

Guide to our process

Purpose of this guide

This guide helps explain the procedures at the Canada Agricultural Review Tribunal (CART).

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1 Definitions

AAAMP Act: Short form of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#).

Administrative Monetary Penalty (AMP): A monetary penalty (a fine) issued by an agency to an individual accused of breaching agri-food or agriculture law.

Admissible: A request that CART can evaluate. This means that CART has the power to determine the questions raised in a request and if the request was made in the manner required by law.

Agency: The government organization that issued the notice of violation under review by CART. The agencies that appear most often before CART are:

- Canadian Food Inspection Agency
- Canada Border Services Agency
- Pest Management Regulatory Agency

Agri-food or Agriculture Law: Federal laws about agri-food or agriculture that may form the basis of a notice of violation. They include the [AAAMP Act](#), the [Safe Food for Canadians Act](#) and the [Health of Animals Act](#).

Applicant: A person who is requesting a review of a notice of violation or a minister's decision.

CART: Short form of the Canada Agricultural Review Tribunal.

Evidence: The information you present to CART to prove a fact.

Evidence may include:

- documents;
- photographs;
- video recordings;
- sound recordings; and
- testimony (what a witness says).

Member: An impartial decision maker at CART who decides the outcome of the request. Members are also sometimes called adjudicators.

Minister: Defined in the AAAMP Act. Use of the term "minister" depends on the notice of violation and could refer either to the minister of Public Safety and Emergency Preparedness, Health, or Agriculture and Agri-Food.

Notice: The "notice of violation" document issued by an agency with information about the alleged violation and the warning or amount of the penalty.

Parties: The people who can participate in a review of a notice or a minister's decision. The applicant and the respondent are each a party.

Respondent: Either the minister or the agency. The respondent is the party that will defend the notice or decision in question.

Regulations: Refers to the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#).

Request: A request for review that the applicant submitted to CART about the notice or minister's decision.

Rules: The [Rules of the Review Tribunal \(Canadian Agricultural Review Tribunal\)](#).

Service: The way that a document is provided to a person.

Unrepresented: The person or party does not have a lawyer or another representative to help them.

Violation: A breach of an agriculture or agri-food law. Sometimes an agency will issue a notice following an alleged violation. Violations are not criminal offences.

2 CART's jurisdiction

CART reviews notices and minister's decisions that have warnings or administrative monetary penalties relating to agriculture and agri-food.

CART is an independent tribunal. This means that it makes decisions separate from the federal government, including the agencies that issue the notices.

The federal agencies that issue notices that CART reviews include the:

- Canadian Food Inspection Agency
- Canada Border Services Agency
- Pest Management Regulatory Agency

3 How to request a review

CART can receive two types of requests after an administrative monetary penalty is issued: requests about notices and requests about minister decisions.

To challenge a notice, an applicant has two ways to submit a request:

1. To the Minister: if an applicant is unhappy with the Minister's decision, they may then request that CART review the Minister's decision.
2. To CART directly.

An applicant can also pay the administrative monetary penalty. However, an applicant that pays the penalty cannot request a review of the notice by CART or the minister. If an applicant pays the penalty within 15 days of the notice being served, the amount they must pay is decreased by 50%.¹

An applicant may submit a request by hand, by registered mail, by courier or electronically.

Practical information for applicants

- Check that your request includes the required information—we strongly recommend using the [Request for Review Form](#).
- Keep a copy of each document you send to CART.
- Tell CART right away if your contact information changes.
- Be prepared to pay your own expenses, such as representation or mailing/photocopying documents.

3.1 Time limit to file a request

¹ Subsection 10(2) of the Regulations.

An applicant must file the request within 30 days after being served with the notice or the minister's decision.

3.2 What is service?

Service is how a document is sent to you. A notice of violation must be served according to the AAAMP Act and Regulations.

The 30-day time limit to file a request starts on the service date.

The service date can be either the day the document is sent or a later date. This depends on how the notice document was sent:

- If sent by fax or email, the service date is the date it is sent.²
- If sent by registered mail or courier, the service date is the tenth day after the date it was sent.

