

July 16, 2024

DELIVERED BY EMAIL

Peter Donkers, Chair
BC Farm Industry Review Board
PO Box 9129 Stn Prov Govt Victoria BC V8W 9B5

Dear Mr. Donkers:

Re: Efforts by the BC Greenhouse Growers' Association to Establish a Separate BC Greenhouse Vegetable Marketing Commission

I am writing to inform BCFIRB about the perspective of the British Columbia Vegetable Marketing Commission (the "Commission") concerning certain efforts undertaken by a non-profit industry association, the BC Greenhouse Growers' Association (the "BCGGA"). The Commission understands BCFIRB's role is limited at present, but BCFIRB could have a more substantial role if the BCGGA's actions lead to any further processes.

Specifically, the Commission understands that the BCGGA seeks to remove greenhouse vegetables from the authority of the Commission under the *British Columbia Vegetable Scheme*, presumably with a view to re-regulating these natural products under the authority of a separate board or commission. Presumably, this other board or commission would have substantially the same powers and mandate as the Commission.

Current Regulatory Context

The British Columbia Vegetable Marketing Commission is established under section 3 of the *British Columbia Vegetable Scheme* (the "Scheme") under the *Natural Products Marketing (BC) Act* (the "Act").

Under section 4 of the Scheme, the Commission has the authority to promote, control and regulate in any respect the production, transportation, packing, storage and marketing of all vegetables. The Commission has all the powers described in section 11 of the Act.

The Commission consists of a Chair appointed by the Lieutenant Governor in Council; at least 4 but no more than 6 members who are commercial producers (3 greenhouse producers and 3 storage crop producers); and 2 members who are not commercial producers, appointed by the Commission using a merit-based process.

Under the authority vested in it, the Commission has established orders. The primary purpose of those orders is to promote orderly marketing and maximize net producer returns by means of centralized, coordinated marketing carried out by agencies designated by the Commission and approved by the BC Farm Industry Review Board (BCFIRB).

The BCGGA Proposal

The Commission first became aware of the BCGGA's efforts through a letter from the BCGGA to the Honourable Lana Popham, former Minister of Agriculture and Food, dated September 26, 2022. In that letter, the BCGGA outlined a number of circumstances (e.g.: hearings, appeals, allegations of bad faith and unlawful activity, etc.) and asserted that these circumstances constitute evidence of the need for a separate organization for the greenhouse sector.

However, the letter did not disclose that the allegations of bad faith and unlawful activity originated, at least in part, from one of the directors of the BCGGA, Mr. Ravi Cheema. Further, and perhaps more significantly, the letter did not disclose that these allegations prompted a costly and time-consuming supervisory review conducted by BCFIRB, which resulted in a finding that the allegations had been advanced without any factual foundation. The BCFIRB specifically noted that Mr. Cheema himself “was the principal source of [many of] the allegations” and that “...there was no cogent evidence to substantiate the very serious allegations made against the Commission”. Ultimately, the BCFIRB confirmed that “BCFIRB does not have (nor has it ever had) a lack of trust and confidence in the ability of the Commission to regulate the industry...”.

In addition, the BCGGA’s letter to former Minister Popham appeared to express concern with the fact that greenhouse members of the Commission must sometimes recuse themselves from matters affecting that sector where there is a real or apparent conflict of interest. The Commission has sought to find a balance between the need for independent decision-making free of bias or conflict, against the need for industry knowledge and experience informing those decisions. In this regard, it is essential to note that greenhouse sector participants frequently ask that greenhouse members of the Commission be recused from considering matters arising out of that sector. In fact, the current President of the BCGGA has made such a request in writing to the Commission.

Thus, a separate commission of the kind proposed by the BCGGA, comprised solely of greenhouse industry participants, would likely be less able to accommodate necessary recusals where impartiality is required in the circumstances.

Most recently, the BCGGA engaged MNP to undertake a “Marketing Study” premised on the idea of a separate greenhouse commission. The results of the MNP study are based primarily on interviews with five of the six members of the board of directors of the BCGGA (the proponents of a new regulatory body). It is unclear if the study reflects the views of the broader greenhouse sector.

We note the study identifies seven supposed disadvantages of the current regulatory model and only two advantages. However, four of the supposed disadvantages say essentially the same thing (i.e.: that recusals of greenhouse members limit direct industry input) and the other three supposed disadvantages are not supported by evidence. The only other interviews conducted by MNP were with four individuals from Ontario, regarding a model that is not applicable in BC.

The Commission understands the BCGGA is now seeking to conduct a survey of greenhouse producers with respect to a separate greenhouse marketing commission in the coming months (perhaps emerging from the MNP marketing study). Of course, any result with sufficient support from producers may be subject to consideration by BCFIRB with the ultimate decision to be made by the Minister.

In this regard, we note that the BCGGA claims that it “represents the interests of over 60 BC greenhouse vegetable growers across British Columbia (BC).” However, the Commission has made repeated requests (which, to date, remain unanswered) for information concerning the BCGGA’s membership and the manner in which people signify their desire to be members of that Association. It appears the BCGGA has been operating on the mistaken assumption that greenhouse producers licensed by the Commission are *de facto* members of the BCGGA. This is not the case.

Analysis of the BCGGA Proposal

The BCGGA proposal is impractical and not in the best interest of orderly marketing, BC’s vegetable producers, or BC’s agriculture sector. The Commission notes:

- The Commission already has three elected greenhouse Commissioners to represent the greenhouse industry.
- Currently, greenhouse applicants do not want greenhouse Commissioners on review panels. It is unclear how what the BCGGA is proposing would handle this and how it is any different or better than what is currently in place.
- As noted, it is unclear how a separate commission, comprised solely of greenhouse industry participants, could make any decisions as the requests to recuse greenhouse members of the Commission from any significant greenhouse decisions would only be exacerbated in a model where all commissioners were from that sector (and, therefore, subject to the same apparent biases and/or conflicts of current greenhouse members of the Commission).
- To help address any perceived conflicts, the Commission has Conflict of Interest Rules and a Code of Conduct that each commissioner must acknowledge and confirm their compliance with on an annual basis. They are required to confirm and demonstrate they will act in the best interest of the full industry. All commissioners have done so to date.
- BCFIRB has confirmed that the small scale of each of BC's regulated commodities (including vegetables) makes it difficult for the identification of commodity board/commission members who are 100% free of any apparent conflict. BCFIRB has also given the Commission guidance on the involvement of such members on the commission.
- One of the benefits of the Commission is that it has elected greenhouse representatives who can provide expertise on greenhouse issues as well as independent and storage crop members who can step in when greenhouse members have a real conflict of interest. The BCGGA seems to be proposing a regulator that is essentially half of the current Commission, thereby lacking the non-greenhouse representatives who can step in where there is a conflict. In other words, the very thing the BCGGA complains about is a benefit offered by the Commission (not a detriment).
- It is more cost-effective to have a single commission to reduce the costs incurred by producers. The significant costs associated with two distinct entities (two groups of commissioners, staff, offices, legal and other costs, etc.) would be borne by producers in both the greenhouse and storage crop sectors.
- The BCGGA claims there is currently a duplication between the BCGGA and the Commission and suggests that would not be the case if there were a greenhouse commission. There is currently no duplication of functions or responsibilities. The Commission is a regulatory body established under BC law. The BCGGA is a voluntary organization whose primary role is to advocate on behalf of its members. This model exists with all regulated agriculture commodities. In fact, there would be a duplication of functions with the Commission if a separate greenhouse commission was established.
- To ensure there is comprehensive engagement of the greenhouse industry in the Commission's planning, actions, and decisions, the Commission has established and fully engaged a Greenhouse Industry Advisory Committee (comprised of influential greenhouse producers and other stakeholders, including members of the BCGGA board of directors) to inform all those processes.
- With direct access to expertise and knowledge in the field from the three greenhouse elected members and a greenhouse industry advisory committee, the Commission can already make decisions and implement regulations that are specifically tailored to greenhouse producers, accounting for their specific requirements, challenges, and opportunities, and assure decisions are made with a comprehensive understanding of the greenhouse industry's needs.
- The BCGGA claims there is no similarity between field grown vegetables and greenhouse grown vegetables. On the contrary, both vegetable sectors compete in an open market that is subject to competition from other provinces and countries.
- Unlike the significant challenges faced by other unregulated agricultural commodities (e.g.: apples), under the stewardship of the Commission, farm gate sales of regulated greenhouse vegetable crops have grown to be one of the top five regulated agricultural product in British Columbia. This mitigates any argument for a separate commission.

- The Commission views the actions and objectives of the BCGGA's proposal as frivolous and vexatious and essentially as an attempt to deregulate the greenhouse sector, only for it to be re-regulated as a separate marketing board or commission. It is not clear why such extraordinary measures would be necessary when there is already ample opportunity for people in the greenhouse sector to express their views to the Commission, or to run for election to the Commission.
- The members of the Commission could be replaced by the BCFIRB if there is any real concern that the Commission is not effectively regulating the industry in the public interest. However, it is significant to note that the BCFIRB has expressed satisfaction with the Commission's current efforts and accomplishments (for example, as noted above).
- Establishment of a separate greenhouse commission would also create additional work for the provincial and federal governments in order to create the legal framework for a new commission doing fundamentally the same thing as the Commission.

The Commission has been closely monitoring the situation and has engaged with the BCGGA to understand their regulatory concerns. As a result of those discussions, we have not (and the BCGGA has not) identified any specific regulatory needs or concerns that the Commission cannot address.

From our perspective, the Commission is well positioned to continue to regulate the greenhouse vegetable sector. The storage crop and greenhouse sectors face similar market dynamics and compete on the open market against other provinces and countries. Our governance model enables an efficient and effective means of regulating both vegetable sectors that ensures transparency, accountability, and inclusivity in decision-making processes.

Conclusion

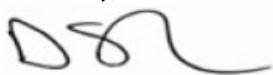
The Commission is committed to ensuring the long-term viability and sustainability of BC's greenhouse agriculture sector. Our efforts focus on promoting a regulatory environment that enables growth, innovation, and equitable opportunities for all stakeholders involved in the regulated vegetable industry.

We are available to discuss the content of this letter or any other related matter at your convenience. We are also committed to keeping you informed of progress and any significant developments.

Clearly, the matters we raise in this letter require careful consideration and consultation with all relevant parties. We are fully committed to working with BCFIRB, if and as required.

Thank you for your attention to this matter. Please reach out if you require any additional information from the Commission that would inform BCFIRB's understanding of the situation.

Sincerely,



Derek Sturko,
Chair

Cc: Martha Anslow
Executive Director