



Citation: 473629 *Ontario Inc. v. Canada (Canadian Food Inspection Agency)* 2014 CART 29

Date: 20141024
Docket: CART/CRAC-1734

Between:

473629 Ontario Inc. (dba Little Rock Farm Trucking), Applicant

- and -

Canadian Food Inspection Agency, Respondent

Before: **Chairperson Donald Buckingham**

With: **Mr. Edward Oldfield, counsel for the applicant; and
Ms. Jacqueline Wilson, counsel for the respondent.**

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts of a violation of paragraph 143(1)(d) of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

Following an oral hearing and review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal, by order, determines that the applicant, 473629 Ontario Inc. (dba Little Rock Farm Trucking), did not commit the violation set out in Notice of Violation #1213ON0370, dated June 19, 2013, concerning events that took place on September 30, 2012, and is not liable for payment of a penalty to the respondent, the Canadian Food Inspection Agency.

The hearing was held in Kitchener, ON,
Monday, May 5 to Wednesday, May 7, 2014.

REASONS

1. Alleged Incidents and Issues

[1] This case, one in a series of three matters between the parties heard by the Tribunal in May of 2014, is about the life and death of spent hens en route to a Canadian slaughter house. The present case arises from the discovery of 425 deceased chickens on October 1, 2012, aboard a trailer driven by personnel of 473629 Ontario Inc., a company carrying on business as Little Rock Farm Trucking (LRFT). The deceased chickens were discovered by employees of chicken processor Maple Lodge Farms (MLF) and Canadian Food Inspection Agency (Agency) officials during the unloading of the trailer. As a result, the Agency on June 19, 2013, issued Notice of Violation #1213ON0370 to LRFT alleging that LRFT had transported or caused to be transported an animal in a manner that injury or undue suffering was likely to be caused to the animal by reason of undue exposure to weather.

[2] Paragraph 143(1)(d) of the *Health of Animals Regulations* (HA Regulations) states:

No person shall transport or cause to be transported any animal in a railway car, motor vehicle, aircraft, crate or container if injury or undue suffering is likely to be caused to the animal by reason of ... (d) undue exposure to the weather.

[3] The role of the Tribunal is to determine whether the Agency has established all the elements required to support the impugned Notice of Violation, specifically if LRFT as a poultry transporter:

- transported or caused the transport of the poultry in question; and
- is responsible for the poultry's injury or undue suffering by reason of undue exposure to the weather (or the likelihood thereof), by virtue of the way it handled the poultry while in its care and control.

[4] Furthermore, if the Tribunal finds that the Agency has established all of the elements required to support the impugned Notice of Violation, the Tribunal must determine whether the Agency has proved that the amount of the penalty is as authorized under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act) and the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations).

2. Procedural History

[5] The Tribunal heard three cases between the parties in May of 2014. While each case arose from its own request for review and will result in its own decision, the Tribunal

ordered, with the parties' consent, that the cases be heard together. Below, the procedural history for each case is reproduced individually and also, where appropriate, collectively.

2.1 Case #1 - The September Incident (CART/CRAC-1734)

[6] This first case arises from Notice of Violation #1213ON0370, dated June 19, 2013, alleging on September 30, 2012, between Lacolle, Quebec and Brampton, Ontario, LRFT [*verbatim*] "committed a violation, namely: Transport or cause to be transported an animal with undue exposure to weather; to wit - 6720 fowl transported to Maple Lodge Farms on trailer D-73, including 425 birds found dead on arrival contrary to section 143.(1)(d) 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*." This matter is referred to throughout these reasons as "the September Incident."

2.2 Case #2 - The October Incident (CART/CRAC-1735)

[7] The second "sister" case arises from Notice of Violation #1213ON0388, dated June 19, 2013, which alleges that on October 29, 2012, between Fort Erie and Brampton, Ontario, LRFT [*verbatim*] "committed a violation, namely: Transport or cause to be transported an animal with undue exposure to weather; to wit - 7680 fowl transported to Maple Lodge Farms on trailer DEL-64, including 537 birds found dead on arrival contrary to section 143.(1)(d) 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*." This matter is referred to throughout these reasons as "the October Incident."

2.3 Case #3 - The January Incident (CART/CRAC-1737)

[8] The third "sister" case comes from Notice of Violation #1314ON0509, dated June 19, 2013, which alleges that on January 30, 2013, between Lacolle, Quebec and Brampton, Ontario, LRFT [*verbatim*] "committed a violation, namely: Transport or cause to be transported an animal with inadequate ventilation: to wit - 7680 fowl transported to Maple Lodge Farms on trailer DEL-62, including 583 birds found dead on arrival contrary to section 143.(1)(e) 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*." This matter is referred to throughout these reasons as "the January Incident."

2.4 Common Procedural History of All Three Cases

[9] Each of the three Notices of Violation was deemed to have been served on LRFT by the Agency on June 19, 2013. Pursuant to section 4 of the AMP Regulations, each violation was classified as a “serious violation” carrying an assessed penalty of \$7,800 each.

[10] In three letters, each dated June 21, 2013, sent by fax and registered mail to the Tribunal, LRFT, through its owner and secretary treasurer, Mr. Mark Reuber (Reuber), requested a review by the Tribunal of the facts of each of the three violations in accordance with paragraph 9(2)(c) of the AMP Act.

[11] By letter dated August 2, 2013, Mr. Edward Oldfield (Oldfield), legal counsel for LRFT set out reasons for his client’s requests for review. Tribunal staff confirmed with Oldfield that LRFT wanted the Tribunal to review its files in English via an oral hearing at a location in Southwestern Ontario. On August 19, 2013, the Agency sent a copy of the report (Report) for each Notice of Violation to LRFT and to the Tribunal. The Tribunal received the Reports on August 20, 2013.

[12] In a letter dated August 20, 2013, the Tribunal invited LRFT and the Agency to file any additional submissions by September 19, 2013. In a letter dated September 18, 2013, Ms. Jacqueline Wilson (Wilson), legal counsel for the Agency, filed one document (a generic version of the Maple Lodge Farms’ Load Condition Report) as evidence to be considered in each case. The oral hearing was held on May 5, 6 and 7, 2014, in Kitchener, Ontario.

3. Evidence

[13] At the start of the hearing the Tribunal ordered (with the consent of all parties) the three cases be heard together with the common understanding that, where necessary, parties would indicate to which case (or combination of cases) evidence applied.

[14] In each case the Agency written record included the relevant Notice of Violation, a generic version of the Maple Lodge Farms’ Load Condition Report, and the relevant Agency Report dated August 19, 2013. The LRFT Poultry written record in each case included the relevant Request for Review dated June 21, 2013, and a further explanation of the fact and arguments relating to each incident set out in Oldfield’s August 2, 2013 letter to the Agency.

[15] The Tribunal heard *viva voce* evidence from witnesses as summarized in Table 1:

Table 1 WITNESSES				
Witness Name	Job Title	Area of Expertise	Evidence Applicable To	Party Calling Witness
Dr. Anco Farenhorst	Doctor of Veterinary Medicine	Chicken Pathology	All Incidents	the Agency
Dr. Andrew Gomulka			September and January Incidents	
Dr. Gurcharan Sandhu			October Incident	
Mr. Bruce Freiburger	Agency Inspector	-	September Incident	
Mr. Johnny Vavala			October Incident	
Mr. Peter Devellis			January Incident	
Mr. Mark Reuber	Owner & Secretary Treasurer of LRFT	-	All Incidents	LRFT

[16] Exhibits in Table 2 below were tendered as evidence during the hearing:

Table 2 EXHIBITS			
Exhibit Number	Exhibit Title	Evidence Applicable To	Party Tendering Exhibit
1	Legible Copy of Tab 4 of Agency Report	October Incident	the Agency
3	Canadian Agri-Food Research Council "Recommended Code of Practice for the Care & Handling of Farm Animals-Transportation"	All Incidents	
4	Crate Configuration in a Trailer For Fowls	September and January Incidents	
2	MLF Load Condition Report	October Incident	LRFT

3.1 Evidence Common to All Three Incidents – General

[17] Common to all three incidents was the type of animal and general process by which they were transported. Each witness contributed evidence informing the transportation of hens from American farms to the MLF slaughter house during the relevant period.

[18] Reuber of LRFT explained generally how the entire process unfolds from start to finish. Farenhorst for the Agency explained how the humane transportation of animals is to be carried out according to certain industry/government-developed guides and standards.

The other five witnesses explained the process from the unloading point to the processing of the chickens at the abattoir. The rules set out in Part XII of the HA Regulations require the entire process be completed in a humane way.

[19] All chickens hauled in the September Incident, the October Incident and the January Incident (Incidents) were “spent hens” which means they were female chickens, approximately 17 months of age, and at the end of their productive lives as egg layers. In each Incident, the layers had been utilized in farming operations in the north-eastern United States and were transported to Canada for slaughter.

