



Citation: Trans-Porcs B.M. v. Canada (CFIA), 2010 CART 12

Date: 20100611  
Docket: RTA-60375;  
RT-1504

**Between:**

**Trans-Porcs B.M. 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 a violation, alleged by the respondent, of paragraph 138(2)(a) of the *Health of Animals Regulations*, and requested by the applicant, pursuant to 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 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 \$2,200.00 to the respondent within 30 days after the day on which this decision is served.

Hearing held in Drummondville, Quebec,  
January 29, 2010.

## REASONS

### Alleged incident and issues

[2] The respondent, the Canadian Food Inspection Agency (Agency), alleges that the applicant, Trans-Porcs B.M. inc. (Trans-Porcs), on March 12, 2008, in Yamachiche, Quebec, transported a compromised pig that 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 Agency has established all the elements required to support the impugned Notice of Violation in question.

### Record and procedural history

[4] Notice of Violation #0809QC0253, dated March 19, 2009, alleges that, on the 12<sup>th</sup> day of March 2008, in Yamachiche, in the province of Quebec, Trans-Porcs [*translation*] “committed a violation, namely: having 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 of 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 Agency served the above Notice of Violation on Trans-Porcs on April 3, 2009, under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. This is a serious violation for which the penalty is \$3,000.

[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 April 30, 2009, Trans-Porcs 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*.

[8] Trans-Porcs also requested an oral hearing, pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The hearing took place in Drummondville, in the province of Quebec, on January 29, 2010. Trans-Porcs was represented by its president, Richard Messier. The Agency was represented by Louise Panet-Raymond, counsel.

[9] On May 4, 2009, the Agency sent its report (Report) about the Notice of Violation to Trans-Porcs and the Tribunal.

[10] In a letter dated May 5, 2009, the Tribunal invited Trans-Porcs to file with it any additional submissions in this matter no later than June 4, 2009. The Tribunal did not receive any such submissions.

[11] In a letter dated June 1, 2009, the Agency made a request to file additional information concerning the Notice of Violation in question, namely: (1) a supplement to the inspector's non-compliance report, dated June 1, 2009, and signed by Dr. Nathalie Parent, the veterinarian who had examined the animal in question on March 12, 2008; and (2) corrections to the Report, including one changing the penalty amount requested by the Agency for the alleged violation from \$3,000 to \$2,200. At the start of the hearing, and with the consent of Trans-Porcs, that document and those corrections were allowed by the Tribunal.

### **Evidence**

[12] The Agency's evidence includes the Report, the corrections to the Report admitted on June 1, 2009, the supplement to the non-compliance report dated June 1, 2009, and the oral testimony of two witnesses at the hearing, namely Emilie Gagnon and Dr. Parent. Trans-Porcs's evidence includes its request for review dated April 30, 2009, and Mr. Messier's testimony at the hearing.

[13] 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 pages 1 and 2), the receiving slip from the abattoir describing unloading details (Tab 2), a map showing the distance between the farm of origin and the abattoir (Tab 3), the ante-mortem screening record (Tab 4), photographs of the pig in question (Tab 1, at pages 3 and 4; Tabs 5 to 9), *Arbre de décision – Transport des animaux fragilisés* [Decision Tree – Transportation of Compromised Animals], produced by the *Fédération des producteurs de porcs du Québec* (January 2007) (Tab 11); and the inspector's non-compliance report, completed by Ms. Gagnon and Dr. Parent (Tab 12), augmented by the supplement to the inspector's non-compliance report dated June 1, 2009, and signed by Dr. Parent.

[14] The following evidence was not contested:

- On March 12, 2008, Trans-Porcs loaded 223 pigs, including a compromised pig, transported the pigs for more than one hour, and unloaded them all at the Atrahan Transformation inc. abattoir at or about 1:30 p.m.
- The compromised pig was lame, bore the owner's tattoo (No. 12066), was placed in the holding pen after unloading and was given a holding tattoo (No. S-14-1). The pig was examined *ante mortem*. The pig was euthanized, and a *post mortem* examination was conducted on the carcass.

[15] The contested evidence in this matter was in answer to the following question: “What was the condition of the compromised pig before transportation, during transportation and upon arrival at the abattoir on March 12, 2008?”

[16] The Agency’s witnesses, Ms. Gagnon and Dr. Parent, provided written and oral evidence. Ms. Gagnon has been an Agency inspector since 2006. She was on site at the Atrahan Transformation inc. abattoir on March 12, 2008. She did not see the unloading of the pigs from the Trans-Porcs truck, but did see the pig in question in the holding pen shortly after its arrival. The pig was lying down, and stimulation was required to make it stand up. Ms. Gagnon observed the pig for 10 to 15 minutes and had the Agency’s veterinarian at the abattoir, Dr. Parent, called to examine the pig. Ms. Gagnon took photographs of the pig (Tabs 5 and 6) and wrote down her observations in a non-compliance report (Tab 12). In the “Observations” section of the report, Ms. Gagnon noted that, at 1:38 p.m., *ante mortem*, a pig was having [translation] “difficulty moving around normally because it was putting weight only on its right side. Its left fore and hind limbs were swollen. When the pig was immobile, its head was lowered, its breathing was rapid and loud, and it did not put any weight on the affected limbs.” Her observations are corroborated by photographs (Tab 5).

[17] Dr. Parent has been an Agency veterinarian for two years and had worked in private practice for more than 13 years before joining the Agency. She was at the abattoir on March 12, 2008. She examined the pig in question *ante* and *post mortem*. She completed the *ante mortem* screening record (Tab 4) and a portion of the inspector’s non-compliance report (Tab 12) on March 12, 2008. Her written observations agree with her testimony at the hearing. During the *ante mortem* examination, the pig was lying down. Dr. Parent had to help the pig to stand up. With great difficulty, she made it walk. Dr. Parent’s conclusion was that the pig was non-ambulatory and had had a chronic condition before leaving the farm of origin. Transportation had exhausted the pig. During the *post mortem* examination, all the joints of the carcass were swollen, as shown in the photographs: the left elbow (Tab 7), the left hock (Tab 7) and the right elbow (Tab 8). When the joints were opened, fluid flowed out, there was arthritis in the right hock and elbow, both elbows were fused and difficult to open, and there was pus in the right elbow joint (photographs at Tab 9). The cartilage of both elbows separated easily from the bone (osteochondritis dissecans). The carcass was condemned for multiple arthritis.

[18] In the supplement to the inspector’s non-compliance report, dated June 1, 2009, Dr. Parent provides details of her *ante* and *post mortem* examinations of the compromised pig. In that supplement, Dr. Parent confirms that, *ante mortem*:

- the pig was lying down when Dr. Parent entered the holding pen;
- Dr. Parent had to stimulate and help the pig to make it stand up;
- once stimulated to move forward, the pig hopped and then did not want to move any farther; and
- the pig favoured its left hind limb, and its left forelimb never touched the ground.

*Post mortem*, Dr. Parent observed that:

- the joints were very difficult to open;
- there was a large amount of scar tissue;
- the two elbows were completely fused;
- there was osteochondritis dissecans in the cartilage of both elbow joints, a condition that would have caused the pig considerable pain; and
- pus was present in the connective tissue, confirming the chronic nature of the condition.

[19] On the basis of her observations, Dr. Parent reached the following professional conclusion:

- the pig had grade 4 lameness (see *Arbre de décision – Transport des animaux fragilisés*, produced by the *Fédération des producteurs de porcs du Québec* [January 2007] [Tab 11]);
- the pig's condition was chronic;
- the pig's condition had not arisen solely during transportation; and
- the animal should not have been transported (see *Arbre de décision – Transport des animaux fragilisés*, produced by the *Fédération des producteurs de porcs du Québec* [January 2007] [Tab 11]).

[20] However, when Mr. Messier asked Dr. Parent, on cross-examination, if transporting the pig had aggravated its condition, Dr. Parent replied "no."

[21] Mr. Messier testified for Trans-Porcs. He is a business person, a shareholder and the president of the applicant. Mr. Messier told the Tribunal that Alain Leclerc was working for the company on March 12, 2008, and that it was he who had transported the pig in question. Upon returning from the abattoir, Mr. Leclerc gave Mr. Messier a report on the incident of March 12, 2008. On the basis of the information provided by Mr. Leclerc, Mr. Messier testified that the pig in question was in the last group of pigs loaded onto the truck on that day. The pig, one of 27 in that group, entered the truck at about 11 a.m. Mr. Messier told the Tribunal that if the pig had not been able to walk, it would not have been capable of going up the truck ramp. According to the information given to Mr. Messier by Mr. Leclerc, the pig had not been suffering on the farm or during loading, but its lameness worsened during the journey. The pig did not have grade 4 lameness (see *Arbre de décision – Transport des animaux fragilisés*, produced by the *Fédération des producteurs de porcs du Québec* [January 2007] [Tab 11]) when it was loaded onto the truck on March 12, 2008. However, when the Agency's counsel, Ms. Panet-Raymond, asked Mr. Messier, on cross-examination, if he believed that the pig had been limping before it was loaded on March 12, 2008, Mr. Messier replied that the pig had certainly been limping and that Mr. Leclerc had probably had to stimulate it to make it enter the truck.

