



Citation: *Chu v Minister of Public Safety and Emergency Preparedness*, 2021 CART 19

Docket: CART – 2145

BETWEEN:

MARINA CHU

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Patricia Farnese, Member

**WITH: Ms. Marina Chu, representing herself; and
Ms. Gaynor Holden, representing the Respondent**

DECISION DATE: July 23, 2021

**VIRTUAL
HEARING DATE: March 5, 2021**

1. INTRODUCTION

[1] Ms. Chu requests that the Canada Agricultural Review Tribunal (Tribunal) set aside or vary the Minister's decision to uphold a Notice of Violation (Notice) and the accompanying \$1300 penalty she received for failing to declare pork sausage when she entered Canada from Romania. She asks for this result because the Canada Border Services Agency (Agency) failed to explain to her, despite repeated requests, whether the Border Service Officer (Officer) properly exercised his discretion when he issued the Notice with penalty. I order that the Notice be set aside because the Agency failed to provide any evidence that the Tribunal could use to assess the Officer's exercise of discretion when choosing to issue the Notice to Ms. Chu.

[2] This decision arises from my review of the Minister's decision #19-00867 to uphold the Notice #3961-19-0535. As mandated in subsection 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), I have completed a *de novo* examination of the facts, meaning I have drawn my own factual and legal conclusions following an oral hearing held on March 5, 2021.

2. LEGAL FRAMEWORK

[3] Subsection 12(1) of the [Customs Act](#)¹ requires travellers entering Canada to declare all goods they import into Canada to an authorized customs officer. To avoid a Notice, the custom's declaration must be made at the first opportunity upon arrival. For those entering the country by air, this declaration typically occurs on the CBSA E311 Declaration Card or kiosk. The timing of declaration is important because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening with an Officer before choosing to declare.²

[4] Goods that accompany a person entering Canada are considered imported into the country the moment after the individual has been given the opportunity to declare.³ If a person declares a good and makes it available for inspection, there is no violation.⁴

¹ [Customs Act, RSC 1985, c 1 \(2nd Supp.\)](#), s 12(1).

² [Canada \(AG\) v Savoie-Forgeot, 2014 FCA 26](#) at para 25 [*Savoie-Forgeot*].

³ *Savoie Forgeot*, [ibid](#) at para 17.

⁴ [Ibid](#).

[5] While failing to declare is an offence under the [Customs Act](#), a person who fails to accurately declare animal by-products often receives a Notice for breaching the [Health of Animals Act](#) (HA Act) or the [Health of Animals Regulations](#) (HA Regulations). When an undeclared animal by-product is found, subsection 7(2) of the [AAAMP Act](#) authorizes officers to issue a Notice. If they choose to issue a Notice, Officers also decide which section of the [HA Act](#) or [HA Regulations](#) to issue the Notice for and whether the Notice will be accompanied by a warning or penalty.

[6] The [HA Act](#) and the [HA Regulations](#) are among the many laws and regulations in the agriculture and agri-food sector that are subject to the uniform enforcement process outlined in the [AAAMP Act](#) and [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations). A person can contest a Notice by requesting a review of the facts of the violation by the Minister. The Tribunal can subsequently review the Minister's decision. Subsection 14(1) of the [AAAMP Act](#) authorizes the Tribunal to confirm, vary or set aside the Minister's decision after deciding whether the applicant committed the violation. The Tribunal will also consider whether the penalty imposed follows the process outlined in the [AAAMP Act](#) in cases where the violation is upheld. Subsection 41(2) of the [AAAMP Act](#) further empowers the Tribunal to intervene if the application of the *Agriculture and Agri-Food Administrative Monetary Penalties* regime does not adhere to the principles of the rule of law and the administration of justice.

3. ISSUES

[7] This case asks the question of whether the Agency must demonstrate that the Officer properly exercised his discretion to issue a Notice and penalty when the elements of offence have been established. Ms. Chu asserts that she was treated unfairly because the Officer was angry with her. She first asked the Minister, and now this Tribunal, to determine whether the Officer's exercise of discretion that resulted in her receiving a Notice under subsection 16(1) of the [HA Act](#) with a \$1300 penalty was proper.

