

IN THE MATTER OF THE  
*NATURAL PRODUCTS MARKETING (BC) ACT*  
AND AN  
APPEAL OF A DECISION DATED MARCH 12, 2003

**BETWEEN:**

PRIMARY POULTRY PROCESSORS ASSOCIATION OF BRITISH COLUMBIA

**APPELLANT**

**AND:**

BRITISH COLUMBIA CHICKEN MARKETING BOARD

**RESPONDENT**

**AND:**

ROSSDOWN FARMS LTD.

**INTERVENOR**

**REASONS FOR DECISION**

**APPEARANCES BY:**

For the British Columbia Marketing Board	Ms. Christine J. Elsaesser, Vice Chair Ms. Karen Webster, Member Mr. Richard Bullock, Member
For the Appellant	Ms. Wendy A. Baker, Counsel
For the Respondent	Ms. Sarah P. Pike, Counsel
For the Intervenor	Mr. Dan Wiebe, President Mr. Dion Wiebe, General Manager
Place of Hearing	Abbotsford, British Columbia
Dates of Hearing	June 20 and July 15, 2003

## INTRODUCTION

1. The Primary Poultry Processors Association of British Columbia (the “Processors”) appealed a March 12, 2003 decision of the British Columbia Chicken Marketing Board (the “Chicken Board”) approving a custom kill arrangement for Rosstown Farms Ltd. (“Rosstown”). The order states:

That the Board approve Rosstown Farms plan as submitted, for the gradual devolution of its production towards its own processing facility. The plan as approved provides for custom killing of a specified volume of production from A-53 to A-59.

2. On April 28, 2003, a Panel of the British Columbia Marketing Board (the “BCMB”) heard an application by the Processors for a stay of the Chicken Board’s March 12, 2003 order. In a decision dated April 30, 2003, the BCMB denied the Processors’ request for a stay.
3. This appeal has a lengthy history and in the interest of time, it is not the Panel’s intention to review all the events over the past year. However, in the BCMB’s stay decision, the relevant background was summarised as follows:

For the past several months, Rosstown and the Processors have been engaged in significant economic conflict flowing from Rosstown’s decision to move towards a vertically integrated breeder/hatchery/broiler operation. There have been several recent BCMB decisions issued under both our supervisory and appellate jurisdiction.

The BCMB’s December 13, 2002 appeal decision confirmed that the Chicken Board has the ability to direct product but that Rosstown’s hatchery needs do not, as a matter of sound marketing policy, justify a regulatory order directing Processors to pick up Rosstown’s production over multiple home weeks. The fundamental regulatory responsibility of the Chicken Board is to ensure that all quota production for a period, including the production of Rosstown as a chicken producer, finds a home.

In our further supervisory decision of January 17, 2003, the BCMB directed that in the absence of an agreement with a processor, Rosstown’s home week would be home week 5. The BCMB also recognised Rosstown would require a transition period to bring all its production into one home week. In a subsequent supervisory decision dated January 31, 2003, the BCMB declined the Processors’ request to reconsider the choice of home week 5 for Rosstown for period A-51 and beyond.

Things have not gone smoothly for Rosstown in the interim. It has had problems getting its birds picked up at the scheduled times by Processors. It has also had difficulty obtaining the contracted price for its birds from all the Processors. As a result of these and other problems, Rosstown has taken a different approach. It has decided to move toward becoming its own processor. On March 12, 2003, the Chicken Board approved Rosstown’s plan for a “gradual devolution of its production towards its own processing facility”. The plan, as approved, provides for custom killing of a specified volume of production from A-53 to A-59. The details of this plan are largely unknown to the BCMB at this time.

4. The appeal of the Chicken Board’s March 12 order was heard on June 20 and July 15, 2003. Rosstown applied for and was granted intervenor status both in the stay application and in this appeal. Mr. Dan Wiebe and his son, Mr. Dion Wiebe,

attended at the hearing and participated fully in this appeal, calling evidence and cross-examining witnesses.

## ISSUES

5. Did the Chicken Board err in allowing Rosstown to custom kill its production as part of a gradual devolution of its production (in periods A-53 to A-59) towards its own processing facility?
6. Does the Chicken Board have the authority and/or did the Chicken Board properly exercise its authority in designating any portion of the provincial allocation to a new entrant to the processing industry in the absence of consultation and an approved policy or regulation, and in a time when the total BC domestic allocation is less than the total requested base allocation of all BC processors?

## DECISION

7. On August 22, 2003, the Panel issued its decision rescinding the March 12, 2003 order with written reasons to follow. These are the reasons for our earlier decision.
8. In the British Columbia chicken industry, there are three major chicken processors: Lilydale Co-operative Ltd., Hallmark Poultry Processors Ltd. and Sunrise Poultry Processors Ltd.. Each processor through its participation in the “huddle” advises the Chicken Board of its future consumer market requirements on a period by period basis. The ultimate consumer market as reflected by retailer requests drives chicken production in the province. Under the national supply management agreement for chicken, the Chicken Farmers of Canada (“CFC”) use the processors’ market requirements to determine the national base allocation of chicken production for BC. The Chicken Board then allocates production to chicken growers based on their quota holdings and the processors’ total requirements. Processors assume an obligation to purchase the volume of chicken requested, at a price set by the Chicken Board.
9. In its March 12, 2003 order the Chicken Board approved an arrangement whereby Rosstown is treated as a processor, allowing it to custom kill part and eventually all of its quota allocation.<sup>1</sup> Ordinarily a grower, which Rosstown is, must enter into a contract with a processor to purchase his live chicken. The processor in turn has contracts with customers who purchase chicken meat. The effect of the March 12 order is that Rosstown is given control over its own allocation, currently 199,000 kgs. Given that Rosstown’s production forms part of the Processors’ allocation required to meet their market demands, control over this production is at the heart of this appeal.

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<sup>1</sup> According to a April 23, 2003 letter from Chicken Board counsel addressed to the Appellant’s counsel, the live weight volumes to be custom killed under the order are: A-53: 199,000 kgs, A-54: 271,000 kgs, A-55: 343,000 kgs, A-56: 415,000 kgs, A-57: 487,000 kgs, A-58: 537,000 kgs, A-59: 567,000 kgs.

10. The Chicken Board defends its decision to treat Rosstown as a processor on a number of grounds. First, they argue that there is no evidence that giving Rosstown its own allocation harms the Processors in any way; they can get chicken elsewhere either through the acquisition of TRQ<sup>2</sup>, arrangements with other processors or with Rosstown directly. Further, as the Chicken Board has lifted over production penalties for A-53, the high chicken consumption summer period, current estimates are that BC will produce 103% of its provincial allocation in that period. Thus, the loss of 0.7% should be made up by the additional 3% of available production.
11. Second, Rosstown did not make the decision to start custom killing its chicken voluntarily; it was forced into this decision by the conduct of the Processors. The Chicken Board argues that the Appellant's own actions have led to the very decision now under appeal.
  - Originally Rosstown sought an order from the Chicken Board directing that the Processors take Rosstown's production over an eight home week schedule to accommodate its hatchery. The Chicken Board did not grant this order and Rosstown appealed. The Processors took the position that they would only take Rosstown's chicken if it was hatched from chicks supplied by the Processors' hatcheries. The BCMB upheld the Chicken Board and turned down Rosstown's request to have its product shipped over eight home weeks stating that the Chicken Board's obligation was to ensure that all Rosstown's production was taken up in each period and Rosstown's hatchery issues should not be a concern to the Chicken Board: *Rosstown v. British Columbia Chicken Marketing Board*, September 12, 2002 (*Rosstown #1*).
  - The Chicken Board then directed that Rosstown's production be taken up in two home weeks in A-49 and in three home weeks thereafter. The Processors filed an application for judicial review in the Supreme Court disputing the Chicken Board's authority to direct product.
  - The Supreme Court upheld the Chicken Board's authority to direct product. The Processors appealed this decision to the Court of Appeal and unsuccessfully sought a stay in the interim.
  - The Processors also appealed the Chicken Board's order directing product to the BCMB. The BCMB upheld the Chicken Board in the short term (A-49 and A-50) but then reiterated its earlier decision that the Chicken Board was only obligated to ensure that Rosstown's production was taken up in a period in one home week: *Primary Poultry Processors Association of BC et al v. British Columbia Chicken Marketing Board*, December 13, 2002 (*Rosstown #2*).

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<sup>2</sup> TRQ (Tariff Restricted Quota) allows processors to import white meat from the United States. TRQ is more beneficial to Ontario and Quebec as the US chicken production areas are more accessible to processors in those provinces.

- The Court of Appeal dismissed the Processors appeal from the Supreme Court concerning the Chicken Board's authority to direct product.
  - Since A-49, two processors have withheld monies owed to Rosstown. The Chicken Board applied to Supreme Court and was successful in enforcing payment through its minimum price order.
  - A further issue relating to non-payment for condemned parts is still before the Supreme Court but is adjourned generally to allow the parties to resolve the issues informally.
  - During this time, it has always been the position of the Processors that Rosstown should not "cherry pick" the hatchery business; it should build its own processing plant.
12. Third, the Chicken Board was very aware of the acrimonious relationship between the Processors and Rosstown over the past year. Given that the parties appeared incapable of resolving the seemingly unending conflict, the Chicken Board attempted to bring about some stability in the industry. The resolution opted for by the Chicken Board, allowing Rosstown to custom kill its own product, is not unique or unprecedented. In the past, the Chicken Board has allowed other producers to take responsibility for their own production and enter custom kill arrangements.
13. Rosstown supports the Chicken Board's decision. Dan Wiebe argues that since Rosstown began operating its hatchery in A-49, it has been caught in a "no man's land" without a solution. There have been constant problems and threats. Court orders have been required to get chicken picked up and even then, chicken has been left on the farm. There have been unlawful charges, holdbacks and deductions by processors for chicken shipped. Court applications have been required so that Rosstown can get paid in full for its chicken.
14. Mr. Wiebe argues that the only option open to Rosstown was to take up the Processors' earlier suggestion that if Rosstown wanted its own hatchery, it should process its own chicken. To facilitate the transition from grower to processor, Rosstown sought and was granted a custom kill arrangement from the Chicken Board whereby after six periods, Rosstown would be custom killing all of its production. Rosstown argues that no other grower would have endured the hardship it has and it is ridiculous to think that this custom kill arrangement sets any kind of precedent. However, if the BCMB agrees with the Processors and finds that a new entrant program should be put in place before new processors enter the market, Mr. Wiebe argues that fairness requires Rosstown to be grandfathered at the levels ordered by the Chicken Board in its March 12 order.
15. The Appellant is highly critical of the Chicken Board's decision. It argues that the March 12 order significantly disrupts the allocation method for the province. The decision interferes with the "bottom up" principle (where each processor identifies its market requirements) which governs the chicken industry, impacts the existing processors' ability to supply their consumer markets, and provides special and

unprecedented rights for one grower at the expense of others in the industry. The Appellant also argues that it is an improper exercise of the Chicken Board's powers to unlawfully expropriate, without compensation, the business of the Processors by unilaterally taking away the certainty of supply inherent in the supply management system. The ability to purchase further chicken through the use of import quota (TRQ) is an unsatisfactory alternative due to its extreme cost and lack of availability.

16. The Appellant argues that the March 12 order is inconsistent with recent BCMB decisions relating to the Rosstown operation. The BCMB released a supervisory decision on June 5, 2002, an appeal decision on September 12, 2002 (*Rosstown #1*) and a further appeal decision on December 13, 2002 (*Rosstown #2*). In those decisions, the BCMB recognised an obligation on processors to purchase all the product requested in a period and a corresponding obligation on the Chicken Board to ensure that processors got the volume of production requested, subject only to decreases set by the CFC. Inherent in these decisions is recognition that the Chicken Board cannot unilaterally transfer a portion of the provincial allocation to a new entrant in a period where the province is experiencing a cut back.
17. The Appellant also refers to the *Hallmark Poultry Processors Ltd. et al v. British Columbia Chicken Marketing Board*, June 27, 2003, where at para. 2 the BCMB states “[t]he Chicken Board’s primary purpose in issuing the August 15, 2000 policy rules was to achieve a greater measure of control, consistency and discipline in the regulation of chicken production”. The Appellant argues that the March 12 order is inconsistent with this stated purpose.
18. The Appellant argues that the findings of the BCMB in *Rosstown #2* are equally applicable in this case. There the BCMB found that by assigning multiple home weeks to Rosstown, the Chicken Board improperly intervened into the processors' ability to serve their customers in a difficult, complex and highly competitive market environment. Similarly, the Appellant argues that the Chicken Board has again improperly intervened in the economic underpinnings of the chicken industry. The Chicken Board did not consult with the Processors prior to the issuance of the March 12 order and did not make inquiries as to the potential impact on Processors if part of their provincial allocation was unilaterally transferred away.
19. The Appellant is also critical of the Chicken Board’s ad hoc approach; it has no policy, written or otherwise, to deal with new entrants into the processing industry. Despite being aware of the Ontario appellate tribunal’s decision of January 2, 2002 creating a new entrant program for processors, the Chicken Board failed to implement any of the substantive protections found in that decision when issuing its March 12 order.<sup>3</sup> The Ontario program sets out a number of protections including limiting new entrant processors to 1% of the total provincial allocation,

