

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 MILK MARKETING BOARD
JUNE 13, 1992

Richmond, B.C.

Hearing Date

October 27, 1992

BETWEEN:

KENNETH MASSIE

APPELLANT

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

APPEARANCES:

Dated November 30, 1992

Mrs. D. Iverson	Chair
Mr. A. Austring	Board Member
Mr. D. Kitson	Board Member
Mr. G. Houston, Esq.	Board Counsel
Ms. B. Coutts	General Manager
K. Massie	Appearing for himself
Mr. S. Stark, Esq.	Appearing for the Respondent

This appeal was brought pursuant to section 11 of the Natural Products Marketing (BC) Act. The Appellant filed his appeal on June 13, 1992. He is appealing a decision of the Respondent referred to in the June 4, 1992, newsletter of the British Columbia Milk Marketing Board. The decision of the Respondent was to enter into an agreement with Birchwood Dairies and the Canadian Dairy Commission.

ISSUES

As a preliminary matter, the British Columbia Marketing Board noted that the Appellant's Notice of Appeal indicated that he was appealing on behalf of a number of concerned milk producers. The Notice of Appeal did not disclose the names of those milk producers. The Appellant now takes the position that the other milk producers referred in his Notice of Appeal are not in fact appellants and that only Kenneth Massie is an appellant in these proceedings.

The purpose of the hearing on October 29, 1992, was to deal with certain preliminary issues.

The first preliminary issue involves an application by the Respondent for determination as to whether the Appellant is a person aggrieved within the meaning of section 11(1) of the Natural Products Marketing (BC) Act.

The second preliminary matter is the issue of whether the Appellant should be provided with a copy of the contract or contracts entered into between the Respondent and Birchwood Dairies.

Section 11(1) of the Natural Products Marketing (BC) Act states as follows:

"Where a person is aggrieved or dissatisfied by an order, decision or determination of a marketing board or commission, he may appeal the order, decision or determination to the Provincial Board by serving on it, not more than 30 days after the notice of the order, decision or determination, written notice of this appeal."

The Natural Products Marketing (BC) Act does not define the term "aggrieved".

SUBMISSIONS

Counsel for the Respondent conceded that there was no question in this appeal that there had been an order, decision or determination made by the Respondent and, therefore, the sole question was whether Mr. Massie was a person aggrieved or dissatisfied by the order.

Counsel for the Respondent argued that there was an absence of a comma between the word "aggrieved" and the word "dissatisfied" so that, in his submission, the phrase should be interpreted conjunctively and not disjunctively. In other words, the word "dissatisfied" has the same meaning as the word "aggrieved" and that the attribute of being dissatisfied was not something distinct from that of being aggrieved.

Counsel for the Respondent went on to cite the case of R.E. Sunshine Hills Property Owners Association and the Municipality of Delta, a decision of the B.C. Supreme Court dated 1977, for the proposition that statutory provisions giving rights of appeal are generally construed strictly.

Counsel for the Respondent cited the case of W.A.W. Holdings Ltd. v. Summer Village of Sundance Beach (1981) W.W.R. 97. That case contained a review of definitions of the term "aggrieved persons" at page 104. The court referred to deSmith's textbook Judicial Review of Administrative Action, 3rd ed. 1973, wherein the learned author remarked that a person aggrieved has been understood to mean one 'who has a genuine grievance because an order has been made which prejudicially affects his interest'.

The court went on to note that an aggrieved person must be seeking a remedy with respect to his direct personal interest in the proceedings and not as a mere member of the public. An applicant must show that there is a duty owed to him personally apart from the general public. Further on, the court refers again to deSmith wherein that author refers to a requirement that the applicant must show a legal right to the performance of the duty and that he must demonstrate a substantial personal interest in its performance.

Counsel for the Respondents submitted that the Appellant was unable to demonstrate that the Respondent's order prejudicially affected his interest or that the Appellant's interest in this matter was any greater than that of any other milk producer or a member of the public.

The Appellant submitted that he was substantially and personally affected by the order of the Respondent. He submitted that it was a term of the contract between Birchwood and the Respondent that 100 litres of fluid quota was returned to Birchwood Dairies and that if the 100 litres had not been returned to Birchwood Dairies, it would have been dispersed among the rest of the producers in the Province. At last count there were 906 producers in the Province which would mean that each producer would have received approximately 1/10th of a litre of fluid quota.

The Appellant also noted that Birchwood Dairies was not on a certified test program and, therefore, the Respondent would have to go on to Birchwood Farms and use cow counters and other means of finding out total production on the farm. The Appellant argued that these procedures represent an additional cost to all producers in the Province. If the Birchwood Farms was on certified D.H.S. test, it would be paid for by Birchwood and would not burden the rest of the producers of the Province.

Finally, the Appellant noted that while Birchwood was not shipping milk, its additional M.S.Q. was dispersed amongst the rest of the producers within the Province. Now that Birchwood is back in production that M.S.Q. will be taken away from all of the producers.

The Appellant also pointed out that he felt that the Respondent had made unreasonable concessions to Birchwood and that the granting of those concessions might set a dangerous precedent which may result in existing producers losing more income.

Finally, the Appellant submitted that Birchwood Dairies has been out of compliance with the Respondent's orders over several years and that there are thousands of dollars of back levies owed by Birchwood which have not been collected. The Appellant was concerned that if the Canadian Dairy Commission decided to bill the Respondent for these outstanding levies then all other producers in the Province would be liable for the contribution.

The Appellant had no other submissions or information regarding how he was personally aggrieved by the Respondent's order with regard to Birchwood Dairies.

In reply, counsel for the respondent noted that as a result of the agreement, 19 million litres of additional milk production is allocated to British Columbia which translates into an increase in each producer's production of approximately 75 litres a month. The 75 litres a month increase is far more than the 1/10 of a litre decrease referred to by the Appellant. In addition, the Canadian Dairy Commission has agreed not to seek payment of the levies referred to by the Appellant. The Canadian Dairy Commission is a party to the agreement and it was a condition of the agreement that they waive their right to pursue the back levies. As well, the agreement provides that Birchwood must pay \$50,000 in five installments of \$10,000 each towards the back levies. The first installment of \$10,000 has been paid by Birchwood. Birchwood has assigned to the Canadian Dairy Commission all of its subsidy payments that it would otherwise receive in respect of its production over the period of the agreement for five years. In total, the Respondent stands to recover \$182,000 under the agreement with Birchwood and the Canadian Dairy Commission.

Counsel for the Respondent noted that the whole purpose of the agreement was directed at producing or providing for production of kosher products for the Jewish community who had been up to this point required to obtain their products outside the country, largely from New York and Seattle because these types of products were not available within British Columbia.

Furthermore, although Birchwood Dairies does not have a D.H.S. certified testing system, there are other producers in the Province who do not have D.H.S. testing counters so that Birchwood is not the only producer requiring on-site tests.

DECISION

After listening to all of the submissions by the Appellant and counsel for the Respondent, it is the conclusion and decision of the British Columbia Marketing Board that the Appellant is not a person aggrieved within the meaning of section 11(1) of the Natural Products Marketing (BC) Act. All of the submissions by the Appellant show that his interests in the agreement between Birchwood Dairies and the Respondent are in common with all other milk producers and that he is not directly or substantially affected by the decision of the Respondent to enter into the agreement.

In view of the British Columbia Marketing Board's decision with regard to this issue, the second issue does not require a decision.

Dated at Victoria, British Columbia, this 30th day of November, 1992.

Donna M. Iverson

Donna M. Iverson, Chair

Oscar Austring

Oscar Austring, Member

Doug Kitson

Doug Kitson, Member