

## VMC – Workshop Report

*“When trust is broken, honour soon follows.”<sup>1</sup>*

### Introduction

I was contracted by the B.C. Vegetable Marketing Commission (VMC) to review the status of the Supervisory Review being conducted by the B.C. Farm Industry Review Board (FIRB), facilitate two (2) workshops of industry stakeholders, and provide a report to VMC outlining a possible path forward.

The storage crop vegetable industry in B.C. is regulated under the Natural Products Marketing Act (Act), the B.C. Vegetable Scheme (Scheme), and the General Orders (Orders) of the VMC. In broad terms the purpose of the Regulations is to provide Producers with a framework for collective self-determination in the areas of production and marketing vegetables.<sup>2</sup>

### Background

A considerable amount has been written by VMC, FIRB and industry stakeholders describing recent internecine conflicts among and between storage crop Producers and their Agencies. Among the reports posted on FIRB’s and VMC’s websites describing the situation are:

- Vancouver Island Farm Products Inc. Agency Application – BCVMC decision – May 10, 2012
- VIP & VIFP – Referral to Supervisory Review – November 21, 2012
- Supervisory Review of CVI Agencies – 2012 – January 7, 2013
- VIP Summary Dismissal Decision – April 9, 2013
- BCfresh and VIFP Agency / SubAgency Application – BCVMC Decision - October 31, 2013
- Supervisory Review of CVI Agencies Follow-up – 2013 – December 23, 2013
- VIP Produce Ltd & Island Vegetable Co-operative Association – Agency Status – January 22, 2014
- IVCA v BCVMC – Decision – December 18, 2015

Producers, through VMC, establish procedures to equitably share market access among themselves. The underlying intent is to combine marketing efforts and prevent price collapse that often occur when many growers independently offer identical fresh product to buyers. The VMC regulations provided a framework to ensure fair and equitable treatment among producers marketing through Agencies. The system worked for many years. Growers collaborated regionally (i.e. by District) to combine their marketing efforts through a local Agency.

It is apparent from the workshop interaction that Producers and Agencies continue to see value in having a regulatory framework. Notwithstanding this expressed support, certain individual producers and Agencies are challenging the system as they pursue their self-interest possibly at the expense of the collective interest of the industry as a whole. This arose, at least in part, from VMC’s failure to

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<sup>1</sup> Quote from participant at Delta workshop session.

<sup>2</sup> Regulated storage vegetables include potatoes, carrots, beets, rutabagas, turnips, parsnips, and cabbage.

effectively administer the Orders (Regulations). However, when VMC has attempted to address the challenges and bring stability they were questionably challenged by Island Producers, Island Agencies and FIRB.

The current situation is characterized by mistrust and inconsistency. This is not surprising since several things have happened in recent years:

- Districts were a key component of storage crop regulation, and they were removed from the Scheme and Orders in 2009. Nevertheless, no substantive Order changes to Agency Licensing or Delivery Allocation rules were made in anticipation of, or subsequent to, District removal. These Orders still need to be amended.
- Irreconcilable differences among Producers caused VIP to split into 2 Agencies. From the outside, it appears the process of addressing this application has been excessively lengthy, immensely time consuming, administratively burdensome, and deliberately frustrated by some participants.
- FIRB was asked by VMC to launch a Supervisory Review relating to the Island Agencies dispute. This has created a forum for further laundry airing, obfuscation, obstruction and frustration. This Review was launched in 2012 – over 3 years ago – and suffers from a distinct lack of deliberate, informed, timely, or decisive action.
- Some Producers have, are, and/or plan to circumvent established Delivery Allocation rights with the full support of Island Vegetable Cooperative Association (IVCA). This direct challenge to the regulatory framework forces VMC to take action or see further erosion of support for the system.

I was asked to facilitate 2 workshops to which industry stakeholders were invited. The purpose of the workshops was to give all participants an opportunity to identify their support for a regulatory system in the first instance, confirm current challenges to the system, and explore possible avenues forward.

### **Workshop Findings**

Two workshops were held – one in Nanaimo and one in Delta. The intent had been that Island growers would attend in Nanaimo and mainland and interior growers would attend in Delta. Unfortunately, several growers associated with Vancouver Island Agencies attended both meetings. This caused most producers at the Delta meeting to remain silent and not express their complete thoughts on the current situation.<sup>3</sup> At the request of numerous Delta producers a third, shorter meeting was held with representatives of lower mainland growers. Representatives of FIRB attended all 3 sessions.

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<sup>3</sup> This reticence to participate was due to existing, and possibly future, business relationships between some growers and the Producers who are allegedly challenging the integrity of the Delivery Allocation system.

Key findings from the workshops are:

1. Producers believe they have an attractive regional / local consumer market where they can earn reasonable prices by delivering freshness and variety from local, BC farmers. The demand for local, home grown produce is particularly strong on Vancouver Island.
2. B.C. Producers enjoy a dominant market share in premium and “local” consumer market segments. During harvest season local production can easily over supply local markets. Accordingly, Producers have developed a system, Delivery Allocation, by which they share the fresh market and draw from storage on a fair and equitable basis. The longer product is in storage, the lower the returns due to storage losses. This erosion of product value in storage creates an incentive for mischief unless the rules are fair and upheld.
3. There is perceived demand<sup>4</sup> for additional BC / local produce in the target market. Supply to meet this demand needs to be carefully managed or seasonal production and storage conditions will cause some Producers, or their Agencies, to trigger a “race for the bottom” to see who can sell their crop first.
4. The majority of Producers recognize the value of regulation.<sup>5</sup> They want to continue to have the privilege of regulation. They believe they can maximize grower returns through collective marketing efforts.
5. The Delivery Allocation system has worked for many years. It provides a mechanism for Producers to share market access, grow their individual businesses and bring new growers into production. It is a rules based system. The majority of Producers at the workshops did not want the Allocation system abandoned.
6. Loopholes have developed in the current Delivery Allocation system. Allegations were made that certain producers, supported by an Agency, are planning to grow, or have grown, far in excess of their Allocation. It is further alleged that the Agency in question is or plans to market the additional produce in direct competition with existing growers and other Agencies. If true, this situation will quickly develop into a grower war for market share as other Agencies jump in to protect their existing market position.
7. Producers are frustrated that the VMC, and FIRB by affiliation, have failed to approve proposed changes to the Allocation system that were intended to close one of the loopholes.<sup>6</sup> The

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<sup>4</sup> Provincial consumption data and market segment analysis has not been undertaken for this report.

<sup>5</sup> The majority of Producers who attended the 2 workshop sessions expressed support for regulation. The support of those who did not attend the workshop is unknown. For the purposes of this report it will be assumed that there is majority support for continued regulation.

<sup>6</sup> See Amending Order 43 – Appeal – BCFIRB.

majority of Producers want the system rules amended to eliminate the loopholes being used to challenge the integrity of the system. IVCA is opposed to these sorts of changes as it could restrict its efforts to sign up mainland growers and then market the majority of that product without using the established DA system.

8. There were a number of unsubstantiated allegations that some / many Producers are by-passing the regulated channels and delivering direct to buyers (bootlegging). This takes market share from those following the rules and creates greater price pressure in the local market. These are not new allegations.
9. There is a widely held belief that VMC has failed to effectively enforce its Regulations. System integrity depends upon predictability of consequences for breaking the rules. When consequences are immaterial or non-existent it is not surprising to hear that some Producers do not follow the established rules.
10. There has been a breakdown in trust among members of VIP. This resulted in a split into 2 Agencies – VIP and Vancouver Island Farm Products (VIFP). VIP is now effectively a single grower Agency competing with VIFP and IVCA on Vancouver Island. It was suggested that buyers were also frustrated with the conflict and disorder created by 3 Agencies on Vancouver Island.
11. No “market need” arguments were made to support 3 Agencies on Vancouver Island which represents <10% of the BC supply and demand. The rest of BC is served by 2 mainstream Agencies and 1 specialty Agency (organic).

Agencies competing for the same buyer with the same product do little, if anything, for Producers or Buyers. In today’s food markets (eg integrated systems, highly efficient supply chains, central distribution) consistency of superior service, reliability of delivery, continuity of supply, order fulfillment, and quality may be more important to many buyers than achieving today’s lowest spot market price. Nevertheless, any good buyer will be opportunistic for marginal requirements and grower / Agency conflict may provide this opportunity.

The system is not necessarily broken, and Producers do not want to abandon it. It is, however, in a state of benign neglect. Strong leadership is required from the Chair, Board and General Manager of VMC if the situation is to be rectified on a timely basis.

These matters can be fixed without re-writing all the Regulations or exempting the vocal minority. Nevertheless, the fix will aggrieve some who see current gaps in the Regulations and Enforcement as an opportunity to advance their self-interest ahead of the collective interest of all growers.

## What might VMC consider doing?

From the Workshops and a review of recent decisions by VMC and FIRB I have been asked to provide a set of recommendations for VMC to consider for moving forward.

1. Purpose, Vision and Strategy – VMC needs to get clear on these foundation building blocks for an effective, rules based system. Purpose can be found clearly in the Act, Scheme and Orders. The strategy seems self-evident – to dominate premium fresh market segments in BC and immediately adjacent markets based on freshness, premium quality, product choice (range) and industry-leading responsiveness. What is missing to an outsider is a clear strategic plan process that incorporates a Vision and Values for the system. Developing this plan should be completed well before the next growing and marketing season (see #4 below).
2. Industry Performance – The VMC should ensure it has a good measure of industry performance as the ultimate measure of the value of the regulatory framework. In the VMC context performance can be measured by market share and profitability, which are outcomes. From an input perspective elements such as product innovation, promotional programs, and logistics efficiency can be compared and contrasted with other competitors and other regions. Developing these metrics, if they do not already exist, should be a key part of the strategic planning and ongoing management processes.
3. Governance – I am not able to make a recommendation on Board structure as has been requested by some Producers. There were suggestions on Vancouver Island for changes to the Board composition. This was not examined at the Delta meeting. Any proposed representation changes should include targeted consultation with Producers that is beyond the scope of this work. In any event, from my perspective little will be gained by changing the Board structure unless there is a strategic plan that reinforces and supports the need for continued collective action.
4. Strategic Plan – It is clear that VMC needs an updated strategic plan for the Storage Crop sector. Developing this plan is not necessarily a broad based industry consultation where every disaffected individual gets a full hearing for their grievances and those seeking to break down or challenge the system have another forum to delay, frustrate and obstruct the process. This is a job for the Storage Crop Committee of VMC, and it needs to be pursued deliberately on a timely basis. It is recommended that this work be completed over the summer to be presented to the Industry in September-October 2016.
5. Management – Considerable comment, direct and indirect, was made on the effectiveness of VMC management, specifically the previous 2 managers. The GM needs to operate with the confidence of the Board and within a management framework that starts with the strategy which flows into the annual business plan and budget, semi-annual management reviews against initiatives in the plan and budget, and clear quarterly reporting against plan. It is also

important that VMC establish clear guidelines, if they do not already exist, to separate governance from management / administration in the execution of plans and in the day to day administration of the system.

6. Storage Crop Planting Intentions – In the immediate (by the end of April) VMC needs to verify all storage crop planting intentions. This is critical and should be relatively easy since most seed is ordered and most crop planning will have been completed by growers. This will allow VMC to put substance to rumours of over-planting and deliberate attempts to circumvent the DA system. The planting intentions should be verified by a crop survey in May and then cross-referenced with deliveries in the fall and winter.
7. Delivery Allocation – A full update of the Allocation Orders is necessary as the rules are unchanged since Districts were abolished in 2009<sup>7</sup>. This will require ensuring effective management of Delivery Allocation in a multi-agency environment. VMC has tools in its existing Orders to address some of the current challenges to the system although proposed changes would likely be appealed and thereby become bogged down in a morass of bureaucratic process. Nevertheless, a rewrite of the Allocation rules is warranted and should be completed well in advance of the next growing season.
8. Agency Licensing – The VMC needs to establish clear criteria on which it would deny an Agency application. This will help provide clarity on why VMC might support any particular application. The Orders<sup>8</sup> provide a list of 20 criteria that must be covered in a business plan of a prospective Agency. These criteria should be applied to each Agency on Vancouver Island as if it were applying anew to be designated as an Agency.
9. Agency Performance – The VMC needs to audit all Agencies performance.<sup>9</sup> Agency responsibilities are clearly set down in Part VII of the Orders. The audit process and results should be confidential and details of individual Agencies must not be shared with Directors. If an Agency balks at VMC staff performing the audit, VMC may consider contracting with an auditor to complete the work at the Agency's expense. This work should be completed by August 31/16 so that it can inform the Vancouver Island Agency decision process.
10. Vancouver Island Agencies – The ongoing dispute resolution process on Vancouver Island involving VIP and VIFP needs to be brought to conclusion, a conclusion that will likely aggrieve some if not all participants. No substantive market based need was identified for having 3 Agencies on Vancouver Island. Island Producers have, by their own admission, an attractive, under-served local market. Nevertheless, Island production has declined over the past 5+ years and there is suitable land available for production expansion. Currently there are 3 camps of

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<sup>7</sup> See Part XVI – Production and Delivery Allocations – General and Part XVII – Procedure for Determining Delivery Allocation for Storage Crops.

<sup>8</sup> see Part XIV – Procedures for Designation of Agencies – of the General Orders.

<sup>9</sup> Agency audit procedures – these have not been reviewed in the research for this work. Procedures may or may not exist already.

producers and 3 sets of Agency staff all with vested interests. After completing audits of Agency performance the VMC should consider requiring each of the 3 Island Agencies to submit a business plan incorporating the criteria set down in Part XIV of the Orders as if they were applying anew for designation. This work should be completed well in advance of the next growing season.

11. Agency Growth – Agencies need a way to grow their businesses. This is provided under Part XV of the Orders – Marketing of “New” or Additional Regulated Product by Existing Agencies. This regulation provides Agencies the opportunity to market “additional” storage crop vegetables subject to the Agency submitting a business plan<sup>10</sup> and the VMC considering the market requirements.<sup>11</sup> The VMC should immediately require IVCA, or any other Agency wishing to grow beyond the established aggregate Allocation of its Producers, to seek authority to market additional regulated crop in accordance with Part XV of the Orders.
12. Enforcement – The VMC needs to establish and follow clear guidelines for enforcement with Producers and with Agencies. These guidelines should include triggers, steps (investigation, discussion, mediation, arbitration, seizure, etc.) and cost recovery. The Orders are silent on enforcement. The VMC may wish to establish a Part of the Orders specifically for Investigation and Enforcement. This work could be completed in parallel with the updated strategic plan.
13. FIRB – VMC Relations – It is clear from the Supervisory Review and recent appeal decisions that the relationship between FIRB, VMC and Producers needs work<sup>12</sup>. A case in point is the Appeal Decision rendered by FIRB when IVCA appealed Amending Order 43. This decision has created further confusion and uncertainty among Producers and Agencies for which VMC and FIRB bear responsibility. This is a very serious issue that must be resolved between the Boards of VMC and FIRB on a priority basis.

Respectfully submitted

George Leroux  
March 31, 2016

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<sup>10</sup> See Part XV, para. 2.

<sup>11</sup> See Part XV, para. 4.

<sup>12</sup> These remarks are institutional, not personal. Individuals at VMC or FIRB should not read into this any judgement of them as people. Regulatory systems by nature, and maybe by design, institutionalize distrust as an outcome of requiring broad transparency and accommodation of every vocal minority’s complaint, however immaterial.