

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

Decision Date: June 27, 2003

Keywords: assurance by commodity board, confidentiality, federal provincial agreements, grandfathered production rights, permit production, production/quality standards, public policy, sound and proper marketing policy,

Issue:

This was a policy appeal with the following objections to the Chicken Board's policy rules:

1. The transitional and operational policy judgements relating to the Export Program, specifically the lack of grandfathering of barn space, further loss of grandfathering when quota was purchased, and
2. The failure to address production standards.

Decision:

The Chicken Board in 2000 revised its policy rules around its export production program to ensure fair access to the program and add some discipline to the system. As part of this revision, the Chicken Board made operational and transitional changes to the Export Program. This affected individual producers previously participating in the program and included allowing for some grandfathering of production for those growers who had built or acquired barn space under the former program.

The appellants argued that the Chicken Board should have grandfathered 100% of the production of producers who had built or acquired barn space, that the viability of land and barn investments overrides other policy considerations, and that as they had previously grown the production, it was unfair for them not to be fully grandfathered into the future.

The panel did not agree and provided lengthy reasons for this conclusion including equity to all producers, the calculated risk taken by the growers growing under licence, the regulatory reality of the supply managed system that rules governing production may change at any time, and the fact that the Chicken Board has the responsibility to regulate the industry by creating a fair system which achieves balance between supply and price, and cannot be all things to all people. The panel concluded that the grandfathering provisions did just what they set out to do.

The appellants raised additional arguments regarding alleged assurances given to the industry regarding the export program, the different treatment given specialty production and lease vs. "grow-out", were also not accepted by the panel which concluded that it was not prepared to interfere with the Chicken Board's new policy rules.

The second issue of the appellants regarded the failure of the Chicken Board to set production standards in the new rules. The panel noted the ongoing lengthy and unsuccessful negotiations on production standards and ordered the board to implement standards within six months.

Order:

The appeals were dismissed subject to the Chicken Board implementing production standards within six months.