

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

K1A 0B7

Citation: *Les Élevages J. Fortin v. Canadian Food Inspection Agency*, 2019 CART 13

Docket: CART – 1973

BETWEEN:

LES ÉLEVAGES J. FORTIN INC.

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

[Translation of the official version in French]

BEFORE: Geneviève Parent, Member

**WITH: Vincent Lamontagne, representative for the applicant; and
Suzanne Trudel, for the respondent**

DATED: October 4, 2019

1. INTRODUCTION

[1] This is a review of the facts surrounding the issuance of notice of violation #1617QC0019-2 with an administrative monetary penalty of \$7,800. This notice of violation, which was issued to the applicant by the Canadian Food Inspection Agency (the Agency) on April 11, 2016, alleges a violation of paragraph 138(2)(a) of the [Health of Animals Regulations \(HA Regulations\)](#).

[2] Paragraph 138(2)(a) of the [HA Regulations](#) provides that no person shall load or cause to be loaded or transport or cause to be transported an animal that, by reason of infirmity, illness, injury, fatigue or any other cause, cannot be transported without undue suffering during the expected journey.

[3] On April 11, 2016, nine pigs belonging to the applicant were loaded and transported from Ferme Dam inc., (a contract farming operation for the applicant), to Abattoir Cliche (abattoir) by Abattoir de Manseau inc. (carrier).

[4] During unloading and after the *ante mortem* and *post mortem* examinations, veterinarian Yves Vaillancourt and inspector Guylaine Fournier found that two of the pigs were unfit to be transported under the Agency's standards and should have been euthanized at the farm; this constituted a violation of paragraph 138(2)(a) of the [HA Regulations](#).

[5] Investigator Dumontier issued the notice of violation #1617QC0019-2 to the applicant on September 27, 2017, with an administrative monetary penalty of \$7,800.

[6] The applicant then applied to the Tribunal for a hearing, to be heard on the facts surrounding the issuance of the notice of violation.

[7] At the case management conference held on December 18, 2018, the applicant stated that the two pigs at issue belonged to her and that she did not dispute the facts in the record as to the pigs' condition, namely that they were non-ambulatory and could not be transported without undue suffering.

[8] In this case, the Tribunal must first determine whether the applicant transported or caused to be transported or loaded or caused to be loaded the two non-ambulatory pigs even when she was not present during loading and even though, in her opinion, she did not have control over the two pigs.

[9] If the Tribunal finds that the applicant did transport or cause to be transported or load or cause to be loaded the two non-ambulatory pigs, the Tribunal must then determine whether the Agency established the administrative monetary penalty in accordance with the relevant regulations by determining that the applicant committed the violation negligently.

[10] For the reasons that follow, after having examined the evidence and heard the testimony given at the hearing on February 28, 2019, the Tribunal, by order, determines that the applicant is liable for the violation and that the administrative monetary penalty was established in accordance with the relevant regulations.

2. BACKGROUND

[11] Mr. Fortin, the applicant's representative, has extensive experience in pig farming, spanning more than 30 years. He oversees a farrow-to-finish operation with nearly 300 female breeding pigs. He raises between 25,000 and 30,000 pigs a year. Some pigs are raised on his farm, and he deals with eight different contract farming operations.

[12] At the time of the facts, Ferme Dam inc. was raising pigs on contract for the applicant, including the two non-ambulatory pigs involved in this case.

[13] The contract between the applicant and Ferme Dam inc. was not filed in evidence. However, several pieces of evidence provide an understanding of the contract's terms and conditions.

[14] As a part of his agreement with Ferme Dam inc., Mr. Fortin delivered lots of approximately 1,000 pigs to Ferme Dam inc. every few months. Ferme Dam inc. raised the pigs and sent them to the abattoir.

[15] In this business relationship, the applicant arranged and paid for the veterinary care and technical monitoring of the animals.

[16] Mr. Fortin was sometimes on site but, mostly, he was in contact by telephone with Mr. Berthiaume of Ferme Dam inc. Mr. Berthiaume could contact Mr. Fortin whenever necessary.

