

September 14, 2020

Sent Via E-Mail

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

Attention: Wanda Gorsuch

Re: Timeline for Lifting Agency Application Moratorium

We write further to our letter to the British Columbia Farm Industry Review Board (“**BCFIRB**”) of July 20, 2020 in which we outlined our concerns regarding the current moratorium on agency applications. In our letter, we advised that Mastronardi Produce Limited (“**Mastronardi**”) intended to submit an agency application to the BC Vegetable Marketing Commission (the “**Commission**”) and requested that the BCFIRB direct the Commission to consider Mastronardi’s application on the following grounds:

- The Commission’s reasons for the current moratorium on agency applications relate to storage crops, not greenhouse vegetables, and the stated rationales for the moratorium do not justify excluding Mastronardi from submitting an application.
- The imposition of a moratorium on all future applicants, regardless of merits or connection to the original concerns underpinning the moratorium, and maintaining the moratorium for over one year, undermine the Commission’s stated goal in the CFP decision of maintaining an “effective, rules-based system in the current and projected business environment”.
- The BCFIRB’s “early fall” delivery date was problematic in light of the deadline for currently licensed producers to provide notice to their agency and the Commission if they intend to move to a different agency.

Mastronardi British Columbia subsidiary, MPL British Columbia Distributors Inc. (“**MPL BC**”) has now submitted its application for a class 1 marketing agency licence to the Commission. A copy of the Executive Summary of MPL BC’s application is attached for your reference.

Now that the application has been submitted, we again request that the BCFIRB direct the Commission to review MPL BC’s application forthwith. While the BCFIRB has committed to a target decision date of early fall 2020, it remains unclear if the BCFIRB’s decision in the early fall will lift the moratorium and on what schedule. Further, the implementation of any ancillary changes arising from the BCFIRB’s decision could take much longer to implement, further delaying review of MPL BC’s application. We therefore remain

concerned about the supervisory review's current state of progress and whether a BCFIRB decision in the early fall will permit sufficient time for the Commission to review the application.

As we have previously advised, Mastronardi is facing significant pressure from retailers and growers to obtain a licence to market greenhouse vegetables grown in British Columbia as soon as possible. Growers must decide by October 31, 2020 through which agency they will market greenhouse vegetables for the upcoming production season.¹ Mastronardi is validly concerned that the BCFIRB's target date of early fall will mean that a decision regarding the moratorium is rendered close to, or after, the agency deadline. This timeline will not leave sufficient time for full review of MPL BC's application before the October 31, 2020 deadline for growers to provide notice to their agencies, and would have the effect of precluding MPL BC's participation as an agency for the 2021 growing season. This would represent a substantial loss to British Columbia growers and consumers that would be unable to take advantage of the domestic and export opportunities that are readily available to serve Mastronardi's customers that represent the top retailers in North America. The end result is that self-serving marketers in the present closely held closed system would continue to benefit and BC Growers will continue to be harmed with an inability to grow in any meaningful capacity remotely near that of their Provincial peers. Further, even if it is theoretically possible for the Commission to complete its review of MPL BC's application after the BCFIRB reaches a decision in early fall, the uncertainty as to the specific date and scope of the decision will negatively impact MPL BC's ability to plan for the upcoming year and attract growers.

We reiterate our view that the broad application of the moratorium to all parts of the regulated vegetable sector is unfair and unnecessary in light of the stated reasons for the moratorium outlined in the CFP decision. The concerns of the Commission related, primarily, to storage crops, not greenhouse vegetables. Ongoing changes in the vegetable industry since 2005 do not provide a reasonable basis for freezing the regulatory system. If anything, adding MPL BC as an agency would help British Columbia take advantage of evolving trends in the greenhouse vegetable markets, as outlined in the application. The results of the Agency Review and Strategic Review will impact all current agencies. It is thus illogical to apply the moratorium to applicants, while permitting business as usual for current agencies. Existing agencies will be required to comply with the outcome of the supervisory review and any resulting changes to the General Orders. Similarly, if granted agency status, MPI BC will comply with the General Orders and all other current and future orders of the Commission and BCFIRB.

In light of these concerns, we respectfully request that the BCFIRB make an order directing the Commission to review MPL BC's application right away. The BCFIRB has the supervisory jurisdiction to make such an order, and it is justified in the circumstances. Prompt, swift and corrective action is warranted now more than ever.

Yours truly,

Dentons Canada LLP



Morgan Camley
Partner

¹ The deadline was previously September 15th, but was recently extended by the Commission.