

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110124**

**Docket: A-82-10**

**Citation: 2011 FCA 25**

**CORAM: BLAIS C.J.  
EVANS J.A.  
STRATAS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**ROSEMONT LIVESTOCK**

**Respondent**

Heard via videoconference between Toronto, Ontario  
and Regina, Saskatchewan on January 24, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on January 24, 2011.

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

**STRATAS J.A.**

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**BETWEEN:**

**ATTORNEY GENERAL OF CANADA  
(CANADA FOOD INSPECTION AGENCY)**

**Applicant**

**and**

**ROSEMONT LIVESTOCK**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Toronto, Ontario on January 24, 2011)**

**STRATAS J.A.**

[1] The Attorney General of Canada applies for judicial review of a decision dated January 25, 2010, made by the Canada Agricultural Review Tribunal.

[2] The Tribunal concluded that the Canadian Food Inspection Agency had not proven on the balance of probabilities that the respondent, Rosemont Livestock, violated subsection 177(1) of the *Health of Animal Regulations*, SOR/91-525. Subsection 177(1) of the *Regulations* prohibits the “[transportation], or [causing] the transportation of, an animal...that does not bear an approved tag.”

[3] The Tribunal offered a number of grounds in support of its conclusion. In this application, the Attorney General of Canada challenges all of those grounds. In our view, it is only necessary for us to deal with one of the grounds.

[4] In this case, in order to establish a violation of subsection 177(1), the Agency had to prove on the balance of probabilities that lambs found to be untagged belonged to Rosemont and that Rosemont had failed to tag the lambs.

[5] The Agency did not satisfy the Tribunal on these two essential matters.

[6] Only a brief review of the facts is necessary. The Agency’s hygiene inspector, Ms. Ashley Lalonde, found untagged lambs in pens at the Ontario Stockyards at Cookstown, Ontario. She conducted an investigation and concluded that the untagged lambs belonged to Rosemont. Ms. Lalonde testified to that effect before the Tribunal. In response, Rosemont called two witnesses. They testified that Rosemont tagged all of the lambs destined for Ontario.

[7] The Tribunal observed (at paragraph 57 of its decision) that the Agency had failed to present direct evidence establishing that the untagged lambs were those of Rosemont. The Tribunal noted the existence of indirect and circumstantial evidence to that effect, but it was left unsatisfied on this factual issue.

[8] The Tribunal was also not satisfied that Rosemont had failed to tag the lambs. In reaching this conclusion, the Tribunal reviewed the conflicting evidence. It found (at paragraph 58 of its decision) that “[w]hile the tagging conditions...were not ideal, it would be conjecture, not legal inference, that...lambs escaped tagging” when they were at Rosemont’s farm.

[9] Overall, the Tribunal concluded (at paragraph 62 of its decision) that “too much speculation, impression and hearsay must be entertained to uphold a violation before the Tribunal in this case” and that the Agency’s case was “not supported by sufficient evidence of ownership and control of the lambs.” As the Agency had not established all of the essential elements of the violation, Rosemont was found not liable for the violation.

[10] Based on the evidence before it, the Tribunal was entitled to make these factual findings. Given the deferential standard of review of reasonableness that applies in this case, there is no basis upon which we can set aside these factual findings. Therefore, the Tribunal’s conclusion that there was no violation must stand.

[11] The Attorney General submitted before us that the Tribunal required the Agency to prove its case on a standard higher than the balance of probabilities. It pointed to the Tribunal's observation that the Agency failed to adduce direct evidence of ownership of the lambs.

[12] On a reading of the Tribunal's reasons as a whole, we conclude that the Tribunal did apply the correct standard of proof, proof on the balance of probabilities. At the outset of its analysis (at paragraph 46), it reminded itself of that standard. It observed correctly that it was bound by section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 to apply that standard and quoted this Court's decision in *Doyon v. Attorney General of Canada*, 2009 FCA 152 to the same effect. Finally, in summarizing its conclusions on the facts, it mentioned the balance of probabilities standard three times (at paragraphs 60, 61 and 63 of its decision). In referring to the lack of direct evidence from the Agency, the Tribunal did not impose a higher standard of proof upon the Agency. Rather, we are satisfied that the Tribunal weighed the evidence before it and, taking it in its totality, found that it did not establish a violation on the balance of probabilities.

[13] Therefore we dismiss the application. As Rosemont did not file a notice of appearance and did not file a memorandum, it will not be awarded any costs of the application.

"David Stratas"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-82-10

**(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE CANADA AGRICULTURAL REVIEW TRIBUNAL, DATED JANUARY 25, 2010, IN THE REVIEW TRIBUNAL FILE NO.: RT#1509)**

**STYLE OF CAUSE:** *ATTORNEY GENERAL OF CANADA  
v. ROSEMONT LIVESTOCK*

**PLACE OF HEARING:** BY VIDEOCONFERENCE  
BETWEEN TORONTO, ONTARIO  
AND REGINA, SASKATCHEWAN

**DATE OF HEARING:** JANUARY 24, 2011

**REASONS FOR JUDGMENT  
OF THE COURT BY:** (BLAIS C.J., EVANS, STRATAS,  
J.J.A.)

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

**APPEARANCES:**

Philippe Alma FOR THE APPLICANT

Greg McKelevey FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan FOR THE APPLICANT  
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