



Citation: *Goat River Farms Ltd. v Canadian Food Inspection Agency*, 2021 CART 11

Docket: CART-1983

GOAT RIVER FARMS LTD.

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Dale McNamar representing the Applicant; and
Mr. Matthew Morawski representing the Respondent**

DECISION DATE: March 31, 2021

HEARING DATE: November 19, 2020

1. OVERVIEW

[1] On April 27, 2018, the Canadian Food Inspection Agency (Agency) issued a Notice of Violation (Violation) with a warning to Goat River Farms Ltd. (Goat River), represented by Mr. McNamar, alleging it failed to ensure a black steer had an approved tag applied to its ear with the logo and number facing forward contrary to subsection 175(1.2) of the [*Health of Animals Regulations*](#) (*HA Regulations*).

[2] The first issue is whether the Agency has proven that the black steer was not identified by an approved tag applied to its ear with the logo and number facing forward. If the Agency has proven the violation, the second issue I must consider is whether the penalty was established in accordance with the [*Agriculture and Agri-Food Administrative Monetary Penalties Regulations*](#) (*AAAMP Regulations*) and, if not, set the correct penalty.

[3] On January 24, 2018, Goat River delivered a black steer to Tarzwell Farms, a provincial abattoir, located in Creston, British Columbia (BC). Prior to being processed, Lena Lenamon, an inspector from the BC Ministry of Agriculture, noticed the black steer had a Canadian Cattle Identification Agency (CCIA) tag tied around its neck with twine. Inspector Lenamon contacted Agency Inspector Kathy Durham to inform her of the situation.

[4] Later the same day, Inspector Lenamon, sent Inspector Durham an email with information confirming Goat River was the owner of the black steer. The email contained along with her signed report, the BC livestock manifest, photographs and the CCIA tag identification number that was attached to the twine.

[5] During the Agency's investigation process, Goat River admitted to not tagging the animals' ear and Mr. McNamar confirmed he was aware of the requirements under the [*HA Regulations*](#). After investigator Yakubowski's review, the Agency issued the Violation number 1718WA0233 with warning against Goat River.

[6] For the following reasons, I find the Agency met its burden of establishing the four essential elements of a violation under paragraph 175(1.2) of the [*HA Regulations*](#). Given Goat River admitted not tagging the animal's ears in accordance with the [*HA Regulations*](#) and hasn't raised a permissible defense, I find that Goat River committed the violation.

2. LEGAL FRAMEWORK

[7] The request for review in this matter was made under paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMPA). If a violation occurred, pursuant to subsection paragraph 14(1)(b) of the [AAAMPA](#), the Canada Agricultural Review Tribunal (Tribunal) must examine whether the penalty was established in accordance with the [AAAMP Regulations](#) and, if not, set the correct the amount.

[8] In [Doyon](#)¹, the Federal Court of Appeal held that violations under the administrative monetary penalty system should be analyzed in accordance with their essential elements. Each of these elements must be proven on a balance of probabilities before an applicant can be found liable.² The first step of the analysis is to determine the essential elements of a violation of subsection 175(1.2) of the [HA Regulations](#).

[9] The analysis must begin by defining the essential elements of subsection 175(1.2) because the essential elements have not been outlined in previous jurisprudence. I will apply the modern purposeful approach to statutory interpretation, meaning that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”³ set out in [Rizzo Shoes Ltd.](#)⁴

[10] I must examine the wording of the [HA Regulations](#) looking at the context and purpose of the statute together with the grammatical and ordinary sense of the provision to find the true intention of Parliament. However, as stated by the Supreme Court of Canada in [Canada Trustco Mortgage Co. v. Canada](#):

[...] When the words of a provision are precise and unequivocal, the ordinary meaning of the words plays a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.⁵
[Emphasis added]

[11] In accordance with these principles a proper statutory interpretation should therefore proceed in three steps: text, context and purpose. Beginning with the text of subsection 175(1.2) of the [HA Regulations](#), a plain reading of the provision reveals the regulator wanted to ensure every animal or carcass of an animal is identifiable through the use of an approved tag :

¹ [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 [Doyon].

² [Ibid](#) at paras 28 & 42.

³ [Ibid](#) at para 21.

⁴ [Rizzo & Rizzo Shoes Ltd. \(Re\)](#), [1998] 1 SCR 27.

⁵ [Canada Trustco Mortgage Co. v. Canada](#), 2005 SCC 54, [2005] 2 SCR 601 at para 10.

