

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

**DECISION**

In the matter of an application for a review of the facts of a violation of provision 139(2) of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

**L'Équipoule Inc., Applicant**

**-and-**

**Canadian Food Inspection Agency, Respondent**

**MEMBER H. LAMED**

**Decision**

**Following an oral hearing and a review of all oral and written submissions, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,000.00 to the Respondent within 30 days after the day on which this decision is served.**

**REASONS**

An oral hearing was held in Montreal on April 27, 2007, at the request of the Applicant.

The Applicant was represented by Mr. Michel Giasson and by its President, Ms. Danielle Simard.

The Respondent was represented by its solicitors Ms. Louise Panet-Raymond and Ms. Anne-Marie Lalonde.

The record consists of the following documents:

- the Notice of Violation, dated July 17, 2006;
- the Applicant's request for review, including written representations, dated July 26, 2006; and
- the Respondent's summary of evidence.

Notice of Violation # 0607QC0014, dated July 17, 2006, alleges that the Applicant, on March 20, 2006, in Ste-Hélène, in the province of Quebec, committed a violation, namely: "A embarqué des animaux d'une façon susceptible de les blesser ou de les faire souffrir indûment" contrary to provision 139(2) of the *Health of Animals Regulations*, C.R.C. 296, which 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.

**Facts**

On March 20, 2006, while Dr. Yvan Gagné, the veterinarian on duty at the Unidindon Inc. slaughterhouse, was performing an *ante mortem* inspection on the evisceration line of three lots of large chickens from Gestion R. Poisson Inc., he noticed that the chickens had a high rate of wing fracture.

The results of Dr. Gagné's investigation appear in the *ante mortem* report (Tab 3) and on the Inspector's non-compliance report (Tab 7) written at the time of the described events. Dr. Gagné died a few weeks prior to the hearing, but the Tribunal considered the reports admissible evidence of his findings at the time of the alleged violation.

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Tabs 3 and 7 show that Dr. Gagné observed a rate of fractures and other lesions, particularly but not solely affecting the chickens' wings, of 18 to 20% for the three lots in question. Veterinarian Dr. Julie Nagel testified that the usual wing fracture rate for such chickens is 3 to 4%. Dr. Nagel explained that the dark red and greenish colouration of the lesions visible in the photographs (Tab 2) indicates that they occurred in the 12 hours prior to the chickens' arrival at the slaughterhouse. Mr. Giasson, the representative of the Applicant, gave the usual fracture rate as being approximately 10 to 12%. In any event, it is clear that the rate of lesions affecting these chickens, especially wing fractures, was considerably higher than the norm. The Tribunal accepted the evidence that the chickens were transported with the lesions. Moreover, the chickens presented with no other significant pathology. The fact that the chickens were collected and crated at the farmer's premises by the Applicant, a company specializing in this service, was not contested.

Ms. Danielle Simard, President of the Applicant, explained the circumstances surrounding this lot of chickens.

First, there was a lack of appropriate feed for the chickens at the end of the production cycle in the period preceding the date scheduled for collection. The farmer was obliged to feed said chickens a growth diet. This change in feed imposed a withdrawal period of an additional five days. Consequently, the slaughter of these chickens was delayed, and they became stronger and larger than normal.

Ms. Simard explained that, as usual, she received from the Olymel slaughterhouse the notice of the date and time of collection of these chickens, which is based on the Olymel slaughterhouse's slaughter program (Tabs 4 and 5). Collection of the chickens that were the subject of this delay was scheduled for noon on March 20, 2006. Ms. Simard testified that, in general, chickens are more difficult to load in the middle of the day, and, knowing the particular circumstances involving these chickens, she foresaw difficulties with this collection. She stated that she asked the slaughterhouse to move collection to the evening of March 20, but her request was refused. Ms. Simard testified that she had no choice but to load the chickens according to Olymel's instructions. She stated that she collects 50 percent of the chickens for Olymel. The collection was very difficult, and, despite all the precautions and efforts of the Applicant's employees, the chickens struggled a great deal, with the consequences described above.

The Applicant is an expert in collection. It was instructed by Olymel to collect chickens that, as Olymel was aware, were in a special situation and could be larger and more likely to struggle than usual. The Applicant demonstrated its expertise and requested that Olymel change the collection time so as to optimize the collection conditions. The uncontested evidence shows that Olymel refused this request.

The Respondent argued that section 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which reads as follows, should be applied:

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.

The Tribunal concludes that the contract between the Applicant and Olymel is a contract for services. The Applicant is an independent service provider and has independence in its carrying out of said contract. The evidence shows that, in accordance with normal business practice, Olymel, by sending a slaughter schedule, calls on the services of the Applicant, which has the necessary expertise in the collection of poultry. There is no evidence that the Applicant is obliged to accept every element of the schedule (even though there might be practical and business consequences as a result of a refusal by the Applicant). The wing fractures occurred in the loading of the chickens for transport by the Applicant on March 20, 2006.

The Applicant certainly employed every reasonable means to optimize the collection, asking for a delay in the collection time, but the fact remains that the Applicant is an independent service provider and is able to refuse to proceed with collection if circumstances so require. Under section 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, reasonable means such as those employed by the Applicant may not be invoked as a defence.

Consequently, the Tribunal can only conclude that the Applicant committed the violation and orders the Applicant to pay the penalty in the amount of \$2,000 to the Respondent within thirty days of the day on which this decision is served.

Dated at Montreal this 1<sup>st</sup> of February, 2008.

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H. Lamed, Member