IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT, R.S.B.C. 1996, c.330 (as amended)

AND IN THE MATTER OF THE
BRITISH COLUMBIA MUSHROOM SCHEME

AND IN THE MATTER OF THE
GENERAL ORDERS OF THE
BRITISH COLUMBIA MUSHROOM MARKETING BOARD

AND IN THE MATTER OF A
REVIEW OF THE AGENCY DESIGNATION OF
ALL SEASONS MUSHROOM FARMS INC.

FINDINGS AND DECISION OF THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD REVIEW OF ALL SEASONS MUSHROOM FARMS INC.'S VIABILITY AS AN AGENCY

I. INTRODUCTION

1. In March 1997, All Seasons Mushroom Farms Inc. ("All Seasons") applied to the British Columbia Mushroom Marketing Board ("Mushroom Board") for designation as a marketing agency pursuant to the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c.330 and the British Columbia Mushroom Scheme, B.C. Reg. 153/66 (as amended).

2. The Mushroom Board referred All Seasons' agency application to the British Columbia Marketing Board ("BCMB") in May 1997 following a determination by the Mushroom Board that it lacked the necessary quorum to hear the application. The BCMB considered All Seasons' agency application in June and July of 1997. In a decision dated August 19, 1997, the BCMB directed the Mushroom Board to grant All Seasons agency status, subject to certain specified conditions.

3. On September 10, 1997, the Mushroom Board issued an order granting agency status to All Seasons.

4. Around the time of the issuance of this agency licence, or shortly thereafter, relations among the proponents of the All Seasons application began to deteriorate. On May 7, 1998, in the course of a decision relating to an appeal from a Mushroom Board order by Truong Mushroom Farm Ltd. (one of the shareholders of All Seasons) the BCMB considered the internal problems which were apparent in All Seasons at that time. The BCMB ordered the Mushroom Board to give All Seasons a period of 90 days from May 7, 1998 to prove that it can operate as a viable agency. In its written reasons dated May 22, 1998, the BCMB further reasoned at paragraph 197 that: "If after 90 days All Seasons could not demonstrate its viability, then the Mushroom Board should revoke its agency license."

5. The Mushroom Board has conducted an investigation and review of the agency status of All Seasons, partially in response to the BCMB direction of May 7, 1998 and partly as required during the normal course of the Mushroom Board's regulation of the mushroom industry. The Mushroom Board's investigation and review process, which began in February 1998, has included: (1) numerous written submissions from the parties who now represent the rival factions of All Seasons principals; (2) a public hearing held on October 7 and 8, 1998; and (3) separate meetings in October between the Mushroom Board and each of the parties purporting to represent All Seasons. Furthermore, since the meetings in October 1998, the Mushroom Board has also received additional written submissions from the parties on the question of whether the Mushroom Board can properly rely on the Registrar of Company records to determine the proper directors and shareholders of All Seasons in circumstances where the Mushroom Board has received notice of a dispute among various persons each claiming to be directors and/or shareholders.

II. BACKGROUND

6. In February 1998, the Mushroom Board was alerted to an irregularity in the operations of All Seasons when it received two applications for agency licence forms with accompanying fees from two different representatives of All Seasons. In response, on February 18, 1998 the Mushroom Board sent a letter to All Seasons care of its solicitor, Mr. Critchley,

requesting that certain specified information be provided. The Mushroom Board requested clarification of where correspondence should be sent, the identity of the officers and principals of All Seasons, and the identity of those persons authorized to represent All Seasons.

7. The first response to the Mushroom Board's request for information came not from Mr. Critchley, but from counsel for Martin Chia and G.M. Mushroom Farms Limited by letter dated March 11, 1998. Counsel for Mr. Chia stated that there was an ongoing dispute among the investors in All Seasons with respect to the respective shareholdings of the various investors. Mr. Chia's position, simply put, was that the company had not been organized, no officers had been appointed, and no shares had been issued to the intended shareholders. According to Mr. Chia, the intended shareholders of All Seasons were to be Mr. Chia, Ty Truong, the Do family, and Binh Trinh, or their respective corporate vehicles. In Mr. Chia's submission, Mr. Truong and Mr. Hung Do were and remained the sole directors of the company and as a result of a disagreement with respect to the proper issuance of shareholdings, the directors were deadlocked.

8. Also on March 11, 1998, the Mushroom Board received a response to its request for information from Do Holdings Ltd. and the Do family ("Do Holdings") through their legal counsel, Mr. Davies. According to this letter, Mr. Hung Do agreed with the accuracy of the responses contained in Mr. Chia's letter. Mr. Do further advised that he did not expect the dispute to be resolved in the near future, and that All Seasons would accordingly be left in a state of limbo for the foreseeable future.

9. Both of these responses were forwarded to Mr. Critchley on March 16, 1998, as no reply had yet been received from Mr. Critchley to the Mushroom Board's initial request for information.

10. On May 7, 1998, the BCMB released its decision which ordered, among other things, the Mushroom Board to give All Seasons a period of 90 days to prove it could operate as a viable agency, failing which its licence should be revoked by the Mushroom Board (written reasons for this decision followed on May 22, 1998). On May 13, 1998, the Mushroom Board

received a response to its request for information from Mr. Ty Truong, director of All Seasons and representative of Truong Mushroom Farm Ltd., the latter being a shareholder in All Seasons. Mr. Truong confirmed the existence of a disagreement about the directorships and shareholdings of All Seasons. Mr. Truong also confirmed that the dispute is between Truong Mushroom Farm Ltd. and White Pearl Mushroom Farm Ltd. (the "Truong Group") on the one hand, and Do Holdings and Martin Chia on the other hand. He further claimed that the origin of the dispute was the allegation by Mr. Chia that he is entitled to be a shareholder of All Seasons, which claim is disputed by the Truong Group but supported by Do Holdings.

11. Mr. Truong's letter also set out the extent of the disagreement among the parties with respect to the authority to operate All Seasons. In Mr. Truong's view, the directors of All Seasons in May 1998 were: Mr. Truong, Mr. Binh Trinh and Mr. Daniel Do. In contrast, Mr. Chia and Do Holdings say that the directors are Mr. Truong and Mr. Hung Do. In addition, Mr. Truong stated that he was the President of All Seasons and that Mr. Daniel Do was the Secretary. In contrast, Mr. Chia and Do Holdings stated that no officers had been properly appointed. Finally, Mr. Truong stated that the shareholders of All Seasons were as follows:

(a) Truong Mushroom Farm Ltd. - 371 Class A Shares
(b) Do Holdings Ltd. - 371 Class A Shares
(c) White Pearl Mushroom Farm Ltd. - 258 Class A Shares

Mr. Chia and Do Holdings said that no shares had been properly issued.

12. On June 8, 1998, the Mushroom Board received further correspondence from counsel for Do Holdings, Mr. Davies. Mr. Davies advised that there had been no change in the status of All Seasons in that neither the directors nor the shareholders had come to any resolution as to a course of conduct for the company. Mr. Davies raised a concern that Mr. Truong had unilaterally declared himself to be in charge of the company, and asserted the position of Do Holdings that any documentation presented to the Mushroom Board by Mr. Truong on behalf of All Seasons had been illegally created and might be the subject of litigation.

13. Also on June 8, 1998, the Mushroom Board received a letter from Hung Do, on All Seasons letterhead, stating that he had been contacted by growers hoping to sell through All Seasons. He stated his intention to begin operating the All Seasons agency independently of Mr. Truong, Mr. Trinh and Mr. Chia. This letter was the first indication to the Mushroom Board that the rival factions for control of All Seasons intended to put forward two separate agencies, each operating under the All Seasons name and under the one agency licence issued by the Mushroom Board.

14. On June 10, 1998, the Mushroom Board delivered another request for information to all parties involved in the All Seasons dispute: Mr. Truong, Mr. Hung Do, Mr. Chia, Mr. Trinh and their respective counsel. In this letter, the Mushroom Board again requested that the parties supply such information as the address and phone number of All Seasons, contact persons at the office and warehouse, and the identity of the officers and principals of All Seasons.

15. The Mushroom Board received three different responses to its June 10 request for further information. Mr. Critchley, on behalf of All Seasons and presumably on the instruction of the Truong Group, replied with detailed information with respect to the location of All Seasons' office and warehouse, and the identity of office and warehouse personnel and other advisors. Mr. Critchley again asserted that the shareholders of All Seasons were Truong Mushroom Farm Ltd., White Pearl and Do Holdings. He also advised that as of June 5, 1998 (the alleged date of the Annual General Meeting of the shareholders of All Seasons) the officers of the company were Mr. Truong, President and Mr. Binh Trinh, Secretary. Mr. Truong enclosed the register of officers of All Seasons, which indicated that Daniel Do, who had been appointed Secretary on September 9, 1997, ceased to hold that position on June 5, 1998, at which time Mr. Trinh was appointed Secretary.

16. In stark contrast, the response received from Mr. Mitchell, on behalf of Mr. Chia, asserted that All Seasons has no office, no office personnel or employees, no warehouse, no accountant and no officers. Contrary to the assertion in Mr. Critchley's letter that a shareholders meeting was held on June 5, 1998, at which Mr. Trinh was appointed Secretary, Mr. Mitchell asserted that there had never been any meeting of the two directors (Hung Do and Mr. Truong),

that those directors have never called an Annual General Meeting, that there has never in fact been an Annual General Meeting, and that shares in the company have never been issued by those directors. Mr. Mitchell also questioned whether All Seasons could lawfully enter a contract to market the regulated product of White Pearl; the Mushroom Board had previously been advised of the existence of such a contract, although a copy had not yet been delivered to the Mushroom Board. Mr. Mitchell asserted that no such arrangement had been approved by the directors of All Seasons and that any actions taken by Mr. Truong or Mr. Trinh in respect of All Seasons are not authorized by the shareholders and are unlawful.

17. The third response received by the Mushroom Board, from Mr. Davies on behalf of Do Holdings, essentially adopted the comments expressed by Mr. Mitchell. Mr. Davies also reiterated his opinion that All Seasons was not in a lawful position to execute a contract with White Pearl or with any other party.

18. On July 3, 1998, the Mushroom Board circulated all of the responses received to its June 10, 1998 request for information, and requested that all parties deliver any response to this correspondence to the Mushroom Board by July 17, 1998. The Mushroom Board advised all parties that upon receiving these responses, the Mushroom Board intended to schedule a meeting with representatives from All Seasons to address any outstanding issues.

19. Again, counsel for all three parties submitted responses. Mr. Davies, on behalf of Do Holdings, asserted that Mr. Truong and Mr. Trinh, following the unlawful appointment of Mr. Trinh as director, purported to hold a number of "sham" director meetings during the spring of 1998. Mr. Hung Do was notified of those meetings, but refused to attend if Mr. Trinh would be in attendance, purporting to act as a director. Mr. Davies further asserted that at one of those "sham" director meetings, the "Board" set a date for the Annual General Meeting to be held on June 5, 1998. The General Meeting was not attended by Do Holdings or the Chia family. Mr. Davies further asserted that the General Meeting was not duly constituted because the true board of directors did not call the meeting and quorum was not likely established. Do Holdings reaffirmed its position that the company continues to be stalemated, and that it is not in a position to enter into contracts, hire staff, borrow money, operate a bank account or carry on business in

any other manner. Do Holdings also expressed the opinion that permitting the agency designation of All Seasons to continue would be to ensure that the uncertainty and potential chaos surrounding the company would permeate the industry, causing significant damage and disrepute.

20. Mr. Mitchell's response, on behalf of Mr. Chia, was similar. Mr. Mitchell again expressed his view that the corporate activities of All Seasons had been based on a fundamental misapprehension, namely that Mr. Truong and Mr. Trinh had become the sole directors of All Seasons. Mr. Mitchell raised several questions with respect to the activities of All Seasons, including the following. Who called the annual general meeting purportedly held on June 5, 1998? If the meeting was called by Mr. Truong alone, under what authority did he act? If the meeting was called by Mr. Truong and Mr. Trinh, under what authority did Mr. Trinh act? How did Mr. Trinh become a director?

21. In Mr. Critchley's response, on behalf of the Truong Group, he first submitted that the Mushroom Board is not the appropriate tribunal to make decisions respecting the legality of corporate proceedings. In Mr. Critchley's view, the appropriate forum for the resolution of these matters is the Supreme Court of British Columbia. He further noted that prior to the formal issuance of shares by All Seasons, an invitation was extended to Mr. Hung Do and Mr. Chia to make an application in the Supreme Court of British Columbia for an injunction, but that no such proceedings have been taken. Finally, Mr. Critchley asserted that the steps taken in the company could be legally sustained in light of the provisions of Articles 13.5 through 13.7 of the company. Mr. Critchley also enclosed executed mushroom grower contracts between All Seasons and Truong Mushroom Farm Ltd. (dated May 7, 1998) and between All Seasons and White Pearl (dated May 19, 1998).

22. In the meantime, the Mushroom Board was made aware of two contradictory letters which had been delivered to all registered B.C. mushroom growers on All Seasons letterhead, one signed by Hung Do as director of All Seasons and the other signed by Ty Truong, President and Binh Trinh, Secretary. The letter from Mr. Truong and Mr. Trinh invited B.C. mushroom growers to contact All Seasons to discuss the possibility of marketing product

through All Seasons. The letter from Mr. Do warned of the ongoing dispute within All Seasons and stated that as a result of the dispute, the right of All Seasons to enter into contracts is questionable and there is an issue as to whether such contracts would be lawful. Mushroom growers were, therefore, also receiving conflicting messages concerning All Seasons' operations from those very persons who were originally involved in establishing the agency.

23. On July 20, 1998, it now being evident that the dispute between the directors and shareholders of All Seasons was not moving towards a resolution, the Mushroom Board issued a request to all parties to provide written submissions on the issue of the continued viability of All Seasons as an agency. Written submissions on this issue were received by the Mushroom Board from each of Mr. Critchley, on behalf of the Truong Group, Mr. Davies, on behalf of Do Holdings, and Mr. Mitchell, on behalf of Mr. Chia.

24. On September 14, 1998, an additional complication was introduced to the dispute when the Mushroom Board received a letter from Do Holdings advising the Mushroom Board that Do Holdings had decided to enter into a contract with All Seasons to market its mushrooms. Mr. Do explained that this decision was reached reluctantly because of the internal problems within All Seasons; however, Do Holdings found it necessary to take this action as it had previously terminated its agreement with Pacific Fresh Mushrooms in anticipation of another agency, Ridge Mushrooms, being granted agency status. The subsequent appeal of the Mushroom Board's recommendation to grant Ridge agency status resulted in a delay which might lead to Do Holdings finding itself without an agency to market its product.

25. Do Holdings also provided the Mushroom Board a copy of an executed mushroom grower contract between Do Holdings as grower and All Seasons as agency. The Mushroom Board noted that this contract was executed by Hung Do on behalf of All Seasons; no member of the Truong Group was apparently a party to this arrangement.

26. Upon review of the written submissions provided by the parties, the Mushroom Board decided to hold a public hearing with respect to the issue of All Seasons' viability as an agency. Accordingly, a notice of hearing was issued to all interested parties on September 15,

1998, setting a public hearing for October 7 and 8, 1998. All growers and agencies were notified and given an opportunity to be heard at this hearing.

27. By letter dated October 6, 1998, Mr. Critchley wrote to the Mushroom Board, on behalf of All Seasons, expressing concerns regarding the public nature of the hearing. He asserted that a meeting with regard to the viability of the company would necessarily involve confidential business information which the company would not wish to disclose at a public hearing. He expressed the willingness of the Truong Group to meet with the Mushroom Board in private to discuss any concerns which the Mushroom Board might have and to provide any documentary evidence requested. Mr. Critchley advised the Mushroom Board that the Truong Group would not be represented at the public hearing.

28. The public hearing before the Mushroom Board proceeded as scheduled on October 7, 1998. Representatives of both Chia Mushroom Farm and Do Holdings attended the hearing; no representative from the Truong Group was in attendance. Mr. Chia, speaking on behalf of himself and Do Holdings, made no submissions as to the viability of All Seasons as an agency and presented no evidence. However, both Mr. Chia and Mr. Ben Do of Do Holdings confirmed that Do Holdings was operating an agency under the All Seasons name from its farm. Neither would make a statement under oath, apparently on the advice of their legal counsel who were not instructed to attend.

29. Two parties were granted intervenor status at the public hearing: the British Columbia Mushroom Growers Association and Farmers Fresh Mushroom Inc. Mr. Tran, on behalf of the Mushroom Growers Association, expressed a concern on behalf of mushroom growers that All Seasons may not be able to operate as a valuable member of the mushroom industry and submitted that All Seasons' agency status should be revoked. Mr. Tran also submitted that All Seasons is not marketing mushrooms through one central location, but rather is marketing directly from farms, including Mr. Truong's and Mr. Do's farms. No other submissions or evidence were received from any other interested party. The submissions which were received, however, confirmed that at least two different entities were purporting to market mushrooms under the authority of the All Seasons agency licence.

30. Following the public hearing, the Mushroom Board met privately with the various principals of All Seasons in order to complete the Mushroom Board's investigation and review of the viability of All Seasons. On October 22, 1998, the Mushroom Board held separate in-camera meetings with each of the Truong Group, Mr. Chia, and Mr. Hung Do, and their respective legal counsel. These meetings were held in-camera at the request of the Truong Group who refused to participate in the public hearing; the Mushroom Board wished to ensure that the Truong Group was given a full opportunity to be heard on these matters.

31. Following these meetings, the Mushroom Board requested that all parties provide legal submissions with respect to the Truong Group's position that the Mushroom Board could, and should, rely solely upon a search of the records of the Registrar of Companies to determine who is authorized to speak and act on behalf of All Seasons. Mr. Critchley's legal submissions were received by the Mushroom Board on October 27, 1998. Responses from Mr. Mitchell and Mr. Davies were received on November 3, 1998 and November 4, 1998, respectively, which responses were provided to Mr. Critchley with the request that he submit any reply submission by November 12, 1998. The Mushroom Board had received no reply from Mr. Critchley by November 18, 1998 but extended that deadline to November 20, 1998. No reply was received.

III. POSITIONS OF THE PARTIES

Submissions by Truong Group

32. The Truong Group asserts that the shareholdings in All Seasons are held by three corporate entities: Truong Mushroom Farm Ltd., White Pearl and Do Holdings. Mr. Truong maintains that there are now two directors of All Seasons: Mr. Truong, who was appointed a director at the time of incorporation, on March 7, 1997, and Mr. Trinh, who was appointed on September 9, 1997. Mr. Truong maintains that he and Mr. Trinh are the sole officers of All Seasons; Mr. Truong was appointed President and Mr. Trinh was appointed Secretary at a directors meeting held on June 5, 1998. A search of the British Columbia Corporate Registry records provided by Mr. Truong's counsel shows that as of October 9, 1998, Mr. Trinh and Mr.

Truong were registered as the sole directors and officers of All Seasons, consistent with Mr. Truong's assertions as outlined above.

33. Mr. Truong's explanation of the corporate proceedings which led to the current state of All Seasons' governance may be summarized as follows:

(a) On March 7, 1997, at about the time All Seasons was first incorporated, Mr. Ty Truong and Mr. Hung Do were appointed as directors of the company.

(b) On September 2, 1997, a meeting of the Board of Directors was held, attended by Mr. Hung Do, Mr. Truong, Mr. Daniel Do and Mr. Trinh. The Mushroom Board has been provided with minutes of that meeting, apparently signed by Mr. Truong who acted as Chair of the meeting. The minutes of that meeting indicate that Mr. Hung Do resigned as a director of the company thereby creating a casual vacancy, and that Mr. Daniel Do was appointed a director to fill that vacancy. The change in directors is reflected in a Notice of Directors also signed by Mr. Truong; however, this Notice is dated March 7, 1997. The Mushroom Board has not been provided with a form of resignation executed by Mr. Hung Do.

(c) On September 9, 1997, a meeting of the Board of Directors was held, attended by Mr. Truong, Mr. Daniel Do, Mr. Trinh and Mr. Hung Do. The minutes of this meeting, apparently signed by Mr. Truong as Chair, indicate that resolutions were passed: (i) appointing Mr. Trinh as a third director of the Company; (ii) appointing Mr. Truong to the office of President; and (iii) appointing Mr. Daniel Do to the office of Secretary. The Mushroom Board has also been provided with a Notice of Directors in Form 8 under the *B.C. Company Act*, again apparently signed by Mr. Truong, which reflects the appointment of Mr. Trinh as a new director. Again, this Notice of Directors is dated March 7, 1997. A search of the corporate registry current as of June 22, 1998, shows Mr. Daniel Do, Mr. Trinh and Mr. Truong as the three directors of All Seasons.

(d) On April 24, 1998, a Notice of Directors' meeting was issued by Mr. Truong calling a meeting for April 28, 1998 for the purpose of issuing shares in All Seasons. This Notice of Meeting was delivered to Mr. Daniel Do and a copy was provided to counsel for the Do family by counsel for All Seasons. The Mushroom Board has been provided with correspondence between counsel for Do Holdings and counsel for All Seasons with respect to the validity of the April 28, 1998 directors' meeting. The gist of that correspondence is that the representatives of Do Holdings refused to attend a directors' meeting attended by Mr. Trinh, as it was the position of the Do family that Mr. Trinh had never been properly elected to the Board.

(e) On April 28, 1998, the meeting of the Board of Directors which had been called by Mr. Truong apparently took place, with Mr. Truong and Mr. Trinh in attendance. At this meeting, a resolution was passed allotting and issuing shares in certain percentages to Truong Mushroom Farm Ltd., White Pearl and Do Holdings. The Mushroom Board has been provided copies of share certificates issued in the name of each of these parties.

(f) On May 5, 1998, counsel for All Seasons delivered to Mr. Daniel Do a Notice of a Directors' meeting called by Mr. Truong for May 7, 1998. Again, counsel for Do Holdings replied with its clients' position that the Board of Directors consists of Mr. Hung Do and Mr. Truong only and that Mr. Trinh had never been elected to the Board. Again, Mr. Hung Do stated that he would attend a directors' meeting attended by himself and Mr. Truong only, but would not attend any meeting attended by Mr. Trinh purporting to act as a director. This letter also puts forward Do Holdings' position that no business could be conducted at a meeting in which Mr. Hung Do was not in attendance since the quorum requirement would not be satisfied. It is not clear from the materials provided to the Mushroom Board whether the intended meeting of the Board of Directors called for May 7, 1998 took place.

be effectively dealing with the appropriate parties who are charged with the responsibility of managing the affairs of All Seasons under the *Company Act.*

39. With respect to the Mushroom Board's determination of the continued viability of All Seasons as a marketing agency, Mr. Critchley urged us to focus on the evidence that All Seasons is now actually functioning as an agency. The Truong Group has submitted that All Seasons has taken a major step by hiring a General Manager. The General Manager has in excess of 40 years experience in the business of sales and marketing of produce, including mushrooms, and is a past director of the B.C. Produce Marketing Association. In addition, All Seasons has hired a truck driver and two clerical and bookkeeping staff.

