Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Bates* v. *Canada (Canadian Food Inspection Agency)*, 2017 CART 18

Date: 20171018
Docket: CART | CRAC-1952

BETWEEN:

RICKY BATES,

APPLICANT

- and –

CANADIAN FOOD INSPECTION AGENCY,

RESPONDENT

BEFORE: **Bruce La Rochelle, member**

WITH: **Ricky Bates, self-represented; and**
Hanna Davis, counsel for the respondent

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(c), of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts of a violation of paragraph 138(2)(a) of the *Health of Animals Regulations*.

DECISION

The Canada Agricultural Review Tribunal determines, by Order, that the Canadian Food Inspection Agency has not established, on the balance of probabilities, that the horse in question could not be transported without undue suffering during the expected journey. Accordingly, Mr. Ricky Bates has not committed the violation as alleged.

By written submissions only.

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REASONS

Case Overview

[1] This case concerns a lame horse and whether, in transporting such horse, the Applicant, Ricky Bates (hereinafter "Mr. Bates") transported an animal in circumstances where such animal could not be transported without undue suffering. There is a degree of imprecision in the wording of the Notice of Violation issued by the Canadian Food Inspection Agency (hereinafter "the Agency"). In the Notice of Violation, the Agency alleges that Mr. Bates has contravened paragraph 138(2)(*a*) of the *Health of Animals Regulations* (C.R.C., c. 296) in the following manner: "Load, transport or cause to be loaded or transported an animal that cannot be transported without suffering." The regulation referred to in the Notice of Violation involves greater precision and, in particular, references the fact that the suffering must be "undue" for a violation to have occurred. The relevant provisions of paragraph 138(2)(*a*) are as follows:

> ***138 (2)****...no one shall transport or cause to be transported an animal*
>
> *(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey...*

[2] The facts concern a load of horses that were being imported to Canada from the United States (hereinafter "U.S.") for the purpose of slaughter. The violation is considered to have occurred when the load of horses arrived in Canada, at the border crossing located

at Kingsgate, British Columbia. At that time, one horse in a load of 28 was determined by an Agency veterinarian to be unsuitable for transport without undue suffering, principally due to lameness. Following this determination, the entire load was rejected for import to Canada.

Procedural History

[3] The Canada Agricultural Review Tribunal (hereinafter "the Tribunal"), highlights components of the procedural history as follows:

(a) Notice of Violation 1617WA0173, dated March 28, 2017, was served on Mr. Bates by registered mail, with a deemed date of service of April 8, 2017. By this Notice of Violation, it was alleged that Mr. Bates, on or about November 18, 2016, at Kingsgate, British Columbia, committed a violation of paragraph 138(2)(*a*) of the *Health of Animals Regulations*, previously quoted. In the Notice of Violation, it is alleged that Mr. Bates did "load, transport or cause to be loaded or transported an animal that cannot be transported without suffering". The Tribunal has noted that "undue" is omitted from the description of the violation.

(b) The Tribunal received a copy of the Notice of Violation from Mr. Bates on April 20, 2017, sent by registered mail. On the Notice of Violation, in relation to the violation description, was written (presumably by Mr. Bates), "this is a false statement". Mr. Bates also included a handwritten note, in which he expressed his general displeasure with the proceedings to which he was now subject. He expressed his concern that the examining veterinarian was either biased against horses being shipped for slaughter in any event, or was not competent. He expressed similar sentiments in relation to the competence of investigators and inspectors, mentioning that this was his experience in both Canada and the U.S. His view was that the Agency was "trying to stop me from making a living an(d) lying about the way I do my job". The essence of his objection was that of a general challenge of the findings of fact by the

Agency, particularly as referenced to the fact that the horses he was hauling were approved by a U.S. veterinarian prior to transport. He also stated that such findings were consistent with his own observations of the horses when they were loaded. Mr. Bates had also apparently been provided with some of the Agency evidence in advance of filing his Request for Review. In his letter, he challenged the video evidence of the Agency, and further denied statements attributed to him by Agency personnel.

(c) On June 5, 2017, Mr. Bates and the Agency were advised by the Tribunal, by email and regular mail, that Mr. Bates' Request for Review was determined to be admissible.

