

Canada Agricultural  
Review Tribunal



Commission de révision  
agricole du Canada

Citation: Hueging v. Canada (CFIA), 2010 CART 19

Date: 20101004  
Docket: RTA-60382;  
RT-1491

**Between:**

**Johann Hueging, 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 this decision is served.**

Hearing held in Winnipeg, MB,  
July 20, 2010.

## REASONS

### Alleged incident and issues

[2] The respondent, the Canadian Food Inspection Agency (Agency), alleges that the applicant, Mr. Johann Hueging (Hueging), on June 3, 2008, near Warren, Manitoba, moved or caused the movement of three lambs not bearing approved tags from their farm of origin, 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:

- that Hueging moved or caused the movement of the lambs in question, and
- when the three lambs left Hueging's farm on the morning of June 3, 2008, bound for the Carman Meats slaughterhouse, they were without Canadian Sheep Identification Program (CSIP) approved tags.

### Record and procedural history

[4] Notice of Violation #0809MBCA0003, dated November 28, 2008, which was amended by agreement of the parties during the oral hearing, alleges that, on the 3<sup>rd</sup> day of June 2008, at Warren, in the province of Manitoba, Hueging "committed a violation, namely: move or cause the movement of an animal not bearing an approved tag from its farm of origin or from a ranch other than its farm of origin contrary to section 176 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*."

[5] Service by the Agency of the above Notice of Violation on Hueging was deemed to have occurred on December 11, 2008. 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 facsimile received by the Tribunal on January 7, 2009, Hueging requested a 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*. At that same time, Hueging requested that the review be oral, in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[8] By letter dated January 16, 2009 and received by the Tribunal on January 19, 2009, the Agency sent its report (Report) concerning the Notice of Violation to Hueging and to the Tribunal.

[9] In a letter dated January 19, 2009, the Tribunal invited Hueging to file with it any additional submissions in this matter, no later than February 18, 2009. No further submissions were received from Hueging.

[10] The oral hearing requested by Hueging was held on July 20, 2010 in Winnipeg, Manitoba with Hueging representing himself and the Agency represented by its counsel, Ms. Shirley Novak.

### **Evidence**

[11] 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 Hueging (the request for review). At the hearing on July 20, 2010, Danna Mack and Dennis Riehl presented evidence on behalf of the Agency while Hueging testified on his own behalf. During the hearing, the parties also tendered four exhibits as evidence.

[12] The facts in this case are not in dispute.

- Hueging operates a farm near Warren, Manitoba where he raises sheep and cattle.
- On June 3, 2008, he loaded three lambs into his pick-up truck and drove them to the Carman Meats slaughterhouse.

[13] The Agency's first witness, Danna Mack (Mack) testified that she has been employed by the Agency since 2007 and is currently an inspector who, among other things, verifies compliance under the *Health of Animals Act* and *Regulations*, including Part XV of the Regulations – Animal Identification. On June 3, 2008, she was undertaking inspections of animals delivered to the Carman Meats slaughterhouse for fitness of animals for slaughter and for required animal identification. She inspected Hueging's lambs as they were coming off his pick-up truck and found all three of the lambs he was delivering were without CSIP approved tags. Mack told the Tribunal that she asked Hueging why he had not tagged his lambs and he replied with the question, "Can I tag them now?". Mack replied that she needed to make a phone call and advised Hueging not to unload the lambs until she returned. However, when Mack did return Hueging had unloaded the lambs and when Mack saw them again, each one had a CSIP approved tag in its ear. Mack then returned to her other duties at the slaughterhouse but later completed an Inspector's Report concerning the incident (Tab 1).

[14] The Agency's second witness, Dennis Riehl (Riehl) testified that he has been employed by the Agency since 2008 and is currently an inspector who, among other things, verifies compliance under the *Health of Animals Act* and *Regulations*, including Part XV of the Regulations – Animal Identification. On June 3, 2008, he received a phone call from Mack at 15:20 wherein Mack told Riehl that she had found three untagged sheep at Carman Meats slaughterhouse. He told her to have the producer wait and he would come over to the slaughterhouse. At 15:30, Riehl arrived at Carman Meats and found Hueging sitting in his truck with ear-tagging pliers, such as would have been used for CSIP approved tags, sitting on the seat beside him. Then Mack joined the two men and told Riehl that the sheep had been unloaded and tagged while she had stepped away to call Riehl. When Riehl asked Hueging if he was aware that his lambs had to be tagged, he replied that he was, but as he had been having trouble with the tags staying in the ears of the lambs once tagged, he had decided that he would not tag the lambs early but wait until he got to the slaughterhouse to tag them.

[15] Hueging testified that he is a farmer who used to have a large dairy operation but since 2006 has moved into sheep production as well as having some beef cattle. On June 3, 2008, he told the Tribunal that he loaded three lambs for slaughter, one for himself and the others for his two daughters, and delivered them to Carman Meats arriving at around 2:45 p.m. while everyone at the slaughterhouse was on their coffee break. After the coffee break, Hueging came out of his truck with three tags and his tagging pliers, while his lambs were still in his truck. Mack was there then and told him that she had to go make a phone call to another Inspector. Hueging told the Tribunal that after she left, someone told him to unload his lambs and move ahead. Prior to unloading the lambs though, Hueging grabbed each of the three, tagged it with a CSIP approved tag and then put it into a holding pen. Hueging explained that the reason he delayed tagging was because he loses plenty of the tags and has even complained about this problem to the Canadian Wool Growers Cooperative in Alberta who issues the tags.

