



BC Farm Industry Review Board

January 19, 2024

File: N2307

DELIVERED BY EMAIL

Jeff Regier



Robert Hrabinsky



Dear Parties:

RE: REGIER PROPERTIES LTD V BRITISH COLUMBIA BROILER HATCHING EGG COMMISSION

The British Columbia Farm Industry Review Board (BCFIRB) received a notice of appeal from Regier Properties Ltd. (the Appellant) on November 2, 2023. The appeal concerned the March 31, 2023 decision of the BC Broiler Hatching Egg Commission (the Commission) to deny the Appellant's request to regrow a portion of quota that the Appellant had leased and was lost to Avian Influenza (AI), and the Commission's subsequent refusal on October 20, 2023 to reconsider that decision.

On November 21, 2023, the Commission applied for a summary dismissal of the appeal. By email dated November 21, 2023, BCFIRB established a submission process for the summary dismissal application to give the Appellant an opportunity to be heard and for the Commission to reply. Those submissions were received in due course and I have now reviewed those submissions.

Submissions of the Parties

The grounds stated in the Commission's summary dismissal application are as follows:

1. Insofar as the appeal is directed at a decision of the Commission dated "March 31, 2023", the appeal has not been filed within the applicable limitation period and is therefore statute-barred by reason of section 8.1 of the Natural Products Marketing (BC) Act and subsection 24(1) of the Administrative Tribunals Act.
2. Insofar as the appeal purports to be directed at a "decision" of the Commission dated "October 20, 2023", there is in fact no "order, decision or determination" made by the Commission on October 20, 2023 that could provide the basis for an appeal pursuant to subsections 8(1) and section 8.1 of the Natural Products Marketing (BC) Act.

The Commission further submits:

The Notice of Appeal indicates that the appeal is taken from a decision dated "March 31/23 October 20/23". However, no "decision" was made by the Commission on October

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20, 2023. Though the Commission did write to the Appellant on October 20, 2023, the email is merely a response to the Appellant's request for the Commission to revisit its decision of March 31, 2023. Significantly, the Commission's email dated October 20, 2023 expressly states:

The Commission did not see any new information within the document you provided that would warrant such a consideration. There will be no further review of their decision. . . the March 31, 2023 decision stands.

Essentially, the Appellant seeks to circumvent the application of the limitation period by purporting to appeal from an affirmation of an earlier decision. However, it is now well-established that an Appellant cannot evade the application of the statutory limitation period, and thereby "breathe life" into an appeal, merely by requesting that a board reconsider an issue...

The Commission therefore seeks an order summarily dismissing the appeal pursuant to paragraph 31(1)(b) of the *Administrative Tribunals Act* on the ground that the application was not filed within the applicable time limit. In particular:

1. The Commission's email dated October 20, 2023 is not an "order, decision or determination" that may be made the subject of an appeal pursuant to section 8 of the Natural Products Marketing (BC) Act.
2. No appeal was taken from the Commission's decision dated March 31, 2023 within the prescribed limitation period.
3. There is no compelling explanation for the Appellant's delay in filing an appeal.
4. There are no special circumstances as might justify an extension of the time to appeal.

The Appellant submits that the email from the Commission, dated October 20, 2023, is not a "separate entity" from the March 31, 2023, decision. The Appellant contends that he provided the Commission with new, essential, and detailed information with respect to the original request and that the October 20, 2023 response from the Commission should, seemingly, be treated as a further decision of the Commission. Furthermore, the Appellant suggests that the Commission should explore more effective solutions collaboratively with producers, considering the unique challenges within the industry arising from the flooding in Abbotsford/Chilliwack area in November, 2021 and the subsequent outbreak of Avian Influenza in November, 2022 both of which had a substantial negative impact on the Appellant's farm and on the industry generally.

The Appellant states the Commission has acknowledged exceptional circumstances for other producers and argues that the impact of recent events to their farm is equally if not more exceptional than those other producers. They noted that the inflexibility of the Commission's flock schedule leaves their barn empty for 33 weeks while also forcing them to shoulder expenses for care of one flock at an external facility when the schedule conflicts.

The Appellant states that that flexibility in flock scheduling could be a crucial element in adapting to unforeseen circumstances in the current challenging production environment. The Appellant further points out that due to AI, there is a foreseeable shortage of hatching eggs for the next 12-18 months and that this primarily benefits

farms unaffected by AI. The Appellant suggests the Commission should find ways to ensure that the remaining farms can also share in these advantages.

