

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPLICATION FOR COSTS

BETWEEN:

HORIZON HATCHERY LTD.

APPELLANT

AND:

BRITISH COLUMBIA BROILER HATCHING EGG COMMISSION

RESPONDENT

DECISION

APPEARANCES:

For the
British Columbia Marketing Board

Mr. Doug Kitson, Chair
Ms Karen Webster, Member

For the Appellant

Mr. Francois E.J. Tougas
Counsel
(via written submission only)

For the Respondent

Mr. Edward F. Macauley
Counsel
(via written submission only)

Date and Place of
Hearing:

October 31, 1996
Victoria, British Columbia

INTRODUCTION

1. The matter before the British Columbia Marketing Board (BCMB) is an application by the British Columbia Broiler Hatching Egg Commission (Commission) for the awarding of costs in their favour in an appeal by Horizon Hatchery Ltd. (Horizon) heard in Richmond, British Columbia on March 7, 1995.
2. This matter was addressed in written submissions from Counsel for the Commission dated August 26, 1996 and from Counsel for Horizon dated August 28, 1996.

ISSUE

3. The issue is whether or not the Commission should receive costs.

BACKGROUND

4. The appeal in question was by Horizon from a February 21, 1995, decision of the Commission to recommend agency status for Fraser Valley Chick Sales Ltd. (FVCS). Horizon's February 24, 1995 Notice of Appeal was received by the BCMB on February 27, 1995. FVCS was granted intervenor status on March 1, 1995.
5. At the hearing of the appeal on March 7, 1995, an adjournment was requested and approved. This adjournment was to allow for confirmation of the sale of Horizon to FVCS. It was anticipated that this sale would occur by April 1, 1995.
6. In the event that the sale did not proceed, the appeal would be reconvened on an appropriate date in April, 1995.
7. The sale did proceed, thereby eliminating the necessity of reconvening the appeal.
8. The BCMB determined prior to the final adjournment on March 7, 1995:

“that at this juncture not to award costs of the day, however, leave to make submissions on the costs of the proceedings once the proceedings have concluded is hereby granted.”
9. Only the Commission has requested costs. Horizon and FVCS have both stated that they are not.
10. Counsel for the Commission, in a written submission dated August 26, 1996, requested costs in the amount of \$5,833.89. A further \$520.00, being the per diem rate of the Commission members in attendance at the appeal, was also requested, for a total of \$6353.89.
11. Counsel for Horizon, in a written response dated August 28, 1996, rebutted the Commission's claim for costs and reiterated Horizon's position, stated at the appeal hearing, that each party should bear its own costs.

ARGUMENT

12. Counsel for the Commission submitted the following:

“Our client, as a result of these appeals, was an unnecessary participant involved solely to assist the Appellant in obtaining a more favourable outcome of those negotiations. There was no merit in any of the Appeals brought by the Appellant. The Commission was put to expense and inconvenience on short notice to prepare for an Appeal which in fact was never going to be pursued by the Appellant.”

13 Counsel for Horizon argued that the Commission’s comments:

“are untrue and inflammatory. His submissions fail to enumerate the main ground of appeal set out in our letter to the BCMB dated February 24, 1995, namely, to appeal the decision of the Commission to licence (FVCS) as a registered agency.”

14 Counsel for Horizon further argued that the appeal was not frivolous and vexatious.

FINDINGS

15. The BCMB finds that the appeals, relating to Order Nos. 101/94, 103/94, 105/94 and 106/94, referred to by Counsel for the Commission in his August 26, 1996 submission, were resolved by mediation on March 19, 1996, and have no bearing on this matter. The only matter to be resolved is the question of the awarding of costs for the appeal hearing held on March 7, 1995.

16. The BCMB finds that the appeal is neither frivolous or vexatious.

17 Having duly considered the submissions of both parties and having reviewed the transcript of the appeal, the BCMB finds no exceptional circumstances and that there is no other justification for the award of costs to the Commission.

DECISION

18. The application for costs is denied.

Dated at Victoria, British Columbia, this 21st day of November, 1996.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Doug Kitson, Chair
Ms Karen Webster, Member