

**Health of Animals Act
Registrar of Appeals**



**Loi sur la santé des
animaux
Greffier des appels**

Date: 20110914

Docket: P-3-10

Citation: 2011 FC 1071

Ottawa, Ontario, September 14, 2011

PRESENT: The Honourable Mr. Justice Russell, Deputy Assessor

BETWEEN:

RICK ALSAGER

**Appellant
(or Mr. Alsager)**

and

**THE MINISTER OF AGRICULTURE AND
AGRI-FOOD CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an appeal by Mr. Rick Alsager (Mr. Alsager or the Appellant) pursuant to section 56(1) of the *Health of Animals Act*, S.C. 1990, c. 21 (Act) of the final compensation awards (Decision) for the Appellant's depopulated elk herd made in accordance with the valuation appraisal of Dr. Betty Althouse (Dr. Althouse), Canadian Food Inspection Agency (CFIA) Evaluation Committee Chair, dated May 6, 2010, (Evaluation Report). Mr. Alsager believes that Dr. Althouse

and CFIA undervalued many of the animals in his elk herd that was depopulated by May 27, 2010. The animals were destroyed pursuant to a Destruction Order issued by the Minister of Agriculture and Agri-Food Canada (Minister) following a positive result of chronic wasting disease (CWD) confirmed by the National Laboratory in Ottawa of one of Mr. Alsager's elk. The Minister has paid compensation to Mr. Alsager in accordance with the Decision but Mr. Alsager believes that some of his animals were unreasonably undervalued and he is appealing the amount of the assessment.

BACKGROUND

[2] The Appellant owns and operates a hunt ranch near Maidstone, Saskatchewan. Customers attend the Appellant's ranch and pay to experience a trophy hunt in natural surroundings.

[3] On April 16, 2010 it was confirmed that one of the Appellant's elk had tested positive for CWD, a transmissible spongiform encephalopathy that causes a progressive neurological disease in elk and other cervidae. CWD is generally believed to be caused by abnormal proteins called prions that affect the animal's central nervous system. It is inevitably fatal.

[4] CWD is a reportable disease under the Act and the *Reportable Diseases Regulations*, SOR/91-2.

[5] Also on April 16, 2010, a Notice of Quarantine was issued by the CFIA to the Appellant pursuant to section 6 of the *Health of Animals Regulations* C.R.C., c. 296 that placed all cervids on certain parcels of the Appellant's property under quarantine.

[6] On April 23, 2010, the CFIA issued a Notice of Requirement to Dispose to the Appellant pursuant to subsection 48(1) of the Act stating that destruction would occur by May 31, 2010.

[7] The Minister engaged the Appellant for the purposes of valuing his animals for purposes of compensation under the *Compensation for Destroyed Animals Regulations*, SOR/2000-233.

[8] An evaluation team approach was used which included: Dr. Althouse, chairperson on behalf of the CFIA; Roger Holland, an industry representative appointed by the Appellant; and Dr. Robert Hope, a representative of the CFIA.

[9] On April 27, 2010, a compensation meeting (Compensation Meeting) was held in North Battleford where the Appellant, his sons Jan and Lane, Roger Holland, Dr. Hope and Dr. Althouse were in attendance. Dr. Althouse was the chairperson for the evaluation with the appropriate delegated authority. General matters of valuation were discussed at the meeting and it was determined that Roger Holland and Dr. Hope would each produce his own report on the valuation of the elk. At the time of the Compensation Meeting, inventories of the elk were not available and so the number of elk to be depopulated and valued was estimated for the purposes of the reports.

[10] For bull elk, antlers are the basis for the Safari Club International scoring system (SCI) used by the industry to value male elk. The bull elk in this case had not yet fully grown their antlers for the 2010 season; antlers will generally grow in full in the autumn. Without the antlers to score and with little supporting documentation respecting the value of the animals, valuation was difficult in this case.

[11] Roger Holland and Dr. Holt completed their respective reports and submitted them to Dr. Althouse for consideration. On May 5, 2010 Dr. Althouse completed her Evaluation Report on a preliminary basis based on the estimation of inventory.

[12] By May 27, 2010, the Minister had depopulated the Appellant's elk. The fallow deer, owned by the Appellant's son, Lane Alsager, were also depopulated. The white-tail deer and the mule deer were not depopulated to allow the hunt ranch operation to conduct business in the Fall with respect to those animals, following which a complete depopulation occurred. During the depopulation of the Appellant's elk, accurate inventories were established, confirming the ages of the animals, the states of pregnancy for the females, and the number of animals.

[13] On June 16, 2010 and June 21, 2010, in accordance with the Evaluation Report completed by Dr. Althouse, and in accordance with the true inventory numbers, the Minister issued Notices of Award of Compensation to the Appellant. Compensation Orders were also issued to Lane Alsager for the depopulation of the fallow deer.

[14] The Appellant received a total of \$227,899.50 for the depopulation of his elk herd. Testing of the animals following depopulation resulted in a total of 24 positive test results for CWD. Compensation Orders were not issued for the white-tailed deer or the mule deer at this time as depopulation had not yet occurred.

[15] The Appellant filed a Notice of Appeal on or about July 28, 2010 pursuant to section 56 of the Act. In that Notice of Appeal he said that he wished "to appeal the compensation for my animals

that were put down on my farm in May 31/10.” These animals were Mr. Alsager’s elk. The award of compensation for the white-tailed deer was issued 1 March 2011, and the white-tailed deer were not part of the animals that were destroyed on May 31, 2010. This means that Mr. Alsager has filed no Notice of Appeal concerning the white-tailed deer and they are not, strictly speaking, a part of this appeal. He says that his disagreement over the valuation of three of the white-tailed deer raises the same issues as he raises with regard to his elk, but the Respondent was not given proper notice that Mr. Alsager wished to appeal the valuations given to the three white-tailed deer which he disputes. It did not become apparent until the hearing that Mr. Alsager wished to question three white-tailed deer valuations. The Respondent has had no notice or opportunity to file written material or prepare evidence for this separate issue, and the Applicant has not complied with the Act and the governing regulations regarding an appeal of the three white-tailed deer valuations.

DECISION

[16] The Compensation Orders made in accordance with Dr. Althouse’s Evaluation Report constitute the Decision under appeal.

ISSUES

[17] The issue in this matter is limited to the question of whether the compensation paid to Mr. Alsager was reasonable in so far as specific animals are concerned which are identified in exhibit A-1 filed by Mr. Alsager.

LEGISLATION

[18] The following statutory provisions come into play in this appeal:

Health of Animals Act, S.C. 1990, c. 21

Disposal of affected or contaminated animals and things

48. (1) The Minister may dispose of an animal or thing, or require its owner or any person having the possession, care or control of it to dispose of it, where the animal or thing

(a) is, or is suspected of being, affected or contaminated by a disease or toxic substance;

(b) has been in contact with or in close proximity to another animal or thing that was, or is suspected of having been, affected or contaminated by a disease or toxic substance at the time of contact or close proximity; or

(c) is, or is suspected of being, a vector, the causative agent of a disease or a toxic substance.

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Compensation to owners of animals

Mesures de disposition

48. (1) Le ministre peut prendre toute mesure de disposition, notamment de destruction, — ou ordonner à leur propriétaire, ou à la personne qui en a la possession, la responsabilité ou la charge des soins, de le faire — à l'égard des animaux ou choses qui :

a) soit sont contaminés par une maladie ou une substance toxique, ou soupçonnés de l'être;

b) soit ont été en contact avec des animaux ou choses de la catégorie visée à l'alinéa a) ou se sont trouvés dans leur voisinage immédiat;

c) soit sont des substances toxiques, des vecteurs ou des agents causant des maladies, ou sont soupçonnés d'en être.

...

Indemnisation : animal

51. (1) The Minister may order compensation to be paid from the Consolidated Revenue Fund to the owner of an animal that is

(a) destroyed under this Act or is required by an inspector or officer to be destroyed under this Act and dies after the requirement is imposed but before being destroyed;

(b) injured in the course of being tested, treated or identified under this Act by an inspector or officer and dies, or is required to be destroyed, as a result of the injury; or

(c) reserved for experimentation under paragraph 13(2)(a).

Amount of compensation

(2) Subject to subsections (3) and (4), the amount of compensation shall be

(a) the market value, as determined by the Minister, that the animal would have had at the time of its evaluation by the Minister if it had not been required to be destroyed
Minus

(b) the value of its carcass, as determined by the Minister.

Maximum value

(3) The value mentioned in

51. (1) Le ministre peut ordonner le versement, sur le Trésor, d'une indemnité au propriétaire de l'animal :

a) soit détruit au titre de la présente loi, soit dont la destruction a été ordonnée par l'inspecteur ou l'agent d'exécution mais mort avant celle-ci;

b) blessé au cours d'un examen ou d'une séance de traitement ou d'identification effectués, au même titre, par un inspecteur ou un agent d'exécution et mort ou détruit en raison de cette blessure;

c) affecté à des expériences au titre du paragraphe 13(2).

Montant de l'indemnité

(2) Sous réserve des paragraphes (3) et (4), l'indemnité payable est égale à la valeur marchande, selon l'évaluation du ministre, que l'animal aurait eue au moment de l'évaluation si sa destruction n'avait pas été ordonnée, déduction faite de la valeur de son cadavre.

Plafond

(3) La valeur marchande ne

paragraph (2)(a) shall not exceed any maximum amount established with respect to the animal by or under the regulations.

peut dépasser le maximum réglementaire correspondant à l'animal en cause.

Additional compensation

Indemnité supplémentaire

(4) In addition to the amount calculated under subsection (2), compensation may include such costs related to the disposal of the animal as are permitted by the regulations.

(4) L'indemnisation s'étend en outre, lorsque les règlements le prévoient, aux frais de disposition, y compris de destruction.

...

...

Appeal

Appel

56. (1) A person who claims compensation and is dissatisfied with the Minister's disposition of the claim may bring an appeal to the Assessor, but the only grounds of appeal are that the failure to award compensation was unreasonable or that the amount awarded was unreasonable.

56. (1) Il peut être interjeté appel devant l'évaluateur soit pour refus injustifié d'indemnisation, soit pour insuffisance de l'indemnité accordée.

Time limit for bringing appeal

Délai d'appel

(2) An appeal shall be brought within three months after the claimant receives notification of the Minister's disposition of the claim, or within such longer period as the Assessor may in any case for special reasons allow.

(2) L'appel doit être interjeté dans les trois mois suivant la notification à l'intéressé de la décision ministérielle contestée ou dans le délai plus long que l'évaluateur peut exceptionnellement accorder.

[19] Section 2 of the *Compensation for Destroyed Animals Regulations* is also relevant:

2. For the purpose of subsection 51(3) of the Act, the amount that is established as the maximum amount with respect to an animal that is destroyed or required to be destroyed under subsection 48(1) of the Act is

(a) if the animal is set out or included in column 1 of an item of the schedule, the amount set out in column 3 of that item; and

39. Elk (*Cervus elaphus*) Bull, 1 year and older Cervidae 8,000

40. Elk (*Cervus elaphus*) All elk other than those referred to in item 39 Cervidae, 4,000

...

43. Whitetailed Deer (*Odocoileus virginianus*) Buck, 1 year and older Cervidae 8,000

44. Whitetailed Deer (*Odocoileus virginianus*) All Whitetailed Deer other than those referred to in item 43 Cervidae 4,000

2. Pour l'application du paragraphe 51(3) de la Loi, la valeur marchande d'un animal qui est détruit ou qui doit l'être en application du paragraphe 48(1) de la Loi ne peut dépasser :

a) le montant prévu à la colonne 3 de l'annexe, pour tout animal visé à la colonne 1;

39. Cerf (*Cervus elaphus*) mâle non castré âgé d'un an ou plus Cervidés 8000

40. Cerf (*Cervus elaphus*) autre que celui visé à l'article 39 Cervidés 4000

...

43. Cerf de Virginie (*Odocoileus virginianus*) mâle non castré âgé d'un an ou plus Cervidés 8000

44. Cerf de Virginie (*Odocoileus virginianus*) autre que celui visé à l'article 43 Cervidés 4000

ARGUMENTS

Appellant's Position

General Introduction

[20] The Appellant (Mr. Alsager) believes that the current compensation scheme under the Act and the Regulations places too much power in the hands of government bureaucrats who are not knowledgeable in the elk and white-tailed deer industries and who are disposed to undervalue animals that have to be destroyed. As a result, he says that producers are being undercompensated in order to fulfill a government agenda to eradicate the industry. He believes that the Decision under appeal is illustrative of this general problem.

[21] Mr. Alsager says that the approach to valuation taken in the present case did not reflect the trophy business that he is in, and did not take into account the specifics of his business operations.

[22] In particular, Mr. Alsager says that the evaluation did not take into account the elite genetics of his elk herd. He has pursued a breeding program over a number of years aimed at producing elite elk bulls for the hunt trophy business that he runs on this property. He says that he does not breed animals that score under 400 on the SCI scale and that he does not have animals below a 380 score on his property, so that the lower SCI scores used in the evaluation of his elk were simply irrelevant to his trophy hunting business.

[23] Mr. Alsager explained to the Court that, following a previous depopulation of his animals in 2000, he began with a nucleus of top-quality elk to develop his own elite genetics. He says that horn

genetics are largely carried on the female side even though it is the bull elks that are hunted for their trophy racks.

[24] Over a period of about 10 years, Mr. Alsager says he was able to see what kind of horn a bull was developing and this showed him which elk cows were producing the trophy bulls. If the bull had good horns he retained both the mother and the calf. If the bull did not have good horns then both mother and calf were destroyed. Cows that did not produce the required traits were eliminated. Over time, he says that he got his elk herd down to a group of cows with the genetics to produce the desired elite trophy bulls. In his view, this means that most of his elk score 400 plus on the SCI scale and this was not appreciated or taken into account when the 2010 evaluations were done by CFIA. He says that, although he had not kept and did not provide documentation to support elite status for his elk, Dr. Althouse and Dr. Hope should have known that his animals had achieved trophy genetics and so required the higher scores that he has identified.

[25] In relation to the elk cows, Mr. Alsager says they also should have been valued as elite animals even though only seven of them were found to be pregnant and 17 were open (i.e. not pregnant) when the time came to destroy them. The failed pregnancies occurred because of the bull he had used that particular year, not because of any problem with the cows. These cows would have produced calves in the future and their failure to produce in 2010 does not detract from their elite genetics and elite value. The cows should not have been valued at the slaughter price simply because they were open.

[26] Mr. Alsager also objects to the discounting of value that occurred because Dr. Althouse felt that the “value of a hunt does not equate with the value of the animal being shot. There are expenses associated with the hunt such as transportation, lodging, meals, guides, carcass and trophy preparation that are included in the hunt price.” Mr. Alsager says that he is not in the same position as an outfitter who guides hunters in search of animals in wild, public space. What he sells to his clients are private trophy animals on private land that have been specifically developed and bred. He says that all he sells is the animal so that his value should not be discounted to 55% to reflect the service value that occurs in other hunt operations. He points out that he successfully convinced Revenue Canada that he should not have to pay GST because he was not providing a service. He is simply selling the animal.

[27] All in all, Mr. Alsager does not take issue with the Minister’s approach to valuation as it applies to other, more usual, commercial contexts. The problem as he sees it is that the valuation approach used just does not allow for, or take into account, the specific genetic values that he has been able to achieve over a long and arduous process of selective culling and breeding, or the approach that he takes to marketing his elite trophy animals to hunters.

[28] As regards the three white-tailed deer that he claims were undervalued, Mr. Alsager says that the evaluation does not recognize the higher quality animals that he breeds.

Specifics

[29] Mr. Alsager says there are two main points of dispute regarding the evaluation of his elk. The first issue is the failure of CFIA to recognize and take into account the elite genetic values of his elk.

[30] He says that CFIA has a mind set that all elk are the same and all herds are the same. This has led to the creation of the valuation graph or grid that was applied to his animals. His herd was a select trophy herd. All his bulls were 400+ on the SCI scale. All small and inferior heads were culled at two years. There were only cows of 400+ genetics; all cows that did not produce 400+ genetics were culled. Therefore, Mr. Alsager says that the CFIA graph and value of bulls less than 380 did not apply to his animals.

[31] He says that the CFIA average price on cows did not apply to his herd either because he had culled all cows that produced average bulls. He claims that cows are consistent in the style of horns and bull calves they produce and the genetics of antlers is heavily determined by the cow. In addition, the CFIA assumption that an open cow is only worth meat value shows that CFIA is deliberately cheating him. Open cows are sold for breeding all the time. If he were to purchase and replace these 30 cows, they most likely would be purchased open and prior to breeding, as is the normal procedure. These quality cows can only be purchased at a few established producers that have bred for the required genetics over the past 10 to 20 years. It takes time to establish a consistent herd like this.

[32] Mr. Alsager says that just because a cow is open (i.e. not pregnant) does not change her genetics. Mr. Alsager experienced a failure with the breeding bull in the fall in 2009, which meant he was out of calves for that year. He says he had a personal major health issue that Fall and he did not watch the bull close enough. All other livestock breeds with good genetic females sell for as much as bred cows. Mr. Alsager's cows were physically sound cows. In 2009 he had 30 calves for 29 cows. Just because a cow is open does not reduce her to meat value. CFIA did not show these cows to be non-productive at the time of being slaughtered; they all had healthy uteruses. CFIA examined all females at the time of slaughter; all these cows had calved in the previous years. In past years, Mr. Alsager had always examined any dry cow prior to breeding to make sure it was sound. This was done by the Turtleford vet, Dr. Miles Johnson.

[33] Mr. Alsager says that many of these points were explained at the Evaluation Meeting that took place in North Battleford, on April 27, 2010, but were completely ignored by Dr. Hope and Dr. Althouse. He says they either did not understand, or they did not choose to bargain or act in good faith. Mr. Alsager believes that Dr. Hope and Dr. Althouse did not understand because they are not knowledgeable about elk and deer in his business. This would not have happened if the evaluation had been conducted, as it had been in the past, by industry people who understand genetics. An acceptable value would have been made that day at the meeting, instead of not knowing what the compensation would be until after the animals were destroyed.

[34] Mr. Alsager says that the present approach to evaluation leads to all the trouble of court trials and is a waste of time and taxpayers' money. Using people that have no knowledge of the relevant issues is not how evaluations should be conducted.

[35] Mr. Alsager says there was no real evaluation team. Also, there was no negotiation of values. He believes that CFIA came in with a pre-determined value on his animals that suited CFIA. He also believes that this approach supports the government agenda to bankrupt producers and destroy an industry that threatens the monopoly that the government has in the cervid hunting industry. Dr. Hope is not an expert in this industry and there is a conflict of interest in his being an employee of CFIA. His comments show a bias and a total lack of knowledge in the business. Dr. Althouse should not be able to dictate values; this is another conflict of interest because she has no knowledge of the animals or the industry. Dr. Hope simply compiled some numbers of what the average elk scores are in Saskatchewan. He did not assess Mr. Alsager's animals and their particular genetic values.

[36] Mr. Alsager says that Dr. Hope and Dr. Althouse came to the Evaluation Meeting with their numbers. CFIA had already decided what was going to be paid, and there was no consideration of what Mr. Alsager presented. There was no discussion about Mr. Alsager's input; they just listened to what was said, and then asked him and his team to leave. He believes they did not understand what his team (Roger Holland, Lane, Jan and Mr. Alsager) were talking about.

[37] Mr. Alsager is of the view that Dr. Hope believes all elk herds are the same, which is completely incorrect. Dr. Hope does not understand genetics. Most (80%) of the elk in the industry are commercial animals raised on new farms by people with limited knowledge, such as Dr. Hope. These animals are raised for velvet production. The graph that Dr. Hope produced for valuation purposes shows this. 80% of these animals do not even qualify for trophies. Many producers bailed out of the industry because they had velvet bulls that were not used for hunt ranches. Hence, the

cheap prices. Most growth in the industry occurred between 1996- 2000. Many new producers bought animals from ROP records strictly for velvet production. Velvet dominated the market at that time. Only a small percentage of breeders (mainly people who had been breeders since the early 90s) were starting to select for trophy genetics. A desirable velvet bull has a short brow, bez, and trez tines with the straight beam, usually a 5x5 or 6x6 point bull. These traits do not make good trophies; these are the bulls that fall into the 375 and under category on the SCI scale. It was not until the collapse of the velvet market in 2000 that producers started concentrating on trophy genetics. This is why 90% of the bulls at that time were let go at meat prices. A few trophy farms thought they could capitalize on these cheap bulls, but they found out very quickly there was no demand for small trophies.

[38] Mr. Alsager says he has been in the business of breeding deer and elk for 30 years. He says his elk have won more trophies and competitions, and he has had more high-selling animals, than anyone else.

[39] Mr. Alsager says that his hunting operation attracts the elite hunters in the business because his stock has the reputation for being top trophies. His clientele are people such as the top management of Pepsi-Cola, directors of the Bank of America, the owners of several casinos in Las Vegas, Hank Williams Junior, Tommy Wilcox, Johnny Lee, John Stone, Rhett Atkins, NFL football players, Steve Mott and Kenny Stabler, and other executives of many other large companies.

[40] These people do not shoot bulls under SCI 380, and they do not shoot deer under 170. Mr. Alsager does not keep elk bulls on his property that do not score 380+ on the SCI scale, and most of

them are well over 400. They are culled out at two years of age. He has select cows with 400+ genetics; there are very few two-year-olds that need culling. The same goes for his deer.

[41] Mr. Alsager says he has been criticized by Dr. Althouse because he does not keep records or pedigrees or use artificial insemination. She thinks that, because of this, he does not know what he is doing.

[42] Mr. Alsager says he has sold breeding bulls all over the world and these animals have dominated the industry from the US, New Zealand, Australia and all over Canada. He will not sell a bull that is not an elite breeder. He feels that Dr. Althouse and Dr. Hope must think that he is just lucky in picking these animals. Pedigrees and records were used mainly for body weights and velvet production that producers used as marketing tools to sell their animals. Mr. Alsager used ROP records when he was selling breeding stock. Since 2000 there has been no breeding market for him (or anyone for that matter). His breeding program since then has been specifically for his own trophies, and ROP records were of no use to him. He says he learned 25 years ago how to assess a bull by his first rack on whether he had the potential to make SCI 400+ points. All his cows were proven and selected to produce calves that would grow SCI 400+ racks.

[43] A bull must have an extra long trez tine and a good bell shape beam with 7+ points. Without this he will be one of those 300+380 bulls. Mr. Alsager says he kept no bull past two years that did not have the right rack.

[44] Mr. Alsager kept records of his cows and their progeny until the bull was two years old. If the bull did not have the good trez and long beam and 7+ points, then he was slaughtered and his mother also got her head cut off. Cows consistently produce offspring with similar racks. When these cows are bred to big bulls (SCI 460-520), if the genetics are not in the cow, they do not consistently produce big bulls, as horn style is determined by the cow.

[45] After the government destroyed all his elk in 2000 Mr. Alsager started again with 30 females. Over the next 10 years he eliminated over 40% of these cows and replaced them with offspring that had SCI 400+ genetics.

[46] He says that all the bulls he has ever used for breeding have scored 450+520, so there is no reason for him to use artificial insemination because there is no advantage to be gained. This is because he is not selling breeding stock; he is producing trophies for himself and, when it comes to any males he purchases, he knows what he is getting by looking at the animal, not by looking at some useless piece of paper. Any bull raised on his property was culled by two years of age if it did not have SCI 400+ potential. This also applies to the deer he purchased.

[47] Mr. Alsager says that, once you have an animal that has the right style and form of horn, the rest is just "giving him the groceries." He believes that CFIA staff are not qualified to dictate the values of animals. The valuation graph they have devised only applies to average animals in the province and is totally irrelevant to the genetics on Mr. Alsager's farm and is, in any event, 10 years outdated.

[48] Mr. Alsager says there are only a few farms left that have animals of similar genetics that Mr. Alsager can use to replace his animals. Mr. Alsager does not discuss mule deer values because he says there is going to be no more “murdering of deer on my property.” He also says there will be no more business done with CFIA. Dr. Hope and Dr. Althouse made statements that the mule deer market is limited when, in fact, there is a huge demand and prices are twice that of whitetail. Mr. Alsager says he has the best and largest herd of mule deer in the country. This cannot be just luck. It is because he knows what he is doing. Dr. Hope checked with other deer breeders and the values of their stock, as well as the prices they sell them for, and what Mr. Alsager buys them for, and his comment was that they were unreasonable. But it is Dr. Hope and CFIA who are unreasonable. Every evaluation CFIA has done in the past two years has ended in disagreement with the producers.

[49] The second major point of contention is the 45% discounting of value that occurred in relation to his bull elk to reflect the alleged service costs of Mr. Alsager’s trophy business. Mr. Alsager suggests that the Court make a recommendation to the Minister to change the valuation procedure back to the way it was before, and make government people stick to disease control. The present evaluation process is flawed and was designed to destroy the industry and put producers out of business. The notion that an animal is only worth 55% of price of the trophy value is a joke. A farmer who sells a beef bull does not get 55% of the selling price if he is depopulated. Such farmers have marketing and production costs; they entertain buyers who come to choose a bull. Mr. Alsager’s business is no different. He produces animals for sale and the sale price is what he expects. Outfitters who take out a hunter on a guided hunt for wild animals do not own the animal or have any costs of producing them; they only supply a service, which is completely different from

livestock producers such as Mr. Alsager. Revenue Canada acknowledges this difference. Mr. Alsager has been audited on the issue of GST and it has been determined that he does not have to charge GST. Most of his clients kill the animals they choose on the first day and are not there for two weeks, as is the usual case with an outfitter of wild deer.

[50] Mr. Alsager believes that evaluation used to be a fair process. A group of knowledgeable people in the industry with no conflict of interest, and unrelated to CFIA and the producer, were used as evaluators.

[51] These people sat around the table and agreed on fair values; it was all done in one afternoon. Once that was done, CFIA came in and dealt with the disease issues. If the producer disagreed or felt something had been overlooked, he could further explain at that time.

[52] In Mr. Alsager's view, certain people in CFIA changed this procedure, not by request of the Minister, but by themselves to advance their agenda to destroy the industry. They dictate a ridiculous value, put producers at the disadvantage of dragging a simple evaluation through the courts, have no knowledge of the industry, and are totally funded at the taxpayers expense to the financial hardship of the producer. The present dispute has already taken over a year, and who knows how much longer it will go on. Mr. Alsager says he expects fair compensation for his animals and he also says he should get compensation for the delay and hardship created by this procedure.

Respondent's Position

[53] The Respondent says that the issue in this application is limited to the question of whether compensation paid to the Appellant for his depopulated elk is reasonable. Section 56 of the Act states as follows:

Appeal

56. (1) A person who claims compensation and is dissatisfied with the Minister's disposition of the claim may bring an appeal to the Assessor, but the only grounds of appeal are that the failure to award compensation was unreasonable or that the amount awarded was unreasonable.

Appel

56. (1) Il peut être interjeté appel devant l'évaluateur soit pour refus injustifié d'indemnisation, soit pour insuffisance de l'indemnité accordée.

[54] In *Siclo v Canada (Minister of Agriculture and Agri-Food)*, 2004 FC 871, Justice Edmond Blanchard noted at paragraph 54 that in terms of the adequacy of compensation pursuant to the Act, "we must rely on the test of what is reasonable."

[55] In *Ferme Avicole Héva Inc. v Canada (Minister of Agriculture)*, [1998] FCJ No 1021, Justice Danièle Tremblay-Lamer stated at paragraph 38 that lost profit or value to the owner was not the same as market value when determining compensation:

It has been established in the case law that the value to the owner does not correspond to fair market value, and that the compensation was not intended to compensate the owner for its lost profits by putting it back into the same position as it was in before the animals were destroyed.

[56] In *Siclo*, above, Justice Blanchard outlines the applicable legislation, beginning at paragraph 22 of his decision, respecting the Minister's authority to order the destruction of animals and the discretion to order compensation corresponding to the fair market value of the animal at the time of its destruction:

Section 48 of the *Animal Health Act* authorizes the Minister to order the destruction of animals which are, or are suspected of being, affected or contaminated by a disease. Under section 51, when the owner's animals are destroyed the Minister may order compensation to be paid to the owner. At the same time, under subsection 51(2), the compensation payable to the owner must correspond to the market value of the animal minus the value of its carcass, as determined by the Minister, at the time of the appraisal if its destruction was not ordered.

[57] Section 48(1) of the Act states as follows:

Disposal of affected or contaminated animals and things

48. (1) The Minister may dispose of an animal or thing, or require its owner or any person having the possession, care or control of it to dispose of it, where the animal or thing

(a) is, or is suspected of being, affected or contaminated by a disease or toxic substance;

(b) has been in contact with or in close proximity to another animal or thing that was, or is suspected of having been, affected or contaminated by a

Mesures de disposition

48. (1) Le ministre peut prendre toute mesure de disposition, notamment de destruction, — ou ordonner à leur propriétaire, ou à la personne qui en a la possession, la responsabilité ou la charge des soins, de le faire — à l'égard des animaux ou choses qui :

a) soit sont contaminés par une maladie ou une substance toxique, ou soupçonnés de l'être;

b) soit ont été en contact avec des animaux ou choses de la catégorie visée à l'alinéa a) ou se sont trouvés dans leur voisinage immédiat;

disease or toxic substance at the time of contact or close proximity; or

(c) is, or is suspected of being, a vector, the causative agent of a disease or a toxic substance.

c) soit sont des substances toxiques, des vecteurs ou des agents causant des maladies, ou sont soupçonnés d'en être.

[58] Section 51 of the Act addresses compensation to owners of animals:

51. (1) The Minister may order compensation to be paid from the Consolidated Revenue Fund to the owner of an animal that is

51. (1) Le ministre peut ordonner le versement, sur le Trésor, d'une indemnité au propriétaire de l'animal :

(a) destroyed under this Act or is required by an inspector or officer to be destroyed under this Act and dies after the requirement is imposed but before being destroyed;

a) soit détruit au titre de la présente loi, soit dont la destruction a été ordonnée par l'inspecteur ou l'agent d'exécution mais mort avant celle-ci;

(b) injured in the course of being tested, treated or identified under this Act by an inspector or officer and dies, or is required to be destroyed, as a result of the injury; or

b) blessé au cours d'un examen ou d'une séance de traitement ou d'identification effectués, au même titre, par un inspecteur ou un agent d'exécution et mort ou détruit en raison de cette blessure;

(c) reserved for experimentation under paragraph 13(2)(a).
Amount of compensation

c) affecté à des expériences au titre du paragraphe 13(2).
Montant de l'indemnité

(2) Subject to subsections (3) and (4), the amount of compensation shall be

(2) Sous réserve des paragraphes (3) et (4), l'indemnité payable est égale à la valeur marchande, selon l'évaluation du ministre, que l'animal aurait eue au moment de l'évaluation si sa

(a) the market value, as determined by the Minister, that the animal would have had

at the time of its evaluation by the Minister if it had not been required to be destroyed
Minus

destruction n'avait pas été ordonnée, déduction faite de la valeur de son cadavre.

(b) the value of its carcass, as determined by the Minister.

Maximum value

Plafond

(3) The value mentioned in paragraph (2)(a) shall not exceed any maximum amount established with respect to the animal by or under the regulations.

(3) La valeur marchande ne peut dépasser le maximum réglementaire correspondant à l'animal en cause.

Additional compensation

Indemnité supplémentaire

(4) In addition to the amount calculated under subsection (2), compensation may include such costs related to the disposal of the animal as are permitted by the regulations.

(4) L'indemnisation s'étend en outre, lorsque les règlements le prévoient, aux frais de disposition, y compris de destruction.

[59] The Minister's discretion to compensate is limited by maximum amounts established under the Regulations. Section 2 of those Regulations provide:

2. For the purpose of subsection 51(3) of the Act, the amount that is established as the maximum amount with respect to an animal that is destroyed or required to be destroyed under subsection 48(1) of the Act is

2. Pour l'application du paragraphe 51(3) de la Loi, la valeur marchande d'un animal qui est détruit ou qui doit l'être en application du paragraphe 48(1) de la Loi ne peut dépasser :

(a) if the animal is set out or included in column 1 of an item of the schedule, the amount set out in column 3 of that item; and

a) le montant prévu à la colonne 3 de l'annexe, pour tout animal visé à la colonne 1;

(b) in any other case, \$30. b) 30 \$, dans tout autre cas.

[60] In the particular case of elk, the schedule, pursuant to the above noted section 2(a) of the *Compensation for Destroyed Animals Regulations*, provides the maximum amount the Minister may award as follows:

39. Elk (<i>Cervus elaphus</i>) Bull, 1 year and older Cervidae 8,000	39. Cerf (<i>Cervus elaphus</i>) mâle non castré âgé d'un an ou plus Cervidés 8000
40. Elk (<i>Cervus elaphus</i>) All elk other than those referred to in item 39 Cervidae, 4,000	40. Cerf (<i>Cervus elaphus</i>) autre que celui visé à l'article 39 Cervidés 4000

[61] In *Donaldson v Canada (Minister of Agriculture)*, 2006 FC 842, Justice Michael Kelen stated at paragraph 16 that the proper approach when determining the reasonable amount to award for the compensation of an animal destroyed under the Act is the market value that the animal had at the time of destruction, subject to any maximum amount referred to in subsection 51(3) of the Act.

[62] The Appellant was awarded \$226,750 for the elk and \$1,149.50 for miscellaneous expenses for a total amount of \$227,899.50. The amount was arrived at based on a number of considerations that included, but were not limited to: replacement cost, genetic quality, age, sex, pregnancy, restricted movement status, and use of the animal.

[63] The valuation of the elk also included consideration of the industry's scoring system based upon the male antlers (SCI). In the present case, the antlers of the male elk had not yet grown in for the season at the time of the depopulation; therefore, the scoring grade was based on the statistically

normal curve of a herd of elk of excellent genetic value. This scoring grid was developed in consultation with elk producers in the industry to ensure that compensation was fair and reasonable.

[64] The valuation of the elk was further made difficult in the present case due to the small amount of documentation provided by the Appellant that would, in the normal course, have assisted in the determination of the value of his elk.

[65] The compensation awarded to the Appellant was not unreasonable.

[66] Pursuant to section 51 of the Act, the Appellant was awarded \$227,899.50 in compensation for the May 2010 depopulation of his elk due to a positive result for CWD. The valuation of his animals took into account the industry's SCI scoring system. Because the male elk had not yet grown their antlers for the 2010 season, valuation was based on a grid scoring system developed in consultation with elk producers and also took into account a number of considerations that included, sex, age, pregnancy, genetics and use of the animal. The assessment of the value of the Appellant's elk was done by market research, statistically sustainable percentages of SCI scores, and consideration of two industry reports.

[67] The Appellant has not shown that the compensation he was awarded was unreasonable. The valuation of the elk and the compensation awarded was based on the information that was available and reflected the fair market value of the animals at the time of depopulation.

WITNESSES

[68] The evidence in this appeal was given orally or entered as exhibits at the hearing. Mr. Alsager represented himself and testified as his only witness as well as submitting a number of exhibits. Because Mr. Alsager's Notice of Appeal, received July 16, 2010, was so brief, it was not until the hearing on June 7, 2010 in Battleford that the Respondent and the Court were made aware of the full range of his disagreement with the valuation or, indeed, that he also wished to take issue with the valuation of three white-tailed deer in addition to the evaluation of the elk. This is why the Respondent was unable to provide written submissions, or much by way of evidence, for the valuation of the white-tailed deer in dispute.

[69] The only Notice of Appeal filed by Mr. Alsager and accepted by the Court is the handwritten letter dated July 13, 2010, received by the Court on July 16, 2010 and accepted as a Notice of Appeal by Chief Justice Allan Lutfy on July 28, 2010. That Notice of Appeal says quite clearly that Mr. Alsager is only appealing the compensation he received "for my animals that were put down on my farm on May 31, 2010." There were no white-tailed deer put down on or about that date. Hence, the Court has no appeal before it that includes the compensation paid for the white-tailed deer.

[70] The witnesses for the Minister were Dr. Althouse, a qualified veterinarian and the CFIA Evaluation Committee Chair, who produced the Evaluation Report that forms the basis for the compensation amounts under appeal, and Dr. Hope, who had been the CF IA - selected industry representative in the valuation process and one of the people responsible for developing the CFIA

valuation system that was applied in this case. Dr. Althouse, who is a disease control specialist for CFIA, also has eight years of experience as a private farmer, producer and seller of livestock. She was candid in informing the Court that Mr. Alsager's was the first cervid valuation she had ever done even though she has been involved in 12 or more depopulations since 2002 in various other roles.

[71] Dr. Hope, on the other hand, who is a district veterinarian for CFIA in Swift Current, has been closely involved with the elk industry since the early 90s and has even owned his own elk herd and conducted his own elk breeding program. He has, among other things, sold bull elk to the hunt industry. Dr. Hope has been involved in many cervid valuations in recent years and, at the hearing, displayed a wide knowledge of the industry and approaches to pricing and valuation. Together with Dr. Jim Harvey, Dr. Hope was responsible for developing the approach to valuation applied to the elk in this case and was closely involved in the valuation process itself. He was present at the Evaluation Meeting that occurred on April 27, 2010 in North Battleford, gathered information about Mr. Alsager's business, and produced one of the reports that Dr. Althouse used as part of the rationale for her own Evaluation Report.

[72] Dr. Althouse and Dr. Hope produced a range of detailed documentation as exhibits that revealed how the valuation process was developed and applied in this case to Mr. Alsager's animals.

[73] Mr. Alsager had selected Mr. Roger Holland of Maidstone, Saskatchewan, a former elk producer, and someone closely involved in the cervid industry in Saskatchewan, as his own industry

expert in the valuation process. Mr. Holland produced a valuation report that was also reviewed by Dr. Althouse as part of her own valuation process and before she produced her Evaluation Report.

[74] The Court has carefully reviewed Mr. Holland's report. It is brief in its reasons and methodology:

Under section 51 of the *Health of Animals Act*, compensation is "Fair Market Value" as determined by the minister, had the animal not been required to be destroyed. IKR [Mr. Alsager] breeding programs out weighs and out performs any other producer in the province of Saskatchewan. It is totally impossible to buy any animals from a Saskatchewan farm that will be the same quality as animals raised on IKR ranch. All cervids raised on the IKR ranch are valued higher because of their genetics, size, smarts and proven performance which is all proven in their records. There is still ample supply of elk and white-tailed deer to buy in Saskatchewan and Alberta. Mule deer and fallow deer are almost impossible to replace in Saskatchewan and Alberta as there are very few producers here. The one's here are very small producers. We are presenting our best value on current prices with the knowledge that these cervids will be impossible to replace with the same quality.

[75] Mr. Holland goes on to say that

CFIA has on record that Ryan Clark and Blue Spruce Elk Farm genetics are recognized as Saskatchewan's top genetics. Blue Spruce Elk Farm genetics are 100% IKR genetics so to just make it more clear. IKR and Ryan Clark genetics are Saskatchewan's best genetics pool and CFIA has recognized this and is recorded on their own paper work on a previous CWD case.

My report is including information given to me by IKR ranch and talking to Saskatchewan's largest fallow deer producer.

[76] Mr. Holland's report is strong on assertions, but thin on methodology and objective proof. It says that Mr. Alsager's animals are "valued higher because of their genetics, size, smarts and proven performance which is all proven in their records." [Emphasis added]. Unfortunately, Mr.

Holland does not explain what “records” he is referring to, and he does not produce any such records or explain why such records are not produced. Mr. Holland essentially repeats what Mr. Alsager asserted before the Court at the appeal hearing on June 7, 2011 in Battleford. Mr. Alsager did not call Mr. Holland as a witness. Mr. Holland’s report is lacking in rigor and methodology. It does little more than repeat and confirm Mr. Alsager’s own position that valuations should be established by industry people who understand pricing and who somehow know, anecdotally and by virtue of close association with other producers, the genetic character and the market value of any particular group of elk or deer. As Mr. Alsager repeated on several occasions, everyone in such a group would know what his Idanell Korner Ranch (IKR) stood for, and there would be no need for records and discussion of methodologies of the kind devised and used by CFIA in this case.

ANALYSIS

[77] Mr. Alsager does not like the current scheme for compensation established under the Act. He believes that it places too much power in the hands of government bureaucrats who are not knowledgeable in his industry, and that it does not provide a level of compensation that will allow producers to recover from depopulations that are carried out when disease strikes their animals. In fact, Mr. Alsager made it clear that, in his opinion, government (or at least certain people in government) is intent upon destroying his industry.

[78] These are complex and controversial political issues. On the evidence produced by Mr. Alsager in this appeal, it is not possible to say whether Mr. Alsager’s general views about the compensation scheme under the Act have any substance to them. In any event, they belong in the

political forum and I am sure that Mr. Alsager, who was both forceful and forthright in representing himself before me, is fully aware that these general views need to be pursued and tested in the political arena. All that the Court can do is to determine whether, given the present scheme that Parliament has devised, and the methodologies and criteria used to evaluate his animals in this case, the compensation he received was reasonable. The evidence before me is that Dr. Hope and Dr. Althouse carried out their respective roles in accordance with the scheme of the governing legislation and the applicable regulations. Mr. Alsager produced no evidence to support his conspiracy theory or that would suggest that Dr. Hope, Dr. Althouse and the CFIA team were doing anything less than their level best to find the appropriate valuations in this case. And it also has to be borne in mind that they were doing this in the face of significant difficulties caused by Mr. Alsager's apparent aversion to record keeping and the production of documentation, and his decision to have his elk herd destroyed before the antlers of the male elk (the basis of the SCI scoring system) had time to grow in for the upcoming season. Mr. Alsager wishes the Court to assume that the superior genetics of his elk would guarantee the antlers scores that are a significant aspect of the evaluation, but he produced no evidence of such a guarantee before the Court and he did not allow this position to be put to the test before the elk were depopulated. Mr. Alsager may argue that CFIA (and Dr. Hope and Dr. Althouse in particular) were wrong or unreasonable in their assessment, but there is no evidence whatsoever to suggest they were doing anything but attempting to provide the legally prescribed level of compensation to Mr. Alsager.

[79] Given Mr. Alsager's experience with two depopulations, his frustrations are perfectly understandable and the Court can appreciate his disappointment with the compensation he received.

However, the Court can only act upon the evidence placed before it and, on Mr. Alsager's side, there is little in the way of objective evidence to back up some of his major assertions.

The Law

[80] As section 56 of the Act makes clear, a person who is dissatisfied with the Minister's disposition of a compensation claim can bring an appeal to an Assessor. However, the grounds of appeal allowed are limited to whether the failure to award compensation was unreasonable, or whether the amount awarded was unreasonable. Mr. Alsager's complaint is that the amount awarded by the Minister for some of his elk and three of his white-tailed deer was unreasonable. As previously explained, it is my view that I have no appeal before me that deals with the white-tailed deer.

[81] Section 2 of the Act defines "Assessor" as follows:

Assessor means the Assessor or any Deputy Assessor appointed under Part II of the <i>Pesticide Residue Compensation Act</i> ;	L'évaluateur ou tout évaluateur adjoint nommé sous le régime de la partie II de la <i>Loi sur l'indemnisation du dommage causé par des pesticides</i> .
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[82] Section 14(1) under Part II of the *Pesticide Residue Compensation Act*, R.S.C. (1985), c. P-10 authorizes the Governor in Council to appoint an assessor from among the judges of a number of Courts, including the Federal Court, to hear appeals from compensation awards made under the *Pesticide Residue Compensation Act* or "under any other Act to which [Part II] is made applicable...." This includes the *Health of Animals Act*.

[83] Chief Justice Allan Lutfy of the Federal Court was appointed as an Assessor and, in accordance with section 14(3) of Part II of the *Pesticide Residue Compensation Act*, he has designated me as a Deputy Assessor to hear Mr. Alsager's appeal.

[84] In *Siclo*, above, Justice Blanchard of this Court provided a summary of the principal statutory provisions applicable to this type of appeal as well as some of the established principles that the Courts have applied to determine whether any particular award of compensation is reasonable:

22 Section 48 of the *Animal Health Act* authorizes the Minister to order the destruction of animals which are, or are suspected of being, affected or contaminated by a disease. Under section 51, when the owner's animals are destroyed the Minister may order compensation to be paid to the owner. At the same time, under subsection 51(2), the compensation payable to the owner must correspond to the market value of the animal minus the value of its carcass, as determined by the Minister, at the time of the appraisal if its destruction was not ordered. Section 48 provides:

48. (1) The Minister may dispose of an animal or thing, or require its owner or any person having the possession, care or control of it to dispose of it, where the animal or thing(a) is, or is suspected of being, affected or contaminated by a disease or toxic substance;(b) has been in contact with or in close proximity to another animal or thing that was, or is suspected of having been, affected or contaminated by a disease or toxic substance at the time of contact or close proximity; or(c) is, or is suspected of being, a vector, the causative agent of a disease or a toxic substance.

23 Section 51 provides:

51.(1) The Minister may order compensation to be paid from the Consolidated Revenue Fund to the owner of an animal that is

(a)destroyed under this Act or is required by an inspector or officer to be destroyed under this Act and dies after the requirement is imposed but before being destroyed;

(b)injured in the course of being tested, treated or identified under this Act by an inspector or officer and dies, or is required to be destroyed, as a result of the injury; or

(c)reserved for experimentation under paragraph 13(2)(a).

(2)Subject to subsections (3) and (4), the amount of compensation shall be

(a)the market value, as determined by the Minister, that the animal would have had at the time of its evaluation by the Minister if it had not been required to be destroyed minus

(b)the value of its carcass, as determined by the Minister.

(3)The value mentioned in paragraph (2)(a) shall not exceed any maximum amount established with respect to the animal by or under the regulations.

(4)In addition to the amount calculated under subsection (2), compensation may include such costs related to the disposal of the animal as are permitted by the regulations.

...

53 Section 56 of the Act gives the Appellant the right to appeal the amount awarded by the Minister to an Assessor. The section provides that appeals are limited to questions of the inadequacy of the compensation or justification of the failure to award compensation:

56. (1) A person who claims compensation and is dissatisfied with the Minister's disposition of the claim may bring an appeal to the Assessor, but the only grounds of appeal are that the failure to award

compensation was unreasonable or that the amount awarded was unreasonable.

54 On the inadequacy of the compensation, we must rely on the test of what is reasonable. In *Évaluateur dans Ferme Avicole Héva Inc. v. Canada (Minister of Agriculture)*, [1998] F.C.J. No. 1021, Tremblay-Lamer J., paragraph 9, indicated:

On the question of the amount of the compensation, the Courts have interpreted section 56 on the basis of the English version of the section, in which the test is what is “reasonable”.

55 Strayer J., also cited by Tremblay-Lamer J. in *Ferme Avicole Héva Inc.*, *supra*, confirmed the reasonableness test in *Nelson v. Canada (Minister of Agriculture)*, [1991] F.C.J. No. 1003:

The appeal is in effect a trial of the issue of whether the compensation ordered by the Minister was “unreasonable”, presumably having regard to the criteria laid down for the Minister whereby he is to determine what in his opinion is the market value that the animal ... would have had immediately before it was destroyed under this Act ...

[85] In addition to the provisions set out by Justice Blanchard in *Siclo*, above, section 2 of the *Compensation for Destroyed Animals Regulations*, provides that the Minister’s discretion to compensate is limited by maximum amounts. Section 2 of those Regulations reads as follows:

2. For the purpose of subsection 51(3) of the Act, the amount that is established as the maximum amount with respect to an animal that is destroyed or required to be destroyed under subsection 48(1) of the Act is

(a) if the animal is set out or included in column 1 of an item of the schedule, the amount set out in column 3 of

2. Pour l'application du paragraphe 51(3) de la Loi, la valeur marchande d'un animal qui est détruit ou qui doit l'être en application du paragraphe 48(1) de la Loi ne peut dépasser :

a) le montant prévu à la colonne 3 de l'annexe, pour tout animal visé à la colonne 1;

that item; and

(b) in any other case, \$30. b) 30 \$, dans tout autre cas.

[86] Pursuant to Regulation 2(a), the relevant schedule provides that the Minister may award for elk up to the following maximum dollar amounts:

39. Elk (<i>Cervus elaphus</i>) Bull, 1 year and older Cervidae 8,000	39. Cerf (<i>Cervus elaphus</i>) mâle non castré âgé d'un an ou plus Cervidés 8000
40. Elk (<i>Cervus elaphus</i>) All elk other than those referred to in item 39 Cervidae, 4,000	40. Cerf (<i>Cervus elaphus</i>) autre que celui visé à l'article 39 Cervidés 4000

[87] As regards white-tailed deer, the schedule sets out the following maximum dollar amounts:

43. Whitetailed Deer (<i>Odocoileus virginianus</i>) Buck, 1 year and older Cervidae, 8,000	43. Cerf de Virginie (<i>Odocoileus virginianus</i>) mâle non castré âgé d'un an ou plus Cervidés 8000
44. Whitetailed Deer (<i>Odocoileus virginianus</i>) All Whitetailed Deer other than those referred to in item 43 Cervidae 4,000	44. Cerf de Virginie (<i>Odocoileus virginianus</i>) autre que celui visé à l'article 43 Cervidés 4000

[88] In *Donaldson*, above, Justice Kelen stated at paragraph 16 that the proper approach when determining the reasonable amount to award for the compensation of an animal destroyed under the Act is to use the market value that the animal had at the time of destruction, subject to any maximum amount referred to in subsection 51(3) of the Act.

[89] Also of relevance is section 57 of the Act:

Powers of Assessor

57. (1) On hearing an appeal, the Assessor may confirm or vary the Minister's disposition of the claim or refer the matter back to the Minister for such further action as the Assessor may direct.

Costs

(2) Costs may be awarded to or against the Minister in an appeal.

Decisions final

(3) The decision of the Assessor on an appeal is final and conclusive and not subject to appeal to or review by any Court.

Pouvoirs de l'évaluateur

57. (1) L'évaluateur qui entend l'appel peut confirmer ou modifier la décision du ministre ou renvoyer l'affaire à celui-ci pour qu'il y soit donné suite de la manière que lui-même précise.

Frais

(2) Les frais peuvent être accordés au ministre ou mis à sa charge.

Dernier ressort

(3) Les décisions de l'évaluateur ne sont pas susceptibles d'appel ou de révision.

[90] In accordance with the above framework and principles, I need to determine whether the compensation awarded by the Minister to Mr. Alsager for the elk in dispute was reasonable as being, in accordance with subsections 51(2) and 51(3) of the Act, the market value that the animals would have had at the time of their destruction if they had not been required to be destroyed (minus the value of the carcasses and subject to the maximums permitted by the Regulations.)

The Valuation Principles and Process Used

[91] Dr. Hope was able to provide the Court with highly material evidence about how he and Dr. Harvey, another veterinarian, had, in conjunction with leading producers in the elk industry devised

the valuation system that was used in this case. He was also able to provide the Court with evidence as to how Mr. Alsager's animals were valued. There was no real challenge to his evidence. In fact, Mr. Alsager made it clear to the Court that he does not take issue with the scheme and the methodology devised by Dr. Hope and Dr. Harvey; he takes the view, however, that it is only relevant to more conventional commercial operations and has no application to the elite, trophy animals that he has produced through his aggressive culling and breeding practices over a number of years.

[92] Although Mr. Alsager asserted in argument that no one at CFIA knows what they are doing when it comes to valuing elk and white-tailed deer, he made little effort to challenge Dr. Hope's evidence that he is an expert on valuing cervids and has been involved in 11 valuations. In cross-examination, Mr. Alsager produced pictures of various elk for Dr. Hope to look at and it became apparent from his answers that Dr. Hope knows precisely how elk are bred and scored for the hunt trophy business and why the horns are so important. The only real point of disagreement that occurred was over the way that Mr. Alsager's animals had been valued.

[93] It became apparent during testimony and cross-examination that Mr. Alsager presented Dr. Hope and Dr. Althouse and the CFIA evaluation team with two major problems: he chose to have his elk destroyed in the spring of 2010 before it was possible to see what kind of horns the bull elk would develop; and he also produced little in the way of records that would have any relevance for valuation purposes.

[94] Mr. Alsager may have had good reasons for choosing to destroy his elk herd before the horns of the bulls had fully developed and hardened, and he may have good reasons for not keeping records, but whatever those reasons are they are of no assistance to the valuation process.

Valuations cannot be made in a vacuum. Even Mr. Alsager concedes that the valuation methodology and approach devised by CFIA is legitimate; he just says it does not apply to the trophy quality of his animals. But all he produced to demonstrate superior values were his own words and some support from others who were willing to confirm that he breeds elk to produce the best genetics for high SCI scores that he can.

[95] The CFIA accepted the anecdotal evidence concerning the higher than average genetic value of Mr. Alsager's elk and factored this into the actual valuation scores that were awarded to his animals. But Mr. Alsager says that this was not enough.

[96] Mr. Alsager has produced the scores and the values that he believes his animals should achieve. The problem is that there is no evidentiary basis to support the scores and the values he awards his animals. There is evidence concerning Mr. Alsager's breeding and culling program and his focus on producing high-scoring bull elk for the hunt trophy business. This evidence was provided by Mr. Alsager himself in oral testimony and it has not been challenged. But an aggressive breeding program is not, *per se*, direct evidence of the value of particular animals that have been destroyed.

[97] My understanding of the evidence is that the market value of the bull elk at issue in this case would depend, to a considerable extent, on the trophy quality of their horns at the time they are

ready to be shot by a hunter client. No one knows what the horns of the particular bull elk in this case would have looked like at that time. And the reason no one knows is that Mr. Alsager chose to have his elk killed in the spring of 2010, long before the horns of the bull elk came to maturity; he also failed to keep records to show what their horns had looked like in previous years, or to show how any particular animal would be likely to score on the SCI scale.

[98] Mr. Alsager's argument, then, is that he bred his animals aggressively to produce the kinds of genetics that would raise the trophy horn quality and value of his herd, so that the bull elk should be valued as though they had developed the kinds of trophy horns that his breeding methods were aimed at producing.

[99] It seems to me that the problem with this is that, without some evidence that the animals in question would have been likely to develop such high-scoring sets of horns, Mr. Alsager's position remains unsupported. There is little by way of evidence before the Court that these specific animals would, if allowed to develop their horns to their full size, have achieved the SCI scores that Mr. Alsager says they should receive for valuation purposes. In fact, the only evidence that the Court has on point goes against the assumptions that Mr. Alsager would like the Court to draw from the description he gave of his breeding and culling techniques.

[100] In response to Mr. Alsager's questions about aggressive breeding for desirable trophy qualities and the Court's request to Dr. Hope to explain how Mr. Alsager's animals fit into the CFIA scheme and the grid of values devised by CFIA for valuation purposes, Dr. Hope had the following to say about the connection between a herd with good genetics and SCI scores:

Dr. Hope: I mean if we could -- if we had a system where you could take a breed of bull to 100 cows and have every last calf come out as a perfect 450 score animal, that would be phenomenal, but that is not how genetics works.

Mr. Alsager: But that --

Dr. Hope: You can leap --

Mr. Alsager: Excuse me for a second, but that's what happens in an average group of 100 cows.

Dr. Hope: That happens in every herd.

[101] Mr. Alsager provided no evidence to the CFIA evaluation team, and he has provided no evidence to the Court, that would show that his genetic program would, on a balance of probabilities, have led to the SCI scores that he posits for each bull elk in dispute, or that would raise the SCI averages for any particular group of his animals. The evidence is that, because the bull elk were not allowed to develop their horns, the valuation team had to fall back on some kind of schematic approach.

[102] CFIA valued Mr. Alsager's animals taking into account (by simply accepting his word for it) that he had an above-average herd. He was asked for supporting documentation but provided nothing that would help. He was given the benefit of the doubt regarding the quality of his animals. Neither Mr. Alsager, nor his designate Mr. Holland, provided an alternative method of valuation for the CFIA team to consider in a situation where the actual bull elk in question would be destroyed long before their actual SCI scores were ascertainable.

[103] As Dr. Hope pointed out in testimony, without any horns to measure and without documentation that might assist in establishing value, the CFIA valuation team was “stuck. I mean that’s why we developed these tables.”

[104] If Mr. Alsager felt that the CFIA valuation scheme should not be applied to his animals, then he should have provided the wherewithal to enable the valuation team to award the values he says each of his animals should have received. Although they are not part of this appeal, the same problem arises with respect to the three white-tailed deer for which Mr. Alsager says he should have received higher compensation. Mr. Alsager simply expected CFIA to accept that he should be paid on the basis of what he said his elk would have looked like in terms of horn size and SCI score if they had achieved the hard horn trophy quality that he had been striving to achieve through his breeding program. Mr. Alsager could have placed the whole issue beyond doubt by allowing his elk to grow out their horns before they were destroyed. But he chose not to do this and then failed to provide any objective evidence to support his projected high SCI scores.

[105] Having reviewed the evidence, it is clear to me that the valuation methodology, worked out with credible people in the industry, and its application in this case was (with the exception I will come to) appropriate and reasonable in the circumstances. Mr. Alsager has been working hard on his breeding program, he has been hit by a previous depopulation, and he is understandably disappointed that he did not receive additional compensation, given all of his hard work. But hard work and disappointment are not the basis for compensation under the statutory scheme.

[106] Mr. Alsager says that CFIA personnel do not know what they are doing when it comes to valuation and that there is a conspiracy to kill his industry. The facts adduced before me are that Mr. Alsager destroyed his elk herd before horn size could be used to value each animal, and then produced few records that could be used for valuation purposes. This is not evidence of a conspiracy against Mr. Alsager or anyone else.

[107] Dr. Hope's report was provided to Dr. Althouse who used it to support her own Evaluation Report that was the basis for the compensation paid. Dr. Althouse chaired the valuation team that assessed and valued Mr. Alsager's animals. This was the first cervid compensation she had dealt with but her approach and rationale are clear from the record.

[108] In testimony before the Court, Dr. Althouse made it clear that she followed the CFIA Common Procedures Manual and, in particular, the sections dealing with the valuation of animals. She pointed out to the Court that

4.4 [of the Manual] discusses market value and that award of compensation is based upon current market value, not on future or past -- past values and discusses ways of determining that by things like bills of sale, receipts, and collecting information to support the current market value, and 4 point -- and then I guess more of 4.4 on market value, and 4.5 talks about evaluating animals and things, so it's not only value of animals but also there could be, I guess, velvet or embryos or semen or other things than animals that could be ordered destroyed for disease control purposes, and 4.5 also talks about, you know, the industry export -- experts and what they would base their opinion on.

[109] Dr. Althouse was well aware that Mr. Alsager "ran a hunt -- hunt operation where people would come in to pay to -- to shoot trophy -- trophy animals, I guess both elk and deer."

[110] Once again, Dr. Althouse refers to the dearth of documentation that was provided by Mr. Alsager, even though it was impressed upon him that it was required for evaluation purposes:

I had talked to Roger [Mr. Roger Holland who was Mr. Alsager's designate for the valuation process] before the meeting [the April 27, 2010 meeting in North Battleford] and just sort of stressed that if they had any other documentation, receipts or sales receipts or invoices or information on scores from hunted animals that they should bring that along to the meeting in support of their evaluation.

[111] The evidence is that the basic principles of the evaluation process, including the percentage score and evaluation grid compiled by Dr. Hope and Dr. McClean were explained to Mr. Alsager at the April 27, meeting and Dr. Althouse testifies that "generally they were in agreement with -- the basic principles of that value for that -- for that score."

[112] This confirms what Mr. Alsager says: he thought the valuation process was theoretically sound. His disagreement, he says, is that it is just not relevant to his animals because of their superior genetics. This objection is difficult to understand because the valuation scheme addresses high scoring animals and was recently applied to depopulations at the Willow Hollow Game Ranch in 2009, which is also a "hunt ranch."

[113] Dr. Althouse also makes it clear that she did not just blindly accept the CFIA approach to valuation and the figures contained in Dr. Hope's report. She did her own checking and investigating:

I thought that as the chair, I shouldn't just accept this CFIA document as being right without doing some independent verification that the numbers here are relevant to the industry today so

Yeah, the percentage part I was comfortable with because it's sort of a normal bell curve, biological variation. I felt that the distribution

was fine and had already been looked at by a number of industry people, but I wanted to see if the value of animals per SCI score was -- was current and relevant, so I -- I guess I just did some on-line searching at various hunt farms and -- that were on-line and printed out information and did some comparisons and looked at a variety to see if this was in the ballpark with what current hunts were -- were going -- going for, and it -- it seemed to stand up quite nicely.

[114] She also made adjustments to Dr. Hope's figures and the grid scores to the benefit of Mr. Alsager.

[115] Dr. Althouse went into some detail in her testimony as to what factors played a significant role in her evaluation:

Q. Okay. So this is your report, and so in developing your report -- and we've already gone through a lot of this already, but what kinds of things -- what kinds of factors did you take into account when you were coming up with your report?

A. I guess things like the -- you know, the time -- the fact that it was -- had been operating as a hunt farm for a number of years. It's one of the larger hunt farms in Saskatchewan. It was operating -- operating successfully. Looking at the evaluations and the information, I guess I had comments that again accurate inventories aren't -- aren't available so the final numbers would be determined at the -- the time of depopulation, comment that animals are compensated at a value that they could be replaced for in the current market conditions subject to the maximum amount. No consideration is given to past or future values. Documentation is to be provided to support values above industry standards. IKR had been asked to provide copies of bills of sale for some of the last animals moved on under the cervid movement permits and any sales receipts. Some sales receipts were provided and a reference below. No evidence of values paid for

animals purchased was supplied. It was agreed that both evaluators would provide a written evaluation report to me and I would be reviewing them. Again, reports were received. And do you want to go through what I said about the elk?

Q. Well, you know, we've already gone through a lot of this and --

A. I guess some of the information that talked about -- I mean we did recognize that the -- the cows were purchased that had the original IKR genetics. They were the basis of the breeding program. They were daughters of Apollo Cree, who was a -- as I understood it, a 480 SCI-scoring bull and granddaughters of Angus, who was the original IKR breeding bull and the half share that had sold for that high amount. I guess comment that when he sold at the Lloydminster show in December of 1995, that was the peak of the elk industry when demand for breeding was high and antler velvet prices were high. Since then antler velvet prices have dropped dramatically. The elk industry is downsizing with large numbers being slaughtered. Elk hunt bulls are readily available for sale to hunt farm. The base herd of cows had been bred to a 512 sire, producing bulls scoring 382 470 SCI according to the owners. No records were provided. No further selection from the female line has been done. Female calves are shot off each fall. Further selection and use of AI is not practiced and no pedigrees or genetic records could be provided, and for those reasons I thought it did not reach the elite status, but the above-average are recognized. Elk are identified by ear tags in the breeding operation, but tags are cut out when animals are identified for hunting.

We did ask a couple of times about what happens to the female calves and was told that they were shot out -- again shot out for meat for hunters that wanted to take meat back with them. I guess that was corrected when we met with Rick [Mr. Alsager] on May

10th or 12th -- May 14th, I think, after the report that indeed there had been some selection going on on the -- on the female breeding side, but that was not brought out in any way at the meeting or in -- in Roger's [Mr. Holland] report, and when we asked about what about the female calves, we just were told that they were always shot off, so I guess I was under the -- under the impression that there was no selection going on on the female side, and that did -- that did play a role in -- in the valuation.

THE COURT: It did play a role?

A. It did.

THE COURT: Yes.

A. Yes, 'cause one would expect if you were elite -- elite genetics that there would be continued improvement and selection within the cow herd.

THE COURT: Is that -- is that what caused you to conclude that the animals had not reached elite status?

A. Yes, the fact that there were no records provided, no SCI scores on animals hunted out and the fact that I felt there was no selection going on on the female side.

[116] This account by Dr. Althouse is confirmed by the documentary evidence entered as exhibits at the hearing.

[117] A significant issue arose when it came to the valuation of the female elk and Dr. Althouse's testimony on this aspect of the Decision is important to note:

Q. So the females, what did we find out about the females?

A. I guess the big surprise was when we did the -- were doing the depopulation, we found that there were a lot more that were open or not pregnant than what we would have expected, and certainly looking at the number of -- of yearling bulls that he had in some of the other ages, I -- I suspect that there normally was good prolificacy or that most of the elk females would have had a calf. Certainly there were I think 15 yearling males, which would indicate to me that there probably were 27 or 28 calves last year, but when we were preg checking, we found a surprising number that were open, and that was -- when I -- when I heard about it, I mentioned it to -- to Jan and passed it on to Alex, who I think let Rick know right there at the time that there were a number of open females in case he wanted to have a look for himself and just -- just see it because we were surprised to see so many open animals, so what that meant, then, is that we have talked about the mature pregnant females being worth \$2,000 and expected there to be 27 pregnant animals, and in effect at the final depopulation there were only seven that were pregnant and at the \$2,000, and there were 17 open mature females, which we then evaluated at the slaughter price of \$750. There were four open two-year-old females as well that were found, and they were also evaluated at \$750. They weren't -- they weren't really identified on the -- there was zero identified on the -- prior to that on the inventory provided.

Q. So why did you call them slaughter animals?

A. I guess because they were open, they weren't bearing a young animal that -- that year, so they're -- they really didn't have any additional value than what they would be worth as meat.

Q. And did you have any documentation, receipts, anything to support with the value of the females would be absent being pregnant?

A. Sorry. What would be what an open female is worth?

Q. Yeah.

A. Is that which you mean? I -- I -- that's something that -- that there is market value on what's published in the Western Producer, and slaughter plants can let you know what the -- what the current market -- or current slaughter price is. That -- that's one of the few values in the elk industry where there sort of is open information on is slaughter value.

Specific Grounds of Complaint

[118] In general, Mr. Alsager does not take issue with the valuation scheme devised by Dr. Hope and Dr. Harvey. He says, however, that it was unreasonably relied upon and applied by Dr. Althouse in her evaluation of his particular animals because she failed to recognize and left out of account the elite genetic value of his elk and further discounted their value by 45% by taking into account that the "value of a hunt does not equate with the value of the animal being shot." Dr. Althouse concluded that there are "expenses associated with a hunt such as transportation, lodging, meals, guides, carcass and trophy preparation that are included in the hunt price." Mr. Alsager says that this is not the case with his trophy hunt operation.

[119] Mr. Alsager's business practices presented the evaluation team with significant problems in this case. He failed to provide sufficient supportive documentary evidence of either genetic worth or market value of his animals. It appears that he does not keep relevant records or that he is reluctant

to disclose them for some reason he has not explained. At the hearing, when cross-examined, he did acknowledge some expenses involved with the hunt but refused to accept that they had anything to do with the market value of the bull elk which, in his view, should be equated with the hunt price. Because of this position, he failed to provide any evidence to Dr. Althouse and the evaluation team, or to the Court, that would allow them to estimate the difference between the hunt price and market value of the bull elk.

[120] Another significant problem was that Mr. Alsager chose to destroy his elk herd before the Fall and this meant that actual horn measurements and SCI scores could not be ascertained and used for evaluation purposes. Mr. Alsager may have had good reason for this choice, but there is no denying that it prevented the use of actual measurements and meant, inevitably, that the evaluators had to fall back on the CFIA evaluation scheme devised and percentage grid (as applied to other trophy hunt operations) where above-average genetics are recognized. Dr. Althouse has explained why, given the dearth of documentation and information in this case, she was unable to award Mr. Alsager's animals the elite status he thought they should have and the accompanying SCI scores that Mr. Alsager says he should have received. Mr. Alsager has explained why he disagrees with Dr. Althouse's conclusions but he has provided the Court with no evidence that would allow the Court to conclude that Dr. Althouse's evaluations were unreasonable in her application of the grid.

[121] As the evidence makes clear, even without appropriate documentation, the evaluators listened to what Mr. Alsager had to say about the superior genetics of his animals and the "Male values take into account the above-average to elite genetics."

[122] As regards the female elk, Mr. Alsager feels that his genetically superior animals should not have been discounted and valued at the slaughter price because there happened to be 17 open mature females as a result of mistakes he made in the breeding procedure for that particular year. What Mr. Alsager is leaving out of account, in my view, is the specific wording of section 51(2)(a) of the Act which fixes the compensation at “the market value ... that the animal would have had at the time of its evaluation by the Minister if it had not been required to be destroyed....” Mr. Alsager has presented no evidence that would suggest that Dr. Althouse was unreasonable to value the open females in the way she did, or to demonstrate to the Court that there is a market in which his female elk, despite being open could, at the material time, have been sold for a value that was higher than their slaughter value. If there was a market in which the females could have been sold for breeding at a higher price than their slaughter value, and in which superior genetics would have raised the value above the slaughter price, the Court has seen no evidence to this effect. Once again, Mr. Alsager has presented the Court with no evidence to support the alternative values he proposes. The fact that these female elk should have been pregnant, or would have been pregnant in subsequent years, does not change the fact that, at the material time, they were not pregnant and hence their market value at that time had to be used as the basis for compensation.

[123] Other than in the case of the service reduction issue which I address below, no evidence has been presented to the Court that would suggest that the evaluation methodology used in this case was unreasonable or, that the evaluators left anything of relevance out of account, or took anything irrelevant into account, in arriving at the market value of the elk in accordance with subsections 51(2) and (3) of the Act. The evidence is that Mr. Alsager received above-average values that fall within the same range as other depopulated elk herds of similar quality.

[124] In addition, Mr. Alsager has provided no evidence that he cannot replace the depopulated elk with elk of similar quality at compensation prices. There is evidence before me that he has purchased bull elk recently but, tellingly, he has declined to provide the Court with the relevant receipts or information on quality and genetics.

[125] My one concern relates to the 45% service reduction that was used in relation to the bull elk. Once again, an assessment of this issue is hampered by the absence of supporting documentation. The Court can well appreciate that the kind of hunt trophy business that Mr. Alsager runs might well require less than the 55% discounting that has been used in other situations but there is little to assist the Court in determining what an appropriate, if any, service adjustment should be.

[126] In addressing this issue in her Evaluation Report, Dr. Althouse merely said that “Value of a hunt does not equate with the value of the animal being shot. There are expenses associated with the hunt such as transportation, lodging, meals, guides, carcass and trophy preparation that are included in the hunt price.” However, in her testimony at the hearing, Dr. Althouse provided a fuller account of her approach to this issue and Mr. Alsager chose not to cross-examine her on point. First of all, Dr. Althouse was fully aware of the arguments that Mr. Alsager has raised on this point before she completed her evaluation:

I was just recording things that they were telling us as during the meeting so that I would hopefully remember them. So he talked about less than 270 they call the management bulls. Greater than 380 were the ones that were hunted out. Value of the bull -- bulls, I guess, varies, and this is when -- the note about Revenue Canada, and I'm -- I'm not sure that my notes make complete sense but the points that Rick had made that revenue Canada had tried to say that 40 percent of the hunt was -- I said -- yeah, equal GST, so it would have been a service rather than the animal and that they had proven that they were -- they were selling livestock, converting to grass

and that they -- they had -- people are just there two days to collect their -- collect their trophy and that they're different from outfitters, much as what he said here, that really it's domestic livestock sale -- sales, sell livestock, no GST paid and that it was accepted by Revenue Canada and that he was asserting that they sell as per animal. They don't sell the whole hunt.

[127] Once again, Dr. Althouse did her own research on this point and testified that:

There's also notes that said these hunts include lodging, meals, capping (*sic*), guide fees, transport to and from the airport. Some of them were again the -- try and separate out what part was the hunt and what part was the -- was the animal, and I found some places that talked and compared to some of the costs associated to -- with a -- say a guided hunt that was a wild guided hunt to see what proportion was related to the guiding and lodging and that sort of thing versus the -- versus the animal, and again, there was sort of \$5,000 for seven days and \$100 for -- or \$1,000 for two days and nights with pickup, and just -- it did -- it did vary, but again, just to get a sense of the -- of that 55 percent sort of -- sort of thing and what -- what proportion would be the -- the extras beyond the animal that would be included in that.

[128] Mr. Alsager makes much of the fact that his trophy hunt operation is different from other trophy hunt operations. He takes the position, as he did with Revenue Canada, that there is no service aspect involved and that he is selling livestock. Besides making Dr. Althouse aware of his dealings with Revenue Canada and the outcome of those dealings, Mr. Alsager provided no documentation or information to Dr. Althouse (and he has provided none to the Court) that would demonstrate the cost of what he does for his clients. In cross-examination he conceded that there were some costs associated with his trophy business:

- a. He and his sons advertise and go to shows: "You've got to -- you've got to market," even though that isn't done much anymore because "90 percent of our clientele are either repeat customers or referrals from people that have been there";

- b. Customers come from the United States (mostly) but also from Spain, Italy, Australia and Japan. Sometimes Mr. Alsager or his son will pick a client up from Calgary or Edmonton but “usually not”;
- c. There are rooms in the lot on the land where people can stay: “Some of them stay. Some of them prefer to stay in town”;
- d. Meals are provided to people who stay: “They shoot the breeze, have a beer or two, have supper, stay overnight, whatever”;
- e. There are “expenses of raising and producing these animals, developing the bloodline and all that kind of stuff...”;
- f. They pay property taxes on the hunt ranch;
- g. They do not hire guides but Mr. Alsager and his son provide guide services.

[129] Mr. Alsager’s point is that, although there may be expenses associated with his business, he is not running a typical trophy hunt operation. As he pointed out in his testimony:

That’s why we -- you know, we had that discussion with Revenue Canada. We’re not providing a service. We’re selling animals. We’re selling trophies, and this is -- this is important, and it was important that we proved that to -- to Revenue Canada that we are a farming operation. We’re diversified a little different than anybody else, but you still must recognize us as agriculture and private, not someone that goes out in the bush, puts up a hunter in a special lodge and hire cooks and all that kind of stuff for two weeks and let them chase around and shoot somebody else’s animal. Totally different. They recognized that, and we don’t have to pay GST, and that to me was important, not the deal about doing the paperwork ‘cause all this stuff is exported out of the country. They get it back anyway.

[130] Dr. Althouse was required to ascertain a market value for Mr. Alsager’s animals in accordance with the relevant provisions of the Act. It seems to me then, that hunt expenses,

whatever they might be are not an irrelevant consideration. Dr. Althouse discounted the value of the bull elk by 45% in accordance with other trophy hunt operations. Mr. Alsager says that those operations are not analogous to his. The Court agrees that it was open to Mr. Alsager to demonstrate that his operations should not be equated with the examples referred to by Dr. Althouse. It was at all times open to him to demonstrate what his real expenses were and their relevance, or irrelevance, for the hunt value of his bull elk.

[131] The Court questioned Dr. Althouse on what she was provided with to allow her to ascertain the relative expense amount. Nothing was provided by Mr. Alsager to demonstrate how, in his case, expenses could be left entirely out of account. Dr. Althouse said that

I was hoping that there would have been more from Roger [Mr. Holland] in his package, but it wasn't included there.

[132] It would seem, then, that Dr. Althouse proceeded by way of analogy with other trophy hunt operations because of what she considered as an absence of supporting documentation and information as to how the finances of Mr. Alsager's trophy hunt operation actually work.

[133] I find Dr. Althouse's approach to this issue problematic because, if Mr. Alsager has been assessed as not providing a service for G.S.T. purposes, it is not really surprising that he does not keep records of what, in his testimony at the hearing, appear to be activities that fall far short of the more typical hunt ranch, outfitter situations that Dr. Althouse appears to have applied by way of analogy. There is no explanation from Dr. Althouse as to why, if Mr. Alsager has been assessed as not providing a service for G.S.T. purposes, the value of his bull elk should be discounted by 45% because the hunt value does not equate with the value of the animal being

shot because of the expenses associated with the hunt. There is no indication from Dr. Althouse as to whether the hunt businesses she looked at that would justify a 55% reduction were businesses that paid G.S.T. or whether, like Mr. Alsager, the nature of their business does not warrant G.S.T. It also looks to me as though, in Mr. Alsager's case, his clients simply show up, select a bull elk for its horns, shoot it and leave. There may be some incidental service expenses associated with this process but I did not hear anything that would justify a 45% reduction in value for service costs. In other words, I do not think this particular service cost issue has been reasonable assessed in Mr. Alsager's case.

[134] I realize that this issue is problematic because Mr. Alsager did not produce any supporting documentation on his service costs and their ratio to the hunt value of his bull elk. However, I see this omission as understandable in circumstances where Mr. Alsager has convinced the tax authorities that his business does not give rise to G.S.T. The G.S.T. situation was made clear and was fully understood by Dr. Althouse, and yet she seems to have disregarded it entirely without any real explanation and without assessing the specific service aspects of Mr. Alsager's trophy hunt business.

[135] The Court is faced with a problem on this appeal because I do not have evidence before me that would allow me to say whether or not Mr. Alsager's business (based upon its G.S.T. status) or Mr. Alsager's actual operations was reasonably compared with other trophy hunt businesses that warrant a reduction of the hunt value of a bull elk to reflect hunt service costs. All I can say is that, in my view, Dr. Althouse has not adequately explained or reasonably justified her approach to this particular issue.

Conclusion

[136] The compensation awarded for Mr. Alsager's bull elk may be unreasonable if Dr. Althouse's decision to disregard the G.S.T. evidence means that she inappropriately equated Mr. Alsager's trophy hunt business with other trophy hunt businesses where a 55% of hunt value has been awarded to take service costs into account.

[137] Section 57 of the Act empowers the Assessor to "confirm or vary the Minister's disposition of the claim or refer the matter back to the Minister for such further action as the Assessor may direct."

[138] As indicated above, I confirm all aspects of the Minister's disposition of Mr. Alsager's claim as being reasonable given the particular facts and context of this case other than the Minister's decision to discount the value of Mr. Alsager's bull elk to 55% of their hunt value to reflect hunt service costs. This particular aspect of the Minister's disposition needs to be examined further by the Minister to ensure that, given the G.S.T. status of Mr. Alsager's business and his actual mode of operation, it is reasonable to reduce the ascribed values of his bull elk to take hunt service costs into account and, if so, by how much.

Costs

[139] The Minister has not claimed costs from the Appellant and asks that each side bear their own costs. Mr. Alsager has asked for costs but I have disallowed much of his appeal and any

additional compensation, if any, has yet to be determined. In addition, Mr. Alsager has chosen to represent himself in this matter. In the circumstances I think it is appropriate that each side bear their own costs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. Except as indicated in the Reasons, the appeal is dismissed. However, in accordance with section 57 of the Act, the matter is referred back to the Minister for a determination of whether in evaluating the Appellant's bull elk it was reasonable, given the G.S.T. status of the Appellant's hunt trophy business and his actual mode of operation, to reduce their value to 55% of hunt value or by any other amount;
2. The Appellant will have 30 days from the date of these Reasons to provide the Minister with any further evidence or argument on this point and a final determination on point will be made within 30 days following the expiration of the said 30-day period;
3. Any additional entitlement to compensation that results from this re-assessment of the value of the Appellant's bull elk will be paid to the Appellant;
4. Each party will bear their own costs.

“James Russell”
Deputy Assessor

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: P-3-10

STYLE OF CAUSE: **RICK ALSAGER**

and

**THE MINISTER OF AGRICULTURE AND AGRI-
FOOD CANADA**

PLACE OF HEARING: North Battleford, Saskatchewan

DATE OF HEARING: June 7, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT** **Russell J.**

DATED: September 14, 2011

APPEARANCES:

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FOR THE RESPONDENT

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