CITATION: Ontario Association of Chicken Processors v. Ontario Broiler Hatching Egg & Chicken Commission, 2025 ONSC 4174
DIVISIONAL COURT FILE NO.: DC-22-0066 (Brampton)
DATE: 20250716

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, B. Fitzpatrick and P. Hebner JJ.

BETWEEN:	)	
	)	
Association of Ontario Chicken Processors	)	*Herman Turkstra and Paul Daly*, for the Applicant
	)	
Applicant	)	
	)	
– **and** –	)	
	)	
Ontario Broiler Hatching Egg & Chicken Commission and Chicken Farmers of Ontario	)	*Trent Johnson and Eric Davis*, for the Commission
	)	
	)	*Geoff Spurr*, for the CFO
Respondents	)	
	)	**HEARD at Brampton:** June 15, 2023

ENDORSEMENT

The Court

[1] On the day of the hearing we allowed this application, quashed the impugned decision, and directed a fresh hearing, with these reasons to follow. As expressed to the parties orally on the day of the hearing, the Tribunal mishandled the competing expert evidence before it, failed to give adequate reasons for its findings, and accordingly the impugned decision could not stand.

[2] This is an application for judicial review of the decision of the Agriculture, Food and Rural Affairs Appeal Tribunal (the "Tribunal") dated August 23, 2022, upholding a decision of the respondent Ontario Broiler Hatching & Egg Commission (the "Commission" or "OBHECC") respecting a 'Cost of Production Formula" ("COPF") used to set prices for chicks sold to chicken farmers (2022 ONAFRAAT 20 (CanLII).

Jurisdiction and Standard of Review

[3] An appeal to the Tribunal is a *de novo* hearing; the Tribunal is authorized "to substitute its opinion" for the impugned Commission decision: *Ministry of Agriculture, Food and Rural Affairs Act*, RSO 1990, c. M.16, s. 16(11); *Chicken Farmers of Ontario* v. *OFPMC*, 2001 ONAFRAAT 4 (CanLII). There is no appeal from the Commission's decision.

[4] This court has jurisdiction to hear an application for judicial review of the Tribunal's decision pursuant to s. 6(1) of the *Judicial Review Procedure Act*, RSO 1990, c. J.1. The standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration* v. *Vavilov*, 2019 SCC 65.

[5] A reasonable decision must be justified by the Tribunal's reasons: it is not sufficient that there may be a basis in the evidence for the Tribunal's findings: *Vavilov*, para. 74, 86.

> [Stating] that regard was had [by the Tribunal] for issues raised, the voluminous material, and established principles, without analysis of those issues, materials and principles, is conclusory.
>
> ….
>
> It is not a question of whether the decision could be justified on the evidence, but rather whether the decision was justified in the Board's reasons, that is, whether the Board used evidence and analysis to come to a logical, transparent and, thus, reasonable decision.
>
> (*Scarborough Health Network* v. *Canadian Union of Public Employees, Local 5852*, 2020 ONSC 4577, para. 26, 8 [Div. Ct.]).

The Impugned Decision

[6] After addressing preliminary issues not in issue in this appeal and providing background information about the parties and the applicable statutory scheme, the Tribunal stated the issues before it as follows, all related to setting the prices of chicks (Decision, para. 46):

> These are the issues before the Tribunal in this hearing.
>
> > 1) Use the five-year rolling average of the prime rate, updated at each pricing update, for the purpose of calculating the debt rate of fixed assets, rather than the prime rate in effect on the date of each pricing update;
> >
> > 2) Exclude depreciation from the calculation of working capital levels;
> >
> > 3) Use a benefits rate for farm labour of 22.5%, rather than 20%;
> >
> > 4) Use [of] Statistics Canada's V103507794 vector for labour rate for full-time skilled labour, rather than vector V103507362;

> 5) Use [of] a real rate of return, rather than a nominal rate of return, in the context of the COPF's capital model; and
>
> 6) Add a 1% risk premium to the Ontario Energy Board return on equity rate for Breeder Growers in the COPF's capital model.

[7] The evidence before the Tribunal included (i) two experts for the Applicant, whose qualifications and evidence are summarized at paras. 49-75 of the Decision; (ii) two experts and the Executive Director of OBHECC for the Respondent, whose qualifications and evidence are summarized at paras 77-96 of the Decision; and (iii) two experts called by CFO and evidence of Dr Groenwegen (who was not tendered as an expert witness), whose qualifications and evidence are summarized at paras. 97-110 of the Decision.

[8] The Tribunal then stated the following principles (Decision, paras. 111-115):

> This appeal might be sub-titled "The Battle of the Experts"; between the experts who testified on behalf of the [Applicant], urging changes to the present OBHECC COPF, and the experts who gave evidence on behalf of the respondent, supporting the present OBHECC COPF, and the experts called by the Third Party, who also supported the present OBHECC COPF.
>
> The members of this Tribunal are not accountants, business valuators or economists. The Tribunal's role is not to decide which of the opinions is correct. If that were the case, then expert opinions would not be necessary as the Tribunal could give its own opinion.
>
> The task of the Tribunal is to decide which of the expert reports are the most reliable and acceptable on each issue based on the following points ("Consideration Points"):
>
> 1) The credentials and experience of the expert;
>
> 2) The reasonableness of both the analysis and result;
>
> 3) Compliance with the pillars of the COPF and the guidelines of the COPF Committee; and
>
> 4) Whether the affect (sic) of the change to the COPF was just and reasonable.
>
> Each of the expert witnesses has provided a written report and given oral testimony. After considering the testimony of the expert and his/her expert report(s), the Tribunal must decide which expert reports are the most reliable and acceptable on each issue.

> The appellant has the onus of proof on this appeal. The appellant's expert reports and testimony must be considered the most reliable and acceptable to the Tribunal in order for the appellant to be successful on each issue.

[9] The Tribunal then provides its disposition, together with entirely conclusory reasons – in two brief paragraphs for the first issue, and one brief paragraph for each of the rest of the issues. We quote these reasons in their entirety (Decision, paras. 116-118):

> **Prime Rate Issue**
>
> [116] On this issue, the Tribunal prefers the evidence of John Todd and his Elenchus report. Based on his extensive credentials and experience and the compliance with the other Consideration Points, the Tribunal finds his report to be the most reliable and acceptable.
>
> [117] The Tribunal also accepts the report of Robert Low on this issue as being reliable and acceptable.
>
> **Exclusion of Depreciation Issue**
>
> [118] On this issue, the Tribunal finds, having considered the Consideration Points, that the expert reports of both John Todd and Robert Low are the most reliable and acceptable and that depreciation should not be excluded when calculating working capital levels.
>
> **Benefit Rates for Farm Labour**
>
> [119] The Tribunal finds that the expert report of Robert Burden, when compared to that of James Forbes, is more compelling on this issue after considering the Consideration Points, and the Tribunal finds that it is the most reliable and acceptable.
>
> **Full-time Labour Rate**
>
> [120] The Tribunal finds that the report of Dr. Rafael Gomez, is the most reliable and acceptable on this issue. His credentials and experience are extensive and his rationale reasonable and complies with all Consideration Points.
>
> **Real Versus Nominal WACC**
>
> [121] The reports of both John Todd and Robert Low supported the continued use of the nominal WACC. The Tribunal finds that they are more reliable and acceptable, after applying the Consideration Points, than the position taken by Paula Frederick.
>
> **Risk Premium**

> [122] On this issue, the Tribunal accepts the conclusions of both John Todd and Robert Low and finds that their reports are more reliable and acceptable after looking at the Consideration Points.

[10] It is hard to imagine more conclusory reasons than these.

[11] Long gone are the days where the authoritative claim of an expert may be accepted just because of the expert's expertise: Hon. Stephen T. Goudge, *The Report of the Inquiry into Pediatric Forensic Pathology in Ontario* (Toronto: Queen's Printer for Ontario, 2008). It is the expert's analysis that is the substance of their evidence, and where there are competing expert opinions, it is the task of the Tribunal to roll up its sleeves, analyse the substance of the expert evidence, and in particular, the points of difference between competing expert opinions, and then to explain – with reference to the expert evidence – why one analysis is preferred over another. Listing the analytical tools used to assess expert evidence, saying that these points have been considered, and then announcing the Tribunal's conclusion, fails to explain why an application of the "Consideration Points" to the evidence leads to the Tribunal's findings. As stated by Huscroft JA:

> In order to reach a reasonable decision in this case, it was incumbent on the board to address the conflicts and ambiguities in the expert evidence. The board was entitled to accept some, all or none of the expert's evidence, but, whatever it chose to do, the board was required to explain and justify its decision (*Re Carrick*, 2015 ONCA 866, para. 38).

[12] The Tribunal mis-stated its task when it noted as follows:

> The members of this Tribunal are not accountants, business valuators or economists. The Tribunal's role is not to decide which of the opinions is correct. If that were the case, then expert opinions would not be necessary as the Tribunal could give its own opinion.

It is, of course, not the task of the Tribunal to come to its "own opinion" on matters in issue requiring expert evidence. Rather, it is the task of the Tribunal to make findings of fact on the basis of evidence that it accepts. Where a factual issue is contested, the Tribunal's task is to explain its finding. It very much is the Tribunal's role to decide which facts are "correct" – that is, which facts the Tribunal accepts on the basis of the evidence before it. As stated by the Supreme Court of Canada, a proceeding should not become "a contest of experts with the trier of fact acting as a referee in deciding which expert to accept" (*White Burgess Langille Inman* v. *Abbott and Haliburton Co.*, 2015 SCC 23, para. 18. See also *R.* v. *J.-L.J.*, 2000 SCC 51, para. 56, *Canada* v. *Piot*, 2019 FCA 53, para. 38).

[13] This was a seriously contested clash of expert evidence on questions of importance to the parties. The Tribunal's reasons fail to provide a reasoned explanation to the losing party as to why its expert evidence was not accepted and fail to provide sufficient analysis to enable review for substantive reasonableness in this court. In short, the reasons are inadequate.

[14] The Tribunal's decision is set aside, and the case is remitted back to a differently constituted Tribunal for a fresh hearing. There shall be no order as to costs.

_"D.L. Corbett J."

"B. Fitzpatrick J."

"P. Hebner J."

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