(1.2) Every person who owns or has the possession, care or control of an animal or a carcass of an animal shall ensure that the approved tag that is applied to it is applied to its ear with the logo and number facing forward.

(1.2) Quiconque est propriétaire d'un animal ou d'une carcasse d'animal ou en a la possession, la garde ou la charge des soins veille à ce qu'une étiquette approuvée soit apposée à l'oreille de l'animal ou de la carcasse d'animal et à ce que le logo et le numéro soient visibles à l'avant.

[12] As a first step, a plain reading of the provision may give rise to ambiguity as to the meaning of the expression “approved tag”. This uncertainty is lifted because the term is clearly defined under section 172 of [HA Regulations](#):

***approved tag** means a tag, chip or other indicator approved by the Minister under subsection 173(1) and listed on the Agency’s web site as an approved tag.*

[13] Turning to context, subsection 175(1.2) of the [HA Regulations](#) is located under PART XV, which includes all the regulations related to animal identification. In [Reynolds](#)⁶, the Tribunal outlined the objective of animal identification as follows:

the animal identification provisions of Part XV enable the Agency to trace the origin and movements of individual farm animals, which are destined for human food consumption. As such, when serious animal disease or food safety issues arise, urgent corrective action, follow-up and trace back of infected animals can be undertaken. Application of approved tags greatly enhances the ability of the Agency to rapidly respond to, and deal with, serious animal diseases and food safety issues identified in animals that have moved, or are moving, through the marketing system. Approved tags allow the animal’s movement to be traced back from the place where the problem is found, such as at an auction market or an abattoir, to the farm where the animals originated⁷ [Emphasis added]

[14] The Tribunal also undertook a review of the tagging identification requirements in Part VX of the [HA Regulations](#) at paragraphs 28 to 30 of [Reynolds](#):

[28] Part XV of the [Regulations](#) envisages a closed system for identifying production animals, such that their movements from birth to death can be monitored by a unique identification tag, which, for designated animals, is placed in one of their ears, ideally at birth. When the tagged animal dies, either on the farm, in transit or when slaughtered, the tag is recorded and that animal is withdrawn from the animal identification registry.

⁶ [Reynolds v. Canada \(Canadian Food Inspection Agency\), 2011 CART 5.](#)

⁷ [Ibid](#) at para 27.

[29] Practical difficulties arise in attempting to have 100% of Canadian cattle, bison and sheep tagged with approved tags. Some animals, requiring identification pursuant to Part XV of the Regulations, may never be tagged, through neglect or opposition to the present regulatory scheme. Most animals, however, will be tagged, but, even among these, some will lose their tags somewhere between the birthing pen and the slaughter house floor. To minimize "slippage" and to maximize the number of animals that are tagged with approved tags for the full duration of the animal's life, the Regulations require several actors in the production chain to tag animals which are either not yet tagged or which have lost their tags. If actors inside or beyond the farm gate do not tag, as required by the Regulations, they too face liability when tags are missing. Owner and transporters of animals are among those identified under the Regulations with such responsibilities. The Agency has the responsibility of ensuring compliance with these provisions either through criminal prosecutions or through the levying of administrative monetary penalties for violations identified in the Agriculture and Agri-Food Administrative Monetary Penalties Regulations.

[30] For the purposes of this case, such approved tags are RFID-CCIA approved tags made of plastic bearing a front piece printed with a bar code and a back button which, when applied to an animal's ear, is meant to lock the tag into place permanently. Such a permanent locking device would permit farm-to-processor tracking and thus meet the objectives of the Regulations to establish a permanent and reliable system to track the movements of all bison, cattle and sheep in Canada from the birth of such animals on their "farm of origin" to their removal from the production system, either through export or domestic slaughter. Almost every system of mandatory identification is, however, subject to mechanical failure or human error. [Emphasis added]

[15] I must determine the purpose of identification requirements under the [HA Regulations](#). Tribunal recognizes that the [HA Regulations](#) impose heavy responsibilities on the agricultural sector.⁸ It also emphasizes that Parliament and the Governor in Council had created this program for the benefit of all consumers and producers in Canada to assure traceability and food safety in the food system.⁹ It's with that purpose that Parliament established a permanent and reliable individual trace-back system for the cattle industry in Canada.

