



## **INTRODUCTION**

1. This appeal involves the entitlement of Eggstream Farms Ltd. (“Eggstream”) to Temporary Restricted Licence Quota (“TRLQ”) to produce free-range organic eggs.
2. Eggstream initially filed an appeal on March 21, 2001 (“the first appeal”), of a British Columbia Egg Marketing Board (the “Egg Board”) decision to deny an additional allocation of 5000 layers of TRLQ for the purpose of free-range organic production.
3. The first appeal was resolved through negotiation whereby the Egg Board agreed to allocate an additional 1237 birds of TRLQ to Eggstream. Eggstream formally withdrew its appeal. Despite reaching a settlement, the Egg Board and Eggstream have been unable to agree on the terms of allocation and as such, Eggstream sought to “renew” the first appeal.
4. By decision dated October 31, 2001, the British Columbia Marketing Board (“BCMB”) determined that once withdrawn, the first appeal was terminated. If an issue has arisen on implementation of a settlement agreement, Eggstream’s remedy was to file a new appeal.
5. On November 1, 2001, Eggstream filed a new appeal alleging a breach of the earlier settlement agreement by the Egg Board and requesting an expedited hearing of its appeal.
6. The appeal was heard by way of telephone conference on November 13, 2001. On November 19, 2001, the Panel released Brief Reasons and Orders with respect to this appeal, with Written Reasons to follow. These are the Written Reasons for our earlier decision.

## **ISSUES**

7. Should additional TRLQ be issued to the Appellant, Eggstream?
8. The Appellant has identified the following grounds of appeal:
  - a) that the Egg Board has frustrated the April 2001 facilitated agreement to provide additional TRLQ to the Appellant.
  - b) that the Egg Board frustrated the Appellant’s attempts to purchase other quota from Rovon Poultry Farm (1985) Ltd. (“Rovon”).
  - c) that the setting aside of TRLQ allocation for the Certified Organic Associations of British Columbia (“COABC”) was unfair to other organic producers such as the Appellant.

## FACTS

9. In approximately 1995, Mr. John Jansen, a shareholder of the Appellant company, became a regulated egg producer having acquired quota for 1000 layers under the New Entrant Program and a further 2900 layers of regular quota.
10. On November 30, 1998, Mr. Jansen applied for a permit to produce 6000 birds of free-range egg production under the TRLQ program.
11. According to the BCMB's Egg Quota Allocation Review of August 15, 2000:

On May 19, 1999 the BCMB approved the Egg Board's decision to prescribe terms and conditions for the allocation of quota to registered and unregistered producers on a temporary lease basis (the existing Temporary Restricted Licence Quota program), as follows:

- Up to 14,000 layer temporary permit to be granted to Elkview Enterprises, subject to an agreement between the Egg Board and Elkview which provides for the incremental return of permit to be held for issuance to producers of certified organic eggs.
  - Up to 5,000 layer temporary permit to be held for producers of certified organic eggs.
  - Up to 3,623 to be issued as permits for free range production.
12. By letter dated June 18, 1999, the Egg Board offered Mr. Jansen the balance of the layers remaining for issuance under the TRLQ Program for 1999, 3763 layers. Mr. Jansen does not recall any conditions attached to this issuance of Permit, nor are there any conditions in the letter approving the request. However, it is the evidence of the Egg Board, confirmed by Egg Board Minutes, that the offer of 3763 layers was made on the understanding that if accepted, Mr. Jansen's name would be placed on the bottom of the list for the remainder of the requested 6000 free-range TRLQ. If declined, Mr. Jansen's name would remain at the top of the list until such time as TRLQ for 6000 layers became available.
  13. Mr. Jansen's TRLQ licence for 3763 layers of free-range production became effective November 19, 1999.
  14. On January 17, 2000, Mr. Jansen wrote to the Egg Board advising of a joint arrangement with a feed company to construct a feed mill on his farm. In order to take advantage of the mill capacity, it was his intention to convert his farm to free-range organic production as soon as possible. To assist in making this operation viable, he requested a 6000 bird TRLQ permit for organic egg production.
  15. At an Egg Board meeting held on January 27 and 28, 2000, the Egg Board considered Mr. Jansen's request for organic TRLQ. As there were three producers ahead of him on the list of applicants, Mr. Jansen's request was turned down. The Egg Board reconsidered Mr. Jansen's request at their February meeting. But as there were still three applicants ahead of him and as there was no TRLQ permit available, his request was denied.

16. In June 2000, the Canadian Egg Marketing Agency (“CEMA”) allocated an additional 107,415 layers of production to British Columbia. Although the Egg Board initially issued these layers by way of a 3% increase in quota allocation to all registered producers, this order was rescinded by the BCMB, as the Egg Board had not obtained prior approval of this order from the BCMB as required by the *British Columbia Egg Marketing Scheme 1967*, BC Reg 173/67 (“the *Scheme*”). The Egg Board’s orders granting 17,000 layers for organic/specialty egg production and 5000 layers of TRLQ for Vancouver Island were conditionally approved pending further consideration of how to fairly and equitably handle the balance of the Provincial allocation.
17. On June 30, 2000, the Egg Board released its B.C. Flock Management Program - Temporary Restricted Licence. The purpose of the policy was to facilitate additional production of certified free-range and organic production. Amongst other things, the policy set the maximum TRLQ that may be applied for or held at any point in time at 5000 layers.
18. On June 30, 2000, the BCMB announced a Supervisory Egg Quota Allocation Review in which interested parties were invited to appear at public meetings or make written submissions. As a result of this process, the Supervisory Panel of the BCMB released its report on August 15, 2000. The report summarised a number of issues for the Egg Board to consider in designing their TRLQ program, including regional allocations, its term and sustainability, health and safety issues as well as the administration of the system.
19. As a result of the direction contained in the BCMB Supervisory Review, on October 2, 2000, the Egg Board submitted its TRLQ Program to the BCMB for approval. As the BCMB felt that the Egg Board’s Program did not fully address its primary concern of flexible, transparent, accessible and sustainable decision making, the Supervisory Panel issued further directions to the Egg Board in its Supervisory Decision on Egg Quota Allocation, dated October 26, 2000. For the purposes of this appeal, the following sections are relevant:
  1. The Egg Board may issue up to 30,000 birds to registered producers pro rata effective December 31, 2000.
  2. The Egg Board is to establish a Market Responsive Allocation Pool (MRAP). The Egg Board is to place the 107,415 birds of quota issued by the Canadian Egg Marketing Agency (CEMA), less the above noted issue to producers, in the MRAP. A portion of the MRAP, not to exceed 20,000 birds, may be retained to assist in meeting the 97% threshold requirements established by CEMA. The remainder of the quota in the pool is to be used to provide quota for the Temporary Restricted Licence Quota (TRLQ) program and a Market Responsive Quota (MRQ) program. Priority is to be given to the allocation of 5000 birds to the TRLQ Program for Vancouver Island and 17,000 birds to the TRLQ Program for organic production. This priority should in no way be considered the only allocations required for these two purposes.

To ensure that the MRAP is sustainable the Egg Board will:

- subject to BCMB prior approval, issue a percentage of any new growth allocated to British Columbia to the MRAP; and
  - allocate to this pool, quota surrendered to the Board through the 5% surrender on quota transfers; and
  - allocate to this pool all quota presently held by the Egg Board in the “new entrant program”; and
  - allocate to this pool all quota that is returned to the Egg Board by TRLQ and MRQ holders.
3. The Egg Board is to make the following amendments to the TRLQ program set out in the document the “B.C. Flock Management Program – Temporary Restricted Licence”, dated October 2, 2000:
- TRLQ may be issued for all types of specialty production (i.e. all but white or brown caged bird production);
  - Priority is to be given to applicants who are new entrants to the industry, to meet regional marketing opportunities and to accommodate organic production in the regulated marketing system;
  - TRLQ shall be granted on the condition that the TRLQ holder replaces 25% of the TRLQ with regular quota at the end of years 4, 5, and 6. At the end of year 7, the Egg Board will issue the remaining 25% of TRLQ;
  - Remove the requirement that a TRLQ holder must obtain an irrevocable letter of credit;
  - Birds will be allocated to the TRLQ Program as directed in item #2, and as required. The Egg Board will not set a limit on the number of birds allocated to the MRAP for issue as TRLQ.

