



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Hamel v Canadian Food Inspection Agency*, 2024 CART 01

**Docket: CART-2022-FNOV-027**

**BETWEEN:**

**YVON HAMEL**

**APPLICANT**

**- AND -**

**CANADIAN FOOD INSPECTION AGENCY**

**RESPONDENT**

[Translation of the official French version]

**BEFORE: Geneviève Parent, Member**

**WITH: Mr. Alain Béland, representing the Applicant  
Mr. Marc-Antoine Séguin, representing the Respondent**

**DECISION DATE: January 29, 2024**

**VIRTUAL HEARING DATE: December 6, 2023**

## 1. INTRODUCTION

[1] This decision was rendered after the hearing held on December 6, 2023 concerning a request for review of the Notice of Violation #2021QC0035-1 (Notice) made to the Canada Agricultural Review Tribunal (Tribunal) pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] The Notice was issued by the Canadian Food Inspection Agency (Agency). It is alleged in the Notice that the applicant (Mr. Hamel) contravened subsection 139(1) of the [Health of Animals Regulations](#) (*HA Regulations*), which states that no one “shall load, confine or transport an animal that is unfit, or cause one to be loaded, confined or transported, in a conveyance or container”. The Notice was served with a \$13,000 administrative monetary penalty.

[3] After considering the applicable facts and law, I find that the Agency has not established, on a balance of probabilities, the essential elements of the violation or Mr. Hamel’s liability.

## 2. LEGAL FRAMEWORK

[4] Subsection 139(1) of the *HA Regulations* provides that, subject to subsections (2) to (5), no person shall load, confine or transport an animal that is unfit, or cause one to be loaded, confined or transported, in a conveyance or container.

[5] Under subsection 136(1) of the *HA Regulations*, “unfit” in respect of an animal, means an animal that

(a) is non-ambulatory;

...

(c) is lame in one or more limbs to the extent that it exhibits signs of pain or suffering and halted movements or a reluctance to walk;

(d) is lame to the extent that it cannot walk on all of its legs;

...

(w) exhibits any other signs of infirmity, illness, injury or of a condition that indicates that it cannot be transported without suffering. (*inapte*)

[6] Under paragraphs 136(1)(e) and 136(1)(f) of the *HA Regulations*, an animal is considered “compromised” if it is lame other than in a way that is described in the definition of “unfit” or if it exhibits any other signs of infirmity, illness, injury or of a condition that indicates that it has a reduced capacity to withstand transport.

[7] A compromised animal may be loaded and transported in compliance with certain conditions listed in section 140 of the *HA Regulations*.

[8] Subsection 136(3) of the *HA Regulations* provides that an animal that is both compromised and unfit is deemed not to be compromised.

[9] Under section 19 of the *AAAMP Act*, the burden of proof is on the Agency. It must establish, on a balance of probabilities, the essential elements of the violation set out in subsection 139(1) of the *HA Regulations*, namely that:

(1) Mr. Hamel is the person named in the Notice of Violation #2021QC0035-1;

(2) Mr. Hamel loaded, confined or transported an animal or caused one to be loaded, confined or transported in a conveyance.

(3) The animal in question was unfit within the meaning of the *HA Regulations*.

### 3. ISSUE

[10] It is not in dispute that Mr. Hamel is indeed the person named in the Notice of Violation #2021QC0035-1.

[11] The parties filed an *Agreed Statement of Facts* with the Tribunal's Registry on or about October 6, 2023, in which it is admitted that Mr. Hamel loaded and transported the cow with ear tag number 110 671 466 (the animal).

[12] Among other things, it is admitted in the *Agreed Statement of Facts* that the animal was sold on September 21, 2020, to Mr. Hamel by the Marché d'animaux vivants [live animal market] Veilleux et Frères inc. Mr. Hamel transported the animal from the market to Ms. Bianca Foley's farm on September 21, 2020. He transported it from Ms. Foley's farm to the Abattoir [slaughterhouse] Cliche on the evening of September 22, 2020, outside business hours.

[13] The *Agreed Statement of Facts* also states that the animal was examined by Dr. Jobidon, a veterinary inspector with the Agency, at the Abattoir Cliche, on September 23, around 7:45 a.m.

[14] The *Agreed Statement of Facts* thus focuses the debate on one of the essential elements of the violation, that is, the animal's condition at the time of loading and transport.

