Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: Schaus Land and Cattle Co. Limited v. Canada (CFIA), 2011 CART 014

Date: 20110922
Docket: CART/CRAC-1498

Between:

Schaus Land and Cattle Co. Limited, Applicant

- and -

Canadian Food Inspection Agency, Respondent

Before: **Chairperson Donald Buckingham**

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 section 176 of the *Health of Animals Regulations,* alleged by the respondent.

DECISION

[1] Following an oral hearing and a review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation and is liable for payment of the penalty in the amount of $500.00 to the respondent within 30 days after the day on which notice of this decision is served.

Hearing held in Kitchener, ON,
April 26, 2011.

REASONS

Alleged incident and issues

[2] The respondent, the Canadian Food Inspection Agency (Agency), alleges that the applicant, Schaus Land and Cattle Co. Limited (Schaus), on February 18, 2009, on or about 7:00 a.m. at Guelph, Ontario, moved, or caused the movement of one or more cattle which did not bear an approved tag, to the Better Beef / Cargill Meat Solutions (Cargill), a slaughter house in Ontario, contrary to section 176 of the *Health of Animals Regulations*.

[3] The Tribunal must decide whether the Agency has established all the elements required to support the impugned Notice of Violation in question, particularly:

- if Schaus moved or caused the movement of the cattle in question, and

- when the cattle left Ikendale Farms Ltd. on February 18, 2009, bound for Cargill that the cattle did not have in their ears a Radio Frequency Identification - Canadian Cattle Identification Agency approved identification tag.

Record and procedural history

[4] Notice of Violation #0809ON024401, dated March 26, 2009, alleges that, on February 18, 2009, on or about 9:00 at Guelph, Ontario, Schaus "committed a violation, namely: Remove or cause the removal of an animal not bearing an approved tag; to wit: cattle, from its farm of origin or from a farm or ranch other than its farm of origin contrary to section 176 of the *Health of Animals Regulations*, which is a violation under 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*."

[5] Service by the Agency of the above Notice of Violation on Schaus was deemed to have occurred on April 17, 2009. Under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, this is a minor violation for which the penalty is $500.

[6] Section 176 of the *Health of Animals Regulations* reads as follows:

> **176.** *Subject to section 183, no person shall move, or cause the movement of, an animal or the carcass of an animal from its farm of origin or from any other farm or ranch unless it bears an approved tag issued under subsection 174(1) to the operator of the farm or ranch where the approved tag was applied to it.*

[7] In a letter dated and received by the Tribunal on April 22, 2009, Schaus requested a review (Request for Review) by the Tribunal of the facts of the violation, in accordance with paragraph 9(2)(*c*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. By way of a telephone conversation with Tribunal staff that same day, Schaus requested that the review be by way of an oral hearing, in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations.*

[8] On May 6, 2009, the Agency sent its report (Agency Report) concerning the Notice of Violation to Schaus and to the Tribunal, the latter receiving it on May 8, 2009. On May 14, 2009, the Agency sent to Schaus and to the Tribunal a Compact Disc containing pictures listed, but not yet included, in the Agency Report.

[9] In a letter dated May 8, 2009, the Tribunal invited Schaus to file with it any additional submissions in this matter, no later than June 8, 2009. In a letter dated June 5, 2009, Schaus provided additional written submissions (Additional Submissions) to the Tribunal, copies of which it in turn forwarded to the Agency. The Agency was invited to respond to Schaus' additional submissions, which it did by letter dated June 12, 2009 (Agency Response). In the Agency Response, the Agency requested that the Tribunal hold this case in abeyance pending the outcome of a judicial review of this Tribunal's decisions in *Denfield Livestock Sales Limited v. Canadian Food Inspection Agency* (RTA-60328 dated October 21, 2008) and *Vold, Jones and Vold Auction Co. Ltd. v. Canadian Food Inspection Agency* (RTA-60330 dated October 28, 2008). This request was granted by the Tribunal and communicated to the parties in its letter dated August 31, 2009. In its letter, the Agency also requested that the Tribunal amend the Notice of Violation such that the alleged incident occurred at 7:00 a.m. rather than 9:00 a.m. on February 18, 2009. As this change was to rectify a typographical error and is not of a nature so as to mislead or prejudice Schaus, the Tribunal, at the hearing, amended the Notice of Violation, as requested by the Agency. Other than these submissions, no further submissions were received from Schaus or from the Agency.

