



Citation: Breton v. Canada (CFIA), 2010 CART 11

Date: 20100521
File: RTA-60374;
RT-1452

Between:

Bernard Breton inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

[Translation of the official French version]

Chairperson Donald Buckingham

In the matter of an application for a review of the facts of a violation of paragraph 138(2)(a) of the *Health of Animals Regulations*, alleged by the respondent, and requested by the applicant under paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

DECISION

[1] Following an oral hearing and a review of all oral and written submissions, the Tribunal, by order, determines the applicant did not commit the violation and is not liable for payment of the penalty.

Hearing held in Thetford Mines, Quebec,
January 28, 2010.

REASONS

Alleged incident and issues

[2] The respondent alleges that on September 4, 2007, in Ste-Hélène, Quebec, Bernard Breton inc. caused a compromised sow to be transported, which could not be transported without undue suffering during the expected journey, contrary to paragraph 138(2)(a) of the *Health of Animals Regulations*.

[3] The Tribunal must decide whether

- the respondent has established all of the elements required to support the impugned Notice of Violation.
- the respondent has established, more specifically and among other things, that Bernard Breton inc. caused the compromised sow to be transported from the farm to the abattoir.

Record and procedural history

[4] Notice of Violation No. 0708QC0249, dated February 5, 2008, alleges that on September 4, 2007, in Ste-Hélène, province of Québec, Bernard Breton inc. [TRANSLATION] “committed a violation, namely, caused to be transported by motor vehicle an animal that, by reason of infirmity, illness, injury, fatigue or any other cause could not be transported without undue suffering during the expected journey, contrary to paragraph 138(2)(a) 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] The respondent served the above Notice of Violation on Bernard Breton inc. on February 17, 2008. Under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, this is a serious violation for which the penalty is \$2,000.

[6] Paragraph 138(2)(a) of the *Health of Animals Regulations* reads as follows:

138. (2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

[7] In a letter dated March 5, 2008, Bernard Breton inc. requested a review by the Tribunal of the facts of the violation, as provided at paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

[8] Bernard Breton inc. also requested an oral review under subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The hearing was held on January 28, 2010, in Thetford Mines, in the province of Quebec. Bernard Breton inc. was represented by Charles Laflamme, Counsel. The respondent was represented by Louise Panet-Raymond, Counsel.

[9] On March 11, 2008, the respondent sent Bernard Breton inc. and the Tribunal its report (Report) on the Notice of Violation.

[10] In a letter dated March 13, 2008, the Tribunal asked Jean-Pierre Breton of Bernard Breton inc. to file any additional submissions in this case no later than April 14, 2008. The Tribunal did not receive any such submissions.

[11] In a letter dated January 19, 2010, the respondent requested leave to file two additional photographs of the pig that was the subject of the Notice of Violation in this case and a document published by the *Fédération des producteurs de porcs du Québec* entitled *Le Transport des animaux fragilisés – évaluation des animaux à risque* [Transporting Compromised Animals: Assessing Animals at Risk]. With the consent of Mr. Laflamme, those photographs and the document were admitted into evidence at the hearing.

[12] Given that the Notice of Violation in this case resulted from the same incident at issue in *Nadeau v. Canada (CFIA)*, 2010 CART 010, that the same counsel is representing both applicants and that the cases were to be heard consecutively on the same day, the Tribunal suggested to the parties that the evidence presented at the hearing be common to both cases. However, the Tribunal asked the parties to file their arguments separately for each case at the end of the hearing. The parties agreed to proceed in this manner.

Evidence

[13] The respondent's evidence includes the Report and the oral testimony of three witnesses at the hearing, namely Marie-Hélène Plamondon, Dr. Katie Bernard and Donato Fazio. Bernard Breton inc.'s evidence consist of request for review, dated March 5, 2008, and the testimony of two witnesses at the hearing, namely Michel Brière and Jean-Pierre Breton.

[14] During the hearing, with Mr. Laflamme's assent, the photographs and documents mentioned in the letter from the Canadian Food Inspection Agency (the Agency) dated January 19, 2010, were received in evidence, respectively numbered as Exhibit P-2 (in a bundle) and Exhibit P-3.

[15] The respondent produced the following documents, numbered as follows:

- No. 1: personal notes made by Ms. Plamondon on September 4, 2007;
- No. 2 (in a bundle): two photographs of the pig taken by Ms. Plamondon on September 4, 2007;

- No. 3: document published by the *Fédération des producteurs de porcs du Québec*, entitled *Le Transport des animaux fragilisés – évaluation des animaux à risque*.

[16] The applicant produced the following documents, labelled as follows:

- No. 4: printout from the *Centre informatisé de renseignements sur les entreprises du Québec (CIDREQ)*, the Quebec Enterprise Register Computer Centre, entitled “État des informations sur une personne morale [Status of Information on a Legal Person] – Ferme St-Georges inc.”, dated January 28, 2010;
- No. 5: printout from *CIDREQ*, entitled “État des informations sur une personne morale [Status of Information on a Legal Person] – 9038-7747 Québec inc.”, dated January 25, 2010;
- No. 6: printout from *CIDREQ*, entitled “État des informations sur une personne morale [Status of Information on a Legal Person] – Élevage la Bretagne inc.”, dated January 22, 2010;
- No. 7: letter from Mr. Hudon of the *Fédération des producteurs de porcs du Québec* to Mr. Laflamme, dated January 26, 2010;
- No. 8: letter from Jean-Pierre Breton, President of Bernard Breton inc., to Mr. Fazio of the Canadian Food Inspection Agency, dated January 15, 2008.

[17] At the close of the hearing, the Tribunal asked counsel to submit their written arguments before February 15, 2010, with regard to the evidence identifying the person responsible for having caused the sow in question to be transported, with the option to reply until February 22, 2010. In its deliberations, the Tribunal considered the written arguments received from the respondent on February 15, 2010, and from Bernard Breton inc. on February 11, 2010. Neither party filed a reply.

[18] The Report contains, among other things, a summary of the violation (pages 9 and 10), the identification of the person alleged to have committed the violation (page 3 and Tab 1 at page 4), the Receiving Slip from the abattoir describing the details of the load (Tab 2), a map showing the distance between the farm of origin and the abattoir (Tab 3), a photograph of the pig in question and the Ante-Mortem Screening Record (Tab 4), and the Inspector’s Non Compliance Report, completed by Dr. Jacques Vézina (Tab 5);

[19] The following evidence was not contested: (1) on September 4, 2007, a truck trailer transporting 31 sows and 12 piglets arrived at the L.G. Hébert et Fils Itée abattoir in Ste-Hélène-de-Bagot (Establishment No. 9) at or about 11:30 a.m.; and (2) the truck driver unloaded the trailer in the presence of Ms. Plamondon, the Agency inspector at Establishment No. 9.

[20] Ms. Plamondon testified at the hearing via teleconference. She confirmed to the Tribunal that she had been present the entire time during the unloading process of the trailer containing the 31 sows and 12 piglets on September 4, 2007. She was close to the truck when the driver, Mr. Nadeau, opened the door of the trailer. The pigs came out in a group, one after the other. Right in the middle of the pigs, Ms. Plamondon saw a sow that had a red mass on her rear. Ms. Plamondon immediately called the receiver to have that person call the veterinarian to examine the sow.

[21] Ms. Plamondon testified that she took photographs of the sow after it was unloaded on the morning of September 4, 2007. Three of those photographs are before the Tribunal, that is, Exhibit 2 (in a bundle), filed at the hearing, and the photograph at Tab 4 of the Report signed by Dr. Vézina, the veterinarian of Establishment No. 9 on September 4, 2007. The photographs clearly show a ball-shaped, blackish-red rectal prolapse protruding from the sow's anal orifice.

[22] The respondent also produced, as Exhibit 1, a page of personal notes signed by Ms. Plamondon, dated September 4, 2007, at 11:30 a.m. On a sheet of paper, she had written, [TRANSLATION] "Name: Jean-Guy Nadeau". She had also noted his address, date of birth, driver's licence number, truck licence plate number and the relevant facts, including [TRANSLATION] "registration number 1FVX8HCB0SL629203 Ferme St-Georges inc.; markings on the truck: Bernard Breton St-Narcisse, Lotb 475-6641; non-isolated prolapse with 30 sows and 12 piglets". However, Ms. Plamondon did not have her notes in front of her while giving her testimony by teleconference. In reply to a question from Ms. Panet-Raymond, Ms. Plamondon stated that she believed that the name "Nadeau" was marked on the truck. On cross-examination, when Mr. Laflamme asked Ms. Plamondon about the registration number of the truck trailer, Ms. Plamondon answered that she was unable to remember without referring to her personal notes taken on September 4, 2007.

[23] Dr. Vézina did not attend the hearing for this case. However, he did write the Non Compliance Report (Tab 5), dated September 4, 2007, which is included in the evidence. Dr. Vézina condemned the sow because of multiple abscesses and emaciation. The Non Compliance Report confirmed the sow's condition: [TRANSLATION] "a sow with a necrotic rectal prolapse placed in a truck with 30 sows and 12 piglets; hold number of sow DH 00". Dr. Vézina noted further in his report that [TRANSLATION] "during the *ante mortem* examination when the animals were received on September 4, 2007, at 11:30 a.m., upon unloading, a sow was found to have a necrotic rectal prolapse, that is, a grapefruit-sized, ball-shaped, blackish-red mass of tissue, which was protruding from the anal orifice. This compromised sow had been placed with the other non-compromised animals, that is, 30 sows and 12 piglets. During the *post mortem* inspection, the sow was identified with tattoo number 06813 DH 00.

[24] Dr. Bernard testified at the hearing as an expert witness for the respondent. She has been a veterinarian since 1995 and has worked for the Agency since 2000. She often acts as veterinarian on duty at Establishment No. 9, and it was established that she had access to Establishment No. 9's files on the September 4, 2007, incident. The Tribunal considered her to be an expert for the purposes of the hearing. In Dr. Bernard's professional opinion, the photographs taken by Ms. Plamondon and signed by Dr. Vézina show that the sow was suffering from a rectal prolapse that had occurred a number of days earlier. There was blood that had become dry and black. The reddish area was more recent and indicated a condition that could have developed while the animal was being transported.

[25] Dr. Bernard testified that, according to the standards for transporting compromised animals, an animal suffering from a rectal prolapse must be transported to the abattoir as soon as possible and no later than seven days after its condition is diagnosed. The document published by the *Fédération des producteurs de porcs du Québec*, entitled *Le Transport des animaux fragilisés – évaluation des animaux à risque*, (Exhibit 3) states at page 11 that an animal compromised because of a rectal prolapse must (within seven days) be sent directly to an abattoir in a separate compartment. Furthermore, Dr. Bernard stated that transporting a sow in such a condition could worsen its condition.

[26] Dr. Bernard also observed that the photographs showed that the sow was emaciated. The sow's rear was thin and abnormal. In Dr. Bernard's opinion, an animal in such a state should not be transported.

[27] Mr. Fazio has been working for the Agency and Agriculture Canada since 1981. For five years, he has been an investigator for the Agency, dealing with notices of violation. Mr. Fazio testified that in fall 2007, he had telephoned Mr. Nadeau about two incidents, including the one that occurred on September 4, 2007. During that telephone conversation, Mr. Fazio allegedly asked Mr. Nadeau the following question: [TRANSLATION] "Who is your employer?" According to Mr. Fazio's testimony, Mr. Nadeau replied, [TRANSLATION] "Bernard Breton inc."

[28] Mr. Brière was the first witness for Bernard Breton inc. He stated that he was the receiver on duty at Establishment No. 9 on September 4, 2007. He filled out the Receiving Slip (Tab 2) for the 31 sows and 12 piglets received at the L. G. Hébert et Fils ltée abattoir in Ste-Hélène-de-Bagot (Establishment No. 9) at or about 11:30 a.m. on September 4, 2007. Two of the sows were described as being [TRANSLATION] "crippled", meaning that they were compromised animals. Mr. Brière stated that the driver, whose name he did not know, had told him to fill out the Receiving Slip in the name of "Bernard Breton".

[29] Jean-Pierre Breton was the second witness for Bernard Breton inc. He is the president of that corporation. He is a businessman and shareholder in many corporations involved in agricultural activities. Mr. Breton told the Tribunal that Bernard Breton was his father, who died in 2008. Bernard Breton inc. is a corporation having a sole shareholder, that is, 2314-2482 Québec inc., of which Jean-Pierre Breton's mother is the primary shareholder. Founded in 1982, Bernard Breton inc. manufactures animal feed and finishes pigs weighing 25 to 124 kg. The corporation owns pickup trucks and trucks for transporting materials and animal feed. It does not own any trucks for transporting animals. On January 15, 2008, Jean-Pierre Breton, as corporation president, wrote to Mr. Fazio at the Agency, telling him that, [TRANSLATION] "after an internal check, I am able to confirm to you that Bernard Breton inc. does not have any trucks for transporting animals and furthermore that Bernard breton [sic] inc. does not transport live animals. Therefore, Jean-Guy Nadeau is not a truck driver for Bernard Breton inc." (Exhibit 8).

[30] Exhibit 4, the printout from the Québec Enterprise Register Computer Centre (*CIDREQ*) entitled “*État des informations sur une personne morale - Ferme St-Georges inc.*”, dated January 28, 2010, indicates that that corporation’s activities consist of pig breeding and the transporting of animals and that it has only two shareholders: Jean-Pierre Breton and Raymond Breton. Jean-Pierre Breton confirmed that he and his brother Raymond Breton are shareholders of Ferme St-Georges inc. He confirmed to the Tribunal that Ferme St-Georges inc. finishes pigs and owns two or three trucks for transporting animals. Mr. Breton knows Mr. Nadeau because the latter worked for Ferme St-Georges inc. for 15 years.

[31] Exhibit 5, the printout from *CIDREQ* entitled “*État des informations sur une personne morale - 9038-7747 Québec inc.*”, dated January 25, 2010, indicates that 9038-7747 Québec inc. is the parent corporation of the “Iberville” establishment, which has the economic activity of [TRANSLATION] “pig farm”. This printout shows that its sole shareholder is Philippe Breton Lemelin, its president is Jean-Pierre Breton and its vice-president/secretary is Raymond Breton. Jean-Pierre Breton confirmed that 9038-7747 Québec inc. “Iberville” is a corporation of which his nephew is the primary shareholder. 9038-7747 Québec inc. “Iberville” is a farrowing establishment for sows and piglets weighing less than six kilograms. All of the sows raised by that corporation are tattooed with the number 06813, which has been exclusively assigned to that corporation by the *Fédération des producteurs de porcs du Québec* since May 24, 2006 (Exhibit 7).

[32] Exhibit 6, the printout from *CIDREQ* entitled “*État des informations sur une personne morale – Élevage la Bretagne inc.*”, dated January 22, 2010, indicates that this corporation’s economic activity is pig breeding and that it has four shareholders, namely Dominique Breton, Marie-Andrée Breton L [sic], Jean-Pierre Breton and Raymond Breton.

[33] Jean-Pierre Breton testified that Élevage La Bretagne inc. is a corporation whose primary shareholders are his daughter and the daughter of his brother Raymond Breton. Élevage La Bretagne inc. is also a farrowing establishment for sows and piglets weighing less than six kilograms. All of the sows owned by this corporation are tattooed with the number 06713, which was assigned to it exclusively by the *Fédération des producteurs de porcs du Québec*.

[34] Mr. Breton stated that the decision to transport pigs—sows or piglets—is made independently and autonomously by the owner-managers of each corporation. Mr. Breton stated that he had never been informed that a sow with a rectal prolapse had been transported to an abattoir on September 4, 2007, until Mr. Nadeau reported to the head office after the September 4, 2007, incident.

[35] On cross-examination, Mr. Breton stated that to his knowledge, Bernard Breton inc. uses the company J.R. Berthiaume for all of its pig transportation needs. Mr. Breton confirmed that of Ferme St. Georges inc.’s three trucks, two are marked “Bernard Breton inc.” and the third is unmarked. They are marked in that way for “marketing” purposes. Mr. Breton also confirmed that all of the bills and payments sent to the above corporations are sent to the same head office, and that the executives are in charge of giving them to the appropriate corporations. That fact is corroborated by Exhibits Nos. 4, 5 and 6, which show that the addresses of the three corporations are the same, that is, 415 Principale Street, St-Narcisse, Quebec. Mr. Breton also stated that the payment for the pigs sold on September 4, 2007, was received at the head office.

Analysis and applicable law

[36] This Tribunal's mandate is to determine the validity of agriculture and agri-food administrative monetary penalties issued under the authority the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act). The purpose of the Act is set out at 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.

[37] The Act's Administrative and Monetary Penalties System (AMPS) as envisaged by Parliament is, however, very strict in its application. In *Doyon v. Attorney General of Canada*, 2009 FCA 152, the Federal Court of Appeal describes the AMPS 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.

[38] The Act does not contain a *de minimus* provision, nor does it permit the defence of due diligence. Section 18 of the *Agriculture and Agri-Food Administrative Monetary Penalties 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.*

[39] Where an AMPS provision has been enacted for a violation, the applicant has very little room to manoeuvre when mounting his or her defence. In this case, section 18 leaves Bernard Breton inc. with few means of defence. Given Parliament's clear statement on the issue, the Tribunal acknowledges that it cannot dismiss the Notice of Violation if, for instance, Bernard Breton inc. alleged having done its best to avoid causing the sow to be transported "without undue suffering" on September 4, 2007, because that would not be a permitted defence under section 18, and would not have the effect of exonerating the Bernard Breton inc.

[40] However, the Federal Court of Appeal also points out in *Doyon* that the Act imposes heavy burden on the respondent. 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.

[41] 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.

[42] The strictness of the AMPS reasonably must apply to both the applicant and the respondent. It is incumbent on the respondent to prove all the elements of the violation on a balance of probabilities.

[43] It is appropriate to reproduce here paragraph 138(2)(a) of the *Health of Animals Regulations*, C.R.C., c. 296 (*Regulations*):

138. (2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

[44] For there to be a violation of subsection 138(2)(a), the respondent must establish the following elements, as set forth at paragraph 41 of *Doyon*:

- 1. that the animal in question was loaded (or was caused to be loaded) or transported (or caused to be transported);
- 2. that the animal in question was loaded onto or transported on a railway car, motor vehicle, aircraft or vessel;
- 3. that the cargo loaded or transported was an animal;
- 4. that the animal could not be transported without undue suffering;
- 5. that the animal suffered unduly during the expected journey (“voyage prévu” in French);

- 6. that the animal could not be transported without undue suffering by reason of infirmity, illness, injury, fatigue or any other cause; and
- 7. that there was a causal link between the transportation, the undue suffering and the animal's infirmity, illness, injury or fatigue, or any other cause.

[45] Regarding elements 2 and 3, the Tribunal is satisfied from the evidence that a compromised sow was transported in the truck trailer driven by Mr. Nadeau on September 4, 2007.

