

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY

REPLY SUBMISSIONS OF MPL BC DISTRIBUTORS INC.

Overview

1. The following submissions of MPL BC Distributors Inc. (“**MPL**”) are provided in response to the Written Submissions of Andre Solymosi (“**Solymosi**”) and the Written Submissions of John Newell, Mike Reed, Blair Lodder, Cory Gerrard and Peter Guichon (collectively, the “**Commission Respondents**”).

Mischaracterization of Mastronardi’s Evidence

2. Throughout the written submissions of Solymosi, there are numerous times in which Solymosi misconstrues or mischaracterizes Mastronardi’s evidence. As a result of the page limit on MPL’s reply submissions, MPL is unable to address all of the misstatements concerning Mastronardi’s evidence, but has set out several examples below.
3. In response to paragraph 49 of Solymosi’s submissions, both the statements of Steve Newell and Jeff Madu were made directly to Mastronardi.¹ Hearing Counsel specifically elected not to interview either of these potential witnesses with respect to these statements. As a result, only Mastronardi’s evidence regarding these conversations is before the panel. Furthermore, Hearing Counsel elected to have John Newell interview his own brother, to obtain hearsay evidence regarding his conversation with Mastronardi.
4. In response to paragraph 52 of Solymosi’s submissions, contrary to Solymosi’s characterization, Mastronardi made reference to plural meetings, not one meeting,

¹ Transcript of P. Mastronardi, February 1, 2022, p. 16, l. 44 - p.17, l. 16 (Newell) and p. 17, l. 35 - p. 18, l. 4 (Madu) (Second Transcript Extract Book of MPL (“TEB #2”) at Tab 2).

in the summer of 2020 and October of 2020 and stated further that he was unsure of the exact nature of said meetings.² In particular, Mr. Mastronardi clearly stated in response to Hearing Counsel regarding these meetings: “And multiple times. Like I said, it was in the summary talk and he said there was some meetings that happen, and I think he said there was another meeting in October. So it was multiple times. It wasn’t once.”³

5. In response to paragraph 54, Solymosi’s submission ignores Mastronardi’s clear evidence that the allegations of MPL also included Solymosi’s involvement with Mike Reed and the issues experienced during Fresh4U’s application for production allocation.⁴

Solymosi’s Attack on Mastronardi’s Evidence is Without Merit

6. At paragraph 70 of his submissions, Solymosi alleges that Mastronardi’s evidence should be treated as suspect, based on the timing of Mastronardi’s disclosure of Ravi Cheema’s (“**Cheema**”) name. However, right from the start Mastronardi made it clear that he did not recall the exact date that Cheema agreed to having his name disclosed. Under cross examination, Mastronardi stated at least seven times that he was unsure of the exact date for the disclosure of Cheema’s name, despite being pushed by Mr. Hira, Q.C. to provide specifics. It is clear that Mastronardi was unsure of the specific timing, and there is no basis to suggest that he intended to mislead the Panel on this point.
7. Furthermore, and in any event, the evidence relied upon by Solymosi in an effort to discredit Mastronardi was elicited through misleading cross-examination and is wholly inadmissible. During cross-examination, Mr. Hira, Q.C. attempted to challenge Mastronardi’s credibility on the basis of Mastronardi’s evidence regarding the timing of MPL disclosing Cheema’s name. However, in doing so, Mr.

² Transcript of P. Mastronardi, January 31, 2022, p. 19, l. 34 - p. 20, l. 11, (Transcript Extract Book of Solymosi (“Solymosi TEB”), Tab 43).

³ Transcript of P. Mastronardi January 31, 2022, p. 22, ll. 11-19 (TEB #2, Tab 1).

⁴ Transcript of P. Mastronardi, February 1, 2022, p. 72, l. 47 – p. 73, l. 13 (Solymosi TEB, Tab 78).

Hira, Q.C. misled Mastronardi regarding the timing of the actual disclosure of Cheema's name. In Mr. Hira, Q.C.'s cross examination, he suggested that Mastronardi did not disclose Cheema's identity during his interview with Hearing Counsel in October 2021. His questions were directed at suggesting that Mastronardi withheld Cheema's identity when he knew that the interview with Hearing Counsel was important for the FIRB Review. During the break, counsel for MPL informed Mr. Hira, Q.C. that he was incorrect in his suggestions, that he was misleading the witness, and requested for him to clarify that with the witness. Mr. Hira, Q.C. thanked MPL's counsel but persisted in continuing with his line of misleading questioning.