(d) On June 26, 2017, the Agency filed its Report with the Tribunal by courier. The Report was also forwarded to Mr. Bates by courier. On August 1, 2017, Mr. Bates advised the Tribunal by telephone that he wished to proceed by written submissions only.

Facts in Dispute

[4] There is no dispute as to the circumstances of the transport and the fact that Mr. Bates was the transporter. The only dispute relates to the condition of the horse and the consequent determination by the Agency that the horse was unsuitable for transport without undue suffering.

Conclusion

[5] The Tribunal has concluded, based on a review of the evidence, to be discussed, that the Agency has not established, on the balance of probabilities, that the horse in question could not be transported without undue suffering during the expected journey. Accordingly, Mr. Bates has not committed the violation, as alleged.

Analysis of Facts: Application of Jurisprudence and Related Tribunal Decisions

[6] The Agency's evidence as to the state of the horse in question is that of Dr. Andrew Mack (hereinafter "Dr. Mack"), an Agency veterinarian. Dr. Mack's initial concern about the shipment of 28 horses was based on observing blood in the trailer. The shipment was therefore unloaded and the horses examined. Two horses were found with bloody nasal discharge, one of whom also had a laceration over one eye. A third horse was determined to be lame. The Agency's case is with reference to the third horse, identified as horse 050. Photos were taken by Dr. Mack of the interior of the trailer, to illustrate blood on the shavings and the trailer gate. Photos were taken of the other two horses, in relation to the nasal discharges and lacerations. Two videos were then taken by Dr. Mack of hors 050.

[7] From the Agency's perspective, based on the document *Port of Entry Inspection Procedures: Horses for Immediate Slaughter Imported From The United States*, even mildly lame horses are not acceptable for import into Canada. This is a directive from the Agency, with no evident association with specific import legislation.

[8] Mr. Bates, in contrast, relies on the veterinary certificate of Dr. Mark Sargent (hereinafter "Dr. Sargent"), a U.S. veterinarian, by which Dr. Sargent determined that the horse was fit for transport.

(i) State of Lameness, Directives, Codes of Practice

[9] The Agency submitted a video taken by Dr. Mack as evidence in support of the state of the horse. The Tribunal has reviewed this video several times and does not observe lameness to such a degree as to conclude that the horse in question was suffering unduly. Rather, the Tribunal views a horse who is able to move around without any significant limp. The horse is quiet and, perhaps, in a state of depression over the circumstances in which he finds himself or herself. All of the other horses in the video seem to be in a similar state: quiet and largely without significant expression. Indeed, when interviewed directly by Agency personnel, Dr. Mack was not prepared to state that the horse in question was "unfit" as opposed to "compromised", in accordance with Agency policy. According to the Agency's summary of such policy when interviewing Dr. Mack, an "unfit" horse would be

one with an "obvious limp with uneven weight bearing", while a "compromised horse" would be one with "imperfect locomotion, a slight limp; the lame leg may not be immediately identifiable". In Dr. Mack's view, such a differentiation in categorization would be a matter for an "equine specialist" (Agency Report, Tab 17, interview with Dr. Mack, Questions 14 and 15). Implicitly, Dr. Mack was not such a specialist. According to Agency policy, as opposed to the law, "even mildly lame animals are considered compromised and must go to the nearest suitable place" (Agency Report, Tab 17, interview with Dr. Mack, Question 16).

[10] The Tribunal views the video evidence as being similar to that presented by the Agency in *L. Bilodeau et Fils Ltée and Patrice Guillemette v. Canada (CFIA)*, 2015 CART 22 (hereinafter "*Bilodeau and Guillemette*"), a Tribunal decision that was affirmed by the Federal Court of Appeal in *Canada (Attorney General) v. L. Bilodeau et Fils Ltée and Patrice Guillemette*, 2017 FCA 5 (per Mr. Justice Boivin, Mr. Justice Scott and Mr. Justice De Montigny concurring; hereinafter "*Bilodeau and Guillemette [FCA]*"). The Federal Court of Appeal decision was rendered directly from the Bench, following the hearing. In *Bilodeau and Guillemette*, the Tribunal concluded that the video and related photographic evidence presented as supporting the contentions of the Agency. As the Tribunal noted at paragraph 23 of its decision in *Bilodeau and Guillemette*:

