

Health of Animals Act  
Registrar of Appeals



Loi sur la santé des animaux  
Greffier des appels

**Date: 20240216**

**Docket: P-2-20**

**Citation: 2024 FC 253**

**AN APPEAL TO THE ASSESSOR  
PURSUANT TO THE *HEALTH OF ANIMALS ACT***

**Ottawa, Ontario, February 16, 2024**

**PRESENT: Associate Chief Justice Gagné, Deputy Assessor**

**BETWEEN:**

**HARPUR FARMS, LLC**

**Appellant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an appeal to an Assessor under section 56 of the *Health of Animals Act*, SC 1990, c 21 [the **Act**]. Harpur Farms, LLC challenges the compensation granted by the Minister of

Agriculture and Agri-Food Canada (\$8,712,618.50), following the Canadian Food Inspection Agency's [the **Agency**] destruction order of Harpur Farms' red deer herd in connection with chronic wasting disease [**CWD**].

[2] Harpur Farms argues the Agency did not use a reasonable method of assessing the fair market value of the herd, nor did it apply a reasonable deduction for the value of the carcasses of the red deer that tested negative to CWD; Harpur Farms claims it should receive \$13,173,119.

[3] The Minister cross-appeals the compensation on the basis that they granted Harpur Farms compensation in excess of the regulatory limits found in the *Compensation for Destroyed Animals Regulations*, SOR/2000-233 [the **Regulations**]. The Minister did not correctly apply the regulatory limit for male red deer under one (1) year old. As a result, the Minister granted \$504,071 in excess compensation. The Minister therefore asks the Assessor to reduce the compensation to \$8,208,547.50.

[4] For the reasons that follow, the appeal is granted in part and the matter is referred back to the Minister for a new determination in accordance with these reasons.

## II. Facts

[5] An Appeal of compensation is a *de novo* trial of the issue of whether the compensation awarded by the Minister under the Act was reasonable (the French version of the Act rather refers to the sufficiency on the amount awarded; we will discuss this discrepancy later).

[6] We therefore held a four-day trial, hearing from the following witnesses:

For Harpur Farms:

Mr. Jordan Harpur, chief financial officer of Organix Corporation, the management company that oversaw the operations of Harpur Farms;

Mr. Randal Wehrkamp, a cervid industry expert;

Ms. Anne-Marie Bélanger, a forensic accountant formerly with BDO, now with Excellence Juricomptable.

For the Minister:

Ms. Sophie Benoit, operations specialist with the Agency;

Dr. Stéphane Fortin, a veterinarian with the Agency;

Mr. Robert E. Burden (Serecon Inc.), expert in agriculture economics and asset valuation.

A. *Harpur Farms and the herd*

[7] Harpur Farms owned three separate red deer farms in Boileau, Avoca and Rivière-Rouge, in the Province of Québec. The operation began in 1988 when Mr. Jordan Harpur's aunt and uncle imported a herd of 48 hinds and 2 stags from New Zealand. New Zealand is the cradle of the red deer farming industry and continues to lead the world in red deer exports.

[8] Through artificial inseminations and embryo transfers, the herd significantly improved its genetics and grew to 2,500 animals in the late '90s. Harpur Farms sought and obtained advice from veterinarians and academics to improve the genetics of its animals and Mr. Harpur described the improvements from 1992 to 2010 as exponential.

[9] Part of this success is due to Harpur Farms' ability to maintain thorough records for each animal throughout its life that contained the full pedigree of the animal, its sire and grandsire, its rate of gain weight, its consumption, breeding rate, velvet production, etc.

[10] Part is also due to Harpur Farms' decision to purchase Les Viandes de la Petite-Nation Inc. [VPN] in 2002 and to build a state of the art slaughterhouse in 2007. Harpur Farms was then able to control the quality of its product from the field to the table.

[11] In 2012, the herd became a closed herd. A closed herd means the breeding operations do not use outside genetics. The decision to become a closed herd resulted from working with industry veterinarians and academics and finding there were no outside genetics that could improve the quality of the herd. Harpur Farms had close to 3,000 animals, part of four different "families", with sufficient genetic diversity to avoid inbreeding.

[12] Harpur Farms had isolated and quantified the value points it was looking for and its herd was superior to any other red deer herd when considering those value points: the carcass size and composition, the growth speed, the fawning rate and early fawning date for females, and the antlers size' and velvet production for males.

[13] Harpur Farms began marketing its venison under the Cerf de Boileau label in 1996. Over time, the venison was cited in cookbooks, newspapers, cooking shows and international culinary competitions. Harpur Farms' products were served in exclusive restaurants around the world and they completed a rigorous certification process to sell to Michelin-rated restaurants in Europe.

[14] By 2018, Harpur Farms was a well-known and renowned red deer breeder, raising a herd of approximately 3,000 red deer across three Farms spanning over 1,000 acres of land. Its activities included breeding and raising red deer for meat, the production of antler velvet, and supplying live animals to third parties for hunting park operations. Harpur Farms sold products across Canada, the United States, Europe and New Zealand.

[15] Harpur Farms was planning an expansion to a property named Kenauk which would increase the herd's population from approximately 3,000 to 20,000 [the **Kenauk Expansion**] and focus on hunting activities.

B. *CWD and the Depopulation Process*

[16] On September 10, 2018, a red deer at one of Harpur Farms' locations tested positive for CWD. CWD is a reportable disease under the Act and the *Reportable Diseases Regulations*, SOR/91-2.

[17] CWD is a transmissible spongiform encephalopathy that causes a progressive neurological disease in deer and other cervids. It is contagious and inevitably fatal. There are no treatments nor vaccines for CWD, and it can only be detected *post-mortem*.

[18] On October 1, 2018, the Agency ordered the depopulation of the entire herd.

[19] Jordan Harpur was in charge of the operations so he was the Agency's contact for the events that followed. Although the situation was not made public at the time, word quickly

spread that the herd was contaminated and would be slaughtered. The brand and reputation that took decades to build were gone overnight. However, the Agency reassured Mr. Harpur from the beginning that the Act provided for compensation up to \$8,000 per animal. Dr. Fortin even acknowledged that Harpur Farms had an elite herd. Dr. Fortin made the analogy that Harpur Farms' position in the red deer industry was akin to the value of the National Hockey League's most valuable player, Sidney Crosby.

[20] At that point, however, the driving force for the Agency was two fold; the first was the speed with which the entire herd could be slaughtered (Quebec's Ministère de l'Agriculture, des Pêches et de l'Alimentation [ministry of agriculture, fisheries, and food] and Ministère des Forêts, de la Faune et des Parcs [ministry of forests, faun, and parks] put significant pressure on the Agency for a quick turnaround); the second was cost minimization.

[21] The Agency set December 31, 2018 as the deadline for the completion of the depopulation. Since this required slaughtering several hundreds of animals per week, and since VPN's normal slaughter rate was 30 animals per week, the Agency hired Les Viandes Forget to proceed with the task.

[22] Between October 3 and December 18, 2018, the herd of 2,723 red deer (the Agency's final count based on physical scanning of the ear tag of each deer ordered destroyed) was depopulated. The Agency and Harpur Farms jointly oversaw the process and Mr. Harpur had daily contacts with Ms. Benoit, Dr. Bertrand and Dr. Daoust from the Agency. Those who testified in this case were adamant; the collaboration between Harpur Farms and the Agency was

at its best in the circumstances. The Agency was very sensitive to the hardship the situation caused the Harpur family and Harpur Farms employees, and Mr. Harpur was aware of the need to quickly proceed with the depopulation of the herd, while reassured that compensation would follow; he was also very sensitive to the impact of the situation on Harpur Farms' and VPN's employees.

[23] Ms. Benoit had explained to Mr. Harpur that the Act and Regulations provided for compensation based on the fair market value of each animal, plus the cost of transporting it to the slaughterhouse and the cost of slaughtering it, minus the value of the carcasses.

[24] On October 12, 2018, Mr. Harpur sent to Ms. Benoit for approval what he referred to as Harpur Farms' *Action Plan for the depopulation of Harpur Farms red deer*. Although Ms. Benoit had asked and was waiting for an action plan, this letter had a much broader scope; its content can be summarized as follows:

- Starting October 18, 2018, Harpur Farms will send its animals to Viandes Forget to be slaughtered;
- After inspection by the Agency, the carcass of the animals who test negative will be purchased by VPN at a price of \$4.50 per Kilo (cold carcass weight);
- VPN will only purchase the carcasses that meet all VPN's HACCP (Hazard Analysis and Critical Control Points) protocols and the Agency requirements (the others will be refused and returned to Viandes Forget);
- The carcasses will be delivered to VPN's premises in Saint-André-Avellin in cardboard combo bins;
- The delivered carcasses will include the industry standard by-products: hearts, livers, kidneys, lungs, etc.

[25] Between October 10 and October 16, 2018, Ms. Benoit and Mr. Harpur exchanged a few emails on the subject but since the letter was not responsive to what Ms. Benoit had asked for (as it included a third party agreement with VPN), she did not sign it.

[26] Harpur Farms, VPN and the Agency nevertheless proceeded with the plan to have Viandes Forget slaughter the animals and to have VPN purchase the carcasses from Harpur Farms.

[27] As soon as VPN started receiving carcasses at its facilities, they noticed that the quality of the meat was terrible; in some cases, the capillaries in the meat had burst, in other the meat was flaccid; all resulting from the tremendous stress put on the animals during transportation and slaughtering. On October 25, the day after the first shipment, Mr. Harper sent emails to Ms. Benoit and Dr. Fortin, with pictures attached, to alert them to the issue (exh. P-18).

[28] Although Ms. Benoit and Dr. Daoust stated they would work with Viandes Forget to settle the issue, Mr. Harpur testified that the situation got even worse. At one point, the Agency even issued a Corrective Action Request, as part of the HACCP process.

[29] In addition, Mr. Harpur was informed that Viandes Forget kept none of the by-products VPN was hoping to receive.

[30] Because of this, VPN only paid Harpur Farms for the carcasses it was able to use, minus the cost of transportation from Viandes Forget to VPN and the cost of disposing the unusable



carcasses (\$666,701), whereas the Agency deducted from the total compensation awarded to Harpur Farms the value of all the carcasses delivered to VPN's premises (\$937,975.50).

C. *The Evaluation Process*

[31] On May 5, 2019, the Agency's representatives met with Mr. Harpur to commence the compensation evaluation process of the destroyed herd.

