

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND AN APPEAL FROM A DECISION
OF THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD
DATED AUGUST 6, 1998

BETWEEN:

MONEY'S MUSHROOMS LTD.

APPELLANT

AND:

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

RESPONDENT

AND:

RIDGE MUSHROOMS INC.

INTERVENOR

AND:

FARMERS' FRESH MUSHROOMS INC.

INTERVENOR

**REASONS FOR DECISION
PRELIMINARY ISSUE-STANDING ON APPEAL**

APPEARANCES:

For the British Columbia Marketing Board	Ms. Christine Elsaesser, Vice Chair Ms. Karen Webster, Member Mr. Hamish Bruce, Member
For the Appellant	Mr. Stein Gudmundseth, Counsel
For the Respondent	Ms. Maria Morellato, Counsel
For the Intervenor, Ridge Mushrooms Inc.	Mr. Keith Mitchell, Counsel
For the Intervenor, Farmers' Fresh Mushrooms Inc.	Mr. Lee Sawatzky, Counsel
Date of Hearing	October 29, 1998
Place of Hearing	Richmond, BC

BACKGROUND

To put these reasons into context, a general description of the appeal background is in order. On August 6, 1998, the British Columbia Mushroom Marketing Board ("the Mushroom Board") decided it was in the best interests of the mushroom industry to designate a new agency. It further concluded that Ridge Mushrooms Inc. ("Ridge"), was an appropriate applicant to receive an agency licence. Before arriving at its findings, the Mushroom Board held a hearing where Money's Mushrooms Ltd. ("Money's") was one of the participants. The Mushroom Board's reasons refer to Money's as an "intervenor".

In arriving at its findings in support of Ridge's application, the Mushroom Board properly identified agency designation as a privilege conferred under the *Natural Products Marketing (BC) Act* (the "*Act*"). That privilege consists of the right to lawfully market mushrooms in the province, subject to the responsibilities and conditions attendant on being granted such status. At present, only three other companies enjoy that privilege, Money's and Pacific Fresh Mushrooms Ltd. (a wholly owned subsidiary of Money's) and All Seasons Mushroom Farms Inc. ("All Seasons"). All Seasons was approved in 1997 after a decision of the British Columbia Marketing Board ("BCMB"). Its operation and status is presently under review by the Mushroom Board. Given the volume of mushroom production in the province and the limited number of agencies that can lawfully market those mushrooms, the addition of a new agency is a matter of some significance.

The Mushroom Board's August 6, 1998 findings recognise that, under the *Act* and the *Regulations* to the *Act*, the Mushroom Board does not have the unilateral right to designate an agency. Under s. 10(4) of the *Act* and s. 8 of the *Regulations*, the appointment of a marketing agency by a marketing board is subject to the approval of the BCMB. Those provisions read as follows:

Natural Products Marketing (BC) Act, R.S.B.C. 1996, c. 330

10(4) Subject to the approval of the Provincial Board, a marketing board may appoint a marketing agency to carry out or perform certain functions or duties for the marketing of a regulated product under its jurisdiction.

Natural Products Marketing (BC) Act Regulations, BC Reg. 328/75

8. Notwithstanding anything to the contrary contained in any scheme every designation of an agency heretofore made by a marketing board shall be effective only until December 31, 1975, unless approved in writing by the Provincial Board and no designation of any agency thereafter shall be effective unless approved in writing by the Provincial Board.

The BCMB's legal authority under these provisions arises in the context of its responsibility for supervision of all marketing boards constituted under the *Act*: s. 3(5).

These provisions make it clear that, before any new agency is appointed, the BCMB has a legal responsibility to satisfy itself that a new agency is necessary and that the applicant is an appropriate candidate to fill that need. The approval function is not a mere “rubber stamp” nor is it dependent on an objection being filed by any person.

