

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260113

Docket: A-328-24

Citation: 2026 FCA 4

**CORAM: DE MONTIGNY C.J.
STRATAS J.A.
BIRINGER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

1230890 ONTARIO LIMITED

Respondent

Heard at Toronto, Ontario, on January 13, 2026.

Judgment delivered from the Bench at Toronto, Ontario, on January 13, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260113

Docket: A-328-24

Citation: 2026 FCA 4

**CORAM: DE MONTIGNY C.J.
STRATAS J.A.
BIRINGER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

1230890 ONTARIO LIMITED

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 13, 2026).

STRATAS J.A.

[1] The Canadian Food Inspection Agency issued a notice of violation and fined the respondent \$13,000 for loading hogs onto a truck that is overcrowded. For the precise language of the violation provision, see *Health of Animals Regulations*, C.R.C., c. 296, s. 148(1). The

respondent persuaded the Canada Agricultural Review Tribunal to set aside the notice of violation: Tribunal decision dated September 9, 2024 (2024 CART 27).

[2] The Attorney General, acting for the Agency, applies to set aside the Tribunal's decision. We agree that the Tribunal's decision must be set aside.

[3] The Tribunal set aside the notice of violation and acquitted the respondent because (at para. 32) the respondent's driver "took into account the risk factors that could reasonably be viewed as having an impact on the [hogs'] capacity to withstand loading, confining, transporting and unloading" and its driver "from [his] perspective" considered that the hogs would not likely suffer an injury or die due to the number of animals. These seem to suggest that the driver acted diligently or had an honest and reasonable belief that there was no problem.

[4] But here, the defences of due diligence or honest belief are not legally available:

Agriculture and Agri-Food Administrative Monetary Penalties Act, S.C. 1995, c. 40, s. 18(1).

Liability for violations under subsection 148(1) of the Regulations is absolute. This means that a person is guilty of the violation if the acts set out in the section are committed, regardless of the person's knowledge or mental state: see similar absolute liability offences under this legislative regime, discussed in *Maple Lodge Farms Ltd. v. Canada (Food Inspection Agency)*, 2017 FCA 45 and *Doyon v. Canada (Attorney General)*, 2009 FCA 152.

[5] The acts triggering liability under s. 148(1) of the Regulations are: (i) loading or causing animals to be loaded; (ii) in a conveyance or container other than one used to transport an animal

in an aircraft; (iii) in a manner that would result in the conveyance or container becoming “overcrowded”. Liability also follows if (i) and (ii) are present and the animal is transported and confined or caused to be transported and confined in a conveyance or container that is already “overcrowded”.

[6] Central to the violation is “overcrowding” at the time of loading. Subsection 148(2) tells us that “overcrowding” happens when:

- “due to the number of animals in the conveyance or container”, the animal “cannot maintain its preferred position or adjust its body position in order to protect itself from injuries or avoid being crushed or trampled”;
- “the animal is likely to develop a pathological condition such as hyperthermia, hypothermia or frostbite”; or
- “the animal is likely to suffer, sustain an injury or die”.

[7] These are all purely factual matters. When assessing what will prove these factual matters, one must keep front of mind that this legislative scheme is aimed at minimizing the risk of death or injury to animals at the time of loading; after all, subsection 148(1) speaks in the present tense and is directed to the time of loading. Thus, the Tribunal should focus on the factual observations of those handling and loading the animals and those operating the conveyance about the condition of the animals and the circumstances of the transport at the time of loading and transportation (*e.g.*, matters such as loading density and temperature), especially

observations and circumstances recorded in notes made at the time. Though the time of loading and transportation is the focus in this legislative scheme, the fact that injury or death to animals happened during transport potentially can be evidence of “overcrowding” at the time of loading. The expert testimony of a veterinarian, based on the veterinarian’s expert assessments and investigations, will often be useful to the Tribunal on that issue and others.

[8] Over time, the Tribunal may develop other acceptable jurisprudence on when any of the three criteria for “overcrowding” is present. But the subjective beliefs, perspectives or opinions of those involved in the loading of the animals and the operator of the conveyance—as opposed to their factual observations at the time—are irrelevant. Again, the defences of due diligence and honest belief are not legally available.

[9] The Tribunal seems to have imported into its analysis of “overcrowding” the risk factors under an unrelated section of the Regulations, subsection 138.3(1), as if they are criteria additional to those in subsection 148(2). That is not how the Regulations have been drafted. The Tribunal’s focus must remain on the three criteria for “overcrowding” under subsection 148(2). However, this is not to say that the risk factors under subsection 138.3(1) never can bear upon the subsection 148(2) criteria. For example, in some cases, the presence of a risk factor alongside other evidence could affect the Tribunal’s assessment of whether the threshold of “likely” is met under two of the three criteria: see, e.g. *Brussels Transport Ltd. v Canadian Food Inspection Agency*, 2023 CART 20. But in the end, the Tribunal’s focus must remain on the three criteria for “overcrowding” under subsection 148(2).

[10] The Tribunal's legal errors are sufficient for us to quash its decision. But we also agree with the Attorney General's submission that the Tribunal's reasons did not adequately account for and explain the evidence before it on key arguments raised by the Agency, such as load density evidence and the veterinarian's evidence.

[11] The Attorney General submits that, based on the evidence in this record, there is only one possible result in this case and so we should direct the Tribunal to confirm the notice of violation, including its imposition of penalty. We disagree. As the Supreme Court said, such a direction—in effect a *mandamus* order—is to happen only in “limited scenarios”: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 142; and see the high threshold for *mandamus* discussed in, e.g., *Canada (Public Safety and Emergency Preparedness) v. LeBon*, 2013 FCA 55 at para. 14. The Tribunal is the merits-decider under this legislative regime and departures from that should be rare: *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326 at 361; *Maple Lodge Farms* at para. 52; *Terra Reproductions Inc. v. Canada (Attorney General)*, 2023 FCA 214 at para. 8. The Attorney General has not persuaded us that the evidence unequivocally points to violation. It may also be that, given the clarification of the legal matters in this decision, if the matter is remitted to the Tribunal for redetermination the respondent might make submissions on liability and penalty that were not open to it before or that were not properly understood or considered before, with the effect that the result and supporting reasons might change. Thus, in our view, the high threshold for directing a verdict in this case has not been met.

[12] Therefore, we will allow the appeal, set aside the Tribunal's decision dated September 9, 2024, restore the notice of violation, and remit the matter to a different member of the Tribunal for redetermination. The Attorney General does not seek costs and so none will be awarded.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-328-24

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. 1230890 ONTARIO
LIMITED

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 13, 2026

REASONS FOR JUDGMENT OF THE COURT BY: DE MONTIGNY C.J.
STRATAS J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Deniz Samadi FOR THE APPLICANT

William Warner FOR THE RESPONDENT
(UNREPRESENTED)

SOLICITORS OF RECORD:

Shalene Curtis-Micallef FOR THE APPLICANT
Deputy Attorney General of Canada