> *[23]…Two of the three video recordings made by Dr. Comeau were viewed by the [Tribunal] at the hearing. They showed that the cow remained standing, without assistance, and that no serious injuries could be seen. The cow could be perceived as a sad or fearful animal, but proof that it was suffering or in a state of undue suffering was not there. Similarly, when one examines the photographs of the cow, submitted by the Agency, there do not appear to be any serious injuries on the cow's side, as was alleged. Therefore, the evidence submitted by the Agency through videos and photographs contradicts the veterinary testimony.*

[11] The Agency has referenced the violation exclusively to the alleged state of lameness of the horse. Therefore, unlike *Bilodeau and Guillemette*, the Tribunal is not obliged to

consider other causes of unsuitability to be transported without actual or likely undue suffering. The Agency, through Dr. Mack, made reference to the fact that there was blood in the trailer, not referenced to the horse in question, and that there was bloody mucous discharge from two other horses.

[12] As in *Bilodeau and Guillemette*, the Tribunal does not consider lameness on the part of a horse, in and of itself, as rendering such horse as being unsuitable for transport without undue suffering. The assessment of the degree of lameness and its relationship to undue suffering is a question of fact in each case, where lameness as such does not give rise to any presumption that the horse is thereby unsuitable for transport without undue suffering.

[13] *Bilodeau and Guillemette* related to two separate notices of violation, issued to the corporate transporter and to the driver respectively, which were addressed in one Tribunal decision. The alleged violation related to subsection 138(4) of the *Health of Animals Regulations*, which provides as follows:

> ***138 (4)*** *No railway company or motor carrier shall continue to transport an animal that is injured or becomes ill or otherwise unfit for transport during a journey beyond the nearest suitable place at which it can receive proper care and attention.*

[14] In *Bilodeau and Guillemette*, the Tribunal made reference to section 138(2.1) of the *Health of Animals Regulations*, which refers to a "non-ambulatory animal", and the relationship of such term to the prohibition against the transport of animals in circumstances where such transport cannot occur without undue suffering:

> ***138 (2)****... [N]o person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal*
>
> *(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey...*

(2.1) For the purpose of paragraph (2)(a), a non-ambulatory animal is an animal that cannot be transported without undue suffering during the expected journey.

[15] The legislature chose to define the term "non-ambulatory animal" in section 2 of the *Health of Animals Regulations*, as follows:

"non-ambulatory animal" means an animal of the bovine, caprine, cervid, camelid, equine, ovine, porcine or ratite species that is unable to stand without assistance or to move without being dragged or carried.

[16] Reading these sections together, the intent of the legislature would appear to be to provide forceful guidance as to parameters, by stating that if an animal "is unable to stand without assistance or to move without being dragged or carried", the animal cannot be transported without undue suffering. However, as the Tribunal noted in *Bilodeau and Guillemette*, at paragraph 28, the legislation cannot reasonably be interpreted to mean that an animal that is sitting or lying down becomes, from that moment, unsuitable for transport, without actual or likely undue suffering being demonstrated. The animal could simply be resting:

[28] Keeping in mind the instructions of the Federal Court of Appeal in Canada (Attorney General) v. Stanford, 2014 FCA 234, regarding statutory interpretation, it is possible that the interplay of subsections 138(2), 138(2.1) and 138(2.2) can be applied to subsection 138(4). If so, it could be concluded that an animal that becomes non-ambulatory during a journey is, from that moment, unfit for transport. However, in the Tribunal's opinion, the non-ambulatory state must be more than temporary for subsection 138(2.1) to apply to subsection 138(4), assuming that such an application or interpretation would be reasonable.

[17] In the present case, the legislature has made no comparable pronouncement in relation to lameness. Rather, the Agency relies on Agency policy and related recommended practices, formulated by government and those concerned with equestrian welfare, as well

as its own importation directives, whereby it is stated that a lame horse should not be transported, irrespective of the degree of lameness. There is no legislative support for the Agency's position in relation to the lameness of horses, other than where such lameness renders a horse non-ambulatory.

