



October 19, 2001

File: 44200-50/EMB 01-17

DELIVERED BY FAX

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Attention: Mr. Robert P. Hrabinsky

Dear Sirs/Mesdames:

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

Mr. Hrabinsky's October 15, 2001 letter was brought to the attention of the British Columbia Marketing Board ("BCMB") Panel assigned to hear this appeal. The Panel has instructed me to provide you with the following.

At pages 3 and 4 of the letter, a ruling is sought from the Panel on the question if it will decide, as a preliminary matter, whether the Appellants may tender lay evidence in support of their argument that the *Natural Products Marketing (BC) Act* and the *British Columbia Egg Marketing Scheme, 1967* do not apply to certified organic production. After setting out six points in support of his position that it ought to be addressed as preliminary issue, Mr. Hrabinsky's letter concludes as follows:

The foregoing points are tendered only in support of the Egg Board's request for a ruling from the BCMB that the "third" issue on the appeal ought to be addressed as a preliminary matter, on the basis of written submissions. The request for this ruling is made because the Appellants have advised that they are opposed to the disposition of this issue as a preliminary matter. For obvious reasons, the Egg Board will await the BCMB's ruling with respect to the procedural point before making substantive submissions on the issue.

BCMB appeal panels are prepared to address any preliminary motion a party seeks to advance. A preliminary motion does not require the consent of the other party. A party does not require a ruling from the Panel in order to argue what it regards as a preliminary issue.

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Marketing Board

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As the Panel understands it, the issue the Respondent seeks to raise is whether lay witness evidence is admissible in support of the Appellants' statutory construction argument. It is common sense for the Panel to have the benefit of complete argument on this point in advance of any hearing. Whether the point is in fact suitable for final determination in advance of the hearing will be decided once submissions are received.

November 9, 2001 has been set aside, at a Vancouver location convenient to both counsel, for the hearing of a preliminary issue the Appellants wish to raise. In the interests of efficiency, it would be appropriate to have written submissions on the admissibility of lay evidence complete by that date. This will allow the Panel to question counsel on any issues that arise from those submissions.

The Panel therefore directs as follows:

The Respondent will file its written submission regarding the admissibility of lay evidence on this appeal no later than October 23, 2001.

The Appellants will file their written response no later than October 30, 2001.

The Respondent will file its written reply no later than November 5, 2001.

Counsel for the Respondent should proceed on the assumption that his attendance will be necessary on November 9, 2001. If the Panel does not require his attendance, his office will be advised before the hearing, or at its commencement.

Yours truly,

(Original signed by):

Jim Collins
Manager
Dispute Resolution Services