

**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 176(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*.

Lawrence Dool, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$500.00 to the Respondent within 30 days after the day on which this decision is served.

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REASONS

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

The oral hearing was held in Edmonton on September 12, 2003.

The Applicant, assisted by his wife, made his own submissions.

The Respondent was represented by its solicitor, Mr. Marc Deveau.

The Notice of Violation dated May 5, 2003, alleges that the Applicant, on the 19th day of March, 2003, at Ponoka, in the province of Alberta, committed a violation namely: “remove or cause the removal of an animal not bearing an approved tag from its farm of origin”, contrary to subsection 176(1) of the *Health of Animals Regulations* which states:

176(1) Subject to section 183, no person shall remove, or cause the removal of, an animal from its farm of origin unless the animal bears an approved tag.

The undisputed evidence is that two roan cows owned by the Applicant and his wife were removed from their farm of origin not bearing approved tags, although they were bearing the registered cattle brand “T over E, left shoulder”, which has been in the family for over 50 years. The Applicant and his wife had approved tags in their possession, and in usual circumstances, did properly tag their animals.

The Applicant and his wife explained the reason these cows were not tagged was two-fold.

Firstly, they were extremely wild and dangerous to work with, having caused severe damage to their property and having had their tags ripped from their ears.

Secondly, the Applicant was recovering from major abdominal surgery hence unable to be as aggressive as he used to be with his cattle. A medical report confirms the Applicant’s physical condition.

The Applicant summed up his situation by saying “I will not endanger my life”.

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The Tribunal is very sympathetic to the plight of the Applicant. There is no question that

due diligence was used to attempt to tag the cattle.

However, these violations are ones of strict liability, meaning that a person cannot use as a defence the fact that he tried in vain to prevent the violation from occurring. This principal is set out in subsection 18(1) of the *Agriculture and Agri-Food Administrative 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.

Accordingly, the Tribunal has no alternative but to confirm the Respondent has established the Applicant committed the violation, and is liable for payment of the penalty established in the *Regulations* and set out in the Notice of Violation.

At the hearing, allegations were made that the Applicant and his wife were treated unfairly by a representative of the Respondent, that the Respondent's enforcement policy was not explained to them, and that the representative was belligerent and hung up the phone on them. The Tribunal points out it has no authority over the alleged conduct of persons involved in enforcing the legislation, its jurisdiction being limited to determining whether or not a violation has occurred, and if so, whether the penalty has been properly established in accordance with the *Regulations*.

Dated at Ottawa this 18th day of September, 2003.

Thomas S. Barton, Q.C., Chairman