

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

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING BOARD  
AGAINST SEIZURE RECEIPT NUMBER 101290  
DATED FEBRUARY 1, 1990

AND THE POSITION OF THE BRITISH COLUMBIA EGG MARKETING BOARD  
THAT THE DELIGHTS CONTINUE TO BE IN CONTRAVENTION  
OF THE DECISIONS OF THE BRITISH COLUMBIA MARKETING BOARD DATED  
JUNE 6, 1989 AND DECEMBER 29, 1989

BETWEEN:

CHRISTINE AND DICK DELIGHT

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: Christine Delight  
David A. Critchley, Counsel

APPELLANT

British Columbia Egg Marketing Board  
Bruce Fraser, Counsel  
Peter Gunther, Director  
Neill Carey, General Manager  
Peter Whitlock, Comptroller  
George Gray, Chick Salesman  
Stewart Paulson, Poultry Industry Specialist,  
Ministry of Agriculture & Fisheries  
Rick Gammer, Senior Program Officer for  
Poultry Products, Agriculture Canada

RESPONDENT

DATE OF HEARING

MARCH 5, 1990

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Christine and Dick Delight against Seizure Receipt Number 101290 dated February 1, 1990 and the position of the British Columbia Egg Marketing Board, that the Delights continue to be in contravention of the decisions of the British Columbia Marketing Board dated June 6, 1989 and December 29, 1989.
2. The appeal was filed with the Board on February 7, 1990 and was heard in Vancouver, British Columbia on March 5, 1990.
3. The Appellant and Respondent were represented by Counsel and were permitted to present witnesses and make oral submissions on the facts and the law.
4. The Appellant argued:
  - a) that Seizure Receipt Number 101290, authorizing the seizure and disposal of layers in excess of the allowable unregulated limit, issued at 3085 - 184th Street, Surrey, British Columbia was an attempt by the Respondent to enforce orders of the Board dated June 6, 1989 and December 29, 1989;
  - b) that ownership of the birds has changed and that the majority of owners were not notified of the Seizure Receipt;
  - c) that the Respondent had limited power to seize the birds. Section 18 of the Natural Products Marketing (BC) Act (the Act) is a specific provision dealing with search and seizure and the power of seizure in Section 18 is limited to the seizure of a regulated product or a receptacle, with emphasis to be placed on the singular and that the power to seize is limited to evidentiary purposes;
  - d) that enforcement of the Act, Regulations, and orders made under the Act or Regulations is governed by Sections 17 and 19 of the Act. In order to seize the birds, a court order is required to enforce an order, rule, decision or determination made by the provincial board or a marketing board;

- e) that the Respondent's Standing Order 2(c), which states that "No person shall keep in concert with another person or persons such layers in facilities contiguous to or apart of each other such that in aggregate the number of layers kept would if kept by one person in such facilities that require that person to obtain a licence and registered as a registered producers.", contravenes the Charter of Rights and Freedoms (Constitution Act, 1982, Part 1, Schedule B, Section 2(d) and Section 15);
- f) that the quota system established and administered under the British Columbia Egg Marketing Scheme, B.C. Reg. 173/67, Part 1, Division (2)3, is invalid in that the Lieutenant Governor in Council of British Columbia may not delegate the power vested in him under Section 2(2) of the Act to establish, amend or revoke schemes for the promotion, control and regulation of natural products in the Province.

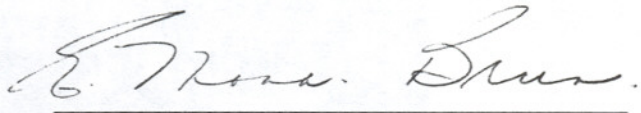
5. The Respondent argues:

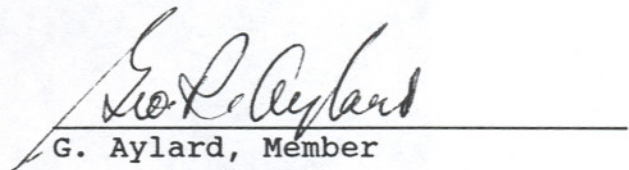
- a) that Section 37(m) of the British Columbia Egg Marketing Scheme authorizes the Respondent "to seize and dispose of any of the regulated product kept, transported, processed, packed, stored or marketed in violation of any order of the Board" and is clear authority for the Respondent to act on an offense under the marketing orders of the Respondent;
- b) that the Respondent acted under Section 37(m) of the British Columbia Egg Marketing Scheme and under Section 18 of the Act;
- c) that the Appellant was given a full and fair hearing in February, 1989 in front of the Respondent and a full hearing in front of the Board;
- d) that any failure to alert the alleged new owners of the birds is the fault of the Appellant because the Respondent specifically requested the Appellant to advise the alleged owners of these birds of the hearing before the Board;

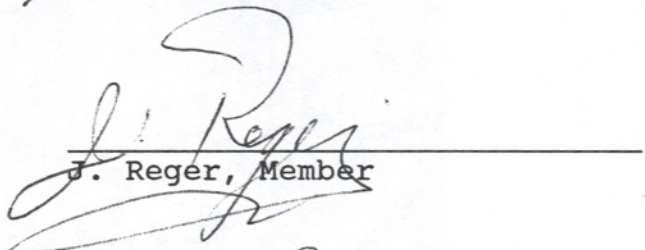
- e) that the British Columbia Court of Appeal in the case of Milk Board v. Clearview 69 B.C.L.R. 220, considered the application of Section 2(d) of the Charter, dealing with freedom of association, and Section 15 of the Charter in its application to the milk marketing scheme. Both the British Columbia Supreme Court and the Court of Appeal concluded that Sections 2(d) and 15 have no application to marketing schemes;
  - f) That Section 2(2) of the Act was a complete answer to the Appellant's argument that the quota system administered under the British Columbia Egg Marketing Scheme was invalid.
6. Having heard and considered the evidence and arguments presented during the hearing, this Board finds that:
- a) the Respondent's letter dated February 1, 1990 and the Seizure Receipt 101290 purported to enforce the orders of the Board;
  - b) Section 13(1)(j) of the Act authorizes the Lieutenant-Governor in Council to delegate powers to the Respondent to seize and dispose of any of the regulated product kept, transported, produced, packed, stored or marketed in violation of an order of the marketing board or commission";
  - c) the portion of the Seizure Receipt 101290 which purports to be made pursuant to the decision of the Board dated June 6, 1989 is invalid, as the Respondent has no authority to enforce an order, decision or determination of the Board;
  - d) there is no merit to the Appellant's argument regarding the Charter and its application to this case;
  - e) the Appellant's assertion that the quota system established under the provisions of the British Columbia Egg Marketing Scheme, B.C. Reg. 173/67, Part 1, Division (2)3 is invalid, is a matter beyond the jurisdiction of this Board, and that this matter should be decided by the British Columbia Supreme Court and the Appellant would have to comply with Section 8(3) of the Constitutional Question Act.

7. The Board orders that the Respondent's Seizure Receipt 101290 be varied by deleting the words "and pursuant to the decision of the British Columbia Marketing Board dated June 6, 1989", and that in all other respects the Seizure Receipt is hereby confirmed.
8. The Order of the Respondent as set out in its Minutes of Meeting No. 1B/90, dated February 5, 1990 is amended by deleting reference to Section 17(f)(iii) and substituting Section 17(f), and deleting the following words "and subsequent appeal to the B.C. Marketing Board, and in accordance with the decision dated June 6, 1989 and amended by letter of December 29, 1989 and Mrs. Delight's non compliance with that decision," and that in all other respects the Order is hereby confirmed.
9. In keeping with this Board's Rules of Appeal one half of the Appellant's deposit shall be forfeit.

Dated this 12<sup>th</sup> day of April, 1990 in Vancouver, British Columbia

  
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E. Mona Brun, Vice-Chairperson

  
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G. Aylard, Member

  
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J. Reger, Member

  
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O. Austrung, Member