

January 18, 2023

Nazeer T. Mitha, KC  
D/ 604 283 8559

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

nmitha@mithalawgroup.ca  
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 \*  
\* Law Corporation

*NTM/mf*

cc: Rose-Mary Basham, KC, via email: rmbasham@bashamlaw.ca  
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January 17, 2023

BY EMAIL

Attention: Nazeer T. Mitha, K.C.

MLG Law Corporation  
543 Granville Street, Suite 920  
Vancouver BC, V6C 1X8

**Re: In the Matter of the *Natural Products Marketing (BC) Act* and Allegations of Bad Faith and Unlawful Activity Review – Part II Process**

We are counsel to MPL British Columbia Distributors Inc. (“MPL”). We request that you bring this letter and its attachment to the attention of the Chair, Peter Donkers.

MPL is a subsidiary of Mastronardi Produce Limited, led by the company’s President and CEO Paul Mastronardi. I am attaching a letter from Mr. Mastronardi dated January 17, 2023.

As you know, in September of 2020 MPL applied to the British Columbia Vegetable Marketing Commission (“BCVMC”) for a Class 1 designated agency licence. An amended application was submitted to BCVMC on May 27, 2021. On January 12, 2022, a panel of the BCVMC approved of MPL’s application.

In May, 2021, BCFIRB decided to initiate a Supervisory Review after learning of allegations made against members and the general manager of the BCVMC by MPL in its civil claim (SCBC Action No. S-214043, filed April 22, 2021), and in another civil action commenced by another industry participant. On July 14, 2022, Chair Donkers issued his decision, concluding, *inter alia*, that there is no evidence to substantiate the allegations made against the members and general manager of the BCVMC. In turn, Chair Donkers issued a further decision on October 21, 2022, deciding, *inter alia*, to amend the Terms of Reference of the Supervisory Review to consider whether the civil actions were filed for improper purposes.

As is set out in Mr. Mastronardi’s letter, MPL is dedicated to working with all participants in the industry, and particularly BCVMC, to bring benefits to growers and to the industry more broadly. MPL recognizes that litigation is not conducive to this goal. As a first step toward shifting the focus back to marketing of greenhouse vegetables and the question of how MPL can benefit the

industry, MPL has taken steps to bring the civil action to an end. MPL has acknowledged that its concerns could have been brought to BCFIRB rather than commencing the civil action. MPL has expressed regret that it did not explore that option. MPL acknowledges the findings of Chair Donkers relating to disruption and in recognition of this MPL has agreed to compensate the BCVMC for 50% of their legal costs arising from the Supervisory Review up to a maximum of \$90,000.

Mr. Mastronardi further explains that MPL is dedicated not only to the development of the BC greenhouse vegetable sector, but also to the need to build positive relationships within that sector. MPL seeks a more constructive path forward, focussed on the question of how MPL can benefit the British Columbia industry as a licensed agency. In our submission, bringing the civil claim to an end, along with the other commitments outlined above, puts those words into action and represents a fundamental shift in the dynamic of this matter.

Lastly, and in recognition of the need to demonstrate its continuing commitment to the industry and orderly marketing, should MPL be successful in the prior approval process, Mr. Mastronardi has committed MPL to voluntary quarterly reporting to BCFIRB for an 18-month period.

With these developments, we submit that it is appropriate to revisit the stated purpose that underlay Chair Donkers' decision to order an amendment of the Terms of Reference, i.e. the need restore orderly marketing and confidence in the industry.

First, in Chair Donkers' July 14, 2022 decision, he publicly concluded that there was no evidence to support the allegations made against the members and general manager of the BCVMC. Second, with the steps now taken by MPL, the termination of the civil action, and the acknowledgements in Mr. Mastronardi's letter, the circumstances have changed. Right-thinking observers of this process will understand that MPL is dedicating itself to the advancement of the BC greenhouse vegetable sector and to be an active, engaged, and cooperative team player in that sector. As set out by Mr. Mastronardi, its history is the best evidence of its commitment to orderly marketing going forward.

BCFIRB has the power to stop exercising a supervisory function, or change the manner in which it exercises that function, as appropriate in the circumstances. This flows from s. 7.1(2) of the Act and from BCFIRB's power to control its own process. In this case there are new circumstances.

In all of the circumstances, we submit that there is no longer a need, and it is not in the public interest, to pursue the Part II Process as it relates to MPL.

The remaining central issue of public interest, i.e. whether MPL will be a suitable licensed agency, will be addressed in BCFIRB's prior approval process.

Accordingly, MPL seeks an order from the Chair that, as a result of changed circumstances, the Part II Process will not proceed and will be concluded as against MPL.

Yours sincerely

GUDMUNDSETH MICKELSON LLP

A handwritten signature in black ink, consisting of several overlapping loops and a trailing flourish.

Andrew D. Gay, K.C.  
ADG/

Enclosure



← INSPIRED BY FLAVOR

January 17, 2023

Attention: Nazeer T. Mitha, K.C., Hearing Counsel  
MLG Law Corporation  
543 Granville Street, Suite 920  
Vancouver BC V6C 1X8

Re: MPL British Columbia Distributors Inc.

I am the President and Chief Executive Officer of MPL British Columbia Distributors Inc. ("MPL"). In this letter, I address the civil action filed by MPL against members and the general manager of the British Columbia Vegetable Marketing Commission ("BCVMC") and the Supervisory Review conducted by BCFIRB arising from the filing of that action, but I would first like to talk about my history, and my company's history, in the business of growing and marketing greenhouse vegetables in North America and our dedication to this industry and to regulatory compliance.

MPL is a member of the Mastronardi group of companies ("Mastronardi") and is a direct subsidiary of Mastronardi Produce Limited which is headquartered in Kingsville, Ontario. The business was started by my grandfather, Umberto Mastronardi and has been in our family for over 70 years. Our family developed protected (greenhouse) production techniques that are industry-leading today, and have helped us grow the largest protected agriculture fresh produce company in North America.

Mastronardi is a fully integrated grower, shipper, distributor and marketer of protected agricultural products. For decades, Mastronardi has built enduring relationships with independent third party growers who we consider our friends and partners. We provide our grower partners with access to an extensive marketing and distribution network through which we supply many of the top retailers and food service operators in North America.

We are a company that cares about our employees, our growers, our customers and the environment. We routinely exceed social responsibility and safety standards required by the large food retailers. We adhere to industry-leading social responsibility standards (Sedex Members and Ethical Trade Audit). We certify our distribution centers through QAI to handle organic product. We conduct testing for unapproved pesticides to validate compliance with organic standards from all our suppliers. We implemented full traceability of the product we distribute. We have been a participant in the Non-GMO Verified Project program since 2010. We follow the Global Food Safety Initiative at all our farms and distribution centers. We have an excellent track record with our history of CFIA inspections.



Because I personally commit so much of my time and energy to ensuring that Mastronardi is a socially responsible company that fosters long-lasting and positive relationships with growers, customers, governments and regulators, the recent Supervisory Review conducted by BCFIRB and the prospect of the Part II Process of the Review have been particularly distressing to me. The focus has shifted from the good that MPL can offer as a licensed agency to the content of the civil action filed by MPL and why we filed it. None of this is positive, and takes all parties' focus away from where it should be. This needs to change. Accordingly, I have instructed MPL's legal counsel to bring the civil action to an end, and to address the issue of costs with the defendants. It is my sincere hope that this will be the first step in shifting the focus back to the question of how Mastronardi would be a positive force for the protected agriculture sector in British Columbia, and to ensure orderly marketing in the industry as a whole.

I have come to realize that there were options to address MPL's concerns rather than commencing the civil action. In particular, MPL could have asked BCFIRB to look into, in a manner it deemed appropriate, the matters that were of concern to MPL. I regret that MPL did not explore this option at the outset. It was not MPL's wish to put other parties or BCFIRB through the extensive and costly supervisory review process. MPL acknowledges that the BCFIRB has made a decision arising out of the first phase of the Supervisory Review, and reached the conclusions it did. At this point, I want our company to move on and get back to showing BCFIRB what a valuable asset MPL can be for growers and the industry in BC.

Our company acknowledges that Chair Donkers found that cost and disruption occurred and in recognition of this, MPL is prepared to compensate the Commission for 50% of its legal costs associated with the Supervisory Review up to a maximum of \$90,000.

MPL is keenly aware of the role that an agency plays within the system of regulation in British Columbia. For many years, Mastronardi has been purchasing regulated products from BC agencies. MPL understands that the authority of agencies is delegated from BCVMC and that an agency is accountable to BCVMC and must at all times work closely and productively with BCVMC. MPL also understands the importance of the agency role in relation to the interests of growers, including by securing and building market access for BC regulated products.

MPL understands that the holding of an agency license is a privilege. To maintain this privilege, MPL acknowledges that it will be required to comply with and promote the BCVMC's rules and orders among growers and other agencies. MPL understands that orderly marketing in the industry is critical. Among other things, this will require MPL to be responsible for representing groups of producers in the marketplace; MPL will be required to manage the production allocation of its growers; and MPL will be required to ensure compliance with minimum prices that may be set by the BCVMC.

Mastronardi has been successfully fulfilling this role elsewhere in Canada for many years. I am personally committed, as is my management team, to complying with the above principles and to working closely and positively with BCVMC and to fostering what is

ultimately a group effort: the promotion of British Columbia produce for the benefit of the industry and for the benefit of British Columbia more broadly.

Mastronardi has a long and positive track record of working with regulators and growers elsewhere in Canada. We understand the importance of regulation in ensuring safety, efficiency and fairness. Mastronardi is Ontario's largest marketer of greenhouse vegetables, demonstrating that we successfully operate within the regulatory environment. With the Canadian regulatory environment, Mastronardi has implemented a grower liaison program that helps build and maintain relations with growers and this has been immensely successful with growers in Ontario and Quebec where there has been significant expansion in production of greenhouse vegetables in the past decade.

I recognize, however, that our company still has to show that its history will reflect its future in the BC industry. Accordingly, should we be successful in the prior approval process, we are prepared to voluntarily commit to quarterly reporting to BCFIRB for an 18 month period, following the approval of our license, on compliance with the terms and conditions of our licence.

In light of all of these commitments, it is my hope that BCFIRB will conclude that the second phase of the Supervisory Review concerning MPL is not necessary.

MPL is grateful to BCVMC for its thorough review of MPL's agency licence application and welcomes the conclusion reached by BCVMC in that review. MPL is dedicated to working alongside BCVMC if BCFIRB approves the agency licence application.

Respectfully submitted,

**MPL BRITISH COLUMBIA DISTRIBUTORS INC.**

By:   
Name: Paul Mastronardi  
Title: Chief Executive Officer