1. Did Ms. Chu violate subsection 16(1) of the [HA Act](#)?
2. Does the Tribunal have the jurisdiction to review an Officer's exercise of discretion to decide under which legislative provision to issue a Notice and impose a penalty?
3. Did the Officer properly exercise his discretion?
4. If the Officer's exercise of discretion cannot be justified, what is the appropriate remedy?

4. ANALYSIS

I. Did Ms. Chu violate subsection 16(1) of the [HA Act](#)?

[8] Ms. Chu conceded that the Agency has established the elements of the offence in her request for review and at the hearing. The essential elements of a violation of subsection 16(1) of the [HA Act](#) are:⁵

1. the applicant is the person identified in the Notice;
2. the applicant imported an animal, animal product, animal by-product or animal food into Canada;
3. none of the exceptions listed in *Part IV* of the [HA Regulations](#) applied; and
4. the applicant did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection.

[9] Ms. Chu committed the violation when she failed to declare that she had pork sausages in her luggage. She returned to Canada from Romania on a flight that arrived at the Montréal-Trudeau International Airport on March 10, 2019. Ms. Chu completed a custom declaration at the Primary Inspection Kiosk and an A23 Delayed Baggage Report because her luggage was delayed. She answered “no” to questions on the declaration and report about bringing any of the listed food, plant, or animal products into Canada. Two pork sausages sealed in plastic were found when an Officer inspected her luggage. The Officer contacted Ms. Chu by telephone and provided her with one more opportunity to declare the sausages. The Officer informed Ms. Chu that the sausages were found in her luggage when she failed to do so. Ms. Chu reported that the Officer also called her a liar and angrily hung up the telephone before phoning back and explaining that she would receive a Notice. The Agency offered no evidence that contradicted Ms. Chu’s report of the Officer’s conduct.

[10] A review of Tribunal decisions reveals that the Agency regularly issues Notices under subsection 16(1) of the [HA Act](#) and section 40 of the [HA Regulations](#) and regularly chooses to impose a warning rather than a penalty when an individual fails to declare a meat product. In this case, the Officer determined that Ms. Chu would receive a Notice with a penalty for violating subsection 16(1).

[11] Ms. Chu argued that the circumstances of how the violation occurred should be considered when the Tribunal reviews the Minister’s decision to uphold the violation. In particular, she alleged that the Officer improperly exercised the discretion granted to him by the [AAAMP Act](#). Ms. Chu asserted that Officer’s decision to impose a Notice with the harshest penalty available to him was the result of the Officer being angered from his inaccurate belief that she was lying. She believed the harsh penalty is unfair and unreasonable because the Officer could have, but failed to consider that low-risk cured meat products from Romania posed little risk. He also did not consider that the violation was unintentional and that she did not have a previous record of false declaration despite frequent travel.

⁵ *Santos v. Minister of Public Safety and Emergency Preparedness*, 2021 CART 17.

[12] The Agency responded that Ms. Chu's concerns about the fairness of her treatment by the Officer had been addressed through a separate complaints process and were not a relevant consideration in this Appeal. The Officer did not testify and the notes he prepared on the day of the inspection do not contain explicit reference to his rationale for the Notice and penalty imposed. Nonetheless, the Agency's representative argued that the Officer followed Agency policy when deciding to issue the Notice and penalty to Ms. Chu. A copy of the policy was not provided to the Tribunal. The Agency's representative also argued that the import risk of African Swine Fever from pork products justified the Notice and penalty.

[13] The Agency argued that the Tribunal has no grounds to vary or set aside the Minister's decision because all the elements of the offence have been established. Previous Tribunal members have held that "it is not the Tribunal's role to revisit the procedure and civil remedy chosen by the Agency against an alleged violator."⁶ In effect, the Tribunal cannot substitute a Notice with penalty to a Notice without a penalty. The discretion exercised by the Officer is unreviewable.

[14] That the *Agriculture and Agri-Food Administrative Monetary Penalties* regime gives Officers the discretion to determine the appropriate charge and penalty is undeniable. Officers are designated officers under section 6 of the [AAAMP Act](#) and subsection 7(2) authorizes them to issue Notices for breaches of the [HA Act](#). Nothing in the [AAAMP Act](#), the [HA Act](#), or their accompanying regulations outlines how an Officer should respond where the same conduct results in multiple breaches of the [HA Act](#). In fact, nothing prevented the Officer from issuing Notices to Ms. Chu under section 16 and section 40. The [AAAMP Act](#), and the [HA Act](#) are equally silent on the discretion to issue Notices with or without penalty where the person alleged to have committed a violation has not done so while operating a business.

