

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND
APPEALS ARISING OUT OF THE BRITISH COLUMBIA CHICKEN MARKETING
BOARD REGULATIONS DATED AUGUST 15, 2000

BETWEEN:

WILHELM FRIESEN
LILLIAN FEHR

APPELLANTS

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

DECISION

APPEARANCES BY:

For the British Columbia Marketing Board

Ms. Christine J. Elsaesser, Vice Chair
Ms. Karen Webster, Member
Mr. Richard Bullock, Member

For the Appellants,

Mr. Lee Sawatsky, Counsel

For the Respondent

Ms. Sarah P. Pike, Counsel

Place of Hearing

Abbotsford, British Columbia

Dates of Hearing

August 13-14, 2003

INTRODUCTION

1. In August 2000, the British Columbia Chicken Marketing Board (the “Chicken Board”) issued new policy rules repealing its General Orders (1987) as amended and all previous Chicken Board policies and guidelines invoked thereunder. As part of these policy rules, the Chicken Board included rules for new entrants, niche markets and of particular interest in these appeals, specialty chicken production.
2. By letter dated October 18, 2000 Ms. Lillian Fehr, on behalf of herself and Mr. Wilhelm Friesen (the “Appellants”) appealed the August 2000 policy rules to the former British Columbia Marketing Board (now known as the British Columbia Farm Industry Review Board or the “Provincial board”)¹. Specifically the Appellants appealed:
 - Part 9, ss. 34, 36, 37 (Transporting of chicken)
 - Part 11, s. 45 (Setting of Price)
 - Part 27 (Barn Space Requirements)
 - Part 43 (New Entrant, Niche Market and Specialty Program)
 - Part 45 (Seizure)
 - Schedules 2, 3, 5, 6, 12, 14 (Transportation, Weighing, Pricing, Levies, Barn Space Requirements, Permit Issuance Guidelines)
3. The policy issues under appeal have evolved and been clarified over time. In addition, the Chicken Board amended its New Entrant, Niche Market and Specialty Program effective July 31, 2002. As a result of discussions between the Appellants and the Chicken Board, some issues were resolved while others remained outstanding. At a second pre-hearing conference held on December 5, 2002, the Appellants identified new issues arising out of a November 15, 2002 letter from the Chicken Board General Manager, Mr. Jim Beattie, addressed to industry stakeholders. On December 11, 2002, the Appellants appealed certain interpretations of the new policy rules as expressed in that letter. They provided further particulars of their issues in a letter to the Provincial board dated January 30, 2003.
4. In a letter dated February 11, 2003, the Chicken Board took issue with these further particulars and filed a preliminary application to have the two appeals, one from the August 15, 2000 policy rules and the other from the November 15, 2000 letter, dismissed as being out of time, or alternatively restricted as to their grounds of appeal.
5. By letter dated February 21, 2003, the Appellants filed a third appeal relating to a decision of the Chicken Board set out in a January 22, 2003 letter. This decision required the Appellants to transfer title of property located at 23981 – 68th Avenue,

¹ The British Columbia Marketing Board and the Farm Practices Board were renamed the British Columbia Farm Industry Review Board effective November 1, 2003: see *Miscellaneous Statutes Amendment Act*, SBC 2003 c. 7 and BC Reg. 350/2003.

Langley, BC from their numbered company into their personal names by June 30, 2003.

6. The Provincial board heard the Chicken Board's preliminary application by telephone conference call on April 15, 2003. The Provincial board found the appeals were filed in time and thus the first appeal (policy rules) and third appeal (corporate ownership of 68th Avenue property) were set for hearing. With respect to the second appeal, the Panel found that as Mr. Beattie's November 15, 2002 letter did not in and of itself contain a decision of the Chicken Board but rather interpreted earlier Chicken Board decisions, this appeal was unnecessary. Given that the Appellants had placed in issue the impact of the New Entrant, Niche Market and Specialty Program on their export business from the outset, the Panel found that the initial appeal was broad enough to encompass the issues raised in the second appeal. The second appeal was dismissed without prejudice to the Appellants.
7. The first and third appeals, both of which are policy appeals, were heard on August 13-14, 2003.