## **Analysis and Applicable Law**

[16] 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.*

[17] 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;*

[18] 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,*

[19] 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*.

[20] 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.

[21] 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.

[22] 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 *Health of Animals Regulations*, may never be tagged, through neglect or opposition to the present regulatory scheme. Most animals, however, will be tagged, but, even among these, some will lose their tags somewhere between the birthing pen and the slaughter house floor. To minimize “slippage” and to maximize the number of animals that are tagged with approved tags for the full duration of the animal’s life, the *Health of Animals 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 *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. 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*.

[23] For the purposes of this case, such approved tags are CSIP approved tags made of a band of metal 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 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.

[24] Section 176 of the *Health of Animals Regulations* draws a strict line “in the sand” such that there will be no violation of the section if, at the moment when an animal is moved from the farm of origin it bears an approved tag. A violation of section 176 arises only 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.

[25] 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 beyond doubt and not in dispute that the Agency has proved, on the balance of probabilities, each of elements 1, 2, and 3 above. In this case, it is clear that Hueging loaded his three lambs and hauled them in the back of his pick-up to Carman Meats.

[26] With respect to element 4, the evidence is clear that Hueging did not tag his lambs before leaving his actual farm property. Hueging's intention, one which he indeed carried out, was to tag the lambs once he got to Carman Meats just before, or as, they were unloaded. Hueging's intention in so acting was to prevent the possibility of tags being lost before the lambs arrived at the slaughterhouse and his rationale was that the lambs were still under his care and control and had no chance of co-mingling with other animals prior to their unloading at Carman Meats. Moreover, Hueging argued that "as long as they [the lambs] are in my vehicle, they are still on my farm". These facts and arguments raise two issues for the Tribunal.

[27] The first issue raised is whether Hueging's intentions for not tagging the animals before he left his physical farm property can exonerate him from the violation he is alleged to have committed. 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**

**(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.**

[28] When an AMP provision has been enacted for a particular violation, as is the case for section 176 *Health of Animals Regulations*, Hueging has little room to mount a defence. The Tribunal accepts that any honest plea from an applicant alone — statements such as "I keep records of my sheep with other tags because CSIP approved tags are not sufficient as I can't read them" or "I didn't tag the lambs until just before I unloaded them at the slaughterhouse because I was afraid they might lose their tags en route" — would not be permitted defences 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 Hueging might raise, including the fact that he does "take control and identification very seriously". Given Parliament's clear statement on the issue, the Tribunal accepts that any of the above statements by Hueging would not be permitted defences under section 18.

[29] The second issue raised by Hueging is the interpretation of the words “farm of origin” in section 176 of the *Health of Animals Regulations*. Hueging argues that this phrase should include his truck when it is loaded with animals away from his actual farm property. The Tribunal finds this argument difficult to accept. Section 172 of the *Health of Animals Regulations* defines “farm of origin” as follows:

*“farm of origin” means the farm or ranch where the animal was born — or the first farm or ranch to which the animal was moved after its birth if it was born at a place other than a farm or ranch, — including all areas of land, and buildings and other structures on those areas, that are used under one management for breeding or raising animals except any of those areas where the animal may be commingled with animals that are from another farm or ranch.*

[30] This definition focuses on the real property and fixtures located on the farm property itself – “the farm or ranch .... including all areas of land, and buildings and other structures on those areas” – rather than on movable property, particularly when such movable property including vehicles used to transport animals, can take animals off the real property of the farm of origin. Where the intention of the legislation is to prevent the co-mingling of unidentified animals, it is a stretch to consider that vehicles carrying animals to market should generally be included as part of the “farm of origin”. The legislation must draw a line somewhere. It has, in this instance, drawn the line at the point at which the animal leaves the physical boundaries of the farm of origin. While there may be instances where a farmer could argue that his truck transporting animals might be considered part of the “farm of origin (for example, where he is transporting animals between two of his own parcels of land), this is not such a case. Hueging has admitted that his lambs were not tagged before he left his farm en route for Carman Meats. Therefore, the Tribunal finds that the Agency has proved, on the balance of probabilities, the fourth element of the alleged offence in this case, that is, that none of the lambs bore an approved tag at the time of movement from the farm.

[31] The Tribunal finds that the Agency has, therefore, made out all of the essential elements of this case. The Tribunal has no reason to doubt Mr. Hueging’s assertions that he always intended to tag his sheep or that he takes the identification process seriously. As well the Tribunal notes that Part XV of the *Health of Animals Regulations* does impose a heavy 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 Hueging, and the Tribunal must interpret and apply the law to the facts of this case. In light of the evidence and the applicable law, the Tribunal must conclude that the Agency has established, on a balance of probabilities, that Hueging 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 this decision is served.

[32] However, the Tribunal wishes to inform Mr. Hueging 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 4th day of October, 2010.

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Dr. Donald Buckingham, Chairperson