Alongside the BCMB’s supervisory jurisdiction lies its appellate jurisdiction. Unlike the supervisory power, the appellate jurisdiction does depend on an objection being filed. Under s. 8(1) of the *Act*, the following appeal rights have been legislated:

- 8(1) A person aggrieved 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 with written notice of the appeal, within
 - (a) 30 days after receiving notice of the order, decision or determination, or
 - (b) if the Provincial Board considers special circumstances warrant it, a further period specified by the Provincial Board on request of the person who brings the appeal.

On September 3, 1998, Money’s appealed the Mushroom Board’s August 6, 1998 decision to recommend Ridge as an agency to the BCMB. Money’s appeal does not challenge the Mushroom Board’s finding that there is room for an additional agency rather the focus is whether, based on the history of Ridge, its principals and its marketing plan, the Mushroom Board should have recommended Ridge to the BCMB.

By agreement of the parties, this Panel ruled on preliminary questions regarding (a) whether the Mushroom Board made a fundamental error in considering Ridge’s application in advance of other agency applications; and (b) whether the BCMB should exercise its supervisory authority pending the hearing of Money’s appeal. In its decision dated October 27, 1998, this Panel answered both questions in the negative.

The appeal hearing commenced on October 29, 1998. At the outset, Ridge objected to Money's standing to bring this appeal. Given that Money's was not prepared to respond, the appeal was adjourned generally to allow written submissions to be filed.

The following submissions were received:

1. October 29, 1998-submissions of Counsel for Ridge,
2. November 2, 1998-submissions of Counsel for Money's,
3. November 6, 1998-reply of Counsel for Ridge,
4. November 10, 1998-further reply of Counsel for Money's.

No submissions were received from either the Mushroom Board or the Intervenor Farmers' Fresh Mushroom Inc..

ISSUE

Does Money's have standing to appeal the recommendation of the Mushroom Board to appoint Ridge as an agency?

ARGUMENT OF RIDGE

Ridge argues that Money's does not have standing to bring this appeal. The argument appears to be two-fold. First, Money's, as an Intervenor in the hearing below, does not have a right of appeal, see *Edmonton Friends of the North Environmental Society v. Canada (Minister of Western Economic Diversification)* [1991] 1F.C. 416. Secondly, Ridge argues that Money's right of appeal is limited by s. 8(1) of the *Act* to those persons "aggrieved or dissatisfied" with an order, decision or determination of a board or commission.

This second argument involves the dual consideration of whether Money's is "aggrieved" or "dissatisfied". Ridge argues that Money's is neither. Ridge relies on *Chetwynd Hotel (1988) Ltd. v. British Columbia (Liquor Control and Licensing Branch)* [1991] B.C.J. No. 4004 (BCCA), which involved a provision of the *Liquor Control and Licensing Act*. Here, it was held that the phrase "aggrieved person" did not give a right of appeal to the Liquor Appeal Board to a competitor who had made submissions to a liquor licensing committee and whose only interest was fear of economic loss through licensed competition. The Court of Appeal held that the intent to protect existing businesses from competition cannot be inferred from the legislation, rather it must be express. As that Act was silent, the competitor had no right of appeal. Ridge relying on *Ghuman v. Minister of Transport* (1983) 2 Admin. L.R. 1 (Fed. T.D.) further argues that by definition a person "aggrieved" is one whose legal rights have been infringed. If no legal right exists, a person cannot be aggrieved. Thus, in the present case where Money's has no legal right that has been infringed, it is not "aggrieved" and has no standing to bring the appeal.

