



January 9, 2012

File: 44200-50/CMB #11-08,  
11-09, 11-10, & 11-11

**DELIVERED BY E-MAIL**

Brian Neufeldt  
D. Kevin Neufeldt

Claire E. Hunter, Counsel  
Hunter Litigation Chambers

**SPECIAL CIRCUMSTANCES - DECISION**

**Introduction**

1. The appellants, Brian and D. Kevin Neufeldt, are brothers who separately applied several years ago to obtain quota under the BC Chicken Marketing Board's (BCCMB) New Entrant Grower (NEG) program. In late 2007 a lottery was held for prospective new entrants to be put on a waiting list for NEG quota. The names of both appellants were drawn in this lottery and in early 2008 they were each put on the waiting list for NEG quota. In January 2011, each of the brothers was notified that NEG quota had become available and in early March 2011, each appellant signed an agreement accepting the grant of 7,716kg live weight (approximately 4,000 birds) per 8 week cycle of quota under the NEG program.
2. In September 2011, each appellant filed two separate appeals (for a total of four appeals) with the BC Farm Industry Review Board (BCFIRB).
3. The first of these appeals arose out of the brothers' written application to and subsequent appearance before the BCCMB in early May 2011 to request that they be granted an exception to the requirement under then Part 50 of the BCCMB General Orders limiting the number of NEG quotas to one per person or entity per property. In its May 30, 2011 decision the BCCMB denied the brothers' request that they be permitted to start 2 new quotas under the NEG program on one location. In September 2011, each brother separately appealed the BCCMB decision of May 30, 2011. As this was beyond the 30-day time limit for filing an appeal, the issue to be determined is whether to extend the time for filing these appeals. These appeals are referred to below as the "first appeals."
4. Additionally, each brother filed a notice of appeal with BCFIRB because he was not awarded additional broiler quota (1500 birds) similar to the award of additional quota in 2010 to other new entrants in the Interior region that had been part of the same lottery. The issues with respect to these appeals are whether or not there is a decision that can be appealed and, if so, whether the appeals are out of time. These appeals are referred to below as the "second appeals."

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5. We have reviewed and considered the following documents:
  - a. May 30, 2011 Decision of the BCCMB in respect of which the first appeals have been filed.
  - b. September 7, 2011 Brian Neufeldt’s notice of appeal of the BCCMB May 30, 2011 decision, with accompanying letter.
  - c. September 7, 2011 Brian Neufeldt’s notice of appeal regarding entitlement to additional quota, with accompanying letter.
  - d. September 29, 2011 Donald “Kevin” Neufeldt’s notice of appeal of the BCCMB May 30, 2011 decision, with accompanying letter.
  - e. September 29, 2011 Donald “Kevin” Neufeldt’s notice of appeal regarding entitlement to additional quota, with accompanying letter.
  - f. October 10, 2011 submissions of the appellants describing the circumstances surrounding the late filing of their “first appeals” and responding to BCFIRB’s request to identify the BCCMB decision with respect to the “second appeals.”
  - g. October 18, 2011 response from the BCCMB, including affidavits of Christine Rickson and William P. Vanderspek.
  - h. October 24, 2011 reply from the appellants.
  - i. October 26, 2011 further reply from the BCCMB including the affidavit of William P. Vanderspek.
  - j. November 1, 2011 final reply of the appellants.
6. The BCCMB updated their General Orders in August 2011. At the relevant times of the BCCMB “decisions” appealed, the General Orders dated January 23, 2006 were in force. Therefore, all references are to the 2006 General Orders. (It is noted that the substance of the relevant orders for these appeals have not changed, only their numbering.)

### **The “First Appeals”: Extension of Time**

#### **Facts**

7. The BCCMB sent copies of its General Orders, which address among other things the process for appeals, to the appellants on two separate occasions. The first copies were sent when the appellants were accepted to the NEG wait list in January 2008. Second copies were sent when the appellants were advised that quota was available in January 2011.
8. The BCCMB decision that is the subject of the first appeals is the BCCMB decision of May 30, 2011 denying the brothers’ request to start 2 NEG quotas at the same location.
9. The appellants filed notices of appeal of the BCCMB decision of May 30, 2011 on September 7, 2011 and September 29, 2011, respectively.

## Law

10. Section 24 of the *Administrative Tribunals Act* (ATA) applies. It provides that appeals are to be filed within 30 days of the decision appealed but does grant discretion to extend the time to file an appeal in the case of special circumstances.
11. Schedule 18 of the BCCMB General Orders addresses the process of appeals to BCFIRB from a decision of the BCCMB and incorporates the ATA provisions.

## Submissions

12. The appellants argue that as new farmers they were not aware of their right to appeal and that this constitutes special circumstances that prevented them appealing the May 30, 2011 BCCMB decision on time.
13. In response, the BCCMB submits that being new farmers and being unaware of the right to appeal does not constitute special circumstances. The BCCMB argues that the appellants should have been aware of their right to appeal because on two separate occasions they were sent copies of and told to familiarize themselves with the BCCMB General Orders.
14. The BCCMB cites the February 8, 2011 BCFIRB decision in *Mel Washtock v. BCCMB*<sup>1</sup> that addressed the importance of the time limits for appeals as follows:

Limitation periods cannot be lightly set aside. The Legislature felt it was appropriate to impose certain deadlines in the [*Administrative Tribunals Act*] on the time for filing an appeal. Effective regulation requires some certainty in commodity board decision making.
15. In addition, the BCCMB notes that in *Washtock* the BCFIRB panel concluded that lack of understanding of the appeal process does not constitute special circumstances:

...if the appellant did not understand the BCCMB General Orders, he should have found someone to explain them to him. Not understanding the rules does not constitute a special circumstance nor does it excuse such a lengthy delay. The appeal process is clearly laid out in Schedule 18 of the General Orders. If the appellant had been seriously interested in filing an appeal at the time of the decision, he could have demonstrated his due diligence by inquiring about the process at the BCCMB or the BCFIRB.

## Analysis & Decision

16. The appellants did not file their notices of appeal within the 30-day time limit. In fact, both notices of appeal were filed with BCFIRB more than 2 months after the expiry date.
17. It is essential for business owners to be familiar with the regulations governing the industry in which they operate. Similarly, both new and established chicken growers need to be acquainted with the BCCMB's General Orders. If a grower does not understand them, it is their responsibility to seek clarification. Here, the appellants received two copies of the BCCMB General orders with the first copy being sent to them three years before this issue arose and the second at the beginning of 2011. So even as new farmers, the appellants had ample time to familiarize themselves with the General Order provisions, including those respecting the process for appeals from BCCMB decisions.

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<sup>1</sup> [http://www.firb.gov.bc.ca/appeals/chicken/washtock\\_dec\\_feb\\_08\\_11.pdf](http://www.firb.gov.bc.ca/appeals/chicken/washtock_dec_feb_08_11.pdf)

18. As in the *Washtock* case, we did not find any evidence that the appellants took any action to question or pursue an appeal process when they received the decision. In addition to the outline of the appeal process provided in the General Orders, there are many resources available to support appellants in this regard, including, but not limited to, staff and websites of both BCCMB and BCFIRB.
19. We adopt the reasoning in the *Washtock* case that the failure of appellants to inform themselves of the appeal process does not constitute special circumstances. Therefore, we find there are no special circumstances that precluded the appellants from filing the appeal within the 30-day period.
20. The request for an extension of time to file the first appeals is denied.
21. The first appeals are dismissed.

### **The “Second Appeals”: Appealable Decision**

#### **Facts**

22. The appellants became aware that new entrant growers in the Interior region had been allocated an additional grant of quota and contacted the BCCMB to determine if they would also be entitled to additional quota.
23. Some discussions did occur between the appellants and BCCMB staff. At some point, the BCCMB General Manager verbally advised the appellants that they were not eligible for quota over and above the initial allotment of 7,716 kgs as part of the NEG program.
24. There is no written decision of the BCCMB that addresses the issue of the appellants’ entitlement to additional quota.
25. The appellants each filed a notice of appeal with BCFIRB concerning their entitlement to additional quota in September 2011.

#### **Law**

26. Part 57 of the BCCMB General Orders outlines the process for persons to apply for a decision or determination of the BCCMB by completing a written application form.
27. Section 8 of the *Natural Products Marketing (BC) Act* R.S.B.C. 1996, c. 330 allows any person aggrieved with or dissatisfied by a decision or determination of the BCCMB to appeal the decision or determination to BCFIRB.

#### **Submissions**

28. In their October 10 and 24, 2011 submissions, the appellants state that they cannot provide a written decision from the BCCMB because this issue was raised in a verbal conversation with the General Manager and no written decision was provided. They state that while there may have been vague discussion of an increase in quota allotments at a meeting in January 2011, the issue of their entitlement to additional quota was not specifically raised by them until June 2011 when they telephoned the BCCMB General Manager. At that time the General Manager mentioned that he could not discern whether or not the quota increase could be available to them. When the appellants questioned what they could do further, the General Manager recommended that they contact BCFIRB. After speaking with staff at BCFIRB the appellants state they again contacted

the BCCMB General Manager in July and requested a letter with respect to their entitlement to additional quota but were refused.

29. In response, The BCCMB states it is not aware of any order, decision or determination that was made in June 2011 with respect to the appellants and the issue of additional quota. Accordingly the BCCMB disputes that there is anything to appeal.
30. The General Manager of the BCCMB states in his affidavit dated October 18, 2011 that he recalls explaining to the appellants in January 2011 that the additional incentive quota available in June 2010 had already been allocated to active new entrant growers in the Interior region and Vancouver Island and because the appellants did not become active until 2011, they were not eligible. He states that neither of the appellants indicated that they intended to appeal this “decision”. In fact, the appellants proceeded to accept the offer of NEG quota and signed an agreement in March 2011.
31. In a second affidavit dated October 26, 2011, the BCCMB General Manager states that he does not have any specific recollection of the conversations referred to by the appellants as occurring in June and July 2011. He states that his ordinary practice if asked to provide a decision of the BCCMB is to take the issue to the board for resolution.
32. Additionally, the BCCMB asserts that, even if a decision was made in June 2011, the time limit for filing a notice of appeal had passed by the time the appeals were filed in September 2011.

#### **Analysis & Decision**

33. The appellants are aware of the process to request a decision of the BCCMB because they went through it in May 2011 in regards to the “first appeals” as noted above.
34. With respect to the issue of their entitlement to additional quota, there is no evidence that the appellants formally applied to the BCCMB for a decision as set out in Part 57 of the General Orders.
35. We find that any conversations that the appellants had with BCCMB management and staff regarding this issue were merely discussions and not decisions or determinations of the board of the BCCMB.
36. We find therefore that there is no decision or determination to appeal with respect to this issue.
37. There being no decision, it is not necessary to address the issue of filing out of time.
38. The second appeals are dismissed.

#### **BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per:



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Cheryl Davie, Presiding Member



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Suzanne K. Wiltshire, Member