

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY: FINAL TERMS OF
REFERENCE AND DRAFT RULES OF PRACTICE AND PROCEDURE

June 18, 2021

Introduction

1. On May 26, 2021, the BC Farm Industry Review Board (“BCFIRB”) issued a Notice of Supervisory Review into allegations of bad faith and unlawful activity raised in court filings alleging misfeasance of public office by members and staff of the BC Vegetable Marketing Commission (“Commission”). On June 14, 2021, I issued a decision confirming that on June 18, 2021, I would issue final terms of reference for the Supervisory Review and circulate draft Rules of Procedure.
2. This decision addresses those two issues.

Final Terms of Reference

3. In my June 14, 2021 decision, I confirmed that I received three requests to participate that were subject to a request that the submissions and all further correspondence and evidence be received in camera. As some of the applicants raised issues that could be relevant to the existing terms of reference of the Supervisory Review, I invited those applicants to reconsider their participation and resubmit their application if they were willing to participate publically.
4. I have since received a request for participant status from Bajwa Farms. Bajwa Farms’ principal is Nupinder Bajwa, who is the sibling of Prokam’s principal, Bob Dhillon. She raises an allegation that the Commission failed to investigate a concern she raised that her estranged husband had grown cabbage without delivery allocation or regulatory approval because of her relationship to Mr. Dhillon and Prokam.
5. In my view, the allegations raised by Bajwa Farms are sufficiently similar to the allegations made by other participants that they ought to be included in the Supervisory Review. As a result, Bajwa Farms is granted participant status in the supervisory review.
6. Bajwa Farms asks that the Supervisory Review include an examination into whether members of the Dhillon family have been treated unfairly as a result of animus toward Bob Dhillon and Prokam.
7. Item 2 of the initial terms of reference in the Notice of Supervisory Review refers to the Commission “Prosecuting enforcement proceedings in bad faith and without procedural fairness due to a personal animosity toward at least one producer, specifically Prokam.”
8. I am amending that term to now read: “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.” For clarity, this amendment is intended to encompass any decision making by members of the Commission that is grounded in a negative animus toward Prokam and Bob Dhillon, including decision making in respect of persons or entities other than

Prokam itself. The final Terms of Reference are appended to this decision as Appendix A, and will be posted on the BCFIRB website.

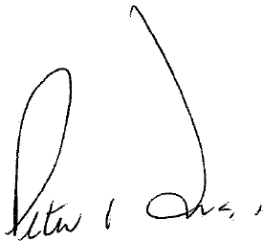
Draft Rules of Practice and Procedure

9. I attach as Appendix B to this decision draft rules of procedure for the Supervisory Review. In my June 14, 2021 Decision, I set the deadline for submissions on these draft rules (and the proposed interim order) at June 23, 2021. In light of the new date for the pre-hearing conference, I am extending the deadline for written submissions to June 25, 2021, and I confirm that the participants can speak to those submissions at the pre-hearing conference now set for 9:30 a.m. on June 30, 2021. A separate notice will be issued confirming the details of the pre-hearing conference.

Conclusion

10. I am making the following directions or orders:
- a. Bajwa Farms is granted standing as a participant in the Supervisory Review.
 - b. The participants in the Supervisory Review, as well as MPL, may provide me with submissions with respect to the draft Rules of Procedure (Appendix B) and the proposed interim order **no later than June 25, 2021**, and may speak to those submissions at the pre-hearing conference now scheduled for 9:30 a.m. on June 30, 2021.
 - c. The Final Terms of Reference for the Supervisory Review will be those attached as Appendix A, and they will be posted on the BCFIRB website.

Dated at Victoria, British Columbia, this 18th day of June 2021.



Peter Donkers
Chair

APPENDIX A

FINAL TERMS OF REFERENCE

Scope and Focus

BCFIRB's supervisory review is directed 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.

The Supervisory Review will consider the following allegations, which form the terms of reference for the supervisory review:

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.

Participants and Counsel

The following counsel and individuals will be represented at the hearing. The panel retains its discretion to allow additional applications to participate if it determines that other individuals' or entities' interests are likely to be affected by the supervisory review.

