

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BRITISH COLUMBIA) ACT

AND

IN THE MATTER OF AN APPEAL TO
THE BRITISH COLUMBIA MARKETING
BOARD FROM A DECISION OF THE
BRITISH COLUMBIA TURKEY MARKETING BOARD

BETWEEN:

Anne Timmerman

Appellant

AND:

British Columbia Turkey
Marketing Board

Respondent

Anne Timmerman

Appearing on her
own behalf

J.A.E. McEwen

Appearing for the
Respondent

Members of the Board
hearing the appeal:

Chas.E. Emery--Chairman
E.Mona Brun, Martin
Hunter, Nigel Taylor and
Alfred E. Giesbriht --
Members

Donald A. Sutton

Counsel for the Board

This appeal was brought on pursuant to the provisions of Section 11 of the Natural Products Marketing (British Columbia) Act and was heard in Richmond, B.C. on Monday, September 22, 1980.

The Appellant is appealing a decision of the Respondent dated August 15, 1980 not to allow the transfer to her of turkey quota held by one George Tsiaras. The effect of the transfer, if allowed would, according to the Respondents interpretation of its regulations, place under the hold or control of the Appellant a marketing quota in excess of 840,000 pounds, which

is the maximum amount allowed to any one registered grower. It is acknowledged by all parties that the quota in question ie that of George Tsiaras, is no longer available to the Appellant but this Board has been requested to rule on the question as though it still was.

The facts surrounding the matter can be shortly stated. The Appellant is presently operating two separate farms under two separate growers licences, one - #67 is held in her own name and which she controls 100% has a quota of 341,250 pounds and the other - #133 is held in the name of Skyacres Turkey Ranches Ltd., a limited company, has a quota of 315,000 pounds. The Appellant owns 52% of Skyacres. The proposed purchase of the Tsiaras quota of 283,500 pounds would bring the total quota to 939,750 pounds, an amount in excess of the maximum quota allowed to one person or corporation.

The prohibition giving effect to the maximum quota allowable is contained in B.C. Turkey Marketing Board General Orders Section 7 which reads as follows:-

"Section 7. Transfer of turkey marketing quotas.

In this section the party from whom a marketing quota is transferred shall be known as the transferor and the party to whom a marketing quota is transferred shall be known as the transferee.

(1) The transferor shall be a registered grower licensed by the Board and shall hold a marketing quota, but the transferee need not be so qualified.

(2) The application for transfer of a marketing quota shall be made to the Board in writing in the form described and furnished by the Board.

(3) The transferee of a marketing quota must be the owner or purchaser of the turkey production unit to which the marketing quota is applied to be

transferred and proof of ownership or purchase is required by the Board.

(4) A registered grower to whom a marketing quota or permit of 840,000 pounds (or metric equivalent) has been issued is prohibited from becoming the transferee in the transfer of marketing quota.

(5) The total amount of marketing quota that may be issued to a transferee on any transfer of marketing quota shall not exceed 840,000 pounds (or metric equivalent) and this amount shall include the amount of marketing quota or permit previously issued to the transferee.

(6) Approval or rejection of each application to transfer marketing quota shall be heard by Board resolution.

(7) The Board may approve of the division of marketing quota provided that the resultant portions of the divided quota will be treated as part of the original quota when considering issuance of additional quota or permit to meet market demands during the succeeding ten years following the date of the approved division.

(8) Leasing of marketing quota privileges will not be granted by the Board.

(9) The Board will not approve the transfer of marketing quota to any transferee if that transferee and any registered grower or growers to whom a marketing quota has been issued are "associated" by the definition of that term in the Canada Income Tax Act and the proposed transfer would result in those associated persons together holding a marketing quota in excess of 840,000 pounds (or metric equivalent).

Particular reference is made to the last section ie Section 7(9) which prohibits transfer to growers who are associated by the definition contained in the Canada Income Tax Act which would result in a quota exceeding 840,000 pounds. The particular provision of the Income Tax Act in question states that an individual is related to a corporation and thus associated if, inter alia an individual controls a corporation. It can be seen therefore that the Appellant and Skyacres Turkey Ranches Ltd. are associated by virtue of her owning 52% of that company. The Respondent became aware of the type of problem posed in the Appellant's type of situation and therefore provided in B.C. Turkey Marketing Board General Orders Section 5 the following provision:-

"Section 5(4). Registered growers who are 'associated' as defined in The Canada Income Tax Act, shall not hold marketing quota or marketing permit, the sum of which exceeds 840,000 pounds (or the metric equivalent). However, where two or more turkey production units are operated as 'family farm units', but due to financial considerations, a corporate body legally controls all the units, the 'family farm units' will be considered as separate units for the purpose of the General Orders."

The important portion of the section to note is that if a corporate body legally controls all the units only then will the family units be considered as separate units. Such is not the case in the Appellant's circumstances as licence #67 is in her name alone.

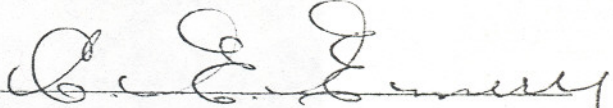
The Respondent has taken the position that, as the Appellant owns 52% of Skyacres Turkey Ranches Ltd. she controls that corporation and therefore she and the corporation are associated. As a consequence, the Respondent states that it

is prevented from approving the transfer of quota in question as it would result in associated persons together holding quota in excess of the 840,000 pounds maximum in contravention of Section 7(9) of its General Orders. It further states that General Order 5(4) as quoted above provides no relief to the Appellant as the corporate body in question does not, "legally control all the units".

The Appellant strongly urged this Board to determine that, as the two farms in question are two separate units operating under two separate licences, the addition of the quota in question to her licence would not place that quota in excess of the maximum. She stated that in her opinion, under such circumstances the provisions of the Respondent's General Orders relied on by it should not apply.

This Board has considered the matter and has come to the conclusion that the Respondent's position should be upheld and that the appeal should not be allowed. In coming to this conclusion the Board is mindful of the Respondents continuing efforts to protect the family farm concept of the turkey industry and its attempts to prevent it being taken over by large corporations which could result if provisions such as are contained in General Order 7(9) are not enforced.

DATED at Richmond, B.C. this 14th day of October, 1980.



Charles E. Emery -- Chairman
B.C. Marketing Board