[15] The Tribunal must therefore decide the following issue: was the animal unfit within the meaning of section 136 of the *HA Regulations* at the time of loading and transport?

[16] Should I conclude that Mr. Hamel did commit the violation set out in subsection 139(1) of the *HA Regulations*, I must also decide whether the amount of the administrative monetary penalty of \$13,000 was established in accordance with the Regulations.

#### 4. ANALYSIS

[17] The Agency submits that the animal was unfit when it was loaded and transported on the basis of the testimony of the veterinarian, Dr. Jobidon. In addition to the elements contained in the Agency's report and those agreed upon in the *Agreed Statement of Facts*, the Agency filed a sworn statement by Dr. Jobidon, Veterinarian, in lieu of her testimony.

[18] Dr. Jobidon conducted ante-mortem and post-mortem assessments of the animal starting at 7:45 a.m. on September 23, 2020.

[19] When Dr. Jobidon assessed the animal, it was in a pen with six other cows.

[20] The *Agreed Statement of Facts* provides Dr. Jobidon's observations from the assessment:

- a. The animal moved reluctantly and only when it was required to;
- b. At no time, even when it was resting, did the animal put its affected limb on the ground, but kept holding it up in the air;
- c. The stifle of the same limb was swollen;
- d. There was severe atrophy (muscle wasting) of the muscles at the top of the affected leg;

...

[21] During the post-mortem examination, Dr. Jobidon condemned the animal's entire back right limb because of arthritis and muscle atrophy found in the limb.

[22] In light of the assessments, Dr. Jobidon concluded that the condition affecting the animal's joint was chronic and that, given the short time between the animal being unloaded by Mr. Hamel in the evening of September 22 and the assessments, the condition was present before the animal had been transported. In the Agency's report,

Dr. Jobidon states that this condition must have been present for several weeks or even months. However, in her written sworn statement provided in lieu of her testimony, Dr. Jobidon was rather of the opinion that [TRANSLATION] “such a chronic condition must necessarily have been present when the animal was transported and was likely present several days or weeks before my exams”.

[23] For these reasons, the Agency submits to the Tribunal that the animal was unfit when it was loaded and transported by Mr. Hamel.

[24] When he was questioned about this during his testimony, Mr. Hamel was of the opinion that the videos of the animal in the Agency’s file show that, at the time of its assessment by Dr. Jobidon, the animal was unfit. However, he testified, that, when the animal was loaded and transported, it was not in the condition that it was in when Dr. Jobidon assessed it.

[25] He testified that, when the animal was loaded and transported and even when it was unloaded at the Abattoir Cliche, it was compromised, not unfit.

[26] On September 21, 2020, he bid on the animal that was walking around the ring at the auction at Marché d’animaux vivants Veilleux et Frères inc. Based on his testimony, the animal was ambulatory and walking on all four legs, and all four of its legs were on the ground. There was only some mild lameness. In the ring and when it was loaded and unloaded, the animal was not reluctant to walk. Mr. Hamel repeated several times that, on the contrary, the animal had a tendency to [TRANSLATION] “charge”.

[27] He knew when he bought the animal, that the right buttock would be condemned because he had noticed muscle wasting (atrophy) in the right buttock and noted that the [TRANSLATION] “stifle” was swollen. He considered the animal to be compromised, not unfit, within the meaning of section 136 of the *HA Regulations*.

[28] Based on the evidence presented in Mr. Hamel's testimony, which was not contradicted by the Agency, Mr. Hamel complied with most of the conditions for the transport of a compromised animal set out in section 140 of the *HA Regulations*:

- The animal was individually loaded without having to negotiate any ramps;
- The trailer into which Mr. Hamel loaded the animal was made in 2020 and has some spaces for isolating an animal;
- The animal was isolated both times when it was transported;
- Both at Ms. Foley's farm and when it was unloaded at the Abattoir Cliche, the animal was isolated in a pen and left alone.

[29] Mr. Hamel testified that he dropped off the animal at the Abattoir Cliche around 9 p.m. on September 22, 2020, and that animals are commonly dropped off outside business hours.

[30] Mr. Hamel testified that he left the animal isolated in a pen at the Abattoir Cliche and that he does not know why it was with other animals when it was examined by Dr. Jobidon.

