

File: 44200-50/EMB 99-18

April 20, 2000

DELIVERED BY FAX AND/OR EMAIL AND/OR SURFACE MAIL

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Attention: Mr. Robert P. Hrabinsky

Dear Sirs:

**RE: APPEAL CONCERNING A DECISION OF THE BRITISH COLUMBIA
EGG MARKETING BOARD TO SEIZE A FLOCK**

On November 12, 1999, the British Columbia Marketing Board (the "BCMB") issued reasons for decision dismissing the Appellant's appeal from decisions of the British Columbia Egg Marketing Board (the "Egg Board") to apply for a search warrant, and act on that warrant, on July 14, 1999.

The BCMB's November 12, 1999 decision addressed all the grounds of appeal except one, which ground the Appellant described as follows in his August 17, 1999 letter:

Issue #2

The "Grandfather" situation, and special circumstances, created by the Egg Board, on Vancouver Island in regards to Free-Range, Free-Run, Organic and Niche Market production must be addressed.

Remedies sought

Immediate legitimizing of my operation, by the Marketing Board, with assurance of no further harassment by the Egg Board.

In the early fall, that specific ground was, by consent, severed from the appeal and deferred to an alternative resolution process, while the other grounds of appeal proceeded to hearing and decision. On February 28, 2000, the Appellant advised the BCMB that he was no longer content with that alternate process and requested that the severed ground be returned to the appeal process.

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British Columbia
Marketing Board

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Mr. Bill Pottruff
Mr. Robert P. Hrabinsky
April 20, 2000
Page 2

The Egg Board does not appear to take issue in principle with the return of this issue to the appeal process, but it has advanced a preliminary objection that the appeal, "in so far as it raises questions as to the effectiveness of supply management on Vancouver Island" should be dismissed, as that is an attack on legislation rather than an appeal from a decision of a commodity board. The Egg Board's concern arises from the following statement contained in a Pre-Hearing conference report dated August 27, 1999:

Under issue #2, it was clarified that this ground raises questions as to the effectiveness of supply management on Vancouver Island. It is argued that the seizure action against the Appellant's production is contrary to what should have been the appropriate response by the Egg Board to the Appellant, and to free range production in general, namely, to legitimize the free range production which has been operating openly for a period of years, without enforcement action, and which has been meeting legitimate production needs.

For his part the Appellant has submitted on September 13, 1999, and again on March 10, 2000, that he is not taking issue with supply management generally, but with the Egg Board's alleged "mishandling of Supply Management on Vancouver Island".

As the Egg Board points out, the BCMB derives its appellate authority from ss. 8(1) and 8(9) of the *Natural Products Marketing (BC) Act* (the "NPMA") which states:

- 8(1) A person aggrieved by or dissatisfied with an order, decision or determination of a marketing board or commission may appeal the order, decision or determination....
- 8(9) On hearing an appeal under subsection (1), the Provincial board may do any of the following:
- (a) make an order confirming, reversing or varying the order, decision or determination under appeal;
 - (b) refer the matter back to the marketing board or commission with or without directions;
 - (c) make another order it considers appropriate in the circumstances.

To deal with the Egg Board's objection, and reviewing the submissions and correspondence, it is important in this instance to distinguish between the decision appealed, the ground of appeal, and the remedy the Appellant seeks.

Mr. Bill Pottruff
Mr. Robert P. Hrabinsky
April 20, 2000
Page 3

Clearly, the decision appealed from remains the seizure.

The ground of appeal here, as we understand it, is that the seizure ought not to have taken place as a result of the Appellant's special circumstances including the Egg Board's prior awareness of and implicit permission of his activities, and as a matter of sound administration of specialty egg production under the *British Columbia Egg Marketing Scheme, 1967* (the "Scheme").

The remedy the Appellant seeks is an order setting aside the seizure notice and, attendant on that, an order from the BCMB that his operation be "legitimized" by the Egg Board.

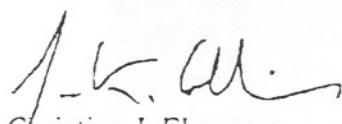
In our view, all these elements are within the BCMB's statutory jurisdiction. Whether the appeal succeeds will depend on a hearing of all the evidence and argument from the parties.

In our view, these grounds of appeal do not entitle the Appellant to ask the BCMB to amend the *NPMA* or the *Scheme*, or to launch a broadside political attack on supply management generally. It will be open to the Respondent to make appropriate objections if the Appellant's case deviates from the appeal as we have laid it out.

The Appellant's March 10, 2000 submission also requests the opportunity to "revisit" certain points from the first appeal hearing based on late disclosure by the Egg Board in respect of that hearing. The Egg Board objects to this on the basis that the BCMB is *functus officio* in respect of the matters already determined. The BCMB is not prepared to reconsider any aspect of its previous decision. If the Appellant was dissatisfied with the decision, his remedy was a statutory appeal to the Supreme Court of British Columbia within 30 days of receiving that decision. It is however open to the Appellant to adduce evidence which may have also been adduced at the earlier hearing to the extent that it is relevant to the ground of appeal described above.

BRITISH COLUMBIA MARKETING BOARD

Per


Christine J. Elsaesser
Panel Chair

cc: Mr. Jim Findlay, General Manager
British Columbia Egg Marketing Board