BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND

ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY REVIEW

July 14, 2022

Contents

I. Introduction

1. On May 26, 2021, the British Columbia Farm Industry Review Board ("BCFIRB") ordered a supervisory review process ("Supervisory Review") pursuant to s. 7.1 of the *Natural Products Marketing (BC) Act* (the "*Act*" or the "*NPMA*") to address allegations of bad faith and unlawful activity arising out of civil claims filed by two entities which pled misfeasance of public office by certain members and the general manager of the British Columbia Vegetable Marketing Commission ("Commission").

2. Specifically, in April 2021, BCFIRB learned that a British Columbia regulated vegetable producer, Prokam Enterprises Ltd. ("Prokam"), filed a Notice of Civil Claim in the BC Supreme Court, naming as defendants the then Commission Vice-Chair, Peter Guichon, and the Commission's General Manager, Andre Solymosi.

3. On April 27, 2021, BCFIRB learned of another Notice of Civil Claim filed in the BC Supreme Court by an Ontario-based greenhouse business seeking agency designation to market British Columbia greenhouse vegetables, MPL British Columbia Distributors Inc. ("MPL"), which named Commission members John Newell, Mike Reed, Corey Gerrard, Blair Lodder and Mr. Guichon (together, the "Commissioners"), as well as Mr. Solymosi.

4. BCFIRB subsequently invited any other individuals who wished to advance similar allegations to apply to participate in the Supervisory Review. Through that process, Bajwa Farms Ltd. ("Bajwa Farms") was granted participant standing. Participant rights were also granted to a designated agency licenced to market storage crops, BC Fresh Vegetables Inc. ("BCFresh"). CFP Marketing Corporation ("CFP"), a business applying to the Commission for agency designation and associated with Prokam, was invited to apply for participation rights should the panel make any orders that affected it. It ultimately did not participate in the Supervisory Review.

5. The Final Terms of Reference, set out below in Part III, were issued on June 18, 2021 ("FTOR"), under which BCFIRB Hearing Counsel, Nazeer Mitha, Q.C., was charged with investigating the allegations set out in the FTOR. That investigation included extensive document production from the participants, along with numerous witness interviews. The investigation continued through to January of 2022 when MPL, who had initially declined, decided to participate in the Supervisory Review. The oral hearing commenced later that month, extending over 17 days in February, March and April, culminating in one day of oral argument on June 23.

6. These are my reasons addressing the allegations in the FTOR. In short, I have found that the allegations are not substantiated against the Commissioners and Mr. Solymosi. Accordingly, I am setting aside all of my interim orders previously issued, and seeking written submissions from Hearing Counsel on what next steps are appropriate to address the very serious concerns raised in this decision, and in addition, what other consequences should follow from my findings in this decision, including the issues of costs and legislative reform raised by the Commission. After

review of Hearing Counsel's submissions, I will seek submissions from all of the participants

II. Procedural History of the Review

7. As above, the Notice of Supervisory Review was issued on May 26, 2021. The Notice provided that the Commission, the named personal defendants in the two civil claims, Prokam and MPL would all be allowed the opportunity to participate in the Supervisory Review as of right. The Notice invited potential participants to apply to participate in the Supervisory Review and to make submissions with respect to interim orders restricting the Commission's activities.

8. On June 14 and 18, 2021, I issued orders granting the following participants standing in the Supervisory Review:

    1. The Commission
    2. Prokam
    3. Andre Solymosi
    4. The Commissioners (John Newell, Mike Reed, Corey Gerrard, Blair Lodder and Peter Guichon)
    5. BCFresh
    6. Bajwa Farms

9. On June 4, 2021, MPL acknowledged BCFIRB's right to undertake a supervisory process, but did not expressly state if it would participate. MPL advised it did not intend to participate in the supervisory review on July 19, 2021.

10. The Notice of Supervisory Review also invited submissions on the terms of reference, which were received on June 4, 2021. I issued the FTOR on June 18, 2021, at which time I also circulated draft rules of practice and procedure. All participants, as well as MPL, were invited to make written submissions on those rules. A pre-hearing conference took place on June 25, 2021, where all participants and MPL were invited to speak to their written submissions. The Final Rules of Practice and Procedure ("Rules") were issued on July 9, 2021. The Rules were amended on August 13, 2021 to allow me to issue orders pursuant to s. 7.1(3) of the *Act* to produce documents, rather than Hearing Counsel.

11. On June 14, 2021 and July 9, 2021, I invited written submissions with respect to interim orders restricting the Commission's activities in light of the allegations in the FTOR. On August 20, 2021, I made an order specifying the composition of the Commission panels that would consider matters related to Prokam, MPL and CFP.

Those interim orders also prohibited Mr. Solymosi from substantive participation in any deliberations or decision-making arising from any requests made by Prokam, CFP, MPL (or any of their principals or affiliated companies) until the conclusion of the Supervisory Review or further order of the panel. The interim orders also restricted Commissioners Newell, Gerrard and Lodder from participating in any deliberations or decision making arising from applications or requests made, or to be made by the same parties until the conclusion of the Supervisory Review or further order of the panel. (Mr. Reed's and Mr. Guichon's terms with the Commission ended in March 2021). I made an order amending the panels on September 15, 2021[1], and made a further amendment on September 24, 2021[2].

12. The amended Rules allowed me, after consultation with Hearing Counsel, to make orders pursuant to s. 7.1(3) of the *NPMA* to require non-participants to the Supervisory Review to produce documents and answer questions. On August 13, 2021, I made an order requiring MPL to produce to Hearing Counsel documents relevant to the Supervisory Review. I understand that MPL subsequently produced documents, and participated in an interview with Hearing Counsel.

13. The oral hearing of this matter was originally scheduled to take place in late September and early October 2021. At the request of Hearing Counsel, and to allow further investigation and disclosure to all participants, on September 16, 2021, the hearing was adjourned, and rescheduled for two weeks commencing January 31, 2022.

14. Hearing Counsel's investigation continued from September 2021 through January 2022. All documents, witness lists and will-say statements produced from the participants, along with Hearing Counsel interview summaries, were made available to the participants.

15. On January 10 and 11, 2022, I received letters from MPL and Prokam raising a number of preliminary issues, including an application for an adjournment. I invited submissions on those issues from all participants, and addressed them in a January 26, 2022 ruling.

16. On January 12, 2022, MPL applied for standing to participate in the Supervisory Review, and sought leave to serve a late witness list, call additional witnesses, and for its counsel to lead its principal's evidence. In my January 26 ruling, I allowed MPL's application for standing, and directed that MPL produce will-say statements and a witness list.

[1] Mr. Royal, a Commission member, had sold his farm and was no longer serving as a Commissioner.
[2] My Order varied the Commission's Amending Order 54 to allow for a 4 member panel to consider requests and applications made by CFP and MPL for the duration of the Supervisory Review.

17. In that same ruling, I refused Prokam and MPL's application for an adjournment, finding that matters had been sufficiently investigated to allow the oral hearing to proceed, but indicated I would accept applications for additional investigation at the conclusion of the hearing.

18. Prokam also sought leave to call certain witnesses, and to exercise the powers of Hearing Counsel to compel document disclosure and answers to questions from witnesses. I refused that application in my January 26 ruling, but confirmed that participants were free to interview any witness if they chose to do so. I also refused the application of Prokam to lead the evidence of Mr. Bob Dhillon, a representative of Prokam, and Mr. Bob Gill, on the basis that it would improperly usurp the role of Hearing Counsel, and that Prokam would be entitled to examine those witnesses following Hearing Counsel.

19. My January 26 ruling also addressed allegations by Prokam of non-compliance with the Rules. I determined that there was no substantive non-compliance with the Rules, but did order the Commission to produce a revised list of documents that would include a better description of the documents over which it was asserting privilege. I also refused Prokam's application for additional document production.

20. Lastly, my January 26 ruling also addressed the use that could be made of a transcript of proceedings before the Standing Joint Committee for the Scrutiny of Regulations held on March 13, 2008.

21. On January 30, 2022, I ordered that certain documents over which the Commission asserted Cabinet confidence privilege were not subject to s. 39 of the *Canada Evidence Act* and ordered the Commission to produce them.

22. The oral hearing began on January 31, 2022. I made a number of rulings in the course of the hearing.

23. First, on February 2, 2022, the third day of the hearing, Prokam and MPL again applied to adjourn the proceeding for substantially the same reasons they raised in January 2022. I refused that application, and in doing so commented on whether the investigation was incomplete because Hearing Counsel had not interviewed Ms. Dawn Glyckherr, who had done some strategic review work for the Commission.

24. On February 4, 2022, Prokam, supported by MPL, brought an application to investigate the conduct of Hearing Counsel related to the receipt of an email from counsel for Mr. Solymosi which had been displayed during the course of testimony. I refused that application on the basis of the representations of Hearing Counsel as to what had occurred.

25. On that same date, I also ruled that Hearing Counsel could lead the evidence of Mr. Brian Meyer, a former general manager of Island Vegetable Co-operative

Association ("IVCA"), by way of an affidavit due to Mr. Meyer's serious health issues that prevented him from testifying.

26. The evidence did not come close to concluding in the first two scheduled weeks of hearing, and two further weeks were subsequently added in March and April 2022. As a result of cross-examination straying well beyond the FTOR in the first two weeks of the hearing, and after receiving submissions from all participants, I placed time limits on cross-examinations for the additional two weeks of hearing in a March 18, 2022 ruling.

27. In that March 18 ruling, I also allowed MPL's application for document production from the Commission relating to the lifting of the agency licence application moratorium for the two-week period October 21, 2020 to November 6, 2020. I denied MPL's renewed application to call Ms. Glyckherr as a witness, and for document production related to her work, on the basis that the evidence to date had not persuaded me it was necessary to revisit my previous ruling.

28. On April 20, 2022, at the conclusion of evidence, MPL applied once more for an order to call Ms. Glyckherr as a witness, and also applied for Mr. Solymosi to be recalled for further examination. I addressed those applications in an April 29, 2022 ruling. With respect to Ms. Glyckherr, I determined that the evidence did not provide any basis to conclude she would be able to address any of the specific allegations in the FTOR. With respect to Mr. Solymosi, I found that two late-disclosed email chains did not justify recalling him, given that Messrs. Newell and Solymosi had both been subject to extensive cross-examination on the substance of the meeting that followed those emails.

29. Over the course of the hearing, I heard from 16 witnesses over 16 days. Hearing Counsel and all participants provided written submissions in May and June, and oral submissions proceeded on June 23, 2022.

III. The Nature, Purpose and Scope of the Supervisory Review

30. Given the final submissions received from MPL, Prokam and Bajwa Farms ("the Complainant Participants"), and in particular Prokam, it is necessary to revisit the FTOR and the purpose of this Supervisory Review.

31. As set out in the FTOR, this review has been guided by two objectives:

    - ensuring effective self-governance of the Commission in the interest of sound marketing policy and the broader public interest; and,
    - ensuring public confidence in the integrity of the regulation of the BC regulated vegetable sector.

32. The two-fold purpose was to first determine whether the following allegations could be substantiated, and then consider what resulting orders or directions may be required:

    1. The Commission's exercise of powers to direct producers to agencies and the issuance of new agency licenses in a manner that is designed to further the self-interest of members of the Commission, including:

        a. Self-interested prevention of new agencies from entering the British Columbia market to further the Commission members' economic interests, by both failing to adjudicate agency licence applications, and preventing the granting of additional production allocation to growers thought to be aligned with applicants;

        b. Collusion by members to "vote swap" on agency applications; and,

        c. Self-interested direction of producers to agencies in which the Commission members have a financial or personal interest.

    2. Commission members and staff exercising or failing to exercise statutory duties in bad faith, for improper purposes, and without procedural fairness due to a personal animosity toward at least one producer, specifically Prokam.

33. In its final written submissions, Prokam takes the position, for the first time, that this process has a very limited scope (counsel for Prokam did not address this position in oral submissions). Specifically, Prokam says the only question in this Supervisory Review "is whether there is evidence that, if accepted, could support Prokam's misfeasance allegations".[3] Prokam relies on the written submissions of Hearing Counsel, together with the Notice of Supervisory Review, both of which include language regarding whether allegations "can be substantiated". It says that the language supports the conclusion that the task of this panel is not to weigh the evidence and determine the merits of the allegations in the misfeasance claim, but rather, akin to a motion to strike in the BC Supreme Court, the panel is to simply look to see if it is "plain and obvious" that the allegations could not be substantiated.

34. I see no merit in this position. I agree with Hearing Counsel and the other non-complainant participants (Mr. Solymosi, the Commissioners, the Commission and BCFresh) that the scope of this Supervisory Review has been clear from the outset. As the Commissioners note,[4] if my task has not been to investigate the allegations and determine whether they can be substantiated (in the sense of actually weighing evidence and making findings), it would be impossible to fulfil the objectives of this review. Without actual findings as to whether the allegations raised by Prokam, MPL

[3] Prokam's Written Submission, para. 22
[4] Commissioners' Written Submission, para. 70

and Bajwa Farms are, or are not, substantiated, I do not see how this review could restore confidence in the integrity of the administration of the regulated vegetable sector.

35. Moreover, this review took the form of a public hearing with cross-examination of witnesses, including those accused of wrongdoing, preceded by extensive document discovery and witness interviews. That seems to me to be fundamentally inconsistent with a "motion to strike" type approach, which I understand generally proceeds on the pleadings without evidence, or the weighing of contested evidence.

36. Indeed, it is difficult to reconcile Prokam's current position to its position at the investigation stage about the importance of the truth-seeking function of this review, and its active participation throughout in producing thousands of pages of documents, and its demands that Hearing Counsel interview a large number of witnesses. For example, in July of 2021, in its submissions on the Rules, and in response to the Commission suggesting it should not have to produce documents unless the allegations could be substantiated, Prokam argued that the Commission's position would defeat the purpose of an investigation and discovery process (an argument that I ultimately accepted). Prokam further emphasized the truth-seeking function of this Supervisory Review in its January 17, 2022 application for an adjournment and relief requiring Hearing Counsel to call specific witnesses.

37. While not entirely clear, it may be that Prokam's principal position is that this more narrow scope is necessitated by virtue of the fact, in Prokam's view, this Supervisory Review became "afflicted…by a degradation in procedural fairness, effectively compromising the truth-seeking function of this review.[5] I address the alleged procedural shortcomings of this review in more detail in the next section. At this stage, I simply wish to note that Prokam's submission that this review has been "ill-conceived" from the start, and that neither Prokam nor MPL wished to participate, appears inconsistent with its June 4, 2021 submission on the terms of reference for the Supervisory Review, where it stated:

> We welcome the BCFIRB taking seriously the allegations that have been made in the pleadings. As set out in our May 27, 2021 letter, Prokam has long been trying to draw the BCFIRB's attention to the issues that form the basis for the Prokam Claim. It is a positive development that this conduct is now to be a focus of BCFIRB's attention. …

38. Prokam also points to what it sees as a "fluidity" to the interpretation of the scope of the FTOR in this matter. It says that the language used in the FTOR was defined broadly, yet over the course of the review process, this panel and Hearing Counsel more narrowly (and improperly) construed the FTOR.[6]

[5] Prokam's Written Submission, para. 12
[6] Prokam's Written Submission, paras. 30-33

39. I agree with Prokam that the FTOR framed the scope of this Supervisory Review broadly. This left the Supervisory Review sufficiently open and flexible to allow Hearing Counsel to investigate any impropriety he found in the course of his investigation. That said, as I explained in my January 26, 2022 ruling, the initial focus of the Supervisory Review was necessarily on the allegations raised by the Complainant Participants and the responses of those accused of wrongdoing. If there appeared to be some credible basis arising out of the evidence or investigation for Hearing Counsel to go further with his investigation, then the FTOR left it open for him to do so. Without a credible evidentiary foundation, however, going beyond those initial allegations would be nothing more than a fishing expedition into any and all conduct by the Commission. I was not persuaded that any such foundation was ever put forward, and I remain of the view that it would not have been proportionate or in the public interest to investigate other matters in the absence of some evidentiary basis for doing so.

40. Lastly, and this was a particular focus in counsel's oral submissions, Prokam says that Hearing Counsel, in his final submissions, improperly attempted to reframe the scope of the FTOR as being about an investigation into "corruption", which it says is much broader than misfeasance and connotes a more systemic and wide-ranging issue.[7] I did not understand Hearing Counsel to be attempting to move the goalposts in this review. Rather, I understood he used that language because it captured the essence of many of the allegations (that is, the impugned individuals acting out of self-interest rather than in the public interest), and to emphasize that my task was not to adjudicate a claim in misfeasance in public office (a proposition with which I understand all participants agree). I have not approached this review as being an investigation into broader systemic issues, but instead have focussed on the specific allegations in the FTOR.

IV. Procedural Fairness

41. Prokam and MPL raise a number of allegations of procedural fairness, focussed on the actions taken by Hearing Counsel and my previous rulings. As I have largely addressed these matters in previous rulings, I will attempt to address them in a more summary fashion below.

42. Before doing so, however, I wish to highlight one overarching point at the outset. In the Notice of Supervisory Review, I explained that a high degree of procedural fairness was warranted, and set out the basis for that decision this way:

> The Act affords BCFIRB significant latitude in how it exercises its supervisory jurisdiction. BCFIRB acknowledges that allegations of bad faith and wrongdoing by public officials warrant a high degree of procedural fairness and an oral hearing.

[7] Prokam's Written Submission, paras. 34-35

43. As I described in my ruling on the final Rules, the Rules were "designed to balance the investigatory function of a Supervisory Review against the need for a very high degree of procedural fairness given the nature of the allegations being investigated." Procedural fairness is inherently flexible and what is necessary will depend on the circumstances. An oral hearing was required given the potential impact on the rights of those accused of wrongdoing. There were times when I made rulings that the Complainant Participants were not entitled to certain rights of cross-examination and discovery at least in part because they were not responding to allegations of wrongdoing. In the review to date, the Commissioners and Mr. Solymosi were the ones facing extremely serious allegations. That is the lens through which these procedural fairness allegations should be viewed.

A. Conduct of Hearing Counsel

44. Prokam and MPL allege various impropriety by Hearing Counsel that they say compromised the fairness of this proceeding.

45. First, Prokam raises a concern that Hearing Counsel did not attempt to frame and test Prokam's claim in the best possible light. For example, Prokam points to Hearing Counsel's failure to address Mr. Guichon's evidence in its 2018 appeal that he considered there to be urgency "as a grower … [t]hat had a whole bunch of potatoes in storage to sell", which Prokam says, "casts doubt on the rigour with which Hearing Counsel has approached his review of the evidence and the reliability of arguments based on that review."[8]

46. I previously addressed the role of Hearing Counsel in my January 26, 2022 ruling on Prokam's application for leave to call certain witnesses, where I noted that he was responsible for collecting and presenting "all of the evidence counsel determines is relevant at the oral hearing … and representing the public interest throughout the process." I also noted that it would be "inappropriate for me to grant to Prokam the powers of Hearing Counsel to investigate and require answers to questions. To the extent that I determine that additional investigations may be required following an application, it is the role of Hearing Counsel, who is vested with duties to investigate in the public interest, to undertake that work."

47. The mere fact that Hearing Counsel did not consider relevant Mr. Guichon's evidence in 2018 that he approached matters "as a grower" does not impugn the way in which he approached his role. As I explain later in these reasons, Mr. Guichon's evidence in no way substantiates Prokam's allegations, such that I cannot find any fault with Hearing Counsel's decision not to rely on that evidence. In any event, Prokam had the opportunity to - and did - present that evidence to me, such that there was no unfairness to Prokam from the fact that Hearing Counsel did not rely on that evidence.

[8] Prokam's Written Submission, paras. 18-20, 37

48. Prokam again raises the issue of Hearing Counsel not interviewing all possible witnesses that it identified. In my January 26, 2022, ruling, I emphasized that Hearing Counsel was properly entitled to exercise his discretion with a view to proportionality when it came to his investigation:

> As I see it, it is entirely appropriate and in the best interests of this supervisory review for Hearing Counsel to exercise his duties with a view to proportionality. To hold otherwise would give rise to concerns about fishing expeditions and the waste of public resources, particularly when will say statements were not based on actual knowledge of evidence witnesses would give. That is not in the public interest.
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> The bottom line is that Hearing Counsel has formed the opinion, in his discretion, that, with a couple of exceptions, the additional witnesses were either unnecessary or irrelevant. At this point, on the basis of the submissions I have received, I am not prepared to override that exercise of discretion, particularly taking into account that Prokam has not actually spoken to many of the third party witnesses it sought leave to call. As I noted above, I see no impediment to Prokam speaking with those witnesses at any time, and it was open to them to do since they filed their claim in March of 2021, well before this supervisory review commenced.

49. At no time during the review process did Prokam (or MPL) bring on an application to have a witness called with a proper evidentiary foundation, which could have been established by their own interviews. Evidently, they chose not to conduct those interviews, which in my view significantly undermines any allegation of unfairness.

50. With respect to Prokam's complaint that Hearing Counsel did not compel sufficient document production from the Non-Complainant Participants, it is noteworthy that in its final submissions Prokam emphasizes that "it has been Prokam's position that it had in its possession sufficient evidence to establish its misfeasance claim against Messrs. Guichon and Solymosi" in the form of documents related to the 2018 appeal, which it says was bolstered by the production of additional documents in this proceeding.[9] Again, it is difficult to reconcile this admission with Prokam's position that it was somehow prejudiced by a lack of document production.

51. MPL appears to argue that some degree of unfairness arose out of the fact that it was not permitted to call witnesses and demand document discovery because that authority was vested in Hearing Counsel. This overlooks the extensive pre-hearing investigation and document disclosure process, which required the participants to produce all documents in their control. MPL was also provided with summaries of all witness interviews conducted by Hearing Counsel. MPL was also permitted to apply to me for orders requiring further document production and to call witnesses, a process of which it availed itself several times. Accordingly, I do not see any unfairness from Hearing Counsel having the principal authority to direct witness interviews and document production.

[9] Prokam's Written Submission, para. 9

52. Finally, Prokam suggests that Hearing Counsel did not vigorously cross-examine the individuals subject to Prokam's allegations, and engaged in more aggressive cross-examination of the complainant witnesses than the non-complainant witnesses.

53. It is true that at times Hearing Counsel did take a more forceful approach in his questioning of certain witnesses, in particular, Mr. Dhillon, in contrast to his approach with a witness such as Mr. Solymosi. But as I address below, this was in my view necessitated by the credibility issues of Mr. Dhillon which emerged during his extensive cross examination, in contrast to the straightforward and credible evidence provided by Mr. Solymosi, even under multiple hours of cross-examination. Accordingly, I do not see the approach taken by Hearing Counsel to be demonstrative of any bias or unfairness.

B. Decisions by the Hearing Panel

54. Prokam and MPL both take issue with a number of rulings that I made in the course of the hearing, arguing that they led to procedural unfairness. I do not see that is necessary or appropriate to defend those rulings in these reasons. I will however highlight the pertinent rulings that I made in connection with the issues MPL and Prokam now raise.

55. First, Prokam takes issue with my decision to deny its request for an adjournment to allow Hearing Counsel to conduct further investigations. I addressed the adjournment application in my January 26, 2022 ruling:

> As I understand it, considerable work has been done to investigate those allegations. Multiple witnesses have been interviewed, and thousands of pages of documents have been produced and reviewed. Perhaps most importantly, the key participants, being the individuals who have raised the allegations and those who stand accused, will all be testifying in the hearing and subjected to rigorous cross-examination by experienced counsel. The allegations can therefore be fully explored during the hearing on the basis of the investigation done to date …

56. I left it open, however, that, the investigation could continue if it appeared necessary based on the evidence at the hearing:

> However, it may be that at the conclusion of the evidence, it becomes apparent that there are other areas that must be explored, or additional documents and witnesses to be produced. If there is a credible basis arising out of the evidence in the hearing for these additional steps to be taken, then it will be open to the participants to apply to me at the conclusion of the evidence. In that regard, I wish to make clear that I see no impediment, either under our Rules of Procedure or the BC Supreme Court Rules, to counsel for any of the participants interviewing whatever witnesses they so choose, and presenting me with an evidentiary foundation based on those interviews.

57. As I noted above, no evidentiary foundation was ever presented to me, a point I reiterated in Prokam's adjournment application on February 3, 2022, the third day of the hearing.

58. Next, Prokam says that my denial of its application to lead evidence from Messrs. Dhillon and Gill led to unfairness. I also addressed this in my January 26, 2022 ruling:

> As I have noted on several occasions, this is not an adversarial process; it is inquisitorial in nature. Hearing Counsel "has the primary responsibility for collecting and presenting all of the evidence counsel determines is relevant at the oral hearing, ensuring an orderly and fair hearing, and representing the public interest throughout the process." He has the role of ensuring that the proceedings allow me to obtain all the information needed for me to determine the issues in the Terms of Reference, while also ensuring that the evidence is properly constrained. Turning over the presentation of evidence at first instance to counsel for a witness would have the effect of allowing them to frame the issues and the direction of the hearing, which is the role designated to Hearing Counsel. It is therefore my view that Hearing Counsel should conduct the first examination of Messrs. Dhillon and Gill, which can take the form of a cross-examination as is necessary.
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> I am also satisfied that no procedural unfairness to Messrs. Dhillon and Gill arises out of that procedure. Those individuals are not the subject of any allegations of wrongdoing, and any rights they may have will not be in any way compromised by having Hearing Counsel conduct the first examination. I also note that counsel for the witness is entitled to examine the witness last before re-examination by hearing counsel, which affords an appropriate right to be heard.

59. Both Prokam and MPL say that unfairness arose out of the time restrictions on cross-examinations that I imposed in my March 18, 2022 ruling. As I explained there, time limits were appropriate because the cross-examinations had often strayed far beyond the FTOR for the Supervisory Review. I left it open that if any participant could point me to specific evidence they had not had the opportunity to canvas, I would retain the discretion to deviate from the time limits to afford counsel more time. I exercised that discretion a number of times in favour of the Complainant Participants. Importantly, in their closing submissions, neither Prokam nor MPL pointed me to any specific areas they were not able to canvas because of the time limits imposed on cross-examination.

60. MPL takes issue with my decision that it would not be permitted to recall Mr. Solymosi to cross-examine him on two late-disclosed emails showing Commissioner Newell's opposition to MPL entering the BC marketplace in 2017. I explained my reasoning for not recalling Mr. Solymosi in my April 29, 2022, ruling:

> I am mindful of MPL's suggestion of potential unfairness if Mr. Solymosi is not recalled to address these emails. I do not see that any unfairness arises. As above, at best, the email chains speak to Mr. Newell's views, and all parties were able to cross-examine Mr. Newell. Further, if there is anything relevant arising out of either email chain, it is the

December 14, 2017 meeting, and all of the parties also had a chance to extensively cross-examine Mr. Solymosi on that meeting, including on the minutes that were in evidence from the outset.

61. Lastly, Prokam raises a more general concern that procedural fairness was initially intended to benefit all parties, but over time began to favour the individuals subject to the allegations. As I noted at the outset, I ordered an oral hearing to ensure a high degree of procedural fairness to those accused of wrongdoing. Of course, procedural fairness is flexible and context-specific. At times, I determined that Prokam and MPL were not entitled to certain procedural rights because, at least in part, they were not the ones accused of wrongdoing. Those rulings reflected, in my view, an appropriate, context specific application of my jurisdiction to control the procedure while balancing the fairness owed to the participants.

V. Applicable Legal Principles

62. There appears to be broad agreement between Hearing Counsel and the participants that it is appropriate for me to have regard to the legal principles concerning the tort for misfeasance in public office in addressing these very serious allegations, but that I am not to adjudicate on whether the tort is made out.

63. Hearing Counsel emphasizes the need for restraint when dealing with allegations of misfeasance or wrongdoing. The allegation of misfeasance is an extremely serious one, and proof commensurate with the seriousness of the alleged wrong is required. It is among the most egregious of conduct as it carries with it the “stench of dishonesty”.

64. To the same effect, counsel for the Commissioners observes that the allegations are particularly serious as they have the effect of undermining confidence in the regulated industry and can have a chilling effect on government actors. Thus, courts consider such claims “skeptically” on an exacting standard, and require clear proof commensurate with the seriousness of the wrong. They further say that the claims should only be brought with caution and restraint, and require well-particularized pleadings.

65. Prokam made a lengthy oral submission that misfeasance is not necessarily synonymous with corruption, noting that a broad range of misconduct can ground an action in misfeasance, including breaches of statute, acting in excess of granted powers or for an improper purpose, wilfully choosing not to discharge public obligations, or acting in a procedurally unfair manner. It further says that misfeasance can be established through a pattern of conduct. I am prepared to accept that may be so, but reiterate that I will focus on whether the specific allegations in the FTOR have been made out; namely, whether there has been conduct by the named Commissioners and Mr. Solymosi motivated by self-interest and personal animus.

VI. The Nature of the Regulated Vegetable Industry

66. The regulatory scheme for the regulated vegetable industry was succinctly described by the Commission in its written submissions at paras. 6-12, and I adopt it in its entirety:

> The Commission is the first instance regulator of the British Columbia vegetable industry. The *British Columbia Vegetable Scheme*,[10] as promulgated under the *NPMA*, establishes the Commission and its associated powers. BCFIRB has general supervisory powers over the Commission and hears appeals from orders, decisions, or determinations made by the Commission.[11]
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> Under the *Vegetable Scheme*, the Commission has the power and duty to "promote control and regulate in any respect the production, transportation, packing, storage and marketing of a regulated product".[12] The Commission's powers, duties, and obligations include to: (a) make orders and rules necessary or advisable to promote, control, and regulate effectively the marketing of a regulated product; (b) regulate where, when, and through which agency a regulated product must be marketed; (c) require persons engaged in marketing regulated vegetables to register and obtain licenses; and (d) to cancel a license for violation of a provision of the scheme, regulations, or an order of the Commission.[13]
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> The Commission, as the first instance regulator of the vegetable industry, "sets a strategic vision, establishes rules, makes regulatory decisions and carries out enforcement activities in support of producers, the industry and the public interest."[14] It does so in a complex regulatory environment—regulating a wide range of vegetables in a rapidly-changing industry that is subject to changes in the market and consumer demand, increasingly stringent food safety requirements, and uncontrolled imports.
>
> Reflecting this complexity and the importance of industry expertise to regulating vegetables, the Commission is composed of one appointed Chair and up to eight producers, elected to their positions by other producers in the industry.[15] The Commission also has a General Manager with delegated powers under the *NPMA* and staff members who carry out the day-to-day administration of the Commission. [Footnote Omitted]
>
> The consequence of the regulatory scheme is that (except in limited circumstances), all producers of regulated vegetables must market through designated agencies.[16]

[10] *British Columbia Vegetable Scheme*, B.C. Reg. 96/80 [*Vegetable Scheme*].
[11] *NPMA*, s. 8.
[12] *Vegetable Scheme*, s. 4.
[13] *NPMA*, s. 11.
[14] Ex. 1 at p. 4174 (2019-20 Vegetable Review Decision dated December 22, 2020, at para. 54).
[15] *Vegetable Scheme*, s. 4.
[16] British Columbia Vegetable Marketing Commission, General Orders, Part XIV, s. 1.

> Designated agencies are private vegetable marketing businesses that are licensed by the Commission and delegated regulatory authority.[17]
>
> Designated agencies thus play a critical role in the regulation of the vegetable industry. Reflecting that importance, the issuance or renewal of an agency license is a privilege, not a right—potential agencies must go through an application process and licenses for existing agencies are reissued annually and subject to review at the Commission's discretion.[18]
>
> In turn, designated agencies are subject to obligations and duties under the regulatory scheme. In particular, the Commission's general orders provide, among other things: (a) that with respect to wholesalers, any sales of regulated product subject to minimum pricing rules must receive prior Commission approval to ensure minimum prices are respected; and (b) agency's supply needs are determined by their producer's "delivery allocation" or "DA". Producers must not (i) produce;[footnote omitted.] or (ii) ship regulated product without a corresponding DA without prior Commission approval. [19]

67. A word is also warranted about what is meant by "orderly marketing", particularly in the storage crop sector. The need to enforce rules for orderly marketing is widely supported, with even the principals of Prokam and MPL expressing their agreement with the need for compliance with the principles of orderly marketing.

68. As was described by Mr. Solymosi in his evidence, orderly marketing in the storage crop sector is grounded in three components: agencies responsible for representing groups of producers in the marketplace; delivery allocation ("DA"), which agencies use to manage the rotation of producers' supply into the marketplace; and minimum pricing that provides economic stability to producers and to permit multiple agencies to compete in the same marketplace on service and quality. Minimum pricing is required to prevent a race to the bottom and ensure economic stability. Orderly marketing is what has allowed the British Columbia regulated storage crop vegetable industry to survive despite it having relatively smaller volumes and higher production costs than other areas in North America.

69. Against this backdrop, I turn to the specific allegations being advanced by Prokam, MPL and Bajwa Farms.

[17] General Orders, Part IV, s. 2.
[18] General Orders, Part XIV, ss. 10 – 16.
[19] Ex. 1 at p. 5106 (BCFIRB Decision dated February 28, 2019, at para. 6).

VII. Prokam's Allegations

A. Background and Findings of Fact

70. The evidence establishes the following facts with respect to the Commission's dealing with Prokam and its principals.

1. The Investigation into Prokam and Issuance of Cease and Desist Orders

71. Prokam is a producer, whose principal is Mr. Dhillon. In late 2015, Prokam acquired DA in the amount of 26 tons which represents production from approximately 60-70 acres. There is no dispute that in 2017, Prokam increased its production of potatoes to 380 acres without acquiring further DA. Prokam planted, produced and shipped approximately 5,000 tons of potatoes, accounting for 9% of BC's total potato production. In particular, Prokam shipped and sold roughly 4,000 pounds of Kennebec potatoes, for which it had no DA, through its agency, IVCA.

72. Mr. Dhillon stated Prokam's production was in response to its agency's (IVCA), growth plan to fill the premium early wholesale retail market. There was no written direction or record of IVCA directing Prokam to produce in excess of its DA. There is no Commission restriction on producers planting in excess of DA. However, marketing product without DA or in excess of DA requires Commission approval.

73. Mr. Dhillon was at all material times a director of IVCA. His brother-in-law, Mr. Gill, was hired as IVCA's mainland sales representative primarily to sell Prokam's potatoes.

74. Prior to Mr. Gill's hiring, IVCA was actively soliciting out-of-province sales with Thomas Fresh Inc. ("Thomas Fresh") in Alberta and Saskatchewan. IVCA marketed Prokam potatoes to Thomas Fresh in 2016. In March 2017, Thomas Fresh sent signed 60-day forward contracts to IVCA, which Mr. Gill executed in April 2017 to supply Thomas Fresh with Prokam's potatoes at a set price. That price was significantly below market price.

75. In late January 2017, the Commission initiated a review process to coordinate agency production planning. IVCA was asked repeatedly to submit a marketing plan, but IVCA remained silent on its plans for Prokam's potatoes (grown in excess of its DA) and its relationship with Thomas Fresh, instead relying on an earlier marketing plan submission IVCA prepared for the BCFIRB Vancouver Island Agency Review in November 2016.

76. On or about April 5, 2017, a storage crop agency managers' meeting was held with respect to production and DA. Mr. Dhillon attended that meeting. At the meeting, it was emphasized that agencies and producers were required to comply with their DAs and not sell below the Commission's minimum price orders.

77. Following that meeting, on May 18, 2017, Mr. Solymosi sent an email to a number of individuals, including Mr. Dhillon. In that email, Mr. Solymosi advised that the Commission intended to take enforcement steps on "Producers who produce far in excess of their Delivery Allocation from the Commission". Enforcement proceedings might also be brought upon agencies who do not comply with Commission policies and the General Orders. Mr. Solymosi appended to that email a letter to storage crop agencies that answered in detail questions regarding the Commission's authority, requirements, and penalties.

78. The evidence is clear that Mr. Dhillon understood from this communication that the Commission would be taking a strict approach to DA-related compliance.

79. Mr. Solymosi is the General Manager of the Commission. There is some debate between the participants in this Supervisory Review with respect to Mr. Solymosi's role. Prokam and MPL emphasized the significant role Mr. Solymosi has, including the impact he has on Commission decision making. The Commissioners and Mr. Solymosi emphasized that Mr. Solymosi does not actually exercise any decision-making authority under the legislation. I find that Mr. Solymosi's role is as described by Hearing Counsel. Mr. Solymosi is not a Commission member; his authority is primarily exercised by the making of recommendations. That said, Mr. Solymosi's recommendations, as the General Manager, carry significant weight and the Commission relies on him to a considerable extent.

80. On June 14, 2017, Mr. Solymosi wrote to IVCA and Prokam, explaining that the Commission had taken the view that Prokam and IVCA were in non-compliance with the General Orders for the 2016/17 crop year as IVCA had not requested approval for marketing potatoes grown in excess of Prokam's DA. Prokam and IVCA were warned that the Commission would be monitoring non-compliance with various matters, including DA, and that a failure to comply could result in the cancellation of Prokam's producer license.

81. Prokam and IVCA responded by way of a letter dated July 10, 2017 ("July 10 Letter"). In addition to the then Commission Chair, the letter was also addressed to the then Chair of BCFIRB, the Minister of Agriculture and the opposition critic. The July 10 Letter, as Mr. Dhillon ultimately agreed, was critical of the Commission and took the position that Prokam had done nothing wrong. Mr. Dhillon nevertheless agreed that Prokam had, in fact, grown potatoes significantly in excess of its DA.

82. Both Messrs. Dhillon and Gill gave evidence about the July 10 Letter. Mr. Gill was forthcoming about the involvement of the entire IVCA board of directors, including Mr. Dhillon, in the preparation of the July 10 Letter, even when it might not be in his own interests to say so. While Mr. Gill was less forthcoming with respect to other matters, with respect to the July 10 Letter, I found him to be a reliable witness.

83. In contrast, there were significant issues with Mr. Dhillon's credibility. Among other issues, Mr. Dhillon denied in his evidence that he had been involved at all in preparing

the July 10 Letter, stating he relied on his agency, IVCA, to respond. As I have already mentioned, Mr. Dhillon was a director and vice president of IVCA. According to Mr. Gill, the letter was prepared by Mr. Gill, but the board of directors of IVCA, including Mr. Dhillon, went over the response line by line and made changes before the letter was finalized. I find that Mr. Dhillon's suggestion he simply signed the July 10 Letter without reading it closely is not credible. It is clear to me that Mr. Dhillon had significant involvement in the drafting of the July 10 Letter. I also note that Mr. Dhillon agreed with significant portions of the July 10 Letter, including portions which can be fairly characterized as containing inflammatory but entirely unfounded allegations (such as "harassment", "threats", and "borderline prejudicial human rights violations").

84. Even more troubling was Mr. Dhillon's repeated attempts to deflect responsibility for the conduct at issue because he was a "grower" that "relied on his agency". There is no question Mr. Dhillon had significant responsibility and authority within IVCA. Mr. Dhillon's repeated self-serving suggestions that he was in effect an unsophisticated farmer, acting at the direction of a third party agency, were not credible. Mr. Dhillon is clearly a sophisticated businessman who I find knew exactly what he was doing in planting potatoes well in excess of his DA, and that doing so would be something the Commission took very seriously.

85. Mr. Dhillon was also questioned about his knowledge of minimum pricing requirements. Under cross-examination, and despite being a long-time producer, a director and vice president of IVCA, and a signatory to the July 10 Letter, he testified that he had no knowledge of any minimum pricing orders. This was simply not believable, and was perhaps the clearest illustration of Mr. Dhillon's consistent tendency to deflect and avoid answering questions where the answers were not favourable to him. In that regard, Mr. Dhillon had many of the characteristics of an evasive and untruthful witness.

86. Returning to the events in question, Mr. Solymosi responded to the July 10 Letter on behalf of the Commission, and requested that Mr. Dhillon and IVCA's president, Mr. Michell, attend the September 6, 2017 Commission meeting. Neither Mr. Dhillon nor Mr. Michell did so.

87. On August 8, 2017, the Commission set a minimum price for potatoes purchased in British Columbia by an agency for marketing outside of the province ("export price").. Throughout August 2017, Prokam was shipping potatoes outside the province to Thomas Fresh, well in excess of its DA, and, once set, below the new Commission minimum price order. Mr. Dhillon admitted under cross-examination that he understood that selling below the Commission's minimum pricing orders is a serious matter.

88. At the same time, the relationship between IVCA staff on the one hand, and Messrs. Dhillon and Gill on the other, was, as Mr. Dhillon agreed, deteriorating and becoming "chaos". Mr. Michell confirmed that Prokam and Mr. Dhillon were directly selling

regulated product without telling the general manager of IVCA, and were specifically selling below the Commission's minimum price to Thomas Fresh.

89. As a result, on or about September 2017, Brian Meyer, IVCA's general manager, contacted Mr. Solymosi to inform him that IVCA was having problems complying with the minimum price orders set for out of province marketing. Throughout the discussions between Mr. Meyer and Mr. Solymosi, Mr. Meyer specifically attributed those difficulties to his inability to control the agency because of Prokam's influence. Based on all the evidence before me, I find that IVCA was reaching out to Mr. Solymosi for assistance, and that Mr. Solymosi understood that to be the nature of his communications with IVCA.

90. Much was made about two emails sent in the course of the exchange of correspondence between Mr. Solymosi and IVCA on September 27, 2017. In the first email from Mr. Solymosi to Mr. Meyer (at 11:34 am), Mr. Solymosi sought information from IVCA about the difficulties it was having with Prokam, specifically seeking a letter from IVCA acknowledging the issues, explaining corrective actions and requesting assistance from the Commission, and explanations about certain processes. Mr. Solymosi requested that IVCA provide that information in advance of the next Commission meeting scheduled for October 16, 2017. Mr. Solymosi stated "Prokam is not to be solicited for any information that is out of the ordinary".

91. In a second email from Mr. Solymosi that day (at 1:47 pm), Mr. Solymosi explained that selling below minimum price "is a serious matter that puts the Agency in non-compliance and your Class I Agency license [is] at risk of being revoked." He further confirmed that if a producer's actions put an agency in non-compliance, the ultimate responsibility lies with the Agency and the Commission would hold the agency accountable. Mr. Solymosi went on to write:

> I am requesting the letter and documents to protect IVCA from the actions being taken by a rogue producer under IVCA control. I believe and entrust that your efforts and those of IVCA to take corrective action on the matter are genuine and in the interest of preserving integrity in the orderly marketing system. The Commission needs to know that IVCA is taking ownership of its obligations as an Agency and that there is an issue beyond its control that is placing the agency in a position of non-compliance with its mandate. I can honestly attest that the Commission wants IVCA to succeed as an Agency. As long as we are honest and upfront, work together in support of the orderly marketing system, and request assistance when needed, your Agency license is protected.

92. Mr. Solymosi was cross-examined at length with respect to these two emails. With respect to his reference to Prokam as a "rogue producer", Mr. Solymosi agreed on cross-examination that by September 27, 2022, he did, in fact, view Prokam as a rogue producer. His opinion was based on the description provided by Mr. Meyer, as he trusted what an agency manager told him. Mr. Solymosi had not had any communication with Prokam when he described Prokam as a rogue producer.

93. When Mr. Solymosi was asked about whether his email to IVCA was an inducement to get information against Prokam in return for protection of its license, Mr. Solymosi testified that was incorrect, as his intention was to communicate that an agency acting as it should and taking accountability for its role would be allowed to keep its license. He testified that he was focused on IVCA as an agency required to comply with the General Orders and assisting IVCA to regain control of its agency.

94. On or about October 3, 2017, Mr. Solymosi and Mr. Krause, then the Commission's government appointed Chair, met with Mr. Meyer and Mr. Michell amongst others. IVCA provided significant additional material, some of it annotated, that led Mr. Solymosi and Mr. Krause to form the view that cease-and-desist orders ought to be issued, particularly in light of the selling of potatoes below the minimum price orders.

95. Mr. Krause testified that after looking at the documents and considering the October 3 meeting, he formed the view that Prokam and Mr. Dhillon were using Mr. Gill to sell potatoes below the minimum price, and that Prokam and Mr. Dhillon seemed to be representing IVCA in the market without authority. He saw the situation as serious, and he directed Mr. Solymosi to put together cease and desist orders, and authorized Mr. Solymosi to send them.

96. At this point, Mr. Krause brought Mr. Guichon into the picture because he thought it appropriate for the vice-chair of the Commission to become involved. Thus, around October 5, 2017, Mr. Solymosi sent Mr. Guichon an email asking to bring him up to speed on compliance issues and attaching the draft cease and desist letters. Mr. Guichon subsequently had a telephone call with Mr. Solymosi and Mr. Krause. Based on the information that Messrs. Solymosi and Krause provided him, he agreed the letters should be sent.

97. Draft orders were also provided to IVCA in advance for review and comment, but not to anyone at Prokam or Thomas Fresh. Mr. Solymosi testified that he provided the drafts to determine whether IVCA had any comments on the ability to comply with those orders. He also testified that since IVCA was looking for help, he wanted to be sure the help he was providing was sufficient.

98. On or about October 10, 2017, the Commission issued a cease and desist order to Prokam. Cease and desist orders were also issued on the same day against Thomas Fresh and IVCA (together, the "CDOs"). The CDOs restrained Prokam and IVCA from marketing and selling potatoes below the Commission's minimum price orders and Kennebec potatoes without DA. Notably, Prokam was not ordered to cease shipping potatoes for which it held DA.

99. Mr. Solymosi conceded that he relied entirely on IVCA to provide information in his investigation, and did no independent investigation. He also allowed that, in retrospect, some of the information IVCA provided to him was inaccurate, and that some information was not provided at the time that ought to have been.

100. At no time during the investigation leading to the CDOs did Mr. Solymosi have any communication with Prokam about the issues being raised by IVCA. Mr. Solymosi explained that he did not reach out to Prokam for several reasons. First, he saw the matter as being an agency matter, and he understood he was assisting the agency to regain control. Mr. Solymosi further testified that the CDOs were only a first step; a show cause hearing would follow where Prokam would be provided with an opportunity to present evidence and be heard.

101. The Commission met on October 16, 2017 and discussed the enforcement proceedings. The minutes of that meeting report that IVCA has been cooperating in an effort to maintain their agency status. Commissioner Mr. Reed testified that those comments were made by Mr. Solymosi. Mr. Reed agreed that Mr. Solymosi informed the Commissioners that he had told IVCA that as long as it cooperated with the Commission and its investigation its agency licence would be protected.

2. The Show Cause Hearing

102. The Commission went on to hold a "show cause" hearing to consider whether the CDOs should be upheld. The hearing was originally intended to include in-person representations, but the Commission ultimately held a written process. Nevertheless, at the show cause hearing, all parties, including Prokam, had the opportunity to make submissions and provide evidence to the Commission regarding the CDOs. Prokam argued that no action should be taken with respect to its license because the sales were interprovincial and took place outside of British Columbia. Prokam understood that the Commission did not purport to regulate minimum price sales for BC potatoes sold by an agency into Alberta and Saskatchewan, nor would sound marketing policy support the need to impose a minimum price on such sales.

103. On November 7, 2017, a storage crop agency managers meeting was held. The meeting included a variety of topics and Prokam was not identified as a specific agenda item. That said, the show cause hearing process was discussed. There was general agreement at that meeting that Prokam was "a problem grower". After the meeting, Mr. Murray Driediger, BC Fresh's general manager, asked Mr. Solymosi if it would help for the agency managers to sign a joint letter of some kind to show industry support for the enforcement proceedings, and Mr. Solymosi agreed that it would be helpful to put a letter in front of the Commission at the next meeting on November 22, 2017.

104. On November 10, 2017, a letter was sent from the general managers of the Commission's agencies to Mr. Solymosi, expressing their gratitude for Mr. Solymosi's efforts to ensure compliance with DA rules. That letter states, in part, that "[b]ad actors seeking to destroy the system for their own personal benefit must not be allowed to profit from making end runs on the regulated system under the guise of 'new market' and prices below that established by the [Commission], while the rest of the industry follows the rules." Mr. Solymosi understood the reference to "bad actors" to be a reference to Prokam.

105. The evidence shows that letter was prepared by Mr. Driediger, at his own suggestion, after the November 7, 2017 agency managers meeting. Mr. Solymosi was not involved in asking for the letter or preparing its content. Mr. Solymosi shared this letter with the Commission before the show cause hearing, but did not share it with Prokam as Mr. Solymosi did not think of it at the time.

106. On November 20, 2017, Mr. Solymosi sent an email to the Commissioners regarding the procedural status of the enforcement process. He advised that "Prokam (and IVCA – to protect their interests) have already appealed the C&D Orders …". In this proceeding, Mr. Reed testified that he understood Mr. Solymosi to have been referring to the fact that IVCA would not need to pursue its appeal given it was cooperating with the Commission and its licence would be protected.

107. On December 14, 2017, the Commission deliberated on the show cause hearing. Messrs. Solymosi, Reed and Newell all confirmed in their evidence that the Commissioners discussed the Commission's authority to set minimum prices for export and interprovincial sales, and the potential risk the Commission and Mr. Solymosi had not validly exercised its authority.

108. The Commission made its decision on the show cause hearing on or about December 22, 2017. The Commission upheld the CDOs. The Commission's ultimate determination was that Mr. Dhillon, with the assistance of Mr. Gill, essentially co-opted the regulatory authority of IVCA and bypassed agency staff, allowing Prokam to sell potatoes in excess of DA directly to Thomas Fresh (with the impugned transactions "papered" through IVCA) at prices below the Commission's minimum pricing, with IVCA largely unaware of these "backdoor activities".

109. The Commission further ordered that BCFresh was to be the designated agency for Prokam, and Prokam's Class 1 Producer License would be revoked and replaced with a Class 4 license. IVCA was not sanctioned, and Mr. Newell acknowledged in his testimony that "looking back on it, I don't think it was fair."

110. I agree with the Commissioners that taking all of this evidence together, it is clear that these events all flowed from the Commission's concern with Prokam's overall failure to comply with the Commission's authority over transactions which require DA, licensing and pricing control. The effects of Prokam's non-compliance could be significant and delegitimize the entire regulated marketing industry. In its show cause decision, the Commission sought to explain in considerable detail the foundation and need for its efforts to regulate the industry, the role of agencies within the industry, and the need to allow for the orderly co-existence of multiple designated agencies to benefit BC producers. It was those concerns that motivated the Commission to take action with respect to Prokam.

111. A live issue in this proceeding is whether Mr. Guichon improperly participated in any of these proceedings with respect to Prokam. Mr. Guichon is chair of the board of directors of BCFresh, and the Commission decided to refer Prokam to BCFresh as its

agency. Mr. Guichon was in attendance at the December 14, 2017, meeting, and participated in the discussion, including by offering his views on the direction of Prokam to BCFresh as its agency. He later recused himself and did not take place in the decision-making.

112. The evidence shows that Mr. Guichon participated in discussions about Prokam because he was asked to do so by Commission Chair, Mr. Krause. Mr. Krause's evidence was that he believed it was acceptable for storage crop Commissioners to be involved in discussions and provide information and clarification so long as they were not involved in any decision. Consistent with this, Mr. Guichon did not participate in any deliberations or actual decisions. His participation was limited to answering questions; he did not participate in any deliberations or decisions concerning Prokam.

113. In January 2018, Prokam applied to the Commission to vary the order directing it to BCFresh as its agency. On January 30, 2018, the Commission denied that application, stating that BCFresh was the best agency to monitor Prokam and maintain orderly marketing. The evidence shows that the full Commission participated in the conference call, including Mr. Guichon, who is not recorded in the minutes as having recused himself from the decision. However, Mr. Guichon maintained that he did recuse himself and did not participate. He suggested his recusal might not have been noted because the meeting was held on a noisy conference call. Mr. Guichon heard Mr. Gerrard recuse himself, and that is also not recorded in the meeting minutes. The minutes were circulated for feedback, but no one indicated recusals were not marked, including Mr. Guichon.

114. On balance, I am satisfied that Mr. Guichon did recuse himself from the reconsideration decision. I found Mr. Guichon to be a credible witness, and I find it telling that Mr. Gerrard's recusal was likewise not noted in the minutes. The minutes appear to be in error and the failure to correct them before approval was more likely inadvertent.

3. Prokam's Appeal

115. Prokam appealed the Commission's decision ("Prokam 2018 Appeal") to BCFIRB, and in the context of that appeal argued that the Commission had no jurisdiction to regulate interprovincial potato sales, that its process and decision were procedurally unfair, and that the direction that BCFresh act as its agency was not in accordance with principles of sound marketing and was procedurally unfair. The appeal was heard in December 2017 and April, May and June 2018.

116. BCFIRB issued its decision on the appeal on February 28, 2019 (the "Appeal Decision"). Ultimately, BCFIRB declined to issue the order that Prokam sought overturning the CDOs. The panel was satisfied that the conduct of Prokam and its officers was not beyond reproach. BCFIRB confirmed that Mr. Dhillon, in his role as IVCA vice-president and director, contributed to both Prokam and IVCA's breach of the Commission's General Orders. In particular, it found that Mr. Dhillon was a force

to be reckoned with within IVCA: Prokam was a big player in IVCA, in contrast to the other smaller growers; and Mr. Dhillon was not beneath threatening to fire staff or pulling his money from the agency in order to get his way. With respect to Mr. Gill, Mr. Dhillon was instrumental in bringing him into IVCA and supported his employment handling IVCA's "mainland sales" which in fact were the sales of Prokam potatoes to Thomas Fresh. Mr. Dhillon in fact negotiated for his father's company to pay half of Mr. Gill's salary.

117. BCFIRB found that the Commission, having failed to gazette its minimum price orders for regulated product marketed out of province, did not have the authority to apply its minimum pricing rules to interprovincial sales or to issue any CDOs respecting such sales. BCFIRB upheld the Commission's findings in relation to Prokam's non-compliance for shipping Kennebec potatoes without DA and without Commission authorization and remitted a number of issues, including the issue of whether Prokam's conduct (irrespective of the minimum pricing rules in relation to interprovincial sales) warranted any further action, back to the Commission for reconsideration.

118. BCFIRB directed that the Commission canvass the parties' views on whether any Commissioners were required to recuse themselves from the reconsideration process and decision. The Commission did so, and constituted a panel that took into account Prokam's views. Prokam did not suggest at the time that there was any bias or impropriety with respect to this reconsideration panel.

119. The Commission issued its reconsideration decision on November 18, 2019, which Prokam appealed. That appeal is deferred pending the outcome of this Supervisory Review.

4. Knowledge of the Legality of the Minimum Price Orders

120. For the purpose of this proceeding, the key finding in the Appeal Decision was that the Commission did not have the authority to apply its minimum pricing rules to interprovincial sales or to issue any CDOs respecting such sales because the Commission had not complied with the federal *Statutory Instruments Act* by registering and gazetting any minimum prices for regulated product sold out of the province..

121. Based on the evidence that I have heard in this proceeding, BCFIRB's conclusion in the appeal was not inevitable. BCFIRB heard considerable submissions on that issue, and the Commission devoted more than 20 pages to its argument that there was no requirement for the interprovincial minimum pricing orders to be gazetted. There appears to have been an arguable case gazetting was not required, and the answer was not plain and obvious at the hearing of the 2018 Prokam Appeal.

122. The question in this proceeding is when Mr. Solymosi or Mr. Guichon knew the minimum pricing orders to be unlawful.

123. Mr. Solymosi's evidence was that he genuinely and honestly believed that at all times the Commission had the jurisdiction to set prices for British Columbia storage crops, including when those crops are destined for export. Mr. Guichon testified that he was always under the assumption the Commission had the authority to set export prices for products grown in British Columbia. Mr. Krause likewise believed that the Commission had the authority to set prices for regulated product produced in British Columbia but destined for outside of British Columbia, and that the minimum prices were not enacted illegally. His view was based on his understanding of the decision of *BC Vegetable Greenhouse v. BC Vegetable Commission*, 2003 BCSC1508; aff'd 2005 BCCA 476 (the "I-5 Decision").

124. There was evidence in this proceeding that in or about 2007, Parliamentary Committee meetings took place that discussed whether the Commission had the constitutional jurisdiction to set inter-provincial and export levies on British Columbia product leaving the province. At those hearings, Mr. Hrabinsky, counsel for the Commission, stated his view that the Commission had the authority to set interprovincial levies without complying with the *Statutory Instruments Act* requirement that those levy orders be gazetted.

125. On the other hand, Mr. George Leroux, then the Commission's government appointed Chair, suggested at those Parliamentary Committee meetings that there ought to be legislation which exempts the Commission from having to gazette the levy orders. Mr. Leroux was called as a witness at Prokam's request in this proceeding. He explained that he was of the view the Commission could not set extra-provincial levies without complying with the *Statutory Instruments Act* requirement to gazette. He provided evidence in this proceeding that his testimony at the Committee meetings pertained specifically to gazetting of levy orders, not minimum pricing orders.

126. Mr. Solymosi did not commence employment with the Commission as a general manager until mid-2015. Mr. Solymosi had previously held a position with the Commission as an analyst, but Mr. Leroux's evidence was that Mr. Solymosi may not have been involved in the Committee meetings in that role.

127. Mr. Solymosi testified that he learned of these discussions on or about October 13, 2017, when Prokam's counsel brought them to his attention. Mr. Solymosi investigated and concluded that the I-5 Decision applied to minimum pricing orders. On October 16, 2017, Mr. Solymosi emailed Wanda Gorsuch, BCFIRB Manager, Issues and Planning, to seek her views on whether he had the authority to set minimum prices for regulated product sold out of the province. He explained his own perspective that setting minimum price falls within his authority as a general manager regardless of whether the product is for BC-local consumption or for export. He also asked for her thoughts. The next day, he also asked for more information about other circumstances where the Commission had drawn from its federal authority requiring publication in the Canada Gazette. He also sought archived orders gazetted by the Commission from the Farm Products Council of Canada. Mr. Solymosi and

Ms. Gorsuch subsequently had an exchange with respect to some caselaw, including the I-5 Decision.

128. These events gave rise to an exchange between counsel for Prokam and counsel for the Commission in or about October 2017. In that exchange, Mr. Hrabinsky advised that "export" minimum prices should be understood to be "the minimum price for regulated product purchased in BC for further marketing outside of BC, but not the price of which regulated product might be resold outside of BC." Subsequently, on October 30, 2017, the definition of "export" price" was amended toto included "minimum price for White Potatoes purchased in BC for further marketing outside of BC". Mr. Solymosi directed this amendment out of an abundance of caution in case it was argued that the Commission was relying on federal authority.

129. Mr. Solymosi was cross-examined on whether he had, in fact, learned of these issues sooner. Two days after the export minimum pricing orders were set, on August 10, 2017, Ms. Gorsuch wrote to a producer, Mr. John Walsh, copying Mr. Solymosi, replying to Mr. Walsh's question whether the Commission had the authority to set a minimum price for exports. Ms. Gorsuch explained that the authority came from the federal legislation. When asked about Ms. Gorsuch's comment, Mr. Solymosi gave evidence that he did not consider that the Commission was relying on federal authority to set export minimum pricing orders because the purpose for implementing the pricing orders was not to regulate interprovincial commerce and trade. While he later copied her response into a subsequent e-mail, Mr. Solymosi was steadfast that he disagreed with Ms. Gorsuch's views.

B. Allegations Concerning Mr. Solymosi

130. The allegations against Mr. Solymosi in respect of Prokam are that he (1) engaged in a malicious and unfair investigation of Prokam; (2) knew, was willfully blind or was reckless with respect to the minimum export price orders being invalid; and (3) maliciously or in bad faith induced IVCA to cooperate in an investigation against Prokam.

131. Mr. Solymosi was an important witness. As I have already noted, he was questioned for several days. Throughout, he remained composed, and answered questions directly and honestly. I found him to be a highly credible witness.

1. Improper Investigation of a "Rogue Producer"

132. Prokam suggests that Mr. Solymosi's investigation into Prokam was grounded in a "malicious belief" and was procedurally unfair. Prokam suggests Mr. Solymosi "immediately formed the view that as between Prokam and IVCA, Prokam was responsible for the purported non-compliance". He thus is alleged to have embarked upon his investigation with the malicious premise that Prokam was a "rogue producer",

then conducted an investigation for the purpose of creating an evidentiary record to support his view.[20]

133. Hearing Counsel takes the position that there is no proper basis to draw an inference that Mr. Solymosi acted improperly, as Mr. Solymosi had a reasonable basis to characterize Prokam as a "rogue producer". Mr. Solymosi likewise argues that the evidence demonstrates that Prokam, through the actions of Mr. Dhillon, was, in fact, a rogue producer who was undermining the entire regulated vegetable marketing system when the CDOs were issued.

134. There is no basis for me to conclude that Mr. Solymosi commenced investigating Prokam out of some "malicious belief" that Prokam was a rogue producer. Over the course of the hearing, the panel repeatedly heard that Mr. Solymosi has never shown any personal animosity towards Prokam or Mr. Dhillon. Even Mr. Dhillon admitted that he was not aware of any animosity that Mr. Solymosi has against him. There is simply no evidence that Mr. Solymosi acted with personal animosity towards Prokam.

135. It is clear to me that Mr. Solymosi's main concern in issuing the CDOs was orderly marketing. The evidence establishes that the Commission was taking seriously the issues of marketing without DA, unapproved marketing of new production over DA and pricing. As early as April 2017 and June 2017, Prokam had been warned about its production and shipping in excess of DA, and Prokam responded it was doing nothing wrong. IVCA's general manager then reported that Prokam was bringing IVCA into non-compliance by selling in excess of DA and below Commission ordered minimum prices without keeping IVCA informed. In those circumstances, it was entirely appropriate for Mr. Solymosi and the Commission to take enforcement action.

136. Further, Mr. Solymosi's comment that Prokam was a "rogue producer" is not unreasonable, let alone malicious. In his evidence, Mr. Solymosi explained that to him, "rogue" means acting in an independent way, not in compliance with the authority of the regulatory system. I agree with counsel for Mr. Solymosi that Mr. Solymosi's definition of rogue was not only an accurate description of Prokam and/or Mr. Dhillon, but it was not one motivated by animus. It was motivated by the destabilizing effect that Prokam's actions were having on the entire regulated storage crop vegetable industry. Expressing concern for regulated marketing is not malice or an improper intent; it is exactly what is expected of the Commission's general manager.

137. I also do not see anything improper with Mr. Solymosi initially choosing to believe that, as between IVCA and Prokam, Prokam was in the wrong. IVCA is a Commission agency. The evidence shows that Mr. Solymosi quite properly had close relationships with agency managers. This is unsurprising given that agencies exercise delegated legislated authority from the Commission. There is nothing malicious about Mr. Solymosi trusting an agency manager who requests assistance when that agency

[20] Prokam's Written Submission, paras. 46, 50-51

manager reports having problems with a producer and presents evidence to support those problems.

138. Prokam says that as a result of Mr. Solymosi forming his "malicious belief", he undertook his investigation in an unfair manner. Specifically, Prokam says that Mr. Solymosi only solicited evidence from IVCA, which was incomplete and one-sided. Prokam further suggests that Mr. Solymosi instructed IVCA to hide the investigation from Prokam. Prokam characterizes the investigation as a "sham".

139. Hearing Counsel says that Mr. Solymosi's decision to only obtain information from IVCA and not contact Prokam would, at most, show a flawed or incomplete investigation, but does not amount to "corruption". Hearing Counsel points to the involvement of the Commission's independent, appointed Chair, Mr. Krause, as support for the idea that Mr. Solymosi was not "corrupt". Further, Mr. Solymosi submits that malice is not established through incompetence, inexperience, poor judgment, lack of professionalism, laziness, recklessness, honest mistake, negligence, or even gross negligence. There is no requirement for a perfect investigation so long as the individual conducting the investigation acts reasonably in the circumstances.

140. It must be remembered what role Mr. Solymosi's investigation played in the broader context of the enforcement proceedings against Prokam, IVCA and Thomas Fresh. Mr. Solymosi obtained some evidence that resulted in him issuing the CDOs to Prokam, IVCA and Thomas Fresh. All three bodies could continue operating, including shipping, marketing and purchasing potatoes, so long as they were in compliance with the General Orders. After the issuance of the CDOs, a show cause hearing was held and Prokam was given every opportunity to present evidence and make submissions. Even if there was unfairness in the investigation, it was certainly cured by the show cause hearing, and in any event does not rise to the level of wrongdoing.

141. Prokam argues that some evidence was not properly disclosed at the show cause hearing. For one, on November 24, 2017, IVCA delivered a letter dated October 25, 2017, authored by Santokh Hothi of Hothi Farms, stating that Prokam shipped Kennebec potatoes without quota (DA), and sold them while Hothi Farms had quota (DA) and product that was ready to be shipped. There was some question whether Mr. Solymosi had requested that the letter be issued to confirm what he was told orally or not. Prokam argues that because that letter was not disclosed to Prokam, Prokam was not aware it had to meet the allegation it shipped potatoes without DA when Hothi product was available. This might have led Prokam to tender evidence that Prokam was shipping with the knowledge of his agency and Messrs. Michell and Meyer. There was also an issue with respect to whether the agency managers' November 7, 2017 letter was properly disclosed at the show cause hearing.

142. The investigation was not perfect. It would have been preferable if these letters had been properly disclosed at the show cause hearing. At its highest, this lack of disclosure is an inadvertent error. I find that the lack of disclosure was not reckless or malicious.

2. Unlawfulness of the Minimum Pricing Orders

143. With respect to interprovincial pricing, Prokam argues that Mr. Solymosi knew that the implementation of levies on interprovincial or export transactions required the exercise of federal authority as of January 2017. He further knew by August 2017 that Ms. Gorsuch believed the Commission's authority to regulate export transactions was derived from federal legislation, and must have believed it to be correct because he repeated that advice in an email to Mr. Meyer. By October 2017, Prokam says Mr. Solymosi knew, was wilfully blind, or was reckless as to the fact that the setting of export minimum pricing orders required an exercise of federal authority, and that the validity of the minimum pricing orders was likely to be legally challenged. This, Prokam says, supports the submission that Mr. Solymosi issued the CDOs knowing they were unlawful, or being willfully blind or reckless as to those facts. In this regard, Prokam notes that Mr. Solymosi's (or Mr. Guichon's) knowledge of the unlawfulness of the interprovincial pricing orders may be established by proving wilful blindness or recklessness, noting that subjective knowledge may be very difficult or impossible to prove directly.

144. Hearing Counsel takes the position that there is no basis upon which the panel could make an inference that Mr. Solymosi knew the export minimum pricing orders were invalid, making the CDOs invalid. He says that while Mr. Solymosi and the Commission were incorrect in setting export prices, that does not amount to unlawful conduct in the nature of corruption. The Commission similarly emphasizes that there is no basis to retroactively vest anyone with knowledge of the Appeal Decision before it was made. Counsel for Mr. Solymosi argues that Mr. Solymosi had no knowledge of the 2008 parliamentary hearings until October 2017, noting that Mr. Solymosi is not a constitutional lawyer and being incorrect on the "fine points of constitutional law" does not constitute malice or corruption.

145. I find that Mr. Solymosi had a reasonable, honestly held belief that the Commission's minimum price orders for product marketed out of province were lawful. As I have already found, prior to the Appeal Decision it was far from settled that the interprovincial minimum prices relied on an exercise of federal authority that required federal gazetting. There were credible arguments on both sides of the issue. At most, Mr. Solymosi could be said to have understood that it was likely that Prokam would attempt to advance an argument that gazetting was required, but that there was an available argument based on the I-5 Decision that gazetting was not required. That does not amount to knowledge, wilful blindness or recklessness as to the validity of the minimum pricing orders and resulting CDOs.

3. The "Promise" to IVCA

146. Prokam alleges that Mr. Solymosi effectively offered to protect IVCA's licence if it assisted him to prosecute Prokam. In this connection, Prokam points to Mr. Solymosi's September 27 email to Mr. Meyer. Prokam further relies on Mr. Solymosi's November 20, 2017 email where he referred to IVCA filing an appeal of the CDOs to protect its interests, and Mr. Reed's understanding that IVCA would not pursue an appeal because it was cooperating and did not expect a negative impact on its license status.

147. Hearing Counsel and Mr. Solymosi both take the position that the evidence does not establish any inducement of cooperation from IVCA. I agree. Reading the September 27, 2017 email to IVCA in its full context, it is clear to me that Mr. Solymosi was explaining to IVCA the importance of complying with the Commission's General Orders to continue operating in the regulated market. As Mr. Solymosi's counsel observes, all that Mr. Solymosi communicated was that IVCA, as an agent of the Commission, was required to cooperate with the Commission by being honest and straightforward, and correcting its non-compliant behaviour. That is not an inducement but a requirement for any agency exercising delegated Commission authority. In any disciplinary matter, cooperation and compliance in the face of an error may lead to lesser sanctions.

148. Prokam also relies on Mr. Reed's evidence that Mr. Solymosi reported promising to IVCA that its license would be protected if it participated in the investigation. Prokam suggests that I should prefer the evidence of Mr. Reed over the "self-serving" evidence of Mr. Solymosi that he made no such promise. Prokam further relies on Mr. Reed's evidence that at no time was there a discussion or suggestion that IVCA ought to be punished at the show cause hearing.

149. I do not understand Mr. Reed to have testified that he believed that Mr. Solymosi had made a promise to induce IVCA to cooperate in some kind of malicious takedown of Prokam. Mr. Reed was merely reiterating what Mr. Solymosi said: that by cooperating and coming into compliance with the General Orders, as any agency is required to do, IVCA would face lesser sanctions.

C. Allegations Concerning Mr. Guichon

150. The allegations against Mr. Guichon in respect of Prokam are that he: (1) exercised his powers as vice-chair of the Commission to approve the CDOs in bad faith and with malice; (2) knew, was willfully blind or was reckless with respect to the minimum export price orders being invalid; and (3) that he exercised his powers to participate in the show cause and reconsideration hearings in bad faith, for an improper purpose, or with malice.

1. The Cease and Desist Orders

151. There are two issues in connection with Mr. Guichon's participation in the issuance of the CDOs: first, whether Mr. Guichon was a decision maker at all; and second, whether he approved them in bad faith, for an improper purpose, or with malice.

152. In connection with whether Mr. Guichon was a decision maker, Prokam points to Mr. Guichon's evidence in the Prokam 2018 Appeal as evidence of his wrongdoing in this proceeding. Prokam notes that when it was put to Mr. Guichon in 2018 that he did not consider whether his concerns as a grower made it inappropriate for him to be the decision-maker in respect of sending out the ceased and desist orders, he did not disagree with the characterization that he was a decision-maker. The particular exchange that Prokam refers to is as follows:

> Q All right. All right. You didn't consider whether your concerns as a grower made it inappropriate for you to be the decision-maker in respect of sending out the cease and desist order to Thomas Fresh, did you?
>
> A I -- I don't -- I don't know if we were the only two that sent that out or -- I mean, whether it was talked about at the -- at the Commission level or not. Probably not, but I -- otherwise, I guess, you'd have a copy of it.
>
> Q I would hope so, yes.
>
> A Yeah. And I don't know who else Andre talked to at -- other commissioners, who else he talked to about it --
>
> Q All right.
>
> A -- so. It wouldn't be myself and Alf acting alone without consulting with the rest, as far as I know.

153. Hearing Counsel says that Mr. Guichon was not the moving force behind the CDOs. The Commissioners argue that Mr. Guichon did not exercise any power in or around the issuance of the CDOs.

154. In my view, the evidence Prokam refers to falls far short of establishing that Mr. Guichon was the decision maker in respect of the CDOs. I only take from Mr. Guichon's evidence in 2018 that he was consulted about the CDOs. If anything, Mr. Guichon appears to be casting doubt on Prokam's attempt to portray him as a decision maker.

155. I find that the CDOs were issued by Mr. Solymosi at the direction of Mr. Krause, and Mr. Guichon was consulted with respect to that decision. That is the extent of Mr. Guichon's decision making in connection with the CDOs.

156. The second issue is whether Mr. Guichon's involvement in the issuance of the CDOs was motivated by any bad faith, malice or an improper purpose. Prokam argues that Mr. Guichon did have an improper purpose, insofar as he provided evidence in 2018 that he was angry "as a grower", "with a whole bunch of potatoes in storage to sell", about the 60-day forward contracts, stating "[a]s soon as I see a contract for 22 cents a pound and they've been selling all year, I'm not very happy about it". Prokam says that nothing in Mr. Guichon's testimony in this review neutralized his 2018 evidence. Prokam says that the fact that Mr. Guichon approved or consented to the CDOs based on his personal interests as a grower is sufficient to establish malice, improper purpose or bad faith.

157. Hearing Counsel argues there is no basis in evidence other than speculation that Mr. Guichon consented to the CDOs for some improper purpose. Counsel for the Commissioners argues that the mere fact that Mr. Guichon's personal interests are at issue does not establish any improper motive.

158. I agree with counsel for the Commissioners. The legislation accepts a significant degree of conflict of interest, given that the Vegetable Marketing Scheme is administered by growers who are required to approach matters from the perspective of a grower. Mr. Guichon's reference to coming to his impressions "as a grower" is reflective of the fact that Prokam's conduct impacted the regulated market (and thus all growers) as a whole. Mr. Guichon approaching the CDOs, and indeed all aspects of the regulation of the industry, from his perspective as a grower is precisely what the legislature intended and envisioned in the structure of the NPMA. It is not demonstrative of bad faith, improper purpose, or malice.

2. Knowledge the Pricing Orders were Unlawful

159. With respect to Mr. Guichon's knowledge of the unlawfulness of the export prices, Prokam argues that Mr. Guichon had been a Commissioner for about 24 years at the time the CDOs were issued. Prokam points to meeting minutes from October 2006 that show the Commission was working to remove the gazetting requirement for orders made under federal authority, as well as some discussions in September 2007 around the need for levy orders to be gazetted. Mr. Guichon testified he would have been aware of the risk around not gazetting interprovincial levy orders.

160. Hearing Counsel takes the position that there is no evidence Mr. Guichon knew that the export prices set by the Commission were unlawful and that the CDOs were also unlawful. Counsel for the Commissioners likewise argues that all the evidence confirms the Commission believed in the legitimacy of the CDOs. The Commissioners say that the unlawfulness of the CDOs was far from "unimpeachable", presenting a lengthy substantive argument to the contrary.

161. As I see it, any suggestion that Mr. Guichon would have known that the export minimum pricing orders were unlawful is highly speculative and not grounded in the evidence presented to me. Mr. Guichon's evidence, which I accept, was that he was

always under the assumption the Commission had the authority to set export prices for products grown in British Columbia. As the Commissioners observe, while Commissioners including Mr. Guichon might have been aware of some risk, there were credible arguments on both sides; the issue is one on which reasonable people - lawyers and regulators included - might well disagree. When those arguments are taken together with the good-faith basis on which the CDOs were issued, I do not see any evidence of bad faith or knowledge, recklessness or willful blindness as to the lawfulness of the orders on the part of Mr. Guichon.

3. Participation in the Show Cause and Reconsideration Decisions

162. Prokam takes issue with Mr. Guichon participating in discussions concerning the direction of Prokam to BCFresh as its agency. Prokam also argues that Mr. Guichon did not recuse himself from the reconsideration decision, pointing to the fact that no recusal is noted in the minutes as it normally would be. This, Prokam says, is ample support for the conclusion Mr. Guichon participated in decision making when he knew he ought to recuse himself.

163. Hearing Counsel takes the position that any discussions Mr. Guichon participated in were done on the advice of the then independent, appointed chair of the Commission, with a genuine belief that his conduct was appropriate and not contrary to any conflict of interest policy. Counsel for the Commissioners agrees, emphasizing that Mr. Guichon attended the show cause hearing but recused himself, consistent with BCFIRB's directions to commodity boards.

164. There does not appear to be any dispute that Mr. Guichon recused himself from the show cause decision. I have already found that, contrary to Prokam's suggestions, Mr. Guichon did properly recuse himself from the reconsideration decision. Beyond that, Mr. Guichon's participation was not done in bad faith, with malice, or for any improper purpose, including his own self-interest due to his relationship with BCFresh. At all material times, storage crop Commissioners were encouraged to be involved or available in discussions regarding storage crop matters and greenhouse Commissioners were encouraged to be involved in discussions regarding greenhouse matters. Mr. Guichon did so. Thereafter, Mr. Guichon recused himself.

165. More generally, with respect to the direction of Prokam to BCFresh, the Commission made it clear that Prokam was directed to BCFresh as its agency because BCFresh was considered to be the only agency robust enough to act as Prokam's agency. There is no evidence whatsoever Mr. Guichon participated in discussions concerning Prokam with knowledge, recklessness or willful blindness that he was acting unlawfully or with the intention of causing harm to Prokam, or to benefit himself as a BCFresh grower and shareholder.

D. Conclusion with respect to Prokam's Allegations

166. This supervisory review heard 16 days of evidence. Despite this, in its final submissions, Prokam relies almost exclusively on evidence arising out of the Prokam 2018 Appeal, with the exception of a few selected statements made by witnesses in this proceeding, and extracts from emails. When I consider that evidence in the context of all the evidence adduced in this proceeding, including the extensive cross-examination of Mr. Solymosi and Mr. Guichon, it becomes clear that Prokam's allegations are not substantiated. The evidence relied upon by Prokam falls far short of the evidentiary threshold for proving the type of serious allegations that Prokam advanced against Messrs. Solymosi and Guichon.

167. In my view, while Prokam continually asked for further investigations, document production, and cross-examination, they would not have been of assistance. The allegations of wrongdoing were put squarely to Mr. Solymosi and Mr. Guichon, both by Hearing Counsel and Prokam, their denials of self-interest and personal animus were entirely credible, and were amply supported by the documentary evidence and testimony of other witnesses.

168. On the other hand, in their submissions before me, the other participants have called into question Mr. Dhillon's conduct throughout the events in question, the motivation for filing Prokam's civil claim, and more generally, his willingness to participate in good faith in the regulated vegetable industry going forward. As I discuss below in the Conclusion, I was asked by several participants to draw an inference that the claim was filed for ulterior and strategic purposes. I intend to seek submissions from Hearing Counsel, and in turn the participants, about how to address these issues in order to ensure confidence is restored in the regulated marketing industry.

VIII. MPL's Allegations

A. Background and Findings of Fact

169. The evidence supports the following findings of facts with respect to the Commission's dealings with MPL.

1. Anti-MPL Sentiment from Commissioner Newell

170. I begin with the evidence of Commissioner Newell, who expressed his view that he did not wish for MPL to enter the BC marketplace as early as 2017 and 2018. Specifically, in 2017 and 2018, Mr. Newell authored some email chains where he expressed concern about MPL entering the BC market. Mr. Newell specifically wrote in one message "We don't need more agencies here in the West – it will be the beginning if [sic] the end if that happens." That email was addressed to Mr. Solymosi, amongst others, who responded by indicating that the matter was on the agenda for the next Commission meeting, and he would be looking to set a date for that meeting. MPL suggests that Mr. Solymosi's response showed he thought it necessary to call a

meeting of the Commissioners to deal with MPL potentially seeking to operate in BC to address Mr. Newell's concerns.

171. The Commission meeting was held on December 14, 2017. A notation in the minutes from that date indicates that there had been some inquiries about applying for a new greenhouse agency, and discussion was focused on "Moratorium on Agencies after the Village Farms decision". There was no evidence before me about what that decision entailed, but I take from the evidence that the Village Farms decision created some precedent with respect to how agency applications should be handled, and the Commissioners were discussing how to address MPL's potential future agency application in light of that precedent.

172. Notably, all parties had the opportunity to cross-examine Mr. Solymosi and the Commissioners on this meeting, including the discussion of a potential future moratorium. Nothing arose out of those cross-examinations which would suggest that these discussions were driven by any animus towards MPL. In any event, no agency application from MPL was before the Commission, and no moratorium was imposed at that time.

173. Several months later, in April 2018, Mr. Newell again expressed his reluctance for MPL to enter the BC market in an email. In response to an email from Mr. Solymosi regarding an agency transfer application submitted by Randhawa Farms, Mr. Newell stated "This may be Mastronardi's way into our industry…the marketing plan is most likely Mastronardi using Jamie and VIFP to service their Wal-Mart business and give Jamie a commission/fee for letting it go through their agency. Shameless…as a BC Agency. If you have more info, give me a call…" Mr. Solymosi clarified in response that the issue raised in the originating email had no relationship to MPL.

174. Mr. Mastronardi testified that over time he heard from others that Mr. Newell, in particular, was hostile to MPL entering the BC market. Mr. Mastronardi testified that Mr. Newell's brother, Steve Newell, told Mr. Mastronardi in 2018 that he and his brother would make sure that MPL never came to British Columbia, or words to that effect. More recently, two of the Newells' employees, Jeff Madu and Shirvan Bakhtiyari, are said to have told Mr. Mastronardi that Mr. Newell and Steve Newell would make sure MPL would not obtain a license in BC.

175. MPL takes issue with the fact that Messrs. Madu and Bakhtiyari were not called as witnesses so they could be cross-examined. I do not consider that any unfairness flows from the lack of opportunity to cross-examine those individuals given that I am satisfied that the evidence established that Mr. Newell was generally opposed to MPL entering the BC marketplace. I do not find, however, that there was any evidence that Mr. Newell's views influenced the actions of the Commission or its general manager at any time in regards to the eventual imposition of a temporary moratorium on agency applications, or MPL more generally.

2. The Moratorium

176. On June 28, 2019, the Commission issued a decision that imposed a moratorium on applications for agency and producer/shipper licenses until such time as it had completed a strategic and agency review ("Moratorium Decision"). The Moratorium Decision also summarily dismissed an agency application by CFP.

177. In brief, on May 9, 2019, the Commission received a Class 1 Agency Application from CFP, seeking to be operational as a storage crop agency in time for the 2020 growing season. CFP is affiliated with Prokam.

178. As the Commission explained in its decision on the moratorium, there was an issue of concern with CFP's application arising from the involvement of the former BCFIRB Chair, who sat as the presiding member on the Prokam 2018 Appeal, on the CFP Board of Directors. The Commission considered that the former BCFIRB Chair's involvement with an agency application closely connected with the subject matter of the Prokam 2018 Appeal could create an appearance of bias. Specifically, it could lead stakeholders and members of the public to wonder if the appeal process might have been tainted by the prospect of future business opportunities with the principal of the appellant, and thus the prospect of an appearance of bias. The Commission therefore considered that it should not engage in any substantive consideration of the merits of CFP's application in those highly unusual circumstances.

179. In the same decision, the Commission imposed a moratorium on all agency applications. The Commission pointed to the evolution of the regulated marketing sector, including 2010 amendments that removed the requirement that restricted producers to ship to an agency located in their district, which effectively allowed for greater competition between agencies. The Commission noted that when that took place, the management of DA at an industry level was not addressed in the General Orders, and ambiguity remained with respect to DA. Additionally, the Commission considered that the Appeal Decision regarding federal pricing authority had impeded its ability to act quickly when required to act on delegated federal legislative authority. Since the Commission could not rely on minimum pricing alone as the core instrument to maintain orderly marketing, the Commission considered that it needed to strengthen other components of the regulatory system so it could rely less on minimum pricing. This included the role of agencies.

180. As a result of these concerns, the Commission explained that a moratorium on agency applications was required to allow it to complete a strategic review:

> All these considerations underscore the need for the Commission to complete its important work on the Strategic Review and the Agency Review. Detail on both these reviews can be found in appendix B. These undertakings will assist the Commission in determining what changes to the Orderly Marketing framework may need to be adopted in order to maintain an effective, rules-based system in the current and projected business environment. Furthermore, it is expected that these actions are expected to result in comprehensive amendments to the General Order that will clarify how delivery

> allocation should be managed in a multi-agency / producer-shipper marketing model. These fundamental regulatory issues need to be addressed before the status quo is altered by establishing a new Agency.

181. The strategic review was commenced by the Commission in July 2018, and included an in-depth agency review process. The summary of the agency review process appended to the Moratorium Decision describes the agency review process as follows:

> The fundamental objectives that guide the Agency review are as follows:
>
> 1. Evaluate governance and determine if the Agency is operating according to its core purpose & mandate in carrying out the marketing duties of regulated vegetables;
>
> 2. Evaluate Agency performance and regulatory compliance;
>
> 3. Ensure trust in industry – The foundation of an orderly market.
>
> The Agency reviews will focus on providing the Commission with a comprehensive understanding of Agency corporate policy and procedures, and further insight on how each Agency performs in relation to regulatory compliance and expectations.
>
> Through the review process the Commission will develop an understanding on how each Agency is currently functioning in accordance to its overarching purpose and mandate. And assess opportunities for improvement in monitoring accountability and Agency performance. It is anticipated that the review process will be completed by the fall of 2019, with outcomes determined in early 2020.

182. The Moratorium Decision makes it clear that Commissioners Guichon and Gerrard were recused by the Chair from partaking in the discussion and decision on the moratorium and CFP's agency application. Commissioners Newell, Lodder and Reed, among others, voted to impose the moratorium.

183. In September 2019, BCFIRB established a supervisory review (the "2019 Supervisory Review") to consider three issues: perception of bias and potential conflict of interest in Commission decision-making; the Commission's oversight of agencies who exercise delegated legislated authorities to fulfil their role in the regulated vegetable marketing system; and certain aspects of the Commission's storage crop DA orders and management. Meanwhile, the Moratorium Decision was appealed to BCFIRB by CFP. On or about September 10, 2019, BCFIRB issued an order deferring the hearing of the appeal of the Moratorium Decision to the 2019 Supervisory Review. On November 17, 2020, CFP withdrew its appeal. BCFIRB encouraged MPL to participate in the 2019 Supervisory Review, which it did.

184. To be clear, at the time the Moratorium Decision was made in June 2019, MPL had not made any application for an agency license in British Columbia.

3. MPL's Agency Application and the Lifting of the Moratorium

185. In March 2020, the Commission held a meeting where the Commissioners were advised that MPL had written to BCFIRB advising that MPL intended to apply for a greenhouse agency licence and greenhouse production allocation in BC. There is no evidence that between March 2020 and October 2020, the Commissioners discussed or considered lifting the moratorium. However, throughout that period BCFIRB was engaging in the 2019 Supervisory Review, examining the Commission's structure and governance and related processes, including the Commission's oversight of agencies exercising delegated Commission authority.

186. On July 20, 2020, while the moratorium was still in place, MPL wrote to BCFIRB and advised that it intended to submit an agency application to the Commission and asked BCFIRB to direct the Commission to consider the agency application. In support, MPL referred to the September 15, 2020 deadline by which licensed producers must provide notice to their agency and the Commission if they intend to transfer to a different agency (the "Agency Transfer Deadline"). MPL expressed concern that without direction from BCFIRB, the transfer date would likely pass before the 2019 Supervisory Review was complete and the moratorium was lifted.

187. Notably, MPL stated "As is well known in the industry, the moratorium arose from the Commission's June 28, 2019 decision in relation to CFP Marketing Corporation's ("CFP") agency application". MPL went on to say "The concerns of the Commission primarily relate to storage crops, not greenhouse vegetables".

188. On July 27, 2020, BCFIRB wrote to MPL and advised that it would be premature to issue directions to the Commission given that the moratorium was still in place and that the panel would provide direction to the Commission regarding the moratorium by early fall 2020. The 2019 Supervisory Review panel agreed with MPL that the moratorium arose out of a storage crop agency application, but that any requirement for an agency accountability framework would extend to the Commission's regulation of both the storage crop and greenhouse sectors.

189. On September 10, 2020, MPL submitted an application for a Class I designated agency license to the Commission (the Agency Transfer Deadline had by this time been extended to October 31, 2020).

190. The next day, on September 11, 2020, MPL wrote to the Commission and expressed its concern that the Commission's evaluation of its agency application could be procedurally unfair. It requested confirmation that any individuals that had already stated a position on MPL's application before reviewing it, or that had a conflict of interest, would recuse themselves from the process. MPL also sought confirmation that the Commission's conflict of interest policy would be followed.

191. MPL then wrote to BCFIRB and the Commission several times in September 2020 to attempt to push forward and expedite a decision on its agency application. MPL asked BCFIRB to direct the Commission to review the agency application forthwith and

extend the Agency Transfer Deadline. BCFIRB indicated it would take those issues into account in the deliberations on the 2019 Supervisory Review.

192. MPL also wrote to the Commission and again raised potential prospective procedural fairness concerns, suggesting that the Commission was intending to delay processing the application, that a competitor of MPL was involved in the decisions and ought to recuse himself, and that the Commission had ignored the request to make inquiries into pre-judgment of the agency application and to ensure individuals with a conflict of interest recuse themselves.

193. On October 21, 2020, the Commission met and considered the ongoing moratorium. The minutes of that meeting show that the Commission did not immediately lift the moratorium because it felt it was still important for it to complete its agency and strategic review. Mr. Guichon testified in cross-examination that if the Commission had not promulgated the final agency application rules before it reviewed MPL's application, it might have been accused of tailoring those rules to the particular application. The evidence from those who were present at that meeting, including Messrs. Guichon, Reed, Newell, Gerrard and Lodder, was that there was no substantive discussion about MPL's agency application at that meeting. I find there was no such discussion at that meeting.

194. Later on October 21, 2020, the BCFIRB 2019 Supervisory Review panel issued a direction that the Commission lift the Moratorium and begin its review and consideration of new agency applications. The panel held that if the Commission was of the view that new criteria or process steps should form part of the agency application process, it may wish to adopt a transitional policy until such time as the Commission determines if rule changes were required. The panel further noted that all current and pending agency applicants should be made aware that the Commission may request additional information or adjust its process. The panel stated its expectation that the Commission would move forward with identifying Commissioners to be assigned to Commission panels no later than October 30, 2020..

195. On October 27 and 28, 2020, MPL wrote to the Commission and demanded an immediate processing of MPL's agency application, and sought confirmation there would be a further extension of the Agency Transfer Deadline on the basis that the deadline of October 31, 2020, would be "nearly impossible to meet." MPL again raised its procedural fairness concerns with the Commission.

196. On October 30, 2020, the Commission wrote to MPL and cautioned it against business planning in anticipation of any agency designation when it had not yet been granted that privilege. The Commission advised it would proceed expeditiously, but not in a manner that would compromise the interests of the industry. The Commission further stated that it had no plans to extend the Agency Transfer Deadline.

197. The Commission struck a panel on October 29, 2020 to review MPL's application. On November 4, 2020, it set a timeline for the review and consideration of the application

with a view to making a decision in the week of December 14-18, 2020. The next day, however, MPL's application was put on hold to wait for the completion of an amending order which would address updated requirements for agency applications going forward.

198. On November 13, 2020, the Commission wrote to MPL and advised that MPL's application was forwarded to a panel, but that the panel would defer consideration of the application until the Commission had finalized its additional criteria, considerations and processes for agency applications. At that time, any additional criteria, considerations and processes would be communicated to MPL to give it an opportunity to address any matters not already addressed in its application. Following receipt of any supplementary materials or submissions, the panel would assess the application.

199. On November 24, 2020, MPL filed a Notice of Appeal with BCFIRB, alleging that the Commission denied MPL's request for an extension of the Agency Transfer Deadline, and thus effectively denied MPL's application for a Class 1 Agency designation for the 2020/21 growing season.

200. On December 22, 2020, BCFIRB issued its decision in the 2019 Supervisory Review which identified several areas for improvement in relation to conflict of interest and code of conduct policies and Commission composition to ensure the effectiveness of the Commission in regulating the vegetable industry (the "2019 Supervisory Review Decision").

201. The Commission moved to strike MPL's appeal on a preliminary basis. On January 20, 2021, a BCFIRB appeal panel granted that application and dismissed MPL's appeal. The BCFIRB appeal panel found that MPL's real concern was that it had taken too long for the Commission to process MPL's agency application for 2020/21. The panel found that the delay in processing the agency license did not result from an "order, decision or determination" of the Commission, and therefore did not create a right of appeal. The panel found that to the extent the appeal was attempting to achieve the ends of directing the Commission to issue a license or impose timelines for issuing a licence on the Commission, the appeal would be dismissed as being both premature and an abuse of process because no decision, order or determination had been made.

202. With respect to the Commission decision not to extend the Agency Transfer Deadline, the panel placed the appeal in the context of the regulated industry, observing that granting an industry-wide extension to the Agency Transfer Deadline at the request of a prospective agency applicant would be extremely disruptive to existing relationships between greenhouse producers and their agencies, as well as planning for the 2020/21 crop season. The panel found that the balancing of industry interests favoured preserving existing relationships over a prospective applicant's access to a stable of producers.

203. With respect to MPL's procedural fairness concerns, the appeal panel observed that the 2019 Supervisory Review Decision and supporting directions, issued December 22, 2020, spoke directly to managing apprehension of bias and conflict of interest concerns. The panel agreed that the fairness allegations were largely speculative and anticipatory of an agency decision that had yet to be made.

204. In the result, the panel dismissed the appeal pursuant to ss. 31(1)(c) and (f) of the *Administrative Tribunals Act* on the basis the appeal was frivolous, had no reasonable prospect of success, and would give rise to an abuse of process.

205. On March 19, 2021, MPL filed a petition seeking judicial review of BCFIRB's summary dismissal, which has not proceeded to date.

206. As above, BCFIRB issued its decision on the 2019 Supervisory Review on December 22, 2020, and in doing so made directions with respect to the Commission's conflict of interest rules and election procedures given potential apprehension of bias and conflict of interest concerns.

