

March 16, 2023

**File No.: 8006-031**

**VIA EMAIL: [Wanda.Gorsuch@gov.bc.ca](mailto: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](mailto:rhrabinsky@ahb-law.com)

Dear Ms. Gorsuch:

**Re: MPL Prior Approval Process**

I am writing further to the Final Terms of Reference dated March 8, 2023, which provide, in part, as follows:

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).

Pursuant to that practice directive, the Commission hereby applies for a non-disclosure order with respect to the following records:

1. 2021-05-27 - MPL Amended Agency Application; and
2. 2021-09-27 - Email from Andre to Panel with Attachments.

In addition, the Commission respectfully submits that the deadline for circulation of the Commission's *Book of Documents Relied on by the Commission in coming to its January 12, 2022 Decision* should be deferred until such time as MPL has had an opportunity to make submissions with respect to any non-disclosure order that it might seek in relation to the following records:

3. 2021-10-08 - Agency Application Slide Deck;
4. 2021-10-08 - Document Entitled Category Expansion; and
5. 2021-11-15 – MPL Reply Submission.

#### Item 1

Item 1 originates from MPL. It represents the unredacted agency application submitted by MPL to the Commission.

The role of designated agencies was described at paragraph 1 of the Commission's January 12, 2022 decision, as follows:

"Designated agencies" are a critical component of the regulatory system for vegetables in British Columbia. They are the means by which the Commission achieves its main policy objective of maximizing producer returns through centralized, coordinated marketing of regulated product. The appropriate agency structure for the marketing of regulated vegetables contributes to orderly marketing by ensuring market growth opportunities for producers, and a steady supply of BC product for consumers.

Of course, in addition to this, agencies are business competitors. Consequently, each agency must protect their sensitive, confidential and proprietary information from disclosure to other agencies and competitors. It follows that an applicant for an agency licence must disclose to the Commission certain sensitive, confidential and proprietary information. In the absence of such disclosure, it would not be possible for the regulator to properly assess the application. On the other hand, it is not necessary for industry stakeholders to receive this sensitive, confidential and proprietary information in order to express a fulsome position on the policy implications of the application. For that reason, the Commission's October 13, 2021 "Consultation on Agency Application" that was circulated to industry stakeholders provided as follows:

#### Redacted Version Agency Application

All stakeholders that wish to participate in the consultation process can attain a redacted version of MPL's agency application upon request. A copy of this document can be requested from the BCVMC administrative assistant, Claudia Trigo, at [claudia@bcveg.com](mailto:claudia@bcveg.com). A list of recipients who receive a copy of the document will be kept on file and forwarded to the panel.

The redacted version of the application that was provided by MPL and distributed to participating stakeholders is provided with this letter. The Commission seeks an order providing for the non-disclosure of the redacted portions of that application. **A copy of the application in unredacted form will be provided to the BCFIRB under cover of separate email.**

#### Item 2

Item 2 contains an amalgamation of market data assembled by the Commission that is confidential and shared only with greenhouse managers. A copy of that record bearing the redactions proposed by the Commission is provided with this letter. **A copy of that record in unredacted form (save for redactions made to protect solicitor client privilege) will be provided to the BCFIRB under cover of separate email.**

#### Items 3, 4 and 5

Items 3, 4 and 5 are materials provided by MPL to the Commission in unredacted form. **Copies of those records in unredacted form will be provided to the BCFIRB under cover of separate email.**

#### Submissions

The Commission respectfully submits the redacted portions of Item 1 contains sensitive and confidential information that is proprietary to the applicant, MPL. Item 2 contains confidential market data assembled by the Commission that is shared only with greenhouse managers. Proper regulation will often require that applicants and stakeholders disclose such sensitive, confidential and proprietary information to the Commission. If these confidences cannot be maintained, stakeholders will be unwilling to provide to the Commission the information that is necessary for the proper functioning of the regulatory system. If the information redacted from Item 1 was disclosed to stakeholders at large, MPL's competitive business interests would be negatively impacted. Similarly, if the information redacted from Item 2 was disclosed to stakeholders at large, the competitive position of all licensed agencies would be jeopardized. There is a clear public interest in maintaining confidence over this information and, as already noted, other industry stakeholders do not need to receive such confidential business information in order to express a fulsome position on the policy implications of MPL's application. It is the Commission's respectful view that there is no reasonable alternative to the non-disclosure order sought.

The Commission takes no position with respect to Items 3, 4 and 5 other than to submit that the deadline for circulation of the Commission's *Book of Documents Relied on by the Commission in coming to its January 12, 2022 Decision* should be deferred until such time as MPL has had an opportunity to make submissions with respect to any non-disclosure order that it might seek in relation to those records.

For all these reasons, the Commission respectfully asks that the BCFIRB order that:

1. The redacted portions of Item 1 be withheld from disclosure to all eligible participants except for MPL (the source of the information that has been redacted);

2. The redacted portions of Item 2 be withheld from disclosure to all eligible participants; and
3. The deadline for circulation of the Commission's *Book of Documents Relied on by the Commission in coming to its January 12, 2022 Decision* be deferred until such time as MPL has had an opportunity to make submissions with respect to any non-disclosure order that it might seek in relation to those records.

Yours truly,

**AFFLECK HRABINSKY BURGOYNE LLP**

Per:   
**ROBERT P. HRABINSKY**

cc. [morgan.camley@dentons.com](mailto:morgan.camley@dentons.com)  
cc. [emma.iring@dentons.com](mailto:emma.iring@dentons.com)  
cc. [cferris@lawsonlundell.com](mailto:cferris@lawsonlundell.com)