

IN THE MATTER OF THE  
NATURAL PRODUCTS MARKETING (BC) ACT  
AND AN APPEAL FROM A DECISION  
OF THE BRITISH COLUMBIA MUSHROOM MARKETING BOARD  
DATED NOVEMBER 27, 1997

**BETWEEN:**

TRUONG MUSHROOM FARM LTD.

**APPELLANT**

**AND:**

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

**RESPONDENT**

**AND:**

MONEY'S MUSHROOMS LTD. AND PACIFIC FRESH MUSHROOMS INC.

**INTERVENORS**

**AND:**

GROWERS FOR MONEY'S MUSHROOMS LTD.

**INTERVENOR**

**AND:**

MR. HUNG DO

**INTERVENOR**

**DECISION**

**APPEARANCES:**

For the British Columbia Marketing Board	Ms. Christine Elsaesser, Vice Chair Ms. Karen Webster, Member Mr. Dedar Sihota, Member Mr. Hamish Bruce, Member Ms. Satwinder Bains, Member
For the Appellant	Mr. David A. Critchley, Counsel Mr. Mark Andrews, Counsel
For the Respondent	Ms. Maria Morellato, Counsel
For Money's Mushrooms Ltd. and Pacific Fresh Mushrooms Inc.	Mr. Stein Gudmundseth, Counsel
For Growers for Money's Mushrooms Ltd.	Mr. Peter Kravchuke, Counsel
For Mr. Hung Do	Mr. Martin Chia, Agent
Date of Hearing	January 21, 1998, March 2-3 1998 and March 27, 1998
Place of Hearing	Langley and Burnaby, British Columbia

## INTRODUCTION

1. Truong Mushroom Farm Ltd. (the “Appellant”) appealed to the British Columbia Marketing Board (“BCMB”) from a decision of the British Columbia Mushroom Marketing Board (the “Mushroom Board”) on November 27, 1997 limiting the Appellant’s production to 100,000 lbs. of mushrooms/month. Intervenor status was granted to Money’s Mushrooms Ltd. (“Money’s”) and Pacific Fresh Mushrooms Inc. (“Pacific Fresh”), Growers for Money’s Mushrooms Ltd. (the “Growers”), and Mr. Hung Do.
2. The Appeal was heard on January 21, 1998, March 2-3, 1998 and March 27, 1998. The following written submissions were made:
  - from the Appellant on March 27, 1998;
  - from the Respondent on March 27, 1998;
  - from Money’s and Pacific Fresh on March 27, 1998;
  - from the Growers on April 6, 1998;
  - from the Respondent on April 6, 1998;
  - from Money’s and Pacific Fresh on April 6, 1998;
  - from the Appellant on April 15, 1998.
3. Due to the urgent nature of this appeal and the complexity of the arguments made the BCMB has decided to release our decision with written reasons to follow. Every attempt will be made to have the written reasons released as soon as possible.

## ISSUES

4. Did the Appellant have a contract with an existing agency such that it was exempted from the September 4, 1997 Order (the “Order”) of the Mushroom Board? (“Exemption”)
5. Is the Order within the jurisdiction of the Mushroom Board to enact? (“Jurisdiction”)
6. If the Order is valid, did the Mushroom Board properly exercise this power in the circumstances? (“Discretion”)



## FINDINGS

7. The BCMB finds that the Appellant does not fall within the exemption to the Order, as it did not have an existing contract with Pacific Fresh or an existing contract with All Seasons Mushroom Farms Inc. (“All Seasons”).
8. Given that the Order purports to regulate production, the BCMB finds that it is beyond the legal authority of the Mushroom Board. Short of an amendment to the British Columbia Mushroom Scheme (the “Scheme”), the Mushroom Board’s regulatory focus must be on the activity of marketing, in conjunction with the other powers under s. 4.01 of the Scheme.
9. The BCMB recognizes the concerns that led the Mushroom Board to enact the Order. Growth in the industry must be monitored and fairly distributed amongst growers. The Mushroom Board can achieve its objective within its current power under s. 4.01(a) of the Scheme:

...to determine the manner of distribution, the *quantity* and quality, grade or class of the regulated product that shall be transported, packed, stored or *marketed* by any person at any time... (emphasis added)

10. Given that the BCMB has determined that the Order is outside the legal authority of the Mushroom Board, we did not consider the issue of discretion. However, a few comments about the status of All Seasons are warranted. In August of 1997, the BCMB made a decision that the mushroom industry would benefit from another agency. All Seasons made a good case for agency status and the BCMB supported it in its quest. Today, All Seasons is crumbling from the inside with outright hostility between its principals. It is difficult to say how much the Order had to do with this falling out.

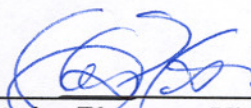
## DECISION

11. The Appellant does not fall within the exemption to the Order.
12. As the Mushroom Board did not have the legal authority to pass the Order, the Order is struck down.

13. The BCMB orders the Mushroom Board to give All Seasons a period of 90 days from the date of this decision to establish that it can operate as a viable agency. The Mushroom Board is not precluded from entertaining requests from other potential agencies. Such requests shall be considered in a public hearing where notice is given to all existing agencies, including All Seasons.

Dated at Victoria, British Columbia, this 7<sup>th</sup> day of May, 1998.

BRITISH COLUMBIA MARKETING BOARD  
Per



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Christine Elsaesser, Vice Chair