⁸ [Habermehl v. Canada \(Canada Food Inspection Agency\), 2010 CART 17; Coward v. Canada \(Canadian Food Inspection Agency\), 2010 CART 18; H.S. Knill Company Limited v. Canada \(Canadian Food Inspection Agency\), 2011 CART 15.](#)

⁹ [Reynolds v. Canada \(Canadian Food Inspection Agency\), 2011 CART 5](#), at para 27.

[16] The Tribunal finds that the words in subsection 175(1.2) of the [HA Regulations](#) are precise and that they should be interpreted using their ordinary meaning. Accordingly, I find the Agency must establish on the balance of probabilities the following four essential elements in order for Goat River to be held responsible for the violation under subsection 175(1.2) of the [HA Regulations](#):

- Element 1 – An animal or a carcass of an animal was not identified by an approved tag applied to its ear with the logo and number facing forward;
- Element 2 – The violator owns or has the possession, care or control of an animal or a carcass of the animal in question;
- Element 3 – An approved tag was issued to the violator or the owner of the animal
- Element 4 – The alleged violator failed to ensure that the approved tag is applied to the ear of the animal in question with the logo and number facing forward.

[17] In accordance with the principles established by the FCA in [Doyon](#)¹⁰, the Tribunal must act with the greatest prudence in analyzing the evidence and applying the essential elements of the violation to the evidence. My role as a decision maker is to be circumspect in managing and analyzing the evidence in relation to the four essential elements for a violation of subsection 175(1.2) of the [HA Regulations](#).

3. ISSUES

[18] Has the Agency proven on the balance of probabilities the four essential elements of the Violation to establish the steer was not identified by an approved tag applied to its ear with the logo and number facing forward?

[19] If the Agency has proven the Violation, I must, as a second issue, examine whether the penalty was established in accordance with the [AAAMP Regulations](#) and, if not, set the correct penalty.

4. ANALYSIS

I. a. General Facts

[20] On January 24, 2018, Goat River delivered a black steer to Tarzwell Farms located in Creston, BC. Provincial Inspector Lenamon noticed the black steer in a holding pen with a CCIA tag tied around its neck with twine. At approximately 9:23am, she tried to contact Agency inspector Durham to inform her of the situation.

¹⁰ [Supra](#) note 1, [*Doyon*].

[21] After receiving the information about the black steer, Inspector Durham tried to contact Inspector Lenamon to have the animal held for further inspection to no avail. Inspector Lenamon confirmed the animal had already been euthanized. Later that day, Inspector Lenamon sent inspector Durham an email containing along with her signed report, the BC livestock manifest number 304536, photographs of the black steer and the CCIA tag identification number 124 000 209 671 538 which was attached to the twine.

[22] Inspector Durham also received a call from Mr. McNamar of Goat River who expressed concerns about the inspector's attempt to have the black steer held for further inspection. Mr. McNamar explained he attempted to tag the animal and during the process the tag was inadvertently crimped together. He further stated he was unable to get the tag apart and because he did not want to use another tag he attached the crimped tag around the animal's neck with twine.

[23] On February 7, 2018, Inspector Durham searched the tag number 124 000 209 671 538 in the CCIA Canadian Livestock Tracking System (CLTS) database system. The search confirmed the tag was issued by the CCIA and the owner was Goat River.

[24] On February 27, 2018, Inspector Durham prepared an Inspector Non-Compliance Report to have the matter sent for investigation because of Goat River's failure to apply an approved tag to the black steer's ear pursuant to paragraph 175(1.2) of the [HA Regulations](#). Investigator Yakubowski conducted the investigation of the facts of the alleged Violation.

[25] On March 7, 2018, Investigator Yakubowski confirmed through a search of the CLTS database system that Goat River was the owner of the CCIA tag found on the black steer. The tag was issued to Goat River and Mr. McNamar.

[26] On March 8, 2018, Mr. McNamar confirmed in a conversation with Investigator Yakubowski that he personally delivered the black steer to the abattoir with the CCIA tag around its neck because he did not want to use a new tag. He further confirmed he was aware of the [HA Regulations](#) requirements and knew animals leaving its premises had to bear an approved tag.

[27] On March 8, 2018, Investigator Yakubowski contacted Leanne Tarzwell, an owner of Tarzwell Farms and she confirmed Goat River was a regular customer who is aware of the requirements to have animals bearing approved tags. Ms. Tarzwell also stated she did not receive any notification that the black steer would be arriving without a tag in its ear. The same day, Inspector Yakubowski also contacted provincial Inspector Lenamon to corroborate the information contained in her report.

[28] On April 27, 2018, the investigation concluded with the issuance of Violation number 1718QC0013 with a warning against Goat River.

II. b) Has the Agency proven all the essential elements of the violation under subsection 175(1.2) of the [HA Regulations](#)?

Elements 1 and 2 – An animal was not identified by an approved tag applied to its ear with the logo and number facing forward and that Goat River owns the animal in question

[29] Elements 1 and 2 are not contentious. The report submitted by the Agency contains photos which show the black steer had a tag attached around its neck with twine. Mr. McNamar confirmed both during his testimony and to Agency investigators that he was the owner of the black steer. He further admits he did not attach the tag to the animal's ear in accordance with the [HA Regulations](#).

Element 3 – An approved tag was issued to the Goat River

[30] The evidence submitted by the Agency demonstrates that a CCIA tag was issued to Goat River. The report submitted by the Agency included a printout of the search result for Goat River's account details from the Canadian Livestock Tracking System. The printout confirms Goat River's Account ID. The same account ID is found in the CCIA history for tag number 124 000 209 671 538, which was found attached around the steer's neck with twine.

Element 4 – The alleged violator failed to ensure that the approved tag is applied to the ear of the animal in question with the logo and number facing forward

[31] Mr. McNamar confirmed he tried for almost an hour to tag the steer's ear prior to transporting it to the abattoir, without success. During his testimony, Mr. McNamar confirmed that after multiple attempts, the tag had closed in the process, hence he resorted to attaching the tag with twine around the steer's neck.

[32] Based on the above, I find the Agency has established all the essential elements of the violation under subsection 175(1.2) of the [HA Regulations](#).

III. c) Did Goat River raise a permissible defense?

[33] Violations issued pursuant to the [AAAMPA](#) are absolute liability in nature, meaning that due diligence and mistake of fact defenses are not available to Goat River.¹¹ As for the permissible defenses, subsection 18(2) of the [AAAMPA](#) states the following:

Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

¹¹ [Ibid](#) at para 11; see also [AAAMPA](#), s18(1).

[34] Goat River argued although it could not tag the steer's ear it did the next best thing to ensure the animal was identifiable. It claims no harm was done because the Agency was able to track the animal's movement.

[35] The Tribunal understands Goat River's point of view, but as recognized earlier, the identification requirements in the [HA Regulations](#) puts heavy responsibility for its success on the shoulders of ranchers. During his testimony, Mr. McNamar explained the difficulties of tagging an animal when you don't own a handling system, and I recognize that this exercise can be both difficult and dangerous. However, the legislator has deemed it necessary to have tags applied to the ear of animals as a measure that ensures traceability and food safety in the food system.

[36] Showing due diligence by attempting to tag the animal's ear multiple times and finally attaching it around its neck is not a permissible defense. As a result, the violation is founded because the Agency has proven on a balance of probabilities, all the elements of a violation of subsection 175(1.2) of the [HA Regulations](#).

5. WAS THE VIOLATION WITH WARNING ESTABLISHED IN ACCORDANCE WITH THE AAAMP REGULATIONS?

[37] The Violation with warning issued to Goat River was established properly. Subsection 7(1) of the [AAAMPA](#) allows for a violation with warning or a monetary penalty be issued where someone has contravened the [HA Regulations](#). Subsection 7(2) of the [AAAMPA](#) grants the Agency the discretion to determine whether a warning or monetary penalty is warranted when issuing a violation.

[38] A violation of subsection 175(1.2) of the [HA Regulations](#) is categorized as a "minor" violation in Schedule 1 of the [AAAMP Regulations](#). According to Subsection 5(2) of the [AAAMP Regulations](#), the amount of the monetary penalty for a "minor" violation that is committed by a person in the course of a business or in order to obtain a financial benefit is \$1300.

[39] I find that the Agency use its discretion properly in accordance with the [AAAMP Regulations](#) by issuing a warning to Goat River.

6. ORDER

[40] I find that Goat River committed the Violation number 1718WA0233, dated April 27, 2018.

[41] I wish to inform Goat River this violation is not a criminal offence. Five years after the date of the notice was served, Goat River is entitled to apply to the Minister to have the violation removed from the records, in accordance with section 23 of the [AAAMPA](#).

Dated at Ottawa, Ontario, on this 31st day of March 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal