

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL FROM A DECISION CONCERNING A REQUEST FOR QUOTA

BETWEEN

KARL HANN
d.b.a. BIOTA FARM

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board

Suzanne K. Wiltshire, Presiding Member
Garth Green, Member
Wayne Wickens, Member

For the Appellant

Karl Hann

For the Respondent

Robert P. Hrabinsky, Counsel

Date of Hearing

August 17, 2007

Place of Hearing

Abbotsford, British Columbia

INTRODUCTION

1. There is a federal-provincial agreement governing the national supply management system for eggs in Canada. This means that there is a fixed supply of eggs produced annually in Canada. This fixed supply is allocated by the Canadian Egg Marketing Agency (CEMA) through a quota system to the various provinces and territories. The British Columbia Egg Marketing Board (Egg Board) has the authority to allot quota to registered producers in British Columbia.
2. The appellant, Karl Hann, is an organic egg producer and also operates an egg grading station. He carries on these businesses under the name Biota Farm. While he has been producing eggs for approximately 8 years, he is not a registered producer and does not hold a permit, licence or quota with respect to his egg production.
3. The appeal relates to Mr. Hann's January 22, 2007 application to the Egg Board to become a registered quota holder.
4. The Egg Board considered the application as a request to convert Mr. Hann's production to quota as if he were a Temporary Restricted Licence Quota (TRLQ) or Special Permit holder (Permittee). The Egg Board declined Mr. Hann's request, stating in its April 19, 2007 decision letter:

The [Egg] Board's decision is based upon the fact that you are not a Permittee and did not hold authorized production as of December 1, 2004.

5. Mr. Hann appealed this decision to the British Columbia Farm Industry Review Board (BCFIRB). He seeks a direction from BCFIRB that the Egg Board allocate him a licence, quota or permit sufficient to cover his egg production. Alternatively, he asks that he be exempted from the requirement to be registered with the Egg Board and instead be recognized as an independent agent so that he will no longer be considered to be an "illegal" producer.

ISSUES

6. Did the Egg Board err in deciding not to grant Mr. Hann a licence, quota or permit?

BACKGROUND

7. Mr. Hann started producing organic eggs after acquiring his first flock of 1300 birds in 1999. He has been producing organic eggs since that time and now has a flock of 3600 birds.
8. The Egg Board first became aware of Mr. Hann's unauthorized production in early 2000 and issued a seizure receipt. At that time Mr. Hann notified the Egg Board that he was an organic producer and was advised by the Egg Board that any further action on the seizure would be deferred pending a decision on bringing organic egg production into the supply management system.

9. Sometime later in 2000, certified organic egg producers in production as of June 8, 2000 were advised by the Egg Board that they could apply for TRLQ.
10. In a November 16, 2000 email sent to a number of individuals and organizations, Mr. Hann noted that the deadline to apply for TRLQ to become a licenced egg producer was that day. He indicated, however, that as a member of the Certified Organic Association of British Columbia (COABC) negotiating team he felt it would be inappropriate for him to sign an individual agreement with the Egg Board to serve his personal business needs.
11. At the hearing, Mr. Hann confirmed that he had indeed been aware in November 2000 of his right to make an application for TRLQ with respect to his own production but had decided not to apply in view of his position as a member of the COABC negotiating team.

SPECIALTY REVIEW

12. In 2002 the BC Minister of Agriculture announced initiatives concerning the governance and policy framework for the regulated marketing sectors, including a requirement for the supply managed commodities to proactively encourage the development of specialty markets. In response to this policy objective, BCFIRB commenced a supervisory review, instructing all five supply managed boards to carry out a review of their policies and programs with respect to specialty markets.
13. This supervisory review, known as the Specialty Review, resulted in a number of directions being issued by BCFIRB in its September 1, 2005 report entitled *Specialty Market and New Entrant Submissions – Policy, Analysis, Principles and Directions* (September 2005 Report). Subsequently, BCFIRB issued further directions concerning specialty implementation issues, as follows: in January 2007 respecting exemption for quota transfers between siblings; and, in May 2007 regarding new entrant program eligibility criteria. Interested persons may source these and other documents pertaining to the Specialty Review in their entirety at: http://www.firb.gov.bc.ca/specialty_review.htm.
14. Boards were instructed to implement the directions through changes to their board orders.
15. With respect to conversion of existing permits the September 2005 Report noted in section 5.6 that specialty producers had been granted a variety of permits with varying terms and conditions to produce regulated products and stated:

