

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Supervisory Review  
of the  
Vancouver Island Chicken Industry – 2004

December 17, 2004

## **INTRODUCTION**

The British Columbia Chicken Marketing Board (the Chicken Board) regulates the production and marketing under the *British Columbia Chicken Marketing Scheme* (the *Scheme*), and in exercising that responsibility is subject to the supervision of the British Columbia Farm Industry Review Board (Provincial board).

This supervisory review requires the Provincial board to revisit the question whether regulatory support should be given to facilitate a Vancouver Island chicken processing plant, as proposed earlier this year by Island Pride Poultry Processors Ltd. (Island Pride).

## **THE MARCH 2000 SUPERVISORY REVIEW**

The Provincial board (then the British Columbia Marketing Board or BCMB) had occasion to address the feasibility of a chicken processing plant on Vancouver Island in considerable detail in various appeal decisions and in its supervisory *Review of the Vancouver Island Chicken Industry* (March 2000). The latter review subjected the Vancouver Island chicken industry to intense scrutiny in the wake of the 1999 decision by Lilydale Cooperative Ltd. (Lilydale) to close its Vancouver Island processing plant. Following that closure, the Chicken Board of the day proposed to (a) remove the price premium Vancouver Island growers previously received for their chicken, (b) require Vancouver Island growers to assume transportation costs involved in delivering their product to Lower Mainland processors and (c) remove the freeze on transfer of Vancouver Island quota off Vancouver Island.

The result of the Provincial board's March 2000 review was to endorse the Chicken Board's policy proposals, subject to various transitional directions. The Provincial board's March 2000 report included the following:

The issue before the BCMB is whether the BC chicken industry can continue to support Vancouver Island chicken production, and its allied industries, on a large scale. If the answer is in the negative, then what is a reasonable transition?

In our judgement, the future of unsubsidized, large-scale chicken production on Vancouver Island is clearly finite without the presence of an Island plant capable of processing that production.... Although we have been told that the Vancouver Island growers are working on a business plan and have looked at acquiring land for a plant, in the twenty months since the release of the Job Protection Commissioner's Report and based on all the information available to us, there is still no substantive evidence before the BCMB that such a plant will ever be built, or that if built would be economically viable.

Previous Island chicken processing plants have not been successful in economic and marketing environments less difficult than those facing BC today. ...

Vancouver Island chicken growers have enjoyed regulatory protection since the early 1960s. Quota has not been allowed to move off the Island. The 2.2 cent price premium has been in place since 1980. ... The Chicken Board's FOB farm gate policy has also meant that processors have been responsible for the freight costs involved in transporting chicken from the farm to the plant.

Vancouver Island chicken growers are not unique. Producers of other commodities on the Island also face economic pressures, even when a processing plant is present. Producers in the Interior and Northern BC face similar transportation and market access circumstances. ...

The BCMB also does not accept that regulation should be used to direct that non-Island chicken growers provide, on anything but an interim basis, any further financial subsidy to support Vancouver Island production. All BC chicken growers are under significant economic pressure in a very competitive marketplace.

In coming to this conclusion, the BCMB is acutely cognizant of the impact of this decision on Vancouver Island chicken growers, and others in the Island agriculture industry. The BCMB is firmly of the view that a comprehensive MAF (Ministry of Agriculture and Food) review, as contemplated by the 89 *Decision* [89 *Chicken Ranch Ltd. v. British Columbia Chicken Marketing Board*], of both the regulated and non-regulated Island agriculture industry is required as part of an overall strategic vision for the development and maintenance of agriculture on Vancouver Island. A comprehensive solution to this issue goes well beyond our legal mandate and exceeds the tools available to us in these circumstances. We adopt the Chicken Board's observation that "this is a problem for society to solve.

The Provincial board's March 2000 review essentially concluded that economics of the chicken industry on Vancouver Island did not and would not support a large-scale Vancouver Island processing plant.

The soundness of the Provincial board's March 2000 conclusions are borne out by the fact that Island Pride has itself explicitly stated on November 9, 2004 that for its initiative even to proceed, it requires several favourable regulatory supports, including that all Vancouver Island production once again be "locked to the Island":

We hereby summarize our position and clarify our exact needs for the island processing initiative:

All current production/quota that is on Vancouver Island is **locked to the Island** and becomes the base of the new production **region** known as The Vancouver Island Region.

Upon opening the new processing plant (early fall, 2005) all current production on the Island is **directed** to the new plant for processing.

Over a 2 year period, all quota that has left the Island since 1999 will be “**repatriated**” back to the Island by some equitable means and be grown and subsequently **directed** to Island Pride. ...

Without the provisions outlined above, a processing plant located on the Island would not be viable long-term and would most certainly lead to the rapid decline and eventual end to any significant chicken production in the region. [bold in original]

According to Island Pride, its initiative can proceed only if regulators are prepared to reverse course and return to a marketing policy that would again “lock in” Vancouver Island quota production. Island Pride, whose proposal sees as “equally important” the return of the production that has migrated off the Island over the past four years, has not indicated how its proposal would provide long term stability, particularly in harder times, when previous plants have failed.

The Chicken Board points out “the prospect of guaranteed supply for an Island plant is precisely the request made in 1998 in order to ensure Island processing remained viable. This request was turned down....” Lilydale, which operated that plant, has stated on this review that: “Lilydale would need to be compensated for its significant losses resulting from prior clear decisions not to support a policy of regionalization on the strength of which Lilydale invested millions of dollars in new facilities.... Lilydale believes that it would be in a position to seek damages should such a discriminatory policy be adopted.” Whether Lilydale’s claim to damages has legal merit has no bearing on our decision. It does however underline that regulators are now being asked to do for a proposed new plant something they refused to do for a previously existing plant. It is also evident, as shown in the submission of Rosstown Farms Ltd. (Rosstown) on this review, that a decision in favour of Island Pride would impact other prospective processors: “Rosstown Farms will vigorously protest any special privilege to a Vancouver Island processing plant, without getting the same treatment as a matter of equity.”

The Provincial board’s March 2000 report expressed acute awareness that endorsing the Chicken Board’s decision to remove the various regulatory supports and subsidies from Vancouver Island growers would likely result in a migration of quota off Vancouver Island. This has come to pass. The Chicken Board’s October 7, 2004 report prepared for this supervisory review has recorded the extent of this migration:

According to Chicken Board figures (Appendix 1), there are 809,383 kg of primary quota presently on the Island along with 280,207 kg of transitional quota. Since the enactment of the OIC on June 1, 2000, 1,800,556 kg of primary quota and 242,555 kg of transitional quota has moved off the Island (Appendix 2)

(the primary total includes 144,660 kg of secondary at the time of transfer or repatriation).<sup>1</sup>

The roughly 2 million kgs of quota that has migrated off Vancouver Island since 2000 represents approximately 7% of British Columbia's total chicken production.

## **SECTION 5.01 OF THE SCHEME**

The "OIC" referred to by the Chicken Board is the Order in Council passed by the previous Government in June 2000, which amended the *Scheme* by adding s. 5.01, which reads as follows:

5.01 Despite section 4.01, the board must not permit a disposition or transfer of quota issued to a person to produce regulated product on Vancouver Island to any area of the province other than Vancouver Island unless the board sets aside quota exclusively for purposes of production of regulated product on Vancouver Island in an amount equal to the amount the board permits disposed of or transferred off Vancouver Island.

When Island Pride made its initial approach to the Ministry of Agriculture, Food and Fisheries (the MAFF) about this matter in February 2004, it referred to s. 5.01 and stated: "What we require from the Ministry of Agriculture, by Mar 1, '04, is verification of our interpretation of the O.I.C.", which it proposed as follows:

1. Any quota sold off Vancouver Island is to be replaced by permit (to be produced on Vancouver Island).
2. The permit is for island production controlled by the island processing plant and administered by the same.
3. Upon start up of the plant, permits would be issued to, up to 16 new growers for roasters & Cornish with HACCAP approved facilities.
4. At 75% throughput of existing Island quota, the permit would be issued to existing quota holders, on Vancouver Island, on an individual's quota to a maximum of 50% of total production.

