

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND IN THE MATTER OF AN APPEAL FROM A DECISION
PASSING INTERIM ORDER #002 DATED SEPTEMBER 13, 2000

BETWEEN:

HALLMARK POULTRY PROCESSORS LTD.
SUNRISE POULTRY PROCESSORS LTD.

APPELLANTS

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

AND:

BRITISH COLUMBIA CHICKEN GROWERS ASSOCIATION

INTERVENOR

REASONS FOR DECISION

APPEARANCES

For the British Columbia Marketing Board

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

For the Appellants

Mr. Christopher Harvey, Q.C.
Counsel

For the Respondent

Mr. John J.L. Hunter, Q.C.
Counsel

For the Intervenor

Ms. Maria Morellato, Counsel

Date of Hearing

October 12, 2000

Place of Hearing

Langley, British Columbia

INTRODUCTION

1. On August 15, 2000, the British Columbia Chicken Marketing Board (the “Chicken Board”) issued new Regulations. These Regulations repealed the General Orders (1987) as amended and all previous Chicken Board policies and guidelines invoked thereunder.
2. On August 21, 2000, the Chicken Board issued Interim Order #001 which set out that period A-36 would be the period to correct over-production. All over production would be deducted from a grower’s subsequent production allotment and any production above a 5% sleeve would be deducted as a penalty.
3. On September 13, 2000, the Chicken Board issued Interim Order #002, which set the production allocation for period A-36.
4. On September 19, 2000, Hallmark Poultry Processors Ltd. and Sunrise Poultry Processors Ltd. (the “Appellants”) appealed Interim Order #002 and requested a stay of the effect of this Order until this appeal has been heard and determined.
5. On October 4, 2000, the Appellants withdrew their application for a stay of this Order.
6. Intervenor status was granted to the British Columbia Chicken Growers Association (the “Growers Association”).
7. The appeal was heard on October 12, 2000.

ISSUE

8. Does Interim Order #002 establish a quantity of product to be marketed that is totally unrealistic in that it is far too high for the market requirements for the period to which it relates (A-36)?

FACTS

9. On August 9, 2000, the Chicken Board met with the Joint Committee made up of members of the Growers Association and the Primary Poultry Processors Association of British Columbia (the “PPPA”) to discuss the allocation for period A-36.

10. The PPPA, of which the Appellants are both members, requested the following production allocation:

Domestic	16.0 M kgs eviscerated weight (“evisc”)
Export	<u>2.3 M kgs evisc</u>
Total	18.3 M kgs evisc

The 2.3 M kgs evisc for export production is separate from the domestic allocation, including any over production adjustments to the domestic allocation, and is not an issue in this appeal.

11. The PPPA was concerned about over production and requested an over production sleeve of 5%.
12. The Growers Association proposed that the A-36 quota period be used as a correction cycle and that the over production from the summer cycles be added to the allocation. The over production was contemplated to be approximately 2 M kgs.
13. The PPPA made the request that Chicken Board staff verify, no later than September 12, 2000, the over production numbers and confirm that the over production would be shared among processors according to their percentage market share (i.e. 25/25/50 for each of Sunrise/Lilydale Foods Ltd. (“Lilydale”)/Hallmark).
14. At the August 14-15, 2000 meeting of the Chicken Board, representatives from the Growers Association and the PPPA met with the Chicken Board respecting the quota allocation for period A-36. Both the Growers Association and the PPPA confirmed their agreement with the following allocation:

Domestic	16.3 M kgs evisc (including 300,000 kgs specialty production)
Export	<u>2.3 M kgs evisc</u>
Total	18.6 M kgs evisc

15. Both the Growers Association and the PPPA also agreed at the August 14-15 meeting of the Chicken Board that period A-36 would be a compliance period for all growers to get their production into line with their quota allocation.
16. On September 11, 2000, the Chicken Board met to determine the allocation for period A-36. The Chicken Board decided to respect the existing consensus unless the Joint Committee made new recommendations. The Chicken Board adopted the agreed to allocation for period A-36.
17. On September 13, 2000, the Chicken Board determined the over production numbers from the summer amounted to 3 M kgs evisc.

18. After taking into account over production of 3 M kgs evisc and adding that to the domestic allocation requested by the processors (16 M kgs evisc), the Chicken Board issued Interim Order #002 which set the allocation, including 100% secondary and 36% transitional.