ISSUES

Appeal #1

8. Did the Chicken Board err in passing policy rules in August 2000 which prohibited:
 - a) the increase of permits through pro-rata industry growth;
 - b) a permit holder's purchase of quota beyond industry growth without a corresponding reduction in the permit level; and
 - c) previously unregulated growers from selling or transferring their permit level for a full twelve years, without recognition for the period of time the grower had been in business prior to the enactment of the regulation?
(Permit Terms Issue)
9. Did the Chicken Board err in passing policy rules in August 2000 which limited or prohibited export of permit production? (Export Issue)
10. If the Chicken Board did err on any of the grounds set out above, what is the appropriate remedy?

Appeal #2

11. Did the Chicken Board err by setting June 30, 2003 instead of August 15, 2006 as the deadline for transferring the property located at 23981 – 68th Avenue in Langley, BC into the same name as the permit holder? (Corporate Ownership Issue)

BACKGROUND

12. The Appellants are specialty chicken producers. They have worked for many years developing a market for live and processed specialty chicken both locally and in the United States. They produce Silkies and Taiwanese chicken. Silkies and Taiwanese chicken have different physical characteristics from standard broiler chickens (including different coloured skin and meat, different texture, different uses). They take longer to grow and have a different diet. Taiwanese chickens are a Buddhist style prepared chicken; after processing, the head and feet are still attached and there are no blemishes, bruising, missing parts or torn skin. Silkies and Taiwanese chickens are marketed almost exclusively to Asian consumers. There is virtually no market for cut-up segments of the birds. The demand is year round with peaks around certain Asian holidays.
13. The Appellants began their specialty chicken business in 1984 in response to a perceived void in the market. Initially, the Appellants raised birds in rented facilities. In 1993, they bought their first farm and began raising breeding stock for Silkies. They have continued to expand their operations and have raised chicken on their own farm as well as other rented locations in the Fraser Valley. The demand for specialty chicken in the United States began almost at the same time as in Canada but it was not until 1996 that the Appellants were able to begin exporting to this market. By 2000, the Appellants were producing 348,570 kgs/year including both their domestic and export production. However, in May 2000, the Appellants had a barn fire and lost three quarters of their breeding stock. It has taken approximately three years to rebuild their breeding stock to pre-fire levels.
14. As opposed to a standard broiler grower, the specialty chicken grower does not receive much support from the regulated marketing system. The standard broiler chicken grower contacts a hatchery and places an order for chicks. The breeding stock is regulated and chicks are supplied. When the chicks are placed, the grower is told the approximate shipment date. On a predetermined schedule, the grower raises the feed and water lines; catchers arrive and the birds are shipped to the processor for slaughter and marketing. The grower cleans his barns then begins the whole cycle again. The cycle length for standard broilers is eight weeks.
15. In contrast, the Appellants do their own breeding, planning a year or more ahead of time to acquire the necessary breeding stock. They raise breeding stock, gather eggs and deliver them to a hatchery off farm. Once hatched, the chicks are taken to various growers. When the bird age and size meet the criteria for the customer, the Appellants hire part-time catchers.² The Appellants use their own trucks to haul their birds. The Appellants do some of their own marketing; processors also do some marketing. If the Appellants are exporting live birds, they look after all the paperwork and ensure all tests and inspections are performed. Once at the border,

² Silkie chickens are grown on a fourteen-week cycle and Taiwanese chickens are grown on an eighteen to nineteen week cycle.

an American veterinarian inspects the birds and the paperwork before the Appellants are allowed to deliver their live birds to their customers.

