

From: Gorsuch, Wanda AF:EX

Sent: March 15, 2023 11:38 AM

To: 'RHrabinsky@ahb-law.com' <RHrabinsky@ahb-law.com>

Cc: 'morgan.camley@dentons.com' <morgan.camley@dentons.com>;

'melanie.power@dentons.com' <melanie.power@dentons.com>; 'emma.irving@dentons.com' <emma.irving@dentons.com>; 'cferris@lawsonlundell.com' <cferris@lawsonlundell.com>

Subject: RE: MPL BC Agency Prior Approval Process - Final Terms of Reference

Dear Mr. Hrabinsky,

In setting out its procedures for this supervisory hearing process, BCFIRB seeks the Commission's full file on the MPL BC agency designation application. For clarity, BCFIRB is not asking the Commission to disclose any solicitor-client communications. Any documents submitted by the Commission may be appropriately redacted to protect solicitor-client privilege.

Regarding any non-disclosure application, the Commission and MPL BC need to advise the panel as to what information they consider proprietary or confidential business information that needs to be protected by a non-disclosure order and potentially an *in camera* process in the supervisory hearing. Whether the panel receives a joint application or individual applications, the panel will then hear from any participant opposed to the application. Before making a non-disclosure order, the panel must be satisfied that any evidence subject to a non-disclosure order is truly confidential in nature.

As the effect of a non-disclosure order is to allow, in appropriate circumstances, a panel to receive evidence to the exclusion of the participants (and that includes the participants' counsel), it would be appropriate for all counsel to be discussing what appropriate undertakings would be necessary to maintain confidentiality, should a participant's counsel be allowed to remain and participate in an *in camera* process and advise the panel accordingly.

Regards,

Wanda

Wanda Gorsuch, BSc, MA,

Manager, Issues and Planning
BC Farm Industry Review Board (BCFIRB)

Cell: 250-920-8012

****NEW Tel:** 778.974.5790

Email: Wanda.Gorsuch@gov.bc.ca

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From: FIRB AF:EX <FIRB@gov.bc.ca>
Sent: March 14, 2023 3:05 PM
To: Gorsuch, Wanda AF:EX <Wanda.Gorsuch@gov.bc.ca>
Subject: FW: MPL BC Agency Prior Approval Process - Final Terms of Reference
Importance: High

From: Robert P. Hrabinsky <RHrabinsky@ahb-law.com>
Sent: Tuesday, March 14, 2023 2:35 PM
To: FIRB AF:EX <FIRB@gov.bc.ca>
Cc: Camley, Morgan <morgan.camley@dentons.com>; Power, Mélanie <melanie.power@dentons.com>; Emma Irving <emma.irving@dentons.com>; 'cferris@lawsonlundell.com' <cferris@lawsonlundell.com>
Subject: RE: MPL BC Agency Prior Approval Process - Final Terms of Reference
Importance: High

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I am writing further to the Final Terms of Reference and to the BCFIRB's letter dated March 8, 2023 addressed to the Commission and to MPL's legal counsel.

The Final Terms of Reference provide, in part, as follows:

The Commission must file with BCFIRB all documents, in its possession, in unredacted form that it relied on in coming to its January 12, 2022 decision no later than March 17, 2023. All eligible participants in the in-person hearing, including the Commission, are to file with BCFIRB all documents they intend to rely upon at the supervisory hearing by April 21, 2023.

Eligible participants must serve all other eligible participants with their documents at the same time they file them with BCFIRB unless they require a non-disclosure order pursuant to BCFIRB's May 2020 "Protection of Privacy and Confidentiality in BCFIRB Supervisory Processes and Reviews" Practice Directive (Appendix B).

It is anticipated that the Commission will need to apply for a non-disclosure order to protect the

interests of third parties with respect to certain confidential or sensitive information. Given the extraordinarily short deadline imposed on the Commission, it will not be possible to serve all other eligible participants with the Commission's documents at the same time these documents are filed with the BCFIRB. The Commission will need time to apply for a non-disclosure order, as contemplated in the Final Terms of Reference, before serving all other eligible participants. Consequently, it is anticipated that the Commission will be able to deliver the documents to the BCFIRB by March 17, 2023, concurrent with its application for a non-disclosure order. Service on other eligible participants will need to await the outcome of that application.

To facilitate this process, I am writing to seek clarification and confirmation from the BCFIRB that its direction that the Commission "file with BCFIRB all documents, in its possession, in unredacted form" is not intended to circumvent the absolute privilege that attaches to solicitor client communications. In other words, I am seeking clarification from the BCFIRB that the documents filed by the Commission with the BCFIRB may be appropriately redacted to protect solicitor-client privilege without having to make application to rely on that absolute privilege.

Regards,

Robert P. Hrabinsky

AFFLECK | HRABINSKY | BURGOYNE LLP

Affleck Hrabinsky Burgoyne LLP
1000 – 570 Granville Street
Vancouver, BC, V6C 3P1

Email: rhrabinsky@ahb-law.com

Web: www.ahb-law.com

Direct Tel: 604-800-8026

Direct Fax: 604-800-9026

Office Tel: 604-800-8020

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From: FIRB AF:EX <FIRB@gov.bc.ca>

Sent: Wednesday, March 8, 2023 3:08 PM

To: FIRB AF:EX <FIRB@gov.bc.ca>

Subject: MPL BC Agency Prior Approval Process - Final Terms of Reference

Please see attached regarding the above-noted subject matter.

BC Farm Industry Review Board

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