[32] The parties agreed to retain October 1, 2018, as the evaluation date, which is the day Harpur Farms received a general Notice of Requirement to Dispose for each of its farming sites.

[33] The Common Procedures Manual [the **Manual**] outlines procedures relating to, among others, awards of compensation under the Act and provides specific guidance for the valuation of animals and things. The valuation may be completed by a single evaluator, or by an evaluation team composed of an Agency veterinary inspector to chair the team, an industry expert evaluator selected by the Agency, and an industry expert evaluator selected by the owner [**Compensation Committee**]. Harpur Farms chose the latter option.

[34] The Compensation Committee members tasked with assessing the value of the depopulated herd were its chair, Dr. Stéphane Fortin, Mr. Robert E. Burden, expert for the Agency, and Mr. Randall Wehrkamp, expert mandated by Harpur Farms. Dr. Fortin later expanded the committee to include two additional Agency representatives, Dr. Marc Bertrand and Ms. Sophie Benoit.

[35] The two industry expert evaluators, Mr. Burden and Mr. Wehrkamp, prepared individual valuation reports in which they reached different conclusions. Section 12.6(8) of the Manual provides that in “cases where the evaluation team is unable to reach agreement”, the chair “will determine the compensation to be awarded and outline the reasons in an evaluation chair report”. Therefore, Dr. Fortin’s task was deciding the compensation to be awarded to Harpur Farms based on the experts’ views.

[36] Amongst several points of contention, the industry experts disagreed on whether the animals should be valued as meat animals or breeding stock. Animals used for breeding have a higher market value than animals sold for their meat.

[37] In September 2019, Mr. Wehrkamp provided a report requesting a total compensation of \$13,406,961 (exh. P-2) [the **Wehrkamp Report**]. He considered all of the animals for their breeding value, as opposed to their meat value. He valued each animal at the maximum amount allowed under the Regulations, except for male fawns under one (1) year old which he valued at \$7,999 each despite the \$4,000 regulatory limit for these animals. During his testimony, he maintained that the Agency could exceed the regulatory maximum in this case as it had done so in a similar case in the past. No further details were provided.

[38] Mr. Burden issued three versions of his report. On November 18, 2019, Mr. Burden provided a first report that valued the herd at \$7,363,101. Mr. Burden valued 918 animals for their meat, 97 male for breeding, and 1,708 females for breeding.

[39] On November 28, 2019, the evaluation committee held a meeting with Mr. Harpur to discuss the results of both expert reports. Mr. Harpur presented Mr. Wehrkamp's report, as Mr. Wehrkamp was absent. Mr. Harpur presented arguments that supported adding the value of the deer antler velvet and increasing the number of animals categorized as breeders. Dr. Fortin asked Mr. Burden to consider these values in a revised version of his report.

[40] On March 2, 2020, Mr. Burden completed a second version of his report valuing the herd at \$9,647,443. Mr. Burden changed his distribution between meat and breeding stock. On average, he valued 725 animals for meat at \$1,436, 198 males for breeding at \$7,509 and 1,800 females for breeding at \$3,887. Male fawns under one (1) year were valued at \$7,596, which is over the \$4,000 regulatory limit. Mr. Burden valued the antler velvet at \$125,053.

[41] On March 31, 2020, Mr. Burden provided a third version of his report maintaining the same value for the herd at \$9,647,443 [the **Serecon Report**]. However, he divided the \$125,053 for deer antler velvet amongst the average values of the animals rather than providing it as a standalone figure. This increased the average value of meat animals to \$1,505 and female breeding stock to \$3,928.

[42] On May 21, 2020, the Compensation Committee provided its final report to Harpur Farms. Dr. Fortin accepted the values contained in the Serecon Report for three reasons. First, Harpur Farms' operations included meat production and was not limited to breeding. Second, Mr. Burden considered Harpur Farms' Kenauk Expansion and established a reasonable number of animals intended for breeding, whereas Mr. Wehrkamp considered that 100% of the animals

were for breeding purposes. Third, Mr. Burden considered that there was a decrease in value of the animals as they age.

[43] On July 20, 2020, the Compensation Committee awarded Harpur Farms a compensation of \$9,650,594 for the market value of the herd, minus \$937,975.50 as the deduction for the carcasses. The total compensation award amounts to \$8,712,618.50.

[44] The Agency also awarded compensation for the services of all third parties involved in the depopulation of the herd, including the amounts of \$7,545 for manpower, \$93,711.08 for transportation from Harpur Farms to Viandes Forget, \$51,157.35 for waste disposal, and \$288,936.13 for slaughtering.

D. *Uncollected Semen*

[45] During the depopulation process, Harpur Farms asked permission to collect the semen of four (4) of its highest genetic value stags at the Boileau site.

[46] The Minister refused Harpur Farms' request on the basis that it would disrupt the finality of the disposal order and violate policy of not using semen from animals exposed to any disease.

[47] Ms. Anne-Marie Boulanger valued the uncollected semen straws at \$2,612,016 [the **BDO Report**]; Harpur Farms has added this amount to its claim.

III. Issues before the Assessor

[48] The issues raised by this appeal are the following:

- A. *Is the Minister's compensation for the animals reasonable (sufficient)?*
- B. *Has the Minister applied a reasonable (sufficient) deduction for the carcasses of the animals?*
- C. *Can the Assessor award compensation for uncollected semen?*
- D. *Can the Assessor reduce the compensation awarded in excess of regulatory limits (the Minister's cross-appeal)?*

IV. Analysis

[49] Section 48 of the Act gives the Minister the power to dispose of an animal or thing where the animal or thing is, or suspected of being, affected or contaminated by a disease. Section 51 of the Act allows the Minister to order compensation to be paid to the owner of the animal or thing, at its market value at the time of the order but not exceeding the maximum amount established under the Regulations, minus the value of the carcass.

[50] However, the Crown is not liable for any costs, loss or damage resulting from the compliance with the Act or to pay any fee, rent or charge for what is done (Section 50 of the Act). In that sense, the Act's limited compensation scheme 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. This Court's jurisprudence has established that "market value" under section 51

of the Act excludes “special value to the owner” or economic loss (*Bergen v Canada (Minister of Agriculture and Agri-Food)*, 2021 FC 834, at para 94; *Willow Hollow Game Ranch Ltd. v Canada (Agriculture and Agri-Food)*, 2016 FC 343, at para 36).

[51] Sections 41 and 42 of the Regulations set the maximum amount of compensation for a male red deer aged one year and older at \$8,000 and all other red deer at \$4,000.

[52] Finally, the right to appeal the compensation is provided for in section 56 of the Act.

Considering the apparent conflict between both official versions of paragraph 56(1), it is worth reproducing it here:

<b>56 (1)</b> 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.	<b>56 (1)</b> Il peut être interjeté appel devant l’évaluateur soit pour refus injustifié d’indemnisation, soit pour insuffisance de l’indemnité accordée.
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[53] As stated on many occasions by the Supreme Court of Canada, bilingual statutory interpretation requires that where one version is ambiguous and the other is clear and unequivocal, the common meaning of the two versions *a priori* would be preferred; and where one of the two versions is broader than the other, the common meaning favours the more restricted or limited meaning (*Caisse populaire Desjardins de l'Est de Drummond v Canada*, 2009 SCC 29, at paras 83-84; *R v Daoust*, 2004 SCC 6, at para 26, *R v Côté*, 1977 CanLII 1

[1978] 1 SCR 8, at p 327, *Tupper v The Queen*, 1967 CanLII 14 (SCC), [1967] SCR 589 at p 593).

[54] In *The Interpretation of Legislation in Canada*, 4<sup>th</sup> Ed (Thompson Reuters: 2011), at pp. 343-344, Professor Pierre-André Côté also states that, taking into consideration the fact that the two versions are equally authoritative, statutory interpretation of bilingual enactments begins with a search for the shared meaning between the two versions.

[55] A reasonable indemnity (in the sense generally understood by reviewing Courts) is not necessarily sufficient but one that is sufficient is necessarily reasonable. The English and French versions of the Act can easily be harmonized by construing the concept of reasonableness as meaning sufficiency.

[56] We also have to keep in mind that section 56 sets out the grounds for appeal, and not the standard to be applied by the Assessor on appeal. The right to appeal is that of the person who claims compensation and it is triggered if the failure to award compensation is unjustified, or if the compensation awarded is considered insufficient or inadequate.

[57] The Assessor examines the evidence *de novo* and confirms or varies the Minister's disposition of the claim, or refers the matter back to the Minister for such further action as the Assessor may direct (section 57(1) of the Act).

A. *Is the Minister's compensation for the animals reasonable (sufficient)?*

(1) The Principles

[58] Pursuant to sections 51 and 52 of the Act, the market value of the animals or things shall constitute the basis of the compensation.

[59] The Act does not expressly define the expression "market value", except that section 52 specifies that this is the value that the animal or thing "would have had at the time of its evaluation if it had not been required to be destroyed".

[60] The Manual, provides guidelines on the meaning of market value:

12.4 Market Value

[...]

For the purpose of awarding compensation, market value is the value that the animal or thing would have had at the time of its evaluation if it had been sold in the open market (i.e. to a willing buyer from a willing seller) and not been ordered destroyed.

12.4.1 General Procedures

[...]

3. Confirm the understanding of market value with the owner by asking the owner to provide the following:

- bills of sale and receipts for relevant transactions during the past two years, for reference purposes; and
- relevant pedigrees and production records.

4. Confirm the industry expert's understanding of market value by clarifying that market value should be as follows:



- comparable to the price paid by a willing buyer to a willing seller in an arm's-length transaction for comparable animal or thing;
- based on current prices charged by local suppliers;  
or
- based on current prices paid by marketing agents or agencies for milk, eggs, etc.

[61] In any event and as pointed out by the Appellant, the definition of market value in this case is not at issue as the parties, along with the experts, have retained more or less the same definition:

Exhibit P-32, final report from the evaluation committee, p. 2:

The amounts presented here reflect the market value of the animals, as required under the Health of Animals Act and its Compensation for Destroyed Animals Regulations.

“Market value” means the value that the animal would have had at the time of its evaluation if it had been sold on the open market, that is, to a willing buyer by a willing seller, and if it had not been required to be destroyed.

Exhibit P-2, Wehrkamp Report, p. 5:

Fair market value is defined within the Health of Animals Act as “the market value the animal would have had at the time of its evaluation, had it not been ordered destroyed.”

Exhibit P-1, BDO Report, p. 5:

20. For the purpose of the Report, we have defined FMV as:

“the highest price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”

Respondent's Updated Book of Additional Evidence, Tab-1, Serecon Report, p. 12:

the expected amount expressed in Canadian dollars that a willing buyer would pay a willing seller both having full knowledge of facts and neither under any compulsion to act.

[62] Finally and as indicated above, the Regulations provide the maximum amount that may be awarded for destroyed red deer, which is \$8,000 for males one year and older and \$4,000 for all other red deer.

[63] However, neither the Act, the Manual nor the Regulations prescribe a specific methodology to calculate the market value of the animal, which is part of the parties' disagreement in the case before me.

(2) Proposed Methodologies

(a) *The Wehrkamp Report*

[64] Mr. Wehrkamp prepared three different valuation models (comprising four scenarios): the "Minnesota comparison" model; the "New Zealand Replacement Cost" model, and; the "Discounted Cash Flow" model (comprising the status quo scenario and the Kenauk Expansion scenario).

[65] The "Minnesota comparison" model uses the compensation awarded by the United States Department of Agriculture to the North Oaks farm following the depopulation of its red deer herd as a baseline. He applied a 1.34% conversion rate and adjustment factors of 25% between two age groups for males and females and 33% between bred and open females; he obtained a value of \$14,564,009 (above the maximum amount allowed under the Regulations).

[66] The “New Zealand Replacement Cost” model is the calculation of what it would cost Harpur Farms to source red deer from New Zealand and land them onto its farms in Québec. Mr. Wehrkamp primarily relied on invoices (for animals as well as handling, transportation, importation and other costs) to obtain a value per head. He then applied standard adjustment factors, just as in the Minnesota comparison model, and obtained a value of \$16,407,504 (above the regulatory limit).

[67] Finally, Mr. Wehrkamp prepared a Discounted Cash Flow [DCF] model, which is essentially an “income approach” whereby the value of the asset is calculated based on its future cash flows (revenues and costs considered). He presented it as an additional model developed to cover all angles and obtained values of \$17,055,983 for the status quo scenario and \$44,690,922 for the Kenauk expansion scenario (again, both over the maximum amount allowed under the Act).

[68] Mr. Wehrkamp did a weighing exercise of the four values from each scenario, giving each one a weight of 25%. Although I am not convinced that this is a useful or appropriate approach in the circumstances, it is immaterial to the result as all models are above the regulatory maximum.

(b) *The BDO Report*

[69] Ms. Anne-Marie Bélanger opined that the highest and best use of the herd would be its “value-in-use”, based on a going concern approach, which is the value that the herd would

generate under a specific use, as opposed to its “value-in-exchange”, which is the value of the herd based on its members’ individual value.

[70] Ms. Bélanger explained that this method is to be preferred in a context where there is no comparable on the market; when a group of assets is economically viable on a prospective basis, a going concern approach is preferable and will yield the highest value.

[71] Since the Act does not foresee a compensation for any loss in excess of the value of the animals or things ordered to be destroyed, she points out that her approach is focused on the value of the herd itself, rather than of Harpur Farms’ business, damages or the loss of profit it sustained in the context of the depopulation.

[72] Ms. Bélanger calculated the value of the herd with and without the Kenauk Expansion and by way of a DCF methodology using Harpur Farms’ projections of revenues and costs (i.e., feed, land rental, salaries and veterinarian fees) relating to the herd and stemming from the sale of meat, live animals and velvet, and based on historical figures. She valued the herd in a status quo scenario at \$10,987,169 to \$13,428,762, with a midpoint of \$12,207,965, and the Kenauk Expansion scenario at \$20,378,920 to \$24,907,568, with a midpoint of \$22,643,244.

[73] Finally, Ms. Bélanger calculated the value of the semen straws that could have been harvested by Harpur Farms. These calculations are based on the scenario that samples would have been taken on a period of 11 days from four (4) mature stags and the fact that the value of a single semen straw is \$395.76 and the costs relating to the operations would have amounted to

\$15,000. Based on these assumptions, Ms. Bélanger calculated the fair market value of the semen straws to be \$2,612,016.

(c) *The Serecon Report*

[74] Mr. Burden's valuation method encompassed four steps.

[75] First, Mr. Burden categorized the animals per sex and age, and then established the percentage of animals that should be considered as meat stock versus breeding stock based on the herd's history and indicators such as female fawning rates, mortality rates, slaughter rates, breeding percentage, culling program and the Kenauk expansion. He concluded that, out of the 2,723 deer in the herd, 423 males and 303 females were destined for slaughtering as part of the ongoing high value meat operation, and 197 males and 1,800 females were used for breeding.

[76] Second, Mr. Burden evaluated the meat stock based on its value on the meat market using data provided by Harpur Farms. To determine the meat market value, he calculated the average historical slaughter weight of the animals by age and sex, he calculated the gross value of the carcasses per kg, and he deducted costs for processing, trucking, and variable costs to bring younger animals to weight. This resulted in a net meat value higher than benchmark values, to which he added a premium for the velvet and hide of the deer. He found an average value of \$1,505 for 726 animals.

