

**Date: 20080225**

**Docket: A-146-07**

**Citation: 2008 FCA 74**

**CORAM: DÉCARY J.A.  
LÉTOURNEAU J.A.  
SHARLOW J.A.**

**BETWEEN:**

**DUNN-RITE FOOD PRODUCTS LTD.**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA and CHICKEN FARMERS OF CANADA**

**Respondents**

Heard at Winnipeg, Manitoba, on February 25, 2008.

Judgment delivered from the Bench at Winnipeg, Manitoba, on February 25, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

**Date: 20080225**

**Docket: A-146-07**

**Citation: 2008 FCA 74**

**CORAM: DÉCARY J.A.  
LÉTOURNEAU J.A.  
SHARLOW J.A.**

**BETWEEN:**

**DUNN-RITE FOOD PRODUCTS LTD.**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA and CHICKEN FARMERS OF CANADA**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Winnipeg, Manitoba, on February 25, 2008)**

**SHARLOW J.A.**

[1] This is an appeal from a judgment of Justice Phelan (2007 FC 218) dismissing the application of Dunn-Rite Food Products Ltd. (“Dunn-Rite”) for judicial review of the decision of Chicken Farmers of Canada to impose a levy of almost \$60,000 on Dunn-Rite for failing to market a certain shipment of chicken within the time constraints imposed by the terms of the market development licence issued to it under the *Canadian Chicken Licensing Regulations*, SOR/2002-22. We are all of the view that this appeal cannot succeed.

[2] By virtue of paragraph 5(3)(d) of the *Regulations* as in force at the relevant time, Dunn-Rite was required to market the chicken “during the market development commitment period”. It is undisputed that in this case the market development commitment period ended on March 5, 2005.

[3] There is a dispute as to how to determine when the marketing of the chicken was completed. It appears that Chicken Farmers of Canada uses the date of the issuance of the Certificate of Inspection Covering Meat Products (Form CFIA 1454) as the indicator of the last act of marketing for exported chicken. In this case, that form was issued on March 9, 2005.

[4] Dunn-Rite argues that Chicken Farmers of Canada erred in law in using the date of issuance of Form 1454 as conclusive proof of the date of the completion of marketing. We do not accept that argument. In our view, given the statutory scheme and the manner in which chicken is normally exported, Chicken Farmers of Canada was entitled to use the date of issuance of the Form 1454 as *prima facie* proof of the date of completion of marketing. In other words, Chicken Farmers of Canada was entitled to rely on the date on that form as proof, in the absence of evidence to the contrary, that marketing ceased on that date. However, it was open to Dunn-Rite to present evidence that in the particular circumstances of this case, marketing ceased on some earlier date.

[5] Indeed, that is what Dunn-Rite attempted to do. It presented evidence to Chicken Farmers of Canada in an attempt to establish that, in fact, marketing was completed on or about February 25, 2005, because by that time the chicken was so far advanced in the export process that Dunn-Rite could not have stopped the export procedure. That argument did not persuade Chicken Farmers of Canada. Nor did it persuade Justice Phelan. We have no basis for disturbing that factual conclusion.

[6] This appeal will be dismissed with costs.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-146-07

**(APPEAL FROM A JUDGMENT OR ORDER OF THE FEDERAL COURT DATED  
FEBRUARY 26, 2007, DOCKET NO. T-1425-05)**

**STYLE OF CAUSE:**

DUNN-RITE FOOD PRODUCTS  
LTD v.  
ATTORNEY GENERAL OF  
CANADA and CHICKEN  
FARMERS OF CANADA

**PLACE OF HEARING:**

Winnipeg, MB

**DATE OF HEARING:**

February 25, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:**

Décary, Létourneau, Sharlow JJ.A.

**DELIVERED FROM THE BENCH BY:**

Sharlow, J.A.

**APPEARANCES:**

William R. Murray and David B. Kovnats  
David K. Wilson and Anne M. Tardif

FOR THE APPELLANT  
FOR THE RESPONDENT  
(CHICKEN FARMERS OF  
CANADA)

Kevin Staska

FOR THE RESPONDENT  
(ATTORNEY GENERAL OF  
CANADA)

**SOLICITORS OF RECORD:**

Murray & Kovnats - Winnipeg, MB  
Fasken Martineau DuMoulin LLP - Ottawa, ON

FOR THE APPELLANT  
FOR THE RESPONDENT  
(CHICKEN FARMERS OF  
CANADA)

John Sims, Q.C.,

FOR THE RESPONDENT

Deputy Attorney General of Canada – Ottawa, ON

(ATTORNEY GENERAL OF  
CANADA)