



File: 44200-50/CMB 00-14

October 4, 2000

DELIVERED BY FAX

Fasken Martineau DuMoulin
Barristers and Solicitors
Suite 2100
1075 West Georgia Street
Vancouver, BC V6E 3G2
Attention: Mr. Christopher Harvey, Q.C.

Davis & Company
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7
Attention: Mr. John J.L. Hunter, Q.C.

Blake, Cassels & Graydon
Barristers & Solicitors
Suite 2600, Three Bentall Centre
P.O. Box 49314
595 Burrard Street
Vancouver, BC V7X 1L3
Attention: Ms. Maria Morellato

Roberts & Baker
Barristers and Solicitors
Suite 1101
840 Howe Street
Vancouver, V6Z 2L2
Attention: Ms. Wendy A. Baker

Dear Sirs/Mesdames:

**RE: AN APPEAL BY HALLMARK POULTRY PROCESSORS LTD. ET AL
FROM THE AUGUST 15, 2000 REGULATIONS OF THE BRITISH COLUMBIA
CHICKEN MARKETING BOARD**

The British Columbia Marketing Board ("BCMB") Panel which heard the stay application has reviewed the following submissions concerning the production of documents:

- September 27, 2000 letter from Mr. Harvey;
- September 27, 2000 letter from Mr. Hunter;
- September 29, 2000 letter from Mr. Hunter; and
- September 29, 2000 letter from Ms. Morellato.

The Panel has instructed me to provide you with the following.

.../2

British Columbia
Marketing Board

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria, BC V8W 9B5
Telephone: (250) 356-8945
Facsimile: (250) 356-5131

Location:
3rd Floor
1007 Fort Street
Victoria

Mr. Christopher Harvey, Q.C.
Mr. John J.L. Hunter, Q.C.
Ms. Maria Morellato
Ms. Wendy A. Baker
October 4, 2000
Page 2

On September 27, 2000, the Appellants made a formal request to the BCMB for production of documents from the British Columbia Chicken Marketing Board (“Chicken Board”). The Appellants request “all documents showing who drafted the changes (to the August 15, 2000 Regulations) and the reasons why the changes were made.” While the appeal is not limited to this, of particular concern are the changes to the “BC Export Program”. In particular, the Appellants seek copies of:

- (a) any economic impact assessments or economic data that may have been considered or were available for consideration;
- (b) any e-mail and other communications passing between the (Chicken) Board (including its individual members and staff) and other persons and bodies such as (but not limited to) the CFC (Chicken Farmers of Canada), persons in other provinces or other provincial boards, persons connected with the government, the BCMB, growers, interested parties, etc.
- (c) all submissions by various parties, all minutes of the Chicken Board, Joint Committee, subcommittee, PPAC (Pricing and Production Advisory Committee) etc.
- (d) any other communications, drafts, studies, discussion papers, analyses.

Counsel for the Chicken Board responded by submitting that there is no provision in the governing legislation for the “production of documents to an Appellant” in a statutory appeal. Counsel drew a distinction between requiring production of specific documents, and “discovery”, the latter being what the Chicken Board submits is in substance the Appellants’ request. Counsel advises that the Chicken Board is nonetheless prepared to produce its Minutes, submissions and other communications made to the Chicken Board in relation to the amendments leading to the new Regulations.

The production of documents in an appeal to the BCMB is addressed in s. 8(4) and s. 8(5) of the *Natural Products Marketing (BC) Act* (“the Act”):

- 8(4) The marketing board or commission from which an appeal is made must promptly provide the Provincial board (BCMB) with every bylaw, order, rule and other document touching on the matter under appeal.
- 8(5) On its own motion or, on the written request of a party to an appeal under subsection (1), the Provincial board may direct that a party to the appeal provide the Provincial board and other parties to the appeal with a copy of each document the Provincial board specifies in its direction.

Mr. Christopher Harvey, Q.C.
Mr. John J.L. Hunter, Q.C.
Ms. Maria Morellato
Ms. Wendy A. Baker
October 4, 2000
Page 3

Subject to claims of privilege – which are reasonably read into both sections since the law of privilege extends beyond rules of evidence and can only be abrogated by clear legislative language – the legislature has in s. 8(4) imposed a duty of relevant document production upon every commodity board subject to appeal. This duty arises by operation of law and does not depend on BCMB order. In the BCMB’s view, the production required by s. 8(4) is subject only to claims of relevancy and privilege.

The duty contained in s. 8(4) is a duty to provide documents to the BCMB rather than an appellant. As a matter of course, the commodity board under appeal would be expected to provide a copy of the relevant documents to an appellant at the same time. If the duty to produce documents to the BCMB in s. 8(4) is not subject to claims of privilege, the BCMB would in any event be loathe to disclose to any party to the appeal, or to take into account on appeal, privileged documents of the commodity board.

In view of the encompassing nature of s. 8(4), nothing can be added by issuing a specific direction under s. 8(5).

As noted above, the disclosure required by s. 8(4) is subject to claims of relevancy and privilege. If the Minutes of the “Sub-committee of the Joint Committee of Processors and Producers” are in the possession of the Chicken Board, they are privileged documents on the grounds that the discussions set out in those minutes are “without prejudice” communications that are essential to the effective functioning of the chicken industry. Disclosure of such documents – without consent of all parties – would seriously impair the functioning of the Joint Committee, which plays a fundamentally important role in ensuring communication and stability in the chicken industry. The conditions set out in *Middlekamp v. Fraser Valley Real Estate Board* (1992), 71 BCLR (2d) 276 (CA) are clearly satisfied here.

The parties are expected to conduct themselves in accordance with these reasons.

Yours truly,

(Original signed by):

Jim Collins
Manager
Dispute Resolution Services

Mr. Christopher Harvey, Q.C.

Mr. John J.L. Hunter, Q.C.

Ms. Maria Morellato

Ms. Wendy A. Baker

October 4, 2000

Page 4

cc: Mr. Jim Beattie, General Manager
British Columbia Chicken Marketing Board

Mr. Rob Vane, Owner/Manager
K&R Poultry Ltd. (Farm Fed)

Mr. Christian Mundhenk, Manager
89 Chicken Ranch Ltd.

Mr. Ernie Silveri, President
British Columbia Egg Hatchery Association