## **Analysis and Applicable Law**

[22] 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.*

[23] The Act's system of monetary penalties (AMP) 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 AMP system as follows, in 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.*

[24] The Act does not contain a *de minimus* provision, nor does it permit the defence of due diligence. 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.*

[25] Where an AMP provision has been enacted for a particular violation, the applicant has very little room to manoeuvre when mounting his or her defence. In this case, section 18 leaves Trans-Porcs 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 Mr. Leclerc, the driver of the Trans-Porcs truck, had tried his best to avoid a situation that would aggravate the pig's condition. By itself, such evidence, which was not

presented in this case anyway, could not be considered to be a defence authorized by section 18 and could not exonerate Trans-Porcs.

[26] However, the Federal Court of Appeal also points out in *Doyon* that the Act places a heavy burden on the respondent. In 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.*

[27] 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.*

[28] The strictness of the AMP regime reasonably must apply to both the applicant and the Agency. Consequently, the Agency must prove all the elements of the violation, on a balance of probabilities.

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

**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;...*

[30] For there to be a violation of paragraph 138(2)(a), the Agency must establish the following elements, as listed in 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.

[31] As to elements 1, 2 and 3, the Tribunal is satisfied that, according to the Agency's evidence, which was uncontested by Trans-Porcs, Mr. Leclerc, a Trans-Porcs employee, loaded and transported the pig in question in a Trans-Porcs truck on March 12, 2008.

[32] As to elements 4, 5, 6 and 7, the Agency's evidence is convincing and suffices to prove each element, on a balance of probabilities. The Tribunal recognizes that Ms. Gagnon and Dr. Parent observed *ante mortem* that the pig was compromised and was having difficulty getting up and moving around by itself and that it could not put full weight on any of its four legs. Dr. Parent's *post mortem* observations confirm, without question, the pig's motor difficulties. The Tribunal is satisfied that the pig had been suffering and limping for some time, even before the pig was loaded onto the truck.

[33] Given the pig's condition, could the pig have been transported that day without undue suffering, and was that undue suffering, if there was any, incurred during the expected journey? In *Canada (Attorney General) v. Porcherie des Cèdres Inc.*, 2005 FCA 59, the Federal Court of Appeal indicates that undue suffering is unwarranted, unjustified or undeserved suffering (paragraph 26). In *Doyon*, the Federal Court of Appeal indicates that undue suffering can be imposed even on healthy animals if they are exposed to risks during transportation (paragraph 34). In this case, the pig could not have been transported without undue suffering, because the pig had already been suffering from significant lameness. The Tribunal is satisfied that the pig had had lameness that was at least grade 3 before it was loaded onto the truck. The *Arbre de décision – Transport des animaux fragilisés*, produced by the *Fédération des producteurs de porcs du Québec* (January 2007) (Tab 11), states [translation], "if there is a risk that an animal will become non-ambulatory during transportation, that animal must not be transported. Load these pigs last, and unload them first. Separate them from healthy pigs, and protect them adequately from cold. If it is impossible to meet these conditions, euthanize the animal on the farm." Thus, a pig with grade 3 lameness must be transported with great care.

[34] In this case, the pig was not transported without undue suffering. Upon the pig's arrival at the abattoir, the animal was observed to have grade 4 lameness. As it is unlikely that the pig had already been suffering from grade 4 lameness on the farm of origin (given that it had walked up the truck ramp), that deterioration resulted from transportation to the abattoir. If the pig had already been suffering from significant lameness on the farm of origin, according to the Court's reasoning in *Cèdres*, the Tribunal finds that it was very unreasonable to have transported the pig, since the industry prohibits producers and transporters from transporting a pig in such a condition. It is assumed that transporting an animal in such a condition will undoubtedly cause undue suffering. However, if the deterioration in the pig's condition occurred during transportation, the Court's reasoning in *Doyon* would apply, and the Tribunal is satisfied that the Agency has proven elements 4, 5, 6 and 7, as required in *Doyon*, above.



[35] In both cases, the evidence demonstrates that there is a clear causal link between the transportation, the undue suffering and the infirmity of the pig. Consequently, the Tribunal concludes that the Agency has, on a balance of probabilities, proven all the essential elements of the violation. The Tribunal, by order, determines that Trans-Porcs committed the violation and orders it to pay the respondent a monetary penalty of \$2,200 within 30 days after this decision is served.

[36] However, the Tribunal wishes to inform Trans-Porcs that this violation is not a criminal offence. After five years, Trans-Porcs 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 11<sup>th</sup> day of June, 2010.

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Dr. Donald Buckingham, Chairperson