

**IN THE MATTER OF  
THE NATURAL PRODUCTS MARKETING (BC) ACT AND  
AN APPEAL FROM A DECISION OF THE BRITISH COLUMBIA CHICKEN  
MARKETING BOARD DATED MARCH 10, 1997  
CONCERNING THE TRANSFER OF QUOTA**

**BETWEEN:**

89 CHICKEN RANCH LTD., TEXAS BROILER RANCH LTD.  
AND GLEN LAKE CHICKEN RANCH LTD.

**APPELLANTS**

**AND:**

BRITISH COLUMBIA CHICKEN MARKETING BOARD

**RESPONDENT**

**AND:**

BRITISH COLUMBIA CHICKEN GROWERS ASSOCIATION

**INTERVENOR**

**AND:**

TOP SHELF FEEDS INC.

**INTERVENOR**

**REASONS FOR DECISION  
ADJOURNMENT APPLICATION**

**APPEARANCES BY WRITTEN SUBMISSION:**

For the British Columbia Marketing Board

Mr. Ross Husdon, Chair  
Ms. Christine Elsaesser, Vice Chair  
Mr. Hamish Bruce, Member  
Ms. Satwinder Bains, Member

For the Appellants

Mr. Peter Klassen, Counsel

For the Respondent

Mr. John Hunter, Q.C., Counsel

For the British Columbia  
Chicken Growers Association

Mr. Tobin Robbins, Counsel

## **INTRODUCTION**

1. This is an application by the British Columbia Chicken Marketing Board (the “Chicken Board”) to adjourn the continuation of the appeal from July 27, 1998. To date the British Columbia Marketing Board (“BCMB”) has heard six days of evidence (February 17-19, March 11-13, 1998). Counsel estimate that at least five more days are required to complete the evidence.
2. The issue on appeal is significant and involves the decision of the Chicken Board to deny the Appellants’ request to transfer their chicken quota off Vancouver Island.
3. The British Columbia Chicken Growers Association (“BCCGA”), Lilydale Co-operative Ltd. (“Lilydale”) and Top Shelf Feeds Inc. applied for and were granted Intervenor status prior to the commencement of the appeal. However, there has been a significant development since the appeal was adjourned on March 13, 1998.

In early April, Lilydale advised that it intended to close its processing facility on Vancouver Island. As a result, Lilydale withdrew as an Intervenor on June 30, 1998.

4. The Province appointed the Job Protection Commissioner to review the situation. Given the impact of these developments on the appeal, all the parties agreed to adjourn the continuation of the appeal until such time as the Commissioner's report was completed and the impact of the closure could be assessed. The Commissioner's report was released on July 13, 1998. The BCMB has reviewed the executive summary of that report but not the document in its entirety. The report had not been released at the time the following written submissions were prepared.
5. The BCMB has received the following written submissions:
  - a) letter dated July 3, 1998 from Mr. John Hunter Q.C. on behalf of the Chicken Board;
  - b) letter dated July 6, 1998 from Ms. Wendy Baker on behalf of Sunrise Poultry Ltd.;
  - c) letter dated July 7, 1998 from Mr. Tobin Robbins on behalf of the BCCGA;
  - d) letter dated July 9, 1998 from Mr. Peter Klassen on behalf of the Appellants.

## **ARGUMENT**

6. The Chicken Board requests that the appeal be adjourned as they have not received a copy of the Commissioner's report and they do not know if or how the Minister of Agriculture and Food will respond to it. The situation is still very uncertain and as such a continuation of the appeal at this time may be an unnecessary expense for all the parties.

7. The Chicken Board proposes an adjournment on the following terms:
  - a) the appeal be adjourned generally;
  - b) the revised lease program be extended until March 13, 1999; and
  - c) a further telephone conference be scheduled in September 1998 for a time in October 1998 to determine whether the appeal will continue and if so on what date.
8. Sunrise Poultry Ltd., along with other parties including the Appellants, is involved in an appeal of the Chicken Board's revised leasing program. Given its relationship to this appeal it has been scheduled for hearing immediately following this appeal. Sunrise Poultry Ltd. is affected by any adjournment of this appeal and therefore their submissions were also sought.
9. Sunrise Poultry Ltd. agrees with the adjournment on the terms proposed by the Chicken Board and also requests that if their appeal cannot be heard until January, 1999, the revised leasing program be extended to September 1999. This issue could be dealt with at the October telephone conference.
10. The BCCGA adopts the arguments of the Chicken Board for the adjournment and the proposed order. They too require time to consider the impact of the Job Protection Commissioner's report and feel that a continuation now would be premature. They are also of the view that any prejudice to the Appellants by the delay is eliminated by the extension of the revised lease program.
11. The Appellants oppose the application to adjourn the hearing. They argue that Lilydale's closure has weakened the Chicken Board's case. This fact will not be altered if another party opens and tries to carry on a processing plant on Vancouver Island. The Appellants' concern is that the political nature of this matter will necessitate an extended period of consultation before there is any resolution and this will delay the hearing of the appeal.
12. The Appellants argue that an extended delay causes them substantial prejudice. They anticipate that once they know their quota is transferable to the Lower Mainland it would take upwards of two years to locate and build a suitable facility. The age of the Mundhenks, the shareholders of the Appellants, makes time of the essence and the mere extension of the lease program will not relieve this prejudice.

## **DECISION**

13. Section 8(7) of the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330 (the "Act") provides, *inter alia*, that "...the Provincial board may adjourn a hearing for the period it considers appropriate on the request of the person bringing the appeal or the marketing board or commission from which the appeal is being made."

14. The legislation clearly confers discretion in the BCMB to adjourn an appeal hearing. That discretion must in our view be exercised in a principled fashion, weighing the reasons for the adjournment, the balance of convenience between the parties and the public interest.
15. The appeal before the BCMB raises issues of significant public interest. The Chicken Board has since its inception prevented the transfer of quota from Vancouver Island and the Interior to the Lower Mainland. This was an attempt to preserve and protect the regional viability of the chicken industry.
16. The Appellants are now challenging this policy, which has been in effect for more than 30 years. Their argument is simple. The chicken industry on Vancouver Island is no longer viable and as such they should be allowed to transfer their quota off the island.
17. The effect of any decision in this appeal will have far reaching effects on the entire agricultural industry on Vancouver Island. It cannot be limited to just the Appellants or just chicken growers. In considering the effect of an adjournment the BCMB must consider the broader public interest as well.
18. The Job Protection Commissioner's report was released on July 13, 1998. The BCMB is satisfied that the parties cannot assess the effects of the report and its recommendations in any satisfactory way prior to the scheduled continuation date of this appeal on July 27, 1998.
19. The Commissioner's report, which has just been released, has created a dynamic situation. Depending on the response to the report, the appeal may either become moot, or it may take on an entirely new dimension, which places an onus on all the parties to adduce new evidence. While the Appellants say that whatever happens is irrelevant to (or can only reinforce) their argument, the situation is different for the other parties who are also entitled to fairness and whose position the BCMB is not prepared to prejudge.
20. To proceed with the appeal hearing at this time gives rise to significant risks of unnecessary expense for all parties. It also places the BCMB in the predicament of potentially having to fashion a remedy in circumstances which are not "ripe" for decision, or which attempts to foresee contingencies which may never materialise.
21. The Appellants say this uncertainty may, given, "the small "p" political nature" of the issues involved, go on without resolution. For the purposes of this appeal hearing, we are not prepared to let that happen. While we believe, for the reasons expressed above, there is great value in allowing a reasonable period of time for this matter to be resolved, we are prepared to establish peremptory hearing dates to conclude this appeal. Based on the schedules of counsel, we understand that if the hearing does not proceed on July 27 the next available dates are in January of 1999. In our view, this is not an unreasonable delay in these unique circumstances.

22. The Appellants have said that they will be prejudiced by a 6-month delay in completing the hearing. During this period however, the Appellants will continue to be allowed to lease their quota off Vancouver Island, and they will continue to receive financial compensation pursuant to the leasing arrangements. Moreover, the Chicken Board has agreed to extend the revised leasing program to March 13, 1999. Whether an extension beyond this period becomes necessary can be addressed in October. The sole prejudice asserted before us by the Appellants lies in the impact of the 6 month delay on their ability to get on with their present intention to build a new facility in the event they win their appeal. In weighing the balance of convenience over the next 6 months in light of the purposes of the Act, we do not believe that this factor outweighs the prejudice to the other parties and to the public interest that would be occasioned by proceeding to hearing on July 27, 1998.
23. Rather than establish peremptory dates in this Order, we believe it would be wise to establish those dates in the October telephone conference. At that time, all parties will have a better idea of any response to the Commissioner's report and whether their own schedules have changed such that an earlier hearing date might be set. If January 1999 continues to be the earliest date for hearing the appeal, then peremptory dates can be established and the matter of extending the revised lease program beyond March 13, 1999 can be addressed.
24. Accordingly, the BCMB orders as follows:
- A) That the appeal be adjourned to a date no later than January 31, 1999.
  - B) That a telephone conference be conducted not later than October 15, 1998 to determine the necessity for continuation and, if required, to schedule the appeal on a peremptory basis to a date no later than January 31, 1999.

Dated at Victoria, British Columbia this 17<sup>th</sup> day of July, 1998

BRITISH COLUMBIA MARKETING BOARD

Per

*(Original signed by):*

Ross Husdon, Chair