

## Salmon Arm Poultry Farm Ltd. et al v. BC Egg Marketing Board – Preliminary Decision

**Decision Date:** May 16, 2001

**Keywords:** appellate jurisdiction; jurisdiction of Commodity Board, BCFIRB and supervisory jurisdiction; organic production; order, decision or determination; exercise of discretion; prior approval; statutory interpretation, summary dismissal, procedural fairness, temporary restricted licence quota (TRLQ)

### **Issue:**

The appellants had appealed several issues arising from the Egg Board's *Market Responsive Allocation Program Summary of Decisions*. A preliminary matter was raised by the BC Marketing Board (BCMB, now called the BC Farm Industry Board) to address the issues of:

- To what extent did the issues appealed relate to Egg Board actions taken at the specific direction of the BCMB in its supervisory capacity; and
- To the extent that the issues related to Egg Board actions taken at the specific direction of the BCMB, were they commodity board decisions that could be appealed or were they instead matters that could only be addressed by judicial review of the BCMB?

### **Decision:**

The appellants argued that it was not for them to decide if BCMB should hear this appeal, but rather for the BCMB and their legal counsel, and since the decisions under appeal were sent out under Egg Board letterhead, they were Egg Board orders. They further argued that they were not privy to how these decisions were made and were appealing the decisions they received from the Egg Board.

The Egg Board argued that the supervisory decision of the BCMB was comprised of directions to the Egg Board as to what it could do, should do, and must do and that it was difficult to address whether the Egg Board had used its discretion or made the orders it was told to make by the BCMB. It argued that it was the Egg Board's choice to follow the directions of the BCMB rather than to apply for judicial review of these directions and that the Egg Board was still trying to figure out the implications of the October 2000 directions from the BCMB. The Egg Board further questioned that as many of its day-to-day decisions deal with the implementation of this program, are all of these decisions not appealable by producers?

Appeals to the BCMB are governed by the *Natural Products Marketing (BC) Act* which gives the BCMB (now BCFIRB) general supervision over all marketing boards and commissions. Decisions under its supervisory role are subject to review under the *Judicial Review Procedure Act* and therefore cannot be appealed and are only subject to judicial review by the Supreme Court of BC. The BCMB issued a supervisory decision the *Egg Quota Allocation Review* in August 2000 which led to the Egg Board decisions under appeal. In order for a matter to be the proper subject of an appeal, it is necessary under the *Act* for there to be "an order, determination or decision of a marketing board..." The panel examined each issue under appeal to determine whether the Egg Board had exercised any discretion in making its orders. It determined that in each case, it did not act independently and the decisions being appealed were all a result of the Egg Board carrying out the specific supervisory directions of the BCMB and therefore not appealable to the BCMB.

### **Order:**

The appeals were dismissed.