

December 3, 1999

DELIVERED BY FAX

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Attention: Mr. Tobin S. Robbins

Dear Sirs:

**RE: A COMPLAINT BY EUGENE AND DORLE EASON FROM THE
OPERATION OF OUTLANDER POULTRY FARMS LTD. AT
[address], LANGLEY, BRITISH COLUMBIA**

On November 8, 1999, the Farm Practices Board ("FPB") sent a letter to all parties setting out procedural directions. Our letter stated that in accordance with the representations, on the previous hearing date (May 14, 1999), made by counsel for the Complainants that he had concluded his case subject to calling two witnesses, namely Mr. Bill Storie, Township of Langley Bylaw Enforcement Officer and Mr. Gary Wool, the Panel would hear from those witnesses at the outset of the December 7 hearing, and then move to counsel for the Respondent to open his case as he deems appropriate.

Our November 8 procedural direction was issued in the wake of an October 15, 1999 pre-hearing conference conducted by the parties and FPB staff. The December 7 hearing date was identified and agreed to by the parties at this conference. At that time, it appears that the parties' intention was that this date would focus on an application by the Respondent. The November 8 procedural direction made clear that the first portion of this date would be utilized to ensure that the Complainant's case was closed, and then to allow the Respondent to proceed with its case as it saw fit.

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On November 16, 1999, the FPB received a letter from Mr. Harvey, counsel for Outlander Poultry Farms Ltd. ("Outlander"), advising that he had decided against preparing motion papers and would be proceeding in accordance with our procedural directive. This letter was copied to Mr. Wool.

On November 26, 1999, the BCMB sent a letter to all parties on this appeal advising of the time and place for the resumption of the hearing.

On November 29, 1999, Mr. Wool wrote to the Board advising that he was not able to have any witnesses appear December 7. He states:

When we had the pre-hearing conference, December 7th, (sic) was set aside for Outlander Poultry to bring an application before the panel. No witnesses were scheduled. Since then outlander (sic) abandoned its application.

As for my own court calendar, I have a court commitment already scheduled for December 7th, commencing at 2:00 p.m. I have no problem appearing at 10:00 a.m. on December 7th, although in the circumstances it may be better to convert December 7th, to a pre-hearing conference (by telephone) for the purpose of setting hearing dates.

Counsel for Outlander and counsel for the Intervenors oppose any application to adjourn the December 7 date. Also counsel for Outlander opposes any alteration to the FPB's prior procedural directive and maintains that the farm is entitled to a conclusion of this hearing. The *Farm Practices Protection (Right to Farm) Act* ("Act") requires the Panel to hold a hearing and either dismiss the complaint or make an order pursuant to s. 6 (1)(b). He argues that s. 6 of the *Act* is mandatory. The Panel has no jurisdiction to defer the holding of a hearing indefinitely, and thus suspending a very serious application for an unduly long time.

In his December 1, 1999 response, Mr. Wool argues that he did not create the situation presently before the Panel. He states that the idea of converting December 7 to a hearing was made "after" the Respondent elected not to proceed with an application. He states that after being notified, by way of Mr. Harvey's November 16 letter, of the Respondent's intent to abandon its application, he then booked other commitments the afternoon of December 7. Mr. Wool then goes on to state that "...the Board, on its own, declared that this would be a hearing date. They should have called counsel because a substantial part of the process changed."

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Counsel for Outlander, in his December 1, 1999 submission, points out that Mr. Wool was informed that December 7 was a hearing date before Mr. Harvey abandoned his intention to make an application. In addition, Mr. Harvey specifically referred to the FPB's earlier procedural directive in his November 16 letter. Mr. Harvey submits that if, in the face of this correspondence, Mr. Wool chose to fill his afternoon with other commitments he did so deliberately hoping to gain a deferral of the hearing by creating scheduling problems for himself.

The Panel agrees with the submissions of counsel for Outlander. Counsel for the Complainants is mistaken when he attempts to shift responsibility to others. On May 14 Mr. Wool confirmed that his case was closed subject to calling two witnesses. In the pre-hearing conference conducted on October 15, the December 7 date was agreed to by all parties. At that time, the parties themselves intended this date to focus on a motion by the Respondent. However, that intention does not bind the Panel, which is responsible for hearing procedure. Our November 8 letter – issued one full month in advance of the date agreed to by all counsel – set out our expectation that prior to any motions or applications by the Respondent, the Complainant would be expected to call its final two witnesses and close its case, consistent with the representations it made May 14. Having received the Panel's November 8 letter, counsel for the Complainants raised no objection until November 29.

In his November 29 letter, Mr. Wool's justification for not being able to call witnesses on December 7 was that "no witnesses were scheduled" at the October 15 pre-hearing conference. The very purpose of our November 8 letter was to advise him that witnesses were scheduled, in accordance with counsel's May 14 statements. For 21 days after that direction was given, counsel raised no concern or objection. In our opinion, he has not given a valid reason why he cannot call his two remaining witnesses. Our procedural direction on this point stands.

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Nor could anything in this exchange of correspondence be taken to absolve Mr. Wool of his responsibility to attend before the FPB on December 7. In view of our November 8 letter, Mr. Harvey's decision not to bring an application could not be taken by Mr. Wool as an indication that the December 7 hearing would not proceed. In fact, the opposite was true. That counsel chose to fill his calendar with other engagements even though he was aware of the December 7 hearing date does not relieve him of his duty to attend, nor does it create legitimate grounds upon which this Panel could grant an adjournment.

This matter has dragged on far too long and much of this delay is due to Mr. Wool's unavailability. The Panel is advised that the parties were only able to come up with one date between October 1999 and March/April 2000. The Eason's are entitled to have their case heard and Outlander is entitled to respond to their allegations and bring this Complaint to a conclusion. No one's interest is served by adding to the delay.

The hearing will proceed on December 7, 1999 as scheduled.

FARM PRACTICES BOARD
Per

(Original signed by):

Christine J. Elsaesser, Panel Chair