

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20100203**

**Docket: A-575-08**

**Citation: 2010 FCA 36**

**CORAM: BLAIS C.J.  
LÉTOURNEAU J.A.  
TRUDEL J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA  
(Canadian Food Inspection Agency)**

**Applicant**

**and**

**DENFIELD LIVESTOCK SALES LIMITED**

**Respondent**

Hearing held at Montreal, Quebec, on January 26, 2010.

Judgment delivered at Ottawa, Ontario, on February 3, 2010.

**REASONS FOR JUDGMENT BY:**

**LÉTOURNEAU J.A.**

**CONCURRED IN BY:**

**BLAIS C.J.  
TRUDEL J.A.**

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

**Issues**

[1] The Attorney General of Canada seeks judicial review of a decision of the Review Tribunal (Tribunal) constituted under the *Canada Agricultural Products Act*, S.C. 1985, c. 20 (4th Supp.) (the Act).

[2] By a decision dated October 21, 2008, the Tribunal cancelled both the notice of violation issued against the respondent and the monetary penalty of \$500 imposed against it. The prosecution alleged that the respondent had moved (in French, "retiré") or caused the movement of ("fait retirer") an animal from a farm or ranch other than its farm of origin without the animal bearing an approved tag. This, it was alleged, contravened section 176 of the *Health of Animals Regulations*, C.R.C., c. 296 (the Regulations).

[3] The review procedure undertaken in this Court raises two questions. One of these is the usual one respecting the standard of control applicable to the decision under review and the other is the issue of the Tribunal's interpretation of section 176, which creates the infraction, and more particularly, of the words "cause the movement of" ("faire retirer") that are at the heart of the prohibition set out in that section.

### **Relevant legislation**

[4] While the matter turns on the interpretation of section 176 of the Regulations, it is nonetheless necessary to refer to other sections thereof in order to better support certain aspects of my thoughts and analysis. I accordingly reproduce hereunder sections 96 and 172 to 187:

**96.** No person shall offer an animal for sale at a public sale, auction or market of livestock unless the animal is identified by tag or brand or is one of a lot confined to a pen.

**96.** Nul ne peut mettre en vente un bovin dans un lieu de vente, d'enchère ou de marché publics d'animaux de ferme, à moins que l'animal ne soit identifié au moyen d'une étiquette ou d'une marque ou ne fasse partie d'un lot confiné dans un enclos.

PART XV  
ANIMAL IDENTIFICATION  
INTERPRETATION

**172.** The definitions in this section apply in this Part.

“administrator” means a person with whom the Minister has entered into an agreement, under section 34 of the Act, under which the person is to administer a national identification program for animals.

(administrateur)

“animal” means a bison, a bovine and an ovine. (animal)

“approved tag” means a tag, chip or other indicator approved by the Minister under subsection 173(1). (étiquette approuvée)

“bison” means an animal, other than an embryo or a fertilized egg, of the subspecies *Bison bison bison*, *Bison bison athabascae* or *Bison bison bonasus*. (bison)

“bovine” means an animal, other than an embryo or a fertilized egg, of the species *Bos taurus* or *Bos indicus*. (bovin)

“distributor” means an individual, a partnership, a corporation, a cooperative, an association or an organization that sells or distributes approved tags. (distributeur)

“farm of origin” means the farm or ranch where the animal was born — or the first farm or ranch to which the animal was moved after its birth if it was born at a place other than a farm or ranch, — including all areas of land, and buildings and other structures on those areas, that are used under one management for breeding or raising animals except any of those areas where the animal may be commingled with animals that are from another farm or ranch. (ferme d’origine)

“farm or ranch” includes a feed lot, a breeding herd, an artificial insemination unit or any other place where an animal has been since leaving its farm of origin.

(ferme ou ranch)

“organization that manages an animal

PARTIE XV  
IDENTIFICATION DES ANIMAUX  
DÉFINITIONS

**172.** Les définitions qui suivent s’appliquent à la présente partie.

« administrateur » Personne avec qui le ministre conclut un accord, aux termes de l’article 34 de la Loi, pour l’administration d’un programme national d’identification des animaux. (administrateur)

« animal » Bison, bovin ou ovin. (animal)

« bison » Animal, autre qu’un embryon ou un oeuf fécondé, des sous-espèces bison bison, *Bison bison athabascae* ou *Bison bison bonasus*. (bison)

« bovin » Animal, autre qu’un embryon ou un oeuf fécondé, des espèces *Bos taurus* ou *Bos indicus*. (bovine)

« distributeur » Personne morale ou physique, société de personnes, coopérative, association ou organisme qui vend ou distribue des étiquettes approuvées. (distributeur)

« étiquette approuvée » Étiquette, puce ou autre indicateur approuvé par le ministre aux termes du paragraphe 173(1). (approved tag)

« ferme d’origine » La ferme ou le ranch où est né un animal — ou la première ferme ou le premier ranch qui accueille un animal né hors d’une ferme ou d’un ranch — y compris tout terrain et tout bâtiment et autre ouvrage qui y sont érigés et qui servent, sous une seule direction, à la sélection ou à l’élevage des animaux, sauf ceux où l’animal peut être mêlé à des animaux provenant d’une autre ferme ou d’un autre ranch. (farm of origin)

« ferme ou ranch » S’entend d’un troupeau d’élevage, d’un parc d’engraissement, d’un centre d’insémination artificielle ou de tout autre lieu où un animal a été depuis qu’il a quitté sa ferme d’origine. (farm or ranch)

