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Sent Via E-Mail: wanda.gorsuch@gov.bc.ca

British Columbia Farm Industry Review Board
780 Blanshard Street
Victoria, BC V8W 2H1

Attention: Wanda Gorsuch

Dear Sirs/Mesdames:

Re: British Columbia Farm Industry Review Board 2019-2020 Vegetable Supervisory Review

We write as counsel for Mastronardi Produce Ltd. (“**Mastronardi**”) in response to the July 10, 2020 request of the British Columbia Farm Industry Review Board (the “**BCFIRB**”) for input on the following topics:

1. British Columbia Vegetable Marketing Commission (the “**Commission**”) structure; and
2. designated agency accountability.¹

Introduction

Mastronardi seeks to grow market opportunities for all participants in the British Columbia vegetable industry by expanding the market for BC growers. Mastronardi has proven track-record of leading substantial and successful growth in the Ontario greenhouse market, and other jurisdictions in which it operates, and therefore brings significant and unique insight and expertise into regulatory schemes, and what makes them successful for market participants.

The goals of providing sustainable long-term growth for all market participants align with the purposes of the *British Columbia Vegetable Scheme*, BC Reg. 96/80 (the “**Vegetable Scheme**”) and BC’s 2004 Regulated Marketing Economic Policy (the “**Economic Policy**”). In particular, the Economic Policy outlines the following policy purposes of regulated marketing, which align with Mastronardi’s goals in seeking entry to the BC market:

1. The regulated marketing system operates in the interests of all British Columbians. Boards and Commissions operating under the authority of the *Natural Products Marketing (BC) Act* are

¹ BCFIRB has also sought input on storage crop delivery allocation. Mastronardi makes no submissions on this topic.

responsive to the needs of British Columbia producers, as well as to processors, consumers and other participants in the British Columbia food system.

...

3. The British Columbia regulated marketing system supports the development of new markets identified at the production, marketing, and processing level to facilitate industry growth and competitiveness.

The regulated system encourages regulated industries to serve the British Columbia demand for their product and to capture markets outside of British Columbia where these markets can add strength and stability to a regulated industry.

...

Boards and Commissions ensure policies and practices pertaining to pricing, levying, marketing, and production requirements provide the producer with the ability to pursue new markets and to capture market premiums for products differentiated at the farm level.

Boards and Commissions accommodate financially viable, competent sales agencies and processors who wish to pursue new markets for existing products, as well as markets for new value-added processed products and for products differentiated at the farm level.

Growth and expansion of the BC vegetable industry to capture new markets is, thus, a key plank of the regulated marketing scheme in this Province. However, because of the manner in which the *Vegetable Scheme* has been implemented by the Commission, the BC industry has failed to realize its true potential, and the goals outlined in the Economic Policy have not been achieved.

This is clearly demonstrated by the substantial difference in growth rates for the Ontario and BC greenhouse industries, dating back to 2008.² From 2008 to 2018, the Ontario greenhouse industry grew by 67% in terms of square metres under production, while BC grew by only 13% over the same period.³ The Canadian industry as a whole grew by 54% over the same period. Similarly, from 2014 to 2018 Ontario greenhouse exports grew by 41% in terms of dollar value, while export growth in BC was essentially stagnant over the same period, at 3%.⁴ Ontario's higher rate of growth resulted in the addition of 1,375 new permanent jobs in the industry from 2014-2018, while BC lost 236 jobs over the same period.⁵

Ontario's growth demonstrates that BC has an opportunity to grow its greenhouse market. The US, with a population of 331 million, cannot meet its domestic demand and must import product. Imports of fresh

² See attached, Schedule "A".

³ See attached, Schedule "A". Source, Statistics Canada, Table 32-10-0456-01, Production and value of greenhouse vegetables.

⁴ See attached, Schedule "A". Source, Government of Canada, Statistical Overview of the Canadian Greenhouse Vegetable Industry, 2018.

⁵ See attached, Schedule "A". Source, Government of Canada, Statistical Overview of the Canadian Greenhouse Vegetable Industry, 2018.

tomatoes represent 61% of US consumption, of which approximately 54% are greenhouse grown (approximately 1 billion kgs). For fresh cucumbers, imports represent about 81% of US consumption (970,000 MT). Imports of bell peppers represent 43% of US consumption, of which 42% (307 million kgs) are greenhouse grown. Mastronardi, and the Ontario industry as a whole, has capitalized on this opportunity in Ontario, but BC has not to date. However, there is still room to grow BC greenhouse vegetable exports to the US, by supplanting field production in the US market and imports from Mexico.

Mastronardi wants to help BC growers take advantage of this opportunity. Growers have told Mastronardi that they are stifled in BC by the manner in which BC's regulatory scheme has been implemented, and by the politicized nature of the regulatory process, which they have described as an "old boys' club". This supervisory review provides an opportunity to make key changes to the way that BC's scheme is implemented that will address grower concerns, and promote growth of the BC industry in manner that is commensurate with the goals outlined in the Economic Policy.

In particular, Mastronardi submits that the following changes, which are consistent with policy outcomes outlined in the Economic Policy, should be implemented:

1. **The BCFIRB should immediately end the current moratorium on agency approvals.** New agencies will bring fresh ideas and competitive drive to the market, which will favour growth of the industry and support growers.
2. The BCFIRB and Commission should remove the current regulatory "handcuffs" on growers:
 - a. Growers should be empowered to switch marketers without the need to obtain permission from the Commission.
 - b. Growers should not be required to commit to marketers by specific dates.
 - c. The requirement for growers to commit to an agency for fixed terms should be eliminated.
 - d. If a grower wishes to produce greenhouse vegetables, they should be able to build a greenhouse and easily obtain a licence to produce.
3. The agency approval process should be made transparent through the establishment of clear criteria and an objective evaluation rubric, outlined in Part XIV of the Commission's General Orders.
4. Agency applications should be vetted and approved by independent staff of the Commission on the basis of clearly articulated criteria.
5. Three independent members, in particular two representatives of national retailers and one from a national food service company, should be appointed by the government to the Commission. These members will provide a vital and fresh perspective and new insights to the regulation of the industry in BC.

6. There should be term-limits for all Commission members, which will prevent the entrenchment of vested interests, and accrual of significant institutional power by any specific market actors.
7. Marketing agencies should promote grower-expansion, and should be held accountable for their results in achieving these goals.

Further detail is provided below, along with Mastronardi's response to the specific questions posed by the supervisory review panel.

Response to Supervisory Review Questions

Commission Structure

- 1. An effective regulated marketing system requires trust and agreement to abide by the Commission rules.**

What does the Commission need to do to build that level of trust and to build a stronger common interest in supporting its policies and rules for the benefit of the industry as a whole?

An effective marketing system must have trust as its foundation. In particular, market participants must have faith that decisions of the regulatory authority are arrived at through a rational, transparent, and fair process, for the purpose of meeting regulatory and policy mandates, rather than the interests of a limited number of market actors. Perceptions of bias and unfairness in decisions that are made by the Commission undermine confidence in the Commission, which ultimately erodes the ability of the Commission to fulfil its functions.

A lack of trust in the system is particularly corrosive to meeting the following policy mandates of regulated marketing, which are outlined in the Economic Policy:

1. The regulated marketing system must operate in the interests of all British Columbians, and must be responsive to the needs of BC producers, processors, consumers and other participants in the BC food system.⁶ Biased decision making, leads to outcomes that are not in the interest of all market participants, as required by the Economic Policy. Such outcomes, and the perception of same, erodes trust and discourages market participants from taking risks. This, in turn, restricts growth.
2. The regulated marketing system must support the development of new markets to facilitate industry growth and competitiveness.⁷ Expansion along these lines requires market actors to take risks, and to invest. If market participants do not have faith in regulators, they will be less likely to take the necessary risks that spark growth.

⁶ Economic Policy, at s. 1.

⁷ Economic Policy, at s. 3.

3. The regulated system encourages capturing markets outside of BC where they can add strength and stability to a regulated industry.⁸ The ability to capture foreign markets is restricted where trust in the regulator does not exist.

Openness and transparency in the conduct of Commission business is vital to building trust in its role as a regulatory steward, and that it is acting in the interest of all participants, and is serving the requisite Economic Policy goals.

Mastronardi has heard from BC growers that the Commission is viewed as serving entrenched interests, and as being biased. BC growers have told Mastronardi that they do not have faith that decisions of the Commission are made for the purpose of meeting its policy goals. This issue must be addressed if the BC industry hopes to achieve its potential.

Mastronardi believes that there are a number of measures that the BCFIRB can take to address perceptions of Commission bias.

First, the Commission should be expanded to include three independent members: two members from national retailers and one member from a national food service company that purchases greenhouse vegetable products. As the supervisory review panel has pointed out, a number of BC regulated marketing boards already have non-producer members. In particular: (a) the BC Cranberry Marketing Commission has one independent member appointed by the Cranberry Commission; (b) the BC Milk Marketing Board has one independent member selected by an industry advisory committee; and (c) the BC Chicken Marketing Board has two independent members appointed by cabinet.

The presence of independent members on other BC marketing boards demonstrates that they can be effectively incorporated under the regulated marketing scheme. Independent members will provide fresh insights and their decisions on important topics will be viewed with less skepticism. This will assist in ensuring that market participants have faith that decisions of the Commission are made fairly.

Second, the Commission's election policy should be revised to establish term-limits for Commission members. The current lack of term limits allows entrenchment of interests on the Board, which in turn negatively impacts the perception of Commission decisions.⁹

2. Does the use of panels and advisory committees result in sound marketing decision making by the Commission? If not, what more does the Commission need to do to make sound decisions and manage perceptions of bias and conflicts of interest?

Mastronardi does not believe that the current Commission policies, including the use of panels and advisory committees, successfully manages perceptions of bias and conflicts of interest. These issues are systemic, and require change to the structure of the Commission to address. For example, while the use of panels or an advisory committee may result in the removal of voters with a direct vested interest in a particular decision, the lack of turnover for Commission positions, and limited number of members on which the Commission draws, and knowledge that these Commission members will be voting on matters

⁸ Economic Policy, at s. 3.

⁹ *British Columbia Vegetable Marketing Commission Policy on the Election of Commission Member Positions* (the "Election Policy") at p. 3.

of interest to each other, results in a perception of bias. Mastronardi has heard from BC growers who say that they are incredibly frustrated by the current system, and want change. They are fearful to speak out however, because of the power of entrenched interests on the Commission.

A related issue with this model is lack of knowledge. It is problematic for greenhouse members to make decisions on storage crop matters as they lack requisite knowledge. It is similarly problematic for storage crop members to make key decisions relating to greenhouse issues, and given the structure of the Commission, it is not clear that each is not simply protecting the other's interests.

Mastronardi supports structural change as the only effective method to manage and address the Commission's conflict of interest issues. In particular, Mastronardi supports expansion of the Commission to include two representatives from national retailers, and one member from a national food service company. Mastronardi believes this would add a diversity of opinion to the Commission that is currently missing. In particular, retail and food service sector members should be added to provide a vital perspective on consumer needs. Independent members would be motivated to make decisions on the basis of the outcomes outlined in the Economic Policy, and they would not be perceived as acting in the interest of any particular market actors.

Second, certain key decisions of the Commission should be made on the basis of clear and objective criteria by staff of the Commission, rather than the Commission itself. In particular, Mastronardi believes that the agency approval process should be made transparent through the establishment of clear criteria and an objective evaluation rubric, outlined in Part XIV of the Commission's General Orders. Agency applications should be vetted and approved by independent staff of the Commission on the basis of these evaluation criteria, who would make a recommendation to Commission members. Such measures would de-politicize the approval process, which would eliminate perceptions of bias and conflicts.

Finally, term limits should be implemented to ensure that the same market participants do not dominate Commission positions, and by extension Commission policy. More frequent turnover of Commission membership will address this structural issue, and ensure that unethical alliances of Commission members do not form.

3. How could the Commission benefit from adding independent members? What are the risks?

As stated above, Mastronardi believes that the Commission will greatly benefit from the addition of independent members. Independent members, in particular representatives of retail and food sector interests, will bring a fresh perspective to the Commission.

The addition of independent members will address two issues in particular. First, the addition of independent members is necessary in BC because of the stagnation in growth of the BC greenhouse industry dating back to 2008. Independent members, and in particular members of the retail and food service sectors, will provide fresh perspectives and ideas on how to kickstart the growth of the BC industry.

Allowing participation by members of the retail and food service sectors will provide the Commission with a unique perspective on ways to promote the overall growth of the industry and how to meet consumer

demand. This is consistent with the objective of meeting the interests of all participants in the BC industry, including consumers, outlined in the Economic Policy.¹⁰

Second, independent members will assist in addressing the perception that Commission decisions are biased. Independent members, subject to similar term limits as all other members, will vote on the basis of policy goals that the *Vegetable Scheme* is intended to promote. They will not be beholden to the interests of specific members of the BC industry, but will make decisions on consideration of the best interests of all participants and health of the industry as a whole.

There is a risk, if there are too many independent members, that the Commission will not have the requisite expertise to make appropriate decisions. As such, producers should maintain a majority of Commission positions to ensure that appropriate expertise is applied to each decision.

4. If the BCFIRB recommends that the scheme be changed to permit independent members, should the members be appointed by government or industry? What skills and expertise should they have?

Mastronardi believes that three independent members should be appointed by government in a merit-based process from outside of the BC vegetable industry. Two of the independent members should be appointed as representatives from national retailers, and the other should represent a national food service company. The criteria for selecting independent representatives should include a requirement that they represent companies that purchase greenhouse vegetable products.

5. Commission positions go uncontested and there is little turnover in membership. What are the risks and benefits to the sector when there is a lack of board turnover? What are possible solutions?

Mastronardi thinks that stagnation of membership turnover is a serious systemic issue, as outlined above. A lack of turnover in Commission positions and the longstanding tenure of certain members results in the entrenchment of certain individuals and interests on the Commission. This prevents fresh ideas and approaches from being brought to Commission decisions. It has also resulted in a perception that Commission decisions are made to promote the narrow interests of current players, rather than the interests of all market participants.

As stated above, Mastronardi supports the establishment of limits on consecutive terms for Commission members. This is a practice that has been utilized in Ontario, with success.

The supervisory review panel's consultation meetings identified a number of reasons for the lack of turnover in Commission membership that would be addressed by the establishment of term limits. In particular, the voting power of larger agencies would be less of an issue if their nominees had to step down following service for consecutive terms. Representatives of new and smaller producers would be emboldened to stand for election if they knew that the results are not a foregone conclusion. As such, the establishment of term-limits will have beneficial knock-on effects that will address many of the issues identified in the BCFIRBs consultation meetings.

¹⁰ Economic Policy, p. 1, 3.

Designated Agency Accountability**1. What do you think the primary purpose of an accountability framework should be?**

Mastronardi thinks that ensuring growth and growing returns for its producers is the key metric to determine agency efficacy. The ability of growers to expand in BC is an important metric that should be considered in any agency accountability framework.

There has been significant growth in Ontario relative to BC with respect to greenhouse production. Any accountability framework should be designed to promote happy and healthy producers and expansion of the industry, as has occurred in Ontario.

There are two major structural issues in BC that detract from agency accountability. First, there are too many barriers that prevent BC greenhouse growers from switching marketing agencies.¹¹ In particular, the requirement to commit to an agency by a fixed date each year, now October 31st, and requirement to commit for a full year, provides agencies with too much power over growers.¹² This prevents BC growers from rewarding agencies that are doing a good job, and protects agencies that are not fulfilling their mandate from suffering the natural consequence of this failure. These restrictions should be relaxed. The result will be greater agency accountability to its growers, which will ensure that agencies are focused on delivering sales growth and are aggressively seeking markets for their growers' products.¹³

Second, Mastronardi believes that the addition of new marketing agencies will promote healthy competition among agencies for grower business. This will result in better agency service and attention to delivering results for growers. Ontario has a broader selection of marketing agencies to promote its product. This provide growers with more selection, and fosters agency accountability.

The biggest barrier to expansion of the agency pool in BC, currently, is the moratorium on approval of new licences. The moratorium should be lifted immediately.

Further, the difficulty of the approval process and the perception that the process is tainted by bias creates barriers to entry for potential new applicants. As stated above, Mastronardi believes that this issue should be addressed by the series of policy proposal outlined above. In particular with respect to agency applications, objective criteria for approvals should be identified, and outlined in Part XIV of the Commission's General Orders. As guiding principles, Mastronardi suggests that an applicant should obtain an agency licence if it can meet one of the following criteria:

1. The applicant can prove that it successfully markets greenhouse vegetables in another market outside of BC; or

¹² BC Vegetable Marketing Commission Policy on Greenhouse Vegetable Producers Transferring from One Agency to Another.

¹³ BC Vegetable Marketing Commission Policy on Greenhouse Vegetable Producers Transferring from One Agency to Another.

2. The applicant submits a business plan to market greenhouse vegetables grown in BC and it can demonstrate the following:
 - a. It has the financial means to implement the business plan; or
 - b. It has support from potential customers or BC growers to market greenhouse vegetables grown in BC.

Agency applications should be vetted and approved by independent staff of the Commission on the basis of these evaluation criteria, who would make a recommendation to Commission members. Such measures would de-politicize the approval process, which would eliminate perceptions of bias and conflicts. This would, in turn, promote the submission of more applications for agency licences, which will encourage healthy competition among agencies for grower business.

2. Should an agency accountability framework include reporting on compliance with the Commission's General Orders?

Mastronardi has no objection to reporting on compliance, provided that reporting requirements are structured in a manner that ensures protection of confidential business information.

3. Does an agency's business structure influence outcomes for producers and the industry?

The best way to evaluate the impact of an agency's business structure is whether it has happy growers and is promoting growth, expansion, and returns for those growers. Mastronardi does not believe that any particular business structure is necessarily best suited to achieving these goals. Agencies should continue to be permitted to utilize a breadth of potential business structures. Implementation of the policy suggestions outlined above, including promotion of additional agency applications through establishment of clear objective criteria and evaluation methods, and allowing growers greater flexibility in switching agencies will ensure that the agencies that are best structured to take advantage of market opportunities are rewarded.

Storage Crop Delivery Allocation

Mastronardi does not seek to enter the British Columbia regulated vegetable market as an agency for storage crop products. Mastronardi's business is focussed on greenhouse grown products. Mastronardi's view is that the panel's decisions on this topic should take into the important factors outlined in the above submissions on Commission structure and marketing agency accountability frameworks. Any decision of the panel should consider the impact to consumers and should foster opportunities to grow the British Columbia vegetable industry.

Conclusion

Mastronardi looks forward to collaborating with the Commission, the BCFIRB, and industry stakeholders in this supervisory review to grow the British Columbia greenhouse vegetable industry.

Yours truly,

Dentons Canada LLP



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Enclosure