

**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:**

For the British Columbia Marketing Board

Mr. Ross Husdon, 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

For Top Shelf Feeds Inc.

Mr. Stuart Armour

**APPEARANCE BY WRITTEN SUBMISSION:**

For Sunrise Poultry Processors Ltd. et al.

Mr. Darrell Roberts, Q.C.

## **INTRODUCTION**

1. This is an application by the British Columbia Chicken Marketing Board (the “Chicken Board”) to adjourn the continuation of the appeal from March 15, 1999 to a date no earlier than May 15, 1999.
2. The Intervenors, the British Columbia Chicken Growers Association (“Growers”) and Top Shelf Feeds Inc. (“Top Shelf”) also applied to adjourn the continuation of the appeal for one year, to March 15, 2000.
3. On February 25, 1999, the Panel granted limited intervenor status, for the purposes of filing a written submission concerning the adjournment applications, to Sunrise Poultry Processors Ltd. et al. (“Sunrise”).
4. The issue on appeal is significant and involves the decision of the Chicken Board to deny the Appellants’ request to transfer their production quota from Vancouver Island to other regions of the Province. The appeal was heard February 17-19 and March 11-13, 1998 and subsequently adjourned until January 31, 1999 after Lilydale Cooperative Ltd. (“Lilydale”) announced the closure of its Vancouver Island plant.
5. After an October 28, 1998 pre-hearing conference, the Panel set March 15-19 and April 6-9, 1999 as the dates for the hearing to continue.
6. At a February 12, 1999 pre-hearing conference, the Chicken Board and the Intervenors requested an adjournment. The Appellant opposed the adjournment. A one day hearing to hear the applications was scheduled for March 1, 1999.
7. Prior to the hearing, on February 26, 1999, Counsel for Sunrise filed his written submission with the BCMB and the other parties.

## **ARGUMENT**

8. The Chicken Board requests that the appeal be adjourned to not earlier than May 15, 1999 to provide sufficient time for industry consideration and comment on its February 16, 1999 proposed “Relocation of Farm Operation Policy.”
9. The Chicken Board argues that the proposed policy would permit the Appellants, as they have requested in the appeal, to relocate their farm from Vancouver Island to the Lower Mainland.
10. The Growers request a one year adjournment to allow a reasonable time period for the members of the Growers on Vancouver Island to conclusively determine whether it is feasible to construct a poultry processing plant on Vancouver Island.
11. Top Shelf supports the position taken by the Growers.

12. Sunrise opposes the adjournment on the basis that it will necessarily result in the adjournment of their own appeal of the Chicken Board's Revised Lease Program and prejudice the Sunrise appellants.
13. The Appellants argue that a further delay causes them substantial prejudice. They anticipate that if 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 Mudhenks, the shareholders in the Appellants, makes time of the essence and the mere extension of the lease program will not relieve this prejudice. In their opinion the proposed "Relocation of Farm Operation Policy" is not agreed upon by industry and there is no assurance that it will become policy.
14. The Appellants further argue that the Growers have had sufficient time and opportunity to determine the feasibility of establishing a chicken processing plant on Vancouver island and additional time is not warranted.
15. The Appellants note that the Lilydale plant is the latest in a series of Vancouver Island poultry processing plants to close, proving that chicken processing on the Island is not feasible.

## **FINDINGS**

16. Section 8(7) of the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330 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."
17. This legislation clearly confers discretion in this Panel 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.
18. The appeal before this Panel raises issues of significant public interest, however, we are aware that the Appellants filed their appeal on April 7, 1997 and that several adjournments have already been granted. The discretion conferred on the Panel by the legislation to grant an appeal must take into account both the public interest and the rights of the Appellants in this appeal.
19. The Panel does not consider the application by the Growers and Top Shelf for a one year adjournment reasonable in the current circumstances. The Growers have had since April 1997, when the appeal was filed, to gather information on the viability of chicken processing on Vancouver Island, the issue to be argued on this appeal.
20. Originally, Lilydale was an Intervenor in this appeal, opposing the Appellants' request that quota be transferred off Vancouver Island. After announcing on April 6, 1998 that it intended to close the plant, Lilydale withdrew as an Intervenor.

21. On its face, the Chicken Board's February 16, 1999 proposed "Relocation of Farm Operation Policy" offers a remedy to the Appellants. The policy, released on February 24, 1999, is however a draft and must proceed through an industry consultation process. By the time this policy becomes an order of the Chicken Board, its form and substance may be significantly changed from the original discussion document.
22. On this basis proceeding to a hearing March 15-19, during which the merits of this proposed policy and its impact on the BC chicken industry would be argued, is premature. Delaying the appeal past dates, April 6-9, that have also already been set deprives the Appellants of their right to finally be heard and may impact on the Sunrise appeal from the Revised Lease Program.

### **DECISION**

23. The March 15-19, 1999 hearing is adjourned.
24. The hearing of this appeal on its merits will resume April 6-9, 1999.
25. The Chicken Board is to complete its required consultation, including with the Pricing and Production Advisory Committee, on the proposed "Relocation of Farm Operation Policy" not later than March 31, 1999.
26. There will be a pre-hearing conference on April 1, 1999 to review the status of the policy and the April 6-9, 1999 hearing.

Dated at Victoria, British Columbia this 4<sup>th</sup> day of March, 1999.

**BRITISH COLUMBIA MARKETING BOARD**

Per:

*(Original signed by):*

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Ross Husdon, Chair