[31] Counsel for Mr. Hamel filed sworn statements by Ms. Brigitte Veilleux, Secretary for Encan Marché d'animaux vivants Veilleux et Frères inc., by Mr. Dan Roy, who is in charge of receiving the animals for the auction, and by Bianca Foley, Mr. Hamel's partner. These statements stand for their respective testimony.

[32] Ms. Brigitte Veilleux testified that none of the auction employees noticed that the animal was limping, and there were no notes to this effect on the weight ticket, which would be the case if employees noticed lameness or another anomaly. She specified that, if the animal had not been ambulatory and was walking on three legs only, it would not have been put up for sale.

[33] Mr. Dan Roy, who has 15 years of experience in animal sales, testified that he does not allow unfit animals to enter the ring. However, this animal was in the ring and was walking before the buyers when it was purchased by Mr. Hamel.

[34] Mr. Dan Roy testified that he [TRANSLATION] “never noticed any significant lameness that would render an animal unfit for transport to begin with, in a cow that we sold to Mr. Hamel in the fall of 2020”.

[35] Ms. Foley, Mr. Hamel’s partner, testified that she helps Mr. Hamel unload and load animals when he arrives at her farm. She remembers discussing the event of September 20, 2020, with Mr. Hamel and that she told him that she was certain that the animal was not unfit given what “[she herself] had noted at the time”.

[36] In light of the foregoing and having analyzed the evidence and the applicable law, I find that the Agency has not demonstrated, on a balance of probabilities, that the animal was unfit when it was loaded and transported by Mr. Hamel. Here is why.

[37] I am of the view that the evidence is clear regarding the animal’s condition at the time of Dr. Jobidon’s assessment: it was unfit.

[38] However, subsection 139(1) of the *HA Regulations* deals with the animal’s condition at the time of loading and transport. The animal’s condition at the time of the ante-mortem and post-mortem assessments and the pathology described by Dr. Jobidon do not necessarily make the animal unfit at the time of loading and transport.

[39] In *Tollgate Farm v. Canadian Food Inspection Agency*, [2023 CART 19](#) (*Tollgate Farm*), the Tribunal upheld a violation of subsection 139(1) of the *HA Regulations*. However, *Tollgate Farm* can be distinguished from this case, among other things, with respect to the evidence on the animal’s condition and the conclusions from the veterinary exam, which was done closer to the time of transport. In *Tollgate Farm*, the veterinarian wrote that given the “amount of arthritis” the heifer had, she had “not be[en] able to bear



weight properly... for a long period of time” (paragraph 21). In *Tollgate Farm*, the veterinarian was of the view that the chronic injury would have developed over “a very long time (months)” (paragraph 22).

[40] However, in this case, Dr. Jobidon assessed that the arthritis and muscular atrophy were likely present only for several days to several weeks.

[41] Dr. Jobidon’s assessed the animal more than 11 hours after it was unloaded at the slaughterhouse and therefore well over 11 hours after it was loaded and transported by Mr. Hamel.

[42] The evidence shows that six other animals were placed with the animal between the time when Mr. Hamel isolated it at the slaughterhouse and Dr. Jobidon’s assessment.

[43] The evidence is silent regarding what might have happened between the time when the animal was isolated at the slaughterhouse by Mr. Hamel and its assessment by Dr. Jobidon.

[44] Mr. Hamel provided clear, specific and consistent testimony regarding the animal’s condition at the time of its loading and transport and at the time of its unloading. The three sworn statements by Ms. Veilleux, Mr. Roy and Ms. Foley also support the fact that the animal was not unfit when it was loaded and transported.

[45] In *Doyon v. Canada (Attorney General)*, [2009 FCA 152](#), the Court notes that the decision-maker must be circumspect in managing and analyzing the evidence and in analyzing the essential elements of the violation and the causal link because of the severity of the administrative monetary penalty system in agriculture and agri-food. At paragraph 28 of that decision, the Court specifies that, in this context, a decision “must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay”.

[46] Accordingly, after analysis, I am of the view that the Agency has not established, on a balance of probabilities, the essential elements of the violation set out in subsection 139(1) of the *HA Regulations*.

## 5. CONCLUSION

[47] Mr. Hamel did not commit a violation of subsection 139(1) of the *HA Regulations*.

[48] The Notice of Violation #2021QC0035-1 with an administrative monetary penalty of \$13,000 is set aside.

Dated on this 29<sup>th</sup> day of January 2024.



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Geneviève Parent  
Member  
Canada Agricultural Review Tribunal