



October 7, 2019

Files: N1715, N1716, N1718, N1719

Claire E. Hunter
Hunter Litigation Chambers Law Corporation
2100 – 1040 West Georgia Street
Vancouver BC V6E 4H1

Robert P. Hrabinsky
1000 – 570 Granville Street
Vancouver BC V6C 3P1

Dear Sir/Mesdame:

Re: *Prokam and Thomas Fresh v. BCVMC*; File Nos. N1715, N1716, N1718, and N1719

On September 20, 2019, counsel for Prokam Enterprises Ltd. (“Prokam”) applied to me as the remaining member of the panel that rendered the decision in the above captioned appeals, pursuant to BCFIRB’s supervisory power found in subsections 7.1(1) and (2) as well as section 8.1 of the *Natural Products Marketing (BC) Act (NPMA)* and section 15 of the *Administrative Tribunals Act*, for orders that:

1. The British Columbia Vegetable Marketing Commission (Commission) forthwith issue to Prokam Enterprises Ltd. a producer-shipper licence for the growing season beginning April 1, 2020 and ending March 31, 2021;
2. Prokam’s delivery allocation for regulated product for the 2020-2021 growing season shall be calculated without regard to the 2018-2019 and 2019-2020 growing seasons; and
3. Prokam shall have leave to apply for a renewal of the producer-shipper licence for the growing season beginning April 1, 2021 and ending March 31, 2022.

On September 27, 2019, BCFIRB received an email from counsel for the Commission seeking three weeks to prepare and deliver a response to the application due to his schedule but would try to submit the Commission’s response sooner if possible.

Background

On February 2, 2019, the BCFIRB panel (myself and Diane Pastoor) issued a decision arising from an appeal between Prokam¹ and Thomas Fresh Inc. in which the Commission was directed to reconsider directing Prokam to market through BCFresh Inc.; replacement of Prokam’s Class 1 Producer Licence with a Class 4 Licence; and, replacement of Thomas Fresh’s Class 1 Wholesaler Licence with a Class 4 Wholesaler Licence. This decision was not judicially

¹ Bob Dhillon is the primary shareholder in Prokam Enterprises Ltd.. He is also a director of CFP Marketing Corporation

reviewed and my understanding is that the Commission has commenced its reconsideration process.

Separately, an entity known as CFP Marketing Corporation dba Canada Fresh (“CFP”) applied for a Class 1 Agency Application for an agency license. On June 28, 2019, the Commission issued a decision summarily dismissing CFP’s application and imposing a moratorium on all designated agency and producer-shipper licence applications.

On July 3, 2019, CFP filed an appeal of this decision alleging that the Commission failed to follow its own processes (regarding designated agency approval) and conducted itself in a manner that was procedurally unfair and gives rise to a reasonable apprehension of bias” and seeking an order setting aside the summary dismissal and directing the Commission to approve CFP as a designated agency or alternatively to forthwith process CFP’s application in a manner consistent with the General Orders.

On September 10, 2019, the presiding member in the appeal (BCFIRB Member Pawan Joshi) issued a process letter to the parties wherein he deferred further consideration of CFP’s appeal in accordance with s. 8(8) of the *NPMA* to allow for a supervisory process to be completed.

While I agree with CFP that the industry should not be closed to new participants for an indeterminate period of time to allow for prolonged review, there needs to be some consideration of which, if any, of these initiatives² should be resolved as a matter of sound marketing policy before a new agency application can be considered. In my view, that is the role for a supervisory panel of BCFIRB.

I am also aware that a supervisory panel has now been struck. I am not a member of that panel given my prior involvement with the *Prokam* appeal. In fact, on July 15, 2019, I expressly recused myself from any and all BCFIRB discussion and decision-making pertaining to all current and future appeals or supervisory processes involving BCFIRB in relation to the Commission’s consideration of CFP’s Class 1 Agency Licence.

Decision

I do not find it necessary to hear from the Commission on this matter as I am not prepared to consider Prokam’s application for a producer-shipper license. In this case a final decision in the Prokam appeal was issued on February 2, 2019. Prokam is now seeking relief that is substantive in nature, as opposed to the correction of a slip or other error. In such circumstances, I consider myself *functus officio*: see *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848.

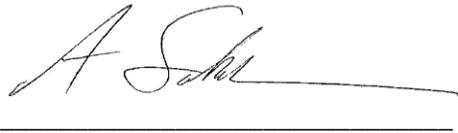
I also note that, as set out above, I have specifically recused myself from the supervisory panel that has now been struck in light of my prior involvement with the Prokam appeal. On this

² The initiatives referenced include the reconsideration of matters from the Prokam appeal, an agency review as well as a strategic review).

application, Prokam is seeking the issuance of a producer-shipper licence, and appears to seek that relief pursuant to BCFIRB's supervisory jurisdiction. It would therefore be inappropriate for me to consider the granting of that kind of relief on this application, and by cover of this letter, I am forwarding this application to the supervisory panel for their consideration.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in cursive script, appearing to read 'A Sakalauskas', is written over a horizontal line.

Al Sakalauskas, Vice Chair
Presiding Member