[20] General industry evidence demonstrated that U.S. producers keep layers in production for slightly longer than Canadian producers. Due to their continual production of eggs, spent hens often have minimal feathering, depleted calcium reserves, and typically weigh around four pounds. Owners of spent hens often seek out buyers who will slaughter and utilize the hens for any value.

[21] The spent hens in each Incident were being sold to MLF by U.S. operators at a price of one cent per pound (Tab 3 of Agency Report). LRFT was hired by MLF to transport the fowl using MLF-owned trailers. All witnesses acknowledged that some hens would die during transport in each Incident given the stage of hen life, general hen condition, and hauling distances. Testimony revealed that a hen death rate of over four percent was a tipping point where Agency personnel typically initiate an investigation concerning the circumstances of death.

[22] In each of the Incidents, the percentage of dead chickens exceeded four percent. The total of deceased hens found during unloading in each Incident was:

- September Incident 425 deceased of 6720 (6.3%);
- October Incident 537 deceased of 7680 (7.0%); and
- January Incident 583 deceased of 7680 (7.6%).

[23] The evidence also revealed that whether dealing with spent hens or any other type of chicken, the process of taking chickens from their farm of origin to a slaughter house for processing generally follows these steps:

1. Processor and the producer enter into negotiations for the sale and delivery of the birds from the producer’s barns to the processor’s slaughter house.
2. Chickens are collected, caught, placed into cages onto trucks, and transported to the destination.
3. Upon arrival at slaughter house, load is weighed and placed in waiting queue for processing.

4. When processing time comes, chickens are removed from trailer, brought into the slaughter house and then onto the killing floor.

[24] To complete and oversee this transfer, many players are involved. At one end of the process, the producer is typically present when a crew of chicken loaders arrive. The loaders catch and load the chickens into crates. As the crates are filled and loaded onto a trailer, the driver moves his truck ahead until his trailer is completely filled. Once fully loaded, the driver secures the load (usually by tarping it) and drives the chickens to the processor, which can be a few kilometres to several hundred kilometres away.

[25] At the processor site, the trailer of chickens awaits its turn for processing (up to 12 hours or more in some cases). Then the cages are removed from the trailer and brought inside the abattoir. Once inside, the chickens are removed from cages where they are slaughtered and processed. The chickens are inspected both *ante mortem* and *post mortem* for health and humane transportation concerns. If any dead or infirmed chickens are found, they are counted and documented in a standard report. When necessary, enforcement action is commenced by the Agency against the entity who violated the health or humane transportation regulations during any part of the process.

3.2 Evidence Common to All Three Incidents - Expert Testimony of Farenhorst

[26] Dr. Anco Farenhorst (Farenhorst), an Agency veterinarian, was qualified as an expert in the application of policies for the humane transportation of animals and in the interpretation of scientific evidence regarding the transportation of fowl. He gave evidence pertinent to all three Incidents.

[27] Farenhorst informed the Tribunal he was not on site for any of the three Incidents, but had reviewed all documentation arising from each case in preparation to give evidence. He told the Tribunal that animal handling and transport codes exist and have been developed by multi-party stakeholders including regulators, provincial associations, transporters, industry organizations, scientific researchers and educators.

[28] The codes were designed to provide standards for parties participating in the care, handling and transportation of animals. While the codes do not have legal status, they do lay out common standards for all parties. Two codes relevant to all three Incidents are the following documents of the Canadian Agri-Food Research Council:

- Recommended Code of Practice for the Care and Handling of Pullets, Layers and Spent Fowl: Poultry – Layers” (Poultry Code); and
- Recommended Code of Practice for the Care and Handling of Farm Animals – Transportation” (Transportation Code).

[29] Farenhorst explained a spent hen is a chicken that has completed its production of laying eggs. Laying hens are brought into the production process at about 19 weeks and remain in production for a full year in Canada (the duration is slightly longer in the U.S.).

[30] In Eastern Canada and the Eastern U.S., after this production period is over, the spent hens are then sent for slaughter while in Western Canada they are simply disposed of. Farenhorst testified that the longer hens remain in production, the more spent they become.

[31] At the end of laying, Canadian birds are very fragile and U.S. birds even more so because they typically use more of their body resources, lose their feathers through molting, and must be handled with special care. Farenhorst told the Tribunal that the older birds will also have bones that are more fragile as their calcium stores have been transferred to egg shells throughout their productive laying lives.

[32] Farenhorst's expert opinion was that such birds are particularly susceptible to transportation stress resulting from:

- missing tarps;
- exposure to wet weather (particularly when there is a cool or cold ambient outside temperature at the bottom of, or below, the 13° to 28°C comfort range for chickens); and
- poor feathering.

[33] Transportation of hens under those conditions would be, in his opinion, contrary to the standards set out in the Poultry Code, paragraph 7.2.2 and Transportation Code, paragraph 2.2.1, which state:

7.2.2 The driver of the vehicle is responsible for the care and welfare of all birds during transport. The driver should take into consideration climatic conditions and adjust coverings to allow birds to warm up or cool off, as required.

2.2.1 The following factors are associated with increased risk for animals in transit: (a) long-distance transportation, from loading at the place of origin, including poultry catching, to unloading at final destination; (b) low economic value of animals being transported; (c) adverse weather conditions; and, (d) other factors that compromise the ability of animals to be transported without suffering – e.g., pregnant, very young or old animals.

[34] Farenhorst agreed that:

- MLF was a major processor of spent fowl;

- the two referenced codes permitted transport of spent hens and birds for up to 36 consecutive hours;
- as the duration of transportation gets longer and/or the birds get older, there is an expectation that the death rate of birds in transit will increase;
- there will always be some deaths on such loads; and
- while loads with a 4% loss or higher would result in automatic inspection by the Agency, 4% was not an acceptable loss and decisions by the veterinarian-in-charge for inspection could be initiated at any rate of loss.

[35] When asked why birds in a load might die, Farenhorst told the Tribunal that a number of factors can be responsible including disease, transportation factors, injury, overheating, freezing or a combination thereof.

[36] Farenhorst also testified that catchers and their handling of chickens could contribute to injury and death of birds during transport. He stated that this cause is set out in the Transportation Code, which identifies that:

8.7.2 Careless catching of birds is a common source of injury. Injured birds are particularly susceptible to transportation stress. This is inhumane and increases the loss of marketable product.

[37] Farenhorst agreed that although a processor may be held responsible for the condition of birds once a load arrives, pursuant to the Transportation Code, the driver of a load is responsible for animals during transport:

8.7.23 The driver of the vehicle is responsible for the care and welfare of all birds during transport. The driver should take into consideration climatic conditions and should adjust coverings to allow birds to warm up or cool off, as required.

3.3 Evidence Specific to the September Incident (CART/CRAC-1734)

3.3.1 Facts Not in Dispute

[38] The producer involved in the September Incident was Giroux's Poultry Farm Inc. located in Chazy, New York. The crew who caught the birds were from Brian's Poultry Services Ltd. of Mildmay, Ontario and were hired directly by MLF. The average size of each hen transported was 3.98 lbs and the loading density was 14 birds per cage. Trailer D-73 was loaded with 480 crates with a total of 6,720 hens. LRFT was the transporter of the

birds and its employee, Mr. Widdes, was the driver responsible for delivery of the load to MLF, the processor.

[39] Catching of the hens and loading of the trailer began on September 30, 2012, at 09:00. Two hours after the loading began, Mr. Widdes departed with trailer D-73 at 11:00, travelled 632 km, and arrived at the processing destination later that day at 22:30.

[40] Processing of trailer D-73's load was scheduled to commence the next morning on October 1, 2012, at 09:10, but actually began slightly earlier at 07:33. The hens waited 9 hours and 3 minutes at the MLF facility before being unloaded. Unloading of all birds was complete at 08:12 and the total length of time from beginning of loading to the end of unloading was 23 hours and 12 minutes.

[41] In total, 425 dead hens were found on the morning of October 1, 2012 at the time of unloading trailer D-73 at the processing plant. Earlier that day, Agency personnel conducted *ante mortem* inspections of the load at the processing site (Freiburger at 04:15 and Gomulka at 07:01). The same day Gomulka also conducted a *post mortem* inspection at 09:21. Agency investigator Michael Cole conducted the September Incident investigation.

3.3.2 Evidence of the Manner of Loading and Transport to MLF

3.3.2.1 Tab 1 of the Agency Report – LRFT Live Load Report for Trailer D-73

[42] The Little Rock Farm Trucking Live Load Report for Trailer D-73 (LRFT Load Report) was completed by the LRFT driver before any deceased hens were discovered and is a record of the loading conditions and movement of trailer D-73 on September 30, 2012.

[43] The LRFT Load Report indicates that on September 30th, loading took 2.5 hours and en route travel took another 11 hours. During that time the outside temperature was between 10 and 13 degrees Celsius. The weather conditions varied from cloudy, to rainy, to clear with rain recorded at 14:30 and 17:30. By 20:30, weather conditions were notated as clear.

