

**IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT**

**AND IN THE MATTER OF
A PRIOR APPROVAL APPLICATION
CONCERNING A RECOMMENDATION MADE BY THE BRITISH COLUMBIA
VEGETABLE MARKETING COMMISSION ON JANUARY 12, 2022
THAT MPL BRITISH COLUMBIA DISTRIBUTORS INC.
BE GRANTED AN AGENCY DESIGNATION**

**SUPPLEMENTAL SUBMISSION OF THE
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION**

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Scope of the Supplemental Submission Sought

1. By letter dated August 22, 2023, Panel Chair Joshi invited all eligible participants to make a supplemental written submission on the implications, if any, of the January 25, 2023 ruling of Chair Peter Donkers made in the Allegations of Bad Faith and Unlawful Activity supervisory review (the “Ruling”) on the designation of MPL BC as an agency, including implications of the voluntary reporting requirement agreed to by MPL BC.

Background

2. On March 27, 2023, the BCFIRB requested that eligible participants respond to certain questions (the “Questions”).
3. In its April 6, 2023 response to the Questions, the Commission noted that it had not considered the Ruling when it made its January 12, 2022 decision recommending that MPL BC should be designated as an agency, subject to the approval of the BCFIRB. This was necessarily so because the Ruling was made long after the Commission had made its January 12, 2022 decision.
4. However, the Questions were put to a quorum of Commission members who were then aware of the Ruling. In response to questions concerning possible MPL reporting requirements, the Commission expressed its institutional position, based on the information then available to it, that:
 - (a) The remedial steps already taken by MPL are sufficient to address the concerns that arose as a result of MPL advancing very serious, and unfounded, allegations of wrongdoing; and
 - (b) MPL should be subject to the same reporting requirements that are applicable to all agencies.

5. With respect to the implications of the Ruling in general, the Commission said the following in its April 6, 2023 response to the Questions:

Reporting requirements already set out in the Commission's General Order include agency obligations presented in Appendix B that fall under the following categories: [list omitted for brevity]

The Commission has not yet finalized its agency accountability framework as directed by the BCFIRB in its December 22, 2020 Supervisory Decision. Progress was impeded by the pandemic, staff turnover, and the BCFIRB's Review of Allegations of Bad Faith and Unlawful Activities, which has consumed considerable Commission resources. Nevertheless, the Commission does anticipate further industry consultations concerning the development of additional reporting requirements that will be applicable to all agencies. At this juncture, the Commission anticipates that these additional reporting requirements will focus on: [list omitted for brevity].

However, the Commission does not think that there is any need to impose any "special" regulatory reporting requirements against MPL, notwithstanding MPL's offer to commit to "quarterly reporting to BCFIRB for an 18-month period", and notwithstanding the findings made by Chair Donkers in his July 14, 2022 decision concerning Phase I of the "Bad Faith" Supervisory Review.

In that supervisory decision, Chair Donker's concluded that there was no cogent evidence presented to substantiate the very serious allegations of wrongdoing that were advanced by MPL, and that in most cases the allegations were based on no more than speculation, rumour and innuendo. He also identified serious concerns arising out of the lack of an evidentiary foundation for the allegations of wrongdoing advanced by MPL, and the impact that the allegations had on the Commission and orderly marketing in the Province.

Consequently, Chair Donkers made orders amending the terms of reference for the Supervisory Review, provided an opportunity for MPL to submit additional evidence, and invited Hearing Counsel and all participants to provide written submissions on the following two issues:

- i. what conclusions or inferences should be drawn from the findings in the Phase I Decision, together with any additional evidence filed by ... MPL, with respect to ... MPL's motivations for advancing allegations of bad faith and unlawful conduct against the Commissioners and Mr. Solymosi, and

- ii. in light of any findings that might be made concerning ... MPL's motivations, what, if any, orders or directions does the panel have the authority to make in furtherance of restoring orderly marketing and trust and confidence in the BC regulated vegetable industry.

Before Phase II commenced in earnest, MPL decided to:

- (a) bring an end to the civil action (and paying the defendants' costs);
- (b) recognize that there have been costs and disruption and pay a significant portion of the Commission's legal costs arising out of the Supervisory Review;
- (c) switch its focus back to advancing the marketing of greenhouse vegetables;
- (d) commit to becoming a constructive member of the B.C. regulated vegetable sector;
- (e) commit to comply with the three key components of orderly marketing; and
- (f) commit to quarterly reporting to BCFIRB for an 18-month period.

Based on this, and having regard to the recommendation of Hearing Counsel, Chair Donkers decided on January 25, 2023 to discontinue the "Phase II" proceedings against MPL.

Against this background, it is the Commission's respectful submission that the steps already taken by MPL are sufficient to address the concerns that arose as a result of MPL advancing very serious, and unfounded, allegations of wrongdoing.

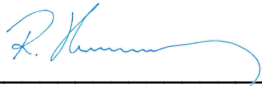
Further, it is the Commission's respectful submission that MPL's conduct in advancing these unfounded allegations is not properly regarded as a kind of *regulatory non-compliance* that might justify the imposition of special reporting requirements. Had MPL not taken the steps that it did, there may well have been other regulatory approaches that would constitute a suitable regulatory response. However, it is the Commission's respectful view that special reporting requirements are better suited to circumstances where there has been a demonstrated history of *regulatory non-compliance*. "Bad behaviour" that gives rise to costs and hardships, but is not otherwise a form of regulatory non-compliance, is better addressed in other ways.

Supplemental Submission

6. At this time, the Commission has no further supplemental submissions with respect to the implications of the Ruling or the voluntary reporting requirement agreed to by MPL BC.

7. The Commission reserves its right to make such further supplemental submissions in its final reply.

ALL OF WHICH IS RESPECTFULLY SUBMITTED
THIS 6th DAY OF SEPTEMBER, 2023



Counsel for the British Columbia Vegetable Marketing Commission