

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND APPEALS FROM DECISIONS OF THE
BRITISH COLUMBIA CHICKEN MARKETING BOARD
CONCERNING QUOTA COMPLIANCE

BETWEEN:

JAY BEE FARM LTD.,
NORM AND LESLIE WILSON DBA
LUCK OF THE DRAW BROILER FARM
and
VANCE POULTRY LTD.

APPELLANTS

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Marketing Board

Ms. Christine J. Elsaesser, Vice Chair
Mr. Hamish Bruce, Member
Ms. Satwinder Bains, Member

For the Appellant, Jay Bee Farm Ltd.

Mr. Anvarali Bandali

For the Appellant,
Luck of the Draw Broiler Farm

Mr. Norm Wilson and Ms. Leslie Wilson

For the Appellant, Vance Poultry Ltd.

Mr. Bayne Vance

For the Respondent

Mr. John Hunter, QC, Counsel

Date of Hearing

October 20, December 1-2, 1998
and January 11, 1999

Place of Hearing

Abbotsford, British Columbia

INTRODUCTION

1. On December 18, 1997, the British Columbia Chicken Marketing Board (the "Chicken Board") passed an amended version of Interim Order 313, a quota compliance order.
2. The Appellants Norm and Leslie Wilson, dba Luck of the Draw Broiler Farm ("Luck of the Draw"), by letter dated December 17, 1997 appealed alleged over-production under the New Grower Program. Their appeal regarding over-production became intertwined with Order 313 as it imposed over-production penalties. Accordingly, the Luck of the Draw appeal was heard at the same time as the appeals relating to Order 313.
3. On August 20, 1998, the BCMB received an appeal on the imposition of a penalty imposed under Order 313 from Mr. Bayne Vance on behalf of Vance Poultry Ltd. ("Vance Poultry"). One day later, the BCMB received an appeal on the implementation of Order 313 from Mr. Anvarali Bandali on behalf of Jay Bee Farm Ltd. On August 26, 1998, the BCMB received an appeal on the implementation (or merits) of Order 313 "in its current form" from Mr. David Martens on behalf of David and Sheryl Martens. On the same date, Mr. Wilson on behalf of Luck of the Draw requested a stay of Order 313 pending the hearing of its appeal.
4. On October 20, 1998 the Appellants and Respondent appeared before the British Columbia Marketing Board ("BCMB") to argue preliminary issues relating to the appeals under Order 313. The preliminary issues to be determined were disclosure of certain documents and argument relating to the issue of whether the appeals of Order 313 were out of time. As there was insufficient time to deal with the issues in the one-day hearing, the issue of disclosure of documents was subsequently concluded by telephone conference on October 22, 1998.
5. The BCMB ordered the issue of whether the appeal of Order 313 was out of time to be heard at the same time as the appeal on its merits. The evidence heard in relation to the out of time issue on October 20, 1998 formed part of the evidence in the appeal of Order 313. Although not all of the Appellants initially appealed Order 313, the BCMB allowed all the Appellants to make submissions on the out of time issue in order to have the issue fully canvassed. The hearing on its merits proceeded on December 1-2, 1998. Unfortunately, the appeal was not completed on that date and it continued on January 11, 1999.
6. Subsequent to the December 2, 1998 hearing, Mr. Martens withdrew his appeal.

ISSUES

7. Are there special circumstances for extending the period of time for appealing Order 313? ("**APPLICATION TO EXTEND TIME**") If so, the following issue arises on the merits.
8. Did the Chicken Board have the authority to enact Order 313? ("**JURISDICTION**")
9. No issue arises as to the timeliness of the following two appeals.
10. Should the over-production penalties implemented under Order 313 be varied? ("**PENALTIES**")
11. What production level is Luck of the Draw entitled to under the New Grower Program? ("**NEW GROWER PROGRAM**")

FACTS

12. In February 1993 in response to concerns regarding over-production amongst growers, the Chicken Board enacted Order 257-1993. This Order imposed monetary over-production penalties of \$0.37 per kilogram on each kilogram in excess of the allowable tolerance sleeve of 10%. Similar monetary over and under-production penalty orders were enacted over the next few years including Order 276-1994 and Order 287-1995. The Chicken Board, however, had difficulty enforcing the monetary penalties under these orders and ultimately, chose not to enforce them.
13. On April 1, 1994, the Chicken Board implemented the New Grower Program which was intended to provide the opportunity for successful applicants to qualify as growers under the *British Columbia Chicken Marketing Scheme, 1961* (the "*Scheme*"). Under this program, the successful applicant would receive 5000 birds of primary broiler quota for \$75,000. Primary quota must be fully utilised by the grower. The grower was also given 5000 birds of secondary quota.
14. Ordinarily, secondary quota is not grown at 100% utilisation. The Chicken Board issues periodic orders setting the percentage of secondary quota which will be grown in any given cycle. The level of secondary quota utilisation is market responsive. However, under the New Grower Program, new growers were allowed to use 100% of the secondary quota initially issued to enhance their financial viability.
15. Norm and Leslie Wilson were successful applicants under the New Grower Program and as a result received 5000 birds of primary quota and 5000 birds of secondary quota. They commenced production in cycle 1995-5 placing chickens in their barns on August 3, 1995.
16. In the three cycles prior to September 12, 1996, Luck of the Draw placed between 5,300 and 6,120 birds more than the primary and original secondary quota totalling 10,000 birds per cycle.
17. On September 12, 1996, pursuant to Order 303, the Chicken Board issued a further 5000 birds of secondary quota to all registered producers who had not previously sold quota. The Wilsons received 5000 birds of secondary quota in the September 12, 1996 quota issue and thus, increased their maximum farm size from 10,000 birds to 15,000 birds.
18. On September 16, 1996, Luck of the Draw advised the Chicken Board of their intention to grow out their entire secondary quota for a five-year period as "per the agreement under the New Grower Program". Thus, it was the Wilson's intent to grow the 5000 birds of primary quota, 100% of the initial 5000 birds of secondary quota and 100% of the 5000 birds of newly issued secondary quota.
19. On March 13, 1997, the Chicken Board issued Order 311. This Order declared that all registered growers who held secondary quota prior to September 12, 1996 would have it cancelled and effective May 11, 1997 primary quota of an equal amount would be granted to them. Thus, after May 11, 1997, Luck of the Draw held 10,000 birds of primary quota and 5000 birds of secondary quota.
20. On November 6, 1997, Mr. Wilson met with the Chicken Board to discuss his over-production and the New Grower Program. On November 19, 1997, the Chicken Board wrote to Mr. Wilson setting out their interpretation of the New Grower Program and the effect of that interpretation on Luck of the Draw. The Chicken Board's letter states in part:

1. Exactly what am I growing?

As a successful applicant under the BCCMB's New Grower Program (NGP) you were allotted a maximum of (after payment of the New Grower Registration Fee) 9,644 kgs. broiler primary and 9,644 kgs. broiler secondary, for a total of 10,000 birds.

