

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND APPEALS FROM DECISIONS CONCERNING THE TRANSFER OF QUOTA
AND THE SUPPLY OF BROWN EGGS

BETWEEN

MYLES MATER
d.b.a. MOUNTAIN MORNING FARMS

APPELLANT

AND:

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

AND:

BRITISH COLUMBIA EGG PROCESSORS COUNCIL

INTERVENER

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board

Christine J. Elsaesser, Panel Chair
Wayne Wickens, Member
Suzanne K. Wiltshire, Member

For the Appellant

Myles Materi

For the Respondent

Robert P. Hrabinsky, Counsel

For the Intervener

Amy Alibhai, President

Date of Hearing

April 24-25, 2007

Place of Hearing

Kelowna, British Columbia

INTRODUCTION

1. There is a federal-provincial agreement governing the national supply management system for eggs in Canada, to which the Minister of Agriculture and Lands, the British Columbia Farm Industry Review Board (Provincial board) and the British Columbia Egg Marketing Board (Egg Board) are signatories. 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 Egg Board has the authority in British Columbia to allot quota to registered producers in their jurisdiction.
2. The Appellant, Myles Materi is both a registered producer of eggs and the operator of an egg grading station, Mountain Morning Farms (Mountain Morning). Mr. Materi brings two separate appeals, one in his capacity as a producer and the other in his capacity as a grading station operator.
3. The first appeal relates to Mr. Materi's quota. On February 13, 2006, Mr. Materi submitted a request to the Egg Board to transfer his 500 bird layer quota. To date, the Egg Board has not approved the transfer of this quota. Mr. Materi seeks an order from the Provincial board allowing his quota to transfer.
4. On January 28, 2007, Mr. Materi applied for a stay of the Egg Board's decision to charge interest on an unpaid account which Mr. Materi intends to pay out of the proceeds from his quota transfer. In a decision dated February 20, 2007, the Provincial board dismissed the stay application.
5. The second appeal deals with the supply of brown eggs to the Mountain Morning grading station. Mr. Materi takes the position that the Egg Board has failed to live up to its commitment and obligation to supply Mountain Morning with brown eggs and as such seeks a direction from the Provincial board that the Egg Board direct more brown egg production to his grading station and allocate a 5000 bird quota or permit to his wife, Laverna Materi.
6. The appeals were heard on April 24-25, 2007.

ISSUES

7. Did the Egg Board err in not allowing Mr. Materi to transfer his 500 bird layer quota?
8. Did the Egg Board err by not honouring a commitment to provide Mountain Morning with a proper supply of brown eggs?

BACKGROUND

9. There is a complicated history to these appeals some of which has been previously canvassed by the Provincial board in earlier appeals. The Panel does not intend to recite the entire history but instead will attempt to give enough background to place these appeals into context.
10. In 1999, Mr. Materi and his wife began working on the farm at 5551 50th Street SW in Salmon Arm, British Columbia. This farm was being operated by Mr. Materi's grandfather, David Wilson. Initially, the Materis produced hay and had a 99 bird layer flock. They also assisted Mr. Wilson with his layer operation. Mr. Wilson had been a registered egg producer. After selling his quota in 1977, he retained a 499 bird flock which at that time was exempt from regulation.¹ Although Mr. Wilson passed away some time after 1999, it appears that Mr. Materi and his wife continued to operate a layer operation with the "499 bird flock". Although this flock is called the "499 bird flock" its numbers have increased over time. In March 2007, this flock consisted of approximately 1500 layers. This flock is often referred to by Mr. Materi as the "unregulated flock" but that is a misnomer as all layer flocks are regulated. It is in fact an illegal flock in excess of the maximum flock allowed without holding quota (99 birds).
11. In March 2002, Mr. Materi acquired 500 layers of quota which he has housed at the same location as the illegal flock at 5551 50th Street SW.² Although Mr. Materi refers to two barns, there is in fact one barn building on this property with a common wall dividing the building. One side houses the "499 bird flock". Mr. Materi alleges that his wife operates this "farm." The other side houses the 500 bird layer quota. Mr. Materi operates this "farm".
12. In January 2003, Mr. Materi and Jake Penner, another registered egg producer began operating Mountain Morning as a licensed egg grading station. The grading station was located on Mr. Materi's farm and graded eggs from approximately 46,000 birds. The majority of the production came from Salmon Arm Poultry Ltd. (Jake Penner's farm), Aberdeen Poultry Ltd. (Mr. Penner's son Dan Penner's farm) and Jack Shaule.
13. In the fall of 2005, as a result of grading issues between Mr. Materi and Dan Penner and issues around management of the grading station bank accounts between Mr. Materi and Jake Penner, the Mountain Morning partnership soured. Consequently, Mr. Shaule and both Jake and Dan Penner sought to move their production to a different grading station. Mr. Materi took steps to buy out

¹ According to Peter Whitlock, then Operations Manager for the Egg Board, in 1983 the exemption in the Standing Order was reduced from 499 birds to 99 birds. However, as Mr. Wilson operated under the old rules, his production was grandfathered.