On June 4, 2004 letter, MAFF advised Island Pride as follows:

The BCCMB, as set out in Section 5.01, has been keeping account of all quota transfers off Vancouver Island since 2000. There are, however, a wide range of potential means through which the BCCMB could facilitate the return of quota to the Island in response to the anticipated need for increased production. It is also

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<sup>1</sup> Currently there are 465,457 birds produced each cycle, on Vancouver Island; 934,281 birds per cycle have been transferred off the Island since 2000 at which time Vancouver Island production was 1,399,738 birds per cycle in total.

clear from our consideration of this issue that any recommendations concerning quota provisions in support of a Vancouver Island processing plant will have a broader impact on the British Columbia chicken industry generally. There may also be policy implications that could affect the regulated marketing system at large.

Given the complexities and implications involved, and given its responsibility for general supervision of the regulated marketing system, this matter should be reviewed by the BCFIRB in its supervisory capacity to give guidance to the BCCMB.

On June 16, 2004, Island Pride wrote to the Chair of the Provincial board requesting a supervisory review “to provide guidance to the BCCMB on the implementation of Section 5.01 of the BC Chicken Marketing Scheme.”

We will have more to say about s. 5.01 below.

## **SUPERVISORY REVIEW PROCESS**

On July 27, 2004, the Provincial board notified the Vancouver Island Chicken Growers Association (VICGA) that a review would be conducted to “address, in full consultation with the Chicken Board, the BC chicken industry, other interested persons and with government, the range of industry and regulatory issues related to the restoration of production on Vancouver Island in compliance with s. 5.01 of the Scheme”.

The Provincial board identified interested parties in this review as including the Chicken Board, British Columbia Chicken Growers Association, Chicken Industry Stakeholders (ie. processors and hatcheries), BC Hatching Egg Commission, Island Pride, Council of Marketing Boards, Island Farmers’ Alliance, Cowichan Valley Regional District and the Municipality of North Cowichan and has communicated with these parties throughout the review.

On August 25, 2004 the Provincial board wrote to interested parties to outline what would be a two-phase process. In Phase 1, the Chicken Board would, in consultation with industry stakeholders, review the issues and considerations associated with the implementation of s. 5.01 of the *Scheme* and provide proposals to the Provincial board no later than October 8, 2004. In Phase 2, the Provincial board would consider the Chicken Board’s proposals and determine whether further consultation or other processes would be required in support of its review. Also on August 25, 2004, the Provincial board directed the Chicken Board to give consideration to an immediate restriction on the transfer of quota off Vancouver Island pending the decision in this review. On September 2, 2004 the Chicken Board authorized a moratorium on transfer of all quota off Vancouver Island effective September 2, 2004, to be reviewed following communication of the decision in this review.

The Provincial board received the report of the Chicken Board on October 7, 2004. Following a review, the decision was made to obtain further industry input and four members of the Provincial board received additional industry submissions at public meetings held in Abbotsford on November 15 and in Duncan on November 16. Written submissions were accepted until November 19, 2004.

The Provincial board received the requested Island Pride Business Plan on November 12, 2004. We must note however that the documents (“Island Pride Poultry Processors Ltd. – Five Year Business Plan – October 26, 2000”, “Qualitative Research, Proposed New Product Introduction” – Hall & Hall Associates Ltd, and “Survey Findings of Poultry Consumption and Viability of a Poultry Production Facility on Vancouver Island, Prepared for the Vancouver Island Broiler Industry” – Venture Market Research Ltd.), were of limited value to the review process, being outdated and lacking current statistics and industry data.

The Lower Mainland Growers (approximately 45 present) raised many questions about the transfer of production back to Vancouver Island. They were concerned about how it would be decided which quota would go back to Vancouver Island, who would get it, and how they would pay for it. The lack of barn space on Vancouver Island to handle all the repatriated chicken production was seen as a barrier, as was ensuring that production sent back to Vancouver Island would stay there. It was suggested that conditions might need to be imposed on Island growers or on Island Pride if the quota is returned.

These growers noted that locking down quota on Vancouver Island was a reversal of policy and would be artificially supporting the industry on Vancouver Island. It was suggested that any production going back to Vancouver Island should be leased and payment distributed back to Lower Mainland growers. Some growers suggested they should be able to direct quota and buy and ship their chicken where they want. Processors should be allowed to open plants, but not with assurance of supply. It was commented that if Island Pride gets a processing plant they would be circumventing the General Orders of the Chicken Board (New Entrant Program).

Subsidies to Vancouver Island growers were brought up as an alternative to returning quota; but there was also concern about where subsidies would end and whether they would be shared province-wide. It was also stated that the cost of transporting chicken from Vancouver Island actually exceeds the 3.1 cents previously paid. Concerns about the conflict between the imposition of subsidies and the WTO rules were raised.

The cost and economics of chicken farming on Vancouver Island was also raised by Lower Mainland growers and questioned in view of what they believed to be the aging infrastructure on Vancouver Island. It was suggested that Newfoundland is the only region in Canada with higher costs than Vancouver Island and that the Vancouver Island chicken industry will not survive in the long run.

Lilydale gave several reasons why quota should not be returned to Vancouver Island. Lilydale took steps in the 1990s to keep the Vancouver Island plant open and failed. This caused financial hardship to the company. Lilydale argues that it would be improper if Island Pride were to be given conditions that Lilydale was denied.

Rosstown has applied under the New Entrant Program. They would not be happy to be shunted aside for the Island Pride initiative. They also believed that repatriating 7% of the quota would leave barns empty on the Lower Mainland and necessitate new barns being built on Vancouver Island at inflated cost.

At the Vancouver Island meeting (14 present) there was some support from growers for the Island Pride plant, but other economic issues were discussed. In general, Vancouver Island growers stated that they wanted equal treatment with growers on the Lower Mainland. A local processing plant was a tool for encouraging local production, but not the only means. One comment was, “We will support a chicken processing plant, at no cost to us.” There was concern voiced about losing equity in Lilydale Co-operative unless growers are directed to ship to another plant.

The higher cost of growing chicken on Vancouver Island as compared to the Lower Mainland was an area of general agreement. Freight subsidies to even the costs between production on the Island and the Lower Mainland, if there was not a processor on the Island, would be a great benefit to Vancouver Island growers. One Vancouver Island grower did state: “We believe that subsidies do not build futures—they are only bandages for now.” It was also noted that Island growers were required to pay a \$.005/kg subsidy for the Avian Influenza costs which they had nothing to do with. However they are aware that a \$.003 subsidy for freight assistance on all growers was not supported in the Lower Mainland.

Of the Island growers that presented, all but one stated their opposition to locking quota to Vancouver Island. Growers mentioned that while there is barn space available for some growth on Vancouver Island, it would take a few years to bring the infrastructure up to what would be needed to handle all returned quota. It was suggested that this production come back as leases or permits rather than quota.

Representatives from Top Shelf Feeds Ltd., the Island Farmers’ Alliance, and District A Farmer’s Institutes, all spoke in favour of a processing plant on Vancouver Island and the spin-off effects it would have.

All present agreed with the positive market test results for Vancouver Island grown products.

#### **TIMING AND RELATIONSHIP TO ASSURANCE OF SUPPLY APPEALS**

The Provincial board intended to issue any determinations, directions and recommendations by December 3, 2004. In late November 2004, this date was extended

to December 17, 2004 to allow the Provincial board to consider the findings and decisions on appeals of Chicken Board General Orders regarding Assurance of Supply and Entry of New Processors.

