

July 27, 2022

Sent Via E-mail

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

Attention: Wanda Gorsuch

Re: MPL British Columbia Distributors Inc. ("**MPL BC**") Agency Designation

We write in response to your letter of July 22, 2022.

MPL BC is surprised and concerned by BCFIRB's decision to put on hold the approval process of MPL BC's agency licence pending further "findings and directions" in the BCFIRB Allegations of Bad Faith and Unlawful Activity Review (the "**Allegations Review**").

As set out in our letter of March 16, 2022, it is MPL BC's submission, that the issues and findings in the Allegations Review are irrelevant to BCFIRB's supervisory review of MPL BC's current agency application. As previously noted by BCFIRB, BCIRB's role on an agency licence review is to ensure that the BC Vegetable Marketing Commission's (the "**Commission**") decision to approve MPL BC's application accords with sound marketing policy. There is no rational connection between the Allegations Review process and an assessment of marketing policy. It is a well known principle that administrative boards must exclude irrelevant matters from their considerations and that consideration of irrelevant factors can render an administrative decision unreasonable.¹

Moreover, the question of whether MPL BC raised the allegations it did in its Notice of Civil Claim in bad faith was not an issue before the Panel in the Allegations Review. As the Panel noted, the scope of the Allegations Review was set out in the Allegations Review's terms of reference. Nowhere in the terms of reference is there reference to the Panel investigating and making findings regarding MPL BC's intentions or motivations in raising the allegations that it did.

It was never within MPL BC's reasonable expectations that the Panel in the Allegations Review would seek to make findings regarding the good faith basis upon which MPL BC raised the allegations in question, when that issue was not a part of the terms of reference of the Allegations Review; nor could

¹ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, [1947] 2 All E.R. 680 (Eng. C.A.), *Sunshine Valley Co-operative Assn. v. Grand Forks (City)*, 1948 CarswellBC 108, [1977] 1 A.C.W.S. 841, *Trinity Western University v. College of Teachers (British Columbia)*, 1997 CarswellBC 2017, *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699

MPL BC have reasonably expected that it would be a consideration raised in the context of its agency application approval.

MPL BC appreciates that BCFIRB has a role to play in ensuring that decisions made by the Commission accord with sound marketing policy. However, MPL BC is also entitled to a fair proceeding regarding consideration of its agency designation application, including that such a decision not be made based on irrelevant factors or on the basis of potential findings made in a separate supervisory review, which were not part of the terms of reference of that review.

As the Allegations Review and surrounding circumstances are irrelevant to MPL BC's agency application approval process, it is MPL BC's submission that the Panel's decision in the Allegations Review should not be considered by BCFIRB as part of its approval process and there is no basis upon which the approval process should be halted pending further findings or directions arising in that matter. To do otherwise would be contrary to MPL BC's reasonable expectations and right to procedural fairness.

Yours truly,

Dentons Canada LLP



Morgan Camley
Partner