² Although Mr. Materi's licence and correspondence refer to his farm as being at 5553 50th Street SW in Salmon Arm, he agreed in cross examination that the production unit is in fact located on the adjacent property at 5551 50th Street SW.

Mr. Penner's interest in Mountain Morning. Mr. Materi's original desire to transfer his quota was part of his buy-out arrangement with Jake Penner. The Egg Board initially refused the requests by Mr. Shaule and Jake and Dan Penner to move their production from Mountain Morning and continued to direct their product to the Mountain Morning grading station. The relationship between Mr. Materi and Dan Penner, who produced brown eggs, worsened. After alleging that Dan Penner had tampered with his eggs, Mr. Materi advised the Egg Board on March 14, 2006 that he would no longer take Dan Penner's eggs as he felt they were a health and safety risk.

14. Throughout this period Mr. Shaule and Jake Penner, neither of whom were brown egg producers, continued to ship to Mountain Morning. However, in August 2006, the Egg Board allowed Dan Penner to switch his production to white caged layers and begin shipping to another grader. As a result of Dan Penner moving out of brown egg production, there was a significant decline in the Interior brown egg supply.
15. During this same time frame, Mr. Materi continued to press the Egg Board for approval of his quota transfer. On February 21, 2006, the Egg Board advised Mr. Materi that they had conditionally approved the transfer subject to him providing certain information and removing all birds currently housed at his egg production unit. There was a further requirement of the standard 5% assessment on the quota transfer and an imposed restriction that the remaining 475 bird quota held by the purchasing producer remain free-run with this production directed to Mountain Morning.
16. Mr. Materi's evidence is that he "fowled out" and removed his quota birds. Although the exact date is unclear, Mr. Materi maintains that since February 22, 2006 he has not produced any eggs under his quota. The Panel notes there is no independent evidence of this. There is no question that the illegal flock attributed to Mr. Materi's wife has remained on the farm and as Mr. Materi's quota flock ceased production, the illegal flock has in fact grown to approximately 1500 birds. However, in Mr. Materi's view this is a separate matter. On March 15, 2006, Mr. Materi wrote to the Egg Board advising that he had met the conditions of the quota transfer and asking that his transfer be approved.
17. On March 16, 2006, the Egg Board wrote to Mr. Materi advising that his request for a quota transfer was being deferred until he removed all birds currently housed at his production unit and paid outstanding production levies of \$124.50 and accounts receivable for unpaid eggs graded by Mountain Morning for the production weeks 7-9/06 in the amount of \$63,654.85.³ Since that time there has been a stalemate. Mr. Materi has made weekly payments against his outstanding account but a significant balance remains owing. As for the production levies, Mr. Materi disputes the amount owing as he claims his flock was destroyed

³ For a three week period, Mr. Materi did not remit payment for eggs delivered to his grading station. Although the Egg Board paid the producer, Mr. Materi has not paid off this outstanding account.

February 22, 2006 and these levies relate to a period after that. He maintains that the illegal flock is a separate issue and has no bearing on his request to transfer quota.

18. As for the brown egg supply issue, the Egg Board sent out numerous notices to registered producers seeking more brown egg production but no further registered producers have stepped forward to ship to Mountain Morning.
19. By October 2006, the amount owed by Mountain Morning on account of eggs received was \$70,221.74. The Egg Board gave Mountain Morning seven days to bring the account into good standing failing which it would redirect its producers to another grading station. Effective October 6, 2006, the production from Mr. Shaule, Salmon Arm Poultry and Salmon Valley Eggs Ltd. (formerly Aberdeen Poultry Ltd.) was directed to another grading station (Sunshine Eggs Ltd.) on the proviso that Mountain Morning could purchase the eggs on a C.O.D. basis. Since that time, Mountain Morning's supply of eggs has been made up of pre-purchased eggs and the production from the illegal flock.
20. On October 19, 2006, the Egg Board advised Mr. Materi that it had retained auditors to conduct an audit of Mountain Morning grading station in order to have a clear understanding of its total market including any unregistered birds being utilized to supply its market. Mr. Materi has not complied with the request for a grading station audit; he questions the timing of the request and sees it as an attempt by the Egg Board to punish him for meeting with the Minister of Agriculture.
21. At the time of appeal, Mr. Materi had not met the Egg Board's three conditions for a quota transfer (removal of illegal flock, unpaid levies and accounts receivable) and he was still seeking more brown egg production for his grading station.

