

**BC FARM INDUSTRY REVIEW BOARD**

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR  
APPROVAL PROCESS

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**SUPPLEMENTAL WRITTEN SUBMISSIONS OF WINDSET FARMS (CANADA) LTD.  
AND GREENHOUSE GROWN FOODS INC.**

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## **I. Overview**

1. On August 22, 2023, this panel of the BC Farm Industry Review Board (the “**Board**”) invited participants in this Supervisory Review to make supplemental written submissions on the January 25, 2023 ruling of Chair Donkers (the “**Ruling**”) in the Board’s Phase II Supervisory Review of allegations of bad faith and unlawful activity (the “**Bad Faith Supervisory Review**”). Those allegations of bad faith and unlawful activity were made by MPL British Columbia Distributors Ltd. (“**MPL BC**”) against BC Vegetable Marketing Commissioners and Commission staff in a civil claim (the “**Bad Faith Claims**”).

2. Specifically, the Board has asked for parties’ submissions on: “the implications, if any, of the Ruling on the designation of MPL BC as an agency, including implications of the voluntary reporting requirement agreed to by MPL BC.”

3. The voluntary reporting requirement referred to in the Ruling of Chair Donkers is a proposed voluntary reporting requirement outlined in the January 17, 2023 letter of Paul Mastronardi written to Hearing Counsel in the Bad Faith Supervisory Review. In that letter Mr. Mastronardi makes a number of statements with respect to his decision to instigate the Bad Faith Claims civil action on behalf of MPL BC that led to the Bad Faith Supervisory Review, including the following statement:

*I recognize, however, that our company still has to show that its history will reflect its future in the BC industry. Accordingly, should we be successful in the prior approval process, we are prepared to voluntarily commit to quarterly reporting to BCFIRB for an 18 month period, following the approval of our licence, on compliance with the terms and conditions of our licence.<sup>1</sup>*

4. We understand the Board is asking participants to make submissions with respect to the Ruling of Chair Donkers, including this proposed voluntary commitment of MPL BC to commit to 18 months of “quarterly reporting” to the Board if it is granted an Agency licence.

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<sup>1</sup> January 17, 2017 letter of MPL BC, included as Schedule A to the Ruling of Chair Donkers.

5. In his Ruling, Chair Donkers suggested that the commitments made in Mr. Mastronardi's January 17, 2023 letter, including the commitment to quarterly reporting, would assist in restoring trust among industry participants. This was the trust that has been eroded due to MPL BC and another party's allegations of bad faith and wrongful activity made against the Commissioners and Commission staff, which Chair Donkers had determined had been made without evidentiary foundation.

6. For the reasons set out below, it is the submission of Windset Farms (Canada) Ltd. ("**Windset**") and Greenhouse Grown Foods Inc. ("**GGFI**") that:

- (a) there is no commitment or term and condition that can be made by MPL BC or Mr. Mastronardi personally that can restore trust amongst members of the regulated greenhouse vegetable industry in BC and the evidence before this panel is that MPL BC continues not to have trust in BC's regulated system;
- (b) the Board does not have the jurisdiction to impose conditions to allow MPL BC to be designated as an Agency where it does not meet all of the required factors set out in Part XIV, s. 2(6) of the Commission's General Orders, as that would be tantamount to amending the General Orders; and
- (c) 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.

## **II. Continued Lack of Trust by MPL BC and Mr. Mastronardi in Commission and other Industry Participants**

7. While MPL BC suggests that it will go above the Commission's normal requirements for an Agency by reporting quarterly to the Board for an 18 month period, Windset and GGFI submit this additional reporting by MPL BC does not demonstrate trust or acceptance in the existing regulatory system, nor is this offer enough to re-establish trust between industry participants. In fact, the evidence before this panel of the Board in this Supervisory Review is that Mr. Mastronardi and MPL BC continue to demonstrate a lack of trust in the Commission and its staff.

8. While Chair Donkers found that the steps proposed in Mr. Mastronardi's January 17, 2023 letter would "significantly address the impact of its conduct on orderly marketing, the Commission, its members and staff", Mr. Donkers did not establish that this offer would entirely

repair the damage done by the Bad Faith Claims. In addition, Chair Donkers made clear that this offer was not necessarily sufficient to ensure that MPL BC be designated as an Agency, and in fact, specifically left it open to this panel of the Board to make that determination:

Lastly, I wish to make clear that this ruling only addresses MPL's status in Phase II of the Supervisory Review. Prior to the hearing in Phase I of the Supervisory Review, the Commission recommended that MPL's agency license be approved by BCFIRB. It will be for the supervisory panel presiding over the prior approval process for MPL's agency license to make its own determinations in that process after hearing from all of the relevant parties.<sup>2</sup>  
[Emphasis added]

9. Accordingly, any findings by Chair Donkers in the Ruling with respect to the offers made by MPL BC in its January 17, 2023 letter, including its offer of quarterly reporting, does not bind this Board in any way with respect to its determination as to whether MPL BC should appropriately be designated as an Agency.