16. Prior to August 2000, the Chicken Board regulated the standard broiler and did not regulate exotic or specialty chicken. The Appellants were able to grow their business completely independent of regulation. The result of the new policy rules is to effectively grandfather the Appellants' historical level of production with a permit. While new permit holders could apply for and receive a 500-bird/week permit, the Appellants were granted a permit for their estimated production of 348,570 kgs/year had the May 2000 fire not occurred. (This translates to 3475 birds/week, roughly 7 times the permit for new producers.)
17. Currently, the Appellants are producing chicken on the following sites:
 - a) Home farm: 1539 – 176th Street, Surrey (48,000 sq. ft.)
 - b) Corporate farm: 23981 – 68th Avenue, Langley (41,000 sq. ft.)
 - c) Lease of barns 1 and 2 from Harbidge Farm Ltd. at 6450 – 240th Street, Langley (52,000 sq. ft.)
18. Despite the fact that the August 15, 2000 policy rules restrict the ability of growers to lease barn space, the Appellants continue to lease the Harbidge property as a result of an agreement reached with the Chicken Board in a letter dated November 22, 2000:

Based on your business requirements as you presented them, the Board is prepared to exercise its discretion under part 43 of the regulations to allow your farms until August 15, 2006 to acquire ownership of sufficient barn space to grow its permit production. If the space is not acquired the permit is subject to cancellation.

19. Currently the Chicken Board is conducting a review of both the permit program (Part 43) and the policy rules. In addition, the Chicken Board is also participating in a broader review of specialty production at the direction of the Provincial board. Draft orders will soon be circulated in the industry and the specialty review is expected to conclude in the next few months.

DECISION

20. Given that these appeals relate to the August 2000 policy rules enacted by the Chicken Board and that these rules have been amended from time to time, the nature of these appeals have evolved.

Permit Terms Issue

21. Two of the Chicken Board's amendments directly impact the appeals before us. On July 31, 2003, the Chicken Board wrote to the Appellants advising of its decision to allow a one-time transfer of a permit after year 6 (of the 12-year permit) as part of a *bona fide* sale of the farm to which the permit is attached. The Chicken

Board also amended its permit program to allow for growth. In its July 31, 2002 amendment to the August 2000 policy rules, the Chicken Board allowed a permit grower, on the anniversary of the issuance of his permit, to purchase quota at a level of up to 10% of the volume of authorised production without any reduction to his permit. If a grower does not make a yearly purchase, the 10% can be carried forward. This amendment is retroactive to August 2000.

22. The Appellants have not purchased any quota to add to their permit holdings. They argue that instead of granting them a permit of 3,475 birds/week, the Chicken Board should have either issued quota or alternatively relaxed the restrictions and limitations relating to their permit. They argue that the new rules do not address their niche poultry business nor do they allow for expansion of their live bird export business. The level of grandfathering the Appellants received is inadequate compensation; it does not allow them to expand their pre-existing domestic and export business and as such results in economic loss. They take issue with many aspects of the speciality program, although not all of these issues form part of these appeals:

- a) The 12-year wait before the permit becomes primary quota.
- b) The non-transferability of the permit, even to a company owned by the Appellants.
- c) The termination of permit on death.
- d) The lack of access by permit growers to industry growth.
- e) The ability of the Chicken Board to refuse to issue a permit.
- f) The 10% limit on yearly acquisition of quota without a corresponding loss of permit production.
- g) The permit fee of \$0.18/bird per cycle.
- h) The Chicken Board's refusal to consider annualised production as opposed to cycle by cycle compliance. (i.e. Taiwanese and Silkie chickens are not grown in the standard eight-week cycle raising issues as to over and under production.)

23. The Chicken Board argues, and we agree, that the 12-year wait and non-transferability issues have now been dealt with. A specialty grower can now transfer his permit after 6 years as part of a *bona fide* transfer of the production unit to which the permit is attached. The Appellants are now at year 4 of their permit and as such they do not have long to wait should they decide to exit the industry. Further, should the Appellants wish to transfer the permit into their numbered company, the Chicken Board would allow that to be done as long as there was consistency between the permit holder(s) and the owner(s) of the production unit. This transfer would not count as a "one-time transfer" of the permit.

