



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Sadykow v Canadian Food Inspection Agency*, 2023 CART 21

**Docket: CART-2022-FNOV-014**

**BETWEEN:**

**MANUELA SADYKOW**

**APPLICANT**

**- AND -**

**CANADIAN FOOD INSPECTION AGENCY**

**RESPONDENT**

**BEFORE:** **Emily Crocco, Member**

**WITH:** **The Applicant, on her own behalf**  
**Ms. Akkila Thirukesan, for the Respondent**

**DECISION DATE:** **July 7, 2023**

**VIRTUAL HEARING DATE:** **June 21 and 26, 2023**

## 1. INTRODUCTION

[1] The Applicant is requesting that the Canada Agricultural Review Tribunal (“Tribunal”) review the Notice of Violation (Notice) #2021ON0328-3 that the Respondent issued against her and which imposed a \$10,000.00 penalty.

[2] The Notice alleges that on October 28, 2020, the Applicant imported a regulated animal with a certificate that contained false or misleading information, contrary to section 13 of the [Health of Animals Regulations](#) (*HA Regulations*).

[3] Section 13 of the *HA Regulations* states that “no person shall import a regulated animal if a certificate... required under an import permit required by this Part, contains any false or misleading information”.

[4] Pursuant to subsections 7(1)(a) and (2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (*AAAMP Act*) and paragraph 2(c) and section 5 of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (*AAAMP Regulations*), a breach of the *HA Regulations* can result in a notice with a financial penalty.

[5] For the reasons that follow, the Notice and its penalty are upheld.

## 2. ISSUES

[6] To determine whether section 13 of the *HA Regulations* was violated, I must determine:

1. Whether the Applicant imported a regulated animal; and
2. Whether the certificates she used to do so contain false or misleading information.

[7] There is no question that the Applicant imported a regulated animal, as that term is defined in the *HA Regulations*. Throughout the Applicant's testimony, she conceded that she had imported the dogs, a fact that was in any case very well supported by the Respondent's evidence.

[8] The dispute here is really about whether the certificate contained any false or misleading information. If the Respondent establishes the violation, I must then determine the appropriate penalty, if any.

### **3. ANALYSIS**

#### **A. The Violation is Established**

##### **Import Requirements**

[9] On October 28, 2020, the Applicant imported puppies into Canada from Poland. She did so pursuant to an Import Permit that had been issued to her on August 13, 2020.

[10] Section 160.1 of the *HA Regulations* states that "Every person who is subject to a permit or licence issued under the Act shall comply with the conditions contained in the permit or licence." The Import Permit imposed a number of requirements on the Applicant.

[11] Because the dogs she imported were not born in a government approved and supervised kennel, the permit required the Applicant to provide certification from an "official veterinary inspector of the central veterinary service of the country of origin".

[12] The Import Permit's language regarding an "official veterinary inspector" reflects the language in the *HA Regulations*. Subsection 12(2) of the *HA Regulations* states, in part, that a regulated animal may be imported into Canada if the animal is accompanied by a certificate "of an official veterinarian from that area".

[13] Put simply, section 10 of the *HA Regulations* defines “official veterinarian” as a licensed veterinarian who is also employed or authorized by their country (among other things) to fill in certificates like the ones submitted by the Applicant when she imported the dogs from Poland.

### **The False Information**

[14] Upon the dogs’ importation, the Applicant provided certificates signed by Dr. Ewa Michalowska, a Polish veterinarian.

[15] Some of the certificates stated that Dr. Michalowska was an “official veterinary inspector of the central veterinary service of the country of origin.”

[16] The problem is that when she signed these documents in 2020, Dr. Michalowska was not an official veterinarian in Poland.

[17] I reach this conclusion due to the following uncontested evidence.

[18] In a recorded conversation with the Respondent’s investigators on January 5, 2021, several Polish government officials, including Piotr Derylo, Katarzyna Stachurska, and Magdalena Debkowska, said that Dr. Michalowska had not been an official veterinarian in Poland since 2017.

[19] As a result, the certificates’ statements to the contrary were false.

### **The Misleading Information**

[20] In addition, the documents Dr. Michalowska signed and stamped misled the reader into believing that she was authorized to make the certifications.

[21] For example, in a document entitled “Kennel Certificate”, Dr. Michalowska wrote in both Polish and English that she certified that the Polish kennel “has an attending veterinarian”, that “all the dogs in this kennel are uniquely identified”, and that the “housing facilities are structurally sound and in good repair”. This mirrors almost exactly the language in the Canadian Import Permit for the requirements of an official veterinarian’s certification.

[22] Second, Dr. Michalowska stamped each document with two differently formatted and coloured stamps. This made it seem that the documents had been signed by an official veterinarian.

[23] According to the Polish officials’ evidence, and the testimony of the Respondent’s veterinarian Dr. Heather Boots, when certifications are legitimately signed by official veterinarians, they are stamped first in black ink and state the signatory’s status as a licensed veterinarian, and then stamped in red ink stating that same person’s status as an official veterinarian.

[24] Dr. Michalowska stamped each document twice, once in red ink, once in black ink. Although their vocabulary is different, both stamps say that Dr. Michalowska is a licensed veterinarian.

[25] In my view, it is clear that these stamps were used to mislead officials into believing that they were certified by an official veterinarian. Why else use two differently coloured stamps with the same content on dozens of documents?

