

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL BY CLAUS SCHWUCHOW FROM A DECISION CONCERNING
GRADUATED ENTRY PROGRAM QUOTA ALLOCATION

BETWEEN

CLAUS SCHWUCHOW

APPELLANT

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

AND:

TOM DEGROOT

INTERVENER

AND:

BRITISH COLUMBIA MILK PRODUCERS ASSOCIATION

INTERVENER

DECISION

APPEARANCES:

For the British Columbia Farm
Industry Review Board:

Suzanne K. Wiltshire, Presiding Member
Honey Forbes, Member
Dave Merz, Member

For the Appellant:

Claus Schwuchow

For the Respondent:

Robert P. Hrabinsky, Counsel

For the Intervener Tom DeGroot:

Delwen Stander, Counsel

For the Intervener BC Milk Producers
Association:

Dick Klein Geltink, President
Robin Smith, Executive Director

Date of Hearing:

November 16, 2009

Place of Hearing:

Abbotsford, BC

INTRODUCTION

1. The British Columbia Milk Marketing Board (Milk Board) has had a graduated entry program (GEP) in place for many years. The program is intended to provide a means for persons who have “a genuine intention to be an active dairy farmer” to enter the industry through the allocation of quota to such persons under the GEP.
2. In a “closed” supply managed system, quota attains a significant value. Given the value of quota, the GEP has always presented the risk that it will attract persons who merely wish to engage in the business of owning and administering quota. The Milk Board’s efforts to limit abuses of the program are reflected in the GEP Rules set out in Schedule 1 to its Consolidated Order. If a person allotted quota under the GEP (an entrant) is not “actively engaged in milk production”, the quota allotted is “subject to immediate cancellation on notice by the Board to the entrant”.
3. Following the British Columbia Farm Industry Review Board (BCFIRB) decision in *Van Herk v. British Columbia Milk Marketing Board* (June 19, 2006), the Milk Board became concerned that there were other GEP entrants who had entered into arrangements in non-compliance with the requirement that a GEP entrant be actively engaged in milk production. Because of this concern, the Milk Board proposed to enforce compliance with the GEP Rules but to give a non-compliant GEP entrant and the person actually farming the GEP quota a one time opportunity to apply for “regularization” whereby in appropriate circumstances, the GEP quota would be reallocated to the “farm manager” actually farming the quota.
4. The Milk Board advised BCFIRB of its proposed regularization program for GEP quota and a supervisory process was established, culminating in the issuance of supervisory directions by BCFIRB giving approval, in certain circumstances and subject to certain application requirements, for “regularization” of GEP quota held by non-compliant GEP entrants.
5. The Milk Board identified a number of GEP entrants as being possibly non-compliant with the GEP Rules because others were shipping milk under the GEP quota registered in their names raising a question as to who was engaged in producing the milk being shipped. The GEP entrants so identified included T. Van den Brink and J. Oostlander because the milk produced under the GEP quota originally allotted to each of them was being shipped by Tom DeGroot.
6. In separate November 13, 2008 decisions, the Milk Board determined that each of these GEP entrants was in non-compliance with the GEP Rules and approved the regularization of their GEP quotas, reallocating each quota to Tom DeGroot.
7. The appellant appeals the reallocation of the Van den Brink and Oostlander GEP quotas to Tom DeGroot. The appellant is concerned that the Milk Board did not spend sufficient time investigating the circumstances that gave rise to Mr. DeGroot becoming the shipper of these two GEP quotas. He notes that in all other cases of

regularization only one GEP quota was allotted to any single “farm manager”. The appellant takes the position that only one GEP quota should have been reallocated to Mr. DeGroot and then only if he was actually milking the quota.

8. The intervener, Mr. DeGroot, was granted full party status in the appeal. He opposes the appeal and asks that the decisions of the Milk Board be upheld.
9. Mr. Oostlander and Mr. Van den Brink were notified of the appeal but did not apply to intervene.
10. The BC Milk Producers Association appeared as an intervener and made submissions.

ISSUE

11. Did the Milk Board properly determine that the GEP quotas originally allotted to Mr. Van den Brink and Mr. Oostlander were to be reallocated to Mr. DeGroot under the GEP regularization program?

BACKGROUND

Graduated entry program

12. Over the years there have been several changes to the Consolidated Order provisions with respect to the GEP. The relevant portions of the GEP Rules in place at the time the Regularization Program was instituted and which have remained essentially the same since at least 2001, provide:

Special Restrictions on Allotments Under the Program

4. (1) Total Production Quota allotted by the Board under the program may be held for production by the entrant only for so long as the entrant:

- (a) permits Board audits of the dairy farm operation to ensure compliance with Board orders and all applicable legislation, including all terms and conditions of the program;
- (b) is in good standing with all applicable Board orders and all applicable legislation, including all terms and conditions of the program; and
- (c) is actively engaged in milk production;

failing which the Total Production Quota so allotted shall thereupon be subject to immediate cancellation on notice by the Board to the entrant.

Determination as to Whether the Entrant is Actively Engaged in Milk Production

7. (1) The Board will determine, in its sole discretion, whether an entrant is actively engaged in milk production for the purposes of the program. Without limiting the generality of the foregoing, the Board will have regard to the following factors:

- (a) whether the Total Production Quota allotted under the program is being used for the benefit of the entrant;
- (b) whether the entrant is active in the day-to-day affairs of the dairy farm, including matters of animal husbandry;
- (c) whether the entrant operates and controls the dairy farm;
- (d) whether the entrant owns, leases or rents the dairy farm;
- (e) whether the entrant pays for feed and other farm supplies utilized on the dairy farm; and
- (f) whether the entrant enjoys the chance of profit and bears the risk of loss in relation to the operations of the dairy farm.

(2) For the purpose of determining whether the entrant is actively engaged in the production of milk, the Board shall have regard to the substance and effect of any arrangement made between the entrant and any other Person, irrespective of the form of that arrangement.

(3) Where it appears to the Board that the entrant is primarily engaged in the business of administering Total Production Quota allotted under the program, and that some other Person is primarily engaged in the business of milk production associated with that Total Production Quota, the entrant shall be deemed not to be actively engaged in milk production.

Changes to the Graduated Entry Program

8. (1) Applicants on the wait list and entrants under the program are subject to all changes that the Board may make from time to time to the terms and conditions of the program.

(2) Notwithstanding subsection (1), the Board may, in its sole discretion, provide to an entrant a written exemption from any term or condition of the program that has come into effect after the entrant's entry into the program, in which event the entrant shall continue to be governed by the terms and conditions of the program as they existed at the time of the entrant's entry into the program except insofar as those terms and conditions may conflict with any subsequent term or condition for which a written exemption had not been granted.¹

Regularization program

13. In a July 25, 2008 letter BCFIRB gave final approval to the Milk Board's proposed regularization program and provided a BCFIRB Notice respecting its supervisory directions to be delivered by the Milk Board to producers. The key supervisory directions for the purposes of this appeal are:

- 3. Situations in which the GEP quota is being actively produced by a farm manager other than the GEP participant as of November 1, 2006 are eligible for regularization.

¹ An amended version of the GEP Rules was issued August 1, 2008 but is not materially different.

4. Regularization will be a one-time only opportunity for a non-compliant GEP participant to have his or her quota allotted to the non-compliant “farm manager” with whom they have a current and direct association. They must appear together before the Milk Board and must make a joint application in which they both agree to have quota that has been issued to the GEP participant as a special allotment cancelled and re-allotted to the farm manager. Should the Milk Board be satisfied that the specific circumstances warrant regularization, this new allotment of quota shall be issued directly to the farm manager and, effective the date of the Milk Board’s approval, commence being subject to the 10/10/10 assessment schedule and “Last In, First Out” principle at sections 22(1) and (2) of the Milk Board’s Consolidated Order. We leave it to the Milk Board to determine after reviewing the applications whether further conditions, such as any of the rules relating to GEP in Schedule 1 of the Consolidated Order, should be applied to the farm managers in order to forestall future abuses with respect to the disposition of this quota. ...
 6. This one-time regularization opportunity applies only to GEP participants and directly associated farm managers currently in non-compliance with the GEP who come forward and make a joint application to the Milk Board, as outlined above.
 7. There may be specific situations where the Milk Board in its discretion does not approve an application for regularization. In such cases the Milk Board must take the necessary steps to address any suspected non-compliance. The decision in the Van Herk appeal provides procedural guidance on such matters. Persons who are aggrieved or dissatisfied with a subsequent Milk Board decision can appeal that decision to BCFIRB on the facts of their case.
14. The Milk Board offered an open invitation to the industry to come forward and seek regularization in non-compliant situations and also made direct contact with GEP entrants and “farm managers” with questionable compliance. After meeting with the GEP entrants and “farm managers”, the Milk Board met to consider the circumstances relating to each application for regularization and decide on the outcome.

Regularization applications and decisions

15. On September 10, 2009, the Milk Board conducted interviews with GEP entrants Van den Brink and Oostlander and “farm manager”, Mr. DeGroot, and reviewed:
 - a “Quota Purchase and Lease Agreement” dated May 31, 2001, a “Power of Attorney” dated June 1, 2001 and a “Contract of Sale” dated May 31, 2001 with respect to the purchase by Tom DeGroot and Laurie DeGroot of the GEP quota allotted to Van den Brink.
 - a “Milk Quota Purchase Agreement” dated August 2, 2006 with respect to the purchase by Tom DeGroot of the GEP quota allotted to Oostlander.
16. The Milk Board concluded that in each case the respective GEP entrant was not in compliance with the GEP Rules because each had “sold” his interest in the GEP quota registered in his name and was not actively engaged in milk production from the quota. In each case, Mr. DeGroot had become the producer of milk being shipped under the quota.

17. GEP entrant Van den Brink and Mr. DeGroot jointly applied for regularization, as did GEP entrant Oostlander and Mr. DeGroot.
18. At its October 15, 2008 board meeting, the Milk Board decided that the Van den Brink/DeGroot and Oostlander /DeGroot transactions “be regularized on the strength that they have an agreement and are therefore eligible for regularization under the Board program”.
19. The decision letters of November 13, 2008 were sent to Mr. Van den Brink and Oostlander, respectively, and copied to Mr. DeGroot, advising that the GEP quota in each case would be regularized and that Van den Brink and Oostlander, respectively, were to take immediate steps to transfer the entire quota registered in their name to the current shipper, Mr. DeGroot, “according to the terms of the transfer documents”. Each letter stipulated certain conditions with respect to the GEP portion of the quota reallocated to Mr. DeGroot, including that:
 - the GEP quota would be registered to Mr. DeGroot as the last quota in and therefore the first quota assessed in a transaction and be subject to the 10/10/10 retraction principle on transfer
 - Mr. DeGroot would be the GEP entrant and be subject to all the terms defining the GEP, would be subject to audits and be required to remain in compliance with the terms of the GEP set out in the Consolidated Order.

SUBMISSIONS

Mr. DeGroot’s quota activities

20. The appellant submits that Mr. DeGroot is a dealer in quota and buys and sells quota for profit. In this regard, the appellant referred to two transactions, in addition to the Van den Brink/DeGroot and Oostlander/DeGroot transactions, that he submits show Mr. DeGroot has bought and sold GEP quota.
21. Mr. DeGroot confirmed that as a principal of T & L Cattle Ltd. he acts as a broker of quota and cattle and has brokered many transactions, but stated that he did not put the quota or cattle in his name. He also confirmed that outside the two transactions relating to the GEP quotas in question on this appeal he had been previously involved as a middleman in putting deals together but said that he had no ownership interest in the quota in those cases. He acknowledged that he had previously leased GEP quota for a period from 1997 to 2001.
22. Mr. DeGroot’s counsel submits that to consider other factors such as Mr. DeGroot’s activities as a broker is to introduce a step not envisaged by either the Milk Board’s notice respecting the regularization program or BCFIRB’s supervisory directions.

Prior interest in quota

23. The appellant argues that when regularized, the GEP quota in question becomes subject to the GEP Rules and that under the GEP Rules, Mr. DeGroot is not qualified to receive the second allotment of GEP quota because he is already a holder of the first allotment of GEP quota. He submits that the Milk Board should have sought further direction from BCFIRB when faced with the situation where Mr. DeGroot was asking the Milk Board to reallocate two separate GEP quotas to him under the regularization program.
24. The Milk Board submits that the appeal is premised on a fundamental misapprehension. While a farm manager who receives GEP quota under the regularization program is obliged to live up to the GEP requirement to be actively engaged in milk production, that does not make the farm manager a GEP applicant subject to the eligibility requirement to have never had a direct or indirect interest in supply managed quota. Indeed, no regularization would be possible if this eligibility requirement applied since all farm managers eligible for regularization have an interest of some kind in the GEP quota being regularized and must be actively engaged in milk production from that quota.
25. The Milk Board observes that the present appeal is to be distinguished from the Milk Board's decision, referred to in BCFIRB decision *Schwaerzle v. British Columbia Milk Marketing Board* (March 24, 2009), to remove Mr. Schwaerzle from the GEP waitlist because he had acquired an interest in quota through regularization. In that case, Mr. Schwaerzle's prior illicit acquisition of an interest in quota subsequently regularized made him ineligible as a GEP new entrant applicant.

Regularization

26. The Milk Board submits that its decisions in both the Van den Brink and Oostlander matters were entirely consistent with BCFIRB's supervisory directions. Both GEP entrants had written contracts providing for the sale of their GEP quota and in both cases the application for regularization was jointly supported by the GEP entrant and the "farm manager".
27. The Milk Board relies on the *Supervisory Review of the Allocation by British Columbia Milk Marketing Board of Graduated Entry Program Quota from Lilian & Sandy Stewart to Steve Verdonk* (June 26, 2009) at paragraphs 19 through 21, referring to regularization as "a one-time only opportunity for a non-compliant GEP entrant to have his or her quota allotted to the non-compliant 'farm manager'". The Milk Board submits that it is clear from this decision and from BCFIRB's supervisory directions that: regularization is a one-time only opportunity for the non-compliant GEP entrant – not a one-time only opportunity for the non-compliant "farm manager"; regularization applies only to GEP entrants and directly associated "farm managers" who come forward and make a joint application; and, the presence

of a joint application means that the Milk Board was not to look behind the private transaction to determine whether it was “fair”.

28. The Milk Board submits its decision to regularize both of the GEP quotas here was consistent with BCFIRB’s supervisory directions. The Milk Board had no reason to prefer one non-compliant GEP entrant over the other and no reason to suspect either knew of the other’s transaction with Mr. DeGroot. There was no basis to preclude either GEP entrant from following through on their arrangements with Mr. DeGroot. The supervisory directions provide no basis for the Milk Board to deny either Van den Brink or Oostlander their respective opportunities to realize upon their particular opportunities under the regularization program simply because the purchaser in each case happened to be Mr. DeGroot.
29. Mr. DeGroot submits that the appeal is without merit. Both the quotas in question were regularized in keeping with the supervisory directions of BCFIRB and in accordance with the procedures the Milk Board put in place. Accordingly, the Milk Board decisions to reallocate each of the GEP quotas in question to the intervener must be upheld. Unlike the situation in *Verdonk*, no discretion was involved. There was no reason for the Milk Board to consider other factors and to do so would be to introduce a step not envisaged by BCFIRB’s directions.

Actively engaged in milk production

30. The appellant submits that before making its decision with respect to regularization, the Milk Board should have audited the farms in question to ascertain if Mr. DeGroot was actively engaged in milk production from both quotas. In this regard he noted Mr. DeGroot’s evidence that with respect to one of the quotas in question only 17 cows were being milked. He submits that this lack of full production of the quota demonstrates that Mr. DeGroot’s intention is not to be an active dairy farmer and that he is in fact just “milking the quota”.
31. The Milk Board notes that Mr. DeGroot appeared on its records as the shipper of milk produced from both the quotas in question and that it had no evidence that he was not actively producing milk from the quotas. As well, Mr. DeGroot answered affirmatively during the interviews with the Milk Board to all the questions directed to him concerning his being actively engaged in milk production from the quotas.
32. The Milk Board submits that prior to making a decision to regularize quota it was not required to audit or investigate to determine whether or not a “farm manager” joining in an application for regularization was “actively engaged in milk production”. However, the Milk Board noted that in all cases the “farm manager” to whom the GEP quota has been reallocated has been made subject to the GEP Rules requiring active engagement in milk production from the GEP quota so reallocated. To ensure compliance with this requirement the Milk Board has scheduled audits of all “farm managers” who have been reallocated quota under the regularization program and Mr. DeGroot’s two farms are included in those audits.

33. Mr. DeGroot submits that at the time of the joint applications for regularization, he satisfied the Milk Board that he had been milking the GEP quotas in question and he was therefore approved for regularization according to BCFIRB's directions.
34. The BC Milk Producers Association notes that there have been concerns with respect to the GEP. The Association's view is that going forward the intent needs to be crystal clear that a new entrant must be and remain an active farmer. The Association fully supports the GEP.

ANALYSIS

Eligibility for regularization

35. The first question for the panel is whether, in each case, the situation was one that was eligible for regularization – i.e. whether it met the policy requirements for regularization as set out in BCFIRB's supervisory directions.
36. There was no dispute that in each case the GEP entrant had “sold” his interest in the GEP quota and was no longer actively engaged in milk production from the quota. The GEP entrant in each case had therefore ceased to be compliant with the GEP Rules.
37. The question of whether the “farm manager” DeGroot was, in each case, actively producing the GEP quota was disputed on appeal.
38. At the time regularization was applied for, the Milk Board considered Mr. DeGroot's affirmative responses to the questions it posed respecting active engagement, as well as the fact that Mr. DeGroot was the shipper of the milk produced under each of the quotas, to be satisfactory proof that he was actively engaged in milk production from each of the quotas. The Milk Board witnesses testified that the questions asked concerning active engagement addressed: who was responsible for animal husbandry (i.e. ensuring cows were milked and cared for and responsibility for the nutritional aspects of feeding); who was responsible for ensuring quota was filled and who made decisions respecting quota swaps; and who enjoyed the chance of profit and bore the risk of loss with respect to the dairy operations.
39. At the hearing, Mr. DeGroot testified that he was actively engaged in producing milk from both quotas in question. He stated that after he purchased the Van den Brink quota in 2001, he and his wife began milking the cows and carried out all duties relating to everyday dairy farming. In 2003 he hired someone to help him part-time with the dairy operations. In 2005 he and his wife moved to their current farm and the quota followed them. At present he has a full-time hired hand running the farm with him because he has back problems resulting from earlier surgery. Mr. DeGroot and his wife still carry out the milking on holidays and make all decisions

respecting the operations as well as carrying out barn checks between 6pm and 9am and dealing with the majority of calvings.