[77] Third, Mr. Burden evaluated stag breeders based on a depreciated replacement cost approach given the absence of comparable market transactions. Because the stock originally

came from New Zealand and the only substantive equivalent genetic strain was found there, he established the value of the stags per age and based on the costs of flying-in a stag breeder from New Zealand onto Harpur Farms' property. He found an average value of \$4,989 for 197 stags.

[78] Fourth, Mr. Burden evaluated female breeders based on several critical factors given the absence of comparable market transactions. These factors were the females' fawning rate, typical useful reproductive life, expected mortality, and annual fixed and variable costs. He found an average value of \$3,929 for 1,800 female breeding stock, which corresponds to the number of breeders Mr. Harpur explained he needed to meet his objectives for both the ongoing meat operation and for the Kenauk Expansion.

[79] Mr. Burden established his final valuation at \$9,146,523.

(3) Methodology retained

[80] The Appellant argues the compensation is insufficient because the Minister undervalued the depopulated herd by choosing Mr. Burden's valuation method. I agree.

[81] Although it is well established that class or purpose (i.e. meat, breeding, hunting trophy) is a relevant characteristic to consider when valuating an animal under the Act's compensation scheme, I believe that a distinction should be made between the class or purpose in the eye of the seller, and the class or purpose in the eye of a potential purchaser.

[82] In my view, the evidence clearly establishes that the Harpur Farms' herd was a breeding herd, if only by the way all the fact and expert witnesses described it as the most impressive red deer herd they have seen in Canada, and probably in the world. As a result of 30 years of selective breeding and intensive management practices, it surpassed the competition on every aspect considered by breeders. It is true that some of the value points are destined to better serve the venison market (for example the size and the composition of the carcass), but each one of these animals had similar genetics and could have been of interest for a purchaser as a breeding animal. Again, the fair market value is what a purchaser would accept to pay to a consenting seller in an open and free market. If the animals are valued individually, the seller's business plan has little to no impact on that value.

[83] Although there is no evidence the market could absorb 2,723 breeding animals at once, Mr. Burden and the Minister admitted that it could have absorbed 2000 breeding animals. That number is fixed arbitrarily solely based on Harpur Farms' past business model and future plans (partly considering the Kenauk Expansion). It is hard to accept that while Mr. Burden valued more than 2,000 animals as breeders, the Minister now takes the position that it would be impossible to sell 724 more at breeding price.

[84] It is also admitted that the fair market value is based on normal market conditions and not on a fire sale; that means Harpur Farms would have had the proper time to liquidate its herd. The *Willow Hollow* case defines fair market value as the current market value as if the herd's depopulation was not imminent.

[85] Since we have determined that Harpur Farms had a breeding herd, I am of the view that the replacement cost model is the preferred valuation methodology. In fact, both industry experts agree that the New Zealand replacement cost model is the best method to value Harpur Farms' breeding stock considering the absence of comparable on the Canadian market.

[86] That said, they do not quite agree on the result.

[87] First, Mr. Burden applies a 41% premium to account for the size difference between New Zealand and Harpur Farms' animals, whereas Mr. Wehrkamp applies between 44 to 50%. Neither have provided detailed evidence to support their view so I will set that premium at 45%.

[88] Second, Mr. Burden added a 17% depreciation factor to the older males. His only rationale is that it is obvious that older animals have lesser value. On the other hand, Messrs. Harpur and Wehrkamp testified to the contrary. Their position will be preferred for the following reasons:

- (a) The only sale records of older stags on file, show that in fact these older stags have great values for hunting (Wehrkamp Report, app. 10.1);
- (b) The application of this depreciation leads to the unexplained result that the mature breeder stags would be worth less than the mature meat stags;
- (c) The depreciation is applied on the price of a replacement animal, whose value mostly comes from transportation costs. It is however obvious that the transportation costs would not change for older animals, and therefore Mr. Burden should not have depreciated these transportation costs;
- (d) Older stags can be sold on the hunting market at great value, Harpur Farms having sold in the past such older stags for \$17,000 and even one for \$35,000.



[89] Third, Mr. Burden maintains that his model includes value for bred females. The Appellant argues, for the following reasons, that it is unlikely because:

(a) Nowhere in his report is there a mention that the females were pregnant or that value was attributed to account for that fact;

(b) Dr. Fortin confirmed that despite this being a requirement in the Manual (Tab 28, Section 5) they had not tested the females for pregnancy and conceded that a value of 25% should likely be added in Table 7 for the females;

(c) It is impossible to verify that the prices used by Mr. Burden include a premium for bred females nor that they have taken into account in his replacement model that the embryos would likely die in the transport of the hinds and would need to be accounted for after transport.

[90] I agree with the Appellant that the compensation should include value for bred females, in line with Harpur Farms' historical breeding rate.

(4) Conclusion on Compensation

[91] Since the parties have not provided me sufficient details to assess the appropriate compensation to be awarded for the depopulation of the herd, the file will be sent back to the Minister for a new determination of the fair market value of the 2,723 red deer that were ordered destroyed, in line with the findings contained in this section.

B. *Has the Minister applied a reasonable (sufficient) deduction for the carcasses of the animals?*

[92] The Minister is of the view that the Assessor does not have jurisdiction to review the deduction applied for the carcasses and that if they had been bought by any company aside from

VPN, the Appellant's parent company, this question would not have been raised in this appeal.

