

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

CLOSING SUBMISSIONS OF MPL BRITISH COLUMBIA DISTRIBUTORS INC.

Overview

1. This case concerns a BC Vegetable Marketing Commission (the “**Commission**”) that is “broken”. The industry operates on mutual trust among the Commission, the agencies and the growers.¹ The whole system breaks down if the industry loses that trust.²
2. There has been a loss of trust and confidence in the Commission for some years. To the Commission’s knowledge, the industry has been concerned with bias and conflicts of interest and the Commission being an “old boys’ club”. At the latest since 2019, feedback from the industry in Dawn Glyckherr’s (“**Glyckherr**”) Strategic Review was that there was “corruption at the top”.
3. The BC Farm Industry Review Board (“**FIRB**”) struck a panel in September, 2019, to undertake the review of bias and conflicts of interest within the Commission.³ The following questions were posed and answered by the panel in December 2020 concerning structure and governance:⁴
 - (a) Does the Commission structure allow it to effectively, fairly and accountably manage potential conflicts of interest and apprehension of bias in its decision making?

¹ Transcript of A. Solymosi, February 11, 2022, p. 78, ll. 32-43 (Transcript Extract Book (“TEB”) at Tab 4)

² Transcript of A. Solymosi, February 11, 2022, p. 79, ll. 1-3 (TEB, Tab 4).

³ Transcript of A. Solymosi, February 11, 2022, p. 92, ll. 29-37 (TEB, Tab 4).

⁴ Ex. 1, p. 4726.

Answer: The current Commission structure does not allow the Commission to effectively, fairly or accountably manage potential conflicts of interest and apprehension of bias in its decisions.

- (b) Does the Commission structure enable it to make effective and strategic decisions regarding the production and marketing of regulated BC vegetables?

Answer: The current Commission structure and the ties of producer members to agencies results in the Commission decisions being perceived as being bias or resulting in conflict of interest. That creation of bias and conflict of interest results in procedurally unfair decisions, which are potentially neither effective nor strategic.

4. In coming to its conclusions, the FIRB panel found that recusals were inadequate to manage conflict of interests at the Commission:

100. The panel considered whether the issues of irreconcilable legal duties owed by a Commissioner/agency director and compartmentalizing the functions of operating minds for both the Commission and agencies, can be managed through appropriate and timely recusals. The conclusion is recusal by member(s) under those circumstances cannot resolve these circumstances.

101. Commissioners with a director-level legal fiduciary duty to an agency are in an irreconcilable conflict with their duty to make many regulatory decisions in the best interests of industry and in the public interest. Even where the Commission and agencies' objectives or interests are completely aligned, it would not be surprising for a reasonable person to apprehend or perceive that the mind of that Commissioner would be biased in favour of the agency they direct over the interests of other agencies. These concerns would be magnified when the Commission exercises its compliance and enforcement powers as part of its agency oversight role. In the long-run, recusals are insufficient to address the underlying competing obligations.⁵

⁵ Ex. 1, p. 4723, para 100-101.

5. In addition, Glyckherr was retained to address trust at the governance level to restore trust in the system.⁶ Her conclusions as relayed to Andre Solymosi (“**Solymosi**”) were, among other things, as follows:

“There was an old boys’ club”;⁷

“Decisions were made at the coffee shop at Delta”;⁸ and

“There was corruption at the top”.⁹

6. It was in this environment that Mastronardi Produce Limited (“**MPL**”) sought to operate in BC.
7. It is undisputed that MPL is a very large company that is multiple times the size of John Newell’s (“**Newell**”) company, Windset Farms (“**Windset**”). Windset viewed MPL as a competitor. From at least November, 2017, Newell was opposed to MPL operating in BC. Newell’s email to Solymosi on November 29, 2017 in response to the potential of MPL operating in BC was: “We don’t need more agencies here in the West – it will be the beginning if [sic] the end if that happens”.¹⁰
8. In the same chain of emails, Solymosi said: “I have this [MPL] on the agenda for the next Commission meeting. I will reach out to everyone today about setting a date. We need to hold it the week of December 11-15.”¹¹ It is evident in these emails that Solymosi thought it necessary to call a meeting of the Commissioners to deal with MPL potentially seeking to operate in BC in response to Newell’s concern.
9. A Commissioner’s meeting was held on December 14, 2017. At item 7.4, it was noted that there had been some inquiries into applying for a new greenhouse

⁶ Transcript of A. Solymosi, February 11, 2022, p. 94, ll. 20-33 (TEB, Tab 4).

⁷ Transcript of A. Solymosi, February 11, 2022, p. 96, ll. 17-23 (TEB, Tab 4).

⁸ Transcript of A. Solymosi, February 11, 2022, p. 96, ll. 24-29 (TEB, Tab 4).

⁹ Transcript of A. Solymosi, February 11, 2022, p. 97, ll. 1-4 (TEB, Tab 4).

¹⁰ Ex. 37, p. 1.

¹¹ Ex. 37, p. 2.

agency (this could only be referring to MPL).¹² Solymosi was instructed to request from each greenhouse agency the ownership composition of their agency and “to research the position to place a moratorium on greenhouse agency applications”.¹³ This discussion came about even though there was no application before the Commission for an agency.¹⁴

10. That was the start of the Commissioners, led by Newell, imposing a moratorium on applications for greenhouse agency licenses.¹⁵ No further documents were produced relating to what followed from the December 14, 2017 meeting. The Complainants’ counsel had no opportunity to cross-examine Solymosi on the chain of emails and what followed the December 14, 2017 meeting that ultimately led to a moratorium being imposed on greenhouse agencies. The November 29, 2017 emails were not produced until just before Newell testified. MPL could not have known that Item 7.4 was a follow up by the Commissioners on the November 29, 2017 chain of emails until the emails were produced. It is disingenuous for the Commissioners and Hearing Counsel to say that MPL could have cross-examined Solymosi about Item 7.4 in their opposition to recall Solymosi.
11. The moratorium was imposed in June 2019 for the primary purpose of dealing with CFP Marketing Corporation but a moratorium against greenhouse agency applications was thrown in. The moratorium against greenhouse agency applications was kept in place without any reasoned basis. There was no pending application for a greenhouse agency license. MPL was the only company that had made enquiries and had expressed a keen interest in applying for an agency license since November 2017. There was no issue with MPL as a company and no issue with the SAFETI principles; the only issue was that the greenhouse commissioners did not want competition from MPL.

¹² Ex. 1, p. 1365.

¹³ Ex. 1, p. 1365.

¹⁴ Transcript of P. Guichon, April 20, 2022, p. 48-49, ll. 24-4 (TEB, Tab 8).

¹⁵ Ex. 1, pp. 1358-1366.

12. On September 29, 2020, FIRB told the working group of the Commission of which Newell and Peter Guichon (“**Guichon**”) were members that “lifting the moratorium is critical as it is not sound marketing policy to put business on hold indefinitely”.¹⁶
13. On October 21, 2020, the Commission held a meeting for the exclusive purpose of considering the request from FIRB for “immediately lifting the moratorium on Agency Applications”.¹⁷ The Commissioners did not lift the moratorium. Later, on the same day, FIRB directed the Commission to remove the moratorium and to strike a panel to consider MPL’s outstanding application for an agency license. FIRB noted that though Amending Order 54 had not been completed, the Commission had done enough work for it to start considering new applications. In its letter of October 21, 2020, FIRB stated:

Given the Commission’s progress on its strategic planning and accountability framework projects and the input the panel received from the regulated vegetable sector, the panel is satisfied that the Commission is now in a position to effectively manage current and pending agency and/or producer-shipper applications although these projects are not fully completed.¹⁸

14. FIRB further noted that a “transitional policy” could be adopted should the Commission determine that rule changes were required to finalize the agency accountability framework.¹⁹
15. A panel was struck on October 29, 2020 to review MPL’s application for a greenhouse agency license. On November 4, 2020, a timeline was set for the review and consideration of MPL’s application with the view that a decision would be made in the week of December 14-18, 2020.²⁰ The next day, MPL’s application

¹⁶ Ex. 1, p. 4476.

¹⁷ Ex. 1, p. 4478.

¹⁸ Ex. 1, p. 4476.

¹⁹ Ex. 1, p. 4476.

²⁰ Ex. 1, p. 4549.

was put on hold to wait for the completion of Amending Order 54, notwithstanding FIRB's direction.²¹

16. It is no answer for the Commissioners to say that Newell and others took no part in the review of MPL's application for an agency license. It is their opposition to MPL and their participation in the decisions made up to October 29, 2020 in opposition to MPL operating in BC because they did not want competition from MPL that constitute the misfeasance.
17. In the case of Michael Reed ("**Reed**"), he continued to oppose MPL after a panel had been struck to review its application by interfering with Ravi Cheema's ("**Cheema**") application for product allocation in March 2021 with Solymosi's assistance when he learned that MPL (not Mucci) was involved. In a meeting held on March 23, among Cheema, Reed, Chris Brocklesby and Kevin Doran, Cheema asked Reed why he was fine with Mucci but not MPL. Reed's response was "in a light [SIC: should be tight] market, we don't need more competition".²²;
18. In the case of Solymosi, while he did not vote on Commission matters, he was integrally involved in the decision making process and played an active role in assisting the Commissioners in their actions in opposition to MPL.
19. Newell's opposition to MPL is further illustrated by:
 - (a) Steve Newell's statement to Paul Mastronardi ("**Mastronardi**") in October 2018 that he and his brother John would make sure that Mastronardi would not obtain a licence;²³
 - (b) Jeff Madu's ("**Madu**") statement in August 2021 to Mastronardi that Newell and Steve Newell would make sure that MPL would not obtain a licence and MPL should give up;²⁴ and

²¹ Ex. 1, p. 4555.

²² Transcript of R. Cheema, April 20, 2022, p. 86, l. 17 – p. 87, l. 14 (TEB, Tab 9).

²³ Transcript of P. Mastronardi, February 1, 2022, p. 17, ll. 1-16 (TEB, Tab 2).

²⁴ Transcript of P. Mastronardi, February 1, 2022, p. 17, ll. 35-44 (TEB, Tab 2).

(c) Shirvan Bakhtiyari's ("**Bakhtiyari**") statement to Mastronardi that the "Windset boys" would try to keep him out of BC.²⁵

20. Notably, Steve Newell and Madu were not called as witnesses and Hearing Counsel refused to even interview them. Instead, Hearing Counsel asked Newell to ask Steve Newell (his brother and co-owner of Windset) whether he had made the statement. MPL could not cross-examine Steve Newell and Madu about their statements.

21. The purpose of this Supervisory Review is to investigate the complainants' allegations. It is not to assess whether the evidence disclosed through that investigation meets the test for misfeasance in public office applied by the Court following a full trial. As the Panel has noted on several occasions, this Supervisory Review "is not a court proceeding"²⁶ – it was structured so as not to permit MPL to even call witnesses or demand document discovery. If this were a court proceeding, MPL would have been entitled to various additional procedural rights, including having the ability to call witnesses and to compel production of documents. In the context of trying to limit MPL's procedural rights, Hearing Counsel has agreed with the Panel's assessment that this hearing is not a court proceeding. And yet, for the purposes of asserting that MPL has not made out its case, Hearing Counsel refers to and encourages this Panel to consider case law dictating the onerous standard for misfeasance applied by the court. Hearing Counsel is trying to have it both ways. If the Panel were to accede to Hearing Counsel's suggestion, MPL would be in the untenable position of trying to meet the rigorous test imposed by the Court while at the same time being denied the procedural rights accorded by the Court to litigants. There is clearly evidence to support MPL's allegations of misfeasance and it is unknown at this stage of the civil proceeding what further evidence will be uncovered when MPL is afforded the

²⁵ Transcript of P. Mastronardi, February 1, 2022, p. 20, ll. 17-26 (TEB, Tab 2).

²⁶ February 4, 2022 ruling on Brian Meyer affidavit and Feb. 3, 2022 ruling on production and adjournment request – "is not a court proceeding".

procedural rights of an adversarial court proceeding. It would be procedurally unfair to require MPL to meet a test that is not required of it in a supervisory review.

22. Further, it would not be in the public interest or consistent with FIRB's stated truth seeking function to artificially restrict the scope of this Supervisory Review to the specific particulars alleged by MPL in the civil proceedings. Limiting the review to just the particulars, when examinations for discovery and full document production have not been done and the underlying information is largely within the knowledge of the Commissioners, would stifle the Panel's ability to properly investigate the concerns raised by the complainants. A good example is the late production of the November 2017 emails that spoke to Newell's long-standing opposition to MPL, which Hearing Counsel and the Commissioners dismissed as irrelevant because the emails predated the timing of the Complainants' particulars of misfeasance in the Court proceeding. These were documents which were within the knowledge, control and possession of Newell and Solymosi. The Complainants could not have known about them at the time the particulars were provided in the Court proceeding. They could not have sought production of them in this review. If the true purpose of this review is to investigate and address the concerns raised by the complainants, the Panel should review and consider all evidence before it, including any additional information that came to light as part of this review process. The Panel would not be discharging its truth finding obligations by limiting its review to particulars provided by the Complainants in the very early stages of a court proceeding, when a large part of the particulars is within the knowledge of the Commissioners and oral discoveries and discovery of documents have not taken place.

Allegations Raised by MPL

23. In its Notice of Civil Claim, MPL raised three main allegations:
- a. The Commissioners and Solymosi acted to delay or prevent MPL from obtaining an agency license;

- b. Reed and Solymosi took steps to interfere with or prevent growers thought to be aligned with MPL from obtaining additional production allocation; and
 - c. The Commissioners voted in a manner that led to an exchange of votes between storage crop commissioners and greenhouse commissioners.
24. Each of the above allegations are addressed in detail below.

The Commissioners and Solymosi Acted to Delay or Prevent MPL from Obtaining an Agency License

25. The Commission is responsible for, among other things, considering and approving agency licence applications. As a result, they exercise considerable power over parties seeking to enter the BC produce market and it is of paramount importance that their powers are not exercised for improper purposes or to prevent competitors of Commission members from entering the market. Notwithstanding this, starting from at least November 2017, the Commissioners and Solymosi took steps to delay or prevent MPL from entering the BC market because it is a competitor of Windset.
26. The evidence presented to the Panel clearly demonstrates that Newell and Reed, in particular, did not want MPL entering into the BC market and the competition that would follow. By at least November 2017, Newell was expressing concerns related to MPL entering the BC market and shared those concerns with Solymosi who then, in his capacity as the Commission's general manager, called a Commission meeting at which the Commission discussed putting in place a moratorium on agency applications. Newell, Guichon, Reed, Corey Gerrard ("**Gerrard**") and Blair Lodder ("**Lodder**") all attended the December 14, 2017 meeting and participated in instructing Solymosi to "research the decision to place a moratorium on greenhouse agency applications".²⁷ The moratorium was ultimately put in place in June 2019 by which time the Commission was well aware that MPL intended to apply for an agency license. The Commission then delayed

²⁷ Ex. 1, p. 1365.

in lifting the moratorium until it was ultimately directed to do so by FIRB. Even then, the Commission did not lift the moratorium.

27. The timeline of the key events and actions taken on the part of the Commission is as follows:
- a. On November 29, 2017, Jos Moerman sent an email to Solymosi attaching photographs of peppers from Mexico being sold by “Mastronardi” and stating that “[w]e don’t need another agency in BC. Mastronardi will undercut prices in order to gain market share.” Newell responded to the email chain stating “Yep, Wal-Mart Canada made the switch- very very cheap deal for them ...too bad”. In response to these emails, Solymosi advised that he had “this on the Agenda for the next Commission meeting” and that he would reach out to everyone that day about setting a date. Newell then responded to Solymosi’s email stating “[w]e don’t need more agencies here in the west – it will be the beginning if [sic] the end of that happens”.²⁸
 - b. Two weeks later, on December 14, 2017, the Commission held a meeting. At the meeting the Commission were advised that there have been some inquiries into applying for new greenhouse agency licences and a “[m]oratorium on Agencies...”.²⁹
 - c. On March 7, 2018, the Commission held a meeting. By at least that time, the full Commission was aware that MPL had been making inquiries into obtaining an agency licence. Meeting minutes from the Commission meeting note that the Commission was advised that an agency inquiry had been received from MPL.³⁰

²⁸ Ex. 37.

²⁹ Ex. 1, p. 1365.

³⁰ Ex. 2, p. 7.

- d. On April 17, 2018, Newell responded to an email from Solymosi regarding an agency transfer application submitted by Randhawa Farms Ltd. by stating “This may be Mastronardi’s way into our industry...the marketing plan is most likely Mastronardi using Jamie and VIFP to service their Wal-Mart business and give Jamie a commission/fee for letting it go through their agency. Shameless...as a BC Agency. If you have more info, give me a call...”.³¹ In Newell’s cross, he admitted that there was no basis for his statement and that he was wrong. It is a further example of Newell’s long-standing opposition to MPL entering the B.C. market because of the competition it would place on Windset.
- e. In or about October 2018, Mastronardi attended a vendor appreciation event as part of the Produce Marketing Association trade show. While at this event, Mastronardi spoke with Steve Newell, a co-owner and CEO of Windset and Newell’s brother. When Mastronardi told Steve Newell that MPL was intending to come out west, Steve Newell told him that he and his brother John would make sure that Mastronardi would not obtain a licence.³²
- f. On April 1, 2019, the Commission initiated its strategic review. Glyckherr was retained as part of the strategic review that included looking at issues related to bias, conflicts of interest and concerns of trust.³³
- g. On June 24, 2019, the Commission voted to impose a moratorium on all new greenhouse or storage crop agency licenses. Newell, Lodder and Reed voted to impose the moratorium on greenhouse agency licenses. Newell had a clear conflict of interest as an owner of a greenhouse agency; Reed was the Executive Vice President of Sales of Houweling Management and Marketing Services Canada Inc. (“**HMMSCI**”) which managed the Country Fresh Produce Inc. (“**Country Fresh**”) agency, a competitor of

³¹ Ex. 38.

³² Transcript of P. Mastronardi, February 1, 2022, p. 17, Lines 1-16 (TEB, Tab 2).

³³ Transcript of A. Solymosi, February 11, 2022, p. 93, ll. 5-40 (TEB, Tab 4).

MPL; and Lodder was a director of the Okanagan Grown Produce Ltd. agency. At the time the moratorium was imposed, the Commissioners knew that:

- i. it would take a second vote by the Commission to lift the moratorium.³⁴
 - ii. as long as the moratorium was in place MPL would not be able to obtain an agency licence.³⁵
- h. In August 2019, the Commission fired Glyckherr, in part due to personality differences.³⁶ Solymosi admitted that she told him that she was not well received by the Commissioners and that she was called names.³⁷ The Commissioners did not want to continue with Glyckherr even though Solymosi thought that she was an upstanding person and had done a very good job and wanted her to complete her review.³⁸ Hearing Counsel refused to call Glyckherr as a witness so that the Complainants could not elicit evidence from her about the Commissioners' response to her investigations and the information that she did not complete her report because the Commissioners did not like what she had to say and were hostile to her.
- i. On March 10, 2020, the Commission held a meeting at which the Commissioners were advised that MPL had sent a letter to FIRB advising that MPL intended to apply for an agency licence and greenhouse production allocation in BC.³⁹

³⁴ Transcript of C. Gerrard, April 19, 2022, p. 141 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, pp. 21-22 (TEB, Tab 7).

³⁵ Transcript of C. Gerrard, April 19, 2022, pp. 142-143 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, p. 23 (TEB, Tab 7).

³⁶ Ex. 24, pp. 25-42.

³⁷ Transcript of A. Solymosi, February 11, 2022, p. 99, ll. 13-40 (TEB, Tab 4).

³⁸ Transcript of A. Solymosi, February 11, 2022, p. 97, ll. 21-35 (TEB, Tab 4).

³⁹ Ex. 1, p. 3.

- j. On September 10, 2020, MPL submitted its first application for a greenhouse agency license to the Commission.⁴⁰ Hearing Counsel notes in his submissions that MPL did not file its agency application until September 2020 “more than a year after the moratorium was imposed.”⁴¹ But it is disingenuous to suggest that the Commission did not know that MPL wanted to apply for an agency licence or that events prior to September 2020 are not relevant to MPL’s delay concerns. Hearing Counsel is blowing hot and cold. For the purpose of suggesting that the Commissioners did not interfere with MPL’s application, Hearing Counsel says that MPL did not submit its application until September 2020 so that there was nothing to interfere with, but for the purpose of suggesting that MPL acted improperly, he says that MPL filed its application notwithstanding the moratorium being in effect.⁴²
- k. There is no evidence to indicate that between March 2020 and October 20, 2020 the Commissioners considered or discussed lifting the moratorium. It was at FIRB’s instigation in a meeting on September 29, 2020 with the working group of the Commission that the Commission was asked to consider immediately lifting the moratorium. At this meeting, “the Working Group agreed with the panel that lifting the moratorium is critical as it is not sound marketing policy to put business on hold indefinitely”.⁴³
- l. On October 21, 2020, the Commission held a meeting for the exclusive purpose of discussing FIRB’s request for the Commission to consider lifting the moratorium.⁴⁴ At the time of this meeting:

⁴⁰ Ex. 1, p. 4441.

⁴¹ Closing Argument of Hearing Counsel, p. 37, para 196.

⁴² Closing Argument of Hearing Counsel, p. 37, para 196-198.

⁴³ Ex. 1, p. 4476.

⁴⁴ Transcript of C. Gerrard, April 19, 2022, p. 143, ll. 10-16 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, p. 23, ll. 20-25 (TEB, Tab 7).

- (i) the Commissioners were aware that the Commission was in possession of two agency applications, including one from MPL;⁴⁵
 - (ii) At the meeting, the Commissioners agreed that it was not sound policy to have the moratorium in place indefinitely.⁴⁶
 - (iii) Despite the direction from FIRB and the knowledge that there were pending agency licence applications, at the October 21, 2020 meeting, the Commissioners voted not to lift the moratorium.⁴⁷
- m. Later in the day, on October 21, 2020, FIRB sent a letter to the Commission directing the Commissioners to lift the moratorium.⁴⁸
- n. On October 31, 2020, the deadline for growers to provide notice of transferring agencies expired.
- o. On November 4, 2020, Solymosi sent an email to the Commissioners who had been selected to consider MPL's agency application advising them that MPL's application would be sent to them and proposing a meeting to discuss the application in mid-November.⁴⁹ Solymosi proposed a time line for the consideration of MPL's application with a view that the decision would be made in the week of December 14, 2020.⁵⁰
- p. The next day, on November 5, 2020, Solymosi and Debbie Etsell instructed the Commissioners who had been selected to consider MPL's agency application not to open the MPL application package:⁵¹

⁴⁵ Transcript of C. Gerrard, April 19, 2022, p. 143, ll. 17-22 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, p. 23, ll. 26-32 (TEB, Tab 7).

⁴⁶ Transcript of C. Gerrard, April 19, 2022, p. 143, ll. 23-30 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, p. 23, ll. 33-36 (TEB, Tab 7).

⁴⁷ Transcript of C. Gerrard, April 19, 2022, p. 143, ll. 31-37 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, p. 23, ll. 37-40 (TEB, Tab 7).

⁴⁸ Transcript of C. Gerrard, April 19, 2022, p. 143, ll. 45-47 (TEB, Tab 6).

⁴⁹ Ex. 1, p. 4549.

⁵⁰ Ex. 1, p. 4549.

⁵¹ Ex. 1, p. 4555.

- i. Solymosi testified that the change in position regarding consideration of MPL's agency application was to allow time for intended amendments to the General Order that applied to agency applications.⁵² This was despite FIRB's clear direction to lift the moratorium and its statement that "the Commission is now in a position to effectively manage current and pending agency and/or producer-shipper applications although these projects are not fully completed".⁵³
- ii. Nevertheless, the Commission did not issue Amending Order 54, which replaced the previous PART XIV-Procedures for Designation of Agencies of the Commission's General Order, until March 15, 2021 – over four and a half months later.⁵⁴ During the preceding time, Solymosi delayed considerably in responding to Mastronardi's inquires and concerns regarding MPL's agency application.⁵⁵
- q. In August 2021, Mastronardi attended a charity golf tournament with Madu, a head salesperson for Windset and brother in law to Steve Newell and Newell.⁵⁶ Madu advised Mastronardi that Newell and Steve Newell will make sure that MPL would not obtain a licence so it was better to give up, as there was no use in attempting to apply.⁵⁷
- r. In addition, Mastronardi was advised by Bakhtiyari of Millennium that the "Windset boys" would try to keep him out. Mastronardi clarified that this referred to Newell and Steve Newell of Windset.⁵⁸

⁵² Transcript of A. Solymosi, February 11, 2022, p. 156, l. 30 – p. 157, l. 25 (TEB, Tab 4).

⁵³ Ex. 1, p. 4476.

⁵⁴ Ex. 1, p. 4834.

⁵⁵ Transcript of P. Mastronardi, January 31, 2022, p. 28, ll. 27-28 (TEB, Tab 1).

⁵⁶ Transcript of P. Mastronardi, February 1, 2022, p. 18, ll. 5-9 (TEB, Tab 2).

⁵⁷ Transcript of P. Mastronardi, February 1, 2022, p. 17, ll. 35-44 (TEB, Tab 2).

⁵⁸ Transcript of P. Mastronardi, January 31, 2022, p. 20, ll. 17-26 (TEB, Tab 1).

28. When the above events are viewed together and in context, it is evident that the combined effect of the above actions (and inactions) taken by the Commission objectively point to a concerted effort on behalf of the Commission to delay and prevent the consideration of MPL's agency licence application and in turn its issuance.
29. With respect to Solymosi's role in the above events, Solymosi's counsel has tried to paint Solymosi as an inactive bystander who just did as he was directed by the Commissioners. However, this characterization of Solymosi belies the realities of his role. While Solymosi did not vote on Commission matters, he was still integrally involved in the decision making process. In this respect, Solymosi agreed, under cross-examination, that:
- a. as general manager he is "a very active participant in matters that pertain to the Commission";⁵⁹
 - b. the Commissioners relied on him to a "great extent in helping them do their job";⁶⁰
 - c. the industry operates on the basis of trust and part of his job as "general manager is to make sure that system of trust is maintained";⁶¹
 - d. he was ordinarily present at all Commission meetings, that he collected a lot of the documents for meetings and presented the documents to the Commission. He further agreed that at first instance he was the one who put together for the Commissioners' consideration the documents and evidence that he thought were necessary and bore on an issue;⁶²

⁵⁹ Transcript of A. Solymosi, February 11, 2022, p. 76, ll. 28-37 (TEB, Tab 4).

⁶⁰ Transcript of A. Solymosi, February 11, 2022, p. 77, ll. 18-23 (TEB, Tab 4).

⁶¹ Transcript of A. Solymosi, February 11, 2022, p. 78, ll. 32-47 (TEB, Tab 4).

⁶² Transcript of A. Solymosi, February 11, 2022, p. 79, ll. 4-13 (TEB, Tab 4).

- e. the Commissioners depended on information provided by him in the discharge of their duties;⁶³ and
 - f. at Commission meetings, he participated in discussions regarding issues being considered by the Commissioners and he understood that his views would be considered by the Commissioners.⁶⁴
30. Further, Solymosi has a vested interest in keeping the Commissioners he works with happy. He is an employee of the Commission and, as noted above, works closely with the Commissioners. His response to Jos Moerman's and Newell's emails in November 2017⁶⁵ and his response to Reed's complaint about Cheema's application for production allocation in March 2021 (as set out below) are good examples of Solymosi's role in the Commission and his efforts to keep the Commissioners happy.

Reed and Solymosi

31. Reed considered MPL to be a competitor and was opposed to MPL coming to B.C. In March 2021, Reed interfered with Cheema's application for production allocation through Country Fresh when he learned that MPL would receive part of the production allocation. Reed was fine with Mucci (an Ontario Company) but not with MPL because "he didn't need more competition".⁶⁶ Mucci was MPL's largest competitor in Ontario but there was no suggestion that Mucci was coming out to BC.⁶⁷ He complained to Solymosi. Solymosi took up his cause without questioning him about the basis of his assertions and without making inquiries about the legitimacy of his assertions.

⁶³ Transcript of A. Solymosi, February 11, 2022, p. 79, ll. 26-29 (TEB, Tab 4).

⁶⁴ Transcript of A. Solymosi, February 11, 2022, p. 86, l. 39 – p. 87, l. 3 (TEB, Tab 4).

⁶⁵ Ex. 37.

⁶⁶ Transcript of R. Cheema, April 20, 2022, p. 85, l. 44 – p. 86, l. 24 (TEB, Tab 9).

⁶⁷ Transcript of M. Reed, April 19, 2022, p. 34, ll. 40-46 (TEB, Tab 5).

32. The sequence of events was as follows:
- a. On March 1, 2021, Country Fresh filed an application for renewal of its agency license for March 1, 2021 - March 1, 2022;
 - b. On March 17, 2021, Cheema filed an application for greenhouse production allocation with a supporting letter dated March 16, 2021 from Casey Houweling (“**Houweling**”) of Country Fresh;⁶⁸
 - c. On March 19, 2021, Suzanne Babcock, compliance officer, forwarded a copy to all designated greenhouse agencies and producer-shippers to give them an opportunity to submit an objection in writing by the end of the day on March 26, 2021;⁶⁹
 - d. No objections were filed by anyone including HMMSCI and Reed;⁷⁰
 - e. On March 25, 2021, Reed complained to Solymosi that “the application and business plan were developed without the knowledge of HMMSCI who contractually manage the day-to day functions of Country Fresh without his knowledge as the Agency Manager”;⁷¹
 - f. Solymosi took up Reed’s cause without enquiring into the validity of Reed’s assertions. Solymosi sent a letter to Houweling⁷² stating that Country Fresh’s application was entered into directly between Houweling as director and the proposed agency (Country Fresh) and that Country Fresh would manage its sales to the customer and supply product from the production for 2022 crop year, when it was Solymosi’s understanding that the day to day functions of Country Fresh have been carried out by HMMSCI and that Reed was the appointed general manager for Country Fresh. Though it

⁶⁸ Ex. 24, pp. 76-78.

⁶⁹ Ex. 24, pp 88-89.

⁷⁰ Ex. 24, p. 94.

⁷¹ Ex. 24, p. 93.

⁷² Ex 24, p. 97.

was commendable that Houweling was now taking an active role, “the Commission has been licencing CFP on the understanding that HMMSCI exclusively managed the CFP operations”.⁷³ Solymosi’s understanding came from Reed;

- g. Reed then sent an email⁷⁴ telling Solymosi what to say to Country Fresh: “You can advise that you asked me, as the agency manager for Country Fresh, but that I said I have not been advised of the terms of the agreement and advised you that Casey and Ravi do not have the right to sign off on the agreement...”. Solymosi’s response was “thanks Mike, I’ll follow up on this”;⁷⁵
 - h. Solymosi further quoted Reed’s advice that HMMSCI “has a contract to oversee all functions of Country Fresh Agency through 2022”;⁷⁶ and
 - i. Solymosi never once questioned Reed about the basis for his assertions.⁷⁷ He could not point to any document that stipulated that it was a condition of Country Fresh’s license agreement that HMMSCI would be the exclusive agent for Country Fresh because there was no such condition.⁷⁸
33. The reality of the relationship between Reed (through HMMSCI) and Country Fresh was as follows:
- a. All corporate decisions relating to HMMSCI were made by its directors Keith Doran and Chris Brocklesby;⁷⁹

⁷³ Ex. 24, p. 98.

⁷⁴ Ex. 24, p. 104.

⁷⁵ Ex. 24, p. 103.

⁷⁶ Ex. 24, p 105.

⁷⁷ Transcript of A. Solymosi, February 11, 2022, p. 182, ll. 4-7 (TEB, Tab 4).

⁷⁸ Transcript of M. Reed, April 19, 2022, p. 31, ll. 36-43 (TEB, Tab 5).

⁷⁹ Transcript of M. Reed, April 19, 2022, p. 28, ll. 22-28 (TEB, Tab 5).

- b. Country Fresh's shareholders, directors and officers were Houweling and Jonathan Mackey ("**Mackey**");⁸⁰
- c. Reed was never a shareholder, director or officer of either HMMSCI or Country Fresh and had no say in any corporate decisions made by Houweling and Mackey;⁸¹
- d. It was not a condition of Country Fresh's agency license that HMMSCI would be its exclusive manager;⁸²
- e. There was no requirement that Country Fresh's agreement with Cheema needed HMMSCI's prior approval. Country Fresh's position was that there was no provision that HMMSCI would be the exclusive agent for Country Fresh and that HMMSCI would have the exclusive right to provide services for it. HMMSCI took no steps to counter Country Fresh's entering into an agreement with Cheema without first consulting with HMMSCI⁸³ and did not say to the principals of Country Fresh that they were in breach of their agreement with HMMSCI;⁸⁴
- f. Reed took no steps against Country Fresh for the alleged breach and did not file an objection after receipt of the notice from Suzanne Babcock. Instead, he went to Solymosi to interfere with Cheema's application for production allocation when he learned that it was MPL, not Mucci, who would be receiving part of the production because "he did not need more competition".⁸⁵

⁸⁰ Transcript of M. Reed, April 19, 2022, p. 28, ll. 29-47 (TEB, Tab 5).

⁸¹ Transcript of M. Reed, April 19, 2022, p. 29, ll. 1-21 (TEB, Tab 5).

⁸² Transcript of M. Reed, April 19, 2022, p. 31, ll. 27-43 (TEB, Tab 5).

⁸³ Transcript of M. Reed, April 19, 2022, p. 33, l. 42 – p. 34, l. 13 (TEB, Tab 5).

⁸⁴ Transcript of M. Reed, April 19, 2022, p. 38, ll. 5-8 (TEB, Tab 5).

⁸⁵ Transcript of R. Cheema, April 20, 2022, p. 86, ll. 17-24 (TEB, Tab 9).

Commissioners Conducted Themselves in a Manner that Resulted in Vote Swapping

34. In Hearing Counsel's submissions, he appears to be suggesting that because MPL has not produced evidence of a written vote swapping agreement between the greenhouse grower Commissioners and the storage crop Commissioners, and the Commissioners have denied the existence of such an agreement, that there is no evidence that such an arrangement existed. Hearing Counsel's submission ignores that any direct evidence of such an arrangement is entirely within the control of the Commissioners. It is unrealistic to expect that parties to a vote swapping arrangement would concede its existence or memorialize it in writing.
35. Nevertheless, the objective evidence disclosed at this hearing demonstrates that the greenhouse grower commissioners relied on the storage crop commissioners' input when voting on storage crop issues (and *vice versa*); and that during the time Newell (a greenhouse grower commissioner) and Guichon (a storage crop commissioner) were both on the commission there was perhaps one, if any, time when the storage crop commissioners voted on a greenhouse issue against the views expressed by the greenhouse members many years ago.
36. Solymosi confirmed in his testimony that while the greenhouse growers recuse themselves from votes on greenhouse matters, the storage crop Commissioners who vote on the matter rely on the greenhouse growers with respect to the issue being voted on – and *vice versa* on issues related to storage crop matters. Specifically, Solymosi provided evidence as follows:

Q Okay. Now, do you agree with me that vegetable growers on the Commission — the commissioners who are vegetable growers rely on the commissioners who have potato [indiscernible] or storage [indiscernible], on matters arising out of storage crop infractions or issues

A Yeah.

Q — is that a fair statement?

A It's a fair statement, because they would have the knowledge of that sector and the greenhouse producers would have a knowledge of greenhouse sector.

Q So you've answered my next question; vice-versa is true. Storage crop commissioners relied on green growers, is that —

A Correct.

Q That's correct, right?

A Yeah.

...

Q So in answer to Ms. Hunter's question, do you have any recollection at what point in the discussions — referring to an earlier question, but where I really want to take you to is that — you said you didn't take any notes, but in the third line to the answer, line 36:

We have to rely on their knowledge...

-- referring to the crop — storage crop people.

We've got our own opinions ...

— you've seen that in — in his notes.

... and we, as an industry or industry Commission, have to take advice from each other. Is that true? Sure.

Mr. Newell:

And they're heavily invested, many of them for 40-plus years. And that industry have taught me an enormous amount as a greenhouse commissioner, and I know there are other greenhouse commissioners who are actually in the same boat. They rely on us equally for every ...

— and carry on to the next page —

... any — anything that happens in the greenhouse business, and that they're not, as an agency manager, but a commissioner for the greatest good of the industry. And I want to be [indiscernible] to make sure that this regulated industry stays strong.

You agree with that evidence?

A I — I agree.⁸⁶

37. Gerrard, Lodder, Newell, Reed and Guichon all acknowledged that greenhouse commissioners heard from storage crop commissioners before voting on storage crop issues – and *vice versa*.⁸⁷

⁸⁶ Transcript of A. Solymosi, February 11, 2022, p. 81, ll. 6-23 and p. 83, ll. 1-40.

⁸⁷ Transcript of M. Reed, April 19, 2022, p. 11, ll. 6-23 and p. 49, ll. 3-14 (TEB, Tab 5); Transcript of C. Gerrard, April 19, 2022, p. 144-145 (TEB, Tab 6); Transcript of B. Lodder, April 20, 2022, p. 25 (TEB, Tab 7); and Transcript of P. Guichon, April 20, 2022, pp. 42-43 (TEB, Tab 8).

38. Gerrard, Lodder, and Reed were also not able to recall a time, prior to March 2021, when the greenhouse commissioners voted on a storage crop issue against the views expressed by the storage crop members – or *vice versa*.⁸⁸
39. While Guichon at first said that there were times when the storage crop commissioners did not vote as the greenhouse commissioners would have wanted them to, when pressed, the only specific incident he could recall related to a vote on commission charges as between the greenhouse and the storage crop industries. Guichon’s evidence on this vote was, as follows:
- I can remember one for sure. It was setting a commission charges between greenhouse group and the storage crop group. They thought that they, being some of the greenhouse members thought that they should be paying us charges and the root crop paying more, and no, we didn’t agree.⁸⁹
40. It is noteworthy that the only specific time Guichon could recall the storage crop commissioners voting in a manner contrary to how the greenhouse commissioners would have liked is when the vote related to whether the storage crop growers should be paying more charges than the greenhouse growers. It would have been in the storage crop commissioners’ vested interest to vote against such a measure and it is hardly surprising that they deviated from the greenhouse commissioners’ views on that issue.
41. The objective evidence shows the Commissioners in fact voted in a manner that led to an exchange of votes between storage crop commissioners and greenhouse commissioners.

Allegations are not Frivolous and were Raised in Good Faith

42. In Hearing Counsel’s submissions, Hearing Counsel suggests that several of the allegations raised by MPL were “frivolous”. In particular, Hearing Counsel suggested that:

⁸⁸ Transcript of M. Reed, April 19, 2022, p. 49, ll. 15-19 (TEB, Tab 5); Transcript of C. Gerrard, April 19, 2022, p. 145 (TEB, Tab 6); and Transcript of B. Lodder, April 20, 2022, p. 25 (TEB, Tab 7).

⁸⁹ Transcript of P. Guichon, April 20, 2022, p. 63 (TEB, Tab 8).

- a. The suggestion that Solymosi's tone of voice on the phone constituted misfeasance is frivolous;⁹⁰ and
 - b. The claim that Reed's conduct constituted "corruption" is frivolous.⁹¹
43. Solymosi's tone of voice was only one aspect of his conduct raised by Mastronardi under cross-examination and MPL did not use the word corruption to describe Reed's conduct. It was Hearing Counsel who introduced the term corruption.
44. Further, Hearing Counsel ignores the following evidence:
- a. When issues were raised by MPL, Solymosi did not want to deal with it and did not investigate;⁹²
 - b. The November 29, 2017 email exchange between Newell, Moerman and Solymosi;⁹³
 - c. Solymosi's failure to investigate efforts to discredit MPL's application, originally raised by its counsel's letter of September 11, 2020;⁹⁴
 - d. The statements of Steve Newell, Madu and Bakhtiyari regarding efforts to prevent MPL from obtaining an agency licence in BC;
 - e. Reed's interference with Cheema's application for production allocation when he learned it was MPL and not Mucci who was involved; and
 - f. MPL's good faith is further demonstrated by providing industry input in response to FIRB's request in its 2019 -2020 Review.⁹⁵
45. It should also be noted that regardless of whether this Panel finds that MPL's specific allegations have been substantiated, MPL did not act frivolously and acted

⁹⁰ Closing Argument of Hearing Counsel, p. 36, para 191.

⁹¹ Closing Argument of Hearing Counsel, p. 42, para 226.

⁹² Transcript of A. Solymosi, February 11, 2022, p. 127, l. 42 – p. 128, l. 26 (TEB, Tab 4).

⁹³ Ex. 37.

⁹⁴ Ex. 1, p. 4442; and Transcript of A. Solymosi, February 11, 2022, p. 127, l. 4 – p. 128, l. 6 (TEB, Tab 4).

⁹⁵ Ex. 1, pp. 4420-4429.

in good faith at all times. The evidence disclosed in this hearing demonstrates that the general concerns raised by MPL were concerns common in the industry. In particular, Solymosi testified that:

- a. there was a “lot of industry concern about bias and conflict of interest”;⁹⁶
- b. he had heard comments before regarding the Commission being an “old boys club” and that there was distrust. He also heard from Glyckherr that the growers felt that there was “corruption at the top”;⁹⁷
- c. He was advised by Glyckherr of concerns in the industry that, among other things, included:
 - i. the governance structure was suspect at best;
 - ii. she foresaw the death of the family farm;
 - iii. the Commission was an old boys club, where members toed the line at meetings and opposing points of view were not raised;
 - iv. many Commission decisions were not made at Commission meetings but instead at the coffee shop in Delta; and
 - v. there were mental health issues amongst farmers, many of whom were feeling ignored and many farmers cried during their interviews.⁹⁸

46. Cheema also provided the following evidence which he related to Mastronardi:

- a. Glyckherr advised a meeting of the Greenhouse Growers Association about frustrations from farmers, racism involved at the Commission and that the Commission was an “old boys' club; you scratch my back, I scratch your back sort of deal”;⁹⁹
- b. It was his perspective that a select few persons at the Commission made decisions in their own interest;¹⁰⁰ and

⁹⁶ Transcript of A. Solymosi, February 11, 2022, p. 87 (TEB, Tab 4).

⁹⁷ Transcript of A. Solymosi, February 11, 2022, p. 87, l. 43 – p. 88, l. 10 (TEB, Tab 4).

⁹⁸ Transcript of A. Solymosi, February 11, 2022, p. 96, ll. 5-33 (TEB, Tab 4).

⁹⁹ Transcript of R. Cheema, April 20, 2022, p. 73, ll. 8-31 (TEB, Tab 9).

¹⁰⁰ Transcript of R. Cheema, April 20, 2022, p. 72, ll. 15-20 (TEB, Tab 9).

- c. It was his main concern that Commissioners act in a conflict of interest to benefit themselves as farmers or agencies.¹⁰¹

47. At all times, MPL acted in good faith in raising the allegations that it did and in an effort to ensure that the Commission was acting fairly. Mastronardi's concerns were based on information received from Cheema that was commonly known in the industry and acknowledged by Solymosi to be known to him, his own experience in the delays he faced in dealing with the Commission, and the statements made to him by Steve Newell and Madu. The following findings made by FIRB in its 2019-2020 Review support MPL's concerns:
 - a. the current Commission structure does not allow the Commission to effectively, fairly or accountably manage potential conflicts of interest and apprehension of bias in its decisions;
 - b. the current Commission structure and the ties of producer members to agencies results in the Commission decisions being perceived as being bias or resulting in conflict of interest. That creation of bias and conflict of interest results in procedurally unfair decisions, which are potentially neither effective nor strategic;
 - c. recusals by the Commissioners were not adequate to manage the conflicts in the Commission;¹⁰²

48. Further, Mastronardi testified that in making the allegations, MPL had been acting in good faith.¹⁰³

Conclusion

49. This is a case in which MPL sought to enter the BC market when the industry was in disarray. There was distrust in the system and concerns with bias and conflicts

¹⁰¹ Transcript of R. Cheema, April 20, 2022, p. 72, ll. 28-37 (TEB, Tab 9).

¹⁰² Ex. 1, p. 4723, para 100-101.

¹⁰³ Transcript of P. Mastronardi, February 2, 2022, p. 34, ll. 9-14 (TEB, Tab 3).

of interest that caused FIRB to conduct a review in 2019-2020 and Glyckherr to conduct a strategic review. FIRB found that the structure was such that it did not allow the Commission to effectively, fairly or accountably manage potential conflicts of interest and apprehension of bias in its decisions. The creation of bias and conflict of interest results in procedurally unfair decisions, which are potentially neither effective nor strategic. Recusals by the Commissioners were not adequate to address the bias and conflict of interest. These findings coupled with MPL's experience in its attempts since November 2017 to operate in BC, information provided to Mastronardi by Cheema, and statements made directly to him by persons in the Windset camp support MPL's concerns that resulted in it commencing a misfeasance action in 2021. Mastronardi was cross examined at length by Mr. Hira, Q.C. and no evidence of bad faith was elicited.

50. There was ample evidence elicited in this review to support MPL's allegations of misfeasance. To hold MPL to a standard which requires a full trial procedure, including examinations for discovery, full opportunity for documentary disclosure and the protections of the trial process, ignores the truncated and limited process in this Supervisory Review. Furthermore, to rely on MPL's particulars alone without regard to the totality of the evidence elicited in this review does not address

the reality of what transpired and in doing so, FIRB would not be discharging its stated truth finding purpose under this Supervisory Review.

All of which is respectfully submitted this 30th day of May, 2022.



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