[18] Codes of practice or similar recommendations and policy as to acceptable conduct are influential, but are in no way determinative as to whether the absolute liability violation under consideration has been committed. In this case, reference is made by the Agency to the *Humane Handling Guidelines for Horses* for the purpose of providing guidance in relation to lameness. This document is prepared by *Alberta Farm Animal Care and the Alberta Equestrian Federation*. It cannot be said to be a document into which the legal definition of "undue suffering" is incorporated. The Agency also relies on its *Compromised Animal Policy* in relation to the transportation of animals. As the Federal Court of Appeal noted in *Bilodeau and Guillemette [FCA]*, at paragraph 10, in relation to the *Compromised Animal Policy* of the Agency (translation by the Tribunal; official Federal Court of Appeal translation not published at time of decision herein):

> *[10] The Applicant relies on Doyon to argue that the Tribunal erred in omitting to consider relevant evidence, in particular the Policy defining unsuitability for transport. We are however of the view that the Tribunal examined the Policy, but decided that such Policy had a weak probative value in the particular case (Tribunal decision, paragraph 27). It was permissible for the Tribunal to so conclude since, as noted by the Respondents, such Policy does not have the force of law and does not bind the Tribunal…*

(ii) The Meaning of "Undue": the Transport of a Suffering Animal

[19] The present case turns on the meaning of "undue suffering" and whether suffering to such a degree has been established in relation to the horse in question. With respect to the meaning of "undue" suffering, the Tribunal is guided by the decisions of the Federal Court of Appeal in *Attorney General of Canada v. Porcherie des Cèdres Inc.*, 2005 FCA 59 ("Porcherie des Cèdres"), *Samson v. Canada (Canadian Food Inspection Agency)*,

2005 FCA 235 ("Samson") and *Doyon v. Canada (Attorney General)*, 2009 FCA 152 ("Doyon").

[20] In *Porcherie des Cèdres*, the Court of Appeal discussed "undue suffering" as follows (per Mr. Justice Nadon, Madame Justice Desjardins and Mr. Justice Pelletier concurring), at paragraph 26:

> *[26]...It does not seem reasonable to me to interpret the words "undue" and "indu[e]" as meaning "excessive" and "excessif". In my opinion, a reasonable interpretation of "undue" and "indu[e]", in the context of the relevant legislation, can only lead to the conclusion that these words mean instead "undeserved", "unwarranted", "unjustified", "unmerited" or "inapproprié", "inopportun", "injustifié", "déraisonnable". This interpretation ensures that a suffering animal cannot be loaded and transported, since any such loading or transportation will cause "unjustified" and "unreasonable" suffering to the animal.*

[21] In *Samson*, the Court of Appeal (per Mr. Justice Noël, Mr. Justice Sexton and Madame Justice Sharlow concurring), affirmed its reasoning in *Porcherie des Cèdres*, adding, at paragraph 12:

> *[12] What the provision contemplates is that no animal be transported where having regard to its condition, undue suffering will be caused by the projected transport. Put another way, wounded animals should not be subjected to greater pain by being transported. So understood, any further suffering resulting from the transport is undue. This reading is in harmony with the enabling legislation which has as an objective the promotion of the humane treatment of animals.*

[22] The terms from the Federal Court of Appeal which guide the Tribunal are nonetheless associated with degrees of imprecision and apparent subjectivity. For suffering to be considered to be "undue", it must be viewed as "unwarranted", "unjustified", "undeserved" or "unreasonable". As the Tribunal stated in *Maple Lodge Farms Inc. v.*

Canada (Canadian Food Inspection Agency), 2016 CART 14, at paragraph 57 ("Maple Lodge Farms 2016b"), to distinguish the decision from *Maple Lodge Farms Inc. v. Canada (Canadian Food Inspection Agency)*, 2016 CART 8:

> *[57] In relation to the meaning of "undue", the Tribunal has been guided by* Porcherie des Cèdres *on multiple occasions:* Roelands v. Canada (Canadian Food Inspection Agency)*, 2013 CART 8;* E. Grof Livestock v. Canada (Canadian Food Inspection Agency)*, 2014 CART 11,* A.S. L'Heureux Inc. v. Canada (Canadian Food Inspection Agency)*, 2014 CART 17 and* Western Commercial Carriers Ltd. v. Canada (Canadian Food Inspection Agency)*, 2014 CART 33. In* E. Grof Livestock*. at paragraph 82, the Tribunal expressed a degree of concern with respect to definitional imprecisions relating to "undeserved", "unwarranted", "unjustified" and "unmerited", stating that "such categorizations would appear to involve difficulties in application, being associated with varying degrees of subjective review". For example, implicit in the* Porcherie des Cèdres *definitions is that an animal can be transported and be exposed to suffering that is "deserved", "warranted", "justified" or "merited" and therefore, in any such case, not undue. How an animal could ever "deserve", "warrant" or "merit" suffering is very difficult to envisage. It is therefore to be hoped that the Federal Court of Appeal will provide clarification. The most readily operational definitional term would appear to be "unjustified" suffering, versus when such suffering can be justified…*