8. Cross-examining counsel are given reasonable latitude in questioning a witness, but there are limits to cross-examination. One such limit is that counsel must have a good faith basis for asking a question and must not knowingly mislead a witness. In this respect, the Supreme Court of Canada has stated in *R. v. Lyttle*, [2004] 1 S.C.R. 193:

In this context, a "good faith basis" is a function of the information available to the cross-examiner, his or her belief in its likely accuracy, and the purpose for which it is used. Information falling short of admissible evidence may be put to the witness. **In fact, the information may be incomplete or uncertain, provided the cross-examiner does not put suggestions to the witness recklessly or that he or she knows to be false.** The cross-examiner may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition. The purpose of the question must be consistent with the lawyer's role as an officer of the court: to suggest what counsel genuinely thinks possible on known facts or reasonable assumptions is in our view permissible; **to assert or to imply in a manner that is calculated to mislead is in our view improper and prohibited.** [emphasis added]

9. Even when seeking to challenge a witness' credibility, it is improper for counsel to knowingly mislead a witness or to put facts to a witness that counsel knows are false.⁵
10. Here, Mr. Hira, Q.C. suggested that Mastronardi did not disclose Cheema's name in the interview conducted by Hearing Counsel in October 2021 when Hearing Counsel's notes of the interview clearly said otherwise – something Mr. Hira, Q.C. was aware of. The law is clear that while counsel has a broad discretion in cross

⁵ *Gomez v. Sidhu*, 2002 BCCA 19 at para. 44-45.

examination, he or she has an obligation not to mislead a witness. Where, as here, evidence is elicited from a witness based on a misleading cross-examination, it should be disregarded. Accordingly, no weight should be given to the evidence elicited from Mastronardi regarding the timing of disclosure of Cheema's name and Solymosi's submissions regarding Mastronardi's credibility should be dismissed.

Further Response to the Written Submissions of Andre Solymosi

11. In response to paragraphs 4 and 5 of Solymosi's submissions, the attempt to narrow the scope by which Solymosi's conduct should be assessed, by only considering the reference to "staff" members of the Commission, ignores the truth seeking function of this proceeding. It also ignores Solymosi's active role in management of the Commission, including his involvement as a general manager in matters such as Fresh4U's application for production allocation. Solymosi is much more than a simple employee of the Commission, as alleged in his written submissions. While he is not a formal decision maker, he is active in his management role of the Commission including sitting in on Commission meetings providing input and even recommendations, if asked.⁶
12. In response to paragraph 58, Solymosi's submission ignores the undisputed evidence, that even an inquiry for agency status by MPL was serious enough to warrant time on the Commission's meeting agenda. It is clear that MPL's inquiries were not treated as mere aspirations by the Commission, given the devotion of valuable Commission time to discussions regarding these agency inquiries.
13. In response to paragraph 78, Solymosi contradicts his own submissions, omitting that Mastronardi also gave evidence of delayed responses of Solmyosi, as noted in Solymosi's own paragraph 54. Furthermore, during Solymosi's own evidence, he admitted that he had not investigated any movement to discredit MPL's agency licence application, despite these issues being raised by MPL.⁷

⁶ Transcript of A. Solymosi, February 11, 2022, Solymosi, p. 86, ll. 13-19 (TEB, Tab 4).

⁷ Transcript of A. Solymosi, February 11, 2022, p. 127, l. 33 – p. 129, l. 9 (TEB #2, Tab 2).

Response to the Written Submissions of the Commission Respondents

14. In response to paragraphs 117(a) and 124 of the Commissioners' submissions, MPL's concerns regarding the Moratorium are not limited to the imposition and eventual lifting of the Moratorium. The Commissioners' submission fails to consider the significant length of the Moratorium's duration.⁸ During this time, there were no discussions by the Commission regarding whether the imposition of the Moratorium continued to be justified or whether it should be lifted.
15. In response to paragraph 129 of the Commissioners' submissions, the Commissioners rely on an arbitrary distinction between Reed's role as a Commissioner and as Executive Vice President of Sales of HMMSCI. Commissioners utilize their business or even personal emails for Commission matters on a regular basis⁹ and at no time in the correspondence does Reed specify his communications as being directed from his role at HMMSCI, as opposed to his role as a Commission member.
16. In response to Paragraph 132 of the Commissioners' submissions, the concerning trend of only one example (cited by Mr. Guichon) where the Commissioners have voted in a manner that is contrary to each other's interest cannot be cast aside as frivolous. This trend is consistent with MPL's allegations of Commissioners maintaining votes in their own interest, especially when considered alongside Solymosi's own admission that he was aware of comments concerning the Commission being an "old boys club" for years and additional concerns of "corruption at the top" being disclosed through Dawn Glyckherr's interviews.¹⁰
17. In conclusion and in response to both the written submissions of Solymosi and the Commissioners, MPL submits there remains ample evidence elicited in this review to support MPL's allegations of wrongdoing.

⁸ From June 28, 2019 to October 21, 2020 at Ex. 1 at 4168-4180 and 4475-4477.

⁹ See email exchanges and emails from Solymosi to Commission members at Ex. 24, p. 25-45.

¹⁰ Transcript of A. Solymosi, February 11, 2022, p. 87, l. 43 – p. 88, l. 8 (TEB, Tab 4).