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<sup>3</sup> The Agriculture, Food and Rural Affairs Appeal Tribunal is a tribunal set up to hear disputes under the *Farm Products Marketing Act*, in Ontario.

prohibiting new entrants in a production cut back situation, putting a maximum initial volume on a new entrant at 300,000 kgs and requiring new entrant processing plants to be federally or provincially inspected. These same considerations are not apparent in the March 12 order, which instead subverts the allocation process by allowing growers to cut deals with processors outside of that process, effectively creating an open market on live price.

20. Processors should have a reasonable expectation that their market needs will be addressed in a manner consistent with the process established under the various operating agreements, and the method developed by the Chicken Board over the last several years. Historically, new processors were not unilaterally granted a share of the provincial allocation; they had to find it. Mr. Ken Huttema of Farm Fed testified that when he started his processing plant he was prohibited from processing production from his own farm. Unlike Rosstown, there was no accommodation made for the start up of Farm Fed.
21. The effect of this order is to give Rosstown control over 567,000 kgs of production. Rosstown can make allocation decisions that should be happening at the huddle and then distribute that allocation to any processor it can come to an arrangement with, effectively creating a parallel system. Such a system is inappropriate and inconsistent with supply-management and regulated marketing. To allow such an order to stand creates a precedent for other growers and will inevitably lead to “dog fights” to determine who gets what product. If more growers were to follow this route, the end result would be competition on price with the losers being the growers.
22. The Chicken Board's order also creates a distinct advantage to Rosstown as a “processor”. While other processors are experiencing significant cut backs in their allocations, Rosstown has been given increasing production every period, going from 199,000 kgs to 567,000 kgs over six periods.
23. The Chicken Board failed to provide a reasonable opportunity to be heard to existing processors whose entitlements, needs and economic interests were affected by the order and failed to consider the needs of BC's consumers and retailers. In addition, the Chicken Board ignored the clear instruction of the BCMB in *Rosstown #2*, that in the absence of an agreement with a processor, Rosstown was required to ship its product in one home week. When Rosstown could not come to a suitable arrangement with a processor, the Chicken Board agreed with Rosstown's request to call itself a “processor” and then determine its own home week schedule. Rosstown is not processing chicken but rather selling product to a processor who markets to retail customers, and in so doing Rosstown has simply found a way to avoid compliance with the BCMB's decision in *Rosstown #2*. Once again, the Chicken Board has placed Rosstown's hatchery needs ahead of the interests of the existing processors in this province and the BCMB has already determined this to be an inappropriate consideration.

24. The Appellant argues that there is no authority in the August 2000 policy rules for the March 12 order. The definition of “custom processing” is “the slaughter of chicken by a processor for or on account of a person who produced the chicken for consumption by that person and family members of that person who reside on the same premises”. “Processor” is defined as “any person who changes the nature of chicken by mechanical means or otherwise and markets, offers for sale, stores or transports the chicken in a processed or manufactured form”.<sup>4</sup> The Appellant argues that Rosstown does not fit within either definition, nor can Rosstown be compared to specialty permit growers who are entitled to receive their entire permit first out of the allocation without reduction.
25. The general powers of the Chicken Board found within the *British Columbia Chicken Marketing Scheme, 1961* (the “Scheme”) are not available to contradict or vary the express language of the policy rules. The Chicken Board has unilaterally created a new category of industry participant, outside the extensive body of policy rules governing all other industry participants, namely a grower-vendor. In a climate of reduced production allocations, it is extremely unfair and prejudicial to the current processors to have their allocation, which is already insufficient for their needs, unilaterally transferred to a new “processor” without notice or the benefit of consultation.
26. As for the suggestion that Rosstown be grandfathered, the Appellant wants the BCMB to “put the genie back in the bottle”. Neither Mr. Wiebe nor the Chicken Board have demonstrated that there will be any harm in having this order reversed. Mr. Wiebe has testified as to contracts he has with processors. On the stay application, the only two contracts he referred to were with processors. Mr. Wiebe has provided no evidence of retail customers who will be impacted if this order is reversed and the allocation returned to the general pool, available for all processors. Furthermore, even if Rosstown has retail customers, they can be serviced through the purchase of TRQ or through the purchase of product directly from processors in the province and other parts of Canada.
27. The Chicken Board relies on the Processors’ conduct as justification for the March 12 order. The Appellant concedes that everyone experienced problems in A-49 adjusting on short notice to the directions of the BCMB, not just Mr. Wiebe. Period A-50 was better, however there were still some outstanding issues. By A-51, things were moving along smoother. Although there remains an outstanding issue relating to payment to Rosstown for condemned parts, that issue is being negotiated. The Appellant argues that in any business relationship, there is a potential for problems, however the marketing board system allows for issues to be resolved through appeals, court applications and informal processes. The

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<sup>4</sup> Subsequent to this appeal being argued, the Panel was advised by the Chicken Board that, on September 27, 2001, the definition of “custom processing” was deleted from the policy rules and the definition of “processor” was amended to be “any person who is engaged in the business of processing chicken”.

Appellant argues that after being through a period of extreme turmoil, business was just starting to settle down and move forward when the Chicken Board implemented its one-off solution, creating more problems, instability and chaos in the market.

28. The Appellant is aware that on June 18, 2003, the newly appointed Chicken Board placed a moratorium on the issuing of licenses for new processing facilities and the approval of new custom killing arrangements until December 31, 2003. However, despite recognising that consultation is necessary on this issue, the March 12 order is still in effect. The Appellant asks that the March 12 order be quashed arguing that Rosstown has failed to articulate any cost, prejudice, or harm that would result by so doing. The Appellant also asks the BCMB to prohibit new processor entrants until the Chicken Board has fully consulted with the industry stakeholders and developed a new entrant policy.
29. The Panel has spent considerable time reviewing these issues. We find that we agree with the Appellant and as a result direct that the March 12, 2003 order be rescinded with directions to the Chicken Board. We have come to this conclusion for a number of reasons.
30. First of all, the March 12 order represents a significant change in the way that the chicken industry is run. The national system is based on a bottom up approach whereby processors advise the Chicken Board of their market requirements and the Chicken Board seeks to obtain sufficient production to meet their requests. Rosstown is not a processor and does not have “market requirements”. Rosstown is a grower. The Panel agrees with the Appellant that to allow a grower to control his own production through custom kill arrangements is a subversion of the bottom up allocation system. Such a significant change cannot be made on an ad hoc basis without consultation with the major industry stakeholders.
31. Second, the Panel disagrees with the Chicken Board’s assumption that just because Rosstown’s production is only 0.7% of the province’s allocation, the loss of that production could not have much impact on the processors. The custom killing of 199,000 kg of chicken in A-53 amounts to 0.7%. However, under the March 12 order Rosstown will be custom killing 567,000 kg or 2% of the province’s production by Period A-59. What appears to be a small percentage is in fact a significant amount of production when considered in light of BC’s period by period production levels of approximately 30,000,000 kg. Rosstown’s production is equivalent to the 2% tolerance within which BC is expected to manage its entire production. Further, in a time of decreasing allocations, where the Processors are not getting the amount of production they require to meet their market demands, a further decrease has more impact. Processors are being squeezed with their market requirements. While the effect of the Chicken Board’s decision to lift over production penalties for period A-53 may help ease this pressure, over the longer term the effect of the March 12 order will be to remove allocation from the Processors. This may result in a lower base next year and a further reduction in

individual processor allocations. In addition, this order was passed on the eve of the expiration of the terms of the members previously appointed to the Chicken Board. Given that this order represented a significant change in the industry and given the absence of consultation, this lack of transparency is troubling. These concerns are amplified by the fact that the BCMB has on several occasions made it very clear to the Chicken Board that concerns relating to Rosstown's hatchery should not form part of their considerations in regulating the chicken industry. On its face, the March 12 order appears once again to be an attempt by the Chicken Board to accommodate Rosstown's hatchery to the detriment of other players in the industry.