On the second branch of the s. 8 test, Ridge argues that Money's is not "dissatisfied" within the meaning of the *Act*. Based on *Global Marine Products Inc. (Re.)* [1996] N.S.J. No. 132 (S.C.), Ridge argues that "dissatisfied" must be interpreted more narrowly than any person who disagrees with a decision. Rather, the preferred interpretation of "dissatisfied" is one essentially similar to "aggrieved". Ridge also refers to the interpretation of "dissatisfied" in the decision of Mr. Justice Trainor in *British Columbia (BC Mushroom Marketing Bd.) v. British Columbia (BC Marketing Board)* (1988) 31 Admin. L.R. 259 (B.C.S.C.) at p. 265:

Of course the expression "dissatisfied" is much broader. I take it to mean that the result has failed to meet or fulfil the wish or desire or expectation of the person launching the appeal. However, the broadening of this category by extending it to include dissatisfied persons does not bear directly on the question of whether the Legislature intended, by such broadening, to bring the Mushroom Board into that category.

Thus, Ridge is of the view that Money's, whose only interest is as a competitor, is not "dissatisfied" within the meaning of the *Act* and thus, has no standing to bring the appeal.

ARGUMENT OF MONEY'S

Money's takes the position that although intervenors do not usually possess a right of appeal, s. 8 of the *Act* grants a right of appeal to persons "aggrieved" or "dissatisfied" with decisions of a marketing board. Money's concedes that it does not fall within the definition of an "aggrieved person" within s. 8. However, the passage from the *BC Mushroom Marketing Board* decision quoted above and the Concise Oxford Dictionary (1982) definition both suggest that "dissatisfied" is sufficiently broad so as to include Money's. There is no reason to depart from the plain ordinary meaning of "dissatisfied" as suggested by Ridge.

Money's further argues that it has a substantial present interest in the outcome of the appeal, beyond that of restricting competition. The BCMB Guidelines for Approving the Appointment of Designated Agencies (the "Guidelines") require co-operation both between agencies and their respective boards in discharging governance issues. Money's argues that if it is expected to co-operate with future agencies, it has an interest in ensuring that only qualified agencies are granted licenses. Unreliable agencies could significantly impact the supply of mushrooms and the prospect for growth in the industry.

Money's argues that the specific statutory language of the *Act* and the *British Columbia Mushroom Marketing Scheme* (the "*Scheme*") as well as the Guidelines support the conclusion that the Legislature intended to grant existing agencies the right of appeal. The aims of the *Act*, namely the "promotion, control and regulation" of natural products in BC contemplate co-operation between marketing boards and commissions and agency licensees. Were the right of appeal limited to "aggrieved" parties, there would be no scope to challenge the Mushroom Board's recommendation. By extending the right of appeal, the BCMB preserves its power of review. Finally, the BCMB's policy as mandated by the Guidelines contemplates existing agencies being involved in the approval process, not to protect them from competition but rather to improve the expertise and information available to the board. It therefore follows that Money's, by virtue of its participation in the prescribed process, is not foreclosed from a right of appeal.

REPLY OF RIDGE

Ridge in reply, argues that Money's fails to address the fundamental principle established in the *Chetwynd Hotel* decision that any intention to protect businesses from competition must be explicit in the legislation. In addition, Money's cites no case law to the contrary, which argues Ridge, is "a telling indicator". Ridge argues that the only interest Money's has in this appeal is the possible competition from Ridge.

Money's attempt to rely on the Guidelines of the BCMB is misplaced as the Guidelines cannot grant a right of appeal that does not exist in the *Act*. Money's argument that "the licensing of unreliable agents could impact the supply of mushrooms and the prospects for growth through exports to foreign markets" does not create any special interest in Money's which is not shared by all mushroom consumers, retailers and suppliers.

With respect to the term "dissatisfied", Ridge argues that it is not so broad as to include anyone involved in the mushroom industry. The passage from the *BC Mushroom Marketing Board* decision upon which Money's relies, is *obiter* and not necessary for the decision. Accordingly, the consideration of "dissatisfied" in that case is of no legal effect. In any event, even on the interpretation of "dissatisfied" in that decision, the Court did not suggest that a right of appeal extended to anyone whom might have an interest, no matter how remote, nor did it suggest that such a right extended to competitors.

Ridge argues that the implications of allowing Money's standing are staggering. Not only would competitor agencies be granted the right of appeal but so would potential competitors or applicants for agency licenses, retailers, wholesalers, importers, growers, composters and suppliers. It cannot be the legislative intent to cast the right of appeal so broadly so as to allow rights of appeal to the Supreme Court of British Columbia to all those persons identified. This would cause further delay, hinder the effective operation of the *Act* and complicate proceedings before the BCMB. Money's is a mere busybody seeking to argue that Ridge should not get a license for reasons unrelated and not specific to Money's. That is an insufficient interest to justify granting standing.

REPLY OF MONEY'S

In response, Money's disputes that its only interest is to prevent competition. The Guidelines compel Money's to co-operate with a new agency and assist the Mushroom Board in discharging its governmental responsibilities to promote, regulate and control, the transport, packing, storing and marketing of mushrooms. Money's has a direct interest to ensure that any new agency has the expertise, resources and ability to carry out these functions properly. It has a substantial stake in the health of the industry and is not a mere busybody. The very reason the Guidelines contemplate the involvement of existing agencies in the decision-making process is their considerable expertise and experience.

Money's further argues that there is no presumption against potential competitors having a right of appeal. Ridge's interpretation of the *Chetwynd Hotel* case is incorrect. This case held that under the particular wording of the *Liquor Control and Licensing Act*, only those "having a relevant interest in and being aggrieved" by a decision, may appeal. This case does not establish a fundamental principle against competitor's right of appeal and is readily distinguishable on two separate grounds. First, our *Act* has an express provision granting the right of appeal to any person "dissatisfied" with a decision of a board. Second, the *Scheme* differs from a liquor-licensing scheme in that the Mushroom Board

has direct responsibility to manage competition in the industry and thereby prevent existing licensees from destructive competition.

Money's argues that the s. 8 right of appeal must be interpreted in light of s. 8 of the *Interpretation Act* R.S.B.C. 1996, c.238 which stipulates that "every enactment...must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." It should not be given the restricted interpretation advanced by Ridge as it deprives "dissatisfied" of meaning and is therefore, suspect. Had the Legislature wanted to so limit the right of appeal, it could have done so expressly.

Money's also argues that, contrary to the position of Ridge, the lack of judicial precedent is not a telling indicator that Money's does not have the right to appeal a decision of a board's recommendation to grant a license to a competitor. This circumstance has not arisen before and thus, no court has considered the issue. There are examples however, where intervenors before the Mushroom Board have been granted standing on appeals before the BCMB. This is evidence of a desire to expand rather than restrict the ability of third parties to participate in the appeal process.

Finally, Money's argues that Ridge is wrong when it argues that a broad right of appeal would open the floodgates for appeals by anyone associated with the mushroom industry. If a person has been granted intervenor status at the original hearing after demonstrating an abiding interest in the matter and an ability to contribute to the decision making process, that party should have a right of appeal. The central issue is really whether the party can assist the BCMB in properly regulating the industry. The intent of the Legislature in enacting s. 8 was to allow a whole range of parties to bring appeals including existing agencies, affected growers and processors, providing they meet the threshold. Money's argues that if Ridge is right and Money's does not have a sufficient interest to bring this appeal, then no industry stakeholder would be entitled to bring the appeal. Such a result would hamstring the approval process.

DECISION

Money's has conceded that it is not a "person aggrieved" within the meaning of s. 8(1) of the *Act*. Accordingly, its standing to bring this appeal depends on whether it is a person "dissatisfied" by the decision of the Mushroom Board.

The term "dissatisfied" must ultimately takes its meaning from the language, purpose and structure of s. 8 read in light of the fundamental purposes of the *Act*. As directed by s. 8 of the *Interpretation Act*, all enactments shall be construed as being remedial and shall receive such fair, large and liberal interpretation as best ensures the attainment of their objects. In giving meaning to the term "dissatisfied", our review of the judicial decisions cited by Ridge has been helpful; however, with the exception of Mr. Justice Trainor's *obiter* comments in the *British Columbia Mushroom Marketing Board* case, none of the cases relied on interpret language identical to s. 8.

It is significant that unlike the *Chetwynd Hotel* case where standing depended on “having a relevant interest in and being aggrieved”, in s. 8 the terms “aggrieved” and “dissatisfied” are used disjunctively. As reflected in Mr. Justice Trainor’s decision, the word “dissatisfied” must mean something more than aggrieved” or else the Legislature would not have added it. The Nova Scotia Municipal Board also acknowledged the distinction between aggrieved and dissatisfied in *Northwest Arm Heritage Association v. City of Halifax* (1986), 23 Admin.L.R. 20 at p. 59, where the Board expressed the opinion that “a person to have the status of an “aggrieved person” under the ... Act, must have suffered a legal grievance, that is he must show something more than mere dissatisfaction with a decision he seeks to appeal”(emphasis added).

We reject Ridge’s submission that, as a matter of law, the terms “aggrieved” and “dissatisfied” are “essentially similar”. The Legislature should not be taken to speak redundantly. Indeed, we are satisfied that quite the opposite was intended when the Legislature granted standing to persons beyond the class of persons aggrieved. Far from expressing a redundancy, the Legislature’s decision to extend the right of appeal to persons dissatisfied with commodity board decisions (i.e. persons beyond those whose legal rights are affected) reflects an important public policy decision in the regulated marketing context. In particular, the Legislature has recognised that for the regulated marketing system to operate effectively and credibly, a broad right of appeal to the BCMB is appropriate.

Regulated marketing is not the same as liquor licensing or municipal planning. The different commodity sectors which make up the regulated marketing system are comprised of a wide array of participants with varying interests, all of which must be taken into account by variously constituted commodity boards exercising legislative, administrative and adjudicative functions. In order to achieve effective governance, commodity boards must balance those interests as best they can. In some instances, their decisions affect what would be recognised as “legal rights”; but in many others, legal rights will not be affected, even though a particular decision may be of great interest and practical significance to a particular person.

We are satisfied that the Legislature intended a broad right of appeal from decisions of all commodity boards as a necessary safeguard in order to ensure that the powers of commodity boards are not wielded in a fashion detrimental to either the public interest or the purposes of the Act. This understood, cases from outside the regulated marketing system, while instructive, are not determinative. Clearly, the Legislature has determined that the power given to boards under the *Act* is significant and thus justifies a broad scope of persons who may appeal. In our view, this intent would be undermined by the narrow construction advanced by Ridge. This said, the Panel does not believe that “dissatisfied” is to be interpreted so broadly as to include simply anyone in the mushroom industry who does not like a decision, without regard to an assessment of his personal interest in the appeal. To be “dissatisfied” under s. 8, a person should have a significant and genuine present interest in the outcome of the proceeding. The question of whether a particular person satisfies this definition will of course be determined by the BCMB on a case-by-

case basis. Thus, the real question in this case becomes whether, on the facts, Money's satisfies this requirement.

One point made by Ridge in this connection is that Money's, as an "intervenor" before the Mushroom Board, should not have a right to appeal to the BCMB. The Panel is not certain that Money's was an intervenor in the hearing below as an "intervenor" before a board often differs from the same label when used in a Court. Roles of parties before a board are not always analogous to those of plaintiff or defendant as there may only be one applicant or principal party. If the issue was whether Money's was a person aggrieved, this distinction might be relevant. However, given the focus on the term "dissatisfied", we do not think Money's involvement as an "intervenor" before the Mushroom Board is conclusive. Indeed, one condition of obtaining intervenor status in law is that a person show a sufficient and genuine personal interest in the subject matter of the appeal such that he may be adversely affected by the decision appealed from: see Evans et al, *Administrative Law* (1995), pp. 1319-22. This is not inconsistent with our understanding of the legal meaning of the term "dissatisfied" under s. 8.

