

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

**DECISION**

In the matter of an application for a review of the facts of a violation of subsection 141(1) of the *Health of Animals Regulations*, alleged by the Respondent and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

**Steve Ouellet, Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**MEMBER H. LAMED**

**Decision**

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

## REASONS

[2] The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-food Administrative Monetary Penalties Regulations*.

[3] The oral hearing was held in Rivière-du-Loup, Quebec, on October 9, 2009.

[4] The Applicant represented himself.

[5] The Respondent was represented by its solicitor, Mr. Réal Doutre.

[6] Some pages missing from the Non-compliance report prepared by the Respondent's inspector were produced at the beginning of the hearing, with the Applicant's consent.

[7] Notice of violation number 0708QC0112 dated August 31, 2007, alleges that the Applicant, at or about 14:30 hours on February 26, 2007, at Le Bic, in the province of Quebec, committed a violation, namely: "Avoir transporté des animaux d'espèces différentes ou de poids ou d'âge sensiblement différent à bord un véhicule à moteur sans les avoir séparés" contrary to subsection 141(1) of the *Health of Animals Regulations*.

[8] Subsection 141(1) of the *Health of Animals Regulations* reads as follows:

*Subject to this section, no person shall load on any railway car, motor vehicle, aircraft or vessel and no carrier shall transport animals of different species or of substantially different weight or age unless those animals are segregated.*

## The evidence

[9] The Respondent called to testify Jean-Luc Michaud, an animal inspector with 26 years of experience, who received training on the transportation of animals I and II. It was Mr. Michaud who issued the Notice of Violation.

[9] Mr. Michaud testified that on February 26, 2007 he was at the animal auction in Le Bic for a period of two hours to inspect the animals when they arrived. He said that he was at the unloading dock and saw the truck and the attached trailer belonging to the Applicant, Mr. Ouellet, arrive at the dock. Mr. Michaud said that when the truck and trailer were parked at the dock, he looked in the rear compartment of the trailer and saw a cow among the calves that were there.

[10] Mr. Michaud testified that calves are normally loaded into the front compartment of a trailer and cows are loaded into the rear compartment. In response to the Tribunal's question as to whether this distribution is a requirement or directive under the Recommended Code of Practice for the Care and Handling of Farm Animals, he replied in the negative. Mr. Michaud also said that he had found that the litter in the rear compartment of Mr. Ouellet's trailer had reached its absorption limit (Inspector's non-compliance report, Tab 3, Respondent's report). No Notice of Violation was issued regarding the adequacy or inadequacy of the litter. The fact that all the animals loaded in the trailer arrived at the auction in good health is not at issue.

[11] Mr. Ouellet testified that the cow that Mr. Michaud saw leaving the rear compartment with the calves did not travel with the calves. If this had been the case, Mr. Ouellet said, "There would have been deaths." Mr. Ouellet said that the cow in question, which was smaller than the other cows that he was transporting at the same time, had been loaded into the compartment in the middle of the trailer. She was separated from the cows in the front of the trailer by a fixed 16-foot high door, and also separated by a 36-inch moveable barrier for calves loaded into the rear compartment. This compartment is sealed with an exterior door that is opened when the trailer backs into the unloading dock.

[12] Mr. Ouellet testified that when he arrived at the auction on the day in question, he had to wait in the yard between 10 and 15 minutes before he was able to unload the cattle at the unloading dock. While waiting to enter the dock, Mr. Ouellet said that he removed the moveable barrier separating the cows and calves. Once the trailer reached the dock and the rear exterior door was opened, all the animals in the rear compartment were standing up, ready to leave, and none of the calves showed any signs of having been trampled or having come into contact with the cow. The Respondent did not contradict this evidence. Mr. Ouellet said that the cow had been with the calves between three and five minutes before the exterior door was opened. Mr. Ouellet said that Mr. Michaud told him that the manure was liquid, but never raised the issue of the cow that was exiting at the same time as the calves.

### **Analysis**

[13] The evidence is incontrovertible that the animals were all standing when the exterior door of the rear compartment was opened, and the calves showed no signs of trampling. These facts tend to corroborate Mr. Ouellet's testimony that the cow was not loaded with the calves and did not travel with them, because if this had been the case, some of the small calves would have been injured or would have died. The Tribunal accepts Mr. Ouellet's testimony that he raised the barrier between the rear and middle compartments while he was waiting in the yard for a spot at the dock, and that the cow had been among the calves for three to five minutes.

[14] The Respondent claims that the meaning of the term "transport" in subsection 141(1) of the *Health of Animals Regulations* covers all phases of transport, including unloading. It supports this contention by citing the decision of *Les Fermes G. Godbout v. CFIA* (RTA #60172) (appealed to the Federal Court of Appeal 2006 FCA 408 but not on this point) where the Tribunal said that the term "expected journey" in subsection 138(2) of the *Health of Animals Regulations* ends with unloading.

[15] The Tribunal notes that subsection 141(1) does not contain the term "expected journey." Subsection 141(1) establishes the obligation to segregate animals of different species or of substantially different weight or age when loading or transporting them. Even if it agrees that the term "transport" must also include unloading, by analogy within the meaning of the term "expected journey," the Tribunal cannot accept that "transport" consists only of unloading, which would be the result of accepting the Respondent's contention. The Tribunal does not agree that raising the barrier between the two compartments a few minutes prior to unloading, when the vehicle and trailer had arrived at their destination, and that as a result, a cow was left standing among calves for this very short period of time, is equivalent to "transport" within the meaning of subsection 141(1). This interpretation is too narrow and rigid, especially given the draconian nature of the system of monetary penalties under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, mentioned by Justice Létourneau in section 21 of the recent *Michel Doyon v. Attorney General of Canada* 2009 FCA 152 decision.

[16] Consequently, the Tribunal finds that the Respondent did not establish that the cow was loaded or transported with the calves and therefore did not establish the essential element of the violation.

Dated at Montréal this 25th day of October, 2009.

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H. Lamed, Member