40. Mr. DeGroot said that in the summer of 2006 Mr. Oosterman exited the dairy business and sold his farm property to a third party. Mr. DeGroot then rented the property from the third party and took over the Oosterman cows and continued the dairy operations on the property. Mr. DeGroot testified that he operates the farm as his own, although another person lives on the property. This person milks when he is able to but has a job and travels and so Mr. DeGroot or a hired hand do the milking when this person is absent. Mr. DeGroot stated that he is on the property every day, takes care of all breeding and brings milk cows to the property. He keeps no dry or young stock on this property. All oversight and management of this dairy operation is performed by him.
41. The appellant questioned whether or not DeGroot was actively engaged in milk production from the quotas in question but did not bring any evidence to counter the evidence of the Milk Board and the testimony of Mr. DeGroot as to his activities in respect of milk production from each of the quotas. The appellant's questions of Mr. DeGroot on cross-examination only served to clarify that the hired man was paid a salary with some variation in the amount depending on seasonal demands and hours required and that the distance between the two farms was approximately 3 miles. The only other point of note brought out by the appellant was that while Mr. DeGroot was milking 64 cows on the home farm, only 17 cows were being milked on the other farm where the Oosterman quota is located. The appellant raises a question as to whether milking only 17 cows on this farm constitutes being actively engaged in milk production.
42. In considering this question, we note Mr. DeGroot's evidence that he keeps no dry or young stock on this farm to some extent explains the difference in the number of cows kept on each farm. We received no evidence as to whether or not the production requirements in respect of the Oosterman quota were being met over the years during which Mr. DeGroot has been producing milk under this quota. We observe that milk production volumes from any given cow can vary over time and that the production requirement is an annual one. It is for these reasons that the Milk Board allows registered producers to engage in quota swaps of used or unused production so that at the conclusion of the dairy year a producer is neither over nor under produced. Lacking specific evidence of ongoing underproduction, we have no basis to conclude that simply because Mr. DeGroot testified that he was only milking 17 cows at the time of the hearing, he is not actively engaged in milk production from this quota.
43. However, we agree with the appellant's implied argument that for a person to be actively engaged in the production of milk from GEP quota that has been regularized there must be an intention to fully produce that quota. Consistent with the Milk Board's evidence that in the near future it will be auditing compliance with the relevant provisions of the GEP Rules of all those holding regularized GEP

quota, we conclude this is a matter that can be better dealt with by the Milk Board through ongoing audit of compliance with the GEP Rules and other provisions of the General Orders. Accordingly, the Milk Board is directed to assess Mr. DeGroot's compliance with the relevant provisions of the General Orders and GEP Rules in this context as well.

44. In conclusion, the panel finds that both the Van den Brink/Degroot and Oostlander/DeGroot situations make them eligible for regularization. The evidence establishes that in each case the GEP quota was being actively produced by a farm manager, namely Mr. DeGroot, other than the GEP entrant as of November 1, 2006.
45. The final eligibility requirements concern the need for a joint application. Item 4 of BCFIRB's supervisory directions requires that the non-compliant GEP entrant and the non-compliant farm manager appear together before the Milk Board and make a joint application in which they both agree to have quota that has been issued to the GEP entrant as a special allotment cancelled and re-allotted to the farm manager.
46. The evidence establishes that these requirements were fulfilled. In each case the original GEP entrant and Mr. DeGroot appeared before the Milk Board and made the required joint application.

Should regularization have been refused despite compliance with the eligibility requirements?

47. Item 7 of BCFIRB's supervisory directions makes clear that where the basic eligibility requirements are met, "There may be specific situations where the Milk Board in its discretion does not approve an application for regularization." [emphasis added] (See also supervisory direction 4).

Prior interest

48. The appellant raises an issue as to whether having a prior interest in quota should have resulted in a decision not to approve the regularizations in this case.
49. The appellant notes that to apply as a new entrant under the GEP Rules, neither the applicant nor the spouse of the applicant may have, or have had at any time, any financial interest in quota. The difficulty with this argument is that the intervener did not apply as a new entrant but pursuant to the regularization program established by the Milk Board in accordance with BCFIRB's supervisory directions.
50. The Milk Board is correct that if the requirement of having no prior interest in quota that applies to new entrants were to apply to "farm managers" under the regularization program then no one would qualify for regularization. For this reason, while the intervener had a prior interest in each of the quotas that was regularized, this did not disqualify him from being eligible to apply for regularization. Nor did the regularization of the first quota disqualify him from

being eligible for regularization of the second quota. Indeed there is no similar requirement as to having no existing or prior interests in quota provided for in the supervisory directions for regularization. However, like Mr. Schwaerzle, the intervener's interest in the quotas that have been regularized preclude his qualification as a new entry GEP applicant.

