



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Elrefaei v Canada Border Services Agency*, 2022 CART 29

Docket: CART-2022-BNOV-022

BETWEEN:

MARWA ELREFAEI

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

WITH: Ms. Marwa Elrefaei, the Applicant; and  
Ms. Gaynor Holden, representing the Respondent

DECISION DATE: October 14, 2022

DECISION

The Canada Agricultural Review Tribunal, by ORDER, confirms the settlement agreement reached by the parties.

## 1. OVERVIEW

[1] This matter concerns a request for review of the Notice of Violation # 4971-22-0813 (Notice) by Ms. Elrefaei to the Canada Agricultural Review Tribunal (Tribunal), pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] On July 15, 2022, following her arrival at the Pearson International Airport, Ms. Elrefaei failed to present an animal or thing, namely 0.6 kg of cilantro with roots and soil. Consequently, the Canada Border Services Agency (Agency) issued him a Notice for violating 7(1) of the [Plant Protection Act](#) (PP Act).

## 2. PROCEDURAL HISTORY

[3] On July 19, 2022, Ms. Elrefaei applied to the Tribunal for a review of the Notice # 4971-22-0813.

[4] On August 25, 2022, the Tribunal determined that the request for review was admissible.

## 3. OFFER TO SETTLE

[5] On August 26, 2022, the Tribunal sent a letter to the Agency and Ms. Elrefaei notifying them that Ms. Elrefaei's request for review was admissible.

[6] On September 9, 2022, the Agency presented a written offer to settle the case concerning Ms. Elrefaei, offering to replace the Notice originally issued with a penalty of \$1 300 by a Notice with warning and no monetary penalty.

[7] Ms. Elrefaei communicated her acceptance to this offer via email, received by the Tribunal on September 19, 2022.

[8] The Agency's settlement offer noted that the Notice will remain in the Agency's records for a period of six years from the date of the Notice. In addition, the existing record of the Notice may be considered in the event of any future instances of non-compliance.

[9] Ms. Elrefaei must understand that all travellers entering Canada may be subject to secondary examinations by the Agency, regardless of previous enforcement action.

[10] Furthermore, I wish to reiterate to Ms. Elrefaei that the introduction of undeclared food, plant or animal products into Canada can result in serious risk to our plant and animal health and can endanger our food supply, agriculture, economy, environment and even our own wellbeing.

#### 4. THE SETTLEMENT

[11] The Tribunal has the sole and exclusive jurisdiction to hear and determine all questions of fact or law regarding any matter over which it is given jurisdiction pursuant to section 38(1) of the [AAAMP Act](#).

[12] Moreover, as a court of record, the Tribunal is vested with additional powers to the ones explicitly conferred by its enabling legislation. These powers are available to the Tribunal as they are necessary to fulfill the purpose and objective of the statutory regime created by the legislature.<sup>1</sup> This ensures the enforcement of its orders and other matters necessary to duly exercise its jurisdiction pursuant to section 41(2) of the [AAAMP Act](#).

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<sup>1</sup> [ATCO Gas & Pipelines Ltd. v. Alberta \(Energy & Utilities Board\)](#), 2006 SCC 4 at para 51.

[13] The Tribunal does not have the explicit authority to replace a Notice with penalty to a Notice without penalty. However, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement as established in [Atkinson](#)<sup>2</sup>.

[14] Given these powers provided to me by statute, I agree that the most just and efficient outcome in this case is to amend the Notice with a penalty of \$1 300 to a Notice with warning and no monetary penalty.

[15] This settlement agreement constitutes a final settlement of the rights of both parties in relation to CART-2022-BNOV-022 and the events which occurred on July 15, 2022.

[16] This settlement should not be cited as a precedent or otherwise relied on except in relation to the current Violation.

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<sup>2</sup> [Atkinson v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2018 CART 3.

## 5. ORDER

[17] As requested by the parties and pursuant to the powers conferred to me, I confirm, by **ORDER**, the settlement agreement.

[18] I wish to inform Ms. Elrefaei that this Violation is not a criminal offence. After 5 years, she may apply to the Minister of Public Safety and Emergency Preparedness to have the Violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).



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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal