

September 13, 2021

File No.: 8006-029

VIA EMAIL: Wanda.Gorsuch@gov.bc.ca

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Dear Ms. Gorsuch:

Re: Supervisory Review into Allegations of Bad Faith and Unlawful Activity

By letter dated September 10, 2021, the BCFIRB referenced my email dated September 9, 2021, in which I relayed my instructions that Mr. Royal had sold his farm effective September 16, 2021.

In that same letter, the BCFIRB asked that the Commission provide an analysis concerning the legal authority of Mr. Royal to remain a Commission member in light of the *Scheme*, the recent amendments thereto, and the Regulations to the *Natural Products Marketing (BC) Act*.

At the outset, it is important to note that the Commission did not intend to “propose” that Mr. Royal continue in his capacity as a Commission member despite having sold his farm. Rather, the purpose of my email was to alert the BCFIRB and the parties that an individual who had been ordered by the BCFIRB to serve on a Commission panel had sold his farm, and that “a question may arise regarding his standing to serve as a Commission member after that date.”

For the reasons that follow, it is the Commission’s view that Mr. Royal cannot serve as a panel member after September 16, 2021, notwithstanding the BCFIRB’s interim order dated August 20, 2021.

Section 3 of the *British Columbia Vegetable Marketing Scheme* provides as follows:

- 3 (1) A commission called the British Columbia Vegetable Marketing Commission is continued for the purpose of administering the scheme under the supervision of the Provincial board.
- (2) The commission consists of the following:
 - (a) a chair appointed by the Lieutenant Governor in Council;
 - (b) at least 4 but no more than 6 members **who are commercial producers**, elected by the commercial producers in accordance with rules and procedures
 - (i) established and published by the commission, and
 - (ii) approved by the Provincial board before taking effect;
 - (c) 2 members who are not commercial producers, appointed by the commission using a merit-based selection process approved by the Provincial board.
- (3) Despite subsection (2) and any term of an elected member established under a practice, procedure or rule referred to in section 3 (5) or (6), as those subsections read on July 30, 2021,
 - (a) an elected member who was serving on the commission as of July 30, 2021 may continue to serve on the commission until
 - (i) May 31, 2022, if the member's term expires on or before May 31, 2022, or
 - (ii) until the member's term expires, if the member's term expires after May 31, 2022, and
 - (b) the term of a commercial producer who is elected, between July 31, 2021 and May 31, 2022, to serve on the commission does not begin until May 31, 2022.
- (4) Despite subsection (2) (c), the commission is deemed to be validly constituted if the terms of the persons appointed under that provision begin
 - (a) no earlier than July 31, 2021, and

(b) no later than May 31, 2022.

(5) Subsections (3) and (4) and this subsection are repealed effective June 30, 2022.

Pursuant to section 1 of the *Scheme*, "commercial producer" **means a producer** whose name has been entered and remains registered in one or more of the registers of commercial producers referred to in section 5."

"Producer" is defined under section 1 as "a person who **operates** a farm on which one tonne or more of the regulated product has been produced during the immediately preceding 12 months."

Sections 5 and 6 of the *Scheme* provides as follows:

- 5 (1) **The commission must keep at its head office a register of commercial producers in which the commission must record the name and address of every producer who applies and who is qualified to be registered as a commercial producer under section 6.**
- (2) The commission may revise the register of commercial producers from time to time, and, if satisfied that a person no longer qualifies under section 6 to be registered as a commercial producer, may remove the producer's name and address from the register after causing a notice to be mailed to the producer at the producer's last registered address advising the producer of its intention to remove the producer's name.
- 6 **A producer qualifies to be registered as a commercial producer if, during the immediately preceding 12 months, regulated product of at least a gross value to the producer of \$5 000 has been grown on the farm operated by the producer and marketed as ordered or directed by the commission.**

Consequently, upon the sale of Mr. Royal's farm on September 16, 2021, Mr. Royal will no longer "operate" a farm and can no longer be considered a "producer", or by extension, a "commercial producer".

Presently, the Commission is composed of the following eight members:

- Debbie Etsell, Chair (Independent)
John Newell, Vice Chair (Greenhouse Cucumbers)
Hugh Reynolds, Secretary (Processing Crops)
Blair Lodder, Member (Storage Crops)

Cory Gerrard, Member (Storage Crops)
Kevin Husband, Member (Storage Crops)
Brent Royal, Member (Greenhouse Tomatoes)
Armand VanderMeulen, Member (Greenhouse Peppers)

Subsection 3(m) of the *Natural Products Marketing Act Regulations* provides that “a majority of the members of any marketing board or commission shall constitute a quorum and all matters shall be decided by a majority vote of the members present provided that a resolution in writing signed by all members shall be as valid as if passed at a meeting regularly called and properly constituted.” Thus, at present, five members of the Commission are required to constitute a quorum.

Notably, subsection 3(d) of the *Natural Products Marketing Regulation* provides that “in the event of any vacancy in the membership of any marketing board or commission, where such membership consists of 3 or more members, the remaining members shall constitute the marketing board or commission until the vacancy is filled.” It follows that the Commission will be comprised of seven members after September 16, 2021, which will reduce the number of members required to constitute a quorum to four, at least while the Commission continues to be comprised of seven members.

It is the Commission’s respectful view that it is open to the BCFIRB to modify its Interim Orders of August 20, 2021, *after September 16, 2021*, to provide as follows:

- c. The following panel shall hear and decide applications or requests made, or to be made, by Prokam and CFP: Chair Etsell and commissioners Newell (greenhouse sector), VanderMeulen (greenhouse sector), and Lodder (storage crop sector).
- d. The following panel shall hear and decide applications or requests made, or to be made, by MPL: Chair Etsell, and commissioners Reynolds and Husband (all non-greenhouse sector) and VanderMeulen (greenhouse sector).

Yours truly,

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Per: 
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