DECISION

a) Approval of Quota Transfer Appeal

22. The Panel will address the appeal concerning approval of the quota transfer first.
23. Mr. Materi has made it clear since February 2006 that he wishes to transfer his quota. Although the transfer is no longer part of the purchase of Jake Penner's partnership interest in Mountain Morning, Mr. Materi asserts that he needs the proceeds of the sale to deal with his outstanding debts to the Egg Board and to his bank. Mr. Materi has made it clear to the Egg Board that subject to some minor accounting issues he is prepared to pay off his liabilities to the Egg Board once the transfer of quota is finalized and he has given an undertaking to this effect. He maintains that he does not have the financial ability to bring himself into good standing in advance of the transfer. Further, Mr. Materi argues that the Egg Board's refusal to allow this transfer in a timely fashion has deepened his

financial predicament. Had the transfer been approved in February 2006, Mountain Morning would not be in the precarious financial position it now finds itself.

24. The Egg Board's decision to not approve a quota transfer in February 2006 was a decision that Mr. Materi, who was familiar with the process from his earlier successful 2004 appeal, could have appealed at the time rather than in January 2007.
25. If the non-compliance issue related only to monies owed to the Egg Board, the Panel would not have had difficulty directing the Egg Board to allow the quota transfer to take place on appropriate undertakings. However, the issue is far more complicated than that. The real issue of non-compliance relates to the "499 bird flock". The Egg Board has repeatedly said that it will not allow the transfer of quota until and unless Mr. Materi removes the "499 bird flock". The Egg Board is not prepared to allow the quota transfer when Mr. Materi has made it clear that he intends to make up the loss of production from his quota with the "499 bird flock".
26. Mr. Materi maintains that the "499 bird flock" is a separate issue as these are not his birds. This flock was originally farmed by his grandfather and upon his death the flock became Mrs. Materi's operation. He argues that his wife is responsible for this flock; she feeds the birds, pays the bills, etc. He argues that if the Egg Board has an issue with Laverna Materi then it should deal with her. The Egg Board has been aware of his wife's operation since 2003; Egg Board field representatives have observed and counted the flock. Mr. Materi claims that representatives of the Egg Board advised that as long as the two operations remained two separate entities in separate "barns", they were satisfied. Given that the Egg Board has taken no enforcement measures against his wife, Mr. Materi questions whether the "499 bird flock" is the real issue.
27. The Egg Board maintains that in its dealings with Mr. Materi it has followed its long-established procedure requiring good standing from the proposed transferor before approving a transfer. The Egg Board argues that Mr. Materi is non-compliant in several significant respects. He has 1500 layers in his egg production unit yet only has quota for 500 layers. While he maintains that none of the birds belong to him, the Egg Board says this assertion is immaterial to the issue of non-compliance. If the layers belong to Mr. Materi, then he is significantly over quota and has failed to remit over quota levies to the Egg Board. If, as Mr. Materi asserts, all of the birds belong to his wife then he is non-compliant with paragraph 2(c) of the Standing Order which provides:

2(c) Size Exemption – A person who keeps or maintains ninety-nine (99) layers or less shall be exempt from the requirement of obtaining a licence and registering as a Registered Producer provided that:

- (i) No person shall keep or maintain, in concert with another person or persons, such layers in facilities contiguous to or a part of each other, such that in aggregate, the number of layers kept or maintained, would if kept or maintained by one person in such facilities, require that person to obtain a licence and register as a Registered Producer.

- (ii) No Registered Producer shall permit a person exempt from the requirement of obtaining a licence to keep or maintain layers in the Egg Production Unit of or in facilities contiguous to or that ordinarily would constitute a part of the Egg Production Unit of the Registered Producer.
28. Egg Production Unit is defined in s. 1(1) of the Standing Order and “means, the land and buildings comprising a poultry farm at which a registered producer keeps or maintains layers owned by him and used for the purpose of producing eggs to be marketed in accordance with marketing quota or marketing permit.” Thus, the Egg Board argues, the definition of an egg production unit is a farm not a barn or a part of a barn. The Egg Board also argues that Mr. Materi, as the registered producer, is contravening s. 2(c)(ii) in that his registered production is in a production unit contiguous to the unregistered production of his wife. Thus, the Egg Board’s position is that it does not matter whether the “499 bird flock” belongs to Mr. Materi or his wife. It says significant non-compliance exists and it would be foolhardy to permit a quota transfer until Mr. Materi’s non-compliance is rectified. It also says that to do otherwise would be to tacitly permit the continued existence of 1500 illegal layers in his egg production unit.
29. The Panel is in agreement with the Egg Board. We find that Mr. Materi is non-compliant with the Standing Order. We do not accept Mr. Materi’s assertion that the “499 bird flock” is his wife’s production and therefore a separate matter. The Panel finds this argument to be a sham and Mr. Materi is not believable on this point. We say this for a number of reasons:
- Mrs. Materi was not called as a witness to testify as to her involvement;
 - Mrs. Materi is a young mother with two small children who also works part time;
 - Mr. Materi is a full time farmer and grading station operator working seven days a week;
 - Mr. Materi in his testimony and correspondence speaks for all the production on his farm;
 - Mr. Materi controls all the production. As his quota flock was taken out of production, the “499 bird flock” simply increased in lock step to meet the shortfall;
 - Mr. Materi does not pay his wife for this production, in his words “she gives” the production to the grading station.
30. This latter point requires further explanation. Mr. Materi’s evidence is that his wife produces eggs for the grading station yet she is not “paid” for the production. This is his justification for not remitting marketing fees and his basis for saying they are not owed. Essentially Mr. Materi’s interpretation of the applicable section of the Standing Order is “if I don’t pay her, I don’t have to pay the Egg Board.”
31. The relevant section of the Standing Order is Section 12(c):

- (c) Where the person markets eggs through a Registered Grading Station Operator or Breaker, the licence fee shall be collected by the Registered Grading Station Operator or Breaker by deduction of the amount of the fee from the monies payable to him to the person and the fee so collected shall be remitted by the Registered Grading Station Operator or Breaker to the Board forthwith. In any other case the person shall pay the licence fee in accordance with the directions of the Board.
[emphasis added]

32. The Panel does not accept Mr. Materi's interpretation. He is twisting the Standing Order to try and fit his circumstances. Whatever the arrangement Mr. Materi alleges he has with his wife, it is clear that monies are payable by the grading station to the "person" marketing those eggs (i.e. Mrs. Materi). Section 10 of the Standing Order sets a minimum price payable to producers for eggs of varying grades. Whether in fact Mrs. Materi reports being paid does not change that reality. Further, the grading station is marketing these eggs into wholesale or retail markets. This is what grading stations do. The grading station is being paid by its customers for the production and in turn, even if Mr. Materi does not "pay" Mrs. Materi, the costs associated with the production are being paid and Mr. Materi and his wife both derive the benefit from those sales. There is simply no basis to conclude Mountain Morning does not owe marketing fees nor is there any basis to conclude that Mr. Materi is not fully in control of the "499 bird flock".
33. In his testimony, Mr. Materi persisted in twisting the Standing Order to demonstrate why he actually is in compliance. In Mr. Materi's opinion, s. 2(c) and the definition of an egg production unit should be read to mean that each room of his barn constitutes an egg production unit despite the actual wording of the definition which includes "the land and buildings comprising a poultry farm." This interpretation is in contradiction with the requirement in s. 2(c) requiring those persons with exempt (99 bird) flocks to not keep their "layers in facilities contiguous to or a part of each other, such that in aggregate, the number of layers kept or maintained, would if kept or maintained by one person in such facilities, require that person to obtain a licence and register as a Registered Producer."
34. Mr. Materi also twists the Standing Order to create an entitlement if not on his part, on the part of his wife to the "499 bird flock" that was operated by Mr. Wilson. There is no provision in the Standing Order whereby a grandfathered exemption held by one producer can pass to another. Mr. Wilson qualified for the "499 bird flock" because that was the exemption level at the time he sold his quota in 1977. Upon his death, there was no right of production to pass on. There is simply no basis for either Mr. or Mrs. Materi to operate at Mr. Wilson's exemption level. Mrs. Materi could only have a 99 bird flock if that flock was being raised on her own independent production unit, not contiguous to a registered producer. It goes without saying that Mr. Materi as a registered producer cannot have an exempt 99 bird flock.