[17] Ferme Dam inc. owned its livestock facilities and handled the day-to-day care of the pigs, while the applicant purchased and provided the feed and medications prescribed by the veterinarians.

[18] From this business relationship, both Ferme Dam inc. and the applicant drew prospects for profits and revenues, with Ferme Dam inc. being paid [translation] "according to production".

[19] The pigs, which were owned by the applicant but raised by Ferme Dam inc., were usually transported to an abattoir in Rivière-du-Loup.

[20] Michel Berthiaume of Ferme Dam inc. and his employee were normally in charge of booking the carrier and making appointments with the abattoir.

[21] The applicant paid for the transportation of her pigs.

[22] Regarding the selection of pigs, it is clear from Mr. Fortin's testimony that Ferme Dam inc. was in charge of selecting the pigs to be transported to the abattoir.

[23] Mr. Fortin gave clear verbal orders that pigs [translation] "unfit for transport" should never be loaded and that Mr. Berthiaume of Ferme Dam inc. could contact him if in doubt about what to do with pigs that were compromised.

[24] No written instructions to this effect were given to Ferme Dam inc. or the other contract farming operations.

[25] Pigs under a certain size and weight were not accepted at the abattoir in Rivière-du-Loup.

[26] Mr. Fortin sometimes decided where to transport pigs that were [translation] "too small" to be transported to the abattoir in Rivière-du-Loup.

[27] In this case, the two pigs were transported to Abattoir Cliche inc. in East Broughton by the carrier Abattoir Manseau inc.

[28] Ferme Dam inc. does not usually do business with the carrier Abattoir Manseau inc. Rather, this is a carrier with which the applicant does business.

[29] However, the evidence is inconsistent as to whether Ferme Dam inc. or the applicant signed the contract performed by the carrier Abattoir Manseau inc. for transportation to Abattoir Cliche inc.

[30] Mr. Fortin was not present when the two pigs in question were being loaded by Ferme Dam inc. or when they were being transported.

3. ISSUES

[31] According to [Doyon](#),¹ for there to be a violation of paragraph 138(2)(a) of the [HA Regulations](#), the Agency must be able to establish

¹ [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152, at para. 41 [*Doyon*]

1. that the animal in question was loaded (or was caused to be loaded) or transported (or caused to be transported);
2. that the animal in question was loaded onto or transported on a railway car, motor vehicle, aircraft or vessel;
3. that the cargo loaded or transported was an animal;
4. that the animal could not be transported without undue suffering;
5. that the animal suffered unduly during the expected journey (“voyage prévu” in French);
6. that the animal could not be transported without undue suffering by reason of infirmity, illness, injury, fatigue or any other cause; and
7. that there was a causal link between the transportation, the undue suffering and the animal’s infirmity, illness, injury or fatigue, or any other cause.

[32] As mentioned, the applicant does not dispute the facts in the record regarding the pigs’ condition, namely that they were non-ambulatory and could not be transported without undue suffering.

[33] Thus, only the first element of the violation, namely “that the animal in question was loaded (or was caused to be loaded) or transported (or caused to be transported)” is at issue and remains to be proven.

[34] The applicant submits that she was not in charge of and did not have control over the two pigs when they were transported and therefore could not have transported or caused to be transported or loaded or caused to be loaded the pigs. The applicant cites [Ferme Alain Dufresne inc.](#)² in support of her claim.

[35] On the contrary, the Agency submits that the applicant caused the pigs to be loaded and transported as a mandator.

[36] In the alternative, the applicant contests the amount of the administrative monetary penalty imposed on her, arguing that the penalty was not issued in accordance with the relevant regulations because she was not negligent.

[37] The Tribunal must therefore determine two issues:

1. **Did the applicant transport or cause to be transported or load or cause to be loaded the two non-ambulatory pigs?**
 - i. Is it necessary for the applicant to have been in control of the pigs to be held liable for the violation of paragraph 138(2)(a) of the [HA Regulations](#)?
 - ii. Can the applicant be considered to have an agent within the meaning of subsection (20)(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act \(AAAMP Act\)](#) and thus be held liable for the violation of paragraph 138(2)(a) of the [HA Regulations](#)?

