

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation : *Transport Pierre Fauteux S.E.N.C. v Canadian Food Inspection Agency*, 2021
CART 32

Docket: CART-2021-FNOV-010

BETWEEN:

TRANSPORT PIERRE FAUTEUX S.E.N.C.

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

[Translation of the official French version]

BEFORE: Geneviève Parent, Member

**WITH: Vincent Lamontagne, for the Applicant; and
Laurent Brisebois, for the Respondent**

DECISION DATE: November 17, 2021

1. INTRODUCTION

[1] This matter concerns a request for review of the Notice of Violation No. 1213QC0169-1 (Notice), issued by the Canadian Food Inspection Agency (Agency) on April 10, 2014. The Notice, served with an administrative monetary penalty of \$7,800, charged the Applicant with loading and transporting a pig (“detained pig #4”) which could not be transported without undue suffering during the expected journey, contrary to paragraph 138(2)(a) of the [Health of Animals Regulations](#) (HA Regulations).¹

[2] The Canada Agricultural Review Tribunal (Tribunal) rendered an initial decision² in this matter. The Federal Court of Appeal of Canada ordered that the matter be referred to the Tribunal for reconsideration on the grounds set out in the appeal decision in this case.³

[3] For the reasons that follow, having listened to the recording of the hearing held on October 30, 2018, and having considered all the evidence, the Tribunal is of the opinion that the Agency has established, on a balance of probabilities, that the Applicant committed the alleged violation. However, the Tribunal determines that the administrative monetary penalty should be the base amount of \$6,000, since it assesses the total gravity value in this case to be 10; consequently, the penalty need not be adjusted under item 6 in Schedule 2 of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations).⁴

2. LEGAL FRAMEWORK

[4] Paragraph 138(2)(a) of the [HA Regulations](#) provides that no person shall load on any motor vehicle and no one shall transport an animal that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

[5] As stated in [Doyon](#)⁵, for there to be a violation of paragraph 138(2)(a) of the [HA Regulations](#), the Agency must, on a balance of probabilities,⁶ establish the following essential elements:

1. that the animal in question was loaded (or was caused to be loaded) or transported (or caused to be transported);

¹ [Health of Animals Regulations, CRC, c 296](#).

² *Transport Pierre Fauteux S.E.N.C. v Canada Food Inspection Agency*, 2019 CART 17.

³ [Canada \(Attorney General\) v Fauteux](#), 2020 FCA 165.

⁴ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR/2000-187](#).

⁵ [Doyon v Canada \(Attorney General\)](#), 2009 FCA 152 (CanLII) at para 41.

⁶ See [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40](#), s 19.

2. that the animal in question was loaded onto or transported on a railway car, motor vehicle, aircraft or vessel;
3. that the cargo loaded or transported was an animal;
4. that the animal could not be transported without undue suffering;
5. that the animal suffered unduly during the expected journey (“voyage prévu” in French);
6. that the animal could not be transported without undue suffering by reason of infirmity, illness, injury, fatigue or any other cause; and
7. that there was a causal link between the transportation, the undue suffering and the animal’s infirmity, illness, injury or fatigue, or any other cause.

3. BACKGROUND

[6] In a judicial contract filed with the Tribunal in August 2018, the parties agreed on a summary of the facts, as well as admissions contained in the contract and evidence given at the hearing.

[7] Mr. Fauteux, a partner in Transport Fauteux s.e.n.c. at the time of the events, has more than 32 years of experience in the hog transportation industry and is well versed in the Compromised Animals Policy (Policy). He has received training on this subject and has written to his clients to make them aware of the Policy. He asks loaders to isolate pigs that appear to be compromised so that he can personally decide whether they should be isolated during transport or transported at all.

[8] On July 26, 2012, Mr. Fauteux loaded and transported a lot of 225 pigs to the abattoir Les Viandes du Breton inc., in Rivière-du-Loup. He transported them in a triple-deck Barette trailer with a compartment for isolating animals when necessary.

[9] Detained pig #4 was loaded with the other pigs and not isolated for the journey from Ferme porcine M.V. inc. The journey from Ferme porcine M.V. inc. to the abattoir is approximately 428 km, or nearly 5 hours by road.

[10] Mr. Fauteux stated that the loader did not place any pigs in isolation when they were loaded at Ferme porcine M.V. inc. The loader told Mr. Fauteux that he had not noticed anything unusual about the pigs. Mr. Fauteux stated that he had not noticed anything during loading, that detained pig #4 had had no difficulty keeping up with the others, and that he would otherwise have stopped loading to examine it. He stated that detained pig #4 had even climbed to the second deck of the trailer.

[11] During unloading at the abattoir, an abattoir employee placed detained pig #4 in isolation because it was struggling to keep up with the others. The employee then identified the pig as [translation] “sick or injured” on the delivery slip.

[12] Detained pig #4 was inspected for the Agency by Dr. Pelletier at approximately 2:20 p.m. Dr. Pelletier conducted ante- and post-mortem inspections in the holding pen. Ante- and post-mortem photographs and an ante-mortem inspection report document Dr. Pelletier's observations of the condition of detained pig #4 when it arrived at the abattoir. Dr. Pelletier testified at the hearing that her ante- and post-mortem observations confirmed that detained pig #4 was unfit for transport.

4. ISSUES

[13] Several admissions were made as part of the judicial contract between the parties, leaving the following three issues for the Tribunal to determine:

1. Given its condition, could detained pig #4, which Mr. Fauteux transported on behalf of Transport Pierre Fauteux s.e.n.c. on July 26, 2012, be loaded and transported without undue suffering during the journey?
2. If detained pig #4 could not be transported without undue suffering during the journey, was Mr. Fauteux negligent in agreeing to transport it to the abattoir anyway?
3. Given that the administrative monetary penalty is addressed to Mr. Fauteux in his capacity as a partner in Transport Pierre Fauteux s.e.n.c., a company now dissolved, can Mr. Fauteux be personally prosecuted?

5. ANALYSIS

I. Given its condition, could detained pig #4, which Mr. Fauteux transported on behalf of Transport Pierre Fauteux s.e.n.c. on July 26, 2012, be loaded and transported without undue suffering during the journey?

[14] As a result of the admissions of the parties to the judicial contract, only elements 4, 5, 6 and 7 of a violation of paragraph 138(2)(a) of the [HA Regulations](#) are at issue (see para 5).

[15] It must therefore be determined whether (4) the animal could not be transported without undue suffering; (5) the animal suffered unduly during the expected journey ("voyage prévu" in French); (6) the animal could not be transported without undue suffering by reason of infirmity, illness, injury, fatigue or any other cause; and (7) there was a causal link between the transportation, the undue suffering and the animal's infirmity, illness, injury or fatigue, or any other cause (as stated in [Doyon](#)⁷).

[16] In general, both Dr. Pelletier, a veterinarian for the Agency, and Mr. Fauteux gave very credible testimony at the hearing.

⁷ [Doyon v Canada \(Attorney General\)](#), 2009 FCA 152 (CanLII) at para 41.

[17] Dr. Pelletier testified, with photographs, that her observations at the ante-mortem examination were corroborated by her post-mortem examination and confirmed that detained pig #4

- was suffering in that it remained silent and did not stand up when approached by a human;
- had an immediately obvious limp as it avoided putting weight on its right hind leg;
- had a slow gait and could not stand up without stimulation or assistance;
- had trouble moving;
- had a tail that was completely necrotic from the base to the tip, which was frayed, a condition visible to the naked eye that is often a sign of other pathologies;
- had dead tissue that was visible when the right hip was opened, indicating necrosis;
- had a large periarticular abscess encompassing the entire right hind leg joint;
- had other abscesses embedded in the surrounding muscle tissue; and
- had a carcass weight of 76.6 kg, whereas the weight charts in the 2013 *Guide de référence sur la manipulation et le bien-être des porcs durant le transport (Guide)* state that the normal weight for a pig ranges from 91 kg to 250 kg. Dr. Pelletier stated that the average weight of a carcass is 105 kg, or 30 kg more than the carcass weight of the pig in question.

[18] Dr. Pelletier stated that she believed the limping, low weight and necrotic tail were chronic, progressive conditions. They were not caused by transport; therefore, detained pig #4 was unfit for transport and suffered unduly during transport as a result of its condition at the time of loading.

[19] Mr. Fauteux stated that the loader at Ferme porcine M.V. inc. confirmed there were no compromised pigs in the lot and that he himself had not noticed anything during loading. In his opinion, detained pig #4 was fit for transport because it had been able to keep up with the other pigs during loading, it had even climbed to the second deck of the trailer, and it had walked nearly 45 ft. unaided during unloading, from the trailer to the pen inside the abattoir.

