

IN THE MATTER OF THE  
*NATURAL PRODUCTS MARKETING (BC) ACT*  
AND AN APPEAL FROM DECISIONS CONCERNING THE CONVERSION OF A  
UNREGULATED FLOCK PERMIT TO QUOTA

**BETWEEN**

PHIL REMPEL

**APPELLANT**

**AND:**

BRITISH COLUMBIA EGG MARKETING BOARD

**RESPONDENT**

**DECISION**

**APPEARANCES:**

For the British Columbia Farm Industry  
Review Board

Ron Bertrand, Presiding Member

For the Appellant

Phil Rempel  
Elsie Rempel

For the Respondent

Randy Friesen, Operations Manager,  
British Columbia Egg Marketing  
Board

Date of Hearing

June 27, 2012

Place of Hearing

Abbotsford, British Columbia

## **INTRODUCTION**

1. The appellant, Phil Rempel, operates an egg farm located in Abbotsford under an unregulated flock permit from the British Columbia Egg Marketing Board.
2. The permit is considered to be a “grandfathered” permit as it allows the pre-1983 maximum of 499 birds of layer production. Since 1983, the unregulated flock size has been restricted to 99 birds.
3. On December 29, 2011, Mr. Rempel wrote to the Egg Board requesting that his unregulated flock permit for the 499 birds be converted to layer quota. In addition, he requested that, should this conversion be granted, the amount of quota be increased from 499 layers to 1000.
4. The Egg Board responded in a letter dated March 16, 2012 indicating that the matter had been reviewed at its March 1, 2012 meeting and that the request to convert the permit to layer quota had been denied.
5. On April 10, 2012, Mr. Rempel appealed this decision to the British Columbia Farm Industry Review Board (BCFIRB). The appeal was heard on June 27, 2012.

## **ISSUES**

6. Did the Egg Board err in its March 16, 2012 decision to deny the appellant’s request to convert his current grandfathered 499 permit to layer quota?
7. Did the Egg Board err in its March 16, 2012 decision to deny the appellant’s request to increase the permit to 1000 birds of layer quota?

## **BACKGROUND**

8. In 1983, the Egg Board changed its long standing policy that set the maximum number of layers that may be kept without quota and without the requirement to be licensed as a registered producer from 499 layers to 99 layers.
9. An exemption to this policy was granted to persons able to establish that they kept between 100 and 499 layers throughout the six month period prior to August 31, 1983. This allowed those individuals to keep up to 499 layers without becoming licensed producers and without acquiring quota. These producers are referred to by the Egg Board as “unregulated producers with grandfathered layer flocks”.
10. To maintain this permit or grandfathered status, Appendix F of the Egg Board’s General Orders requires the following:
  - i. the layers must be kept and maintained at the person’s egg production unit;
  - ii. the status cannot be transferred and expires upon the person’s death or termination of the production of the eggs for a period of 36 weeks;

- iii. the layers must be maintained continuously at the egg production unit, no suspension of production to exceed 36 weeks;
- iv. the layers must not be commonly housed with layers of another person, regulated or unregulated, at any location;
- v. the person cannot by contract, lease or otherwise enter into any arrangement with their grandfathered status;
- vi. the person must be issued a license or a permit for grandfathered status by the Board by March 31, 1996;
- vii. a registered producer cannot have grandfathered status;

11. Mr. Rempel has operated under a grandfathered layer flock permit since 1983.

### **ARGUMENT OF THE APPELLANT**

12. Mr. Rempel argues that he has followed all of the Egg Board's rules for his grandfathered flock for the past 29 years. He argues that he has earned the right to have his 499 bird permit converted to quota and further to have the amount of quota increased to 1000 layers. He has been a good producer and kept up to date with his farming practices. He has had a number of informal conversations with Egg Board members over the years about converting his permit to quota and converting his operation to free run which he says were favourably received. Unfortunately none of these conversations were in writing. In response to those conversations and the changing demands of his customers, Mr. Rempel has begun the expensive conversion to a free run operation.
13. Mr. Rempel argues that the Egg Board's unregulated flock policy is outdated because:
  - the 499 bird permit is too restrictive as it is non-transferable and attached to his current farm;
  - purchase of any quota (even as little as one layer) will result in the permit being rescinded;
  - there is no ability to expand his egg operation without losing the 499 permit; and
  - the current rules do not support succession planning because the permit cannot be transferred to his son.
14. In addition, Mr. Rempel argues that he is not eligible for the Egg Board's new entrant program because he holds broiler quota and is a licensed broiler producer. The new entrant program is restricted to applicants who do not hold and who have not held any beneficial interest in supply managed quota. In his view this further limits his ability to become a licensed egg producer.
15. Mr. Rempel requests that BCFIRB direct the Egg Board to convert his permit for 499 layers to an equivalent amount of quota and then increase the total amount of quota to 1000 layers.