[44] The LRFT Load Report indicates that from 14:30 (when the report first indicates that it was raining) to the time of arrival, the driver had applied a left side tarp on trailer D-73. In the Report, the LRFT driver answered “no” to questions concerning whether there were any issues loading the birds and en route to the processing plant. The Report reveals the driver stopped three times during transport to check the birds/adjust the tarps.

[45] During stops the driver did not notice any change in the condition of the birds. The driver noted, however, that he *[verbatim]*: “Was in 3 traffic jams all together an 1½ with left

tarp on and pouring rain in Montreal". No response was entered for the question in the Report asking the driver to estimate dead birds on arrival ("Estimate DOA's on load").

3.3.2.2 Tab 16 of the Agency Report - LRFT High D.O.A Driver's Report

[46] Little Rock Farm Trucking High D.O.A. Driver's Report Trailer Unit # & Plate # D73 (D.O.A Report) was completed by LRFT personnel and recorded on October 14, 2012. The D.O.A Report includes several questions reproduced below *verbatim*, revealing conditions concerning the loading and transport of the hens on September 30, 2012:

- [Question] 2. *In your opinion describe the conditions of the birds prior to loading?*
[Answer] *some deads at farm, driver said they were NOT putting dead birds into the drawers*
- [Question] 6. *In your opinion, how were catchers handling birds?* [Answer] *catchers were good. the only comment the driver made was that these were large birds.*
- [Question] 9. *Describe how trailer was managed throughout trip.* [Answer] *tarps were being managed to protect from rain in transit.*
- [Question] 11. *Were there any major temperature\weather changes throughout the trip?* [Answer] *heavy rain through Montreal*
- [Question] 12. *Were there any other events encountered during your trip that may have affected the health of the birds?* [Answer] *multiple traffic delays in Montreal while it was raining. driver estimates 1 1/2 to 3 hours total*
- [Question] 13. *Did you make any stops en route? if so, for how long...and for what reason?* [Answer] *3 stops to manage tarps.*

3.3.2.3 Tab 17 of the Agency Report - Flock Information Reporting Form

[47] The Flock Information Reporting Form (Flock Form) was completed by the producer Giroux Poultry Farm Inc. The Flock Form indicates the estimated mortality rate of the flock at the time of loading of the birds was already 4%.

[48] The Agency tendered no oral direct evidence concerning the loading and transportation conditions of trailer D-73, prior to its arrival at MLF on September 30, 2012.

3.3.2.4 Testimony of Reuber

[49] Mr. Mark Reuber (Reuber), owner and secretary treasurer of LRFT testified that on September 30, 2012, LRFT followed the same process that it had used for approximately a decade during which LRFT transported 16,203 loads of spent hens, all to MLF.

[50] He testified that LRFT's involvement with the load transported on the September Incident (and other like loads) included the following steps:

- MLF faxes LRFT a list of fowl pick-ups;
- MLF instructs LRFT how many loads there are at each pick-up, the date to arrive at pick-up location, and the date to have fowl back at MLF for kill;
- LRFT schedules trucks for the required capacities;
- LRFT driver goes and picks up required trailers from MLF, which are owned and cleaned by MLF;
- LRFT driver takes LRFT tractor truck and MLF trailer and proceeds to each pick-up location;
- Third-party catchers at pick-up location instruct LRFT driver exactly when and where the catching is to take place;
- Catchers catch fowl and place them in crates loaded on trailer dollies;
- LRFT driver loads dollies onto trailer;
- When driver has finished loading trailer, he is responsible for tarping load, as required by prevailing conditions; and
- LRFT is responsible for fowl from loading at pick-up location to arrival at MLF.

[51] Reuber agreed that spent fowl must be handled with special care because they are older, have poor feathering, and have depleted energy reserves. Despite being in this state, Reuber explained it is not necessarily harder to keep the birds warm during transit. Proper tarping, he explained, will provide adequate temperature control for a load.

[52] Reuber indicated he was familiar with the Canadian Agri-Food Research Council's Poultry Code but had not seen its Transportation Code. Reuber testified however, that all LRFT's drivers (including Mr. Widdes who drove on September 30, 2012) receive training on how to care for their loads and record load reports. Reuber clarified that stages of training in the humane transport of animals for LRFT drivers included a one-day training orientation covering various aspects of humane transport. The remainder of the training including proper tarping practices, shadowing another driver for a period of a couple

weeks, and the opportunity to talk to a dispatcher if something went wrong en route after initial training had been completed.

[53] Reuber agreed the LRFT Load Report (Tab 1 of the Agency Report) had been completed by LRFT personnel and that the document indicated that tarps had been put on the left side of trailer D-73 (and not on the right side). Reuber explained that this was to be expected as it was consistent with standard procedure for rainy weather when temperatures were above 10 degrees Celsius.

[54] Under these conditions, LRFT drivers are instructed to tarp up the one side of the trailer exposed to rain while leaving the other side open for ventilation purposes. Reuber identified a photo (Exhibit 4) of the type of trailer used by MLF and LRFT for load D-73. He explained that type of trailer has no more than a 1½-2 inch gap between the top and side tarps, has a solid metal front, rear, top and bottom, and a vent on the back and top front, which can be opened or closed.

[55] Reuber testified from his personal experience driving loads that it would be warmer inside the trailer than the ambient outside temperature even with featherless birds because of the trailer's solid front, rear, top and bottom.

3.3.3 Evidence of How the Hens Fared at MLF while Awaiting Processing

[56] There was no evidence put before the Tribunal that the LRFT driver or any other LRFT personnel remained on the premises of MLF after the delivery of the load of trailer D-73 at 22:30 on September 30, 2012. In their Report the Agency did, however, provide several documents with relevant information concerning what transpired during that time period.

3.3.3.1 Tab 4 of the Agency Report - MLF Load Condition Reports for D-73

[57] A copy of the MLF Load Condition Report for D-73 (MLF Load Report), completed by MLF personnel, was provided to the Tribunal. The document was difficult to decipher due to a poor quality copy. The document indicates the load was inspected eight times between 23:09 and 06:38 while the load was held for processing at MLF. Inspection times recorded were 23:09; 00:09; 01:08; 02:13; 03:39; 04:22; 5:27 and 6:38.

[58] During these inspections, the temperature in the holding area varied from 12 to 16 degrees Celsius. The internal load temperature varied as follows:

- front of load - 14.6 to 18.6 degrees Celsius;
- middle of load - 15.3 to 18.6 degrees Celsius; and

- rear of load - 12.1 to 18.9 degrees Celsius.

[59] The MLF Load Report indicates the side exhaust fans in the holding area were on from first inspection at 11:09 and were shut and remained off from the fifth inspection at 03:39 until the time of processing. The MLF Load Report indicates no tarps were on the load the entire time in the holding area.

[60] With respect to bird condition, the MFL Load Report indicates that the birds were “alert/vigorous”, did not have good feathering (for the first four inspections), and had good feathering (for the last four inspections). There were no obvious signs of disease observed during any of the inspections.

[61] The MLF Load Report included a row of data entitled DOAS. Included in the 23:09 inspection column, there was a notation indicating there are 11 DOAS on the bottom and 9 DOAS on the middle section of the trailer. There are no additional notations in five of the other inspection columns but in the 02:13 inspection column there is a notation that may be “3 00” or “3 UD” and in the 03:39 inspection column there is a notation “@ 11:05 67”. The only other significant notation on the document is an indication that “Don” reported his results to dispatch at 03:54 and at 06:38.

3.3.3.2 Tab 6 of the Agency Report - CFIA Barn/Kill Floor Sheet

[62] The CFIA Barn/Kill Floor Sheet (CFIA Kill Sheet) for October 1, 2012, was completed by MLF personnel at 04:15 and then later inspected and signed by the Agency’s Freiburger. The Kill Sheet indicates that load D-73 was the eleventh load to be killed that day and that had been moved ahead in sequence.

[63] The document also shows the birds were alert, fans in holding areas had been off, trailer condition was dry, bird condition was poor with 70 DOAS, and a load temperature of 18 degrees Celsius. The document also notes that more hen deaths had occurred on the passenger side of the trailer’s load.

3.3.3.3 Tab 7 of the Agency Report - MLF Flocks to be Killed

[64] Maple Lodge Farms Flocks to be Killed for October 1, 2012, was completed by MLF personnel with notations from CFIA personnel. The document indicates that at 07:01, the D-73 load had “poorly feathered birds many dead at the bottom of the trailer.” The notation that was initialled by “AG”.

3.3.3.4 Tab 8 of the Agency Report - MLF Kill Sheet

[65] Maple Lodge Farms Kill Sheet for October 1, 2012 (MLF Kill Sheet), was completed by MLF personnel and indicates that at 07:33, the D-73 load had 425 DOAS with an additional 309 birds condemned at processing.

3.3.3.5 Tab 15 of the Agency Report – MLF Live Transportation Investigation Report

[66] Maple Lodge Farms Live Transportation Investigation Report (MLF-LTI Report) for Truck Number D-73 was completed by MLF personnel and recorded on October 2, 2012. The MLF-LTI Report indicates the D-73 load had 6.32% DOAS and 4.59% Grower condemned chickens. With respect to its internal investigation findings, the MLF-LTI Report noted *[verbatim]*:

“10C and cloudy during loading, birds looked fair, 2.5 h to load human handling was used during loading, 3h after leaving farm the driver had to pull L.S tarp because it was raining, Also the driver got caught in traffic 3 times on his way back for a total time of approximately 3.39h, Yard personell reported 67 DOA’S on arrival, this load was moved up in the processing sequence.”

3.3.3.6 Tab 16 of the Agency Report – LRFT High D.O.A. Driver’s Report

[67] The LRFT D.O.A. Report for was completed by LRFT personnel and recorded on October 14, 2012. Questions 15 and 16 of the D.O.A. Report reveal details of arrival of the load and holding conditions at MLF on September 30 and October 1, 2012, as follows:

[Question] 15. If a receiver checked the load in, were there any comments or notations raising concern of any kind? [Answer] receiver noted a number for DoA’s.

[Question] 16. At the plant holding facility, describe tarp configurations and if facility fans were on or off. [Answer] left side tarps closed.

3.3.3.7 Tabs 9 and 12 of the Agency Report – Written Evidence of Agency Inspector Freiburger

[68] Agency witness Mr. Bruce Freiburger (Freiburger) provided written evidence concerning his involvement in the inspection of trailer D-73. In his report, CFIA Poultry Vehicle Transportation Inspection (at Tab 9 of the Agency Report), Freiburger stated he

first saw trailer D-73 in the MLF holding barn at approximately 04:30 on October 1, 2012. He observed the trailer when he was with MLF yardman, Mr. Jerry Botelho. Freiburger writes that at that time he observed:

"...The birds were poorly feathered with dead noticed on bottom outside crates. Passenger side had more dead. Jerry and I counted about 90 d.o.a.s. so he called dispatch and they decided to move D-73 ahead of schedule as a stressed load. This trailer was scheduled as the eighth truck to be killed but went in as third. The line was broke down so D-73 didn't start till 7:33. I saw this trailer outside the bay at 7:10 and took temperatures using a hand held laser thermometer. The temperature in the front was 22.3C, the middle was 23C and the back was 21.8C. The birds were alert but poorly feathered. I monitored the unloading of the dollies, trailer washing, d.o.a. sorter Kevin Pessoa, hanging of the stunned fowl and disposing of additional d.o.a.s. All jobs performed in compliance. I verified the finish time of 8:12 and a total d.o.a of 425 (101 from the sorter) with live receiving supervisor Tony Almeida. This inspection was over the 4% threshold so a sample was set aside for veterinarian necropsy under held tag # 135467..."

[69] In his inspector notes at Tab 12 of the Agency Report, Freiburger indicates that at 4:15 that he:

"Went to the holding barns. Took barn and trailer temperatures. I met up with yardman Jerry Botelho in barn 22. He had just checked D-46 and D-73 in barn 23 and they were both stressed loads. I looked at them both and agreed with him. D-46 had 90 visible d.o.a's and D-73 had 70. Most d.o.a's were on passenger side (left) of the trailer. Jerry called dispatch to inform them of his findings. -both trucks were going to be moved up ahead of schedule. -both trailers were from same grower (U.S.). D.o.a.'s noted on bottom outside crates. Line 3 (fowl) didn't start till about 6:30.

3.3.3.8 Testimony of Agency Inspector Freiburger

[70] Freiburger explained he has worked as a government inspector at MLF for over 25 years. In his duties he conducts weekly inspections of incoming loads for violations. Freiburger was on duty starting at 04:00 on October 1, 2012. He first observed load D-73 at 04:15 and concluded the load was in distress. He noted 70 dead birds primarily on the passenger side of the load.

[71] He noted in his report, at Tab 6 of the Agency Report, that the birds looked worse than normal, had a high feather loss and a general poor condition even though the internal temperature of the load was in the normal range of 18 degrees Celsius. Freiburger said he witnessed the entire unloading of load D-73. As soon as he noticed the dead count would be

over four percent, he instructed MLF personnel to collect a random sample of birds which, he then marked and sent to the Agency veterinarians for necropsy.

[72] While he did not know the exact location on the load where the sample of dead chickens came from, he believed they probably came from the middle and back of the load. Freiburger explained to the Tribunal that it appeared MLF personnel changed the tarp configuration between 02:13 and 03:39 due to a temperature change affecting the load.

[73] Freiburger stated the hens in question were at the end of their life cycle, in poor condition, had poor feathering and had been exposed to adverse weather making them very vulnerable. Freiburger also agreed that 4% of the chickens at the Giroux farm stayed behind because they were already dead.

[74] Freiburger explained load D-73 sat stressed for two additional hours at the MLF plant because of a breakdown on its kill line. He agreed the MLF Load Report completed by MLF personnel contained certain corrections and discrepancies. Notably the MLF Load Report showed the birds had bad feathering at certain inspection times, but not at others. He pointed out a notation in the 23:05 column of the MLF Load Report indicated 20 DOAs while at another place in the same form it recorded 67 DOAs. Finally, Freiburger told the Tribunal that LRFT were regular deliverers to MLF of spent hens and had hauled several trailers a day for several years to the plant but no longer delivered fowl to MLF.

3.3.3.9 Tab 13 of the Agency Report – Written Evidence Agency Witness Gomulka

[75] The Agency's second witness, Dr. Andre Gomulka (Gomulka) provided a written "Report of Inspector" (Tab 13 of Agency Report) of his involvement in the inspection of the dead chickens from load D-73. In his Report of Inspector, Gomulka completed an *ante mortem* inspection of the load at 07:01 and found the birds to be poorly feathered, with many dead at the bottom of the trailer.

[76] His report indicated he also completed a *post mortem* necropsy of 10 of the dead fowl from the load at 09:21 of the same day on October 1, 2012. He found the dead fowl in the sample to have good flesh, cyanotic [bluish in colour due to oxygen depletion in animal and poorly feathered. In 10 of the fowl, he found their internal body temperatures ranged from 11 to 26 degrees Celsius. He indicated normal live temperature were around 41 degrees Celsius. This suggested to Gomulka that some of the birds had been dead longer than others.

[77] The following are conclusions Gomulka drew and recorded in his Report of Inspector concerning the necropsy that he performed:

Comments: The dead fowls in the sample are in good flesh with copious fat. The birds are cyanotic and poorly feathered. Also these fowls are in active egg cycle production.

1. Cyanosis is not specific lesion to any disease, but is often found in birds which died some time ago since depletion of oxygen in dead body follows autolytic changes after death.

...

3) No pathology indicating, suggesting infectious cause of death was found on the necropsy exam.

4) The farmer did not report any health problems of the flock. ...

...

5) Uneven location of dead fowls in the trailer (many dead fowls are at the bottom of the trailer) points to unfavorable weather condition during fairly long (11 hours) transport. ...

...

6) Temperature of dead fowls in the sample has wide range. We can divide the dead fowls in three groups: a) coldest fowls: 11.1°C, 11.2°C, 11.3°C; this is close to ambient temp. of the weather in Brampton at 7:00AM. The Weather Network temp. on 01 Oct. 2012 recorded in Brampton was 12°C/53.6°F This means these birds died early since internal body temp. equalized with weather temperature. This also agrees with a note that 67 dead fowls in the trailer were seen on arrival (see Live Transport Investigation Report for D-73 on 01 Oct. 2012); b) moderately cold fowls: 15.5°C, 15.8°C, 18.6°C; c) warmest fowls: 25.1°C, 25.3°C, 26.5°C these fowls died latest. ... The wide range of temperature in the sample tells me that the birds did not die at the same time but, the dying process was rather continuous.

...

Conclusion: In my professional opinion high mortality in D73 is due to inadequate protection of the poorly feathered fowls from adverse weather conditions during the transport/storage.

3.3.3.10 Expert Testimony of Agency Witness Gomulka

[78] Gomulka was qualified as an expert on the pathology of chickens. Gomulka told the Tribunal he has been the Agency veterinarian officer at MLF since 2001 and performs *ante mortem* and *post mortem* inspections on loads arriving at MLF. *Ante mortem* inspections are conducted twice per shift while *post mortem* inspections are conducted by Gomulka only when there are high DOA counts over 4% of a load.

[79] With respect to load D-73, Gomulka confirmed he had completed an *ante mortem* inspection of the load in which he included notations at 07:01, that the D-73 load had “poorly feathered birds many dead at the bottom of the trailer.” Gomulka also testified he completed the *post mortem* necropsy on 10 chickens from this load starting at 09:21 on October 1, 2012.

[80] In reviewing his results with the Tribunal, he explained that at least three of the birds had very low body temperature of around 11°C. In his professional opinion, dead birds with a body temperature of 26°C, will have been dead for less than eight hours and birds with a body temperature or 11°C will have been dead for a longer period of time.

[81] Gomulka agreed that stress on spent hens in the circumstances of the September Incident could be related to many factors including:

1. catching of the hens;
2. loading of the hens into crates;
3. long time hens are in their crates;
4. length of the haul;
5. withdrawal of the hens from their feed;
6. weather conditions during loading and travel, and while waiting at the processor prior to processing;
7. poor feathering of the birds; and
8. any broken bones suffered by hens during the whole process from loading to unloading.

[82] Gomulka referred to the MLF Load Report and testified he did not complete any part of the document nor did he add any notation to it. From his reading of the MLF Load Report, Gomulka testified it is not possible to know if there were 20 or 67 DOAs on load D-73 at around 23:00 on September 30, 2012.

[83] In reference to his Report of Inspector (Tab 13 of Agency Report), Gomulka agreed that birds which showed *rigor mortis* (#7 and #10) and the warmer birds (#2, #4, #8, and #10) all likely died while the birds were waiting for slaughter in the MFL holding facility. Gomulka also agreed the temperature in the holding facility fell from 18.6°C to 12°C during the waiting period for load D-73 at MLF facilities. That type of temperature drop would be dangerous for poorly feathered birds.

[84] Gomulka agreed that his conclusion from his report at Tab 13 of the Agency Report should have reflected that bad chicken handling contributes to mortality, which can occur during the transport or storage of the chickens as they await slaughter, that dead birds with a body temperature of 26°C were the last chickens to die and probably died after the load got to the MLF holding facility and that he could not know exactly where or when the dead birds with a colder body temperature might have died. Gomulka told the Tribunal that when 4% of the load dies, the Agency does a post mortem necropsy, a practice which supports an assumption that up to 4% of the load can die through nobody's fault.

[85] Gomulka testified that birds that are poorly feathered will lose heat more quickly and factors such as wind chill and wet conditions present during transport also contribute to faster body heat loss for birds like those on load D-73. Gomulka confirmed the 67 DOAs included in his report referred to, not to the number included in the MLF Load Report, but to the MLF-LTI Report (Tab 4 of Agency Report) which he agreed was lacking in clarity.

3.3.3.11 Expert Testimony of Agency Witness Farenhorst Specific to the September Incident

[86] The Agency's third witness, Dr. Anco Farenhorst (Farenhorst), testified that the poorly feathered hens on load D-73 were specifically exposed to transportation stressors including:

- a missing tarp;
- wet weather; and
- an ambient outside temperatures of 10 to 13 degrees Celsius.

[87] Transportation under such conditions, he believed, would be contrary to the standards set out in paragraph 7.2.2 of the Poultry Code and paragraph 2.2.1 of the Transportation Code.

[88] Farenhorst told the Tribunal he agreed that as the duration of transportation gets longer and/or the birds get older, there is an expectation that the death rate of birds in transit will increase. He agreed that on the day load D-73 was slaughtered, all loads killed by MLF had some DOAs. He explained there will always be some rate of deaths on similar loads. When asked why birds might be found dead on the load, Farenhorst told the Tribunal that any number of things can be responsible including diseases, transportation factors, injury, overheating, freezing or a combination of these issues. Farenhorst agreed that catchers and their handling of chickens could also contribute to injury and death of birds during transport.

4. Applicable Law and Analysis

[89] The Tribunal's role is to determine the validity of any agriculture and agri-food administrative monetary penalty or warning issued under the authority of the AMP Act. The purpose of the AMP 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.

[90] Section 2 of the AMP Act defines "agri-food act" as follows:

2. ...“agri-food Act” means the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act or the Seeds Act.

[91] Pursuant to section 4 of the AMP Act, the Minister of Agriculture and Agri-Food, or the Minister of Health, depending on the circumstances, may make regulations to designate violations that may be proceeded with:

4. (1) The Minister may make regulations:

(a) designating as a violation that may be proceeded with in accordance with this Act

(i) the contravention of any specified provision of an agri-food Act or of a regulation made under an agri-food Act...

[92] The Minister of Agriculture and Agri-Food has made one such regulation, the AMP Regulations, which designates as violations several specific provisions of the HA Act, the HA Regulations, the *Plant Protection Act* and its regulations. These violations are listed in Schedule 1 to the AMP Regulations, which includes a reference to subsection 143(1)(d) of the HA Regulations.

[93] Courts have examined the AMP regime with a certain degree of scrutiny, especially given that violations entail absolute liability. In *Doyon v. Attorney General of Canada*, 2009 FCA 152 (*Doyon*), Létourneau JA, writing on behalf of the Federal Court of Appeal, describes the regime as follows:

[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.

[94] Moreover, the Federal Court of Appeal, in *Doyon*, points out that the AMP Act imposes a heavy burden on the Agency:

[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.

[95] Section 19 of the AMP 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.*

[96] In *Doyon*, the Federal Court of Appeal, in order to determine if an applicant had committed a violation of the HA Regulations, was tasked with interpreting the meaning of “no person shall...transport...an animal that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey” as that phrase is found in paragraph 138(2)(a) of the HA Regulations. In doing so, it developed an interpretation that parsed out “elements” of a violation that the Agency must prove in order to uphold a Notice of Violation, seven in the case of an alleged violation of that particular paragraph. This approach is in keeping with more recent dicta from the Federal Court of Appeal in the case of *Canada (ACG) v. Stanford*, 2014 FCA 234 (*Stanford*), where, at paragraphs 41-44, Dawson JA comments on how the exercise of statutory interpretation is to be done, again in the context of determining the appropriate interpretation of the AMP Act and AMP Regulations:

[41] The preferred approach to statutory interpretation has been expressed in the following terms by the Supreme Court in Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, 1998 CanLII 837 at paragraph 21:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. See also: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 at paragraph 29.

[42] The Supreme Court restated this principle in Canada Trustco Mortgage Co. v. Canada, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 10:

It has been long established as a matter of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: see 65302 *British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words plays a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole. [underlining added]

[43] *This formulation of the proper approach to statutory interpretation was repeated in Celgene Corp. v. Canada (Attorney General), 2011 SCC 1, [2011] 1 S.C.R. 3 at paragraph 21, and Canada (Information Commissioner) v. Canada (Minister of National Defence), 2011 SCC 25, [2011] 2 S.C.R. 306 at paragraph 27.*

[44] *Inherent in the contextual approach to statutory interpretation is the understanding that the grammatical and ordinary sense of a provision is not determinative of its meaning. A court must consider the total context of the provision to be interpreted “no matter how plain the disposition may seem upon initial reading” (ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board), 2006 SCC 4, [2006] 1 S.C.R. 140 at paragraph 48). From the text and this wider context, including the apparent purpose, the interpreting court aims to ascertain legislative intent, “[t]he most significant element of this analysis” (R. v. Monney, [1999] 1 S.C.R. 652, 1999 CanLII 678 at paragraph 26).*

[97] Therefore, in keeping with an interpretation where the alleged violation is “read in its entire context and in its grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”, how is one to interpret the violation enumerated in paragraph 143(1)(d) of the HA Regulations? It reads: “No person shall transport ... any animal in a ... motor vehicle ... if injury or undue suffering is likely to be caused to the animal by reason of... undue exposure to the weather”.

[98] During her closing argument, counsel for the Agency pointed the Tribunal to several authorities to assist the Tribunal in its interpretation including: *Les Fermes G. Godbout & Fils Inc. v. Canada (CFIA)*, 2006 FCA 408 (*Godbout*); *R. v. Maple Lodge Farms* (2013), (OCJ Court File No. Brampton 10-1160) (*Maple Lodge Farms*); *Poirier-Bérard v. Canada (CFIA)*, 2012 CART 23 (*Poirier-Bérard*), *Exceldor Coopérative v. Canada (CFIA)*, 2013 CART 9 (*Exceldor*, 2013 CART 9); *0830079 B.C. Ltd. v. Canada (CFIA)*, 2013 CART 34 (S&S

Transport); *Finley Transport Ltd. v. Canada (CFIA)*, 2013 CART 42; and *E. Grof Livestock Ltd. v. Canada (CFIA)*, 2014 CART 11.

[99] Also as indicated by counsel for the Agency in her closing argument, the Tribunal has, in the past, already applied the *Doyon* approach of parsing out the elements of a paragraph 143(1)(d) violation, at paragraph 24 of its decision in *Exceldor*, 2013 CART 9. There, the Tribunal sets out the five elements that the Agency must establish to sustain as valid a violation of section 143(1)(d) of the HA Regulations. These five elements, also set out in paragraph 28 of the Tribunal's decision in *Exceldor Coopérative v. Canada (CFIA)*, 2014 CART 8 are as follows:

1. an animal was transported;
2. the animal in question was transported in a railway car, motor vehicle, aircraft, vessel, crate or container;
3. the animal transported was likely to incur injury or suffer unduly by reason of undue exposure to the weather;
4. the alleged violator transported, or caused to be transported, the animal in question; and
5. there was a causal link between the transportation carried out by or on behalf of the violator, in which the animal was likely to incur injury or suffer unduly by reason of undue exposure to the weather, and the undue exposure to the weather.

4.1 Findings Concerning Elements 1 and 2

[100] Elements 1 and 2 require no further interpretation. Either an animal was transported in a motor vehicle in this case or it was not. The Tribunal finds that the Agency has established elements 1 and 2. The evidence demonstrates that the chickens were transported in trailer D-73 on September 30, 2012.

4.2 Findings Concerning Element 4

[101] Likewise, an interpretation of whether the alleged violator transported the birds on the day in question does not require further interpretation. Already, this Tribunal and the Federal Court of Appeal, have ruled on a purposive interpretation of what constitutes "transportation" in the context of the HA Regulations. In *S&S Transport*, at paragraph 45, the Tribunal set out the following:

Counsel for the Agency cited a number Tribunal decisions where the definition of “transportation” or “transport” under the Health of Animals Regulations have been considered, including Sure Fresh Foods v. Canada(CFIA), 2010 CART 16; Ménard v. Canada(CFIA), RTA 60126; and, Glenview Livestock Ltd. v. Canada(CFIA), RTA 60162. The Tribunal is also mindful of guidance from the Federal Court of Appeal in Canada (A.G.) v. Ouellet, 2010 FCA 268, which dealt with the judicial review of a Tribunal decision considering a violation under subsection 141(1) of the Health of Animals Regulations, which reads “...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...”. In that case, the Federal Court of Appeal specifically rejected a Tribunal finding that “transport” ceases when the animals are in their conveyance awaiting their imminent unloading at an abattoir. Therefore, it appears that the definition of “transportation” under the Health of Animals Regulations is now quite settled law. While “transportation” obviously includes the actual time “on the road”, it has several stages, including the physical actions of loading, hauling and the unloading of animals. Without a doubt, the causal link in Ouellet, was temporally close and very direct. In that case, the transporter was the actor that performed the prohibited act as it was the transport driver who, while the load was waiting for unloading at the abattoir, allowed a cow and the calves which had been separated to co-mingle contrary to subsection 141(1). In that case, the waiting time to be unloaded was a mere 10 minutes. However, even in the present case, where each of the actors actively contributed to the one or more of the loading, hauling and unloading of the animals, a causal link, albeit less direct than the one noted in Ouellet, is still present. ...

[102] The *S&S Transport* case dealt with a violation of section 140(2) of the HA Regulations, which required the Agency to prove that birds in that case, during their transport, were overcrowded to the extent that it was likely to cause injury or undue suffering. In that case, the Tribunal found that the birds were loaded by the catchers in an overcrowded manner and they continued to be overcrowded at each stage including: (1) the loading, (2) the in transit voyage, (3) the arrival and drop-off of the loaded trailer at the processing facility; and (4) the holding period until slaughter at the processing facility. During each phase of the “transportation”, the alleged violation of overcrowding during transport was ongoing and was found likely to cause or did cause injury to the birds.

[103] In the present case, a similar definition of the breadth of transportation would apply, even though the alleged violation is under section 143(1)(d), rather than section 140(2) of the HA Regulations. Applying this definition in the case at hand, the transportation of the birds began with loading by the catchers employed by MLF (Brian’s Poultry Services Ltd.), continued with the actual in transit voyage of the chickens by LRFT in an MLF trailer between New York and Southern Ontario, further continued with the

drop-off of the trailer by the LRFT driver into the MLF holding facility, and did not terminate until the birds were eventually unloaded for slaughter by MLF personnel.

[104] Much evidence was tendered concerning each of the stages of the transport of the chickens on trailer D-73. The evidence showed that the transportation of the load took a considerable amount of time to complete, starting at 09:00 on September 30, 2012, in New York State and ending at 08:11 on October 1, 2012, in Brampton, Ontario, a period of just under 24 hours. It is clear from the evidence that LRFT never had ownership of the chickens. It is further unlikely that, given the evidence, a reasonable interpretation would suggest that LRFT had care and control of either the loading (the first stage of transportation) or the holding at the MLF facility (the final stages of transportation) of the 6,270 chickens on trailer D-73. What is clear was that LRFT was the transporter of the birds during the second and third stages of transportation—the in-transit voyage and the drop-off of the loaded trailer at MLF. As a result, with respect to element 4, the Tribunal finds, as fact, that LRFT transported the chickens.

[105] In making this finding, it is important to note that the evidence was clear that no LRFT personnel was present at MLF during the entire period that load D-73 waited for processing in the late evening of September 30 through to the morning of October 1, 2012. It is also clear that this was the accepted industry practice. Reuber testified that MLF arranged which loads needed to be picked up, supplied LRFT with the trailers to pick up the chickens, and expected the delivery of those trailers back to the MLF facilities at a specified time. In reality, from the evidence presented, LRFT exercised no, or practically no, control over the chickens during their catching and loading on the MLF trailer or after the deposit of the trailer at the MLF processing facility.

[106] This case differs, therefore, in an important aspect from both of those at the centre of *Maple Lodge Farms* decided recently by the Ontario Court of Justice. In those cases, the accused, MLF, had a clear and continuous connection to the care and control of the birds throughout every aspect of the transportation—it hired the catchers and then had its employees drive its trailers to its processing facilities where MLF employees unloaded the birds. Moreover, it owned the chickens. There was, in those cases, no need to parse out the different roles and responsibilities for different persons involved in the transportation of the birds as they appeared to be all under the care and control of MLF.

[107] In this case, there was no evidence to suggest that MLF had any expectation of involvement by LRFT after the MLF trailer it had hauled was dropped off at the MLF facility. The Tribunal, therefore, finds that LRFT's participation in the transportation of the chickens ceased at 22:30 on September 30, 2012, when it dropped off the MLF trailer it was hauling at the MLF processing facility. The Tribunal accepts that it may be possible to prove that actions or inactions of LRFT personnel that occurred prior to MLF processing facility drop-off might have had "carry-over" effects after this time. If, however, there were no "carry-over" effects that can be attributed to a time when LRFT did have care and control of the chickens, it would defy logic to contend that LRFT continued to transport or was responsible for the transport of the birds when none of its personnel remained with the

trailer and that such a presence would not be required or even tolerated once MLF personnel took over all monitoring and control of trailer D-73, as of 22:30 on September 30, 2012.

4.3 Findings Concerning Element 3

[108] The Tribunal has carefully review of its own jurisprudence in the 24 cases where a violation of paragraph 143(1)(d) of the HA Regulations has been the basis of an alleged AMP violation. The Tribunal is also mindful of the guidance offered in interpreting the HA Regulations set out by the Federal Court of Appeal in *Doyon, Canada (AG) v. Porcherie des Cèdres Inc.*, 2005 FCA 59 (*Porcherie des Cèdres*) and most recently in *Stanford*. It is what constitutes the transporting of an animal “where injury or undue suffering is likely to be caused to the animal by reason of ... undue exposure to the weather”—element 3 of an alleged violation of paragraph 143(1)(d) of the HA Regulations—that this Tribunal must interpret. These words must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[109] What is somewhat unusual however, in interpreting a violation under paragraph 143(1)(d) of the HA Regulations, is that the word “undue” appears twice, once with reference to “suffering” and once with reference to “exposure”. Parliament’s use of the term twice is clearly intentional and hence each use of the word must be given appropriate significance.

[110] While the scheme and object of the HA Act and HA Regulations is not explicitly stated in the legislation, references to the importance of regulating the humane transport of animals within the Canadian agriculture and food system surfaces in section 64 (1) (i) of the HR Act which states that:

The Governor in Council may make regulations for the purpose of protecting human and animal health through the control or elimination of diseases and toxic substances and generally for carrying out the purposes and provisions of this Act, including regulations ... (i) for the humane treatment of animals and generally (i) governing the care, handling and disposition of animals, (ii) governing the manner in which animals are transported within, into or out of Canada, and (iii) providing for the treatment or disposal of animals that are not cared for, handled or transported in a humane manner.

[111] Again, Part XII of the HR Regulations, in which the standard set out in paragraph 143(1)(d) is found, is entitled “Transportation of Animals”. Given their content, the HA Regulations in this Part must also be interpreted as establishing standards for the protection animal health while those animals are in commercial transport from a producer’s barn to a processor’s slaughter facilities.

[112] The animal health protection provisions of the HA Act and HA Regulations do not, therefore, exist in a vacuum. The context of the legislation is that animal health is to be protected within the agricultural and agri-food production systems that currently exist in Canada.

[113] While Parliament has enacted a specific provision to protect animal health for animals during transport from undue suffering by reason of undue exposure to weather, that provision must be interpreted so as to maintain a balance between the regular commercial activities of actors in agricultural and agri-food production systems and the protection of the animals in those systems. Thus, the intention of Parliament to use both the phrase “undue suffering” and “undue exposure to the weather” in defining a violation must to be read with the context of this balancing in mind, given the scheme and object of the HA Act and HA Regulations.

4.3.1 “By Reason of Undue Exposure to the Weather”

[114] The Federal Court of Appeal in *Porcherie des Cèdres*, at paragraph 26, (albeit in the context of paragraph 138(2)(a) of the HR Regulations violations) has considered the meaning of the word “undue” and in relation to “undue suffering”. There the Court held “undue” to mean “undeserved”, “unwarranted”, “unjustified” or “unmerited” suffering. Moreover, the Federal Court of Appeal later cited this interpretation with approval in its *Doyon* decision at paragraph 30.

