

IN THE MATTER OF THE  
*NATURAL PRODUCTS MARKETING (BC) ACT*  
AND  
AN APPEAL FROM A DECISION CONCERNING AN  
EXEMPTION FROM POOLING OF SALES  
AND  
AN APPEAL FROM A DECISION CONCERNING  
AGENCY FEE STRUCTURE

**BETWEEN:**

GRAEME JAMES dba GLENMORE VALLEY GREENHOUSES,  
DWAINE ALGATE, GREG FERNANDES JOE FERNANDES,  
JORGE GOMES, ERIC HEARLE, JIM LUTE, JOHN LUTE,  
GERRY STEADMAN and TOM WILSON

**APPELLANTS**

**AND:**

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

**RESPONDENT**

**AND:**

INTERIOR VEGETABLE MARKETING AGENCY

**INTERVENOR**

**DECISION**

**APPEARANCES:**

For the British Columbia Marketing Board

Ms. Christine Elsaesser, Vice Chair  
Mr. Hamish Bruce, Member  
Mr. Richard Bullock, Member

For the Appellants

Mr. Graeme James

For the Respondent

Mr. Murray Driediger, General Manager

For the Intervenor

Ms. Lillian Posch, General Manager

Date and Place of Hearing

Kelowna, British Columbia  
May 31, June 1 and July 10, 2001

## INTRODUCTION

1. This decision is being issued with written reasons to follow.
2. By agreement with all parties, two appeals were heard by the British Columbia Marketing Board (the “BCMB”) at the same time. The first appeal brought by Mr. Graeme James, dba Glenmore Valley Greenhouses, seeks an exemption of his greenhouse tomato and Long English cucumber production from the requirement to pool sales through the Interior Vegetable Marketing Agency (the “IVMA”).
3. The second appeal brought by Mr. James and nine other greenhouse producers seeks to change the fee structure charged by the IVMA from a dual marketing fee comprised of a greenhouse square footage fee and a per box fee to just a per box fee.
4. The IVMA was granted intervenor status in support of the British Columbia Vegetable Marketing Commission (the “Vegetable Commission”).
5. The appeal was heard over three days in Kelowna. None of the parties were represented by Counsel. Mr. James was the spokesperson for the Appellants in the fee structure appeal and spoke on his own behalf on the pooling of sales appeal.

## ISSUES

### **Pooling of Sales Appeal**

6. Is it unfair that Glenmore Valley Greenhouses (“Glenmore”) is not exempted from pooling of sales for the 2001 season? Glenmore raises the following grounds:
  - a) pooling unfairly subsidises poor growers, whose poor quality product brings the overall pool price down;
  - b) growers with sub-standard facilities cannot produce during the “shoulder” season (when Interior greenhouse products are in demand);
  - c) the influence of these growers on the IVMA Board of Directors has resulted in the IVMA not enforcing effective grading standards and not requiring growers to improve their facilities;
  - d) extra transportation costs from outlying areas (e.g. Kamloops and Merritt) negatively impact on the price paid to other growers; and
  - e) the IVMA is losing market share.

### **Agency Fee Structure Appeal**

7. Should the IVMA dual marketing fee (10 cents per square foot plus a fee per box shipped) be changed to a per box only fee? The Appellants raise the following grounds:
- a) growers selling through farmers' markets or their own stores are paying the IVMA square footage fee for product not shipped through the IVMA;
  - b) the combination of a per box fee and a square footage fee means that growers with a poor production year have an inordinately high handling cost "per box" for each box shipped;
  - c) the square footage fee paid by growers who start late subsidises other growers; and
  - d) the general economic state of the industry, with increased competition and high heating costs.

### **FINDINGS**

#### **Pooling of Sales Appeal**

8. The Panel finds that exempting Mr. James, an individual grower, from the pooling of sales would be unfair to other growers and detrimental to both the operations of the IVMA and orderly marketing in the Interior greenhouse industry.

#### **Agency Fee Structure Appeal**

9. The Panel finds that, taking into account the evidence concerning the overall marketing and financial structure of the Interior greenhouse industry, there are no grounds for changing the agency fee structure currently in effect.

### **ORDER**

10. The exemption from the pooling of sales appeal is dismissed.
11. The agency fee structure appeal is also dismissed.
12. There will be no order as to costs.
13. Written reasons to follow.

Dated at Victoria, British Columbia this 29th day of August, 2001.

**BRITISH COLUMBIA MARKETING BOARD**

Per

*(Original signed by):*

Christine Elsaesser, Vice Chair  
 Hamish Bruce, Member  
 Richard Bullock, Member