

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Windset Farms (Canada) Ltd. v. British Columbia Farm Industry Review Board*,
2026 BCCA 279

Date: 20260626
Docket: CA50396

Between:

Windset Farms (Canada) Ltd. and Greenhouse Grown Foods Inc.

Appellants
(Petitioners)

And

British Columbia Farm Industry Review Board, British Columbia Vegetable Marketing Commission, and MPL British Columbia Distributors Inc.

Respondents
(Respondents)

Before: The Honourable Mr. Justice Abrioux
The Honourable Justice Edelman
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated January 2, 2025 (*Windset Farms Canada Ltd. v. British Columbia Farm Industry Review Board*, 2025 BCSC 2, Vancouver Docket S238189).

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Place and Date of Hearing:

Vancouver, British Columbia
April 27–28, 2026

Place and Date of Judgment with Written
Reasons to Follow

Vancouver, British Columbia
April 28, 2026

Place and Date of Written Reasons:

Vancouver, British Columbia
June 26, 2026

Written Reasons of the Court

Summary:

In October 2023, the British Columbia Farm Industry Review Board (“BCFIRB”) designated MPL British Columbia Distributors Inc. (“MPL”) as an agency with the ability to market greenhouse vegetables produced in British Columbia, for a probationary period ending March 1, 2025, after which its agency designation would be reviewed. The appellants, a producer and a designated marketing agency subject to the same regulatory scheme, brought a petition for judicial review of BCFIRB’s decision. The judge upheld BCFIRB’s decision and the appellants appealed. Before the appeal was set down for hearing, BCFIRB released its agency review decision, granting MPL an unconditional agency designation. MPL argues that the appeal should be dismissed as moot. Held: Appeal quashed. The appeal is moot as there is no longer a live issue with respect to the decision under review, since the decision has been superseded by BCFIRB’s subsequent agency designation. The Court declines to exercise its discretion to hear the moot appeal. The appellants have not established that the issues they raise are recurring issues, evasive of review, or of broad public interest. Where asked to review a policy decision made by a highly specialized tribunal, it is appropriate for this Court to exercise restraint in rendering judgment in the absence of a live dispute.

Reasons for Judgment of the Court:

Overview

[1] This appeal concerns a decision of the British Columbia Farm Industry Review Board (“BCFIRB”), reviewing a decision of the British Columbia Vegetable Marketing Commission (the “Commission”). BCFIRB exercises supervisory powers over marketing boards and commissions, including the Commission, under the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330 [NPMA]. The Commission is empowered under s. 11(1) of the NPMA to designate and regulate the agencies through which regulated product must be marketed, but it does so under the supervision of BCFIRB.

[2] MPL British Columbia Distributors Inc. (“MPL”) is a greenhouse vegetable marketer based in Ontario who appeared before the Commission seeking designation as an agency entitled to market vegetables produced in British Columbia. The Commission designated MPL as an agency subject to the approval of BCFIRB (the “First Commission Decision”).

[3] MPL next sought approval of its agency status from BCFIRB. On October 11, 2023, BCFIRB approved MPL's designation as an agency for a probationary period (the "First BCFIRB Decision"). This was a novel status which is not set out in the regulatory scheme.

[4] The First BCFIRB Decision approved MPL's agency designation for a time limited period, commencing immediately and continuing through until the licensing period ending March 1, 2025. The decision contemplated that there would be a future review of MPL's agency designation prior to issuing MPL an agency licence for the following year.

[5] Windset Farms (Canada) Ltd. ("Windset") is a producer of greenhouse grown vegetables that is subject to the regulatory scheme at issue in this appeal. Greenhouse Grown Foods Inc. ("GGFI") is a designated agency with authority to market vegetables under the same legislative scheme. Windset and GGFI sought judicial review of the First BCFIRB Decision. The judicial review was heard in April 2024 and reasons for judgment dismissing the application for judicial review were issued on January 2, 2025. Windset and GGFI appeal that decision.

[6] Before the appeal was set down for hearing, BCFIRB issued a subsequent decision which unconditionally approved MPL's agency designation. MPL argued that this unconditional approval superseded the decision under review and asked the Court to quash the appeal as moot. Windset resisted, arguing that there remained live questions about the scope of BCFIRB's jurisdiction in approving agency designations that required appellate intervention. In the alternative, Windset asked the Court to exercise its discretion to hear and determine the moot appeal.

[7] After hearing submissions for the parties on the question of mootness, we granted the relief sought by MPL and quashed the appeal, with reasons to follow. These are those reasons.

Background

The Regulatory Framework

[8] British Columbia regulates the marketing of vegetables grown in the province through the *NPMA*, the *Natural Products Marketing (BC) Act Regulations*, B.C. Reg. 328/75 [*Regulations*], and the *British Columbia Vegetable Scheme*, B.C. Reg. 96/80 [*Vegetable Scheme*]. This regime provides that large scale producers of vegetables generally must sell their vegetables through a designated agency.

[9] The *Vegetable Scheme* establishes the Commission as the first instance regulator of the British Columbia vegetable industry. The Commission exercises powers and authority granted by the *Vegetable Scheme* and the *NPMA*. Pursuant to its *NPMA* s. 11(q) rule-making authority, the Commission enacted a Consolidated General Order (the “General Order”) which sets out its regulations for the marketing of regulated vegetables. At the relevant time, the General Order provided 10 criteria that must be satisfied in order for a new agency to be granted designated agency status.

[10] BCFIRB exercises a general supervisory function over boards and commissions, including the Commission, and hears appeals from their decisions: *NPMA*, ss. 7.1, 8. The *NPMA* contains a privative clause with respect to the decisions of BCFIRB: s. 9(3). BCFIRB is to be considered an expert tribunal in relation to all matters over which it has exclusive jurisdiction: *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58(1).

[11] Both the Commission and BCFIRB must approve new designated agencies. At first instance, the Commission designates the agencies through which vegetables must be marketed: *NPMA*, s. 11(1)(a). Any order of the Commission designating an agency is subject to approval by BCFIRB: *Regulations*, s. 8. Pursuant to s. 9(2) of the *NPMA*, BCFIRB has exclusive jurisdiction to determine whether the Commission’s decision to designate an agency accords with sound marketing policy and the Commission’s General Order.

Judicial Review Decision

[12] In their application for judicial review of the First BCFIRB Decision, Windset and GGFI argued that the decision was patently unreasonable because BCFIRB: 1) ignored the conditions in Part XIV of the General Order that require a party seeking agency designation to satisfy each of 10 criteria; and 2) created a new type of provisional licence that they had no jurisdiction to create. They also argued that they were not afforded procedural fairness by BCFIRB. The judge declined to find that the First BCFIRB Decision was patently unreasonable and she rejected the appellants' submission that the BCFIRB hearing was procedurally unfair. Finding no reviewable error in the First BCFIRB Decision, she dismissed the petition.

Subsequent Developments

[13] In June 2024, while the judicial review was under reserve, the Commission repealed most of the provisions in the General Order that relate to agencies and replaced them with an "Agency Order". The Agency Order continues to include nine of the 10 criteria for designation as a new agency that were previously in the General Order. It now also includes a provision that the Commission may give different weights to the requirements or waive any of them entirely.

[14] As provided for in the First BCFIRB Decision, in anticipation of the end of MPL's probationary period, the Commission reviewed MPL's designated agency status. On January 22, 2025, the Commission concluded that MPL should be designated as an agency, subject to BCFIRB's approval (the "Second Commission Decision"). The Commission applied the Agency Order in making the Second Commission Decision.

[15] As was the case with the First Commission Decision, the matter went to BCFIRB for approval. On July 11, 2025, BCFIRB approved MPL as an agency without conditions (the "Second BCFIRB Decision"). The Second BCFIRB Decision superseded the First BCFIRB Decision.

[16] No judicial review has been sought of the Second BCFIRB Decision.

On Appeal

[17] On appeal, the appellants submit the judge erred because she failed to set aside the First BCFIRB Decision on the basis of a number of alleged errors. MPL's primary submission on appeal is that there remains no live controversy with respect to the First BCFIRB Decision because it has been superseded by the Second BCFIRB Decision. MPL submits that this Court should not exercise its discretion to hear this moot appeal.

[18] While the appellants concede that the probationary agency status granted by the First BCFIRB Decision has expired and been replaced by an unconditional grant of designated agency status issued in the Second BCFIRB Decision, the appellants do not concede that the appeal is moot. They submit that there remain live controversies about whether BCFIRB was required to give effect to the General Order and whether BCFIRB could create a new class of licence. These are issues that, in the appellants' submission, are not moot because the appellants and MPL remain subject to the ongoing supervisory scheme administered by the Commission and BCFIRB. Alternatively, if the appeal is moot, the appellants argue that this Court should exercise its discretion to hear the appeal because it is in the interests of justice to do so.

[19] MPL and the appellants both sought leave to adduce new evidence in support of their mootness arguments. We admitted this evidence on the basis that parties do not need to meet the test for admission of additional evidence on appeal to have it considered on a preliminary application to quash an appeal as moot: *Forjay Management Ltd. v. 625536 B.C. Ltd.*, 2021 BCCA 171 at para. 15.

Discussion

[20] The appeal is moot because the tangible and concrete dispute between the parties over whether MPL's probationary agency designation was lawful has disappeared: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 353, 1989 CanLII 123.

[21] Windset argues that the appeal is not moot because appellate guidance on the scope of BCFIRB's jurisdiction will nonetheless affect Windset and MPL's rights in their recurrent supervisory proceedings with BCFIRB. The possibility that the alleged issues may arise in future BCFIRB proceedings is "too remote to render the present question a live controversy": *Independent Contractors and Businesses Association v. British Columbia (Attorney General)*, 2019 BCSC 291 at para. 39, aff'd 2020 BCCA 245. While the unique nature of this very small, highly regulated community renders any decision by BCFIRB of significant import to the parties, the fact that the issues on appeal are important to the appellants does not save the appeal from being moot.

[22] This Court retains discretion to hear a moot appeal in certain circumstances. In *Tatlock v. British Columbia (Attorney General)*, 2025 BCCA 181 at paras. 18–20, this Court discussed three animating reasons for the Court's reluctance to hear moot appeals, as explained by the Supreme Court of Canada in *Borowski*:

- a. The courts' institutional competence to resolve legal disputes is rooted in the adversarial system, which ensures that issues are argued by parties who have a stake in the outcome.
- b. Judicial economy requires that scarce resources be allocated to matters that are not moot, unless there is an element of "social cost in leaving the matter undecided": *Borowski* at 362. Special circumstances of the case may make it worthwhile to apply judicial resources to resolving a moot appeal where the appeal will have some practical effects on the rights of the parties, raises issues of a brief and recurring nature that might otherwise evade review, or raises an issue of public importance.
- c. The courts' proper law-making function must be respected. By rendering judgment in the absence of a live dispute, a court risks pre-emptively dictating government decision-making in a manner that departs from its traditional role under our system of constitutional government.

[23] In this case, the parties are in an adversarial relationship and there is no reasonable concern that the issues would not be “well and fully argued” on appeal: *Borowski* at 358–359. However, it is on the second and third *Borowski* factors that the appeal falters. In the circumstances of this case, it would not be an appropriate use of judicial resources to consider and rule upon the legal issues raised by the appellants. There are four reasons for this.

[24] First, it is not correct to say, as the appellants do, that resolving the matters in issue will have a practical effect on the rights of the parties going forward. With respect to the appellants’ challenge to BCFIRB’s interpretation of the General Order, the legal and factual landscape has changed. The Agency Order has replaced the General Order. Therefore, even if there have been inconsistencies in the past about the way BCFIRB has interpreted the General Order, a new framework is now being applied, making judicial guidance on the former framework of little or no practical utility to the parties moving forward. Further, contrary to the appellants’ submissions, the evidentiary record does not support the conclusion that the issuance of probationary licences by BCFIRB is a recurring issue. While the appellants point to a recent case in which the Commission issued a conditional agency designation, there is no evidence to support the notion that BCFIRB is issuing probationary licences on a recurring basis.

[25] Second, unlike other cases in which a matter has been found to be evasive of review because it recurs too quickly to leave time for judicial review (for example, the municipal approval to hold an annual triathlon, as in *Harrison Hot Springs (Village) v. Kamenka*, 2004 BCCA 347), such temporal urgency is not present in this appeal. The judicial review decision was issued on January 2, 2025. At that time, all parties knew that the Second Commission Decision was imminent, and that it would be followed by a second hearing before BCFIRB. Nevertheless, the appellants took no steps to expedite the appeal so that it would be heard prior to the Second BCFIRB Decision, rendering an appeal of the judicial review of the First BCFIRB Decision moot.

[26] Third, the issues raised in this appeal are purely economic in nature. While they are interesting and important issues to the appellants, they are not issues of broad public interest.

[27] Finally, the First BCFIRB Decision is a policy decision made by a highly specialized tribunal. The appellants have in part cast their position as one in which the parties would be helped by the advice and assistance of this Court in considering jurisdictional issues relating to the scope of BCFIRB's power. In the context of a specialized tribunal administering a complex regulatory scheme, where there is no live issue, it is appropriate for this Court to exercise restraint.

Conclusion

[28] For all of these reason, we quashed the appeal.

“The Honourable Mr. Justice Abrioux”

“The Honourable Justice Edelman”

“The Honourable Justice Francis”