[10] After the rendering by the Federal Court of Appeal in February 2010 of *Canada (Attorney General) v. Denfield Livestock Sales Limited* 2010 FCA 36 and the withdrawal of the *Vold* case, the oral hearing requested by Schaus was held in Kitchener, Ontario on April 26, 2011, with Mr. Ken Schaus (Ken Schaus) and Mr. Steve Vanderkolff (Vanderkolff) representing Schaus and the Agency represented by its counsel, Ms. Wendy Wright.

Evidence

[11] The evidence before the Tribunal in this case consists of written submissions from both the Agency (Notice of Violation, Agency Report and Agency Response) and from Schaus (Request for Review and Additional Submissions). As well, the Agency presented Mr. Peter Schaefer (Schaefer), and Schaus presented Ken Schaus and Vanderkolff to

provide oral evidence at the hearing on April 26, 2011. During the hearing, the parties also tendered two exhibits as evidence: (1) from the Agency, colour copies of photos provided in the Agency Report; and (2) from Schaus, a binder containing Schaus' presentation, copies of photos and computer reports of untagged animals.

[12] The parties agreed to several facts in the case:

- 39 cattle arrived at Cargill on the morning of February 18, 2009.
- That morning, the cattle were moved from Ikendale Farms Ltd. (Ikendale Farms) on a truck driven by Mr. Steve Wilhelm.
- 13 cattle on the load that arrived at Cargill that morning were found by Schaefer not to bear any Radio Frequency Identification tags approved by the Canadian Cattle Identification Agency (RFID-CCIA approved tags) required for compliance with Part XV of the *Health of Animals Regulations*.
- No RFID-CCIA approved tags were discovered in the truck or the slaughter house and only two of the 13 cattle missing tags had fresh holes and/or blood in their ears.

[13] The contested evidence in this matter is whether Schaus had care and control of the 39 cattle (including the 13 untagged cattle) moved from Ikendale Farms to Cargill on the morning of February 18, 2009. The pertinent evidence, which relates to the matter in dispute, given by the Agency's Schaefer and Schaus' witnesses is set out below.

[14] Schaefer has been an employee of the Agency for the past eight years and currently acts as an inspector. He testified that he arrived at Cargill in the morning of February 18, 2009 to examine animals that were destined for slaughter to determine if they bore RFID-CCIA approved identification tags. He found 13 untagged cattle in the load of 39 cattle that are the subject of the alleged violation. He told the Tribunal that his procedure upon discovering missing tags is to collect information concerning the load. In this case, Schaefer asked the driver of the load, Mr. Wilhelm, whether his load was all tagged and where his load was from. Schaefer was told by Wilhelm that the load came from Ikendale Farms and to the best of his knowledge all the animals were tagged. Schaeffer referred the Tribunal to the Cargill receiving/drive card dated 02/18/09 for this load of 39 cattle, located at Tab 2 of the Agency Report, which shows the producer as "Schaus L + C" and the trucker as "Ikendale". The Eartag Summary Detail Report from Cargill for the period 2/16/09 to 2/20/09, located at Tab 3 of the Agency Report, also shows the load of 39 cattle (including 13 untagged cattle) delivered on 2/18/09 with the producer listed as "Schaus L C 20198" and the trucker as "Ikendale". Schaefer testified that he completed the Cattle ID Inspection Report located at Tab 4 of the Agency Report, which records the owner of the load as "Schaus Land & Cattle". Schaefer testified that he completed the Report of

Inspector located at Tab 5 of the Agency Report and the Inspector Non-Compliance Report (Short Form) located at Tab 6 of the Agency Report. Both record the owner of the load, including the 13 untagged cattle, as “Schaus Land & Cattle”. Schaefer told the Tribunal that all the evidence he gathered pointed to Schaus as owners of the cattle, particularly because he was told this by both Mr. Wilhelm and by Tracy Barker of Cargill and this data was recorded in the Cargill system for the load.

