



Docket: CART – 2129

SALMA BHANJI

APPLICANT

-AND-

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Ms. Salma Bhanji the Applicant; and
Ms. Sandy Kozak representing the Respondent**

ORDER DATE: October 22, 2020

In the matter of an application to the Canada Agricultural Review Tribunal pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of the facts of Notice of Violation # 7011-19-0426 accompanied by a penalty in the amount of \$800 issued pursuant to paragraph 34(1)(b) of the [Health of Animals Regulations](#).

**ORDER ARISING FROM THE RESPONDENT'S SUBMISSIONS RECEIVED ON NOVEMBER
21, 2019**

1. BACKGROUND TO THE CURRENT ORDER

[1] On June 3, 2019, Ms. Bhanji applied to the Tribunal for a review of the facts stemming from Notice of Violation # 7011-19-0426 (NOV) pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (*AAAMP Act*). Ms. Bhanji has elected to proceed by way of written submissions.

[2] On July 30, 2019, the Tribunal determined that the request met the threshold for admissibility and informed the parties. The Canada Border Services Agency (Agency) subsequently filed its report and supporting documentation in accordance with section 33 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (*Tribunal Rules*).

[3] On November 21, 2019, the Tribunal received correspondence from the Agency stating that it was proceeding with the cancellation of the subject NOV and that the monetary penalty would no longer be owed.

[4] On November 22, 2019, the Agency's correspondence was sent to Ms. Bhanji via email. As of the date of writing this order the Tribunal has received no further communication from either party.

[5] Given the lack of authority cited by the Agency or communication from Ms. Bhanji, the Tribunal is seeking further submissions from the parties in order to inform its analysis.

[6] For the reasons that follow, I **ORDER** that the Agency by no later than **November 23, 2020**, provide the Tribunal with submissions answering the following questions:

1. Did Ms. Bhanji, based on the applicable law and the evidence on file, violate paragraph 34(1)(b) of the [Health of Animals Regulations](#)?; and
2. On what authority can the Agency now request the cancellation of the NOV # 7011-19-0426?

[7] Ms. Bhanji will also be given **30 days**, from the day the Respondent's submissions are received, to provide a reply.

2. AUTHORITY OF THE TRIBUNAL

[8] Pursuant to section 38 of the [AAAMP Act](#) the Tribunal has "sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which it is given jurisdiction under this Act or any other Act of Parliament". A review of a NOV made in accordance with paragraph 9(2)(c) of the [AAAMP Act](#) falls within its jurisdiction.

[9] The powers of the Tribunal after it concludes a review of the NOV facts are clearly set out in paragraph 14(1)(b) of the [AAAMP Act](#). It can only determine whether or not the person requesting the review committed a violation.

[10] In the case at bar, this means the Tribunal must review the facts of NOV # 7011-19-0426, consider the applicable law, evidence on file and binding cases from the Federal Court of Appeal and determine whether the Applicant should be held liable for a violation of paragraph 34(1)(b) of the [Health of Animals Regulations](#).

3. ANALYSIS

[11] The Agency, in its correspondence appears to suggest it has the authority to cancel the NOV the Tribunal is now seized with reviewing pursuant to its mandate.

[12] In effect, the Agency is requesting that the Tribunal refrain from determining whether or not the Ms. Bhanji violated paragraph 34(1)(b) of the [Health of Animals Regulations](#). At this point I am not persuaded that the [AAAMP Act](#) allows the Tribunal to discharge itself of its obligations.

[13] Additionally, the limited submissions provided by the Agency do not provide enough information in order for the Tribunal to endorse its request. In fact, it does not provide the legal basis upon which it suggests it has the authority to now cancel the NOV. Furthermore, the submissions do not provide an evidentiary basis upon which the Tribunal could conclude that Ms. Bhanji did not commit the alleged violation.

[14] Considering the above-mentioned, in order to ensure the Tribunal acts within its authority and fulfills its legislative mandate, it is necessary that the parties provide further submissions.

4. ORDER

[15] I **ORDER** the Agency to provide written submissions by no later than **November 23, 2020**, which will answer the following questions:

1. Did Ms. Bhanji, based on the applicable law and the evidence on file, violate paragraph 34(1)(b) of the [Health of Animals Regulations](#)?; and
2. On what authority can the Agency now request the cancellation of the NOV # 7011-19-0426?

[16] I **ORDER** that the Applicant is also given **30 days** from the day the Agency's submissions are received to provide a reply.

Dated at Ottawa, Ontario, on this 22th day of October 2020.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal