

INTRODUCTION

1. On November 6, 2000, the British Columbia Egg Marketing Board (the "Egg Board") issued its Market Responsive Allocation Program Summary of Decisions (Approved by the BCMB). The Market Responsive Allocation Program (the "MRAP") was issued as a result of specific directions made to the Egg Board by the British Columbia Marketing Board (the "BCMB") in its Supervisory Decision on Egg Quota Allocation, dated October 26, 2000.
2. The Appellants have appealed the Egg Board's Summary of Decisions, and in doing so have raised several issues:
 - a) Should all regions of BC be treated the same as part of a unified provincial egg production and marketing area?
 - b) Should all types of egg production be treated the same?
 - c) Should all egg producers be treated the same?
 - d) Should "free" quota be given to any producer?
 - e) Should all new quota be allocated on a pro rata basis?
 - f) Should the 2000 allocation of 107,415 birds be given solely to existing producers, who have experienced quota cutbacks in previous years, on a pro rata basis?
 - g) Was the process leading to these decisions, which did not follow the recommendations of the Egg Industry Advisory Committee, fair and transparent?
3. In addition, the Appellants take issue with the following specific points in the Egg Board's Summary of Decisions:
 - a) (b.1. and g.) Vancouver Island should not be singled out as a region.
 - b) (b.2.) The granting of organic Temporary Restricted License Quota ("TRLQ") rewards persons who have been producing outside the system.
 - c) (b.4.) There should be no claw back added to MRAP.
 - d) (b.5.) What percentage of new growth is to be allocated to MRAP?

- e) (b.6. and c.) Priority should not be given to new entrants. There is also no need for TRLQ for caged layer production. These measures (and other measures) will lead to excess production (in terms of types of production and regions of production) where it is not needed.
 - f) (d.) The issuance of 25% free quota is unfair to existing producers.
 - g) (e.) No immediate concern, however, in the long term the cost of surplus removal is potentially a problem.
4. A preliminary issue was raised by the BCMB as to whether the Egg Board actions in question are properly appealable to the BCMB under section 8(1) of the *Natural Products Marketing (BC) Act* (“the Act”).
5. A hearing was held by telephone conference in order to allow the Appellants and the Egg Board to make submissions on this issue.

ISSUES

6. The issues are as outlined in the BCMB’s letter of March 11, 2001, which requested the parties response:
- a) To what extent do the issues that have been appealed relate to Egg Board actions taken at the specific direction of the BCMB in its supervisory capacity?
 - b) To the extent that the issues relate to Egg Board actions taken at the specific direction of the BCMB, are they commodity board decisions that may be appealed under s. 8(1) of the *Act*, or are they instead matters that can only be addressed by way of judicial review of the BCMB?

ARGUMENT OF THE APPELLANTS

7. Mr. Jake Penner, on behalf of Salmon Arm Poultry Farm Ltd., argues that it is not for the Appellants to decide whether the BCMB should hear this appeal. If there is an issue of jurisdiction, this is for the BCMB and their legal counsel to decide.
8. The Egg Board sent out the decisions that are under appeal on Egg Board letterhead. Mr. Penner argues that he cannot see how these orders can be anything other than Egg Board orders.

9. The producers are not privy to whatever backroom dealings may have occurred between the BCMB and the Egg Board. All producers know is what they read in the materials sent out by the Egg Board. The issues under appeal relate to the MRAP and TRLQ programs. These are Egg Board decisions and Mr. Penner cannot see why the BCMB cannot hear these appeals.
10. Ms. Joanne Tjaden, on behalf of Cedarcroft Holdings Ltd., agrees with Mr. Penner in that she does not feel it is up to her to determine whether the BCMB should hear this appeal. She too argues that she was not privy to how these decisions were made. She received the decisions from the Egg Board and that is what she now seeks to appeal. She too expresses confusion as to why it is necessary to participate in this hearing.
11. Mr. John Penner, on behalf of Penner Poultry Farm and Mr. Art Loewen of J & A Poultry Farm Ltd., share the views of the other Appellants.

ARGUMENT OF THE RESPONDENT

12. Mr. Peter Whitlock, General Manager of the Egg Board, spoke on behalf of the Respondent. He stated that the October 26, 2000 supervisory decision of the BCMB was comprised of directions as to what the Egg Board could do, should do and must do. Given that background, it is somewhat hard to address whether the Egg Board made an order or whether the Egg Board made the order it was directed to make by the BCMB.
13. For example, with respect to the 30,000 bird allocation, the BCMB directed that the Egg Board may issue up to 30,000 birds to producers pro rata effective December 31, 2000. The Egg Board was given the option to allocate up to 30,000 birds and it chose to allocate that amount.
14. With respect to the MRAP, the BCMB directed the Egg Board to establish a MRAP. Into that pool, the Egg Board was directed to place the 107,415 birds less the pro rata allocation to producers (i.e. that portion of the 30,000 birds allocated by the Egg Board). The Egg Board was not given any choice as to the minimum amount of birds (77,415) in the MRAP.
15. With respect to the TRLQ Program, the BCMB directed the Egg Board to make amendments to the Program to allow for specialty production other than free range and certified organic. The BCMB also directed the Egg Board to establish a Market Responsive Quota Program (“MRQ”) and a Quota Exchange Program.
16. Once the Egg Board had implemented the October 26, 2000 directions, the BCMB agreed to allow the Egg Board to rescind the existing New Entrant Program.

17. Mr. Whitlock maintains that it was the Egg Board's choice to follow the directions of the BCMB. It could have applied for judicial review of the BCMB directions but it chose not to do so. The Egg Board did not have real concerns with some of the directions, as these were issues that the Egg Board was working on in any event.
18. With respect to the MRAP, all the BCMB did was place a different name on it. This is essentially the old TRLQ Program. Mr. Whitlock wonders however, if this is now the only way to issue quota?
19. Mr. Whitlock states that the Egg Board is still trying to figure out the implications of the October 26, 2000 directions. The Egg Board will need to work with the program for several years to determine what it means and whether it provides adequate flexibility to allow the Egg Board to regulate the industry.
20. Mr. Whitlock stated that the Egg Board was concerned that as many of its day to day decisions deal with implementation of this program, are all these decisions not appealable by producers? When does the MRAP cease to be a BCMB decision?

REPLY OF APPELLANTS

21. Mr. Jake Penner reiterates that this is a decision of the Egg Board and as such the BCMB should be able to hear an appeal. The orders are damaging to the industry in general and his operation in particular, which is why he has appealed.
22. Ms. Tjaden states that she is appealing the 2000 allocation and the decision to allocate only 30,000 birds to existing producers.
23. Mr. John Penner and Mr. Loewen felt that the issues were adequately set out and they had nothing further to add.

DECISION

24. Appeals to the BCMB are governed by s. 8(1) of the *Act* 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 by serving the Provincial board (BCMB) with written notice of the appeal...

25. Section 9(1) of the *Act* sets out the appeal provision for decisions of the BCMB made in its appellate role. It states as follows:
- 9(1) If a person, marketing board or commission is aggrieved or dissatisfied by an order or referral of the Provincial board under section 8(8), the person, marketing board or commission may appeal the order or referral on a question of law to the Supreme Court if the appeal is commenced within 30 days of being served with a copy of the order or referral.
26. Section 3(5) of the *Act* gives the BCMB general supervision over all marketing boards or commissions constituted under the *Act*. Decisions of the BCMB made in its supervisory role are subject to review under the *Judicial Review Procedure Act*. Thus, supervisory decisions cannot be appealed and are only subject to judicial review by the Supreme Court of British Columbia. The scope of judicial review is much narrower than the broad evidentiary rehearing, supported by extensive remedies, that takes place on an administrative appeal to the BCMB.
27. Having set out the statutory framework, a bit of background is necessary to place the appeal into context. On June 8, 2000, the Egg Board purported to allocate the 2000 Canadian Egg Marketing Agency (“CEMA”) allocation. On June 26, 2000, the BCMB wrote to the Egg Board and advised that s. 37(c) of the *BC Egg Marketing Scheme, 1967* (“the *Scheme*”) requires prior approval of the BCMB before any determination by the Egg Board to transfer or vary a producer’s quota or to establish terms and conditions upon which quota is issued to producers. As no prior BCMB approval had been obtained by the Egg Board, the BCMB cancelled the Egg Board’s June 8, 2000 order pending approval of the BCMB.
28. The BCMB struck a Supervisory Panel to consider the issue of the allocation of overbase quota. The Panel invited submissions from egg industry stakeholders on the broad issues of regional and specialty egg production and marketing restrictions on the entry of new producers in the context of BC’s overall production requirements and total provincial allocation. In addition to four public hearings held in Vernon, Prince George, Abbotsford and Nanaimo, the Panel also invited written submissions.
29. On August 15, 2000, the Panel issued its Supervisory Decision, the Egg Quota Allocation Review. In this Decision, the Panel refused to approve the pro rata allocation of 107,415 birds (the entire 3% CEMA allocation) to existing registered producers, as this allocation did not address the needs of the specialty and regional markets. The Egg Board was asked to reconsider the quota allocation in light of the Panel’s concerns that:
- a) consumers in regions should have better access to locally produced regulated product;
 - b) the TRLQ Program be more effective and less restrictive;
 - c) quota transfers be transparent;

- d) communications with industry stakeholders be improved; and
 - e) above all, that Egg Board decisions be flexible, transparent, accessible and sustainable.
30. Based on the foregoing recommendations, the Egg Board was directed to provide its decision by October 1, 2000.
31. On October 2, 2000, the Egg Board submitted its decisions to the BCMB for approval. Given that the BCMB was of the opinion that the Egg Board's decisions did not fully address its primary concern of flexible, transparent, accessible and sustainable decision making, the Panel made directions to the Egg Board on October 26, 2000. Only the directions relevant to the appeal are set out:
- 1. The Egg Board may issue up to 30,000 birds to registered producers pro rata effective December 31, 2000.
 - 2. The Egg Board is to establish a Market Responsive Allocation Pool (MRAP). The Egg Board is to place the 107,415 birds of quota issued by the Canadian Egg Marketing Agency (CEMA), less the above noted issue to producers, in the MRAP. A portion of the MRAP, not to exceed 20,000 birds, may be retained to assist in meeting the 97% threshold requirements established by CEMA. The remainder of the quota in the pool is to be used to provide quota for the Temporary Restricted Licence Quota (TRLQ) program and a Market Responsive Quota (MRQ) program. Priority is to be given to the allocation of 5,000 birds to the TRLQ program for Vancouver Island and 17,000 birds to the TRLQ Program (sic) for organic production. This priority should in no way be considered to be the only allocations required for these two purposes.

[The Panel went on to set out directions for the TRLQ and MRQ programs.]

- 3. The Egg Board is to make the following amendments to the TRLQ program set out in the document the "B.C. Flock Management Program – Temporary Restricted Licence", dated October 2, 2000:
 - TRLQ may be issued for all types of specialty production (i.e. all but white or brown caged bird production);
 - Priority is to be given to applicants who are new entrants to the industry, to meet regional marketing opportunities and to accommodate organic production in the regulated marketing system;
 - TRLQ shall be granted on the condition that the TRLQ holder replaces 25% of the TRLQ with regular quota at the end of years 4, 5, and 6. At the end of year 7, the Egg Board will issue the remaining 25% of TRLQ;
 - Remove the requirement that a TRLQ holder must obtain an irrevocable letter of credit;
 - Birds will be allocated to the TRLQ program as directed in item #2, and as required. The Egg Board will not set a limit on the number of birds allocated to the MRAP for issue as TRLQ.

These changes are to be completed and the TRLQ program is to be implemented by November 15, 2000.

4. The Egg Board is to establish a Market Responsive Quota (MRQ) program to respond efficiently to market issues and regional production shortages. MRQ will be allocated on the following basis:
 - MRQ will be available for the production of eggs from white and/or brown caged birds;
 - Priority is to be given to applicants who are new entrants to the industry and to meet regional marketing opportunities;
 - Birds will be allocated to the MRQ program as directed in item #2, and as required. The Egg Board will not set a limit on the number of birds that may be allocated to the MRQ for issue as MRQ.

With the exception of the above, the amended TRLQ rules and procedures are to apply to the MRQ program.

The MRQ program is to be implemented by November 30, 2000.

5. The Egg Board will establish a Provincial Quota Exchange, satisfactory to the BCMB, by February 1, 2001...
 6. Upon the implementation of the amended TRLQ program, the MRQ program and the Provincial Quota Exchange, the Egg Board may rescind the orders or rules for the existing New Entrant Program.
32. Given that the Appellants are appealing the Egg Board actions in response to the foregoing Supervisory Decision of the BCMB, it is first necessary for this Appeal Panel to determine whether or to what extent it has jurisdiction to hear these appeals.
 33. For a matter to be the proper subject of an appeal under s. 8(1) of the *Act*, it is necessary for there to be an “order, determination or decision *of* a marketing board....”
 34. Based on the plain language of section 8(1), it is not enough for an appellant to show that he or she is aggrieved and dissatisfied with something the commodity board has done. The right of appeal turns on the existence of an “order, determination or decision of a marketing board.”
 35. What does the legislation mean when it uses this language? Can an appeal be filed simply by a person showing, as the Appellants seek to do here, that there exists a commodity board order they disagree with? Alternatively, does the legislation’s reference to an order, determination or decision “of” a commodity board require that the order, determination or decision in question actually be attributed to choices made by the commodity board, rather than imposed upon it by the BCMB? In our opinion, the latter interpretation is correct. The reference to decisions “of” the commodity board necessarily implies the exercise of judgment by the commodity board, rather than the issuance of such orders resulting from required adherence to specific directions from above.

36. The proposition that a commodity board must have a degree of independent ownership over an order, determination or decision before it can be appealed to the BCMB is not a technical or legalistic requirement. The fundamental purpose of a right of appeal to the BCMB is to ensure that commodity boards remain accountable to the independent and specialised BCMB for *their* exercises of judgement. Where action taken by a commodity board is not “their” decision, but is rather an administrative action taken pursuant to a specific BCMB direction imposed upon them and which allows for no discretion on their part, the purpose of the appeal power is absent. It would be absurd and contrary to the legislation if the BCMB, in its appellate capacity, was effectively required to hear an appeal from its own supervisory decision. The absurdity is even more pronounced when one considers that, if the BCMB was required to hear such an appeal, the commodity board, which is supposed to appear to defend “its” decisions on BCMB appeals, would simultaneously have a right to seek judicial review of the very same BCMB substantive supervisory direction at issue on the appeal. This is not what the legislation intended.
37. The *Act* confers both a supervisory and appellate jurisdiction on the BCMB. The sections conferring these powers must be read so as to allow the BCMB the fullest exercise of both powers, in harmony with one another. Where the BCMB has, as here, exercised its uncontested supervisory authority to issue specific directions to a commodity board to issue orders, the appropriate remedy is to challenge the BCMB by way of judicial review. It is not to appeal those very same decisions to the BCMB under the fiction that they are decisions “of” the commodity board merely because that board has carried out that which the BCMB, after due supervisory deliberation, required it to do.
38. A situation not dissimilar from the present was before the Court in *Arnold v. British Columbia (Region L, Regional Director)*, unreported, July 17, 1989 (BCSC). The issue in that case was whether a Government official, who reduced a person’s income assistance, made an appealable “decision” where his action was mandated by the legislation. The Court held he had not made an appealable “decision”. Mr. Justice Coultas held at page 5:

In my view, a determination, like a “decision” requires that there be a choice. Section 1 is a complete answer to the question at issue. Deciding the eligibility of a person involves “making a decision”. The Regional Director has not decided the eligibility of the recipient. Mr. Arnold did not present a medical certificate pursuant to the Regulation within the time period, or at any time after that. The Regulation clearly states, as did the letter to the Petitioner dated October 7th, 1988, that unless he supplied a medical certificate he would be reclassified. There was no discretion in the Regional Director to decide the eligibility of the recipient to receive a benefit or reduction. It was an automatic action.

39. Mr. Justice Coultas relied on the Ontario Court of Appeal decision in *Lamoureux and Registrar of Motor Vehicles* [1973] 2OR 28 which stated:

Despite the fact that the application to the Divisional Court is for a judicial review of the ruling of the Registrar of Motor Vehicles, it is to be noted that the suspension of Lamoureux's licence did not result from any ruling, decision or action of the Registrar, but flowed directly from the operation of the provisions of s. 21 brought into operation with respect to Lamoureux's licence by virtue of his conviction for an offence contrary to sections of the Criminal Code therein specified.