207. On March 15, 2021, the Commission enacted Amending Order 54, which amended agency application requirements.

208. On April 23, 2021, MPL filed its notice of civil claim, and this Supervisory Review was commenced on May 26, 2021.

209. The Commission received MPL's amended application on May 27, 2021. In the context of this Supervisory Review, on August 21, 2021, I issued an order with respect to the composition of the Commission panel that would hear and consider MPL's amended agency application. On December 21, 2021, the Commission finalized a decision approving MPL's application and on January 12, 2022 sent its decision to BCFIRB, requesting prior approval from BCFIRB pursuant to s. 8 of the *NPMA* Regulations. The prior approval process is underway, but no decision has been taken by BCFIRB.

210. As noted earlier, MPL initially declined to participate in this Supervisory Review, but subsequently sought leave for standing in January of 2022, shortly before the oral hearing was to commence.

4. The Commission's Strategic Review

211. A considerable amount of time was taken up in cross-examination of various witnesses, including Mr. Solymosi, on a 2019 Commission strategic review apparently started by Ms. Glyckherr who was on contract with the Commission. Much was made of the views Ms. Glyckherr is said to have formed of the Commission from her engagement with the Commission, and industry, including reports she saw it as an "old boy's club". She also reportedly compiled various concerns expressed by stakeholders (such "scratch my back, I will scratch yours", apparently concerning alleged vote swapping at the Commission), but it does not appear she ever provided

any written work product to the Commission. Ms. Glyckherr did not complete her work as the Commission ultimately decided it would terminate its relationship with her. I do not consider it necessary to make any findings as to why that relationship came to an end, as that issue is well outside the FTOR.

212. In response to multiple applications by MPL and Prokam, I declined to order that Hearing Counsel interview Ms. Glyckherr, or that she be called as a witness. I was not satisfied that she had any direct evidence to contribute concerning any of the specific allegations in the FTOR, and because doing so would not be proportional. I remained of that view after hearing evidence from Mr. Ravi Cheema, discussed more fully below, who failed to provide any evidence that Ms. Glyckherr would be of assistance in addressing the allegations in the FTOR.

213. Given that all participants were at liberty to interview Ms. Glyckherr, but no one came forward with a foundation to suggest Ms. Glyckherr had any evidence to offer beyond generalized hearsay and suspicions, I do not consider that the failure to interview or call Ms. Glyckherr has in any way compromised the truth-seeking function or fairness of this Supervisory Review.

B. Allegations Concerning Messrs. Guichon, Gerrard, Newell and Reed

214. The allegations concerning the Commissioners are that (1) they acted arbitrarily to prevent MPL from entering the BC market for an improper purpose (including the imposition of the moratorium and delays in lifting it); (2) they failed to recuse themselves from decision-making in respect of MPL's agency application, and did not apply the proper criteria for evaluation agency applications; (3) they engaged in a vote-swapping agreement to circumvent the Commission's conflict of interest policy; and (4) Mr. Reed prevented the granting of additional production allocation to a grower thought to be aligned with MPL for his own benefit.

1. Preventing MPL from Entering the Market to Maintain Market Interest or to Harm MPL

215. MPL argues that the evidence demonstrates that Commissioners Newell and Reed, in particular, did not want MPL to enter the BC market and the resulting competition. They point to the fact that as early as December 2017, the Commissioners directed Mr. Solymosi to research a potential moratorium. MPL takes the position that the December 14, 2017 meeting was the starting point for the Commissioners, led by Mr. Newell, to impose a moratorium on applications for greenhouse agency licenses for the purpose of blocking MPL from entering the BC market. That moratorium was put in place in June 2019.

216. Hearing Counsel takes the position there is no merit to the allegation that the Commissioners imposed a moratorium in June 2019 because they knew that MPL would eventually want to make an agency application. Hearing Counsel points to the reasons for the moratorium given in the Commission's June 28, 2019 Moratorium

Decision, as well as the fact that MPL did not make its application until more than a year after the moratorium was imposed. Counsel for the Commissioners agrees there is no compelling evidence to support that the moratorium was put in place for any reason that differs from those outlined in the Commission's decision.

217. It is clear to me that the moratorium was imposed for the reasons set out in the Moratorium Decision: to allow the Commission to complete a strategic review and agency review in light of the way that the regulated marketing industry had evolved over the preceding decade, including the implications of the Appeal Decision. The Commission addressed its strategic planning and agency review purposes and processes that necessitated an industry-wide moratorium. I agree with Hearing Counsel that any suggestion the Commission knew MPL might be interested in making an agency application, and therefore made up a reason to impose a moratorium as a prophylactic, is simply frivolous.

218. After MPL submitted its application, MPL suggests that the events demonstrate that the Commissioners undertook a concerted effort to delay and prevent the consideration of MPLs agency license application and in turn its issuance.

219. In response, Hearing Counsel says there is "no evidence whatsoever" that the failure to lift the moratorium had anything to do with MPL. Hearing Counsel suggests that it is mere speculation to suggest that MPL had anything to do with the decision not to immediately lift the moratorium, and the actual evidence, including the meeting minutes and the evidence of the Commissioners, is to the contrary. The Commission likewise argues that there is no evidence to support the conclusion that the failure to lift the moratorium was in any way related to MPL.

220. The fact that the Commission did not immediately lift the moratorium for MPL's agency application must be considered in its full context. BCFIRB was undertaking its 2019 Supervisory Review into issues including the Commission's oversight of agencies, and Commission management of perception of bias and conflict of interest and other governance related issues. The Commission had only one agency application before it, that of MPL, and caution was required to ensure there could be no allegation that the Commission was tailoring new rules specifically for MPL. This resulted in the Commission Chair determining it was necessary to finalize the agency framework (and application criteria) prior to considering MPL's application. The Commission also had to incorporate BCFIRB's directions and recommendations made in the 2019 Supervisory Review Decision. The allegation that the named Commissioners in some way colluded to prevent or delay the application is also frivolous.

221. The only evidence that could possibly suggest that there was some improper motive is Mr. Newell's statements in 2017 and 2018 that he was opposed to MPL entering the BC marketplace. There was no evidence, however, that Mr. Newell's views had any influence on the Commission's decision-making more than a year later. The uncontradicted evidence was that Mr. Newell did not participate in any discussions or

decision-making about MPL's agency application. This was confirmed not only by Mr. Newell, but the other Commissioners who testified at the hearing.

2. Failure of the Commissioners to Recuse Themselves and Application of the Wrong Legal Criteria

222. MPL's argument on this front appears to largely focus on the moratorium, likely in the face of the evidence that none of the Commissioners had any participation in the consideration of MPL's agency application. Instead, MPL says that Mr. Newell was in a clear conflict of interest when he voted on the moratorium, as he was an owner of a greenhouse agency. Mr. Reed was also said to be in a conflict because he acted as executive vice president of sales of Houweling Management and Marketing Services Canada Inc. ("HMMSCI") which managed the Country Fresh Produce Inc. ("Country Fresh") greenhouse agency. Mr. Lodder was a director of the Okanagan Grown Produce Ltd., an agency, licenced to market regulated greenhouse and storage crop vegetables. MPL said that all of them knew at the time that it would take a second vote by the Commission to lift the moratorium, and as long as the moratorium was in place MPL would not be able to obtain an agency license.

223. Hearing Counsel and the Commissioners first point out that all of the Commissioners confirmed that they were not on any panel struck to consider MPL's application (except for Mr. Guichon, who was initially on the panel, but was removed at the end of his term), and did not see or discuss MPL's application with any other Commissioners, or otherwise have a decision-making role with respect to the application. Accordingly, they say there is no basis for any allegation that any of the Commissioners put themselves in any sort of conflict position in respect of MPL's application.

224. While I agree with Hearing Counsel and the Commissioners on that point, that is not a full answer to MPL's allegations regarding the moratorium. However, what is a full answer is my finding that the moratorium was put in place for other reasons, and was not intended to prevent MPL from entering the marketplace. I do not see any conflict of interest arising from the Commissioners voting to impose a moratorium to allow for the development of new rules and policies after a strategic and agency review.

3. The Vote Swapping Agreement

225. Perhaps the most serious allegation advanced by MPL was the existence of a vote-swapping agreement between the storage crop Commissioners and their greenhouse crop counterparts on the Commission. During the course of the review, the ground seemed to shift somewhat, and the focus of MPL was on the evidence that the greenhouse Commissioners relied on the storage crop Commissioners' input when voting and *vice versa*. MPL further argued that there was evidence of only one time, many years ago, when the storage crop Commissioners voted on a greenhouse issue against the views expressed by the greenhouse members. MPL appears to say that the absence of any other similar votes is evidence of a vote swapping agreement, and

that it is not realistic to expect any other evidence to emerge of such an unlawful agreement.

226. Hearing Counsel argues there is no factual foundation for this very serious allegation, describing it as "a general allegation without any evidentiary foundation".[21] The Commissioners similarly characterize the allegation as being merely "the imagination of MPL's representatives".[22]

227. First, I note that Mr. Mastronardi was extensively cross-examined about this allegation and did not identify any specific decisions made by the Commissioners pursuant to a vote-swapping arrangement. Mr. Mastronardi further advised in the course of his testimony that this and other allegations against the Commissioners were largely based on information he received from Mr. Ravi Cheema, a greenhouse producer operating under the name Creekside Hothouses and Fresh4U.

228. As a result of Mr. Mastronardi's testimony that Mr. Cheema was the principal source of the allegations being advanced by MPL, Mr. Cheema was called as a witness. Mr. Cheema gave evidence that he felt the Commissioners in general acted in a conflict of interest to benefit themselves because they are owners of farms or agencies and therefore make decisions in their own economic self-interest. This was based in part, as I understand it, on discussions and interactions he had with Ms. Glyckherr. However, Mr. Cheema could not point to any specific decision where a particular Commissioner voted in their own interest instead of the interest of the industry. When directly questioned about the insinuation that it was "common knowledge" that the Commission operated as an "old boy's club", "you scratch my back, I scratch yours", Mr. Cheema was unable to point to any specific decision where that occurred, or name any Commissioner who he said engaged in that practice.

229. I pause here to note that while Mr. Mastronardi did not suffer from credibility issues to the same extent as Mr. Dhillon, there was a very clear discrepancy between what Mr. Mastronardi suggested Mr. Cheema would say, and what Mr. Cheema actually said. For example, Mr. Mastronardi could not explain why he named the Commissioners he did in his Notice of Civil Claim, pointing the panel to Mr. Cheema. Specifically, Mr. Cheema testified that he provided Mr. Mastronardi with no names. Overall, Mr. Cheema's evidence did not particularize Mr. Mastronardi's evidence about what he was told by Mr. Cheema, let alone confirm that there was evidence of a vote-swapping agreement designed to circumvent the Commission's conflict of interest procedures as MPL initially alleged. As I address below, this raises a significant question about the basis on which MPL raised these very serious allegations.

230. The result was that neither Mr. Mastronardi nor Mr. Cheema could identify a single decision made pursuant to any vote swapping arrangement, or a single Commissioner

[21] Hearing Counsel's Written Submission, para. 220
[22] Commissioners' Written Submission, para. 113

involved in such a decision. In addition, all of the Commissioners denied the allegation, denials which I found to be credible and which were not in any way shaken in cross-examination.

231. I accordingly do not think it is particularly probative that the Commissioners could not specifically identify past examples of votes where the greenhouse Commissioners parted company from the advice of the storage crop Commissioners. Such an allegation is extremely serious, and as I set out above, demands cogent evidence. While I accept that the particulars of such an agreement would necessarily be within the knowledge of the Commissioners, and not readily available, there must still be some factual foundation before such a serious allegation is advanced. I find on the evidence before me that these allegations were advanced without any such foundation, rather just on generalized rumours and innuendo. I will return to what should follow from that finding below.

4. Mr. Reed's Interference with the granting of additional production allocation to growers aligned with MPL

232. MPL advances a specific allegation that Commissioner Reed considered MPL to be a competitor and, in March 2021, improperly interfered with Mr. Cheema's application for production allocation through its agency, Country Fresh. Specifically, when he learned that MPL would market (as a licensed wholesaler) the resulting greenhouse vegetables.

233. By way of background, in or about March 2021, Country Fresh applied for renewal of its agency license, and Mr. Cheema applied for additional greenhouse production allocation with a supporting letter from Country Fresh. A copy of that production allocation application was forwarded to all designated greenhouse agencies and producer-shippers to allow them to object. No objections were immediately filed by Mr. Reed or HMMSCI (or any other party). Then, on March 25, 2021, Mr. Reed, writing in his capacity as Chief Financial Officer of HMMSCI, complained to Mr. Solymosi that the application and business plan were developed without the knowledge of HMMSCI who contractually managed the day-to-day functions of Country Fresh. MPL says that Mr. Solymosi then took up Mr. Reed's cause without questioning him about the basis of his assertions. Mr. Solymosi wrote to Country Fresh and put Mr. Reed's assertions to it, quoting from Mr. Reed's advice. MPL argues that the advice Mr. Reed gave was in fact wrong.

234. I find this allegation to be frivolous. The Commission ultimately granted Mr. Cheema's application for production allocation, and there is no evidence that Mr. Reed involved himself in the application or discussed it with any of the other Commissioners. Mr. Reed flatly denied the allegation, and Mr. Cheema himself confirmed that Mr. Reed did nothing in his capacity as a Commissioner to interfere with Fresh4U's application. Moreover, there is simply no evidence to link Mr. Reed's email to any negative animus toward MPL.

C. Allegations Concerning Mr. Solymosi

235. MPL alleges that Mr. Solymosi acted improperly by delaying the Commission's consideration of MPL's application, or otherwise contributing to the delays in lifting the moratorium. As I understand it, MPL says that Mr. Solymosi was a very active participant in the discussions around the moratorium, that the Commissioner's relied on him to a great extent, and that he was present at all Commission meetings and put together documents for the Commissioners' consideration. As a result, MPL says that Mr. Solymosi is complicit in any wrongdoing by the Commissioners.

236. I again find this allegation to be frivolous. Notably, Mr. Mastronardi made a number of key admissions in cross-examination, including that: (a) Mr. Solymosi was not a decision maker and had no control over the Commission panel, including when the panel made decisions; (b) there was no evidence Mr. Solymosi delayed getting information to the panel; (c) Mr. Solymosi was not responsible for any delay between September 18, 2020 and March 5, 2021; and (d) the only thing Mr. Solymosi did wrong was have a tone on a phone call that Mr. Mastronardi interpreted as Mr. Solymosi not wanting MPL to obtain a licence. Simply put, a tone of voice in a phone call cannot ground such a serious allegation.

D. Conclusion on MPL Allegations

237. As with Prokam, despite 16 days of evidence, I find that the allegations that MPL has advanced against the Commissioners and Mr. Solymosi had no basis in substantive evidence, and were largely frivolous. MPL's allegations were generalized and based principally on rumour and innuendo communicated to MPL by one individual. Again, like Prokam, in the absence of any proper foundation for MPL to have advanced the allegations, I do not agree that any additional interviews or evidence were required or would have been helpful.

238. The fact that these entirely speculative allegations were advanced in a notice of civil claim pleading misfeasance in public office, which has caused significant destabilization in the industry, gives rise to the same concerns about the basis for filing the claim, as well as MPL's future participation in the regulated vegetable industry. I will return to address the implications of this concern in the Conclusion.

IX. Bajwa Farms

A. Background and Findings of Fact

239. Bajwa Farms is a producer that owns a 60-acre parcel of land. It has also historically grown cabbage on lands leased from Van Eekelen Enterprises ("Van Eekelen").

240. Ms. Nupinder Bajwa has been operating Bajwa Farms on her own since separating from her husband Mr. Harjeet Bajwa as a result of domestic abuse. While Mr. Bajwa remained a director and shareholder of Bajwa Farms, he was prohibited by court order

from attending at the Bajwa Farms properties pending criminal charges against him. He was also prohibited from attending at any of the workplaces of Ms. Bajwa or their children. He subsequently pleaded guilty to assault and has been sentenced.