## ARGUMENT OF THE RESPONDENT

16. While the Egg Board appreciates the appellant's participation in the industry over the past 29 years, it argues that Mr. Rempel must continue to comply with the requirements in Appendix F to the General Orders in order to maintain his permit and to produce eggs from up to 499 layers.
17. The Egg Board states that there are no provisions in Appendix F that would contemplate the Egg Board exchanging the permit for an equivalent amount of quota. Therefore, the Egg Board argues that it did not err when it denied Mr. Rempel's request.
18. The Egg Board relies on [\*Mountain Morning Farms v. British Columbia Egg Marketing Board, an August 14, 2007\*](#) decision of BCFIRB which discusses the transferability of a 499 bird permit:
  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.  
[emphasis added]
19. The Egg Board requests that BCFIRB uphold its March 16, 2012 decision.

## DECISION

20. This appeal turns on two issues. The first issue is whether the act of simply following the rules for a period of 29 years entitles a producer to special consideration. The second issue deals with the alleged representations made by Egg Board members and whether those representations were sufficient to create a reasonable expectation on the part of the appellant that his permit would be converted to quota so as to allow him to rely on that expectation.
21. On the first issue, it goes without saying that all egg producers, whether operating under permit or quota, are expected to follow the rules established by the Egg Board which can change from time to time. The mere fact that a producer is in compliance with rules does not create an entitlement for special treatment by the Egg Board. Otherwise, all producers who follow rules could argue that they are entitled to some form of 'special' consideration.
22. In 1983, the Egg Board decided, as a matter of sound marketing policy, to reduce the maximum number of layers that could be held without quota from 499 birds to 99 birds. According to the Egg Board's Resolution of August 9, 1983, unregulated

flocks in British Columbia had continued to grow. As a result, regulated producers were seeing reductions in their quota holdings to balance supply with demand. Further, the cost of surplus egg removal was being borne solely by regulated producers. The Egg Board determined that it was necessary to reduce the unregulated permit from 499 birds to 99 birds to address the surplus egg problem.

23. I agree that the rules in Appendix F are restrictive. However, there is a reason for these restrictions. The Egg Board determined in 1983 that it was necessary to lower the size of unregulated flocks to address the surplus egg issue. The Egg Board did not want to put the small 499 bird operations out of business but instead allowed them to run their course. New producers had to meet the new rules but existing producers could operate as they always had.
24. There has never been a policy that allows unregulated permit holders to convert their permits to quota. If Mr. Rempel wishes to expand his operation beyond 499 layers, Appendix F requires that he become a licensed producer meaning that he would have to acquire quota for all layers on his farm, including those that were grandfathered. The same rules apply to Mr. Rempel as apply to anyone who wishes to enter the egg industry.
25. Similarly, unregulated permit production has never been transferable. A person who wishes to have unregulated production can do so but only up to the level set by the Egg Board.
26. I would observe that Mr. Rempel has enjoyed special status since entering the industry in 1983 just prior to the rule change. The Egg Board granted him a 499 bird permit and then grandfathered those production rights. Despite not having a history of production, he was not restricted to a 99 bird permit. At any time during the last 29 years, Mr. Rempel could have become a licensed producer by acquiring quota in which case that quota would have been transferrable.
27. I turn now to consider the appellant's second argument regarding the alleged representations from Egg Board members. The evidence on this issue was minimal. While I do not doubt that over the years Mr. Rempel may have had informal discussions with Egg Board members regarding how he could become a quota holder, there was no evidence called to indicate who the Egg Board members were, what they actually knew about Mr. Rempel's personal circumstances, what precisely was said or whether any statements made were intended to be relied on or intended to be anything more than personal views. There was also no evidence called that would suggest there was ever a decision of the Egg Board collectively. There was nothing in writing. Similarly, there was no evidence led to support the notion that Mr. Rempel relied on the alleged representations of the Egg Board in any way. In fact, Mr. Rempel indicated that his decision to move to a free run operation was at least in part in response to customer demand.

28. In circumstances where a person is seeking relief that is completely inconsistent with the General Orders, it is necessary to lay an evidentiary foundation sufficient to allow the panel to know what the specifics of the representation were (date, time, identity of Board member, circumstances surrounding representation and content of the representation) and how the representation was relied on. In this case, the evidence is insufficient to allow me to properly assess the nature of any alleged representation and as such I dismiss this ground of the appeal.
29. Turning now to the issue on appeal, I find that the Egg Board did not err in its March 16, 2012 decision to deny the appellant's request to convert his 499 bird permit to 1000 birds of layer quota. The Egg Board's decision is entirely consistent with the General Orders and in my view, sound marketing policy. Following the rules for 29 years is not a basis for the Egg Board to exercise its discretion to give the appellant special consideration. Indeed, had the Egg Board ruled in favour of the appellant on this issue, it is difficult to see a reason why all the remaining unregulated producers would not apply for a similar conversion to obtain quota without having to purchase it and without having to meet the requirements of existing programs.
30. For the foregoing reasons, I dismiss the appeal.
31. There will be no order as to costs.

Dated at Victoria, British Columbia, this 30<sup>th</sup> day of July 2012.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**



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Ron Bertrand, Presiding Member