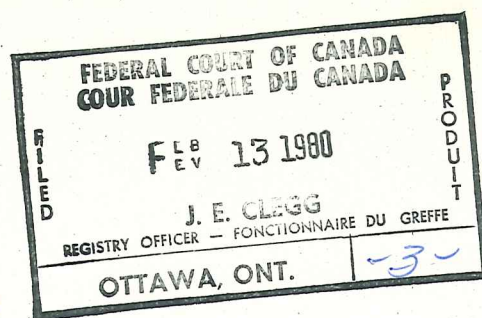




Federal Court of Canada  
Trial Division



Court No.: T-453-80

IN THE MATTER of an Application by  
MAPLE LODGE FARMS LIMITED pursuant  
to Section 18 of the Federal Court  
Act;

AND IN THE MATTER OF a proceeding  
for a Writ of Mandamus for relief  
in the nature of a Writ of Mandamus  
to the Ministry of Economic Development  
responsible for Industry, Trade and  
Commerce;

AND IN THE MATTER OF the Export and  
Import Permits Act 1953-54, Statutes  
of Canada, Chapter 27, as amended,  
and the Regulations thereunder.

BETWEEN:

MAPLE LODGE FARMS LIMITED,

Applicant,

- and -

GOVERNMENT OF CANADA AND THE MINISTER  
OF ECONOMIC DEVELOPMENT, responsible  
for INDUSTRY, TRADE AND COMMERCE,

Respondents.

REASONS FOR ORDER

DUBE, J.:

The applicant moves the Court for a writ of mandamus ordering the Minister to issue supplementary import permits allowing the applicant to import four million pounds of live chicken under five pounds.

In his affidavit in support of the motion Robert J. May, Secretary-Treasurer of the applicant, says that Maple Lodge Farms Limited has been in business since 1956 as a poultry-processor and employs some five hundred and forty employees. Until February 1979 chicken was not a regulated item under the *Export and Import Permits Act*<sup>1</sup> or the Regulations thereunder. On October 19, 1979 a regulation was passed under the Act restricting the amount and number of chickens permitted to be imported into Canada. At that time a Notice to Importers was issued advising that chicken in Canada would be subject to a global import quota effective October 22, 1979. Under that quota the applicant's entitlement for the balance of the calendar year was 1,775,997 pounds eviscerated weight.

For the year 1980 the global import quota was approximately 48 million pounds and the applicant's entitlement thereunder was to be 9,448,306 pounds. Appended to the said notice was the Annex of Conditions and Procedures governing the issuance of supplementary import permits.

Foreseeing the shortfall in its requirements the applicant applied on several occasions for supplementary import permits which applications were only granted in part. Further requests for supplementary import permits made during the months of December 1979 and January 1980 have been refused by the Minister.

The affiant states that unless the applicant receives supplementary import permits forthwith it will be unable to supply its longstanding and reliable customers and will suffer losses of profit in the short term, and loss of permanent business in the long term. It will have to lay off many of its staff with resultant hardship.

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<sup>1</sup> R.S.C. 1970 Ch. E-17

As I pointed out at the opening of the hearing a writ of mandamus is a matter for the discretion of the Court and will be granted only where there is a specific legal right and no other remedy: therefore the applicant must show that there resides in him a legal right to the performance of a legal duty by the Minister. Moreover, the subject matter of the writ must be clear and the act sought must be a duty imperative and not discretionary.

Under section 5 of the Act the Governor in Council may establish a list of goods, to be called an Import Control List, including therein any article the import of which he deems it necessary to control for any of the purposes outlined in the subsections, including subsection (a.1) which reads:

(a.1) to restrict, for the purpose of supporting any action taken under the *Farm Products Marketing Agencies Act*, the importation in any form of a like article to one produced or marketed in Canada the quantities of which are fixed or determined under that Act.

Section 8 deals with import permits. It reads:

8. The Minister may issue to any resident of Canada applying therefor a permit to import goods included in an Import Control List, in such quantity and of such quality, by such persons, from such places or persons and subject to such other terms and conditions as are described in the permit or in the regulations.  
(my underlining)

Under section 12, the Governor in Council may make regulations prescribing the information and undertakings to be furnished by applicants for permits. One such regulation

is the Import Control List which includes under number 19:

19. Chickens and chicken capons,  
live or eviscerated parts and  
products manufactured wholly  
thereof.

The Regulations respecting Import Permits provide under section 3 that a resident of Canada may apply for a permit by furnishing the information described in subsections (a) to (k). Section 4 prescribes that "a permit shall be in the form set out in the schedule". The Notice to Importers of October 19, 1979 describes the chicken import quota, the quota allocation and the issuance of permits.

The Annex to the Notice describes the conditions and procedures governing the issuance of supplementary import permits. It announces that "if required to fill specific Canadian market needs, additional quantities of chicken and chicken products may be allowed to enter Canada supplementary to the basic quota."

The basic argument of learned counsel for the applicant is that the Minister has no discretion on the issuance of permits, the matter being entirely in the hands of the Governor in Council: the only function of the Minister would be the signing of the permits.

With all due respect, I cannot accept that argument. While under section 5 of the Act it is for the Governor in Council to establish an Import Control List, section 8 of the Act makes it discretionary and not mandatory for the Minister to issue import permits "in such quantity and of such quality, by such persons, from such places and subject to such other terms and conditions as described in the permit or in the regulations." The discretion of the Minister is further confirmed by section 10 which provides that "the Minister may amend, suspend, cancel or reinstate any permit."

If the Minister who is entrusted with the administration of an Act should decide not to issue permits, which he has the discretion to issue or not to issue, it is not for the Court to order him to do otherwise; unless his decision be unreasonable or tainted with bad faith. In *British Oxygen Co. Ltd. and The Minister of Technology*,<sup>2</sup> the House of Lords held that the Minister has a discretion under the *Industrial Development Act 1966* and is not bound to pay a grant to every person who is eligible to receive one. Lord Reid said at page 624:

. . . If the Minister who now administers the Act, acting on behalf of the Government, should decide not to give grants in respect of certain kinds of expenditure, I can find nothing to prevent him. There are two general grounds on which the exercise of an unqualified discretion can be attacked. It must not be exercised in bad faith, and it must not be so unreasonably exercised as to show that there cannot have been any real or genuine exercise of the discretion. But, apart from that, if the Minister thinks that policy or good administration requires the operation of some limiting rule, I find nothing to stop him.

There is no suggestion of unreasonableness or bad faith on the part of the respondent Minister. He is acting within the scope of his authority and in furtherance of the purpose of the Act, which is to restrict the importation of chicken to protect the Canadian production, thus acting in support of the *Farm Products Marketing Agencies Act*, as provided for by subsection 5(a.1). Surely, it is not for the Court to interfere with the Minister's discretionary powers in the performance of his duties.

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<sup>2</sup> *British Oxygen Co. Ltd. and Minister of Technology*  
[1971] A.C. 610

However much sympathetic I might be to the plight of the applicant, I have no alternative but to deny his application.

O R D E R

The application is denied with costs.

O T T A W A  
February 13, 1980

J. F. C. C.