« organisme de gestion d’un système d’identification des animaux » Personne

identification system” means an individual, a partnership, a corporation, a cooperative, an association or an organization that is authorized by provincial legislation to manage an animal identification system. (organisme de gestion d'un système d'identification des animaux)  
 “ovine” means an animal, other than an embryo or a fertilized egg, of the genus *Ovis*. (ovin)

morale ou physique, société de personnes, coopérative, association ou organisme qui gère, en vertu d'une loi provinciale, un système d'identification des animaux. (organization that manages an animal identification system)  
 « ovin » Animal, autre qu'un embryon ou un oeuf fécondé, du genre *Ovis*. (ovine)

#### APPROVAL AND ISSUANCE OF TAGS

**173.** (1) The Minister may approve a tag, chip or other indicator for the identification of an animal, or the carcass of an animal, for the purposes of this Part.  
 (2) In applying subsection (1), the Minister shall take into account whether  
 (a) the tag, chip or other indicator bears a unique identification number;  
 (b) the tag, chip or other indicator may not readily be altered or otherwise tampered with;  
 (c) the tag, chip or other indicator is difficult to counterfeit;  
 (d) the identification number on the tag, chip or other indicator is easily and reliably readable; and  
 (e) the tag, chip or other indicator is designed to be retained by any animal to which it may be applied.

**174.** (1) At the request of the operator of a farm, ranch or auction barn, the administrator may issue approved tags or cause them to be issued, for the purpose of identifying animals on that farm or ranch or in that auction barn.  
 (2) At the request of an importer of animals, the administrator may issue approved tags or cause them to be issued, for the purpose of identifying the imported animals.

#### APPROBATION ET DÉLIVRANCE DES ÉTIQUETTES

**173.** (1) Le ministre peut approuver une étiquette, une puce ou un autre indicateur servant à l'identification des animaux ou des carcasses d'animaux pour l'application de la présente partie.  
 (2) Pour l'application du paragraphe (1), le ministre prend en considération les critères suivants :  
 a) l'étiquette, la puce ou l'indicateur porte un numéro d'identification qui lui est unique;  
 b) l'étiquette, la puce ou l'indicateur ne peut être facilement modifié ou autrement falsifié;  
 c) l'étiquette, la puce ou l'indicateur ne peut être facilement contrefait;  
 d) le numéro d'identification peut être lu facilement et correctement;  
 e) l'étiquette, la puce ou l'indicateur est conçu de manière à rester en place sur l'animal sur lequel il est apposé.

**174.** (1) À la demande de l'exploitant d'une ferme, d'un ranch ou d'une salle d'encan, l'administrateur peut délivrer ou faire délivrer des étiquettes approuvées pour l'identification des animaux qui s'y trouvent.  
 (2) À la demande d'un importateur d'animaux, l'administrateur peut délivrer ou faire délivrer des étiquettes approuvées pour les animaux à être importés.

## REPORTING REQUIREMENT

**174.1** A distributor, or an organization that manages an animal identification system, that sells or distributes approved tags shall, within 24 hours after selling or distributing them, report the following information in respect of those approved tags to the administrator:

- (a) the name, address and telephone number of the person to whom they were sold or distributed;
- (b) the date they were sold or distributed;
- (c) their unique identification numbers; and
- (d) the total number that were sold or distributed.

## IDENTIFICATION REQUIREMENT

**175.** (1) Except as otherwise provided in this Part, every person who owns or has the possession, care or control of an animal or a carcass of an animal shall ensure that it is identified by an approved tag that is applied to it before it is moved from its farm of origin.

(1.1) Every person who applies, or causes the application of, an approved tag to an animal, or the carcass of an animal, shall ensure that the tag is for the species of that animal and is applied to the animal, or the carcass, for which the tag was issued under subsection 174(1).

(1.2) Every person who owns or has the possession, care or control of an animal or a carcass of an animal shall ensure that the approved tag that is applied to it is applied to its ear with the logo and number facing forward.

(2) Except as otherwise provided in this Part, every person who owns or has the possession, care or control of an animal or a carcass of an animal shall ensure that it bears the approved tag referred to in

## RENSEIGNEMENTS

**174.1** Le distributeur ou l'organisme de gestion d'un système d'identification des animaux qui vend ou distribue des étiquettes approuvées communique à l'administrateur, dans les vingt-quatre heures suivant la vente ou la distribution, les renseignements suivants :

- a) les nom, adresse et numéro de téléphone de la personne à qui les étiquettes approuvées ont été vendues ou distribuées;
- b) la date de la vente ou de la distribution;
- c) les numéros d'identification uniques des étiquettes approuvées vendues ou distribuées;
- d) le nombre total d'étiquettes approuvées vendues ou distribuées.

## IDENTIFICATION OBLIGATOIRE

**175.** (1) Sauf disposition contraire de la présente partie, quiconque est propriétaire d'un animal ou d'une carcasse d'animal ou en a la possession, la garde ou la charge des soins veille à ce que l'animal ou la carcasse d'animal soit identifié à l'aide d'une étiquette approuvée apposée avant que l'animal ou la carcasse d'animal n'ait été retiré de sa ferme d'origine.

(1.1) Quiconque appose ou fait apposer une étiquette approuvée sur un animal ou une carcasse d'animal doit veiller à ce qu'elle corresponde bien à l'espèce de l'animal en cause et soit apposée sur l'animal ou la carcasse pour lequel elle a été délivrée aux termes du paragraphe 174(1).

(1.2) Quiconque est propriétaire d'un animal ou d'une carcasse d'animal ou en a la possession, la garde ou la charge des soins veille à ce qu'une étiquette approuvée soit apposée à l'oreille de l'animal ou de la carcasse d'animal et à ce que le logo et le numéro soient visibles à l'avant.

(2) Sauf disposition contraire de la présente partie, quiconque est propriétaire d'un

subsection (1) at all times after it is moved from its farm of origin.

animal ou d'une carcasse d'animal ou en a la possession, la garde ou la charge des soins veille à ce que l'animal ou la carcasse d'animal porte en tout temps l'étiquette approuvée visée au paragraphe (1) après que l'animal ou la carcasse d'animal a été retiré de sa ferme d'origine.