[20] Mr. Fauteux did not isolate detained pig #4 during transport.

[21] Mr. Fauteux assumes that the limping and the pig's condition when it arrived at the abattoir were caused by the pigs becoming irritated and overcrowded on the ramp during unloading. He assumes that detained pig #4 may have been injured at that time because, at the abattoir Les Viandes du Breton, there was a gap between the unloading dock and the trailer where the pigs' legs could get caught.

[22] The Federal Court of Appeal dealt with the definition of "undue suffering" in [*Porcherie des Cèdres*](#).⁸ "Undue suffering" must be interpreted in such a way as to prohibit the transportation of a suffering animal if the transport will cause "unjustified", "unmerited" or "unwarranted" suffering.

⁸ [*Canada \(Attorney General\) v Porcherie des Cèdres Inc*, 2005 FCA 59 \(CanLII\)](#).

[23] However, paragraph 138(2)(a) of the [HA Regulations](#) does not prohibit the transportation of a suffering animal. An injured or compromised animal may be transported as long as additional precautions are taken.⁹

[24] Among other documents presented as evidence, the *Guide* is an industry reference. It sets standards for handling and transporting pigs, in particular compromised pigs. Mr. Fauteux stated that he was very familiar with it.

[25] Although it is possible that detained pig #4 kept up fairly well with the other pigs during loading and unloading and that its limp was made worse during unloading, the evidence clearly shows that the pig was in a condition that made it at least compromised, if not unfit for transport.

[26] The *Guide* states that a pig with a slight limp or imperfect locomotion is compromised but still fit for transport under certain conditions that are meant to prevent undue suffering during transport (for example being isolated during transport, loaded last and unloaded first).

[27] In addition to the limp, the evidence shows that detained pig #4 was emaciated and had a necrotic tail. Both conditions were chronic and visible to the naked eye.

[28] The *Guide* states that a tail wound such as the one sustained by detained pig #4 is sufficient to classify the pig as compromised but fit for transport under certain conditions (for example being isolated during transport, loaded last and unloaded first), which, if met, will prevent undue suffering during transport.

[29] In addition, the Guide clearly states that an emaciated, weak animal such as detained pig #4 cannot be transported without suffering and must not be transported.

[30] In this case, the conditions for transporting a compromised pig were not met and detained pig #4 was transported when it was emaciated.

[31] The Tribunal is therefore of the opinion that detained pig #4 could not have been transported without undue suffering because of its condition when it was loaded, that this condition was detectable at the time of loading, that undue suffering occurred during transport, and that a causal link exists between the scheduled transport, the undue suffering and the pig's poor condition when it was unloaded.

[32] Therefore, the Tribunal finds that the Agency has shown, on a balance of probabilities, that the Applicant violated paragraph 138(2)(a) of the [HA Regulations](#).

⁹ [Ibid](#) at para 36.

II. If detained pig #4 could not be transported without undue suffering during the journey, was Mr. Fauteux negligent in agreeing to transport it to the abattoir anyway?

[33] The Tribunal must now determine whether the Agency determined the “total gravity value” of 13 points on the basis of the facts and evidence and in accordance with Schedule 3 to the [AAAMP Regulations](#).

[34] Under the judicial contract, the parties agree to a gravity value of 5 for the first criterion, history, and a gravity value of 5 for the last criterion, harm. The Tribunal therefore has to consider only the gravity value for the second criterion, intent or negligence.

[35] As stated in [AS L’Heureux inc.](#),¹⁰ at the stage of determining the administrative monetary penalty for the violation committed, the Agency must conduct an assessment and show the nature of the negligence or intent. This onus lies with the Agency. It cannot simply assume negligence once a violation has been committed. The aim of this stage is to ensure that the administrative monetary penalty imposed takes into account the specific facts of each case.

[36] In this case, the Agency submits that Mr. Fauteux committed the violation through a negligent act. It therefore assigns a gravity value of 3 in accordance with the [AAAMP Regulations](#), Schedule 3, Part 2, item 3.

[37] Carla Abbatemarco, an area investigator, testified at the hearing to explain her rationale for determining the gravity value indicating that Mr. Fauteux had acted negligently. She began by highlighting several “positive points” in Mr. Fauteux’s case, such as his extensive experience as a hog transporter, his knowledge of the Policy, his having written to his clients to make them aware of the standards on compromised animals and his agreements with loaders to isolate compromised animals.

