



File: 44200-50/EMB 99-17

March 14, 2002

DELIVERED BY FAX

Peter Pottruff
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Macaulay McColl
Barristers
Suite 600, 840 Howe Street
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Attention: Robert P. Hrabinsky

Dear Sirs:

**PRELIMINARY APPLICATION IN AN APPEAL CONCERNING A DECISION OF
THE BRITISH COLUMBIA EGG MARKETING BOARD TO SEIZE A FLOCK**

By letter dated October 15, 2001, Peter Pottruff requested that his appeal originally filed July 30, 1999 but subsequently adjourned, be set down for hearing. By letter dated November 14, 2001, Counsel for the British Columbia Egg Marketing Board (the "Egg Board") requested that the British Columbia Marketing Board (the "BCMB") dismiss the appeal as being frivolous, vexatious or trivial pursuant to ss. 8(8.3) of the *Natural Products Marketing (BC) Act* (the "Act").

The Egg Board argues that initially, consolidation of the Peter Pottruff appeal with the Bill Pottruff appeal was considered. Although consolidation did not occur, the Peter Pottruff appeal was held in abeyance pending the resolution of the Bill Pottruff appeal. The Bill Pottruff appeal raised the same issue as the Peter Pottruff appeal, that by failing to enforce the regulation of specialty egg production, the Egg Board had given tacit approval to the illegal production of specialty eggs on Vancouver Island.

The BCMB did not accept this argument and ruled against Bill Pottruff in his appeal. The Egg Board argues that given that the BCMB has already determined the merits of the "tacit permission" issue in the Egg Board's favour, the Peter Pottruff appeal should be dismissed.

British Columbia
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In response, Peter Pottruff argues that his appeal was put in abeyance pending the outcome of the Vancouver Island Specialty Review and later, the Egg Quota Allocation Review. He denies relinquishing his right of appeal pending the outcome of Bill Pottruff's appeal and argues that his appeal cannot be resolved based on someone else's situation.

The Panel has considered this issue. Although Peter Pottruff's initial notice of appeal was vague as to the issues under appeal, in a pre-hearing conference conducted on August 31, 1999, the grounds of appeal were set out as follows:

Grounds of appeal: Appellant objects to seizure notice on the basis that the Egg Board should not have been allowed to carry out a seizure which is arbitrary and selective. For years, the Egg Board has been aware of and has been tacitly allowing the Appellant's "non-cage" production on Vancouver Island despite its Orders, and when that production has been meeting legitimate market requirements.

These grounds of appeal are remarkably similar to those raised by Bill Pottruff in his appeal. Bill Pottruff argued that the Egg Board as a result of its "prior awareness and/or its implicit permission of (Bill Pottruff's) activities, or as a matter of sound administration of specialty egg production" should not be permitted to seize his flock.

However, the similarity of the issues raised in this appeal to those in the Bill Pottruff appeal is insufficient to allow the Panel to determine whether this appeal is "frivolous, vexatious or trivial". It may be that given the passage of time and the changes within the egg industry that the issues raised on appeal are no longer valid. However, the Egg Board has not set out any such particulars. Rather, the Egg Board asks this Panel to assume that Peter Pottruff's circumstances are exactly the same as Bill Pottruff's without laying an appropriate factual foundation. Was Peter Pottruff producing eggs illegally? If so, is there any reason why he should not be subject to the enforcement authority of the Egg Board?

The Panel understands the Egg Board's argument. However based on the documents before us, we are unable to determine whether Peter Pottruff's appeal can be summarily dismissed as a result of the findings made in the Bill Pottruff appeal. This is especially so, since the BCMB is not bound by precedent and may make any "order it considers appropriate in the circumstances".

Accordingly, the Panel directs that this appeal proceed to a hearing, to be conducted by telephone conference. At this hearing, the Panel expects to hear submissions from the Egg Board as to why this appeal is frivolous, vexatious or trivial pursuant to s. 8(8.3) of the *Act*. Peter Pottruff will have a right to respond to the Egg Board's submissions and to set out how his issues on appeal are different from those raised by Bill Pottruff.

BRITISH COLUMBIA MARKETING BOARD
Per

(Original signed by):

Christine J. Elsaesser
Panel Chair