

Hallmark Poultry Processors Ltd. et al v. BC Chicken Marketing Board

Decision Date: February 16, 1998

Keywords: consultation, federal provincial agreements, authority of Commodity Board

Issue: The issues on appeal were:

- did the consultation process followed by the Chicken Board satisfy the requirements of procedural fairness and those imposed by the Chicken Scheme?
- were the proposed agreements destructive and detrimental to the chicken industry in British Columbia?
- did the Chicken Board have the authority to enter into national agreements to regulate the production of chicken within British Columbia?

Decision:

This appeal was regarding the Chicken Board's decision in 1997, after being out of the national allocation system since 1989, to enter into a new National Allocation Agreement (NAA) regarding the national allocation of chicken production and a Memorandum of Agreement (MOA) with the four western provinces to allocate production between them.

The appellants argued that the Chicken Board breached the rules of procedural fairness by failing to adequately consult with processors and with the Pricing and Production Advisory Committee (PPAC). They further argued that the NAA and the MOA were inconsistent with the statutory powers of the Chicken Board and that the effect of the MOA would be to forgo production in BC resulting in a material loss to them. The appellants also took issue with the lack of either a "sunset" or an "exit" clause to the agreement which they argued was contrary to BC government policy. They argued that the effect of the NAA was to transfer the power to set price and production levels to central Canada and that this agreement would be a return to the old approach which had proved unworkable. The appellants also argued that the Chicken Board had no statutory authority to enter into the NAA because this is a matter of exclusive federal jurisdiction and that without provincial government approval allowing the Chicken Board to grant its authority to a federal board, it could not fetter its discretion in this way.

The Chicken Board argued that this appeal was premature as there was no order or regulation to review. It argued that the consultation process had been adequate; that the Chicken Board would continue to set production for BC, not the national organization; and that the constitutional argument was premature as no order was necessary to enter the NAA.

Order:

The Chicken Board was directed not to enter into the NAA until it contained an exit clause and that the Chicken Board establish a conflict resolution method and demonstrate attempts at consultation including efforts to reach consensus with processors. Further, the Chicken Board was directed to utilise the PPAC as part of the consultation and to keep the BC Marketing Board (now the BC Farm Industry Review Board) apprised of this consultation and seek its approval before entering into any NAA or MOA.

This order was successfully appealed to the BC Supreme Court.