DECISION

Section 8 of the *Natural Products Marketing (BC) Act (NPMA)* provides for an appeal from “an order, decision or determination of a marketing board or commission” as follows:

Appeals from a marketing board or commission order, decision or determination

- 8 (1) A person aggrieved by or dissatisfied with an order, decision or determination of a marketing board or commission may appeal the order, decision or determination to the Provincial board.

Pursuant to section 8.1 of the *NPMA* and subsection 24(1) of the *Administrative Tribunals Act, (ATA)* a notice of appeal respecting a decision must be filed within 30 days of the decision being appealed.

Pursuant to section 8.1 of the *NPMA* and section 22(2) of the *ATA*, a notice of appeal must “identify the decision that is being appealed.”

Paragraph 31(1)(b) of the *ATA* provides as follows:

Summary dismissal

- 31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

(b) the application was not filed within the applicable time limit;

The Appellant’s notice of appeal indicates that the ‘decision’ that is being appealed is the “March 31/23 October 20/23” decision of the Commission.

With respect to the March 31, 2023 decision of the Commission to deny the Appellant’s request to regrow the leased quota that he had lost to AI over successive flock placements, the Appellant had until April 30, 2023 to appeal that decision to BCFIRB. No appeal was filed within that timeframe and the Appellant has not submitted any evidence of exceptional circumstances that would have precluded him from filing the appeal in a timely manner. While both the flooding that occurred in November of 2021 and the AI outbreak that occurred in November of 2022 were exceptional occurrences with respect to the industry as a whole, they were not exceptional circumstances that would have inhibited the Appellant in filing an appeal of the March 31, 2023 decision in accordance with the statutory time limits.

In October of 2023, at the Appellant’s request, the Commission allowed the Appellant to submit any new information that would support a reconsideration of its March 31, 2023 decision. The Commission received and reviewed the information provided by the

Appellant and determined that “No new information was presented that caused the Board to reconsider its previous decision”. The Board expanded on its response to the Appellant in order to better explain its March 31, 2023 decision:

Firstly, and as previously communicated, sourcing of placement quota, whether by lease or purchase, is at the Producer’s discretion and risk.

Secondly, the exceptional circumstances around the quota lease were granted to Dockum Poultry Farms Ltd., in which they were allowed to lease above the 10% ceiling placed on all leases detailed within the Consolidated Order. The rationale for this was due to the flood. The Producer did not have usable barn space. Being that your flock was also lost to the flood at another premises and in reviewing the impacts to the hatchery egg flow, a match was made by staff. The lease itself was a private business matter between two producers.

Lastly, the Commission does not have a flock regrow policy. Once a flock is lost, there are no circumstances in which it can be made up without affecting other producers and hatcheries within the Official Flock Schedule (i.e., a disruption to orderly marketing). During the flood and the HPAI outbreak, over 600,000 broiler breeder hens were lost; none of the associated producers can regrow that production.

The Commission is obliged to consider the interests of the hatching egg sector in province as a whole. While the short-term results of certain decisions for individual producers may seem unfair or illogical when considered in isolation, the policies of the Commission have to address the fairness and rationale of the system for all stakeholders in the sector over the long term. The Appellant’s further submissions in October of 2023 to the Commission provided some calculations and policy arguments but did not include any new relevant information for the Commission that was different than what it had available to it when it made its March 31, 2023 decision. As noted by the presiding member of this board in *An Appeal Requesting a Repeal of Section 5 of Schedule 6 of the British Columbia Milk Marketing Board Consolidated Orders (May 29, 2008)*:

“I do not accept that an Appellant can, simply by writing a letter to a commodity board objecting to a given order or seeking clarification, generate a right of appeal.”

There is nothing that would have prohibited the Appellant from continuing to engage the Commission on matters of policy while he was concurrently appealing the March 31, 2023 decision. However, having missed the limitation period for filing his appeal of the March 31, 2023 decision, the Appellant’s continuing engagement on the leasing issue does not thereby create a further appealable “order, decision or determination” simply as a result of the Commission failing to accept his new arguments.

Limitation periods are in place to ensure that parties act in a timely manner. Sound marketing requires timely decision making both at the board and appellate levels. The time frames included in the *NPMA* and *ATA* are objectively fair and in this case were well within the reach of the Appellant. Contrary to the submissions of the Appellant on this application, the limitation periods involved in appealing a marketing board decision are not “merely...dates in the correspondence”. They are consequential and important

to ensuring sound marketing and should only be avoided in truly exceptional circumstances. No such circumstances exist in this appeal.

The Commission's application for summary dismissal of the appeal is granted and the appeal is dismissed.

Regards,

A handwritten signature in black ink, appearing to read 'Pawan Joshi', written in a cursive style.

Pawan Joshi
Presiding Member