Since that time, the appeal panel has given notice that it will not be in a position to issue its decision on assurance of supply until the New Year. Because our deliberations have led us to conclude that the fundamental substance of this decision would be the same irrespective of the appeal panel's decision on assurance of supply - i.e., that the Provincial board does not support Island Pride's request to freeze Vancouver Island quota as a condition of supporting a Vancouver Island processing plant whether or not Parts 7 and 8 of the Chicken Board's General Orders are upheld on appeal - we issue this decision now.

## **DECISION**

While Island Pride has framed the issue on this review as being how s. 5.01 of the *Scheme* can be implemented to best support its proposal, the Chicken Board's report properly addresses the issue from a broader perspective. From the Chicken Board's perspective, we must confront the question of how far regulators should properly go in seeking to support a Vancouver Island processing plant. It is implicit in the Chicken Board's report that a Vancouver Island plant cannot be pursued at all costs. The Chicken Board has rightly pointed out that a Vancouver Island plant cannot be pursued regardless of the consequences to growers on Vancouver Island, and to the larger regulated marketing system governing chicken production:

The Chicken Board is very concerned about any policy that might encourage the migration of investment and production to the Island today, and such investment becoming unviable in the future as a result of further changes in policy or circumstances.

The plant, to be successful would need a long-term commitment to assured production. Many factors over the next few years could affect this commitment, including a change of policy, an increase of provincial allocation affecting the economics of processing, and any number of other unpredictable factors.

There is a long history of failed attempts to produce and process on the Island. The basic factors making Island production challenging have not changed appreciably since 1999. There is great risk in artificially supporting the reintroduction of processing on the Island.

Before discussing those risks and impacts further, it is appropriate here to return again to s. 5.01 of the *Scheme*, which we will quote again for convenient reference:

5.01 Despite section 4.01, the board must not permit a disposition or transfer of quota issued to a person to produce regulated product on Vancouver Island to any area of the province other than Vancouver Island unless the board sets aside

quota exclusively for purposes of production of regulated product on Vancouver Island in an amount equal to the amount the board permits disposed of or transferred off Vancouver Island.

Section 5.01 is probably best understood as an attempt by the previous Government, in the aftermath of our March 2000 supervisory decision, to leave open (rather than guarantee) the possibility that the Vancouver Island chicken production industry might one day be restored to its year 2000 levels. Significantly, s. 5.01 did not limit Vancouver Island growers from transferring their quota off Vancouver Island. Instead, it authorized the Chicken Board to approve such transfer if it “set aside” an equal amount of quota for Vancouver Island production.

It is important to emphasize that s. 5.01 merely speaks to set aside. Neither Island Pride, nor any other proposed processor, has any automatic right to production set aside pursuant to s. 5.01. Section 5.01 does not speak to the precise mechanism by which such quota would be set aside or returned; it does not address whether, having been returned to Vancouver Island, such quota would once again be transferable off Vancouver Island; it does not speak to whether other regulatory supports would also have to be in place to make the return of quota effective. Yet these are the very questions that Island Pride’s proposal has required the Chicken Board and Provincial board to address, because they all pertain to the more fundamental question whether or in what form British Columbia should move back to the former policies of regional quota in chicken production. Contrary to the submission of Island Pride, it is not a simple matter of “implementing” s. 5.01 to suit its proposal.

We therefore agree with the Chicken Board that, as regulators, we must come to grips with the fundamental question whether, as a matter of sound marketing policy, Island Pride’s proposal justifies, in the circumstances before us, taking the step of allocating existing Vancouver Island production and/or set aside production for its initiative, particularly given the regulatory supports that Island Pride has attached as a condition to its proposal proceeding.

As noted earlier, the Chicken Board has provided the Provincial board with an extremely helpful and well-considered report on this subject. The Chicken Board’s report outlines various alternative policy options both in its order of preference, and according to whether the Provincial board upholds Parts 7 and 8 of its Orders on the appeals under reserve.