35. The Panel notes that Mr. Materi persists in his interpretation despite being advised of his non-compliance by Egg Board staff in 2003.⁴ Mr. Materi argues that despite being advised of his non-compliance, his recollection is that the Egg Board allowed him to continue to produce as long as the two flocks were kept separate. He points to the fact that nothing happened thereafter as proof of an entitlement. The Panel does not accept that by the Egg Board choosing to not enforce its rules, if that is indeed what happened, there is any principle of law that would operate to excuse Mr. Materi from complying with the Standing Order.
36. The Panel is strongly of the view that a period of non-compliant activity without enforcement does not create a right to an amnesty nor does it create an entitlement to produce.
37. Mr. Materi also twists the Standing Order in an attempt to bring himself into compliance and again assert his entitlement to transfer his quota. After the Egg Board persisted in telling Mr. Materi to remove all birds from his production unit (at 5551 50th Street SW), he determined that compliance could be achieved by a purely paper transaction. He applied to move his quota (which was according to him gone) to his property at 6251 70th Avenue SW. There was no barn or production unit there; however he wanted the quota attached to that piece of property in order to create a situation where the “499 bird flock” was not contiguous with the registered flock without actually having to remove the “499 bird flock”. The Panel finds that this action demonstrates Mr. Materi’s mindset that the Standing Order is a technicality which can be easily circumvented by meaningless paper transactions.
38. One final example of Mr. Materi’s approach to these issues can be seen in the monies owed to the Egg Board on account of eggs delivered to the grading station and not paid for (\$63,654.85). In February 2004, Mr. Materi and his partner Jake Penner filed an appeal with respect to farm gate pick up fees. The appeal was adjourned due to the Avian Influenza crisis in the spring of 2004 but was heard in April 2005. As a result of this appeal, the Egg Board was required to address its transportation policy in consultation with industry. Ultimately the Egg Board issued a new transportation policy on May 23, 2006 which was not retroactive. After providing industry, including Mountain Morning, opportunity to comment on the new policy, the Provincial board approved the policy (including its non-retroactivity) on July 4, 2006. However, Mr. Materi felt that given the outcome of the Mountain Morning appeal, he still was entitled to payment of retroactive farm gate pick up fees. Accordingly, he withheld payment for eggs delivered to his grading station in the approximate amount he felt he was “owed” by the Egg Board as a self-help remedy. Mr. Materi subsequently filed an appeal on October 22, 2006 which was ultimately dismissed as it was found that the issue of retroactivity had been dealt with in the July 4, 2006 supervisory decision.

⁴ Egg Board Minutes, July 16 and 17, 2003.

39. It is worth noting here, that although Mr. Materi very clearly voices what he believes he is entitled to by virtue of the Standing Order, he also admits he is not that familiar with the Standing Order and has instead relied on what the Egg Board has told him. When asked what steps he had taken to familiarize himself with Egg Board policies and initiatives his response was:

You have to understand, I'm trying to keep a business going here in spite of everything and I work seven days a week. I can only do so much. You know, I don't have the luxury of a lot of spare time and I'm still a dad. So, you know, you still have to spend some time with the kids too. So, unfortunately, if I'm not, you know, completely up on the -- all the laws and everything, I can only rely on the board to tell me what -- you know, what we need to do...
[April 24, 2007 Transcript p. 75]

40. This abdication of responsibility on the part of Mr. Materi is really quite shocking when one considers the lengths to which he has gone to assert his mistreatment at the hands of the Egg Board and his entitlement to the relief he seeks in these appeals. He candidly admits that he has written numerous letters to the Egg Board, the Provincial board and the Minister of Agriculture; he has attended meetings and made numerous phone calls as well. He candidly admits his lobbying efforts and acknowledges his belief that “the squeaky wheel gets grease.” Had Mr. Materi spent some of this considerable time and effort reading the Standing Order that relates to the regulated industry he participates in as both a producer and a grader, perhaps he would not have found himself in his current predicament of non-compliance.
41. The Panel finds that Mr. Materi is non-compliant with the Standing Order. Given the extent of his non-compliance, the Panel agrees with the Egg Board that it would be foolhardy to allow Mr. Materi’s quota to transfer until such time as all birds are removed from the egg production unit at 5551 50th Street SW including the “499 bird flock”. To do otherwise would be to perpetuate the shell game between the illegal flock and the quota flock. The Panel finds that the Egg Board was and is entitled to withhold approval of a quota transfer unless and until certain conditions are met. We also find that the conditions imposed by the Egg Board were reasonable in the circumstances. Accordingly, this appeal is dismissed.
42. Mr. Materi’s choice is a simple one. If he wants to transfer his quota he must meet the conditions imposed by the Egg Board and remove all birds, including the illegal flock, from the egg production unit at 5551 50th Street SW. Given that there is no independent evidence of if or when the 500 bird layer flock was removed, and given the linkage between the quota flock and the illegal flock, the Panel supports the decision of the Egg Board to conduct a Flock Verification Audit as well as an audit of the Mountain Morning grading station to determine the extent of unpaid over quota levies and marketing fees. Once the Egg Board is satisfied that its conditions have been met and upon being satisfied with any undertakings given by Mr. Materi with respect to payment of outstanding levies, marketing fees and accounts, the quota can transfer. Alternatively, Mr. Materi can persist in doing nothing, in which case, the Egg Board would be within its authority to take action

to deal with his non-compliance including revoking his quota if the Egg Board deemed it appropriate.