[93] I disagree with the Minister. Paragraph 51(2) of the Act provides that the compensation is equal to the market value of the animal, minus the value of its carcass. The purpose of this provision is simply to avoid that owners receive double compensation.

[94] If the Assessor has jurisdiction to assess the sufficiency of the compensation, he or she has jurisdiction to assess the value of the carcasses and the sufficiency of the deduction to be applied to avoid double compensation.

[95] I agree with the Minister that VPN is to be considered as any third party purchaser dealing with Harpur Farms at arm's length. The focus is on Harpur Farms and on what Harpur Farms was able to obtain from the sale of the carcasses, not on VPN or any loss VPN could have suffered from that arrangement.

[96] When we consider what Harpur Farms received from the carcasses (\$666,701) as opposed to what the Minister deducted from the compensation (\$937, 975), Harpur Farms was undercompensated.

[97] When the compensation scheme was explained to Mr. Harpur, the parties discussed three different scenarios: i) the animals could be destroyed on site and the carcasses disposed of by Sanimax, at the Minister's costs; ii) the animals could be slaughtered and the meat given to food

banks; and iii) the animals could be slaughtered by Viandes Forget and VPN could buy the carcasses from Harpur Farms at a price to be agreed upon by the Agency.

[98] Considering that Harpur Farms is entitled to a full compensation and that any deduction mostly benefitted the Minister, the Agency had to approve the sale price and make sure it was fair. VPN had initially offered to pay \$1 a kilo and before accepting that price, Ms. Benoit called a third party purchaser who offered a price of \$4.50 per kilo. VPN then agreed to match the price of \$4.50 per kilo.

[99] On October 11, 2018, Mr. Harpur sent a draft agreement letter to Ms. Benoit (Exhibit P-17), which contained i) a plan for the depopulation of Harpur Farms red deer, and ii) the terms for the sale of the carcasses, once slaughtered, inspected and tested negative, from Harpur Farms to VPN. In summary, Harpur Farms would purchase the carcasses (including by-products) meeting certain minimum quality standards at a price of \$4.50/kg.

[100] Ms. Benoit testified that she ignored this letter and even deleted it from her email inbox as it did not concern the Agency.

[101] I do not agree. Again, VPN has to be considered as any third party purchaser. This letter therefore contains a tri-partite agreement. The following conditions concern the Agency:

- It would pay for transportation from Harpur Farms's premises to Viandes Forget;
- It would pay Viandes Forget for all slaughter and inspection fees required to produce a dressed hanging cold carcass, labelled, and quartered;

- It would pay for any potential waste removal and decontamination expenses;

[102] As for the agreement between Harpur Farms and VPN, to which they both obviously consented, it provided for the following:

- VPN will purchase from Harpur Farms inspected, hanging red deer carcasses, delivered to its facilities in St-Andre-Avellin, at the price of \$4.50/kg (cold carcass weight), delivered in cardboard combo bins;
- The delivered carcass will include the industry standard by-products: hearts, livers, kidneys, lungs, hanging tenders, trachea, tendons, pizzles, testicles, and tails;
- All carcasses must meet all VPN's HACCP protocols and Agency requirements.

[103] The transportation from Harpur Farms to Viandes Forget, the slaughtering and the inspection were the only portion of this agreement that concerned the Agency, the rest only concerned Harpur Farms and VPN. Of course, if the Agency did not agree with the sale conditions between Harpur Farms and VPN, and if it intended to use different conditions/figures for the calculation of the deduction to be applied for the carcasses, it had ample occasions to say so. It could have insisted on different terms and conditions for the sale of the carcasses because, as indicated above, the Minister benefits from the deduction. It did not.

[104] In addition, although Ms. Benoit did not sign the agreement, the Agency executed its part of the deal; it transported the animals from Harpur Farms to Viandes Forget, it paid for the slaughtering, and it inspected the carcasses.

[105] On the other hand, Harpur Farms and VPN respected their agreement and, as a result, Harpur Farms received \$666,701 for the carcasses. This amount, plus the transportation costs between Viandes Forget and VPN, has to be deducted from the compensation award in order to avoid double compensation. I add the transportation costs to the amount of the deduction because this part of the deal was between Harpur Farms and VPN. The sales conditions are clear as between them; VPN would pay Harpur Farms \$4.50 a kilo delivered in cardboard combo bins. Not only did Harpur Farms accept that condition, but transportation costs from the slaughtering house to any third party's premise is outside of the scope of the compensation scheme.

[106] I fail to see how the result would have been different had Harpur Farms and VPN transacted at arm's length.

C. *Can the Assessor award compensation for uncollected semen?*

[107] Harpur Farms did not collect semen straws from its stags, it did not have any semen straws in storage on October 1, 2018 and none had to be destroyed. Consequently, neither the Compensation Committee nor the Assessor has jurisdiction to award compensation for uncollected semen straws.

[108] The loss of the opportunity or loss of chance to collect semen straws clearly falls outside the scope of the Act. As indicated above, section 50 of the Act expressly exempts the Minister from paying any costs, loss or damage resulting from a person's compliance with the Act.

