



Canada Agricultural
Review Tribunal

Commission de révision
agricole du Canada

Citation: *1230890 Ontario Limited v Canadian Food Inspection Agency*, 2026
CART 03

Docket: CART-2025-FNOV-027

BETWEEN:

1230890 ONTARIO LIMITED

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: **Patricia Farnese, Member**

WITH: **William Warner, for the Applicant, and**
Hiam Amar, for the Respondent

HEARING DATES: **November 24-25, 2025**

DECISION DATE: **January 21, 2026**

1. INTRODUCTION

[1] 1230890 Ontario Limited o/a Warner Transport (Warner) received a Notice of Violation (Notice) with a \$13,000 penalty for contravening subsection 148(1) of the *Health of Animals Regulations* (*HA Regulations*). The Canadian Food Inspection Agency (Agency) issued the Notice after some of the hogs Warner transported to Conestoga Meat Packers were either dead or euthanized on arrival. Warner asks that the Tribunal review the facts that led to the Agency's conclusion that they transported hogs in overcrowded conditions.

[2] The Notice is confirmed. The Agency has proven that the hogs were transported in overcrowded conditions that were likely to cause hyperthermia. The Agency is not required to prove that the hogs died or were euthanized because they were hyperthermic. Given the anticipated weather conditions during transport and the size of the hogs, the space available to each hog was insufficient. By failing to reduce the load density by 15%, Warner's trailer was overcrowded resulting in a contravention of subsection 148(1) of the *HA Regulations*. I do not agree that Warner was negligent when contravening subsection 148(1). The penalty is varied to \$10,000.

2. ISSUE

[3] To sustain the Notice, the Agency must prove that it was more likely than not that:

- a. Warner loaded, transported or confined an animal or caused an animal to be loaded, transported, or confined;
- b. in a conveyance or container, other than a container that is used to transport an animal in an aircraft; and,
- c. the conveyance or container was or would become overcrowded because the animal was likely to develop a pathological condition such as hyperthermia.

[4] Warner admits to loading and transporting 190 hogs in a 53-foot, pot-belly trailer. This trailer meets the definition of a conveyance under subsection 2(1) of the *Health of Animals Act*. They also agree that 3 hogs were dead upon arrival at Conestoga Meat Packers and another was euthanized on the trailer. Warner disputes that the hogs were

transported in overcrowded conditions. They also dispute the Agency's calculation of the penalty they received for the Notice and argue that they were not negligent during their transport of the hogs. Therefore, the review of the Notice raises the following two issues:

- **Issue One:** Was the trailer overcrowded?
- **Issue Two:** If yes, was the penalty correctly assessed?

3. ANALYSIS

Issue One: Was the trailer overcrowded?

[5] Subsection 148(1) of the *HA Regulations* prohibits transporting animals in overcrowded conditions. The Agency states that they issued the Notice because hogs became hyperthermic after Warner transported them on a hot day with inadequate space. Paragraph 148(2)(b) of the *HA Regulations* clearly outlines that overcrowding occurs when, due to the number of animals transported, an animal is likely to develop a pathological condition such as hyperthermia.

[6] Overcrowding is a factual finding that is determined from the condition of the animals and the circumstances of transport at the time of loading (see *Attorney General (Canada) v 1230890 Ontario Limited*, [2026 FCA 4](#) at para 7). For this Notice to be upheld, the Agency is required to prove a causal link between the number of animals transported and the *likely risk* of the animals developing hyperthermia. The Agency does not have to prove any of the hogs were hyperthermic.

[7] Warner disputes that the trailer was overcrowded. They assert that the animals succumbed to an underlying health condition that was unknown at the time of loading and exacerbated by the normal stress of transport. They further argue that the hogs were not hyperthermic. Moreover, the number of hogs loaded was twice reduced in response to the weather conditions which provided adequate space for the hogs.

[8] The Tribunal, the Agency, and transporters routinely rely on industry guidelines found in the National Farm Animal Care Council's Recommended Code of Practice for

the Care and Handling of Farm Animals: Transportation (the Transport Code) and the Code of Practice for the Care and Handling of Pigs (the Pig Code) to determine an acceptable loading density that will minimize the risks to hogs from overcrowding. Loading density considers the weight of the hogs and the size of the trailer used. Weather conditions during transport and the health of the hogs may also be considered when relevant.

What was the average weight of each hog?

