

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: Reynolds v. Canada (CFIA), 2011 CART 005

Date: 20110314
Docket: RTA-60394;
RT-1522

Between:

E. Roger Reynolds, 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 Regina, SK,
January 27, 2011.

REASONS

Alleged incident and issues

[2] The respondent, the Canadian Food Inspection Agency (Agency), alleges that the applicant, Roger Reynolds (Reynolds), on April 3, 2009, near Stoney Beach, Saskatchewan, caused to move to Moose Jaw, Saskatchewan one Black Angus bull, which was not bearing an approved tag, 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 Reynolds moved or caused the movement of the bull in question, and
- when the bull left Hagerty Livestock Test Centre (Hagerty Livestock) on April 3, 2009, bound for the Johnstone Auction Mart in Moose Jaw, that the bull did not have in its ear a Radio Frequency Identification - Canadian Cattle Identification Agency (RFID-CCIA) approved identification tag.

Record and procedural history

[4] Notice of Violation #0910SKCA0011, dated August 20, 2009, alleges that, on April 3, 2009, at or near Stoney Beach, in the province of Saskatchewan, Reynolds “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 farm or ranch other than its farm of origin contrary to section 176 of the *Health of Animals Regulations*, which is a violation under 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 Reynolds was deemed to have occurred on September 4, 2009. 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 letter dated September 4, 2009, and received by the Tribunal on September 9, 2009, Reynolds 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*. By way of a telephone conversation with Tribunal staff on September 9, 2009, Reynolds requested that the review be by way of an oral hearing, in accordance with subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[8] On September 16, 2009, the Agency sent its report (Report) concerning the Notice of Violation to Reynolds and to the Tribunal, the latter receiving it on September 17, 2009.

[9] In a letter dated September 17, 2009, the Tribunal invited Reynolds to file with it any additional submissions in this matter, no later than October 19, 2009. In a letter dated October 5, 2009, Reynolds provided additional written submissions to the Agency but did not provide a copy of these submissions to the Tribunal. The Agency provided the Tribunal with these submissions at the oral hearing and it was agreed by the parties that these submissions would become part of the record of the case. Other than these submissions from Reynolds dated October 5, 2009, no further submissions were received from Reynolds or from the Agency.

[10] The oral hearing requested by Reynolds was held in Regina, Saskatchewan on January 27, 2011, with Reynolds 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 both the Agency (the Notice of Violation and the Agency's Report) and from Reynolds (his request for review and additional written submissions). As well, both parties presented witnesses who tendered evidence at the hearing on January 27, 2011. Darlene Tingtved and Kelvin Hopfauf gave evidence on behalf of the Agency while Reynolds, himself, gave evidence on his own behalf. During the hearing, the parties also tendered 7 exhibits as evidence.

[12] Certain elements of the evidence are not in dispute:

- The Black Angus bull which is at the centre of this dispute was owned by Reynolds and was born in the spring of 2008.
- In the fall of 2008, the Black Angus bull was transported to the facilities of Hagerty Livestock in Stoney Beach, Saskatchewan for care and testing.

- Reynolds visited his bull while it was at Hagerty Livestock in November 2008 and in March 2009.
- On April 3, 2009, the Black Angus bull was loaded from Hagerty Livestock in Stoney Beach and transported to Johnstone Auction Mart in Moose Jaw, Saskatchewan.
- On April 6, 2009, the Black Angus bull was sold as Lot #70 at the 12th Annual Triple A Bull and Heifer Sale at the Johnstone Auction Mart. This was the first animal that Reynolds had ever sold at the sale.
- After inspecting the pens at the Johnstone Auction Mart in the afternoon of April 6, 2009, Agency officials found that the Black Angus bull identified as Lot #70 did not bear an RFID-CCIA approved tag.
- Both Hagerty Livestock and Johnstone Auction Mart are approved tagging sites for applying RFID-CCIA approved tags under the *Health of Animals Regulations*.
- Reynolds did not approach either Hagerty Livestock or Johnstone Auction Mart to request that they retag his Black Angus bull, prior to the Agency official's discovery on April 6, 2009 that his bull identified as Lot #70 did not bear an RFID-CCIA approved tag.