² [Ferme Alain Dufresne Inc. v. Canada \(CFIA\)](#), 2015 CART 6.

2. Did the Agency establish the administrative monetary penalty in accordance with the relevant regulations?

- i. What is the scope of the burden of proof under section 19 of the [AAAMP Act](#)?
- ii. Was the applicant negligent?

4. ANALYSIS

1. Did the applicant transport or cause to be transported or load or cause to be loaded the two non-ambulatory pigs?

[38] On this question, the applicant submits that she could not have transported or caused to be transported or loaded or caused to be loaded the two pigs in question because she did not have control over them when they were loaded and transported. In particular, the applicant cites [Ferme Alain Dufresne inc.](#)³ in support of her claim.

[39] On the contrary, the Agency submits that, under subsection 20(2) of the [AAAMP Act](#), the applicant caused the pigs to be loaded and transported through her mandatary.

[40] Both parties pleaded the mandate provisions of the *Civil Code of Québec*.

[41] The Tribunal considers [Ferme Alain Dufresne inc.](#)⁴ to be of no usefulness to this case. First, that case deals with the interpretation of subsection 139(2) of the [HA Regulations](#) and not paragraph 138(2)(a), as in this case. In addition, that case deals with the chicken catching industry, which is different from that of pigs, and the contractual terms inferred by the Tribunal that bind the catcher and the producer appear to differ from the evidence presented in this case. Finally, subsection 20(2) of the [AAAMP Act](#) was not raised in that case, whereas it is in this case.

[42] With that being said, the Tribunal must determine the issue of the applicant's control over the pigs under paragraph 138(2)(a) of the [HA Regulations](#).

[43] To do so, I will first interpret paragraph 138(2)(a) of the [HA Regulations](#) and then analyze the potential impact of subsection 20(2) of the [AAAMP Act](#) in this case.

i. Control over the pigs under paragraph 138(2)(a) of the [HA Regulations](#)

[44] The English version of paragraph 138(2)(a) of the [HA Regulations](#) reads as follows:

***138 (2)** Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal*

³ [Ibid.](#)

⁴ [Ibid.](#)

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey;

[Emphasis added]

[45] The French version of the same provision reads as follows:

138 (2) *Sous réserve du paragraphe (3), il est interdit de charger ou de faire charger, ou de transporter ou de faire transporter, à bord d'un wagon de chemin de fer, d'un véhicule à moteur, d'un aéronef ou d'un navire un animal*

:

a) qui, pour des raisons d'infirmité, de maladie, de blessure, de fatigue ou pour toute autre cause, ne peut être transporté sans souffrances indues au cours du voyage prévu;

[Emphasis added]

[46] Section 12 of the [Interpretation Act](#) reads, “Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

[47] The object of paragraph 138(2)(a) of the [HA Regulations](#) is to prevent the undue suffering of animals being loaded and transported. The purpose of Part XII of the regulations, which contains paragraph 138(2)(a), is “to regulate animal transportation in Canada by setting reasonable standards of care that address the welfare of animals in transit”.⁵

[48] Paragraph 138(2)(a) of the [HA Regulations](#) must be interpreted with the understanding that it is also part of the agriculture and agri-food administrative monetary penalty system.

[49] A careful reading of the Parliamentary debates that led to the [AAAMP Act](#) confirms that the purpose of the agriculture and agri-food administrative monetary penalty system is to promote regulatory compliance by the industry and not to punish a given offender at all costs.⁶

[50] A number of elements of the system reflect this purpose, including the fact that the penalty may be significantly reduced if the person named in the notice of violation co-operates, is diligent or promptly corrects their practices.

⁵ Gazette Part II, Vol. 139, No. 13, at pp. 1541–48.

⁶ For example, see 35th Parliament, 1st Session, vol. 8, pp. 9522, 9541–42; 35th Parliament, 1st Session, vol. 14, pp. 15845, 16081.

