

**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*.

Bill Prokuda, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant did not commit the violation and is not liable for payment of the penalty.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated May 5, 2003, alleges that the Applicant, on the 31st day of March, 2002, at Clyde, 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.

While inspecting cattle at the Livestock exchange in Clyde, Alberta, the Respondent found three of nine cattle owned by the Applicant were not bearing approved tags. The Applicant acknowledged the cattle were born on his farm.

The violation in subsection 176(1) relates to the circumstances at the time of removal from the farm of origin, and not to some subsequent period.

The Applicant states “all our animals are properly tagged when they leave our farm” and implies the tags were lost when the calves were unloaded at the auction mart.

The Respondent provides no evidence to contradict this evidence of the Applicant.

The Respondent has failed to establish, on a balance of probabilities, that the calves in question were not bearing approved tags when they were removed from the Applicant’s farm.

Dated at Ottawa this 24th day of September 2003

Thomas S. Barton, Q.C., Chairman