[13] The contested evidence in this matter relates to whether Reynolds caused the movement of the Black Angus bull identified as Lot #70 at the Triple A Bull and Heifer Sale and whether that bull failed to have a RFID-CCIA tag in its ear when it left Hagerty Livestock on April 3, 2009.

[14] Agency's witnesses were Inspectors Darlene Tingtved (Tingtved) and Kelvin Hopfauf (Hopfauf), both employees of the Agency. The pertinent evidence of these two Agency employees is summarized below. Reynolds testified in his own defence and his evidence is also set out below.

[15] Tingtved has been an employee of the Agency, and its predecessor, for the past 23 and one half years and currently acts as an inspector. She testified that she arrived at the Johnstone Auction Mart in the afternoon of April 6, 2009. When she arrived, she examined the animals in the sale to determine if they bore RFID-CCIA approved identification tags. While she did not find any cattle in the sales ring that did not bear RFID-CCIA tags, she did find several that lacked such tags which had already been sold and were being held in pens in the barns of Johnstone Auction Mart. One of the animals Tingtved found that did not bear an RFID-CCIA tag was a Black Angus bull identified as Lot #70. She informed employees of Johnstone Auction Mart that this animal, along with any of the others that did not bear an RFID-CCIA tag, could not be shipped out until they were so tagged.

[16] Tingtved told the Tribunal that an employee of the Johnstone Auction Mart, Ted Camber (whose statement is at Tab 11 of the Report), commenced this process of applying RFID-CCIA tags to the untagged animals by penning the animals and then running them through a chute and headgate. During this time, Tingtved examined the Black Angus bull identified as Lot #70 before and while it was in the headgate. Before running the animal through the chute and headgate, she took photos of the animal (Tab 3 of the Report – photos 6 and 7, which are enlarged in Exhibits 2.2 and 2.1 respectively). While in the headgate, Tingtved did a manual palpation of the animal's ears with her gloves off, as well as a visual inspection of its ears. She reported to the Tribunal that, as a result of this thorough examination, she was able to conclude that the animal did not have an RFID-CCIA tag and did not have any holes in its ears, except for the one that had been made when the producer/sales tag "#70" was installed and which was still in the bull's ear.

[17] By referencing the producer/sales tag #70 with the sale catalogue (Tab 4 of the Report) and through discussions with employees of the Johnstone Auction Mart, including Wayne Johnstone (whose statement is at Tab 12 of the Report) and Scott Johnstone (whose statement is at Tab 14 of the Report), Tingtved testified that she was able to establish that the Black Angus bull with the producer/sales tag #70 was owned by Reynolds. She further was able to establish through a statement from Larry Hagerty (whose statement is at Tab 9 of the Report), and this was not denied by Reynolds, that the bull had been transported on April 3, 2009 from Hagerty Livestock, unloaded at the Johnstone Auction Mart that same day, and kept there awaiting its sale which occurred on April 6, 2009.

[18] In cross-examination, Tingtved informed the Tribunal that she did not inspect bull #70 prior to its being sold at the sale. Tingtved also told the Tribunal that the bull, which is shown the sale catalogue at page 22 (Tab 4 of the Report) appears to have a dangle tag in its right ear, while the photos that she took (photos 6 and 7, at Tab 3 of the Report) show bull #70 with only one tag -- the producer/sales dangle tag #70 in the left ear. Asked to explain this discrepancy, Tingtved told the Tribunal that she did not think the animal photographed in the sales catalogue was the animal she inspected on April 6, 2009, as she neither saw, nor felt any holes in the left ear or the right ear, other than the one securing the producer/sales dangle tag #70.

[19] Hopfauf, the other witness for the Agency, has been an employee of the Agency, and its predecessor, for 22 years and four months and currently acts as an inspector. He was asked by Tingtved to obtain statements from persons involved in matters arising from untagged cattle at the Johnstone Auction Mart sale of April 6, 2009.

[20] Hopfauf told the Tribunal he met with Reynolds on May 8, 2009, and took a statement from him (Tab 7B of the Report). Hopfauf indicated that, during the taking of the statement Reynolds was very pleasant and very laid back. Pertinent parts of that statement, transcribed by Hopfauf and signed by Reynolds, state as follows: "On October 5, 2008, Laird Senft hauled Mr. Reynold's one Black Angus bull to Larry Haggerty's [sic] at Stoney Beach, SK. Mr. Reynolds states the bull was tagged with a CCIA tag. In March of 2009 Mr. Reynolds was at Haggerty [sic] Livestock and noticed the tag was still in. April 4, 2009 Mr. Reynolds was at Johnstone Auction, while grooming his animal for the sale he was informed the CCIA tag was missing. The Auction Mart re-tagged." Hopfauf contacted Reynolds a second time, this time by telephone on June 1, 2009 to take a further statement from him (Tab 10 of the Report). Pertinent information from that statement was that the bull in question was tagged with CCIA tag number 265100295 in May 2008 and that Reynolds "states that he was present at Mr. Hagerty's farm on November 2008 and March 2009, [and] no notice of the tag missing was made".

[21] Reynolds stated to the Tribunal, as a preliminary matter, that he agrees with the need for an animal identification program but that the program, as it is currently structured, has flaws and needs to be fixed. Reynolds testified that he is an insurance broker by profession but that he got into the livestock business in 2007 when he purchased two animals from the New Force Angus (Laird and Joyce Senft) dispersal sale. These animals were kept at the farm of Kieran Doetzel. That was where his Black Angus bull, that is the subject of this case, was born. It would be the first bull that Reynolds would sell at a bull sale. This Black Angus bull was raised on the Doetzel farm and then transported to Hagerty Livestock in October 2008. Just prior to its transport, it was tagged with RFID-CCIA tag number 265100295. Reynolds told the Tribunal that he visited Hagerty Livestock twice, once in November 2008 and once in March 2009, and on both occasions, he never noticed a missing tag. Reynolds told the Tribunal that after the second visit, he never saw the Black Angus bull again until he saw it at the Johnstone Auction Mart when he washed, groomed and clipped the animal in preparation for the sale, after it had arrived there on April 3, 2009. Reynolds told the Tribunal that it has not been proven that when the bull arrived at the Johnstone Auction Mart that an [RFID-CCIA] tag was not in its ear. He further testified that his bull must have had a hole in its right ear that Tingved missed in her examination because in the sales catalogue photo, his Black Angus bull has a dangle tag in its right ear while in her photos the bull has a dangle tag only in its left ear. As well, unlike what he recounted in his statement of May 8, 2009 given to Hopfauf, that on April 4, 2009 he was he was informed the CCIA tag was missing, Reynolds' evidence was that it was on April 6, 2009 that he was advised that his bull did not have a RFID-CCIA tag. An employee of the Johnstone Auction Mart then re-tagged the bull before it left the facility. Finally, Reynolds told the Tribunal that, while he clearly owned the animal, it was never really under his care and control. As soon as he became aware of the missing RFID-CCIA tag, he cooperated with the Agency and the Auction Mart to fix the problem.

[22] Reynolds testified in cross-examination that he was not present when the RFID-CCIA approved tag number 265100295 was applied to his bull in 2008 but that he knew it was a button tag secured in the right ear of the animal. When asked by Agency counsel, he agreed that he could not see a button tag in the right ear of the animal number lot #70 in the sales catalogue photo and that the dangle tag in the sales catalogue photo in the right ear of the bull was likely a Hagerty Livestock identification tag.

Analysis and Applicable Law

[23] 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* (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.

[24] 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;

[25] 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,

[26] 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*.

[27] Part XV of the *Health of Animals Regulations* (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 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.

[28] Part XV of the 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.

[29] 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 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 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 Regulations, they too face liability when tags are missing. Owner and transporters of animals are among those identified under the 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*.

[30] For the purposes of this case, such approved tags are RFID-CCIA approved tags made of plastic bearing a front piece printed with a bar code and a back button 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 bison, cattle and 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.

[31] The evidence in this case is that the system that the Regulations rely upon, or perhaps more accurately the equipment and technology to support that system, does not establish a permanent and infallible system to track the movements of all bison, cattle and sheep in Canada. The Tribunal accepts the evidence of Reynolds that his agents did, sometime before November 2008, tag his Black Angus bull with a RFID-CCIA approved identification tag. If there was human error in the application of the RFID-CCIA approved tag in 2008, there was no evidence of it presented at the hearing. However, evidence from Reynolds of his verification of the continuing presence of that approved tag in the bull's ear between November 2008 and April 2009 was somewhat vague and consisted of active affirmations such as "In March 2009 Mr. Reynolds was at Haggerty Livestock and noticed that the tag was still in." (Reynolds' statement of May 8, 2009 at Tab 7B of the Report) and more passive observations such as "Mr. Reynolds states that he was present at Mr. Hagerty's farm on November 2008 and March 2009, [and] no notice of the tag missing was made." (Reynolds' statement of June 1, 2009 at Tab 10 of the Report) and by way of oral evidence at the hearing when Reynolds told the Tribunal that on the two occasions when he visited Hagerty Livestock to see his bull, he never noticed the tag missing.

[32] While Agency officials admittedly never saw the animal in question before April 6, 2009, the undeniable fact remains that the evidence of Agency witnesses, which was admitted by Reynolds, firmly establishes that Reynolds' Black Angus bull was found at the Johnstone Auction Mart on the afternoon of April 6, 2009 without an RFID-CCIA approved tag.

[33] Two conclusions are available, given the evidence. Either the bull was tagged when it left Hagerty Livestock on April 3 and it lost its tag en route or while being unloaded or held at the Johnstone Auction Mart prior to its sale on April 6, or the bull did not have its tag before it was loaded at Hagerty Livestock on April 3, 2009. The former might exonerate Reynolds while the latter would impute liability to him.

[34] Section 176 of the 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. If the tag is lost in transport, section 184 permits the owner or transporter to retag the animal "immediately after it is received" at the next place where it is to be unloaded. While the evidence in this case does not suggest that the tag was lost in transit, Reynolds did not tag his animal immediately—it was retagged only after the Agency officials identified that it was missing its tag some three days after it was transported.

[35] A violation of section 176 of the Regulations arises 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.

[36] 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, elements 2 and 3 above. The evidence bears out that Reynolds’ bull, a defined animal under Part XV, was moved from Hagerty Livestock, in this case the “any other farm or ranch”, to the Johnstone Auction Mart on April 3, 2009.

[37] With respect to element 1, the Act, as well as the case law from this Tribunal and from the Federal Court of Appeal, is quite clear that the owner of an animal is responsible for the acts of his agents and will, by their actions, cause the movement of an animal. In this case, even though Reynolds did not actually move the bull himself, he directed or acquiesced to the movement of his bull from Hagerty Livestock to the Johnstone Auction Mart. Section 20(2) of the Act states:

(2) A person is liable for a violation that is committed by any employee or agent of the person acting in the course of the employee’s employment or the scope of the agent’s authority, whether or not the employee or agent who actually committed the violation is identified or proceeded against in accordance with this Act.

[38] With respect to element 4, the parties argue that the evidence leads to different and opposing conclusions. The Tribunal has found as a fact that the bull did at one time in 2008 have a RFID-CCIA approved tag. However, the Tribunal did not hear any conclusive evidence as to exactly when the bull lost that RFID-CCIA approved tag, given that it was not in place on April 6, 2009. The evidence of Reynolds is that he saw his bull tagged with an RFID-CCIA tags in March 2009 when he visited Hagerty Livestock. After that moment, no evidence was led by either party that the bull’s tag was definitely in the bull’s ear on the morning of April 3, 2009 nor that the bull’s tag was lost on, or looked for, or found on, the transport vehicle that took the bull to the Johnstone Auction Mart. Reynolds’ evidence is that either he became aware of the missing tag on April 4, 2009 (his statement of May 8, 2009) or on April 6, 2009 when he was informed by Agency officials after the sale. Reynolds did testify

that he groomed his animal prior to the sale but he makes no mention of whether he definitely confirmed the presence or absence of the tag at that time. Moreover, Agency witness Tingtved provided evidence that she found no holes in the bull's ears when she examined it on April 6, 2009, holes that might have supported a finding that the bull had very recently lost a tag. A reasonable conclusion from the evidence which the Tribunal accepts on the balance of probabilities as its finding of fact, is that the RFID-CCIA tag that had been applied to the bull's ear in 2008 had fallen out some time before its transport on April 3, 2009, such that the hole from that tag had already completely healed over. Therefore, at the time of its transport, the Tribunal finds that it is more likely than not, that the Black Angus Bull #70 at the time of its loading and transport on April 3, 2009 did not bear an approved RFID-CCIA approved tag.

[39] Final arguments from Reynolds indicated that he put his faith in individuals with more experience than he himself had and in the current tagging system of approved RFID-CCIA tags. Both let him down. That the current tagging system is letting producers down and exposing them to unfair legal liability has become a not uncommon refrain from applicants appearing before the Tribunal (see *Habermehl v. Canada (CFIA)* 2010 CART 017; and *Coward v. Canada (CFIA)* 2010 CART 018). The applicants in these cases argue, as did Reynolds in this case, that there is a significant problem with RFID-CCIA approved tags' permanency and, as such, producers of beef, bison and sheep are unfairly exposed to liability for violations of Part XV of the Regulations.

[40] Considering that a producer has to purchase, apply and verify the continuing and constant presence of a RFID-CCIA tag in the ear of each of his animals whenever they are moved off his farm or face liability for regulatory non-compliance, Part XV does appear to 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 Reynolds, and the Tribunal must interpret and apply the law to the facts of this case.

[41] The Act's system of monetary penalties (AMP), as set out by Parliament is, however, 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.

[42] When an AMP provision has been enacted for a particular violation, as is the case for section 176 of the Regulations, Reynolds has little room to mount a defence. The Tribunal accepts that any honest plea from an applicant alone — such as “I last saw the animal a while ago and it was tagged so I thought it would be tagged when it was transported because the tags are supposed to be permanent” — would not, in and of itself, be a permitted defence 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 Reynolds might raise. Given Parliament’s clear statement on the issue, the Tribunal accepts that such statements by Reynolds would not be permitted defences under section 18.

[43] The Federal Court of Appeal, in *Doyon v. Attorney General of Canada*, 2009 FCA 152, also points out that the Act imposes an important burden on the Agency. At paragraph 20, the Court states:

[20] Lastly, and this is a key element of any proceeding, the Minister has both the burden of proving a violation, and the legal burden of persuasion. The Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.

[44] Section 19 of the Act reads as follows:

19. *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[45] Moreover, in *Doyon*, the Federal Court of Appeal cautions this Tribunal and advises it to be “*circumspect in managing and analysing the evidence and in analysing the essential elements of the violation*” in an alleged AMP violation as follows, at paragraphs 27 and 28:

[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an actus reus which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him – or herself.

[28] Therefore, the decision-maker must be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.

[46] The Tribunal is guided by prior cases from the Federal Court of Appeal in the case of *Canada (CFIA) v. Magnowski* 2003 FCA 492, where the producer tagged his cattle on Mother's Day, 2002, and they were found 11 months later to be missing their approved tags and by the recent Tribunal case of *Coward v. Canada (CFIA)* 2010 CART 018, where the producer had tagged all his cattle just 18 days before they were found to be without RFID-CCIA approved tags. In both of those cases, as in this one, the Agency met the burden of proving that when the animals left their farm of origin or any other farm or ranch, they did not, on the balance of probabilities, bear approved tags, as is required by the Regulations. Without a doubt, as a first time seller of purebred Black Angus bulls, Reynolds was unfortunate, but the best evidence that Reynolds can rely on is that his bull had an approved tag sometime in the month before it was loaded for transport to the bull sale. Overall, the evidence supports the Agency's position that it has rightly issued a Notice of Violation to Reynolds under section 176 of the Regulations.

[47] The testimony of all witnesses in this case was professional and credible. In light of all the evidence and the applicable law, the Tribunal must conclude that the Agency has established, on a balance of probabilities, that Reynolds 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.

[48] The Tribunal wishes to inform Mr. Reynolds 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 14th day of March, 2011.

Dr. Donald Buckingham, Chairperson