



BC Farm Industry Review Board

May 22, 2020

File: 44200-60/VEG

DELIVERED BY EMAIL

Claire E. Hunter, QC
Hunter Litigation Chambers Law
Corporation

Dear Ms. Hunter:

RE: VEGETABLE SUPERVISORY REVIEW (REVIEW)

I write in response to your letter of April 30, 2020, submitted on behalf of your clients Prokam Enterprises Ltd. (Prokam), and CFP Marketing Corporation dba Canada Fresh (CFP).

Your letter was in response to my letter dated April 3, 2020, in which the supervisory panel requested written feedback from regulated vegetable industry stakeholders on three proposed areas of Review focus, and how stakeholders would like to be consulted.

You indicated a general statement of support for the proposed Review topics but did not provide specific advice on how your clients wish to be consulted. It also provided a lengthy and positional explanation of the procedural history of your clients' interactions with the British Columbia Farm Industry Review Board (BCFIRB), including their previously articulated concerns and grievances with respect to past decisions of BCFIRB, and the BC Vegetable Marketing Commission (Commission). The letter culminates in two alternative requests, which are, in the panel's view, an invitation to revisit or reconsider prior decisions to defer (or not reinstate) your clients' appeals pending the outcome of this supervisory review.

Client concerns

With respect to the various grievances raised in your letter, and with the exception of CFP's demand to have its agency application immediately considered, they have been addressed in previous decisions of BCFIRB in its appellate and supervisory capacity:

- February 28, 2019 - *Prokam and Thomas Fresh v BCVMC* – the BCFIRB appeal decision addressed procedural fairness and conflict of interest concerns with

Web:

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Phone:

Info: 250 356-8945

Fax: 250 356-5131

Mail:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Office:

2975 Jutland Rd
Victoria, BC V8T 5J9

Commission decision making (and specifically involvement of Director Guichon) and ordered the Commission to address specified orders on reconsideration.

- September 10, 2019 - Decision of Presiding Member – deferring CFP’s appeal pending completion of supervisory process.
- October 7, 2019 - Decision of Presiding Member – dismissing Prokam’s application for a producer-shipper license, relief on its delivery allocation calculation as he was *functus officio* and referring the matters to the supervisory panel.
- November 29, 2019 - Decision of Presiding Member – deferring Prokam appeal of Commission’s Reconsideration Decision of November 18, 2019 (made by a Commission panel agreed to by the parties to address conflict of interest concerns involving Director Guichon noted above) pending completion of supervisory process.
- January 9, 2020 – Supervisory panel process decision addressing Prokam’s concerns about interim relief submissions and concerns about panel meetings with Commission.
- January 10, 2020 – Supervisory Panel Interim Relief Decision (Prokam) January 10, 2020 – addressing Prokam’s immediate need for decisions for 2020/2021 crop year including agency, producer shipper license, and delivery allocation.
- February 11, 2020 – Supervisory Panel Prior Approval Decision - approving the Commission’s decision on Prokam’s delivery allocation for 2020/2021 crop year.
- March 30, 2020 – Supervisory Panel Process Decision - declining to refer Prokam’s appeal back to the appellate jurisdiction as supervisory panel made decisions on substantive issues Prokam raised in its November appeal and the appropriate course of action being for the supervisory panel to conclude its work.

The panel does not intend to revisit or reconsider any of these decisions, including the previous decisions to defer your clients’ appeals pending the outcome of this review process. Your clients have other legal remedies available to them if they are not satisfied with past decisions of BCFIRB.

As noted above, the panel responded to several applications and requests of your clients. In particular, the panel responded on January 9, 2020; January 10, 2020; February 11, 2020; and March 30, 2020. The panel took the time to provide Prokam the direction it needed through these responses to ensure Prokam had an avenue for marketing its product in 2020/21, an opportunity to seek production growth within the Commission rules, and an increased allowable production volume through the exclusion of its zero production years. The panel provided Prokam with an opportunity to be heard on many of the same issues identified in your letter before issuing its interim decisions. The interim decisions supersede many of the Commission’s earlier orders which Prokam sought to appeal. It appears from your correspondence that Prokam is now seeking another avenue to “rehear” the same appeal issues which the panel has decided for the growing year 2020/21.

