



Bennett Jones

Bennett Jones LLP

2500 Park Place, 666 Burrard Street

Vancouver, British Columbia, Canada V6C 2X8

Tel: 604.891.7500 Fax: 604.891.5100

www.bennettjones.com

David E. Gruber

Partner, Department Co-Head, Litigation

Direct Line: 604.891.5150

e-mail: gruberd@bennettjones.com

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January 5, 2024

Via E-Mail

BC Farm Industry Review Board
2975 Jutland Rd
Victoria, BC V8T 5J9

Attention: Peter Donkers, Chair

Dear Sirs/Mesdames:

Re: BC Chicken Marketing Board Long-Term Chicken Pricing Recommendation Review

On behalf of the Primary Poultry Processors Association of BC (the "**Processors Association**"), we write in reply to the submission of the BC Chicken Marketing Board's (the "**Chicken Board**") submission of December 21, 2023, regarding the Processors Association's application for a confidentiality order. All capitalized terms have the same meaning as set out in the Processors Association's application of December 15, 2023, unless otherwise defined.

The Chicken Board states that it is "open to some form of confidentiality order" but goes on to categorically oppose the Processors Association's application. It takes the position that any confidential information ought first to be provided to the Chicken Board so that it - not the Appeal Board - can make a decision as to whether the information requires protection.

For the reasons set out below, the Chicken Board's position is misguided.

Public Interest of the Confidential Information

The Chicken Board takes the position that the Processors Association "is silent on the public interest consideration, and no mention has been made as to whether a less restrictive alternative means of disclosing the commercially sensitive information while preserving its confidentiality exists".

This is not accurate. As set out in the Chicken Board's submission, disclosure of the Customer and Operations Information would be commercially damaging to the processors and would lead to competitors outside of the province gaining a competitive advantage over British Columbia processors simply by reason of the Processors' participation in this appeal. The public interest aspect of such concerns is self-evident: the British Columbia public interest is served by the existence of a competitive poultry processor industry (see e.g. *Royal Bank of Canada v. Westech Appraisal services*

Ltd., 2017 BCSC 773 at para. 12; *Resolve Business outsourcing Income Fund v. Canadian Financial Wellness Group Inc.*, 2014 NSCA 98 at paras. 31-41; *Sobeys West Inc. v. United Food and Commercial Workers International Union, Local 1518*, 2018 CanLII 111610 (BC LRB)). The public interest is not served if that competitiveness is harmed as a result in the processors' good faith participation in a statutory appeal process.

With respect to less restrictive alternatives, the Processors Association clearly set out a process that impairs the public interest in an open proceeding as minimally as possible. Contrary to the implication of the Chicken Board's submission, the Processors Association does not seek an order excluding entire documents or categories of documents from the public purview. Rather, it only seeks to redact names, figures, and identifying details as necessary to protect the confidentiality of the Customer and Operations Information. The Processors Association also made it clear that it would be open to any party - including the Chicken Board - to challenge the necessity or propriety of any redaction.

Evidence of Confidentiality

The Chicken Board also submits that the Processors Association's application is not "grounded in evidence". The difficulty with this submission is that it is not possible to provide evidence of confidential information without a confidentiality order already in place. Doing so would frustrate the purpose of the application, as the confidentiality inherent in the information would be lost as soon as such evidence is provided. Moreover, the confidentiality of the Customer and Process Information is self-evident from its description. By way of analogy, one can meaningfully assert confidentiality in one's medical records without having to first disclose those medical records.

Finally, it should be noted that it would have been exceedingly difficult to provide full particulars of the confidential information and copies of all documents for which confidentiality is sought within the time frame set out by the Appeal Board in its December 11, 2023 letter (i.e. within four days).

Procedural Issues

The Chicken Board also takes the position that the Processors Association should not be entitled to rely upon information that was not provided to the Chicken Board during its prior process, and that the Chicken Board should be entitled to review any new information prior to such information being provided to the Appeal Board.

This position is not connected to the application currently before the Appeal Board, which is an application for a confidentiality order. The Chicken Board is, in essence, asking the Appeal Board to make a determination on an evidentiary issue before any parties seeks to tender such evidence. The issue is not ripe for determination and is irrelevant to the issue before the Appeal Board.

Furthermore, the Chicken Board's position ignores the fact that this appeal is not a judicial review and is not limited to the record that was before the Chicken Board: see *British Columbia Society for the Prevention of Cruelty to Animal v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331 at paras. 24 and 38; *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 40(1); and Rule 21(3) of the Appeal Board's *Rules of Practice and Procedure*. The Appeal Board may consider any information

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and evidence it considers appropriate. It is not for the Chicken Board to dictate what evidence the Appeal Board can or cannot receive and consider.

At the very least, determinations about whether parties may or may not be entitled to rely upon certain documents ought not to be determined in the vacuum of an application for a confidentiality order. Such issues should instead be resolved in a manner that is consistent with Rules 21(4) and (8) of the Appeal Board's *Rules of Practice and Procedure*.

Conclusion

For these reasons, the Chicken Board's submissions are without merit, and the Processors Association's application for a confidentiality order should be allowed.

Yours truly,



David E. Gruber

DEG:TP

cc: Woody Siemens, Executive Director, BC Chicken Marketing Board
Stephanie Nelson, Executive Director, BC Broiler Hatching Egg Commission
BC Chicken Growers' Association
Craig Evans, Executive Director, Primary Poultry Processors' Association of BC
Ernie Silveri, Executive Director, BC Egg Hatchery Association BCFIRB website