

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *Zogiani v Canada Border Services Agency*, 2022 CART 01

Docket: CART-2021-BNOV-042

BETWEEN:

REMZIJE ZOGIANI

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Besim Zogiani, representing Ms. Remzije Zogiani; and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

DECISION DATE: January 10, 2022

1. INTRODUCTION

[1] This matter concerns the request for review of a Notice of Violation #4971-21-1450 (Notice), pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] On October 29, 2021, Ms. Zogiani was served with the Notice at the Toronto Pearson International Airport for having allegedly failed to present 8.5 pounds of homemade sausages in her 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 issued with a \$1,300 monetary penalty.

[3] The issue is to determine the admissibility of this request. I must evaluate whether or not Ms. Zogiani 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).

[4] For the following reasons, in accordance with section 32 of the [Tribunal Rules](#), I find Ms. Zogiani’s request for review is inadmissible because it was not sent by registered mail within the 30-day limit prescribed by subsection 11(2) of the [AAAMP Regulations](#). As confirmed by the Federal Court of Appeal in [Clare](#), this is a strict deadline which the Canada Agricultural Review Tribunal (Tribunal) does not hold jurisdiction “to deviate from”.¹ Therefore, Ms. Zogiani is deemed to have committed the violation in accordance with subsection 9(3) of the [AAAMP Act](#).

2. BACKGROUND

[5] On November 9, 2021, Ms. Zogiani submitted via regular mail a request for review of the Notice to the Tribunal.

[6] On November 16, 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 December 1, 2021. In the letter, Ms. Zogiani was urged to comply with section 14 and subsection 11(2) of the [AAAMP Regulations](#) and with Rule 13 of the [Tribunal Rules](#) by sending the request via registered mail to the Tribunal in order to allow her request for review to be considered for admissibility.

[7] On November 19, 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.

¹ [Clare v. Canada \(Attorney General\)](#), 2013 FCA 265 at para 24.

[8] On November 22, 2021, Ms. Zogiani's representative replied by email to the Tribunal's request to comply with the requirements of section 31 of the [Tribunal Rules](#). Ms. Zogiani's representative informed the Tribunal that she does not have an email address or Canadian phone number. Ms. Zogiani's representative did provide the Tribunal with his phone number and email address. However, Ms. Zogiani's representative failed to send a copy of the request for review by registered mail within the 30-day limit as prescribed by section 14 and subsection 11(2) of the [AAAMP Regulations](#).

[9] As of December 1, 2021, the Tribunal has not received a request for review from Ms. Zogiani by registered mail.

3. ISSUE

[10] Does Ms. Zogiani meet the admissibility threshold established in the [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#)? 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, if applicable; and
3. providing the required information and motives of the request for review in accordance with the [Tribunal Rules](#).

4. ANALYSIS

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

[12] 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 an applicant has already paid the penalty attached to the Notice, or 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](#).

[13] Subsections 11(2), 14(1) and 14(2) of the [AAAMP Regulations](#) outline the required statutory period and the permitted modes of delivery for the filing of a request for review of the facts of a violation before the Tribunal. 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.

[14] Under the above-mentioned provisions, Ms. Zogiani had the responsibility to file the request for review by a permitted method of transmission within 30 days after having been served the Notice, according to subsections 11(2) and 14(1) of the [AAAMP Regulations](#).

[15] On November 9, 2021, Ms. Zogiani sent her request for review by regular mail. Regular mail is not a valid way to make a request for review under subsection 14(1) of the [AAAMP Regulations](#). Because she failed to send her request for review in the prescribed manner and time limit, there is no valid request for review before the Tribunal.

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

5. ORDER

[17] For the above-mentioned reasons, I **ORDER** that the request for review is **inadmissible**.

[18] Finally, I wish to inform Ms. Zogiani that this violation is not a criminal offence. After five years, Ms. Zogiani 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 10th day of January 2022.

(Original Signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal