



Citation: *Greidanus Poultry Service Ltd. v. Canada (Canadian Food Inspection Agency)* 2013 CART 29

Date: 20130917

Docket: CART/CRAC-1619

Between:

Greidanus Poultry Service Ltd., Applicant

- and -

Canadian Food Inspection Agency, Respondent

Before: Chairperson Donald Buckingham

**With: Mr. R. Ian Robertson, counsel for the applicant; and
Ms. Julia Turvey, 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 subsection 139(2) of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

[1] Following an oral hearing and review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines, on the balance of probabilities, that the applicant, Greidanus Poultry Service Ltd., did not commit the violation as set out in Notice of Violation 1112QC0097 dated February 22, 2012, and is not liable for payment of the penalty to the respondent, the Canadian Food Inspection Agency.

The hearing was held in Kitchener, ON,
Wednesday, April 10 and Thursday, April 11, 2013.

REASONS

Alleged Incidents and Issues

[2] On February 22, 2012, the respondent, the Canadian Food Inspection Agency (Agency), issued to the applicant, Greidanus Poultry Service Ltd. (Greidanus Poultry), two Notices of Violation, each alleging that Greidanus Poultry had loaded animals in a way likely to cause injury or undue suffering to them, contrary to subsection 139(2) of the *Health of Animals Regulations*. Notice of Violation 1011QC0220 related to an incident that allegedly took place on January 19, 2011, at Bosanquet, Ontario, while Notice of Violation 1112QC0097 related to an incident that allegedly took place on November 8, 2011, at Teeswater, Ontario. Each of these cases is the subject of a separate proceeding and decision, although the parties agreed, and the Tribunal ordered, that the cases be heard together.

[3] Paragraph 139(2) of the *Health of Animals Regulations* reads as follows :

139. (2) *No person shall load or unload, or cause to be loaded or unloaded, an animal in a way likely to cause injury or undue suffering to it.*

[4] In this case when considering the validity of Notice of Violation 1112QC0097, relating to the incident that allegedly took place on November 8, 2011, at Teeswater, Ontario, as well as in the companion case, Notice of Violation 1011QC0220, relating to the incident that allegedly took place on January 19, 2011, at Bosanquet, Ontario, the Tribunal must determine whether the Agency has established all of the elements required to support the impugned Notice of Violation, more specifically:

- Element #1 - a cargo was loaded
- Element #2 - the cargo was an animal, or animals
- Element #3 - the loading of the animal(s) caused or was likely to cause injury or undue suffering to the animal(s)
- Element #4 - there was a causal link between the loading, the likelihood of injury or undue suffering of the animal(s), and Greidanus Poultry;

[5] Furthermore, if the Tribunal finds that the Agency has established all of the elements required to support the impugned Notices of Violation, the Tribunal must determine whether the Agency has proved that the amount of the penalty is justified for each Notice of Violation under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act) and its Regulations.

Procedural History

[6] Notice of Violation 1112QC0097, dated February 22, 2012, alleges that on November 8, 2011, at Teeswater, Ontario, Greidanus Poultry, *[verbatim]* “committed a violation, namely loaded animals in a way likely to cause injury ou undue suffering to them contrary to section 139(2) of the *Health of Animals Regulations* which is a violation of section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.”

[7] Notice of Violation 1011QC0220, dated February 22, 2012, alleges that on January 19, 2011, at Bosanquet, Ontario, Greidanus Poultry, *[verbatim]* “committed a violation, namely loaded animals in a way likely to cause injury ou undue suffering to them contrary to section 139(2) of the *Health of Animals Regulations* which is a violation of section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.”

[8] On March 9, 2012, the Agency was deemed to have served Greidanus Poultry with both Notices of Violation. Under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (Regulations). Each violation was classified as a “serious violation” for which the penalty assessed was \$6,000 each.

[9] In a letter dated March 14, 2012, sent by fax and later by registered mail to the Tribunal, Greidanus Poultry, through its legal counsel Mr. R. Ian Robertson (Robertson), requested a review by the Tribunal of the facts of both violations, in accordance with paragraph 9(2)(c) of the Act. That letter set out the reasons for the requests for review. Tribunal staff confirmed with Robertson that Greidanus Poultry wanted the Tribunal to review its files in English via an oral hearing at a location in Southwestern Ontario.

[10] On March 26, 2012, the Agency sent a copy of its reports (Reports (collectively), or Agency Report for the January 19, 2011 incident and Agency Report for the November 8, 2011 incident (specifically)) regarding each of the Notices of Violation to Greidanus Poultry and to the Tribunal. The Tribunal received the Reports on March 27, 2012. The Reports as submitted were, however, partly in French and partly in English.

[11] In a communication to the Agency dated March 27, 2012, the Tribunal invited the Agency to file any of its submission then currently in French in English, as English had been chosen by Greidanus Poultry as the language of the proceedings. On April 25, 2012, the Agency indicated that it was providing to Greidanus Poultry, and to the Tribunal, its entire submissions in English, with the Tribunal receiving its copy on May 1, 2012.

[12] In a letter dated May 2, 2012, the Tribunal invited Greidanus Poultry and the Agency to file any additional submissions with the Tribunal by June 1, 2012. This date was later extended by the Tribunal to August 7, 2012.

[13] In a letter dated August 7, 2012, and received by the Tribunal the same day, Greidanus Poultry, through its counsel, Robertson, filed arguments in support of Greidanus Poultry’s requests for review.

[14] On March 6, 2013, the Tribunal sent the parties Notices of Hearing, indicating that the oral hearing requested by Greidanus Poultry, in the two matters, would be held on April 10 and 11, 2013, in Kitchener, Ontario. The Tribunal confirmed that both parties received the Notices of Hearing. The hearing requested by Greidanus Poultry was held on that day. Greidanus Poultry was represented by its counsel, Robertson, and the Agency represented by its counsel, Ms. Julia Turvey.

The Evidence

General Observations

[15] At the start of the hearing, the parties agreed, and the Tribunal so ordered, to hear both cases together, with the understanding that where necessary, the parties would indicate where the evidence they were tendering was specific to only one of the cases, rather than to both cases.

[16] The written record for each case consists of the following:

For the Agency:

- Notice of Violation 1011QC0220, dated February 22, 2012, for the occurrence which allegedly took place on January 19, 2011, at Bosanquet, Ontario, and the Agency Report (both in its original form and in its translation into English in hard copy and on a compact disk (CD)), relating to this incident; and
- Notice of Violation 1112QC0097, dated February 22, 2012, for the occurrence which allegedly took place on November 8, 2011, at Teeswater, Ontario, and the Agency Report (both in its original form and in its translation into English in hard copy and on CD) relating to this incident, including a letter dated November 15, 2011, at Tab 22 of the Report from Dr. Louis Fortin (Fortin) to Greidanus Poultry regarding this incident and others.

For Greidanus Poultry:

- its Request for Review, filed by Robertson, dated March 14, 2012, relating to Notice of Violation 1011QC0220, dated February 22, 2012, for the occurrence which allegedly took place on January 19, 2011, at Bosanquet, Ontario; and
- its Request for Review, filed by Robertson, dated March 14, 2012, relating to Notice of Violation 1112QC0097, dated February 22, 2012, for the occurrence which allegedly took place on November 8, 2011, at Teeswater, Ontario; and the letter dated December 6, 2011, from Greidanus Poultry to Fortin (Tab 23 of the Agency Report) in response to the latter's letter (Tab 22 of the Agency Report) regarding this incident and others.

[17] As well, the parties tendered oral testimony at the hearing:

For the Agency:

- Dr. St  phanie Lefebvre (Lefebvre), a doctor of veterinary medicine, who gave expert evidence regarding chicken pathology and who also gave evidence relating to the incident of January 19, 2011;
- Fortin, a doctor of veterinary medicine, who gave expert evidence regarding chicken pathology and who also gave evidence relating to the incident of November 8, 2011; and
- Mr. Donato Fazio (Fazio), an investigator for the Agency who investigated both incidents, filed documents in and compiled the Agency Reports for both incidents and who also gave evidence relating to both incidents.

For Greidanus Poultry:

- Mr. Terry Greidanus (Greidanus), owner and president of Greidanus Poultry, who gave expert evidence regarding chicken catching and loading and who also gave evidence relating to the incidents of January 19, 2011, and November 8, 2011;
- Mr. James Bank (Bank), employee of Greidanus Poultry, who gave expert evidence regarding chicken catching and loading and who also gave evidence relating to the incident of November 8, 2011;
- Mr. Gary Souch (Souch), employee of Greidanus Poultry, who gave expert evidence regarding chicken catching and loading and who also gave evidence relating to the incident of January 19, 2011; and
- Mr. Jason Buttar (Buttar), employee of Greidanus Poultry, who also gave evidence relating to the incident of January 19, 2011.

[18] The parties also tendered six exhibits at the hearing:

For the Agency:

- | | |
|-----------|--|
| Exhibit 1 | Curriculum vitae and continuing professional education of Lefebvre (undated), relevant for both incidents in question; |
| Exhibit 2 | Invoice dated January 26, 2011, from Greidanus Poultry to Ferme des Voltigeurs for catching and loading of the Rombouts load of January 19 - 20, 2011; |

- Exhibit 3 Curriculum vitae and continuing professional education of Fortin (undated), relevant for both incidents in question; and
- Exhibit 4 Invoice dated November 18, 2011, from Greidanus Poultry to Avicomax Inc. for catching and loading of the Ritchie load of November 8 - 9, 2011.

For Greidanus Poultry:

- Exhibit 5 Booklet entitled "*Should this bird be loaded?*" *A guide for preparing, loading and transporting poultry* (Ontario Farm Animal Council *et al.*, undated), relevant for both incidents in question; and
- Exhibit 6 Booklet entitled "*Broiler Chicken Industry*" *Safe Work Practices* (Poultry Service Association *et al.*, undated), relevant for both incidents in question.

Evidence Common to Both Cases

[19] While the two incidents that form the basis of the respective charges for which Notices of Violation have been issued against Greidanus Poultry, the Tribunal is able to accept several pieces of evidence as being common to both incidents under investigation, even though the two incidents occurred almost 10 months apart.

[20] Basic to both incidents is the process of how live chickens get from their farm of origin to the processing plant where their lives will end. Greidanus, Bank, Souch and Buttar provided the Tribunal with a picture as to how this process generally unfolds from the time of catching to the loading of the chickens at the farm of origin, while Lefebvre, Fortin and Fazio provided the Tribunal with a picture of how the process unfolds from the unloading to the processing of the chickens at the abattoir. Of course, from a legal perspective, the rules set out in Part XII of the *Health of Animals Regulations* require that this entire process be completed in a humane way. As well, industry associations also acknowledge the importance of, and the steps to be taken to secure, the humane transportation of chickens (Tab 29 of Agency Report for incident of January 19, 2011; Tab 24 of Agency Report for incident of November 8, 2011; and Exhibits 5 and 6).

[21] The procedure to get chickens from their farm of origin to the slaughter house for processing works approximately in the following fashion. Just prior to chickens reaching a desired market weight, the processor and the producer enter into negotiations for the sale and delivery of the birds from the producer's barns to the processor's slaughter house. The chickens, of course, must be collected, caught, placed in cages on trucks, transported, uncrated, and brought to the slaughter house kill floor. To complete and oversee this transfer, many players are involved. At the producer end of the process, the farmer will likely be present when a crew of chicken catchers and loaders arrives. The catchers catch

the chickens, hand them up to the loaders, who are on the transport trailer, who place the chickens in the crates on the transport trailer and close the lid on the crates. As the crates are filled, the truck driver moves his truck ahead until all the crates are filled. Once fully loaded, the trucker will secure the load, usually by tarping it, and drive the chickens a few kilometres, or sometimes several hundreds of kilometres, to the processor site. There, the cages will be removed from the truck, the chickens will be removed from the cages, once inside the abattoir, and there they will be killed and processed. The chickens will be inspected both *ante mortem* and *post mortem* for health and humane transportation concerns. If any dead or infirmed chickens are found, they will be counted, a report will be prepared, and if necessary, enforcement action may be commenced by the Agency against anyone violating humane transportation regulations during the whole process.

Evidence Specific to the Incident of November 8-9, 2011

[22] The parties do not dispute many of the facts concerning the commodity moved, certain aspects of the process used to move that commodity and the players involved in moving the commodity during the incidents of November 8-9, 2011, which are as follows:

- producer: Al Ritchie (Ritchie), whose farm is located at Teeswater, Ontario
- catching crew: Greidanus Poultry, with Bank as foreman of the crew and the loader of chickens into the cages on one of the trailers
- size of chicken for transport: 2.2 -2.3 kgs
- loading density of chickens per cage: 12
- number of chickens loaded and transported: 31,572 on four trailers as follows: 7,008 in trailer #C-80; 7,488 in trailer #C150; 8,508 in trailer #17; and 8,568 in trailer #200
- transporter: Premier Express Lines Ltd.
- processor: Avicomax Inc., Drummondville, Quebec
- date and time of start of catching and loading; for the first trailer, November 8, 2011, at 5:25 p.m.; for the second trailer, 5:25 p.m.; for the third trailer, 7:30 p.m.; and for the fourth trailer, 7:40 p.m.
- date and time of departure of loaded trailers from farm: for the first trailer, November 8, 2011, at 7:00 p.m.; for the second trailer, 7:00 p.m.; for the third trailer, 9:20 p.m.; and for the fourth trailer, 9:20 p.m.
- distance and approximate driving time from farm to processor: 843 km – about 9 hours 59 minutes

- date and time of arrival of load at processor: for the first trailer, November 9, 2011, at 5:52 a.m.; for the second trailer, 5:55 a.m.; for the third trailer, 9:58 a.m.; and for the fourth trailer, 11:28 p.m.
- date and time of commencement of processing: for first the trailer, November 9, 2011, at 6:15 a.m.; for the second trailer, 8:30 a.m.; for the third trailer, 12:45 p.m.; and for the fourth trailer, 12:45 p.m.
- total length of time from beginning of loading to beginning of processing: 12 hours and 50 minutes for the first trailer; 15 hours and 5 minutes for the second trailer; 17 hours and 15 minutes for the third trailer; and 17 hours and 5 minutes for the fourth trailer
- person conducting *ante-mortem* and *post mortem* inspections at processor site at time of inspection: Fortin – *ante mortem* at 8:30 a.m. on November 9, 2011, for one load of chickens; unspecified time for the other three load of chickens
- number of chickens found dead at time of unloading at processing plant: 140
- number of chickens found dead at time of unloading at processing plant on their backs: 69
- Agency investigator conducting investigation after occurrence of incident: Fazio

(Tabs 17, 18, 20, 21, 22 of Agency Report and oral testimony of Fortin, Fazio, Greidanus, and Bank)

[23] The charge in this case against Greidanus Poultry relates to an allegation that it loaded chickens “*in a way likely to cause injury or undue suffering*” to the chickens on the evening of November 8, 2011. The Agency tendered several hundred pages of written materials in support of its position. At the oral hearing, the Tribunal heard from seven witnesses providing almost two full days of oral evidence. From an evidentiary point of view, the parties did not dispute that Greidanus Poultry did load the chickens in question on the night of November 8, 2011. The evidence is equally clear that on November 9, 2011, when the birds were unloaded for processing, 140 of the 31,572 birds were dead, and of these, 69 were found dead on their backs. On this evidence, the Tribunal finds that the Agency has proven the first two elements of the alleged violation, as set out in paragraph [4] above, that is, a cargo was loaded, and the cargo was animals.

[24] It is the evidence that the parties have tendered concerning Element #3—the loading of the animal(s) caused or was likely to cause injury or undue suffering to the animal(s)—and Element #4—there was a causal link between the loading, the likelihood of injury or undue suffering of the animal(s), and Greidanus Poultry—that requires a close examination by the Tribunal.

[25] Both parties tendered direct and expert opinion evidence as to how the chickens were loaded on November 8, 2011, and how they might have died after they were loaded, but before they were unloaded many hours and many kilometres later on November 9, 2011.

[26] The Tribunal will consider first the direct evidence provided by the parties by those who were present at the loading of the birds. This evidence comes before the Tribunal from both the Agency and Greidanus Poultry.

[27] From the Agency, there is written direct evidence at Tab 17 of the Agency Report that provides some insight into the catching conditions on the night of November 8, 2011. Tab 17 contains five documents, all of which are signed by producer Ritchie. The first document is entitled "*Chicken Farmers of Ontario Flock Production and Marketing Form*" indicated that the "mortality rate as of the three to four days prior to shipping of the flock was "2%". The remaining four documents are entitled "*Chicken Farmers of Ontario Flock Information Reporting Form*". All of these documents provide some details as to the condition of the chickens prior to loading and observations on the catching process as it was carried out that night as each document provides a space to record contemporaneous comments "On catching process". For each batch of the chickens collected on the evening of November 8, 2011, the "*Chicken Farmers of Ontario Flock Information Reporting Form*" contains the comment "OK" regarding the catching process. These comments, it was confirmed in the oral testimony by Greidanus and not disputed by the Agency, are either written or acknowledged by the producer who then signs off at the bottom of the form. All of these forms at Tab 17 of the Agency Report are signed by Ritchie, the producer of the chickens caught and loaded on November 8, 2011.

[28] The Agency tendered no oral direct evidence concerning the catching conditions observed on the night of November 8, 2011, as no Agency personnel were present at the time of loading and all the witnesses called by the Agency were Agency personnel.

[29] From Greidanus Poultry, there is written direct evidence describing the catching and loading conditions on the night in question, although that evidence is very sparse. In its Request for Review, Greidanus Poultry makes the statement that "...their employees are thoroughly trained, that the birds in question were properly put into the shipping crates in an upright position and that any and all birds which may or may not have been found to be on their backs turned themselves over subsequently to being properly placed into the shipping crates...."

[30] During the hearing, however, Greidanus Poultry provided much more comprehensive direct oral evidence concerning the catching conditions on the night of November 8, 2011, from Bank, who was present during the catching and loading of the chickens on that night.

[31] Bank testified that he has been a full-time chicken catcher for 12 years and has been employed by Greidanus Poultry since 2005, catching chickens for the company. He was qualified as an expert and able to give expert opinion evidence in the catching and loading

of chickens. Presently, he acts as a chicken loader and crew foreman for Greidanus Poultry. He told the Tribunal that he took an initial half-day training course in 2010, on bird handling safety, put on by Greidanus Poultry and then annually all staff of Greidanus Poultry have a quick briefing and update on bird handling safety and the humane transport of chickens. Moreover, if a particular issue in this area came up, Bank would consult with Greidanus or his brother Grant for advice. Bank testified that the general process for catching and loading birds was as follows:

1. generally the farmer would sell all the chickens in his barn at one time, making for an “all-in, all-out” catching and loading process;
2. transporter arrives;
3. catching and loading crew arrive;
4. foreman of catching and loading crew would talk to the farmer and ask if there were any particular health concerns with the flock;
5. foreman then moves chickens off the back walls of the barn and tells catchers to get ready and to set up gates to fence chickens up into a smaller fenced area of the barn to facilitate catching process;
6. catchers start catching chickens by grabbing three to four chickens per hand; and
7. catchers carry birds, usually eight birds, to loader who then fills crates on the truck, making sure all the chickens are on their feet and straighten any up on their feet if they are not before the crate is closed.

[32] Bank testified, in direct examination, that there were 14 people, including himself, on the Greidanus Poultry crew that loaded the Ritchie chickens on November 8, 2011. He was one of the loaders on the trucks. As a loader, he was directly involved in the loading of the chickens and had interactions with both the transport truck driver and the producer. The driver did not help with the catching or loading of the chickens, but moved the truck ahead bit by bit, 17 times, as each row of crates was filled with chickens. Bank told the Tribunal that he observed the producer, Ritchie, being around during the entire loading of his chickens. Bank testified that all the chickens he loaded that day at Ritchie’s farm were all upright in their crates when the crates were closed.

[33] In cross-examination, Bank told the Tribunal that there were no particular issues with the birds that he loaded from the Ritchie farm on November 8, 2011. Bank explained that the Ritchie crop of chickens was loaded onto two trucks at the same time, with two loaders on each truck. He admitted that he could not see all of the chickens, as they were loaded on both trucks, but that in his crates and those loaded by his colleague on the same truck, 100% were on their feet. Bank told the Tribunal that one or two chickens would go into a crate on their back and then about 90% of these would flip over on their feet by

themselves. The other 10%, he would have to flip over manually. Bank, in response to the Agency's counsel's questions, told the Tribunal that while he has seen a chicken die in a crate, he did not see any chickens die in their crate on the night of November 8, 2011. Bank also testified that while he has seen birds on their back in crates, none were on their backs after loading at the Ritchie farm.

[34] Greidanus also gave evidence for Greidanus Poultry regarding the incidents that occurred on November 8-9, 2011. He presented direct evidence in the form of his letter dated December 6, 2011, in response to Fortin's letter on behalf of the Agency, dated November 15, 2011. He also was qualified as an expert in the catching and loading of chickens and therefore also gave expert opinion evidence concerning the matters of this case.

[35] Greidanus is the owner of Greidanus Poultry, a company incorporated in 2006. He has caught and loaded chickens for 22 years, catching well in excess of one million birds over that period. He has been involved in the publication of two industry publications on the humane treatment and transportation of animals (Exhibits 5 and 6). He teaches Greidanus Poultry employees on the humane treatment and transportation of chickens. Greidanus was not present for the loading of chickens on November 8, 2011, but when he received Fortin's letter dated November 15, 2011, alleging that his company's catching and loading crew had violated the *Health of Animals Regulations*, he replied: *[verbatim]*

...

Attn; Dr. Louis Fortin This is in response to the letter you sent me on Nov. 15, 2011. We at Greidanus Poultry Service Ltd. train all of our employees on how to handle and load chickens humanely. We have been working at this line of work for several years and load approx. 500'000 chickens per week. Our employees have been reminded again about this. You have stated that we loaded them on their backs, which is very untrue. Every chicken that I have noticed to take a heart attack, ends up dying upside down, and I am positive that is what has happened in this matter...

...

[Sic throughout]

Greidanus also testified that while he was not with the catching and loading crew at the Ritchie farm on the night of November 8, 2011, he did call Ritchie about the shipment and Ritchie told Greidanus that his employees had done "a terrific job". Greidanus told the Tribunal that Ritchie was a long-time producer and was particular about how things were done on his farm. Greidanus also testified that he talked with the dispatcher of the transport company (Premier Express Lines Ltd.) and they didn't mention any problems with the loading of the shipment in question.

[36] Other than the specific evidence contained in his letter and calls to the producer and the transport company involved in the shipment of November 8-9, 2011, the rest of

Greidanus' evidence related to the general procedures in place at Greidanus Poultry for loading chickens, how catching and loading occurs and the reactions of chickens in the process that he has observed through his extensive experience. As general expert opinion evidence, Greidanus opined the average loading time per trailer is about two hours with the trucker always present, as he has to move the truck ahead bit by bit and the farmer is responsible for being onsite, but may not always be present. The processors inform the catching and loading crew what time to begin at the farm while it is the trucker that informs the crew how many birds to load per crate, depending on the weight of the birds and the outside temperature. Greidanus told the Tribunal that his company had experienced a lot of problems shipping birds to Quebec because of the increased transport distance and with shipping heavy birds, although the birds in this case were not of the heavy variety. He asserted that the birds now grow so rapidly that they are constantly under stress and it takes so little to make them die. Greidanus testified that he has seen birds dying in a crate and has seen a bird flip over and die in its crate. He says that, based on his professional experience and observation, when this occurs, the bird flips and flops and then a large number of these turn over and die on their back and this can occur within the confines of a transportation crate. As well, Greidanus opined that it is also possible that a bird that is on its back in a crate can right itself onto its feet within the crate.

