

April 6, 2023

File No.: 8006-031

VIA EMAIL: Wanda.Gorsuch@gov.bc.ca

Ms. Wanda Gorsuch
Manager, Issues and Planning
B.C. Farm Industry Review Board
780 Blanshard Street
Victoria, BC V8W 2H1

Robert P. Hrabinsky
Direct Tel: (604) 800-8026
Direct Fax: (604) 800-9026
Email: rhrabinsky@ahb-law.com

Dear Ms. Gorsuch:

Re: MPL Prior Approval Process – Order Requiring Production of Information Protected by Solicitor-Client Privilege

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.

By email dated March 14, 2023, I wrote on behalf of the Commission to the BCFIRB as follows:

...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.

The BCFIRB responded by email dated March 15, 2023 as follows:

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.**

By letter and email dated March 16, 2023, the Commission provided the BCFIRB with, among other things:

1. A copy of an email dated September 27, 2021 from Andre Solymosi to the Commission Panel with Attachments (including a September 27, 2021, 3:42pm email from Ms. Etsell to BCFIRB), bearing redactions to protect solicitor client privilege, and to protect an amalgamation of market data assembled by the Commission that is confidential and shared only with greenhouse managers.
2. A copy of the above-referenced email and attachments, **expressly described as being "in unredacted form (save for redactions made to protect solicitor client privilege)."**

Notwithstanding the BCFIRB's prior clarification that it "is not asking the Commission to disclose any solicitor-client communications", BCFIRB Panel Chair, Pawan Joshi, has today ordered the Commission to "forthwith" provide the BCFIRB with a copy of the above-referenced email without the redactions expressly made to protect solicitor-client privilege.

It is the Commission's respectful view that Panel Chair, Pawan Joshi, has no lawful authority to compel the production of information protected by solicitor client privilege.

The Commission reserves the right to make fulsome submissions regarding the BCFIRB's lack of any lawful authority to order the production of information protected by solicitor client privilege. However, it seems possible that the Order made by Chair Joshi (requiring the production of the September 27, 2021 email and attachments free from any redactions to protect solicitor client privilege), was made in error.

I respectfully ask for clarification on whether this Order was made in error. If not, then the Commission seeks leave to make fulsome submissions regarding the BCFIRB's lack of any lawful authority to order the production of information protected by solicitor client privilege.

Yours truly,

AFFLECK HRABINSKY BURGOYNE LLP

Per:


ROBERT P. HRABINSKY

- cc. morgan.camley@dentons.com
cc. emma.iring@dentons.com
cc. cferris@lawsonlundell.com