10. Windset and GGFI submit that on an objective view of the evidence, the conclusion can only be that there is a continued lack of trust on the part of Mr. Mastronardi and MPL BC in relation to the Commission and its staff. This lack of trust cannot be supported in the regulated vegetable marketing system in BC, and can only lead to the conclusion that it is inappropriate to designate MPL BC as an Agency.

11. Mr. Mastronardi's evidence was that he commenced the Bad Faith Claims because he "didn't have trust in some of the commissioners" because "they kept putting on delays."<sup>3</sup>

12. In addition, it is important to carefully consider Mr. Mastronardi's offer to have MPL BC report quarterly. The offer was made to have MPL BC report quarterly to the Board, not to the Commission. In essence, Mr. Mastronardi is seeking to have MPL BC be designated as an Agency, and have the Board continue to be involved in his participation in the industry, presumably due to his lack of trust in the Commissioners and Commission staff.

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<sup>2</sup> January 25, 2023 letter of Peter Donkers, Chair, BC Farm Industry Review Board Supervisory Review of Allegations of Bad Faith and Unlawful Activity Review Phase II, p. 5.

<sup>3</sup> Draft Transcript, Day 1, Cross-Examination of P. Mastronardi, p. 106, lines 6-38.

13. However, on cross-examination it became apparent that Mr. Mastronardi not only does not trust Commission members and staff, but also lacks trust in the Board. When put to him repeatedly on cross-examination as to whether or not he agreed with the Board's findings that the Bad Faith Claims were based on "rumour speculation and innuendo," he admitted that he did not agree with the Board's findings.<sup>4</sup> When pressed on cross-examination, it is clear that Mr. Mastronardi and MPL BC does not even agree to accept the Board's decision.

14. Objectively, the evidence is that Mr. Mastronardi, and therefore MPL BC, does not trust other, existing members of the BC regulated vegetable marketing system, including members of the Board, Commissioners, and Commission staff. Mr. Mastronardi's evidence is that his January 17, 2023 commitments are part of a deal he made to withdraw the Bad Faith Claims in order to progress his Agency application; they do not represent a true statement of regret with respect to MPL BC's actions in commencing the Bad Faith Claims.<sup>5</sup> The evidence on the record before this Board is that Mr. Mastronardi still believes he has been wrongly treated by statutory decision-makers in the BC regulated vegetable marketing system.

15. Taking into account this evidence, this Board should have little faith in Mr. Mastronardi's bare assertions that MPL BC intends to follow Commission Orders, the enabling legislation and regulations as is required by Part XIV, s. 2(6)(d) of the Commission's General Orders and that he has changed his view. Orderly marketing requires trust amongst all industry participants. While he was given an opportunity to retract his position with respect to the Bad Faith Claims in this proceeding on his cross-examination, he declined to do so. This panel of the Board should feel free to determine that the evidence in this proceeding does not demonstrate that trust has been restored amongst industry participants.

16. Looking at the evidence objectively, we can only infer from Mr. Mastronardi's continued lack of trust in the regulatory system that MPL BC does not intend to follow the Commission's Orders, the enabling legislation and regulations should it be designated as an Agency.

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<sup>4</sup> Draft Transcript, Day 1, Cross-Examination of P. Mastronardi, p. 104 -106.

<sup>5</sup> Draft Transcript, Day 2, Redirect of P. Mastronardi, p. 5, line 10 to p. 6, line 40, Exh. B.

**III. Terms and Conditions Cannot Support MPL BC's Application - It Simply Does Not Meet the Requirements for Agency Designation**

17. It would be inappropriate and a reviewable decision for this Board to determine that a commitment on the part of MPL BC to quarterly reporting or any other condition would enable MPL BC to become designated as an Agency despite not having met all of the Commission's required factors.

18. The Commission established the criteria it requires for Agency designation in Part XIV, s. 2(6) of its General Orders. As Windset and GGFI have set out in their Closing Statement filed on May 26, 2023, an applicant must meet all of the factors set out in that section of the General Orders in order to be designated as an Agency. There is nothing in Part XIV, s. 2(6) that suggests that any of those requirements may be waived, or that an applicant can be granted Agency status if it meets certain terms and conditions other than those outlined.

19. Put another way, it would be inappropriate and contrary to the terms of the Commission's General Order for this Board to impose certain terms and conditions on MPL BC as means of enabling it to meet the requirements of Part XIV, s. 2(6) of the General Order. An applicant either meets the required factors at the time of its application or it does not. In the case of MPL BC, it does not.

20. As the Board determined in its January 31, 2017 decision into the Agency designation of Vancouver Island Produce Ltd. ("VIP"), an Agency must be able to demonstrate that it meets the agency criteria in the Commission's General Orders. In that case, VIP failed to meet the requirement that it represent multiple growers and a diversity of product. The Board did not impose terms and conditions that would enable VIP to work towards meeting the necessary criteria. Instead, it determined VIP should not be designated as an Agency and that it could reapply when it met the required criteria. The Board stated that:

In the future, should VIP be able to demonstrate it meets the agency application criteria in the Commission's General Orders, including the support of multiple

growers and diversity of product it is always free to apply for an agency licence as is any other group of growers meeting the agency requirements.<sup>6</sup>

21. It is not open to this panel to determine that a commitment to quarterly reporting or other terms and conditions are an appropriate remedy to enable MPL BC to be designated as an Agency. For the reasons set out in Windset and GGFI's Closing Statement, MPL BC has not met any of the factors required in Part XIV, s. 2(6) of the Commission's General Orders, and there is no condition – whether some reporting requirement or another condition – that can improve that position. Similarly to VIP, MPL BC has only one grower in support, and that factor alone should be fatal to its application. For these reasons, this Board must determine that MPL BC should not be designated as an Agency.

22. Further, it is important to note that MPL BC did not challenge any of the Agency designation factors set out in Part XIV, s. 2(6) of the Commission's General Orders, but instead advanced a position that it met all of the required factors. It is not open for MPL BC to now challenge the requirements for designation, or suggest that it should be designated if it meets only some of the factors together with the imposition of certain terms and conditions. For the reasons stated, that option is not open for this Board to consider.

#### **IV. Consideration of Ruling and Proposed Commitments is Unnecessary – MPL BC does not Meet Multiple Requirements for Designation**

23. Windset and GGFI state that it is, in fact, not necessary for this panel of the Board to consider the proposed commitments of MPL BC to quarterly reporting as it has not established that it has met all of the Part XIV, s. 2(6) factors of the BC Vegetable Marketing Commission's General Orders required to be designated as an Agency.

24. An applicant for Agency designation must meet all of the required factors. The evidence is that MPL BC does not meet all of those factors. The Final Terms of Reference for this Supervisory Review of the Board provided that the Board would take into account the Ruling of Chair Donkers, which included a statement that steps had been taken by MPL BC that would lead to the restoration of trust and confidence in the industry. However, it is not necessary for this panel

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<sup>6</sup> Exh. 1, Tab 4, *British Columbia Farm Industry Review Board Future of Regulated Marketing, Agency Designation*, January 31, 2017, p. BCVMC-062, paras. 99.



of the Board to determine whether or not that trust and confidence has, in fact, been restored in deciding whether to designate MPL BC as an Agency. It is open to this panel of the Board, and it should find that, regardless of whether trust has been re-established in the industry (which Windset and GGFI say has not occurred), MPL BC does not meet several of the other factors, namely:

- (a) there is no market requirement for MPL BC as an Agency;
- (b) it is in the interests of the industry for regulated product to be marketed by an existing agency;
- (c) the presence of MPL BC will be disruptive to orderly marketing;
- (d) there is no evidence-based demand for the specific regulated product that is not already satisfied by existing agencies;
- (e) there is no evidence-based support from multiple licensed commercial growers for MPL as an agency; and
- (f) MPL BC will have a detrimental effect on the delivery allocation and production allocation of existing producers.

25. Simply put, while the Final Terms of Reference for this Supervisory Review included the option for parties to provide submissions on the Ruling of Chair Donkers, it is not necessary for this Board to even consider that Ruling. MPL BC has failed to provide the necessary evidence that it meets other required factors (such as those enumerated above), which do not depend on any restoration of trust between industry members.

26. For all of the reasons stated, it is the respectful submission of Windset and GGFI that MPL should not be designated as an Agency.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of September, 2023




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