[15] Agency investigator, Mike Kozak records in his notes, at Tab 9 of the Agency Report, that he received a phone call from Ken Schaus on April 20, 2009 and Ken Schaus informed him that Schaus was not the owner of the 39 cattle, that Schaus “provides financing because banks won’t” and that the Schaus operation had nothing to do with these animals. Kozak also records that on April 29, 2009 he called Ikendale Farms and spoke with Chris Kuntz, manager. Kuntz told Kozak that he (Kuntz) was aware of the February incident but said Ikendale was not the owner of the animals. Ikendale does custom feeding with the animals brought in for 150 days of feeding. Kuntz told Kozak that Schaus arranges everything. The cows are brought in (but not by Schaus except occasionally when local) from various places, out west and local. Kuntz told Kozak he did not know who the owners of the cattle were but that “Schaus takes care of it. They are paid by the LB from Schaus. They deliver to Cargill. Animals are supposed to be tagged when they receive them. 60 days before they leave they are checked. Tags are put on any missing animals.” Kuntz ended by telling Kozak that Ikendale is paid to fatten the animals.

[16] Finally, the Agency sets out in its Report, at page 10, that Schaefer obtained a Cargill Voucher (located at Tab 10 of the Agency Report) from Cargill employee Bent Andersen showing payment to “Schaus Land & Cattle” for the load of 39 cattle delivered on February 18, 2009.

[17] In cross-examination, Schaefer informed the Tribunal that, as far as he knew, the Cargill “voucher system” worked to identify cattle delivered to the facility, such that when a load comes off a truck, a drive card is completed with information from the truck’s bill of lading. For Cargill’s purposes in this case, the producer was listed as Schaus, but for the Agency’s purposes, the producer could refer to any one of the persons who fed, loaded, shipped or received payment for the cattle. Schaefer told the Tribunal that he did not know who fed the cattle in question, nor did he know if the bill of lading was used as a source document to determine to whom payment for the animals would be made.

[18] The applicant’s first witness, Ken Schaus, stated to the Tribunal that he agrees with the need for an animal identification program and that since the program started in 2001, Schaus has tagged thousands of cattle. It has state-of-the-art technology to read approved tags and does so several times for the cattle that enter and exit its facilities. Ken Schaus stated that the company is first and foremost a cattle producer, but also operates as an order buyer and agent for third parties as well.

[19] Ken Schaus told the Tribunal that the cattle that are the subject of this case were part of a complex series of transactions where Schaus acted as a broker to set up the transaction for several investors, with responsibility for tagging falling on the farm of origin and handlers of the cattle, not Schaus. Schaus were agents of Cargill and facilitated the channelling of payment for the animals back to their owner-investors. Nothing formal was in place to show who fed these cattle, who produced them or any method to ensure that they were tagged, but that responsibility should have fallen to the farm of origin.

[20] Ken Schaus testified that Schaus does not contest that the 13 animals in question did not bear approved tags, but maintains that it was not the responsibility of Schaus to do the tagging as it, at no time, had care and control of the animals. The animals were shipped from western Canada to two farms in Ontario and then shipped to Cargill for slaughter. The only involvement of Schaus was that it brokered an agreement between investors who bought the cattle and the seller from western Canada, and an agreement to have the cattle brought to market weight and then sold to Cargill for slaughter.

[21] In cross-examination, Ken Schaus explained to the Tribunal that Schaus' involvement with the cattle in question flowed from a series of contracts that the company uses when it acts as an agent for third party investors. In this case, contracts likely included: a sales contract between the western producers or their agent and Schaus as agent for the eastern investor purchasers: an investment contract between Schaus and the investor purchasers; a service and feeding contract between Schaus and Ikendale detailing feeding arrangements for the cattle as well as conditions and timing of directions for delivery of the cattle to Cargill. Then, when the cattle are sold, Schaus receives payment from Cargill as agent for the investors, who will receive a cheque from Schaus for their interest in the cattle sold less any feeding, transportation and care costs associated with that group of cattle. This complex arrangement of several intersecting contracts is in contrast to Schaus' other line of business where it owns, controls and markets cattle it directly raises or buys.

