

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL OF A DECISION
OF THE BRITISH COLUMBIA CHICKEN MARKETING
BOARD CONCERNING FARM SIZE

BETWEEN:

PRIMARY POULTRY PROCESSORS ASSOCIATION
OF BRITISH COLUMBIA

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

DECISION

APPEARANCES BY WRITTEN SUBMISSION:

For the
British Columbia Marketing Board

Mr. Ross Husdon, Chair
Mr. Doug Kitson, Vice Chair
Mr. Harley Jensen, Member
Ms Christine Moffat, Member
Mr. Dedar Sihota, Member
Ms Karen Webster, Member

For the Appellant

Mr. Christopher Harvey, Q.C.

For the Respondent

Mr. John Hunter, Q.C.

Issue

1. Is the appeal of the Primary Poultry Processors Association of British Columbia (Association) filed within the time limits prescribed by Section 8(1) of the *Natural Products Marketing (BC) Act* or, if not, are there special circumstances for extending the period for filing the appeal?

Background

2. On September 12, 1996, the British Columbia Chicken Marketing Board (the Chicken Board) passed Order #303 which provided for a “Minimum Quota” of 15,000 birds, and a “Maximum Quota” of 150,000 birds.
3. On September 17, 1996, the Chicken Board circulated an agenda indicating that the minimum and maximum farm size issue would be discussed at the October 30, 1996, meeting of the Pricing and Production Advisory Committee (PPAC).
4. The PPAC is a committee created by regulation to provide input from producers and processors to the Chicken Board on issues relating to pricing and production.
5. By letter dated September 27, 1996, Mr. Colin Pritchard, Secretary-Manager of the Association, took issue with Order #303 and requested the issue of farm size be returned to the PPAC on October 30, 1996, for their recommendation.
6. On October 30, 1996, the PPAC met. The farm size issue was not returned by the Chicken Board for further review. The PPAC made a recommendation to the Chicken Board that the maximum farm size issue be revisited.
7. On December 11, 1996, the Chair of the PPAC, Mr. Clarence Jensen, offered to mediate a discussion between the Chicken Board and the PPAC in order to avoid an appeal.
8. Mr. Dave Brew and Mr. Fred Krahn, who are both members of the Chicken Board and the PPAC, were present at the December 11, 1996, meeting.
9. On December 14, 1996, Mr. Jensen advised the Association that the Chicken Board would not revisit the issue of farm size and accordingly, there would be no further PPAC meetings to discuss the issue.

10. The Association filed their notice of appeal on December 31, 1996.

Arguments of the Appellant

11. The Appellant takes the position that whether or not the appeal was filed in time, there are special circumstances for extending the filing period.

12. The Appellant relies on the following special circumstances:

- a. the PPAC process was created to encourage continuing dialogue between the PPAC and the Respondent, and such continuing dialogue was attempted by the Appellant following the passage of the Order appealed from;
- b. the PPAC process requires that the Respondent consult further with the PPAC in the event that the Respondent decides not to accept a recommendation of PPAC, and the Respondent further failed to consult when it unilaterally passed a new farm size order without consulting the PPAC in advance;
- c. the Chair of the PPAC indicated to the Appellant that “Victoria” wanted the issue resolved within the PPAC process and, accordingly, advised the Appellant not to appeal until the PPAC process was exhausted;
- d. the Secretary-Manager of the Appellant never received the fax addressed to him dated October 11, 1996, (see exhibit “B” to affidavit of Mr. Art Stafford sworn January 22, 1997); and
- e. the Appellant filed a notice of Appeal in a timely manner once it became clear that the PPAC process was exhausted.

Arguments of the Respondent

13. The Respondent takes the position that the appeal was filed out of time and there are no special circumstances warranting an extension of the time limit for filing.

14. The Appellant was aware of the Respondent’s decision regarding farm size on or about September 12, 1996. The Appellant requested that the Respondent reconsider the issue. This was done on October 10, 1996, and the Respondent’s October 11, 1996, memo to Mr. Pritchard resulted.

15. The Respondent takes the position that the Appellant is well familiar with the appeal process and suffers no prejudice if the appeal is struck.

Findings

16. It appears from the affidavits and documents filed that the industry as a whole, and the Appellant in particular, was well aware of the farm size issue.
17. The Appellant made recommendations through its representatives on the PPAC. The PPAC considered the farm size issue in September and October, 1996.
18. It appears that the Respondent considered the PPAC's input on October 10, 1996. The Respondent's October 11, 1996, memo confirms, however, that it was prepared to "hear any request and rationale from a Grower/Processor why the current maximum of 150,000 birds should be higher."
19. This comment could be interpreted as suggesting the farm size decision was not final.
20. This interpretation is further supported by the December 11, 1996, PPAC meeting where a decision was made to attempt to mediate discussion between the PPAC and the Respondent. The consensus of the PPAC members was to meet and attempt to work out an agreement with the Respondent before going to appeal.
21. The attendance at this December 11, 1996, PPAC meeting of Mr. Brew and Mr. Krahn, and their apparent agreement to mediate, may well have caused the other members of the PPAC to form the opinion that the Respondent was receptive to further discussion of the farm size issue.
22. The Appellant may well have believed an appeal remained an option well into December 1996.
23. The BCMB finds that the appeal was filed out of time.
24. The BCMB further finds that there are special circumstances, in this case, to warrant an extension of the time for filing an appeal.

Decision

25. The period for the filing of the appeal of Chicken Board Order #303 is extended to January 7, 1997.

26. The appeal will be heard on its merits.

Dated at Victoria, British Columbia, this 23rd day of July 1997.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Ross Husdon, Chair

Doug Kitson, Vice Chair

Harley Jensen, Member

Christine Moffat, Member

Dedar Sihota, Member

Karen Webster, Member