Despite the panel's objectives of expediting answers to the issues Prokam raised in its appeals to provide certainty for the growing year 2020/21, the Commission has advised that Prokam does not intend to plant regulated vegetables for marketing in 2020/21. Given this disappointing outcome, the panel can only wonder if the time spent considering the interim matters would have been better spent pressing forward with the Review which the panel deferred until it answered Prokam's issues. In any event, the outcomes of the Review may assist and possibly inform Prokam with dealing with any of their remaining concerns.

Review Process

Considering the various concerns you raise around the issue of delay and fair process, the panel will briefly address the process that has been followed to date, and the anticipated future process.

A supervisory review is not an adversarial process that gives rise to the same procedural fairness requirements of an appeal. It is for the panel to determine how it will exercise its supervisory authority and use consultation with stakeholders to best meet the SAFETI¹ principles in the interest of sound marketing policy. In this case, the panel determined that a broad consultative process accessible to all members of the regulated vegetable industry who wish to participate is inclusive, effective and strategic and will support the sound marketing policy decisions the panel needs to make.

The Review is addressing three areas which relate directly to the various concerns raised by your clients – Commission structure and decision-making, agency accountability (which will assist applicants with understanding the accountability expectations of an agency); and storage crop delivery allocation (which Prokam argues is not being managed appropriately by the Commission to the detriment of Prokam). As noted earlier, the panel first requested industry input, including from your clients, by April 30, 2020 on the proposed areas of focus and how industry members want to be consulted.

As set out in my May 15, 2020 email to you and posted on the BCFIRB website, now that the Review topics are finalized, the panel will be seeking industry member input to assist it in determining if change is necessary to the policy and rules of the Commission membership, structure and decision-making (Commission Structure), how the Commission manages agencies through the establishment of an accountability framework (Agency Accountability) and how the Commission manages delivery allocation for the storage crop sector (Delivery Allocation (Storage Crop)).

The panel is asking industry members, including your clients, to participate in a short survey on how they want to engage with the panel as part of the Review process before May 29, 2020 ([Survey link](#)). As part of its consultation work, the panel will be providing industry members with background information and specific questions for response.

¹ Strategic Accountable Fair Effective Transparent Inclusive

The panel is prioritizing its work based on the urgency of the issues. The panel has, and continues to acknowledge, that CFP, as well as other interested parties seeking agency and/or producer-shipper licenses, require certainty about when the Commission will lift its moratorium on applications. Completion of the agency accountability framework as part of the Review is necessary before the Commission lifts the moratorium on considering agency applications (including CFP's). The panel will continue to work with the Commission to establish timelines for each component of the Review and report on them through its [website](#).

CFP and Prokam, like all interested parties, will have the opportunity to provide input on matters relevant to their businesses as part of the Review and to have access to the information that impacts them. Subject to any confidentiality concerns, all information related to the review, including CFP and Prokam matters, are, and will continue to be, publicly accessible on BCFIRB's web site.

The panel is not in a position to make specific commitments on the timing of future decisions. The panel is adjusting as necessary to be able to continue the Review during the COVID-19 pandemic and is acutely aware of the need for timely outcomes.

Conclusion

As noted above the supervisory process is not an avenue to revisit your client's appeals. The fact that they disagree with a particular outcome, does not mean that the panel's decisions are open to reconsideration.

It is the panel's objective to remain focused on providing the Commission direction regarding the three Review topics after consulting with interested parties. If after receiving this correspondence and reviewing the BCFIRB website you continue to have questions about the Review or your clients' participation, please do not hesitate to contact Wanda Gorsuch at 778-974-5790 or Wanda.Gorsuch@gov.bc.ca.

Please encourage Prokam and CFP to engage in the Review process and to complete the survey (Monkey poll) regarding their preferred methods of input. The panel's goal is to achieve positive outcomes for the regulated vegetable industry, through the application of the results of the Review.

The panel looks forward to hearing from you in this regard.

Regards,



Daphne Stancil,
Chair, Supervisory Panel

cc:

Debbie Etsell, Chair
BC Vegetable Marketing Commission

André Solymosi, General Manager
BC Vegetable Marketing Commission

BCFIRB web site