[22] The applicant's final witness, Vanderkolff, stated to the Tribunal that he is the Controller at Schaus. He stated that Schaus runs two lines of operations, one being those cattle on-site or off-site owned by other investors but sold under the Schaus name at slaughter facilities and the other being cattle that Schaus owns in its own right, all of which are contained on-site at Schaus facilities. All on-site cattle, whether owned outright by Schaus or by investors are put through Schaus mechanisms to find and replace missing tags. Data presented by Vanderkolff [Exhibit 2 (at page marked "Exhibit 7")] shows that of 27,206 cattle, less than 2.3% have missing tags. When cattle come into the Schaus facilities, as many as 20% have missing tags and are then retagged such that, when they exit the facility and are checked again, less than 2% have missing tags, which again are replaced before the animals are shipped to the slaughter house. Even with Schaus' vigilance, the system is not working, as the opportunity not to be in violation of the tagging provisions is low. Vanderkolff estimated that if violations were issued for even one missing tag, then, mathematically speaking, Schaus would have at least 1 or 2 violations per month.

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Analysis and Applicable Law

[23] This Tribunal's mandate 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.*

[24] Section 2 of the Act defines "agri-food Act":

> ***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*;*

[25] 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:

> **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...*

[26] The Minister of Agriculture and Agri-Food has made one such regulation, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* SOR/2000-187, which designates as violations several specific provisions of the *Health of Animals Act* and the *Health of Animals Regulations*, and the *Plant Protection Act* and the *Plant Protection Regulations*. These violations are listed in Schedule 1 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* and include a reference to paragraph 176 of the *Health of Animals Regulations*.

[27] Part XV of the *Health of Animals Regulations* (Regulations) is entitled "Animal Identification". 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 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, in principle, 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 originated.

[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.

[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, as clearly suggested by the evidence of the Schaus witnesses. 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, 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.

[31] The evidence in this case is that the system that the Regulations rely upon, or perhaps more accurately the equipment and technology to support that system, does not establish a permanent and infallible system to track the movements of all bison, cattle and sheep in

Canada. If ever the 13 cattle in question bore approved tags (and there is little evidence before the Tribunal to suggest they did), the parties agree that when they were slaughtered the cattle bore no such tags. The parties also agree that the 13 cattle in question never passed through the Schaus facilities or its state-of-the-art system for identifying missing tags. Instead, Schaus acted as a broker to facilitate the purchase and sale of the cattle in question from their place of birth in western Canada to their slaughter at the Cargill facility. The Tribunal is convinced by the evidence presented by Schaus that it never owned, or was the "producer" of these cattle, even though certain documents presented as evidence list Schaus as "producer". On the other hand, it is difficult to accept Schaus' argument that at no time did it ever have "care and control" of the animals. All the evidence points to Schaus as a broker who exercised specific control over the cattle, from their purchase in western Canada to their delivery to a farm in Ontario for feeding and, later, to their sale at Cargill. Payment for the cattle was even made to Schaus, which then distributed it, less applicable costs, to investors that it had contracted with for commercial purposes.

[32] A violation of section 176 of the Regulations arises where:

1. the alleged violator moved (or caused the movement) of,

2. an animal falling within the definition of "animal" under Part XV,

3. from that animal's farm of origin or any other farm or ranch, and

4. the animal did not bear an approved tag at the time of movement from the farm.

[33] It is the Agency which bears the burden of proof for proving all the elements of the alleged violation. Based on the evidence presented, it is clear and not in dispute that the Agency has proved, on the balance of probabilities, elements 2, 3, and 4 above. The evidence bears out that 13 cattle, defined animals under Part XV, were moved from Ikendale, in this case the "any other farm or ranch", to Cargill on February 18, 2009. All 13 cattle lacked RFID-CCIA approved tags.

[34] With respect to element 1, the Federal Court of Appeal, in *Doyon v. Attorney General of Canada*, 2009 FCA 152, also points out that the Act imposes an important burden on the Agency. At paragraph 20, the Court states:

> *[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.*

[35] 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.*

[36] Therefore, with respect to element 1, the Act, as well as the case law from this Tribunal and from the Federal Court of Appeal, are quite clear that the owner of an animal is responsible for the acts of his agents and will, by their actions, cause the movement of an animal. However, in this case, the Tribunal finds that Schaus was not the owner of the cattle. Nor did Schaus actually move the cattle itself. Yet, Schaus was clearly instrumental in directing the movement of the cattle from Ikendale to Cargill on February 18, 2009.

