

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

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
AGAINST AN ORDER OF THE
BRITISH COLUMBIA CHICKEN MARKETING BOARD
DATED JUNE 28, 1990

BETWEEN:

BELLEWOOD FARMS LTD.

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: H. Peters
I. Peters

APPELLANT

A. Stafford, Manager
J. Hunter, Legal Counsel

RESPONDENT

DATE OF HEARING

October 12, 1990

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Harry and Irma Peters of Bellewood Farms Ltd. against Order #226-1990 of the British Columbia Chicken Marketing Board dated June 28, 1990.
2. The appeal was filed with the Board on August 14, 1990, and was heard in Richmond, British Columbia on October 12, 1990.
3. The Appellants were not represented by counsel and presented their own case. The Respondent was represented by Counsel. Opportunity was given to call and cross-examine witnesses, file documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The issues raised by the Appellant include:
 - a) The Appellants first investigated the feasibility of raising Cornish four years earlier but found that the high cost of processing made the project economically unfeasible. In the summer of 1990, the Appellants were approached by a representative of Lilydale Cooperative Ltd. to raise Cornish on a weekly basis for the fresh market. With the agreement of the Appellants, Lilydale applied to the Respondent for the required permit.
 - b) Prior to the issuance of Order #226-1990, it was the understanding of the Appellants that Cornish would be raised on permit with only live weight exceeding 2.2 lbs. added to a grower's production quota allocation. This understanding was based on the existing Order, Regulation #1M-170-1982; the monthly reports made by the Respondent to the producer association over the period May to June, 1990; and the draft Cornish Program Update presented by the Respondent to hatcheries.
 - c) The Appellants state that following the receipt of Lilydale's application for permit on behalf of the Appellant, dated June 15, 1990, the Respondent made the decision on June 21, 1990, to amend the allocation of Cornish from 100% permit to a 30% quota 70% permit ratio. The Appellants assert that this decision was made as a result of past altercations between the Respondent and themselves and therefore, the decision was made in bad faith.

- d) The Appellants further assert that the decision that Cornish could be raised viably on the 30/70 split was made without benefit of market research or production information.
 - e) The Appellants state that Cornish raised for the fresh market constitutes a specialty product and assert that growers should be permitted to raise Cornish on permit as is the case for other pilot projects operated by the Respondent, such as the further processed chicken project.
5. The Appellants request that Order #226-1990 be cancelled and the Cornish program be operated as a pilot project to be reviewed in two years, with Cornish allocated by permit.
6. The issues raised by the Respondent include:
- a) The British Columbia chicken industry has had a Cornish program in effect since the formation of the B.C. Chicken Marketing Board in 1961. Over the years Cornish production decreased drastically as the demand in British Columbia was supplied by Alberta. In 1985 it was determined that local frozen Cornish could not compete with imports from Alberta and the program was discontinued in 1985.
 - b) Since leaving the national chicken plan in January, 1990, the Respondent has encouraged hatcheries and processors to supply the Cornish market by allowing registered producers to produce and market Cornish on permit outside of quota. The Respondent permitted a registered producer to raise 1,000 Cornish/month to be processed and marketed "Chinese style" under a specialty market program. In February, 1990, they considered an application by a registered producer, R. Donaldson to produce from 2-10,000 birds/week to be custom killed and sold to various large retailers. On May 3, 1990, the Respondent allowed Mr. Donaldson permit of 4,000 birds/week effective March 3, 1990, until further notice, to be reviewed July 5, 1990. The Respondent states that Mr. Donaldson was advised that Cornish permits would have to be rotated between all interested growers in a similar manner as permits for the Further Processed Pilot Project. On May 24, 1990, the Respondent became aware that Lilydale Cooperative Ltd. was interested in marketing Cornish and was purchasing Mr. Donaldson's 4,000 bird/week Cornish permit.

- c) On June 21, 1990, the Respondent met with representatives of Lilydale Cooperative Ltd. to discuss the request for an additional 4,000 bird/week Cornish permit to be placed on the Appellant's farm. The Respondent proposed two methods of allocating the permit:
 - i) 8,000 birds/week to be rotated on an equitable basis to all growers, or
 - ii) Cornish to only a few registered growers on the basis of a 30% quota/70% permit basis, with the percentage of quota to be reviewed depending on the success of the program. The Lilydale representatives discussed the ratio proposal with R. Donaldson and the Appellant and advised the Respondent on June 28 that the proposal was acceptable to both growers. The Respondent proceeded to issue Order #226-1990 on June 28, 1990.
 - d) The Respondent asserts that the Cornish Program was developed by the Respondent and consists of Cornish produced for both the fresh and frozen market, and would not be considered a specialty product.
 - e) The Respondent states that in establishing a fair and equitable ratio between quota and permit, that it reviewed R. Donaldson's returns on Cornish and discussed with the Alberta Chicken Marketing Board their experiences with a Cornish program and the returns received by Alberta growers for Cornish versus Broilers. The Respondent further states it was their intention to equalize the permit application among growers to allow the Cornish program to be carried out at Lilydale without creating a disadvantage to growers shipping to other provinces.
 - f) The Respondent states that the effectiveness of the ratio is proven by the absence of complaints it has received from growers.
7. The Respondent suggests that the appeal should be dismissed and the Order #226-1990 should be confirmed.

8. The Board finds that:

- a) The decision of the Respondent was fair and no prejudice was suffered by the Appellant. The Appellant alleged bad faith on the part of the Respondent but was unable to provide any evidence, other than the Respondent's decision to change the issue of full permit to a 30% quota/70% permit split. The Respondent has stated that full permit was planned, but following a meeting with the Alberta Chicken Marketing Board to discuss that Board's experience related to a Cornish program, the Respondent determined that the 30% quota/70% permit split was fair.
- b) The program developed by the Respondent appears to have sufficient flexibility to respond to changes in a developing market.

9. Having considered all of the evidence and submissions at the hearing of this appeal, the Board finds in favour of the Respondent. The appeal is hereby dismissed and Order #226-1990 of the British Columbia Chicken Marketing Board is confirmed. In accordance with this Board's rules of appeal, the whole of the Appellant's deposit shall be forfeit.

Dated this 9th day of January, 1991 in Richmond, British Columbia

(Original signed by):

E. M. Brun, Vice-Chairperson
O. Austring, Member
J. Reger, Member