

Canada Agricultural  
Review Tribunal



Commission de révision  
agricole du Canada

Citation: Nalli v. Canada (CFIA), 2011 CART 16

Date: 20111005  
CART/CRAC-1558

**Between:**

**Joseph Nalli, Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**Before:     Chairperson Donald Buckingham**

In the matter of an application made by the applicant, pursuant to subsection 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts of a violation of subsection 178(1) of the *Health of Animals Regulations*, alleged by the respondent.

## **DECISION**

**[1] Following a review of all written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines that the applicant committed the violation and upholds the Notice of Violation with warning issued by the Agency.**

By written submissions only.

## REASONS

### Alleged incident and issues

[2] The respondent, the Canadian Food Inspection Agency (Agency), alleges that the applicant, Mr. Joseph Nalli (Nalli), on March 28, 2010, at Cookstown, Ontario, applied approved tags issued under subsection 174(1) to animals that were not on the farm, ranch, or in the auction barn for which the approved tags were issued, contrary to subsection 178(1) 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 that:

- Nalli tagged or caused the application of tags to the sheep in question;
- that the sheep were tagged with Canadian Sheep Identification Program (CSIP) approved tags that did not correspond with their farm of origin.

### Record and procedural history

[4] Notice of Violation #1011ON051801, dated December 2, 2010, alleges that, on March 28, 2010, at Cookstown, in the province of Ontario, Nalli “committed a violation, namely: Apply or cause the application of an approved tag to an animal or animal’s carcass that is not at the site for which the tag was issued contrary to section 178(1) 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 Nalli was deemed to have occurred on December 12, 2010. Under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, this is a serious violation for which Nalli was issued a warning.

[6] Subsection 178(1) of the *Health of Animals Regulations* reads as follows:

**178(1).** *Subject to section 183, no person shall apply or cause the application of, an approved tag issued under subsection 174(1) to an animal or the carcass of an animal that is not on the farm or ranch, or in the auction barn, for which the approved tag was issued.*

[7] In a letter dated December 15, 2010, received by the Tribunal on December 16, 2010, Nalli requested a review by the Tribunal of the facts of the violation, in accordance with subsection 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

[8] By letter dated December 29, 2010, and received by the Tribunal on December 30, 2010, the Agency sent its report (Report) concerning the Notice of Violation to Nalli and to the Tribunal.

[9] In a letter dated December 30, 2010, the Tribunal invited Nalli to file any additional submissions in this matter, no later than January 31, 2011. No further submissions were received from either party.

### **Evidence**

[10] The evidence before the Tribunal in this case consists of written submissions from the Agency (the Notice of Violation and the Agency's Report) and from Nalli (the request for review). The facts in this case are not in dispute between the parties.

- Nalli transported seven sheep (four ewes and three ewe lambs) to Ontario Stockyards Inc. (OSI) in Cookstown, Ontario on March 28, 2010.
- Nalli did not own the sheep but rather they belonged to his neighbour Maddalena Mora (Mora).
- The sheep arrived at OSI without CSIP-approved tags and Agency Inspector Ashley Roberts (Roberts) who was completing inspections at OSI, informed Nalli that no person shall transport sheep unless they bear approved tags.
- In response, Nalli proceeded to apply CSIP-approved tags to the seven sheep prior to unloading them at OSI.
- Roberts later discovered that the CSIP-approved tags that Nalli applied to the seven sheep were registered to him, not to Mora, the owner of the sheep.

### **Analysis and Applicable Law**

[11] 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* (the 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.*

[12] 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...*

[13] 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...*

[14] 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 subsection 178(1) of the *Health of Animals Regulations*.

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

[16] Part XV of the *Health of Animals 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.

[17] If actors inside or beyond the farm gate do not tag, as required by the *Health of Animals Regulations*, they too face liability when tags are missing. Owner and transporters of sheep are among those identified under the *Health of Animals Regulations* with such responsibilities. However, in certain circumstances to preserve animal identity, as is the case with obligations under section 178(1), the *Health of Animals Regulations* prohibit persons from applying an approved tag issued to one farm and producer onto an animal from another farm and producer.

[18] The Agency has the responsibility of ensuring compliance with these provisions either through criminal prosecutions or through the levying of administrative monetary penalties or warnings for violations identified in the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[19] For the purposes of this case, the owner is required to affix a CSIP-approved tag onto each sheep prior to its leaving its farm of origin. The CSIP-approved tag, when applied to an animal's ear, is meant to lock the tag into place permanently. Such a permanent locking device will permit farm-to-processor tracking and thus meet the objectives of the *Health of Animal Regulations* to establish a permanent and reliable system to track the movements of all 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. When in this case, the sheep did not have a CSIP-approved tag upon their arrival at OSI, it constituted a breach of one section of the *Health of Animals Regulations*; Nalli, in trying to remedy that breach, committed another.

[20] Subsection 178(1) of the *Health of Animals Regulations* states that a violation occurs where:

1. the alleged violator applies (or causes the application of);
2. an approved tag under subsection 174(1);
3. to an animal (or carcass of an animal);
4. that is not on the farm, ranch, or in the auction barn for which the tag is issued.

[21] The Agency bears the burden of proof for establishing all the elements of the alleged violation. Based on the evidence presented, the Agency has proved all the elements of the violation beyond the standard of the balance of the probabilities.

[22] This case is perhaps a classic tale of one person doing a good deed in helping a neighbour and then winding up in trouble for his good deed. Nalli transported, for no fee, seven sheep to OSI to help his neighbour, who was suffering from health concerns. Mora, the owner of the sheep, had not tagged them prior to their departure and, once at OSI, Nalli immediately told OSI staff and Roberts that the sheep were untagged. The staff at OSI would not accept the sheep until they were tagged. After requesting and receiving instruction from Roberts on how to apply the tags, Nalli went into his trailer and tagged the seven sheep with CSIP-approved tags. Roberts recorded the tag numbers and later, when tracing to whom the CSIP-approved tags had been issued, found they were registered to Nalli, not Mora. In his request for review, Nalli did not deny these allegations and admitted that he used his own approved tags to tag his neighbour's sheep and stated that he now understood the regulations for tag use when it comes time for sale of lambs, that he realized what he did was wrong and that it would not happen again.

[23] The Tribunal finds that the Agency has, therefore, made out all of the essential elements of this case. The Tribunal accepts that Nalli was acting in good faith without a fee to help a neighbour and that he is undoubtedly apologetic for using his own tags on his neighbour's sheep. While it is regrettable that Nalli's efforts to help a neighbour have resulted in his committing a regulatory violation, the Tribunal is only permitted, under its enabling statutes, to assess the validity of the Notice of Violations issued by the agencies it oversees, of which the Agency is one.

[24] In this case, the *Health of Animals Regulations* are very clear that it is unlawful to tag an animal with a CSIP-approved tag that does not correspond to that animal's farm of origin. The Agency has proven—and Nalli has admitted—that Nalli tagged seven sheep that were not his own with CSIP-approved tags that were registered to him. In light of the evidence and the applicable law, the Tribunal must conclude that the Agency has established, on a balance of probabilities, that Nalli committed the violation and upholds the Notice of Violation with warning issued to him by the Agency.

[25] The Tribunal does wish to inform Nalli that this violation is not a criminal offence. After five years, he 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*

*(a) where the notice of violation contained a warning, the date the notice was served, or*

*(b) in any other case, the payment of any debt referred to in subsection 15(1),*

*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 5<sup>th</sup> day of October, 2011.

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Dr. Donald Buckingham, Chairperson