[37] Final arguments by Schaus indicated that if an agent like itself, who sets up arrangement for investors to participate in cattle production in Canada, is held responsible for tagging animals which it never actually handles, then this will have a negative and chilling effect on financing arrangements for cattle investors in Canada. This Tribunal is not in a position to comment on whether this may indeed be the case. The application of the obligations under the *Health of Animals Regulations* on many in the producer-to-processor chain may appear overbroad by exposing several players at the same time to unfair legal liability. This has become a not uncommon refrain from applicants appearing before the Tribunal (see *Habermehl v. Canada (CFIA*) 2010 CART 017; *Coward v. Canada (CFIA*) 2010 CART 018; *Denfield Livestock Sales Limited v. Canadian Food Inspection Agency*, RTA-60328). The applicants in these cases argued, as did Schaus in this case, that there is a significant problem with the permanency of RFID-CCIA approved tags and, as such, each of the players, in the producer-to-processor chain of beef, bison and sheep, is unfairly exposed to liability for violations of Part XV of the Regulations.

[38] In the *Denfield* case, the Federal Court of Appeal commented on the meaning of the words “move, or cause the movement of an animal” in the context of section 176 of the *Health of Animals Regulations*. The Court in *Denfield* held that an auction mart exercised sufficient power and control over the movement of an animal so as to cause the movement of an animal for the purposes of section 176 (paragraphs 18, 29, and 31 of the FCA decision). The same logic can be applied in this case where Schaus, by its actions to direct the movement and timing of the feeding and sale of the 13 cattle, is sufficient to conclude that it “caused the movement of the animals” even though it did not own them or have possession of them in their facilities.

[39] The Tribunal is mindful that its finding in this case will constitute an extension of liability to agents of owners under Part XV of the *Health of Animals Regulations*. However, considering the legislative provisions and the guidance offered to it by the Federal Court of Appeal on the matter, the Tribunal finds that the Agency has proved, on the balance of probabilites, the first element of the violation, "that Schaus caused the movement of" the cattle on February 18, 2009 from the farm of origin, in this case Ikendale. Considering that now, not only the producer but the transporter, or their agents must purchase, apply and verify the continuing and constant presence of a RFID-CCIA tag in the ear of each of their animals whenever they are moved off their farm or face liability for regulatory non-compliance, Part XV does appear to impose a heavy, if not impractical, responsibility on one sector for the benefit of all consumers and producers in Canada to assure traceability and food safety in the food system. Fair or not, this is, however, the regulatory burden that Parliament and the Governor in Council have placed on, in this case, the applicant Schaus, and the Tribunal must interpret and apply the law to the facts of this case.

[40] The Act's system of monetary penalties (AMP), as set out by Parliament is very strict in its application. The Act creates a liability regime that permits few tolerances as it allows no defence of due diligence or mistake of fact. Section 18 of the Act states:

> **18.** (1) *A person named in a notice of violation does not have a defence by reason that the person*
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> *(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.*
>
> (2) *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.*

[41] When an AMP provision has been enacted for a particular violation, as is the case for section 176 of the Regulations, Schaus has little room to mount a defence. The Tribunal accepts that any honest plea from an applicant alone — such as "We have a system in place for those animals that come through our facility to ensure that they have approved tags"— would not, in and of itself, be a permitted defence under section 18, and would not have the effect of exonerating an applicant. In the present case, section 18 of the Act will exclude practically any excuse that Schaus might raise. Given Parliament's clear statement on the issue, the Tribunal accepts that such statements by Schaus would not be permitted defences under section 18.

[42] The testimony of all witnesses in this case was professional and credible. In light of all the evidence and the applicable law, the Tribunal concludes that the Agency has established, on a balance of probabilities, that Schaus committed the violation and is liable for payment of the penalty in the amount of $500.00 to the Agency within 30 days after the day on which notice of this decision is served.

[43] The Tribunal wishes to inform Schaus that this violation is not a criminal offence. After five years, it will be entitled to apply to the Minister to have the violation removed from its record, in accordance with section 23 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act:*

> **23.** (1) *Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from*
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> (*a*) *where the notice of violation contained a warning, the date the notice was served, or*
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> (*b*) *in any other case, the payment of any debt referred to in subsection 15(1),*
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> *unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.*

Dated at Ottawa, this 22nd day of September, 2011.

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Dr. Donald Buckingham, Chairperson