40. The thrust of the *Arnold* decision is consistent with our analysis above: that where legislation makes a decision subject to appeal, the person whose decision is being appealed must actually have a choice in the matter rather than merely taking a specific action they are legally bound to take. To determine our jurisdiction over these appeals, it is therefore necessary to look to each issue under appeal and determine whether the Egg Board exercised any discretion in making its order. It is clear from the BCMB's October 26, 2000 Supervisory Decision that on certain matters the Egg Board had no independent discretion at all.
41. The Appellants take issue with whether all regions of BC should be treated the same as part of a unified provincial egg production and marketing area, whether all types of egg production should be treated the same and whether all egg producers should be treated the same. Given that the BCMB Supervisory Decision specifically directs the Egg Board to consider regional needs in its allocation of quota and specifically directs that Vancouver Island receive 5000 birds of TRLQ, it is clear that the Egg Board had no independent discretion with respect to regional allocation of quota. To the extent that this allocation favours specialty producers and results in certain producers being treated differently than others, this was done at the direction of the BCMB. The Egg Board had no independent discretion.
42. The Appellants take issue with "free" quota being given to any producer. Presumably this is a criticism of the TRLQ and MRAP programs in that quota is issued on a 7-year permit with a requirement that a producer begin buying quota after year 4 as opposed to the allocation of all quota to registered producers on a pro rata basis. Once again, the BCMB directed the Egg Board to enact the TRLQ and MRAP programs under these terms. The Egg Board did not exercise any independent discretion in respect of this ground of appeal.
43. The Appellants argue that all new quota should be allocated on a pro rata basis and that the year 2000 allocation of 107,415 birds should be given solely to existing producers, who have experienced quota cutbacks in previous years. This approach was originally proposed by the Egg Board, and specifically rejected by the BCMB. Given that the move away from a pro rata distribution of quota and towards a market responsive approach results from a direction of the BCMB, the Egg Board did not exercise any independent discretion in making this order.

44. The Appellants also take issue with the process leading to these decisions. They argue that the Egg Board did not follow the recommendations of the Egg Industry Advisory Committee (the “EIAC”), and the process was not fair and transparent. The EIAC is an advisory body that provides recommendations to the Egg Board on policy issues. The Egg Board is not bound to follow EIAC recommendations although it must consider the input.
45. This submission depends on accepting the argument that matters under appeal are independent decisions of the Egg Board. To the extent that – as found in this decision – such orders are in fact issued at the specific direction of the BCMB, the relevant process is the BCMB supervisory process. Any concerns about that process is a matter for judicial review.
46. The Appellants argue that Vancouver Island should not be singled out as a region. This was clearly a direction of the BCMB and as such did not result from a decision of the Egg Board.
47. The Appellants argue that the granting of organic TRLQ rewards persons who have been producing outside the system. The Egg Board did not decide to grant organic producers TRLQ. The BCMB made a very specific direction to the Egg Board to include organic production within the TRLQ Program. As such, this is not a decision of the Egg Board.
48. The Appellants argue that there should be no claw back added to the MRAP. The Appellants take issue with the 5% surrender on quota transfers being part of the MRAP. This too is a specific direction from the BCMB and is not a decision of the Egg Board.
49. The Appellants take issue with a percentage of new growth being allocated to MRAP. The BCMB has directed that in order for the MRAP to be sustainable, the Egg Board is to issue a percentage, subject to BCMB prior approval, of any new growth to the MRAP. Once again, the Appellants’ objection is with the BCMB supervisory direction.
50. It is clear, in summary, that the Appellants’ objections are directed fundamentally against specific directions given by the BCMB to the Egg Board after a detailed supervisory review. In this review the very matters under appeal were considered by the BCMB and gave rise to specific directions to the Egg Board, in a direction quite different from that the Egg Board itself had proposed. While administratively reduced to Egg Board “orders” upon BCMB direction, they were in all relevant respects decisions “of” the BCMB, not the Egg Board. On these unique facts, therefore, we conclude that the appeals are not properly before the BCMB.
51. Having come to these conclusions, we wish to make a number of other points clear regarding the interface between our appellate power and our supervisory/prior approval role.

