

Hunter Litigation Chambers

KAARDAL/SMART/OULTON/HUNTER

March 9, 2022

File No: 3211.001

BY EMAIL

BC Farm Industry Review Board
1st Floor, 780 Blanshard Street
Victoria, BC B8W 2H1

Attention: Wanda Gorsuch

Dear Sirs/Mesdames:

**Re: Allegations Supervisory Review;
Pending agency application of CFP Marketing Corporation**

We ask that you direct this letter to the attention of the Review Panel. We write on behalf of CFP Marketing Corporation to request that FIRB direct or order the Commission to decide CFP's outstanding agency application by March 23, 2022. The direction or order, if made by BCFIRB as requested, will be the third direction or order BCFIRB gives to the Commission regarding the determination of CFP's application for an agency, originally made almost three years ago.

The first direction was made by BCFIRB on October 21, 2020, in which the supervisory panel in the 2020 supervisory review directed the Commission to lift its moratorium on new agency applications. In November 2020, CFP agreed to abandon its appeal from summary dismissal of its original agency application and abandon its petition for judicial review in reliance on the Commission's representations that if CFP did that, the Commission would proceed to consider CFP's agency application.

That did not occur, and instead the Commission sought in 2021 an order from FIRB relieving it from determining CFP's agency application. That led to the Chair of the Review Panel proposing (on July 9, 2021) a Commission panel for the hearing and determination of applications brought by CFP, and ordering (on August 20, 2021) the Commission panel to hear and decide CFP's application for an agency license:

21. Accordingly, the Commission and its members must perform their statutory duties by deciding the requests and applications brought by Prokam, CFP and MPL, using the panels I set out below. To act otherwise would paralyze the Commission, with significant repercussions for the industry.

There was considerable delay between the Chair's August 20, 2021 order and the Commission providing CFP with the opportunity to present its application to a panel. The

intervention of the November 2021 floods, which caused significant disruption to Abbotsford growers, led to a further brief delay. The presentation ultimately occurred on December 13, 2021. At the conclusion of the presentation, the Commission panel advised CFP that deliberations would take place that day and that CFP could expect a decision shortly. Almost three months later (and more than half-a-year since the Review Panel ordered the Commission to hear and determine CFP's application), CFP has yet to receive a decision on its application. CFP most recently followed up with the Commission on March 3, 2022 (see enclosed letter). The Commission has acknowledged receipt but has yet to substantively respond to that correspondence.

There is a considerable difference to an agency's ability to plan with its growers for the upcoming growing season between being able to begin that planning in December, and being able to begin in March. The ongoing delay is prejudicial to CFP and puts CFP at risk of being excluded from the industry for a third consecutive growing season. In the circumstances of the nearly three-year delay since CFP originally submitted its agency application, and two previous directions or orders from FIRB, the Commission ought to have proceeded with alacrity to determine CFP's application. In our respectful view, the Commission is in breach of the Chair's August 20, 2021 order. While that order did not specify a timeframe within which the Commission was required to hear and determine CFP's application, the Commission cannot delay compliance with it indefinitely, or unreasonably.

For all of these reasons, we request that the Commission panel be ordered to determine CFP's agency application by March 23, 2022.

Yours truly,

Hunter Litigation Chambers

Per: *Claire E. Hunter*

Claire E. Hunter, Q.C.

Cc: Robert Hrabinsky

CEH/RJA