



Citation: *Roy v Canada Border Services Agency*, 2021 CART 14

**Docket: CART-2021-BNOV-007**

**BETWEEN:**

**DIPIKA ROY**

**APPLICANT**

**- AND -**

**CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**BEFORE:** **Luc Bélanger, Chairperson**

**WITH:** **Ms. Dipika Roy representing herself; and  
Mr. Jonathan Ledoux-Cloutier representing the Respondent**

**DECISION DATE:** **May 14, 2021**

## **1. INTRODUCTION**

[1] This matter concerns the request for review of Notice of Violation (Notice) # 4791-21-0252 pursuant to paragraph 9(2)(c) of the [\*Agriculture and Agri-Food Administrative Monetary Penalties Act\*](#) (AAAMP Act).

[2] The issue is to determine the admissibility of this request. I must evaluate whether or not Ms. Roy satisfies the admissibility threshold established by the [\*AAAMP Act\*](#), the [\*Agriculture and Agri Food Administrative Monetary Penalties Regulations\*](#) (AAAMP Regulations) and the [\*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)\*](#) (Tribunal Rules).

[3] On February 7, 2021, Ms. Roy was served with this Notice upon her arrival at the Pearson International Airport in Toronto for importing undeclared potatoes. Thereby, this contravened subsection 7(1) of the [\*Plant Protection Act\*](#). This violation is classified as “Very Serious” and amounts to a penalty of \$1,300 (reducible by 50% if paid within 15 days).

[4] For the following reasons, in accordance with section 32 of the [\*Tribunal Rules\*](#), I find Ms. Roy’s request for review is inadmissible on the basis that she has paid the amount of the penalty imposed. Therefore, Ms. Roy is deemed to have committed the violation in accordance with section 9 of the [\*AAAMP Act\*](#).

## **2. BACKGROUND**

[5] On March 8, 2021, Ms. Roy filed a request for review of the Notice via email. The request for review was received by the Canada Agricultural Review Tribunal (Tribunal) on March 8, 2021.

[6] On March 8, 2021, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with rules 30 and 31 of the [\*Tribunal Rules\*](#) on or before March 23, 2021.

[7] On March 9, 2021, the Canada Border Services Agency (Agency) complied with rule 30 of the [\*Tribunal Rules\*](#), by filing a copy of the Notice with the Tribunal via email. The proof of service of the Notice in the email also confirmed that the penalty associated to the Notice had been paid as of the date of filing.

[8] On March 22, 2021, Ms. Roy sent an email following up to the Tribunal’s acknowledgement letter requesting her to comply with rule 31 of the [\*Tribunal Rules\*](#).

## **3. ISSUE**

[9] Does Ms. Roy meet the admissibility threshold established in the [AAAMP Act](#) and the [AAAMP Regulations](#)? The threshold consists of three requirements:

1. filing the request for review in the prescribed time and manner;
2. the non-payment of the penalty associated to the notice of violation; and
3. providing the required information and motives of the request for review in accordance with the [Tribunal Rules](#).

#### **4. ANALYSIS**

[10] The legislative scheme encompassed in the [AAAMP Act](#) provides a review mechanism whereby a Notice can be reviewed either by the Minister or by the Tribunal. The legislation further provides Ms. Roy an opportunity to have a Minister's decision reviewed by the Tribunal if she first elected for a Ministerial review. In this case, Ms. Roy has elected to proceed by way of direct review by the Tribunal.

[11] However, in order to avoid the Tribunal and the respective parties unnecessarily expending resources, for example the filing of pleadings and the holding of a hearing, the [AAAMP Act](#) states as follows:

*9 (1) Where a notice of violation sets out a penalty and the person named in the notice pays, in the prescribed time and manner, the amount of the penalty or, subject to the regulations, the lesser amount set out in the notice that may be paid in lieu of the penalty,*

*(a) the person is deemed to have committed the violation in respect of which the amount is paid;*

*(b) the Minister shall accept that amount as and in complete satisfaction of the penalty; and*

*(c) the proceedings commenced in respect of the violation under section 7 are ended.*

[12] This provision coincides with the second threshold admissibility requirement, which is to determine whether the penalty associated to the Notice has been paid.

[13] In this case, Ms. Roy has paid the reduced amount of the monetary penalty, which is stated on the Notice as being \$650 to the Agency's satisfaction. The section of the Notice where Ms. Roy acknowledges having committed the violation explicitly reads as follows:

*I understand that by agreeing to pay this penalty, I am acknowledging that I have committed the violation noted.*

[14] The Tribunal has no jurisdiction to review the facts of the Notice when the penalty or lesser amount has been paid, as recently confirmed by the Federal Court of Appeal in *Hershkovitz*<sup>1</sup>. Ms. Roy is therefore deemed to have committed the violation pursuant to subsection 9(1) of the [AAAMP Act](#).

[15] Given my findings with regards to the second threshold requirement, it is not necessary to consider the other two requirements.

## **5. ORDER**

[16] For the aforementioned reasons, I **ORDER** that the request for review is **inadmissible**.

[17] Finally, I wish to inform Ms. Roy that this violation is not a criminal offence. After five years, she is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the Notice removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 14<sup>th</sup> day of May 2021.

(Original signed)

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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal

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<sup>1</sup> [Hershkovitz v Canada \(Attorney General\), 2021 FCA 38.](#)