

LATENT DEFECTS

Fact sheet

Section 8 of the *Règlement sur la production et la mise en marché des veaux d'embouche* (Regulations on the production and marketing of feeder calves) states the following [translation]:

The producer bears the liability for the feeder calf he or she markets until the time of adjudication in the case of sales at auctions and specialized auctions, or until the buyer takes possession of the feeder calf in other cases; thereafter, the producer also remains liable for any latent defect the feeder calf may have.

The feeder calf sales agency received a request to clarify the liability borne by the different parties when it comes to latent defects. While this sheet is not an official legal notice, the information below is based on provisions set out in the Civil Code.

Generally speaking, the following conditions must be met for a defect to be considered latent:

- The defect must be serious (i.e., if the buyer had known about it, he or she would have purchased the goods either at a lower price or else or not at all).
- The defect must be unknown to the buyer at the time of sale.
- The defect must be hidden (i.e., not apparent) and could not have been detected by a prudent and diligent buyer.
- The defect must be present (even if in a latent state) prior to the sale.

It is important to note that the legal warranty of quality provided for in the Civil Code of Québec applies to the sale of animals at auction.

However, the presence of a latent defect does not presuppose that the seller is aware of the animal's condition. The seller may market a calf with a latent defect without knowing of its existence and still be held liable for the calf.

An instance of a latent defect could therefore be considered a shared liability.

- The seller is bound to uphold the warranty of quality for the product sold, i.e., a feeder calf in this case.
- The buyer must pay the selling price for the animal. If the buyer notices a latent defect, he or she must notify the seller about it in writing.

The credibility of the Specialized feeder calf Auctions Circuit rests on the quality of animals that are bought and sold there and on the effective settling of disputes for all parties involved. It is for this reason that the sales agency may work to facilitate the settling of disputes on the basis of autopsy reports or other relevant records that demonstrate the prior existence of a condition.

