



Canada Agricultural  
Review Tribunal

Commission de révision  
agricole du Canada

Ottawa, Canada  
K1A 0B7

Citation: *Kowalczyk v Canada (Minister of Public Safety and Emergency Preparedness)*,  
2020 CART 20

**Docket: CART – 2144**

**BETWEEN:**

**STEFAN KOWALCZYK**

**APPLICANT**

**- AND -**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENT**

**BEFORE: Luc Bélanger, Chairperson**

**WITH: Mr. Stefan Kowalczyk, representing himself; and  
Ms. Tara-Lee Fraser, representing the Respondent**

**DECISION August 29, 2020  
DATE:**

**WRITTEN SUBMISSION ONLY**

## **1. OVERVIEW**

[1] This matter concerns a request by Mr. Kowalczyk to the Canada Agricultural Review Tribunal (Tribunal) for review of the Minister's decision # 18-03127, confirming the Notice of Violation # 7011-18-0741 (NOV), pursuant to paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] It is alleged that on October 7, 2018, following his arrival at Calgary International Airport in Calgary, Alberta, Mr. Kowalczyk imported apples without presenting them for inspection. Consequently, the Canada Border Services Agency (Agency) issued him a NOV with a penalty of \$1,300 for violating section 7 of the [Plant Protection Act](#).

[3] There are two issues before the Tribunal. As a preliminary matter the Tribunal must determine whether it should endorse the Agency's consent to the appeal. Secondly, if answered in the negative, the Tribunal must make a finding as to whether or not the Minister erred when it held the Agency proved all the essential elements to establish Mr. Kowalczyk violated section 7 of the [Plant Protection Act](#).

[4] In this instance, I find that the Tribunal should not endorse the Agency's consent to the appeal because the request to do so offers no argument or evidence to conclude the Minister erred or that Mr. Kowalczyk did not violate section 7 of the [Plant Protection Act](#) as alleged in the NOV. Pursuant to sections 14 and 38 of the [AAAMP Act](#), the authority to set aside a Minister's decision or to cancel a NOV rests solely with the Tribunal. The Tribunal has the exclusive jurisdiction to hear and determine all questions of fact or law in relation to a request for review and accordingly it must fulfill its legislative mandate by undertaking a review of the facts surrounding the issuance of the NOV.

[5] For the reasons that follow, I find that the Agency has not established on a balance of probability the essential elements for a violation of section 7 of the [Plant Protection Act](#). Accordingly, I set aside the Minister's decision, and hold that no monetary penalty is payable by Mr. Kowalczyk to the Agency.

## **2. BACKGROUND**

[6] On November 1, 2019, the Tribunal determined that the request for review of the Ministerial decision was admissible. In a letter informing the parties of its admissibility decision the Agency was prompted to comply with section 49 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Tribunal Rules) which required them to file a certified copy of all documents or exhibits relevant to the request for review by December 6, 2019.

[7] On November 18, 2019, the Tribunal received correspondence from the Minister's delegate advising that it was proceeding with the cancellation of the NOV. This correspondence provided no legal basis or authority for the position that it could unilaterally cancel a NOV confirmed by the Minister and for which the Tribunal was seized with reviewing.

[8] The Tribunal requested that the Minister's delegate clarify its position. The Tribunal received no response from the Agency.

### **3. PRELIMINARY MATTER: SHOULD THE TRIBUNAL ENDORSE THE AGENCY'S CONSENT TO THE APPEAL?**

[9] Similar to my analysis in *Appiah-Kubi*<sup>1</sup>, once the Minister renders a decision, he is *functus officio* as established in *Chandler*<sup>2</sup>, meaning it has fulfilled its mandate since it accomplished the purpose for which it was created. In other words, once the decision is rendered the Agency cannot re-examine the case because it lacks the authority to do so.

[10] The Tribunal's authority when reviewing a decision of the Minister is clear. Pursuant to paragraph 14(1)(a) of the [AAAMP Act](#) it must confirm, vary or set aside the Minister's decision. In order to set aside a decision, the Tribunal needs to be convinced that the Minister erred in law or in fact when it found that all the essential elements of the alleged violation were established.

[11] After undertaking a thorough analysis of the applicable legal framework, I find that the Tribunal cannot endorse the Agency's consent to the appeal. I will now proceed to the analysis of the facts and applicable law of the case, to determine whether the decision of the Minister should be confirmed, varied or set aside.

### **4. ISSUE**

[12] The issue is whether the Minister erred either in fact or law in finding that the Agency proved all the essential elements of a violation of section 7 of the [Plant Protection Act](#)?

### **5. ANALYSIS**

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<sup>1</sup> *Appiah-Kubi v Canada Border Services Agency*, 2020 CART 17 at para 17.

<sup>2</sup> [Chandler v Alberta Association of Architects](#) [1989] 2 SCR 848.

[13] In *Hachey*<sup>3</sup>, the Tribunal concluded that a review of ministerial decisions are conducted “*de novo*”. The Tribunal must examine the underlying facts of the violation and draw its own factual and legal conclusions.

[14] In order to prove a violation of section 7 of the [Plant Protection Act](#) the onus is on the Agency to establish the following four essential elements:

- I. Mr. Kowalczyk is the person who committed the violation; and
- II. Mr. Kowalczyk imported a plant product into Canada; and
- III. Mr. Kowalczyk failed to present the plant product to Agency officers before being referred to the customs secondary examination area for luggage inspection; and
- IV. Mr. Kowalczyk failed to produce all permits, certificates and other documentation.

[15] In this case the certified copies of all documents or exhibits relevant to this review have not been filed and the regulatory timeline for doing so has passed. Therefore, there is no evidence before the Tribunal capable of establishing a violation of section 7 of the [Plant Protection Act](#).

## **6. ORDER**

[16] On the basis that the Agency has failed to provide evidence to substantiate a violation of section 7 of the [Plant Protection Act](#), I **ORDER**, that the Minister’s decision must be set aside, the NOV issued to Mr. Kowalczyk is dismissed, and no monetary penalty is payable to the Agency.

Dated at Ottawa, Ontario, on this 29<sup>th</sup> day of August 2020.



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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal

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<sup>3</sup> [Hachey Livestock Transport Ltd. v. Canada \(Minister of Agriculture and Agri-Food\)](#), 2015 CART 19, at para 45.