[109] Section 52 of the Act limits the compensation of things to those that were ordered destroyed.

[110] That is the case irrespective of whether or not i) Harpur Farms had the permit to collect semen straws; ii) Harpur Farms needed the Agency's approval to collect semen straws, iii) the Agency had approved semen straw collection in similar situations in the past, or iv) the Agency erred in refusing Harpur Farms' request.

[111] Therefore, the \$2,612,016 claim for the market value of the uncollected semen straws is dismissed.

D. *Can the Assessor reduce the compensation awarded in excess of regulatory limits (the Minister's cross-appeal)?*

[112] An appeal before an Assessor is a *de novo* trial of the issue of whether the compensation awarded by the Minister was reasonable/sufficient. The only grounds of appeal allowed under section 56 of the Act are that the failure of the Minister to award compensation was unreasonable or that the amount awarded was unreasonable/insufficient. However, once an appeal is brought forward, the Assessor has the power under section 57 of the Act to confirm or vary the Minister's disposition of the claim or refer the matter back to the Minister.

[113] The Compensation Committee and the Assessor are bound by regulatory limits on compensation enacted under paragraph 51(3) of the Act and cannot render decisions in a manner that is contrary to a clear legislative intent.

[114] During the oral submissions of counsel for the Appellant, I asked him whether when assessing the sufficiency of the total compensation awarded to Harpur Farms, I could order that any additional compensation payable under the present judgment be offset by the amount the Minister already paid in excess of the statutory maximum. Counsel conceded that an assessment of the sufficiency of the compensation award has to account for that excess amount of \$504,701 already paid to Harpur Farms.

[115] As indicated above, the file will be referred back to the Agency for a new determination of the compensation owed to Harpur Farms, and the amount of \$504,701 will be deducted from any additional compensation to be awarded as a result of this new assessment.

V. Final Remarks

[116] Given the size of the herd and the magnitude of the evaluation to be performed, Harpur Farms opted for an evaluation team composed of an Agency veterinary inspector to chair the team, an industry expert evaluator selected by the Agency, and an industry expert evaluator selected by Harpur Farms.

[117] During the trial, it became clear that there were very few communications between the members of the Compensation Committee and absolutely no contact between the two industry experts. In my view, the work of the committee would have benefitted from a few meetings, or at the minimum real communications between its members in an attempt to reach an agreement (see section 12.6 of the Manual).

VI. Conclusion

[118] This Appeal is granted in part and the matter is remitted to the Minister for a new determination in accordance with these reasons, namely:

- a) Harpur Farms shall be awarded compensation for 2,723 red deer that were ordered to be depopulated;
- b) No animal shall be valued in excess of the statutory maximum of \$8,000 for male red deer aged one year and older and \$4,000 for all other red deer;
- c) The herd shall be valued as a breeding herd using Mr. Randy Wehrkamp's New Zealand Replacement Cost model with a 45% premium adjustment;
- d) An amount of \$666,701 for the carcasses plus the transportation costs from Viandes Forget to VPN will be deducted from the compensation to be awarded;
- e) No compensation shall be awarded for the uncollected semen;
- f) An amount of \$504,701 (payment made in excess of statutory limits) shall be deducted from any further compensation to be awarded;

[119] By letter dated October 26, 2023, Harpur Farms is seeking a cost award in accordance with Rule 400 of the *Federal Courts Rules*, SOR/98-106. Besides the fact that this appeal is conducted under the Act and the *Assessor's Rules of Procedure*, SOR/2003-293 rather than under the *Federal Courts Rules*, I am of the view that the mixed result does not favour an award of costs; each party shall bear their own.



**JUDGMENT in P-2-20**

**THIS COURT'S JUDGMENT is that:**

1. The appeal is granted in part and the matter is remitted to the Minister of Agriculture and Agri-Food Canada for a new determination in accordance with the present Judgment and Reasons, namely:
  - a) Harpur Farms shall be awarded compensation for 2,723 red deer that were ordered to be depopulated;
  - b) No animal shall be valued in excess of the statutory maximum of \$8,000 for male red deer aged one year and older and \$4,000 for all other red deer;
  - c) The herd shall be valued as a breeding herd using Mr. Randy Wehrkamp's New Zealand Replacement Cost model with a 45% premium adjustment;
  - d) An amount of \$666,701 for the carcasses plus the transportation costs from Viandes Forget to VPN will be deducted from the compensation to be awarded;
  - e) No compensation shall be awarded for the uncollected semen;
  - f) An amount of \$504,701 (payment made in excess of statutory limits) shall be deducted from any further compensation to be awarded;
2. No costs are granted

"Jocelyne Gagné"  
\_\_\_\_\_  
Associate Chief Justice  
Acting as Deputy Assessor

**AN APPEAL TO THE ASSESSOR**  
**PURSUANT TO THE *HEALTH OF ANIMALS ACT***

**SOLICITORS OF RECORD**

**DOCKET:** P-2-20

**STYLE OF CAUSE:** HARPUR FARMS, LLC v THE MINISTER OF AGRICULTURE AND AGRI-FOOD CANADA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATES OF HEARING:** OCTOBER 10, 11, 12 & 13, 2023

**JUDGMENT AND REASONS:** GAGNÉ A.C.J.

**DATED:** FEBRUARY 16, 2024

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