[9] To assess loading density, the Tribunal must make a finding as to the weight of the hogs at the time of loading. Warner's uncontested evidence, supported by the evidence of their driver and the owner of Confederation Farms, is that it is not industry practice to weigh individual hogs prior to loading. Biosecurity protocols prohibit transporters from entering the barns to weigh the hogs prior to loading even if they so wish. Thus, the average weight of the hogs at loading is in dispute.

[10] The Agency presented evidence that the average weight was 127.21 kg per hog. They derived this number from the difference between the weight of the trailer before and after the trailer was loaded at Conestoga Meat Packers. In *Vernla Livestock v Canadian Food Inspection Agency*, [2024 CART 20](#) (*Vernla*) I expressed concerns about the reliability of evidence of weight using this methodology. I find that 127.21kg, however, is the best available evidence as to the average weight of each hog in this case. Unlike in *Vernla*, the Agency provided a document titled "Conestoga Meats Receiving Receipt" from the date of violation that lists the net weight of the trailer before and after unloading. This document provides independent verification of the Agency Inspector's notes which lists the weight he says he obtained from an unnamed staff person a Conestoga Meats.

[11] Warner asks that the Tribunal infer that the average weight was less than 127.21kg per hog because both Mr. Warner and their driver are experienced transporters and would not risk overcrowding pigs. Mr. Warner testified that he regularly delivers hogs to Conestoga Meat Packers from the two farms where the loaded hogs originated. He explained that this regularity and his understanding of normal industry practices allowed

him to anticipate the size of hogs when he prepared the Record of Livestock Movement. Conestoga Meat Packers has a range of weights they expect hogs to be. Farms will raise hogs and send them to Conestoga Meat Packers when they reach that desired weight. Therefore, loads tend to have consistent sized hogs until the final hogs of a barn's cycle when the stragglers are sent. Mr. Warner testified that hogs were sent at the point during these farms' cycles when they are shipping consistently sized hogs.

[12] Determining weight at loading, however, is a purely factual matter. Warner's evidence is based on what they anticipated the hogs to weigh. Even if I were permitted to assign more significance to what Warner believed, the evidence suggests that they believed the average weight of the hogs was more than 127.21kg, not less. The Record of Livestock Movement for the hogs from Confederation Farms listed average weight of the hogs as 130kg. Although no weight was listed on the Records of Livestock Movement for the hogs from the other farm, Mr. Warner and the Agency Inspector testified that the size of the hogs was consistent between the two farms. Moreover, the driver stated that no change was made to the pre-existing loading plan when she loaded the hogs indicating the condition of the hogs was as anticipated prior to arrival.

How wide was the trailer?

[13] It is undisputed that Warner transported the 190 hogs from two different farms in 10 separated compartments of a 53-foot potbelly trailer. The trailer has three levels. The top and middle level each has four compartments and the bottom level contains two. The first, second, and third compartments (from the front of the trailer) on the middle level each had a dead hog on arrival. The euthanized hog was also found in one of these compartments.

[14] Warner disputes the Agency's evidence about the size of each compartment within the trailer, and therefore, the space available to each hog. The Agency presented the measurements recorded by one of their Inspectors who observed the hogs being unloaded at Conestoga Meat Packers. Warner, however, provided a photograph of a tape measure inside the trailer to argue that the trailer was 1.5 inches wider than the Inspector

recorded. The Agency could not convincingly refute Warner's photograph or their assertion that the Inspector likely measured only the textured surface of the floor in each compartment and excluded the non-textured space on each edge. Because its measurements include all the available space that would be available to the hogs, I accept that Warner's measurements of the compartments, as listed in the table below:

Compartment	Total Size (sqft)
A1	87.75
A2	87.75
B1	108.48
B2	108.48
B3	108.48
C1	108.48
C2	108.48
C3	108.48
D1	107.75
D2	136.12

Are industry guidelines prescribing reductions of loading density in response to weather conditions compulsory?

[15] Subsection 138.3(1) of the *HA Regulations* explicitly lists the foreseeable weather conditions as a risk factor to be considered when transporting animals. As guidance to transporters, the Transport Code recommends that loading density be reduced by 25% during hot, humid weather to prevent animal suffering. The Pig Code, released 13 years after the Transport Code, modifies the initial recommendation for transporting hogs in hot, humid weather. The Pig Code contains a Livestock Weather Safety Index (Index) which provides more precise recommendations based on specific temperature and humidity ranges. Accordingly, I attach more weight to the Pig Code than the Transport Code when considering the impact of weather on recommended loading density. Adherence to the Pig Code's Index is more likely to prevent animal suffering because it prescribes different actions based on how hot or humid the conditions may be, including postponing any shipments if the temperature exceeds 37.8°C or a relative humidity above 30%. The Transport Code would only recommend a 25% reduction in those temperatures.

[16] In practice, many turn to a table created by Ontario Pork to determine the recommended loading density of any given load. In addition to outlining the loading density recommended in the Transport Code under ideal conditions, Ontario Pork has also interpreted the Index as specifying 3 different percentage reductions (-10%, 15%, or 25%) based on how hot the temperatures are. I see no reason to depart from this practice in this case especially as the Agency adopted Ontario Pork's Index in their communication with Warner about the reasons for the Notice. The table accurately represents the applicable loading density guidelines in the Transport Code and Pig Code.

[17] I find the weather warranted a 15% reduction in loading density. The Pigs Maximum Loading Density charts found in the Transport Code recommend a loading density of 4.78 sqft per 127.21kg hog under ideal conditions. The Agency has provided uncontested evidence that the hogs were transported in temperatures that ranged between 24-28°C. Warner testified that they reduced the total number of hogs twice in anticipation of these warm temperatures, first from 220 to 200 and then to 190. Relying on Ontario Pork's interpretation of the Index, the Agency argues that Warner's reductions were insufficient and that the trailer was overcrowded because loading density was not reduced by 15%. To conform to Ontario Pork's recommendation to reduce the loading density by 15%, the available space per hog must be increased to 5.497sqft.

[18] As outlined in the table below, 6 of the compartments exceeded the recommended loading density of 5.497sqft for 127.21kg hogs transported in the anticipated weather conditions. Exceeding the maximum loading density risks the harm and suffering the industry guidelines aim to avoid. Consequently, the number of allowable hogs is not rounded to the nearest full hog because a fraction of a live animal cannot be loaded.

Compartment	Total Area of Compartment (sqft)	Allowable Hogs in ideal conditions	Allowable Hogs with 15% reduction	Actual Number of Hogs Loaded	Hogs exceeding guidelines	Actual Reduction %
		Total Area / 4.78sqft	Total Area / 5.497sqft			
A1	87.75	18 (18.36)	15 (15.96)	15	0	15.82%
A2	87.75	18 (18.36)	15 (15.96)	15	0	15.82%
B1	108.48	22 (22.69)	19 (19.73)	20	1	13.06%
B2	108.48	22 (22.69)	19 (19.73)	20	1	13.06%
B3	108.48	22 (22.69)	19 (19.73)	20	1	13.06%
C1	108.48	22 (22.69)	19 (19.73)	20	1	13.06%
C2	108.48	22 (22.69)	19 (19.73)	20	1	13.06%
C3	108.48	22 (22.69)	19 (19.73)	20	1	13.06%
D1	107.75	22 (22.54)	19 (19.60)	18	0	13.04%
D2	136.12	28 (28.48)	24 (24.76)	22	0	13.06%

[19] Warner does not dispute the Agency's evidence of the weather conditions during transport or that they did not reduce the loading density by 15%. They argue that despite not making the 15% reduction, the trailer was not overcrowded because the overall load density was reduced twice to account for the weather. Warner asserts that the guidelines are not binding and, therefore, falling short of the 15 % threshold is not sufficient evidence of a contravention of subsection 148(1) of the *HA Regulations*.

[20] Although the Transport Code and Pig Code are not binding, they establish a benchmark for loading density when transport conditions are ideal. As explained above, the precise weight of the animals transported are normally unknown, so some variance from the benchmark may be tolerated. Transporters are expected to use their judgment to vary the load based on factors that make the transport conditions less than ideal to reduce the risk of harm or suffering.

[21] The load reduction recommendations for weather conditions, however, represent a consensus that animals will likely suffer from hyperthermia if subjected to higher load densities in hot weather. This consensus can be seen in Conestoga Meat Packers' load density requirements for transporters, which also mandate a 15% reduction for transport

in these temperatures. Therefore, by proving that the load density was not reduced by 15% from the recommended load density under ideal conditions, the Agency has proven on a balance of probabilities, the causal link between the number of animals transported and their *likely risk* of developing hyperthermia. I find that Warner overcrowded the trailer in a contravention of subsection of 148(1) of the *HA Regulations*.

