

File: 44200-MuMB/TTRUONG 2
44200-MuMB/TRUONG/
ALL SEASONS

December 16, 1998

DELIVERED BY FAX

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Suite 250, 375 Water Street
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Attention: Mr. Stein K. Gudmundseth

Dear Sirs/Mesdames:

Re: Application to Stay the Enforcement of Orders 1/98 and 3/98

On December 9, 1998, Truong Mushroom Farm Ltd. and All Seasons Mushroom Farm Inc. (the "Applicants") applied to "stay" the enforcement of Orders 1/98 and 3/98 by the British Columbia Mushroom Marketing Board (the "Mushroom Board") pending the hearing of their appeals. The appeals on their merits are scheduled to proceed on December 18, 1998.

The Panel accepts that the jurisdiction to grant a "stay" in the context of an appeal is governed by the three part test set out in Attorney General of Manitoba v. Metropolitan Stores, (1987) 1SCR 110.

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This involves a consideration of the following:

- a) where a public interest is at issue, is there a "serious question to be tried",
- b) if a stay is not granted, will the applicant suffer irreparable harm, and
- c) does the balance of convenience favour the granting of a stay, pending a decision on the merits.

After reviewing the submissions of Counsels, this Panel is satisfied that in all the circumstances, a stay is inappropriate for the following reasons. Order 1/98, which requires all new marketing to be approved, was passed by the Mushroom Board on May 12, 1998. Order 3/98, which specifically requested the Applicants to apply to the Mushroom Board for approval to market regulated product, was passed on September 3, 1998. The Applicants appealed Order 1/98 on June 9, 1998, and Order 3/98 on October 1, 1998. The Applicants have never applied to increase their marketing under Order 1/98 but have chosen, as is their right, to appeal.

Unfortunately, the appeals have not been pursued vigorously. In fact, the December 18, 1998, appeal date was set at the insistence of the Mushroom Board. Given the foregoing, it is difficult to understand the urgency of this application. The Mushroom Board and Money's Mushrooms Ltd. have raised a concern that the Applicants are seeking an advantage by operating outside the Orders for as long as possible in order to further their arguments of prejudice.

The Panel is not satisfied on the evidence that the Applicants will suffer irreparable harm if the stay is not granted. In these circumstances, the balance of convenience rests with the Mushroom Board. Orders of a commodity board should not be lightly set aside. The BCMB will consider the validity of Orders 1/98 and 3/98 at its hearing on December 18, 1998. Until such time as the BCMB can hear full evidence and arguments, this Panel is not prepared to grant a "stay" to the Applicants.

Dated at Victoria, British Columbia, this 16th day of December 1998.

British Columbia Marketing Board

Per:


Christine Elsaesser, Vice Chair

cc: Mr. R.A. Wattie, Barrister & Solicitor
Linley Duignan