These changes are to be completed, and the TRLQ program is to be implemented by November 15, 2000.

4. The Egg Board is to establish a Market Responsive Quota (MRQ) program to respond efficiently to market issues and regional production shortages. MRQ will be allocated on the following basis:
- MRQ will be available for the production of eggs from white and/or brown caged birds;
  - Priority is to be given to applicants who are new entrants to the industry and to meet regional marketing opportunities;
  - Birds will be allocated to the MRQ program as directed in item #2, and as required. The Egg Board will not set a limit on the number of birds that may be allocated to the MRAP for issue as MRQ.

With the exception of the above, the amended TRLQ rules and procedures are to apply to the MRQ program.

The MRQ program is to be implemented by November 30, 2000.

20. Prior to the completion of this review process, on October 19, 2000, Mr. Jansen applied for a 5000 bird TRLQ permit for certified organic production. The Egg Board maintains that although the application form is not explicit, this pool of TRLQ was intended to legitimise the production of those producers who had been operating outside the system. Mr. Jansen maintains that his operation complies with the form as he had a certified facility, he had pullets in his barn and was feeding them certified organic feed at the required date, June 8, 2000. His documentary evidence supports this claim.
21. Effective November 19, 2000, Mr. Jansen renewed his contract for TRLQ Permit for 3763 layers. This Permit allowed Eggstream to produce either certified free-range or certified organic eggs. It expressly states that “[t]he Applicant agrees that its obligations under the Act

and regulations and the British Columbia Egg Marketing Board Standing Order operate during the term of this Agreement and following its completion”.

22. On November 21, 2000, Mr. Jansen wrote to the Egg Board requesting 5000 birds of TRLQ on a temporary basis from May 15, 2001 to May 14, 2002 to supply Island Egg Sales Ltd. with certified organic production. The Egg Board did not respond to this request. In anticipation of approval of his application, Mr. Jansen placed a further 5000 layers on his farm.
23. At its meeting on February 1 and 2, 2001, the Egg Board considered a request by Mr. Jansen for additional quota credits to cover his organic production. The Egg Board declined to deal with the issue.
24. On February 23, 2001, Mr. Jansen again wrote to the Egg Board requesting 5000 birds of organic TRLQ. In the letter, Mr. Jansen provides a summary of events to assist in understanding his situation. He details a visit by then Egg Board Chair Gerald Zaph to his farm in 1997 or early 1998 and Mr. Zaph speaking about the possibility of TRLQ being issued for free-range production. One other producer (Mr. Luteyn) was also being considered. Eventually, Mr. Jansen found out that the other producer had in fact received free-range TRLQ permit and none had been issued to Eggstream. That precipitated his request for TRLQ in 1998. Eventually, Eggstream received 3763 birds of TRLQ. However, the other producer received his entire request of 14,000. Eggstream then decided to convert to organic production and made further requests for organic TRLQ. Once the BCMB completed its supervisory review, Mr. Jansen expected that out of fairness, he would receive either the remaining unissued TRLQ from his original 6000 layer request or his request for 5000 layers of organic TRLQ. This did not happen. In his February 23 letter Mr. Jansen asked the Egg Board to issue TRLQ and quota credits to cover all of his production.
25. On March 19, 2001, the Egg Board responded to Mr. Jansen’s letter. It advised that the marketplace was oversupplied with organic production to the tune of 20,000 layers. As a result, the Egg Board was reluctant to encourage additional organic production. It advised that the decision to keep or sell the layers was his. However, if he had a market for the eggs, the Egg Board would allow him to utilise quota credits to accommodate the production.
26. On March 21, 2001, Mr. Jansen filed his appeal of the Egg Board’s decision to deny Eggstream an allocation of organic TRLQ. As a result of negotiations, the Egg Board and Mr. Jansen resolved the issue on appeal. On April 29, 2001, Mr. Jansen was allocated a further 1237 layers to bring his total TRLQ allocation to the maximum 5000 layers. The appeal was withdrawn.
27. Unfortunately, the exact terms of the TRLQ contract were not discussed. There was confusion on the part of the Egg Board (and perhaps Mr. Jansen) as to the impact of the revisions to the TRLQ Program brought about by the BCMB supervisory process. This confusion lead to a deferral of the final decision with respect to the 1237 TRLQ allocation.

The Egg Board advised on July 27, September 6, October 10 and November 2, 2001 that final approval was deferred despite the fact that the Appellant had withdrawn his appeal and complied with the conditions imposed by the Egg Board.

28. On June 21, 2001, the Appellant approached an egg producer in Creston who wished to sell her quota. Having come to an agreement on price, on July 24, 2001 Rovon sought a variance of the Egg Board's regional quota relocation policy to enable this transfer of quota to the Lower Mainland. The Egg Board declined approval.
29. By letter dated August 16, 2001, Rovon requested the intervention of the BCMB. The Appellant by letter of the same date made a similar request.
30. By letter dated August 17, 2001, the BCMB requested a written response from the Egg Board to the issues raised by Rovon and Mr. Jansen including an explanation of the decision of the Egg Board to not consider special circumstances for this transfer of quota.
31. The Egg Board responded by letter dated August 21, 2001. It felt that as the issue was "highly sensitive." As Rovon had time to wind down its operation, the issue should be resolved through "proper channels" by the Ministry of Agriculture, Food and Fisheries addressing the standing request of the egg industry to remove restrictions on quota movement within BC. The Egg Board agreed to work with the BCMB to bring this issue to the Ministry's attention as soon as possible. The Egg Board suggested that Rovon should participate in the October 3, 2001 Provincial Quota Exchange.
32. On September 24, 2001, Rovon sold its quota on the National Quota Exchange to a producer in Quebec.

#### **ARGUMENT OF THE APPELLANT**

33. The Appellant's position is quite simple. With respect to his initial application for free-range TRLQ, he argues that he should have been treated in a similar fashion to Mr. Luteyn. The Appellant asked for 6000 birds of free-range production and should have received it. He received the lesser amount of 3763 birds of TRLQ subject to the rules at the time. This allocation should not be subject to the claw back provision that is part of the new TRLQ program. The 1237 birds of TRLQ received as part of the facilitated agreement in April 2001, should be considered as part of his original request for 6000 birds and should therefore be effective from that same date of November 19, 1999. This allocation should not be subject to a claw back. The Egg Board is being unfair when it tries to impose new contractual terms onto an allocation that was effective November 19, 1999.
34. With respect to his application for organic TRLQ, the Appellant argues that he has proven that he was in operation on June 8, 2000. His flocks were fully certified organic. He was in production and ready to ship to his grading station. As such, he should qualify for certified organic TRLQ along with other producers who were also in operation at that time. He is a

registered producer operating within the system. He has converted all of his quota production to organic.

35. The Appellant argues that he should not be disadvantaged by producers who have chosen to operate outside the system. Looking at the Egg Board's list of applications for organic TRLQ, the Appellant who was #8 on the list did not receive TRLQ. Bradner Farms (#22 on the list) received 6200 birds of TRLQ. Bradner Farm's application was given preference because its production was not regulated and there was a desire on the part of the Egg Board to bring it into the system. The Appellant argues that this is unfair. He has complied with the Permit Program and should receive organic TRLQ.
36. Given that there is a 5000 layer maximum under the new TRLQ program, and given the conduct of the Egg Board, the Appellant argues that the 5000 layers of organic TRLQ should be allocated to his son Darren Jansen. Darren Jansen is a shareholder in the Appellant, Eggstream.
37. As a further example of unfair treatment, the Appellant argues that he has tried to purchase quota. However, the Egg Board thwarted his attempts to purchase quota by failing to vary its regional quota transfer policy. As a result of failing to deal with the regional transfer of quota issue, the Egg Board has allowed more than 6000 birds of quota to leave the Province. This is simply irresponsible.

#### **ARGUMENT OF THE EGG BOARD**

38. The Egg Board argues that it was a condition of Mr. Jansen's allocation of 3763 birds of TRLQ that upon receipt his name would go to the bottom of the list. He accepted these terms and placed 3763 layers. Any further entitlement should only be considered when Mr. Jansen's name again qualifies for an allocation under the TRLQ Program.
39. According to the Egg Board's list, Mr. Jansen also applied for 5000 birds of organic TRLQ on May 14, 1999. At that time, he was placed #8 on the list. In January 2000, Mr. Jansen applied for another 6000 birds of organic TRLQ. As there was insufficient organic TRLQ, Mr. Jansen's requests were not considered. In 2000, CEMA allocated a further 107,415 layers to BC. How this allocation would be distributed led to a Supervisory Review by the BCMB. As a result of this review, the BCMB directed several changes be made to the TRLQ program, including a 7 year limit, claw-back provisions and a portion of free quota. In addition, the 5000 bird limit placed on TRLQ Permit holders by the Egg Board was upheld.
40. Also during this period, the Egg Board was negotiating with the COABC in an attempt to address the inequities in the market place due to the volume of product being marketed outside the supply management system. An effort was made to bring unregulated producers into the TRLQ Permit Program and temporary levy reductions were offered. To be fair, these same levy reductions were offered to Mr. Jansen.

41. When Mr. Jansen commenced his original appeal, the Egg Board negotiated with him in good faith. It was agreed that a further 1237 birds of TRLQ would be allocated to Mr. Jansen on the understanding that he would withdraw his appeal. However, there was considerable confusion on the part of the Egg Board as to which of the BCMB's directions flowing from its Review were optional and which were mandatory. As a result, the Egg Board withheld some of the optional components "pending agreement on the mandated items". In addition, Mr. Jansen was given until December 31, 2001 to finalise the issuance of the 1237 birds of TRLQ Permit.
42. The Egg Board recognises that Mr. Jansen has continued his efforts to acquire quota to replace the TRLQ. However, he has at least twice placed additional pullets prior to receiving Egg Board approval for his plans. The Egg Board argues that Mr. Jansen is again in this position with pullets becoming 19 weeks of age (and thus ready to lay) on November 15, 2001. The Egg Board maintains that Mr. Jansen must sign the new TRLQ contracts with claw back provisions on both the original 3763 allocation and the negotiated 1237 allocation. When he does so, he will receive final approval for the 1237 allocation, the last 25% of both TRLQ allocations free and reduced levy from 12.4 to 5 cents/bird/week retroactive to week 3101 (August 2001).
43. As to Mr. Jansen's application for organic TRLQ, the Egg Board maintains that Mr. Jansen must wait his turn. Mr. Jansen does not qualify for organic TRLQ as at June 8, 2000 as his farm was not in production. In addition, the application forms relied on by Mr. Jansen were intended for COABC producers with proven organic production outside the supply managed system. The Egg Board made a decision that priority would be given to legitimising unregulated production through the TRLQ program.
44. There is no justification to allow Mr. Jansen or his son to queue jump. Further, the maximum permit granted under the TRLQ Program is 5000 layers. Mr. Jansen should not be allowed to exceed that limit. While Darren Jansen may apply for TRLQ in his own right, he must wait in line with everyone else.

## **DECISION**

### **Initial Allocation of TRLQ**

45. The first issue to consider is whether a producer who enters into a contract with the Egg Board to produce free-range, free-run or organic production under the TRLQ Permit Program is affected by changes to that Program as they occur from time to time. The Panel is of the opinion that this question must be answered in the affirmative. The contract entered into between the Egg Board and the producer for TRLQ Permit expressly contemplates that it is subject to the *Natural Products Marketing (BC) Act*, the *Scheme* and the Standing Orders of the Egg Board.
46. As a matter of practice, the Egg Board may choose to review these annual contracts to determine whether changes are warranted given amendments to its Legislation or its Standing

Orders. It is not reasonable to contemplate when one enters into a one-year contract with the Egg Board that the contract will continue to be renewed under the same terms despite changes to the Legislation or the Standing Order.

