

January 11, 2022

VIA ELECTRONIC MAIL

B.C. Farm Industry Review Board
1st floor, 780 Blanshard Street
Victoria, B.C. B8W 2H1

Attention: Wanda Gorsuch

Dear Sirs/Mesdames:

Re: Supervisory Review - Allegations of bad faith and unlawful activity

I write further to my letter of January 7, 2022, the January 5, 2022 letter of the hearing panel chair to all participants and the letter of January 10, 2022 of Ms. Hunter, QC, counsel for Prokam. As noted, I am new counsel for MPL British Columbia Distributors Inc. (“**MPL**”) and will be representing them in the BC Farm Industry Review Board’s (“**BCFIRB**”) upcoming review.

Byway of this letter, MPL hereby applies for:

- Leave to lead the evidence in chief of Paul Mastronardi;
- An extension of time to apply for leave to call any witnesses that hearing counsel has identified in his letter of December 24, 2021 whom he has indicated he does not propose to call until three days following receipt of a substantive response to the January 5, 2022 letter of Ms. Hunter, QC;
- An extension of time for MPL to provide its list of proposed witnesses and will say statements to January 14, 2022;
- An extension of time to apply for leave to call witnesses listed in MPL’s list of witnesses to three days after hearing counsel has advised whether or not they will call the additionally listed witnesses; and
- Leave for MPL to call and lead the evidence in chief of Trevor Jones and Ravi Cheema as witnesses at the BCFIRB review hearing.

Application to Lead Evidence in Chief of Paul Mastronardi

In hearing counsel’s letter of December 24, 2021, he indicated that he intends to call Paul Mastronardi as a representative of our client MPL. Pursuant to the direction of the BCFIRB, and in accordance with the Rules of Practice and Procedure Rule 28, we hereby apply for leave to lead Mr. Mastronardi’s evidence in chief at the hearing. We are counsel for MPL and it is appropriate and a matter of procedural fairness that we be permitted to lead the evidence of Mr. Mastronardi.

Mr. Mastronardi will be available from January 31 to February 4, 2022.

Request for Extension to Apply to Call Additional Witnesses Listed by Hearing Counsel

MPL seeks an extension of the January 11, 2021 deadline to apply to call additional witnesses until after hearing counsel has responded to Prokam's request for information about hearing counsel's decision not to call certain witnesses.

As noted in counsel for Prokam's letter, dated January 10, 2022, hearing counsel has provided two bases for not calling previously identified witnesses:

- Unnecessary duplication of evidence already before BCFIRB and/or interviews completed; and
- The issue of parliamentary privilege that has been referred to the hearing panel for determination.

Notwithstanding counsel for Prokam's request, to date, hearing counsel has not provided information and documentation necessary for the parties to assess whether they should apply for leave from the hearing panel to call evidence from any of the witnesses hearing counsel has declined to call.

For the reasons set out in counsel for Prokam's letter, dated January 10, 2022, which MPL hereby adopts, MPL is not in a position to receive instructions or express a position on an application for leave to call witnesses hearing counsel does not propose to call.

Accordingly, MPL respectfully requests an extension of time to bring an application for leave to call additional witnesses. The extension of time that is being requested with respect to witnesses identified in hearing counsel's letter of December 24, 2021 is as follows:

1. in respect of the witnesses proposed not to be called by reason of "unnecessary duplication of evidence already before BCFIRB and/or interviews completed", three business days after hearing counsel delivers a substantive reply to Prokam's January 5, 2022 letter; and
2. in respect of the witnesses proposed not to be called by reason of "issue of admissibility of parliamentary proceedings transcript referred to panel chair for determination", three business days after hearing counsel confirms in light of the panel chair's determination of this issue whether he is calling these witnesses.

Extension of Time to Provide Witness List

MPL seeks, pursuant to Rules of Practice and Procedure Rule 35, an order extending the time for MPL to provide its list of proposed witnesses and will say statements to January 14, 2022.

On December 24, 2021, hearing counsel provided an investigation update in which hearing counsel advised of the witnesses they intend to call at the review hearing and responded to certain document requests made by MPL – the latter we will address under cover of separate correspondence.

Upon review of hearing counsel's investigation update, it was apparent that hearing counsel does not intend to call any of the witnesses previously identified by MPL as individuals with evidence related to the issues in this matter. In particular, Paul Mastronardi identified, in his interview with hearing counsel on November 23, 2021, the following individuals as potentially having relevant evidence:

- Steven Newell, President/CEO of Windset Farms

- Jeff Madu, Windset employee
- Dawn Glyckherr, D2M Consulting
- Ravi Cheema, Creekside

Notwithstanding that these individuals were identified by MPL prior to hearing counsel conducting the majority of its interviews between December 8 and 14, 2021, it appears from hearing counsel's disclosure of December 24, 2021 that hearing counsel has not interviewed any of these potential witnesses. With respect to Steven Newell in particular, it appears that rather than interviewing Mr. Newell, hearing counsel asked Mr. Newell's brother, John Newell (a witness in these proceedings), to make inquiries of Mr. Newell and to advise hearing counsel of the result of those inquiries.

Hearing counsel has the primary responsibility for collecting and presenting all of the evidence counsel determines is relevant at the oral hearing, ensuring an orderly and fair hearing, and representing the public interest throughout the process. This obligation on the part of hearing counsel is expressly set out in Rule 18 of the Rules of Practice and Procedure. While MPL has not been an active participant in these proceedings until yesterday and, as such, did not previously provide a formal list of proposed witnesses, it is MPL's submission it was still incumbent on hearing counsel to investigate this matter thoroughly by interviewing potential witnesses identified by MPL. In particular, Mr. Newell and Mr. Madu are adverse in interest to MPL and it is unlikely that they would cooperate with MPL by being interviewed. In MPL's submission, it is appropriate and just for hearing counsel to be the one to interview and, if they have relevant evidence, to call adverse witnesses identified by MPL.

As the panel is aware, I have only recently been retained as counsel in this matter and have been diligently working to become fully acquainted with the file. We are in the process of preparing MPL's list of proposed witnesses and anticipated will say statements, but we require a few extra days to complete MPL's list and will say statements. Nevertheless, I can advise at this time that MPL intends to include in its witness list the individuals previously identified by Mr. Mastronardi who are listed above, as well as Trevor Jones.

Accordingly, MPL respectfully requests:

1. An extension of time for MPL to provide its list of proposed witnesses and will say statements to January 14, 2022; and
2. An extension of time to apply for leave to call witnesses listed in MPL's list of witnesses to three business days after hearing counsel has advised whether or not they will call any witnesses listed in MPL's list of witnesses.

Intention to Call Additional Witness

Pursuant to Rule 28 of the Rules of Practice and Procedure, MPL hereby applies for leave to call and lead the evidence in chief of Trevor Jones and Ravi Cheema. It is anticipated that Mr. Jones and Mr. Cheema will both provide evidence of, among other things, statements made by Commission and industry members to the effect that MPL would never receive a license. It is MPL's submission that both Mr. Jones and Mr. Cheema have evidence related to the issues raised in this review that it would be helpful for the BCFIRB to hear in order for the BCFIRB to fully assess those issues and fulfill its objectives

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under the Terms of Reference. Accordingly, it would be appropriate and fair that MPL be permitted to call and lead evidence from these witnesses.

If you require any further submissions on the above matters, please advise and we would be happy to provide them.

Yours truly,

BASHAM LAW

A handwritten signature in black ink, appearing to read "RBasham", written in a cursive style.

Rose-Mary L. Basham, Q.C.

RLB/rfb
Encl.