

11/18/86

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL TO THE
BRITISH COLUMBIA MARKETING
BOARD FROM A DECISION, DATED AUGUST 19, 1986
OF THE BRITISH COLUMBIA
MUSHROOM MARKETING BOARD

BETWEEN:

WREDE'S MUSHROOM FARM LTD.

APPELLANT

AND:

BRITISH COLUMBIA MUSHROOM MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: Wrede's Mushroom Farm Ltd.
H. Wrede, President
K. Wrede, Vice-President
G. Wrede.

APPELLANT

British Columbia Mushroom Marketing Board
A. Ethier, Chairman
M. Dube, Secretary
H. Huh, Member
D. Blomme, Member
H. Blackmore, Legal Counsel

RESPONDENT

Date of Hearing

October 16, 1986

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Wrede's Mushroom Farm Ltd. from a decision made August 19, 1986 of the Respondent the B.C. Mushroom Marketing Board denying the issuance of a Wholesale Distributor Licence to Wrede's Mushroom Farm Ltd. and the order or determination of said Board on August 15, 1986 wherein it established the criteria upon which eligibility for a licence is based.
2. The appeal was filed with the Board on September 4, 1986 and was heard in Richmond on October 16, 1986.
3. Both the Appellant and the Respondent were given the opportunity to call and cross-examine witnesses, file documentary evidence, file written submissions and make oral submissions on the facts and the law.
4. The Appellant is seeking to sell his own production in the market place based on economic necessity. He stated that there are inadequate services and procedures at the Fraser Valley Mushroom Growers Co-operative Association, including discrimination in the subsidization of the compost division and being at a disadvantage in relation to mushroom growers in the Interior and on Vancouver Island. The Appellant argues that he is locked into a compulsory scheme of inefficient marketing and handling and that the system is such as to cause discrimination and restraint of freedoms which offends the Canadian Charter of Rights and Freedoms. Further, the Appellant feels that he is unable to obtain a fair return on his investment.
5. The Respondent answers that it has acted within the authority established in the B.C. Mushroom Marketing Scheme, B.C. Reg. 153/66.
6. The Board finds that:
 - a) The British Columbia Mushroom Marketing Board ("Mushroom Board") is established under the British Columbia Mushroom Marketing Scheme ("Scheme") B.C. Reg. 153/66;
 - b) By provision of that Scheme, the Mushroom Board is granted authority within the Province to promote, regulate and control in any respect or in all respects the transportation, packing, storing and marketing, or any of them, of the regulated product, including the prohibition of such transportation, packing, storing and marketing, or any of them, in whole or in part, and without limiting the generality thereof shall have the following powers:
 - (a) To regulate the time and place at which and to designate the agency through which any regulated product shall be packed,

stored or marketed; 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 any time; and to prohibit the transportation, packing, storing or marketing, in whole or in part, of any grade, quality, or class of any regulated product;

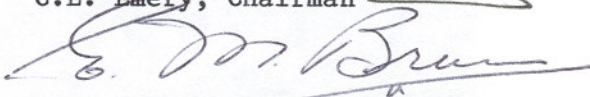
- (c) to require any or all persons engaged in the production, packing, transporting, storing or marketing of the regulated product to register with and obtain licences from the board.
- c) On August 15, 1986 the Mushroom Board established the following criteria for eligibility for a Wholesale Distributor Licence.
 1. Every applicant must demonstrate the ability and show intent to purchase a minimum of \$1,000.00 worth of regulated product from an agency or agencies in the following calendar year.
 2. All warehouse facilities must meet minimum health standards of the area, municipality or city in which it is built, have permanently displayed a current health certificate and sufficient cooler space.
 3. All applicants must provide documentation to show they regularly service a minimum of 10 retail food outlets.
 4. Existing wholesale distributor licences in good standing (in that the licensee has purchased a minimum of \$1,000.00 worth of regulated product from a designated agency in the previous year) will be renewed.
 5. No registered producer will be issued a wholesale distributor licence.
 6. The Board shall at all times have the final authority in the granting of licences which may be rejected if it is felt the granting of any licence is not in the best interest of the industry as a whole.
 7. A person or company cannot hold a wholesale licence if the majority of this produce is supplied from their own farm.
 8. Any wholesaler found to be in violation of any of the above criteria may have his licence cancelled.
- d) The Mushroom Board denied the Appellant's application for a Wholesale Distributor Licence on the basis of the established criteria. It is the Board's opinion that under its regulatory authority (Division 4, Section 4.01(a) of the B.C. Mushroom


Scheme) the Mushroom Board has the right to define the qualifications to be made in the issuance of a wholesale distributor's licence. The Board finds no reason to disagree with any of the qualifications established.

7. The Board notes that the appellant is a major producer of mushrooms producing approximately 200,000 lbs. of mushrooms per month and employing 45 people with a payroll of \$70 - 80,000. per month; The Board recognizes the Appellant's knowledge of the industry acquired through twenty-seven years of farming.
8. It is the opinion of the Board that the Appellant's appeal stems primarily from dissatisfaction with the activities of, and the services provided by the Fraser Valley Mushroom Growers Co-operative Association.
9. The Board notes that the Mushroom Board acknowledges that there are problems in the industry and states that it is moving toward solutions to the industry problems, including the possible appointment of a second agency in the designated area.
10. The Board finds, in that both parties acknowledge industry problems, that the solutions are best handled through the Mushroom Board and the Fraser Valley Mushroom Growers Co-operative Association.
11. Having considered all of the evidence and submissions at the hearing of this appeal, the Board has determined that the appeal should be denied and that all concerned should put their efforts towards improving the industry. The Board further determines that the Appellant shall pay to the Respondent all levies due on the product sold outside the designated Agency, Fraser Valley Mushroom Growers Co-operative Association, and upon payment of levies due, that the Respondent shall reinstate the Appellant's producer licence.
12. In accordance with this Board's Rules of Appeal, the whole of the Appellant's deposit shall be forfeit.

Dated this 18th day of November in Victoria, British Columbia.


C.E. Emery, Chairman


E. M. Brun


H. L. Black


M. Hunter