



January 9, 2020

File: 44200-00 GOV

DELIVERED BY EMAIL

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Dear Sirs and Mesdames:

VEGETABLE SUPERVISORY REVIEW AND PROKAM ENTERPRISES LTD.

I write in response to Ms. Hunter’s letter of December 30, 2019, in which she raises an objection to this panel “considering any evidence or submissions from the BC Vegetable Marketing Commission (the “Commission”) or BCfresh – both parties who have adopted a position adverse to Prokam in these proceedings – that Prokam [Prokam Enterprises Ltd.] has not had an opportunity to hear and test”.

Counsel (Mr. McDonell) for BC Fresh Vegetables Inc. (BCfresh) provided a brief letter in response dated January 3, 2020 asking for more time to consider what BCfresh characterizes as “troubling” allegations by Prokam Counsel. On January 8, 2020, the panel received further correspondence from Counsel for BCfresh taking the position that having raised the allegation of bias, Prokam must now seek a ruling from this panel. The panel also reviewed the January 9, 2020 Prokam Counsel letter stating the primary concern is it is improper for the supervisory panel to “...consider information provided by an adverse party about our clients without giving our clients an opportunity to know and test the case they have to meet.”

The panel has determined it is in a position to address Prokam’s objections without further submissions from the parties or any further process and has considered all necessary and relevant information. This is our decision.

Background

It is first necessary to address the background to this matter.

A supervisory panel of the BC Farm Industry Review Board (BCFIRB) is currently undertaking a supervisory review of the regulated vegetable industry, the terms of reference for which may include governance-related issues, strategic planning for the industry, and a related agency review.

As the supervisory review got underway, on September 20, 2019 Prokam applied to the remaining member of the panel that rendered the appeal decision in *Prokam et al v. BC Vegetable Marketing Commission* (February 28, 2019) (Prokam appeal decision) for a producer-shipper licence and relief on its delivery allocation calculation. As the appeal panel member was *functus officio*, they forwarded the application to the supervisory panel (October 7, 2019). Given the Commission, as directed by BCFIRB in the Prokam appeal decision, was in the process of following those directions and reconsidering a number of matters, including the avenue for Prokam was to market its regulated crops, the supervisory review panel determined it was appropriate to wait until the Commission issued its reconsideration decision before addressing the Prokam application.

The Commission issued its reconsideration decision on November 18, 2019, before the supervisory panel began to deal with the earlier Prokam application. As part of the relief sought, Prokam requested a producer-shipper licence, or to be directed to CFP Marketing Corporation (CFP) in the event CFP obtained a designated agency licence (instead of being directed to BCfresh). Prokam also sought relief on the calculation of its delivery allocation. Prokam emphasized the need for some form of expedited or interim relief to enable it to plan and plant for the 2020/21 crop year.

The supervisory review panel determined it was appropriate to put the broader supervisory process on hold in order to consider and address Prokam's immediate business concerns. The supervisory review panel established a condensed submission process on December 4, 2019, in response to Prokam's stated need for timely relief. This interim process included all parties the panel determined it needed to hear from (Prokam, the Commission, BCfresh) and closed on December 16, 2019. The panel concluded that in addition to the direct submissions it received it could rely as well on the extensive information already at hand through the previous appeals and requests, which parties incorporated by reference into their submissions.

Redacted Submission from BCfresh

In the submission process outlined above, the panel received redacted and unredacted forms of the same submission from BCfresh, dated December 16, 2019. BCfresh requested that information in paragraph 13 of its submission be redacted. Prokam received the redacted form of the BCfresh submission.

In sum, Prokam says that it has no ability to test this information given the nature of, and schedule for, the submission process and says it is entitled to a high degree of procedural fairness as these decisions "impact its right to a licence".

First, it is important to note that it is a fundamental principle of orderly marketing that quotas and licenses do not confer any rights which may be asserted against the regulator: *Sanders v. British Columbia (Milk Board)* (1991), 53 B.C.L.R. (2d) 167. No producer has a “right” to any licence. Licences issued by commodity boards are conditional, based on the performance of the applicant. Where a licensee is not compliant with the conditions of the licence or with the relevant rules, the commodity board may, under particular circumstances, suspend, cancel or as here, vary a licence. BCFIRB has previously accepted, and this panel agrees, that a production licence is a privilege earned through performance and compliance, not a right.

Second, BCFIRB has both appellate and supervisory mandates in relation to BC’s eight commodity boards, including the Commission, under the *Natural Products Marketing (BC) Act*. In each of these capacities, it routinely receives information of a commercially sensitive or proprietary nature through *in camera* proceedings. Where BCFIRB finds that information received *in camera* is material to a decision it is being asked to make, it would next obtain submissions from the other parties and consider these in determining a method to protect confidentiality.

However, in this case, the panel has determined that the redacted paragraph of the BCfresh submission, which provides specific details of BCfresh’s markets and contracts, is not material to the interim decision it is presently making. At issue is whether Prokam has a legitimate opportunity to market regulated vegetables for 2020/21. The panel finds that it can proceed to make its decision without reference to the redacted information provided by BCfresh.

Meetings with Vegetable Commission

Prokam also objects to the panel’s meetings with the Commission on October 28, 2019 and November 14, 2019. We find this objection to be without merit.

The supervisory review panel’s letters (dated November 6 and 27, 2019 respectively) copied to Prokam and posted to BCFIRB’s web site, confirm the purpose of these meetings was to assist the panel in understanding the business of the Commission as background to determining the scope and process of the regulated vegetable supervisory review, to obtain a detailed status report on current Commission projects, to request current governance documents, and to get feedback on a working group proposal. These letters also confirmed that the panel will be providing stakeholders, including Prokam, the opportunity for written comment before the supervisory review terms of reference are finalized.

As all of the parties are well aware, BCFIRB is conducting a supervisory process relating to high level issues within the industry. Importantly, the panel and the Commission met on both occasions prior to the Commission making its reconsideration decision. In recognition of the fact that the Commission had not yet issued its decision, the panel and the Commission did not discuss the reconsideration matters beyond a process update. Also, the meetings occurred before the panel established the process to address Prokam’s requests for interim relief. The matters that Prokam’s requests raise that are specific to the 2020/21 production year are narrow and specific compared with those issues which the panel expects to deal with through its supervisory review which will be different in scope than the specific appeals and have industry-wide application.

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The panel has not yet fully developed the process for the broader supervisory review but has indicated that parties with an interest will have opportunities to participate in the review which is underway. Given the nature of the supervisory review process, no party should expect that it will participate in every meeting held by this panel. This supervisory review process will not have the same formalities and procedural steps as an appeal process given the nature and intent of BCFIRB's supervisory mandate.

Finally, as noted above, the issue currently before the panel dealing with Prokam's applications as interim matters, is whether Prokam has a legitimate opportunity to market regulated vegetables in 2020/21. The panel finds that it can decide on these interim matters without reference to the broader industry and project background information sought from the October and November 2019 meetings with the Commission.

Given the time constraints related to planning for the 2020/21 crop season, the panel is doing its best to release its decision on Prokam's request for interim relief in the very near future as communicated on December 23, 2019. Once its decision is released, the panel will be moving forward with the broader supervisory review.

Yours truly,

A handwritten signature in cursive script that reads "D. E. Stancil".

Daphne Stancil
Chair, Supervisory Panel