

June 25, 2021

**Sent Via E-mail**

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

**Attention: Wanda Gorsuch**

Re: British Columbia Farm Industry Review Board ("**BCFIRB**") Supervisory Review

We write on behalf of MPL British Columbia Distributors Inc. ("**MPL**") in response to the BCFIRB's June 14, 2021 communication, wherein it invited Supervisory Review participants and MPL to make submissions with respect to the BCFIRB's draft Supervisory Review rules of procedure, and proposed interim orders. The BCFIRB also asked MPL to clarify whether it intends to participate in the Supervisory Review.

**Participation of MPL in Supervisory Review**

MPL wishes to participate in the Supervisory Review, though the nature and extent of that participation will depend on the final terms of reference and procedural rules that the Supervisory Review Panel elects to use.

While MPL understands and respects BCFIRB's supervisory role over the Vegetable Commission, this Review is not the proper or appropriate forum in which to adjudicate MPL's misfeasance claim. Proceeding with the Supervisory Review process concurrently or in advance of the civil court proceeding creates real risk to the parties involved given the seriousness of the alleged conduct.

The procedural rules must first be determined before MPL can fully evaluate the extent to which it will participate in the Supervisory Review.

**Procedural Rules**

The BCFIRB has requested submissions from MPL and other parties in respect of its proposed procedural rules. MPL has expressed its concerns with the Supervisory Review process in its previous submission.

MPL believes that the procedural rules are miscast in that they place an onus on participants who have raised allegations in the civil misfeasance proceedings in a different forum, the BC Supreme Court. Rule 1, for example, places a burden on participants raising misconduct allegations in those other proceedings

to reveal names of all documents, witness statements, and detailed statements of evidence in this proceeding within 14 days. Any respondents then, having had an opportunity to review this information, can respond at that point with their own information and disclosure, pursuant to procedural rule 3.

This would all occur before defendants in the misfeasance action have even filed their Response to Civil Claim and creates precisely the type of interference with the civil proceedings that MPL has raised as a concern in its previous submission.

The BCFIRB, as an administrative tribunal and as a result of its broad supervisory function, could, and MPL says should, craft a process that emphasizes its inquisitorial and investigative function rather than an adversarial process that puts the emphasis on the participants. It is not MPL's responsibility to fulfil the BCFIRB's supervisory role. The emphasis in any productive Supervisory Review process would be on investigating the allegations of wrongdoing and in particular those who are alleged to have committed the wrongful acts. The proposed rules, as currently drafted, do not fulfil this function.

As MPL emphasized in its initial submission, the Supervisory Review process must not be conducted in a way that interferes with the ongoing civil claims. The procedural rules must be completely revised to recognize this fact and ensure that there is no interference.

### **Proposed Interim Orders**

The Supervisory Review panel's proposed interim orders are:

1. Commission members John Newell, Corey Gerrard and Blair Lodder (Mike Reed and Peter Guichon are now former members) are prohibited from participating in any deliberations or decision making with respect to any rights or interests of Prokam, CFP, MPL, or any of their principals or affiliated companies, until the conclusion of the Supervisory Review.
2. Andre Solymosi is prohibited from substantive participation in any deliberations or decision making with respect to any rights or interests of Prokam, CFP, MPL, or any of their principals or affiliated companies, including but not limited to the making of recommendations to any commissioners of Commission panels, until the conclusion of the Supervisory Review. However, Mr. Solymosi may continue to deal with Prokam, CFP, MPL, and any of their principals or affiliated companies in an administrative capacity.

MPL's position is that any order of the Supervisory Review panel should require that its agency application for the 2022 growing season, which is currently pending, be processed with all due haste and should not permit review of its agency application to be further delayed. MPL already missed the 2021 growing season due to delays by the Commission.

Further delay of processing MPL's application could imperil MPL's ability to participate as a designated marketing agency for the 2022 growing season. As MPL stated in its previous submission, the practical effect of any freeze on processing of its 2022 agency application would be a reinstatement of the Commission's moratorium which was found to have been inconsistent with sound marketing by the BCFIRB. This would impose a regulatory penalty on MPL for raising its allegations of misconduct and seeking redress in court by effectively prohibiting it from participating in the regulated vegetable industry until the claims are adjudicated.

The Supervisory Review's orders are thus only appropriate if they are made in conjunction with additional orders that clearly set out a process and timetable for speedy review of MPL's agency application. Such orders should identify who, will review the application and provide clear deadlines and milestones by which steps in the review process are taken and decisions must be made.

Exclusion of the three members referenced above should not, on its own, create quorum issues given that the Commission is composed of 9 members. To the extent that the current Commission vacancy creates any quorum issue or inability to process MPL's agency application, the BCFIRB may exercise its authority pursuant to section 4(1)(c) or (d) of the *Natural Products Marketing (BC) Act Regulations*, BC to require holding of an election in a timely fashion or appointment of a member to the Commission.

If there are additional recusals of members, beyond the individuals identified in the BCFIRB's proposed orders, that create quorum issues, the BCFIRB may, and MPL says should, make inquiries and issue orders with respect to the necessity of such recusals. Should they be found necessary, the BCFIRB should direct the Commission to make appropriate accommodations to ensure timely review of the agency application occurs.

The functions of the Commission in respect of the agency review process could, for example, be delegated to non-conflicted members pursuant to section 11(1)(p) of the *Natural Products Marketing (BC) Act*, and the BCFIRB could direct that such a delegation occur. It would be perfectly appropriate for the Commission, if by reason of *bona fide* recusals, finds itself unable to reach its quorum requirements, to make alternative accommodations for the fulfilment of its functions through such a delegation.

Further, the BCFIRB could also, as a product of its supervisory function, address MPL's application in place of the Commission if no other accommodation can be made. This would permit the business of the Commission to proceed and avoid the imposition of a regulatory penalty on MPL for seeking redress for its misconduct allegations.

Yours truly,

Dentons Canada LLP



David Wotherspoon  
Partner