[15] Although I have been unable to find a case that specifically addresses discretion in this context, an obvious parallel can be drawn to the exercise of discretion in policing. The court has repeatedly outlined that police discretion is not absolute and requires rational justification.⁷ The court has cautioned, however, that routine exercises of discretion have been identified as "clearly justified" and only when they are "truly exceptional" are the police required to explain discretionary decisions.⁸ The Officer's exercise of discretion in this case would qualify as routine, but given that the Agency has not provided any evidence that explains why similar conduct attracts different Notices and penalties, the exercise of discretion is not clearly justified. The first question to answer, therefore, is whether I have the jurisdiction to review the Officer's exercise of discretion.

⁶ [Stracinski v Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2015 CART 11, at para 38.

⁷ [R. v. Beaudry](#), 2007 SCC 5, [2007] 1 SCR 190 at para 37 [*Beaudry*].

⁸ [Ibid](#) at para 40.

II. Does the Tribunal have the jurisdiction to review an Officer's exercise of discretion to decide under which legislative provision to issue a Notice and impose a penalty?

[16] While it is true that Ms. Chu did not clearly ask the Minister to review the Officer's "exercise of discretion" for fairness, it would be wrong to conclude that that question was not put before the Minister. In her request for review by the Minister, Ms. Chu states concern for the "inaccuracy of the sanction". She also notes her attempt to use the Agency help desk "to inquire on the severity of the violation" and explains that the help desk was "unable to clarify the basis for their decision." Combined with her stated concerns about the Officer's conduct, Ms. Chu turned to the review process to determine if the Officer had treated her fairly when he issued Notice with penalty under subsection 16(1) of the [HA Act](#). In effect, she was questioning the Officer's exercise of discretion.

[17] As an unrepresented litigant, Ms. Chu should not have been prevented from having her appeal addressed because she failed to fully comprehend the complicated legal regime and procedural rules that applied. The Minister, like the Tribunal, has an obligation to "do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons."⁹ The Minister erred in failing to address the substance of her appeal. The Minister's decision merely reviews whether she committed the violation.

[18] The Minister's failure to consider the main issue raised in Ms. Chu's request for review justifies this Tribunal setting aside the Minister's decision. When a Notice with penalty is issued, the recipient can request that the Minister review "the facts of the violation."¹⁰ The [AAAMP Act](#) establishes a different process when the Notice is issued with a warning. In that case "the Minister shall determine whether or not the person committed the violation."¹¹ Accepted principles of statutory interpretation indicate that this distinction is significant. A plain reading of these sections suggests that the authority given to the Minister for a review when a Notice is issued with a warning is narrower in scope than when a review is of a Notice with penalty. Whether the Officer properly exercised discretion is included in "the facts of the violation" that can be requested to be reviewed by the Minister.

⁹ [Statement of Principles on Self-represented Litigants and Accused Persons](#) as endorsed by the Supreme Court of Canada in [Pintea v. Johns](#), 2017 SCC 23, [2017] 1 SCR 470 at para 4.

¹⁰ [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), SC 1995, c 40, s 9(2)(b) [[AAAMP Act](#)].

¹¹ [Ibid](#) s 12(1).

[19] The [AAAMP Act](#) similarly grants the Tribunal the authority to consider whether an Officer's exercise of discretion was proper when the Act directs the Tribunal to review "the facts of the violation"¹² The Tribunal can also rely on its inherent jurisdiction to review the Officer's exercise of discretion. Subsection 41(2) of the [AAAMP Act](#) grants the Tribunal "all the powers, rights and privileges that are vested in a superior court of record." Superior courts have powers arising from their inherent jurisdiction to not only control their own process but also to administer justice and uphold the rule of law.¹³ This inherent jurisdiction exists to "ensure the observance of the due process of law and to prevent improper vexation or oppression."¹⁴ An improper use of discretion by a public official has long been recognized as contrary to the administration of justice and the rule of law and therefore within the Tribunal's jurisdiction to consider.¹⁵

III. Did the Officer properly exercise his discretion?

[20] I was unable to find a previous decision that outlines a standard for reviewing an Officer's discretion when deciding the appropriate violation and penalty under the [HA Act](#) and [HA Regulations](#). A clear parallel, however, can be drawn to police discretion when deciding whether to lay a charge. The Supreme Court of Canada has outlined that the police must justify their discretion using subjective and objective factors.¹⁶ When assessing subjective factors, whether the Officer's exercised his discretion "honestly and transparently, and on the basis of valid and reasonable grounds" is considered.¹⁷ The objective analysis considers the material circumstances and legal context in which the discretion was exercised.¹⁸

Was the Officer's exercise of discretion subjectively justified?

