

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

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING BOARD  
AGAINST A DECISION OF THE  
BRITISH COLUMBIA EGG MARKETING BOARD  
DATED MAY 29, 1990

BETWEEN:

DON AND ALICE LEWIS

APPELLANTS

AND

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances:

Don Lewis  
Alice Lewis

APPELLANTS

M. Speitelsbach, Member  
P. Whitlock, Controller  
Bruce F. Fraser, Legal Counsel

RESPONDENT

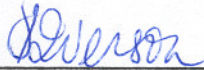
DATE OF HEARING

September 14, 1990

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Don and Alice Lewis against a decision of the B.C. Egg Marketing Board ("Respondent") dated May 29, 1990, in which the Respondent refused to exempt Mr. Lewis from the surrender of 5% of quota in the event of an eligible quota transfer.
2. The appeal was heard in Vancouver, British Columbia on September 14, 1990.
3. The Appellants were not represented by counsel and presented their own case. The Respondent was represented by Counsel. Opportunity was given to call and cross-examine witnesses, file documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Appellants stated that:
  - a) In October, 1988, due to Mr. Lewis' ill health resulting from an accident early in 1988, they made the decision to retire and sell their egg production unit;
  - b) They notified other egg producers of their interest in selling, but were unable to effect the sale of the egg production unit as a whole and were forced to sell the quota separate from the production unit;
  - c) By letter of May 8, 1990, application was made to the Respondent for exemption from the 5% holdback on quota transfers. The decision of the Respondent, made May 29, 1990, to deny this request is the matter under appeal;
  - d) The method of acquiring quota for new entrants from producers leaving the industry is unfair and should be the responsibility of the industry as a whole.
5. The Respondent stated that:
  - a) A new entrant policy was developed on the instructions of the Board in its decision on an appeal filed by Christine and Dick Delight. The terms and conditions of the policy, as agreed to by the Board, required a surrender of 5% of quota from eligible quota transfers as set out in Section 9(i) of the Standing Order.

- b) The Appellant's application for exemption from the transfer provisions on compassionate grounds was considered by the Respondent during a meeting of May 12, 1990.
  - c) Although the Respondent had, in the past, exercised discretion in respect to circumstances of hardship or compassion that were not set out in the Standing Order, it was the Respondent's belief that it had no discretion to grant an exemption on any basis other than the exemptions specifically agreed to by the Board.
  - d) In determining the means by which quota would be accumulated for issuance to new entrants, it was the determination of the Respondent that it would be reasonable and fair to deduct quota from producers leaving the industry who have made a fair living on the quota use rather than existing producers who remain in the industry.
6. Having carefully considered the evidence presented and the statements made, the Board finds that the Appellants had made the decision to sell their quota and had taken active steps to do so more than one year prior to the adoption and implementation of Section 9(i) of the Standing Order; and finds that special circumstances exist for giving consideration to exempting the Appellants from Section 9(i) of the Standing Order.
7. Therefore, in the matter of the appeal against the decision of the British Columbia Egg Marketing Board dated May 29, 1990, the British Columbia Marketing Board orders that the quota sold by the Appellants during 1990, along with any further quota presently held by the Appellants and sold by them before December 31, 1991, shall be exempt from Section 9(i) of the Standing Order.
8. In keeping with this Board's Rules of Appeal, the Appellants' deposit shall be refunded to them.

Dated this 29<sup>th</sup> day of November, 1990 in Victoria, British Columbia

  
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D. Iverson, Chairperson

*E. Mona Brun*

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E. Mona Brun, Vice-Chairperson

*G. Aylard*

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G. Aylard, Member

*J. Reger*

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J. Reger, Member