

IN THE MATTER OF THE
NATURAL PRODUCTS (B.C.) ACT

and

IN THE MATTER OF AN
APPEAL BY MAINLAND DAIRYMEN'S ASSOCIATION AGAINST
A DECISION BY THE BRITISH COLUMBIA MILK MARKETING BOARD
NOT TO REFUND LEVIES PAID ON MILK DELIVERIES
UTILIZED FOR INDUSTRIAL PURPOSES IN EXCESS
OF A PRODUCER'S 1989/90 DAIRY YEAR
MARKET SHARING QUOTA

REASONS FOR DECISION

The Appellant's appeal is from a decision of the British Columbia Milk Marketing Board ("the Milk Board") not to refund certain monies which had been collected from those British Columbia dairy farmers who produced milk in excess of their allotted Market Sharing Quota ("M.S.Q.").

This decision of the Milk Board was communicated to British Columbia dairy farmers by way of a news letter dated February 12, 1990 (Tab 2 of Exhibit 12). The Milk Board met again on August 21 and 22, 1990 and reconsidered its earlier decision regarding the refund of these monies, which have been referred to throughout the appeal as "over-quota levies". This decision was made after the Milk Board reviewed M.S.Q. production data and was communicated to producers by way of a news letter dated September 4, 1990 (Tab 4 of Exhibit 12).

The Milk Board is a signatory to the National Milk Marketing Plan which is found at Tab 3 of Exhibit 4. Part of that Plan provides as follows:

- G.1 "The Signatories in each Province shall ensure that the allocation to producers of Provincial Market Sharing Quota is in conformity with the provisions of this Plan and in accordance with their respective responsibilities in each Province.

G.2 The Signatories shall endeavour to ensure that policies adopted by their government do not conflict in their effects with the spirit and intent of this Plan, the Committee shall be kept informed of Provincial policies that affect the Plan and Memorandum of Agreement."

Thus, as a signatory to the National Milk Marketing Plan, the Milk Board has an obligation to act responsibly in order to fulfill its undertakings related to the National Plan.

We accept the evidence of Mr. Thorpe that the decision was made by the Milk Board as a result of a three percent reduction in national M.S.Q. and because of the necessity to reduce excess production of milk. This decision was a responsible one which is in keeping with the principles of supply management and which would show British Columbia acting responsibly in not encouraging excess production being put on the international market.

While British Columbia milk producers did not have their M.S.Q. reduced because of British Columbia's unique "65/35" arrangement within the National Milk Marketing Plan, this did not mean that the Milk Board could simply ignore the directives it had received to reduce the Province's over-production of milk.

Once the decision of the Milk Board not to refund over-quota levies (as had been done in past years) was announced in February 1990, many dairy farmers would have relied on this announced decision and would have targeted their milk production accordingly. This is supported by the testimony of Mr. Geoffrey Thorpe, General Manager of the Milk Board, who testified that he had been told at a producer meeting that if the Board "went back on its February decision that there would be an appeal against that...". This is also supported by the letter written to the Milk Board by Mr. McLeod on behalf of the Southern Interior Dairymen (Exhibit 13) in which it was stated that if the Milk Board "...refunds over quota levies after stating in writing that they would not, they can expect to be sued for damages." Thus, to now accept the Appellants argument and return the monies to over-producers would unjustly penalize those producers who acted responsibly and properly targeted their milk production.

Implicit in the argument of the Appellants is the suggestion that the money which is the subject of this Appeal is "their money". While it is true that the Appellants contributed to these monies, it is not correct that these monies are indeed their monies. Further, Mr. Van Dongen , one of the producers who overproduced his M.S.Q., stated that he supported the action of the Milk Board. We feel that the Milk Board's decision is one which will benefit all of British Columbia's milk producers, rather than just those who decided to ignore the Milk Board's directives.

It is unclear how many British Columbia dairy producers, indeed, how many members of the Mainland Dairymen's Association, are in disagreement with this decision of the Milk Board. The Appellant's witness, Mr. Van Esch, the Secretary/Manager of the Mainland Dairymen's Association, testified that at a meeting of the Mainland Dairymen's Association held on March 5, 1991 where approximately 65 to 70 members were present (of a total membership of approximately 150), only approximately 25 of such members voted in favour of the action of the directors of the association in bringing this appeal.

Those dairy farmers who made the decision to produce above their M.S.Q. did so at their own risk, fully aware that the Milk Board had decided that over quota levies would not be refunded to them as they had been in previous years. While the Appellants argued that they were actually ensuring that the British Columbia kept its market share, we accept the Respondent's argument that that is a responsibility of the Milk Board, not that of individual producers.

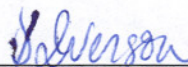
In summary, in February 1990 the Milk Board was placed in the position where it found it necessary to take action to reduce the production of milk in excess of British Columbia's allotted M.S.Q. It decided that it would do this by not refunding to

producers monies collected as over quota levies, which did not get returned to each producer as a result of that producer ultimately coming within producer's individual M.S.Q.

The Milk Board proposes to use these monies to reduce the amount of levies all producers in the Province will have to pay. The actions of the Milk Board are consistent with those of responsible supply management, and we uphold the Milk Board's decision not to refund these monies to those producers who overproduced their M.S.Q.

In keeping with the provisions of the Natural Products Marketing (B.C.) Act, the Appellant's deposit is forfeited.

DATED the 5th day of June, 1991.



DONNA M. IVERSON,
Chairperson