



BC Farm Industry Review Board

January 25, 2023

File: 44200-60\AREV

DELIVERED BY EMAIL

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Dear All:

RULING REGARDING MPL BRITISH COLUMBIA DISTRIBUTORS INC. AND ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY REVIEW PHASE II

Introduction

By way of letter dated January 18, 2023, Hearing Counsel recommended that I bring to an end phase two of the ongoing supervisory review concerning allegations of bad faith and unlawful activity (Supervisory Review)¹ for MPL British Columbia Distributors Inc. (MPL), one of two companies who raised allegations in civil claims naming as defendants certain members and the general manager of the British Columbia Vegetable Marketing Commission (Commission).

One supporting submission was received from the Commission, subject to a clarification on the payment of legal costs to the Commission, which was subsequently provided by MPL. No other submissions were received.

¹ pursuant to s. 7.1 of the *Natural Products Marketing (BC) Act* (the Act or NPMA)

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For the reasons set out below, which are relatively brief in light of the hearing of the judicial review applications scheduled to commence at the end of the month, I accept the recommendation of Hearing Counsel and conclude Phase II of the Supervisory Review for MPL.

Background

In my July 14, 2022 decision concerning Phase I of the Supervisory Review (Phase I Decision), I concluded that there was no cogent evidence presented to substantiate the very serious allegations of wrongdoing that were advanced by MPL and Prokam Enterprises Ltd. (Prokam), and that in most cases the allegations were based on no more than speculation, rumour and innuendo.

I also identified serious concerns arising out of the lack of an evidentiary foundation for the allegations of wrongdoing advanced by MPL and Prokam, and the impact that the allegations had on the Commission and orderly marketing in the Province. Because those concerns were not directly addressed during the course of Phase I, and had the potential to impact other proceedings before the BC Farm Industry Review Board (BCFIRB), I sought further submissions on what next steps might be required, and what consequences should follow from my findings in the Phase I Decision.

Those submissions culminated in my October 21, 2022 decision (Phase II Procedural Decision), in which I made orders amending the terms of reference for the Supervisory Review, provided an opportunity for MPL and Prokam to submit additional evidence, and invited Hearing Counsel and all participants to provide written submissions on the following two issues:

- i. what conclusions or inferences should be drawn from the findings in the Phase I Decision, together with any additional evidence filed by Prokam and MPL, with respect to Prokam and MPL's motivations for advancing allegations of bad faith and unlawful conduct against the Commissioners and Mr. Solymosi, and
- ii. in light of any findings that might be made concerning Prokam and MPL's motivations, what, if any, orders or directions does the panel have the authority to make in furtherance of restoring orderly marketing and trust and confidence in the BC regulated vegetable industry.

To date, Phase II has not proceeded in light of judicial review applications filed by both MPL and Prokam, and pending interim stay applications. The stay applications are set for hearing commencing January 30, 2023, together with the merits of the judicial reviews.

Analysis

Hearing Counsel's recommendation is based on the steps and recommendations set out in correspondence from Mr. Paul Mastronardi, the principal of MPL. I have attached Hearing Counsel's January 18, 2023 letter, with its enclosures, as **Schedule A** to this

ruling. (The Commission's submission of January 20, 2023 is attached as **Schedule B**, and an email of that same date from counsel for MPL is attached as **Schedule C**.)

Hearing counsel summarized the steps being taken by MPL at p.3 of his letter:

- (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.

Hearing Counsel submits that these steps collectively achieve, insofar as MPL is concerned, the overall objectives of this Supervisory Review, which I identified at paragraph 267 of the Phase I Decision:

...ensuring 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.

I elaborated on the objective of what is often referred to as "orderly marketing" at paragraph 26 of the Phase II Procedural Decision:

BCFIRB's overarching concern in the exercise of any of its supervisory or appellate powers is to ensure marketing boards act within the regulatory authority granted under their scheme and consistent with sound marketing policy to ensure the equitable and orderly marketing of natural products. It appears to be well-accepted by all of the participants that orderly marketing requires trust and confidence. That includes mutual trust and confidence between the Commission and industry participants (particularly for those participants who might potentially act as an agent with delegated fiduciary responsibilities from the Commission), as well as public confidence in the Commission's ability to effectively regulate and industry participants' willingness to follow that regulation to achieve industry stability.

At paragraphs 27 and 28, I went on to discuss in further detail the concerns that in my view necessitated moving forward with Phase II of the Supervisory Review:

The concern at the heart of this next phase is the very significant disruption of, and loss of trust and confidence in, the Commission and regulated vegetable industry as a result

of the allegations of wrongdoing advanced in the civil claims (and in turn this Supervisory Review). That disruption included the Commission being deprived, at least in part, of access to its General Manager for an extended period of time, as well as reputational damage to both the Commissioners and the General Manager. It is also worth noting that at one point during the Supervisory Review, the Commission was facing mass resignations from its Commissioners and was unable to form decision making panels, requiring direct intervention by this panel.

Had I had found cogent evidence supporting the allegations of bad faith and misfeasance, there is no doubt that BCFIRB would have had to take steps to restore confidence in the Commission's ability to effectively regulate. Similarly here, if the allegations of wrongdoing were brought forward without a proper foundation and for an improper purpose, this panel has to consider what steps are required, including providing direction and assistance to the Commission, to restore orderly marketing and confidence in the industry. Depending on my ultimate findings, those orders could potentially include restrictions on the future role and participation of Prokam, MPL and their principals in the industry. Providing direction and assistance to the Commission with a view to restoring industry confidence and orderly marketing is in my view a prudent exercise of BCFIRB's supervisory power that is consistent with its broad supervisory mandate as the body with overall responsibility for regulated marketing in the province.

For present purposes, I wish to emphasize that mutual trust and confidence between the Commission and industry participants lies at the heart of orderly marketing, without which the industry could not function effectively. As I noted at paragraph 26 of the Phase II Procedural Decision, that is particularly the case for participants who might potentially act as an agent with delegated fiduciary responsibilities from the Commission.

The challenge facing the industry at the conclusion of Phase I was the significant erosion of that mutual trust and confidence between MPL, Prokam and the Commission. Neither Prokam nor MPL had withdrawn the allegations they had advanced in their civil claims, but I had concluded that no cogent evidence had been presented in the Supervisory Review to support those very serious allegations of wrongdoing. For its part, the Commission took the position in its closing argument for Phase I that the allegations were made for "strategic purposes; namely to harass; to intimidate; to cause expense; and to cast a pall of suspicion over the conduct of the Commission".² It went on to describe the making of those allegations as a "low point in the history of regulated marketing in the Province".³

In my view, that scenario was obviously untenable when it comes to the Commission's ability to effectively regulate the industry. The Commission continued to face civil claims alleging serious wrong doing, allegations which it believed were raised for improper purposes, including intimidation and harassment. At the same time, it was required to act as the regulator and deal with Prokam and MPL as industry participants, both of whose principals, directly or indirectly, were seeking to assume fiduciary

² Commission's Closing Argument, para. 22

³ Commission's Closing Argument, para. 23

responsibilities as agents of the Commission. Given BCFIRB's broad supervisory mandate, it was incumbent on me to try to restore effective governance by first assessing the merits of the Commission's allegations regarding the improper basis for the claims, and then determining what direction or assistance could be provided to the Commission in terms of how it should regulate and otherwise deal with Prokam and MPL.

Now, however, MPL has taken steps which I agree will significantly address the impact of its conduct on orderly marketing, the Commission, its members and staff. These steps, taken voluntarily, will go a long way in restoring trust, and in my view eliminate the need for me to pursue Phase II for MPL. With the civil claim being brought to an end, the cloud of the allegations hanging over the Commission has been lifted. The significant cost and disruption to the Commission have been acknowledged and addressed through a significant payment of the Commission's legal costs in the Supervisory Review. Just as importantly, MPL has expressly acknowledged the role it must play in ensuring orderly marketing in the BC regulated vegetable industry, including maintaining a transparent and accountable relationship with the Commission, coupled with heightened reporting requirements, should its agency licence be approved.

Accordingly, it is my view that steps have been taken which will lead to the restoration of the trust and confidence which lie at the heart of effective governance and orderly marketing in the industry. I note in that regard that the Commission is supportive of Hearing Counsel's recommendation that Phase II be discontinued for MPL. In all of the circumstances, therefore, I am prepared to make an order that Phase II of the Supervisory Review be concluded for MPL. This order does not impact Phase II for Prokam.

Lastly, I wish to make clear that this ruling only addresses MPL's status in Phase II of the Supervisory Review. Prior to the hearing in Phase I of the Supervisory Review, the Commission recommended that MPL's agency license be approved by BCFIRB. It will be for the supervisory panel presiding over the prior approval process for MPL's agency license to make its own determinations in that process after hearing from all of the relevant parties.

Regards,

A handwritten signature in black ink, appearing to read "Peter Donkers", written in a cursive style.

Peter Donkers,
Chair

Attachments: Schedule A
Schedule B
Schedule C

cc: Mark Underhill
Kate Phipps
Nazeer Mitha, K.C.
Emma Irving
Ryan Androsoff
William Stransky
Aubin Calvert

BCFIRB web site