

MEMORANDUM

TO: CFC Board of Directors
FROM: CFC Staff
DATE: December 5, 2023
SUBJECT: Final Levy Assessment Abeyance Request– Simple Path Farms Poultry Ltd.

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On November 2, 2023, the CFC Board released its decision with respect to Simple Path's request that it waive or reduce the market levy assessment for marketing periods A-174 and A-175. The Board denied Simple Path's request and confirmed the levy assessment of \$241,483.00.

The Board's November 2 decision states that payment of this levy shall be made within 35 days after the day on which that decision was sent to Simple Path. As that decision was sent on November 2, the deadline for payment is Friday, December 7, 2023.

On Monday, December 4, Simple Path initiated a complaint before the Farm Products Council of Canada. This complaint asks that Council (i) strike section 5(1) of the *Levies Order* as unreasonable or *ultra vires*; and (ii) set aside the Board's levy assessment. In the alternative, Simple Path's complaint contends Council should conclude that the force majeure conditions of section 11.2(1) of the *Levies Order* were met and that CFC should cancel the Board's levy assessment.

Also on December 4th, Simple Path made a written request to the CFC Chair asking that the Board delay finalizing this levy assessment until Council's complaint is disposed of.

In the event the Board declines Simple Path's request to the Board, and if Simple Path does not remit payment by December 7, 2023, Simple Path's market development license will be automatically suspended based on the following regulatory provisions:

Canadian Chicken Marketing Levies Order, section 11.2(3):

The primary processor shall remit the levy within 35 days after the day on which the final assessment determination is received.

Canadian Chicken Licensing Regulations, section 9(4):

Despite subsections (1) to (3), a market development licence is to be automatically suspended if the holder fails to comply with subsection 11.2(3) of the *Canadian Chicken Marketing Levies Order* (emphasis added).

The effect of these regulatory provisions is that a license is automatically suspended where a licensee fails to comply with its obligation to remit payment within 35 days. These provisions do not, however, address a situation in which a processor challenges the Board's final assessment determination by way of a complaint to Council.

In these circumstances, it is open to the Board to decide to hold the final assessment of levy in abeyance pending the outcome of the complaint to Council. This would avoid the automatic suspension of Simple Path's license and allow the complaint process before Council to run its course. Such a decision would be comparable to the approach taken by the Board in allowing Simple Path to pay levy owing for prior periods through a payment plan extending beyond the levy assessment deadline. Such an approach would also recognize Council's complaint function while preserving CFC's authority to suspend Simple Path's license in the event the complaint is dismissed and Simple Path fails to pay the assessed amount. A Board decision to hold the final levy assessment in abeyance would be without prejudice to any position CFC may take on the merits of the complaint to Council and related relief sought by Simple Path in that complaint.

Should the Board decline Simple Path's request to hold the levy assessment in abeyance, the automatic suspension would take effect (as previously discussed) unless stayed or set aside, notably, pursuant to an application for judicial review to the Federal Court of Canada.