3.3 CART review or Ministerial review

Please note that if you submit requests before both CART and the Minister, or if you indicate in your communications with either CART or the Minister that you meant for your request to be before the other entity, you will be asked to choose one option.

In deciding which option to pursue, be sure to check whether you are within the time limit to file a request before CART.

4 Admissibility of the request

When CART receives a request for review, it must first determine if the request is admissible. CART can only review a request that meets certain requirements of the AAAMP Act, the Regulations and the Rules.

4.1 Is the request admissible?

To decide if a request is admissible, CART considers the following:

1. Does CART have the power to consider the request?

The AAAMP Act says that CART can only review administrative monetary penalties relating to agriculture and agri-food.

2. Was the penalty paid?

If the applicant has paid the penalty, their request is not admissible.³

3. Was the request made in time?

If an applicant does not submit a review request within 30 days after the notice or minister's decision is served, a request to review is not admissible.⁴

4. Was the request sent in the right way?

² Subsection 9(2)-(4) of the Regulations.

³ Subsections 9(1), 11(2) and 13(2)(a) of the AAAMP Act.

⁴ Sections 11, 12 and 13 of the Regulations.

Requests must be submitted by hand, registered mail, fax, email, or by courier (**not ordinary mail**).⁵

4.2 What if CART decides an applicant's request is not admissible?

If CART determines that a request is inadmissible, this will end the process at CART.

If the applicant disagrees with the decision, they can ask the [Federal Court of Appeal](#) to review it.⁶

5 Burden of proof

The respondent has the burden of proof.⁷ This means that the respondent must convince CART that the applicant committed the violation described in the notice.

Since the respondent has the burden of proof, an applicant does not have to provide CART with any evidence of the violation. Each applicant can decide if they want to give CART their version of events.

In a request, the respondent must prove every element of the alleged violation.⁸ For example, the respondent must prove that:

- the right person is named in the notice;
- the person named in the notice violated the law as alleged; and
- the penalty, if any, was established according to the Regulations.

The respondent must prove each element on “a balance of probabilities.” This means that the respondent must show that its allegation is more likely to be true than not.

If the respondent does not prove every element of the violation, the notice must be set aside.

6 Defences an applicant can and cannot use

In Canada, federal administrative monetary penalties relating to agriculture and agri-food are part of an absolute liability system. As a result, if the respondent can prove that an applicant committed the violation, the applicant will be responsible to pay the penalty.

The respondent does not have to prove that the applicant intended to break the law. Generally, it will not matter why an applicant committed the violation.

As a result, in a request to CART, an applicant **cannot use** defences such as:

- “I did my best” or “I did not intend to” (also called “due diligence” defences); or
- “I did not know” or “I thought I was doing the right thing” (also called “mistake of fact” defences).⁹

However, an applicant **may use** other defences such as:

- “I had no other choice” (also called “necessity”);
- “A government official told me” (“officially induced error”); or

⁵ Subsection 14(1) of the Regulations.

⁶ Subsection 28(1) of the *Federal Courts Act*.

⁷ Section 19 of the AAAMP Act.

⁸ *Doyon v. Canada (Attorney General)*, 2009 FCA 152.

⁹ Subsection 18(1) of the AAAMP Act.

- “I was not in control of what I was doing” (also called “automatism”).¹⁰

7 Choosing a written or oral hearing

CART will have a hearing to determine if the applicant is in violation of the law and, if so, whether the amount of the administrative monetary penalty was properly determined.

There are two types of hearings: written and oral. We will ask the applicant which type they prefer.

7.1 Written hearings

In written hearings, the parties provide written, photographic or video evidence, as well as written arguments.

These hearings are usually decided more quickly. CART makes its decision based on the written arguments and supporting documents the parties submit. As a result, there is no opportunity to testify or ask questions about the evidence.

The following is the typical process for a written hearing:

- The respondent provides written arguments and evidence (documents, photos or videos) that the applicant committed the violation in the notice, and that the penalty—if any—was appropriate.
- The applicant may then choose to provide written arguments and evidence (documents, photos or videos) about why they disagree with the respondent’s arguments and evidence.

