

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
IN THE MATTER OF MPL BRITISH COLUMBIA DISTRIBUTORS INC.
AGENCY PRIOR APPROVAL PROCESS

REPLY SUBMISSIONS OF MPL BRITISH COLUMBIA DISTRIBUTORS INC.

Introduction

1. Capitalized terms used but not defined in these reply submissions have the meaning ascribed to them in MPL BC's September 6, 2023 supplemental submissions.
2. In response to Chair Joshi's August 22, 2023 invitation for all eligible participants to make supplemental written submissions on the implications of the Ruling, MPL BC received and reviewed submissions from the BCVMC (dated September 6, 2023), Windset Farms (Canada) Ltd. and Greenhouse Grown Foods Inc. (together, "**Windset/GGFI**") (dated September 6, 2023), and Creekside Hothouse Ltd. ("**Creekside**") (dated September 4, 2023).
3. These are MPL BC's reply submissions to Windset/GGFI's supplemental submissions.
4. Windset/GGFI's supplemental submissions do not address the issue that was specifically put to the parties by Chair Joshi on August 22, 2023. Instead, Windset/GGFI took Chair Joshi's invitation as an opportunity to reargue issues that were addressed and heard at the May 23-24, 26, 2023 hearing in Delta, BC. Most notably, they reargue that MPL BC does not meet the criteria set out in Part XIV, s. 2(6) of the General Orders and therefore should not be granted an agency license. MPL BC strongly objects to these submissions at this stage in the proceedings and submits they are improper and irrelevant to the issue being canvassed, and should be disregarded or given no weight as a result.

Windset/GGFI failed to engage on the implications of the Ruling

5. Windset/GGFI's supplementary submissions do not engage with the discrete issue that was specifically put to the parties; that is, what, if any, implications flow from the Ruling. Indeed, Windset/GGFI's sole submission on the issue is that the MPL BC Prior Approval Supervisory Review Panel need not consider the Ruling: "it is unnecessary for this panel to even consider the Ruling or MPL BC's commitment to quarterly reporting because, on the face of the evidence and despite any statements made in the Ruling, MPL BC does not meet all of the Part XIV, s. 2(6) requirements to be designated as an Agency"¹ [emphasis added].
6. Given Windset/GGFI's failure to engage on the implications of the Ruling, the only submissions properly before BCFIRB on this issue are those put forth by the BCVMC, MPL BC, and Creekside.

Windset/GGFI's submissions are improper and should be disregarded

7. In lieu of responding to the issue canvassed by Chair Joshi, Windset/GGFI's supplemental submissions attack MPL BC's agency application anew and supplement their argument on its merits. MPL BC submits that those submissions are not properly before BCFIRB, given they go well beyond the limited scope of the submissions sought by Chair Joshi. Accordingly, they should be disregarded or given no weight.
8. However, should the panel disagree and instead decide to consider Windset/GGFI's submissions, MPL BC's reply is as set out below. For clarity, MPL BC objects to Windset/GGFI's improper submissions and replies solely for the purpose of preserving its interests in doing so should the BCFIRB decide not to disregard them.
9. Windset/GGFI firstly submit that there is no commitment that MPL BC or its principals could make that would restore trust amongst members of the regulated

¹ Windset/GGFI Supplementary Written Submissions, at para 6(c). See also Section IV and paras 23 and 25 for similar submissions.

greenhouse vegetable industry.² They then limit the contours of this submission to MPL BC's offer of voluntary additional reporting: they say that it is the 18-month quarterly reporting commitment that does not demonstrate and cannot re-establish trust in the regulated greenhouse vegetable industry.³ Lastly, they then move to arguing that the evidence before this Panel undeniably establishes MPL BC's mistrust in the BCVMC and that the only possible inference that could be drawn from this fact is that MPL BC does not intend to comply with BCVMC rules and orders.⁴