[23] The Tribunal has previously stated that the lens of reference for the purpose of applying these terms is not an industry lens, but rather the views of a reasonable person, appreciative of a legislative regime which the Tribunal has viewed as involving a balancing of animal welfare and industry interests. For example, in *Maple Lodge Farms 2016b*, at paragraph 59, the Tribunal discussed the matter as follows:

> *[59] …the Agency contends that, in relation to animal transport, there is no balance to be struck between regular commercial activities and the protection*

of animals, contrary to the sentiments expressed by the Tribunal Chair in Little Rock Farm Trucking 1, *2014 CART 29, at paragraph 113.*

> [113] While Parliament has enacted a specific provision to protect animal health for animals during transport from undue suffering by reason of undue exposure to weather, that provision must be interpreted so as to maintain a balance between the regular commercial activities of actors in agricultural and agri-food production systems and the protection of the animals in those systems. Thus, the intention of Parliament to use both the phrase "undue suffering" and "undue exposure to the weather" in defining a violation must to be read with the context of this balancing in mind, given the scheme and object of the *HA Act* and *HA Regulations*.

This Tribunal member agrees with the Tribunal Chair on this point, and hence the Agency's position is not adopted.

[24] It is a business reality that animals may be or in fact are in a state of discomfort, distress or suffering during transport. What is "unjustified", "unwarranted", "undeserved" or "unreasonable" will depend on the facts of the case. In addition, the Federal Court of Appeal in *Doyon* has eliminated what it considered to be an erroneous interpretation by the Tribunal of the Court's earlier decision in *Samson*. The matter was clarified in paragraphs 36, 38 and 53 and of *Doyon*, as follows:

> *[36] …the fact that an animal is compromised and suffering does not necessarily mean that it cannot be transported, especially if it remains ambulatory…*

> *[38] …in the case of lameness and arthritis, there is no absolute prohibition against transporting an emaciated hog to the slaughterhouse, except where the hog is extremely thin, as illustrated in a picture that leaves no room for interpretation as to the miserable state of the hog's health. Such hogs must be euthanized at the farm…*

> *[53] Given how it viewed the issue, the Tribunal seems to have understood and assumed that, if suffering at the time of loading is proven, the result of transportation is necessarily greater and hence undue suffering. Such a conclusion is neither automatic nor inevitable…*

[25] In the present case, it is far from clear as to the degree of suffering of the horse in question during transport, let alone at the time of unloading. The fact that the horse may have been lame at the commencement of the transport, or became lame at any point during the transport does not, in itself, indicate that the horse was incapable of being transported without undue suffering.

(iii) Lameness, Veterinary Opinion and Opinion of Transporter

[26] A principal decision of the Federal Court of Appeal governing the reasoning of the Tribunal is that of *Doyon*, previously discussed. *Doyon* concerned a situation involving a pig who was lame, among other challenges. In particular, as described by the Federal Court of Appeal at paragraph 5, the condition of the hog was alleged to be as follows:

> *[5] …the hog was compromised, emaciated and pale and suffering from articular arthritis of the left shoulder and compensatory swelling of the right carpus and tarsus.*

[27] There was conflicting evidence from Mr. Doyon, who was highly experienced in the care and transport of pigs, and the opinion of the Agency veterinarian. Where the reasoning process of the Tribunal was found to be particularly lacking was with reference to the extent of its reliance on the evidence of the Agency veterinarian, whose examination the Federal Court of Appeal found to be cursory. The Tribunal did not accord adequate weight to the experience and judgement of Mr. Doyon, as discussed in paragraphs 55 and 56:

> *[55] In the case at bar, the Tribunal briefly related the applicant's testimony, but excluded it without analyzing it or indicating why it was excluding it. Yet this testimony dealt with essential elements of the violation and contradicted that of the veterinary surgeon.*

