

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

THE COURT:

THE HONOURABLE MR. JUSTICE HOWARD L. IRVING

BETWEEN:

CANADIAN EGG MARKETING AGENCY

Plaintiff

- and -

FRANK RICHARDSON OPERATING AS NORTHERN POULTRY

Defendants

AND BETWEEN:

CANADIAN EGG MARKETING AGENCY

Plaintiff

- and -

PINEVIEW POULTRY PRODUCTS LTD

Defendants

**REASONS FOR DECISION OF THE
HONOURABLE MR. JUSTICE IRVING**

COUNSEL:

D. Wilson

J. Posynick

For the Plaintiff

G. McLennan

For the Defendants

**REASONS FOR DECISION OF THE
HONOURABLE MR. JUSTICE IRVING**

[1] On April 7, 1999, I made an Order in the action including, *inter alia*:

“IT IS HEREBY ORDERED THAT:

1. Pineview and Richardson are each enjoined from marketing in interprovincial trade eggs produced at their facilities at Hay River, Northwest Territories if Pineview or Richardson respectively:

- . . .
- (b) fail to report to the Agency by Tuesday, April 27, 1999, in accordance with the Agency's Seller's Interprovincial Declaration Form prescribed pursuant to the *Canadian Egg Licensing Regulations*, the quantity of eggs marketed from their facilities in interprovincial and export trade in the months of December, 1998 and January, February and March, 1999, other than in the case of the report by Richardson for December 1998, which shall be submitted by May 5, 1999;
 - (c) fail to report to the Agency in accordance with the Seller's Interprovincial Declaration Form prescribed pursuant to the *Canadian Egg Licensing Regulations*, by the 10th of each subsequent month the quantity of eggs marketed from their facilities in

interprovincial and export trade in the preceding month;

- (d) fail to pay to the Northwest Territories Egg Producers' Board (the "Board") by the Friday of each week the federal levy payable on each dozen eggs marketed in interprovincial and export trade in the preceding week as prescribed in section 3(1) of the *Canadian Egg Marketing Levies Order* (the "*Levies Order*"), for remittance by the Board to the Agency at the end of each subsequent week as prescribed in section 6(2) of the *Levies Order*; or

- 2. The federal levy payment under paragraph 1(d) of this Order for the period from April 7, 1999 to April 23, 1999 shall be paid by no later than Tuesday, April 27, 1999.
- 3. The Agency, as well as the Board, shall be entitled to enforce the payment of the federal levy under paragraphs 1(d) and 2 of this Order.
- 4. Pineview and Richardson are directed by no later than May 7, 1999, to account to the Agency the quantity of all eggs marketed from their respective facilities in interprovincial and export trade from the date of first production to date.

5. In order to enable the accounting referred to in paragraph 4 to be properly conducted:
 - (a) Pineview, its directors and shareholders, and its associates, Villetard Eggs, Villetard's Eggs Ltd., and Alberta Eggs Ltd., are directed to produce, by no later than May 7, 1999, all relevant documents pertaining to the quantity of eggs marketed in interprovincial and export trade from Pineview's facilities from the date of first production to date; and
 - (b) Richardson, his servants and agents, and his associates, 355210 Alberta Ltd., 103538 Alberta Ltd., and Alberta Eggs Ltd., are directed to produce, by no later than May 7, 1999, all relevant documents pertaining to the quantity of eggs marketed in interprovincial trade from Richardson's facilities from the date of first production to date."

[2] The Canadian Egg Marketing Agency (the "Agency") now seeks Summary Judgment against the Defendants for damages to be assessed, and for an Order holding the Defendants in contempt of the Order of April 7, 1999, and for other ancillary relief.

[3] Generally, the basis of the Agency's current applications are that it contends that the Defendants have marketed eggs in interprovincial trade during the months of December 1998,

January, February and March of 1999, but have failed to report their marketings to the Agency by May 5, 1999 or at all as required by paragraph 1.(b) of the Order.

[4] Also that the Defendants failed to report to the Agency appropriately by the 10th of each month, subsequent to the month of March 1999, respecting the eggs marketed from their facilities in interprovincial and export trade, as required by paragraph 1.(c) of the Order.

[5] Also that the Defendants failed to pay the Northwest Territories Egg Producers Board (the "Board") the appropriate federal levy payable on each dozen eggs marketed from their facilities in interprovincial and export trade, as required by paragraphs 1.(d) and 2. of the Order.

[6] Also that the Defendants failed to account to the Agency the quantity of all eggs marketed from their respective facilities in interprovincial and export trade from the first production to date, as required by paragraph 4 of the Order.

[7] During the hearing which resulted in my Order of April 7, 1999, counsel informed me that the Board was just in the process of being established, and that the Northwest Territories was following the common practice of provinces in appointing an egg producers board which would allocate egg marketing quotas to applicant egg producers in the Northwest Territories. The Board would also be expected to work cooperatively with the Agency in collecting the federal levies for the eggs marketed in interprovincial trade (the levies are reviewed periodically, and for 1999 were established at \$0.20 per dozen eggs) and to remit the levies promptly to the Agency (minus a small fraction of the federal levy which the Board was entitled to retain for its own administrative costs).

[8] At the opening of the Yellowknife hearings on December 20 and 21, 1999 into these applications, counsel for the Agency advised the Court of the startling development involving certain actions of the Board. He produced a Resolution of the Board dated December 14, 1999, a copy of which is attached to these Reasons.

[9] The Board duly forwarded its Resolution to the Northwest Territories Products Marketing Council, to whom the Board reports. Mr. R.P. Bailey of the Marketing Council replied under the date of December 17, 1999 (a copy of the relevant parts is attached Reasons).

[10] It may be noteworthy that members appointed to the Board included the Defendant Frank Richardson and his wife Marj Richardson, as well as Mr. Villetard of the Defendant Pineview. There is no evidence before me as to whether these members had any involvement in the Board's resolution of December 17, 1999.

[11] Mrs. McPherson, the solicitor for the Board, was present in the courtroom during much of these applications, and assisted me in advising that after the Board was established, it received remittances from time to time from Northern Egg totalling \$37,835.31 and remittances from time to time from Western Margarine totalling \$321,340.68; these remittances were in the form of

cheques which were not negotiated by the Board other than to allow the Board to pay its own administrative levy of \$2,636.94, and relayed \$53,238.47 to Mrs. McPherson who was to forward that sum to the Agency for its administrative expense. The great bulk of the federal levies was required by the Agency for its surplus egg removal program. Instead of paying to the Agency the balance of the levy (approximately \$300,000) the Board returned those funds to the producers.

[12] The Agency had, in part, premised its applications before me on the understanding that the federal levies had not been paid, and so was unaware that the Board had actually received levy remittances from producers, totalling about \$360,000, which should have been relayed to the Agency from time to time, promptly, after the remittances had reached the Board.

[13] Accordingly, these actions by the Board of failing to remit the federal levies received from time to time by the Board, or to advise the Agency about them, have left the Agency's applications in some disarray. I assume the Agency will, if necessary, take action to recover back from the producers the amounts of the levies refunded to them by the Board which it should have relayed to the Agency.

[14] One of those producers is a company, 318290 Alberta Ltd., operating as Western Margarine, which, although not a party to these actions, was included as a non-party target in the Agency's Notice of Motion in these enforcement proceedings. Western Margarine had not been mentioned in my Order of April 7, 1999. The only evidence before me is that during 1999, Western Margarine had marketed eggs interprovincially for which it paid the Board federal levies totalling \$321,340.68. I understood that the Agency learned of Western Margarine by receiving egg marketing reports from them.

[15] I am not persuaded that the Agency's attempt to obtain relief from Western Margarine, a non-party to the litigation, was appropriate. Accordingly, the claim against it is dismissed with costs.

[16] Another issue has arisen from my Order of April 7, 1999 relating to the Accounting required by paragraph 4. and the Production of Documents required by paragraph 5. The Agency interprets the Order to require an appropriate accounting by each Defendant pursuant to the Supreme Court Rule #436. The Defendants interpret the Order simply to require them to produce documents, so that the Agency itself would have to perform the Accounting. No Accounting has yet been done, although the Defendants say that all documents are available for production. The Order of April 7, 1999 means what it says. Pineview and Richardson must prepare and supply the Accounting to the Agency in accordance with the Rule. I will extend the time for completion of the Accounting to March 10, 2000.

[17] The Defendants, in their affidavits, and through their counsel, have denied that they have marketed eggs interprovincially since the Order of April 7, 1999. In relation to the Defendant

Richardson, Mr. McLennan urged that he was not personally marketing eggs, but that this may have been done by the limited companies which he operated.

[18] The Agency has alleged in its affidavits that the Defendants have indeed been marketing eggs in interprovincial trade, all without providing the Agency with the required reports detailing the eggs marketed, or receiving the federal levies required to be paid.

[19] The dispute between the parties seems to be a contest of affidavits. I am satisfied that resolution of the dispute requires a trial of the issues in dispute.

[20] Accordingly, in order to determine whether the Agency can recover damages against the Defendants, or either or them, I direct the trial of the issues in dispute, which I understand to be:

- 1) Have the Defendants, or either of them, marketed eggs produced in the Northwest Territories in interprovincial trade from the date of first production to November 30, 1999, without holding an appropriate licence to do so pursuant to the Canadian Egg Licensing Regulations, 1987, as amended?
- 2) If so, did the Agency suffer damage, and what is the quantum of damage?
- 3) Does the Agency have legal capacity to claim and recover judgment for such a claim in damages?
- 4) Have the Defendants, or either of them, marketed eggs in interprovincial trade from December 1, 1999, to the time of trial, and so, have the appropriate federal levies been paid in relation to such marketings?

[21] Other issues were advanced by the Agency, such as whether the Defendants are in contempt of court in relation to the Order of April 7, 1999; the Defendant Richardson had sought an Order to substitute a company for him as a Defendant, and the Defendant Pineview has moved to amend its Statement of Defence.

[22] The motions were not dealt with before me on December 20 and 21, 1999 and, accordingly, the Defendants may apply to the Court to resolve them.

[23] Further, if any party wishes to vary or enlarge upon the issues for trial set out above, he may apply further to the Court to do so.

JUDGMENT DATED at YELLOWKNIFE, NORTHWEST TERRITORIES
this 7TH Day of FEBRUARY, 2000

IRVING, J.A.
DEPUTY JUDGE