10. With respect, these are all untenable propositions: not only are they not borne out by the evidence before this Panel, they are also inconsistent with the findings made by the trier of fact on this very issue in the Supervisory Review. Further, it was never suggested, by MPL BC or otherwise, that MPL BC's commitment to additional reporting, *on its own*, is the basis upon which trust and confidence has been, and will be, restored in the governance and orderly marketing of the industry. Finally, even if the evidence did establish that Mr. Mastronardi continues to lack trust in certain members of the BCVMC—which, for clarity, is denied—that fact alone would not establish that MPL BC (the entity and the agency applicant) mistrusts the BCVMC as a regulator or that it intends to ignore the BCVMC's authority and refuse to follow industry rules and regulations. That logic is flawed and would require this Panel to make unsupported logical leaps.

Chair Donkers made findings of fact regarding trust and orderly marketing

11. Windset/GGFI's submission that trust in the BC regulated vegetable sector cannot be restored is contrary to findings made by Chair Donkers'—the trier of fact on this very issue—that MPL BC had in fact taken steps that “will lead to the restoration

² Windset/GGFI Supplementary Written Submissions, at para 6(a).

³ Windset/GGFI Supplementary Written Submissions, at para 7.

⁴ Windset/GGFI Supplementary Written Submissions, at para 16.

of the trust and confidence which lie at the heart of effective governance and orderly marketing in the industry.”⁵

12. MPL BC refers to and repeats the supplementary submissions it made on September 6, 2023 with respect to the findings made by Chair Donkers—the trier of fact on the impact of the Civil Claim on orderly marketing and public confidence in the governance of the regulated greenhouse vegetable industry.⁶
13. The overarching goal of BCFIRB in the Supervisory Review was to “ensure orderly marketing and public confidence in the integrity of the regulation of the BC regulated vegetable sector.”⁷ Phase II of the Supervisory Review was concluded as against MPL BC on the basis that the steps taken by MPL BC, collectively, achieved those overall objectives (insofar as MPL BC is concerned).⁸ As was mentioned in MPL BC’s supplemental submissions, the circumstances that led to the Ruling remain unchanged today.⁹ There is therefore no basis to now find that trust in the governance and orderly marketing in the industry has not or cannot be restored.

Additional quarterly reporting complements MPL BC’s commitments to restoring trust and orderly marketing

14. After arguing that no commitment from MPL BC could possibly restore trust in the regulated greenhouse vegetable industry, Windset/GGFI then limit this bald assertion by arguing that it is the 18-month quarterly reporting commitment (without reference to any of the other commitments or actions taken by MPL BC) that will not re-establish trust in the industry.
15. The additional quarterly reporting suggestion was made as part of a broader set of other commitments and actions taken by MPL BC with a view to restoring that trust

⁵ Chair Peter Donkers Ruling in the Supervisory Review, January 25, 2023, at p 5.

⁶ MPL BC Supplementary Written Submissions, at para 9.

⁷ Hearing Counsel Submissions on MPL Application, January 18, 2023, at p 2.

⁸ Chair Peter Donkers Ruling in the Supervisory Review, January 25, 2023, at p 5; Hearing Counsel Submissions on MPL Application, January 18, 2023, at p 3.

⁹ MPL BC Supplementary Written Submissions, at para 10.

and confidence.¹⁰ It was suggested as a means of providing comfort, at increased reporting intervals, that complete licensing and regulatory compliance was being achieved.

