

90-16  
10/19/90

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 DECISIONS OF THE BRITISH COLUMBIA VEGETABLE  
MARKETING COMMISSION DATED APRIL 12, 1990 WITH RESPECT TO THE  
PRICE FOR PROCESSING PEAS AND CORN IN THE CROP YEAR 1990.

BETWEEN:

BRITISH COLUMBIA FOOD PROCESSORS ASSOCIATION  
APPELLANT

AND:

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION  
RESPONDENT

REASONS FOR DECISION

APPEARANCES:

British Columbia Food Processors Association

D.H. (Doug) Kitson, Member  
R. (Ron) Meermans, Member  
V.D. (Vic) Giesbrecht, Member  
Ken Kirsch, Member  
David Chesman Esq., Legal Counsel

APPELLANT

British Columbia Vegetable Marketing Commission

James E. Harris, Chairman  
Charles (Chuck) Amor, General Manager  
Ken Savage, Spokesman  
Robert Savage, Spokesman  
M.R.V. Storrow, QC, Legal Counsel  
Margaret L. Eriksson, Legal Counsel

RESPONDENT

Date of Hearing: May 9, June 4, August 29, 30, 31, in Vancouver.

1. The matter before the British Columbia Marketing Board ("The Board") is an appeal by the British Columbia Food Processors Association ("The Appellant") from decisions made April 12, 1990 of the British Columbia Vegetable Marketing Commission ("The Respondent") setting the contract price for processing peas and processing corn in the crop year 1990.
2. The appeal was filed with the Board May 1, 1990 and was heard in Vancouver May 9, June 4, August 29, 30, 31, 1990.
3. The Appellant and the Respondent were given the opportunity to call and cross examine witnesses, file documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Appellant requested the Board to set aside the Respondent's decisions setting the 1990 contract price for processing peas and corn, and substitute the Appellant's final price offer submitted to the tribunals for the following reasons:
  - a) that the Respondent's decisions with respect to peas and corn are patently unreasonable having regard to all the facts and circumstances attended to the case;
  - b) further, and/or in the alternative, the Respondent is inherently biased and as such, bias was a predominant and motivating factor in the Respondent's decisions;
  - c) the Respondent did not follow proper procedure and/or exceeded its jurisdiction in rendering the decisions as it did.
5. The Appellant stated the fundamental issues in the Appeal are:
  - a) the Appeal is really a trial de novo giving the Board full access to the facts and circumstances relevant to deciding the issues on appeal and/or;
  - b) in the alternative, and only if the appellate function of the Board pursuant to section 11 of the Act is not by way of a trial de novo, the Board has the power to decide the appeal on its merits and not on narrow administrative grounds for the following reasons:
    - i) the Respondent's two decisions appealed from are tainted by a real apprehension of bias and/or actual bias; and/or;



- ii) the Respondent's two decisions appealed from result from the Respondent's improper sub delegation of a decision making function; and/or;
  - iii) the Respondent's two decisions appealed from are tainted by an absence of fairness; and
  - iv) the Respondent's two decisions appealed from are patently unreasonable.
- c) The 1990 prices for peas and corn set by the Respondent are not in the best interest of the B.C. pea and corn growing industry but are, in fact, contrary to the best interests of the British Columbia pea and corn industry having regard to the following factors:
- i) the 1990 prices for peas and corn in British Columbia are not price competitive with 1990 prices for peas and corn in the other relevant jurisdictions;
  - ii) the Respondent's failure to consider relevant market factors in rendering the decisions;
  - iii) the effects created by such pricing for this year.
- d) The Board should exercise its power and apply the Appellant's final offer price, as presented to the tribunals and this Board, for both processing peas and corn.
6. The Respondent stated that the decisions concerning the setting of the 1990 processing pea and corn prices should be upheld for the following reasons:
- a) the procedures set down by the Respondent in its general orders are quite complete, fair in all respects and provide for a means to deal with any changes of the system itself;
  - b) the established system was followed by the Respondent
  - c) proceedings of the negotiations for both peas and corn were done without bias in all respects.

7. The Respondent stated that the fundamental issues in the appeal are:
  - a) the Appellant has failed to prove its case on any of the grounds set out above;
  - b) producers' cost of production for peas and corn in British Columbia are greater than the prices set by the Respondent;
  - c) due to the poor crop year it is appropriate for the Board to exercise its power to raise the price above that set by the Respondent; and/or alternatively;
  - d) the Board dismiss the appeal and uphold the decision of the Respondent.
  
8. After hearing the arguments, reviewing the submissions and considering the facts and the law, The Board finds that:
  - a) the British Columbia Vegetable Marketing Commission is established under the British Columbia Vegetable Marketing Scheme ("Scheme") B.C. Reg 96/80;
  - b) by the provisions of that Scheme, the Respondent is given authority over the parties to the contracts and the contracts in issue in the appeal;
  - c) in October 1983, the Respondent enacted the order regulating the marketing of regulated product for processing or manufacture (the "Order");
  - d) the Order authorized a negotiation process for the settlement of contract terms by the processors and producers; and
  - e) negotiation policy sets out the negotiation process contemplated by the order.
  