[37] When asked under cross-examination, Greidanus agreed that he could not remember the dates that he had talked with Ritchie and Premier Express Lines Ltd., but the conversations had both been by telephone. Greidanus agreed that all the chickens were loaded by his crew in around two hours and that it was possible for a loader to load a chicken into the crate on its back, particularly with the heavier chickens. Greidanus added that he would not leave a chicken on its back in a crate, but that "everyone is human and it is possible to miss [righting] a chicken [back on its feet]".

[38] Almost the entirety of the evidence submitted in both written and oral form by the Agency relates to observations concerning the state of the birds found by Agency officials at the unloading of the poultry on November 9, 2011, at the Quebec abattoir and, by way of expert opinion, what those observations might mean in terms of cause of death of the 140 dead chickens on the four loads coming from the Ritchie farm in Ontario loaded the day before.

[39] The Agency's witness, Fortin, is a qualified veterinarian employed by the Agency, who was working at the processor Avicomax Inc., Drummondville, Quebec, on November 9, 2011, as the chief veterinarian in charge. He has extensive experience in chicken pathology and was qualified as an expert in that field for the purposes of giving expert opinion evidence. His oral testimony, his written reports (Tabs 20 and 21 of the Agency Report), his letter to Greidanus (Tab 22 of the Report) and the photos he took on the day in question (Tab 19 of the Agency Report) describe the conditions of the chickens he found at unloading in Quebec. Fortin testified his typical work day started at around 6 a.m., and that was what happened on November 9, 2011. He would do an *ante mortem* inspection of any loads that had arrived at the abattoir to see if there were any deaths in the load, transportation problems or pathology or disease that needed attention or reporting. With the four loads in question, Fortin noted the loading date of

November 8, 2011, that the birds had travelled for about 10 hours and that there were 12 birds in each crate, a number that for the time of year was normal for this size of chicken.

[40] At Tab 20 of the Agency Report are the *ante mortem* veterinary inspection reports for the four loads. Fortin told the Tribunal that he filled in the bottom of each form. The *ante mortem* veterinary inspection report A shows *ante mortem* notes at 6:15 a.m., “Nothing to report” and at time of slaughter “10 dead chickens on their backs out of a total of 18”. The *ante mortem* veterinary inspection report B shows *ante mortem* notes at 8:30 a.m., “2 chickens on their back” and at time of slaughter “27 dead chickens on their backs out of a total of 33”. The *ante mortem* veterinary inspection report C shows *ante mortem* notes at 12:45 a.m., “3 chickens on their back” and at time of slaughter “6 dead chickens on their backs out of a total of 9”. The *ante mortem* veterinary inspection report D shows *ante mortem* notes at 12:45 a.m., “2 chickens on their back” and at time of slaughter “26 dead chickens on their backs out of a total of 80”. When asked during direct examination to explain his notes on these forms, Fortin said that at 6:15 a.m., while it was still dark, he noted that there was nothing to report but that by 8:30 a.m., he noted that there were several chickens on their backs that were still living but that were suffering and were in agony. At the time of slaughter, Fortin noted that 69 of 140 chickens found dead in the four loads were dead on their backs with another 100 to 125 on their backs that were still alive. Fortin told the Tribunal that this was an unusually high number on their back with usually only one or two birds per load found on their backs. When asked how birds end up on their backs, Fortin explained that there is no real explanation unless they were placed like this when placed in the cage, as there is not enough space in the crate for a chicken to turn over on its back, or if it is on its back, to turn onto its feet.

[41] At Tab 21 of the Agency Report is the “Inspector Non Compliance Report” completed by Fortin. In the remarks section of the report, at page 3, Fortin notes the following:

...

In addition to the mortalities recorded in the four trailers, many other live chickens were on their backs and were very weak. It is important to note that the majority of birds are placed in the crates on their backs and that the catchers must then place them in the upright position because it is virtually impossible for a chicken placed in the dorsal position to right itself due to the density of birds in the crates. After a period of suffering, they die.

...

In response to a question from the Agency’s counsel, Fortin told the Tribunal that, in his opinion, the only way the chickens could get on their back was by the catchers putting them in the crate that way. He further opined that it was not possible that the chickens were on their backs due to “flip-over disease” because it is a disease that causes death within minutes of its onset. Moreover, he added that because of the density of chickens in the crates, even if these occurrences had related to the disease, there would not have been enough room in the cages for the chickens to flip themselves over onto their backs.

[42] Tab 22 of the Agency Report is a letter dated November 15, 2011, written by Fortin to Greidanus Poultry, wherein Fortin states that he: *[verbatim]* “...witnessed many large poultry rosters that had been loaded into the poultry crates on their backs. A lot if these birds were dead.” Then he lists loads shipped on October 4 (2 loads), October 27 (1 load) and on November 8, 2011 (4 loads) and the number of dead chickens found on their backs. Fortin notes that:

[verbatim] “These 7 loads were loaded by your catching crew. **Poultry should not be loaded on their backs in crates.** Article 139(2) of the Health of animals regulation (2) says: “No person shall load or unload, or cause to be loaded or unloaded, an animal in a way likely to cause injury or undue suffering to it.” In these cases, the birds were loaded on their backs and this action caused undue suffering, including in some cases death by suffocation. This undue suffering could have been easily prevented. Be advised that this is an infraction of the Health of Animal’s regulations. You must undertake measures to avoid a recurrence as soon as possible. These infractions will be reviewed and may be subject to enforcement actions.”

[43] Under cross-examination, Fortin agreed with counsel for Greidanus Poultry that the documents at Tab 17, signed by the producer, indicate that the catching process was “OK” on the night of November 8, 2011. Fortin agreed as well that the loading of each trailer took a couple of hours that evening, the arrival at the abattoir the next day for the four loads occurred between 5:52 and 11: 28 a.m. and that the last load to arrive (trailer 80) had the most dead chickens on it. In response to a question from counsel for Greidanus Poultry, Fortin reiterated that he could not see how a chicken would have had enough space to move from feet to back, or vice versa, in the cages in question given the density of the chickens contained therein. Fortin also added that he has never seen a bird die and then end up falling on its back.

[44] Fazio, another of the Agency’s witnesses, was the Agency investigator who compiled the investigation report for the Agency. He became involved when he was handed several files for different incidents involving Greidanus Poultry. He explained to the Tribunal that he had compiled the Agency Report from evidence presented to him by the Agency veterinarians, but did not call Greidanus Poultry or Greidanus on this file. Fazio told the Tribunal that the Report was to document the same violation and same fine as the Report he had prepared for an earlier alleged violation. For that alleged violation he had called Greidanus on February 15, 2011, to investigate the earlier incident concerning Greidanus Poultry and recorded the notes from their conversation. Those notes are also contained in this Agency Report at Tab 26. However, this conversation predates the present alleged occurrence by almost nine months and its probative value is therefore very low.

[45] Under cross-examination, Fazio told the Tribunal that he did not contact the producer when conducting his investigation, to obtain any information he might have concerning the events that occurred during the loading of the chickens, because he didn’t think that the producer stayed around during loading and, therefore, wouldn’t have seen

the birds going into the crates. Fazio told the Tribunal that he did not contact the transporter or the drivers of the loads when conducting his investigation to obtain any information they might have had concerning what went on at the loading, because he didn't think they would have any relevant information. Fazio told the Tribunal that he has never caught any chickens and while he has observed the loading of chickens he has never observed a Greidanus Poultry crew loading chickens. Fazio testified that he did not contact any member of the Greidanus Poultry crew that was present at the catching and loading on November 8, 2011, when conducting his investigation, to obtain any information they might have concerning what went on that evening.

[46] The Tribunal notes that Fazio was the investigator in this case and as such he prepared the Agency Report. The Tribunal further notes that the Agency Report contains 26 tabs of evidence. While the Tribunal is generally very appreciative of the detailed evidence filed in these cases by the Agency, it is clear that Tabs 3-16 and 25-26, representing over one-half of the evidence provided in the written submissions, relates to events involving Greidanus Poultry that had happened prior to the incident of November 8, 2011. None of those events appears to have evoked the issuance of a Notice of Violation by the Agency, although Fortin's letter at Tab 22 indicates that they could have.

[47] One other expert witness, Lefebvre, appeared for the Agency. Lefebvre is a qualified veterinarian employed by the Agency, who was working at another abattoir, the Ferme des Voltigeurs Inc., Saint-Charles-de-Drummond, Quebec, from July 2010 to March 2011. She has extensive experience in chicken pathology and was qualified as an expert in that field for the purposes of giving expert opinion evidence. She gave detailed evidence concerning the incident which took place on January 19-20, 2011 involving a Greidanus Poultry catching crew and also gave expert opinion evidence for the evidence concerning the incident which took place on November 8-9, 2011. The only plausible explanation in her professional opinion was that the chickens that died on their backs had been improperly loaded on their backs. Due to their physiology, chickens should not be placed in crates on their backs, as they are unable to right themselves and their weight will slowly suffocate them, causing their skin to show bluing, as they suffer and eventually die. Lefebvre also testified that chickens do grow quickly and that for some chickens, their hearts simply cannot keep up. She testified that there is a condition, or syndrome, known as "flip-over disease" where a chicken which is on its feet, will suddenly flip over and die within minutes. She added that the cause of "flip-over disease" is still obscure, and its occurrence very rare, but the disease can wipe out up to 50% of a group of birds and those birds will not show any particular lesions when examined.

[48] Under cross-examination, Lefebvre told the Tribunal that chickens grow very fast and that it takes a toll on their hearts. She added, however, that not all birds are affected, although this trend has increased in recent years with a pathology following from this phenomenon also increasing. Lefebvre also stated that while it is not normal to have chickens on their backs upon arrival at the abattoir, there are certainly more problems associated with loads that have to travel a longer distance between farm and abattoir. Lefebvre reiterated to the Tribunal that in her professional opinion, it is practically impossible for chickens to flip over on their backs once they are in the crate.

Applicable Law and Analysis

[49] The Tribunal's role is to determine the validity of agriculture and agri-food administrative monetary penalties issued under the authority of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act). The purpose of the Act is set out in section 3:

3. *The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.*

[50] Section 2 of the Act defines "agri-food act" as follows:

2. *"agri-food Act" means the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act or the Seeds Act.*

[51] Pursuant to section 4 of the Act, the Minister of Agriculture and Agri-Food, or the Minister of Health depending on the circumstances, may make regulations to designate violations that may be proceeded with:

4. (1) *The Minister may make regulations:*

(a) *designating as a violation that may be proceeded with in accordance with this Act*

(i) *the contravention of any specified provision of an agri-food Act or of a regulation made under an agri-food Act...*

[52] The Minister of Agriculture and Agri-Food has made one such regulation, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (SOR/2000-187) (Regulations), which designates as violations several specific provisions of the *Health of Animals Act* and the *Health of Animals Regulations*, as well as the *Plant Protection Act* and the *Plant Protection Regulations*. These violations are listed in Schedule 1 to the AMPs Regulations, which includes a reference to subsection 139(2) of the *Health of Animals Regulations*.

[53] The courts have regarded this regime with some scrutiny, especially because the violations entail absolute liability. In *Doyon v. Attorney General of Canada*, 2009 FCA 152, Justice Létourneau, writing on behalf of the Federal Court of Appeal, describes the regime as follows:

[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an actus reus which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him- or herself.

[28] Therefore, the decision-maker must be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.

[54] Moreover, the Federal Court of Appeal, in *Doyon*, points out that the Act imposes a heavy burden on the Agency:

[20] Lastly, and this is a key element of any proceeding, the Minister has both the burden of proving a violation, and the legal burden of persuasion. The Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.

[55] Section 19 of the Act reads as follows:

19. *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[56] Therefore, it is incumbent on the Agency to prove, on the balance of probabilities, all the elements of the violation. In the present case, for there to be a violation of subsection 139(2), the Agency must establish four elements as outlined in paragraph [4], above. As already stated, the parties do not contest that the Agency has proven the first two of these. What the Tribunal must consider now, given the abundance of direct and expert opinion evidence, which is largely in direct contradiction between the parties, whether the Agency has proven the other two elements of the violation.

[57] Counsel for the Agency, in its closing arguments at the hearing, directed the Tribunal to consider two cases already decided by the Tribunal. Counsel cited, in support of its position, the cases of *Transport Robert Laplante et Fils Inc. v. Canada (CFIA)*, 2010 CART 05 (*Laplante*) and *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, RTA-60347, issued March 4, 2009 (*Maple Lodge*). Both of these cases involved an alleged violation of subsection 139(2) of the *Health of Animals Regulations*. *Laplante* involved a pig with a fractured hind leg and *Maple Lodge* involved several injured chickens. The Tribunal's determination in *Laplante* resulted in the Notice of Violation being set aside while in *Maple Lodge* it was upheld. However, in both cases, the injury for which the Notice of Violation

was issued and under examination by the Tribunal occurred when the animals were being unloaded. Thus, direct evidence could come from Agency witnesses and was held to be sufficient or wanting, depending on the case, to prove an allegation that the “unloading” of the animal(s) caused or was likely to cause injury or undue suffering to the animal(s)(Element #3); and there was a causal link between the unloading, the likelihood of injury or undue suffering of the animal(s), and the alleged violator (Element #4) who was the person who had unloaded the animal.

[58] Here the case is much different because the charge relates to the loading, rather than the unloading of the animals. The question for the Tribunal to determine is whether the birds were improperly loaded, that is, loaded in a way that was likely to cause injury or undue suffering by Greidanus staff on the night of November 8, 2011. According to the direct evidence of Greidanus Poultry provided by witnesses Bank and Greidanus, as well as the comments of the producer on the catching process, as recorded in the “Chicken Farmers of Ontario Flock Information Reporting Form” submitted by the Agency, the chickens were loaded according to the usual standard process and if a chicken was loaded on its back accidentally, it was righted to its feet before the crate was closed. The direct evidence is unequivocal that while it was humanely possible to miss one or two chickens that were not righted to their feet, missing 69—the number found dead on their back the next day at the abattoir was not possible. On the other hand, the Agency’s expert opinion evidence is that it was not possible for 69 chickens to have died and flipped over onto their backs given the pathology observed at the abattoir on November 9, 2011 (Fortin). Nor does the theory of “flip-over disease” fit well with Fortin’s evidence that he saw many chickens alive and on their backs (emphasis added) at the abattoir on November 9, 2011. Still, perhaps it was possible for so many chickens to have flipped over en route and at the abattoir before unloading given the professional opinion of experienced chicken catchers (Greidanus).

[59] The Federal Court of Appeal in *Doyon*, when judicially reviewing the Tribunal’s finding regarding an alleged violation falling under a different, but related, section of the *Health of Animals Regulations* stated the following:

b) Analysis and management of the evidence

[54] *The main function of a tribunal of first instance is to receive and analyse the evidence. In carrying out this important function, it may reject relevant evidence, but it cannot disregard it, especially if it contradicts other evidence of an essential element of the case: see Oberde Bellefleur OP Clinique dentaire O. Bellefleur(Employer) v. Canada (Attorney General), 2008 FCA 13; Parks v. Canada (Attorney General), [1998] F.C.J. No. 770 (QL); Canada (Attorney General) v. Renaud, 2007 FCA 328; and Maher v. Canada (Attorney General), 2006 FCA 223. If it decides to reject the evidence, it must explain why: ibidem.*

[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.

[60] The Tribunal is mindful of these dicta from the Court in *Doyon* in this case and in this light, has carefully considered the evidence provided by both Greidanus Poultry and the Agency. The Tribunal received oral testimony from seven witnesses. The Tribunal has no reason to question the credibility of any of those witnesses as all were clear, enlightening, forthright, and direct in their presentation of evidence of what they witnessed on November 8 and 9, 2011, or of expert opinion evidence that they gave drawing on their own experience and professional background.

[61] Concerning Elements #3 and 4 of the alleged violation, the Tribunal has direct, unequivocal evidence of the foreman who was on one of the four transports loading the chickens for Greidanus Poultry who provided an eye-witness account of what he and the crew observed following normal catching and loading procedures on the night of November 8, 2011. Bank, as a loader, testified under oath that he neither loaded any birds on their backs, nor saw any birds on their backs when the lids were closed on the crates on the load leaving the Ritchie farm. This evidence was aligned with the direct evidence from November 8, 2011, produced by the Agency, which stated that the catching process that night was "Ok" on a document signed off by the producer. There is also the hearsay evidence from Greidanus that in his telephone conversations with Ritchie and the transport company Premier Express Lines Ltd. that there was no indication that anything went wrong during catching and loading on the evening of November 8, 2011. The Agency in its investigation of the alleged violation did not choose to collect any evidence from the producer, or the truck driver or anyone else that might have contradicted the direct evidence of Bank and Greidanus. While the Agency is to be commended in this case for Fortin acting quickly to engage in dialogue with Greidanus by way of a fairly formal accusation of a violation of the *Health of Animals Regulations*, the rest of the investigation was wanting in completeness.

[62] There is no compelling reason why the Tribunal should completely ignore the direct, uncontradicted evidence in favour of the evidence offered by the Agency's witnesses, who collected their evidence, not at the time of loading, but several hours and several hundred kilometres later at the time of unloading. Unlike the *Laplante* and *Maple Lodge* cases cited

by Agency counsel, here the direct evidence from an on-site Greidanus Poultry loader, unless it is untrustworthy which the Tribunal has found that it is not, is the best evidence available to the Tribunal to determine if the Agency has proved Elements #3 and 4 of the alleged violation. While the direct evidence presented by Fortin and the professional opinion evidence provided by Fortin and Lefebvre, without any direct evidence of a contrary state of affairs at the time of loading, might have been sufficient to prove the third and fourth elements of the alleged violation, the Tribunal cannot accept that it does so in light of credible direct evidence to the contrary. If it did, the Tribunal would run the risk of doing exactly what the Court cautioned the Tribunal not to do in the *Doyon* case.

