

Pan-O-ramic Farms (1990) Ltd v. BC Milk Marketing Board

Decision Date: October 22, 2004

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Issue: Did the Milk Board have a duty to act fairly prior to notifying a transporter that its agreement would not be renewed?

Decision:

The appellant argued that the Milk Board had a duty of fairness and due process before making its decision not to renew the appellant's Transporter Agreement, which resulted in the cancellation of its licence enabling it to transport milk. Further, it argued that the *Natural Products Marketing Act* does not permit the Milk Board to cancel a licence without cause, making the 60 days notice clause of non-renewal in the agreement *ultra vires* or beyond the jurisdiction of the Milk Board. The appellant argued that the duty of fairness applied whether or not the decision was simply an exercise of "contractual rights" because this decision had serious and final financial consequences. Further, it argued that procedural fairness could be imposed by the Provincial board's (now the BCFIRB's) absolute supervisory role over all commodity boards through a full hearing on the merits of the case which has a different standard from that of judicial review. The Milk Board argued that the Provincial board must determine this appeal according to the same principles that would govern a court on judicial review and that this was a pure commercial contract taking it outside of the Provincial board's scope of review.

The panel rejected the Milk Board's argument after thorough examination of the reviewability of contracts used for regulatory purposes. Several relevant cases were cited. The panel noted that when public funds are involved, public bodies must exercise their powers in relation to the use of these funds as authorized by the statute. Agreements with transporters were not private contracts carried out for the business of the Milk Board, but rather a regulatory necessity after the Milk Board declared itself the first receiver of all milk produced in the province. The panel further stated that the Provincial board had a statutory obligation to hear appeals and a duty to ensure that marketing boards act lawfully and in accordance with sound marketing policy. Part of its mandate is to keep the Milk Board broadly accountable for its actions relative to the principles of public law which include fairness and appellate review for persons affected by its decisions. The panel then turned to the appellant's argument that over and above its claim for due process, the paragraph of the agreement authorizing the Milk Board to terminate the Agreement arbitrarily on 60 days notice was *ultra vires* the Milk Board. The panel rejected the appellant's argument and ruled that the Milk Board must have the ability to give notice of non-renewal for valid reasons other than misconduct. The panel made it clear that this was not a judicial review application and noted that the court's judicial review role is much more limited than that of the Provincial board. It has jurisdiction to determine standards of conduct and fair dealing that commodity boards are expected to grant to those being regulated.

Order:

The decision of the Milk Board to end the appellant's agreement was reversed and set aside.