#### RECORD-KEEPING REQUIREMENT

**175.1** (1) Subject to subsection (2), every operator of a farm of origin, or of a farm or ranch other than the farm of origin, who removes, or causes the removal of, an ovine 18 months of age or older from the farm of origin or from the farm or ranch other than the farm of origin shall keep a record of

(a) the identification number on the approved tag that is applied to the ovine;  
 (b) the date of removal;  
 (c) the reason for removal; and  
 (d) the name and address of the owner or person having the possession, care or control of the ovine at the destination to which it is removed.

(2) Subsection (1) does not apply to an ovine transported directly for slaughter to an establishment registered under the Meat Inspection Act or under an Act of the legislature of a province that provides for the inspection of ovine carcasses.

(3) Every operator of a farm of origin, or of a farm or ranch other than the farm of origin, who receives, or causes the reception of, an ovine for breeding purposes, shall keep a record of

(a) the identification number on the approved tag that is applied to the ovine;  
 (b) the date of reception; and  
 (c) the name and address of the owner or person who had the possession, care or control of the ovine at the farm or ranch from which it was removed.

(4) Every person who is required to keep a record under this section shall keep the record for a period of at least five years.

#### EXIGENCES EN MATIÈRE DE REGISTRES

**175.1** (1) Sous réserve du paragraphe (2), l'exploitant d'une ferme d'origine, ou d'une ferme ou d'un ranch qui n'est pas une ferme d'origine, tient, lorsqu'il en retire ou en fait retirer un ovin âgé d'au moins 18 mois, un registre contenant les renseignements suivants :

a) le numéro d'identification de l'étiquette approuvée qui est apposée sur l'ovine;  
 b) la date du retrait;  
 c) les motifs du retrait;  
 d) le nom et l'adresse du propriétaire ou de la personne qui a la possession, la garde ou la charge des soins de l'ovine à l'endroit où il est envoyé.

(2) Le paragraphe (1) ne s'applique pas à l'ovine qui est transporté directement pour abattage à un établissement agréé aux termes de la Loi sur l'inspection des viandes ou d'une loi provinciale régissant l'inspection des carcasses ovines.

(3) L'exploitant d'une ferme d'origine, ou d'une ferme ou d'un ranch qui n'est pas une ferme d'origine, tient, lorsqu'il reçoit ou fait en sorte que soit reçu un ovin destiné à la reproduction, un registre contenant les renseignements suivants :

a) le numéro d'identification de l'étiquette approuvée apposée sur l'ovine;  
 b) la date de réception de l'ovine;  
 c) le nom et l'adresse du propriétaire ou de la personne qui avait la possession, la garde ou la charge des soins de l'ovine à la ferme ou au ranch duquel celui-ci a été retiré.

(4) Quiconque tient un registre en application du présent article le conserve pour une période d'au moins cinq ans.

## PROHIBITIONS

**176.** Subject to section 183, no person shall move, or cause the movement of, an animal or the carcass of an animal from its farm of origin or from any other farm or ranch unless it bears an approved tag issued under subsection 174(1) to the operator of the farm or ranch where the approved tag was applied to it.

**177.** (1) Subject to section 183 and subsection 184(2), no person shall transport, or cause the transportation of, an animal or the carcass of an animal that does not bear an approved tag.

(2) Subject to section 183 and subsection 184(2), no person shall receive, or cause the reception of, an animal or the carcass of an animal that does not bear an approved tag.

**178.** (1) Subject to section 183, no person shall apply, or cause the application of, an approved tag issued under subsection 174(1) to an animal or the carcass of an animal that is not on the farm or ranch, or in the auction barn, for which the approved tag was issued.

(2) No person shall apply, or cause the application of, an approved tag issued to an importer under subsection 174(2) to an animal that has not been imported by the importer.

**179.** Except as authorized under paragraph 186(1)(a) or 187(1)(a), no person shall remove, or cause the removal of, an approved tag from an animal or the carcass of an animal.

**180.** No person shall apply, or cause the application of, an approved tag from an

## INTERDICTIONS

**176.** Sous réserve de l'article 183, nul ne peut retirer ou faire retirer un animal ou une carcasse d'animal de sa ferme d'origine ou d'une ferme ou d'un ranch autre que sa ferme d'origine, à moins que l'animal ou la carcasse d'animal ne porte une étiquette approuvée, délivrée aux termes du paragraphe 174(1) à l'exploitant de la ferme ou du ranch où l'étiquette approuvée a été apposée sur l'animal ou la carcasse d'animal.

**177.** (1) Sous réserve de l'article 183 et du paragraphe 184(2), nul ne peut transporter ou faire transporter un animal ou une carcasse d'animal qui ne porte pas une étiquette approuvée.

(2) Sous réserve de l'article 183 et du paragraphe 184(2), nul ne peut réceptionner ou faire réceptionner un animal ou une carcasse d'animal qui ne porte pas une étiquette approuvée.

**178.** (1) Sous réserve de l'article 183, nul ne peut apposer ou faire apposer une étiquette approuvée délivrée aux termes du paragraphe 174(1) sur un animal ou une carcasse qui ne se trouve pas à la ferme, au ranch ou à la salle d'encan pour lequel l'étiquette a été délivrée.

(2) Nul ne peut apposer ou faire apposer une étiquette approuvée délivrée à un importateur aux termes du paragraphe 174(2) sur un animal qui n'a pas été importé par cette personne.

**179.** Sauf dans les cas prévus aux alinéas 186(1)a) et 187(1)a), nul ne peut enlever ou faire enlever une étiquette approuvée d'un animal ou d'une carcasse d'animal.

