

Date: May 21, 2002
Case Numbers: 1096558
1096559

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Between:

Her Majesty the Queen

and

Sheffield Mills Poultry Company Limited

[Cite as: R. v. Sheffield Mills Poultry Company, 2002 NSPC 19]

Decision

Heard Before: The Honourable Judge D. William MacDonald

Place Heard: Kentville, Nova Scotia

Date Heard: April 23, 2002

Decision: May 21, 2002

**Counsel: Thomas W. Jarmyn
Prosecutor for the Nova Scotia Turkey Producers' Marketing Board**

**Michael V. Coyle
Solicitor for the Sheffield Mills Poultry Company Limited**

Charges

Sheffield Mills Poultry Company Limited (defendant company) is charged that:

between the 1st day of June 2001, and the 30th day of June 2001, at or near Sheffield Mills, in the County of Kings, Province of Nova Scotia, it did process turkeys without a license issued by the Nova Scotia Turkey Producers' Marketing Board, contrary to Regulation 15 of the Nova Scotia Turkey Producers' Marketing Board Regulations made pursuant to Sections 9 and 11 of the *Natural Products Act*, R.S.N.S. 1989, c. 308;

and further that

between the 1st day of July 2001, and the 31st day of July 2001, at or near Sheffield Mills, in the County of Kings, Province of Nova Scotia, it did process turkeys without a license issued by the Nova Scotia Turkey Producers' Marketing Board, contrary to Regulation 15 of the Nova Scotia Turkey Producers' Marketing Board Regulations made pursuant to Sections 9 and 11 of the *Natural Products Act*, R.S.N.S. 1989. C. 308.

This is a private prosecution conducted by counsel for the Nova Scotia Turkey Producers' Marketing Board (the Turkey Board).

Question

The question is whether the defendant company is required to have a processor's license under the Nova Scotia Turkey Producers' Marketing Board Regulations (the Regulations). The defendant company did not buy turkeys and, therefore, it submits that it was not bound by the requirements of the supply management system established by the *Natural Products Act* (the Act) and the Regulations.

Statement of Facts

At the trial, admissions were made by the defendant company for the purpose only of this proceeding, and no other evidence was presented by either the prosecution or the defendant company. The admissions can be treated as an agreed statement of facts. The admissions of fact are as follows:

1. That without having a license to do so issued to it by the Turkey Board, the defendant company did slaughter, pluck, eviscerate, chill, and bag 41 turkeys between June 1 and June 30, 2001, and 7 turkeys between July 1 and July 31, 2001.
2. That the defendant company is not alleged in this proceeding to have purchased

any of the aforementioned turkeys and did not, in fact, purchase any of the aforementioned turkeys from any commercial producer holding turkey production quota issued by the Turkey Board.

3. That the turkeys referred to in paragraph 1 were grown by producers to whom the exemption contained in Section 10 of the Regulations applied.
4. That the defendant company operates, and operated at all times material, a custom processing facility in which it slaughters, plucks, eviscerates, chills, and bags all manner of poultry, including turkeys, for non-commercial growers. The defendant company's customers bring their live birds to the defendant company's facility in the morning and pick them up later the same day. The defendant company's customers pay a fee for this service. At no time does the defendant company take ownership of the customers' birds. These facts apply to each of the 48 turkeys mentioned in paragraph 1 hereof.
5. That the defendant company is fully licensed to carry out the aforementioned activities by the Province of Nova Scotia under the Meat Inspection Regulations made pursuant to the *Meat Inspection Act* (N.S.) and was so licensed at all times material. A Provincial Government veterinary meat inspector is present in the defendant company's facility to observe and supervise all slaughtering, evisceration and chill operations, and this employee of the Nova Scotia Department of Agriculture and Fisheries inspects and approves (or condemns) every bird before it is released to the customer (or disposed of). These facts apply to each of the 48 turkeys mentioned in paragraph 1 hereof.

Supply Management System

In our economy, price is determined by demand and supply. Higher demand, and lower supply, each will lead to increased prices.

The turkey industry in Nova Scotia operates under a supply management system. The purpose is to establish a minimum price at which turkey is purchased from farmers (more accurately referred to as producers) by those who process turkeys for ultimate sale to consumers. This is done through a system of licensing producers and allocating quota. If the quota more or less matches the demand for turkey, the producers are assured of a fair and predictable price.

