



March 3, 2011

File: 44200-70 POULTRY INS

DELIVERED BY E-MAIL

Michel Benoit
Chair
Risk Mitigation Steering Committee
– Avian Influenza
c/o 230 – 32160 South Fraser Way
Abbotsford BC V2T 1W5

Dear Mr. Benoit:

INSURANCE PRODUCT FOR AVIAN INFLUENZA

Thank you for your letter dated February 18, 2011, seeking the views of the BC Farm Industry Review Board (BCFIRB) about whether commodity boards have the authority to impose levies to create an insurance product for avian influenza. Your question proceeds on the basis that your plan would not work if producers are asked to pay into it on a voluntary basis.

As you know, section 11(1)(o) of the *Natural Products Marketing (BC) Act (NPMA)* confers on commodity boards the power to impose levies "to carry out the purposes of the scheme". The question is whether, if challenged, BCFIRB or a court would regard a producer compensation scheme as falling within the purposes of regulated marketing.

In my capacity as executive director, I believe I can safely state that BCFIRB has no objection in principle to the industry establishing a poultry insurance program in some form as producer risk management does support the agri-food sector generally.

However, as it is possible that this issue could one day come before an appeal panel of this board, it is not appropriate for me, on behalf of BCFIRB in its supervisory capacity, to offer a conclusive answer here to the legal issue of whether this goal could under the *NPMA* be attained by the use of mandatory levies. I will only note that producer loss compensation has not traditionally been a feature of regulated marketing regulation. This does not mean that there is no room for new initiatives, but the question in an appeal would likely turn on how such producer compensation relates to the purposes of

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Farm Industry Review Board

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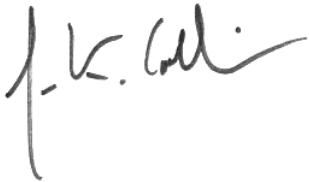
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the legislation, dealing with the management of the production and supply of natural products, as set out in s. 2(1) of the *NPMA*. The purpose and intent of the *NPMA* being to provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in British Columbia, including prohibition of all or part of that production, transportation, packing, storage and marketing.

I expect that a similar question could arise with respect to any regulation made by Lieutenant Governor in Council under s. 22 of the *NPMA*.

As noted, I am not offering an opinion either way. The Committee should be taking its own confidential legal advice on this issue. If you conclude that a statutory amendment would be the most appropriate course of action given the nature of the issue and need for certainty, I would be more than happy to discuss with you and the ministry the most effective way to proceed and work together in support of such an initiative.

Yours truly,

A handwritten signature in black ink, appearing to read "J. K. Collins". The signature is fluid and cursive, with a long vertical stroke extending downwards from the end.

Jim Collins
Executive Director

pc: Wes Shoemaker, Deputy Minister
Ministry of Agriculture