



September 26, 2008

File: 44200-50/MMB #08-05

DELIVERED BY EMAIL

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REQUEST FOR THE REPEAL OF PART VII OF THE *BRITISH COLUMBIA MILK MARKETING BOARD CONSOLIDATE ORDER* (ALLOCATION OF MILK SUPPLY AMONG VENDORS)

On September 19, 2008, the British Columbia Farm Industry Review Board (BCFIRB) wrote to the parties advising that the three member panel for the above captioned hearing scheduled for October 14 and 15, 2008 is to be comprised of Suzanne Wiltshire, Garth Green and Honey Forbes. Given Mr. Green's prior employment with Saputo Inc., the panel requested that the parties make any objections with respect to Mr. Green's participation in the hearing by September 26, 2008. The only objection received was from the British Columbia Milk Marketing Board (Milk Board).

In his email of September 19, 2008, copied to the parties, Mr. Hrabinsky advised

The BCMMB does have concerns regarding Mr. Green's participation in the appeal. While there is no doubt that Mr. Green would seek to discharge his function objectively and with the utmost integrity, it seems inevitable that Mr. Green's views would be informed (or appear to be informed) by the unique perspective and knowledge that he gained as an employee of the Appellant. While this is to be contrasted with "involvement with the development of the particular policy under appeal", we respectfully submit that, at the very least, the appearance of a conflict may be problematic for all concerned.

**British Columbia
Farm Industry Review Board**

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Having said that, the BCMMB recognizes that if Mr. Green recuses himself it will be necessary for another member of the BCFIRB to take his place. This could conceivably create scheduling challenges. I am instructed to advise that if the scheduling of the appeal is placed in jeopardy, the BCMMB would revisit its position on this matter.

The Panel has received no further submissions.

Mr. Green has reviewed the Notice of Appeal, the Lists of Documents and the Lists of Witnesses to be called. After this review, Mr. Green identified the possibility that he may have participated in matters which *may* be at issue in this appeal, and as such he has, out of an abundance of caution, decided to recuse himself as a panel member. At this point, we do not believe this change will require rescheduling of the hearing. I wish only to add that this decision has been made solely out of an abundance of caution and to avoid any misperceptions given the particular circumstances here. The *Natural Products Marketing (BC) Act* has created the BCFIRB as an expert tribunal with specialized knowledge to hear disputes arising out of the regulated marketing sector, and that as a matter of law it would in the ordinary course be entirely appropriate for Mr. Green to participate in matters involving the milk industry as he brings a great deal of specialized knowledge regarding the milk industry and the processing sector.

There are a couple of other procedural matters to address. Saputo has advised in its email of September 24, 2008 that it may have some concern regarding disclosure and the protection of confidential information contained in some of the documents. In the pre-hearing conference, the parties agreed to exchange witness lists and documents by August 15, 2008. This date was extended to September 23, 2008. Although Saputo has disclosed some documents, it appears that there may be further documents of a confidential nature it wishes to disclose but on a limited basis.

I am concerned about the lateness of this request especially in light of the extension given. BCFIRB's Rules of Practice and Procedure set out the process to be followed where a party seeks to restrict the disclosure of all or part of a document. Given the appeal dates of October 14 and 15, 2008, Saputo should make any application with respect to Rule 10(3) forthwith and in any event no later than Monday, September 29, 2008 with notice to all parties. The time for responding to this application will be abridged and any party wishing to respond to the application must do so no later than 4:00 pm on Wednesday, October 1, 2008. In the absence of an application under Rule 10(3), the BCFIRB has no authority to limit the use made by parties of documents disclosed in a hearing.

Finally, in its email Saputo states "given the recent issue concerning Mr. Green, the fact that new interveners have just joined the proceedings and that all interveners have yet to communicate their written submissions, Saputo is concerned that the dates scheduled for a Hearing in October 14 and 15, 2008, is (sic) still unrealistic and that a further postponement of at least one month would be required." The issue with Mr. Green has been addressed above and rescheduling is not anticipated for that reason. As indicated in our letter of September 16, 2008

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respecting interveners, it is not the practice of BCFIRB to require interveners to produce “written submissions” in advance of a hearing. A process has been outlined for Saputo to address its confidentiality concerns in a timely fashion. If, however, Saputo still has a belief that it will not be prepared to proceed on the dates set, in the absence of the consent of the Milk Board, it should make its application to adjourn the hearing pursuant to Rule 28.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

A handwritten signature in dark ink, appearing to read 'SK Wiltshire', is written over a light blue rectangular background.

SK Wiltshire
Panel Chair