

IN THE MATTER OF THE NATURAL  
PRODUCTS MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING BOARD  
FROM THE  
BRITISH COLUMBIA BROILER HATCHING EGG COMMISSION

BETWEEN:

ALFRED REID

APPELLANT

AND:

BRITISH COLUMBIA BROILER HATCHING EGG COMMISSION

RESPONDENT

**DECISION**

Appearances:

British Columbia Marketing Board

Mrs. Donna Iverson, Chair  
Mr. Doug Kitson, Member  
Mr. Don Knoerr, Member  
Mr. James Collins, Secretary

Counsel for the Appellant Alfred  
Reid

Ms. Wendy A. Baker

Counsel for the Respondent British  
Columbia Broiler Hatching Egg  
Commission

Mr. Edward F. Macaulay

Dates and Places of Hearing:

October 14-15 & 22, 1993  
Vancouver and Richmond, B.C.

## Introduction

The appeal before the Board is an appeal brought pursuant to Section 11 of the *Natural Products Marketing (B.C.) Act* (the "Act"). The Notice of Appeal states that it is an appeal of the decision of the Broiler Hatching Egg Commission dated July 23, 1993. The Notice is some six pages long and sets out the Appellant's objections to the decision.

## Regulatory Framework

The Hatching Egg Commission (the "Commission") is established pursuant to Regulation 432/88 under the *Act*. It presently consists of an independent Chair, Mr. Barry Peterson, and four elected members who are registered producers. Section 8 of Regulation 432/88 sets out the Commission's powers and duties.

Section 8(1)(a) incorporates the power set out in Subsections 13(1)(a) to (r) of the *Act*. Amongst the powers given are those found in Subsection 13(1)(m) of the *Act*

"to cancel a licence for violation of a provision of the scheme or of an order of the Marketing Board or Commission or of the Regulations".

Subsection 13(1)(1) of the *Act* gives the power to the Commission:

"to delegate its powers to the extent and in the manner the Board considered necessary or advisable for the proper operation on the scheme under which the Board is constituted

. . . .

Section 13(1)(m) of the *Act*, gives the power to the Commission:

"to make orders and rules considered . . . necessary or advisable to promote, control and regulate effectively the production, transportation, packing, storage or marketing of the regulated product, and to amend or revoke them".

Section 16 of the *Act*, provides:

"In addition to powers that the Lieutenant Governor and Council may vest in a Commission under Section 13, the Commission may, in furtherance of a scheme,

(a) establish quality standards for a regulated product."

The above sections give clear authority to the Commission to make orders and rules; to delegate its powers; and to establish quality standards for hatching eggs.

The Commission has passed General Orders, which are found at Tab 3 of Exhibit 1. The definition of "standards" is found in the General Orders of the Commission:

Standards - means the Standards for Hatching Egg Farms certified by the Commission as established by the British Columbia Broiler Hatching Egg Producers Association and representatives from the Hatcheries licensed by the Commission. A copy of the Standards as at the date of this Order as attached as Schedule B.

That part of the Standards which were established prior to the formation of the Commission are found at Tab 4 of Exhibit 1.

On December 14, 1988, further Standards were adopted by the "Standards Committee", a committee formed of producers and hatchery representatives prior to the formation of the Commission. These Standards are found at Tab 5 of Exhibit 1.

On February 2, 1993, the Commission passed a motion which reads as follows:

"The minimum Standard for the direction of a flock or a hatching egg producer is that the farm must meet the physical Standards and the producer must implement and follow management guidelines established by the Commission Poultry Specialist.

The Commission will not endorse the ordering of flocks for farms or producers who do not meet the minimum standards for the direction of a flock or producer."

A letter dated February 15, 1993 was sent to producers advising them of this policy. A copy of the letter is found at Tab B of Exhibit 1.

#### Background, Facts

At the present time, the Standards Committee consists of an equal number of hatchery representatives and producers and an independent Chair, Mr. Clarence Jensen. The Standards Committee has been carrying out inspections of farms, working on updating the present written Standards and attempting to develop inspection procedures. A draft of the proposed inspection procedures is found at Tab 6 of Exhibit 1.

In January, 1993, Dr. Fitzsimmons, a poultry specialist, was hired by the Commission to assist the Standards Committee. He acts as a third party independent observer to Standards Committee inspections and meetings. He also assists producers and works at hatcheries.

Many of the facts on the appeal are not in dispute. The Board finds the relevant facts are as follows:

The Appellant operates two farms, one located on Huntington Road (the "Huntington Road Farm") and the other located on DeFehr Road (the "DeFehr Road Farm"). These farms are approximately three miles apart and are located in the Abbotsford area.

There are two barns located on the Huntington Road Farm, one which the Appellant uses to raise pullet, and the other which is used as they lay barn. There are two lay farms located on the Defehr Road Farm.

The Appellant has been a hatching egg producer since 1984. At the present time, the Appellant ships his hatching eggs to Lilydale Hatcheries. Lilydale Hatchery is the hatchery division of the Lilydale Cooperative Limited ("Lilydale").

On the DeFehr Road Farm, the Appellant also grows organic vegetables, and he keeps a number of Muscovy ducks. It was his evidence that the reason for keeping these ducks is to control the insect pests in the organic garden.

Early in July, 1993, a Lilydale driver who was picking up the Appellant's eggs reported to the hatchery supervisor that the hatching eggs of the Appellant were not located in the cooler, but were located on the floor in the egg room. As a result of

receiving this information the Lilydale Hatchery manager, Mr. Vanderspek, asked Dr. Fitzsimmons and Mr. Dick Shead from Lilydale to attend at the Appellant's farm and verify whether or not the hatching eggs were being kept in the cooler.

As a result of the information received from his driver, Mr. Vanderspek contacted Dr. Fitzsimmons. On July 13th, Dr. Fitzsimmons and Mr. Shead (from Lilydale) attended at the Appellant's farm. Dr. Fitzsimmons wrote a letter dated July 13, 1993 to Mr. Vanderspek outlining what he saw on his visit to the Appellant's farm. A copy of this letter is found at Tab 14 of Exhibit 1.

Dr. Fitzsimmons' letter sets out that he discussed the points contained in his letter (with the exception of the temperature and the relative humidity) with the Appellant and recommended specific action on clean-up, the package and storage of hatching eggs. The Appellant testified that after speaking with Dr. Fitzsimmons he removed the eggs in the egg storage room (which were to be shipped for use other than hatching) and placed the hatching eggs into this room.

As a result of the findings of Dr. Fitzsimmons and Mr. Shead, Mr. Vanderspek wrote to Mr. Jensen on July 14, 1993 requesting a full Standards inspection of the Appellant's farm. A copy of this letter is found at Tab 9 of Exhibit 2.

The Standards Committee was convened and on July 21, 1993, a message was left on the answering machine of the Appellant that an inspection of his farm would take place on July 22nd. The Appellant testified that he did not play back his answering machine on the 21st, and as a result had six hours notice of this inspection. He also testified that at the time of the

inspection, he was in the process of cleaning one of his layer barns and that once he received the message, he had his crew that was cleaning the layer barns go to clean up the egg room. It was also his evidence that when a barn is being cleaned up, things may slide in the other barns.

On the afternoon of July 22, 1993, the Standards Committee attended at the Appellant's farm. After attending at the farm, the Committee met and a secret ballot was taken as to whether or not the Appellant's farm passed inspection. Mr. Jensen testified that it was unanimous that the farm did not pass. The Committee found that the farm did not meet the standards in various areas. A copy of the minutes of their meeting is found at Tab 10 of Exhibit 2.

On July 23, 1993, a letter was drafted to the Appellant setting out the items that the Committee felt needed to be addressed. The letter also notes that there are a number of "high priority items" which Dr. Fitzsimmons advised the Appellant should be completed and ready for an inspection on August 9, 1993 by three Committee members. This letter was hand delivered to the Appellant. It is on Commission letterhead and is signed by Dr. Fitzsimmons. It is found at Tab 15 of Exhibit 1.

Also on July 23, 1993, Mr. Vanderspek wrote to Mr. Reid setting out that his farm was in contravention of the Standards. In his letter to the Appellant, Mr. Vanderspek stated:

"I apologize for not taking some type of action sooner, as the problems that were identified by the Standards Committee obviously developed over a period of time and should have been addressed much earlier.

I would have thought that once you had been given notice of an imminent inspection, at least the basic problems should have been corrected. The lack of nesting material, dead birds, lame birds, broken equipment and broiler roosters, were to say the least, disturbing.

Please be informed that I have cancelled until further notice, all orders for future placement of broiler breeder chicks. These orders can be reinstated only when the concerns identified by the Standards Committee have been rectified and a satisfactory reinspection had taken place. I regret that this action has become necessary."

Copies of this letter were also sent to Mr. Jensen, Mr. Fitzsimmons, Mr. Durham (the Secretary/Manager of the Commission and Mr. Van Zeggellar (the CEO of the Lilydale Cooperative). A copy of this letter is found at Tab 16 of Exhibit 1.

Sometime after receiving the July 23, 1993 letter from Lilydale, the Appellant telephoned the Commission. It appears as if the Appellant was told by the person answering the phone, Ms Sheila Durham, that it was not appropriate for him to contact the Commission at this time. Mr. Durham testified that it was his understanding that this is what occurred. He also testified that he was not sure why the Appellant was given that information.

Between July 23rd and August 9th, 1993, the Appellant attempted to rectify some of the problems which had been identified by the Standards Committee. He testified that he had cleaned the waterers, worked on fixing up the driveway, removed debris and attempted to get the humidifier working. However, due to a missing coupler, it was not working by August 9th, the day which he was advised a reinspection would take place.



The Appellant testified that on August 9, 1993, Mr. John Walders (a hatching egg producer), Dr. Fitzsimmons, Mr. Jensen and Mr. Shead attended at his farm.

Mr. Jensen testified that he could not recall whether or not Mr. Walders was present. He also testified that this inspection was somewhat of a "preliminary" inspection to determine whether or not the farm should be inspected by the full Standards Committee. Mr. Jensen testified that he and the others in attendance felt that while there had been improvements to the Appellant's farm, it was not yet at the point where Dr. Fitzsimmons and those in attendance on August 9th felt it would be worthwhile to have a full inspection because, in their opinion, it did not yet meet standards.

On August 10, 1993, a letter was sent to the Appellant setting out key items which the "Committee" felt still needed to be addressed. This letter is on Commission letterhead and is signed by Mr. Jensen. A copy of the letter is found at Tab 18 of Exhibit 1.

On August 12, 1993, Mr. Barrie Peterson, the Chair of the Commission, wrote to the Appellant inviting him to attend a meeting of the Commission to be held August 17, 1993. The Appellant did not attend this meeting. His reason for failing to attend appears to be related to his distrust of the Commission. No reasons were given for his distrust of the Commission.

On August 16, 1993, Mr. Vanderspek and Mr. Shead attended at the Appellant's Huntington Road Farm as a result of a request by the Appellant. Mr. Vanderspek testified that they found several items of concern when they attended on this occasion. One of the items of concern related to the finding of several vials of unused vaccine. The Appellant testified that he was not in agreement

with the vaccination of his birds for Reo Virus. However, Mr. Vanderspek expressed concern of the failure of the Appellant to follow the prescribed vaccination program, as the particular vaccination which the Appellant was in disagreement with was meant to provide a level of immunity to the progeny of the birds. Apparently, the vaccination assists in preventing leg problems of broilers.

After attending on the Appellant's farm, Mr. Vanderspek wrote to the Appellant setting out his concerns. Exhibit 3 is a copy of this letter. On August 24, 1993, the Appellant wrote back to Mr. Vanderspek regarding the concerns contained in Mr. Vanderspek's letter of August 18, 1993. Exhibit 4 is a copy of this letter. In it, the Appellant acknowledges his failure to follow the vaccination program and, in particular, his decision not to have the "seven week vaccination" done. It appears from the Appellant's letter and from his testimony as if he misunderstands the purpose of the vaccination, in that he refers to leg problems in his flock. The Board accepts Mr. Vanderspek's evidence that the purpose of the vaccination is to increase the immunity of the offspring of the parent birds, rather than increasing the immunity of the parent birds themselves.

Apparently, the Appellant satisfied Mr. Vanderspek as to his intention to properly carry out the vaccination program required from him, as Mr. Vanderspek testified that Lilydale has ordered a flock for the Appellant's Huntington Road Farm which is to be delivered on November 3, 1993. Exhibit 5 is a copy of the letter sent to the Commission by Mr. Vanderspek on September 13, 1993. It should be noted that this letter states:

"I wish the Standards process currently in place to resolve the outstanding issues at 356 Defehr Road".

. . .

Mr. Vanderspek testified that since July 23, 1993, he has found the Appellant to be cooperative. He also testified that he was hopeful that the Appellant and Lilydale were on the way to reestablishing a good working relationship.

Mr. Vanderspek also testified that prior to July of 1993, Lilydale did not have complaints as to the quality of the eggs produced by the Appellant and shipped to them.

The Appellant gave evidence that his farm had, in the past, passed inspection. A Standards summary dated November 17, 1992 confirming this is found at Tab 7 of Exhibit 1.

The Appellant testified that as a result of his failure to pass Standards, he had to sell 2/3 of his quota to avoid "huge losses". He also testified that he calculated that he would lose approximately \$55,000 per year in income as a result of selling this quota and that if he had not sold the quota, he would have lost \$50,000. No evidence was given to support these figures.

As well, the Appellant testified that as a result of selling the quota, he will be unable to participate in future growth in the hatching egg industry as producers who have sold quota are not allowed to participate in growth when the Commission issues new growth quota. The Board is aware of this policy.

## Issues Raised

The Appellant argues that the procedures which should have been followed in dealing with the problems on his farm were not followed. He also argues that some of the matters which the Standards Committee found deficient were not matters set out in the written Standards and, thus, his farm should have not been failed on Standards not set out in writing. He further argues that the Commission exceeded its jurisdiction in finding the Appellant in violation of Standards of which he had no notice and in not operating fairly by not following the procedures they had set out.

The Respondent argues that the decision which the Appellant Notice of Appeal sets out is not a decision of the Commission.

The Board does not have to deal with these issues, as it is clear that the real issue before the Board is whether or not the Commission should have intervened with Lilydale and ordered Lilydale to place a flock.

## Decision

The Appellant asked the Board to set aside the July 23rd and August 10th decisions. With respect, the Board is not in a position to substitute its decision for that of the Standards Committee as to whether or not the Appellant's farm passed Standards. In any event, it was not the Commission which decided not to place a flock on the Appellant's farm, it was Lilydale.

Whether or not all of the deficiencies found on the Appellant's farm are set out in the Standards, it is clear from all of the evidence that the Appellant's farm was deficient as to many of the

items which are set out in the written Standards. The Board accepts the evidence of Respondent's witnesses with respect to the condition of the Appellant's farm. As well, the Appellant has been involved in the hatching egg industry since 1984. Many of the "unwritten" standards are simply good farm management and good animal husbandry, and the Appellant, as an experienced hatching egg producer should have been aware of the need to comply with most, if not all of them.

It is also clear that the Commission could not be expected to intervene in Lilydale's decision without there being a request to do so by the Appellant. The Board is somewhat troubled by the information given by Ms. Sheila Durham to the Appellant when he called sometime after July 23, 1993, regarding his speaking with the Commission. On the other hand, when Mr. Peterson wrote to Mr. Reid on August 12, 1993 inviting him to a meeting of the Commission on August 17, 1993. It was the Appellant's decision not to attend this meeting and instead to pursue an appeal to this Board. Thus, to a large extent, the Board finds that the failure of the Commission to intervene was the responsibility of the Appellant.

In a prior appeal before the Board, the Board was critical of the Commission for intervening and ordering the placement of a flock when a farm did not pass the Standards. The Board accepts the Commission's failure to intervene as reasonable in all of the circumstances.

On the other hand, the decision of Lilydale not to place a flock on the Appellant's farm has obviously had a negative impact on the Appellant. While the Appellant clearly has an obligation to operate his farm in a manner other than he was operating it in July, 1993, it is unfortunate that he was not given an opportunity

to rectify matters prior to Lilydale deciding not to place a flock on his farm.

The Board is concerned about three things which have come to its attention through the evidence at this appeal:

Firstly, the Board is concerned about the Appellant selling eggs to bakeries. The fact of broiler hatching egg producers selling eggs to bakeries has previously been brought to the Board's attention. This is considered to be a health hazard unless the eggs have been properly graded and inspected.

Secondly, the Board is concerned about the Appellant's failure to follow the proper vaccination schedule which has been established.

Thirdly, the Board is concerned about the Appellant's refusal to get rid of the ducks which he has on his farm.

As the evidence on this appeal shows that at least one hatching egg producer is selling eggs to the bakery, the Board asks the Commission to investigate this and to ensure that this practice is stopped, unless the eggs have been properly graded and inspected.

With respect to the ducks, while the Board has an appreciation for the Appellant's argument that ducks are not "fowl" as defined in the Standing Order, the Board is aware through its experience with the broiler hatching egg industry that it is of vital importance to the health of a broiler hatching egg flock and the resulting progeny that the flock be isolated from other animals, including birds such as ducks. This is obviously why the Standards Committee was concerned both with the ducks and with the barn doors being properly secured, as well as with the presence of

rodents. When a person decides to produce a product such as broiler hatching eggs, certain results follow, some of which may affect a person's lifestyle. However, if a person wishes to be a broiler hatching egg producer the health of his flocks and their progeny must take precedence over his or her lifestyle preference. The Appellant has been a broiler hatching egg producer for approximately nine years and the Board cannot accept his evidence that it is not necessary to rid his farm of these birds.

As stated earlier, the Appellant has suffered financial consequences as a result of the decision of Lilydale not to place a flock with him. Whether or not it was necessary for him to sell quota in order to be able to continue operating his farms has not been established.

The Appellant asks the Board to make a term of its Order that the Appellant be entitled to participate in growth in the industry and when future quota is issued as a result of this growth, that the Appellant not be barred from receiving his proper share of such quota. The recommendations will address this request.

#### Recommendations

If the Appellant:

- a) gives a written undertaking to Lilydale that he will follow the vaccination schedule prescribed by Lilydale unless Lilydale indicates, in writing, that he does not have to.
- b) gets rid of the ducks located on his DeFehr Road Farm or satisfies both Lilydale and the Commission that arrangements have been made for the ducks which ensure that no potential problems caused by the ducks' presence exist with respect to his hatching eggs flocks; and

- c) provides documentation satisfactory to the Commission which establishes that it was necessary for the Appellant to sell quota in order not to suffer severe financial hardship,

the Board recommends that the Appellant be allowed to participate in future growth in the hatching egg industry as if he had not sold quota. The conditions must be met by the Appellant no later than December 31, 1993, or such later time as set by the Commission.

The Appellant will be given leave to return before the Board if he meets conditions a) and b) set out herein and if the Commission does not give him written permission to participate in future growth in the industry. The Board will hear evidence as to the financial necessity of the Appellant selling his quota. The panel which has heard this appeal is not seized in this respect.

The Board commends the Commission on its efforts to date in improving standards in the hatching egg industry. The Board also recognizes that the Standards Committee has made considerable efforts to develop updated Standards. The Board urges both the Commission and the Standards Committee to ensure that updated standards are reduced to writing and adopted by the Commission.

Additionally, the Board recommends that the Commission set out in writing the procedures which it will follow and which producers should follow if a hatchery refuses to place a flock with them.

#### Order

The appeal is dismissed. In accordance with the rules of appeals, the Appellant's deposit is forfeited.



Dated at Victoria, British Columbia, this 3rd day of November,  
1993.

*(Original signed by):*

Donna M. Iverson, Chair

Douglas Kitson, Member

Don Knoer, Member