With respect to Permit Conversion, the following policy directions are given:

1. Specialty permits are to be converted to quota licenses of a class applicable to the designated product produced.

2. Permit conversion to quota is to recognize, as a minimum, the authorized volumes produced in the twelve months ended December 31, 2004, or the nearest quota cycle to this twelve-month period.
16. In response to these directions and others, the Egg Board proposed a number of changes to its Standing Order.
17. BCFIRB wrote to the Egg Board in February 2006 in response to the proposed changes to its Standing Order. With respect to the proposed change respecting permit conversion BCFIRB noted, among other things, that it was the position of COABC that certain producers who were in production prior to December 2004 but were not permittees should be treated as “de facto” permittees. BCFIRB requested that the Egg Board respond to the COABC request.
18. On April 7, 2006, the Egg Board responded attaching a revised copy of the proposed changes to its Standing Order and advising that it did not intend to treat anyone who did not currently hold TRLQ or Special Permits as “de facto” permittees under the permit conversion program.
19. In a July 18, 2006 letter BCFIRB accepted the Egg Board’s proposed Standing Order changes of April 7, 2006, including the provision for conversion of all TRLQ and Special Permit holders to quota subject to certain conditions. No further mention was made of “de facto” permittees, nor was the Egg Board required to give any further consideration to this issue.
20. The approved and adopted provisions of the Standing Order with respect to permit conversion state:
 - 9(s) Permit Conversion – for producers holding TRLQ and Special Permits as of December 31, 2004 for the purposes of SECTION 9(i), the start date for the schedule will be the original TRLQ or Special Permit date for the base amount and the date of issuance for any subsequent issuances. Permit conversion will recognize the authorized bird numbers held in the twelve months ended December 31, 2004 and be subject to the payment of any outstanding levies due. Except as follows, each TRLQ and Special Permit holder, not already at 5,000 layers, will be given the opportunity to increase to that level in response to market requirements. Any TRLQ or Special Permit holder who would fail to qualify as a New Entrant by virtue of being a holder, past or present, of supply managed quota, egg or any other type, or being a spouse or direct family member of a quota holder, past or present, this permittee’s eligibility to be issued specialty quota upon conversion of the TRLQ or Special Permit programs, is to be limited to the number of units they were authorized to produce on December 31, 2004.¹
21. The September 2005 Report also provided directions with respect to new entrants, noting that all boards proposed new entrant programs or amendments to new entrant

¹ The reference to SECTION 9(i) above is to the provisions of the Standing Order respecting partial surrender on transfer for new quota allocations after September 1, 2005 under the declining transfer assessment schedule.

programs. The directions, among other things, called for the establishment of new entrant waiting lists where they did not exist and the review and modification of existing waiting lists to reflect the new eligibility and invitation criteria developed by the boards. In issuing new entrant opportunities boards were encouraged to provide priority to specialty and regional market needs.

22. The approved and adopted provisions of the Egg Board's Standing Order with respect to new entrants provided for the establishment of new entrant programs. The Board was authorized to use the Market Responsive Allocation Pool (MRAP) of quota that was set aside to allow existing TRLQ and Special Permit holders to increase to 5000 layers if they so wished and to facilitate the new entrant programs. A process was established to rank applications to be new entrants, with separate lists to be established for organic, free run, free range and regular new entrant programs. Persons who were already on waiting lists and who qualified under the new entrant layer programs were given the opportunity to convert to the applicable new list and retain their position. New additions to the list would then be added in the order applications were received. The right of TRLQ and Special Permit holders under section 9(s) to convert and increase their production to 5000 layers was recognized and these producers were given priority over those on the new entrant waiting lists.

RECENT APPLICATIONS

23. Mr. Hann testified that in late 2005 he became aware that a number of organic egg producers had been allocated a permit, licence or quota. He said that when he contacted the Egg Board subsequently in March 2006 he was advised he was not on the list and therefore had not been eligible for any allocation.
24. Further evidence with respect to this list was provided by Peter Whitlock, then Operations Manager of the Egg Board. He indicated that the list referred to was a list of producers who had applied to the Egg Board for Special Permits in order to change grading stations after the grader with whom they had been dealing ceased operations. Since this was not Mr. Hann's situation, his name did not appear on the list. Mr. Whitlock went on to explain that in September 2005 there were three different types of organic egg producers: producers who had applied for TRLQ; producers who held Special Permits; and producers who were neither TRLQ nor Special Permit holders but who were simply unregistered. He said it was this third group into which Mr. Hann fell and the Specialty Review directions respecting permit conversion did not deal with this third group.
25. Mr. Hann sent his first application to the Egg Board in August 2006 together with a cheque in the amount of \$250. This application was made on a July 26, 2006 form directed to "TRLQ Applicants on Existing Waiting Lists". The form advised that pursuant to BCFIRB's directions, existing waiting lists would be converted to New Entrant Program lists and that if a person believed they were eligible to be a New Entrant and wished to retain their position on the waiting lists they should complete the form and return it with a cheque for \$250.

26. The Egg Board returned Mr. Hann's application and cheque with its September 7, 2006 letter, advising him the application form he had completed was for those on the TRLQ waiting list and his name did not appear on that list. The Egg Board advised Mr. Hann that if he wished to place his name on the new entrant waiting list, he would need to complete the enclosed "New Entrant Application" form and forward it together with a cheque for \$250.
27. Mr. Whitlock confirmed that there were two different application forms with respect to the new entrant waiting list, one to be completed by those who were on the previous TRLQ waiting list and wished to be on the new entrant waiting list and one for new entrants who had not previously applied and wished to be on the new entrant waiting list. He acknowledged that the information requested on both was basically the same, but noted that because there were different rules, especially concerning ranking, with respect to the two groups, it was necessary to keep the applications separate and hence the need for separate forms.
28. After receiving the Egg Board's September 7, 2006 letter, Mr. Hann met sometime later in September 2006 with the then General Manager of the Egg Board, Arlene Lannon, and Mr. Whitlock. Mr. Hann initially said his understanding from that meeting was that he did not qualify as a new entrant; however, on cross-examination he explained that he had been told by Ms. Lannon that he did not qualify because new entrants needed to be located outside the Lower Mainland. Mr. Hann told the panel that in his own mind at the time he did not qualify as a new entrant because he had been a producer for several years.
29. Mr. Whitlock's recollection of the September 2006 meeting with Mr. Hann was that he and Ms. Lannon took Mr. Hann through the directions from BCFIRB and the Egg Board's implementation of those directions as to who was eligible and who was not eligible to apply as a new entrant. He noted that at the time there was an outstanding issue as to whether priority should be given to new entrant producers outside the Lower Mainland because of the limited amount of quota available to new entrants. Because this was still under discussion, Mr. Whitlock recalled Mr. Hann had been told there was a risk that it would be some time before his name would come up for consideration as a new entrant in the Lower Mainland. Mr. Whitlock said that Mr. Hann had never been told he would not qualify as a new entrant and that there was nothing he had seen in the August 2006 application made by Mr. Hann or in the subsequent January 2007 application that is the subject of this appeal that would make Mr. Hann ineligible, other than the need for Mr. Hann to be in compliance with the Egg Board's Standing Order respecting reporting and remittance of levies before quota could be allotted.
30. Although Mr. Hann's evidence was somewhat contradictory as to whether or not he ever filled out the new entrant application form, Mr. Hann did confirm that he did not at the time of the September 2006 meeting or subsequently submit a completed new entrant application form to the Egg Board.

31. The next application submitted by Mr. Hann was the January 22, 2007 application that is the subject matter of this appeal. Mr. Hann again made his application on the July 26, 2006 form applicable to TRLQ Applicants on Existing Waiting Lists. In his January 22, 2007 covering letter he advised that by December 31, 2004 he had 3600 laying hens and the size of his property would limit his production to 6000 layers. He wrote that it was his understanding that the Egg Board did not have an application form to be completed for his case because he was not a TRLQ holder nor a new entrant and he was therefore resubmitting his original application and a new cheque.
32. Mr. Whitlock said that initially the Egg Board staff had seen this application as a new entrant application even though it had again been made on the wrong form. However, Ms. Lannon spoke with Mr. Hann to confirm his intention. From that conversation she had understood that Mr. Hann wished to be treated like other permittees and to have his application considered on the basis of his being a “de facto” permittee. The application was then brought to the Egg Board for consideration on that basis.
33. The Egg Board considered Mr. Hann’s January 2007 application at its March 7 and 8, 2007 meeting. The minutes of that meeting record the following:

In discussion, the [Egg] Board recognized that Mr. Hann had been given the option to apply for special permit. If he had done so he would have been obligated to comply, like everyone else, with certain conditions and that due to his decision not to apply, was operating outside the guidelines of special permit holders, therefore he should not be eligible for quota as are special permit holders.

The Board determined not to accommodate Mr. Hann in the same process as those producers holding special permits.

34. The Egg Board’s decision was communicated to Mr. Hann in its decision letter of April 19, 2007. That letter, written by Ms. Lannon, after referring to the September 2005 Report’s directions concerning permit conversion, states:

When I spoke with you about your request, I understood that it is this aforementioned “Permittee” conversion program that you wished to be part of and your letter was presented to the Board on that basis.

After consideration, the Board has declined your request. The Board’s decision is based upon the fact that you are not a Permittee and did not hold authorized production as of December 1, 2004.

Ms. Lannon went on to advise Mr. Hann that he was eligible to be placed on the new entrant waiting list which was open to the general public. As to Mr. Hann’s indication in his letter that he had made an application to be a new entrant and was refused, Ms. Lannon, referring to the Egg Board’s earlier letter of September 7, 2006, noted that Mr. Hann’s earlier application had been submitted on the wrong form and he had been asked to complete a new form but had not done so.

APPELLANT'S SUBMISSIONS

35. Mr. Hann says that he feels that he is portrayed as not agreeing with the process. While acknowledging he did not apply for TRLQ in 2000, he says it is unfair to say he refused. In his view, since he was involved in negotiations on behalf of COABC at the time and therefore involved in a group effort it would have been inappropriate for him to make an individual agreement, perhaps in his favour. He views those who applied for TRLQ or special permits and thus eligible for conversion to have “jumped off” during the negotiation process. He says the fact that he cannot show he was one of them, i.e. a permittee, is not important in his view.
36. Mr. Hann argues that there is no existing application for his situation and no willingness for the Egg Board to take him into consideration. He does not consider himself a new entrant and because he did not fill out the new entrant application form his applications were not considered by the Egg Board as a new entrant application.
37. With respect to the application forms, Mr. Hann submits that the two forms ask the same questions and are essentially the same. He says that this shows the Egg Board is in the mode of trying to confuse people so eventually they will give up. He says that if the Egg Board were practical they would have crossed out the heading on the top of the form he submitted and put him on the list with others. That they didn't he submits shows that the Egg Board does not want him as a registered producer.
38. Mr. Hann submits that as a certified organic producer he should get a permit to produce eggs if there is a market for them. He submits that this is what the September 2005 Report calls for when it talks of the need for greater flexibility and the need to take into account and develop new markets.
39. Mr. Hann says there is an unfilled market demand for certified organic eggs. He provided 3 different egg cartons pointing out that 2 of these cartons, one for free range eggs and one for free range certified organic eggs, indicate these types of eggs are being shipped in from other provinces. This he submits demonstrates the market demand for the type of eggs he produces as evidenced by the third carton for his farm's production of certified organic eggs from free range chickens. Since this demand is not being met from within the province there is a need for greater allocation for the province than CEMA is acknowledging. He also referred the panel to a recent Egg Board presentation and a recent news article concerning demand for free range eggs.
40. Mr. Hann asks that the panel make a decision for all those finding themselves in the same position in which he finds himself. He submits that he and others like him have been overlooked or ignored and left outside the system. Their situation has not been addressed because the Egg Board has failed to ask itself how it will bring producers like him within the system. He points to the September 2005 Report as speaking to the need for flexibility and accommodation to facilitate orderly marketing.

41. Mr. Hann submits that the Egg Board's usual response is to say that its requirements are imposed or ordered by government and therefore must be accepted by those like himself. He submits that this is not the case and asks that BCFIRB as the overseer of the Egg Board and other boards and commissions no longer endorse this myth. He submits that in reality the decisions of various marketing boards reflect the wishes of their members who see those operating on the outside as taking something away from them. He submits this puts into question whether such boards are working in the public interest or in the personal interests of their members.
42. Mr. Hann says that while the Egg Board now has a market responsive allocation in its Standing Order, in refusing to consider his production for registration the Egg Board is marginalizing those who are and have been market responsive.
43. Mr. Hann asks that a way be found to stop classifying him as an "illegal" producer. He seeks to become a licensed producer with allocation according to market needs. He asks that he not be singled out because he failed to sign some sort of agreement but rather that he be included as a registered producer so long as there is still discussion ongoing regarding the participation of himself and others in his position and the conditions of their participation, such as amounts to be levied.
44. Mr. Hann says that he does, however, have some reservations with respect to "joining" the Egg Board or "signing up" with CEMA because he feels he cannot promote his business from within that organization and that the levies he would be required to pay would not be used to promote his operations. He suggests an alternative solution in his case would be to treat him as an independent agent, required to pay only those fees applicable to his registration and administration costs and promotion costs relating to his production. He does not want to pay the CEMA portion of the levy and submits that CEMA is wrong when it says the quota is finite because he and others have had to bring in eggs from out of province to meet market demand.
45. Mr. Hann argues that a specific class of production can be exempt from a specific marketing body's schemes and orders if that production and the market for that production are different. It has been his position from the time he commenced organic egg production that such production should be exempt.

RESPONDENT'S SUBMISSIONS

46. The Egg Board asks that the appeal be dismissed. Its argument rests on three grounds.
47. The Egg Board first argues that Mr. Hann seeks to appeal from the terms of orders it made at the specific direction of BCFIRB. The Egg Board says that to the extent it was ordered by BCFIRB to convert authorized production to quota, the application of these directions by the Egg Board to Mr. Hann is not an independent exercise of discretion of a commodity board and cannot be appealed, citing two previous BCFIRB decisions: *MJ Farm Ltd. v. British Columbia Chicken Marketing Board*,

March 1, 2007 and *Salmon Arm Poultry Farm Ltd. et al. v. British Columbia Egg Marketing Board*, May 16, 2001.

48. In this regard, the Egg Board points to the September 2005 Report directions respecting permit conversion and in response thereto the proposed changes to its Standing Order which were subsequently approved by BCFIRB. The Egg Board notes that BCFIRB's approval of those changes was made with knowledge of the Egg Board's position that no provision would be made for "de facto" permittees.

49. The Egg Board also referred the panel to BCFIRB's May 30, 2006 letter directed to various boards, which states:

The terms of commodity board orders which have been issued as a result of the supervisory directions FIRB issued in September 2005 cannot be appealed to FIRB. However, persons do have a right to appeal to FIRB their own special circumstances or other issues related to the administrative implementation of a commodity board's orders (where a board has exercised its discretion and makes an independent decision as to how a FIRB direction will be implemented or applied).

50. The Egg Board's second argument is that there are no "special circumstances" warranting a departure from the application of BCFIRB's directions and the Egg Board's Standing Order. The Egg Board says there are only two features that distinguish Mr. Hann from any other person engaged in unauthorized, non-permitted egg production and neither feature would justify a departure from application of the Egg Board's Standing Order concerning permit conversion. The first is that the Egg Board has known of Mr. Hann since at least early 2000 when it issued the seizure receipt against his unauthorized production. This knowledge, it submits, cannot be regarded as a special circumstance justifying a departure from the rules. The second is that Mr. Hann was given the opportunity later in 2000 to become a permittee by applying for TRLQ but refused. The Egg Board says that this is a distinguishing circumstance that militates against Mr. Hann's position. As to Mr. Hann's statements regarding his earlier involvement with COABC in negotiations respecting specialty production, the Egg Board submits that this is not a special circumstance operating in his favour but rather only demonstrates his knowledge of supply management issues.