Another argument made by Ridge is that Money's only interest is that of an economic competitor and as such is subject to the "fundamental principle" expressed in *Chetwynd Hotel* that, for standing to exist, a legislative scheme must expressly grant the right of appeal to such a competitor. In our view, the principle relied on by Ridge must be considered in light of the legislative context and language of that decision. We do not wish to be taken as saying that any economic impact of a decision, no matter how small or remote, is sufficient to satisfy the term "dissatisfied" in s. 8. Rather, Mr. Justice Taylor's comments in *Chetwynd Hotel* must be placed into proper context. While he properly observed that "the law has tended to be against restraint of competition" and that "an intent to protect existing businesses from competition ... must be found in the legislative language", two important points must be made about their application here. First, the very purpose of regulated marketing statutes *is* to restrain, control and regulate competition: s. 2 of the *Act*. Second, the term "dissatisfied" is legislative language that in our view is clearly capable of embracing economic interests.

It should be noted that Money's is not in this case purporting to assert standing based on financial harm through competition per se. Its objection is not to the designation of another agency, but rather to the designation of Ridge as that agency. Its concern is that if Ridge is unfit, Money's will be adversely affected. As a designated agency, Money's has a legal responsibility to work, and work effectively, with all other agencies under the direction of the Mushroom Board, in order to address common governance issues, such as grading and bootlegging. If Ridge cannot properly carry out those responsibilities, Money's will be impaired in carrying out its own duties in the public interest. The failure of agencies to work effectively to combat bootlegging will adversely affect the industry as a whole, including Money's. If the mushroom industry suffers because an agency operates improperly or ineffectively, it is reasonable to expect that both the supply of and demand for mushrooms, and hence Money's economic interests, would be adversely affected.

It is also significant that the BCMB has chosen to exercise its supervisory approval power under s. 10(4) in a fashion that is flexible and tailored to the circumstances. In this instance, the BCMB would want to hear from Money's prior to rendering any decision in respect of Ridge. As evidenced in the Guidelines, the BCMB has recognised the common sense proposition that existing agencies have a clear interest and useful experience to offer on the impact of a new agency on a closed or regulated marketplace. The fact that Money's would be invited to participate in a review of the recommendation to appoint Ridge as an agency suggests to us that Money's forms part of the class of persons who would have a right to appeal. The very circumstances, which make Money's involvement in a supervisory review relevant, form the basis for its standing on appeal. Money's has a concern and a stake in the overall health of the mushroom industry. It has direct interest in ensuring that a new agency has the expertise, resources and ability to function in a regulated marketplace.

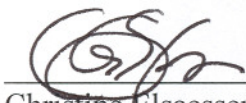
In our view, Money's has demonstrated a sufficient personal interest in the Mushroom Board's finding to recommend the BCMB appoint Ridge as an agency, and thereby is "dissatisfied" within the meaning of s. 8(1) of the *Act*.

ORDERS

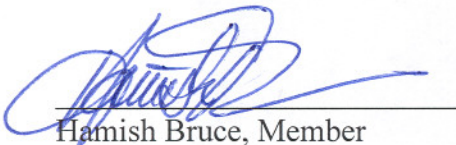
The panel finds that Money's has standing to bring the appeal. Accordingly, Ridge's application to have the appeal dismissed is denied. There will be no costs awarded as the issues argued were of significant consequence to all concerned.

Dated at Victoria, British Columbia, this 30th day of November 1998.

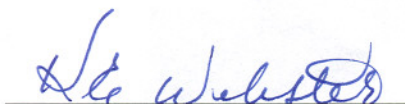
British Columbia Marketing Board



Christine Elsaesser, Vice Chair



Hamish Bruce, Member



Karen Webster, Member