

## **Fraser Valley Duck and Goose Ltd. v. BC Chicken Board**

**Decision Date:** August 11, 2008

**Keywords:** consultation, new entrant program, allocation of quota, anti-competitive implications, assurance of supply, direction of product, specialty production, new entrant program (processor), exercise of discretion

**Issues:** Did the Chicken Board err in not providing Fraser Valley Duck and Goose (FVDG) with growth allocation under Part 8 of its General Orders?

### **Decision:**

The appellant has a vertically integrated waterfowl operation in the Fraser Valley and also grows and processes small quantities of chicken. Because of the disruption in FVDG's production due to Avian Influenza, its market for duck was largely taken up by other producers during this time and did not return. To increase its viability, FVDG attempted to increase the size of its chicken operation by applying to become a "deemed new entrant". In 2007, FVDG applied for but did not receive growth allocation under this program because the Chicken Board had decided that FVDG did not qualify as a deemed new entrant. This is the decision being appealed.

FVDG argued that the sections in the General Orders pointed to as explanation as to why it did not qualify as a deemed new entrant were not intended for processors like it operating in the Fraser Valley, but rather for small regional processors and were specifically to deal with meat inspection issues. It maintained that the Chicken Board broadened its wording and interpretation of this section to make FVDG ineligible to apply for growth. Further, it argued that if the noted sections do apply that this was not communicated to it in a timely manner until it was too late for it to be able to sign up enough new growers to qualify for growth allocation in the second round. Lastly, FVDG argued that the Chicken Board had the discretion to provide it with increased allocation based on its special circumstances relating to its losses due to Avian Influenza.

The Chicken Board argued that there was no error on its part and its obligation is to regulate and control the production, marketing, transportation and storage of chicken; it is not simply to give chicken to processors who want it. It argued that the FVDG's interpretation of its eligibility was faulty and that it must look at the whole definition, not merely parts of it and must consider intention. It further argued that FVDG did not meet the threshold requirements and was therefore not eligible to apply as a deemed new entrant. The Chicken Board argued that it used its discretion and allocated the growth to four applicants who qualified for the program.

The panel ruled that the Chicken Board that it did not err in not providing FVDG with growth allocation, but found that communication from the Board was far from clear and not responsive to requests for clarification from FVDG. The panel therefore directed the Chicken Board to provide FVDG, when it met the threshold requirements, the opportunity to apply for any previously allocated growth from the second round allocation that was not fully taken up and utilized in accordance with the terms upon which it was granted.