[21] The Tribunal has no evidence that will permit me to engage in a subjective analysis of whether the Officer was rationally justified when exercising his discretion. The Agency chose not to call the Officer as a witness and his report fails to explain why he issued the Notice with penalty under subsection 16(1) of the [HA Act](#) over the other options available to him.

¹² [Ibid](#) s 9(2)(c).

¹³ [MacMillan Bloedel Ltd v. Simpson](#), [1995] 4 SCR 725 at para 38.

¹⁴ [Endean v. British Columbia](#), 2016 SCC 42, [2016] 2 SCR 162 at para 23, citing IH Jacob, "The Inherent Jurisdiction of the Court", *Current Legal Problems* (1970) 23:1.

¹⁵ See [Roncarelli v. Duplessis](#), [1959] SCR 121.

¹⁶ Beaudry, [supra](#) note 7 at paras 38 and 39.

¹⁷ [Ibid](#) at para 38.

¹⁸ [Ibid](#) at paras 39 and 43.

[22] Ms. Chu alleged anger arising from the Officer's belief that she acted with dishonest intent motivated the Notice and penalty she received. She testified that the Officer was aggressive, called her a liar and angrily disconnected the phone before calling back and leaving a message. The Narrative Report the Officer filed soon after the Notice was issued does not reference the disconnected call or message. The Agency did not dispute Ms. Chu's description of the Officer's conduct, but argued that the concerns were satisfactorily dealt with under a separate complaints process and have no bearing on this case. I disagree. If Ms. Chu is correct in her allegations, the Officer's conduct may constitute an abuse of process that would be difficult to justify as an honest exercise of his discretion.

[23] I am cognizant, however, of not unreasonably shifting the burden of proof to the Agency to disprove an allegation of abuse of process. In [*Canada \(Attorney General\) v. Bougachouch*](#),¹⁹ the Tribunal was found to have acted unreasonably when it shifted the burden of proof to the Agency to prove that racial profiling of Arab passengers was not the reason why the Applicant was singled out for secondary screening. The Federal Court of Appeal held that such a shift was unreasonable because it was based on a "mere impression" of racial profiling and the Agency's failure to provide statistical evidence and declaration cards to counter that impression.²⁰ The court also found that the Tribunal disregarded credible testimony that explained why the Applicant may have been left with the impression that only Arabs were selected for secondary screening.

[24] This case can be distinguished from [*Bougachouch*](#) because the Tribunal had evidence before it that explained why the applicant had not been racially profiled. I do not have evidence to counter Ms. Chu's impression. The Agency's representative asserted that the Officer followed an internal policy when deciding what to charge. The policy was not entered into evidence. The Agency also did not offer a witness to explain how the Officer's discretionary decision conformed with that policy. The Agency's representative further argued that the threat of African Swine Fever justified the Officer's actions. I am unpersuaded by the argument that the Officer considered African Swine Fever because the Automated Information Reference System report the Officer relied upon lists Romania as a country that is designated free from porcine diseases. The Agency's arguments were mere speculation. The record does not support the conclusion that either Agency policy or the risk of African Swine Fever informed the Officer's discretion in this case.

[25] With nothing on the record that speaks to the Officer's rationale for choosing to issue a Notice with penalty under subsection 16(1) rather than the other options open to him, I am unable to conclude that his exercise of discretion was subjectively justified. I am also unable to conclude, however, that an abuse of process occurred. Ms. Chu has not established a causal link between the Officer's angry demeanor and the Officer's choice of Notice and penalty. She also has not followed the notice requirements to make a section 7 *Charter*²¹ challenge if that was her intention.

¹⁹ [*Canada \(Attorney General\) v. Bougachouch*, 2014 FCA 63.](#)

²⁰ [*Ibid*](#) at para 35.