7.2 Oral hearings

At an oral hearing, you will have the opportunity to talk and ask questions. The parties will often bring witnesses and make oral arguments. An oral hearing also allows parties to question each other’s witnesses.

CART holds its oral hearings by videoconference. As a result, you can attend an oral hearing from your home. You can use your own electronic device, such as a laptop, desktop or smartphone, to join the hearing.

For more information, please see [Practice Note: Virtual and In-Person Oral Hearings](#).

The following is the typical process for an oral hearing:

- 1) The member asks if there are any preliminary issues. A preliminary issue is something a party believes should be discussed at the outset.

Examples include:

- the hearing process;
- access to documents;
- whether the witnesses have shown up;
- what the witnesses can hear before they testify;
- technology issues; and
- human rights accommodations.

Not every hearing will have preliminary issues.

- 2) The parties make opening statements.

¹⁰ Subsection 18(2) of the AAAMP Act.

The respondent first makes their opening statement, followed by the applicant if the applicant chooses to do so.

An opening statement functions as a summary of what you will present at the hearing. No details or evidence are required. For example, an applicant could explain why they disagree with the notice or minister's decision.

3) The respondent's witnesses give their testimony.

When these witnesses testify:

- the respondent's representative asks questions of the witness (direct examination);
- the applicant can then challenge the witness (cross-examination); and
- the respondent's representative may ask follow-up questions (redirect).

This process is repeated for each of the respondent's witnesses.

4) The applicant and/or their witnesses give their testimony.

When the applicant and/or their witnesses testify:

- the applicant directly examines the witness;
- the respondent cross-examines these witnesses;
- the applicant can ask follow-up questions in redirect;
- if the applicant testifies, the respondent will cross-examine the applicant; and
- the applicant may then add to their testimony after cross-examination.

This process is repeated for each of the applicant's witnesses.

5) Closing submissions

Once all witnesses have testified, the parties make their closing submissions. These are short summaries of what you want the member to remember about the evidence, spoken first by the respondent and then the applicant. The respondent may have an opportunity to reply.

Closing submissions are sometimes made orally at the hearing or in writing after.

7.3 Active adjudication

CART members may use active adjudication during oral hearings.

Active adjudication may include:

- explaining the laws and rules that apply to CART's review;
- deciding what issues need to be addressed;
- deciding what procedures are appropriate;
- deciding the order for parties to present evidence; and
- asking questions.

In using active adjudication, the CART member will ensure that legal and procedural rules are applied fairly to all parties.

8 Case management conference calls

Sometimes, case management conference calls (CMCCs) are required before oral hearings. They are usually

held at least a month before the hearing.

During the CMCC, the parties usually discuss:

- the hearing process;
- who their witnesses will be and how much time is needed to testify;
- timelines for submitting documents; and
- potential hearing dates.

Following the CMCC, CART will write to the parties confirming next steps in the file.

9 Witnesses

Witnesses can give their testimony in writing.

All witnesses must promise to tell the truth by either making a sacred oath (a religious promise to tell the truth) or an affirmation (a non-religious promise to tell the truth).

9.1 Summonses: Making a witness testify at an oral hearing

If you want to make sure that your witness will attend the oral hearing, you can ask CART for a summons. A summons is a document from CART to a person that tells them they must attend the hearing.

9.2 Affidavit evidence (written testimony)

An affidavit is a way of giving testimony in writing. A person who gives their testimony in this way is called an “affiant.”

An affidavit is affirmed to a lawyer, a notary public, or a commissioner of oaths.

9.3 Limits to witness testimony

Witnesses must limit their testimony to just what is relevant (in other words, having to do with the issues in question).

The member may direct the witness to limit their testimony to just what is relevant. The member may also direct that a witness give their testimony in writing rather than orally, or direct that the witness doesn’t need to testify at all.

10 Representation

You may represent yourself or someone else may represent you.¹¹

If the applicant is a corporation, partnership or unincorporated association, the representative must be either an officer/partner/member of the corporation or a lawyer.¹²

Your representative must provide their contact information to CART.

You must tell CART as soon as possible about any change regarding your representative or their contact information.

