



August 16, 2018

Files: #N1612, 13, 14, 16, 17

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Dear Sirs/Mesdames:

RE: Casey Van Ginkel dba V3 Farms (N1612), Skye Hi Farms Inc., (N1613) and W. Friesen (N1614), Bradner Farms (N1617) and Coastline Chicks (N1618) v British Columbia Broiler Hatching Egg Commission

By letter dated July 27, 2018, I wrote to the parties enquiring, whether in light of s. 31(g) of the *Administrative Tribunals Act (ATA)* which allows for summary dismissal of appeals where the substance of the appeal has been appropriately dealt with in another proceeding, any outstanding issues remained on the previously deferred appeals that were not addressed by the British Columbia Farm Industry Review Board (BCFIRB) July 17, 2018 supervisory decision (Supervisory Decision)¹.

Submissions Received

Counsel for the appellants Coastline Chicks and Bradner Farms takes the position that the issues in their August 2016 appeal were not “adequately dealt with” in the Supervisory Decision in that the decision is interim in nature and defers the operative regulatory changes to a future date. As such, the appellants apply for an interim order, pursuant to s. 15 of the *ATA* incorporating “the decisions and deadlines set out in paragraphs 85, 86 and 115 to the end into an interim order in

¹ 2018 July 17. BCFIRB. In the Matter of the Natural Products Marketing (BC) Act and the Regulation of Specialty (Asian Breed) Hatching Egg Production.

the appeal". Once the interim order has been complied with, it will be possible to say whether the issues in the appeal have been adequately dealt with. Until then, s. 31 of the ATA has no application.

Counsel for Skye Hi Farms Inc., Casey van Ginkel dba V3 Farms and Bill Friesen and Lillian Fehr dba W Friesen Enterprises is in agreement with the position that the appeals were not "adequately dealt with" and that the decision is interim in nature. These appellants join in the request that an interim order be made incorporating the decisions and deadlines set out in the Supervisory Decision into an interim order in the appeal. They also request that a prehearing conference be scheduled for these appeals following the expiry of the deadlines set out in the Supervisory Decision, so that the parties can advise at that time whether it will be necessary to proceed with the appeals.

In response, the BC Broiler Hatching Egg Commission (Commission) says no outstanding issues remain on the appeals. The Supervisory Decision was comprehensive in nature. The Commission fully recognizes its responsibilities as directed by BCFIRB and that it will proceed accordingly. The appellants' dissatisfaction with the nature or scope of the supervisory directions does not bear on the finality of the appeal process. To hold otherwise would permit the appellants to prolong the appeal proceedings either indefinitely, or until such time as BCFIRB adopts the appellants' view of a satisfactory outcome.

Decision

To place my decision into context, it is important to understand the nature of appeals N1612-14, 18, 19. In these appeals, the appellants challenged the Commission's decision of August 19, 2016 to seek BCFIRB's prior approval to enact an exemption regulation. On September 15, 2016, and prior to the pre-hearing conference call on that same date to address appeal process issues, a letter was sent by the chair of BCFIRB to the Commission advising that a supervisory panel had been established to consider the request for prior approval. Following the conference call and a further submission process, these appeals were deferred to allow the supervisory process to run its course.

In the deferral decision of September 16, 2016, the appeal panel stated as follows:

In these circumstances, this Panel agrees with the Commission that until such time as the Commission's prior approval request has been addressed by the supervisory panel, further consideration of the issues raised in these appeals should be deferred. In the event that prior approval is granted by BCFIRB at the conclusion of the supervisory process, then it may be that the issues raised by the appellants in these appeals will have been addressed and reviewed as part of that process. In the event that prior approval is not granted, that will obviously inform the Commission of potential issues with its proposed regulation that may need to be further addressed. This also has the potential to affect the parties' positions on these appeals. [emphasis added]

So the question becomes what is the current state of affairs within the specialty broiler hatching egg industry as a result of the Supervisory Decision. Very clearly, BCFIRB decided that it could

not simply accept the Commission's request for prior approval of an exemption regulation. Instead, BCFIRB established a supervisory panel to review the Commission's request and its implications and that an "appropriate and transparent review process will be established and communicated - if indicated by the assessment - in order to ensure the necessary information for sound decision making" (paragraph 19 of the Supervisory Decision).

What followed was a lengthy review process wherein the Commission made and revised work plans with support from the BCFIRB panel. On the basis of the panel approved work plan it carried out consultation and ultimately provided its final recommendations to the panel on the appropriate regulation of the specialty hatching egg sector (Paragraphs 19-50 of the Supervisory Decision). So not only has BCFIRB not accepted the Commission's Recommendations which were the subject of these appeals (paragraph 11 of the Supervisory Decision), BCFIRB went well beyond identifying potential issues with the proposed regulation.

As a result of the supervisory review process, the Commission revised its recommendations to BCFIRB. These recommendations were also not ultimately accepted. The BCFIRB supervisory panel conducted its own process and came to its own conclusions on the necessary regulatory tools to meet sound marketing policy objectives for the BC specialty broiler hatching egg industry moving forward (Paragraphs 61 of Supervisory Decision). The supervisory panel accepted that based on the policy objectives of supply management, establishing production controls through the issuance of quota and price setting should be the overall long-term goal, but provided no guarantee that this would be the outcome of the Commission's process (Paragraphs 86 and 87 of Supervisory Decision).

The supervisory panel established a system of transferable production permits with required minimum levels of regulation relating to such things on farm biosecurity and premises identification. It also directed the Commission to develop a framework for new industry entrants and a strategic vision for this sector of the industry, supported through the gathering of baseline industry data.

In light of the above, it is clear to me that the subject matter of these appeals which related to the Commission's original request for approval of an exemption regime have been over taken by the supervisory process, the subsequent recommendations made by the Commission and the decisions made by the supervisory panel throughout the process which resulted in the Supervisory Decision.

The Supervisory Decision contemplates that the Commission will undertake further work to finalize the appropriate level of regulation for the specialty sector based on sound marketing policy. While the Supervisory Decision contemplates quota and minimum price as the outcome it was clear that the result of that work cannot be prejudged. When the Commission makes its decisions, those decisions will be subject to a right of appeal.

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There is simply no basis upon which I can make interim orders in an appeal where no live issue remains and the subject matter has long been overtaken by subsequent decisions.

Yours truly,

A handwritten signature in black ink, appearing to read 'A Sakalauskas', followed by a long horizontal line extending to the right.

Al Sakalauskas
Presiding Member