40. The material before the Mushroom Board also shows that All Seasons has invested in vehicles for use in the business, as well as office space, cooling equipment at its warehousing facilities, and a substantial supply of boxes for its product.

41. In Mr. Critchley's submission, the business operation is up and running, and this alone is evidence of the continued viability of the agency. Mr. Critchley submits that the Mushroom Board should not be concerned with the past disputes among the shareholders and directors of All Seasons, and expressed hope that if the Ridge application for agency status is approved, some resolution of the internal conflict may be reached through mediation.

42. Mr. Critchley has stated that the obvious hostility between prospective shareholders and the apparent inability of either side to carry on the business was resolved several months ago. The faction comprised of Do Holdings and Mr. Chia has been given ample notice of the manner in which All Seasons has been conducting its operations and no application has been taken by those individuals to prevent the operations in any way. When asked about the conflict between the two agencies currently operating under the All Seasons name, Mr. Critchley submitted that the Mushroom Board should ignore the Do Holdings agency and deal with the version of All Seasons being operated by Mr. Truong.

43. Essentially, the Truong Group is asking the Mushroom Board to disregard the alleged irregularities which underlie the appointment of those who now claim to have the authority to operate the agency, and to rely on the registration of those individuals with the Registrar of Companies as proof of that authority. They also ask the Mushroom Board to focus solely on the evidence that the Truong version of All Seasons is operating and can continue to operate successfully as a business.

Submissions By Do Holdings

44. Do Holdings disputes the validity of the corporate actions taken by Mr. Truong and All Seasons in September 1997 and the spring of 1998. Underlying this position is the insistence by Mr. Hung Do that he did not resign as a director of All Seasons, as is contended by Mr. Truong. The minutes for the September 2, 1997 directors' meeting provided by the Truong Group in the material presented to the Mushroom Board indicate that Mr. Hung Do was in attendance at that meeting; however, Mr. Hung Do claims that he was not in attendance. Moreover, the Mushroom Board has not been provided with an executed resignation from the Board of Directors on behalf of Mr. Hung Do. Correspondence between counsel for All Seasons and counsel for Do Holdings in May 1998 indicate that a blank resignation was forwarded to Mr. Do for his execution, which was refused.

45. The position of Do Holdings is that Mr. Truong unilaterally assumed control of the company, and that Mr. Trinh has never been properly appointed as a director of the company. It is the position of Do Holdings that All Seasons has no legal authority to enter into any contracts or to conduct business in any fashion.

46. Do Holdings also disagrees with Mr. Critchley's submission that the Mushroom Board can rely upon the records of the Registrar of Companies to ascertain who has authority to act on behalf of All Seasons. Do Holdings says that there is no provision in the *Company Act* or any other statute providing that the register maintained by the Registrar of Companies is conclusive proof as to who the directors of a company are.

47. Mr. Davies, counsel for Do Holdings, also referred us to the case of *R. v. Kuhn*, 73 W.W.R. 146 (B.C.S.C.). In that case, a Notice of Directors filed with the Registrar of Companies was accepted as *prima facie* proof of matters stated therein; Mr. Davies points out that the notice was accepted as proof of those matters as no evidence was offered to rebut the presumptions raised therein.

48. Finally, Do Holdings disagrees with the Truong Group's assertion that the statutory provisions in question provide legal authority to deal only with Mr. Truong and Mr. Trinh as representatives of All Seasons. Specifically, Do Holdings notes that Section 160(3) of the *Act* provides that "*until the contrary is proven*, minutes of a meeting are deemed to be valid". In Do Holdings' submission, that section makes it clear that minutes of meetings may be proven inaccurate, and thus are not definitive.

49. In summary, Do Holdings submits that the register maintained at the B.C. Companies office can only be relied on by the Mushroom Board as *prima facie* evidence of the Board of Directors' composition; because the Mushroom Board has been given actual notice of a dispute over the All Seasons Board's true composition; we cannot rely on the register, nor is there any common law authority to entitle the Mushroom Board to exclude Mr. Hung Do in the Mushroom Board's dealings with All Seasons.

50. With respect to the viability of All Seasons, Do Holdings submits that differences continue to exist among the shareholders of All Seasons that appear to be well beyond the point of reconciliation. Do Holdings expressed the opinion that if All Seasons' agency designation is permitted to continue, the uncertainty that will persist will cause damage to the industry. Do Holdings also points out that if Mr. Truong can hold himself out as the true operating mind of All Seasons then there is nothing stopping Mr. Hung Do from holding himself out as the company's operating mind. Indeed, it appears from the evidence before the Mushroom Board that this has happened, as there are currently two versions of All Seasons purporting to operate under the same name and the same licence. Both the Truong Group and Do Holdings are selling mushrooms as All Seasons; each are effectively selling mushrooms from their own farms for this

purpose. This unfortunate state of affairs is not consistent with our regulatory scheme which envisages mushrooms being marketed by a centralized agency.

