

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

AND

IN THE MATTER OF AN APPEAL FROM THE BRITISH COLUMBIA
BROILER HATCHING EGG COMMISSION CONCERNING THE ENTITLEMENT
TO FUTURE QUOTA, THE ENTITLEMENT TO COSTS AND THE
CIRCULATION OF THE 'REASONS FOR JUDGEMENT' OF THE
HONOURABLE MADAM JUSTICE HUDDART

BETWEEN:

MR. ALFRED REID

APPELLANT

AND:

BRITISH COLUMBIA BROILER HATCHING EGG COMMISSION

RESPONDENT

DECISION

APPEARANCES

British Columbia
Marketing Board

Mr. Doug Kitson, Chair
Mr. Don Knoerr, Member
Ms. Karen Webster, Member

For the Appellant

Ms. Wendy A. Baker

For the Respondent

Mr. Edward F. Macaulay

Dates and Places of
Hearing

April 26, 1995
Surrey, British Columbia

June 6, 1995
Richmond, British Columbia

The matter before the British Columbia Marketing Board (BCMB) was referred back to the BCMB by Madam Justice Huddart of the Supreme Court of British Columbia (Vancouver Registry No. A934561 dated February 27, 1995) and arises from a November 3, 1993 decision of the BCMB concerning an appeal by Mr. Alfred Reid from the British Columbia Broiler Hatching Egg Commission (Commission). The Court directed the BCMB to address:

- 1) The Appellant's entitlement to future quota issuance.
- 2) The Appellant's entitlement to costs before the BCMB.

In addition to the foregoing, the Appellant also sought an order from the BCMB:

- 3) That the Commission be required to circulate the 'Reasons for Judgement' of Madam Justice Huddart to all hatching egg producers.

Background

1. This appeal arises from an order by Madam Justice Huddart, of the Supreme Court of British Columbia as follows:

"THIS COURT ORDERS that the within appeal is hereby allowed and that the decision of the BCMB is rendered null and void:

THIS COURT FURTHER ORDERS that the BCMB erred in finding that it had no jurisdiction to consider whether the Commission had followed its own rules and procedures.

THIS COURT FURTHER ORDERS that the BCMB erred in its jurisdiction in extending the definition of fowl in Standard #8 to include muscovy ducks.

THIS COURT FURTHER ORDERS that the issue of the appellants entitlement to future quota issuance is to be remitted to the BCMB for an appropriate remedy and if necessary further evidence may be adduced at that hearing.

THIS COURT FURTHER ORDERS that costs shall be in the cause."

2. The BCMB notes particularly the following excerpts from the 'Reasons for Judgement' of the Honourable Madam Justice Huddart, dated February 27, 1995.

Page 12: Paragraph 28

"On the analysis I concluded that the Board abandoned its jurisdiction under the Act, when it failed to consider whether the Commission had followed the inspection procedures it had approved. In ordinary circumstances I would have remitted the matter to the Board for reconsideration, so that the Board might decide whether it should substitute a decision to place flock for the decision not to do so. However, time and Mr. Reid's economic circumstances had rendered the decision futile before the Board's hearing of the appeal. At the suggestion of counsel, I ordered the issues of Mr. Reid's entitlement to future quota issuance be remitted to the Board."

and again;

3. Page 16: Paragraph 37

"The Board erred when it found it had no jurisdiction to consider whether the Commission had followed its own rules and procedures. It also erred to the extent that it included muscovy ducks within the definition of fowl in Standard #8. Neither of these conclusions mean that procedural fairness concerns must control the discretion of the Commission in deciding whether to direct the placement of a flock. These conclusions simply mean that the Commission must give the producer a fair opportunity to answer the case made against him by the standards committee and/or the Commission's other advisors before acting on their advice. Fairness demands that this opportunity not be so delayed as to be meaningless and the demand of fairness is most insistent when the primary ground for complaint is not included in the written standards."

Findings

4. The BCMB finds, based on the evidence presented during the hearing held on April 26, 1995 and based on the submissions subsequently presented by counsel for both parties that
 - a) The previous decision of the BCMB has been found to be null and void by the Honourable Madam Justice Huddart of the Supreme Court and that this determination extends to the BCMB's finding of severe financial hardship.
 - b) No evidence was provided to the BCMB that Mr. Reid intended to sell quota during 1993 prior to the events leading up to the original appeal. Mr. Reid gave evidence that in the summer of 1993 he had made serious investment in his farm. Whilst the BCMB cannot determine what may or may not have influenced Mr. Reid to take these steps, it is not unreasonable to conclude that these were not the actions of a producer that had the intention of reducing his flock size.
 - c) In addition, Mr. Reid testified that he had considered selling quota on previous occasions but that he had no intention of selling quota in the summer of 1993. The BCMB has accepted Mr. Reid's evidence in this matter.
5. In the matter of costs, the BCMB finds that costs incurred in the initial hearing of October 14, 15 and 22, 1993 predated the BCMB's authority to award costs. With respect to the costs incurred at the hearing following Mr. Reid's appeal to the Supreme Court of British Columbia, the BCMB finds that the Appellant suffered hardship as the result of a decision deemed by the Supreme Court to be in error and as a consequence was obliged to undergo the expense of a second hearing before the BCMB. The BCMB considers this to be a circumstance wherein the award of costs is appropriate.

6. In the third and final matter of the circulation of the 'Reasons for Judgement' of Madam Justice Huddart, the BCMB finds that the Commission has acted in a fair and proper fashion by making the 'Reasons for Judgement' available to those members of the hatching egg industry who wish to view the 'Reasons for Judgement' at the Commission offices during regular business hours.

Decision

In accordance with section 11(7) of the Natural Products Marketing (BC) Act the BCMB makes the following decisions.

7. In the matter of the Appellant's entitlement to future quota issuance, the BCMB hereby directs, for the next issuance only, the Commission to waive Section 8, subsections (h) and (i) of its General Orders, dated April 12, 1991, in this instance and for this particular circumstance only. In this case Mr. Reid shall be treated as though his flock is sufficiently large to benefit from the issuance of free quota. Beyond this point, if and when further issuances occur, the aforementioned additional quota shall be counted as part of the Appellants overall quota, for the purposes of 8.(i), provided always that the Appellant still has possession of this quota.
8. With respect to the costs incurred by the Appellant related to the hearings of April 26 and June 6, 1995, the Respondent is ordered to pay these costs, the actual amount being subject to the finalization of the BCMB's 'Tariff of Costs', to the Appellant.

The BCMB retains jurisdiction to determine the amount and will do so in due course.
9. The BCMB declines to issue an order in the matter of the circulation of the 'Reasons for Judgement' of Madam Justice Huddart to all hatching egg producers.

Dated at Victoria, British Columbia, this 19th day of
September 1995.

(Original signed by):

D. Kitson, Chair