

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *Khan v Minister of Public Safety and Emergency Preparedness*, 2021 CART 25

Docket: CART-2175

BETWEEN:

MOHAMMAD SOHAIL KHAN

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Mohammad Sohail Khan, representing himself; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: September 15, 2021

1. INTRODUCTION

[1] This matter concerns the request for review of the ministerial decision #20-00619 (Decision) upholding the Notice of Violation (Notice) #4974-20-0350 pursuant to subsection 13(2)(b) 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 Mr. Khan 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 23, 2020, Mr. Khan was served with this Notice at the Toronto Pearson International Airport for having allegedly failed to present the ghee in his possession upon entering the country. Thereby, this contravened subsection 16(1) of the [Health of Animals Act](#) (HA Act). This violation is classified as “Very Serious” and was served with a \$1,300 monetary penalty.

[4] For the following reasons, in accordance with subsection 48(1) of the [Tribunal Rules](#), I find Mr. Khan’s request for review is inadmissible because it was not sent by registered mail within the time limit prescribed by subsection 14(3) of the [AAAMP Regulations](#). Therefore, Mr. Khan is deemed to have committed the violation in accordance with section 9 of the [AAAMP Act](#).

2. BACKGROUND

[5] On December 16, 2020, Mr. Khan was notified of the minister’s Decision upholding the Notice.

[6] On December 30, 2020, a request for review of the Decision was received by the Canada Agricultural Review Tribunal (Tribunal) which Mr. Khan submitted via email.

[7] On January 5, 2021, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with rules 46 and 47 of the [Tribunal Rules](#) on or before January 20, 2021. In this acknowledgement letter, Mr. Khan was also made aware of the requirement to send a copy of his request for review to the Tribunal by registered mail.

[8] On June 28, 2021, Mr. Khan sent the Tribunal a copy of the Notice by email.

3. ISSUE

[9] Does Mr. Khan meet the admissibility threshold established in the [AAAMP Act](#) and its regulations? The threshold consists of three requirements:

1. filing the request for review in the prescribed time and manner;
2. if applicable, 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 Mr. Khan an opportunity to have a Minister's decision reviewed by the Tribunal if he first elected for a Ministerial review. In this case, he had first elected for a Ministerial review, and proceeded to request that this Decision be reviewed by the Tribunal.

[11] The [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#) require that the Tribunal, before it proceeds to a full hearing of a matter, makes a decision on the admissibility of an applicant's request for the review. Absolute bars to admissibility arise when the applicant has failed to file a request for review within the prescribed time and manner as set out in the [AAAMP Act](#) and the [AAAMP Regulations](#).

[12] Section 13 of the [AAAMP Regulations](#) outlines the required statutory period for the filing of a request for review of a Minister's decision before the Tribunal:

13 If a person is notified that the Minister, having concluded a review, has decided that the person committed a violation

(a) the time within which the person may request a review of the Minister's decision by the Tribunal is 30 days after the day on which the notice is served and the request must be in writing;

(b) if the review is in respect of a penalty, the time within which the person may pay the penalty that the Minister has maintained or the corrected amount that the Minister has decided on is 30 days after the day on which the notice is served.

[13] Subsections 14(1) and 14(2) of the [AAAMP Regulations](#) outline the permitted modes of delivery for the filing of a request for review before the Tribunal:

14 (1) A person may make a request referred to in section 11, 12 or 13 by delivering it by hand or by sending it by registered mail, courier or fax or other electronic means to a person and place authorized by the Minister.

(2) Where a person makes a request referred to in subsection (1), the date of the request is

(a) the date on which the request is delivered to the authorized recipient, if the request is delivered by hand;

(b) the earlier of the date on which the request is received by the authorized recipient and the date on the receipt given to the person by a post office or courier, if the request is sent by registered mail or courier; or

(c) the date on which the request is sent, if the request is sent by fax or other electronic transmission.

[14] Additionally, subsection 14(3) of the [AAAMP Regulations](#) sets out how and when the request for review must be sent by registered mail following an electronic transmission:

(3) If a request is sent by fax or other electronic means, a copy of the request shall be sent either by courier or registered mail within 48 hours after the time limit for making the request.

[15] On December 16, 2020, Mr. Khan was notified of the Decision. He had 30 days from that date to comply with section 13 of the [AAAMP Regulations](#).

[16] On December 30, 2020, Mr. Khan sent his request for review by email. Because it was sent electronically, he had an obligation to send a copy by courier or registered mail by no later than January 17, 2021, pursuant to subsection 14(3) of the [AAAMP Regulations](#).

[17] As he failed to send the copy of the request by registered mail within the prescribed time limit, there is no valid request for review before the Tribunal.

5. ORDER

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

[19] Finally, I wish to inform Mr. Khan that this violation is not a criminal offence. After five years, he is entitled to apply to the Minister of Agriculture and Agri-Food to have the Notice removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 15th day of September, 2021.

Original Signed

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal