

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

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING BOARD  
FROM THE DECISION OF THE BRITISH COLUMBIA  
EGG MARKETING BOARD FEBRUARY 2, 1989  
CONCERNING CHRISTINE DELIGHT AND DICK DELIGHT

BETWEEN:

CHRISTINE DELIGHT AND DICK DELIGHT

APPELLANTS

AND;

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances:

David A. Critchley, Counsel  
Christine Delight  
Dick Delight

APPELLANT

British Columbia Egg Marketing Board  
Bruce Fraser, Counsel  
Neill Carey, General Manager  
Peter Guenther, Director  
Peter Whitlock, Comptroller  
Richard Green, Fieldman

RESPONDENT

Date of hearings:

April 25, 1989,

April 26, 1989

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Christine Delight and Dick Delight ("the Appellant") from a decision of the British Columbia Egg Marketing Board ("the Respondent") made on February 2, 1989, which states;
  - (a) the Appellant is entitled to maintain up to 499 layers and they are directed to reduce their flock to a maximum of 499 layers within 30 days; and
  - (b) the Appellant must pay marketing licence fees in the amount of \$11,148.81 with respect to their egg production from January 1, 1983 to February 28, 1989 and after that at rates in effect from time to time on the dozens of eggs they market. The invoice amount of \$11,148.81 is due and payable within 30 days.
2. The Appeal was filed with the Board on February 24, 1989 and was heard in Richmond, British Columbia on April 25, and April 26, 1989.
3. Both the Appellant and the Respondent were represented by legal counsel and were given the opportunity to call and cross examine witnesses, present documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Appellant provided evidence as follows;
  - a) they currently have approximately 2400 birds which are raised, using loose housing barns, nesting boxes, hand feeding and hand egg collection;
  - b) using specialized feeds and certain strains of chickens, the Appellant is able to produce eggs, which are significantly different than those available from commercial flocks, which taste different, have thicker shells, have a firmer consistency of egg white and have significantly darker egg yolks. Since these egg quality attributes are significantly different than those available from current commercial egg laying operations, the Appellant is able to cater to a niche market which is

different from that currently serviced by commercial egg producers. To support this position numerous petitions and letters of support were entered as evidence by the Appellant;

- c) the regulated marketing system for eggs should be sufficiently flexible to accommodate producers, such as the Appellant, because of their ability to meet the needs of specialized markets which commercial egg producers are not satisfying;
- d) on the question of the Respondent's invoicing of the Appellant for marketing licence fees, dating back to January 1, 1983, the Appellant submitted past fees should only be charged from September 8, 1988 and that, for legal reasons, the retroactive time frame should not exceed two years; and
- e) the cost to purchase egg quota for the 2400 birds would be approximately \$100,000 which reflects the efficiencies and economies present in commercial egg laying operations but which would be totally unjustified and uneconomic given the low level of operational efficiencies which provide the unique product quality and the positive marketing perception for the customers from the management approach and facilities of the Appellant. i.e. lower feed conversion, lower rates of lay, higher costs for specialized feed, higher mortality, high labour component.

5. The Respondent provided evidence as follows:

- a) the eggs produced by the Appellant are nutritionally the same as those sold to the supermarkets and the restaurants from existing commercial egg producers;
- b) the Respondent has legislative authority to regulate egg production within the province using a quota system and that the Appellant does not hold current and valid quota to permit it to house 2400 laying hens;

- c) the Appellant is entitled to house 499 laying hens without quota or to obtain, by way of purchase, egg laying quota for the 2400 hens currently housed by the Appellant;
- d) on the issue of marketing licence fees, the Appellant acknowledged, to the Respondent's manager over the telephone, that they should be paying some marketing licence fees to the Respondent. As such, the Respondent should pay a similar levy as other egg producers commencing with January 1, 1983; and
- e) the Respondent does not consider it appropriate to establish a quota-building program for new entrants since the existing commercial egg producers are not producing at their base quota level.

6. The Board finds as follows;

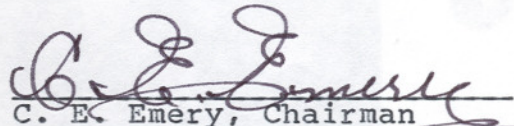
- (a) the Appellant is responsible for paying market licence fees for production in 1988 (\$3319.47) and for 1989 production which includes \$598.20 for the first 8 weeks of 1989, as well as market licence fees which would normally be due and payable by the Appellant for production in 1989 and beyond;
- (b) the Appellant is providing a product and a service to the market place which is different than that currently provided by commercial egg producers and represents a niche market demand which is not being met through the current policies and regulations of the Respondent;
- (c) the Respondent shall complete and table with the Board, by September 30, 1989, a comprehensive market analysis and marketing strategy, in a form satisfactory to the Board, which examines opportunities for developing niche markets for eggs within the province. The scope of this analysis needs to be sufficiently comprehensive as to include documentation and analysis of the approaches used by producers and marketers of eggs in the United States, the United Kingdom, Europe and other areas of Canada to develop niche and specialty markets within their own home markets;

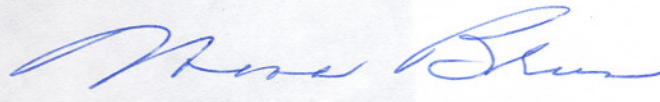
- (d) the current quota system, as administered by the Respondent, results in a market value for quota, upon transfer, which is difficult to economically justify for a cottage type operation as operated by the Appellant;
  - (e) the Board strongly suggests that the Respondent develop and table with the Board by September 30, 1989 an amended quota transfer policy which will allow for new entrants to the industry for servicing specialty and niche markets such as that developed by the Appellant. The amended quota policy should not discriminate, in economic terms, against producers, such as the Appellant, who incur substantially higher costs of production to produce eggs which can be differentiated in the market place from those commonly available from commercial producers who have production efficiency as a major focus for their enterprise;
  - (f) the Appellants will be permitted to maintain 2400 laying hens until December 31, 1989 and then will have to meet the terms and conditions for quota transfer or reduce production to 499 hens.
7. From the evidence of this Appeal, the Board has serious concern over the Respondent's lack of attention to ways for developing new and innovative marketing and production techniques which could stimulate increased interest by consumers in eggs.
  8. Although the Respondent has discussed, on numerous occasions over the past years, the issue of a quota building program for new entrants to the industry, the Board does not consider it appropriate for the Respondent to delay instituting a new entrant program because existing producers are not at original base quota.
  9. This Board has had the opportunity to hear all of the evidence and submissions of the Appellant and the Respondent. Based on these submissions the Board concludes the Appellant should be entitled to maintain up to 2400 layers until December 31, 1989 and then will have to meet the terms and conditions for quota transfer or reduce production to 499 hens

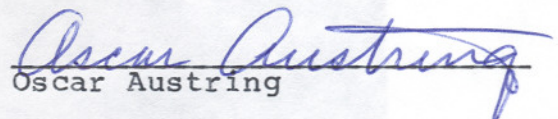
and also finds that the Appellant is retroactively responsible for paying marketing licence fees for egg production from January 1, 1988 and accepts the Respondent's estimate of \$3917.67 as market licence fees due and payable for the period from January 1, 1988 to February 25, 1989.

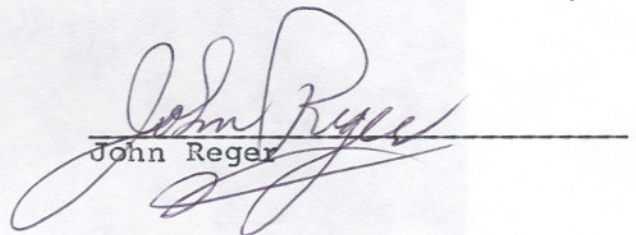
10. In accordance with the Rules of Appeal, one half of the Appellant's deposit shall be forfeit.

Dated this <sup>6th</sup> day of June, 1989 in Richmond, British Columbia.

  
C. E. Emery, Chairman

  
Mona Brun, Vice-Chairperson

  
Oscar Austring

  
John Reger