[22] My conclusion that the hogs were likely to have developed hyperthermia caused by overcrowding in the trailer is not altered by the fact that one of the dead hogs was transported in a compartment that met the minimum space requirement of 5.497 sqft per animal. Warner's suggestion that an underlying health condition caused the deaths is unpersuasive, particularly when weighed against the evidence of the Agency veterinarian who conducted the ante-mortem and post-mortem examinations at Conestoga Meat Packers on the day of transport. She observed a hog in the segregation pen panting excessively, with no improvement after being given time to rest. She also noted purple discolouration at the base of the neck, along the ventral body, and on the ears of the dead hogs—findings consistent with circulatory compromise. This discolouration was visible in the photographs submitted to the Tribunal. She recorded a rectal temperature of 43.4°C in one of the dead hogs, well above the normal temperature of 38.7°C. Her necropsy findings included a deep purple spleen, pooling of blood in the lungs, and congestion of the liver and kidneys, all of which she identified as signs of heat stress. She further reported that the hogs were otherwise in good condition and showed no indications, during either the ante-mortem or post-mortem inspections, of any underlying health condition that could have caused death during transport. In her professional opinion, the hogs died from hyperthermia resulting from crowded transport conditions.

[23] Warner submitted an opinion from the farm's regular veterinarian, who offered possible alternative explanations for the symptoms the Agency veterinarian attributed to hyperthermia. He also noted that the hogs originated from a barn that had recently experienced cases of Porcine Reproductive and Respiratory Syndrome (PRRS) and mycoplasmal pneumonia. He did not conclude, however, that the hogs in question were suffering from either condition, nor did he dispute that they had become hyperthermic.

Even if I were to accept that the hogs had underlying health issues, this would not negate the finding of hyperthermia.

Issue Two: Was the penalty correctly assessed?

[24] Having upheld the Notice, the Tribunal must decide whether the penalty was correctly assessed. Warner was fined \$13,000. Schedule 1 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AAAMP Regulations) classifies subsection 148(1) of the *HA Regulations* as a very serious violation. Subsection 5(3) of the *AAAMP Regulations* imposes a \$10,000 penalty for very serious violations committed in the course of business or to obtain a financial benefit, although the penalty can be adjusted in some cases. Schedule 3 of the *AAAMP Regulations* attaches numerical values, called Gravity Values, to three criteria. These criteria ask whether Warner has any prior violations or convictions, if they acted with intent or negligence, and contemplates the harm done or could have been done.

History

[25] The Agency justifiably gave Warner a Gravity Value of 5 in the compliance history category. Schedule 3, Part 1 of the *AAAMP Regulations* mandates a Gravity Value of 5 if more than one minor or serious violation has occurred within the preceding five years from the date of the violation. Warner has had one other very serious violation in the past five years.

Negligence or Intent

[26] I do not find that a Gravity Value of 3 for the second criteria of negligence or intent is justified. Although a Warner did not voluntarily disclose the violation, a Gravity Value of 0 is appropriate because I find no evidence that their actions were intended to cause overcrowding. I also reject the Agency's charge that Warner was negligent.

[27] Although the risk of harm to the hogs caused by overcrowding in warm weather is widely understood, I find Warner's failure to reduce the load by 15% reflects a reasonable

misunderstanding of how to calculate loading density. Warner ought to have considered the loading density of each compartment when deciding how many hogs to load. If the area available to the hogs is considered as a whole, however, 194 hogs could be loaded into 1070.25sqft. Warner loaded 190 hogs. That they believed they were complying with subsection 148(1) is understandable, albeit in error. Warner also reduced the load twice in response to the temperature. These actions indicate they were aware that the temperature during transport risked harm to the animals and they acted to mitigate the risk. The actual conditions of transport (i.e. the space available to each hog in each compartment), however, must be considered when assessing overcrowding to give effect to the *HA Regulations*' aim of reducing animal suffering.

Harm

[28] I find that a Gravity Value of 5 for the final criteria is justifiable because the overcrowding caused serious harm to animals. The Agency has proven that four hogs died or were euthanized because they became hyperthermic. Schedule 3, Part 3 of the *AAAMP Regulations* outlines that a Gravity Value of 5 is to be assigned when there is serious or widespread harm to animals. Death meets that requirement.

[29] With a Total Gravity Value of 10, Schedule 2 of the *AAAMP Regulations* directs that the penalty is not adjusted. The penalty was incorrectly assessed at \$13,000.

3. CONCLUSIONS

[29] The Notice is confirmed and the penalty varied to \$10,000.

Dated on this 21st day of January 2026.



Patricia Farnese
Member
Canada Agricultural Review Tribunal