[38] She then stated that there was nothing in the record that described the checks Mr. Fauteux had done when loading detained pig #4, and she therefore relied on Dr. Pelletier’s notes regarding the condition of detained pig #4 to conclude that Mr. Fauteux had acted negligently.

[39] Through his testimony and his explanation of how he conducts his business, Mr. Fauteux satisfied the Tribunal that he is a serious, conscientious transporter who cares about the well-being of the pigs he transports. He provided clear and credible testimony that satisfied the Tribunal that he had taken the steps that a responsible company would have taken in the same circumstances to avoid the violation.

[40] In addition to obtaining the mandatory Transport Quality Assurance (TQA) certification, Mr. Fauteux took a course on preventive medicine for pigs to further develop his skills and add to his 30 years of experience in transporting pigs.

¹⁰ [AS L’Heureux inc v Canada \(Canadian Food Inspection Agency\)](#) at paras 59–61 [*AS L’Heureux inc*].

[41] Mr. Fauteux's trailer has an area for isolating pigs that are compromised but fit for transport.

[42] Mr. Fauteux sent letters to all his customers, asking them to observe the existing standards for the handling and well-being of pigs during transport.

[43] Mr. Fauteux stated that he had an agreement with all the pig loaders under which the loaders would keep aside pigs that appeared weak or compromised so that, once the loading was complete, he could decide for himself whether to transport them. He stated that he often refused to transport compromised pigs.

[44] Loaders were also told to load pigs in small groups of no more than six or seven, to make the loading process easier and to enable Mr. Fauteux to identify pigs that might be compromised without the need for the loader to keep them aside.

[45] Mr. Fauteux stated that if he saw a pig limping, having trouble keeping up with the group or otherwise compromised, he would stop the loading, make an assessment, and exclude the pig from the load if he considered it to be unfit for transport or take the necessary steps to isolate it if he considered it to be compromised but fit for transport. Mr. Fauteux stated that this situation occurred with almost every load. Producers sometimes tried to sneak in compromised pigs.

[46] When he arrived at Ferme porcine M. V. inc., the loader confirmed to Mr. Fauteux that there were no compromised pigs in the lot.

[47] During loading on July 26, 2012, as with all loads, Mr. Fauteux himself observed each pig that was loaded. He stated that it went fairly quickly and that he had to be alert.

[48] Mr. Fauteux has not received any other notices of violation since the transport of July 26, 2012.

[49] As pointed out in [AS L'Heureux inc.](#),¹¹ due diligence, which cannot be raised as a defence to a violation, may be useful in the assessment under Part 2 of Schedule 3 to the [AAAMP Regulations](#), regarding the analysis of negligence or intent.

[50] Due diligence does not imply a superhuman or perfect behaviour. It means taking the steps and precautions necessary to avoid the alleged damage.^{12 13}

¹¹ [Ibid](#) at paras 64–71.

¹² [R v Maple Lodge Farms, 2013 ONCJ 535 \(CanLII\)](#) at paras 363–64.

¹³ [AS L'Heureux inc.](#), [supra](#), note 9.

[51] Given the above, the Tribunal is of the opinion that the violation was not committed knowingly or through negligence. It is unfortunate but likely that, despite the precautions taken by Mr. Fauteux, he was unable to identify detained hog #4 as compromised or unfit for transport. A gravity value of 0 must therefore be assigned for the criterion “Intent or Negligence” under the [AAAMP Regulations](#), Schedule 3, Part 2, item 1.

[52] The Tribunal therefore determines that the administrative monetary penalty should be the base amount of \$6,000, since it assesses the total gravity value in this case to be 10; therefore, the penalty does not need to be adjusted under item 6 of Schedule 2 to the [AAAMP Regulations](#).¹⁴

III. Given that the administrative monetary penalty is addressed to Mr. Fauteux in his capacity as a partner in Transport Pierre Fauteux s.e.n.c., a partnership now dissolved, can Mr. Fauteux be personally prosecuted?

