



BC Farm Industry Review Board

November 24, 2023

File: 44200-60\AREV

DELIVERED BY EMAIL

Claire Hunter, K.C.
Hunter Litigation Chambers

Kenneth McEwan, K.C.
McEwan Partners

Ravi Hira, K.C.
Hira Rowan

Robert McDonell
Farris LLP

Robert Hrabinsky
Affleck Hrabinsky Burgoyne

Dear All:

RE: RULING ON BCFRESH APPLICATION TO ADDUCE EVIDENCE IN PHASE II OF ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY SUPERVISORY REVIEW

In my ruling of October 20, 2023, regarding next steps in Phase II of this Supervisory Review, I directed that that any party wishing to adduce additional evidence in Phase II should do so by November 8, 2023. I received one such application from BCFresh.

In its November 8, letter, BCFresh states that it intends to support Hearing Counsel's recommendation that the BC Vegetable Marketing Commission (Commission) review Prokam's Delivery Allocation ("DA") in a transparent process. However, BCFresh goes on to state that in the event I decide not to follow that recommendation, and instead consider Prokam's DA in this supervisory review, it wishes to introduce evidence relating to circumstances relevant to the calculation of that DA.

On November 17, Hearing Counsel responded to BCFresh's application. His position is that BCFresh's application is unnecessary at this time, as the evidence regarding Prokam's DA will only be relevant if I do not accept Hearing Counsel's recommendation to have the Commission determine the DA, and instead make that determination in this Supervisory Review. He therefore recommends that I receive all of the submissions from the participants pursuant to my October 20 ruling, and then make my decision regarding his recommendation. If I reject that recommendation, I could then invite all participants, including BCFresh, to bring on evidentiary applications related to the DA issue.

I agree with Hearing Counsel's position. As he points out, the BC Supreme Court specifically confirmed my earlier rulings that this Supervisory Review process is iterative in nature, such that it is possible to have the application brought on at a later date if it becomes necessary to do so. That will ensure the participants are only put to the time and expense of adducing additional evidence if it is required, furthering the principle of proportionality. Granting leave to all participants, including Prokam, to bring on such an application will also ensure a fair process.

Accordingly, BCFresh's application to adduce additional evidence at this time is denied. However, BCFresh, along with all other participants, will be at liberty to bring an application to adduce evidence relevant to the calculation of Prokam's DA in the event I determine that issue should be addressed in this Supervisory Review.

Regards,

A handwritten signature in black ink, appearing to read "Peter Donkers". The signature is fluid and cursive, with a large initial "P" and "D".

Peter Donkers
Chair

cc: Mark Underhill, K.C.
Kate Phipps
Nazeer Mitha, K.C.
BCFIRB web site