b) Brown Egg Supply Appeal

43. The second appeal deals with the supply of brown eggs to Mountain Morning. Mr. Materi argues that the Egg Board has a duty to supply his grading station with an adequate brown egg supply to meet his grading station's markets. In support of this argument he points to a letter from David Taylor, Chair of the Egg Board dated June 27, 2006. In this letter, Mr. Taylor states:

The Board recognizes its responsibility to supply your grading station with eggs. The Board will continue to do what is necessary to ensure that your grading station has an ongoing supply of white and brown eggs as required.

44. Mr. Materi's interpretation of this letter is that it is a guarantee or "blatant promise" by the Chair of the Egg Board that his grading station would get eggs. Rather than a statement that the Egg Board will try its best, Mr. Materi interprets this letter as saying he will have his brown eggs "come hell or high water".

45. Mr. Materi argues that instead of living up to its "promise" to supply Mountain Morning with the production it requires, the Egg Board has instead made a number of decisions which have had the effect of limiting the supply of eggs generally and brown eggs specifically in the province and in the Interior:

- allowing free-run production on Vancouver Island to be converted to white caged layers;
- allowing 14,000 birds of free-run layers to leave the Interior;
- allowing production from Prince George to move to the Lower Mainland creating hardship for Interior graders;
- directing white production away from Mountain Morning;
- allowing Dan Penner to convert 14,000 layers from brown to white production;
- not approving the direction of 3000 layers of brown production from Pennarosa Farms to Mountain Morning.

46. Mr. Materi argues that the above decisions made by the Egg Board are inconsistent with its stated policy to treat all graders fairly. These decisions have had a devastating impact on Mountain Morning. In 2005, Mountain Morning was grading over 50,000 birds of production. Now it grades only the production from the "499 bird flock" and what can be purchased C.O.D. This has resulted in loss of revenue and market share. It has also created the unappetizing problem of local markets being supplied by out-of-province eggs.

47. Mr. Materi points out that there is similarity between this appeal and a decision of the British Columbia Marketing Board: *Island Egg Sales Ltd. v. British Columbia Egg Marketing Board*, August 4, 2000. This appeal involved an appeal of the

decisions of the Egg Board regarding direction of product between grading stations and the need to take into account regional markets.

48. In terms of a remedy, Mr. Materi asks that his grading station be treated fairly. He asks for a further direction of brown, white and free-run production. Given the lack of brown egg supply, he also seeks a direction that his wife, Laverna Materi be granted an allocation of 5000 birds. He says there is a precedent for such an allocation. He points to a person who was allegedly producing layers from an unregistered flock in Malakwa. He says this person was recently given 5000 birds of production by the Egg Board and the production was directed to a competitor grader. He says fairness dictates that his wife receive a similar allocation.
49. In response, the Egg Board argues that it is difficult to reconcile Mr. Materi's second appeal with his first. As a producer he seeks to sell his quota but as a grading station operator he desperately seeks more production and a remedy that quota be allotted to his wife. The Egg Board asks why should quota be allotted to Mr. Materi's wife when he seeks to sell his own quota?
50. Secondly, the Egg Board argues that the relief sought by Mr. Materi reveals a fundamental misunderstanding of the national supply management system. Quota is, by definition, a finite resource. It says the volume of quota available in British Columbia is dependent upon our domestic allocation from CEMA; it cannot be created out of thin air. Finally, it says Mr. Materi appears to overlook the fact that British Columbia is a short province. British Columbia does not have sufficient allocation to meet all its markets and all grading stations in the province are chronically short of production.
51. In fact, Egg Board Chair, Mr. Taylor advised Mr. Materi of this point on June 15, 2006, just over a week before the June 27, 2006 "promise" relied upon by Mr. Materi. In his June 15 letter, Mr. Taylor advised "my understanding is that management has worked endlessly to maintain supply, but [the Egg Board] cannot use a solution that disadvantages another grader or goes outside established Board rules and policies."
52. Finally, the Egg Board argues that even if quota could be created out of thin air, it is not rational to establish a policy whereby quota be allotted to the spouses or relatives of grading station operators on the basis of meeting a grading station's marketing requirements. If this remedy was offered to Mr. Materi, every grading station would be standing in line for their allocation of quota.
53. The Panel agrees with the Egg Board that the testimony from all the graders in this appeal was consistent; British Columbia is short of production. Eggs are imported to meet some of our market needs. Mr. Andren of the Veekens grading station in Prince George testified that he is short of production and blames the Egg Board for allowing quota which was being produced in Prince George by Peter Veeken to transfer to the Lower Mainland. Mr. Floritto testified that his grading station,

