



Citation: *Arbib v Canada Border Services Agency*, 2021 CART 04

Docket: CART – 2166

BETWEEN:

NOOMENE ARBIB

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

[Translation of the official French version]

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Noomene Arbib, representing himself; and
Mr. Jonathan Ledoux-Cloutier, representing the respondent**

DECISION DATE: February 19, 2021

WRITTEN SUBMISSIONS ONLY

1. OVERVIEW

[1] This matter concerns a request by Mr. Arbib to the Canada Agricultural Review Tribunal (Tribunal) involving Notice of Violation number 3961-20-0513, in accordance with paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMPA).

[2] It is alleged that on March 4, 2020, upon his arrival at the Pierre-Elliott-Trudeau International Airport in Montreal, Mr. Arbib imported “Similac Alimentum” without presenting it for inspection. As a result, the Canada Border Services Agency (Agency) issued him a Notice of Violation with a \$1,300 penalty for violating subsection 16(1) of the [Health of Animals Act](#) (HAA). It states that it was a “very serious violation” according to section 4 of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (Regulations).

[3] Mr. Arbib simultaneously presented an application for review of the facts alleged in Notice of Violation number 3961-20-0513 to the Tribunal and the Minister of Public Safety and Emergency Preparedness (Minister). The Tribunal was informed that on June 18, 2020, the Minister rendered a decision confirming the offender’s responsibility, in accordance with subsection 13(1) of the [AAAMP Act](#).

[4] The Tribunal must determine whether the enabling statute allows it to accept a request for review of facts alleged in a Notice of Violation after the Minister has already rendered such a decision.

[5] For the following reasons, this request for review is not admissible.

2. BACKGROUND

[6] It seems that Mr. Arbib sent the Tribunal his request for review of the Notice of Violation on March 12, 2020, by registered mail. Also on March 12, 2020, Mr. Arbib concurrently undertook steps to introduce a request for review with the Minister. Since then, the Minister conducted the review in accordance with paragraph 9(2)(b) of the [AAAMPA](#) and confirmed the applicant’s responsibility for the facts alleged in the Notice of Violation.

3. ISSUE

[7] Does the Tribunal have the authority to conduct a review pursuant to paragraph 9(2)(c) of the [AAAMP Act](#) once the Minister has rendered a decision pursuant to subsection 13(2) of the [AAAMPA](#)?

4. ANALYSIS

[8] A request for review is a right which Parliament has extended to applicants which allows them, for a very limited expenditure in time and money, to have a Notice of Violation reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of the hearing and the rendering of a decision, considerable time and money from all parties will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved. Where an applicant does not meet the requirements of the [AAAMPA](#), the [Regulations](#) or the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#), the Tribunal may rule that the request for review is inadmissible.¹

[9] Subsection 9(2) of the [AAAMPA](#) describes a series of options by which Mr. Arbib could exercise the right to a review of the underlying facts of a Notice of Violation; these options are:

Alternatives to payment

(2) Instead of paying the penalty set out in a notice of violation or, where applicable, the lesser amount that may be paid in lieu of the penalty, the person named in the notice may, in the prescribed time and manner,

(a) if the penalty is \$2,000 or more, request to enter into a compliance agreement with the Minister that ensures the person's compliance with the agri-food Act or regulation to which the violation relates;

(b) request a review by the Minister of the facts of the violation; or

Option

(2) À défaut d'effectuer le paiement, le contrevenant peut, dans le délai et selon les modalités réglementaires :

a) si la sanction est de 2 000 \$ ou plus, demander au ministre de conclure une transaction en vue de la bonne application de la loi agroalimentaire ou du règlement en cause;

b) contester auprès du ministre les faits reprochés;

¹ *Wilson v Canada (Canadian Food Inspection Agency)*, 2013 CART 25, at para 10.

(c) request a review by the Tribunal of the facts of the violation.»

c) demander à la Commission de l'entendre sur les faits reprochés.

[10] As confirmed by the Federal Court of Appeal in [Stanford](#), parliament states that a person may request a review of the facts of the violation by the Minister **or** the Tribunal.² Mr. Arbib had to choose, as it is not possible to proceed concurrently as he did.

[11] Mr. Arbib simultaneously exercised both mechanisms for reviewing a Notice of Violation set out in the [AAAMPA](#). Further to his request, the Minister reviewed the alleged fact. On June 18, 2020, the Minister rendered a decision confirming Mr. Arbib's responsibility, in accordance with subsection 13(2) of the [AAAMPA](#). Once that decision was rendered, the Tribunal could no longer exercise its review authority under paragraph 9(2)(c) of the [AAAMPA](#).

5. ORDER

[12] On the ground that the Tribunal cannot review the facts in a Notice of Violation when a decision has already been rendered in accordance with subsection 13(2) of the [AAAMPA](#), I **ORDER** that this request for review is **INADMISSIBLE**.

Dated at Ottawa, Ontario, this 19th day of February 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal

² [Canada \(Attorney General\) v Stanford, 2014 FCA 234](#), at para 19.