[115] As the term “undue” relates to “undue exposure”, one must also consider, at least, the ordinary dictionary meaning of the word “undue” which according to the Canadian Oxford Dictionary is defined as “excessive”, “disproportionate”, “unwarranted”, “inappropriate”, “improper”, or “unjust”.

[116] So given the context of the HA Regulations as regulations to protect animal health within existing agricultural production systems, the Tribunal finds the qualifier “undue” in the context of “undue exposure to the weather” at its narrowest (using the definition of “undue” from *Porcherie des Cèdres*) to refer to situations where animals are “unjustifiably exposed to the weather” or “undeservedly exposed to the weather”. If one adopts a broader dictionary meaning for the term, “undue exposure” would refer to a more exclusive set of situations where animals were “inappropriately exposed to the weather” or “excessively exposed to the weather”.

[117] Either the narrow or the broad definition of the phrase “undue exposure to the weather” will attach liability to an actor in the Canadian agri-food system where animals in their care and control are exposed to weather that is beyond any “justified” or “warranted” exposure to the vagaries of Canadian weather. Canadian meat industries participants are required to pursue their activities year-round in all types of Canadian weather. When individuals and corporations care for food animals from the point of loading to the point of slaughter, they will expose their animals to the weather. Without the qualifier “undue

exposure”, this provision of the HA Regulations would prohibit the transportation of food animals whenever they might be exposed to the weather in which they suffer or are likely to suffer. Parliament appears to have considered such a standard as too high for industry and has therefore added the qualifier “undue” so that only certain types of exposure to the weather will attract liability.

[118] If only “unjustified” or “unwarranted” or “disproportionate” exposure to the vagaries of Canadian weather is contemplated by paragraph 143(1)(d) of the HA Regulations, then what circumstances might this include? One can imagine three different sets of circumstances that would be caught by the definition of “undue exposure to the weather”.

[119] The first set of circumstances is where producers, transporters or processors know or ought to know there is the likelihood of difficult weather conditions, and without regard for the risks that such bad weather poses, they choose to transport animals anyway. There are ample examples of this scenario presented in the cases cited by the Agency. For example, in *Maple Lodge Farms*, the transporter of the load examined in the first count by the Ontario Court of Justice, had the chickens loaded in sub-zero temperatures (-5° to -7°C) during a heavy snowstorm. The transporter then transported chickens that were wet before they left the producer’s farm to the processing facility and the load suffered high mortality. The Court found that the load unduly suffered by reason of undue exposure to the weather. Similarly, the transporter of the load examined in the second count by the Court, had the chickens loaded in even colder temperatures (-13° to -16°C), albeit without the snow, in the middle of winter. The transporter then transported chickens to the processing facility and the load suffered high mortality. The Court rightly found that the load as well unduly suffered by reason of undue exposure to the weather.

[120] In *Poirier-Bérard*, a case decided by this Tribunal, the winter temperatures during loading and transport of the chickens in question were even more extreme (-22° to -29°C) and when a necropsy was performed on the dead chickens in the load some of the carcasses actually were found to have ice crystals in their muscular tissue. There again, the Tribunal found that the load had unduly suffered by reason of undue exposure to the weather.

[121] In each of these cases and by extension in any similar types of situations, producers, haulers and processors run a very real risk of loading, transporting, and holding animals until slaughter in conditions that unduly expose them to the weather. Such animals are “undeservedly” or “unjustifiably” exposed to the weather because the loading and transport of animals under such known weather conditions is very risky and increases the chances that loads might suffer high mortality if something goes wrong during any part of the whole transportation process from loading to unloading. Only if optimal transport conditions occur in extreme weather will the transporter escape high mortality on the load and any ensuing liability if high mortality is discovered.

[122] A second set of circumstances might arise where animals' misfortunes arise from extreme weather conditions which are not foreseeable—a sudden severe rain storm, a blinding snow storm, or an unanticipated spike or chute of temperature for example. As violations under the AMP Act and AMP Regulations are absolute liability offences, if the undue exposure to the weather, however unforeseeable, is what causes or is likely to have caused, the undue suffering of the animals then element #3 of the violation will be established. This will be the case even if under such conditions there was little, if anything, that a transporter could have done to prevent the undue suffering of the animals by reason of their undue exposure to the weather.

[123] Finally, a third set of circumstances where animals might unduly suffer by reason of undue exposure to the weather may arise where animals are unduly exposed to the weather when a transporter simply fails to take adequate precautions to protect the transported animals from the vagaries of Canadian weather. Weather may not be extreme, but in these circumstances, transporters and processors must act quickly and prudently guided by industry standards to abate the effects of adverse Canadian weather on their animals. When they fail to protect their animals in such situations because of human error (improper tarping, excessive waiting, poor protective equipment or processes) or lack of training when the weather requires that they protect their animals, then the animals will be unduly, or undeservedly, exposed to the weather.

[124] With these three different sets of circumstances in mind, it is up to the Tribunal then to analyze the evidence to determine whether animals in this case have unduly suffered by reason of undue exposure to the weather. Counsel for the Agency, in her closing argument, urged the Tribunal to find that the birds unduly suffered by reason of undue exposure to weather primarily on the basis of:

- the evidence of Freiburger that between 10 and 70 dead birds on trailer D-73 observed at or shortly after the trailer's arrival at the MLF facility on the night of September 30, 2012;
- the evidence of Freiburger that there were 425 dead birds found on trailer D-73 when it was unloaded for processing on the morning of October 1, 2012;
- the LRFT driver's report that he encountered rain in Montreal and traffic jams in transit from producer to processor and that he applied only the driver side tarps while transporting the load through the rain;
- the evidence of Agency witnesses and reports that the dead chickens were located primarily on the passenger side of trailer D-73; and
- the expert opinion of Gomulka in his written report and in his expert testimony, that after his necropsy of 10 birds, he believed the high mortality on trailer D-73 was due to inadequate protection of the poorly feathered fowls from adverse weather conditions during the transportation/storage.

- the expert testimony of Farenhorst that the LRFT driver failed to observe the obligations of the Transportation Code and Poultry Code.

[125] In analyzing and attributing the appropriate weight to the evidence presented by the Agency to prove element 3, the Tribunal is guided by the dicta of the Federal Court of Appeal in *Doyon*, which when judicially reviewing the Tribunal's finding regarding an alleged violation falling under a different, but related, section of the HA Regulations, stated the following:

[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.

...

b) Analysis and management of the evidence

[54] The main function of a tribunal of first instance is to receive and analyse the evidence. In carrying out this important function, it may reject relevant evidence, but it cannot disregard it, especially if it contradicts other evidence of an essential element of the case: see Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v. Canada (Attorney General), 2008 FCA 13; Parks v. Canada (Attorney General), [1998] F.C.J. No. 770 (QL); Canada (Attorney General) v. Renaud, 2007 FCA 328; and Maher v. Canada (Attorney General), 2006 FCA 223. If it decides to reject the evidence, it must explain why: ibidem.

[126] What is the evidence with respect to the weather conditions on September 30, 2012? At the loading of trailer D-73, the uncontradicted evidence was that it was dry (not raining), overcast and 10°C. The driver recorded that at 11:30, when he departed the producer's farm that the weather was cloudy and 13°C. He noted rain for the first time at 14:30 and that it was 11°C, as recorded on the LRFT Live Load Report for Trailer D-73 at Tab 1 of Agency Report. At 17:30, the driver again noted that it was raining and that it was 11°C. At 20:30 and again upon his arrival at MLF at 22:30, the LRFT driver noted that it was clear (no longer raining) and 13°C. For September in Eastern Canada, these weather conditions do not strike one as unusual. It was neither scorching hot or extremely cold. The rain recorded did not last overly long nor was recorded to be intense. The day appeared to be perhaps a little cool, but not at all an unpleasant fall day. As such, the weather on September 30, 2012, would not fall into either of the first two sets of circumstances for "undue exposure to the weather". It was neither extreme (and foreseeable) from the outset, nor suddenly unusual, threatening or extreme (even if not foreseeable) en route or while at the MLF facility.

[127] Did the evidence show then that the driver somehow failed at his responsibility for protecting the birds on September 30, 2012? It is important to note that this is not a question of whether he acted with “due diligence” on the day in question, which would not be a defence under the AMP Act, but whether his actions contributed to the birds in this case being “unduly” exposed to the weather. The weather on September 30, 2012, was an overcast, unsettled fall day with mixed cloud and rain. The evidence shows that the driver stopped several times to check his load and during some of the in transit voyage had drawn the left tarp to ensure that the chickens were protected from any rain. The right tarp was not drawn to protect the birds from becoming too hot as might have been the case if tarps on both sides of the truck had been drawn.