Daybreak Terrace, was short on product as well and was critical of the Egg Board's decision to allow Dan Penner to convert from brown to white caged production. Mr. Alibhai, who spoke on behalf of the British Columbia Egg Processors Council (BCEPC) also described British Columbia as a short province. The Panel accepts that this is an issue. However, until such time as British Columbia signatories manage to obtain an increased allocation from the national system the Egg Board must balance the competing interests of grading stations throughout the province.

54. Accepting that the province is short of production, it follows that graders will have difficulty supplying their markets from time to time. Indeed all the graders who testified conceded this fact. The Panel accepts that it is the role of the Egg Board to manage the situation and as markets shift, respond when necessary by directing product. However, it remains the obligation of graders to develop good, long term relationships with producers. They can enter into contracts with producers to supply certain types of eggs at specified prices in order to have the stability in meeting their markets. Although such contracts cannot override the Standing Order, they do promote longer term stability in meeting market demands.
55. The Panel finds the criticism leveled at the Egg Board by Mr. Materi and the other two grading stations (Daybreak and Veekens) that the Egg Board has failed to supply them with the eggs they require, misplaced. There appears to be a misconception as to the role of the Egg Board. The Egg Board cannot force a producer to grow a certain type of egg. That is a business decision made by the producer in conjunction with the grader. Presumably if a grader has a market that needs filling, he will ask a willing producer to fill that need. It is a weak criticism when Mr. Floritto criticizes the Egg Board for allowing Dan Penner to convert to white production when Daybreak Terrace is not prepared to convert any of its 30,000 layers to brown production. Similarly, Mr. Andren of Veekens is critical of the Egg Board's decision to allow a producer (Peter Veeken) to transfer his quota in Prince George to a Lower Mainland producer. The Egg Board currently employs no mechanism to force production to stay in the Interior. If another Interior producer does not acquire the quota in the initial two quota exchanges, it can freely transfer out of the region. Likewise Mr. Materi's criticism of the Egg Board allowing Interior production to move to the Lower Mainland is equally misguided.
56. Not all of the Egg Board's counterparts in other provinces direct product between grading stations. In such situations, grading stations must rely on their own ability to establish good contractual relationships with producers in order to secure a supply of eggs. This is simply good business practice between a company and its suppliers. Despite the fact that the Egg Board in British Columbia can direct product, there is a real question about when it is appropriate to do so and how best to balance the competing needs of grading stations and regional markets. That said, it is incumbent on graders in British Columbia to take an active role in securing production to supply their markets.

57. In the Panel's view, grader station operators cannot abdicate the responsibility to make reasonable business decisions to the Egg Board nor can they expect the Egg Board to bale them out of any business decision. It is not the responsibility of the Egg Board to adopt or create policies to protect and sustain graders for their own sake when markets and production patterns change. The Egg Board's role is to enact policies to achieve the public interest in having efficient and effective egg production.
58. Mr. Materi argues that the Egg Board's decisions have had a devastating impact on Mountain Morning. In 2005, Mountain Morning was grading over 50,000 birds of production; now it grades a fraction of that. As a result, markets have been lost and there has been a significant loss of revenue. Although the Panel does not doubt that Mountain Morning is in a difficult financial situation, the Panel rejects the argument that the financial problems of Mountain Morning are directly attributable to the actions of the Egg Board. Mountain Morning (as a partnership between Mr. Materi and Mr. Penner) had access to 50,000 layers because Jake Penner was a significant producer. He brought with him his son and an associate who were also significant producers. It is not surprising that when production and financial disputes led to the business model changing, difficulties arose. These difficulties however were due to the fact that the grading station no longer had control over significant production. In this situation, it was incumbent on the grading station, as a business, to develop stable long term relationships with new producers and to go out and source eggs from out of province to fill short term gaps. The Egg Board can only do so much. It is not surprising that a grader who chooses not to pay for eggs and who spends little time fostering new relationships may have difficulty attracting producers to his grading station.
59. After hearing the evidence and reviewing the submissions, the Panel finds that the Egg Board has met its regulatory obligations in support of Mountain Morning's requirement for more brown eggs. It continued to make efforts to find a producer to convert to brown production despite the fact that during the same time frame Mr. Materi was flaunting the rules, threatening to "ramp up" the production of his "499 bird flock" and not paying for eggs delivered to his grading station. We agree with Mr. Alibhai of the BCEPC who stated succinctly that it is not up to individual graders to take the rules and laws of supply management and interpret them for their own individual needs and change them to suit their own specific grading stations.
60. Finally, there is the issue of Mr. Materi's request that his wife be granted 5000 birds of production. Given our finding that the Egg Board has met its obligation to supply eggs to Mountain Morning, it follows that the Panel is not prepared to grant this relief. However, as Mr. Materi spent a great deal of his time pressing this point, the Panel has a few comments. First, even if Mr. Materi had been successful on this appeal, the Panel would not have ordered the Egg Board to issue quota to Mrs. Materi.