47. In this case, the Appellant entered into a contract on November 19, 1999 for egg production from 3763 layers under a free-range TRLQ Permit. The contract was renewed effective November 19, 2000 on the same terms. However, when the contract was renewed November 19, 2001, the Egg Board incorporated new terms including a 7-year term and a claw back provision. The Egg Board was directed by the BCMB to include these terms in the TRLQ Permit Program.
48. Accordingly, the Panel finds that the Egg Board was correct in amending its TRLQ Permit contract to include the terms required by the BCMB. These changes were incorporated into the 2001 contracts. However, in incorporating the new terms in the contract it appears that the Egg Board considered the date the TRLQ Permit was first issued to a producer to calculate the 7-year term. Given that TRLQ under the old Program was not issued on any term but was instead subject to annual renewal, it would be more appropriate to set the 7-year term from 2001 forward. Under the original TRLQ Program, it was not contemplated when or how TRLQ under this Program would return to the Egg Board. Producers operating under the one-year renewable term with the old TRLQ Program should have the same benefit of stable business planning over a longer fixed term as is now afforded to new Permit holders.
49. The Appellant is entitled to an allocation of 3763 birds of TRLQ for a 7-year term commencing November 19, 2001. With respect to the 1237 birds of TRLQ allocated to the Appellant effective April 29, 2001, the 7-year term commences on April 29, 2001. Both allocations are subject to the claw back or surrender provisions beginning in year 5.
50. In considering the issue of the claw back or surrender provision, the further issue of bona fide attempts on the part of a producer to purchase quota arises. In this appeal, the Panel heard evidence of the Appellant's attempts to purchase quota. Although a prospective seller was found, the Egg Board did not act to vary its regional quota transfer policy and as such the Appellant was unable to purchase the quota. The Panel is of the view that before the claw back or surrender provision can operate to decrease a producer's TRLQ Permit, there must have been real opportunities for the producer to purchase quota. There must be some evidence that the producer failed to make bona fide efforts to purchase quota.
51. In this case, had the Appellant been further along in the term of its TRLQ contract, the failure on the part of the Egg Board to approve a quota transfer could be more significant. It would be unfair to impose a claw back provision if a producer did not have a real opportunity to purchase quota. In that event, an extension in the start date of the claw back and possibly in the term of the contract may be the anticipated result. However, given that the Appellant is in year 1 of a 7-year term, there is still considerable time to acquire quota. As such, it is not necessary to extend the time period before the claw back provision takes effect.

## **Allocation of Organic TRLQ**

52. As part of this appeal, the Appellant seeks an allocation of 5000 birds of organic TRLQ. This seeks to revive his October 2000 request, the history of which is discussed at paragraphs 20-26 above, and which resulted in the settlement, following which Mr. Jansen was allocated 1237 layers, to bring his total TRLQ production to 5000 layers.
53. In previous reasons, this Panel has already decided that the original appeal was terminated when the Appellant abandoned it, and that having abandoned the first appeal, the present appeal must focus on whether the Egg Board breached the agreement that was reached to resolve that appeal. For the reasons given above, the Panel concludes that it was entirely reasonable for the Egg Board to insist that the 1237 layers be subject to the terms and conditions of the TRLQ program. There is no evidence of any agreement by the Egg Board to exempt Mr. Jansen from those requirements, and it would have been contrary to public policy had the Egg Board done so. The first appeal is concluded. The Appellant has not demonstrated sufficient grounds to warrant the Panel going behind that settlement to revisit the original request.