> *[56] Moreover, the applicant is a pork producer with twenty-nine (29) years' experience. Of his own accord, he took a course on the transportation and euthanasia of compromised hogs at a continuing education centre: see the Applicant's Record at page 35. He had no prior record when the proceeding was instituted. He had seen the hog over a long period and ensured that it would be transported in isolation, while the veterinary surgeon, as we will see later, saw the hog alive for five minutes at most. It was not in his interest to incur a $2000 penalty for a hog worth $100 when he would have spent only $3.50 if he had decided not to include the hog in the load and to keep it at the farm: see Applicant's Record at page 73. The rejection of this credible testimony warranted an explanation that was never given.*

[28] In the present case, there is a similar differentiation in the evidence. The Agency relies on the opinion of its veterinarian, while Mr. Bates does not provide much counter-evidence apart from his own experience and judgement, plus the existence of veterinary evidence relating to the transport approval by a U.S. veterinarian, Dr. Sargent. The Agency attempted to discount such evidence through interviewing Dr. Sargent and relating his belief that a lame horse was not unsuitable for transport.

[29] In its Report, the Agency appears to view Mr. Bates' previous violations as undermining the credibility of his position in the present case. In the Tribunal's view, the fact of previous violations does not, in itself, undermine the credibility of Mr. Bates' position. It appears no less likely that Mr. Bates has learned from previous experience as it is that he has continued to follow a violation path. If Mr. Bates knows the parameters of violation from previous experience, why would he want to risk another violation at this time? Similar to the comments of Mr. Justice Létourneau in *Doyon*, it does not make sense, from a cost-benefit perspective, for an experienced transporter to risk a significant monetary penalty and, in this case, the complete rejection of the rest of the load, when the costs of removing an animal unsuitable for transport would be so much lower.

[30] In the Tribunal's view, it is important to distinguish the attitude of an applicant from the substance of his or her concerns. Mr. Bates was clearly upset with the outcome affecting

both the horse in question and the entire transport that was turned back at the border. In his initial Request for Review, Mr. Bates expresses a degree of contempt for the process and for the evaluation expertise of the Agency veterinarian, Dr. Mack. Dr. Mack also recounted alleged incidents of verbal abuse by Mr. Bates, subsequent to Mr. Bates learning that the entire load would be turned back. (Agency Report, Tab 2). Facts nonetheless exist independent of attitudes, and attitudes must in any event be viewed in context. What people say or do in the heat of a contentious moment may not be reflective of their general attitudes and behaviours. As an example, in *Tao v. Canada (Canada Border Services Agency)*, 2014 CART 6, at paragraph 40, the Tribunal noted that Mr. Tao evidenced similarly negative attitudes in his communications relating to how he was being treated by Agency personnel—in that case, the Canada Border Services Agency. The Tribunal was mindful of the need to avoid letting attitudes colour an evaluation of the facts:

> *[40] The Tribunal must be mindful to not be unduly influenced by the demeanour associated with testimony, when assessing the credibility of such testimony. In this regard, the Tribunal benefits from guidance as developed by the courts in criminal prosecutions. Demeanour may be associated with credibility, in the context of an overall assessment of facts, rather than when viewed in isolation. Conclusions as to credibility are not to be made solely based on an assessment of demeanour…*

[31] Similarly, Mr. Bates' attitudes towards the process and the people involved in same should not unduly influence the Tribunal in relation to the assessment of the credibility of his assertions. There are a number of statements attributed to Mr. Bates by Dr. Mack and other Agency personnel, to which Mr. Bates has not responded, beyond denying that he ever described the horse in question as being "cut short"—a reference to an improper trimming of a hoof. In many respects, it is the weakness of the Agency's own video evidence, rather than anything Mr. Bates might or might not assert, that is the primary weakness in the Agency's case. In addition, the Agency's position that any degree of lameness of a horse renders a transporter of such horse subject to a violation under paragraph 138(2)(*a*) of the *Health of Animals Regulations* is not supportable, as a matter of law.

Order

[32] The Tribunal determines, by Order, that the Agency has not established, on the balance of probabilities, that the horse in question could not be transported without undue suffering during the expected journey. Accordingly, Mr. Bates has not committed the violation as alleged.

Dated at Ottawa, Ontario, this 18th day of October, 2017.

Bruce La Rochelle, member