9. The Respondent made a No Evidence Motion on the following basis:
  - a) the Appellant has failed to lead evidence to prove that the Respondent's decisions were unfair and unreasonable;



- b) the Appellant has failed to lead evidence to show that the Respondent's decisions on the price of peas and corn derive from a system which is inherently biased;
  - c) the Appellant has failed to demonstrate how the concept of patent unreasonableness is relevant to this appeal; and
  - d) the Appellant has failed to lead evidence which demonstrates that the Respondent has fettered its discretion.
10. The Board dismissed the No Evidence Motion of the Respondent. The Board found that there was evidence that the decision of the Respondent to accept the tribunals' recommendations may have been unreasonable and that the Respondent did not follow proper procedure in considering the tribunals' recommendations.
11. The Board concludes that the Respondent did not act in a reasonable and proper manner when deciding the processing pea and corn prices for the 1990 crop year. The Board's reasons are as follows:
- a) the Respondent failed to properly consider the tribunals' recommendations with respect to the processing pea and corn prices for the 1990 crop year;
  - b) a number of the members of the British Columbia Vegetable Marketing Commission did not have copies of the tribunals' recommendations prior to or during the consideration of the tribunals' recommendations and that they did not fully review the reasons for the tribunals' recommendations when they made their decisions April 12, 1990 setting the prices for processing peas and corn in the 1990 crop year;
  - c) the Respondent's failure to inquire properly into the merits of the tribunals' recommendations for processing peas and corn amounted to a blind adoption of the tribunals' recommendations and not a proper exercise of the discretion vested in the Respondent by the Scheme.
12. This board has had the opportunity to hear all of the evidence and submissions made by the Appellant and the Respondent. Based on these submissions the Board has determined that it is fair and reasonable to determine the contract prices as follows;



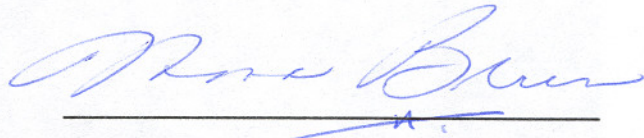
- a) the final offer of the producers dated March 16, 1990 for clauses 5, 6 and 7 be incorporated into the 1990 Sweet Corn contract; and;
  - b) the final offer of the producers dated March 7, 1990 for clauses 2 and 4 be incorporated into the 1990 pea contract.
13. The Board has determined that the Respondent must take immediate steps to address and rectify deficiencies in its conduct and negotiation policy so as to provide both processors and growers with a fair and equitable system for negotiating processing crop prices.

The Board considers the following as important factors for the Respondent to consider:

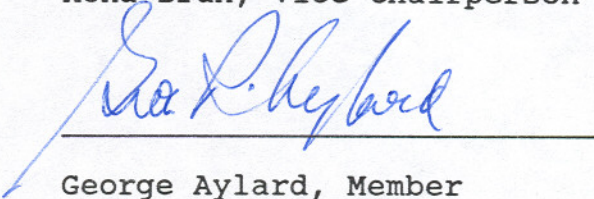
- a) the appointment of a coordinator/chairperson for individual crop negotiations which is perceived by both growers and processors as neutral and unbiased;
- b) the establishment of a process for collection, analysis and verification of relevant market and production statistics and information which can provide a basis for informed and effective pricing decisions to support effective development of the total industry;
- c) the encouragement of cooperation and collaboration between producers and processors to develop effective pricing strategies to meet the challenge of declining tariff protection and increasingly globalized markets;
- d) the selection and appointment of conciliators and/or arbitrators in a fair and timely manner;
- e) adoption of a system to modify and improve the negotiating process, on a regular basis, providing processors and growers with an equal opportunity to provide suggestions for improvement;
- f) timely commencement and completion of crop negotiations well in advance of the planting season.

14. The Board feels it is necessary to express its very serious concern regarding the manner in which the Respondent approaches its responsibilities for the promotion and regulation of the processing vegetable industry within the Province. In particular, the Board is concerned over the Respondent's apparent disregard for the need to follow fair and proper procedures and the need to encourage harmony and cooperation between growers and processors so that they can effectively meet the challenges of an increasingly globalized world market.
  
15. In accordance with this Board's Rules of Appeal, one half of the Appellant's deposit shall be forfeit.

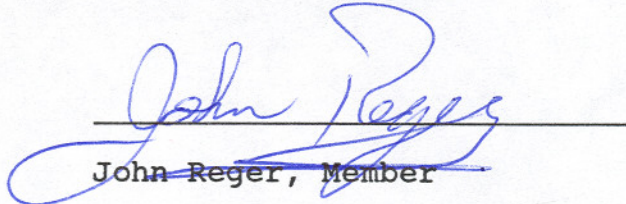
Dated the 19<sup>th</sup> day of October, 1990 in  
Victoria, British Columbia.



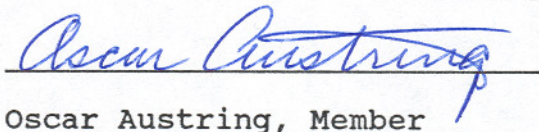
Mona Brun, Vice Chairperson



George Aylard, Member



John Reger, Member



Oscar Austring, Member