Submissions By Mr. Chia

51. With respect to the internal conflict within All Seasons, the position of Mr. Chia is essentially the same as that of Do Holdings. Mr. Chia maintains that Mr. Hung Do never resigned as a director of All Seasons, that accordingly there was no casual vacancy on the Board, and that Daniel Do was therefore never properly appointed as a director. It follows, he reasons, that all of the other actions taken by Mr. Truong and Mr. Trinh on behalf of All Seasons are invalid. Like Do Holdings, Mr. Chia is of the view that All Seasons is not in a position to lawfully enter into any contracts or conduct any business.

52. Mr. Chia's counsel, Mr. Mitchell, also disagrees with the submission of Mr. Critchley that the Mushroom Board may rely upon the records of the Registrar of Companies in dealing with All Seasons. It was submitted by Mr. Mitchell that the Mushroom Board has been privy to correspondence demonstrating that those named on the records as purporting to control All Seasons do so in the absence of any legal right. Accordingly, because the Mushroom Board has been notified that Mr. Truong and Mr. Trinh have been unlawfully registered as directors, we cannot now rely on the information contained in the Registrar of Companies' records.

53. Mr. Mitchell relies upon sections 67 and 327 of the *Company Act*. Section 67(2) provides as follows:

> (2) The register of members is proof *in the absence of evidence to the contrary* of any matters directed or authorized by this Act to be inserted in it.

54. Section 327 provides:

> Every declaration issued by the Registrar under his or her hand is proof *in the absence of evidence to the contrary* of any matter stated in it relating to the records of the Registrar's office.

55. Mr. Mitchell argues that in the present case, there is abundant "evidence to the contrary", of which the Mushroom Board has been notified, demonstrating that the information contained in the corporate search is incorrect. As would be the case with the documents referred to in sections 67 and 327, in light of this evidence to the contrary, the Mushroom Board cannot rely on the information in the corporate records with respect to the purported directors of All Seasons.

56. With respect to the viability of All Seasons as an agency, Mr. Chia has submitted that Mr. Truong should not be permitted to unilaterally appropriate for his own benefit a licence obtained by and with the resources of others whom Mr. Truong is purporting to exclude from the operation. Mr. Chia submits that if Mr. Truong wishes to secure an agency licence, on his own behalf and on behalf of Mr. Trinh, he should apply for such a licence on that basis.

57. Mr. Chia also submits that those purportedly operating All Seasons are willing to do so in the absence of any lawful right, and that it is not in the public interest to allow the marketing of mushrooms to be conducted by those who have little respect for the Mushroom Board and its right to regulate the industry. Mr. Chia submits that allowing All Seasons to retain its licence would risk industry chaos and would expose growers and others within the industry, who may be unaware of All Seasons' internal management and control problems, to unnecessary risk.

58. On the issue of the internal conflict, Mr. Chia asserts that the company remains deadlocked and cannot operate. When asked about the possibility of resolving this conflict, Mr. Chia adopted a "wait and see" attitude and stated that the possibility of resolving the All Seasons conflict may depend upon the success of the Ridge agency application.

IV. DECISION OF THE BOARD

59. We are in agreement with counsel for the Truong Group that the Mushroom Board is not the appropriate decision-making body to resolve issues involving disputes among

In our view, this legal entitlement to assume the "indoor management" of a company is in order cannot apply when a party has been put on notice that all is not as it should be; at that point, further inquiry is the wisest course of action, particularly for a decision-making body such as the Mushroom Board whose duties include properly regulating the marketing of mushrooms in British Columbia by supervising agencies such as All Seasons.

64. The *Act*'s general provision regarding the rectification of irregularities (section 206) also recognizes the importance that there be no actual notice.

> (2) An order made under subsection (1) does not prejudice the rights of any third party who has acquired those rights for valuable consideration without notice of the omission, defect, error or irregularity cured by the order.
>
> [emphasis added]

65. A case cited to us by Mr. Mitchell lends further support to the conclusion that a third party may only rely upon the apparent authority of a "director" if he or she has no notice of information which would contradict such authority. In *Morris v. Kanssen*, [1946] A.C. 459 at 475, the following statement appears:

> One of the fundamental maxims of the law is the maxim "omnia praesumuntur rite esse acta." [a prima facie presumption exists assuming regularity of acts until the contrary appears]. It has many applications. In the law of agency it is illustrated by the doctrine of ostensible authority. In the law relating to corporations its application is very similar. The wheels of business will not go smoothly round unless it may be assumed that everything is in order which appears to be in order. But the maxim has its proper limits. ... It is a rule designed for the protection of those who are entitled to assume, just because they cannot know, that the person with whom they deal has the authority which he claims. *This is clearly shown by the fact that the rule cannot be invoked if the condition is no longer satisfied, that is, he who would invoke it is put upon his inquiry.* He cannot presume in his own favour that things are rightly done if inquiry would tell him that they were done wrongly.