11 Accommodations

We want to make sure you can fully participate in the hearing process, and that it is accessible for all participants (including parties, witnesses and lawyers).

An accommodation is an arrangement to remove a barrier so you can participate fully in your hearing. We will accommodate your needs related to a disability or any of the other grounds set out in the [Canadian Human Rights Act](#). We want to remove barriers to provide everyone with equal access to our services.

Anyone who requires accommodation should notify the [Registry](#) as early as possible.

Examples of accommodations you can request at a hearing:

- an interpreter if French or English is not your first language;
- breaks during the oral hearing;
- that participants speak loudly or slowly; and
- more time to answer questions.

In addition, we can help you:

- set up your technology for your hearing; and
- access information and publications (including audio recordings of hearings).

We do our best to communicate clearly. If you have questions about anything we send you, please [contact](#) us.

If we cannot arrange what you request, we will inform you as soon as possible and do our best to offer a satisfactory alternative.

A party that wants interpretation must notify CART as soon as possible.¹³

If you need an interpreter at the hearing, we provide the following free of charge:

- Spoken language interpretation (for French and English)
- Sign language interpretation for languages such as American Sign Language (ASL), Indigenous sign languages, and langue des signes québécoise [Quebec sign language] (LSQ)
- Real-time captioning

For interpretation into a language other than French or English, the party requesting the service must notify

¹¹ Subsection 18(1) of the Rules.

¹² Subsection 18(2) of the Rules.

¹³ Subsection 8(3) of the Rules.

CART at least 30 days before the hearing. The party requesting that interpretation must pay for the service.¹⁴

Ask for an interpreter when you fill out your request, or [contact](#) us.

12 Preliminary issues

Preliminary issues are concerns that a party wants discussed prior to the hearing. If you have a preliminary issue, you should contact CART as soon as possible.

Examples of preliminary issues include:

- adjournment requests (when a party asks that the hearing happen on another day);
- access to documents;
- if witnesses have shown or will show up;
- what the witnesses can hear before they testify;
- whether certain evidence can be provided to CART;
- technology problems; and
- accommodation requests.

Not every hearing will have preliminary issues.

12.1 Adjournments (or postponements)

In exceptional cases, you may request that CART change the hearing date (postpone or adjourn).

You must make these requests as soon as possible.

12.2 Time extensions

Although CART cannot extend time limits in the AAAMP Act, it can extend those in the Rules.

When requesting more time for the limits set in the Rules, be sure to include:

- your case number;
- the original deadline;
- how much extra time you are requesting;
- the reasons you want an extension; and
- whether you have already requested an extension in this file.

12.3 Hearings are open to the public and our decisions are published online

Hearings at CART are public.¹⁵ For a list of CART's upcoming oral hearings, please see our [hearing schedule](#). If you would like to observe a hearing, please email the [Registrar](#).

Tribunal decisions are published in French and English on [CART's website](#) and on [CanLII](#), a legal decision website.

That said, in exceptional cases, a party may request that proceedings be held in private.¹⁶

¹⁴ Subsection 8(4) of the Rules.

¹⁵ Subsection 19(1) of the Rules.

¹⁶ Subsection 19(2) of the Rules.

12.4 Excluding witnesses

Most witnesses cannot attend the oral hearing until they have testified. The purpose is to make sure that witnesses' testimony is not influenced by what is said at the hearing.

A party may request that CART formally order witnesses excluded from the hearing until they have testified. CART may also make such an order.

12.5 New evidence during reviews of a minister's decision

This section applies only to requests of a minister's decision.

You must request CART's permission to introduce new evidence that was not provided to the Minister.¹⁷

Your request needs to explain why the new evidence:

- is relevant;
- is necessary; and
- was not available to the Minister.

The other party will have a chance to respond to the request.

CART will consider the parties' arguments before deciding whether to allow the new evidence.

13 Objections

An objection is how you tell the member that the other party's evidence, testimony or question should not be allowed. A successful objection will keep evidence from entering the record. This means that the member cannot use that evidence to decide your case.

CART is not required to follow the rules of evidence used in courts. As a result, with only one exception, CART can accept any evidence.¹⁸ The exception is privileged information (explained later).

