



September 1, 2004

File: 44200-50/CMB 04-04  
44200-50/CMB 04-10  
44200-50/CMB 04-11

**DELIVERED BY FAX**

Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Suite 2600, Three Bentall Centre  
PO Box 49314  
595 Burrard Street  
Vancouver, BC V7X 1L3  
Attention: Maria Morellato

Hunter Voith  
Litigation Counsel  
1200 – 900 West Hastings Street  
Vancouver, BC V6C 1E5  
Attention: John J.L. Hunter, Q.C.

Miller Thomson LLP  
Barristers & Solicitors  
Robson Court  
1000 – 840 Howe Street  
Vancouver, BC V6Z 2M1  
Attention: Wendy A. Baker

Dear Sirs/Mesdames:

**AN APPEAL BY LILYDALE CO-OPERATIVE LTD. FROM JANUARY 30, 2004 DECISIONS OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD TO DIRECT PRODUCT FROM CLAREMONT POULTRY LTD. AND SWEETBRIAR POULTRY FARM LTD. TO SUNRISE POULTRY PROCESSORS LTD. IN PERIOD A-58 (#04-04)**

**AN APPEAL BY LILYDALE CO-OPERATIVE LTD. FROM JULY 12, 2004 DECISIONS OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD TO DIRECT PRODUCT FROM THE “7 GROWERS” TO THE POLLON GROUP (#04-10)**

**AN APPEAL BY THE “7 GROWERS” FROM JULY 12, 2004 DECISIONS OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD TO DIRECT PRODUCT FROM THE “7 GROWERS” TO THE POLLON GROUP (#04-11)**

---

British Columbia  
Farm Industry Review Board

Mailing Address:  
PO Box 9129 Stn Prov Govt  
Victoria, BC V8W 9B5  
Telephone: (250) 356-8945  
Facsimile: (250) 356-5131

Location:  
3<sup>rd</sup> Floor  
1007 Fort Street  
Victoria

On September 8-10, 2004, the British Columbia Farm Industry Review Board (the “Provincial board”) is scheduled to hear three appeals commenced by Lilydale Co-operative Ltd. (“Lilydale”) and seven of its growers from decisions of the British Columbia Chicken Marketing Board (the “Chicken Board”) relating to direction of product or assurance of supply to processors.

One preliminary issue remains outstanding. In the Pre-hearing Conference Report dated August 13, 2004, Counsel for Hallmark Poultry Processors Ltd. and Sunrise Poultry Processors Ltd. (the “Processors”) requested production of certain documents from Lilydale relating to its usage of temporary import quota during the Avian Influenza (“AI”) crisis. Lilydale has refused that request. Counsel for the Processors, by way of a letter dated August 20, 2004, has made application to the Provincial board for production of documents.

Counsel for the Processors argues that documents relating to Lilydale’s usage of temporary import quota during the recent AI outbreak are relevant to determine whether Lilydale, in order to fulfill its market requirements, requires product in excess of the amount allocated by the Chicken Board. If, during a time of crisis, Lilydale did not use all of the temporary import quota made available to it, this evidence is relevant to the question of Lilydale's needs during periods A-58 and A-61. The Processors argue that they are entitled to explore this area on cross-examination and as such require these documents to be properly prepared for these appeals.

Counsel for Lilydale argues that what happened during the AI outbreak is not particularly helpful or informative to the issues on appeal. Lilydale would rather focus its limited time at the hearing on what informed the redirection of product decisions.

The Chicken Board takes no position with respect to this application.

## **DECISION**

The Panel has considered the submissions of the parties. The production of documents in an appeal to the Provincial board is addressed in s. 8(4) and s. 8(5) of the *Natural Products Marketing (BC) Act*:

- 8(4) The marketing board or commission from which an appeal is made must promptly provide the Provincial board with every bylaw, order, rule and other document touching on the matter under appeal.
- 8(5) On its own motion or, on the written request of a party to an appeal under subsection (1), the Provincial board may direct that a party to the appeal provide the Provincial board and other parties to the appeal with a copy of each document the Provincial board specifies in its direction.

In this case, s. 8(5) governs the Processors’ request.

Maria Morellato  
John J.L. Hunter, Q.C.  
Wendy A. Baker  
September 1, 2004  
Page 3

The documents requested by the Processors appear to be relevant to the issue of Lilydale's recent market requirements. Given that the effect of the redirection decisions was to move product away from Lilydale to other processors, the Panel agrees that the real impact of those decisions must be explored as part of these appeals. Counsel for Lilydale, beyond stating this type of information is not particularly helpful, does not dispute the relevance of these documents nor does she advance any claim of privilege.

Accordingly, the Panel directs Lilydale to produce all documents in its possession relating to its usage of temporary import quota during Periods A-58 and A-61 and provide those documents to all parties by the close of business on Friday, September 3, 2004.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per



Christine J. Elsaesser  
Vice Chair

cc: Robert Hrabinsky  
Macaulay McColl

Delwen Stander  
Sliman, Stander & Co.

Bill Vanderspek, Acting General Manager  
British Columbia Chicken Marketing Board