[51] A literal, contextual and purposive interpretation of paragraph 138(2)(a) of the [HA Regulations](#) leads to the conclusion that this provision does not require the person named in the notice of violation to have physical or direct control over the animals at the time of loading to cause an animal to be loaded and transported.

[52] Applying this interpretation of paragraph 138(2)(a) of the [HA Regulations](#) to the facts in this case leads to the conclusion that the applicant can be considered to have caused the two pigs to be loaded and transported.

[53] The contract for contract farming between the applicant and Ferme Dam inc. provided that Ferme Dam inc. would raise pigs belonging to the applicant and arrange for their delivery to the abattoir by booking transportation that would be paid for by the applicant.

[54] The loading and transportation were at least partly for the applicant's benefit. In that sense, the very nature of contract farming makes it possible to say that the applicant can be considered to have caused the pigs to be loaded and transported ("*fait charger*" and "*fait transporter*") under paragraph 138(2)(a) of the [HA Regulations](#). The applicant was the reason for or cause of that transportation.

ii. "Agent" within the meaning of subsection 20(2) of the [AAAMP Act](#)

[55] Subsection 20(2) of the [AAAMP Act](#) states that, "A person is liable for a violation that is committed by any employee or agent of the person acting in the course of the employee's employment or the scope of the agent's authority, whether or not the employee or agent who actually committed the violation is identified or proceeded against in accordance with this Act."

[56] Although the contract between the applicant and Ferme Dam inc. was not filed in evidence, the written evidence and hearing testimony as a whole show that the business relationship at the time of the events between the applicant and Ferme Dam inc. was akin to that of a mandator-mandatar in terms of raising pigs and transporting them to the abattoir, within the meaning of both section 2130 of the *Civil Code of Québec* and the common law concept of "agent".

[57] Indeed, the evidence shows, on a balance of probabilities, that the applicant allowed Ferme Dam inc. to act on her behalf and to legally bind her to third parties, in particular carriers and abattoirs, without relinquishing her powers. The applicant could still intervene in the delegated management areas. The applicant delegated to Ferme Dam inc. the authority to represent her in dealings with carriers and abattoirs, but the evidence does not show that, on a balance of probabilities, responsibilities were delegated to Ferme Dam inc.

[58] Ferme Dam inc. was making decisions for the applicant, and it had great latitude and Mr. Fortin's absolute trust in choosing the pigs to be transported to the abattoir in Rivière-du-Loup. However, the evidence shows that the applicant maintained a presence at Ferme Dam inc. from time to time throughout the year by sending veterinarians and consultants responsible for the technical monitoring of the animals. There was a relationship of subordination between the applicant and Ferme Dam inc. in that the applicant gave instructions that Ferme Dam inc. had to follow, and she even retained a certain amount of control over the transportation of the pigs, specifically pigs that were compromised or too small to be transported to the abattoir in Rivière-du-Loup, as in this case.

[59] Consequently, the Tribunal is of the opinion that subsection 20(2) of the [AAAMP Act](#) applies in this case. It is therefore unnecessary to establish with certainty who, Ferme Dam inc. or the applicant, in fact organized the transportation of the two pigs by Abattoir de Manseau to Abattoir Cliche.⁷

[60] It should be noted that this provision is consistent with the provisions of the *Civil Code of Québec* regarding the liability of a person ("mandator") for acts performed by their agent ("mandatary") within the scope of the agent's authority ("mandate").⁸

[61] As previously mentioned, it is clear from the Parliamentary debates that led to the [AAAMP Act](#) that the objective of the agriculture and agri-food administrative monetary penalty system is to ensure that all stakeholders involved in the chain from pig farms to abattoirs comply with animal health and welfare rules.

[62] The Tribunal is of the opinion that subsection 20(2) is one of the most important legal instruments in the [AAAMP Act](#) for achieving regulatory compliance by the industry.

[63] In light of the above and on the basis of the evidence, the Tribunal is of the opinion that, on a balance of probabilities, the applicant caused to be loaded and caused to be transported the two non-ambulatory pigs, by virtue of paragraph 138(2)(a) of the [HA Regulations](#), through her agent, by virtue of subsection 20(2) of the [AAAMP Act](#).

