



November 29, 2019

File: N1908

DELIVERED BY E-MAIL

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Dear Sir/Mesdames:

RE: Prokam Enterprises Ltd. (Prokam) v BC Vegetable Marketing Commission

On November 27, 2019 I wrote to the parties in my capacity as the presiding and sole member of the above captioned appeal panel to advise that I was giving consideration to whether it was appropriate in the circumstances to defer further consideration of this appeal in accordance with s. 8(8) of the *Natural Products Marketing (BC) Act (NPMA)*. I gave the parties the opportunity to provide their positions on BCFIRB addressing the appeal-related matters in its supervisory capacity and have now received and reviewed their submissions.

The BC Vegetable Marketing Commission (Commission) submission provides a review of the many procedural steps taken in these matters since October 2017. It is not necessary to review that history here. The Commission position is that the recursive nature of the process to date demands that this latest appeal be deferred in accordance with s. 8(8) of the *NPMA* until the existing supervisory process has been completed.

Prokam agrees that it makes sense to have issues raised by this appeal addressed by the same supervisory Panel to which the earlier CFP Marketing Corporation (CFP) appeal was deferred. However, Prokam says that neither Prokam nor CFP has yet been given an opportunity to meet with the supervisory panel or the Commission in the context of the ongoing supervisory process to which CFP's appeal has been deferred, and to which Prokam's September 2019 application for an interim producer-shipper license was forwarded. If this appeal is deferred to the supervisory review, Prokam expects to be afforded significant and timely participatory rights in the supervisory review process.

Second, Prokam is concerned that deferral may result in additional delay and suggests that any prejudice to Prokam by this deferral could be mitigated through the granting of the interim relief it seeks, namely granting Prokam an interim producer-shipper licence pending the outcome of this process either within the appeal or within the supervisory process.

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Farm Industry Review Board

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Prior to consenting to deferral of the appeal, Prokam wants meaningful and direct input into the timeline and the procedure to be adopted on supervisory review and suggests that the pre-hearing conference scheduled in the appeal be used to canvass interested parties which it describes as, at a minimum, BCFIRB, Prokam, CFP, and the Commission to discuss issues of procedure and timing and establish a procedural roadmap for a supervisory review, agreeable to all parties.

Decision

I have considered the positions of the parties and specifically Prokam's position that the conference call scheduled in relation to its appeal before me as Presiding Member to hear from the parties on their positions with respect to the deferral should somehow be used as a mechanism to create a roadmap for the supervisory process misinterprets my role. To be clear, I cannot make determinations that would tie the hands of the supervisory Panel.

Further and in light of the fact that both parties acknowledge that this appeal should properly be deferred pending the completion of the supervisory review that is already underway, I order that further consideration of Prokam's appeal be deferred in accordance with s. 8(8) of the *NPMA* until the supervisory process has been completed.

In making this Order, I cannot limit the supervisory Panel as to the issues it may consider, the process it will follow or the time frame to conclude its supervisory process. Having made the decision that I have sufficient information before me based on the submissions of the parties to make my decision and as I conclude it is appropriate in these circumstances to defer the appeal, it is now up to the supervisory Panel to determine how it will incorporate the issues raised in this appeal in its supervisory process. Any roadmap for the supervisory review process must be developed by the supervisory Panel.

As those members would not be in attendance on a pre-hearing conference call held in the appeal proceedings, I can see no utility in conducting the pre-hearing conference scheduled for Monday, December 2, 2019. To adopt such a process would only add to the delay the appellant seeks to avoid.

This decision will be provided to the supervisory Panel and the parties should expect to hear from that Panel in due course.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Pawanjit Joshi
Presiding Member