**180.** Nul ne peut apposer ou faire apposer sur un animal ou une carcasse d'animal



animal or the carcass of an animal to another animal or the carcass of another animal.

**181.** No person shall alter an approved tag to change its tamper-proof nature or its identification number or to make the identification number unreadable.

**182.** No person shall make, sell or provide a tag, chip or other indicator that so closely resembles an approved tag that it is likely to be mistaken for one.

#### TAGGING SITE

**183.** (1) Subject to subsection (5), a bison or a bovine may be moved from its farm of origin, without having an approved tag applied to it, to a site for the purpose of having an approved tag applied to the animal at that site if

- (a) the person who manages the site has previously provided the administrator with a statement containing the name and address of the site and an undertaking that the person will comply with the requirements of paragraphs (c) to (e);
- (b) the operator of the farm of origin supplies, along with the bison or bovine, the approved tag issued to that operator under subsection 174(1), or a prior arrangement has been made by the operator of the farm of origin with the person who manages the tagging site to have approved tags applied at that site;
- (c) the bison or bovine is not mixed with any other person's animals that do not bear approved tags;
- (d) the approved tag referred to in paragraph (b) is applied to the bison or bovine immediately after it is received at the site; and
- (e) the person who manages the site keeps records, and makes them available to the administrator on request, of enough information about the origin of the bison or bovines received there to enable their

l'étiquette approuvée d'un autre animal ou d'une autre carcasse.

**181.** Nul ne peut modifier une étiquette approuvée de façon à en altérer le caractère inviolable ou le numéro d'identification ou à rendre ce dernier illisible.

**182.** Nul ne peut fabriquer, vendre ou fournir une étiquette, une puce ou un autre indicateur qui ressemble à une étiquette approuvée à s'y méprendre.

#### INSTALLATION D'ÉTIQUETAGE

**183.** (1) Sous réserve du paragraphe (5), le bison ou le bovin ne portant pas d'étiquette approuvée peut être déplacé de sa ferme d'origine à une installation pour qu'une telle étiquette y soit apposée, si les conditions suivantes sont réunies :

- a) la personne chargée de la gestion de l'installation a préalablement transmis à l'administrateur une déclaration portant les nom et adresse de l'installation ainsi qu'un engagement de sa part de se conformer aux alinéas c) à e);
- b) l'exploitant de la ferme d'origine transmet, avec le bison ou le bovin déplacé, l'étiquette approuvée qui lui a été délivrée aux termes du paragraphe 174(1) ou a pris des dispositions auprès de la personne chargée de la gestion de l'installation d'étiquetage pour que les étiquettes approuvées soient apposées sur les lieux de l'installation;
- c) le bison ou le bovin n'entre pas en contact avec des animaux qui appartiennent à une autre personne et qui ne portent pas d'étiquette approuvée;
- d) l'étiquette approuvée visée à l'alinéa b) est apposée sur le bison ou sur le bovin dès la réception de l'animal à l'installation;
- e) la personne chargée de la gestion de l'installation tient un registre, qu'elle fournit à l'administrateur à sa demande, contenant suffisamment de renseignements

origin to be traced, including

- (i) the names and addresses of the owners or persons having the possession, care or control of the animals when they are brought to the site,
- (ii) the dates when the animals are brought to the site, and
- (iii) the numbers of the approved tags that are applied to the animals and the dates when the approved tags are applied to the animals.

(2) The person who manages a tagging site shall tag all bison or bovines brought to the site that do not already bear an approved tag.

(3) Every person who gives an undertaking referred to in paragraph (1)(a) to comply with the requirements of paragraphs (1)(c) to (e) shall comply with those requirements.

(4) [Repealed, SOR/2005-192, s. 9]

(5) If a person fails to comply with subsection (3), the Minister may order the person not to receive any bison or bovines at the site referred to in subsection (1) for the purpose of applying approved tags to them at that site.

(6) [Repealed, SOR/2005-192, s. 9]

(7) An order issued under subsection (5) is effective for the period specified in the order.

(8) A person who receives an order under subsection (5) must comply with it.

(9) The Minister shall not issue an order to a person under subsection (5) unless

(a) a notice has been delivered to the person

(i) informing the person that the Minister proposes to issue the order, and

(ii) identifying the requirement that the person has not complied with; and

(b) the person has been given an opportunity to be heard in respect of the non-compliance within the period specified in the notice.

(10) The Minister shall have the notice published in a newspaper of general circulation in the community where the site

pour que l'origine du bison ou du bovin puisse être établie, notamment les renseignements suivants :

- (i) les nom et adresse du propriétaire de l'animal ou de la personne qui en a la possession, la garde ou la charge des soins au moment où il est amené à l'installation,
- (ii) la date où l'animal est amené à l'installation,
- (iii) le numéro de l'étiquette approuvée apposée sur l'animal ainsi que la date d'apposition.

(2) La personne chargée de la gestion d'une installation d'étiquetage appose une étiquette approuvée sur tous les bisons et les bovins qui y sont transportés et qui n'en portent pas déjà une.

(3) Toute personne qui s'engage aux termes de l'alinéa (1)a) à se conformer aux exigences des alinéas (1)c) à e) doit se conformer à ces exigences.

(4) [Abrogé, DORS/2005-192, art. 9]

(5) Le ministre peut ordonner à quiconque ne se conforme pas au paragraphe (3), de cesser de recevoir des bisons ou des bovins à son installation en vue d'apposer sur eux une étiquette approuvée.

(6) [Abrogé, DORS/2005-192, art. 9]

(7) L'ordre donné en vertu du paragraphe (5) reste en vigueur durant la période qui y est indiquée.

(8) Toute personne qui reçoit un ordre en vertu du paragraphe (5) doit s'y conformer.

