Powers and Duties Review

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Prepared by:
BC Milk Marketing Board

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Introduction

The *British Columbia Milk Marketing Board Regulation (Regulation)*, under the *Natural Products Marketing (BC) Act (NPMA)* sets out:

> 9 (1) By November 30, 1999, and by the end of each 3 year period after that date, the board must conduct a review of the continued appropriateness and adequacy of the provisions of section 7 [Powers and duties of the board] and report its findings to the British Columbia Farm Industry Review Board.
>
> (2) A review under subsection (1) must be conducted by the board in consultation with the Milk Industry Advisory Committee, the British Columbia Farm Industry Review Board and the minister's ministry.

The British Columbia Farm Industry Review Board (BCFIRB) has directed the British Columbia Milk Marketing Board (Board) to conduct a review (Review) of the powers and duties as required by the *Regulation.* A number of broader "reviews" have taken place since 1999 and have served to satisfy the requirements of the *Regulation.* The broader "reviews" included the 1999 BC Marketing Board's review of the legislation governing all BC marketing boards and commissions; the 2001-02 government-wide, Core Review; and the 2003-06, Specialty Review. The 2009/10 FIRB Enhancing Markets Review which was intended to serve as a review for purposes of the Regulation was cancelled due to government budget limitations. This Review represents the first standalone review as required by the *Regulation.*

Objective of the Review

The objective is to review, consistent with the Board's strategic plan, the Board's Powers and Duties in order to preserve, build, and transition the BC Dairy industry for future generations. The Review will look at the appropriateness and adequacy of the powers and duties of the Board and report its' findings to BCFIRB. It is not intended to assess or evaluate the effectiveness of those responsible for carrying out the powers and duties nor will the Review evaluate the validity or appropriateness of the supply management system.

The goals of the Review are to:

1. Review if the current powers and duties of the Board are still appropriate and adequate for regulating the BC Dairy industry in the best interests of the industry and public;
2. Review the appropriateness and governance accountability of any delegated powers or duties; and
3. Review potential additional powers or duties that may be considered for future strategic direction and sound governance in the best interest of the dairy industry.

Approach

BCFIRB expectations were outlined in a January 22, 2014 letter to the Board regarding the Powers and Duties Review (Appendix 1). As required by the *Regulation*, the Board commenced the process with meetings with the BCFIRB and the BC Ministry of Agriculture to ensure common understanding of expectations for the Review. BCFIRB provided further direction by way of a March 14, 2014, letter to all Boards and Commissions regarding Financial Accountability (Appendix 2).

To ensure that the principles of transparency and inclusiveness were addressed, the Board consciously expanded the engagement beyond that required by regulation, the Milk Industry Advisory Committee (MIAC), to include other dairy industry groups, including the Specialty Production Advisory Committee (SPAC), the BC Dairy Council (BCDC) and the BC Dairy Association (BCDA) plus interested stakeholders via the Board's website. The Review was added to regular meeting agendas of the committees, council and association.

The Board retained the services of Harvey Sasaki, Agri-Saki Consulting Inc. to lead the engagement and provide a summary of the listening sessions for the Board's consideration. A Discussion Document was prepared to facilitate stakeholder engagement. The Board posted the Discussion Document to its website and invited written comments.

The Review is based on the feedback received from stakeholders, review of information and documents provided by BCFIRB, information from past reviews and other publicly available documentation.

Criteria

The Review is guided by the requirements of the *Regulation* and by the following key principles for effective regulation for the future:

- Regulations are in the public interest, affordable, effective, efficient and accountable.
- Support industry to maintain current producers.
- Provide opportunity or mechanisms for renewal of the industry – new producers.
- Flexibility for sound marketing management of the dairy industry.
- Growth through innovation for value-added of the entire market.

Source of Powers and Duties

The Board sources it powers and duties from Federal and Provincial legislation and regulations.

Federal Legislation and Regulation

The *British Columbia Milk Order* established under the *Agricultural Products Marketing Act*, grants authority to the Board to regulate the marketing in interprovincial and export trade of milk produced in British Columbia. In exercising that authority the Board can apply the same powers used to regulate the marketing of milk in British Columbia. The authority is however limited by any powers exercised by the Canadian Dairy Commission in relation to the marketing of milk in interprovincial trade. The Board is also authorized to

> "fix or impose levies or charges on milk or any component of milk and collect those levies or charges" and to "use the levies and charges for the purposes of the Board".

The *Dairy Products Marketing Regulations* established under the *Canadian Dairy Commission Act* provides the Board the authority to allot federal quota and

> "to exercise all or any powers"; "apply all or any criteria"; and "administer all or any rules" "in relation to the entitlement to, and allotment, suspension or cancellation of provincial quota".

Provincial Legislation and Regulation

The *British Columbia Milk Marketing Board Regulation* established in 1994 under the *Natural Products Marketing (BC) Act* continued the Milk Marketing Board previously established under the *Milk Industry Act.* The *Regulation* vests in the Board the power to:

> "promote, regulate and control in any and all respects the production, transportation, packing, storage and marketing, or any of them, of a regulated product (defined as milk, fluid milk or a manufactured milk product) including the prohibition of production, transportation, packing, storage and marketing, or any of them, in whole or in part, and is vested with all powers necessary or useful in the exercise of these powers"

within British Columbia. Further powers of the Board are drawn from section 11(1) of the *NPMA*, including, but not limited to, setting prices; setting and collecting levies or charges and use those to carry out the purposes of the scheme; and to

> "delegate powers to the extent and in the manner the board considers necessary or advisable for the proper operation of the scheme".

The primary instrument by which the Board actions its powers and duties is through the Consolidated Order. The Consolidated Order details the requirements of producers and processors for the promotion, regulation and control of production, transportation, packing, storage and marketing of a regulated product.

While not necessarily granting powers or authorities, other provincial legislation imposes requirements on the Milk Board:

Milk Industry Act

The *Milk Industry Act* which sets out the requirements for and inspection of dairy farms and dairy plants in British Columbia to ensure safety of the milk and milk products contains references to Milk Board orders and requirements for the Board. References to the Board pertain to the accounts of vendors, access to plant records, injunctive measures, certification of payments; and requirements to impose and collect fines and penalties.

The Board communicates with the BC Ministry of Agriculture inspection staff in carrying out these responsibilities.

Farming and Fishing Industries Development Act

The *Dairy Industry Development Council Regulation* (*DIDC Regulation*) established under the *Farming and Fishing Industries Development Act* (*FFIDA*) in 2003 requires

> "The board must collect levy on behalf of the council by deducting it from the proceeds otherwise due to a producer for milk delivered." and (3) the board must remit to the council the amount collected….".

The Dairy Industry Development Council (Council) is governed by Section 4 and 10 of the *FFIDA*, which enables the Council to pay expenses

> "necessary for and incidental to the administration of this Act" or pay to a person, including a person representing the producers of a commodity, a sum to (i) benefit and promote the industry in British Columbia in respect of a commodity, or (ii) conduct or support research or educational programs in British Columbia in respect of the development and promotion of a commodity".

The annual report of the Board accounts for the levies collected and funds remitted by the Board to the Council.

Stakeholder Engagement

The Board released a scoping survey with industry in March 2014 in order to define the scope of understanding and provide direction to further probe during the engagement sessions of the review. The survey received 241 responses (41.4% of survey list). The majority responses view the Board powers and duties as adequate; however, a considerable portion did not know. There was strong support (71%) for the BCDA role of promotion and lobbying while 62% do not know if the Board provides effective accountability for delegated duties. There were split views on additional compliance duties of the Board with respect to food security, biosecurity, animal welfare, environmental issues and DFC proAction program.

Four engagement sessions were conducted as part of the Review. Each session started with a description of the scope and objectives of the Review, providing background context on past reviews. The engagement listening sessions, included a summary of the industry engagement strategy being employed in the Review; an outline of the source of the Board's powers and duties; a summary of the existing strategic vision for the dairy industry; BCFIRB SAFETI principles for sound governance; and the evolution of the promotion and marketing duties.

Participants were asked to consider the Board's strategic plan summary; share their views on current duties of the Board; the appropriateness of continued "delegation" of any promotion and/or marketing duties of the Board; and consider any additional powers or duties needed by the Board to realize the strategic vision of the industry. Sessions ranged from one to two and one-half hours.

An "As it was Heard" report was prepared for each session and posted to the Board's web-site. Stakeholders were generally in agreement that the current powers and duties of the Board were adequate and appropriate; however, it was observed that participants did not have a solid understanding of those powers and duties.

The Milk Board also made Review information available on its website the first week of April 2014. A deadline of May 31, 2014 was established for receipt of submissions from interested parties. Reference to the website was provided to participants at the engagement sessions. The Board received two submissions through its web-posting from BCDC and DIDC.

Strategic Context

To facilitate good governance by all boards and commissions BCFIRB identified and put in place the SAFETI principles. With the focus of this Review being on the continued appropriateness and adequacy of the powers and duties conferred on the Board and not a review or evaluation of the effectiveness of the Board, not all six SAFETI principles apply. The relevant SAFETI principles for purposes of the Review are Strategic and Accountable.

An important component of the Review is to ensure that the current powers and duties enable the Board to achieve its strategic vision for the dairy industry in British Columbia. The Board has established a strategic plan for the BC dairy industry; the purpose, vision and mission are outlined below:

Purpose
Manage the supply of milk to ensure sufficient milk production to meet consumer demand.

Vision
A dynamic, responsive, sustainable and consumer focussed dairy industry in BC.

Mission
To enhance the vitality of the whole BC dairy industry through a culture of sound governance.

The strategic vision for the industry aligns well with the current powers and duties of the Board. The goals, strategies and expected outcomes of the four pillars of the strategic plan can be achieved within the existing powers and duties. It was noted that clarification of current powers and duties of the Board is needed with industry stakeholders and this issue will be further explained in this report.

Accountability

The current powers and duties provide for effective governance and accountability. As a prudent regulator, the Board needs to satisfy with the Ministry and DIDC that promotion accountability is adequate. This will be further explained in the report.

Review Conclusions:

Through the review of the legislation, regulations, consolidated order, annual reports, other relevant documents, scoping industry survey and the feedback through the stakeholder listening sessions, the following conclusions were noted.

Goal #1 Review if current powers and duties are adequate.

The review noted that the existing powers and duties of the Board are appropriate and adequate to meet current and future strategic direction. These powers and duties are well articulated in the Consolidated Order and generally accepted by industry. However, there is a need for further communication to improve understanding of the powers and duties of the Board.

The review identified that duplicative authorities have been granted for promotion which will be further explained in goal #2 below.

Milk quality is within the authorities of the Board as a regulatory but not commercial role. The Board links to the dairy industry are primarily "regulatory" and not "commercial" in nature. Ref: Running W Egg v. EMB appeal, April 23, 2014 and Kimpton v. Canada et al, 2002.

Food safety is within the provincial government (Milk Industry Act) authority and not the Board. However, the Board monitors quality and safety of raw milk based upon the standards established by the government.

Marketing

There is a general misconception of stakeholders regarding the Milk Board's authority and role with respect to "marketing". Marketing is defined under the *Natural Products Marketing Act:*

> *"includes producing, buying, selling, shipping for sale, offering for sale or storage, and in respect of a natural product includes its transportation in any manner by any person"*

Marketing is also defined under the *Dairy Products Marketing Regulations* under the *Canadian Dairy Commission Act:*

> *"includes selling, reselling, offering for sale, buying, pricing, assembling, packing, handling, storing, delivering and transporting"*

The Board adequately covers its marketing duties through provisions in the Consolidated Order, examples include the classification of milk and allocation of supply amongst vendors.

Some stakeholders suggested the elimination or revocation of the marketing duties of the Board. This suggestion fails to respect the fundamental tenets and underlying pillars of the supply management system. Marketing is the basic, fundamental duty of the Board.

Overall, the powers and duties appear adequate to address potential future issues and challenges unless additional duties are assigned from the Ministry.

Goal # 2: Review the appropriateness and governance accountability of any delegated duties.

Promotion

Some stakeholders questioned the Board's authority for promotion, indicating that promotion has always been the responsibility of industry through mechanisms such as the Dairy Products Promotional Fund Committee and the Dairy Industry Development Council. Most stakeholders view the Board's role in promotion as simply to collect and remit promotional fees.

Unlike marketing, promotion is not defined in legislation or regulation. The NPMA provides broad and enabling powers under section 7(1) as "in any and all respects". Section 9.1 (e) of the *Canadian Dairy Commission Act* includes a statement regarding the powers of the Commission:

> *"undertake and assist in the **promotion** [emphasis added] of the use of dairy products, the improvement of the quality and the publication of information in relation to those products"*

BC Marketing Board (a.k.a. BCFIRB) report, the Evolving Regulated Agriculture System, Review of the Regulated Marketing System, February 1999 provided direction for funding producer associations. The recommendation, A9, stated "That the funding of producer associations be provided by the application of a dedicated levy". The rationale was "There is a need to ensure that producer associations have the ability to act independently from Commissions and have access to reliable source of funding".

The powers, duties and authorities related to promotion of the dairy industry in British Columbia have considerably evolved over time. Processors and producers initially undertook separately funded promotional activities. Processors approached producers and suggested that the two groups pool resources to fund promotion and used provisions of the *Milk Industry Act* to establish "a fund to be used for promoting dairy products in accordance with regulations that may be made by the Lieutenant Governor in Council". In 1968, the result was BC Regulation 214/68, the creation of Dairy Products Promotional Fund and Dairy Products Promotional Fund Committee.

The Regulation prescribed the structure of the Committee which included the Director, Dairy Branch, Ministry of Agriculture as secretary and the Chair, BC Milk Marketing Board as treasurer. These two positions were ex-officio member appointments to the Committee. The regulation also set out the duties of the promotion fund committee "for the effective promotion of dairy products in British Columbia" as well as the duties of the secretary and treasurer.

In 1994, the Ministry of Agriculture shifted the authority of the Milk Marketing Board from the *Milk Industry Act* to the *NPMA*, in response to challenges posed to the Milk Board by unregulated production. In 1997, further amendments to the *Milk Industry Act* were initiated by the Ministry. The amendments were directed at clarifying the roles of the Ministry of Agriculture, Fisheries and Food and of the Ministry of Health in milk inspection on the farm and in processing plants. The focus of these legislative amendments were to ensure the legislation reflected the requirements for the safety of milk and milk products while making provisions for the dairy industry to increase its involvement in the delivery of services. These two amendments did not affect the Dairy Products Promotional Fund or Committee.

In 2003, the Ministry of Agriculture as part of its legislative consolidation initiative transferred the authority of the promotional levy from the *Milk Industry Act* by creating the Council through the *DIDC Regulation* under the *FFIDA*. The *DIDC Regulation* created a requirement for the Milk Board to collect levies on behalf of the DIDC and remit the levies to the DIDC. The shift from a Fund under the *Milk Industry Act* to a fund under the *DIDC Regulation* further changed the role and duties of the Board. The shift to the *DIDC Regulation* no longer requires the Board's role as treasurer to the fund. Under FFIDA s(4), the Minister may appoint a Council composed of one or more members of the government, at least one of whom must be a representative of the ministry which administers the FFIDA; producers of the commodity; and one or more persons who the minister considers represent people involved in a) supply of goods or services to the producers or processors, distribution or consumption of the commodity. The Milk Marketing Board provides a supply of services to the dairy industry as first receiver of milk and the collection plus remittance of funds. Under FFIDA, section 2 (6) the DIDC is accountable and responsible to the minister for the administration of the fund. Thus, the Board does not have a direct accountability for the funds since acting as a collection and remitting body. The Board does have an indirect accountability for DIDC funds remitted since the Board administration is used in transport of the funds.

The creation of the Council put in place two separate authorities for dairy promotion in the Province under two separate pieces of legislation. The *DIDC Regulation* enables the Council to pay to

"(i) benefit and promote the industry in British Columbia in respect of a commodity, or
(ii) conduct or support research or educational programs in British Columbia in respect of the development and promotion of a commodity

The NMPA *Regulation* enables the Board the power to "promote" with duties that clearly extends beyond facilitating the collection of fees/levies. The Board is actively involved in promoting the interests of the BC Dairy industry at federal/provincial tables such as the Canadian Milk Supply Management Committee and enabling BCDA promotional activities through regulatory compliance measures.

Fiscal Accountability

During the review, the Board was instructed by BCFIRB, by way of a March 14, 2014 letter, to all Boards and Commissions regarding Financial Accountability to review governance and accountability of funds collected on behalf of DIDC. A detailed summary is provided below.

Review delegated duties and financial accountability of a producer association levy collected on behalf of the Dairy Industry Development Council (DIDC) through FFIDA.

Background Considerations:

1. British Columbia Marketing Board (a.k.a. BCFIRB) report, The Evolving Regulated Agriculture System, Review of the Regulated Marketing System, February 1999 provided direction for Funding Producer Associations. The (A9) recommendation was " that the funding of producer associations be provided by the application of a dedicated levy". Rationale was " There is a need to ensure that producer associations have the

ability to act independently from Commissions and have access to a reliable source of funding."

2. Under the Farming and Fishing Industry Development Act (FFIDA), the Board is the mechanism by which levies are collected by the DIDC.

3. FFIDA S3 (1) The board must collect the levy on behalf of the council by deducting it from the proceeds otherwise due to a producer for milk delivered, and (3) the board must remit to the council the amount collected….". "board" means the British Columbia Milk Marketing Board continued under section 3 of the British Columbia Milk Marketing Board Regulation.
    - BCFIRB email of March 19, 2014 noted, In other words, the Milk Board isn't really "collecting and giving money to the DIDC" - they are "collecting money on the behalf of, and remitting money to, the DIDC".

    - BCFIRB email of March 19, 2014 noted, In the Dairy Industry Development Council Regulation there doesn't appear to be any financial accountability provisions attached to the levy collection requirement - suggesting to a lay person at least that accountability for levies collected under FFIDA authority would rest with DIDC.

    - BCFIRB raised the question to the Board- what level of responsibility for DIDC levy accountability does the Milk Board hold -- as the collecting and remitting body -- but not the body setting and determining use of the FFIDA levies? The Board determined that there is no direct accountability but indirect accountability for sound governance and due diligence for use of the Board administration.

    - This seems to stand in contrast to levies collected under the NPMA by the Board and provided to BCDA (and/or other organizations) for the purposes of carrying out the Regulation – such as promotion and advocacy.

    - The Board has the direct authority under the NPMA to set and collect levies to carry out the purposes of the Regulation.

    - The Board is responsible for those levies collected and distributed under the NPMA and that the levies are used by the BCDA (and other organizations) for the Regulation's purposes.

    - BCFIRB raised an interesting question as to whether there may be duplication of purpose between DIDC levies collected under FFIDA and levies collected by the Board under NPMA for promotion and marketing. The Board concluded that there are duplicative powers with DIDC that raises questions of sound governance and informed due diligence regarding use of Board administrative services and effective regulation under the regulations.

4. BCMMB powers - Definition of Promotion and Marketing is very broad under the NPMA as stated " in any and all respects".

5. NPMA, section 11 p., provides guidance for Powers of the Boards and Commissions to "delegate its powers to the extent and in the manner the board considers necessary or advisable for the proper operation of the scheme under which the board is constituted."

6. Definition of Promotion and Marketing was further defined under the Olera Farms vs EMB appeal #01-17, Feb. 25, 2003 with the following excerpts noted below…
    - Para 60 – jurisdiction is not the issue
    - Para 67 – legislation framed in a broad and enabling fashion
    - Para 69 & 70- The "Act list governance powers conferred on commodity boards which address all aspects of production and marketing."
    - Para 89 – Purpose of the Scheme (regulation) … effective promotion etc. Regulation will not be effective if it is not comprehensive.
    - Para 92- Avoid a "tortured interpretation" contradicting the plain intent of the Scheme.
    - Para 141- Commodity Boards cannot and should not be prevented from enforcing the law simply because it has not done so in the past. (The Board concluded that **the future is not an extrapolation of the past**. Emphasis added)

7. BCFIRB Supervisory Expectations re BC Cranberry Marketing Commission Audit Exemption, Aug. 20, 2013. When receiving government funds or collecting mandatory levies using legislated authority, boards and commissions are responsible for how the money is used, including by a third party beneficiary.

8. BCFIRB direction regarding Financial Accountability with reference to the Rainbow decision, letter of March 14, 2014. "The intent of this letter is to reiterate the continued expectations of the BC Farm Industry Review Board (BCFIRB) that boards and commissions exercise and demonstrate (through annual reporting, audited financial statements and other appropriate tools), transparent and accountable financial management."
   BCFIRB stated that financial accountability is a key part of good governance. It includes both:

   • accounting practices that are in accordance with legislation, regulations, published standards, and stakeholder expectations of accountability and transparency; and,

   • establishing and maintaining appropriate financial accountabilities with producer associations and other organizations that may receive funding from boards and commissions to carry out delegated responsibilities under the NPMA and the schemes.

Conclusions of the Review of delegated duties and financial accountability of a producer association levy collected on behalf of the Dairy Industry Development Council (DIDC) through FFIDA.

1. The Board has legal authority (powers) under NPMA for promotion (including advocacy) and marketing, “in any and all respects”. The Board is not prohibited from lobbying but it is advisable to separate regulation duty from advocacy and promotion duty.

2. DIDC (Dairy Industry Development Council) has legal authority (powers) under FFIDA for promotion and requires the Board to collect a producer levy.

3. The Board and DIDC have duplicative authority for dairy promotion under different Acts.

4. Currently it is unclear if DIDC has an MOU with BCDA to delegate the promotional authority and duties. If not then the legal authority for promotion should be clarified with DIDC.

5. Does the Board have legal authority or direct accountability for governance of promotional activities or use of DIDC funds under FFIDA? The Board does not have a direct accountability for use of DIDC funds since acting as a collecting and remitting body. The Board does have an indirect accountability for DIDC funds remitted due to use of its’ administration.

6. Responsibility for accountability of DIDC use of levy funds under FFIDA falls to the Minister of Agriculture/ Ministry.

7. Definition of Delegation (Webster) – vb – to entrust to another; n. a person acting for another. The Board has delegated its promotional duty to DIDC; however, DIDC has a duplicative power under FFIDA for promotional activities through the producer association, BCDA.

8. The Board has responsibility and accountability for promotional duties under NMPA but not directly connected to FFIDA. In order to regulate effectively and soundly, the Board needs to be satisfied/informed with respect to BCDA promotional activities in order to ensure there is no overlap in duties plus ensure promotional activities are being completed as required by the industry.

Goal # 2 Recommendations:

1. The Board must be well-informed as a prudent regulator to ensure no duplication or lack of duties on promotion (including advocacy) so that the Board can decide if it should exercise its own powers. In order to achieve sound governance, the Board will explore an improved accountability structure of BCDA promotional and advocacy duties.

2. Under the Powers & Duties Review, the Board needs to ask the question – Should the Board exercise its authority under NPMA for promotional duties (including advocacy)? Is there an unmet need for the Board to complete? This will be further explored under Goal #3 consideration of additional duties.

3. The Board has an indirect accountability for due diligence and sound governance of the use of levy funds collected and remitted by the Board to DIDC under FFIDA. eg. Transporter has responsibility to know what cargo that they are carrying or involved with.

4. The definition of Promotion and Marketing is very broad under the NPMA as stated " in any and all respects". Promotion and Marketing does not need to be defined further since the legislation is framed in a broad, enabling fashion. As noted in the Olera Farms vs EMB appeal, the Board must avoid a "tortured interpretation" contradicting the plain intent of the Scheme.

5. NPMA, section 11 p., provides guidance for Powers of the Boards and Commissions to *delegate its powers to the extent and in the manner the board considers necessary or advisable for the proper operation of the scheme under which the board is constituted.* The Board must regulate effectively and with sound governance through informed delegation of duties.

6. *Commodity Boards cannot and should not be prevented from enforcing the law simply because it has not done so in the past.* Therefore, the Future is not an extrapolation of the past.

7. **The Board has the authority of its own under NPMA to "market" and "promote" and therefore should be able to demonstrate that it is satisfied that it can rely on the DIDC and BCDA to effectively implement these duties. With consideration of the amount of levy money involved, and regardless of legal boundaries, the DIDC, BCDA, BC Milk Marketing Board and minister/ministry should be jointly satisfied that these funds are all being spent appropriately.**

Goal # 3 Review Potential Additional Duties that may be considered for future strategic direction and sound governance in the best interest of the dairy industry.

The operating environment for the Board has broadened and become more complex than when it was first established. There is a general recognition of the need to work in collaboration and with the support of other agencies and organizations in the conduct of its duties and in exercising its powers while recognizing the need for independent decision-making and sound governance as a regulator. The list of other agencies and organizations includes, but is not limited to:

- Canadian Dairy Commission
- BCFIRB
- BC Ministry of Agriculture
- BC Dairy Association
- BC Dairy Council
- Other provincial dairy boards
- Dairy Farmers of Canada

The Board has and continues to demonstrate that it is applying its powers and duties in the public interest. Two issues emerged from the stakeholder engagement sessions, the ability to implement the Dairy Farmers of Canada's (DFC) proAction initiative, and inspection services under the *Milk Industry Act.* While the issues have been raised from industry interests they also fall within the realm of public interest, more specifically, food safety, environment and animal welfare.

The Board may require modification or amendments of additional powers and duties to address these issues. The powers and duties conferred to boards in general under the *NPMA* can and have been interpreted to be broad and enabling. Case law has reinforced this view. In the February 25, 2003 BC FIRB decision, *Olera Farms v. BC Egg Marketing Board,* it was cited that the *NPMA* "ís framed in a broad and enabling fashion, consistent with the purpose of ensuring effective and comprehensive regulation in this important economic sector." The decision goes further to explain, "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament."

Additionally, precedents have been established in other regulated sectors that are applicable to the dairy industry. For example, the regulated poultry sector in British Columbia has established mandatory biosecurity requirements as a condition of licence supported through FIRB supervisory review process. The BCPA is responsible for the establishment of biosecurity protocols and standards and the four poultry boards adopt them as a condition of licence and have established compliance and enforcement provisions within their Consolidated Orders. Biosecurity is one of the six programs under the DFC proAction Initiative.

Other proAction programs such as milk quality and the Canadian Quality Milk Program are already in the process of implementation. The amendments to the *Milk Industry Act* made it clear that milk quality fell within the responsibility of industry. Animal welfare can be considered part of the regulation of production and as such accommodated within the existing powers and duties of the Board. However, the Board only has authority and scope for milking cows and not all aspects of animal welfare. Livestock traceability relates to the control of production and marketing of the regulated products, again falling within the existing powers and duties of the Board. Food safety and the environment fall within the authorities of federal departments and provincial ministries of environment, agriculture and health. The roles and responsibilities of the Board will need to be considered in any programs.

The inspection of farms and processing plants fall within the authorities and responsibilities of the provincial Ministry of Agriculture and Ministry of Health. Concerns have been expressed over the impact and effect of the future retirement of the Ministry of Agriculture inspection staff. Through the engagement process, the dairy industry expressed that it values the independence of the inspection system in the Province and is supportive of the Province continuing its role in ensuring the safety of the milk supply and milk products. The Board has not expressed any interest or desire to take over the responsibilities from the Ministry of Agriculture; however, it is important that the Board and the Ministry come to an understanding of their interdependence and need to clarify expectations, roles and responsibilities.

The Board has received numerous requests from some BCDA Board members and provinces to examine the value of one organization in BC. This review is an opportunity to respond to these requests. The Board views the BCDA as a lead role for promotion and advocacy in BC. For example, BCDA has a lead role in promotional programs such as CQM and proAction with the Board's role for regulatory compliance. The Board recognizes the value to separate a regulatory role from promotion for public confidence and social license; however, there is a need for increased accountability of promotion and advocacy duties for sound governance.

Executive Summary of Recommendations

The goals of the Review were to assess if the current powers and duties were still appropriate and adequate; the appropriateness and governance accountability of any delegated powers; and consider what, if any, additional powers or duties would be required in the future.

Goal # 1 - Appropriateness and Adequacy of Current Powers and Duties

The current powers and duties continue to be appropriate and adequate to achieve the strategic vision and direction of the dairy industry in British Columbia. Nothing in the current strategic plan or issues raised in the engagement process identified the need for any additional powers or duties. It is not a question of whether the existing powers and duties can accommodate these areas, rather it will be a matter of how these initiatives can fit within the existing powers and duties, as demonstrated by work done in other sectors should the Board agree to participate.

This Review has not identified the need to recommend legislative or regulatory amendments to the powers and duties conferred to the Board. However, during the review an unprecedented issue of animal welfare occurred which required the Board to take a leadership role in order to preserve orderly marketing and sound marketing policy. The question of authority and roles for dairy animal welfare will need to be a top priority for the Board and regulatory authorities. These and other anticipated future initiatives must be further reviewed in order to be accommodated within the existing powers and duties with some amendments.

Goal # 2 - Appropriateness and Governance Accountabilities of Delegated Powers

The Milk Board currently has the ability to delegate its powers or duties under the provisions of Section 11 (1) (p) of the *NPMA*. “to delegate its powers to the extent and in the manner the board considers necessary or advisable for the proper operation of the scheme under which the board is constituted…”

In order to demonstrate good governance accountability as it relates to delegation:

- There must be a clear understanding of what duties are being delegated.
- Once the duties to be delegated have been established, there must be an assessment of whether there are appropriate “persons” to whom the duties can be delegated to.
- If it has been determined that there is a competent “person” to whom the duty can be delegated to, a formal delegation of power should be registered, i.e. Board motion stating the powers or duties that have been delegated, to whom, for what period, and expectations with respect to performance of the powers and duties so delegated.
- There should be a formal delegation document between the parties to ensure clear understandings of expectations and requirements.
- There should be regular reporting on the delegation to enable on-going assessment and evaluation of whether the delegation is achieving expected outcomes and is still relevant.

This Review has not found evidence that the full breadth of governance accountability for delegated promotional duties has been addressed. What evolved over time has created confusion and possible misunderstandings with respect to the Board's authority and accountability.

The Annual Report of the Board provides some general accountability of the Board by providing a financial statement of the levies/fees collected and funds remitted to the Dairy Industry Development Council as required by the *DIDC Regulation* and the *FFIDA.* The Board's annual report to BCFIRB also identifies the delegated promotional duties to BCDA.

It is recommended to maintain the broad definition of promotion in the NPMA and avoid a "tortured interpretation" contradicting the plain intent of the Act. (Ref: Olera Farms vs EMB appeal, 2003) The NPMA intent is broad, enabling powers.

In summary, with respect to delegated or additional duties, **the future is not an extrapolation of the past**. (Ref: Olera appeal which stated that Commodity Boards cannot and should not be prevented from enforcing the law simply because it has not done so in the past.)

The Board should review roles and funding provided to BCDA through DIDC via the Board under FFIDA and establish as necessary, governance accountabilities to ensure funds are being used for the "proper operation of the scheme (regulation)". The Board has an indirect accountability with respect to the governance and accountability of the funds that have been collected and disbursed. Given the indirect accountability of the Board and with consideration for sound governance and financial accountability for producer funds collected and remitted to DIDC through Board administration, and with consideration of the amount of levy money involved; regardless of legal boundaries; the DIDC, BCDA, BCMMB and Minister/ministry should be jointly satisfied that these millions are all being spent with sound governance.

The Board needs to clarify roles of BCMMB and BCDA to avoid duplication and optimize effectiveness of two organizations. It is recommended to use a RACI model for analysis and clarification.

There are multiple players and interests, complimentary and competing, involved in the continued growth and development of the British Columbia dairy industry. The Board is well positioned to use its leadership role and authority to bring together the various interests and facilitate dialogue amongst the groups.

Goal # 3- Potential Additional Powers and Duties

Public and industry expectations on the dairy industry continue to increase. The public has and continues to play closer attention to quality, animal welfare, environment, food safety, biosecurity, etc. and have become more vocal when concerns arise. This has served to increase the complexity of the operating environment and management by the Board. While future actions are not totally clear, the emerging challenges may be addressed within the context of the current powers and duties with some amendments. Case law and precedents within other regulated sectors will also be considered. The Board will need to discuss with BCFIRB and the Ministry regarding regulatory amendments for some of the future additional duties in animal welfare of milking cows and the proAction program.

Based on the apparent lack of understanding and appreciation of the powers and duties of the Board by producers and processors consulted, the Board will continue dialogue with other organizations on matters potentially requiring Board attention, i.e. proAction to determine the expectations and needs of those interests for application and use of the Board's powers in implementing new initiatives consistent with the long-term strategic direction of the dairy industry. The Board will need to develop a Quality & Transportation Management System to track milk quality/incidents and document improvement which will also enable better coordination with the Ministry of Agriculture.

The Board will work with the Ministry of Agriculture to clarify expectations and understandings of roles and responsibilities with respect to milk and farm inspection in advance of the retirement of the Ministry milk inspection staff. The Board will consider formalizing the expectations and understandings.