

July 19, 2021

File No: 3211.001

BY EMAIL

BC Farm Industry Review Board
1st Floor, 780 Blanshard Street
Victoria, BC V8W 2H1

Attention: Wanda Gorsuch

Dear Sirs/Mesdames:

**Re: Supervisory Review re. Allegations of bad faith and unlawful activity:
Response to July 9, 2021 Interim Orders Decision**

We write on behalf of Prokam and CFP in response to the direction at subparagraph 30(a) of the Supervisory Panel's July 9, 2021 Interim Orders decision. Prokam and CFP do not have any concerns with the proposed panel comprised of Chair Etsell and Commissioners, Newell, Royal, VanderMeulen, and Lodder, and Prokam and CFP accordingly confirm that they waive any and all reasonable apprehension of bias objections to that panel considering matters related to Prokam and CFP during the period of this Review.

Although the Supervisory Panel declined to resolve the factual disagreement referred to at paragraph 14 of the July 9 Interim Orders decision (whether the November 18, 2019 Reconsideration Decision was made by a panel of four or five Commissioners), we do consider it necessary for that disagreement to be resolved prior to consideration during the period of this Review of Prokam's application for a Class 1 license, which application is made necessary only as a result of the Reconsideration Decision, and on the assumption that the Reconsideration Decision is valid.

Resolution of this factual disagreement will determine whether the Reconsideration Decision was made without the requisite legal authority, and is consequently void. Thus, it will determine whether the context for Prokam's application for a Class 1 license is

1. the Commission's November 18, 2019 Reconsideration Decision, which downgraded Prokam's license to a Class 3; or
2. the BCFIRB's February 28, 2019 Appeal Decision, which directed the Commission to reconsider its December 22, 2017 decision to downgrade Prokam's license to a Class 4.

In the first circumstance, Prokam's license class is presumptively a Class 3 license, and in the second, it is presumptively a Class 1 license.

Ordinarily, this issue would be considered in the context of Prokam's appeal of the Reconsideration Decision, with the benefit of fulsome document production from the Commission pursuant to 8(4) of the *Natural Products Marketing (BC) Act*. However, since that appeal has now been twice deferred, that document production has not yet occurred.

The need for a decision on Prokam's license class and CFP's agency application is increasingly urgent. As Prokam advised in its May 8, 2021 letter to the Commission, and in our June 4, 2021 correspondence to the Supervisory Panel, Prokam has planted potatoes commensurate with its delivery allocation as prior-approved by FIRB. Those potatoes are anticipated to be ready for harvest and sale in a few weeks. Prokam remains without a means of access to the market in order to have its potatoes sold in accordance with its delivery allocation.

The import of Member Thauli's decision to defer Prokam's appeal of the Reconsideration Decision pending this supervisory review is that she must have considered some issues raised in the appeal to be more appropriately dealt with in this Supervisory Review. Accordingly, we ask that the Supervisory Panel determine the issue after requiring the necessary document production from the Commission.

Yours truly,

Hunter Litigation Chambers

Per:



Claire E. Hunter, Q.C.

CEH/RJA