

**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 provision 138(2)(a) 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*.

Les Fermes G. Godbout et Fils Inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

TRIBUNAL MEMBER P. ANNIS

Decision

Following an oral hearing and a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,000.00 to the Respondent within 30 days after the day on which this decision is served

REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Québec City on May 5, 2005.

The Applicant was represented by its administrator, Mr. Réal Bérubé and Mr. Paul Bruno Plourde.

The Respondent was represented by its solicitor, Me Patricia Gravel.

The Notice of Violation dated January 6, 2005, alleges that the Applicant, between the 16th and 19th day of June, 2004, at Ste-Hénédine, in the Province of Québec, committed a violation, namely: “avoir chargé et transporté des animaux de ferme dans des véhicules moteur, qui ne pouvaient être transportés sans souffrances” contrary to provision 138(2)(a) of the *Health of Animals Regulations*. Paragraph 138(2)(a) states as follows:

138(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

In this context, “undue” has been defined by the Federal Court of Appeal in *Procureur général du Canada c. Porcherie des Cèdres Inc.*, [2005] F.C.A. 59, to mean “unjustified” or “unwarranted”. The Court held that the loading and transporting of a suffering animal would cause the animal unwarranted or unjustified suffering, and hence would be contrary to the purpose of the *Regulations*.

Subsequently, in *Canadian Food Inspection Agency v. Samson*, [2005] F.C.A. 235, the Court summarized its position as follows:

What the provision contemplates is that no animal be transported where having regard to its condition, undue suffering will be caused by the projected transport. Put another way, wounded animals should not be subjected to greater pain by being transported. So understood, any further suffering resulting from the transport is undue. This reading is in harmony with the enabling legislation which has as an objective the promotion of the humane treatment of animals.

The Tribunal is of the view that the Court did not intend to eliminate a threshold to determine what constitutes undue suffering, but intended to broaden the scope of situations where suffering is considered undue.

This conclusion is supported by the fact that the wording of the paragraph makes it evident that not every “infirmity, illness, injury, fatigue or any other cause” constitutes suffering worthy of a violation. Had this been the case, there would have been no need to use the word “undue”.

It is further bolstered by the fact that this type of violation has been designated under the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* as a “serious” violation.

Also, the likely consequence of concluding that an animal would be caused undue suffering would be severe. The animal would, in most cases, have to be put down.

Finally, this conclusion is consistent with the position taken by the Canadian Agri-Food Research Council in its Guide to Handling Livestock at Risk set out on page 15 of its publication titled “*Transportation Code of Practice for the Care and Handling of Farm Animals*”, [Canadian Agri-Food Research Council : 2001], which document is frequently relied upon by the Respondent in establishing that a violation was committed.

Whether an animal was suffering, and could not, then, be loaded or transported without undue suffering during the expected journey, is a question of fact to be determined in each case by the condition of the animal at the time of the expected journey.

The salient evidence on this issue is as follows:

Dr. Pâquerette Dufour testified on behalf of the Respondent concerning an inspection she carried out on Monday June 21, 2004 on a number of sows located at the abattoir at Dubreuil (establishment #376). She confirmed that these animals had arrived in two deliveries, one made on June 16, 2004 and the other on June 19, 2004. Both deliveries originated from the Applicant’s establishment at St-Raphaël.

Dr. Dufour found a number of pigs in the June 16th, 2004 shipment with serious health problems.

- a) Sow #9020 had an abscess on the right rear leg and was limping slightly from it.
- b) Sow # 3418 was decumbent, was unable to stand and dragged itself by its front legs. According to information obtained by Dr. Dufour from André Deblois who was present during the unloading, the driver unloaded this pig by holding it by its tail as it left the truck. A post-mortem on the pig found fractures of the hind quarter with evidence of necrosis.
- c) An unidentified sow of approximately 80 kg with a grossly swollen right rear leg. The swelling had an open wound from which puss was oozing. The animal could only walk on three legs. A post-mortem revealed multiple abscesses in the leg, including an abscess on the other rear member of the sow.
- d) An unidentified sow of about 50 kg with a tail evidencing severe necrosis. It could raise itself only with great difficulty and could not apply weight on its left rear leg. A post-mortem conducted on the animal confirmed polyarthritis and abscesses.

Dr. Dufour found animals in the shipment of June 19th, 2004 also to be in a situation of distress.

- a) Sow #12 had a prolapsed uterus that showed evidence of necrosis and was giving out a putrid odour.
- b) Sow #6834 also had a prolapsed uterus which similarly showed signs of necrosis from which a putrid smell emanated.
- c) An unidentified sow with extreme weakness in its rear legs. The sow was able to raise itself only after several attempts and had trembling rear members when standing. A post-mortem revealed arthritis in the two rear knees.

Dr. Dufour testified that, in her opinion all of the above conditions existed for some time and certainly predated the animals' transport. She confirmed that these conditions caused suffering to the animals as described above.

The Applicant testified that he had based his decision on, and complied with, the *Transportation Code of Practice for the Care and Handling of Farm Animals* (“The Code”). This document was published by the Canadian Agri-Food Research Council and to which the Canadian Food Inspection Agency had contributed. The *Code* was introduced as an exhibit in Review Tribunal file # 1241 which was heard by the Tribunal prior to this matter. The Applicant argued that by loading and transporting the animals in compliance with the *Code*, it should not be subject to a violation of the *Regulations*.

The Tribunal does not agree that the Applicant complied with the *Code*. But even had it done so, the Tribunal would make its decision based upon the facts of the case presented before it. The *Code* is clear that animals which are sick, injured, infirm or tired and that cannot be transported without causing additional suffering, should not be transported. Moreover in the attached chart to the *Code*, while the general description might apply to the transportation of infirm animals, it is always understood that if the animal’s condition is such that it cannot be properly transported without causing undue suffering, proceeding to transport the animal will result in a violation of the *Regulations*.

Based upon the evidence placed before the court by the Respondent, the Tribunal is satisfied that the condition of the sows prior to transport was such that they could not have been transported without causing undue suffering during the expected journey. This conclusion, however, would not apply to sow #9020 of the June 16th, 2004 shipment. While this animal had an abscess and was limping slightly, there was no evidence that the animal was suffering unduly or in distress from its infirmity.

On one additional point, the Respondent argued that the Tribunal should take into consideration the length of time that the animals had been suffering. It argued that their suffering had been prolonged by the fact that the Applicant had delivered the sows 5 and 2 days, respectively, before the availability of the veterinarian, which unavailability was known by the Applicant.

While there is no doubt that prolonging the suffering of an animal is unacceptable conduct on the part of the persons responsible for its handling, the Tribunal concludes that once the sows had been finally unloaded at their point of destination, the “expected journey” referred to in paragraph 138(2)(a) comes to an end. If the Respondent is concerned that a person has treated an animal with cruelty after their expected journey, it may refer the matter to authorities responsible for enforcing similar legislation, including provincial legislation, which could apply to cover these circumstances.

The Tribunal is satisfied that the Respondent has established, on a balance of probabilities, that the Applicant caused to be loaded and transported animals that by reason of their infirmities could not be loaded or transported without undue suffering during the expected journey. The Tribunal is also satisfied that the amount of the penalty for the violation was established in accordance with the *Regulations*.

Dated at Ottawa this 16th day of August, 2005.

Peter Annis - Member