

January 24, 2022

Sent Via E-mail

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

**Attention: Peter Donkers, Chair and
Wanda Gorsuch**

Dear Sirs/Mesdames:

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

We write in reply to Mr. Hrabinsky's letter of January 20, 2022 and Messrs. Hira Q.C.'s, McDonell's, Stransky's, and Mitha Q.C.'s letters of January 21, 2022, and in support of Ms. Hunter, Q.C.'s letter of January 23, 2022.

MPL British Columbia Distributors Inc. ("**MPL**") repeats and relies on the submissions set out in Ms. Hunter, Q.C.'s letter, dated January 23, 2022.

MPL further submits, in the interests of clarity and certainty, that its request for an adjournment of the January 31, 2022 hearing date is not based on its change of counsel or recent request to participate in the within proceedings. To be clear, MPL is not seeking an adjournment of the currently scheduled hearing in order to accommodate new counsel or because of its desire to participate in these proceedings.

MPL's position is that hearing counsel's investigation to date into the subject matter of the supervisory review is incomplete and, if the matter were to proceed on January 31, 2022, would result in an inadequate record being before the review panel. This risks a significant denial of procedural fairness to the parties and raises concerns about the ability of the public, and the parties, to have confidence in the legitimacy of the review.

The incomplete nature of hearing counsel's investigation is not the result of MPL's prior decision not to fully participate in these proceedings. It is hearing counsel, not the participants, who has the obligation and prerogative pursuant to sections 18 and 19 of the Final Rules of Procedure to collect evidence and interview anyone he believes may have information or records that have any bearing upon the subject matter of the Supervisory Review. Notwithstanding MPL's prior position on participating in this proceeding, it still advised hearing counsel of witnesses MPL believed had relevant evidence and requested that hearing counsel obtain potentially relevant documents. Hearing counsel took no steps to

interview those witnesses and failed request the identified documents, with the exception of some limited requests to witnesses already being interviewed. MPL's level of participation in the proceedings did not change hearing counsel's obligations to interview witnesses or collect potentially relevant evidence. Further, as set out by Ms. Hunter, Q.C., it is not the parties' responsibility to establish the relevance of evidence before hearing counsel is required to perform his investigative function.

With respect to MPL's application to be permitted to participate in these proceedings, none of the other parties have identified any real prejudice to them arising from MPL's participation. Counsel for the Commission members has submitted that allowing MPL to now participate would be "inherently prejudicial" to the Commission members, but has not pointed to any specific or actual prejudice in this respect. Counsel for the Commission members has noted that MPL did not provide a detailed summary of allegations prior to document disclosure and the interviews of the Commission members. However, hearing counsel and the Commissioner members were aware of the allegations raised in MPL's Notice of Civil Claim, and hearing counsel had already conducted his interview of MPL's representative, Paul Mastronardi, *before* hearing counsel interviewed the Commissioners in December 2021. As a result, Commission members and hearing counsel were already aware of the nature of the MPL's allegations prior to document disclosure and the Commissioners' interviews. Further, if there are additional documents or information that the Commissioners now think are relevant, they can still provide that information to hearing counsel and the review panel.

Moreover, as a result of hearing counsel calling Mr. Mastronardi as a witness at the review hearing, MPL is already required to participate in these proceedings. All it is asking for now is that it be allowed to fully participate - as opposed to the partial participation already required by hearing counsel. It was not until December 24, 2021 that MPL was informed that Mr. Mastronardi would be called as a witness, thereby requiring MPL's participation. At the same time, MPL learned that, despite calling Mr. Mastronardi, hearing counsel had not taken any steps to interview potential witnesses or request documents identified by MPL as being relevant. The result of this is that MPL is currently in the position of being required to partially participate in the proceedings. In the circumstances, MPL acted promptly in applying to be allowed to fully participate. Denying MPL the ability to fully participate in these proceedings now would be a quintessential denial of procedural fairness.

In the circumstances, MPL respectfully submits that, in the interests of fairness, it would be appropriate and just for the BCFIRB to grant MPL and Prokam's request for an adjournment of the January 31, 2022 hearing date, and for MPL to be permitted to fully in these proceedings going forward.

Yours truly,

Dentons Canada LLP



Emma Irving
Partner