The BCCMB in its "lottery application form" states under point #13 *"All secondary quota under this program shall not be subject for reduction for 5 years or further quota issue whichever occurs first."*

From August 2/95 until Sept. 12/96 you were entitled to grow 10,000 birds every cycle (56 days). After Sept. 12/96 (the issuance of another 9,644 kgs. secondary quota to registered growers who had not previously transferred a portion of their quota) you were then entitled to grow 10,000 birds. The new secondary was to be grown according to the percentages set by the Board for each cycle, and you are treated equitably with all other registered growers.

After May 11/97 the "old" secondary (of which you were entitled to grow at 100%) was converted to primary quota (which is always set at 100%) and the "new" secondary was to be grown according to the percentages set by the Board for each cycle.

21. The letter also dealt with the interpretation of paragraph 14 of the New Grower Program:

2. To whom does the 20% new quota to new growers refer to?

The BCCMB in its "lottery application form" under point #14 states *"If any year the Board determines to issue additional or supplemental quota, up to 20% of the additional or supplemental quota shall be allotted to new growers who have qualified under this program, and the balance of additional quota issued by the Board may be distributed to persons who were registered growers on the date this program came into force, to recognize the right of then existing growers to expand as a result of investment and confidence in the industry."*

This section refers to subsequent lottery draws for successful applicants in the future, rather than successful applicants who have already entered the Register of Growers. It allows for further new entrants to the industry, identical to yourself. Once in the Register of Growers Luck of the Draw falls under the latter half of the sentence as a registered grower on the date that the program came into force.

22. Finally, the Chicken Board confirmed the accuracy of the quota production orders for Luck of the Draw, which recorded an over-production of 33,790 birds. As a result, the Chicken Board advised that it had notified Luck of the Draw's hatchery and processor who agreed to "stand down" the production unit in order to correct the over-production.
23. On December 17, 1997, the Wilsons appealed the Chicken Board's interpretation of the New Grower Program as contained in the November 19, 1997 letter. The letter of appeal was received by the BCMB on December 23, 1997.
24. During this same time frame, the Chicken Board was developing new policies on issues concerning the industry. The Chicken Board had met in September of 1997 and began developing a number of new orders one of which was the new over-under penalty system. On September 25, 1997 the first version of Interim Order 313 was enacted. The purpose of Order 313 was to create a system whereby under and over-produced growers were brought into compliance with their quota holdings. The Order penalised growers who at a certain time, had produced and shipped either more than 15% by weight

(over-production) or less than 15% by weight (under-production) of their allowed production. The Order required the growers to bring their production into line and also penalised their under or over-production.

25. On October 24, 1997, Hallmark Poultry Processors Ltd. ("Hallmark") and Sunrise Poultry Processors Ltd. ("Sunrise") appealed the newly enacted Order 313. As well, the Primary Poultry Processors Association had also appealed two other orders of the Chicken Board relating to farm size and transitional quota. The processors requested a stay of two of the orders, including Order 313.
26. As a result of the processors' appeal and after negotiations, the Chicken Board changed Order 313. On December 18, 1997, an amended interim Order 313 was issued. One significant change to the Order was a fixed date (February 15, 1998) beyond which penalties would be assessed.
27. By letter dated February 27, 1998, Hallmark and Sunrise withdrew their appeal of Order 313 on the clear understanding that the Chicken Board comply with certain conditions contained in a December 13, 1997 Memorandum of Arne Mykle, Chair of the Chicken Board.
28. On June 2, 1998, the Chicken Board met to review the February 15, 1998 over-production results and identified 53 farms over the 15% tolerance. A meeting of the "Over-Under Committee" was scheduled for July 2, 1998. The Over-Under Committee, comprised of hatchery representatives, field inspectors, British Columbia Chicken Growers Association representatives and the three Chicken Board members of the Over-Under Sub-committee, met on July 2, 1998.
29. On July 9, 1998, the Chicken Board met, reviewed the report from the Over-Under Committee's July 2, 1998 meeting and found 51 growers over-produced. Of that group, 18 had sufficient reason to be excused while 33 had no legitimate excuse for exemption. The Chicken Board then passed a motion to penalise those growers who were over-produced based on the Over-Under Committee recommendations.
30. On July 28, 1998, the Chicken Board sent a letter to the 33 over-produced growers advising of the extent of their over-production and requesting a response if there was a disagreement as to the amount of over-production.
31. On August 20, 1998, the BCMB received the Vance appeal on the imposition of a penalty imposed under Order 313. On August 21, 1998, the BCMB received the Bandali appeal on the implementation of Order 313. On August 26, 1998, the BCMB received the Martens appeal on the implementation (or merits) of Order 313 in its current form.
32. On August 26, 1998 Mr. Wilson on behalf of Luck of the Draw requested a stay of Order 313 pending the hearing of its appeal.

ARGUMENT OF THE APPELLANTS

APPLICATION TO EXTEND TIME

33. The Appellants argue that although an appeal was not filed within 30 days of the issuance of Order 313, special circumstances exist which warrant an extension of the time for filing an appeal. The special circumstances in part relate to the processors' appeal of Order 313.

34. The Appellants rely on the history of the enactment of Order 313 to further their argument of special circumstances. Order 313 was issued in its original form on September 25, 1997. Hallmark and Sunrise appealed that order, in addition to the processor appeals of the two other orders of the Chicken Board relating to farm size and transitional quota. The Chicken Board met with the processors to try and resolve the issues on appeal. As part of these negotiations, representatives from the hatcheries met with Mr. Mykle in December 1998.
35. The Appellants called evidence from three hatchery managers to support their position that there was an agreement that the penalties under Order 313 would be waived for the first cycle after February 15, 1998. Hallmark and Sunrise, the processors who appealed Order 313, own two of the three hatcheries. The third processor Lilydale Co-operative Ltd. did not appeal but was involved in the negotiations surrounding Order 313.
36. According to Bill Sandau of Fraser Valley Chick Sales Ltd. ("FVCS"), in December 1997 he met with Mr. Mykle, Bill Vanderspek of Lilydale Hatchery Ltd. ("Lilydale") and Ernie Silveri of Western Hatchery to determine if there was an equitable way to resolve the processors' concerns with Order 313. Various parts of Order 313 were discussed. The hatchery representatives were concerned that the February 15, 1998 start date was too soon to allow all growers to make timely adjustments to avoid a penalty position. Given that the Order was passed on December 18, 1997, growers may already have been committed to certain chick placements such that they could not avoid a penalty on their first shipment after February 15, 1998. At this meeting, Mr. Sandau stated that Mr. Mykle agreed that the Chicken Board would proceed with Order 313 on a trial basis and would not enforce the over-production penalties in the first penalty cycle commencing after February 15, 1998. It was agreed between these parties that this agreement would be kept secret, as they wanted growers to make a genuine attempt to bring their production into compliance.
37. Mr. Silveri supported Mr. Sandau's position. In early December 1997, the three hatchery managers met with Mr. Mykle. At that time, all four agreed that no penalties would be enforced under Order 313 in the first penalty cycle in order to give the hatcheries enough time to get their growers in line. The four agreed to meet again in May once production figures were known to discuss implementation of Order 313 and "tweak" the system. On this basis, Mr. Sandau and Mr. Silveri went back to their respective principals and advised them to withdraw their appeals.
38. Although present at the December meeting, Mr. Vanderspek of Lilydale could not recall what transpired. His recollection was that a consensus was reached in a later meeting in Langley between Mr. Mykle, Mr. Sandau, Mr. Silveri and himself that there would be no actual penalties imposed under the first penalty cycle of Order 313. There was a gentlemen's agreement that the non-enforcement of Order 313 would not be disclosed in order to ensure grower compliance.
39. The agreement to withdraw the appeals is contained in a letter from Colin Pritchard of the Primary Poultry Processors Association. However, it is Mr. Silveri's evidence that the letter is carefully worded to refer to the December meeting but not specifically disclose the "gentlemen's agreement" so as to prevent this information from being disclosed industry wide.
40. In addition to the agreement between the processors and the Chicken Board, the Appellants suggest that there were also irregularities that made it difficult for them to defend their over-production. The May meeting agreed to between the hatcheries and Chicken Board never took place. At the July 2, 1998 meeting of the Over-Under Committee, Mr. Silveri's evidence was that he was unclear as to the meeting's agenda and as such did not prepare in advance. It was also suggested that growers should

have been contacted individually and asked whether there were special circumstances justifying their over-production instead of relying on the recollections of hatchery representatives.

41. The Appellants also take issue with the Order itself. When the revised Order 313 was released on December 18, 1997, it was not in the normal format for Chicken Board orders. The Order was not on Chicken Board letterhead and it was copied on the back of the December Board Report. At the bottom of the Order was a note that purported to explain how the Order would be implemented. The note states:

Growers over-produced (+15%), must cut back on their next placement to avoid an over production penalty kilogram deduction on flocks marketed on or after February 15,1998.

42. Thus, the Appellants argue that the form of the Order was confusing. It was not clear that this was a new Order and not a draft. Also, a grower reading the Order could think that if he cut back on production as stated in the note, he would not be subject to a penalty.
43. The Wilsons on behalf of Luck of the Draw submit that their appeal of Order 313 was within time as it was dated December 17, 1997 and received by the BCMB on December 23, 1997. Thus, their appeal was within the 30-day limit, as Order 313 issued September 25, 1997 was not finalised until December 18, 1997. Although their initial appeal related to the New Grower Program, their dispute is about over-production. Order 313 imposes a penalty on that over-production and thus forms part of their appeal.

JURISDICTION

44. The Wilsons take issue with Order 313 on its merits. They take the position that the *Scheme* does not authorise monetary penalties and point to a reference in the Feb 27, 1997 Chicken Board minutes of an opinion received from William Wright, the Chicken Board solicitor. According to the minutes, Mr. Wright advised the Chicken Board that it does not have the authority to impose monetary penalties for over and under-production under either the *Natural Products Marketing (BC) Act* (the "Act") or the *Scheme*.
45. Mr. Wilson refers to the evidence of Fred Krahn, Vice-Chair of the Chicken Board, who confirmed that any time a grower is not able to grow chicken, the result in effect is a monetary penalty. In the case of Order 313, a grower who is in an over-production position must comply by reducing his production by an amount equal to the assessed over-production and then further reduce his production by an equal amount again - as a production penalty. This amounts to a monetary penalty to the grower. Mr. Wilson argues that the Chicken Board in enacting Order 313 has acted contrary to the legal advice it received.
46. Mr. Wilson also argues that Order 313 is biased and discriminatory and has not been applied equally to all growers. The Order as drafted is unclear. It refers to an exemption if there are "extenuating circumstances" yet does not define what these are. What constitutes "extenuating circumstances" leads to the apprehension of unequal treatment between growers.
47. He also argues that the Chicken Board has acted outside its own Strategic Plan which states at objective #5:

The Board is determined to build trusting and co-operative relationships within the industry. All substantive issues must be dealt with in an open fashion.

48. Mr. Wilson argues that in the case of Order 313, the Chicken Board has not acted in an open fashion. The Chicken Board created an Over-Under Committee comprised of hatchery representatives and Chicken Board members and a Chicken Board Sub-committee to deal with the implementation of penalties. The test used by either committee is not known to growers and according to Mr. Krahn was not established at the time the Order was implemented.
49. Mr. Mykle has ignored his own verbal commitment that "growers deserve and have the right to expect equitable treatment". Some growers were exempted without having any knowledge of the penalty, some were exempted without providing written reasons for their over-production, some were given an opportunity to meet with the Sub-committee, some had penalties upheld, some penalties were reduced and some growers were completely exempted. A Board member on the Sub-committee was exempted without having to give reasons in writing.
50. The Wilsons argue that a further concern is that Order 313 as drafted does not allow for an orderly weekly supply of chicken, which is a mandate of the Chicken Board. The provincial chicken production summaries tendered as exhibits show that in the month of February, 1998, the Province was 1.5 million kgs. of chicken under-produced. This demonstrates the negative effect of the Order. Growers trying to get into compliance intentionally under produced which resulted in a swing in production. If Order 313 is allowed to stand, there will be production swings twice yearly to avoid penalties. Mr. Wilson argues that this is not a desirable result.
51. Mr. Wilson finally argues that the Chicken Board and Mr. Mykle have acted in bad faith by reversing the decision to waive penalties in the first penalty cycle. As such, the Order should not be allowed to stand.
52. Mr. Bandali did not argue the merits of Order 313.
53. Mr. Vance in his written submissions dated December 16, 1998 argued that Order 313 was not a valid exercise of power. There was no development of this argument.

PENALTIES

54. Mr. Bandali argues that Jay Bee Farm Ltd. should not be subjected to penalties under Order 313. He received a letter dated July 28, 1998 from the Chicken Board, which notified him that he was over-produced 15,267 kgs. beyond the 15% tolerance level. The letter advised that if he took issue with the over-production figure he should notify the Chicken Board in writing of his disagreement. The letter also enclosed instructions on the process for appealing to the BCMB.
55. Mr. Bandali states that he did not write to the Chicken Board as he did not disagree with the numbers. Mr. Bandali received a letter from the Chicken Board dated September 1, 1998 advising that as no written reasons had been received, his over-production would be deducted according to Order 313. Mr. Bandali subsequently requested a mediation with the Chicken Board to resolve the dispute surrounding his farm's over-production. The Chicken Board did not accede to this request.
56. According to his written submissions, Mr. Bandali was requested by his hatchery, FVCS to place chicks one week early to satisfy its schedule. In addition, Mr. Bandali's processor, Sunrise left the birds on the farm one week longer. The effect of the early placement and later pick up was an over-production of 34,248 kgs..

57. Mr. Bandali argues that Order 313 was aimed at chronic over/under producers. He argues that "chronic" does not describe the over-production on his farm. He also argues that the Chicken Board has not treated growers equally. Not all growers have been given an opportunity to explain their over-production situation. Instead, the Chicken Board created a magic formula that exempted some farmers and penalised others.
58. Mr. Bandali also raises concerns about Chicken Board members sitting on the Over-Under Committee when they were in penalty positions themselves. He argues that a member who is over or under-produced is in a direct conflict of interest and should resign from the Committee.
59. Mr. Vance on behalf of Vance Poultry did not give evidence nor did he attend at the final day of the hearing and present any argument despite being advised it was in his best interest to do so. Thus, Mr. Vance's argument is gleaned from the evidence led through the hatchery representatives, the documents and submissions filed and his cross-examination of the Chicken Board witnesses. Mr. Vance apparently agreed to a contract with FVCS sometime prior to September 1, 1997 to place 30,000 chicks. Mr. Vance understood these chicks were to be grown on an export permit. However, on September 1, 1997 the date that chicks were placed, Vance Poultry was advised by FVCS that the birds must be grown under its own quota and not for export. In a letter of explanation dated August 17, 1998, Mr. Vance states that he accepted this change in plans "not fully realising that this would put us in an over-production penalty situation". Hatchery personnel did not advise Vance Poultry that this would create a quota compliance problem.
60. In his cross-examination of Mr. Mykle, Mr. Vance introduced copies of three contracts, all dated September 1, 1997 which supported his argument that somewhere along the line there was a change in the chick placement such that he received an additional 15,000 birds of domestic as opposed to export production. Mr. Mykle agreed that Vance Poultry was approximately 14,000 birds over-produced. Mr. Vance suggested to Mr. Mykle that the foregoing would account for his over-production.
61. Mr. Sandau of FVCS also gave evidence. He was referred to a letter of the Chicken Board dated November 7, 1998. In this letter, the criteria for extenuating circumstances are set out. According to Mr. Sandau, the Vance Poultry operation was "over-produced due to circumstances beyond their ability to manage or control" as they "received extra chicks over and above the contracted amount". Mr. Sandau referred to his letter of November 30, 1998, which confirmed that the 30,000 birds placed at Vance Poultry were placed at the request of Sunrise. The letter states:

As I have stated all along, we are always under a great deal of pressure through the peak summer/fall months to find enough growing space to satisfy our customer demands. Until recently, the BCCMB has condoned our method of asking any of our growers with extra barn space to "fill up" through this period. We have always been able to work these growers production back in line and we will continue to do so.
62. Thus, as best as it can be determined, it appears that Mr. Vance's argument is that due to circumstances beyond his control, 15,000 extra birds being placed on his farm in September 1997, which led to his farm being over-produced when its production figures were assessed after February 15, 1998.
63. The Wilsons on behalf of Luck of the Draw argue that they are not over-produced. They were successful applicants in the New Grower Program in July 1994. Accordingly, they had one year to establish a suitable farm and purchase 5000 birds of primary quota. Once the Chicken Board was satisfied of the foregoing, it then issued a further 5000 birds of secondary quota to the Wilsons.

64. As early as November 1995, the Wilsons were raising issues with the Chicken Board's interpretation of certain paragraphs of the New Grower Program. They take issue with paragraph 13 which reads as follows:

All secondary quota under this program shall not be subject for reduction from 100% utilization for 5 years or further quota issue whichever occurs first.

65. Luck of the Draw received a further 5000 birds of secondary quota on September 12, 1996. This allocation of secondary quota was industry wide and not restricted to the New Grower Program farms. The Wilsons argue that paragraph 13 entitles them to grow 100% of all secondary quota, i.e. the original secondary quota plus the September 1996 secondary quota. Accordingly, by virtue of paragraph 13 of the New Grower Program, the Wilsons argue that they are not subject to the periodic orders of the Chicken Board which allocate a percentage of secondary quota to be grown each cycle depending on market demand.
66. The Wilsons take the position that since secondary quota does not have any value and since quota remains the property of the Chicken Board, the September 1996 increase in secondary quota does not constitute a "further quota issue" under paragraph 13. Because paragraph 13 is ambiguous and subject to different interpretations, "benefit should be given to the reader rather than the maker".
67. The Wilsons advised the Chicken Board of their intention to grow 100% of their entire secondary quota. The Chicken Board never responded to the notification and therefore Luck of the Draw argues that the Chicken Board effectively authorised them to grow their entire secondary quota. Thus, they argue that their interpretation of the New Grower Program has led to their over-production. The Chicken Board was fully aware of this interpretation and yet still penalised Luck of the Draw. This amounts to discrimination.
68. The Wilsons also take issue with the actual calculation of the penalty as the Chicken Board's monthly production orders are inaccurate. As a result, allowing for the errors, the Wilsons submit that if they are over-produced, they are 10,212 kgs. over and not 60,085 kgs. as alleged by the Chicken Board.
69. The Wilsons argue that the ambiguity in the New Grower Program and the errors in calculating over-production amount to extenuating circumstances sufficient to exempt Luck of the Draw from penalty under Order 313. In addition, given that they would still be over-produced on their interpretation of the New Grower Program and after correcting the errors in the Chicken Board production orders, the Wilsons seek an exemption from any penalty imposed in period A-22 as well.

NEW GROWER PROGRAM

70. In addition to the arguments about the imposition of a penalty under Order 313, the Wilsons seek a determination of the level of production they are entitled to under the New Grower Program. As set out above, the Wilsons submit that the New Grower Program is ambiguous. In addition to the ambiguity in paragraph 13, they take issue with paragraph 14 which states:

If in any year the Board determines to issue additional or supplemental quota up to 20% of the additional or supplemental quota shall be allocated to new growers who have qualified under this program and the balance of additional quota issued by the Board may be distributed to persons who were registered growers on the date that this program came into force, to recognize the right of then existing growers to expand as a result of investment and confidence in the industry.

71. They argue that this paragraph entitles successful applicants under the New Grower Program to receive their proportionate share of 20% of the growth any time the Chicken Board decides to issue new or supplemental quota. Although further secondary quota has been issued, Luck of the Draw has not received its share of quota allowed for under paragraph 14.

ARGUMENT OF THE RESPONDENT

APPLICATION TO EXTEND TIME

72. The Chicken Board disputes the existence of any special circumstances sufficient to justify an extension of the time for filing an appeal. As to the "alleged agreement", Mr. Mykle gave evidence regarding his recollection of the December 1997 meeting. He denies ever coming to an agreement with the hatchery representatives to waive the penalty provisions of Order 313. He relies on the correspondence between the hatcheries and processors written during that period as an accurate reflection of the agreement between the Chicken Board and the processors prior to withdrawing their appeal. In any event, the Chicken Board argues that this is really a red herring as there is no evidence to suggest this agreement was ever disclosed to any growers. There is no evidence of any reliance by any grower in general or specifically by the Appellants.
73. The Chicken Board argues that the various hatchery representatives were inconsistent in their version of events. The most generous interpretation is that there was simply a misunderstanding between the hatchery representatives and Mr. Mykle, the less generous interpretation is that this story was concocted.
74. The Chicken Board argues that Order 313 enjoys broad industry support with growers and processors. The issues that led the processors to appeal have been dealt with and the appeals withdrawn. It was not until penalties were imposed that the Appellants sought to appeal. The appeals as to the penalties are in time but this is not an appropriate case for extending time limits for filing an appeal of the Order itself. The statutory direction regarding time for filing appeals in s.8 of the *Act* is to allow appeals to be dispensed with quickly. It should not be lightly set aside.
75. The Chicken Board argues that Luck of the Draw is out of time for filing its appeal of Order 313. The notice of appeal filed on December 17, 1998 specifically refers to a November 19, 1997 decision of the Chicken Board. That letter does not in any way deal with Order 313, rather it concerns the New Grower Program and the Chicken Board's interpretation of that program. Luck of the Draw is attempting to use an appeal that was filed for a different reason to extend its right to now dispute Order 313. The Chicken Board does not take issue with Luck of the Draw's right to challenge the penalties which have been levied under Order 313, just that they do not have the right to challenge the Order itself.

JURISDICTION

76. The Chicken Board argues that Order 313 should not be set aside. It has broad industry support. It is not the first compliance order; there have been several predecessors.
77. The Chicken Board argues that Order 313 is within the authority of the Chicken Board to enact. It does not matter that there may be monetary effects flowing from the penalty provisions. Controlling production through adjustments in quota is a necessary part of the operations of the Chicken Board. There is a significant difference between a production order with a monetary effect and an order that creates a fine. Here there is no penal consequence to non-compliance and as such the Order is a proper exercise of Chicken Board authority.

PENALTIES

78. The Chicken Board argues that the penalties imposed under Order 313 should stand. The Appellants made a great deal about the fact that the test for what are "extenuating circumstances" was not listed. It is not necessary that the criteria be listed or described, as each case must be looked at on its facts.
79. The Chicken Board argues that what is important is equitable treatment. Here the evidence shows that all growers were treated the same; they all had an opportunity to appear before the Chicken Board and make representations. The process followed was a good one. The evidence shows that in September 1997 after consultation, the Chicken Board developed its compliance policy. Then, subsequent to the processors' appeal, the Order was further revised to satisfy their concerns. No grower appealed the revised Order 313.
80. There was evidence regarding an alleged agreement to waive the penalty provisions of Order 313 for the first cycle between Mr. Mykle and the hatcheries. As stated earlier, this is a red herring, as according to the hatchery managers this agreement was kept secret. As none of the Appellants testified, there is no evidence that any of them relied on this agreement. The Chicken Board also argues that this agreement is suspect as it does not accord with any of the documents of that time.

While it may have been the hatcheries hope or preference that the penalty provision be waived, no document supports such an agreement. In addition, nothing in the Order suggests that it would not be enforced.

81. The Chicken Board takes issue with the criticism of the manner in which it implemented Order 313. It argues that it made a good attempt to give growers who disagreed with their penalty an opportunity to appear before the Chicken Board. In addition, the Chicken Board met with the hatchery representatives to gather further information. The Chicken Board created an Over-Under Committee and a Subcommittee comprised of three Chicken Board members to deal with the implementation of penalties. The Chicken Board wrote to all over-produced growers in July 1998. While there has been some issue with the wording of the letter as evidenced by Mr. Bandali's submissions, the letter is a clear invitation to growers to come before the Chicken Board and dispute the penalty.
82. The Chicken Board argues that when one looks at the circumstances as a whole, it made all reasonable efforts to be clear about Order 313. It was well known in the industry for the better part of a year that such an Order was going to be enacted. The growers knew it was coming and had plenty of time to prepare.
83. With respect to the individual appeals, the Chicken Board argues that unless the BCMB sees a clear problem, a procedural or substantive unfairness, it should not interfere in the decision of the Chicken Board. As the tribunal "closest to the ground", it analysed the reasons and excuses of the growers and in the absence of some procedural or substantive error, its decisions should be accepted. Growers should be encouraged to take their issues to the Chicken Board. Simply because an appeal has been filed does not mean that the Chicken Board will not listen to a grower's concerns. The Chicken Board submits that it can resolve these issues with a broad-based procedural inquiry. It does not require a review by the BCMB.
84. The Chicken Board submits there is no evidence supporting the conclusion that any of the penalties imposed are inappropriate. This is especially so in light of the fact that the Appellants have all over-produced beyond their quota and received a financial benefit for that over-production. The Panel heard

no evidence regarding the Appellants' individual farms or situations and no explanation has been offered as to why the penalties should not be imposed.

85. In the case of Mr. Vance, he suggested to the Chicken Board witnesses that he was supposed to be supplied with 15,000 domestic birds of production and 15,000 export birds of production. At the end of the day, his farm produced 30,000 domestic birds and 15,000 export birds. The Chicken Board points out that Mr. Vance gave no evidence to explain what happened or how this could be done without his knowledge and as such the Chicken Board argues that an adverse inference should be drawn. The Chicken Board submits that as there is no evidence to support the Vance Poultry appeal, it should properly be dismissed.
86. The Chicken Board argues that the situation is similar with Jay Bee Farm Ltd. and Mr. Bandali. The Panel has Mr. Bandali's submission. However, the evidence of the Chicken Board presented in the hearing suggests it is unwise to rely on submissions without having the benefit of cross-examination. Mr. Bandali in essence says that birds came in early and went out late thus causing over-production. Although some birds were left late, when one looks at the entire flock many birds actually went out early. In fact, when one looks at the average kill age, there is no significant difference between this cycle and the previous two cycles. Thus, the length of bird placement at the Bandali farm was not unusual in this cycle. In the case of Jay Bee Farm Ltd., the Chicken Board submits that there was no justification offered to reverse the penalties imposed by Order 313 and as such this appeal should also be dismissed..
87. As for the Wilsons and Luck of the Draw, they argue that their over-production turns on the interpretation of the New Grower Program. The Chicken Board argues that if one reviews a summary of Luck of the Draw's production since August of 1995, they began to over-produce before the September 1996 issuance of secondary quota. As early as May 1996, Luck of the Draw was growing 15,600 birds when it only had 10,000 birds of quota. The Chicken Board argues that this over-production cannot be attributable to a difference of interpretation.
88. The Wilsons have been persistent in their over-production. The Chicken Board concedes that there may be some error in its calculation of the production orders. The Wilson's argue that they are only over-produced by 10,000 kgs. and not 60,000 kgs.. The Chicken Board suggests that the real figure is somewhere in between. The Chicken Board is prepared to review this matter to determine the extent of the actual over-production. However, the Chicken Board argues that a difference in interpretation of the New Grower Program does not create extraordinary circumstances sufficient to justify the Wilson's over-production. The fact remains that Luck of the Draw is significantly over-produced and must be brought into line. The penalties are not hugely severe and are warranted in these circumstances. The Chicken Board argues that this appeal too must be dismissed.

NEW GROWER PROGRAM

89. As for the New Grower Program, the Chicken Board states that the nub of the Wilson's argument is that under paragraph 13 they should be entitled to grow 100% of the new secondary quota as well as 100% of the old secondary quota. The Chicken Board argues that on a reasonable reading of that paragraph, this interpretation does not make sense.
90. Paragraph 13 is very clear; a successful applicant under the New Grower Program will receive 5000 birds of primary quota and 5000 birds of secondary quota. Paragraph 13 provides a guarantee that a successful New Grower applicant will be entitled to grow 100% of that secondary quota for five years

or until new quota is issued. Nothing in paragraph 13 extends the guarantee to any additional secondary quota that is issued.

91. However, if this Panel is of the view that an ambiguity exists, the Chicken Board suggests that the Panel clarify any ambiguity and then refer the matter back to the Chicken Board to resolve the numerical dispute.

FINDINGS OF THE BCMB

APPLICATION TO EXTEND TIME

92. The Appellants chose, despite cautions from the Panel, not to take the witness stand and give any evidence with respect to the issues on appeal. Accordingly, the only evidence before the Panel is the evidence from the witnesses called by the Chicken Board, the hatchery representatives and the documents filed.
93. Appeals can be filed outside the 30-day time limit if, as set out in s. 8(1)(b) of the *Act*, "the Provincial board considers special circumstances warrant it". In this case, it is only the appeal related to Order 313 on its merits or its implementation that requires a consideration of special circumstances. The appeals of the Appellants relating to the actual penalty imposed were timely and the Chicken Board does not take issue with them.
94. Order 313 was initially appealed by Hallmark and Sunrise. The Chicken Board, following discussions with the two processors, revised Order 313. The evidence from the hatchery representatives suggests that as part of the agreement to withdraw the appeal, Mr. Mykle, on behalf of the Chicken Board, agreed not to enforce the penalty provisions in the revised Order 313 for the first cycle. The Chicken Board for whatever reason did not live up to this agreement and in July 1998 began enforcing the over-production penalties. This evidence is troubling. Based on the weight of evidence before us including our assessment of the witnesses, the Panel is not prepared to dismiss the agreement as a concoction. While Mr. Mykle disputed the evidence on this point, the Panel prefers the evidence of the three hatchery representatives.
95. The Panel is satisfied that the three hatchery representatives gave their best recollections of their meetings with Mr. Mykle. The fact that all three stories were somewhat inconsistent as to time, place or date is not indicative of a concoction. More probably it is an indication that three busy men when trying to recall the events of a year ago recollect certain details somewhat differently. The fact remains that all three men had the exact same understanding, that Mr. Mykle agreed to waive the penalty provisions of Order 313 for the first cycle.
96. Mr. Mykle denies agreeing to waive the penalties under Order 313 for the first period. He does however acknowledge that such a request was made. Indeed, the Chicken Board's own minutes of July 9, 1998 confirm that "[f]rom the December 8/97 meeting with A. Mykle, the hatcheries were of the understanding that no penalty would be enforced for this period, and that this was the basis that the appeal was to be dropped."
97. It is difficult to accept the Chicken Board's submission that this is a concoction. The Appellants had not commenced their appeal by July 9, 1998 and the processors' appeal was long since withdrawn. As such there is no readily apparent reason for the hatchery representatives to begin concocting stories in July 1998. That leaves the submission that all the hatchery representatives misunderstood their discussions with Mr. Mykle. The Panel does not accept this submission.

98. The Panel finds, on the weight of the evidence, that Mr. Mykle did agree to waive the penalty provisions of Order 313 in order to afford the hatchery representatives time to get their growers on side. We recognise that Mr. Mykle is not the Chicken Board. It is our assessment that, such an agreement having been made, the Chicken Board was either not aware of the agreement or chose not to honour it. The Chicken Board in any event proceeded with the enforcement of the penalty provisions under Order 313.
99. Given that none of the Appellants testified, the Panel does not know whether any of them knew of the December agreement to waive the penalties under Order 313. Accordingly, without proof of reliance, the December agreement is insufficient to provide "special circumstances" to extend the time for filing the appeal. However, the actions of the Chicken Board raise concerns with this Panel. That coupled with the manner in which the Order was released, not on letterhead and on the back of a Board report, may have led growers to believe this was a draft Order. Without the benefit of evidence from the Appellants, it is difficult to know for certain.
100. By the time of the hearing, there is no doubt that there was controversy surrounding Order 313. The controversy arose due to the earlier processor appeals and the unfulfilled agreement as well as allegations of improper conduct, bias and discrimination by the Chicken Board. The existence of the controversy impacts on the Chicken Board's ability to implement Order 313.
101. Given the foregoing, the Panel is of the opinion that there is benefit to the industry as a whole to review Order 313 on its merits. Thus, the Panel finds that in the circumstances of this case, there are special circumstances warranting an extension of the time for appealing the merits of Order 313.

JURISDICTION

102. Given that the Panel finds there are special circumstances for extending the time for appealing Order 313, the issue remains as to whether Order 313 is within the jurisdiction of the Chicken Board to enact.
103. The Panel finds that it is. The *Scheme* very clearly grants the Chicken Board the power to regulate and control the production of chicken within the Province and to establish the terms on which quota can be granted and revoked or reduced.
104. The fact that the penalties imposed under Order 313 have a monetary impact on growers does not take the Order outside the jurisdiction of the Chicken Board. Order 313 does not purport to fine growers for over-producing. Rather, growers who over-produce beyond a 15% sleeve are required to reduce their production back to their allotted quota and are penalised based on the amount of over-production.
105. The Chicken Board has drafted a number of compliance orders. Unfortunately, the predecessors were difficult to enforce. In response to pressure by both processors and growers, the Chicken Board created a new compliance order in September 1997. Further fine-tuning occurred following the appeal by the processors in the fall of 1997. This led to a revised Order 313, which, with the exception of the Appellants, appears to have industry support.
106. The Panel heard from Mr. Frank Flokstra, President of the British Columbia Chicken Growers' Association. The Association is strongly in favour of the Order and believes it is necessary to deal with the problem of chronic over and under-producers. The Panel also heard from the representatives of the three major hatcheries in the Province. Although these gentlemen had serious concerns about the

procedure followed by the Chicken Board in implementing the Order, they did not take issue with the intent and substance of Order itself.

107. The Panel finds that Order 313 is within the authority of the Chicken Board to enact. It has broad support within the industry and is a good attempt at solving the compliance problem. The Chicken Board has recognised that Order 313 is a "work in progress" and as time goes on there may be need for further fine-tuning. However, the Chicken Board should note the process concerns raised by the Appellants. It is important that all growers feel they have been dealt with fairly. The Chicken Board must design processes that are perceived by all to be unbiased, transparent and properly published and recorded.

PENALTIES

108. All three Appellants seek to be exempted from the penalty provisions of Order 313. However, despite caution from the Panel, all three Appellants chose not to testify. By not taking the stand and simply relying on their cross-examination of Chicken Board witnesses, the evidence of the hatchery representatives and the documents filed, the Appellants placed the Chicken Board at a tactical disadvantage. Had it been necessary for this Panel to consider the individual circumstances of each farm, insufficient evidence was led by any of the Appellants to support a claim for relief. On this point, the Panel agrees with the Chicken Board that an adverse inference should be drawn.
109. Unfortunately that does not dispose of this appeal in its entirety. The Panel has reviewed the procedure followed by the Chicken Board in enacting and implementing Order 313 and found it flawed in a number of respects. The flaws can be summarised as follows:
- a) The initial consultation for Order 313 was inadequate. The Chicken Board did not use its Pricing and Production Advisory Committee to its full advantage and as such, resulted in the processors appealing the original Order.
 - b) Growers were given inadequate notice of Order 313 to allow them time to correct any over-production. The Chicken Board cannot accurately say that growers had from September 1997 to February 15, 1998 to get their production on track. Once the original Order 313 was appealed by the processors, everything was put on hold. Growers would not have had any idea about what changes were in store for the quota compliance order.
 - c) The time frame from December 18, 1997 to February 15, 1998 was simply too tight to give growers an opportunity to correct their over-production.
 - d) The manner in which Order 313 was distributed to growers was confusing. The Order was not distributed on letterhead and was sent on the back of a Chicken Board Report. It could easily have been taken as another draft Order or over-looked entirely.
 - e) The note on the bottom of Order 313 was misleading and may have led growers to believe that by cutting back on their production they would avoid a penalty.
 - f) Given the tight time frame, the agreement with the processors to waive the enforcement of the penalty provisions to allow for a dry run had merit. It is unfortunate that the Chicken Board did not follow through on this agreement.

- g) The over-produced growers were not called before the Chicken Board in a timely fashion nor were they advised of the exemption criteria even in the most general sense.
 - h) The Over-Under Committee and Sub-committee structure was flawed. Hatchery managers did not seem to understand their role on this Committee. There were no written terms of reference and no minutes kept. There was confusion among the hatchery managers who attended the July 2, 1998 meeting as to the purpose of the meeting and as such they were not prepared. Thus, the value of their input with respect to their growers is questionable. More disturbingly, some left the meeting with the impression that the process was a farce, a "kangaroo court".
 - i) Two members of the Sub-committee in separate instances were themselves, either over or under-produced. There were no minutes of the Sub-committee to explain how this issue was dealt with. Chicken Board minutes are also silent on this issue. The minutes do not demonstrate that the Chicken Board had any sense that a perception of bias may arise from a Board member, who is himself in a penalty position, sitting in judgement of other growers.
 - j) There were no terms of reference for consideration by the Over-Under Committee, the Sub-committee, or the Chicken Board for what might constitute extenuating circumstances for exempting a grower from over-production.
 - k) The letter written to over-produced growers on July 28, 1998 was unclear. Growers were not told that if there were extenuating circumstances for their over-production, they should write the Chicken Board and advise them of the details. Rather the letter asked growers who disagreed with the over-production calculations to advise the Chicken Board in writing.
 - l) The September 2, 1998 letter did not correct the problem as it simply reiterated the July letter, set out the penalty and told growers of their right of appeal.
110. The better approach would have been to give growers sufficient time to adjust their production to Order 313. This is especially so given the historical pattern of the Chicken Board's non-enforcement of its compliance orders.
111. In addition, the Over-Under Committee should have been comprised entirely of non-Chicken Board members. The Chicken Board could have developed terms of reference for the Committee or allowed it to develop its own. However, certain minimum standards should have been met such as keeping of minutes and records of decision making. Once it concluded its deliberations, this Committee would have reported its findings to the Chicken Board.
112. The Chicken Board would then have been in a position to notify those growers who were over-produced and advise them of their right to appear before the Chicken Board to explain why they were over-produced. These hearings would be conducted by a quorum of the Chicken Board, none of whom should themselves be in breach of Order 313. Once this hearing was concluded, the Chicken Board would be in a position to give its decision on a given grower. By following this process, growers would not only know what was expected of them but also have a clear decision on a date certain from which to appeal to the BCMB if necessary.
113. The outlined procedure protects the rights of all concerned. The Chicken Board cannot forget that the imposition of a penalty under a compliance order may have significant financial consequences on a grower. These consequences may be magnified when the grower is small as profitability is that much less certain. If a grower is going to be penalised, the Chicken Board must be able to demonstrate that it