[64] The Tribunal therefore concludes that the Agency discharged the burden of establishing, on a balance of probabilities, the elements constituting a violation of paragraph [138\(2\)\(a\) of the HA Regulations](#).

⁷ [Deslandes v. Canada \(CFIA\)](#), 2014 CART 9; [Isoporc Inc. v. Canada \(CFIA\)](#), 2006 CanLII 80970.

⁸ Denis Lemieux, "Le rôle du Code civil du Québec en droit administratif" (2005) 18:2 CJALP 119.

2. Did the Minister establish the administrative monetary penalty in accordance with the relevant regulations?

[65] In this case, the total gravity value, which is the sum of the gravity values from the Agency's assessment of the applicant's history (gravity value 5), is 13, resulting in a 30% increase in the basic \$6,000 administrative monetary penalty under subsection 5(3) and under section 9, Schedule 2, of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations \(AAAMP Regulations\)](#).

[66] The Tribunal must now determine whether the administrative monetary penalty of \$7,800 imposed on the applicant was established by the Agency in accordance with the relevant regulations.

[67] Regarding this question, the Agency submits that, under section 19 of the [AAAMP Act](#), its sole burden is to establish, on a balance of probabilities, the elements of the violation. It does not have a burden of proof with respect to the establishment of the amount of the administrative monetary penalty for the violation. The Agency believes that establishing the elements of the violation would shift the burden of proof to the person who committed the violation. It would then be up to the person to show that, on a balance of probabilities, they were not negligent.

[68] The Agency also believes that its burden would otherwise be too great, since it does not have the means to conduct all the necessary checks to establish the negligence or intent of a person who has committed a violation.

[69] In support of the argument that the burden of proof would shift to the applicant with respect to the determination of the appropriate administrative monetary penalty, the Agency presented to the Tribunal a table containing various provisions of the [AAAMP Act](#). The Agency submits that Parliament distinguishes between the violation and the administrative monetary penalty through the use and presence of wording that differs from one section to another. It argues that this differentiation demonstrates that Parliament distinguishes the burden of proof relating to the violation itself from that relating to the establishment of the amount of the administrative monetary penalty.

[70] Alternatively, if the burden of proof should rest on the Agency, it submits that the facts and evidence presented in this case show that the applicant committed the violation with negligence.

[71] The applicant submits that the burden of proof rests on the Agency for both the determination of the violation and the determination of the administrative monetary penalty.

[72] The applicant also submits that she was not negligent in this case because Mr. Fortin gave clear verbal instructions to Ferme Dam inc. to never load non-ambulatory pigs.

i. Scope of the burden of proof under section 19 of the [AAAMP Act](#)

[73] The Tribunal is of the opinion that the identification of the violation and the determination of the associated administrative monetary penalty are two different stages in the same legal structure.⁹

[74] Stage 1 is to demonstrate the elements of the violation based on the facts of the case.

[75] Stage 2 is to ensure that the administrative monetary penalty to be imposed as a result of the violation takes into account the specific facts of each case. Stage 2 describes the violation.

[76] The Tribunal is of the opinion that these two stages are inseparable.

[77] Having reviewed the table presented by the Agency, the Tribunal remains of the opinion that the provision to be interpreted in this case is section 19 of the [AAAMP Act](#), which deals specifically with the Minister's burden of proof under the agriculture and agri-food administrative monetary penalty system in case of review by the Tribunal.

[78] The French version of Section 19 of the [AAAMP Act](#) reads as follows:

***19** En cas de contestation devant le ministre ou de révision par la Commission, portant sur les faits, il appartient au ministre d'établir, selon la prépondérance des probabilités, la responsabilité du contrevenant.*

[Emphasis added]

[79] Section 19 of the [AAAMP Act](#) must be interpreted in accordance with the general rules of interpretation, including section 12 of the [Interpretation Act](#), which reads, "Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[80] This interpretation must therefore take into account the purpose of the agriculture and agri-food administrative monetary penalty system, which is one of absolute liability, where liability follows on mere proof of the violation.

