

March 16, 2022

Sent Via E-mail

British Columbia Farm Industry Review Board
780 Blanshard Street
Victoria, BC V8W 2H1

Attention: Peter Donkers

Re: MPL British Columbia Distributors Inc. (“MPL”) Agency Designation

We write in response to your letter of March 11, 2022.

MPL appreciates that the designation of agencies is not a routine matter and that BCFIRB has a role to play in ensuring that decisions made by the BC Vegetable Marketing Commission (the “**Commission**”) accord with sound marketing policy. Notwithstanding this, MPL is also entitled to a fair procedure regarding consideration of its agency designation application, including being entitled to a decision in a timely manner and that such decision will be made based only on factors relevant to this application.

MPL is concerned by BCFIRB’s recent advice that the prior approval process will still take a number of months and that MPL should have no expectation that it will be completed well in advance of the October 31, 2022 producer transfer deadline. As BCFIRB is aware, it is vitally important for any operating agency to have its licence approved prior to the producer transfer deadline. Following that date, producers are no longer permitted to transfer agencies. If MPL’s licence were not approved until after (or even on the eve of) the producer transfer deadline, it would render the licence essentially unusable for the next growing season, as no producers would be able to transfer their agency relationship to MPL.

While MPL understands that the approval process takes time and that timing may be impacted by the pending appeals, BCFIRB also has a statutorily mandated responsibility to proceed with the prior approval process and a public law obligation to make a decision in a reasonable time.¹ Undue delay in the processing of MPL’s agency licence application may result in procedural unfairness to MPL and, depending on the length of the delay, could give rise to a finding that BCFIRB is effectively refusing to exercise its statutory decision making powers.² Further, it is in the best interests of the BC vegetable industry that the approval process move forward without unnecessary delay, as the completion of the

¹ *Wu v. Vancouver (City)*, 2019 BCCA 23 at para 41 (“**Wu**”)

² *Wu* at para 41 citing *Dass v. Canada (Minister of Employment & Immigration)* (1996), 193 N.R. 309 (Fed. C.A.). See also *Prosper Petroleum Ltd. v. Her Majesty the Queen in Right of Alberta*, ABQB 127.

process will provide certainty for producers who may wish to consider transferring to MPL if its agency licence is granted.

For the above reasons, MPL again expresses its hope that the approval process can move forward with reasonable promptness and with consideration being given to the October 31, 2022 transfer deadline.

Consideration of Irrelevant Matters

MPL is also concerned with your advice that the “prior approval panel will also need to address the impact of the ongoing Allegations of Bad Faith Review process on the prior approval process”. It is unclear what impact you are referring to or on what basis BCFIRB considers the supervisory review flowing from MPL’s unrelated allegations of bad faith (made in connection with alleged events that occurred prior to MPL submitting its current agency application) are relevant to BCFIRB’s approval process.

MPL is encouraged that BCFIRB is taking steps to investigate the serious concerns raised in the Allegations of Bad Faith Review, but in MPL’s submission, that review and the issues raised in it are irrelevant to BCFIRB’s supervisory review of MPL’s current agency application. The Allegations of Bad Faith Review were started at BCFIRB’s own instigation and relates to allegations unconnected to the Commission’s review and consideration of MPL’s current agency application.

MPL’s dealings with the Commission and specific commissioners connected to or giving rise to the Allegations of Bad Faith Review are irrelevant to MPL’s agency application currently in front of the BCFIRB and should not form any part of the consideration for approval. As noted in your letter, BCIRB’s role is to ensure that the Commission’s decision to approve MPL’s application accords with sound marketing policy. There is no rational connection between the Allegations of Bad Faith Review process and an assessment of marketing policy. It is a well known principle that administrative boards must exclude irrelevant matters from their considerations and that consideration of irrelevant factors can render an administrative decision unreasonable.³

Here, BCFIRB’s consideration of MPL’s allegations of improper conduct unconnected with the current agency application in connection with BCFIRB’s approval process would also be contrary to public policy and would not serve the interests of the industry in ensuring that governance issues are brought to light. Consideration of the circumstances surrounding the Allegations of Bad Faith Review or the review itself carries with it the significant risk of creating a broad and perverse disincentive to the reporting of wrongful conduct of regulatory agencies under the purview of the BCFIRB and may have a chilling effect on industry members who may otherwise consider bringing legitimate issues to the attention of BCFIRB or to the attentions of the courts. Specifically, industry members may become concerned that if they voice concerns with the Commission and BCFIRB investigates those concerns, the matter may result in processing delays or be used as a consideration on subsequent applications brought by the industry member.

³ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, [1947] 2 All E.R. 680 (Eng. C.A.), *Sunshine Valley Co-operative Assn. v. Grand Forks (City)*, 1948 CarswellBC 108, [1977] 1 A.C.W.S. 841, *Trinity Western University v. College of Teachers (British Columbia)*, 1997 CarswellBC 2017, *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699

Given that the Allegations of Bad Faith Review and surrounding circumstances are irrelevant to MPL's agency application approval process, it is MPL's submission that they should not be considered by BCFIRB as part of its approval process and there is no basis upon which they should impact on the approval process.

Yours truly,

Dentons Canada LLP

A handwritten signature in black ink, appearing to read 'Morgan Camley', written over a light grey rectangular background.

Morgan Camley
Partner

MC/ms