Evidence shows MPL BC moving forward and committed to being a productive member of regulated industry

16. Windset/GGFI argue that the evidence before this Panel establishes MPL BC's continued mistrust in the BCVMC and they assert that the only possible inference that could be drawn from this fact is that MPL BC does not intend to comply with BCVMC rules and orders.¹¹
17. Respectfully, that is an absurd contention with no evidentiary support. MPL BC rejects this contention categorically. While Mr. Mastronardi indicated he lacked trust in some of the BCVMC commissioners when the Civil Claim was filed over two years ago (in April 2021), there is no basis to find an ongoing lack of trust by Mr. Mastronardi of MPL BC in the BCVMC, particularly not at present, and there is nothing to suggest MPL BC would not comply with all BCVMC rules and orders. As Mr. Mastronardi indicated in his letter to Chair Donkers, he decided to put the Civil Claim behind him and focus on the business of vegetable marketing, including building relationships and working with the BCVMC.
18. The fact that MPL BC's quarterly reporting commitment was made to BCFIRB rather than BCVMC does not: a) support the proposition that there is ongoing lack of trust in the industry regulators; or b) preclude BCFIRB from requiring that additional quarterly reporting also be made to the BCVMC (though, as previously mentioned, the BCVMC submits in these proceedings that in its view doing so is not necessary or appropriate¹²). MPL BC expected that its reporting to BCFIRB would be shared with BCVMC.

¹⁰ Hearing Counsel Submissions on MPL Application, January 18, 2023, at p 3.

¹¹ Windset/GGFI Supplementary Written Submissions, at para 16.

¹² BCVMC Response to BCFIRB Questions, April 6, 2023, at pp 10 and 12; BCVMC Supplementary Written Submissions, at paras 4-5.

19. The evidence before this Panel is that MPL BC is moving forward, is a productive industry player, and is committed to restoring trust and confidence in the governance and orderly marketing of the industry by, including but not limited to:
- a. acknowledging BCFIRB's decision in the Supervisory Review;¹³
 - b. voluntarily agreeing to a dismissal of the Civil Claim;¹⁴
 - c. committing to following all the rules, regulations, and General Orders of the BCVMC with its agency working to enhance the BC greenhouse vegetable industry and to improve profitability for producers;¹⁵
 - d. committing to appointing an internal BCVMC liaison with knowledge and understanding of the regulatory requirements and limitations imposed on agencies under the BCVMC General Orders;¹⁶ and
 - e. operating as a Class 1 Wholesaler in BC since the Spring of 2021 without incident.¹⁷

MPL BC has demonstrated how it meets agency licensing requirements

20. Windset/GGFI improperly argue anew that MPL BC's agency application does not meet the criteria set out in Part XIV, s. 2(6) of the BCVMC General Orders. They further advance that there is no BCFIRB-imposed term or condition that could rectify these alleged shortcomings. Finally, they posit that any term or condition imposed would be improper as it could only be for the purpose of enabling MPL BC to meet the requirements set out in Part XIV, s. 2(6) of the General Orders.¹⁸

¹³ MPL BC letter to Hearing Counsel, January 17, 2023, at p 2. Draft Transcript, May 23, 2023, Cross Examination of P. Mastronardi at p. 107 lines 28-39.

¹⁴ MPL BC letter to Hearing Counsel, January 17, 2023, at p 2.

¹⁵ MPL BC Agency Application, Section 1 at p 8; Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 69 lines 16-47.

¹⁶ MPL BC Agency Application, Section 1 at pp 8-9; Draft Transcript, May 23, 2023, Evidence in Chief of P. Mastronardi at p. 69, lines 40-47.

¹⁷ BCVMC Agency Decision, January 12, 2022, at para 25.

¹⁸ Windset/GGFI Supplementary Written Submissions at para 19.

For the reasons given above, this attempt to re-argue the case is highly objectionable.

21. To the extent that MPL BC has any need to respond to this attempt at re-argument, MPL BC repeats and relies on its closing submissions, filed on May 26, 2023, which clearly demonstrate how its agency application meets all of the criteria set out in Part XIV, s. 2(6) of the BCVMC General Orders.¹⁹
22. MPL BC did not suggest additional quarterly reporting as a means to address any alleged shortcomings in its agency application. MPL BC maintained at all times that its application met all of the criteria set out in Part XIV, s. 2(6) of the BCVMC General Orders. The additional quarterly reporting suggestion was made on January 17, 2023: almost 20 months after submitting its agency application on May 27, 2021, and more than a year after responding to industry consultation on November 11, 2021 and the BCVMC approving its application on January 12, 2022. As mentioned, the additional quarterly reporting suggestion was made in the course of the Supervisory Review, as part of a suite of commitments and actions by MPL BC to restore trust and confidence in the governance and orderly marketing of the industry. It was suggested as a means of providing comfort, at increased reporting intervals, that complete licensing and regulatory compliance was being met. It was not meant to supplement MPL BC's agency application or address any alleged shortcomings, as Windset/GGFI suggest.
23. Finally, in specific reply to Windset/GGFI's reliance on BCFIRB's January 31, 2017 refusal to renew Vancouver Island Produce Ltd.'s ("**VIP**") agency license²⁰ for the proposition that a single producer letter of support is fatal to MPL BC's application, MPL BC submits that not only is it an inaccurate statement of BCFIRB's reasons

¹⁹ See in Part E, pp 16-38.

²⁰ *British Columbia Farm Industry Review Board Future of Regulated Marketing, Agency Designation*, January 31, 2017, p. BCVMC-037.

for refusing the VIP license renewal, it is simply not true that MPL BC's agency application is not supported by more than one producer.²¹

24. In the decision refusing the VIP license renewal, BCFIRB noted that VIP had been marketing a single product from a single farm since 2012, and had in fact effectively only been marketing its own product for five years.²² Contrary to what Windset/GGFI suggest, BCFIRB's refusal to renew the license was not due to a single producer supporter of its agency application. Rather, it was due to a five-year failure to establish marketing operations that would support more than its own production:

“Amid all of these grounds, VIP has not challenged the one key “empirical” fact asserted by the Commission: “there are no other regulated producers in the region that are not accounted for and that would have a desire to join the VIP agency.” Amid VIP's many grounds objecting to the Commission's decision, it has not been able to overcome this basic fact. The regulated marketing reality is that VIP has been marketing its own product since 2012. VIP had every opportunity to establish that its marketing operations supported more than one producer. It has not done so. Even if VIP were able to provide concrete evidence of an actual new entrant application, we note that all new entrants require Commission approval.

The very nature of an agency in the regulated marketing system is that it exists to market real production on behalf of multiple producers – to represent the interests in the marketplace of a group of growers. Agencies receive delegated legislative authority to serve a specific purpose in the regulated marketing system. They exist to harness the marketing power of growers and contribute to sound marketing policy (in this circumstance through providing a mix of products). VIP's current operations do not meet this determinative factor. In our

²¹ Exh. 1, Tab 4, at BCVMC-0238 and 0245.

²² Exh. 1, Tab 4, *British Columbia Farm Industry Review Board Future of Regulated Marketing, Agency Designation*, January 31, 2017, BCVMC-060, at para 89.

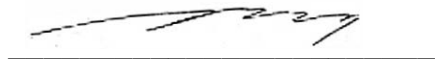
view, VIP's plans for growth are insufficiently concrete to justify waiting longer than the five years that have already passed.

In this situation, it simply makes no policy sense to continue VIP as an agency. The speculative argument that a producer or new entrant “might” someday materialize and ask VIP to market their product – something that has not materialized in the past five years – is not, as a matter of sound marketing policy, a valid basis for renewing VIP's agency designation going forward. We therefore agree with the Commission's decision not to renew VIP's agency licence.”²³

Conclusion

25. In closing, Windset/GGFI's supplemental submissions fail to address the discrete issue canvassed by Chair Joshi on August 22, 2023. It was improper for Windset/GGFI to take this invitation for supplement submissions as an opportunity to reargue and supplement their submissions on the merits of MPL BC's agency application, and BCFIRB should disregard their submissions as a result. There is no evidentiary support for the allegations made by Windset/GGFI.

All of which is respectfully submitted this 14th day of September, 2023.



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²³ *Ibid* at paras 91-93.