[53] The Court of Appeal of Quebec has set out clear guidelines on the legal nature of partnerships in [Ferme CGR enr, senc](#).¹⁵ While lacking a legal personality in the strict sense of the word, which is reserved for joint-stock companies that are legal persons,¹⁶ general partnerships possess a certain legal individuality.¹⁷ In particular, they may sue and be sued under the name they declare.¹⁸ They may also have an autonomous patrimony, separate from that of the partners and composed of the contribution of each partner.¹⁹

[54] Paragraph 2 of article 2221 of the CCQ sets out the pledge of creditors within a partnership, stating that all the property of the partnership is liable, in advance, for debts incurred in the course of the partnership’s activities. The personal patrimony of the partners remains the subsidiary pledge of the creditors.²⁰ A partner is liable to the partnership’s creditors if the partnership’s property is insufficient.²¹

[55] Paragraph 1 of article 2221 of the CCQ specifically provides that, with respect to third persons, partners are solidarily liable for the obligations of a partnership if the obligations were contracted for the service or operation of an enterprise of the partnership.

¹⁴ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR/2000-187](#).

¹⁵ [Ferme CGR enr, senc \(Syndic de\), 2010 QCCA 719 \(CanLII\)](#) at paras 66–74.

¹⁶ Art 2188, para 2, [CCQ](#).

¹⁷ Nabil N Antaki, Charlaïne Bouchard, *Droit et pratique de l’entreprise. Entrepreneurs et sociétés de personnes*, t 1 (Cowansville: Les Éditions Yvon Blais Inc., 1999) at 438ff; Sylvio Normand, *Introduction au droit des biens* (Montréal: Wilson & Lafleur, 2020) (on the concept of autonomous patrimony).

¹⁸ Art 2225 [CCQ](#).

¹⁹ Art 2199 [CCQ](#).

²⁰ Nabil N Antaki, Charlaïne Bouchard, *Droit et pratique de l’entreprise. Entrepreneurs et sociétés de personnes*, t 1 (Cowansville: Les Éditions Yvon Blais Inc., 1999) at 445.

²¹ Charlaïne Bouchard, “Chronique jurisprudentielle sur les sociétés de personnes: histoire d’une anomalie” (2015), 74 *Revue du Barreau* 39-72, 48, 71.

[56] Lastly, article 2235 of the CCQ provides that liquidation of the partnership is subject to the rules provided in articles 358 to 364 of the CCQ, adapted as required. These rules provide, of course, that the partnership continues to exist for the purposes of the liquidation, as part of which the liquidator must pay the debts of the partnership before reimbursing the capital contributions and partitioning the assets, if any.²²

[57] In this case, the Notice was sent on April 10, 2014, to [translation] “Pierre Fauteux in his capacity as partner of Transport Fauteux s.e.n.c.” Therefore, in the Tribunal’s opinion, the notice of violation is addressed to the general partnership, as the law allows.

[58] When detained pig #4 was transported and when the Notice was received on April 10, 2014, Mr. Fauteux—who himself transported detained pig #4—was a partner in Transport Fauteux s.e.n.c. along with Julie Fontaine and 9230-6828 Québec Inc.

[59] A notice of closure for Transport Fauteux s.e.n.c. was published in the Enterprise Register on January 20, 2015, and a notice of appointment of a liquidator was published on February 6, 2015. The evidence also shows that 9230-6828 Québec Inc. continues to exist and to carry on the business of transporting pigs.

[60] Thus, both the rules of law regarding the pledge of a partnership’s creditors and the rules of law regarding liquidation lead us to conclude that, as a partner of Transport Pierre Fauteux s.e.n.c., Mr. Fauteux is solidarily liable with the other two partners to pay the administrative monetary penalty, a debt owed by Transport Pierre Fauteux s.e.n.c., if the liquidator did not set aside an amount from the property of Transport Pierre Fauteux s.e.n.c.²³ The dissolution of Transport Pierre Fauteux s.e.n.c. does not erase the partnership’s pre-existing debts, and the partners are solidarily liable for them.

6. ORDER

[61] For these reasons, the Tribunal, BY ORDER, determines that Pierre Fauteux violated paragraph 138(2)(a) of the [HA Regulations](#) by acting in the service and operation of Transport Pierre Fauteux s.e.n.c., which makes Mr. Fauteux liable.

[62] The amount of the administrative monetary penalty is \$6,000, to be paid within 30 days of the date of service of this order.

²² Art 361 [CCQ](#).

²³ Art 2221, para 2, [CCQ](#).

Dated at Québec, Quebec, on this 17th day of November 2021.

(Original signed)

Geneviève Parent
Member
Canada Agricultural Review Tribunal