



March 22, 2019

File: 44200-00 GOV

DELIVERED BY E-MAIL

Jack Brown, Chair
BC Cranberry Marketing Commission

Dear Mr. Brown:

POTENTIAL CONFLICT OF INTEREST CONSIDERATION

The BC Farm Industry Review Board (BCFIRB) recently became aware that Mr. Clinton May was elected to director positions on both the BC Cranberry Marketing Commission (Commission) and the BC Cranberry Growers' Association (Association) on March 5, 2019.

I wanted to bring to the attention of yourself and Mr. May that there are potential conflict of interest considerations to take into account if Mr. May continues to serve on both boards. The potential for conflicts of interest arise out of the different responsibilities of the Commission and the Association.

As regulatory decision-makers, Commission directors have a duty to be fair to, and balance the interests of the cranberry supply chain in accordance with their statutory authority under the BC Cranberry Marketing Scheme and the *Natural Products Marketing (BC) Act*. Directors are not expected to check their backgrounds or their interests at the door, but they still have a duty to be independent, unbiased and fair in their decision making.

On the other hand, the Association's responsibility is to represent and act as an advocate for cranberry producers. Unlike the Commission, the Association has no duty to be impartial and no regulatory responsibilities for which it is accountable to BCFIRB and, ultimately, the public. Association directors must act in the best interest of their organization, as such their duty may conflict with the broader legislative role of a Commission director.

Given these very different responsibilities, it would not be surprising if the Association may disagree with Commission decisions from time to time. BCFIRB can provide examples of where difficulties have arisen where a director wears two hats (as a regulator and grower advocate) as the fundamental obligations and expectations are different. This situation arose recently in both the egg sector and the dairy sector. In both instances, the directors chose to resign from their position on the producer association once elected to the regulated marketing board.

**British Columbia
Farm Industry Review Board**

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
1st Floor, 780 Blanshard Street
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

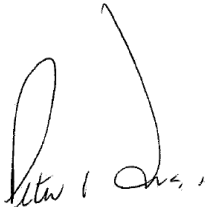
As Chair, you are responsible for making the proper judgements as to when Mr. May would need to recuse himself from Commission discussions and decisions. If your judgement is incorrect there is risk Mr. May could wrongly be excluded, depriving the Commission of his input or, on the other hand, if he does not recuse himself in circumstances that he should have, there is a risk that the board decision may be subject to a challenge on procedural fairness grounds legally and within the industry.

Given the foregoing, BCFIRB's view is that it would be extremely challenging for Mr. May to act in the best interest of the both Commission and the Association given their potentially conflicting responsibilities and divided loyalties. A possible or likely outcome is Mr. May could find himself unable to function fully and effectively as a director on either board.

While I am not recommending a specific outcome, I expect you will work with Mr. May (and your legal counsel as necessary) to consider the potential for conflicts of interest and find a solution in a timely manner. In support of BCFIRB's supervisory role, I would appreciate it if you could keep BCFIRB apprised of any decisions you feel are warranted in the circumstances.

If you have any questions, please feel free to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Donkers", with a long, sweeping vertical line extending upwards from the end of the signature.

Peter Donkers
Chair

cc: BCFIRB website