61. CEMA gives British Columbia its provincial allocation and all layers in the province must be accounted for under that allocation. From that allocation, producers are allotted production in accordance with their quota holdings. There is also a small allotment of quota known as the Market Responsive Allocation Pool (MRAP). The Egg Board has the ability to allocate this production under various programs. In order to access the MRAP pool, a person must apply to the Egg Board and meet its criteria. There is usually a waiting list of persons seeking the finite amount of production available through MRAP. Mrs. Materi can apply like others have and be put on a waiting list. If she meets the applicable criteria, she too can receive MRAP quota. However, the Panel would not as a result of this appeal order that Mrs. Materi be placed on the list ahead of any other person seeking MRAP quota.
62. Secondly, the Panel observes that the remedy of a 5000 bird quota allocation to Mrs. Materi is unnecessary. By this we mean that Mountain Morning as a grading station has the ability to contract with and work with any producer. Supply issues could be addressed by finding other qualified persons willing to apply under the New Entrant Program and willing to work with Mountain Morning. Mrs. Materi is not the only person capable of producing eggs for the grading station. It is difficult to view this remedy as anything other than an attempt by Mr. Materi to obtain a windfall by acquiring and controlling quota, or at the very least a valuable production right via permit, which is tenfold the size of his current legal holdings.
63. Mr. Materi has repeatedly pointed to another producer who he believes was given quota by the Egg Board. Presumably this person applied under an existing or past Egg Board program and subsequently received quota. Others have also done so. A basic principle behind the 2003-05 Specialty Review was servicing and developing the specialty market place by encouraging different types of production. Eligible applicants whether under existing programs or not were given the opportunity to apply for MRAP quota in order to produce specialty eggs for the market place. As a grading station operator, it is open to Mr. Materi to develop relationships with new entrants and prospective new entrants who want access to that program.

ORDER

64. The quota transfer appeal is dismissed.
65. If Mr. Materi wants to transfer his quota, he must meet the conditions imposed by the Egg Board and remove all birds, including the illegal flock, from the egg production unit at 5551 50th Street SW. The Egg Board at its discretion may choose to conduct a Flock Verification Audit as well as a Grading Station Audit of Mountain Morning. Upon the Egg Board being satisfied that its conditions have been met and upon Mr. Materi giving undertakings with respect to payment of outstanding levies, marketing fees and accounts that are agreeable to the Egg Board, the quota can transfer subject to the 5% assessment applicable to quota transfers.

- 66. Alternatively, should Mr. Materi choose to do nothing, the Egg Board has the authority under the *British Columbia Egg Marketing Scheme, 1967* and the necessary processes in place in s. 17 of its Standing Order to deal with non compliance by a registered producer and/or a licensed grading station.
- 67. The brown egg supply appeal is dismissed.
- 68. There will be no order as to costs.

Dated at Victoria, British Columbia this 3rd day of August, 2007.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

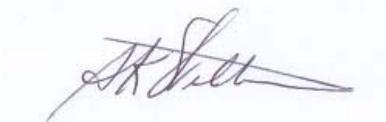
Per:



Christine J. Elsaesser, Panel Chair



Wayne Wickens, Member



Suzanne K. Wiltshire, Member

CORRIGENDUM

Released: August 14, 2007.

[1] This is a corrigendum to the Panel’s Decision issued August 3, 2007, advising that in the sixth sentence of paragraph 55, “any” should have read “more” and “brown” should have read “other”, so that the sentence reads:

It is a weak criticism when Mr. Floritto criticizes the Egg Board for allowing Dan Penner to convert to white production when Daybreak Terrace is not prepared to convert more of its 30,000 layers to other production.

FOR THE PANEL,



Christine Elsaesser, Panel Chair.

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