²¹ [*Canadian Charter of Rights and Freedoms*](#), Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[26] In [Beaudry](#), Charron J states that proof that exercise of discretion was subjectively justified is not sufficient to determine the police officer's actions are lawful.²² Charron J was not asked to consider whether subjective justification was necessary in the absence of a factual record that proves the officer's sincere belief that his exercise of discretion was proper. The essential nature of the use of discretion in policing supports continuing the analysis to the objective factors rather than conclude that the discretion was unlawfully exercised because it has not been subjectively justified.

Was the Officer's exercise of discretion objectively justified?

[27] The [Beaudry](#) test directs that the material circumstances and the legal context be considered when assessing whether the exercise of discretion was objectively justified. In an absolute liability regime, it is difficult to separate that analysis because many of the factors that would normally be considered as material circumstances in a criminal law context, such as intent, are expressly excluded from consideration. Moreover, had the Legislature intended to include a mechanism for weighing mitigating or exacerbating factors when issuing Notices and penalties to individuals, they would have done so. Such a weighing scheme only exists for assessing penalties when violations occur in the course of a business (see section 6 [AAAMP regulations](#)). As a result, the review of the material circumstances is less extensive in this context.

Material Circumstances

[28] Ms. Chu asserts that the Notice and penalty she received should have considered the actual risk posed by the product that was undeclared, that she did not intentionally import meat products without declaring them and that this was her first breach despite an extensive travel history. In addition to being precluded in section 18(1) of the [AAAMP Act](#) from considering those factors in an absolute liability regime, I am tasked with reviewing the material circumstances objectively. I must decide if issuing the Notice with penalty pursuant to section 16(1) of the [HA Act](#) is "proportionate to the seriousness of the conduct" and "exercised in the public interest."²³

²² Beaudry, [supra](#) note 7 at para 38

²³ Beaudry, [supra](#) note 7

[29] I find that the Notice and penalty Ms. Chu received is proportionate to the risks that foreign diseases pose to animal health and the safety of the food supply. I also find that the Officer's decision to issue the Notice with penalty can be objectively justified as in the public interest. The Federal Court of Appeal has upheld numerous Notices for violating section 16(1) of the [HA Act](#) in similar circumstances.²⁴ Individually searching all who enter Canada for undeclared meat products would be cost prohibitive. Likewise, differentiating between products based on their level of risk would be challenging to implement at the border where Officers are processing thousands of travellers a day. Instead, the potential for random checks and substantial fines are meant to provide specific and general deterrence.

Legal Context

[30] The *Agriculture and Agri-Food Administrative Monetary Penalties* regime's "draconian" and "highly punitive" approach supports minimal justification for the exercise of discretion in issuing Notices.²⁵ As an absolute liability regime, the [AAAMP Act](#) imports "the most punitive elements of penal law while taking care to exclude useful defenses".²⁶ When the proper exercise of discretion is raised by an applicant, requiring a minimal level of justification supports the "culture of justification" the Supreme Court of Canada has recently affirmed that those who have been delegated public power must demonstrate.²⁷ Given this legal context, asking that Officers not only treat individuals fairly when assessing whether a Notice is warranted, but that they also be seen to be fair aligns with the legitimate expectations doctrine. Government actions when dealing with the public are to be "fair, predictable, and not arbitrary."²⁸ A minimal level of oversight avoids the potential for corruption and the use of the regime for improper purposes. That the regime provides few avenues to challenge a Notice does not mean it is unable to be scrutinized altogether. Ms. Chu is entitled to these minimal assurances of fair treatment especially as she has few ways of exculpating herself.

[31] Previous case law has correctly stated that I do not have the jurisdiction to cancel a Notice solely based on the conduct of the Officer even where that conduct is alleged to have been "discriminatory, insulting, and unprofessional."²⁹ There is a complaint process to address concerns about Officer conduct. Ms. Chu availed herself of that process. That process, however, was unable to provide her with any information to assure her that the Officer's discretion was exercised properly. She testified that when she contacted the Agency after first receiving the Notice, she was told no policy exists to guide Officer discretion and that everyone receives the harshest penalty when found with undeclared meat products. Neither of those statements is accurate.

²⁴ See [Canadian Food Inspection Agency v. Westphal-Larsen, 2003 FCA 383](#); *Savoie-Forgeot*, [supra](#) note 2.