## **Rovon Transfer**

54. Finally, there is the issue of the Appellant's failed purchase of the Rovon quota. At the time of the intended purchase, there was (and still is) a regional quota transfer restriction preventing Interior quota from being transferred to the Lower Mainland. Rovon felt that special circumstances existed which warranted an exception in its case. Rovon was a producer/grader. As such, the transfer of its quota would not detrimentally affect another grading station. It had lost its regional market to production from Alberta and it could not find a local buyer. Although Rovon could sell its quota on the National Quota Exchange, it could not sell its quota directly into the Lower Mainland without a variance from the Egg Board.
55. Rovon sought the assistance of the Egg Board and the BCMB. However, as a timely resolution of its request was not forthcoming, the quota was placed on the National Quota Exchange in September 2001 and sold to a producer in Quebec. In the Panel's opinion, the failure of the regulated marketing system to react to avoid this very predictable outcome is a resounding failure on the part of all concerned.
56. The Appellant deserves some criticism for "placing the cart before the horse" by putting pullets on his farm before actually purchasing this quota. This is not the first time the Appellant farm has been in this situation.
57. However, the Appellant had a reasonable expectation that the Egg Board would approve this transfer. Although there was a regional restriction on the quota, there were no potential buyers in that region. The market had been largely lost to Alberta and the nearest grading station was 600 km away. In addition, the Appellant was prepared to buy quota for its

organic production. Given that the Egg Board has been encouraging producers interested in organic production to convert their quota to meet specialty demands rather than relying on permit programs, the Appellant would be justified in thinking that the Egg Board would support this variance. It could not have known that the Egg Board and the BCMB would, through their failure to act, allow the unnecessary loss of quota from BC.

58. The question then arises as to whether the Appellant should get some form of relief to legitimise the organic production which would have been covered by the Rovon quota. The Panel finds that in the very unique circumstances arising out of the failure to approve a regional variance, some form of relief is warranted. As a result, the Egg Board is directed to issue sufficient quota, permit and/or quota credits to the Appellant to cover the balance of the flock coming into production as of November 19, 2001. This allocation, the type of which is to be determined by the Egg Board, will be for the normal production life (excluding any moulting) of this flock only and subject to any appropriate fees and levies that the Egg Board would normally impose. While the allocation may come from the TRLQ Program, the Appellant is not entitled to a TRLQ Permit under the terms of the new Program.

## **ORDERS**

59. The Appellant's original allocation of 3763 birds of TRLQ is confirmed. This allocation is subject to the terms of the 7-year Revised TRLQ Program commencing November 19, 2001 with a claw back or surrender provision commencing the beginning of year 5, 2005.
60. The Appellant is allocated an additional 1237 birds of TRLQ Permit. This Permit is also subject to the terms of the Revised TRLQ Program. The Permit is subject to a 7-year term commencing April 29, 2001 and a claw back or surrender provision commencing the beginning of year 5, 2005.
61. The Appellant's request for a further allocation of 5000 birds of TRLQ for organic production is denied.
62. In view of the unique circumstances involved in the frustrated transfer of quota from Rovon to the Appellant, the Egg Board is directed to issue, effective November 19, 2001, sufficient quota, permit and/or credits to cover the balance of the flock coming into production as of that date. This allocation will be for the production life of this flock only and subject to any appropriate fees and levies that the Egg Board would normally impose. Whether this allocation is made in the name of the Appellant, Mr. John Jansen, or Mr. Darren Jansen, shall also be determined by the Egg Board.
63. This allocation is not transferable and upon the purchase of any layer quota by the Appellant, Mr. John Jansen or Mr. Darren Jansen, this allocation reverts to the Egg Board. If some lesser amount of quota is purchased, the same amount of permit shall revert to the Egg Board.
64. There will be no order as to costs.

## COMMENTS

65. The short-term relief provided to the Appellant at paragraph 62 comes solely as a result of the unique and unfortunate consequences of the frustrated transfer of quota from Rovon. The Appellant's organic production requirements in and of themselves were not determinative of this appeal. Those requirements, which must be addressed in the context of overall industry needs, should be the subject of ongoing discussion and longer term planning between the Appellant and the Egg Board.

Dated at Victoria, British Columbia this 30<sup>th</sup> day of November, 2001.

BRITISH COLUMBIA MARKETING BOARD

Per

*(Original signed by):*

Christine J. Elsaesser, Vice Chair

Karen Webster, Member

Hamish Bruce, Member