

## **Jim Hong d.b.a. Hong Lee Farms v. BC Chicken Board**

**Decision Date:** October 2, 2001

**Keywords:** de novo appeal, new entrant program (producers), permit production, scope of appellate review, specialty production,

**Issue:** Should a specialty chicken production permit in the amount of 1500-birds/week be issued to Hong Lee Farms?

### **Decision:**

The appellant was granted a permit for 1000 specialty chickens in 1993, but was forced out of business in 1997 by another specialty producer who undercut his price. In 2000, the Chicken Board implemented new regulations which included a *New Entrant, Niche Market and Specialty Program* intended to formalize specialty production. At this time, the appellant applied for and was granted a permit for 500 birds/week. In 2001, the appellant requested that he be grandfathered for a specialty permit of 1500 bird/week. The Chicken Board denied this request, saying that there was no basis for grandfathering the permit as he was not producing specialty chicken at the time the new regulations came into force.

The panel found in favour of the appellant who argued that historical problems with the specialty chicken program justified his application for 1500 birds/week. He had been driven out of the market when he could not match another producer's price. This producer was able to offer his product at a lower price, in part as a result of the Chicken Board's failure to enforce its regulations. The panel did not accept the argument of the Chicken Board that the panel should not look into the past, but should respect the new regulations and the decision of the Chicken Board. The panel ruled that the Chicken Board must consider past situations in order to make fair decisions.

### **Order:**

The appeal was granted.

This decision was appealed to the BC Supreme Court which granted the appeal.

It was subsequently appealed to the BC Court of Appeal which overturned the Supreme Court decision and reinstated the decision as originally issued.