²⁵ [Doyon v. Canada \(Attorney General\), 2009 FCA 152](#) at para 21.

²⁶ *Ibid* at para 27.

²⁷ [Canada \(Minister of Citizenship and Immigration\) v. Vavilov, 2019 SCC 65](#).

²⁸ [Jono Developments Ltd. v. North End Community Health Association, 2014 NSCA 92](#) at para 71.

²⁹ [Zhou v. Canada, 2010 CART 20](#) at para 28.

[32] Ms. Chu is not asking that she not be penalized, her appeal is looking for assurances that she did not receive a harsher penalty than someone else in similar circumstances because of the Officer's personal animosity. She is entitled to those assurances. The Agency offered none and instead suggested at the hearing that she use the federal access to information process to obtain a copy of the policy Ms. Chu was previously told did not exist. Without any evidence that can even point to the Officer turning his mind to his consideration of the options available to him when issuing the Notice to Ms. Chu, I am unable to conclude that the Officer's exercise of discretion was objectively justified.

5. REMEDY

[33] I have determined that the Notice issued against Ms. Chu should be set aside as there is nothing in the record that demonstrates that the Officer considered how to exercise the discretion granted to him by the [AAAMP Act](#). Because Ms. Chu questioned the appropriateness of the Officer's exercise of discretion, fairness requires that she be assured that her Notice was justified and that her treatment was not motivated by an improper purpose. To allow the Agency to avoid her question because the elements of the offence have been established, exposes the *Agriculture and Agri-Food Administrative Monetary Penalties* regime to abuses of process and corruption. Absolute liability changes the burden of proof the Agency must meet and removes most of the means to avoid conviction. Absolute liability does not remove an accused's right to the proper administration of justice and protections of the rule of law.

[34] Setting aside the Notice is the only option available to me in these circumstances because the limited powers granted to the Tribunal in the [AAAMP Act](#) when reviewing the decision of the Minister. Section 14(1) provides that the Tribunal may:

- a. confirm, vary or set aside any decision of the Minister under section 12 or 13, or
- b. determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty.

[35] I do not have the authority to substitute my discretion for that of the Officer and consider whether a different Notice is more appropriate in these circumstances. I also cannot send the matter back for rehearing by the Minister.

[36] It would also be unfair to Ms. Chu to give the Agency the opportunity to present new evidence at this stage. The Agency had ample warning that Ms. Chu was challenging the Officer's exercise of discretion. As previously mentioned, the issue was raised in her request for review by the Minister. When the Minister failed to address that issue, Ms. Chu restated the issue in her request for review to the Tribunal. She stated that she was seeking a review because the "officer did not use official criteria to judge the severity of the penalty" and that she was "questioning the officer's judgement". While it is true that Ms. Chu identified the wrong criteria that applied to evaluate the Officer's exercise of discretion, there can be no doubt of the nature of her concerns after reading her review request in its entirety.

[37] My decision does not create the equivalent of a 'get out jail free' card when an Officer's notes are lacking. The Agency could have corrected the deficiency in several ways. First, when the initial Officer's report regarding the Notice was made, the Supervisor reviewing the file could have noted the lack of details about factors that went into deciding what Notice and penalty to impose and asked the Officer to provide those details. Failing that, the Officer could have been asked to testify and even if his memory of the specific event was less clear, the Officer could provide evidence on his usual process as was done in [*Farzad v Canada \(Canada Border Services Agency\)*](#).³⁰ The Agency could also have provided policies, guidelines, or operating procedures that Officers rely on when determining which Notice and penalty is appropriate. Although not conclusive, administrative directives, such as Agency policy and procedure manuals, can be used to objectively assess whether an Officer's discretion was exercised reasonably. While the Agency noted that such a policy exists, the Agency chose not to provide the policy to the Tribunal.

6. ORDER

[38] I order that the Notice of Violation #3961-19-0535 and penalty of \$1300 issued to Ms. Marina Chu be set aside.

Dated at Saskatoon, Saskatchewan, on this 23rd day of July, 2021.

(Original signed)

Patricia Farnese
Member

³⁰ [*Farzad v. Canada \(Canada Border Services Agency\)*, 2013 CART 33](#) at paras 54-55.

Canada Agricultural Review Tribunal