



---

## BC Farm Industry Review Board

May 9, 2023

File: 44200-35\MPL

### DELIVERED BY EMAIL

Morgan Camley  
Counsel  
Dentons Canada LLP  
20th Floor, 250 Howe Street  
Vancouver, BC, Canada V6C 3R8

Derek Sturko  
Chair  
BC Vegetable Marketing Commission  
207 – 15252 32<sup>nd</sup> Ave  
Surrey, BC, Canada V3Z 0R7

Craig A. B. Ferris K.C.  
Counsel  
Lawson Lundell LLP  
Suite 1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC, Canada V6C 3L2

Dear Ms. Camley, Mr. Sturko and Mr. Ferris:

### **MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR APPROVAL PROCESS – PROCESS REQUESTS**

In advance of the in-person supervisory hearing, the British Columbia Farm Industry Review Board (BCFIRB) has received the following requests for direction from MPL BC Distributors Inc. (MPL BC) and Greenhouse Grown Foods Inc./Windset Farms (Canada) Ltd. (GGFI and Windset):

- |             |  |
|-------------|--|
| May 1, 2023 | A request from MPL BC that BCFIRB requires production of witness lists and will-say statements; and that GGFI and Windset particularize their arguments supported by their document disclosure.  |
| May 2, 2023 | A request from GGFI and Windset that BCFIRB convenes a pre-hearing conference call to address MPL BC's requests, hearing schedule and time limits, witnesses, order of presentation and clarification of the Final Terms of Reference. |

On May 3, 2023, MPL BC responded to the request for a pre-hearing conference stating that BCFIRB has already indicated it will be issuing directives with respect to the items sought. Further, as the Final Terms of Reference provide, BCFIRB will, at the close of the written submission process, confirm eligible participants and establish time limits and address any other hearing-related matters. MPL BC states “it is therefore reasonable, and indeed most efficient, to wait until after BCFIRB has made its directions regarding hearing-related matters, to assess whether outstanding matters remain and whether a case planning conference is necessary.” Further, MPL BC suggests the request for particulars should proceed by written submissions.

On May 5, 2023, GGFI and Windset expressed surprise at MPL BC’s opposition to a pre-hearing conference, arguing that it would make the process more efficient and that MPL BC’s position illustrates the need for the conference.

### **Directions**

As MPL BC points out, these requests were made as BCFIRB was in the process of confirming supervisory review participants as per the Final Terms of Reference. That decision has now been issued. The next step is for BCFIRB to address any other hearing-related matters (Phase 3 – Final Terms of Reference).

BCFIRB agrees with MPL BC that it is more efficient to wait until BCFIRB addresses the outstanding hearing-related matters (i.e. witness lists, schedule, order of presentation, time limits) as it has committed to do. That decision will be issued shortly. Participants can then assess whether there are any outstanding matters they wish to raise and whether there is a need for a pre-hearing conference call.

Given the scope and focus of the supervisory hearing, the Final Terms of Reference do not contemplate witness will-say statements. This was a considered decision as the scope of this supervisory review is narrow and focused on whether it is consistent with sound marketing policy for MPL BC to be issued an agency licence. Accordingly, BCFIRB anticipates that witnesses will be speaking to the relative merits of MPL BC’s application and the impact a new agency licence may have on their business interests. It is unusual for BCFIRB to require will-say statements, and the panel does not see a need to depart from the usual practice in this matter.

Similarly, the panel does not consider it necessary to require GGFI and Windset to particularize the arguments it intends to make with respect to their documents and does not wish to receive further submissions on the point. The participants have now received disclosure of the documents on which other participants intend to rely. If arguments are going to be made that certain documents are inadmissible or not relevant to this supervisory process, participants can make those arguments in the context of the oral hearing and BCFIRB will make a ruling at that time. BCFIRB is of the

Camley  
Sturko  
Ferris  
May 9, 2023  
Page 3

view that it is neither necessary nor efficient to vet or entertain objections to documents at a pre-hearing conference.

All participants are once again reminded that this is a *de novo* supervisory process, not an adversarial review process of the Commission's decision. BCFIRB urges participants to focus on the central issue of whether the Commission's recommendation to grant MPL BC's agency designation accords with sound marketing policy and to support their position with evidence and argument.

Regards,



Pawan Joshi,  
Panel Chair

cc: Robert Hrabinsky, Legal Counsel, BC Vegetable Marketing Commission  
Agency Applicants and Storage crop Agency Managers  
Greenhouse Agency Managers  
Storage crop/Greenhouse Managers  
Storage crop Producers  
Greenhouse Producers  
Processing Producers  
Wholesalers  
Processors  
BCFIRB web site