IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND
IN THE MATTER OF AN APPEAL
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
PRODUCTION OF DOCUMENTS

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 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. Counsel
For the Intervenor	Ms. Maria Morellato, Counsel
Date of Hearing	October 10-12, 2000 and via written submission
Place of Hearing	Langley, British Columbia

I. ISSUE

1. This is an interim decision about the scope of the British Columbia Chicken Marketing Board's ("Chicken Board's") statutory obligation to produce documents on an appeal to the British Columbia Marketing Board (the "BCMB") under the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330 ("the *Act*"). A separate issue, concerning the admissibility of June 6, 2000 Minutes of the "Joint Committee Working Subgroup", will be addressed in Part V of these reasons.

II. BACKGROUND: CONTESTED DOCUMENTS OF THE CHICKEN BOARD

2. This dispute about disclosure arises within appeals commenced by Hallmark Poultry Processors Ltd. et al ("Hallmark"), Sunrise Poultry Processors Ltd. et al ("Sunrise"), K & R Poultry Ltd. ("Farm Fed") and the British Columbia Egg Hatchery Association (the "BCEHA"). They appeal new Regulations passed by the Chicken Board on August 15, 2000 to govern the British Columbia chicken industry. Created in the wake of continuing conflicts within the chicken industry and an April 2000 decision of the Supreme Court concerning the National Allocation Agreement, this regulatory code makes several major changes to the way in which industry stakeholders are governed. The most significant changes are summarized in a 13 point cover sheet produced by the Chicken Board. Most, if not all, of the changes are challenged by the Appellants.

3. The statutory provisions relevant to the issue of document disclosure are sections 8(4) and 8(5) of the *Act*:

> 8(4) The marketing board or commission from which an appeal is made must promptly provide the Provincial board with every bylaw, order, rule and other document touching on the matter under appeal.
>
> 8(5) On its own motion or, on the written request of a party to the appeal under subsection (1), the Provincial board may direct that a party to the appeal provide the Provincial board and other parties to the appeal with a copy of each document the Provincial board specifies in its direction.

4. Sunrise's application for an order that the Chicken Board produce documents is a sequel to the September 27, 2000 application by Appellant Hallmark for an order that the Chicken Board disclose "all documents showing who drafted the changes [to the new Regulations] and the reasons why the changes were made." That request sought "all the following documents that in any way pertain to the regulatory changes":

(a) any economic impact assessments or economic data that may have been considered or were available for consideration;

(b) any e-mail and other communications passing between the Board (including its individual members and staff) and other persons or bodies such as (but not limited to) the CFC (Chicken Farmers of Canada), persons in other provinces or other provincial boards, persons connected with the government, the BCMB, growers, interested parties, etc.

(c) any other communications, drafts, studies, discussion papers, analyses.

5. On October 4, 2000, we held as follows with regard to Hallmark's request:

> Subject to claims of privilege – which are reasonably read into both sections since the law of privilege extends beyond rules of evidence and can only be abrogated by clear legislative language – the legislature has in s. 8(4) imposed a duty of relevant document production upon every commodity board subject to appeal. This duty arises by operation of law and does not depend on BCMB order. In the BCMB's view, the production required by s. 8(4) is subject only to claims of relevancy and privilege.
>
> The duty contained in s. 8(4) is a duty to provide documents to the BCMB rather than an appellant. As a matter of course, the commodity board under appeal would be expected to provide a copy of the relevant documents to an appellant at the same time. If the duty to produce documents to the BCMB in s. 8(4) is not subject to claims of privilege, the BCMB would in any event be loathe to disclose to any party to the appeal, or to take into account on appeal, privileged documents of the commodity board.
>
> In view of the encompassing nature of s. 8(4), nothing can be added by issuing a specific direction in s. 8(5).

6. Following the issuance of the Panel's decision, the Chicken Board produced three volumes of documents, entered as evidence at the hearing commencing on October 10, 2000. Volume I consists of Minutes of the Chicken Board, the PPAC (Pricing and Production Advisory Committee) and the Joint Committee. Volume II consists of submissions made to the Chicken Board concerning the proposed changes. Volume III contains correspondence to and from the Chicken Board in connection with the proposed regulations.

7. In providing these documents, the Chicken Board objected to production of the class of documents referred to in para. 4(b) above:

> any e-mail and other communications passing between the Board (including its individual members and staff) and other persons or bodies such as (but not limited to) the CFC, persons in other provinces or other provincial boards, persons connected with the government, the BCMB, growers, interested parties, etc.

8. The Appellants take issue with this. Counsel for Sunrise filed written application at the outset of the October 10, 2000 hearing for orders that:

   (a) "the Chicken Board produce all documents that might assist in resolving any of the issues identified by Christopher Harvey, Q.C. in his correspondence dated September 28 and October 6, 2000";

   (b) any objections to disclosure on grounds of relevancy or privilege be determined by the BCMB "following inspection of the documents"; and

   (c) that any objections to disclosure on grounds of public interest immunity be determined by the BCMB "in accordance with the procedure established by common law".

9. Written submissions have since been received from all parties with the exception of Farm Fed and the BCEHA, who made brief oral submissions. We do not intend to summarize all the arguments that have been made before us. We have carefully considered them all.

III. DECISION: CONTESTED DOCUMENTS OF THE CHICKEN BOARD

A. The Appeals

10. The statute ties disclosure to the "appeal". The first step in determining the required disclosure is thus to understand what the Hallmark and Sunrise appeals are about.

11. This has not been easy, in part because of the breadth of the appeals, which challenge over 200 of the new Regulations. It is also partly because the Appellants have given their "particulars" piecemeal, over time. There are in fact five documents setting out various iterations of the Hallmark and Sunrise appeals.

12. The first description is in the submission dated September 21, 2000, in support of the stay application refused by the Panel on October 2, 2000. The September 21 submission does not specify which individual regulations are under challenge. However, the focus of the argument is that the new Regulations, as a whole, are bad economic policy - that they will cause economic hardship to the industry in various ways and are motivated by a desire to facilitate a new Federal-Provincial Agreement ("FPA") whether or not that FPA is in the best interests of British Columbia. That submission also argues that the Chicken Board disregarded both processor input and the Joint Committee process and recommendations. It argues, in short, that the changes were made without proper economic analysis, for the wrong reasons, and without giving sufficient weight to BC processor concerns.

13. The second document is Mr. Harvey's original September 27, 2000 application for documents where he states that "[t]he thrust of the Processors appeal is that the changes to the regulations were based not on economic considerations particular to BC but on philosophic/political grounds." This confirms the approach reflected in the September 21, 2000 submission.

14. The third document is Mr. Harvey's letter dated September 28, 2000. In that letter, Mr. Harvey identifies 17 of the new Regulations' 36 definitions, 167 of the Regulations' 237 sections, and 11 of the new Regulations' 16 Schedules as being under appeal. The same letter describes the changes created by the new Regulations with which Hallmark and Sunrise take issue – e.g., "there will be period by period quota compliance", "the export credit scheme (regrow) will be discontinued". It does not modify the grounds or rationale for appeal as stated in the earlier documents.

15. The fourth document is the Appellant's Notice of Constitutional Question, dated October 5, 2000. The Notice identifies 19 sections of the new Regulations as being *ultra vires* the empowering statute, and four sections as being contrary to s. 8 of the *Charter of Rights and Freedoms.* This document is the first reference to the challenge being based on the argument that certain provisions are *ultra vires* or unconstitutional.

16. The fifth document is Mr. Harvey's letter dated October 6, 2000. That letter:

    (a) identifies six provisions that are "no longer challenged";

    (b) identifies seven definitions, 44 provisions of the new Regulations and one additional Schedule which are now challenged as "*ultra vires*" [which we take to mean *ultra vires* the *British Columbia Chicken Marketing Scheme, 1961* ("the *Chicken Scheme*") and/or the *Act*];

    (c) identifies five provisions that are now alleged to contravene the *Charter*; and

    (d) confirms that "Regulations cited in our previous letter but not specifically noted in this letter are challenged not on *ultra vires* or *Charter* grounds but on the basis of general administrative law principles applicable to the subject matter in question." What those "general administrative law principles" are is not stated. Given the ample opportunity the Appellants have had to state their case, we proceed on the basis that this restates the objections contained in the first two documents that the new Regulations are not based on valid economic analysis, without properly taking stakeholder interests into account and for the larger purpose of entering an FPA.

17. As noted, the October 6, 2000 letter goes beyond the Notice of Constitutional Question and alleges that additional provisions are *ultra vires* and offensive to the *Charter*. Counsel informed us that the October 6, 2000 letter was provided to the Attorney General of British Columbia, who does not wish to appear in relation to the non-*Charter* challenges. It is unclear whether the Attorney General of British Columbia intends to appear in relation to the *Charter* challenges. It is also unclear whether the Attorney General of Canada has been given notice of the additional Regulation attacked under the *Charter*, which was not mentioned in the original Notice. If the Appellants wish the Panel to consider this additional provision under the *Charter*, we expect to be advised at the resumption of the hearing whether the appropriate notice has been given, and response received, from the Attorney General of Canada.

18. Collectively, all these documents attack the identified new Regulations as being bad economic policy, as being based on "philosophic/political grounds" (in particular, the interest in securing an FPA rather than economic analysis), as giving inadequate weight to stakeholder interests and in some cases as being *ultra vires* the *Chicken Scheme*, the *Act* and the *Charter*.

B. Scope of the duty to disclose in these appeals

19. It is within the above context that we consider Sunrise's application for disclosure of "all documents that might assist in resolving any of the issues identified by [Mr. Harvey]".

20. On judicial review or statutory appeal to the Courts where the issues focus on questions of law, there are no rights of discovery: *Nechako Environmental Coalition v. British Columbia (Ministry of Environment, Lands and Parks)*, [1997] B.C.J. No. 1790 (S.C.). The same is true at common law before certain regulatory tribunals: *Re: CIBA-Geigy Canada Ltd.*, [1994] F.C.J. No. 884 (C.A.). At the other end of the spectrum is the right of document discovery in civil litigation under the Rules of Court, where Rule 26(1) has been given extended meaning (*Homalco Indian Band v. British Columbia* (1998), 56 B.C.L.R. (3d) 114 (S.C.)), though not to the point of excess: *British Columbia (Milk Marketing Board) v. Aquilini*, [1996] B.C.J. No. 1433 (S.C.). All these contexts are of interest, but for our purposes are subsidiary to the requirements of the *Act* itself.

21. For convenience, we repeat sections 8(4) and 8(5):

> 8(4) The marketing board or commission from which an appeal is made must promptly provide the Provincial board with every bylaw, order, rule and other document touching on the matter under appeal.
>
> 8(5) On its own motion or, on the written request of a party to the appeal under subsection (1), the Provincial board may direct that a party to the appeal provide the Provincial board and other parties to the appeal with a copy of each document the Provincial board specifies in its direction.

22. It is useful to analyze these provisions by comparing them:

    i. *Who must disclose*: Section 8(4) is a disclosure obligation directed exclusively to the commodity board whose decision is appealed. Section 8(5) addresses disclosure by any party to the appeal.

    ii. *How the duty arises:* Section 8(4) imposes on the commodity board an automatic disclosure obligation; no BCMB order is required. Section 8(5) requires an Order of the BCMB, either on application by a party or by the BCMB on its own motion.

    iii. *What must be disclosed:* The standing duty in s. 8(4) is to promptly provide the BCMB with "every bylaw, order, rule and other document touching on the matter under appeal". Section 8(5) refers to "a copy of each document the Provincial Board specifies in its direction."

23. The Chicken Board argues that the disclosure required by the sections is "limited in scope". It says that the phrase "other documents" in s. 8(4) should be limited to "formal statements of the Chicken Board akin to by-laws, orders and rules and perhaps the formal record before the Board." It argues that ss. 8(4) and 8(5) should not be expanded to permit "discovery of the Chicken Board by a stakeholder group", and does not include "the email correspondence of individual Board members."

24. In our view, the obligation in s. 8(4) is not limited to documents akin to orders, rules and bylaws. Section 8(4) – which must be read subject only to claims of relevancy and privilege – is in our view designed to ensure that an expanded documentary record of the decision is placed before the BCMB to ensure a full and proper appeal hearing. The BCMB was designed to hear appeals on all questions of jurisdiction, law, fact and policy. It should not be surprising therefore that a comprehensive right of appeal has been supported by a corresponding statutory obligation to produce documents.

25. The word "documents" is used in both ss. 8(4) and 8(5). In our view, it should by interpreted consistently in both subsections. Section 8(5) applies to documents held by all parties, including appellants and intervenors. To suggest, for example, that disclosure by an appellant should be limited to documents they possess akin to a "bylaw, order (or) rule" would rob s 8(5) of meaning. To suggest that "documents" has a broader meaning in s. 8(5) than it does in s. 8(4) has no support in the language or context of the subsections. Nor does our interpretation make s. 8(5) redundant to the commodity board; there may well be cases where an order under s. 8(5) is necessary because the commodity board has not complied with s. 8(4).

26. We find that where, as here, an appeal challenges policy judgments of a commodity board, documents "touching on the matter under appeal" include any documents from the Chicken Board or persons on its behalf to outside entities and persons regarding those questions of policy identified at para. 5 of Sunrise's written submission. They also include documents to the Chicken Board from such outside agencies and persons regarding same, whether or not those documents support the new Regulations under appeal. In our view, this includes documents to and from Chicken Board members and staff to outside agencies seeking information or consultation to inform the Chicken Board about the new Regulations under appeal. This includes what Hallmark originally described as correspondence between the Chicken Board or persons on its behalf and "bodies such as (but not limited to) the CFC, persons in other provinces or other provincial boards, persons connected with the government, the BCMB, growers, interested parties, etc." We agree that, to the extent Chicken Board members were communicating externally regarding the matters under appeal, they would be perceived to be doing so in their official capacity.

27. The phrase "touching on the appeal" is ambiguous in some of its applications. As recognized in *Broda v. Edmonton (City)*, [1989] A.J. No. 952 (Q.B.) [Q.L.] – relied on by counsel for Sunrise – it cannot be taken to extremes. It would go too far to impose an obligation to produce every piece of reading material a board or staff member may have privately researched, for example in a library, in informing their thinking prior to deliberations. It would also go too far to include written correspondence between Chicken Board members, and between them and staff. As the Chicken Board points out, it is the collective consensus that is relevant, not the individual members' considerations beforehand. In our view, these are proper limitations. We note that Hallmark's original application (para. 4(b) above) did not request these categories of documents in any event, and Sunrise confirms in reply that it is not seeking to go further (paras. 16-17 and 24). We do, however, consider it relevant to know, given the nature of this appeal, what input the Chicken Board had from outside entities or agencies in making its decision. This input – which by definition arise with persons outside the Chicken Board – is more appropriately seen as part of the submissions process than as "deliberations".

28. The Chicken Board raises the concern whether even this amount of disclosure might result in the Chicken Board spending more time "testifying about [communications] afterward than actually dealing with the issues before them." We agree that in many cases, further questions about documents produced under s. 8(4) would not be appropriate and that the main purpose of the documentary information – as in the case of the submissions already in the record – would be to give the BCMB an understanding the scope and nature of the data given to the Chicken Board, as is the case with the submissions already provided by the Chicken Board.

29. We reference the example referred to by the Chicken Board in written argument, which relates to the Appellant's allegation that "the Chicken Board is trying to implement a CFC-like scheme within British Columbia". Once the documents are produced, an inference may or may not arise that this allegation is correct. If such an inference fairly arises, the Chicken Board may reject the allegation. This may lead in one direction regarding questions. The Chicken Board may on the other hand argue that it is entirely appropriate to adopt a "CFC-like scheme" because it is the best scheme for British Columbia and furthermore coincides with its view that an FPA is also in the provincial interest. This may make certain questions about documents inappropriate. In our view, it for this Panel to exercise appropriate controls and determine whether or to what extent it is appropriate for Chicken Board members to be questioned on their documentary exchanges with other agencies, given the issues on appeal.

30. Finally on this issue, we reject the suggestion of Sunrise that if the Chicken Board continues to withhold documents based on relevance, the disputed documents should be inspected by the BCMB. While this procedure has been used by courts where issues of privilege are contested, it would be inappropriate to do so on the issue of relevancy. Every day in this province, legal counsel perform their duty to assist their clients in identifying relevant documents, for example, when a summons or subpoena is issued, or a demand for discovery of documents is made. There is no evidence whatever to suggest that this duty will not be carried out in anything other than total and professional good faith, in accordance with these reasons.

31. In the alternative, we find that if ss. 8(4) and 8(5) are, as a matter of construction, capable of including the private research of individual Chicken Board members and discussions and deliberations between Chicken Board members, those documents are in any event privileged. We would not consider them as part of the appeal, and would not order them disclosed to the Appellants.

32. In our opinion, ss. 8(4) and 8(5) must be limited by the privilege which we find attaches to the compelling public interest in the confidentiality of deliberations of a statutory authority acting in a legislative capacity. In *Payne v. Ontario Human Rights Commission*, [2000] O.J. No. 2987 (C.A.), the Court described the basis for the "doctrine of deliberative secrecy" in the context of an adjudicative decision:

> First is the practical concern that if no limits were imposed, tribunal members would be exposed to unduly burdensome examinations and "would spend more time testifying about their decisions than making them." A second reason is the need for finality. The decision should rest on the reasons given and not on the success or failure of a cross-examination. Third is the need for a shield to protect the process of debate, discussion and compromise inherent in collegial decision-making.

33. Citing *Tremblay v. Quebec*, [1992] 1 S.C.R. 952, the Court in *Payne* recognized deliberative secrecy for adjudicative decisions is not absolute and must yield "when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice".

34. We note here, however, that while the allegation has been made, no valid reasons have yet been given to support a reasonable belief that the Chicken Board breached procedural fairness. It has not even been shown that the Chicken Board had the sort of common law duty of fairness applicable to adjudicative decisions at issue in *Payne* and *Tremblay*. The new Regulations under attack in these appeals are legislative in nature. They are a comprehensive legislative code, aimed at the entire industry, not one individual. As the BCMB has noted in previous decisions, legislative decisions do not attract a common law duty of fairness: *Canadian Assn of Regulated Importers v. Canada (Attorney General)*, [1994] 2 F.C. 247 (C.A.). Therefore, the interests in deliberative secrecy are even stronger in this context, and clearly pass each element in the four-part test in *R. v. Gruenke*, [1991] 3 S.C.R. 261.

35. Applying the factors in *Gruenke*, we find that communications respecting *legislative* decisions as between Chicken Board members and their staff originate in confidence. We have no hesitation in concluding that such confidence – which must be based on trust and openness among staff and members – is essential to ensure a board can effectively govern this difficult industry. To breach the confidence as between Chicken Board members and between the Chicken Board and staff would in our view cripple the Chicken Board. Further, little would be served in this appeal by compelling the Chicken Board to produce the individual research of its members, or its deliberations with the support of its staff.

36. The duty to disclose its documentary correspondence with outside agencies – which we do not find to be privileged or subject to immunity on any of the grounds asserted by the Board – amply satisfies the purpose of ss. 8(4) and 8(5) and informs the Appellants sufficiently so that they may advance their appeal.

IV. ORDER: CONTESTED DOCUMENTS OF THE CHICKEN BOARD

37. The Chicken Board is to govern itself in accordance with these reasons. We have drawn what we regard as a clear distinction between deliberations among and between Chicken Board members and staff – which need not be disclosed – and communications to and from persons outside the Chicken Board pertaining to the issues on appeal, which we order disclosed.

38. In our view, we do not consider this to be an instance where it is necessary for the BCMB to vet each non-disclosed document. Now that these reasons have been released, the BCMB need not be the arbiter of relevancy. Furthermore, the class of documents in question is sufficiently clear, and the rationale for their non-disclosure sufficiently compelling, that counsel can readily attend to the vetting of privileged documents without the need for prior vetting by this Board: *Carey v. Ontario* (1986), 35 D.L.R. (4th) 161 (S.C.C.) at p. 195.

V. JUNE 6, 2000 MINUTES OF THE JOINT COMMITTEE WORKING SUB-GROUP

A. Background

39. Unlike the Pricing and Production Advisory Committee recognized in the *Chicken Scheme*, the "Joint Committee" is a more recent, non-legislative, innovation, introduced by BCMB direction in 1997. Its composition changed with the advent of an appointed Chicken Board, but its purpose remains the same. The Joint Committee now consists of an equal number of processors and chicken growers. Its purpose is to provide a vehicle – in the face of historic dysfunction, mistrust and lack of communication between processors and growers – for face to face discussions, negotiations and input to the Chicken Board on key issues affecting the chicken industry.

40. Earlier this year, a sub-group was tasked with commenting on "Discussion Points" forwarded by the Chicken Board in connection with the pending regulatory change. The sub-group met, and produced Minutes. One of the items asked for by Mr. Harvey in his September 27, 2000 application for production was "all minutes of the Chicken Board, Joint Committee, subcommittee, PPAC etc." This application was opposed by the Intervenor, British Columbia Chicken Growers Association. The Growers Association argued that "[w]hile in the instant case there is little in the documents in question of relevance which has not already been the subject of evidence at the stay application …[the Growers Association] nonetheless remains very concerned that the disclosure of confidential documents will set an unfortunate and unworkable precedent in the industry; such disclosure will create a serious chilling effect on discussions between the processors and the growers when attempts are made in the future to resolve industry issues through such a Sub-committee."