(9) Le ministre ne donne un ordre en vertu du paragraphe (5) que si les conditions suivantes sont réunies :

a) un avis, contenant les renseignements suivants, a été remis à la personne en cause :

(i) une déclaration portant que le ministre se propose de donner un ordre,

(ii) l'exigence à laquelle la personne ne s'est pas conformée;

b) la personne a eu la possibilité de se faire entendre au sujet des faits reprochés avant l'expiration du délai indiqué dans l'avis.

(10) Le ministre fait publier l'avis dans une publication à grand tirage de la localité où

referred to in subsection (1) is located.

**LOSS OF AN APPROVED TAG  
OR APPLICATION OF A NEW  
APPROVED TAG**

**184.** (1) Subject to subsections (2) and (3), if an animal does not bear an approved tag or loses its approved tag, the person who owns or has the possession, care or control of the animal shall immediately apply a new approved tag to it.

(2) Subject to subsection (3), an animal that loses its approved tag while being transported may continue to be transported until it reaches the next place where it is to be unloaded, and it may be received at that place only if a new approved tag is applied to the animal immediately after it is received there.

(3) An animal that loses its approved tag on the way to an abattoir does not have to have a new approved tag applied to it if

- (a) it is slaughtered at the abattoir;
- (b) the person who operates the abattoir keeps a record of enough information about the origin of the animal to enable the origin to be traced, including, if it is known by that person,

- (i) the number of the approved tag that was lost and, in the case of an animal to which more than one approved tag had been applied since the animal's birth, the numbers of all of them,

- (ii) the name and address of the owner or person having the possession, care or control of the animal when it was brought to the abattoir and the date when it was brought to the abattoir, and

- (iii) the identification of the conveyance that brought the animal to the abattoir; and
- (c) in the case of a bison or a bovine, the person who operates the abattoir reports to the administrator, within 30 days after the animal is slaughtered, the information that the person is required by paragraph (b) to record in respect of the animal.

est située l'installation visée au paragraphe (1).

**PERTE DE L'ÉTIQUETTE  
APPROUVÉE ET APPOSITION DE LA  
NOUVELLE ÉTIQUETTE APPROUVÉE**

**184.** (1) Sous réserve des paragraphes (2) et (3), si un animal perd son étiquette approuvée ou n'en porte pas, toute personne qui en est le propriétaire ou qui en a la possession, la garde ou la charge des soins lui en appose immédiatement une nouvelle.

(2) Sous réserve du paragraphe (3), l'animal qui perd son étiquette approuvée au cours du transport peut continuer à être transporté jusqu'au point de déchargement suivant et peut être réceptionné à cet endroit, seulement si une nouvelle étiquette approuvée lui est apposée dès sa réception.

(3) L'animal qui perd son étiquette approuvée au cours du transport vers un abattoir n'a pas à être réétiqueté si les conditions suivantes sont réunies :

- a) l'animal est abattu à cet abattoir;
- b) le responsable de l'abattoir tient un registre contenant suffisamment de renseignements pour que l'origine de l'animal puisse être établie, notamment les renseignements suivants, s'il les connaît :

- (i) le numéro de l'étiquette approuvée qui est perdue et, dans le cas où plus d'une étiquette approuvée a été apposée sur l'animal depuis sa naissance, le numéro de chacune d'entre elles,
- (ii) la date où l'animal est arrivé à l'abattoir ainsi que les nom et adresse de son propriétaire ou de la personne qui en avait la garde, la possession ou la charge des soins à cette date,

- (iii) l'identification du véhicule ayant servi au transport de l'animal jusqu'à l'abattoir;
- c) dans le cas d'un bison ou d'un bovin, le responsable de l'abattoir communique à l'administrateur, dans les trente jours suivant l'abattage, les renseignements visés à l'alinéa b).

(4) An organization that manages an animal identification system shall, if it receives the information referred to in paragraph (3)(b), report the information to the administrator within 30 days after receiving it.

**185.** (1) Every person who applies, or causes the application of, a new approved tag to an animal or to the carcass of an animal that does not bear an approved tag or has lost its approved tag shall keep a record of

(a) the number of the new approved tag; and

(b) enough information about the origin of the animal or the carcass to enable the origin to be traced, including, if it is known by that person,

(i) the number of the approved tag that was previously applied to the animal or carcass and, in the case of an animal or carcass to which more than one approved tag has been applied since the animal's birth, the numbers of all of them,

(ii) the name and address of the owner or person having the possession, care or control of the animal or carcass when it was brought to the place where the new approved tag was attached to it and the date when it was brought to the place, and

(iii) the identification of any conveyance that brought the animal or carcass to the place where the new approved tag was attached to it.

(2) Subsection (1) does not apply in respect of the application of an approved tag to

(a) an animal before it leaves its farm of origin; or

(b) the carcass of an animal before the carcass leaves the animal's farm of origin.

(3) Every person who applies, or causes the application of, a new approved tag to an animal or to the carcass of an animal that already bears an approved tag shall, within 30 days after the new approved tag is applied, report to the administrator the number of the new approved tag as well as

(4) L'organisme de gestion d'un système d'identification des animaux qui reçoit des renseignements visés à l'alinéa (3)b) les communique à l'administrateur dans les trente jours suivant leur réception.

**185.** (1) Quiconque appose ou fait apposer une nouvelle étiquette approuvée sur un animal ou une carcasse d'animal qui a perdu son étiquette approuvée ou qui ne porte pas d'étiquette approuvée tient un registre contenant les renseignements suivants :

a) le numéro de la nouvelle étiquette approuvée;

b) suffisamment de renseignements pour que l'origine de l'animal ou de la carcasse puisse être établie, notamment les renseignements suivants, s'il les connaît :

(i) le numéro de l'étiquette approuvée qui est perdue et, dans le cas où plus d'une étiquette approuvée a été apposée sur l'animal depuis sa naissance ou sur la carcasse, le numéro de chacune d'entre elles,

(ii) la date où l'animal ou la carcasse a été déchargé à l'endroit où la nouvelle étiquette a été apposée et les nom et adresse du propriétaire de l'animal ou de la carcasse ou de la personne qui en avait la garde, la possession ou la charge des soins à cette date,

(iii) l'identification du véhicule ayant servi au transport de l'animal ou de la carcasse jusqu'à l'endroit où la nouvelle étiquette approuvée a été apposée.

