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

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING BOARD
AGAINST A DETERMINATION OF THE
BRITISH COLUMBIA CHICKEN MARKETING BOARD
DATED DECEMBER 13, 1989

BETWEEN:

TRACE DEBOER

APPELLANT

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: Trace DeBoer
Peter R. Shoore, Sunrise Poultry Processors Ltd.
R. A. Wattie, Legal Counsel

APPELLANT

Albert Bartel, Chairman
Phoebe Hunt, Past Member
Hakon Komm, Colonial Farms Ltd.
John Hunter, Legal Counsel

RESPONDENT

DATE OF HEARING FEBRUARY 19, 1990

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Trace DeBoer against a determination of the British Columbia Chicken Marketing Board ("Chicken Board") dated December 13, 1989, whereby the said board effectively ordered that Trace DeBoer's 39 percent quota increase would be cancelled if he marketed any of his product with a Lower Mainland processor.

2. The appeal was filed with the board on January 11, 1990, and was heard in Richmond, British Columbia on February 19, 1990.

3. The Appellant and Respondent were represented by counsel and were permitted to present witnesses and make submissions on the facts and the law.

4. The Appellant stated that:

   (a) the Trace DeBoer farm, located in the Interior of British Columbia, produces broiler chickens. The farm was established in 1986 when the Appellant sold his dairy operation in the Lower Mainland. In 1986, he purchased roaster quota and established the current broiler operation in the Interior, based upon the policy of the Chicken Board, which allowed for the conversion of the roaster quota into broiler quota in order to encourage establishment of a grower and processing industry in the Okanagan.

   (b) At no time was he informed that restrictions might be placed on his quota if moved to the Interior. Furthermore, these restrictions were not established in writing.

   (c) Due to some dissatisfaction with the hatchery and the processing plant in the Interior, particularly with respect to the processor's practice of catching and shipping chickens to the market in stages, he sought to reach agreement with a hatchery and a processor in the Lower Mainland.

   (d) Upon hearing of the agreement, the Chicken Board informed him that he would lose the extra quota gained by converting roaster quota to broiler quota, and subsequently passed the order (which is the subject of this appeal) to that effect.

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5. The Appellant requests that the Board cancel the order of the Chicken Board to allow Trace DeBoer to ship his full quota to any processing plant in the province, without any loss of any of the additional quota provided to him for locating in the Interior.

6. The Respondent stated that:

   (a) The Chicken Board put in place in 1980 a specific program aimed at developing both a production base and a chicken processing plant in the Interior of the province.

   (b) Under this program, roaster growers from the Lower Mainland were allowed to convert their roaster quota to a broiler quota if they relocated into the Interior. This conversion resulted in a 39 percent increase in quota.

   (c) Over several years, a total of 14 farms, including that of Trace DeBoer were established in the Interior under this program.

   (d) Although the policy document (Exhibit B, Tab 4) did not specifically state so, it was generally understood in the industry that the express purpose of the conversion feature was specifically to encourage establishment of an industry in the Interior. Potential interested parties were interviewed by the Chicken Board and were provided with a common package of information.

   (e) In order to maintain the industry in the Interior, it is necessary to continue the special program which provided special incentives for relocating in that region, by more formally recognizing the tie-in between the incentive and the regional plant.

   The Respondent requested that the board reject the request to cancel the order under appeal, and that no special exemption be provided for Trace DeBoer.

7. The board heard and reviewed the evidence provided by both parties and finds that:

   (a) Although the policy to convert roaster quota to broiler quota did not explicitly state that the percentage increase would be lost if product was shipped to the Lower Mainland, the Board concurs with the Respondent that this prohibition is implicit in the program.

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(b) This program and its intent were well known throughout the industry;

(c) The Chicken Board attempted to clearly inform all potential interested growers about the program and that it acted in a fair and even-handed manner in implementing the program and;

(d) Granting of special exemptions would nullify the objective of the program and would jeopardize the processing plant and in turn, the other broiler farms in the Interior region of the province.

8. The Board therefore confirms the Order of the British Columbia Chicken Marketing Board to reduce the incentive portion of the quota of any Interior growers who receive it, should they choose to ship to processors in the Lower Mainland.

9. Since there was some dispute about the amount of the incentive quota provided to Trace DeBoer, which was not resolved by this hearing, the Board recommends that the parties meet to discuss and resolve the level of quota which is at issue, should the Appellant choose to ship his product to the Lower Mainland.

10. In keeping with this Board's rules of appeal, the whole of the Appellant's deposit shall be forfeit.

(Original signed by):

Mona Brun, Acting Chairperson
O. Austring, Member
G. Aylard, Member
J. Reger, Member

Dated this 27th day of March, 1990 in Victoria, British Columbia.