52. First, this decision does not mean that there is no right of appeal merely because the BCMB has a “prior approval” power to exercise. In and of itself, the requirement for BCMB prior approval in s. 37(c) of the *Scheme* does not remove the right of an aggrieved or dissatisfied person to appeal a commodity board determination to the BCMB. If the Egg Board decision to proceed in a certain manner is appealed within 30 days, and BCMB prior approval has not been granted, such “prior approval” could well be decided in the appeal context, with the appeal decision determining whether “prior approval” will be granted. However, even if the decision is not appealed, BCMB prior approval is still required. Given the Egg Board’s original intention to grant the entire allocation to existing quota holders, it is not surprising that those quota holders filed no appeals from that decision. However, the legislation still required BCMB prior approval.
53. Second, as it relates to the right of appeal to the BCMB, we see a distinction between (a) situations where the BCMB merely reviews a commodity board proposal and grants prior approval based on the information given to it by the commodity board, and (b) situations where the BCMB has gone further, undertaken its own independent consultation process and review, and issued specific supervisory directions to the commodity board deriving from that review. Situation (b) exists here, and for the reasons we have given, there is no right of appeal in this situation. Where, as here, the BCMB acting in its supervisory capacity, undertakes its own investigation or review and makes specific directions to a commodity board, the only avenue of review would be judicial review of the decision of the BCMB pursuant to the *Judicial Review Procedure Act*.
54. However, in situation (a) – where the BCMB grants “prior approval” based on Egg Board information – we think the right of appeal remains. Even if the BCMB issues “prior approval”, an appeal to the BCMB following such prior approval appears consistent with the intent of the legislation. This is so for two reasons. First, the decision fundamentally remains the decision of the Egg Board. Second, an Appellant may bring to the appeal Panel’s attention evidence and argument that were not before the BCMB in the “prior approval” context, given that the BCMB relies on the commodity board’s evidence and process and does not, in normal circumstances, carry out its own independent consultation and evidence gathering process as was done here. In a case where a decision which has been “prior approved” is appealed, normal BCMB policy is to ensure that members hearing the appeal did not take part in the prior approval decision.
55. The Egg Board has asked when do BCMB directions become decisions of the commodity board such that a right of appeal arises? This raises our third point. Even in cases where the BCMB has conducted its own supervisory review and issued directions, there is still a right of appeal where a direction invites or requires the commodity board to exercise discretion.

56. In this case, for example, the BCMB directed the Egg Board to allocate *up to* 30,000 birds pro rata amongst registered producers. Had the Egg Board chosen to allocate something less than 30,000 birds, that decision would have involved an independent exercise of discretion, and a registered producer seeking a higher allocation, up to the 30,000 bird maximum, could have appealed. However, the Egg Board allocated the 30,000 maximum allowed by the BCMB. The Appellants do not object to that, but say instead that the number should be higher. As this was expressly prohibited by the BCMB, their quarrel is again not with the Egg Board, but with the BCMB. The BCMB made its direction and that direction cannot be characterised as a commodity board decision such that the right of appeal granted under s. 8(1) of the *Act* arises.
57. A second example may arise when the Egg Board carries out the BCMB's direction to issue "a percentage" of any new growth to the MRAP, to ensure its sustainability. When the Egg Board does identify a proposed allocation of new growth to the MRAP, its determination would be subject to appeal. Such an appeal could not be on the ground that it should not have allocated any growth at all, since that was a specific BCMB direction. The appeal must be within the boundaries of the constraints imposed by the BCMB.
58. The "boundaries" imposed by the BCMB regarding allocation of quota are specific and considered policy decisions. The decision to have MRAP and TRLQ programs reflects a desire on the part of the BCMB to have a system of allocating quota that is based on principles of flexibility, transparency, accessibility and sustainability. Although the policies on which these programs have been created cannot be appealed, their implementation can be.
59. The Egg Board will be exercising its discretion when it begins to allocate quota under these programs. These decisions can be appealed provided the appeals do not question the overall boundaries specified by the BCMB. An Egg Board decision to prefer one applicant to another could be appealed, as could the amount of TRLQ or MRQ allocated to a particular producer. However, appeals that go to the underlying policy, directed by the BCMB, are not properly the subject of appeal.

ORDERS

60. The appeals are dismissed.
61. There will be no order as to costs.

Dated at Victoria, British Columbia this 16th day of May 2001.

British Columbia Marketing Board
Per

(Original signed by):

Christine J. Elsaesser, Vice Chair
Karen Webster, Member
Hamish Bruce, Member