

January 18, 2023

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By Email (*Wanda.Gorsuch@gov.bc.ca*)

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Our file 1041-001

BC Farm Industry Review Board  
1st Floor, 780 Blanshard Street  
Victoria, BC V8W 2H1

Attention: Wanda Gorsuch

Dear Sirs and Mesdames:

**Re: Supervisory Review - Vegetable Marketing Commission Allegations of Bad  
Faith and Unlawful Activity  
Phase Two – MPL British Columbia Distributors Inc.**

Please bring this letter to the attention of Chair Donkers.

I write to recommend that the Panel bring to an end phase two of the Supervisory Review for MPL British Columbia Distributors Inc. (“MPL”).

I set out below the detailed rationale for my recommendation. In broad terms, however, I make this recommendation based on the steps and commitments which are outlined in the attached correspondence from counsel for MPL and from Mr. Paul Mastronardi, the principal of MPL, which follows without prejudice discussions between myself and counsel for MPL.

As is evident from the attached correspondence, MPL has made the decision not to proceed forward with its civil claim and the allegations contained therein, and is instead seeking a more constructive path forward. MPL is also recognizing and acknowledging its obligations as a potential agent of the Commission, and committing itself to the advancement of the British Columbia greenhouse vegetable sector.

By way of background, the goal of BCFIRB from the outset has been to ensure orderly marketing: see paragraph 67 of the Panel Decision dated July 14, 2022 (“Phase I Decision”). In paragraph 68 of the Phase I Decision, the Panel described, in the context of the storage crop sector, the key components of orderly marketing as follows:

...orderly marketing ... is grounded in three components: agencies responsible for representing groups of producers in the marketplace; delivery allocation (“DA”) which agencies used to manage the rotation of producers’ supply in the marketplace; and minimum pricing that provides economic stability to producers and to permit multiple agencies to compete in the same marketplace on service and quality.

The Panel stressed at paragraph 267 of the Phase I Decision that the overarching objectives of the Supervisory Review were to:

...ensure effective self-governance of the Commission in the interest of sound marketing policy and the broader public interest; and ensuring public confidence in the integrity of the regulation of the BC regulated vegetable sector.

In its October 21, 2022 decision (“Phase II Procedural Decision”), the Panel again stressed that the primary focus must be orderly marketing in the British Columbia regulated vegetable industry: see paragraph 18. Specifically, at paragraph 26 of the Phase II Procedural Decision, the Panel observed that orderly marketing requires trust and confidence. This includes mutual trust and confidence between the Commission and industry participants, as well as public confidence in the Commission’s ability to regulate, and industry participants’ willingness to follow that regulation to achieve industry stability. That is particularly so, in my view, where participants may be exercising fiduciary responsibilities.

The Panel also noted, in the very next paragraph (paragraph 27) the cost and disruption to orderly marketing that had resulted from the filing of the civil claims and in turn the Supervisory Review.

In summary, the overarching goals of the Supervisory Review have been to ensure orderly marketing and public confidence in the integrity of the regulation of the BC regulated vegetable sector. In my submission, the steps being taken to bring the civil claim to an end, and the commitments made by Mr. Mastronardi on behalf of his company, which I summarize below, achieve those two goals.

First, Mr. Mastronardi begins by describing MPL and its long history within the industry in North America. He then observes that the focus has shifted away from the benefits that MPL could bring to the BC regulated vegetable industry, and on to its civil claim and the reasons for filing it. He wishes to bring the focus back to those benefits, and has accordingly instructed MPL’s legal counsel to bring the civil action to an end, and to address the issue of costs with the defendants.

Importantly, Mr. Mastronardi acknowledges that there were other options to address MPL’s concerns rather than commencing the civil action, and in particular that MPL could have come to BCFIRB at the outset with its concerns. He expresses regret that MPL did not explore that option.

MPL also acknowledges the Phase I decision, and the conclusions reached in it, and has decided to move on from it, and focus on demonstrating that MPL can be a valuable asset for growers in the BC industry. MPL also acknowledges that the Panel determined that there were costs and disruption arising from the filing of its claim, and in turn the Supervisory Review. In recognition of this, MPL has committed to compensating the Commission for 50% of its legal costs associated with the Supervisory Review up to a maximum of \$90,000.

Mr. Mastronardi also states that MPL is aware of the important role that it would potentially play as an agency within the system. He recognizes that MPL will be accountable to the Commission and must work closely and productively with the Commission.

It is noteworthy that MPL states that it understands that the holding of an agency licence is a privilege. It appreciates that orderly marketing is critical, and that this will require MPL to represent groups of producers, manage the production allocation of its growers, and comply with any minimum prices that might in the future be set by the Commission. In other words, MPL acknowledges and commits to the three main components of orderly marketing.

Finally, to reinforce its commitments, MPL volunteers to commit to quarterly reporting to BCFIRB for an 18-month period should prior approval of its agency license be granted.

BCFIRB has the power to control its own process. With this significant change of circumstances, and the steps and commitments outlined above, it is my view that there is no need, nor is it in the public interest, to pursue the second phase of the process as it relates to MPL.

In sum, the goals of this Supervisory Review, including the second phase are to ensure orderly marketing and public confidence in the industry. In my view, those goals are achieved by MPL's conduct in:

- (a) bringing an end to the civil action (and paying the defendants' costs);
- (b) recognizing that there have been costs and disruption and paying a significant portion of the Commission's legal costs arising out of the Supervisory Review;
- (c) switching its focus back to advancing the marketing of greenhouse vegetables;
- (d) committing to becoming a constructive member of the B.C. regulated vegetable sector;
- (e) committing to comply with the three key components of orderly marketing; and
- (f) committing to quarterly reporting to BCFIRB for an 18-month period.

In light of the upcoming hearing of the judicial review applications on January 30, I suggest that the Panel seek submissions from all interested parties concerning my recommendation by 4:00 pm on Friday, January 20, 2023. I can provide any final reply by noon on Tuesday, January 24, 2023.

All of which is respectfully submitted.

Yours very truly,  
Mitha Law Group

Per:



Nazeer T. Mitha, KC \*  
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*NTM/mf*

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