

Alfred Reid and Olera Farms v. BC Egg Marketing Board

Decision Date: February 25, 2003

Keywords: adjournment application, jurisdiction (Commodity Board), charter arguments, enforcement, estoppel, exemption from order, levies, market licence fees, misconduct (by commodity board), organic production, specialty production, statutory interpretation, temporary restricted licence quota (TRLQ)

Issue: The issues on appeal were:

- whether “regulated product” under the *Egg Scheme* included certified organic table eggs; and
- a policy challenge to the Egg Board’s decision to enforce and collect levies arising from the appellants’ production and marketing prior to December 2000

Decision:

Regulated product

The appellants argued that as a matter of law, certified organic eggs are not included in the natural products regulated by the *Egg Scheme* because they are so different from any other table egg as to make them different natural products when considered objectively from the perspective of agricultural science. The panel rejected this argument. It also concluded that there was no ambiguity in the *Egg Scheme* and that certified organic eggs were clearly included in the definition of a regulated product as “... all classes of eggs of the domestic hen, including eggs wholly or partly manufactured or processed.” The panel ruled that “certification” does nothing other than address food choice and consumer information and does not exclude organic eggs from regulated marketing schemes, any more than it does for other classes of eggs such as free-run, free-range, Born 3, ProCert organic, caged white or caged brown eggs. The panel noted that the purpose of the *Egg Scheme* is to effectively regulate table egg production to maximize production and price stability through a system of quotas, licences and permits and this regulation cannot be effective if it is not comprehensive.

Marketing licence fees

The appellants argued that the Egg Board’s decision to enforce and collect marketing licence fees from them was unfair, inappropriate and an error in the exercise of the Egg Board’s discretion. The appellants further argued that the Egg Board’s conduct during 1999-2001 negotiations amounted to an exemption of organic production from the *Egg Scheme* and therefore the Egg Board could not claim fees from exempted product. The panel disagreed that the Egg Board had exempted either certified organic product or the appellants’ production. It ruled that the real issue was whether the Egg Board should have decided to enforce its Standing Order back to the 1999 layer count or be estopped from this enforcement prior to 2001 as claimed by the appellants. The panel ruled that the evidence did not establish that the Egg Board had made any express promise that it would never enforce outstanding fees accrued, nor was the Egg Board aware of any mistaken legal belief of the appellants; therefore, the panel dismissed the estoppel argument. However, the panel ruled that as a matter of fairness and sound marketing policy, it was not fair for the Egg Board to decide to enforce marketing fees that arose prior to January 2001, but that its enforcement decision-making was otherwise entirely fair and appropriate and that organic producers had been given fair notice that they were required to apply for temporary restricted licence quota (TRLQ) if they wished to avoid enforcement action.