

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

DECISION

In the matter of an application for a review of the facts of a violation pursuant to subsection 139(2) of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Bill Toll, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following 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.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated April 15, 2004, alleges that the Applicant, on or about 8:10 hours on the 31 day of July, 2002, at Brinston, in the province of Ontario, committed a violation, namely: “did unload an animal to wit: three heifers, in a way likely to cause suffering”, contrary to subsection 139(2) of the *Health of Animals Regulations* which states:

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.

The undisputed evidence is that the Applicant used an electric prod on the faces of heifers while being unloaded at a slaughter facility.

The Applicant was unaware that an electric prod should not be used in this manner.

This, or the exercise of due diligence, does not provide a defence to the violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Monetary Penalties Act* which states as follows:

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 Respondent adduced evidence set out in Tabs 2, 3 and 4 of its report to prove that such a practice could likely cause injury or undue suffering to the animals.

Accordingly, the Tribunal is satisfied the Respondent has shown, on a balance of probabilities, that the Applicant committed the violation and has properly been issued a warning.

Dated at Ottawa this 20th day of July, 2004.

Thomas S. Barton, Q.C., Chairman