



October 5, 2010

File: 44200-50/EMB #10-10

DELIVERED BY E-MAIL & FAX

Myles Materi

Robert Hrabinsky
Macaulay McColl

RE: MYLES MATERI v BC EGG MARKETING BOARD – RULE 22 DECISION

On June 24, 2010, the British Columbia Farm Industry Review Board (BCFIRB) received a Notice of Appeal from the appellant, Myles Materi, appealing a June 1, 2010 decision by the British Columbia Egg Marketing Board (Egg Board) to revoke his layer quota allotment of 500 birds.

The Egg Board applied for summary dismissal of the appeal pursuant to sections 31(1)(c) and (f) of the *Administrative Tribunals Act*, S.B.C. 2004, c.45 (ATA) and section 8.1(1) of the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330 (NPMA). In its decision of August 20, 2010¹, BCFIRB summarily dismissed the appeal.

On August 29, 2010, Mr. Materi applied pursuant to Rule 22 of BCFIRB's *Rules of Practice and Procedure for Appeals*, alleging that the August 20, 2010 Summary Dismissal Decision contains a mistake and requesting that BCFIRB reconsider the evidence and allow the appeal hearing to continue. In support of his argument, he enclosed a number of documents, including copies of several applications for chick/pullet placement permits and an application for levy abatement made by the appellant to the Egg Board between June 2007 and December 2008.

¹Myles Materi v BC Egg Marketing Board, August 20, 2010 – Summary Dismissal Decision
http://www.firb.gov.bc.ca/appeals/egg/materi_summary_dismissal_decision_10_aug_20.pdf

Rule 22 provides:

Rule 22: Correction of errors and clarification of decisions

- (1) A party or intervener who believes there is a clerical, typographical or arithmetical error or accidental omission in a decision (*NPMA*, s. 8.3(1)) must advise BCFIRB as soon as the matter comes to their attention. BCFIRB will seek the views of other parties or interveners as to whether a correction is required unless, in BCFIRB's view, the application is unfounded or the error is so minor or obvious that there is no need to solicit the views of the parties before correcting the decision. BCFIRB may also make such corrections on its own initiative.
- (2) A party or intervener who believes clarification of a board decision is required may apply to BCFIRB, with a copy to the other parties and interveners, in accordance with s. 8.3(3) of the *NPMA*. Other parties and interveners will have 7 days from the date of such application to advise BCFIRB of their views on the matter.
- (3) If BCFIRB amends a decision in accordance with s. 8.3 of the *NPMA*, it will advise the parties and interveners accordingly.

Rule 22 refers to section 8.3 of the *NPMA*:

Power to correct errors and omissions and to clarify decision

8.3 (1) On its own initiative or on the application of a party, the Provincial board may amend a final decision to correct any of the following:

- (a) a clerical or typographical error;
- (b) an accidental or inadvertent error, omission or other similar mistake;
- (c) an arithmetical error made in a computation.

(2) Unless the Provincial board determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days after being served with the final decision, a party may apply to the Provincial board for clarification of the final decision and the Provincial board may amend the final decision only if the Provincial board considers that the amendment will clarify the final decision.

(4) The Provincial board may not amend a final decision other than in the circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the Provincial board's ability on its own initiative to reopen an application in order to cure a jurisdictional defect.

We have carefully considered the appellant's arguments and additional materials submitted on this Rule 22 application, as well as the response of the Egg Board.

The alleged "mistake" or error is contained in the Background section of the Summary Dismissal Decision. After noting that the appellant's disputes with the Egg Board have a lengthy history, the decision sets out a number of background points, including the following:

- Field inspections conducted by Egg Board staff in March 2009, found that no layers were present.

The appellant believes this background point to be false. He states that the Egg Board could not have entered the barns as claimed as they have a coded lock on the door and he has not provided the Egg Board with the code.

As noted in the Egg Board's response, this statement originated as an evidentiary fact asserted by the Egg Board in its application for summary dismissal and this fact was not contested by the appellant in his submissions in response to that application. Rather, on that application the appellant admitted that he had not fully produced his quota offering as a justification a technical legal argument which was rejected by the panel. Whether or not Egg Board staff conducted field inspections in March 2009 and the nature of their findings if they did is therefore immaterial to the decision reached by the panel, its purpose being to merely provide, together with other background points, some historical context.

Turning to section 8.3(1) of the *NPMA*, it is evident that the alleged "mistake" or error identified by the appellant does not fall within the type of error (clerical or typographical error, an accidental or inadvertent error, omission or similar mistake, or an arithmetical error made in computation) which can be corrected under section 8.3(1) of the *NPMA*. Nor does the appellant seek the only type of remedy available under section 8.3(4) - an amendment to correct or clarify the Summary Dismissal Decision. We are also satisfied that the error alleged by the appellant does not reflect any jurisdictional defect that would trigger our discretion under section 8.3(5) of the *NPMA*. We therefore dismiss the appellant's application under Rule 22 and section 8.3 of the *NPMA*.

As we have already noted the remedy sought by the appellant is not in keeping with a Rule 22 application. What the appellant appears to be seeking is a reconsideration of the summary dismissal application, including an opportunity to make the new argument that the actions of the Egg Board in denying his chick/pullet placement permits precluded him from producing his quota, and a dismissal of that application. While section 8.3(5) of the *NPMA* recognises that BCFIRB has discretion to reopen an application in order to cure a jurisdictional defect, the *NPMA* does not provide a general power for BCFIRB to reconsider an appeal after the final decision has been rendered. With the dismissal of the appellant's application under Rule 22, the panel has no further authority; its job is done and it is *functus officio*. BCFIRB has no further appellate jurisdiction to act.

In our view, even if reconsideration of the Summary Dismissal Decision by BCFIRB were possible, reconsideration would be denied. There is no reason why the additional arguments and materials the appellant has submitted on this Rule 22 application could not have been submitted on the earlier Summary Dismissal application. Most of the additional materials submitted by the appellant on the Rule 22 application are either irrelevant in the face of the admissions made by the appellant in connection with the Summary Dismissal application, irrelevant to the issues on that application, or have already been considered on that application. The new information contained in the copies of several applications for chick/pullet placement permits and an application for levy abatement made by the appellant to the Egg Board between June 2007 and December 2008 is also information that could have been provided by the appellant at the time he made his response submissions on the Summary Dismissal application. The new argument the appellant now makes based on the recently provided documents could also have been raised as part of the grounds in the notice of appeal or at the pre-hearing conference. Further, these documents deal with matters which could have been brought forward in response to the Egg Board's show cause letter preceding the Egg Board's June 1, 2010 decision to revoke the appellant's layer quota. They could also have been separately appealed by the appellant in 2007 and 2008 at the time each determination was made by the Egg Board.

For the foregoing reasons, we dismiss the application.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Suzanne K. Wiltshire, Presiding Member



Sandi Ulmi, Vice-Chair



Ron Bertrand, Member

pc: Al Sakalauskas, Executive Director
BC Egg Marketing Board