

**AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT**

DECISION

In the matter of an application for a review of the Minister's decision that the Applicant committed a violation of section 40 of the *Health of Animals Regulations*, and requested by the Applicant pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*; and,

In accordance with the judgement of the Federal Court of Appeal delivered on October 20, 2003 quashing the decision of the Review Tribunal dated the 11th day of September 2002, and remitting the matter to it for a fresh decision in accordance with the Reasons issued by the Court.

Guy Elinar Westphal-Larsen, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a fresh review of the Minister's decision dated June 12, 2002, and all information relating to the violation, the Tribunal by order, confirms the Minister's decision and orders the Applicant to pay the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

In order to vary or set aside the Minister's decision, the Review Tribunal must find that there has been a jurisdictional error or an error of law. The following are some general examples of grounds for relief:

1. Powers are exercised in bad faith.
2. Powers are improperly delegated.
3. Powers are exercised without regard to natural justice or fairness.
4. Powers are exercised for improper purposes.
5. There is no evidence before the Minister to support the decision.
6. A decision is based upon irrelevant considerations.
7. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.
8. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.

The Applicant has not alleged any errors of law were committed.

The Court reasoned a violation of section 40 of the *Health of Animals Regulations* could occur even if subsection 16(1) of the *Health of Animals Act* had been complied with. Accordingly, there was no error in law in the Minister not taking this subsection into account.

The Court has provided some guidance in suggesting the Tribunal may wish to consider whether the *Health of Animals Act* and *Regulations* apply to the alleged violation in light of the provisions of the *Meat Inspection Act* and *Regulations*, and the definition of "animal by-product" in the *Health of Animals Act*.

The Tribunal considers that the applicable import requirements of the *Meat Inspection Act* do not apply to the Applicant as section 3 of the *Meat Inspection Regulations*

.../3

exempts a shipment of meat products weighing 20 kilograms or less that is intended to be

used for non-commercial purposes.

The definition of “animal by-product” in the *Health of Animals Act* is not an all-inclusive definition. In addition, the operative definition of the same term is set out in the *Health of Animals Regulations*, as follows:

“animal by-product” means an animal by-product that originated from a bird or from any mammal except a member of the orders Rodentia, Cetacea, Pinnepedia and Sirennia;

The Tribunal accordingly finds that the Notice of Violation was properly issued, and that the salami in question was an animal by-product as defined in the *Health of Animals Regulations*.

Dated at Ottawa this 6th day of November, 2003.

Thomas S. Barton, Q.C., Chairman