[128] Reuber testified that the LRFT driver’s tarping practice on that day was a correct and prudent step which protected the birds from the rain but did not cover them too much so as to prevent them from overheating. This tarping practice was standard industry practice given the temperature in the circumstances of these normal weather fluctuations, and permitted the protection of the birds on the rainward side of the trailer while still protecting the entire load from overheating. The Tribunal accepts the written evidence from the LRFT driver and the testimony of Reuber that this load was not subjected to extreme weather or to undue exposure to the weather due to driver error on September 30, 2012.

[129] The Agency evidence on the weather conditions to which the birds were exposed on September 30, 2012 is much less convincing than that of LRFT. Agency evidence was collected many hours after the events of the en route travel; it was speculative; and it relied heavily on professional opinion which was not consistent with much of the other evidence in the case. For these reasons, the Tribunal has not attributed it a significant amount of weight.

[130] The Agency relies on the testimony of Freiburger who observed the load in the MLF holding facility, and from expert testimony of Farenhorst and of Gomulka. Both Farenhorst and Freiburger gave clear and unequivocal evidence. Farenhorst suggested that the load was hauled in 10° to 13°C weather, which was at the bottom range of animal comfort for chickens, and for poorly-feathered birds, these conditions would have been stressful. However, there was evidence from the witnesses, and the Tribunal so finds, that while the outside temperature was in the 10° to 13°C range, it is reasonable to expect that the temperature inside trailer D-73, with the heat generated by 6,720 chickens, would be several degrees warmer and would have easily fall into the animal comfort range for spent hens. Given these factual findings, the Tribunal finds little basis on which to accord weight to the expert opinion of Farenhorst that the LRFT driver on September 30, 2012, did not meet the responsibilities set out for him in both the Transportation Code and the Poultry Code.

[131] Freiburger testified he saw many of the dead chickens on the passenger side of load D-73 but overall the trailer looked dry. His first observations of the load were made more than five and one-half hours after the load arrived at MLF. He made no written notes at that

or any other time that the birds were wet. The argument from the Agency that any undue exposure to the weather resulted from the birds becoming wet because of the rain encountered en route, is not supported by the evidence of Freiburger or of LRFT.

[132] Finally, Gomulka's evidence both with respect to what he observed while conducting a general *ante mortem* examination of the whole load more than eight hours after the arrival of the load at the MLF facility, and what he recorded in his *post mortem* necropsy report, was scattered, disjointed and speculative. He was not a convincing witness. As a consequence, the Tribunal attaches a very limited weight to his recorded observations and professional opinion. That said, with respect to his evidence regarding the undue exposure to weather of the birds, Gomulka made no mention of wet birds in his *ante mortem* inspection. As well, in necropsy report, he noted that only three of the ten birds were wet. Moreover, he told the Tribunal under cross-examination that weather conditions might be only one of several factors that could cause death of the chickens. In light of this equivocal evidence, the Tribunal finds that the conclusion he offers at the end of his necropsy report where he states: "*In my professional opinion high mortality in D73 is due to inadequate protection of the poorly feathered fowls from adverse weather conditions during the transport/storage.*" should be accorded little weight.

[133] Consequently, the Tribunal finds that the birds were not subjected to undue exposure to weather on September 30, 2012. As a result, the Agency has failed to prove element 3 of the alleged violation.

4.3.2 Undue Suffering by Reason of Undue Exposure to the Weather or for Other Reasons

[134] Even if the Tribunal is wrong in its finding that the birds on load D-73 were not were unduly exposed to the weather on September 30, 2012, the evidence also suggests there were several potential causes of undue suffering to the birds that day. As a result, the Tribunal is not convinced that the Agency has proven, on the balance of probabilities, that the birds "unduly suffered by reason of undue exposure to the weather" but that many other causes taken together were more likely than not to be responsible for any undue suffering.

[135] As noted above, the temporal sequence of the transportation of load D-73 shows that LRFT had care and control of the load from 09:00 until 22:30 on September 30, 2012. Evidence from MLF personnel was that between 10 and 70 dead birds were spotted soon after the load was dropped off by the LRFT driver at MLF at 22:30 on September 30, 2012. Counsel for the Agency argues that these deaths arose from the rain encountered by the trailer around Montreal during a three to six hour period and the traffic jams that the driver experienced during his haul. As such, the deaths are sufficient to meet the threshold of what constitutes "undue suffering by reason of undue exposure to weather".

[136] The evidence presented in the case, however, suggests otherwise. Many other factors were cited by witnesses Reuber, Farenhorst and Gomulka that could have been causes of the death of the chickens including: age of the birds, spent condition of the birds as laying hens, the catching conditions, the long transportation time, the long waiting time for processing in addition to the weather conditions during transportation.

[137] Another argument of the Agency to support a finding that the animals on the load unduly suffered by reason of exposure to the weather was that most of the dead chickens first observed were on the passenger side which was untarped in transit. The expert testimony of Farenhorst suggested that the death count and location of the dead birds was consistent with death by exposure to weather. Freiburger also stated that the dead birds he observed during his *ante mortem* inspection at 04:15 were on the passenger side of the trailer. However, it was never clear from the evidence how many birds were observed to be dead when load D-73 arrived at MLF—were there only 10 or were there 67 or 70—and where the dead birds were located—mostly on the passenger side or on the bottom?

[138] From the evidence presented, the Tribunal finds that at 22:30 on September 30, 2012, there was no clear evidence or pattern as to how many or where any dead chickens were located on the load. Moreover, from that moment onwards, as the load also fell into the care and control of MLF, the Tribunal is not convinced the evidence shows clearly when and where additional birds died and who was responsible for their deaths.

[139] What evidence is there that another cause or several causes might have caused the mortality? There is the written evidence from the original producer at Tab 17 of the Agency Report that the “estimated morality rate” of the birds at the time they were leaving the producer’s farm was 4%. Deaths en route may have continued as a result. Although the causes are not listed, this mortality rate was not due to transport or to undue exposure to the weather. Gomulka’s evidence on this point was to agree with counsel for LRFT that the stress on spent hens in the circumstances of the September Incident could be related to many factors including: (1) catching of the hens; (2) loading of the hens into crates; (3) long-time hens are in their crates; (4) length of the haul; (5) withdrawal of the hens from their feed; (6) weather conditions during loading, travel, waiting at the processor prior to processing; (7) poor feathering of the birds; and (8) any broken bones suffered by hens during the whole process from loading to unloading.

[140] The Tribunal is not convinced, therefore, on the balance of probabilities, that the Agency has made its case that the actual or likely undue suffering of the birds was by reason of undue exposure to the weather. So, while birds were likely subjected to undue suffering and in fact, 425 did die from load D-73 at some point between loading and unloading for slaughter, they did not, on the balance of probabilities, unduly suffer by reason of exposure to weather.

4.4 Findings Concerning Elements 5

[141] Drawing from the guidance offered by Létourneau JA in *Doyon*, the Agency must also prove a causal link between LRFT, the transportation, and the likely, or actual, injury or undue suffering of the animal resulting by reason of an undue exposure to the weather. This causal link has been discussed above in relation to whether the chickens that suffered and died due to undue exposure to the weather or due to some other cause or causes. Here as well, the evidence presented by the Agency is not sufficient, on the balance of probabilities, for the Tribunal to conclude that LRFT committed actions while it had care and control of the hens during transportation that caused any chickens to suffer unduly by reason of undue exposure to the weather.

[142] The rain and traffic jams encountered in transit from producer to processor are, no doubt, common occurrences during the hauling of animals. When weather becomes extreme or proper precautions to protect the animals during transportation are ignored or shunned, then a driver may cause his animals to unduly suffer by reason of undue exposure to the weather. On the other hand in this case, during the hearing there was much evidence presented that the day in question did not present extreme weather conditions and that the weather the driver encountered en route resulted in him taking standard, necessary precautions to protect his load. Moreover, it was shown that the death of the chickens could have been caused by several factors.

[143] The Tribunal is alert to conflicting evidence in this case concerning when and how the chickens died. The fact remains, however, that there is simply not enough evidence to conclude, on a balance of probabilities, that the undue suffering of the chickens was by reason of undue exposure to the weather caused by the actions of LRFT.

5. Defences available under the law

[144] The Tribunal is also aware that the Act creates a liability regime that permits few tolerances, as it allows no defence of due diligence or mistake of fact. Subsection 18(1) of the Act reads 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.

[145] The findings by the Tribunal above, however, do not relate to a defence of due diligence or mistake of fact by LRFT. Clearly, had LRFT raised such arguments, Parliament's unequivocal statement on the issue in subsection 18(1) would have disallowed them.

6. Conclusion

[146] Accordingly, the Tribunal concludes that, on a balance of probabilities, the Agency has failed to prove all of the essential elements of the violation, and that LRFT, therefore, did not commit the alleged violation. Consequently, LRFT is not liable for payment of a monetary penalty in this case. Because of this finding, it is not necessary for the Tribunal to consider whether the Agency has proven that the amount of the penalty is justified under the Act and its Regulations.

Dated at Ottawa, Ontario, this 24th day of October, 2014.

Dr. Don Buckingham, Chairperson