32. Third, the Panel has concerns about the ad hoc nature of the March 12 decision. The order fails to disclose any rationale as to why it was appropriate at this time for the Chicken Board to deem Rosstown a "processor". Indeed, by so doing the Chicken Board was clearly acting outside its August 2000 policy rules and creating a new category of industry participant. In coming to this conclusion, the Panel is aware that the August 15, 2000 policy rules were amended on September 27, 2001 to change the definition of "processor". As stated earlier, Rosstown is not a "processor" and does not fit within the policy rules as currently drafted. That said, the Panel does recognise that the *Scheme* gives the Chicken Board broad powers to regulate the chicken industry. It is clearly within their powers to develop the rules by which new processors will enter the BC industry.
33. One of the reasons why the elected Chicken Board was replaced was to get away from ad hoc decision making and bring stability to the industry through consistency. Consistency, control and discipline were also the purpose behind passing the August 15, 2000 policy rules. Given that those same policy rules were under review at the time the March 12 order was passed, it is difficult to understand why the Chicken Board did not include incorporate consideration of new entrant processors into that review.
34. The Chicken Board, in defence of its order, argues that the order is not unique or unprecedented; it has in the past allowed other growers to take responsibility for their own production and enter into similar custom kill arrangements. While the Panel doubts that such arrangements were on the scale seen here or that they were entered into at a time of decreasing allocation, it is not the lack of historical precedent that makes this order objectionable. Rather as already stated it is with the order's eleventh-hour timing, in conjunction with the lack of consultation and its ad hoc nature, that the Panel takes issue.
35. The Chicken Board points to the unreasonable conduct of the Processors as justification for this order. Since Mr. Wiebe opened his hatchery, there have been problems getting chicken picked up from Rosstown. There have been increased costs for catching and unlawful deductions made by the Processors. Several appeals and court applications were required to resolve the issues between the parties. The Chicken Board also points to comments made by the Processors

asking for the very remedy set out in the March 12 order. In many instances over the past year, in appeal hearings and in informal discussions, the Processors have warned Mr. Wiebe that they do not support the “cherry picking” of the hatchery business. They have suggested that if Rosstown wants its own hatchery, it should build its own processing plant.

36. The Panel does not agree with the Chicken Board’s characterisation of the events of the past year. Very clearly there has been a power struggle going on between Mr. Wiebe on one side and the Processors on the other. The Chicken Board expressly told Mr. Wiebe that it would not direct product if Mr. Wiebe opened his hatchery. Despite not having a working relationship with a processor to take the chicken produced from Rosstown hatchery’s chicks, Mr. Wiebe threw caution to the wind and set up a hatchery. Once the hatchery was operational, Mr. Wiebe began making demands on the Chicken Board about when his product should be placed and picked up in order to make his hatchery business work.
37. Having seen a portion of their hatchery business taken, it is not surprising that the Processors responded with appeals and applications to court. A significant change had occurred in the industry and the Processors were entitled to test the legality of that change. It must also be pointed out that the BCMB found merit in the positions taken by the Processors in the first two appeals. Decisions made by the Chicken Board in consideration of Rosstown’s hatchery following *Rosstown #1* were overturned.
38. As for the conduct of some of the Processors in not picking up chicken and improperly deducting charges from Rosstown’s shipped production, the Chicken Board pursued its remedy in court. It does not appear that the Processors continued to make unlawful deductions after the court’s determination. The remaining issue of deductions for condemned parts was adjourned generally to allow the parties to work out a resolution.
39. None of the foregoing should be taken as support by the BCMB for the conduct of either party over the past year. Both sides clearly lost sight of the needs of the industry and descended into a petty dispute, harmful to each other and the industry at large. The Chicken Board found itself in a difficult position, in the middle of this dispute. While the BCMB understands the desire on the part of the Chicken Board to resolve the longstanding conflict between Rosstown on one hand and the Processors on the other, how it chose to do so was flawed. While an order in the nature the March 12 order may be appropriate, it is difficult to make that assessment when that decision was issued without consultation with industry stakeholders. Further, when one compares the March 12 order to the detailed new entrant program put in place by Ontario, it is difficult to conclude that the consequences of the March 12 order were properly considered.

## ORDER

40. The March 12, 2003 order is rescinded.
41. As the Chicken Board has already implemented a moratorium on the issuance of new licenses for processing facilities and approvals for custom killing arrangements (except for amounts below 3,000 kg live weight per cycle) until December 31, 2003, it is unnecessary for the Panel to so direct. However, the Chicken Board is directed to continue its consultation with industry participants and to develop a comprehensive new entrant program for processors.
42. The Panel recognises that while awaiting this decision, the parties agreed to an interim arrangement whereby Rosstown continued to custom kill 199,000 kgs of production. Until such time as the new entrant program is finalised, the Chicken Board may exercise its discretion to allow Rosstown to continue to custom kill 199,000 kgs of production. However, in implementing a new entrant policy for processors, the Chicken Board is directed, within its discretion, to treat Rosstown like any other new entrant.

Dated at Victoria, British Columbia, this 18<sup>th</sup> day of September 2003.

BRITISH COLUMBIA MARKETING BOARD

Per

*(Original signed by):*

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