

**Date: 20061214**

**Docket: A-406-05**

**Citation: 2006 FCA 408**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
PELLETIER J.A.**

**BETWEEN:**

**LES FERMES G. GODBOUT & FILS INC.**

**Applicant**

**and**

**CANADIAN FOOD  
INSPECTION AGENCY**

**Respondent**

Hearing held at Montréal, Quebec, on December 11 and 14, 2006.

Judgment delivered at Montréal, Québec, on December 14, 2006.

**REASONS FOR JUDGMENT OF THE COURT BY:**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Montréal, Quebec, on December 14, 2006)**

**LÉTOURNEAU J.A.**

[1] In dockets A-406-05, A-603-05, A-604-05, A-605-05 and A-616-05, the applicants applied for judicial review of decisions rendered by a member of the Review Tribunal, Agriculture and Agri-Food Canada (the Tribunal).

[2] In each of the cases, the respondent accused the applicants of having contravened paragraph 138(2)(a) of the *Health of Animals Regulations*, C.R.C., c. 296 (Regulations), enacted pursuant to the *Health of Animals Act*, S.C. 1990, c. 21.

[3] Paragraph 138(2)(a) reads as follows:

138(1) . . .	138.(1) [...]
(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal	(2) Sous réserve du paragraphe (3), il est interdit de charger ou de faire charger, ou de transporter ou de faire transporter, à bord d'un wagon de chemin de fer, d'un véhicule à moteur, d'un aéronef ou d'un navire un animal :
(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported <u>without undue suffering</u> during the expected journey; (Emphasis added)	a) qui, pour des raisons d'infirmité, de maladie, de blessure, de fatigue ou pour toute autre cause, ne peut être transporté <u>sans souffrances indues</u> au cours du voyage prévu; (nous soulignons)

We also reproduce paragraph 138(2)(c):

138(1) . . .	138(1) [...]
(2) . . .	(2) [...]
(c) if it is probable that the animal will give birth during the journey.	c) s'il est probable que l'animal mette bas au cours du voyage.

[4] Each one of these cases involved the transport by motor vehicle of a farm animal, more specifically, hogs. A contravention of paragraph 138(2)(a) of the Regulations is a violation within the meaning of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 (Act), giving rise to a warning or an administrative monetary penalty: see sections 4 and 7 of the Act.

[5] An appeal lies to the Tribunal pursuant to paragraph 9(2)(c) of the Act. This paragraph states that an offender may “request a review by the Tribunal of the facts of the violation”.

[6] A joint hearing was held before this Court for all five cases. Counsel for the applicants made submissions applicable to all five cases, and more specific submissions were made in the cases of François Carbonneau (A-616-05), Les Fermes G. Godbout et Fils Inc. (A-406-05) and L’Oiselier de St-Bernard Inc. (A-605-05).

Did the Tribunal fail to take into account the prevailing practices at the time of the alleged offences, as well as the ambiguities and inconsistencies which characterized the transportation of animals at that time?

[7] Counsel for the applicants argue that in rendering its decision in each one of the five cases, the Tribunal failed to take into account the customary practices regarding the transportation of animals at the time the offences were committed. They also allege that the criteria relating to the transportation of animals were imprecise and inconsistent at that time, as is shown by the corrective

measures which have been applied since then. Finally, they submit that there cannot be any undue suffering within the meaning of paragraph 138(2)(a) of the Regulations in cases of the transport of animals for human consumption.

[8] The argument concerning customary practices at that time is an attractive one. It is especially attractive because it disguises its real nature and diverts attention from the evidence adduced in each case concerning the state of health of the animals and the suffering caused by their transport. The applicants' defence, like the defence invoking ambiguities and inconsistencies in the transportation of farm animals, is the equivalent of a defence of good faith and due diligence. The latter defence consists in making efforts to know the transportation standards and comply with them.

[9] Unfortunately, subsection 18(1) of the Act rules out a defence of good faith and due diligence:

18(1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or  
(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

18(1) Le contrevenant ne peut invoquer en défense le fait qu'il a pris les mesures nécessaires pour empêcher la violation ou qu'il croyait raisonnablement et en toute honnêteté à l'existence de faits qui, avérés, l'exonéreraient.

Violations of the Act are of absolute liability.

[10] Finally, the applicants' argument to the effect that there can be no undue suffering within the meaning of paragraph 138(2)(a) of the Regulations when the animal is for human consumption implies that there is an economic justification for such suffering. In other words, according to this argument, suffering caused by transport cannot be undue or unwarranted because the animal's ultimate and inevitable destination is the slaughterhouse, to then be introduced into the food chain.

