

***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 pursuant to provision 177(1) 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*.

Mel Tindall, Applicant

-and-

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the Minister's decision dated April 30, 2007, and all oral and written submissions, the Tribunal by order, confirms the Minister's decision and orders the Applicant to pay 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 Monetary Penalties Act*.

The oral hearing was held in Peterborough, Ontario, on December 5, 2007.

Mrs. Karen Tindall made submissions on behalf of the Applicant.

The Respondent was represented by its co-solicitors, Ms. Catherine Villeneuve and Mr. Samson Wong.

The Notice of Violation #0607QC0176 dated February 5, 2007, alleges that the Applicant, on the 4th day of December, 2006, at St-Cyrille de Wendover, in the province of Quebec, committed a violation namely: "Did transport an animal that did not bear an approved tag" 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 or the carcass of an animal that does not bear an approved tag.

This is not a review of the facts of the violation but rather a review of the Minister's decision. The Minister determined the violation was committed.

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. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.
8. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.

At the outset of the hearing I established that both parties were in possession of the following documentation received by the Tribunal.

- Notice of Violation dated February 5, 2007;
- Letter from the Applicant dated March 7, 2007, requesting a Ministerial review;
- Letter from the Respondent dated May 15, 2007, enclosing the Minister's decision dated April 30, 2007;
- Letter from the Applicant dated May 24, 2007, requesting a review of the Minister's decision;
- Letter from the Respondent dated May 28, 2007, enclosing its record;
- Letter from the Applicant received by the Tribunal on July 17, 2007, with similar content to the Applicant's letter dated May 24, 2007.

These documents were then put on record as evidence for the purpose of the hearing.

The Applicant did not dispute the facts on which the Minister's decision was based, and no errors of law were alleged.

In his correspondence dated May 24, 2007, the Applicant pointed out there may have been possible injury or death in attempting to tag the animals and in these circumstances, he felt that a warning should have been issued, and not a fine.

Since this is not another review of the facts, but of the Minister's decision, I cannot take this submission into account. However, since the animals were picked up at a licenced tagging station, some assistance could have been requested.

Further, the Applicant could have refused to transfer the untagged animals.

Regarding the changing of a monetary penalty to a warning, this Tribunal has no jurisdiction to do so, the fine having been established by the Respondent in accordance with the *Regulations*.

The Tribunal wishes to point out to the Applicant that this is not a criminal or a federal offence but a monetary violation, and that he has the right to apply after 5 years to have the notation of this violation removed from the Minister's records in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which states as follows:

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 his subsection.

Dated at Ottawa this 5th day of February, 2008.

Thomas S. Barton, Q.C., Chairman