

**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.**

## 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 4<sup>th</sup>, 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. Peter O'Donnell.

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*.”

In the hearing on file RT # 1262 (NOV 0405QC0225) heard on April 3<sup>rd</sup>, 2006, Mr. Paré indicated the Applicant's evidence and submissions in that hearing would apply to this file as well.

The Notice of Violation # 0405QC0142 dated January 5, 2006, alleges that the Applicant, on the 24<sup>th</sup> day of October, 2005, at East Angus, in the province of Québec, committed a violation, namely: “a transporté un animal qui ne portait pas une étiquette approuvée ” contrary to provision 177(1) of the *Health of Animals Regulations* which states:

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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.

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 January 5<sup>th</sup>, 2006.

Letter dated January 23<sup>rd</sup>, 2006 from Mr. Paré requesting a review.

Letter dated January 23<sup>rd</sup>, 2005 (should be 2006), from the Agency with the report attached.

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

Letter dated February 23<sup>rd</sup>, 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.

On October 24<sup>th</sup>, 2005, the Applicant transported a load of 25 cattle obtained at an auction in western Canada to the abattoir of Viandes Giroux (1997) Inc. On inspection at the abattoir, Dr. O'Donnell observed that a charolais bull was not bearing an approved tag. He indicated he personally palpated the ears to determine whether there were any marks or holes to indicate the animal had been previously tagged. He found none and concluded it had not been earlier tagged.

In summation, Ms. Gravel reviewed the provisions of subsection 177(1) and questioned why it was not possible to tag this particular animal, while the other cattle in the load were properly tagged.

In summation, Mr. Paré did not deny the animal was not bearing an approved tag while being transported, but indicated, in addition to the submissions made in file RT # 1262 (NOV# 0405QC0225), that special equipment and methods were needed to load these animals in order to protect the physical safety of the drivers. He also put the blame on the auction house for not tagging the animal.

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I am satisfied there is ample proof the animal was not bearing an approved tag during transportation and that the Respondent has established on a balance of probabilities that

the violation was committed.

Each person in the chain has distinct regulatory obligations. 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. In this case, all other animals on the load were properly tagged.

Dated at Ottawa this 2<sup>nd</sup> day of May, 2006.

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Thomas S. Barton, Q.C., Chairman