[11] In our view, it is obvious from one of the important objectives of the *Health of Animals Act*, namely, the prevention of the mistreatment of animals (see *Samson v. Canada (Canadian Food Inspection Agency)* 2005 FCA 235, paragraph 12), that economic considerations cannot in themselves warrant the infliction of undue suffering. In fact, subsection 138(4) of the Regulations clearly shows Parliament's intent by obliging a carrier to stop the transport of an animal that becomes injured, sick or otherwise unfit for transport during the trip. Transport must then end at the nearest place where the animal can receive proper care and attention:

138(1) [...]  
(4) No railway company or motor carrier shall continue to transport an animal that is injured or becomes ill or otherwise unfit for transport during a journey beyond the nearest suitable place at which it can receive proper care and attention.

138(1) [...]  
(4) Une compagnie de chemin de fer ou un transporteur routier cesse le transport d'un animal blessé, malade ou autrement inapte au transport en cours de voyage, au plus proche endroit où il peut recevoir des soins

[12] In any event, in each one of the cases at bar, the animal was deemed unfit for human consumption and euthanized.

The case of Carbonneau (A-616-05)

[13] The applicant criticizes the Minister of Agriculture and Agri-Food (Minister) for having rendered a decision in the absence of any evidence as to the condition of the animal before it was loaded for transport. Therefore, according to the applicant, he could not be found guilty of a violation.

[14] The evidence on the record, consisting of the inspector's report and explicit colour photographs, showed that on arrival at the slaughterhouse, the hog had a large umbilical hernia that touched the floor. It measured approximately 30 cm x 30 cm x 30 cm and hindered the animal's gait. On inspection, the animal showed signs of being in pain: see Applicant's Record at pages 12 and 60.

[15] Given the approximately 85-kilometre trip from the departure point to arrival at the slaughterhouse and the short time elapsed between these two points, it is not unreasonable in the circumstances to infer from a condition so extreme on arrival that the animal was in a precarious state of health at the time of loading.

The case of L'Oiselier de St-Bernard Inc. (A-605-05)

[16] The applicant submits that the Tribunal erred in not accepting the testimony of Richard Nadeau, who saw the animal before loading, and in preferring the testimony of Dr. Marc Lapierre, who inspected the animal on arrival at the slaughterhouse. This was the same animal as in the Carbonneau case, Mr. Carbonneau being the carrier.

[17] In his testimony, Mr. Nadeau stated that there had been a hernia at the time of loading, but it had not been as large as it was on arrival, as shown by the photograph.

[18] According to Dr. Lapierre's testimony, this hernia involved painful injuries caused by rubbing on the ground. It forced the animal to keep its back arched to avoid rubbing and relieve its suffering. The animal showed other signs of distress. Dr. Lapierre stated that, without a doubt, the animal was suffering from a hernia before transport, and this was confirmed by Mr. Nadeau.

[19] In our opinion, the evidence before the Tribunal allowed it to conclude that the animal was not fit for transport and that transporting it with 94 other hogs caused it undue suffering.

The case of Les Fermes G. Godbout et Fils Inc. (A-406-05)

[20] Counsel for the applicant submitted that the applicant had not been advised of the specific violation of which it was accused. This claim is unfounded. The applicant was advised of the fact that it was accused of having contravened paragraph 138(2)(a) of the Regulations. The fact that it could also have been charged under paragraph 138(2)(c) of the Regulations because it was probable that the animal would give birth during the trip does not alter or change the violation alleged.

[21] According to Dr. Lamothe, the animal gave birth to a stillborn piglet on the day of transport. Another witness stated having learned that the birth had taken place during the unloading process.



In any event, the Tribunal accepted that the applicant was not charged under paragraph 138(2)(c), but actually under paragraph 138(2)(a).

[22] According to the Tribunal, Dr. Lamothe noted that the animal [TRANSLATION] “suffered from a serious uterine prolapse, which he described as a large mass of tissue approximately 20 cm long and 15 cm in diameter”. There were obvious signs of cyanosis which led him to conclude that the animal had been suffering from this condition before the loading and transport. It was on the basis of this state of health that the Tribunal concluded that there had been a violation of paragraph 138(2)(a). In our opinion, the evidence allowed it to reach such a conclusion.

[23] For these reasons, the five applications for judicial review will be dismissed with costs. However, there will be only one set of costs for the joint hearing, to be paid in equal shares by each of the applicants.

[24] A copy of these reasons will be placed in each file in support of the judgment rendered.

“Gilles Létourneau”

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-406-05

**STYLE OF CAUSE:** LES FERMES G. GOBDOUT &  
FILS INC. v. CANADIAN FOOD  
INSPECTION AGENCY

**PLACE OF HEARING:** Montréal, Quebec

**DATES OF HEARING:** December 11 and 14, 2006

**REASONS FOR JUDGMENT BY:** LÉTOURNEAU, NADON AND  
PELLETIER J.J.A.

**DELIVERED FROM THE BENCH BY:** LÉTOURNEAU J.A.

**APPEARANCES:**

Bruno Marcoux  
Jean-François Paré

FOR THE APPLICANT

Patricia Gravel

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Joli-Cœur, Lacasse et associés  
Sillery, Quebec

FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT