



File: 44200-50/CMB 03-06

May 8, 2003

**DELIVERED BY FAX**

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Attention: Ms. Sarah P. Pike

Dear Sirs/Mesdames:

**AN APPEAL BY LILYDALE FOODS LTD. FROM DECISIONS OF THE BC CHICKEN  
MARKETING BOARD REGARDING GROWER PAYMENTS**

**Introduction**

This is a decision about the production of documents and a list of witnesses in the above captioned appeal.

Lilydale Foods Ltd. (“Lilydale”) appeals two decisions of the British Columbia Chicken Marketing Board (the “Chicken Board”) requiring Lilydale to pay a grower for product which falls outside contract specifications. The first decision of the Chicken Board was conveyed in a letter dated January 7, 2003 and in a February 7, 2003 letter from Hunter Voith and relates to product grown by Bellewood Farms Ltd. (“Bellewood”). The second decision of the Chicken Board was conveyed in a letter dated February 6, 2003 and relates to product grown by Marvel Enterprises Ltd. (“Marvel”).

In response to this appeal and subsequent to a pre-hearing conference held on April 14, 2003, the Chicken Board requests an order from the British Columbia Marketing Board (the “BCMB”) establishing “a reasonable time-table for the delivery of documents by each party and the provision of witness lists: Appellant – 14 days before the appeal; Respondent – 7 days before the appeal; Appellant (reply) – 3 clear days before the appeal”. Specifically, it seeks an order that Lilydale produce:

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**British Columbia  
Marketing Board**

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for the shipments from each of Bellewood Farms Ltd. (period A-49 and any subsequent periods in which monies were deducted for reasons other than emaciation or disease) and Marvel Enterprises Ltd. (period A-48 and any subsequent periods in which monies were deducted for reasons other than emaciation or disease) at issue in this appeal, please produce the following:

- (a) all documents relating to receipt of product from the two growers;
- (b) all documents relating to Lilydale's disposition of the product (whether processed, sent to rendering plant or other disposition) received from the two growers; and
- (c) all documents showing what was paid to the two growers in respect of each period.

The Chicken Board seeks the foregoing order because of its "continuing experience with the failure of Appellants to meet the time-tables agreed upon in pre-hearing conferences" and its need to prepare its case and call necessary witnesses to respond to the Appellant's case.

The Appellant opposes the Chicken Board's application for the following reasons:

- 1) The Chicken Board has been at least as guilty of late production of documents in past appeals as the Appellants.
- 2) Proceedings before the BCMB are meant to be informal and user-friendly. Rigid production requirements interfere with this.
- 3) Ms. Pike (counsel for the Chicken Board) has not demonstrated that there are special circumstances in this case to justify a departure from the general practice.
- 4) The production schedule is inconsistent with s. 8 of the *Act* (*Natural Products Marketing (BC) Act*).
- 5) In particular, s. 8(4) of the *Act* requires the CMB (Chicken Board) to promptly provide the BCMB and, by implication, the Appellant with all relevant documents. The CMB has not yet done this.

In response, the Chicken Board argues that it is relying on s. 8(5) of the *Act* for the order it seeks. If the BCMB wishes to order production of documents under s. 8(4), the Chicken Board is prepared to make disclosure on whatever time-table the BCMB deems appropriate. The primary purpose of this application is to know the Appellant's case in sufficient time to prepare.

## **Decision**

The production of documents in an appeal to the BCMB is set out in s. 8(4) and s. 8(5) of 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.

Section 8(4) imposes 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. However, as a matter of course, the commodity board under appeal is expected to provide a copy of the relevant documents to an appellant at the same time.

Section 8(5) allows the BCMB on its own motion or at the request of a party to order production of documents. This applies to a commodity board in instances where the commodity board has not complied with s. 8(4) and also extends to other parties, appellants as well as intervenors. In the BCMB's view the production required by s. 8(5) parallels the disclosure requirements in s. 8(4) and is subject only to claims of relevancy and privilege.