(2) Le paragraphe (1) ne s'applique pas si la nouvelle étiquette approuvée est apposée:

a) sur un animal avant qu'il ne quitte sa ferme d'origine;

b) sur une carcasse avant qu'elle ne soit déplacée de la ferme d'origine de l'animal dont elle provient.

(3) Quiconque appose ou fait apposer une nouvelle étiquette approuvée sur un animal ou une carcasse d'animal qui porte déjà une

the number of the existing approved tag.

(4) An organization that manages an animal identification system shall, if it receives the information referred to in subsection (3), report the information to the administrator within 30 days after receiving it.

#### ANIMAL DEATH OR SLAUGHTER

**186.** (1) If an animal bearing an approved tag is slaughtered at an abattoir or otherwise dies at an abattoir, the operator of the abattoir

(a) may remove the approved tag from the animal or the animal's carcass; and  
(b) in the case of a bison or a bovine, shall report the death of the animal and the number of the approved tag to the administrator within 30 days after the death.

(2) The operator of an abattoir where an animal bearing an approved tag is slaughtered shall maintain the ability to identify the animal's carcass in the abattoir until the carcass is approved for human consumption or is condemned.

(3) If an animal bearing an approved tag is slaughtered or otherwise dies on a farm or ranch or at an auction barn, the operator of the farm, ranch or auction barn shall keep a record of the slaughter or death of the animal and the number of its approved tag.

(4) An organization that manages an animal identification system shall, if it receives the information referred to in paragraph (1)(b), report the information to the administrator within 30 days after receiving it.

(5) For the purposes of this section, "abattoir" includes a mobile abattoir.

**187.** (1) Every person, including a renderer, a dead stock operator, a post-mortem

étiquette approuvée communiquée à l'administrateur, dans les trente jours suivant l'apposition, le numéro de la nouvelle étiquette approuvée de même que le numéro de l'étiquette que l'animal ou la carcasse d'animal porte déjà.

(4) L'organisme de gestion d'un système d'identification des animaux qui reçoit des renseignements visés au paragraphe (3) les communique à l'administrateur dans les trente jours suivant leur réception.

#### MORT OU ABATTAGE D'UN ANIMAL

**186.** (1) Si un animal portant une étiquette approuvée est abattu dans un abattoir ou y meurt, le responsable de l'abattoir :

a) peut lui enlever son étiquette approuvée;  
b) doit, dans le cas d'un bison ou d'un bovin, signaler la mort de l'animal et le numéro de l'étiquette approuvée à l'administrateur dans les trente jours suivant la mort.

(2) L'exploitant d'un abattoir où un animal portant une étiquette approuvée est abattu doit pouvoir identifier la carcasse de l'animal dans l'abattoir jusqu'à ce que celle-ci soit désignée comme étant comestible ou jusqu'à ce qu'elle soit condamnée.

(3) L'exploitant d'une ferme, d'un ranch ou d'une salle d'encan où un animal portant une étiquette approuvée meurt, par abattage ou autrement, doit consigner dans un registre la date de la mort de l'animal et le numéro de l'étiquette approuvée.

(4) L'organisme de gestion d'un système d'identification des animaux qui reçoit des renseignements visés à l'alinéa (1)b) les communique à l'administrateur dans les trente jours suivant leur réception.

(5) Pour l'application du présent article, « abattoir » s'entend notamment d'un abattoir mobile.

**187.** (1) Quiconque, y compris l'exploitant d'une entreprise d'équarrissage, le

laboratory official or a veterinarian, who disposes of the carcass of an animal bearing an approved tag

(a) may remove the approved tag from the carcass; and

(b) shall report the number of the approved tag to the administrator within 30 days after disposing of the carcass.

(2) Every person, including a renderer or dead stock operator, a post-mortem laboratory official or a veterinarian, who disposes of the carcass of an animal not bearing an approved tag anywhere but on the farm or ranch where the animal died shall

(a) collect enough information about the origin of the animal or carcass to enable the origin to be traced, including, if it is known by that person,

(i) the farm, ranch or other place from which the carcass was removed and the date when the carcass was removed from that place, and

(ii) the name and address of the owner or person having the possession, care or control of the carcass when it was removed from that place; and

(b) report that information to the administrator within 30 days after disposing of the carcass.

(3) An organization that manages an animal identification system shall, if it receives the information referred to in paragraph (1)(b) or (2)(a), report the information to the administrator within 30 days after receiving it.

représentant d'un laboratoire d'examen post mortem et un vétérinaire, dispose d'une carcasse portant une étiquette approuvée :

a) peut lui enlever son étiquette approuvée;

b) doit signaler le numéro de l'étiquette à l'administrateur dans les trente jours après avoir disposé de la carcasse.

(2) Quiconque, y compris l'exploitant d'une entreprise d'équarrissage, le représentant d'un laboratoire d'examen post mortem et un vétérinaire, dispose d'une carcasse ne portant pas d'étiquette approuvée, ailleurs que dans la ferme ou le ranch où l'animal est mort, doit :

a) recueillir suffisamment de renseignements sur l'animal ou la carcasse pour que l'origine de l'animal puisse être établie, notamment les renseignements suivants, s'il les connaît :

(i) la ferme, le ranch ou l'autre endroit duquel la carcasse a été enlevée ainsi que la date d'enlèvement,

(ii) les nom et adresse du propriétaire de la carcasse ou de la personne qui en avait la possession, la garde ou la charge des soins au moment de l'enlèvement;

b) communiquer ces renseignements à l'administrateur dans les trente jours après avoir disposé de la carcasse.