[46] The respondent's evidence is convincing and sufficient to establish elements 4, 5, 6 and 7 on a balance of probabilities. The Tribunal acknowledges that Ms. Plamondon and Dr. Vézina observed a sow with a necrotic rectal prolapse, a grapefruit-sized, ball-shaped, blackish-red mass of tissue, which was protruding from the anal orifice of the compromised sow. There is also the matter of Ms. Plamondon's observations that the compromised sow was among the non-compromised animals. In his Non Compliance Report (Tab 5), Dr. Vézina noted that a compromised animal that may be transported without suffering should be kept separate from non-compromised animals. The document published by the *Fédération des producteurs de porcs du Québec*, entitled *Le Transport des animaux fragilisés – évaluation des animaux à risque* (Exhibit 3) states, at page 11, that an animal that is compromised owing to a rectal prolapse must (within seven days) be sent directly to an abattoir and placed in a separate compartment for transport.

[47] Consequently, the Tribunal accepts that the respondent has proven elements 4, 5, 6 and 7, as required by *Doyon*, above, as follows. Let us first accept that in the best of conditions, this sow could have been transported in its compromised state without undue suffering. However, that was not the case for the journey on September 4, 2007. The transport could not be made without undue suffering because the sow was already compromised and had not been placed in a separate compartment for the journey. The evidence shows that there was undue suffering during the expected journey because of the sow's existing infirmity. There was, therefore, a causal link between the transport and the sow's undue suffering and infirmity.

[48] Dr. Bernard, the expert witness, testified that the prolapse (the blackish area) had occurred a number of days earlier. Dr. Bernard stated that transporting a sow in that condition can worsen its condition. Dr. Bernard explained that the red portion of the prolapse was very recent. This is consistent with the conclusion that the transport worsened the condition. Furthermore, the document published by the *Fédération des producteurs de porcs du Québec*, entitled *Le Transport des animaux fragilisés – évaluation des animaux à risque* advises against transporting such an animal unless it is transported in a separate compartment, which was not the case here. That might have minimized the risk of worsening the sow's condition.

[49] With regard to element 1, the Tribunal has taken into account the Federal Court of Appeal's recent decision in *Canada (Attorney General) v. Denfield Livestock Sales Limited*, (2010 FCA 36) (A-575-08, dated February 3, 2010), which examined the meaning of the expression "cause the movement of" within the meaning of section 176 of the *Health of Animals Regulations*. It is true that here the concept is "cause to be transported" within the meaning of paragraph 138(2)(a) of the Regulations. However, the Court's *obiter dictum* at paragraph 18 raises the issue that is also relevant in this case, as follows:

[18] However, as regards the animals sold, he submits that the auctioneer, that is, the respondent, has possession and control of the animals. But that, it must be said, is not the issue under section 176. Rather, the question is whether the respondent has power and control over the movement of an animal such that it is the respondent that causes the animal's movement from the premises.

[50] The conclusion of the Court on this issue, in the situation of the auctioneer who was in the middle of a transaction between a seller, buyer and transporter, is at paragraph [30]:

[30] If, as I must, I consider the auctioneer's legal obligation vis-à-vis both the vendor and the purchaser to deliver the property sold, I cannot but conclude that the auctioneer, through the combined effect of the mandate to sell that is entrusted to him and the resulting sale, is a participant in the process who, within the meaning of section 176, "cause[s] the movement of" (faire retirer) the property sold from its place of business.

[51] In light of the Federal Court of Appeal's decision in *Denfield*, the Tribunal must answer the following question: Did Bernard Breton inc. have power and control over the movement of the compromised sow such that it was the one that caused the animal to be transported to the L. G. Hébert et Fils Itée abattoir in Ste-Hélène-de-Bagot (Establishment No. 9) on September 4, 2007?