The turkey quota in Nova Scotia is administered and controlled by the Nova Scotia Turkey Producers' Marketing Board (which I have already been referring to as the "Turkey Board"). This regulatory regime in Nova Scotia is part of a federal/provincial government program so that intraprovincial, interprovincial and export trade are all included.

Legislative Framework

There are supply management systems for a variety of farm products (more accurately referred to as natural products) in Nova Scotia, including chicken, eggs, tobacco, grain, some vegetables, pork, and wool. These systems are established under the *Natural Products Act* (which I have already been referring to as “the Act”).

Section 3 of the Act provides for the Governor in Council to establish a Natural Products Marketing Council.

Subsection 6(1) provides that the Council may . . .

- (d) with the approval of the Governor in Council, establish commodity boards for the purpose of carrying out any plan established under this Act; ...
- (h) exempt from any plan or any order or direction of the Council any person or class of persons engaged in the producing or marketing of any regulated product or any class, variety or grade of regulated product;
- (i) require persons engaged in the producing or marketing of a natural product in any area or areas designated by the Council to register with the Council their names, addresses and occupations and the quantity of the natural product produced or marketed by them, and require persons engaged in the producing or marketing of a regulated product to furnish such additional information in regard to the said regulated product as the Council may determine and to inspect the books and premises of such last-mentioned persons; ...

A key word is “marketing,” and it is defined in clause 2 (d) of the Act which provides:

- (d) “marketing” includes advertising, buying, selling, storing, packing, transportation, shipping, pricing, processing, shipping for sale or storage, offering for sale and other act necessary to prepare a natural product in a form or to make it available at a place and time for purchase, for consumption or use and also includes sale by pedlars, hawkers and traders;

Subsection 6(2) of the Act provides:

- (2) The Council may delegate to a commodity board such of its powers as the Council deems necessary . . .

Subsection nine(1) of the Act provides:

- (1) Subject to the approval of the Governor in Council, the Council may from time to time make regulations ...
 - (b) providing for the licensing of persons engaged in the marketing or production of any natural product ...
 - (e) providing the form of licenses and the terms and conditions upon which licenses may be issued, renewed, suspended or revoked; ...

Section 11 of the Act provides

The Governor in Council may or, subject to the approval of the Governor in Council, the Council may

- (a) from time to time establish plans for the promotion, control, regulation or prohibition of the marketing or production of any natural product and may constitute commodity boards to administer any such plan ...
- (d) empower commodity boards to exercise such powers and authority of the Council, mentioned in Section 9, as it deems necessary for the proper operation of a plan.

There is a Nova Scotia Turkey Marketing Plan (the Plan) established pursuant to Section 11 of the Act. It is made under the authority of an Order in Council, and the Plan may be cited as N.S. Reg.265/92.

The purpose of the plan is set out in Section 3 of the Plan which provides:

The purpose of this Plan is to promote and regulate the marketing, production and sale of turkeys; to establish from time to time the fair or minimum price at which turkey shall be purchased by processors and to cooperate with the other boards, agencies and committees set up in other provinces for the same or similar purpose.

The Plan establishes the Turkey Board as a commodity board.

“Processing” is defined in Section 2 of the Plan which provides:

- (k) “processing” means altering the nature, size, quality, or condition of turkeys by mechanical means or otherwise and includes slaughtering;

Section 8 of the Plan provides that the Turkey Board has the authority to

- (c) require the filing of information by producers, processors, hatcheries, and others involved in the marketing or production of turkey and poult within the regulated area as required by the Turkey Board for the orderly administration of this Plan; ...
- (e) issue from time to time separate licenses to producers, shippers, truckers, processors, and others authorizing the persons named therein to sell, assemble, process, receive for shipment, transport or otherwise market turkeys within the regulated area. ...

Subsection 10(1) of the Plan provides:

No shipper, trucker, processor, or producer shall assemble, process, buy, sell, receive for shipment, or transport turkeys within the Province of Nova Scotia without a licence from the Turkey Board.

I mention this provision because it helps explain the scheme contemplated by the legislation, but the defendant company was not charged under Section 10 of the Plan.