(3) L'organisme de gestion d'un système d'identification des animaux qui reçoit des renseignements visés aux alinéas (1)b) ou (2)a) les communique à l'administrateur dans les trente jours suivant leur réception.

[Emphasis added.]

**Facts from which the dispute arises and procedural history**

[5] The respondent is a business registered in Ontario whose activities include holding animal auctions and which is authorized to apply to animals approved tags within the meaning of section 183 of the Regulations.

[6] In April 2007, the Levinoff-Colbex abattoir purchased 36 cows in Ontario through the respondent. The respondent apparently acted as sales agent at the auction. That same day, the animals were transported from the respondent's premises to those of the purchaser, the Levinoff-Colbex abattoir, where they were slaughtered. The carrier, Transport L. Bilodeau et Fils Ltée, was hired by the purchaser.

[7] During the slaughtering, Dr. Patenaude, a veterinarian-inspector with the Canadian Food Inspection Agency, noticed that one of the animals from the respondent's auction barn did not bear an approved tag and, in addition, had no visible or apparent perforations in its ears. He inferred from this that the animal had not been tagged. Such was the basis for the notice of violation issued under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40, and the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187. The notice was issued for failure to observe the prohibition set out in section 176 of the Regulations.

[8] The Tribunal, before which the matter was brought, cancelled the notice of violation and the \$500 penalty, hence this application for judicial review. As the respondent failed to appear at the hearing of the application, we have not had the benefit of any submissions from it.

### **Analysis of the Tribunal's decision and of the applicant's submissions**

[9] The Tribunal held that the respondent's premises, to which the animals were transported in order to be sold, fell within the definition of "farm or ranch" in section 172 of the Regulations. Not surprisingly, the applicant endorses this finding, which is in its favour. That finding, however, inevitably raises questions in view of subsections 174(1), 178(1) and 186(3) of the Regulations and in light of the fact that an auction sale is what is involved here.

[10] It is true that the definition of "farm or ranch" is very broad in that it includes "any other place where an animal has been since leaving its farm of origin". Under that definition, the transport truck in which the animal "has been" would, astonishingly enough, be a farm or ranch. Subsections 174(1), 178(1) and 186(3) make express reference to "auction barn" alongside the terms "farm" and "ranch", which leads one to think that, in the legislator's mind, the auction barns where animals are kept with a view to their sale are neither farms nor ranches.



[11] I understand that the definition of "farm or ranch" found in the version of section 172 of the Regulations adopted in 2000 was amended in 2003 and its scope broadened to include, as we have seen, any place where an animal has been (see SOR/2003-409, s. 1). In the absence of any explanation, I assume that there was a failure at that time to make a consequential amendment to the term "auction barn" which already existed in the 2000 version of the Regulations, since auction barns are now included in the new and broader definition.

[12] Be that as it may, I merely point out this ambiguity, for, as I stated earlier, the dispute before this Court does not concern that aspect of the decision.

[13] On page 5 of the reasons for its decision, the Tribunal states that the main issue involves identifying the person responsible for the animal's being moved from the respondent's premises. The Tribunal explained and considered at some length—and rightly so—the actual auction sale process, including the roles of the breeder, the purchaser, the carrier and the auctioneer.

[14] Faced with contradictory statements, in certain documents, regarding the ownership of the animals sold at auction, the Tribunal found that the respondent, as the auctioneer, did not have ownership of the animals and held no proprietary interest in them. The Tribunal also found that there was no evidence that the respondent exercised any authority or control over the animals once they were sold at auction or over the actions of the purchaser or the carrier.

[15] Lastly, the Tribunal stated the following with respect to the applicant's arguments (at page 6):

I do not agree with the submission of counsel for the Respondent that by selling these cattle at its auction it has participated in the movement of those cattle from its facilities, and hence has committed the violation.

Having no ownership or proprietary interest in the cattle, and having no authority or control over the actions of the purchaser Levinoff-Colbex or its representative Mr. Neil Woodrow, or over the transporter L. Bilodeau et Fils Ltée, I find that the Applicant did not cause these cattle to be moved from its auction facilities.

(a) Absence of ownership by the respondent or of any proprietary interest held by it

[16] With respect, I see in the Tribunal's decision no requirement that a person either own or hold a proprietary interest in an animal in order for the causal nexus required by section 172 to exist. All the Tribunal is saying is that it is easier to find such a nexus where one is dealing with the owner of the animal, who possesses the power and authority to move, or to cause the movement of, the animal from the farm or ranch. There is no doubt that the respondent neither had ownership nor held a proprietary interest.

(b) Absence of power and control over the animals sold and over the actions of the purchaser or carrier

[17] The applicant is not calling into question in this Court the Tribunal's conclusion as to the absence of power and control over the actions of the purchaser or carrier.

[18] However, as regards the animals sold, he submits that the auctioneer, that is, the respondent, has possession and control of the animals. But that, it must be said, is not the issue under

section 176. Rather, the question is whether the respondent has power and control over the movement of an animal such that it is the respondent that causes the animal's movement from the premises.

[19] In answer to that question, the applicant argues that the respondent plays an active role in a sale and that, as sales agent and by virtue of the sale, it causes the movement of the animal from its premises. In other words, it at least facilitates, through the sale, the movement of the animal.

[20] The applicant rightly stressed Parliament's intent to ensure the protection of public health by means of a system of approved tags. At every stage of the transport, sale and slaughter process involving an animal, that animal must bear an approved tag making it possible to trace both its origin and the herd from which it was taken.

