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FARRIS

File No: 332958-0007

March 16, 2022

BY EMAIL

BC Farm Industry Review Board
2975 Jutland Road
Victoria, BC V8T 5J9

Attention: Wanda Gorsuch, Manager, Issues and Planning

Dear Madame:

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

I write in regard to an error in the submission made by counsel for MPL in their letter dated March 15, 2022 which, in my respectful view, is an error which requires response.

At page 2, second paragraph, counsel for MPL suggest that BCFIRB has directed this Supervisory Review to consider two objectives, “1) ensuring effective self-governance of the Commission in the interest of sound marketing policy and the broader public interest and 2) ensuring public confidence in the integrity of the regulation of the BC regulated vegetable sector.” Counsel for MPL appears to be arguing that these two objectives are the Terms of Reference for this Supervisory Review and thus inform the scope of relevance for cross-examination and the witnesses who should attend to give evidence.

This submission is in error. The language quoted above informs the broad interests and statutory purposes in conducting a supervisory review on any given subject; that language does not describe the Terms of Reference for the Supervisory Review now underway. The Final Terms of Reference that BCFIRB issued for this Supervisory Review are included in paragraphs 1 and 2 of the Final Terms of Reference found at Appendix A to the Order of the Chair dated June 18, 2021 as follows:

The Supervisory Review will consider the following allegations, which form the terms of reference for the supervisory review:

1. The Commission's exercise of powers to direct producers to agencies and the issuance of new agency licenses in a manner that is designed to further the self-interest of members of the Commission, including:
 - (a) Self-interested prevention of new agencies from entering the British Columbia market to further the Commission members' economic interest, by both failing to adjudicate agency licence application, and preventing the granting of additional production allocation to growers thought to be aligned with applicants;
 - (b) Collusion by members to "vote swap" on agency applications; and,
 - (c) Self-interested direction of producers to agencies in which the Commission members have a financial or personal interest.
2. Commission members and staff exercising or failing to exercise statutory duties in bad faith, for improper purposes, and without procedural fairness due to a personal animosity toward at least one producer, specifically Prokam.

MPL's counsel cites a passage from the preliminary decision of Chair Donkers of January 25, 2022 suggesting that supervisory reviews are iterative in nature. The fact supervisory reviews may be iterative, in the sense that one review may lead to further review, does not mean that the Terms of Reference for this Supervisory Review, in the hearing now underway, are unhinged.

To the contrary, if the entirety of the January 25, 2022 decision is considered properly in context, Chair Donkers states that if "at the conclusion of the evidence" it may be appropriate that further investigation be undertaken, then it is open to parties to apply for an order for further review.

With the Terms of Reference properly construed, overbroad cross-examinations and applications to call witnesses whose anticipated evidence is not within the Terms of Reference may be avoided such that the hearing can be concluded as proposed by Hearing Counsel.

Yours truly,

FARRIS LLP

Per: 

Robert J. McDonell

RJM/ls

cc. All Counsel