

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

BETWEEN:

HALLMARK POULTRY PROCESSORS LTD.
J.D. SWEID LTD.
ASHTON ENTERPRISES LTD.
WAYSIDE FARMS INC.

SUNRISE POULTRY PROCESSORS LTD.
SUNWEST FOOD PROCESSORS LTD.
DOGWOOD POULTRY LTD.
HIGH PLAINS POULTRY FARMS LTD.

K & R POULTRY LTD.
(DBA FARM FED)

BRITISH COLUMBIA EGG HATCHERY ASSOCIATION

APPELLANTS

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

AND:

BRITISH COLUMBIA CHICKEN GROWERS ASSOCIATION

INTERVENOR

**REASONS FOR DECISION
ADJOURNMENT APPLICATION**

APPEARANCES

For the British Columbia Marketing Board

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

For the Appellants

Mr. Christopher Harvey, Q.C.
Counsel for Hallmark et al

Ms. Wendy A. Baker
Mr. Darrell Roberts, Q.C.
Counsel for Sunrise et al

Ms. Tracey M. Cohen
Counsel for Farm Fed

Mr. John Durham
Agent for the British Columbia
Egg Hatchery Association

For the Respondent

Mr. John J.L. Hunter, Q.C.
Ms. Sarah Pike
Counsel

For the Intervenor

Ms. Maria Morellato, Counsel

Date of Hearing

February 19, 2001 and
via written submission

Place of Hearing

via telephone conference call

Introduction

1. This is a decision about whether the appeals of Hallmark Poultry Processors Ltd. and others from the new, August 15, 2000, Regulations of the British Columbia Chicken Marketing Board (the “Chicken Board”) should be adjourned until October 2001. This in order to allow the parties to these appeals time to negotiate a resolution to the issues between them. The appeals commenced on September 25, 2000. To date, there have been seven hearing days on these appeals.
2. The appeals are set to reconvene on February 26-28, and March 5-9, 2001. The parties anticipate that at least two further days beyond that will be required to conclude the hearing of the appeals.
3. On February 1, 2001, the British Columbia Marketing Board (the “BCMB”) received the initial request for an adjournment from Counsel for Sunrise Poultry Processors Ltd. and others (“Sunrise Poultry”). This request was made with the concurrence of all the Appellants except K & R Poultry Ltd. doing business as Farm Fed (“Farm Fed”). On February 2, 2001, Counsel for Farm Fed confirmed that she had no objection to the adjournment.
4. On February 8, 2001, Counsel for the Chicken Board advised the BCMB that the Chicken Board opposed the adjournment application.
5. On February 9, 2001, Counsel for Sunrise Poultry provided further submissions supporting the application for an adjournment. A further response was received from Counsel for the Chicken Board on February 15, 2001.
6. On February 19, 2001, the Panel held a hearing by teleconference in order to allow the parties to make any further oral argument in support of their positions on the application to adjourn the appeals.

Arguments

7. The Appellants seek an adjournment in order to allow time to negotiate a settlement of many, if not all, the issues between them and the Chicken Board. They argue that tentative solutions have been determined and the parties require further time to allow possible solutions to be worked out. They argue that the continuation of the appeal in February 2001 will not assist the settlement process and may result in the fragile spirit of co-operation being destroyed and the parties being driven further apart. They argue that the appeals are expensive, for Farm Fed prohibitively so. The appeals are time-consuming and should not proceed while the parties are actively working on a solution.

8. They argue that their purpose in seeking the adjournment is not to increase uncertainty in the industry, but rather to allow the Chicken Board's recent modifications to the new Regulations to be tested. The Appellants believe that the first periods after which the new Regulations are fully implemented (A-39 and A-40) should be treated as trial periods in order to work out any problems associated with implementation. If the problems can be worked out, there will be no need for the appeals to continue.
9. The Appellants argue that a considered decision by the BCMB will not foster the same kind of trust as a negotiated solution arrived at by the parties.
10. Both the Chicken Board and the British Columbia Chicken Growers Association oppose the adjournment. Although they agree that the parties have been working towards a negotiated solution, they are concerned that a lengthy delay in resolving the challenge to the Chicken Board's new Regulations will create more uncertainty for producers and processors. The Chicken Board is concerned about the effect of this uncertainty on the BC chicken industry.
11. The Chicken Board is concerned that as long as these appeals remain unresolved, a cloud is cast over the new Regulations. This affects industry acceptance and compliance with the new Regulations. The Chicken Board is not confident that while the new Regulations are under appeal, full compliance will be achieved or that the integrity of the new Regulations will be maintained. It is also concerned about the effect of a lengthy adjournment on the ability to successfully negotiate a new Federal Provincial Agreement, a matter we will speak to briefly at the end of these reasons.
12. The Chicken Board does not want to force the parties back to a hearing that no one wants. But it argues that the solution is not to adjourn the proceedings and leave the appeals hanging over the parties' heads for 8 months. Rather, the best way to achieve the objective of resolution is for the Appellants to withdraw their current appeals without prejudice to their rights to file a new appeal(s). This would allow the parties to operate under the new Regulations and, where necessary, make adjustments by mutual agreement. This would remove any cloud over the integrity of the new Regulations as they are in place and are being implemented. Any appeal that resulted would likely be different than that framed by the Appellants in these appeals and would likely be more focussed on specific problems with the implementation of the new Regulations.
13. The Appellants have been very clear that they are not prepared to abandon their appeals. To do so would in their opinion leave them unprotected, "standing like shorn lambs in the wind". While they desire a lengthy adjournment, withdrawal of the appeals is not a consideration.

Decision

14. Having reviewed the submissions of Counsel, the Panel is of the opinion that the appeals should proceed as scheduled on February 26, 2001. A great deal of time has passed since the appeals were commenced. The appeals challenge virtually every component of the Chicken Board's restructuring of the chicken industry in BC. They raise serious issues as to the validity and legitimacy of Chicken Board actions taken to regulate the industry. The Panel accepts that until these appeals are resolved, a cloud of uncertainty will hang over the chicken industry. This uncertainty will continue to impair the Chicken Board's ability to fully and effectively regulate all chicken industry participants in clear and consistent compliance with its new Regulations.
15. In the Panel's view, a lengthy adjournment of appeals challenging the very underpinning of the Chicken Board's authority to regulate is not in the best interests of the BC chicken industry. The appeals having been commenced, all industry participants – processors and producers alike – have a right to know where they stand. They have a right to know which rules will be upheld and enforced, and which may not, and they have a right to plan their affairs knowing that their neighbours are complying with the same rules in the same way as they are. All this is particularly important in light of the uncertainty that has plagued the BC chicken industry in the last number of years. The Chicken Board's concern about maintaining the integrity of the new Regulations, whose effect we have previously refused to stay, over the period of a lengthy adjournment is, in our view, compelling.
16. The parties have indicated that since the last adjournment in December 2000, progress has been made on a number of issues. This is heartening. However, in the absence of the consent of all parties, the Panel is not prepared to grant an adjournment in these circumstances. In situations like this, where appeals represent a fundamental challenge to the authority of a marketing board, it is in the best interests of the industry that they be resolved in a timely fashion so that, one way or the other, the industry will have certainty.
17. The Appellants argue that the “fragile spirit of co-operation” which the parties have built to this point is in jeopardy should the appeals be continued. The Panel does not accept this position. Indeed, the very fact that the parties have managed to resolve a number of issues during these appeals belies this argument. The parties involved in these appeals are sophisticated; experienced Counsel represent them. If there is a true desire to resolve the issues that led to these appeals, the parties will do so. If not, the parties will have to live with the decision of the BCMB.

18. In addition, given the number of Counsel present, considerable scheduling difficulties have already been encountered. If a lengthy adjournment is granted, there is a real concern that obtaining new dates will be problematic, work done to date will be lost and problems may arise in reconstituting the Panel.
19. The Chicken Board raised the spectre of the new Federal Provincial Agreement and argued that a lengthy adjournment could be prejudicial to BC's ongoing negotiations. The Appellants argue that the Federal Provincial Agreement has no place in this Panel's consideration of the adjournment issue. We agree with the Appellants on this point. As reflected in our reasons above, considerations relevant to the Federal Provincial Agreement have formed no part of our reasoning in denying the Appellants' application for a lengthy adjournment. Rather, the Panel is satisfied that it is in the best interests of the BC chicken industry to have a timely decision on this broad challenge to the Chicken Board's new Regulations.
20. The Appellants' adjournment application is dismissed.

Dated at Victoria, British Columbia this 21st day of February, 2001.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine Elsaesser, Vice Chair

Karen Webster, Member

Satwinder Bains, Member

Richard Bullock, Member