Two GEP quotas

51. We agree with the Milk Board's submission that the reference in the supervisory directions to a "one-time only opportunity" does not prevent the two regularizations approved here. The focus of regularization was on giving the non-compliant GEP holder a one-time opportunity to have the system regularize and legitimize a private "transfer" of quota to a willing "farm manager", even though that transfer had not been authorized under the rules.
52. Regularization was designed and permitted with the knowledge that there had been numerous such private transactions. BCFIRB had to confront the difficulty that, despite the widespread illegality, to have retracted and reallocated all that quota instead of allowing the GEP holder to come forward and apply to "regularize" his transfer to the "farm manager", would have practical as well as legal consequences for the system. At the same time, a general amnesty was not acceptable.
53. As BCFIRB commented in its July 16, 2008 letter to the Milk Board concerning the proposed regularization program:

BCFIRB has considered the information provided through correspondence with the Milk Board and our recent meeting and has deliberated at length regarding this matter. In particular, we have considered the fact that the present state of affairs is inappropriate and impacts negatively on the credibility of all new entrant programs in the BC regulated marketing sector. At the same time, we appreciate that some of the farm managers presently using this GEP quota could face a significant adverse effect to their business if the quota is cancelled and effectively removed from their operations.

While there was no perfect solution, BCFIRB accepted as a matter of sound marketing policy that a one-time only approach to regularizing the situation might on balance be in the public interest. Rejecting certain aspects of the regularization program as proposed by the Milk Board, BCFIRB then provided its supervisory directions outlining the conditions under which regularization would be permitted.

54. Where, as here, two independent GEP holders happened to transfer their quota to the same recipient, the identity of the "farm manager" would not be a basis under the regularization program for depriving either GEP holder from having the opportunity to seek regularization. As noted, both applications otherwise complied with the eligibility requirements for regularization as set out in BCFIRB's supervisory directions.
55. We agree with the Milk Board's conclusion that in this particular case, there is no basis to prefer the regularization of one quota over the other. The only distinction

would seem to be temporal in that one transaction occurred several years before the other. Both took place a considerable time ago and both involved the full transfer of the production rights to Mr. DeGroot for consideration. The original GEP entrants had long since ceased to have any interest in the ongoing dairy operations. As we have concluded above, from the time he acquired the production rights Mr. DeGroot was actively engaged in milk production under both quotas.

56. We agree that both situations were appropriate for and consistent with the policy and directions governing regularization. We conclude regularization in both cases was therefore consistent with sound marketing policy.

Prior activities of Mr. DeGroot

57. The appellant impliedly argues that in considering whether or not to reallocate the GEP quotas to Mr. DeGroot, the Milk Board should have taken into account his prior activities as a broker and/or middleman in facilitating the transfer of GEP quota outside the transfer provisions of the Consolidated Order. It appears that the intervenor's activities as a broker or middleman were to some extent known by and therefore within the consideration of the Milk Board in coming to its decision to regularize.
58. The panel observes that the activities of all persons engaging in or facilitating the lease or disposition of GEP quota for financial gain in contravention of the GEP Rules are to be equally deplored. That being the starting point, the point of regularization was to identify the conditions and circumstances when a particular transaction should in the interests of sound marketing policy be legitimized to bring that production into compliance with the General Orders. We conclude that Mr. DeGroot's activities as a broker/middleman with respect to other unrelated transactions are not, as a matter of sound marketing policy, sufficient to disqualify him as a candidate for regularization of the GEP quotas in question here.

CONCLUSION

59. The appeal is dismissed.

60. We make no order as to costs.

Dated at Victoria, British Columbia, this 12th day of July 2010.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Suzanne K. Wiltshire, Presiding Member



Dave Merz, Member



Honey Forbes, Member