



April 8, 2019

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**DELIVERED BY E-MAIL**

Debbie Etsell, Chair  
BC Vegetable Marketing Commission

Dear Ms. Etsell:

**CONFLICT OF INTEREST CONSIDERATIONS**

Thank you for meeting on April 4, 2019. I appreciate the discussion, ideas and the update on key BC Vegetable Marketing Commission (Commission) initiatives, sector opportunities and challenges. I will look forward to learning more about your upcoming strategic planning process with Commission members and stakeholders.

The BC Farm Industry Review Board (BCFIRB) recently became aware that four Commission members also held positions on the BC Potato and Vegetable Growers Association (BCPVGA) board, and that two of these Commission members have since stepped down from the BCPVGA board.

I understand you are currently working with your members on the risk of real or perceived conflict of interest issues when members sit on multiple boards. As such, I thought it may help support Commission discussions to briefly review some conflict of interest considerations in the regulated marketing context from BCFIRB's point of view.

Real or perceived conflict of interest impacts trust and credibility between Commission members, and for the Commission itself, with stakeholders, government leaders and the public. There are financial and personal liability issues for the Commission if decisions are made under conditions of real or perceived conflict of interest.

***Conflict of interest and regulated marketing***

BCFIRB is aware that conflict of interest cannot be understood in regulated marketing in the same way it applies in other contexts. Given the structure of the Commission, it is clear legislation is prepared to accept a significant degree of "conflict" in the larger interest of producer governance in light of industry knowledge and expertise. This situation raises special challenges for the Commission seeking to identify situations where there may still be a special or unique conflict that exists over and above the

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fact that a person is a producer. These are challenges that must be met if the Commission is to function effectively and accountably.

BCFIRB recognizes that there are a limited number of producers in the BC vegetable industry and, in turn, a limited number interested and willing to serve on boards. It also recognizes that the Commission has struggled with real and perceived conflict of interest issues over the years (including the recent appeal) – in part due to the small number of producers in the industry. As has been proposed several times in the past, a longer-term solution could include reconsideration of the Commission composition to increase the number of independent members.

### ***Organization Purpose and Responsibilities***

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

However, the responsibility of a producer association is quite different and may include representing and advocating for vegetable producers – sometimes on the very issues that the commodity board is actively regulating. Unlike the Commission, producer advocacy associations have no duty to be impartial and do not have regulatory responsibilities for which they are accountable to BCFIRB and, ultimately, the public. Association members must act in the best interest of their organization, and as such their duty may conflict with the broader legislative role of a Commission member. BCFIRB can provide past examples where conflict of interest difficulties arose when directors wore two hats (as a regulator and as a producer advocate).

We recognize that a producer organization may have as its focus research and development or some other non-advocacy aspect of the vegetable industry. In such a scenario, there would likely be less risk of real or perceived conflict for Commission members if they also serve on the board of these organizations.

Where a potential risk for real or perceived conflict of interest associated with dual roles is found to exist, one mechanism to address such risk could include Commission members sitting as observers on other organizations. As a non-voting observer, Commission members could communicate the Commissions' roles, responsibilities and views on the future of the industry to the association while keeping the Commission apprised of association initiatives. This model has been used with some success by other commodity boards.

### ***Responsibilities of the Chair***

As Chair, you are responsible for making the proper judgements as to when members would need to recuse themselves from Commission discussions and decisions. If your judgement is incorrect there is risk the members could wrongly be excluded, depriving the Commission of their input or, on the other hand, if they do not recuse themselves in circumstances that they 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.

***Closing***

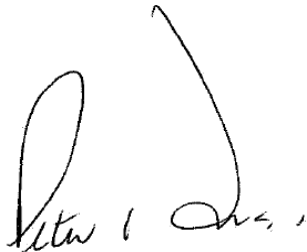
While I am not recommending outcomes for specific situations, I expect you will continue to work with your members and your legal counsel as necessary to consider the potential for conflicts of interest given all your members current positions on other boards, and put in place any necessary solutions in a timely manner, if you haven't already done so. In support of BCFIRB's supervisory role, I would appreciate it if you could keep BCFIRB apprised of any decisions you feel are warranted under the circumstances.

I understand the Commission is starting an annual update of member conflict of interest declarations. This is a strategic and accountable approach that supports good governance and may help reduce future risk of Commission members being challenged on real or perceived conflict of interest.

In closing, I would like to reiterate my offer for a general meeting between BCFIRB and the Commission.

If you have any questions, please feel free to contact myself or Kirsten Pedersen.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Donkers", with a large, sweeping flourish extending upwards and to the right.

Peter Donkers  
Chair

cc: André Solymosi, General Manager  
BC Vegetable Marketing Commission

BCFIRB website