66. Although the Board has not reached any conclusions in respect of the corporate dispute within All Seasons, there is certainly ample information before the Board to put it on notice that the legality of the company's operations to date may be questioned. Indeed, in addition to the material presented to the Mushroom Board during the course of this review and summarised above, we have noted the existence of other evidence of dissension in respect of the operations of All Seasons. On March 2, 1998, during the course of a public hearing before the BCMB which resulted in the direction to the Mushroom Board to review All Seasons' agency status, Mr. Daniel Do testified as to the validity of a document presented in evidence by Mr. Truong. The document was a letter signed by Mr. Do on behalf of All Seasons, which affirmed All Seasons' agreement to purchase mushrooms from Truong Mushroom Farm Ltd. Mr. Daniel Do testified that as of the date of the letter in question, September 5, 1997, he was not a director of All Seasons; he also testified that he was not a director of All Seasons as at the date of his testimony on March 2, 1998. According to the materials presented to the Mushroom Board on this review by the Truong Group, Mr. Daniel Do was appointed as a director of All Seasons at a September 2, 1997 directors meeting and removed from that position on June 5, 1998. The contradiction is obvious and is yet another example of the Mushroom Board being put on notice of possible irregularities in the appointment of the directors of All Seasons.

67. Further, in its decision of May 22, 1998, the BCMB noted problems arising from the evidence before it dealing with the internal management of All Seasons. The BCMB reviewed the evidence of Mr. Do, and other evidence relating to the backdating of documents presented before it, and concluded that the "true state of affairs is difficult if not impossible for the BCMB to determine." The BCMB also noted in its reasons that it was greatly concerned about aspects of the conduct of the Dos and the Truongs and the legitimacy of certain documents relating to All Seasons.

68. The Mushroom Board cannot rely on the records of the Companies Registry in light of the information before us and the submissions of the parties concerning the possible illegality of the internal corporate proceedings of All Seasons. This is not such a clear case that

the Mushroom Board can easily dismiss the information presented to us and be comfortable that there is no substance to the allegations of illegality which have been made.

69. Although third parties who enter into contracts with All Seasons, including mushroom growers, suppliers and customers, may be able to rely upon the Companies Registry in support of their contracts (assuming they had no knowledge of the internal difficulties of All Seasons), the risk that such relationships may be open to challenge remains. As a regulatory body who must act in the best interest of the industry, the Mushroom Board cannot sit by, in light of the knowledge we have been given, and allow such a risk to continue. The Mushroom Board is duty-bound to take action.

70. Nor can the Mushroom Board, as counsel for the Truong Group urges, ignore the internal workings of All Seasons and focus solely on its ongoing operation as an agency as the only determining factor of its continued viability. We have considered the evidence presented by the Truong Groups' All Seasons to demonstrate its operational viability, including the hiring of an experienced General Manager, the investment which has been made in the business and the fact that All Seasons is shipping product on a monthly basis. Nevertheless, in our view this evidence in support of All Seasons' operational viability cannot override two additional and serious considerations, namely, the uncertainty surrounding All Seasons' legal authority to carry on business as a designated agency of the Mushroom Board through various directors, and the regulatory disorder flowing from two separate groups who each purport to operate under the same name and licence.

71. The Mushroom Board, as a regulatory body, owes a duty to all industry stakeholders, including mushroom growers whose livelihoods are at stake. It is not in the best interest of the industry, nor in the best interest of the public generally, to permit a licensed agency to continue to operate in circumstances where its lawful authority to enter into contracts and to carry on business is open to challenge. The current situation under which All Seasons is operating gives rise to a great deal of uncertainty in the industry, and that uncertainty will likely not diminish unless and until the continuing disputes with respect to who has authority to run the company have been resolved. For several months now, whenever the Mushroom Board has had

74. Unless the following three conditions are satisfied within 90 days, All Seasons' agency licence will be revoked:

(a) the Mushroom Board is provided with either a court order confirming the valid legal identity of All Seasons directors, or, alternatively, proof of a mediated settlement on this issue; and

(b) the Mushroom Board is provided with proof that only one company is operating at the end of the 90 day period under the All Seasons agency licence and name; and

(c) the Mushroom Board is provided with a single postal address for All Seasons and the name of a contact person for All Seasons.

DATED December 16, 1998.

Ron Fontaine, Chair

Ted De Vries

Ellen MacIntyre

Quan Truong

Van Hai Duong