The Chicken Board says that if the Provincial board (on the appeals presently under reserve) rejects its assured supply policy, then Island Pride would be in a position to set up shop and compete for growers like any other processor – the Chicken Board makes clear that, in such an environment, it can see no basis to giving Island Pride preferential treatment by assuring its market and freezing Island quota when all other processors have to compete for such production.

The Chicken Board then addresses the options if this Board upholds the assured supply policy. Its primary recommendation is not to freeze or repatriate Island quota, but for the FIRB to authorize the Chicken Board to impose a levy to provide freight support to Vancouver Island producers:

The fundamental issue facing Island producers is economic viability given incremental costs. It is the Chicken Board's impression that, while some producers would like a plant, a number of them appear to be neutral on the issue. It is the Chicken Board's perception that virtually all Vancouver Island producers want either a plant or freight equalization.

The Chicken Board left the Island with a definite view that the commitment of many Island producers to a plant is secondary. Their concern is with the financial disadvantage represented by the need to pay the existing freight increment.

The Chicken Board recommends freight assistance over the idea of assuring supply to an Island plant either at current or "repatriated" production levels:

It is the Chicken Board's view that [freight equalization] would address the fundamental issue for Island producers, economic viability. Second, it deals with the Island situation within the existing policy framework of the Chicken Board thereby enhancing stability and predictability. The Chicken Board feels strongly that it has worked very hard to achieve a measure of stability in the past 18 months to the benefit of all stakeholders. Any alternative other than the one mentioned above, would destabilize the industry and lead to another period of legal challenges, animosity and time taken away for the fundamental purpose: producing high quality products for consumers.

The Chicken Board does understand that there may be government policy objectives to enhance regional development as well as help reduce environmental and disease issues related to the concentration of production in the Fraser Valley. However, if such a policy is to be developed, it needs careful study and consultation and must deal effectively with the complexities involved. The OIC was not written originally to deal with such issues, it was written to give some level of comfort to Island producers and the above alternative accomplishes that.

The Chicken Board points out that even if regulators were to assure production to Island Pride at existing quota levels (roughly 1 million kg of quota out of the 3 million that existed in 2000), regulators would have to address several additional issues:

- It would negatively impact another proposed processor, Rosstown, which is presently seen as a priority new entrant processor, and which presently has an appeal before the Provincial board in which it seeks to increase its own production allocation under the New Entrant policy;

- It would negatively impact on the Chicken Board's ability to allocate production to niche and specialty markets, which is another important policy issue facing the industry at the moment.
- Direction would have to be given to whether the allocation granted to another processor might be reduced in light of the fact that a principal of Island Pride is a senior manager with another major processor.

Having had the benefit of the Chicken Board's recommendations and all the submissions made to the Provincial board, we are unable to support Island Pride's proposal regardless of the answer the appeal panel arrives at on the Chicken Board's assured supply policies. If assured supply is rejected on appeal, Island Pride would have to stand on its own, without regulatory support. If it is upheld, we agree with the Chicken Board that assured supply on the large scale sought here would, in the circumstances before us for the reasons the Chicken Board has given, be contrary to sound marketing policy. Nor have we been convinced that Island Pride's dated business plan would succeed where Lilydale failed; a smaller plant is in any event what the Job Protection Commissioner determined was feasible in his 1998 report on this subject.

We agree with the Chicken Board that the economic realities have not changed appreciably since the Job Protection Commissioner and this Board reviewed the Vancouver Island industry in 1999 and 2000. Island Pride has shown no meaningful evidence that its circumstance differs from Lilydale's request for support, which was rejected in 1998; indeed, its position is less compelling, since Lilydale was operating an existing plant.

We do not come to this decision lightly. As made clear by the letters we received from the Cowichan Valley Regional District and the Municipality of North Cowichan, there are local benefits that a processing plant would have for Vancouver Island, and in particular the area in the proposed vicinity of the plant. However, the chicken industry exists in a world of finite quota and many competing demands for access to that quota. Island Pride's proposal, which is conditioned on receiving regulatory supports, recognizes this. We are not prepared to undertake a course that is opposed by and would have obvious negatively impacts on chicken growers, other prospective processors and the Chicken Board's ability to address specialty production, without being convinced that a valid long term plan and sound public policy clearly justifies overriding those other legitimate interests. We have not been convinced.

Having reached this conclusion, we have given careful consideration to the question whether to accept the Chicken Board's primary recommendation that this Board direct the Chicken Board to impose on all chicken growers a general levy that would allow the Chicken Board to reintroduce a degree of freight support for Vancouver Island growers. From our point of view, the problem with a transportation subsidy is that it is at best a temporary solution and will not prevent the further migration of quota off Vancouver Island. A transportation levy is a very indirect substitute for a full regionalization

strategy, and a poor substitute for the strategic thinking necessary to address the need for bio-security in areas where chicken production is concentrated.

All of which brings us back to s. 5.01 of the *Scheme*. It is clear from our consideration of this matter that the Island Pride proposal would not have been made but for s. 5.01. It is with some justification that Island Pride requested that, if its proposal is refused, “we would ask that your Board **make a clear and precise decision** that would cancel the O.I.C. once and for all and allow natural forces to dictate the future of chicken production and processing on Vancouver Island.” [bold in original]

Section 5.01 was made by the Government, through the Lieutenant Governor in Council, pursuant to that body’s ultimate right to determine marketing policy through amendments to the *Scheme*. Only that body can amend or repeal it.

Having given this matter careful consideration, it is the Provincial board’s opinion that, standing alone, s. 5.01 is confusing and unhelpful. The direction that quota be set aside as part of approving a transfer raises difficult implementation questions in light of the Federal Provincial Agreement, begs fundamental questions as to when or how such quota is to be restored and may well raise false expectations. Subject to any decision by Government to amend the *Scheme* to re-create regional quota on Vancouver Island to support a large-scale plant, the Provincial board recommends that the time has come for s. 5.01 to be repealed.

If Government does express the intention to pursue within the Scheme the type of regionalization policy that would be necessary to support a proposal such as Island Pride’s proposal, several factors outlined in the Chicken Board’s October 2004 report and this decision would need to be addressed. These include directing the quantity of production to be restored to Vancouver Island, directing the creation of regional quota or transportation supports and then determining questions as to whether such protections should be extended to other regions.

In our view, the question whether s. 5.01 should be repealed on the one hand, or enhanced with further amendments supporting a policy of regional production, is one for Government to decide. As we stated in our March 2000 report:

The BCMB is firmly of the view that a comprehensive MAF (Ministry of Agriculture and Food) review, as contemplated by the *89 Decision* [*89 Chicken Ranch Ltd. v. British Columbia Chicken Marketing Board*], of both the regulated and non-regulated Island agriculture industry is required as part of an overall strategic vision for the development and maintenance of agriculture on Vancouver Island. A comprehensive solution to this issue goes well beyond our legal mandate and exceeds the tools available to us in these circumstances. We adopt the Chicken Board’s observation that “this is a problem for society to solve.”

If Government does intend to pursue a regionalisation strategy, the Provincial board is prepared to assist MAFF to determine what those options should be, by providing recommendations based on the discussions of the Board and the consultations with industry in this supervisory review.

The Provincial board is not prepared to authorize or grant Island Pride the regulatory supports it insists upon in order to allow its proposed processing plant to proceed. Subject to any action by Government either repealing or augmenting s. 5.01, and irrespective of any decision the appeal panel makes regarding the appeals of Parts 7 and 8 of the Chicken Board's General Orders, the status quo will remain in place.

In order to give Government appropriate time to review and express any intentions regarding the subject of this report, the Provincial board directs the Chicken Board to maintain the restriction on the transfer of Vancouver Island quota until further notice by this Board.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per**

A handwritten signature in black ink, appearing to read 'Richard Bullock', written over a horizontal line.

**Richard Bullock,  
Chair**