[81] What the Agency must therefore prove, on a balance of probabilities, is the "*responsabilité du contrevenant*" [liability of the person who committed the violation] and not simply the commission of the violation.

[82] The Tribunal is of the opinion that Stage 2, determining the administrative monetary penalty for the violation, cannot be separated from Stage 1. Stage 2 describes the violation using specific criteria set out in Schedule 3 of the [AAAMP Regulations](#).

⁹ [A. S. L'Heureux Inc. v. Canada \(Canadian Food Inspection Agency\)](#), 2018 CART 9.

[83] This description is significant in that it may lead to an increase or decrease in the penalty.

[84] Therefore, the Tribunal is of the opinion that the wording “*responsabilité du contrevenant*” in section 19 of the [AAAMP Act](#) must be interpreted as including both the identification of the violation (Stage 1) and the description of the violation in terms of the history of the person who committed the violation, the presence or absence of negligence or intent, and the seriousness of the harm done or that could have been done (Stage 2).

[85] Interpreting the English version of section 19 of the [AAAMP Act](#) leads to the same conclusion. It reads as follows:

19 In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.

[Emphasis added]

[86] In other words, the Agency must prove, on a balance of probabilities, that the person named in the notice of violation committed the violation as identified and described in the notice.

[87] What appears in a notice of violation issued to a person who has committed a violation is precisely the violation (the regulation that was contravened) and its description from Stage 2 of the process (the amount of the administrative monetary penalty determined on the basis of the facts of the case). The person is therefore held liable for the violation as described in the notice of violation.

[88] Indeed, subsection 7(2) of the [AAAMP Act](#) clearly states that, in addition to identifying the violation, the notice of violation must set out “the penalty, established in accordance with the regulations, for the violation that the person is liable to pay”.

[89] On the other hand, I am of the opinion that it is useful to recall the distinction between the two components of the burden of proof, the evidential burden and the persuasive burden, which are found in both common law and Quebec civil law (*fardeau de présentation* and *fardeau de persuasion*). The burden of presenting evidence may be borne by each party in turn during the course of the proceeding. However, the obligation to convince, the persuasive burden, is relatively fixed¹⁰ and can be shifted only if there is a clear legislative intent to do so, in particular through statutory presumptions.¹¹ No such legislative intent is evident in the agriculture and agri-food administrative monetary penalty system.

¹⁰ Jean-Claude Royer, *La preuve civile*, 5th ed., Cowansville, Que., Yvon Blais, 2016, p. 126.

¹¹ John Sopinka, Sidney N. Lederman and Alan W. Bryant, *The Law of Evidence in Canada*, 5th ed., Toronto, LexisNexis, 2018, p. 112; Royer, *supra*, note 7, p. 96.

[90] The Tribunal does not question how important and onerous the task of the Agency's investigators is. Investigator Dumontier provided a clear, comprehensive statement in this regard. However, the Tribunal cannot consider the Agency's budgetary challenges in its decision. Its role is limited to applying the current legislation.

[91] The Tribunal points out that Investigator Dumontier testified about what is taken into account in an investigator's assessment of the total gravity value, for example the negligence of the person who has committed the violation. She stated that a great deal of preparation was required, including compiling a list of questions to ask the regulated parties, such as "Are you receiving training?" "What are your practices?" "Do you use manuals?" and "Do you have written guidelines?" to determine how the company is managed and what the regulated parties are doing to comply with animal transportation regulations.

[92] As well, the Tribunal notes that the burden of proof (evidential and persuasive) referred to in section 19 of the [AAAMP Act](#) is on a balance of probabilities. The questions that investigators generally ask the person who committed the violation and those associated with the person seem to be sufficient to describe the violation in accordance with the regulations.