241. In the spring of 2020, Ms. Bajwa learned that Mr. Bajwa had planted cabbage on lands that Bajwa Farms had previously leased from Van Eekelen. Meanwhile, in the 2020/21 growing season, Bajwa Farms did not grow cabbage because Bajwa Farms was not able to secure the land from Van Eekelen that it previously leased. In total, Bajwa Farms was unable to secure three parcels of land that it had previously leased. Each parcel was leased to friends of Mr. Bajwa and each was a BCFresh grower.

242. In or about September 2020, Mr. Driediger received a telephone call from Mr. Bajwa, who informed Mr. Driediger that he had grown cabbage without the assistance of Bajwa Farms and wanted to market it. Mr. Driediger knew that Mr. Bajwa was working with Van Eekelen, and also knew that Ms. Bajwa had not grown cabbage to be marketed, that there had been a split between the couple, and Ms. Bajwa had been given control of the Bajwa Farm operations by a court order.

243. After speaking to Mr. Bajwa, Mr. Driediger telephoned Mr. Solymosi to advise him of the situation. Mr. Solymosi directed Mr. Driediger to put the information in an email, which Mr. Driediger did. On or about September 18, 2020, Mr. Solymosi received an email from Mr. Driediger seeking to find a way for Mr. Bajwa to sell the cabbage he had grown in 2020 to BCFresh. The cabbage was grown independent of Bajwa Farms. Mr. Solymosi did not know either Mr. Bajwa or Ms. Bajwa, and did not know about the marital dispute.

244. Mr. Driediger's September email specifically referenced the fact that Ms. Bajwa is Mr. Dhillon's sister. In his evidence in this proceeding, Mr. Driediger explained that he included that information in his email because he wanted Mr. Solymosi to know the situation was volatile and Mr. Dhillon was assisting his sister, Ms. Bajwa, given Mr. Dhillon was also involved in litigation against the Commission. Mr. Driediger's evidence was that he had a very good working relationship with Ms. Bajwa and her son and had great respect for them.

245. In or about October 12, 2020, Mr. Solymosi spoke with Mr. Bajwa and prepared an analysis for the Commission. Mr. Solymosi did not reach out to or discuss these matters with Ms. Bajwa. He recommended to the Commission that if Mr. Bajwa qualified as a producer, he could market the cabbage as a multi-registered farm associated with Bajwa Farms. Mr. Solymosi recommended that any DA earned under Bajwa Farms not be used to grant market access for Mr. Bajwa's cabbage. Normally, a license is required before a producer grows a regulated crop.

246. After considering Mr. Solymosi's analysis, the Commission decided that Mr. Bajwa could not use the Bajwa Farms' DA unless the cabbage was shipped through Bajwa Farms, and communicated this to Mr. Bajwa on November 2, 2020. Consistent with Mr. Solymosi's recommendation, Mr. Bajwa was invited to register with the

Commission as a multi-registration farm, which would have required Ms. Bajwa's consent. Mr. Bajwa did not pursue registration.

247. Meanwhile, Mr. Driediger had some further conversations and determined that Mr. Bajwa was an employee of Van Eekelen, such that the cabbage was in fact owned by Van Eekelen. Mr. Driediger communicated that to Mr. Solymosi at a November 3, 2020 meeting, several weeks after he first learned that information. Van Eekelen then applied for and was granted a license for the cabbage from the Commission.

248. When Ms. Bajwa discovered what had occurred, on November 6, 2020, counsel for Bajwa Farms wrote to Mr. Solymosi and advised him of Bajwa Farms' concerns regarding Mr. Bajwa's conduct and breaches of fiduciary duty, and their impact they had on Bajwa Farms. The Commission declined to intervene, indicating that the matter appeared to be a private dispute in which the Commission could not intervene.

B. Bajwa Farms' Allegations

249. In this review, Bajwa Farms alleges that: (1) the Commission acted in bad faith, without procedural fairness, and based on personal animosity on the part of certain Commissioners and/or the Commission's general manager; and (2) members of the Dhillon family (specifically Ms. Bajwa) have been treated unfairly as a result of animus toward Mr. Dhillon and Prokam, and the Commission has dealt with cabbage DA or cabbage producer licenses in a way that is not impartial and not consistent with best practices.

250. Bajwa Farms argues that throughout the fall of 2020, the Commission demonstrated partiality toward Mr. Bajwa and disregard for Ms. Bajwa's interests. Bajwa Farms makes a number of allegations about the approach Mr. Driediger took in his email, including the fact that he did not mention the criminal charges against Mr. Bajwa, and attempted to paint Mr. Bajwa in a sympathetic light, while all the while not communicating with Ms. Bajwa.

251. Bajwa Farms suggests the Commission mirrored Mr. Driediger's approach by failing to do any due diligence regarding Mr. Bajwa's request for market access, instead blindly relying on information from Mr. Driediger. Bajwa Farms argues it should have been clear to Mr. Solymosi on receiving the September 18 email that it was essential to obtain Ms. Bajwa's views, but he did not do so, nor did he determine any specifics any court order issued in the Bajwa marital dispute.

252. Bajwa Farms suggests that the switch in ownership of the cabbage from Mr. Bajwa to Van Eekelen was suspicious and "may well have [been] made so that it would not be necessary to notify Ms. Bajwa about the marketing of this cabbage".23 Bajwa Farms notes that the explanation that the cabbage was in fact owned by Van Eekelen

[23] Bajwa Farms Written Submission, para. 62

because Mr. Bajwa was an employee of Van Eekelen was first given at a November 3, 2020 meeting, several weeks after Mr. Driediger learned that information. Bajwa Farms suggests it was "rather odd" that Mr. Driediger did not report the "change in ownership of the cabbage" to Mr. Solymosi at the time.[24] It further argues that it was reckless for Mr. Solymosi to accept that change in ownership without investigating further. That lack of due diligence, Bajwa Farms says, is particularly surprising given what he described as the "extraordinary" circumstances of Mr. Bajwa seeking access for the cabbage only to have the cabbage later marketed as belonging to Van Eekelen.

253. Finally, Bajwa Farms argues the Commission's final decision amounted to it ignoring its own rules in order to advance the interests of Mr. Bajwa and Van Eekelen at the expense of Bajwa Farms and Ms. Bajwa. It notes that neither Mr. Bajwa nor Van Eekelen complied with the General Orders by obtaining a license to grow cabbage prior to planning to grow the crop in 2020. Mr. Solymosi acknowledged he was willing to bend the rules and overlook that the cabbage was grown without a licence. No enforcement action was taken for growing cabbage without a license.

254. Bajwa Farms argues that this partiality could only be explained by the fact that Ms. Bajwa is Mr. Dhillon's sister. Bajwa Farms notes in particular Mr. Solymosi's reference to Prokam as a rogue producer in September 27, 2017, and suggests that Mr. Driediger's reference to the relationship between Ms. Bajwa and Mr. Dhillon in the September 18, 2020, email should not have been included because it was irrelevant. Bajwa Farms also notes that the email was included in Mr. Solymosi's recommendation to the Commissioners.

255. In response, Hearing Counsel says that while Bajwa Farms raises various suspicions, it does not establish in evidence that the Commission or Mr. Solymosi did anything improper. The Commissioners take the position that there is no evidence supporting corruption and wrongdoing by any Commissioner, named or otherwise, with respect to Bajwa Farms. The Commissioners note that Ms. Bajwa's argument misconceives the role of the Commission, which is to ensure the orderly marketing of regulated vegetables. They say that except in exceptional circumstances (e.g. when ordered to by BCFIRB), the Commission does not take sides in commercial disputes between producers and agencies. Any argument that Mr. Bajwa diverted a corporate opportunity from Bajwa Farms with the assistance of Van Eekelen was outside the business of the Commission.

256. I see a number of problems with Bajwa Farms' allegations.

257. First, in some respects, Bajwa Farms is attempting to paint the Commission with actions taken by Mr. Driediger. The fact that Mr. Driediger made reference to Ms. Bajwa being Mr. Dhillon's sister says nothing about Mr. Solymosi or the Commission's actions. Mr. Solymosi did not know either Ms. Bajwa or Mr. Bajwa

[24] Bajwa Farms Written Submission, para. 88

before he received the email on September 18, 2019, and had no reason to favour one over the other. I make no findings in respect of Mr. Driediger' s motivations for including the reference to Mr. Dhillon.

258. Second, it is apparent that Mr. Solymosi was relying on the information provided by, and due diligence of Mr. Driediger, including the initial information that the cabbage was Mr. Bajwa's, and the later clarification it was actually owned by Van Eekelen. Further, I took Mr. Solymosi's admission that he 'bent the rules" as an acknowledgement that he was exercising discretion to find market access for a regulated product grown by a registered producer in support of orderly marketing. It is not necessary for me to make any findings about the reasonableness of Mr. Solymosi's reliance on Mr. Driediger, or whether the "bending of the rules" was an appropriate exercise of discretion in this case. Regardless of any such findings, I am satisfied on the evidence before me that Mr. Solymosi was not acting out of any animus towards Ms. Bajwa or Mr. Dhillon. In any event, the real issue for Ms. Bajwa was not that the Commission did not follow its rules, but rather that it failed to intervene on her behalf in her dispute Mr. Bajwa.

259. Third, while it may have been preferable for Mr. Solymosi to reach out to Ms. Bajwa to confirm the state of affairs, he was under no obligation to do so as a representative of the regulator. It is not the Commission's place to get involved in corporate disputes about misappropriation of a corporate opportunity. Further, Mr. Solymosi had no obligation to investigate private affairs or marital disputes, and owed no private law duty to Ms. Bajwa.

260. Taking all of this together, there is no basis for drawing any link between the decisions taken by Mr. Solymosi and the Commission and any animus towards Mr. Dhillon or Ms. Bajwa herself. While I understand why Ms. Bajwa may have hoped that Mr. Solymosi would reach out to her, and accept that it may have been prudent for him to do so, I cannot find the necessary evidentiary support to substantiate Bajwa Farms' very serious allegations, particularly in light of the lack of any evidence that Mr. Solymosi or the Commissioners took decisions because of a negative animus toward Prokam and Mr. Dhillon.

X. Conclusion and Next Steps

261. As I outlined above, despite the extensive investigation, document production, and the evidence of 16 witnesses, there simply was no cogent evidence presented to substantiate the very serious allegations of wrongdoing by the Complainant Participants. In most cases, I have found that the allegations were based on no more than speculation, rumour, and innuendo.

262. The Commission points to significant impacts from these allegations having been made in the notices of civil claim. In addition to the time and expense of responding to them, including in this Supervisory Review, it has been deprived of access to its knowledgeable General Manager in relation to the issues advanced by Prokam, CFP,

MPL and their principals; suffered harm to its own reputation and those of the Commissioners and Mr. Solymosi; and there has been a chilling effect on the willingness of producers to serve as elected Commission members This, the Commission says, has destabilized the industry and undermined the legitimacy of orderly marketing and the Commission as a whole.

263. A number of the participants have raised very serious concerns about these allegations having been made without a proper factual foundation. For example, the Commissioners say that "MPL's demands, allegations and conduct are nothing more than bullying tactics, not grounded in any legally justifiable complaint, and the very making of them thus improper."[25]

264. BCFresh suggests that given ongoing regulatory matters underway when the misfeasance claims were filed, the "irresistible inference" is that the misfeasance claims were commenced for strategic or ulterior purposes, not to recover damages suffered as a result of the conduct of the named defendants. BCFresh says that this conclusion becomes more irresistible when the evidence at the hearing is considered, as the evidence failed to support the making of any of the allegations and the claims for damages in the lawsuits.

265. The Commission goes further, and emphasizes that the unsubstantiated allegations were made in a context where both Prokam and MPL were seeking relief from the Commission. The Commission submits that I ought to draw an inference that the unsubstantiated allegations were made for strategic purposes, specifically, to harass, intimidate, cause expense and cast a pall of suspicion over the conduct of the Commission. This, the Commission argues, marks a "low point in the history of regulated marketing in the Province".[26] It therefore says that BCFIRB should advocate for legislative reform in respect of statutory immunity from such allegations, and that I should award costs in favour of the Commissioners.

266. I am also troubled by the submissions from various participants that these allegations were advanced without any evidence of actual harm or damages. For Prokam's part, it is argued that Prokam was able to continue participating in the market, and to continue selling its potatoes outside the province to Thomas Fresh. It was merely required to do so in accordance with the Commission's General Orders. Similarly, it is suggested that MPL has not suffered any actual harm or damage because it is not yet a participant in BC's regulated vegetable industry, and an agency license is a privilege, not a right. Damages, it is argued, do not flow merely because MPL was not able to enter the market as quickly as it might have liked. While I make no findings on this issue, as I note below, I do want to receive submissions on how this concern should be addressed.

[25] Commissioners' Written Submissions, para. 126
[26] Commission's Written Submission, para. 23

267. I agree with the Non-Complainant Participants that significant concerns arise out of the fact that no evidentiary foundation for these very serious allegations was established in this Supervisory Review. As I noted at the outset, the overarching objectives of this Supervisory Review are twofold: ensuring effective self-governance of the Commission in the interest of sound marketing policy and the broader public interest; and ensuring public confidence in the integrity of the regulation of the BC regulated vegetable sector. Over the course of this hearing, it began to appear that Prokam and MPL had advanced these serious allegations principally on speculation, which reduced this Supervisory Review to largely being an unsuccessful fishing expedition on the part of the Complainant Participants, at extraordinary expense to the Non-Complainant Participants and BCFIRB itself. While the Complainant Participants say that the lack of evidence arises out of various procedural deficiencies in the review, I do not agree for the reasons expressed above.

268. I also agree that these allegations, and the necessity of this Supervisory Review, has destabilized and caused a lack of confidence in the regulated vegetable industry. I am mindful of the significant impact these proceedings have had, including at one point a suggestion that all the acting Commissioners named in this proceeding might resign if required to sit on a panel to decide applications brought by Prokam, MPL or CFP. The advancement of these allegations effectively paralyzed aspects of the Commission's operations, which is demonstrative of the impact these allegations have had on the ability of the Commission to self-govern, and ultimately on the public confidence in the regulated vegetable sector.

269. That said, the specific question of whether the allegations were advanced in bad faith, or for the improper purpose of exerting influence over the Commission, was never put squarely in issue in this Supervisory Review, and was not put to any of the Complainant Participants' witnesses. Moreover, the answer to that question potentially gives rise to larger issues regarding the suitability of Prokam, CFP and MPL to participate in the regulated vegetable industry, issues which may need to be otherwise addressed in the prior approval and appeal processes already underway with respect to the MPL and CFP agency applications.

270. Accordingly, I want to first receive written submissions from Hearing Counsel on what next steps are appropriate to address these very serious concerns, and in addition, what other consequences should follow from my findings in this decision, including the issues of costs and legislative reform raised by the Commission. I would like those submissions to specifically address the forum in which these concerns could be dealt with, keeping in mind the ongoing BCFIRB processes for the MPL and CFP agency applications. After considering those submissions, I will then seek submissions from all of the participants.

XI. Orders

271. As a result of my findings in this supervisory review, I make the following orders:

a) The interim orders dated August 20, 2021, as amended on September 15 and 24, 2021, are rescinded. For clarity, Mr. Solymosi, and those Commissioners still serving in their positions, are free to participate in all of the business of the Commission in accordance with its existing policies and procedures.

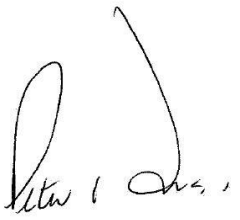
b) Hearing Counsel is to provide written submissions on the issues identified in paragraph 270 above by July 27, 2022. If further clarity is required on the matters to be addressed, Hearing Counsel is at liberty to seek further directions from me.

In accordance with s. 57 of the *Administrative Tribunals Act*, "an application for judicial review of a final decision of (BCFIRB) must be commenced within 60 days of the date the decision is issued."

Dated at Victoria, British Columbia this 14th day of July, 2022

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



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Peter Donkers, Chair