

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

AND

IN THE MATTER OF AN APPEAL
OF GEORGE AND SHIRLEY ZWAAGSTRA
AGAINST THE DECISION OF
THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD
FILED MARCH 10, 1993

BETWEEN:

GEORGE AND SHIRLEY ZWAAGSTRA

APPELLANTS

AND:

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

RESPONDENT

AND:

FRASER VALLEY MUSHROOM GROWERS' CO-OPERATIVE ASSOCIATION

INTERVENOR

AND:

PACIFIC FRESH MUSHROOMS INC.

INTERVENOR

DECISION

DATE OF APPEAL HEARING: MAY 7, 1993

APPEARANCES:

Appellants:	Mr. George Zwaagstra and Mrs. Shirley Zwaagstra (Carrying on business as Liberty Mushroom Farm)		
Respondent:	Mr. Ralph Towsley	Chair,	B.C. Mushroom Marketing Board
	Mr. Jack Sharp	Manager,	B.C. Mushroom Marketing Board
Intervenors:	Mr. Yee Mah	President,	Fraser Valley Mushroom Growers' Co- operative Association

INTRODUCTION

The matter before the British Columbia Marketing Board (the "Board") is an appeal by George and Shirley Zwaagstra, proprietors of Liberty Mushroom Farms ("Liberty"), against a decision of the B.C. Mushroom Marketing Board (the "BCMMB"), as conveyed in a letter dated February 22, 1993, not to grant Liberty an Agency License (the "Decision").

The appeal was filed on March 10, 1993 and was heard on May 7, 1993, in Richmond, B.C.

With the agreement of all the parties present, the hearing proceeded in the absence of Mr. Daniel Ashe, representing the Pacific Fresh Mushrooms Inc. ("Pacific"), who was unable to attend. Pacific had indicated to Board staff that it wished to be added as an intervenor in the Appeal. It was further agreed that Pacific could have the opportunity to make a written submission at a later date. Because of the decision of the Board, this will not be necessary.

Prior to the hearing of the Appeal, all parties were provided with the criteria which the British Columbia Vegetable Commission has developed for the designation of agencies. This was provided for information only and to help the parties to focus on aspects of the designation of agencies in a related industry which might be relevant to the Appeal.

It was agreed, on the recommendation of the Board, that the Respondent should proceed first, in order to focus the appeal on the process and reasons for the denial of the request.

BACKGROUND

The BCMMB was established in 1966 under the B.C. Mushroom Marketing Board Scheme, B.C. Reg. 153/66 (the "Scheme").

The BCMMB is empowered to regulate "... mushrooms grown in the Province of British Columbia", but currently only regulates mushrooms grown and/or marketed in the lower mainland. Other areas of the Province are exempted

from regulation. As well, the Mushroom Board does not regulate speciality mushrooms, but only agaricus bisporous or button mushrooms.

The Fraser Valley Mushroom Growers' Co-operative Association (the "Co-op") was originally the sole designated marketing agency for the regulated product under the Scheme. In 1979, a cannery was built by the Co-op. It is used to process product surplus to the fresh market. The cannery also purchases product from sources other than Co-op members.

In 1988, as the outcome of an appeal by Pacific, a second Agency was licensed by the BCMMB. Relationships between the Co-op and Pacific have not been harmonious and, at the present time, mushroom growers are receiving low returns for their product. This is due, at least in part, to the inability of the Co-op and Pacific to work harmoniously together in the orderly marketing of mushrooms. It is also due to other factors, such as individual growers "bootlegging" their product rather than selling through an agency.

As a result of the present disarray of the mushroom industry, a committee was struck was to review the role of the BCMMB, the operations of the Agencies, and other factors affecting the industry. The review has recently been finalized, and a report of the Mushroom Review Committee (the "Report") has been finalized. Various recommendations to improve the mushroom industry are contained in the Report.

At the present time, mushroom growers in the regulated area may market regulated product through either the Co-op or Pacific.

Co-op membership is by ownership of shares, each share entitling the grower to ship the production of a specific area. The number of shares outstanding is limited, but shares are available for sale from other members.

Pacific is a private company, marketing the production of the owners. It also markets the production of other growers under contractual arrangements.

THE APPELLANTS

The Appellants have owned and operated three mushroom farms over the past twenty-five years. They are no longer occupied full time with the farm, the operations being run under an agreement with another party. Their farm is currently for sale.

Their farm is fully equipped with modern European mushroom equipment, for which Mr. Zwaagstra is an agent. This has enabled the farm to operate with better productivity and efficiency, although the picking is not mechanized and remains labour intensive.

Although the Appellants have owned shares in the Co-op in the past, they do not own any at present, and do not wish to purchase outstanding shares currently available. Their product is currently marketed by Pacific, under a contractual arrangement. They do not own shares in Pacific, although they participated in the initial organization that eventually became Pacific.

The Appellants stated that they are dissatisfied with the BCMMB Agencies. They stated that their dissatisfaction with Pacific is largely because they feel that Pacific's service charges are too high. They pointed out to the Board that, at the present time, the BCMMB does not have the authority to control the service charges of agencies. They also noted that Pacific will pay a higher price to those growers who will contract with Pacific. The Appellants do not feel they should be treated differently if they do not wish to sign a contract.

The Appellants feel that, under the circumstances, they would benefit from marketing their own product through their own agency. Although they do not expect to receive a higher market price, they feel they would have lower costs. The product which they could not sell on the fresh market would be sold to Pacific or to the Co-op for processing.

The Appellants' presentation included the following reasons in support of their appeal:

- the licensing of another agency (Pacific) is a precedent;

- the BCMMB does not protect the interests of "independent" growers (growers who are not shareholders of either of the designated Agencies), examples of unequal treatment were:
 - non-representation on the BCMMB;
 - growers are not entitled to participate in any profits nor review the accounts of the agencies;
 - the practice of pooling should not apply to independent growers.
- the designated Agencies are not required to accept growers as members/owners;
- the designated Agencies do not treat independent growers equally with member growers;
- market competition is forcing the Agencies to increase their grading standards, resulting in a lower price being paid to the growers.

THE BCMMB'S DECISION

It is the BCMMB's view that, although they license two Agencies to market the regulated product, multiple Agencies are deleterious to the principles of orderly marketing. It is the policy of the BCMMB not to issue Agency Licences to growers for the marketing of their own production. These two reasons form the basis of the BCMMB's refusal to grant the Appellants an agency licence.

DECISION

The Board finds that the BCMMB acted within its authority and in a manner consistent with its stated principles of orderly marketing.

Further, the Board finds that the issuance of multiple Agency licences to individual growers wishing to avoid quality control standards, and the costs of investment, operations and overhead of existing Agencies would be detrimental to the industry, and could undermine the current BCMMB efforts to resolve problems in the industry which include some of the concerns of the Appellants.

The Board is also satisfied that the Appellants, as independent growers, have access to the services of two established Agencies. Further, the

Appellants have chosen not to become a member of the Co-op and therefore have voluntarily foregone certain rights and privileges of membership.

As mentioned earlier, a Report has been prepared by the "Mushroom Review Committee". The Report has been presented to the entire Board and has been accepted by it. The Report contains certain recommendations which the Board is hopeful will address some of the concerns voiced by the Appellants. These include amendments to the scheme which would allow the BCMMB to control the service charges by agencies. As well, the Report includes recommendations for changes to the Scheme which would result in a different composition of the Mushroom Board. It also recommends the hiring of a full time general manager by the BCMMB - a recommendation which has been carried out.

Because of the current fragility of the mushroom industry, the Board is concerned that the addition of another agency could further destabilize an already critical situation.

The Appellants have been unsuccessful in their appeal. In accordance with the rules governing appeals before this board, the Appellants' deposit is forfeit.

However, the Board is concerned that the BCMMB has no specific criteria or procedure for the granting or the periodic review of Agency licences. It therefore recommends that the BCMMB review this matter and that it establishes a policy which provides a clear procedure for the licensing of Agencies including:

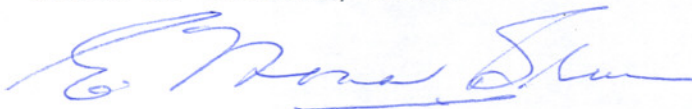
- the information which should be included with an application;
- the minimum criteria with which an Agency must comply;
- the procedure the BCMMB will follow in considering new applications;
- a provision for periodic review of existing Agency licences;
- a provision for applicants to make presentations to the BCMMB; and
- the reasons for the decision to be made available.

In the event that the changes to the Scheme do not take place by December 31, 1993, and in the event that the Appellants' wish to reapply for an agency licence after that date, the Appellants would not be barred from bringing a further Appeal if they re-apply for an agency licence and if the BCMMB refuses to grant them such a licence. This does not mean that their Appeal would be successful, it simply means that the Board will recognize that anticipated changes have not taken place and will hear a further Appeal as to whether or not the Appellants should be granted an agency licence.

Dated this 24th day of June, 1993



Donna M. Iverson, Chair



E. Mona Brun, Vice Chair



Christine M. Dendy, Member