

**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 177(1) 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*.

Les Fermes G. Godbout et Fils Inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines 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.

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REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Penalties Regulations*.

The oral hearing was held in Quebec City on April 3rd, 2006.

The Applicant was represented by its counsel, Mr. Jean-François Paré.

Evidence was given on behalf of the Applicant by Mr. Réal Bérubé, secretary treasurer of the Applicant.

The Respondent was represented by its counsel, Ms. Patricia Gravel.

Evidence was given on behalf of the Respondent by Dr. Line Chartré.

The Applicant agreed to allow the Chairperson to conduct the oral hearing with the aid of an interpreter.

For the record the solicitor for the Respondent made the following observation:

“We understand that the Applicant has been informed by the Tribunal that the Chairperson would preside over the hearing today with the help of an interpreter, through simultaneous translation, and that the Applicant agreed to this procedure. However, the CFIA was not consulted on this matter. Our client does not plan to object today to the hearing of the appeal because all the parties and witnesses are in attendance, but it reserves the right to point to any legal defect that might affect its rights, the interpretation of the law and its application to this file, all in accordance with the provisions of the *Official Languages Act*.”

The Notice of Violation # 0405QC0225 dated April 18, 2005, alleges that the Applicant, on the 9th day of November, 2004, at East-Angus, in the province of Quebec, committed a violation, namely: “a transporté des animaux qui ne portant pas d’étiquettes approuvées” contrary to provision 177(1) of the *Health of Animals Regulations* which states:

177(1) Subject to section 183 and subsection 184(2), no person shall transport, or cause the transportation of, an animal that does not bear an approved tag.

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At the outset of the hearing I ascertained whether each party had copies of the following

key documents in this file:

Notice of Violation dated April 18th, 2005.

Letter dated May 4th, 2005, from the Applicant requesting a review.

Letter dated May 10th, 2005, from the Respondent sending the report and responding to the Applicant's earlier letter.

Letter dated February 21st, 2006 from Mr. Paré regarding the cross-examination of witnesses.

Letter dated February 23rd, 2006 from Mr. Paré regarding reasons for request for review.

Having confirmed both parties had copies, these documents were entered on the record as evidence for the purpose of the hearing.

Dr. Chartré gave evidence on the nature and importance of the tagging system. She further reviewed her past association with the Applicant and the previous warnings given.

A load of cattle was delivered by the Applicant on November 9, 2004 to Viandes Giroux Inc. for slaughter.

On her inspection of the cattle in question on the same day at 8:15 a.m., Dr. Chartré discovered one of the cattle did not have an approved tag. Following slaughter, she found four more cattle did not bear approved tags. She indicated she inspected the ears and did not determine any tears, holes or places where tags may have been located. She testified she further checked the truck and could not find any tags in the truck.

On behalf of the Applicant, Mr. Paré indicated that the Applicant's evidence and submissions would apply to this file as well as to file RT # 1344, (NOV # 0506QC0142) to be heard April 4th, 2006.

Although the Applicant (in the letter dated May 4, 2005, signed by Gilles Godbout and requesting a review) stated it obtains the animals it transports from auctions and may assume these animals bear tags, the evidence of Mr. Bérubé is somewhat different.

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Mr. Bérubé testified as to the manner in which the cattle were loaded. In particular, he noted the difficulty in loading bulls from the range which were like wild animals and

which weighed an average of 2,100 pounds. He further indicated it was not possible to see whether the animals were bearing tags during the loading process. He said it would be impossible to tag the cattle during the loading process because of the weight of the animals and the fact that they were free range animals not accustomed to confined spaces.

Further, he testified proper equipment was not available at the loading area to apply approved tags. In this regard, he said he contacted two auction houses and determined that neither could accommodate him for tagging the animals in question.

In summation, Ms. Gravel referred to the evidence of Dr. Chartré as to the obligation to respect the law and to have the cattle tagged prior to shipment. She indicated the Applicant admitted transporting untagged cattle, and that due diligence was not a defence by reason of subsection 18(1) of the *Agriculture and Agri-Food Monetary Penalties Act*.

The Federal Court of Appeal's decision in the *Canadian Food Inspection Agency v. Magnowski* [2003] F.C.A. 1929 was filed, and paragraphs 10 and 11 were referred to.

In summation, Mr. Paré reviewed the evidence of Mr. Bérubé indicating the total incapacity of the Applicant to tag the animals upon loading. He then indicated that subsection 18(1) did not apply in the circumstances as it was impossible to exercise any form of due diligence. In other words, he argued, since it was not possible to exercise any form of due diligence, that subsection simply did not apply.

I am satisfied there is ample proof the animals were not tagged during transportation and that the Respondent has established on a balance of probabilities that the violation was committed. I also think that if taking some form of action to exercise due diligence is not a defence, then taking no action is also not a defence.

However onerous it may be to affix approved tags to western cattle, it is a legal requirement and is done by others, including the auction barns, on a regular basis.

Thomas S. Barton, Q.C., Chairman