

1 IN THE MATTER OF THE  
2 NATURAL PRODUCTS MARKETING (B.C.) ACT

3 -AND-

4 IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE  
5 BRITISH COLUMBIA MILK MARKETING BOARD SUSPENDING ALL  
6 TRANSFERS OF FLUID AND MARKET-SHARING QUOTA PURSUANT TO  
7 THEIR NEWS BULLETIN OF AUGUST 25, 1993

10 September, 1993  
Richmond, B.C.

8 BETWEEN:

9 JORI HOLSTEINS, LIMBRANT HOLSTEINS  
10 and STAN BLAND

Appellants

11 AND:

12 THE BRITISH COLUMBIA MILK MARKETING BOARD

Respondent

13 REASONS FOR JUDGMENT

14 B.C. MARKETING BOARD:

15 Mrs. D. Iverson	Chair
16 Mrs. M. Brun	Vice-Chair
17 Mr. G. Brar	Member
18 Mr. J. Collins	Secretary
J. McBride, Esq.	B.C. Marketing Board Counsel

19 THE APPELLANTS:

20 R.A. Wattie, Esq.	Appearing for the Appellant Jori
21 Mr. R. Janssen	Appearing for the Appellant Limbrant
22 Mr. S. Bland	Appearing on his own behalf

23 THE RESPONDENTS:

24 S. Stark, Esq.	Appearing for the Respondent
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26 THE CHAIR: I would advise the parties that the British  
27 Columbia Marketing Board has been able to reach a

ORIGINAL

1 decision, which I will give orally.

2 The Milk Marketing Board has been placed in an  
3 extremely difficult position by a recent Supreme Court  
4 decision of Madam Justice Newbury. The British Columbia  
5 Marketing Board would like to express their support for  
6 the members of the Milk Board who have obviously expended  
7 great effort in reaching their decision to suspend the  
8 transfer of quota.

9 As prudent board members would, members of the Milk  
10 Board sought advice of counsel regarding whether or not  
11 to suspend the transfer of quota pending further court  
12 proceedings. On page three of Exhibit 1, tab 14 the  
13 letter setting out the legal advise says, in part:

14 " The approval of transfers of quota without that  
15 understanding could be considered as a dereliction  
of duty by the Board of its mandate. "

16 With "that understanding" referring to an understanding  
17 of Madam Justice Newbury's judgment. The written opinion  
18 makes no mention of consequences to the parties such as  
19 the appellants. The British Columbia Marketing Board is  
20 concerned that the Milk Board arrived at its decision  
21 relying on a legal opinion that does not consider the  
22 specific interests of individuals such as the  
23 appellants.

24 The British Columbia Marketing Board supports the  
25 Milk Board's suspension of transfer of quota for those  
26 individuals whose applications for transfer were not  
27 received prior to 4:30 p.m. August 2, 1993.

1           The potential for harm to the appellants and  
2 producers such as the appellants is real. The potential  
3 injury to the milk industry from the Milk Board allowing  
4 those transfers received prior to 4:30 p.m. August 2,  
5 1993 is speculative. The British Columbia Marketing  
6 Board defers to the Milk Marketing Board and accepts the  
7 evidence of their witnesses that it could be detrimental  
8 to the industry to approve transfer applications received  
9 after 4:30 p.m. August 2, 1993.

10           It is clear from the evidence that the Board heard  
11 that a concern of the Milk Board in allowing the  
12 transfers of quota given the current uncertainty is  
13 possible litigation between purchasers and vendors. The  
14 British Columbia Marketing Board feels that given the  
15 current uncertainty it would be unfair to require  
16 purchasers to complete transfers without having both the  
17 purchaser and the vendor reconfirm their desire to  
18 complete such transfers on the same terms that had been  
19 agreed prior to 4:30 p.m. August 2, 1993.

20           I would ask you to turn to tab 9 of Exhibit 1, the  
21 second page. The British Columbia Marketing Board's  
22 order will amend the decision of the Milk Marketing Board  
23 contained in the minutes of August 23, 1993. Paragraph  
24 5, which now reads:

25           "       The suspension includes applications received  
26                   prior to August 1, 1993 to be effective September  
                  1st and thereafter. "

27           This should instead read:

1           "     The suspension applies to all applications  
2                     received after 4:30 p.m. August 2, 1993. The  
3                     suspension does not apply to applications received  
4                     before 4:30 p.m. August 2, 1993 where all parties  
5                     to the transfer have indicated their awareness of  
6                     the uncertainty caused by the decision of Madam  
7                     Justice Newbury in a form satisfactory to the  
8                     British Columbia Marketing Board, and as well,  
9                     have indicated their willingness to proceed with  
10                    the transfer. This transfer will be effective  
11                    September 1, 1993. "

12                   The British Columbia Marketing Board invites Mr.  
13                   Stark to provide us with a form which the Milk Marketing  
14                   Board would feel appropriate for the purchasers and  
15                   vendors to sign to indicate their willingness to complete  
16                   the transfers. If Mr. Wattie wishes to review this form  
17                   we would ask Mr. Stark to provide the form to Mr. Wattie  
18                   by 12:00 noon on Monday. If the parties are able to  
19                   agree to a form, and by the "parties" I mean Mr. Stark  
20                   and Mr. Wattie, by 5:00 p.m. on Monday we would ask that  
21                   you forward the agreed form to us. If there is no  
22                   agreement we would ask both Mr. Stark and Mr. Wattie to  
23                   provide us with the form which they feel is appropriate  
24                   by 5:00 p.m. on Monday, September 13, 1993. The British  
25                   Columbia Marketing Board will prescribe the form to be  
26                   used if agreement hasn't been reached. Of course, it  
27                   goes without saying that the Milk Board will not be  
                    required to approve transfers which do not satisfy their  
                    requirements prior to August 2, 1993.

(CONCLUDED)