51. Thirdly, the Egg Board says that practical considerations militate against a departure from the current eligibility requirements for permit conversion. According to 2001 Census Statistics, there were approximately 178,285 "unregistered" table egg layers in the province. If the eligibility requirements for "permit conversion" are lowered to accommodate Mr. Hann, taking a principled approach, like accommodation must be granted to any other person similarly engaged in unauthorized egg production. However, quota is a finite resource. The Egg Board submits that the BCFIRB directions and consequential provisions of the Egg Board Standing Order respecting permit conversion strike the right balance.

52. With respect to Mr. Hann's stated reservations regarding "joining" the Egg Board, the Egg Board submits that it is up to Mr. Hann to achieve the objective of not being an

“illegal” operator and that the reporting of production and payment of levies with respect to eggs processed through his grading station are legal requirements that he is required to comply with but has not.

ANALYSIS

53. First, we agree with the Egg Board that neither the September 2005 Report directions, nor the changes made by the Egg Board to its Standing Order in response to those directions, can be appealed.
54. However, since we view the nature of the appeal to be a request to consider Mr. Hann’s special circumstances, we find the Egg Board’s first ground does not provide a basis upon which to dismiss the appeal.
55. It is clear that Mr. Hann does not qualify under the permit conversion provisions of the Standing Order since by his own admission he has never applied for either TRLQ or a Special Permit.
56. It is also clear for the same reason that Mr. Hann does not qualify to be placed on the new entrant wait list in a priority position on the basis of having previously been on the TRLQ waiting list and therefore entitled to maintain a position previously established. He was so advised by the Egg Board in its decision letter of September 7, 2006 and did not appeal that decision.
57. The evidence leads to the conclusion that after the rejection of his initial August 2006 application, Mr. Hann was fully aware of what he needed to do to make application to be included as a new entrant on the wait list established pursuant to the September 2005 Report directions. We have considered whether the meeting between Mr. Hann, Ms. Lannon and Mr. Whitlock may have led Mr. Hann to believe that he could not apply as a new entrant. In this regard, we found Mr. Whitlock’s evidence to be the more reliable. We accept that Mr. Hann was told that he could apply as a new entrant but that, given the state of knowledge at the time, it was anticipated that producers outside the Lower Mainland would be given precedence and thus it might be a considerable period of time before he would be granted quota under the new entrant program. While this may have factored into Mr. Hann’s decision not to apply as a new entrant, we find that he made that choice consciously and not because he was led to believe that he couldn’t make application for inclusion on the wait list as a new entrant.
58. When Mr. Hann next chose to apply in January 2007, he again used the application form applicable only to those already on the TRLQ waiting list. As noted by Mr. Whitlock, the reason for the two different forms of application was the need to distinguish between applicants because of the priority to be given to TRLQ applicants. We can only speculate that the reason Mr. Hann again chose to submit his application on this form was because he wished to be included in this group to advance his position in line. Certainly his evidence at the hearing that he still had the

second form of application for new entrants at home makes it clear that he could have submitted that form of application had he wished to.

59. Mr. Whitlock has testified that Ms. Lannon confirmed Mr. Hann did not wish his January 2007 application to be considered as a new entrant application and we find, because it is consistent with the evidence overall, that indeed Mr. Hann was not really under any misapprehension as to what he needed to submit to have his application considered as a new entrant application. Rather he consciously chose not to make an application as a new entrant.
60. The evidence in our view establishes that Mr. Hann, through Ms. Lannon, requested that his January 22, 2007 application be considered on the basis that he was a “de facto” permittee. The evidence also establishes that the Egg Board considered Mr. Hann’s January 22, 2007 application on the basis that he was seeking to be exempted because of special circumstances from the Standing Order requirements and be treated as though he were a TRLQ or Special Permit holder, i.e. that he be treated as a “de facto” permittee. The Egg Board decided not to exempt Mr. Hann from the Standing Order requirements.
61. What then are the special circumstances that Mr. Hann puts forward? Simply put, the only circumstance he has put forward is that, as a member of the COABC negotiating committee in 2000, he made a decision not to take advantage of the opportunity offered to organic egg producers at that time to apply for TRLQ. He was certainly aware at the time of the opportunity to become a licenced quota holder but made a conscious decision not to do so even though it might later be to his detriment. It was apparent from his testimony that his decision was related to his belief that all organic egg producers needed to stand together and refuse to “sign any agreement” with the Egg Board on a one by one basis. Indeed, he pinned his hopes on achieving an outcome more satisfactory to him from the continuation of the COABC negotiations. This did not occur.
62. We agree with the Egg Board’s submissions that there are no “special circumstances” warranting a departure from the Standing Order in Mr. Hann’s case. The fact that Mr. Hann chose for his stated reasons not to make application for TRLQ in 2000 is not in our view a special circumstance that supports exemption from the Standing Order. If he wished to be treated like other permittees he could have applied at that time. He did not.
63. We also observe that from September 2006 on Mr. Hann was clearly aware that there was another possible route for him to take to regularize his situation by completing and submitting the new entrant application form, together with the required fee, for the new entrant program.
64. Indeed, in requesting that he be recognized as an independent producer of eggs, Mr. Hann appears to prefer that we create a tailor-made solution for him. His preference is that we permit him to operate as a “free agent” so to speak and thus

regularize his situation, allowing him to increase his production to whatever level the market will support while at the same time reducing the fees and levies he will pay because he does not agree with them or portions of them. He wants to be part of the system but not be bound by it. He is, in essence, still negotiating for that better deal.

65. We are not prepared to exempt Mr. Hann from some or all of the Standing Order requirements applicable to him as a producer and grader. Quota is a finite resource. To exempt Mr. Hann as he requests would be to rank him ahead of others who are acting in compliance with the Egg Board's Standing Order and to, in effect, rewrite the ranking system. For this reason his request to be treated either as a "de facto" permittee for conversion purposes or as a "free agent" cannot succeed.
66. As for Mr. Hann's desire to have the benefits of the system without being part of it, this is simply not workable. Nor is it equitable. There cannot be free agents in a supply management system if it is to remain functional and continue to operate.
67. Mr. Hann is correct that the September 2005 Report contemplates the integration of specialty producers like him into the orderly marketing system. Through the September 2005 Report directions and the consequent changes to the Egg Board's Standing Order, a means has been provided for those outside the system to gain entry to the system through the new entrant program.² It is Mr. Hann's choice as to whether he wishes to proceed to regularize his situation by making application for quota as a new entrant and by bringing his operations into compliance with the Standing Order requirements respecting reporting of production and payment of levies.
68. We observe that both parties have raised the issue of the provincial allocation of quota. The Egg Board has referred to the fact that quota is finite. Mr. Hann has referred to the unmet market demand for his type of egg production and the failure of CEMA to recognize this need in the provincial allocation. Section 5.4 of the September 2005 Report calls upon all BC signatories to take an active role in achieving "positive change" in national allocation policies in order to meet BC's market requirements. Section 5.4 also requires, in this case, the Egg Board to "establish principles and procedures for distributing the provincial allocation received from [CEMA] to the different quota accounts based on differential market growth." This is a matter which is the subject of ongoing monitoring by BCFIRB in its supervisory capacity.
69. Finally, we consider it necessary to make it clear that Mr. Hann's status is not a matter for further negotiation through BCFIRB as he appeared to indicate during the course of the hearing might be the next step. BCFIRB's directions with regard to specialty production and new entrants are those set out in the September 2005 Report and BCFIRB's supplementary direction letters of January and May 2007. These directions, after further consideration by each board as to the specific circumstances of each industry, have now been implemented through approved changes to the orders

² Provision has also been made for smaller-scale producers to enter the system through the small lot program which allows for a maximum of 399 birds.

and regulations of each board. These orders and regulations are now binding on producers. Producers must now deal with their respective boards under the terms of their orders and regulations. The course of action that now remains open to Mr. Hann is to proceed in accordance with the Egg Board's Standing Order to regularize his situation to the extent possible.

CONCLUSION

70. The appeal is dismissed. The Egg Board acted in accordance with its Standing Order in deciding not to grant Mr. Hann a licence, quota or permit or to accept his application to be placed on the new entrant wait list as being equivalent to that of a TRLQ applicant on an existing waiting list.

71. Mr. Hann's request for independent agent status is denied for the reasons stated.

ORDER

72. The appeal is dismissed.

73. There is no order as to costs.

Dated at Victoria, British Columbia this 7th day of December 2007.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

(original signed by:)

Suzanne K. Wiltshire, Presiding Member
Wayne Wickens, Member
Garth Green, Member