The Nova Scotia Turkey Producers' Marketing Board Regulations (which I have already referred to as "the Regulations") were made under the authority of an Order in Council and may be cited as N.S. Reg. 266/92.

The Regulations define "processing" in clause 1(t) which provides:

- (t) "process" or "processing" means altering the nature, size, quality, or condition of turkey by mechanical means or otherwise and includes slaughtering;

Section 15 of the Regulations, which is the provision the defendant company is alleged to have violated, provides:

- (1) Each processor engaged in the slaughter or marketing of turkeys shall be registered as a processor with the Board.
- (2) (a) No person shall commence or carry on the business of processing turkeys except as previously authorized by licence issued by the Board.

Section 10 of the Regulations provides:

These regulations shall not apply to any producer who markets less than 25 turkeys in any control period.

“Control period” is defined as “the twelve month period covered by the Promotion Agreement of the Canadian Turkey Marketing Agency,” which I understand to be from May 1 to April 30 in the following year.

Prosecution Position

The prosecution submits the defendant company has admitted to processing turkeys without a license issued by the Turkey Board during the periods covered by the two counts contained in the information.

The prosecutor submits the licensing provisions of the Regulations apply to processors of turkeys whether or not the processors buy turkeys. Information which a licensee can be required to provide is essential for the effective operation and enforcement of the supply management system administered by the Turkey Board.

The prosecutor submits the definition of “marketing” in the Act and the Regulations is a broad definition covering all activities related to the supply and sale of turkeys, and is not limited to persons actually buying and selling turkeys.

Defendant Company Position

The defendant company submits that it is not a processor within the meaning of Section 15 of the Regulations, which the defendant company is charged with violating. The defendant company submits that the words “processor” and “processing” in Section 15 of the Regulations should be interpreted in the context of the supply management scheme for which the Act, the Plan and the Regulations provide.

In the alternative, the defendant company submits that, if it is a processor within the meaning of Section 15 of the Regulations, the requirement for it to be licensed under the Section is *ultra vires* because it is contrary to the Act (the parent statute) which only applies to commercial production.

In the further alternative, the defendant company submits that the requirement for it to be licensed is invalid because it relates not to supply management but rather to food safety, food handling and food processing, which is a field already properly occupied by the *Meat Inspection Act* (N.S.).

In respect of the second and third submissions, the defendant company submits the Court should not find the whole of the Regulations to be invalid, but should “read down” their application to exclude the defendant company.

Notice to the Attorney General of Nova Scotia

Notice was given to the Attorney General of Nova Scotia that the defendant company would be submitting section 15 of the Regulations is *ultra vires* to the extent that it purports to extend the jurisdiction of the Board to include the licensing and regulation of poultry processors lawfully operating outside the scope of the *Act* and, to that extent, it is of no force and effect.

Counsel for the Attorney General advised the Court and counsel that the Attorney General would not be represented at this private prosecution, and would rely upon the prosecutor's submissions respecting the validity of the Regulations.

Analysis

Subsection 15(2) of the Regulations provides:

- (2) No person shall commence or carry on the business of processing turkeys except as previously authorized by license issued by the Board.

By definition, a person who slaughters turkeys is processing turkeys. The defendant company admits it slaughters turkeys. Therefore, it is a processor within the plain meaning of the definition.

It is unlawful to "commence or carry on the business of processing turkeys" without a license. The defendant company admits it did not have a license. The question is whether it was carrying on the business of processing turkeys within the meaning of the Regulations. The defendant company admits its customers pay a fee for its service. In the ordinary course, that is evidence it is carrying on a business.

The essence of the defense is that the defendant company does not buy turkeys and, therefore, its operations are unrelated to the supply management system administered by the Board, which is the licensing agency.

The prosecutor submits that processors, even small businesses which do not buy turkeys, can provide useful information respecting the production of turkeys in Nova Scotia. License holders can be required to provide information, and can lose their licenses if they do not comply.

In order to effectively administer a supply management system, it is obvious that the Board must be able to verify information it receives from those it regulates. One way to verify information is to obtain it from more than one source. The defendant company submits it is sufficient to obtain information from processors which buy from quota managed producers. It is not necessary to obtain information from a custom

processing facility for non-commercial growers.

Clause 6(1)(i) of the Act authorizes the Natural Products Marketing Council to require persons engaged in marketing natural products to register. Under clause 2(d) of the Act, marketing includes “advertising, buying, selling, storing, packing, transportation, shipping, pricing, processing, shipping for sale or storage, offering for sale and other act necessary to prepare a natural product in a form or to make it available at a place and time for purchase, for consumption or use and also includes sale by pedlars, hawkers and traders.” As I read it, the Act contemplates very broad registration requirements, involving all businesses which may have a role respecting a natural product. It is not restricted to businesses which actually buy or sell quota managed product, or businesses which deal with quota holders.

Similarly, clause 8(e) of the Plan authorizes the Turkey Board to “issue from time to time separate licenses to producers, shippers, truckers, processors, and others authorizing the persons named therein to sell, process, receive for shipment, transport or otherwise market turkeys within the regulated area.”

The defendant company submits that all processors who do not buy turkeys, but simply process turkeys for producers to sell to consumers, are exempt from the licensing requirement. That interpretation could include a company that processes hundreds or thousands of kilograms of turkey. If there is a processor operating in this way, that processor would be a very important source of information about turkey production. The information could be used to confirm that provided to the Turkey Board by turkey producers.

Counsel agreed that there are three or four processors in Nova Scotia which deal with turkey growers who are not quota or special license producers, that is persons who grow fewer than 25 turkeys per year and who are exempt from quota requirements under Section 10 of the Regulations. In fact, during the period covered by the two charges against the defendant company, its customers were all persons who grew fewer than 25 turkeys per year.

The defendant company submits that, at the very least, the Regulations should be read down to exempt a processor who simply provides processing service, that is who does not buy turkeys, and whose customers are only persons who grow fewer than 25 turkeys per year.

The prosecution submits that the Board must have information respecting all turkey production in Nova Scotia, including production by persons exempt from the Regulations under Section 10, in order to meet its obligations to administer the quota system and to provide information it is required to do under federal/provincial arrangements. Where there is an exemption in the Regulations for “backyard” growers, the Board’s information will always be incomplete. However, requiring reports from small processors, such as

the defendant company, will provide information respecting production of “inspected meat,” which the Board may not otherwise obtain.

Although the purpose of the legislation is to provide for a supply marketing scheme, in my opinion, the Act and the Plan confer broad authority on the Council and the Turkey Board to decide what registrations and licenses are necessary, and what sources of information they require. If I accept the submission of the defendant company that I should read down the Regulations to exclude some persons who are otherwise within the meaning of terms in the Act, the Plan, and the Regulations, I would be meddling in matters which the Council and the Turkey Board are eminently better qualified to determine. Therefore, I reject the defendant company’s submissions that I should interpret or read down the plain words in the Act, the Plan, and the Regulations to find they do not apply to the defendant company.

In its final submission, the defendant company submits the Regulations are invalid because they stray into the area of food safety where they speak of requirements for a processing license. Clause 15(4)(a) of the Regulations provides:

- (4)(a) The Board may refuse to grant a license to an applicant which, in the opinion of the Board, is not qualified by experience, financial responsibility, or available facility and equipment to properly engage in the processing business.

It is not uncommon for approval of more than one agency of the Federal, Provincial, or a municipal government to be required before permission is given to engage in an activity. Each agency has its own perspective and expertise, but must be limited to that. From the words alone, I cannot conclude the Turkey Board would be overstepping its authority if it refuses a permit under this provision. Nor can I conclude that I should read down the Turkey Board licensing requirement to exempt a person with processing authorization under the *Meat Processing Act*.

Conclusion

I am satisfied beyond a reasonable doubt that the Sheffield Mills Poultry Company Limited violated the provisions of Section 15 of the Nova Scotia Turkey Producers’ Marketing Board Regulations in June 2001 and in July 2001 by processing turkeys without a license issued by the Turkey Board and, accordingly, I find the defendant company guilty on both counts in the information.

As to the penalty, I make the comment that prosecution is sometimes used as a speedy means to litigate honestly held differences of opinion respecting rights and obligations under the law. Where this is the case, the Court should take it into consideration.

I will receive submissions from counsel respecting the penalty.

Dated at Kentville, Nova Scotia, this 21st day of May 2002.

D. William MacDonald
Judge of the Provincial Court of Nova Scotia