has acted in a manner that is fair and transparent. In this case, the Panel is not satisfied that the Chicken Board has met that standard.

114. Accordingly, the Panel orders that Order 313 be amended such that the penalty provisions for the first marketed shipment after February 15, 1998 are suspended. All growers who were penalised shall be credited the penalised production. This order of the BCMB is not restricted in application to the Appellants but applies to all growers who were penalised under Order 313.
115. The Panel further orders that the foregoing suspension of the penalty provision of Order 313 does not have any effect on any under or over-production penalties imposed by the Chicken Board for subsequent cycles after the February 15, 1998 shipment date.

NEW GROWER PROGRAM

116. As for the appeal of the New Grower Program by the Wilsons on behalf of Luck of the Draw, the Panel does not find paragraph 13 ambiguous. The paragraph specifically refers to "[a]ll secondary quota under this program" as being guaranteed for five years or further quota issue. The September 1996 issue of secondary quota was given to all registered growers and as such cannot be construed as "secondary quota under this program". In fact, the Chicken Board could have taken the position that the September 1996 issue of secondary quota was a "further quota issue" and thus was a trigger allowing them to reduce the utilisation of the first allotment of secondary quota. They did not do so.
117. The Wilson's have also taken issue with paragraph 14 of the New Grower Program. The Wilson's claim that under paragraph 14, they should have been entitled to their proportionate share of 20% of any additional or supplemental quota allocated among all registered growers. The Panel agrees that this paragraph is poorly worded. However, the Wilson's did not suggest that they had relied, either at the time they applied or subsequently, on paragraph 14 and increased their production accordingly. Rather, they seem to suggest that on reading paragraph 14, it appears that every time there is additional or supplemental quota issued then up to 20% of that should be "allocated to new growers who have qualified under this program". As new growers, the Wilsons want their share of this pool.
118. The Panel does not find this to be a reasonable interpretation of Paragraph 14. The purpose of paragraph 14 is to create a pool from which future new grower applicants will receive their quota. This interpretation is supported by a letter from then Chair of the BCMB to the Chicken Board dated December 20, 1993 confirming Chicken Board policy that when issuing additional or supplemental quota, it would allocate at least 20 per cent of the additional or supplemental quota to the New Entrant Program (as it was termed by the BCMB).
119. The paragraph does not create an obligation on the Chicken Board to continue to gift successful applicants under the New Grower Program with quota for the five years following their entry into the program. This interpretation would result in an extremely disproportionate allocation of production to a very small group of growers.
120. Given that the Panel has found that the Wilsons did not rely on their interpretation of paragraph 14, then the ambiguity surrounding paragraph 14 is not a factor in assessing their over-production. However, given the issues raised with the New Grower Program, if the New Grower Program is to be reinstated the Chicken Board must review and clarify the document.
121. Finally, the Panel wishes to point out that the Wilson's have been consistently over-produced. Their over-production pre-dates the September 1996 issuance of secondary quota. This is a significant

finding; prior to that date there was no reason for the Wilson's to be over-produced. The inescapable conclusion is that the Wilson's have wilfully pushed the limits and have latterly tried to justify their over-production by their "interpretation" of the New Grower Program. By virtue of the Panel's decision on the issue of Penalties above, the Wilson's will not have an over-production penalty imposed for the first shipment after February 15, 1998.

122. The Wilson's have requested a further exemption if they are still in a penalty position in period A-22. The Panel has not heard any evidence to support such a request and such this request is denied.

DECISION

123. The BCMB finds that special circumstances exist to extend the time to appeal Order 313.
124. The BCMB finds that Order 313 is within the jurisdiction of the Chicken Board.
125. The BCMB finds insufficient evidence to support the appeals of the Appellants with respect to their individual penalties. However, due to the flawed manner in which the Chicken Board implemented Order 313, the BCMB suspends the penalty provisions of Order 313 for the first shipment after February 15, 1998 for all registered growers.
126. The BCMB confirms that the suspension of the penalty provisions of Order 313 does not extend to any subsequent over or under-production penalties imposed by the Chicken Board for cycles after the February 15, 1998 shipment date.
127. The BCMB orders the Chicken Board to revise the process by which the over-under production penalties are imposed to reflect the recommendations at paragraphs 109-113 of this Decision.
128. The BCMB finds that paragraph 13 of the New Grower Program is unambiguous and finds in favour of the Chicken Board on this point.
129. The BCMB further finds that although paragraph 14 of the New Grower Program is ambiguous, the Appellants, Norm and Leslie Wilson led no evidence to support that their reliance on paragraph 14 led to their over-production.
130. The BCMB orders that if the Chicken Board intends to re-instate the New Grower Program it shall revise the document in light of the findings in paragraphs 117-120.
131. The BCMB denies the request of Norm and Leslie Wilson to be exempted from any subsequent penalty imposed under Order 313.
132. There shall be no costs awarded on any of the foregoing appeals.

Dated at Victoria, British Columbia this 26th day of March, 1999.

British Columbia Marketing Board
Per

(Original signed by):

Christine J. Elsaesser, Vice Chair
Satwinder Bains, Member
Hamish Bruce, Member