

92-25  
5/24/93

IN THE MATTER OF THE NATURAL PRODUCTS  
MARKETING (B.C.) ACT

AND

IN THE MATTER OF AN APPEAL  
OF WAYNE AND MICHELLE ANDERSON  
FILED NOVEMBER 24, 1992

BETWEEN:

WAYNE and MICHELLE ANDERSON

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

DECISION

## **INTRODUCTION**

On November 24, 1992, the Appellants, Wayne and Michelle Anderson, who carry on business using the name "Poultry In Motion", filed an appeal against the decision of the British Columbia Egg Marketing Board ("The Egg Board") charging them levies. The decision which is being appealed from is contained in a letter dated November 3, 1992, and addressed to Wayne Anderson. This letter sets out the history of the imposition of marketing licence fees as well as setting out how the Egg Board derives its authority for charging these fees. Additionally, it states that the amount of unpaid marketing licence fees due is the sum of \$5,031.88, and requests payment of this amount. A schedule providing the details of the Egg Board's calculation was attached to the letter.

Mr. George Aylard was a member of the panel who heard this appeal. However, as his term expired prior to the rendering of this decision by the British Columbia Marketing Board (the "Board"), the remaining panel members have rendered this decision.

## **ISSUE**

The Appellants argue that they should not have to pay market licensing fees to the Egg Board because they do not feel that they get anything for their money nor do they feel they are represented by the Egg Board.

The Egg Board argues that they have the authority to charge licence fees to unregulated producers such as the Appellants. They rely on the decision of Mr. Justice Catliff of July 3, 1991, file number C903356, Vancouver Registry (the "Delight Decision") involving the Egg Board and Christine Delight and Dick Delight (the "Delights"). The Delights also have birds without holding quota.

## **BACKGROUND**

Mr. and Ms. Anderson have been producing eggs (commonly known as "free range eggs") in Powell River since approximately February, 1991.

The Delights are producers of free range eggs who have entered into certain arrangements with their customers which have resulted in the Courts finding that they do not market "through normal marketing channels". The Andersons have apparently attempted to model their operation after that of the Delights.

On June 6, 1989, the Delights appeared before a panel of the Board. That panel found that the Delights were responsible for paying market licence fees which were past due, as well as marketing licence fees which would normally be due and payable by them for ongoing production. This Order of the Board was not appealed to the Supreme Court of British Columbia. However, the Egg Board commenced an action against the Delights to enforce the payment of those fees.

The issue as to whether or not unregistered egg producers are required to pay licence fees was dealt with by Mr. Justice Catliff in the Delight Decision. Mr. Justice Catliff found that the Egg Board is empowered to fix licence fees. He further found that the Egg Board is able to fix a licence fee "based on any proper consideration it sees fit". Mr. Justice Catliff concluded that the Delights were obligated to pay licence fees both for the birds which they were allowed to keep without having to have quota and for the birds which were over and above that number.

Subsequent to the decision of Mr. Justice Catliff, the British Columbia Court of Appeal decided that the Delights were not required to purchase quota. This appeal was an appeal by the Delights from another decision of the British Columbia Supreme Court (the "Delight Appeal Decision").

The main issue in the Delight Appeal Decision was whether or not the Delights were required to purchase quota in order to produce their eggs. Mr. Justice Catliff was aware that this issue was being appealed to the Court of Appeal at the time he made his Order. He distinguished between the concept of having a quota and the concept of being licensed, stating:

"First of all it is clear that the defendants, following my first finding, are obligated to pay for licence fees in respect to 499 layers. But secondly, I see no reason why, as long as the defendants continue to have their additional 1500 or more layers laying eggs that they should not be paying a licence fee as the board is authorized to fix and collect under the scheme. If the Court of Appeal requires the defendants to seek a quota then that will not affect, it seems to me, their obligation to have paid fees up to that point. If the Court of Appeal dismisses the appeal, then it seems to me equally the defendants will continue to be liable to pay licence fees."

## **DECISION**

The British Columbia Egg Marketing Scheme does more than create a quota system. It creates a licensing system, with provision for egg producers to pay licence fees, regardless of whether or not they have or are eligible to have quota.

Thus, the marketing licence aspect of the Scheme can apply to a given person, even though the quota aspect does not.

The Board does not have to make a determination as to whether or not the Appellant's operations are such that they are not marketing "through normal marketing channels". Whether or not they are marketing "through normal marketing channels", this Board finds that they are required to pay marketing licence fees.

It was Mr. Anderson's evidence that they purchased 500 day old chicks in November 1990, that the first egg from these animals was laid in February 1991, and that the birds were in full production by March or April 1991. The Appellants then went on to purchase 1000 20-week old pullets during the summer of 1991 but lost 50 of these birds in September 1991 and some

further birds after that time. In the early spring of 1992, they disposed of what was remaining of their original birds. On November 1, 1992, they purchased a further 700 20-week old pullets and on January 2, 1993, they disposed of the birds which they had purchased in the summer of 1991.

It was also the Appellants' evidence that the 20-week old pullets which they had purchased were in full production within two months of them acquiring the birds. They further testified that they sell virtually all of the eggs which they produce.

Calculating how many producing birds the Appellants had at any one time cannot be done precisely. This is somewhat complicated by the fact that it appears as if the Appellants may have given somewhat different information to Mr. Pottruff, an employee of the Egg Board. However, as Mr. Pottruff was not called to testify the calculations will be based on approximations gleaned from the Appellant's evidence.

In determining the quantum of the fees which the Andersons are required to pay up to the date of this hearing, the Board makes the following findings:

1. Between mid-February 1991 and October 31, 1991 the Appellants had, on average, 400 producing birds. The fees payable for this period are:

$$400 \text{ birds @ } 16.2 \text{ (doz/yr/bird)} \times 37 \text{ (weeks)} \times 0.15 \text{ (fee/doz)/52} \\ = \$691.62 + \$48.41 \text{ GST} = \$740.03$$

2. Between November 1, 1991 and December 31, 1991, the Appellants had, on average, 1,400 producing birds. The fee for this period are:

$$1,400 \text{ birds @ } 16.2 \text{ (doz/yr/bird)} \times 9 \text{ (weeks)} \times 0.15 \\ \text{(fee/doz)/52} = \$588.81 + \$41.22 \text{ GST} = \$630.03$$

3. Between January 1, 1992 and March 21, 1992, the Appellants had, an average of 1,300 producing birds and so the fees payable for this period are:

$$1,200 \text{ birds @ } 16.2 \text{ (doz/yr/bird)} \times 12 \text{ (weeks)} \times 0.153 \\ \text{(fee/doz)/53} = \$673.43 + \$47.14 \text{ GST} = \$720.57$$

4. Between March 22, 1992 and July 11, 1992, the Appellants had, on average, 900 birds. Accordingly, the fees payable for this period are:

$$900 \text{ birds @ } 16.2 \text{ (doz/yr/bird)} \times 16 \text{ (weeks)} \times 0.16 \text{ (fee/doz)/53} \\ = \$704.24 + \$49.30 \text{ GST} = \$753.54$$

5. Between July 12, 1992 and December 31, 1992, the Appellants had approximately 1,000 birds and so the fees owing for this period are:

$$1,000 \text{ birds @ } 16.2 \text{ (doz/yr/bird)} \times 25 \text{ (weeks)} \times 0.174 \text{ (fee/doz)/53} = \$1,329.62 + \$93.07 \text{ GST} = \$1,422.69$$

6. For the period from January 1, 1993, to the hearing date, the Appellants had approximately 700 birds and accordingly the fees payable would have been:

$$700 \text{ birds @ } 16.2 \text{ (doz/yr/bird)} \times 5 \text{ (weeks)} \times 0.174 \text{ (fee/doz)/52} = \$189.73 + \$13.28 \text{ GST} = \$203.01$$

The total levies payable by the Appellants to the Egg Board to the date of hearing are \$4,266.86.

Ms. Anderson testified that the Appellants marketed approximately 18,000 dozen eggs in 1992. As well, Mr. Anderson testified that they gave a number of small and medium eggs away. If fees were based on the number of eggs Ms. Anderson testified were marketed in 1992, the fees which would be owed by the Appellants for 1992 would be approximately \$3,200.00, including GST. The fees for 1992, according to the Board's findings, are approximately \$2,900.00. Thus, the calculations are reasonably close.

#### **PAYMENT**

It was the Appellants' evidence that they were experiencing severe financial difficulties and that they could not afford to pay these fees. Because of the financial situation which the Appellants attested to, the Board requests that the Egg Board attempt to enter into negotiation with the Appellants for the payment of the monies which the Board has found owing. However, if the Appellants are not willing to make reasonable payment arrangements, the Egg Board may, as it sees fit, take appropriate steps to collect the monies owing by the Appellants.

In calculating the fees payable by the Appellants, the Board assumed that the Egg Board charges fees only on birds which have reached maturity and are producing eggs. The Board is not saying that this is the way the Egg Board should calculate its fees, but is simply explaining the basis on which the Board's calculations were made, given the lack of evidence on this point.

#### **INTEREST**

The Egg Board has argued that it is entitled to charge interest on unpaid levies according to its Standing Order. Without making a determination whether or not the Egg Board can charge interest as set out in the Standing Order, the Board finds that in these particular circumstances, interest should not be charged by the Egg Board. However, the Board will allow the Egg Board to charge interest at the rate of 5% per annum calculated semi-annually not in advance on any unpaid monies which are due pursuant to this decision, from February 2, 1993.

**DEPOSIT**

The Appellants have been unsuccessful in their appeal. In accordance with the rules governing appeals before this board, the Appellants' deposit is forfeit.

Dated at Victoria, British Columbia, this 24<sup>th</sup> day of May, 1993.

*Donna M. Iverson*

\_\_\_\_\_  
Donna M. Iverson, Chair

*Mona Brun*

\_\_\_\_\_  
Mona Brun, Vice-Chair

*Doug Kitson*

\_\_\_\_\_  
Doug Kitson, Member