ARGUMENT OF THE APPELLANTS

19. The Appellants argue that the levels of production set by the Chicken Board in Period A-36 are simply too high.
20. In addition, they argue that when Order #002 is considered in light of the recent enactment of the new Regulations, a huge amount of confusion has been created on the part of the Appellants and their growers.
21. Section 64 of the new Regulations requires period by period compliance. Sections 96-106 create penalties for over and under production. Interim Order #001 creates a 5% sleeve for over production. The Appellants are left in a quandary as to the combined effect of these various provisions.
22. Turning to Interim Order #002, the Appellants maintain that while they asked for a production allocation of 16 M kgs evisc, the Chicken Board has instead allocated 19 M kgs evisc which is simply too much product.
23. Although the Appellants originally agreed to A-36 as a correction period and with the 5% sleeve, in hindsight they argue that the Chicken Board is trying to do too much too fast. It is simply too difficult to accommodate 3 M kg evisc over production in the lowest chicken demand cycle of the year. Instead, they ask that the correction cycle be moved to A-37 to allow the over production to be brought into line. They also take issue with reducing the over production sleeve from the 15% under the old system to the current 5%. This is too severe a transition and they want further discussions with the Chicken Board.
24. The Appellants argue that that their growers need relief. There is simply not enough time for growers to get themselves into line in A-36 so that they can avoid a penalty.
25. Looking at the process issue, the Appellants argue that Interim Order #002 does not reflect their original agreement. When the PPPA agreed to the allocation, it was their understanding that over production was approximately 2 M kg evisc. Given that it is up to the processor to finesse the production schedule for each grower, the over production numbers were critical. The PPPA asked for confirmation of the over production numbers no later than September 12, 2000. Instead they received the numbers on September 13, 2000, and the numbers reflected over production significantly greater than what had been contemplated.

26. Although this is just one day difference, there is simply not enough time to fine tune the allocations between growers. As such, the Appellants argue that growers will likely be in an over production situation and thus subject to penalty.

ARGUMENT OF THE RESPONDENT

27. The Chicken Board argues that this appeal is entirely unnecessary. The Chicken Board had created a process for setting allocation levels. The Joint Committee, which is comprised of processor and grower members, meets and makes recommendations to the Chicken Board.
28. In the case of Interim Order #001, the Joint Committee met and recommended A-36 as the period to correct over production and a 5% over production sleeve. These recommendations were the basis for Interim Order #001 issued on August 21, 2000. Now the Appellants have had second thoughts and argue that A-36 will not give their growers enough time to bring their production into line, and they want the correction period moved to A-37. The Respondent argues that it does not hear the growers complaining. Lilydale, the other major provincial processor, is not appealing Interim Order #002. Correction periods have been in existence for ten years. There is not a problem.
29. In the case of Interim Order #002, the Joint Committee met and determined that the processors required 16 M kgs evisc production for A-36. This recommendation was made to the Chicken Board and the Chicken Board accepted it. Interim Order #002 is reflective of the agreement arrived at by the Joint Committee.
30. The processors are not receiving more production than they asked for. The additional 3 M kgs evisc will not be produced, rather it is a correcting allocation to balance over and under production of growers in order to bring them into line by the end of A-36. The fact that the over production turned out to be 3 M kgs evisc rather than 2 M does not affect the number of eggs to be set by the processor-owned hatcheries. It has nothing to do with them; they will set the number of eggs required to produce the 16 M kgs evisc that they require.
31. In addition, it is the evidence of Mr. Jim Beattie, General Manager of the Chicken Board, that growers who are significantly over produced have the ability to lease quota in order to bring their over production into line and avoid penalty. In the event that a problem occurs, Mr. Beattie is of the opinion that the Chicken Board is prepared to consider extenuating circumstances for over production. He states:

We are not out to penalise the growers. We're out to do what they said they wanted to do, which was to bring everybody into line.
32. The Appellants also take issue with the 5% sleeve. The Chicken Board maintains that this too was a request of the processors at the Joint Committee level in order to ensure that there was not too much product.

ARGUMENT OF THE INTERVENOR

33. The Intervenor supports Interim Order #002 as it is reflective of the agreement arrived at by the Joint Committee.
34. Mr. Rick Thiessen, the former President of the Growers Association and member of the Joint Committee, confirms the position of the Chicken Board that Interim Order #002 reflects the agreement arrived at by the processors and the growers at the Joint Committee level. He states that the processors came to the table asking for the lowest production levels in two or three years. The growers were concerned about the reduction in production levels but as the processors know the market the growers went along with the request. Interim Order #002 reflects this agreement.
35. Mr. Thiessen does not put much stock in the Appellants' argument that they require more time to bring the over production into line. He states the Order was struck to allow those growers who were over produced to get into line. The effect of the Order is not to put 19 M kgs evisc into the market place. Rather, once the over production is deducted, only 16 M kgs evisc will be produced in A-36.
36. Mr. Thiessen also pointed out that hatcheries begin setting eggs in their incubators nine weeks prior to the beginning of a cycle and continue to set eggs for that cycle for eight more weeks. There is adequate time in the system to allow over production to be adjusted throughout the cycle.
37. Mr. Thiessen recalls that earlier this year the processors requested that the under production correction period be moved forward to A-34 from A-35 and the sleeve reduced to 3%. This request was made to respond to the high market demands in the summer. While the request was made on short notice and presented difficulties for the growers, they were still able to accommodate the processors. Mr. Thiessen does not believe that A-36 will be any different.
38. In addition, Mr. Thiessen does not believe the short time frame for bringing over production into line creates insurmountable problems for growers. He shares Mr. Beattie's view that growers can lease out quota to balance their over production and thus, avoid penalty.

DECISION

39. At the Appellants' request, the hearing of this appeal was moved up. Rather than be heard at the conclusion of the appeal with respect to the August 15, 2000 Regulations, by agreement between the parties it proceeded on a day scheduled for the other appeal.

40. In presenting their appeal, the Appellants relied on the evidence of Mr. Art Stafford. Mr. Stafford is not a chicken processor. Rather he was the long time General Manger of the Chicken Board and now contracts his services to certain processors. He is not a member of the Joint Committee and as such he was not in attendance at the meetings held between the Chicken Board and the Joint Committee prior to the passing of Interim Order #002.
41. Mr. Stafford gave evidence regarding the Appellants' displeasure over the allocation in Interim Order #002 and the concerns raised by certain growers. The Appellants did not call any processor representative or grower to give direct evidence concerning the impact of Interim Order #002 on their operations.
42. The Chicken Board's argument is quite simply that the Chicken Board has a process whereby allocation decisions are made after recommendations are received from the Joint Committee. The Joint Committee is made up of processor and grower representatives. In this case, the Chicken Board followed the recommendation of the Joint Committee and gave the processors the 16 M kgs evisc production that they requested to meet their domestic demands.
43. Part of the justification for this appeal is that the Appellants' growers have raised concerns about potential penalties for over production if they can not get their production into line. The Appellants however, did not call one grower witness to provide specifics concerning this allegation. Rather all we have is the representation of Mr. Stafford that the Appellants have unhappy growers.
44. This presents a difficulty in light of the support of the Intervenor for Interim Order #002. Mr. Thiessen confirmed the position of the Chicken Board that Interim Order #002 reflects the agreement arrived at by the processors and the growers at the Joint Committee level. Mr. Thiessen does not put much stock in the Appellants' argument that they require more time to bring the over production into line. While it may be difficult, he believes that growers who are over produced can get into compliance in A-36 in accordance with the agreement at the August 14-15, 2000 meeting of the Chicken Board.
45. The Panel is not satisfied that Interim Order #002 sets unrealistic market requirements. It is clear from the evidence, which we accept, of Mr. Beattie that the actual amount of domestic production allocated for A-36 is the 16 M kgs evisc requested by the processors plus the 300,000 kg required for specialty production. While there may be some complications in the placement of the proper number of birds on each grower's farm to address over production by the end of A-36, the Panel is not satisfied that this problem is insurmountable.
46. The Appellants as part of the Joint Committee had input into allocations set under Interim Order #002. Indeed they have received the exact amount of production that they requested. Furthermore, both Mr. Beattie and Mr. Thiessen gave evidence of

means by which growers could lease out quota to balance their over production. In all the circumstances of this appeal, the Panel is not prepared to set aside Interim Order #002.

ORDER

- 47. The appeal is dismissed.
- 48. There will be no award of costs.

Dated at Victoria, British Columbia this 27th day of October, 2000.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

Christine Elsaesser, Vice Chair
Karen Webster, Member
Richard Bullock, Member