

Lilydale Co-operative and “7 Growers” et al. v. BC Chicken Marketing Board

Decision Date: September 17, 2004

Keywords: direction of product, interference with existing contracts, fettering of discretion

Issues:

The issues under appeal were:

- a) whether the Chicken Board had the authority to redirect chicken production which was under a pre-existing contract .
- b) redirecting product under pre-existing contracts is not sound marketing policy
- c) the manner in which the product was redirected was arbitrary, uninformed and fettered the Chicken Board’s discretion.

Decision:

The appellants argued that the Chicken Board does not have statutory authority to redirect product that is the subject of a pre-existing contract and to do so is contrary to sound marketing policy and orderly marketing. The panel agreed with the Chicken Board that it does have the right to direct product and that it cannot be constrained by contracts made by the parties. This is especially true when the Chicken Board concluded that the contracts operated contrary to sound marketing policy. The panel did not answer the question of whether the Chicken Board *should* have exercised its authority in this case, merely that the Chicken Board has the legal right to do so.

The panel declined to rule on the second issue of the soundness of the policy of assurance of supply, noting that this issue would be heard in an upcoming appeal.

The third issue was the manner in which the product was directed which the appellants argued was arbitrary, uninformed and fettered the Chicken Board’s discretion because the growers to be directed away from Lilydale were selected by a staff member and not the Chicken Board. They further argued that the Redirection Order was not in the best interests of the growers and Lilydale, forcing Lilydale members to do business with a competitor, which could result in the loss of substantial profits.

The panel ruled that the Chicken Board had developed a sound policy and specifically rejected the notion that the Board fettered its discretion by delegating an administrative task to a staff member. Further, the panel ruled that Lilydale growers do not gain special status by being members of a cooperative and benefit from the supply managed system that guarantees them payment regardless of which processor receives their product. Any losses incurred by the growers as Lilydale shareholders were not deemed to be a proper consideration. The panel declined to rule on the underpinnings of the decision to direct product and the related policy of assurance of supply ruling that these issues had not been adequately addressed in this hearing and would be dealt with at a future date.

Order: Issues a) and c) were dismissed. The policy issue of assurance of supply (redirecting product) was left outstanding and the issue adjourned pending upcoming appeals on this issue.