[93] In light of the foregoing, the interpretation of both the French and English versions of section 19 of the AAAMP indicates that the onus is on the Agency to prove the liability of the person who committed the violation, on a balance of probabilities, in both Stage 1, identifying the violation, and Stage 2, determining the appropriate administrative monetary penalty based on the facts of the case.

ii. Applicant's negligence

[94] Under Schedule 3 of the [AAAMP Regulations](#), the total gravity value is calculated by ascribing gravity values for the following three criteria: (1) the history of the person who committed the violation; (2) the intent or negligence of the person who committed the violation; and (3) the seriousness of the harm done or that could have been done by the violation (section 4(3) of the [AAAMP Act](#) and Schedule 3 of the [AAAMP Regulations](#)).

[95] In this case, the Agency ascribed a gravity value of 3 for the second criterion, indicating negligent conduct by the applicant in committing the violation.

[96] This is the only component of the total gravity value that is disputed by the applicant, who argues that she was not negligent.

[97] As stated above, the evidence shows that Investigator Dumontier asked the applicant and other people involved a number of questions to properly describe the violation based on the facts of the case.

[98] It is clear from the evidence in the record and from the credible testimony of Mr. Fortin that, on the applicant's behalf, he gave clear verbal instructions to the contract farming operations with which he deals, to never load non-ambulatory pigs. Ferme Dam inc. received these same clear verbal instructions.

[99] Mr. Fortin stated in his testimony that he does not use written documents to transmit his instructions to the farms. He prefers to give verbal instructions because [translation] "papers get dirty" quickly in hog barns.

[100] Since the evidence is consistent on this point, the Tribunal must determine whether Mr. Fortin's verbal instructions to Ferme Dam inc. never to load non-ambulatory pigs demonstrates negligent behaviour by the applicant.

[101] In determining the appropriate administrative monetary penalty based on the facts of the case (Stage 2), it may be useful to rely on the guidelines set out by the courts in matters of defences of due diligence to qualify the behaviour of the offender, as stated in [A. S. L'Heureux Inc.](#)¹²

[102] Thus, according to the guidelines generally followed by the courts in determining negligence, a company that has taken all the measures that a responsible company would have taken in the same circumstances to avoid the violation could be deemed not to have been negligent.

[103] The case law establishes that due diligence does not imply a superhuman or perfect behaviour. It means taking the steps and precautions necessary to avoid the alleged damage.¹³

[104] The credibility of Mr. Fortin's testimony is not in question here. It is clear to the Tribunal that Mr. Fortin is a serious and conscientious businessman who wishes to avoid the undue suffering of animals loaded and transported.

[105] However, the fact that only verbal instructions were given to Ferme Dam inc., even though the instructions were clear, does not seem sufficient for the Tribunal to conclude that the applicant took the necessary means and precautions to avoid transporting non-ambulatory pigs.

[106] The means of communication used to convey the instructions is not the most appropriate for ensuring that the instructions reach all employees of the contract farming operation. In addition, Mr. Fortin testified that he did not require contract farming operations to receive training and that he did not implement a monitoring system for verbal instructions.

¹² [A. S. L'Heureux Inc. v. Canada \(Canadian Food Inspection Agency\)](#), 2018 CART 9 at para. 62.

¹³ [R. v. Maple Lodge Farms](#), 2013 ONCJ 535 (Maple Lodge Farms ON) at paras. 363–64.

[107] Therefore, after having analyzed all the evidence in the record and heard the testimony at the hearing, the Tribunal is of the opinion that the Agency has established, on a balance of probabilities, that the applicant was negligent in failing to take all the steps that a responsible company would have taken in the same circumstances to avoid the violation. A gravity value of 3 must therefore be ascribed for negligence or intent under Part 2 of Schedule 3 of the [AAAMP Regulations](#).

5. ORDER

[108] In light of the foregoing, the Tribunal ORDERS that the amount of the administrative monetary penalty to be paid by the applicant is \$7,800.

[109] Under section 15(3) of the [AAAMP Regulations](#), the applicant must pay this amount within 30 days of the date on which this decision is served.

[110] The Tribunal wishes to inform the applicant that this violation is not a criminal offence. After five years, she may apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Québec, Quebec, this 4th day of October 2019.

[Signed]

Geneviève Parent
Member
Canada Agricultural Review Tribunal