The *Act* is silent as to the timing of the disclosure of documents. Accordingly, it is up to the BCMB to determine an appropriate schedule for production of documents in order to preserve procedural fairness to all parties. In this instance, as referred to above, both counsel are very familiar with proceedings before the BCMB. In some past appeals, objections have arisen over documents being tendered in evidence without prior disclosure. In some cases, there appears to be a disturbing trend of leaving preparation for appeals to the last minute and as a result some documents are not disclosed until the actual date of hearing. This puts the parties and the BCMB in a difficult position. Parties want to have their issues resolved without delays and adjournments. The BCMB must balance the desire for quick and informal resolution of appeals with the need for fairness to all parties.

### **Order**

The BCMB directs, further to its letter of March 13, 2003 and pursuant to s. 8(4) of the *Act*, that no later than the close of business on May 16, 2003, the Chicken Board deliver to the offices of the BCMB, with copies to the Appellant, every bylaw, order, rule and other document touching on the matter under appeal, including but not limited to the following:

- Any relevant amendments to the August 15, 2000 policy rules must be produced. As the BCMB and the Appellant have copies of the August 15, 2000 policy rules, copies of the original policy document need not be produced.
- Any policy documents relating to production standards.
- Any policy documents relating to payment of growers by processors.
- Any documents relating to actual payments for production shipped by Marvel and Bellewood from periods A-48 onwards.
- Any documents relating to actual deductions made by Lilydale for production shipped by Marvel and Bellewood from periods A-48 onwards.

The issue on this appeal relates to the failure on the part of Lilydale to pay for production picked up from Marvel and Bellewood. Lilydale maintains that it is not contractually obligated to pay for product which does not meet contract specifications and is therefore unmarketable. There is a suggestion that Lilydale shipped unmarketable product to the rendering plant or otherwise disposed of it. In the circumstances of this appeal, it is incumbent on the Appellant to demonstrate that Marvel and Bellewood's product, which was not paid for, was in fact unmarketable. It is more likely that the documentation supporting this allegation is in the possession of, or accessible to, Lilydale as opposed to the Chicken Board.

Accordingly, the BCMB directs, pursuant to s. 8(5) of the *Act*, that no later than the close of business on May 16, 2003, Lilydale deliver to the offices of the BCMB, with copies to the Chicken Board, all documents touching on the matter under appeal, including but not limited to the following:

- all documents relating to the receipt of product from Marvel and Bellewood;
- all documents relating to Lilydale's disposition of the product (whether processed, sent to the rendering plant or other disposition) received from Marvel and Bellewood; and
- all documents showing what was paid to Marvel and Bellewood respectively for each period.

If, as a result of reviewing the Chicken Board's disclosed documents, Lilydale obtains further documents which it anticipates relying on at the hearing of the appeal, these documents must be delivered to the offices of the BCMB, with copies to the Chicken Board, no later than the close of business, May 23, 2003.

If, as a result of reviewing the Appellant's disclosed documents, the Chicken Board obtains further documents which it anticipates relying on at the hearing of the appeal, these documents must be delivered to the offices of the BCMB, with copies to the Appellant no later than the close of business, May 23, 2003.

The BCMB is not prepared to make an order with respect to identities of witnesses at this time. The Appellant has confirmed that it intends to call one or two witnesses from Lilydale with the possibility of one or two more from other processors. We recognise that witness availability may change and it may be difficult now to know who will give evidence on behalf of Lilydale or the other processors in support of the issue and grounds identified in this appeal. The disclosure of documents ordered above should be adequate to allow the parties to prepare for the appeal. If the Chicken Board requires further information regarding potential witnesses, it can make a further request after receipt of the foregoing documents.

Given our orders with respect to production of documents, it is the BCMB's expectation that *all* documents ultimately tendered in the hearing of this appeal will have been disclosed. In the event of an objection being raised, parties cannot expect to rely on undisclosed documents.

BRITISH COLUMBIA MARKETING BOARD  
Per

*(Original signed by):*

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Christine J. Elsaesser, Vice Chair

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