

02-27
2/12/03



February 12, 2003

File: 44200-50/CMB 02-27

DELIVERED BY FAX

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Attention: Mr. Christopher Harvey, Q.C.

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Attention: Ms. Maria Morellato

Dear Sirs/Mesdames:

**AN APPEAL BY K&R POULTRY LTD. (FARM FED) FROM A SEPTEMBER 2, 2002
DECISION OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD
CONCERNING CONDITIONS OF SALE FOR BROILER CHICKS**

A Panel of the British Columbia Marketing Board (BCMB) has reviewed the following correspondence concerning the subject appeal:

- November 12, 2002 letter from Ken Huttema on behalf of K & R Poultry Ltd. (dba Farm Fed) (with November 8 and September 30, 2002 Farm Fed letters attached);
- December 17, 2002 letter from Mr. Harvey on behalf of the Appellant and proposed intervenors;
- December 18, 2002 letter from the undersigned;
- December 18, 2002 letter from Mr. Harvey;

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- December 20, 2002 letter from Ms. Morellato on behalf of the British Columbia Chicken Growers' Association (Growers' Association);
- December 20, 2002 letter from Mr. Wiebe on behalf of Rosstown Farms Ltd. (Rosstown);
- December 24, 2002 letter from Mr. Hunter on behalf of the British Columbia Chicken Marketing Board (Chicken Board);
- January 9, 2003 letter from Mr. Harvey, with Ken Huttema affidavit attached; and
- February 10, 2003 letter from Mr. Hunter.

The Panel has instructed me to advise the parties of the following.

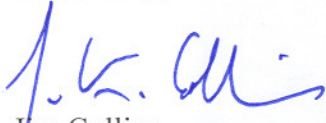
1. Pursuant to s. 8(1)(b) of the *Natural Products Marketing (BC) Act*, Farm Fed's application for leave to extend the time to commence its appeal is granted. In making this decision, the BCMB has considered the submissions of the Appellant, Rosstown and the Chicken Board. The Appellant's evidence is that four days before the expiry of the appeal period, it sought in good faith to commence the appeal. Due to miscommunication with a courier, the appeal was not commenced in time and the courier package has never been found. The Appellant did not follow up with the BCMB again until early November 2002, despite having received no acknowledgement from the BCMB that the captioned appeal had been received. While the Appellant's timing (both before and after September 30) suggests that this matter was not pursued as a high priority, we accept Mr. Hunter's position that there was an intention to appeal within the statutory time period. The period for appeal will be taken to have been extended to November 19, 2002, the date the BCMB received the filing fee.
2. The Appellant's application for a stay of the Chicken Board's September 2, 2002 decision is denied. The way in which the Appellant has pursued this appeal has already been described in point #1 above. The paramount issue on this matter is the interest of industry stability, a matter which is particularly delicate and which the BCMB has addressed in a number of its recent decisions. Parties have relied on and arranged their affairs based on these BCMB decisions. To stay the September 2, 2002 Chicken Board decision before the appeal is heard on the merits would be seriously disruptive to the chicken industry.
3. Intervenor status is granted to the Growers' Association, Lilydale Foods Ltd. and Rosstown. They may appear at the hearing, present evidence and cross examine. Although the identity of those companies comprising the "Pollon Group" and the "Sunrise Group" is not clear, the

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same status as intervenors is granted to Hallmark Poultry Processors Ltd., Western Hatchery Ltd., Sunrise Poultry Processors Ltd. and Fraser Valley Chick Sales Ltd. Mr. Harvey can advise if there are any further companies involved in these groups which should be considered for intervenor status.

BCMB staff will be in touch with the parties and intervenors for the purposes of canvassing availability for a pre-hearing conference.

Yours truly,



Jim Collins
Manager
Dispute Resolution Services

cc: Mr. Jim Beattie, General Manager
British Columbia Chicken Marketing Board