[63] With respect to Element #3, therefore, there is insufficient evidence, on the balance of probabilities, to prove that the manner in which the chickens were loaded on November 8, 2011, “caused or was likely to cause injury or undue suffering to the animal(s)”, as the direct evidence indicates that the chickens were loaded at the correct density in the upright position, or if the occasional chicken was initially loaded on its back it was righted to its feet before the crate was closed. Granted, the catchers and loaders are working very quickly, but the evidence was that they are trained professionals and, according to their training and experience, did their job correctly that night.

[64] Of course, what is unclear is exactly when and how the chickens did die. Experts on both sides had their theories. The veterinarians Fortin and Lefebvre had their theory that it was because the chickens were loaded on their backs and were not righted before transport. Fortin formed this opinion very early and communicated it to Greidanus Poultry through his letter to them dated November 15, 2011, just six days after Fortin’s observations. All that said however, he presented his conclusion in his letter as to what happened on the night of November 8, 2011, without having been on-site at loading. However, the overwhelming evidence that the Tribunal received about how the catching and loading occurred on the night of November 8, 2011, was in direct opposition to Fortin’s conclusion as to what happened. Moreover, there was even a “battle” of expert opinion in that Greidanus had his theory that the chickens were stressed birds that had travelled a very long distance, for many hours, and died of a heart attack en route, which may or may not be consistent with the rare phenomenon mentioned by Fortin and Lefebvre as observed in chickens called “flip-over disease”.

[65] Furthermore any conclusion by the Tribunal that, on a balance of probabilities, the 140 dead chickens were likely to be caused injury or undue suffering because of the way they were loaded by Greidanus employees, would require the Tribunal to totally disregard or find completely untrustworthy the evidence of Bank and Greidanus and the written declaration of producer Ritchie. The Tribunal found all the witnesses, both for Greidanus Poultry and for the Agency, to be credible and therefore finds that the Agency has provided insufficient evidence to prove, even on a balance of probabilities, that the injury took place while the chickens were being loaded. Do other possibilities exist for where and how the injury and death of the chickens took place? Yes, the chickens might have been in a fragile state before loading, as indicated by the producer log sheets showing a 2% mortality rate in the days before the shipment. The chickens might have experienced increased stress due to the long distance and the long period of time between the farm of

origin and the abattoir, which could have resulted in increased mortality while en route. But this remains speculation, as no one conclusion is obvious as to why the chickens died that night.

[66] The Tribunal is aware that the *Agriculture and Agri-Food Administrative Monetary Penalties Act* creates a liability regime that permits few tolerances, as it allows no defence of due diligence or mistake of fact. Subsection 18(1) of the *Act* reads as follows:

18. (1) *A person named in a notice of violation does not have a defence by reason that the person*

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

[67] The findings by the Tribunal above, however, do not relate to a defence of due diligence or mistake of fact by Greidanus Poultry. Clearly, had Greidanus Poultry raised such arguments, Parliament's unequivocal statement on the issue in subsection 18(1) would have disallowed them.

[68] Given that section 18 of the *Act*, in particular, makes it impossible for an applicant to rely on evidence of past or best practices to defend against a charge, it would seem appropriate in the interest of fairness for the Tribunal also to generally attribute very little or no weight to evidence from the respondent concerning similar past practices or activities of an applicant (unless they resulted in the issuance of a Notice of Violation which was not challenged or was upheld) in proving what might have happened on a particular day by the applicant. In this case, it is clear that Tabs 3-16 and 25-26, representing over one-half of the evidence provided in the written submissions, relate to events that happened prior to November 8, 2011.

[69] Accepting such evidence would be in the nature of accepting "similar fact" evidence. While the Tribunal, under its enabling statutes, has a large latitude to accept many kinds of evidence, "similar fact" evidence is rarely held under Canadian law to be of much probative value. The Supreme Court of Canada has favoured an approach that allows the probative value of such evidence to be weighed against the prejudice that may be caused to the accused party. It should be noted that the term prejudice, in this instance, is not in relation to the case of the accused, but rather to the opportunity of the accused to engage in a fair proceeding. In the case of *R. v. Arp* [1998] 3 SCR 339, Justice Cory held that similar fact evidence must provide a significant probative value in comparison with the possible prejudice caused in addition to a significant degree of similarity in the evidence based upon an objective improbability of coincidence. There are also three potential risks that may arise from the admission of similar fact evidence. The first issue relates to the evidence being used in order to "paint" the accused as a "bad" person in order to assess guilt by character. The second seeks to punish an accused for past conduct, rather than the conduct that forms the subject of the present case. Lastly, similar fact evidence may be used to

distract and confuse a decision-maker from the real issues of the case, often in order to hide gaps in the evidence provided.

[70] Concerning the application of similar fact evidence in matters that are before the Tribunal, there is little question that a Tribunal member has the option of considering and admitting similar fact evidence. But the value of such evidence appears quite limited. The primary objective of the Tribunal is the review of Notices of Violation issued in relation to violations of the *Agriculture and Agri-Foods Administrative Monetary Penalties Act*. As such, past conduct would provide little or no pertinent evidence as to whether the violation occurred, but might be considered in a determination of the correctness of the quantum of the penalty assessed.

Conclusion

[71] Accordingly, the Tribunal concludes that, on a balance of probabilities, the Agency has failed to prove all of the essential elements of the violation, and that Greidanus Poultry therefore did not commit the alleged violation. Consequently, Greidanus Poultry is not liable for payment of the monetary penalty. Furthermore, because the Tribunal concludes that the Agency has failed to establish all of the required elements in support of the impugned Notice of Violation, it is not necessary to consider whether the Agency has proved that the amount of the penalty is justified under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and its Regulations.

Dated at Ottawa, Ontario, this 17th day of September, 2013.

Dr. Don Buckingham, Chairperson