### **No Legitimate Defence**

[26] In her submissions, the Applicant repeatedly said that she did not realize that she was breaking the rules. She also asked how she was supposed to know that the certifications were false? She also noted that she has always cooperated with the Respondent’s agents and that she had a long history of compliance before this incident.

[27] Section 18 of *AAAMP Act* states that a person named in a Notice “does not have a defence” by reason that the person “reasonably and honestly believed in the existence of facts that, if true, would exonerate the person”.

[28] As a result, the Applicant’s arguments that she made an honest mistake and has a long history of compliance are not permissible defences against the issuance of the Notice. That said, the Applicant’s compliance history and intentions are relevant in determining the amount of the penalty, and will be assessed later in these reasons.

### **The Violation is Established**

[29] Given the above, she breached section 13 of the *HA Regulations* when the Applicant provided certifications with false information, namely certifications from someone who was not at the time an official veterinarian.

[30] The Applicant also contravened section 13 because the certificates were misleading, namely because the stamps that were used falsely made it seem as though Dr. Michalowska was qualified to provide the certifications.

[31] The Respondent provided evidence of further false and misleading information in the certifications provided by the Applicant. However, given that the violation is established by either of the two determinations I have just made, it is unnecessary to consider these other allegations.

### **B. The Penalty Amount Is Correct**

[32] Division 2 of Part 1 of Schedule 1 of the *AAAMP Regulations* classifies a violation of section 13 of the *HA Regulations* as “very serious”.

[33] Subsection 5(3) of the *AAAMP Regulations* states that the penalty for a “very serious” violation made in “to obtain a financial benefit”, subject to any adjustments

determined for its “total gravity value” (“TGV”), is \$10,000.00. The Applicant imported and resold puppies for profit at the time of the violation. As a result, this base amount was properly calculated.

[34] Section 6 and [Schedule 3](#) of the *AAAMP Regulations* state that the TGV of a violation is determined by considering the:

1. Compliance history of the person, by looking at prior violations or convictions within five years of the assessment;
2. The intent or negligence of the person; and
3. The harm caused by the offence.

[35] According to [Schedule 2](#), a lower TGV score will reduce the amount of the penalty, a score in the middle will result in no adjustment to the penalty, and a higher score will increase the amount of the penalty.

### **Compliance History**

[36] The Respondent properly determined that the Applicant had no previous violations within five years before the day the violation was assessed. As a result, the Applicant properly received the lowest possible TGV score, of zero, with respect to “compliance history”.

### **An Intentional Act**

[37] In my view, the Respondent properly determined that the violation was committed as a result of an intentional act.

[38] In Inspector Jason McGarr’s consistent and uncontested testimony and written notes, on May 20, 2021, the Applicant told him in a telephone conversation that the dogs in question had been brought into Poland from Ukraine. This was a significant admission because at that time, the importation of Ukrainian dogs into Canada was prohibited, the

Applicant had been importing dogs from Ukraine until the prohibition took effect, and her certifications stated that the dogs were born in Poland.

[39] Furthermore, in her testimony at the hearing, the Applicant lamented the money she had invested into the Ukrainian dogs, and that the Ukrainian breeders refused to refund her her money when the Canadian rules no longer allowed her to import the animals.

[40] The Applicant may not have known the specifics of how the false information in the certifications was assembled. But given her statements to the Respondent's inspector and the content of the certifications, it is clear that the Applicant's intent was to mislead the Canadian authorities about the dogs' origin. It was foreseeable that her co-conspirators would develop their own lies (about being an official veterinarian, for example) to support the larger lie (that the dogs were from Poland). The Applicant intended the deception.

[41] As a result, the Respondent properly determined that the Applicant intended the violation and applied a score of five points under the heading of "intent or negligence".

## **Harm**

[42] The Respondent's uncontested evidence that the violation could cause serious or widespread harm to any person or to an animal's health was well reasoned.

[43] For example, given how much of the information on the certifications was false, it may also be true that the dogs in question were ill or unvaccinated when they were imported. This in turn could result in the spread of communicable diseases to these or other animals in Canada.



[44] Moreover, I agree with the Respondent that the deception “defrauds potential customers” from making informed decisions about whether to spend large sums of money for animals of dubious origin and health.

[45] Given the serious or widespread harm that the Applicant’s violation could cause to animal health or to humans, the Respondent properly imposed a penalty score of three under the “harm” heading.

### **Calculating the TGV Score**

[46] Adding the above scores together, the Applicant’s TGV score was appropriately calculated at eight.

[47] Pursuant to Schedule 2 of the *AAAMP Regulations*, any TGV score from six through ten results in no adjustment (either upwards or downwards) to the initial penalty amount.

[48] As a result, the penalty amount was properly calculated at \$10,000.00.

## **4. CONCLUSION**

[49] The violation and the amount of the penalty are confirmed.

[50] The Applicant must pay the \$10,000.00 penalty to the Respondent within three months of being notified of this decision.

[51] This violation is not a criminal offence. Pursuant to section 23 of the *AAAMP Act*, five years after the date on which the Applicant pays the penalty, she has the right to apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records.

Dated at Ottawa, Ontario, on this 7<sup>th</sup> day of July 2023.

A handwritten signature in cursive script that reads "Emily Crocco". The signature is written in black ink and is positioned above a horizontal line.

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Emily Crocco  
Member and Chairperson  
Canada Agricultural Review Tribunal