

Alfred Reid d.b.a. Olera Farms v. BC Egg Marketing Board – Preliminary Issues

Decision Date: January 21, 2002

Keywords: adjournment application, bias of provincial board, jurisdiction (Commodity Board), organic production, statutory interpretation

Issue: Two preliminary matters were raised in consideration of the merits of this appeal:

- The appellant argued that the BC Marketing Board (BCMB, now the BC Farm Industry Review Board) was subject to a reasonable apprehension of bias from its involvement in and statements made in relation to various egg industry issues regarding organic egg production;
- The respondent Egg Board argued that the BCMB should not permit the appellant to call lay evidence in support of its legal argument regarding the Egg Board's jurisdiction to regulate certified organic production.

Decision:

Reasonable apprehension of bias:

The appellant argued that there is a reasonable apprehension of bias on the part of the BCMB as it had already prejudged this issue against him through numerous public statements, letters and documents to the effect that organic production was subject to regulation and through the BCMB supervisory review referred to as the *Egg Quota Allocation Review*. The appellant argued that the only remedy for this prejudice was to allow the appeal and reverse the decision appealed from.

The panel did not agree that the evidence demonstrated that it was unable to fairly consider the appellant's argument that certified organic eggs are not "eggs" within the meaning of the Egg Board's *Scheme*. In determining whether the situation gave rise to a reasonable apprehension of bias, the panel assessed the intent of the relevant legislative background and ruled that an BCMB appeal panel could reasonably be expected to arrive at its own decision in this case and consider the merits of the case as argued by the appellant. Administrative tribunal panels are not bound by the legal conclusions or views of other panels or members. The panel also rejected the appellant's argument that the only remedy for the alleged bias was to allow the appeal. The panel ruled that even if it had found a reasonable apprehension of bias, it would be illogical, unjust and illegal to allow an appeal for no other reason than the fact that the tribunal was biased. It must be the merits of the case that determine the appeal. The bias application was dismissed.

Admissibility of evidence to assist in statutory interpretation:

The appellant gave notice that he intended to call witnesses to support his legal argument that the *Scheme* does not encompass certified organic eggs and that it was not possible to arrive at a considered opinion regarding statutory interpretation without considering his evidence. The Egg Board argued that lay opinion about the construction of a statute was inadmissible and that the language of the *Scheme* was clear. The panel ruled that there was a live issue between the parties and that the appellant wished to advance a legal argument that had not previously made; therefore, it made sense to answer the question of statutory interpretation in light of the evidence as a whole. The Egg Board's evidentiary objection was dismissed.