[21] Clearly, the respondent, as auctioneer, is part of that process. For that reason, the Act and the Regulations contain a number of provisions, specific and general, which place responsibility on the respondent.

[22] Thus section 96 prohibits the respondent from even simply offering an animal for sale at a public sale, auction or market of livestock if it is not identified by a tag.

[23] Section 177 prohibits the respondent's receiving, or causing the reception of, an animal that does not bear an approved tag. Subsection 178(1) prohibits the respondent from applying, or

causing the application of, a tag to an animal that is not in the auction barn for which the tag was issued.

[24] Sections 179, 180, 181 and 182 contain prohibitions with respect to the removal, application and alteration of an approved tag as well as regarding the making, selling or providing of a tag that resembles an approved tag.

[25] Finally, subsection 175(2) requires a person having the possession, care or control of an animal to ensure that it bears an approved tag at all times.

[26] It is thus apparent from a reading of all those provisions that the respondent, depending on the circumstances, is subject to obligations that clearly apply to it at various stages of the auction sale process that it conducts. The section 96 prohibition on offering for sale at an auction could scarcely be more specific to the respondent or more effectively place responsibility on it.

[27] Given this multiplicity of prohibitions and obligations sanctioned by an administrative monetary penalty, I can understand that the Tribunal might have been anxious not to add yet another through a judicial extension of the causality concept. However, and I say so respectfully, I believe the Tribunal failed to draw the legal inferences flowing from the respondent's legal status. That was an error of law reviewable on the standard of correctness.

[28] A very good description of the legal relationship among a vendor, an auctioneer and a purchaser is provided by Lord Denning in *Chelmsford Auctions Ltd. v. Poole*, [1973] 1 All E.R. 810, at pages 812 and 813, where he explains the three contracts existing among those parties and the rights and obligations to which each of those contracts gives rise:

. . . On a sale by auction, there are three contracts. The first is the contract between the owner of the goods (the vendor) and the highest bidder to whom the goods are knocked down (the purchaser). That is a simple contract of sale to which the auctioneer is no party. That was made clear by Salter J. in *Benton v Campbell, Parker & Co*: 'To that contract [of sale] the auctioneer who sells a specific chattel as agent is, in my opinion, no party'. The second is the contract between the owner of the goods (the vendor) and the auctioneer. The vendor entrusts the auctioneer with the possession of the goods for sale by auction. The understanding is that the auctioneer should not part with the possession of them to the purchaser except against payment of the price; or, if the auctioneer should part with them without receiving payment, he is responsible to the vendor for the price. As Lord Loughborough CJ said in *Williams v Millington* [(1788) 1 Hy B1 81 at 85]:

'In the common course of auctions, there is no delivery without actual payment; if it is otherwise, the auctioneer gives credit to the vendee, entirely at his own risk.'

The auctioneer is given as against the vendor, a lien on the proceeds for his commission and charges. The third is the contract between the auctioneer and the highest bidder (the purchaser). The auctioneer has possession of the goods and he has a lien on them for the whole price. He is not bound to deliver the goods to the purchaser except on receiving the price in cash; or, if he is willing to accept a cheque, on receiving a cheque payable to himself, the auctioneer, for the price. If he does allow the purchaser to take delivery without paying the price – or if the purchaser gets delivery clandestinely or by a trick – the auctioneer can sue in his own name for the full price. That was established in 1788 by *Williams v Millington*.

[Emphasis added.]

[29] In common law as in Quebec civil law, the auctioneer is not a party to the contract between the vendor and the purchaser. Under both legal systems, however, the vendor is required to deliver to the purchaser the property sold. By virtue of his legal relationship with the vendor and the purchaser, the auctioneer must deliver to the purchaser the property of the vendor that he has in his

possession if he is paid the sale price. Conversely, the auctioneer is under no obligation to deliver if the sale price is not paid. The auctioneer thus exercises, from a legal standpoint, control over the property he sells at auction. Article 1765 of the *Civil Code of Québec* even allows the auctioneer, where the purchaser fails to pay the price, to resell the property for false bidding.

[30] If, as I must, I consider the auctioneer's legal obligation vis-à-vis both the vendor and the purchaser to deliver the property sold, I cannot but conclude that the auctioneer, through the combined effect of the mandate to sell that is entrusted to him and the resulting sale, is a participant in the process who, within the meaning of section 176, "cause[s] the movement of" (*faire retirer*) the property sold from its place of business.

### **Conclusion**

[31] The application of the legal principles discussed above leads me to conclude that the respondent herein contravened section 176 of the Regulations by delivering an animal that was not tagged to the purchaser or the purchaser's representative. By so doing, it caused the movement of that animal from its farm or ranch as defined in section 172.

For these reasons, I would allow the application for judicial review, set aside the Tribunal's decision dated October 21, 2008 and refer the matter back to the Tribunal to be decided again on the basis that the respondent caused the movement, within the meaning of section 176 of the Regulations, of an animal not bearing an approved tag.

"Gilles Létourneau"

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J.A.

"I agree.

Pierre Blais C.J."

"I agree.

Johanne Trudel J.A."

Certified true translation  
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-575-08

**STYLE OF CAUSE:** ATTORNEY GENERAL OF CANADA  
(Canadian Food Inspection Agency)  
v. DENFIELD LIVESTOCK SALES LIMITED

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** January 26, 2010

**REASONS FOR JUDGMENT BY:** LÉTOURNEAU J.A.

**CONCURRED IN BY:** BLAIS C.J.  
TRUDEL J.A.

**DATED:** February 3, 2010

**APPEARANCES:**

Patricia Gravel  
Dominic Guimond

FOR THE APPLICANT

Bruce Coulter

FOR HIMSELF  
Denfield Livestock Sales Limited

**SOLICITORS OF RECORD:**

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

FOR THE APPLICANT