[52] The respondent argued that Bernard Breton inc. was responsible for having "caused" the sow "to be transported" because of its involvement in the commercial process, which includes the management of payments for the sows and piglets slaughtered on September 4, 2007.

[53] Bernard Breton inc. argued that it was not involved in this matter, either directly or indirectly. It did not own any trucks for transporting pigs. The sow in question was not tattooed with the number assigned to Bernard Breton inc. The truck that transported the sow belonged to Ferme St. Georges inc., and the truck driver was an employee of Ferme St. Georges inc.

[54] The Tribunal notes that the compromised sow in question bore tattoo number 06813, the number assigned to 9038-7747 Québec inc., which allows the Tribunal to conclude that the sow came from the "Iberville" farm owned by 9038-7747 Québec inc. and was the property of that corporation. On that basis, the Tribunal is satisfied that 9038-7747 Québec inc. is responsible for having caused the sow to be transported.

[55] The Tribunal is also of the opinion that although Ferme St-Georges inc., 9038-7747 Québec inc. and Bernard Breton inc. have the same address, share the same administrative costs and sometimes do advertising for one another (signs on trucks), from a legal perspective they are separate legal persons and corporations. To argue that there is a link between all of these corporations because they all belong to members of the Breton family would require piercing the corporate veil and, without evidence that these corporations have never had individual and separate purposes, the Tribunal considers that such a finding would go too far, even further than the principle set out in *Denfield*. In the circumstances of this case, Bernard Breton inc. had no power or control over the movement of the compromised sow.

[56] The Tribunal dismisses the argument that the fact that Bernard Breton inc. shares premises and administrative costs with several corporations, even if they have shareholders in common, necessarily makes Bernard Breton inc. a participant in the process of the commercial management of payments for slaughtered animals within the meaning of *Denfield*. According to the respondent, it is reasonable to conclude that the payment for the animals transported and slaughtered on September 4, 2007, was made to Bernard Breton inc. Unfortunately, the respondent failed to provide satisfactory evidence on that point at the hearing or in the Report.

[57] The Tribunal notes that “Bernard Breton” was written on the Receiving Slip (Tab 2 of the Report) and mentioned in Ms. Plamondon’s personal notes (Exhibit 1). In both cases, “Bernard Breton” is not followed by “inc.”, while in Mrs. Plamondon’s notes, where she records the registration in question, she writes “Ferme St-Georges inc.” (emphasis added). The Tribunal’s impression is that in the mind of the public, the St-Narcisse farming operations are still thought of as being operated by the big boss, “Bernard Breton”, despite the fact that he is no longer living and that, for some time now, that corporation has been divided into many corporations with numerous shareholders.

[58] There is also contradictory evidence. Mr. Fazio stated that during a telephone call in fall 2007, Mr. Nadeau had told him that he was working for “Bernard Breton inc.” However, Jean-Pierre Breton stated under oath that Mr. Nadeau had been an employee of Ferme St-Georges inc. for 15 years and had never worked for Bernard Breton inc. Exhibit 8, a letter from Jean-Pierre Breton, supports that evidence. The Tribunal finds Mr. Breton’s direct testimony to be more convincing than the hearsay provided by Mr. Fazio.

[59] Section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* clearly provides that the Minister has the burden of proof for each element of the violation, 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.

[60] Again quoting from *Doyon*, at paragraph 20:

[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.

[61] The Tribunal finds that in this case, the respondent has failed to prove, on a balance of probabilities, the first element identified in *Doyon*. For a violation under paragraph 138(2)(c) to be maintained, the person named in the Notice of Violation, Bernard Breton inc., must be the person who “caused” the sow in question “to be transported”. According to the evidence filed, the Tribunal finds that Bernard Breton inc. had no power or control over the transport of the compromised sow on September 4, 2007.

[62] The Tribunal determines that Bernard Breton inc. did not commit the violation and is not liable for payment of the penalty.

Dated at Ottawa, this 21st day of May, 2010.

Donald Buckingham, Chairperson