

August 23, 2022

VIA ELECTRONIC MAIL

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

Attention: Wanda Gorsuch, Manager, Issues and Planning

Dear Ms. Gorsuch:

Re: British Columbia Farm Industry Review Board (“BCFIRB”) 2021 Supervisory Review

We write to provide MPL British Columbia Distributors Inc.’s (“MPL”) response to Mr. McEwan, Q.C.’s letter, dated August 12, 2022, and Chair Donkers’ August 17, 2022 request for further submissions.

It appears from our review of Mr. McEwan, Q.C.’s letter that he is suggesting that the BC Farm Industry Review Board (“BCFIRB”) consider commencing a new supervisory review with new Terms of Reference, as opposed to BCFIRB attempting to investigate allegations related to MPL in the current Allegations of Bad Faith and Unlawful Activity Review (the “**Misfeasance Review**”). We also understand Chair Donkers to be requesting submissions on a proposal to amend the current Terms of Reference (the “**TOR**”) in the Misfeasance Review.

Regardless of form, it is MPL’s submission that BCFIRB lacks the jurisdiction to investigate into MPL’s good faith in filing its Notice of Civil Claim and that this issue is a matter for the court to decide. Further, as set out in our letter of August 12, 2022, it would be inappropriate and a breach of procedural fairness for BCFIRB to now at this late stage purport to investigate MPL’s motives and good faith within the context of the current Misfeasance Review.

BCFIRB does not have the Jurisdiction to Inquire into MPL’s Good Faith

BCFIRB does not have the authority or jurisdiction to investigate MPL’s motivations or good faith in filing its Notice of Civil Claim whether through amending the TOR in the current Misfeasance Review or issuing new terms of reference in a new supervisory review. As with all administrative bodies, BCFIRB must act within its authority granted to it from its governing legislation – the *Natural Products Marketing (BC) Act* (the “**NPMA**”). The *NPMA* tasks BCFIRB with “general supervision over all marketing boards or commissions established under the [NPMA]”, but it does not give the BCFIRB the power to investigate or review the motivations of a private citizen or even industry member in commencing a legal action in the courts.

Moreover, if the issue of MPL’s motivations and the allegation that it acted in bad faith are to be determined, they are for the court to determine them in the context of MPL’s civil action. They are not issues for BCFIRB to decide nor is a supervisory review the appropriate forum. At all times, MPL was entitled to bring its concerns to the court for determination. If BCFIRB were to now try to make a ruling on

MPL's motivation and good faith for bringing that claim, it would amount to an impermissible infringement on MPL's right to access the courts and an attempt to usurp the court's power and function.

Amending the TOR would be Impermissible and Contrary to MPL's Reasonable Expectations and Right to Procedural Fairness

Further, even if BCFIRB otherwise would have had the authority to review issues related to MPL's good faith (which MPL submits it does not), for the reasons set out in our letter of August 12, 2022, it is MPL's position that BCFIRB cannot at this stage of the proceedings amend the TOR to include issues related to MPL's motives and good faith. Amending the TOR now does not rectify the procedural and jurisdictional issues raised in our August 12, 2022 submission. BCFIRB has already rendered a final decision on the Supervisory Review and is now *functus officio*. Amending the TOR and seeking to inquire into new issues would be an impermissible re-opening of the Supervisory Review.

Moreover, amending the TOR now to include issues related to MPL's motivations and good faith, would be a violation of MPL's reasonable expectations and right to procedural fairness. From the outset, the Supervisory Review and the procedural rights afforded to participants were confined by the scope of the TOR. The parties conducted themselves in the reasonable belief and expectation that the issues being inquired into by BCFIRB were those set out in the TOR. It was also on that basis that MPL was denied several requests for procedural rights. In essence, by amending the TOR in an effort to allow an inquiry into MPL's good faith, BCFIRB would be trying to retroactively change the scope of the Misfeasance Review (after repeatedly curtailing MPL's procedural requests on the basis of the prior scope of the TOR), to permit a cursory review of MPL's actions without MPL being given an opportunity to defend itself from the start of the proceedings. Taking such steps would not only be contrary to MPL's reasonable expectations and grossly unfair, but would also result in irreparable prejudice to MPL.

In sum, it is MPL's position that BCFIRB does not have the jurisdiction or authority to review or make findings regarding MPL's motivations and good faith in filing its Notice of Civil Claim. Further, even if BCFIRB did have such authority, it cannot now amend the TOR to allow for an inquiry into issues related to MPL's good faith. This is because BCFIRB has completed and discharged its authority in this Supervisory Review and is now *functus officio*, taking steps to consider and make a determination on new issues would amount to an impermissible re-opening of the Supervisory Review, and taking such steps would be a significant violation of MPL's reasonable expectations and right to procedural fairness.

Yours truly,

BASHAM LAW



Rose-Mary L. Basham, Q.C.

RLB/rlb