Canada Agricultural Review Tribunal
Commission de révision agricole du Canada
Ottawa, Canada
K1A 0B7

Citation: *Bogdanov v Minister of Public Safety and Emergency Preparedness,* 2025 CART 27

**Docket: CART-2025-BMR-042**

**BETWEEN:**

**INNA BOGDANOV**

**APPLICANT**

**- AND -**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENT**

**BEFORE:** **Emily Crocco, Member and Chairperson**

**WITH:** **Inna Bogdanov, for the Applicant**
**Veronica Raymond, for the Respondent**

**VIA WRITTEN SUBMISSIONS**

**DECISION DATE:** **August 28, 2025**

Canada

## 1. INTRODUCTION

[1] On January 15, 2025, the Applicant arrived in Canada at an airport in Quebec. At an inspection kiosk, the Applicant said that she was not importing animal products. However, the Applicant was importing ham.

[2] After discovering the ham in the Applicant's possession, the Canada Border Services Agency (the Agency) issued a Notice of Violation (Notice) with a monetary penalty of $1,300.00 for failing to present the ham for inspection.

[3] The Applicant requested that the Respondent review the penalty. In its decision, the Respondent upheld both the Notice and the monetary penalty.

[4] The Applicant has requested that I review the Respondent's decision. For the reasons that follow, I confirm that decision.

## 2. PRELIMINARY ISSUE

[5] The Respondent requested that the request for review be deemed inadmissible for the following main reasons:

a. The Applicant failed to advance compelling reasons for the request;
b. At the time the time that the Respondent made its submissions on admissibility, no permissible defences had been advanced;
c. The Respondent calculated the penalty appropriately; and
d. The Applicant acknowledged failing to declare that she was importing the meat, and that as a result, the violation is established.

### Reasons for the Request

[6] The Respondent argues that the Applicant has failed to advance compelling reasons for the request. According to the Respondent, Rule 48 of the *Tribunal's Rules* requires that when the Tribunal makes a decision on admissibility, the Tribunal must

"consider the applicant's reasons to vary or set aside the Minister's decision". That is a mischaracterization of Rule 48.

[7] Most relevantly, Rule 48(2)(b) states that:

> The Tribunal must, in coming to its decision on admissibility, consider any relevant factor, including whether…
>
> (b) The applicant has complied with all of the requirements of rule 47.

[8] Rule 47 requires an applicant to file certain information with the Tribunal, much of it administrative (like their name, representative's name, choice of language, copy of the decision in question).

[9] Rule 47 also includes subsection (d), which requires an applicant to provide "the applicant's reasons to vary or set aside the Minister's decision".

[10] In my view, Rule 47(d) is inconsistent with section 19 of the *Agricultural and Agri-Food Administrative Monetary Penalties Act* (*AAAMP Act*), which states that the Respondent bears the burden of proof in an application to the Tribunal:

> "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."

[11] As I have stated elsewhere, to require an applicant to provide the reasons for their request would be to improperly shift the onus from the Respondent to the Applicant (see *Steve's Livestock Transport (Blumenort) Ltd. v Canadian Food Inspection Agency*, 2023 CART 22 at para 6).

[12] It is trite law that where a law and a rule are inconsistent, the law prevails. The *Tribunal's Rules* recognizes this basic legal premise in Rule 1, which states that "in the event of any inconsistency between these Rules and an Act of Parliament or any

regulation made under such an Act, that Act or regulation prevails to the extent of the inconsistency."

[13] For this reason, the Tribunal does not apply Rule 47(d) (or the related Rule 31(d)).

[14] Even if Rule 47(d) were not at odds with section 19 of the *AAAMP Act*, I would still not be required by Rule 48(2) in making my admissibility determination, as the Respondent argued, to "consider *the applicant's reasons* to vary or set aside the Minister's decision". [My emphasis]

[15] Instead, Rule 48(2) would only require that I consider *whether* the Applicant complied with the requirements of Rule 47. In this case, the Applicant did comply because she provided all of the information required by that Rule, including her reasons for the request (namely, that she made a mistake and can't afford the penalty).

**Where No Permissible Defences Raised**

[16] It is also irrelevant that the Applicant did not identify any "permissible defences".

[17] First, any requirement to this effect would be procedurally unfair. When the Tribunal makes its determinations on admissibility, the Respondent has not yet disclosed its evidence or reports to the applicant. How could an applicant know what defences they might introduce without knowing the evidence against them?

[18] Most importantly, there is no legislative or regulatory requirement for an applicant to do so, and any requirement to the contrary would by inconsistent with section 19 of the *AAAMP Act*.

**Where the Respondent is Satisfied That it Calculated the Penalty Appropriately**

[19] It is not at all relevant to my determination of the admissibility of the request that the Respondent itself is satisfied that it calculated the penalty appropriately.

[20] Subsection 38(1) of the *AAAMP Act* states that the Tribunal has "sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which it is given jurisdiction under this Act or any other Act of Parliament."

[21] Under subsection 14(1)(b) of the *AAAMP Act*, the Tribunal has the authority to correct a penalty that was not established in accordance with the regulations.

[22] Given these provisions, it is clear that Parliament's intent was not for the Respondent to be the final arbiter on whether a penalty was calculated correctly.

**The Impact of an Applicant Acknowledging a Violation**

[23] An applicant's concession that they committed a violation is irrelevant to determining admissibility. As noted previously, the law requires the Respondent to satisfy the Tribunal, via the hearing process, that the violation occurred as alleged.

[24] Sometimes an applicant's concession about the violation, added to the Respondent's straightforward evidence, will make the Tribunal's analysis very easy. But the assessment must still be done by the Tribunal – after the request has been deemed admissible.

**The Admissibility of this Request**

[25] For the above reasons, I do not find the Respondent's arguments against the admissibility of this request to be persuasive.

[26] Instead, because the Applicant was issued a Notice that the Tribunal has the authority to Review under paragraph 13(2)(b) of the *AAAMP Act*, and because she made the request within 30 days of the Minister's decision (as required by paragraph 13(a) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*), the request is admissible.

## 3. LEGAL ISSUES

[27] I am satisfied that the violation was established. The Applicant acknowledges, and the Respondent's uncontested evidence establishes, that she imported and failed to present the ham for inspection contrary to subsection 16(1) of the *Health of Animals Act* (*HA Act*).

[28] Where the parties disagree is whether any of the Applicant's defences should have an impact on the issuance of the Notice or the amount of the penalty.

## 4. ANALYSIS

### Honest Mistake

[29] The Applicant argued that she made a mistake because she thought she did not have to declare the ham because it was sealed.

[30] Section 18 of the *AAAMP Act* states that a person named in a Notice "does not have a defence" even where a person "reasonably and honestly believed in the existence of facts that, if true, would exonerate the person" (i.e., made a mistake). Section 18 of the *AAAMP Act* is what makes the system "absolute liability".

[31] As a result, the Applicant's mistake is not a permissible defence.

### Alleged Racism and Abuse

[32] In an email to the Respondent dated April 15, 2025, the Applicant alleges frankly shockingly abusive behaviour by the officer who issued the Notice.

[33] As the Respondent noted in their submissions, it is not within the Tribunal's mandate to review officer conduct. As a result, I make no determinations about the alleged abuse.

[34] That said, given the seriousness of the Applicant's allegations about officer misconduct and given that the Respondent is now alive to these concerns, I would hope that the Respondent would initiate an internal review of the alleged abuse of power, whether or not the Applicant pursues a formal complaint.

**The Amount of the Penalty**

[35] The Minister's decision noted that because a violation of subsection 16(1) of the *HA Act* is "very serious", the penalty pursuant to the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (*AAAMP Regulations*) is $1,300.00.

[36] The reason the amount of the penalty was $1,300.00 was because Item 11 of Column 1 of Division 1 of Part 1 of Schedule 1 to the *AAAMP Regulations* states that a violation of subsection 16(1) of the *HA Act* is a "very serious" violation.

[37] Paragraph 5(1)(c) of the *AAAMP Regulations* states that the amount of the penalty for a "very serious violation" by an individual (who is not a business or trying to make a profit) is $1,300.00. Had the Applicant been importing the ham for business, the penalty amount would have been considerably higher.

[38] Once the officer decided to impose a financial penalty for a breach of subsection 16(1) of the *HA Act*, the amount in these circumstances was necessarily $1,300.00. Any other amount would not have complied with the Regulations, whether it was her first or a subsequent violation.

[39] In *Canada (Attorney General) v Chu*, 2022 FCA 105 at para 7, the Federal Court of Appeal wrote that once the Tribunal has determined that there has been a violation of subsection 16(1) of the *HA Act*, "the role of the Tribunal [is] limited to determining whether the penalty was established according to the Regulations."

[40] Moreover, on the question of whether the Applicant should have been given a warning rather than a financial penalty, subsection 7(2) of the *AAAMP Act* states that an officer has discretion to decide whether to issue a warning or a monetary penalty for violations of the *HA Act*. I cannot interfere with that discretion (*Chu* at para 8).

[41] Although I am sympathetic to the Applicant's personal situation, given the decision in *Chu* and because the penalty amount was properly calculated, I cannot change the amount of the penalty.

## 5. CONCLUSION

[42] The Minister's decision is confirmed.

[43] The Applicant shall pay the penalty within 30 days.

Dated on this 28th day of August 2025.

Emily Crocco
Member and Chairperson
Canada Agricultural Review Tribunal