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5/21/02



May 21, 2002

File: 44200-50/EMB 01-17

DELIVERED BY FAX

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Attention: Ms. Wendy A. Baker

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Suite 600
840 Howe Street
Vancouver, BC V6Z 2L2
Attention: Mr. Robert P. Hrabinsky

Dear Sirs/Mesdames:

**AN APPEAL BY FRED REID D.B.A. AS OLERA FARMS FROM AUGUST 1, 2001
DECISIONS OF THE BRITISH COLUMBIA EGG MARKETING BOARD
CONCERNING THE MARKETING OF ORGANIC PRODUCT**

The Panel has reviewed Mr. Hrabinsky's May 7, 2002 letter and Ms. Baker's May 8, 2002 response. Mr. Hrabinsky did not submit a reply.

Mr. Hrabinsky refers to the Court's recent decision in *Mundhenk* and *Hong*. He expresses concern that the British Columbia Marketing Board intends to conduct this appeal as a "*de novo*" hearing. Mr. Hrabinsky refers to Mr. Collins' May 1, 2002 letter to potential intervenors, and to the Panel's April 25, 2002 decision that makes reference to "alleged contraventions".

Mr. Collins' May 1, 2002 letter to potential intervenors merely recites the grounds of appeal taken from the Pre-hearing conference report signed by the parties. The Panel's April 25, 2002 decision used the word "allegation" in the context of the way the application was argued by the parties, and the Egg Board's reliance, in opposing the adjournment, on its judicial enforcement proceedings as plaintiff.

The defining feature of an appeal *de novo* is that the appellate decision-maker is required to ignore the original decision in all respects. Here, the grounds of appeal focus on the original decision, and allege legal error and arbitrariness by the Egg Board.

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The Panel is not prepared to offer Mr. Hrabinsky anticipatory rulings in respect of intervenor applications. If any person applies for intervenor status, the Panel will at that time hear any objection from the Egg Board regarding whether an intervention should be permitted, and as to the terms of such intervention.

Yours truly,


Christine Elsaesser
Vice Chair