To make an objection, you say "objection" or otherwise indicate that you do not agree with what is being said. You say it as soon as you hear a question or see evidence that you think should not be included.

You will then say why you are objecting to the question, statement or evidence. If the member agrees with your objection, the evidence will not be considered. If the member disagrees with your objection, the evidence can be considered.

Below, we review the most common types of objections.

13.1 Relevance

You can object to the evidence if you think a piece of evidence or something a witness is saying has nothing to do with the issues in question.

13.2 Leading questions

If the other party asks a question during direct examination that leads the witness to a certain answer, you can object to the question as "leading." This is often the case with "yes" or "no" questions. For example, "Did

¹⁷ Section 44 of the Rules.

¹⁸ Sections 44 and 45 of the AAAMP Act.

you suspect a problem right away?” is a leading question because it implies there was a problem right away. It would be more appropriate to ask, “When did you suspect a problem?”

Please note that during direct examination the member may allow leading questions for simple background information to move the testimony along.

For example, if the applicant’s mother is testifying, the member may allow the question, “You are the respondent’s mother, correct?” instead of, “How do you know the respondent?”

However, when someone asks about issues directly related to the case, leading questions are not allowed.

13.3 Privileged information

Privileged information is legally protected so that it does not have to be shared.

One kind of privileged information is solicitor-client privilege (what is said between a lawyer and their client).

13.4 Compound questions

A compound question is two or more questions combined as one. Compound questions are not allowed because they can confuse the witness, the other party and the member. Also, it may not be clear which of the questions the witness is answering.

If you find yourself asking a compound question, do not get flustered with the other party’s objection or abandon the issue entirely. Rather, separate the questions to ask one at a time, and they may be allowed.

13.5 Argumentative

When the cross-examiner argues with the witness (“badgering the witness”), the other party can object to the questioning as argumentative.

13.6 “Asked and Answered”

Sometimes, the person asking questions may ask the same question repeatedly and in different ways, or re-ask a question they asked earlier in the testimony.

After a question has been asked and answered, you can object to any further attempts to ask it.

13.7 Vague

A vague question is one that is unclear. You can object to vague questions because the witness could misunderstand the question and answer in a way that hurts your case.

If a vague question is objected to, the person asking the question may be permitted to ask it in a different way that is more specific.

13.8 Non-responsive

When a witness answers a question with information that is unrelated to the question, you can object to it as being “non-responsive.”

This can be especially important in cross-examination when you are looking for very specific “yes” or “no” answers.

13.9 What you cannot object to

Opinion and hearsay evidence are allowed at CART.

As a result, **you cannot object** if the evidence is:

- hearsay, where a person testifies about something they heard from someone else; or
- opinion, where a person gives their opinion about something.

14 Use of Artificial Intelligence (AI)

CART members will not use AI to make a decision. Please see CART's [Practice Note: Use of Artificial Intelligence \(AI\)](#) for more information on how CART may use AI.

If a party plans on using AI, it is recommended that they review the practice note.

15 Withdrawing a request

15.1 Withdrawing a request

An applicant may choose at any time to [withdraw their request](#) (for example, if the parties reach an agreement). An applicant must advise CART in writing by email, letter or fax. CART will close the file once that communication is received.

15.2 Request considered withdrawn

Under certain circumstances, a request may be considered withdrawn. These circumstances include failing to respond to requests from CART, failing to participate in case management conference calls (CMCCs) or failing to appear at the hearing.

Before a request is considered withdrawn, the applicant will be sent notice from CART and given an opportunity to explain why their request should remain open.

Should a request be considered withdrawn, CART will send notice to the applicant.

16 Challenging a CART decision

A party that is unhappy with CART's decision may request the [Federal Court of Appeal](#) to review it. This is called a judicial review.

17 Contact information for the Canada Agricultural Review Tribunal

Mailing address:

Canada Agricultural Review Tribunal
Registry Office
344 Slater Street, 15th Floor, Suite 300
Ottawa, Ontario K1A 0B7

Telephone: 613-943-6405

Fax: 613-943-6429

Email: InfoTribunal@cart-crac.gc.ca