41. In our October 4, 2000 decision, we decided as follows:

> As noted above, the disclosure required by s. 8(4) is subject to claims of relevancy and privilege. If the Minutes of the "Sub-Committee of the Joint Committee of Processors and Producers" are in the possession of the Chicken Board, they are privileged documents on the grounds that the discussions set out in those minutes are "without prejudice" communications that are essential to the effective functioning of the chicken industry. Disclosure of such documents – without consent of all parties – would seriously impair the functioning of the Joint Committee, which plays a fundamentally important role in ensuring communication and stability in the chicken industry. The conditions set out in *Middlekamp v. Fraser Valley Real Estate Board* (1992), 71 BCLR (2d) 276 (CA) are clearly satisfied here.

42. When the Chicken Board produced the three Volumes of documents referred to at para. 6 above, the Minutes were included as part of an attachment to a Processor submission made to the Chicken Board. The Appellants say that, despite our October 4, 2000 ruling, these *specific* minutes are not privileged, that any privilege has been waived and that they form part of the record before the Chicken Board, and must therefore be admissible on appeal to the BCMB. The Growers Association continues to oppose the admissibility of the Minutes "as evidence of the truth of their contents or for purposes of cross-examination." The Chicken Board supports the position of the Growers Association.

43. At the hearing, the Panel initially stated that its earlier October 4, 2000 decision, as it applied to the June 6, 2000 Joint Committee minutes, was determinative of the issue of privilege. The Panel did not determine whether the Joint Committee minutes would remain as part of the record before the Chicken Board or whether they should be removed from the Book of Documents.

44. Counsel for the Hallmark Appellants was not satisfied with the ruling and reiterated his request that the Joint Committee minutes remain as part of the record. In order to clarify the position of the Joint Committee, Mr. Wayne Wickens, its Chair, was called to speak to the issues of how the Joint Committee minutes were prepared and the purpose of their disclosure to the Chicken Board.

45. After receiving this evidence, the Panel requested written submissions on the issue of the disclosure of the Joint Committee minutes of June 6, 2000.

B. Decision

46. Having considered the evidence and submissions, on this issue, we are satisfied that the Joint Committee minutes are admissible. Critical is Mr. Wickens' cover letter, enclosing the Minutes, to the Chicken Board which states: "*I was instructed to forward the results of our discussion to date for your consideration.*" When the Committee instructed its Chair to forward the Minutes to the Chicken Board for its consideration on the very issues that now arise before us on appeal, they became part of the record of the Chicken Board, and as such are properly considered by the BCMB. The Growers Associations' submission would no doubt carry the day had the "processor side" attempted to unilaterally introduce these Minutes. Significantly, however, the group instructed Mr. Wickens to forward these Minutes and did not qualify the use that could be made of the document by the Chicken Board. In our view, the Chicken Board properly included this material in the documents provided to the BCMB. There is no question that we have jurisdiction to receive it: *Act*, s. 8(4); *Natural Products Marketing (BC) Act Regulations*, s. 6(7).

47. We are cognizant of the submissions of the Growers Association and the Chicken Board that these Minutes reflect incomplete discussions, as appears from Mr. Wickens' cover letter. This concern goes to weight, not admissibility, and the question of weight can be the subject of further argument before us if necessary. At a minimum, the Minutes are evidence of the consultative process carried out by the Chicken Board. At this stage, we are hard pressed to see why we should not simply accept the document for what it is: an accurate reflection of the state of incomplete discussions, at a particular point in time, between key industry stakeholders and submitted to the Chicken Board for its consideration as part of its larger regulatory review. We see no basis for suggesting that these Minutes should prejudice any party before us in the case they advance on this appeal.

48. One reason for the concern expressed by the Growers Association and the Chicken Board appears to be that the Appellants may be asserting a right to cross-examine members of the Chicken Board on how they considered these Minutes – or any other submissions – in their deliberations. We wish to make it clear that the Chicken Board representatives will of course be expected to give evidence on behalf of the Chicken Board as a whole regarding the rationales for the regulatory changes under appeal. However, we do not intend to permit as either relevant or appropriate – in the absence of a demonstrated basis on the evidence to breach deliberative privilege – cross-examinations of each individual Chicken Board member on that person's private deliberative process regarding each submission in a legislative process.

Dated at Victoria, British Columbia this 23rd day of October, 2000.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

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