24. As for access to growth, the Chicken Board argues, and we agree, that a permit is not quota and does not have all the same benefits. The Provincial board recognised this point in its decision in *Hallmark Poultry Processors Ltd. et al v. British Columbia Chicken Marketing Board*, June 27, 2003:

49. ...while neither quota nor permits are property, permits are, within the regulated marketing system's policy structure, generally regarded as providing a less secure form of production. Quota is the key underpinning of supply management regulation. The nature and finite supply of quota has meant that it has become expensive to acquire in the marketplace

despite the legislative prohibition on a commodity board assigning value to it. The regulated system makes all key regulatory decisions in relation to quota, and makes all reasonable efforts to ensure chicken that a grower produces under quota is purchased in a given period, according to the [Chicken Farmers of Canada] allocation to the province. In turn, the grower is subject to potential penalties for over and under production of his quota.

50. Permits, by contrast, are a regulatory device commonly used by commodity boards to achieve specific policy objectives, such as fostering production in specialised or niche products, fostering new industry entrants or meeting other emerging production needs. Permit production tends to cost less than quota production. The consequences of over or under production can be less severe for permit as opposed to quota production.
 51. The *quid pro quo* of permit production is, of course, that it is more transient than quota production. The nature of the licence to produce conferred is far less secure. Permit production cannot generally be sold, and according to the evidence of Mr. Peter, bankers do not assign any equity value to it. The realities of permit production make it attractive to many growers who cannot afford quota. At the same time, however, those growers know, or should know, they assume a risk whenever they make investments to grow permit birds.
25. The Chicken Board correctly argues that there are valid policy reasons for differentiating between quota holders and permit holders as regards the *pro rata* distribution of growth. Given that quota holders have generally paid for their quota and permit holders have not, it is not unreasonable for quota holders to benefit from industry growth. However, the Chicken Board argues that if the Panel is concerned by this policy, the appropriate remedy would be to direct the Chicken Board to review that rule in the context of its review of the general orders.
 26. The Chicken Board also properly points out that since August 2000, there have been no allocations of growth to the industry and as such the Appellants have not been affected by this rule. Second, if the Appellants want to grow their business, they can do so through the acquisition of quota. Given that their ability to acquire 10% of their permit goes back to August of 2000, the Appellants can now purchase approximately 17% of their permit holdings in quota. To date, the Appellants have yet to produce even the full amount of their permit and as such, an inability to acquire quota is not limiting their production.
 27. The Chicken Board rejects the Appellants' proposal that they be given quota or further permit, and in support of this position cite the decision of the Provincial board in *Farmcrest Foods Ltd. v. British Columbia Chicken Marketing Board*, June 25, 2003:
 62. For the reasons given above we reject the view that the Appellant's grower permit should be increased. The Panel is of the opinion that as a matter of sound marketing policy Farmcrest's present position is unreasonable and seeks effectively to turn the privilege associated with past grandfathering into a right to produce only under permit. This is contrary to both the language and sound principle of the Chicken Board's policy rules. For the reasons given above the Chicken Board was correct in refusing Farmcrest's request for additional permit birds. We find that the Chicken Board was being responsive, fair and balanced when in early July 2002, it decided Farmcrest could purchase 10% of its permit amount as quota without any permit reduction – which decision the Chicken Board later extended to the entire industry. Farmcrest has since decided not to purchase any quota, and

to take “an all or nothing” approach. This, of course, is a matter for Farmcrest. However, based on the evidence led at this hearing the Chicken Board's decision to allow Farmcrest to purchase 10% of its quota annually and without impact on its permit production was very fair.

28. As for the Appellants’ request for annualised production as opposed to period-by-period compliance, the Chicken Board points out that the Appellants have a large operation. If their production is not properly accounted for, BC could easily over or under produce its allocation and be subject to national penalties. The Chicken Board is currently working with another large permit grower to develop accurate production projections for each period. The Chicken Board wants its period-by-period allocation requests to the Chicken Farmers of Canada (“CFC”) to reflect specialty producers’ needs. Although it is difficult to incorporate the longer cycles associated with specialty production into the standard 8-week broiler cycle for period-by-period production compliance, specialty production has a pattern and can be planned. The Chicken Board does concede that if period-by-period compliance proves unworkable, then the alternative is to move to annualised production. However, the Chicken Board does not believe that period-by-period compliance has been given a real effort by specialty producers.
29. The Appellants argue that the permit system adopted by the Chicken Board in its August 2000 policy rules (and as later amended in July 2002) is inadequate and too restrictive to address their longstanding business. However, the evidence demonstrates that the Chicken Board has been sensitive to the difficulties associated with moving producers from outside regulation into a regulated model. The Chicken Board has been receptive to the complaints of specialty growers and in some cases has attempted to address them. The Chicken Board has specifically addressed the issue with respect to transferability. Specialty growers considering retirement now have means by which they can exit the industry and sell their operations as a going concern. Looking at the Appellants, should they so choose they could sell their operation in two years.
30. In response to concerns raised by another specialty grower, the Chicken Board amended its program to allow for the purchase of up to 10% of permit holdings each year, with an ability to carry forward any skipped years. Permit holders are no longer limited to the permit holdings and restricted in their ability to purchase quota. They can grow their businesses. The Appellants preference is for their permit to be converted to quota and growth to be allocated on a *pro rata* basis or through additional permit production. No doubt all growers would like these options. However, the Panel does not support this position. Prior to enacting the August 2000 orders, the Chicken Board was directed to bring order and regulation to the specialty chicken sector. In so doing, it had to address the businesses of pre-existing specialty growers as well as the entry of new specialty growers into the regulated marketing system. The Panel finds that the Chicken Board has been fair in its treatment of the Appellants. It grandfathered their production at a generous level, which by the Appellants’ own evidence they have yet to meet. The Panel is aware that the Appellants had a fire and lost their breeding stock, and we are also

mindful that uncertainty around whether the Appellants were entitled to export live birds may have led to conservative production decisions. However, the fact remains that the Appellants have yet to produce their full permit and should their markets grow, they can purchase quota to meet market demands. The Panel agrees with the position of the Provincial board in its earlier *Farmcrest* decision cited by the Chicken Board, wherein it held that the privilege of past grandfathering does not carry with it the right to only produce under permit.

31. During this hearing the Chicken Board expressed a willingness to consider other issues or deficiencies with their specialty program. Since then, the Chicken Board has been carrying out a review of its policy rules and retained a consultant to make recommendations for improvements to the specialty program. Having found no error in the Chicken Board's decision to implement its specialty program, the Panel is of the view that the proper course for the Appellants, if they wish to influence policy and if they have not already done so, is to raise their specific issues directly with the Chicken Board or its consultants for consideration in the broader context of the specialty review.

Corporate Ownership Issue

32. The Appellants take issue with the requirement that they transfer title to their farm, located at 23981 – 68th Avenue in Langley, BC and held through a numbered company, to themselves as individuals by June 2003. In November 2000, the Chicken Board granted the Appellants an extension until August 15, 2006 to purchase enough barn space for their permit production. Up until that point in time the Appellants leased barn space to grow the majority of their chicken.
33. The Appellants purchased the 68th Avenue property in 2002. Based on legal and accounting advice, the transaction was structured as a share purchase of the numbered company that held title to the property rather than a transfer of title. While this was an arm's length transaction done in the spirit of the Chicken Board's requirement to extinguish their leases, the Appellants ran afoul of the Chicken Board's requirement that a production unit be registered in the same name as the permit (or quota) holder. The Appellants understand the Chicken Board's requirement but as they have had to deal with a great deal of uncertainty in their business plans, they do not want to incur further expense and request that they not be required to transfer the property until the August 15, 2006 deadline as earlier agreed to.
34. The Chicken Board opposes this request and argues that a fundamental element of supply management is that ownership of the farm is tied to production capacity. It promotes stability and recognises a desire to avoid aggregation. Other growers who were not in compliance have transferred title of their properties to reflect their permit or quota holdings. The Chicken Board does allow individuals to own property through a corporate vehicle as long as there is consistency between the permit or quota and title to the property.

35. We agree with the Chicken Board that as a matter of sound marketing policy, it is important that the person (either individual or corporate) that holds a permit or quota also owns the production unit upon which the regulated product is grown. In this case, the Chicken Board exercised its discretion and gave the Appellants 6 months to remedy the situation. Given that the Appellants chose to appeal this decision and given the length of time it took for the matter to be heard and a decision rendered, the Appellants have had the benefit of a further 8-month extension. It is unfortunate that the Appellants did not receive the full advice on regulatory requirements at the time of transfer. However, the Panel finds that the Appellants must comply with this requirement and directs that on or before December 31, 2004, the 68th Avenue production unit and the 176th Street production unit be held in the same name as the permit holder. It is for the Appellants to decide whether they prefer to hold both farms personally or as shareholders through a corporate vehicle.

Export Issue

36. The final issue on appeal relates to the Appellants' export business. Prior to the August 15, 2000 policy rules, the Appellants' specialty chicken operation was not regulated. In addition to their domestic markets, the Appellants had a relatively small but developing market for live birds in the western United States. This market was summarised in a document created by the Appellants and faxed to the Chicken Board on November 17, 2000:

Year	Total birds	Shipped Live (US)
1999	160,825	7,200
2000	164,106	19,450

37. When the new policy rules were implemented, the Appellants sought assurances from the Chicken Board that their permit was for domestic production only and would not limit their live bird exports. However, the production numbers used to calculate the Appellants' grandfathered permit production included all production at that time (both domestic and export). The Chicken Board was not then concerned with live bird exports and conveyed that message to the Appellants. However, in November 2002, the Chicken Board became aware that the export situation may have changed upon BC's entry into the Federal Provincial Agreement for chicken (the "FPA") in June 2001 and the Chicken Board's subsequent membership in CFC. As part of this agreement, CFC placed a 14% cap on BC's exports and determined that *all* export production must be accounted for within that cap.
38. In addition, as a member of CFC, the Chicken Board also had to abide by and enforce certain federal regulations relating to export production which came into force December 17, 2001: *Canadian Chicken Licensing Regulations*, *Canadian Chicken Marketing Quota Regulations*. The *Licensing Regulations* prohibit persons from marketing chicken in interprovincial or export trade as a producer,

producer–processor, processor, dealer, retailer or transporter, without the appropriate licence issued by CFC: s. 3. The *Marketing Quota Regulations* prohibit a person from marketing chicken in interprovincial or export trade unless he holds a federal quota or a federal market development quota has been allotted, on behalf of CFC, by the provincial commodity board: s. 3.

39. We were not made aware of any reason why the Appellants would be unable to regularise their exportation by obtaining the necessary licences under the *Licensing Regulations*. With respect to the *Marketing Quota Regulations*, “federal market development quota” is issued to a federally inspected processing plant following a request for export production from the provincial commodity board to CFC. CFC in turn allocates export production to each province. In BC, the Chicken Board distributes the allocation among those growers who applied for it. This is the system by which conventional broiler production is grown, processed and exported. Because federal market development quota relates to a processing plant, it may be that the Appellants situation would not easily be covered by this quota.
40. However, federal quota can be applied for by a grower as long as he holds provincial quota and is in compliance with the orders, regulations and rules of the provincial commodity board and with the orders and regulations of CFC: s. 4 *Marketing Quota Regulations*. The quantity of chicken that a grower is authorised to market from a province under a federal quota is equal to the quota allotment to the producer for that period, minus the quantity of chicken marketed by the producer in interprovincial or export trade. Once properly licenced under the *Licensing Regulations*, the person can export up to the level of his permit or quota holdings. Again, we see no reason why the Appellants would be unable to readily obtain the necessary federal approvals to accommodate their existing level of production. On this issue, the Appellants argue that a representative from CFC, Mr. Sequin, advised that they had to obtain provincial quota to allow them to export. It is the Chicken Board’s opinion that the requirement for provincial quota is met in the form of the Appellants’ permit and as such the Appellants should proceed to obtain the proper licences.
41. Increases are, however, a different matter. In order for a person to increase exports, he requires a further permit or quota from the Chicken Board. In issuing federal quota to producers in the province, the Chicken Board must not allow the aggregate amount of quota allotted for any type of production in BC during any period to exceed the total quota allotted to the province by CFC for that period (both domestic and export). Both over and under production outside certain limits trigger production penalties to the province under the FPA.
42. The Chicken Board argues that the Appellants are subject to the same federal regulations as the Chicken Board. The Chicken Board has not passed any rules that are unfair. Rather it has attempted to adjust to the current regulatory and market situation by developing a system which complies with federal regulations. If the Appellants wish to expand either their export or domestic business, they must

purchase quota or work with a processor to gain access to market development quota.

43. As noted above, the Appellants' business does not appear to neatly fit within the Market Development Program. The Market Development Program contemplates a processor finding a new market for their product outside of the province, coming to the Chicken Board with that demand, and the Chicken Board requesting sufficient allocation from CFC to meet both the domestic and export demands. This Program does not appear to contemplate such a request coming from a grower intending to ship a live speciality bird out of BC. The Appellants are correct when they say that, in attempting to find new growth and new markets, they feel like a square peg in a round hole, being held to the requirements of a Program that was never intended to apply to them. Up until the December 2001 federal regulations, the Appellants were completely on side with the Chicken Board's programs and could export whatever product they wanted outside BC.
44. Currently, there is no ability for a grower to put forward an allocation request to the Chicken Board. The Chicken Board suggests that the Appellants could develop a relationship with a federally inspected processor and have that processor speak on their behalf. The Appellants argue, and the Panel agrees, that this is not a solution. Why would a processor assist the Appellants in meeting their live export markets when there is no processing involved? It appears that policy, albeit policy related to the federal-provincial agreement, is creating a barrier to the Appellants' attempts to be innovative and meet a growing market demand. The Chicken Board also suggests that the Appellants should deal with CFC to obtain the necessary licences. While it is clear that the Appellants do need to apply for whatever federal licences they require, that does not address the fundamental issue concerning how new markets and growth can be fairly and properly accommodated. There is very clearly a leadership role that must be played by the Chicken Board with respect to CFC to demonstrate that there is a significant export market opportunity and to develop a way to receive an allocation to support this market despite the current policy omission regarding this subject.
45. The Chicken Board has stated that there is willingness on the part of CFC to consider good faith applications for increased allocations. This situation cries out for such an application. We have a proven market which poses no threat to the domestic market. Other provinces and other chicken boards may not be as aware of this market as it responsive to the large Asian markets in BC and the Pacific Northwest.
46. The Panel is aware that change is never easy. The Panel also acknowledges the impact of the current avian flu restrictions on export. Nevertheless, the Appellants have demonstrated that through their own initiative and hard work there is a significant market for live bird exports into the US. The Chicken Board should take whatever steps are necessary to advocate and encourage specialty producers to exploit this market in the longer term. In working towards the foregoing, the

Provincial board in its supervisory capacity is prepared to assist the Chicken Board in working with the Minister of Agriculture and CFC in order to bring about a positive change in the best interests of specialty chicken producers in BC.

ORDER

47. The Appellants' appeals are dismissed, subject to the direction that the Chicken Board, in its specialty review, develop an export program suitable for specialty chicken production. As part of this direction, the Chicken Board is also directed to actively seek the cooperation of CFC to obtain recognition for the export of live specialty chicken production.
48. The dismissal of these appeals is of course without prejudice to the Chicken Board's ongoing review of issues relating to speciality production, and its right to grant the Appellants the benefit of any change in marketing policy flowing from that review.

Dated at Victoria, British Columbia this 19th day of March, 2004.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

(Original signed by):

Christine J. Elsaesser, Vice Chair

Karen Webster, Member

Richard Bullock, Member