

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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

ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY:

REVISED RULES OF PRACTICE AND PROCEDURE

AND

DOCUMENT DISLCOSURE ORDER

August 13, 2021

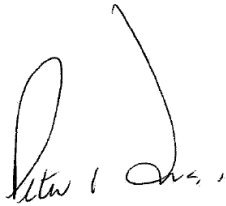
Introduction

1. On July 19, 2021, counsel for MPL British Columbia Distributors Inc. (“MPL”) advised that it does not intend to participate in the supervisory review.
2. The July 9, 2021 Rules of Practice and Procedure (“Rules”) currently allow Hearing Counsel to issue orders pursuant to s. 7.1(3) of the *Natural Products Marketing (BC) Act (NPMA)* to produce documents.
3. Given the importance of these orders for the integrity of this supervisory review, I have determined that it is preferable for me to issue these orders *in lieu* of hearing counsel. Once received, any documents or evidence will be used by hearing counsel as envisioned in the Rules. I am therefore amending Rule 2 of the Rules to read:
 2. Without limitation to any other provisions of these Rules, in the event any industry member who has raised allegations falling within the terms of reference of the supervisory review chooses not to participate in the supervisory review, then the Panel, after any consultation with hearing counsel it considers necessary, may, in ~~their~~its sole discretion, make orders pursuant to 7.1(3) of the Natural Products Marketing Act requiring the non-participant to:
 - a. produce to hearing counsel all relevant documents within the possession, control or power of the non-participant;
 - b. answer questions with respect to the facts underlying the allegations, including but not limited to the identities of individuals with relevant information and to provide information about what evidence those individuals may provide; and,
 - c. if it is claimed that any documents otherwise producible pursuant to s. 2(b) are privileged from production, produce a list of such documents with a statement of the grounds of the privilege that will enable hearing counsel to assess the validity of the claim of privilege.
4. Through my legal counsel, I have consulted with hearing counsel with respect to the necessity for an order requiring MPL to produce all relevant documents in its possession and control. I have determined that such an order is appropriate and necessary for hearing counsel to undertake the investigation into allegations raised by MPL.

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5. In doing so, I have considered the submission by MPL that such an order would prejudice it in its civil claim against Commission members and staff for misfeasance in public office. In my view, the existence of that litigation is not a reason for me to refrain from exercising my discretion, given that those documents would likely be disclosed to the BC Vegetable Marketing Commission members and staff in the course of the discovery process. As I noted in my decision of July 9, 2021, it is not contemplated that MPL will be required to produce documents subject to privilege.
6. I am therefore issuing a production order as annexed hereto as Appendix A.

Dated at Victoria, British Columbia, this 13th day of August 2021.



Peter Donkers
Chair

APPENDIX A

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY

DOCUMENT DISCLOSURE ORDER

TO: MPL British Columbia Distributors Inc. (“MPL”), its directors and officers

C/O: David Wotherspoon
Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

TAKE NOTICE that you are required to produce to Hearing Counsel all documents in your possession or control relating to the matters in question in this proceeding, including but not limited to records concerning:

1. The Commission’s exercise of powers to direct producers to agencies and the issuance of new agency licenses in a manner that is designed to further the self interest of members of the Commission, including:
 - a. Self-interested prevention of new agencies from entering the British Columbia market to further the Commission members’ economic interests, by both failing to adjudicate agency licence applications, and preventing the granting of additional production allocation to growers thought to be aligned with applicants;
 - b. Collusion by members to “vote swap” on agency applications; and,
 - c. Self-interested direction of producers to agencies in which the Commission members have a financial or personal interest.
2. Commission members and staff exercising or failing to exercise statutory duties in bad faith, for improper purposes, and without procedural fairness due to a personal animosity.

Relevant documents include anything that touches on or concerns the subject matter of the Supervisory Review or that may directly or indirectly lead to other information that touches on or concerns the subject matter of the Supervisory Review.

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The term “document” is intended to have a broad meaning and include, without limitation, the following mediums: written, electronic, text, cellular or social media messaging, audiotape, videotape, digital reproductions, photographs, films, slides, maps, graphs, microfiche, metadata, and any data and information recorded or stored by means of any device.

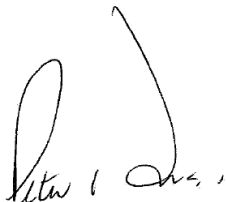
All documents should be provided on or before August 20, 2021. The documents may be provided in an electronic format and should be directed to:

Nazeer Mitha, Q.C.
Mitha Law Group
Email: nmitha@mithalawgroup.ca

Suite #920-543 Granville Street
Vancouver, BC V6C 1XB

Please note the provisions of the *Natural Products Marketing (BC) Act* and the *Rules of Practice and Procedure* in this matter are reproduced below.

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Natural Products Marketing Act, s. 7.1(3)-(7):

7.1 (3) In the exercise of its powers under this section, the Provincial board may make an order requiring a person to do one or more of the following:

- (a) attend as required;
- (b) take an oath or affirmation;
- (c) answer questions;
- (d) produce records or things in their custody or possession.

(4) If a person fails to comply with an order under subsection (3), the Provincial board may apply to the Supreme Court for one or both of the following orders:

- (a) directing the person to comply with the order of the Provincial board;

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(b) directing any director or officer of the person to cause that person to comply with the order of the Provincial board.

(5) Subsections (3) and (4) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the Provincial board.

(6) The failure or refusal of a person to comply with an order under subsection (4) makes the person, on application to the court by the Provincial board, liable to be committed for contempt as if in breach of an order or judgment of the court.

(7) In the exercise of its powers under this section the Provincial board may make rules governing its procedure and the quorum in supervisory matters, including its meetings, and may make rules and issue orders governing the procedure for any exercise of its supervisory powers.

Rules of Practice and Procedure, Rule 2:

2. Without limitation to any other provisions of these Rules, in the event any industry member who has raised allegations falling within the terms of reference of the supervisory review chooses not to participate in the supervisory review, then the Panel, after consultation with hearing counsel may, in its sole discretion, make orders pursuant to 7.1(3) of the Natural Products Marketing Act requiring the non-participant to:
 - a. produce to hearing counsel all relevant documents within the possession, control or power of the non-participant;
 - b. answer questions with respect to the facts underlying the allegations, including but not limited to the identities of individuals with relevant information and to provide information about what evidence those individuals may provide; and
 - c. if it is claimed that any documents otherwise producible pursuant to s. 2(b) are privileged from production, produce a list of such documents with a statement of the grounds of the privilege that will enable hearing counsel to assess the validity of the claim of privilege.