Hearing Counsel

Nazeer T. Mitha, Q.C.
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Review Panel Counsel

Mark G. Underhill
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Participant	Legal Counsel	Email Addresses
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Bajwa Farms Ltd.	Dean Dalke	dean.dalke@dlapiper.com
BC Vegetable Marketing Commission	Robert Hrabinsky	rhrabinsky@ahb-law.com
André Solymosi	Ravi Hira, Q.C.	RHira@hilarowan.com AHall@hilarowan.com RNHira@hilarowan.com MNicholls@hilarowan.com
John Newell, Mike Reed, Corey Gerrard, Blair Lodder, Peter Guichon	Kenneth McEwan, Q.C. William Stransky	kmcewan@mcewanpartners.com wstransky@mcewanpartners.com
BC Fresh Vegetables Inc (BC Fresh)	Robert (Rob) McDonell	rmcdonell@farris.com

APPENDIX B

DRAFT RULES OF PRACTICE AND PROCEDURES

Disclosure and production of evidence

1. Any participant who is raising allegations falling within the terms of reference for the supervisory review (the “Complainant Participants”) shall, within fourteen (14) days after the date of the prehearing conference, provide to hearing counsel:
 - a. the names and addresses of all witnesses they believe ought to be heard, together with a detailed statement of the evidence the witness is able to provide at the Oral Hearing; and
 - b. all relevant documents within the possession, control or power of the Complainant Participant.
2. Hearing counsel, upon receiving materials under section 1, is entitled to undertake any further investigations, questioning or interviews that he considers appropriate. After completing those tasks, he shall provide all of the relevant and non-privileged materials in his possession to legal counsel for all of the participants in the supervisory review, including, *inter alia*, documents, witness names, and summaries of evidence, investigations and interviews. Documents may be redacted by hearing counsel prior to circulation to remove information that is privileged or of a sensitive or confidential nature.
3. Any participant, other than a Complainant Participant, who receives materials from hearing counsel pursuant to s. 2 shall, within fourteen (14) days of receiving those materials, provide to hearing counsel:
 - a. the names and addresses of all witnesses they believe ought to be heard, together with a detailed statement of the evidence the witness is able to provide at the Oral Hearing; and

- b. all relevant documents within the possession, control or power of the participant.
4. Hearing counsel, upon receiving materials under section 3, is entitled to undertake any further investigations, questioning or interviews that he considers appropriate. After completing those tasks, he shall provide all of the relevant and non-privileged materials in his possession to legal counsel for all of the participants in the supervisory review, including, *inter alia*, documents, witness names, and summaries of evidence, investigations and interviews. Documents may be redacted by hearing counsel prior to circulation to remove information that is privileged or of a sensitive or confidential nature.
5. All participants have an ongoing obligation to produce documents and information throughout the course of the Supervisory Review, regardless of whether they have been served with a summons to produce. Hearing counsel will also produce to all participants any relevant and non-privileged documents that may come into his possession at any point during the Supervisory Review.
6. The terms “document” or “documents” are intended to have a broad meaning and include, without limitation, the following mediums: written, electronic, text, cellular or social media messaging, audiotape, videotape, digital reproductions, photographs, films, slides, maps, graphs, microfiche, metadata, and any data and information recorded or stored by means of any device.
7. The Review Panel considers relevant documents to include anything that touches on or concerns the subject matter of the Supervisory Review or that may directly or indirectly lead to other information that touches on or concerns the subject matter of the Supervisory Review.
8. Any person or entity served with a summons to produce information or documents shall provide all requested information within that person’s or entity’s possession, control or power in the time indicated in the summons to produce or,

if no time is indicated, in a timely manner, and in such a form as directed by the Review Panel.

9. The originals of relevant documents or other things are to be provided to hearing counsel upon request.
10. Legal counsel to participants and witnesses will be provided with documents and information, including witness statements, on the express understanding that they are to be treated as confidential, and can only be shared with clients and their experts or consultants, until such time as the documents or information are made public at the Oral Hearing or the Review Panel otherwise declares. For greater clarity, this does not preclude the Review Panel or hearing counsel from producing a document or other thing to participants, their counsel, or a proposed witness prior to the witness giving his or her testimony or as part of the investigation being conducted. Nor does it preclude the Review Panel from providing a document or information to experts or consultants retained by the Review Panel.
11. A party who believes that hearing counsel has not provided copies of relevant documents must bring this to the attention of hearing counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. This does not preclude the document from being used in cross-examination by any of the participants. Before such a document may be used for the purposes of cross-examination, a copy must be served by the party or party's counsel intending to use it on hearing counsel and all participants not later than 48 hours prior to the testimony of that witness, subject to the discretion of the Review Panel.
12. Hearing counsel or other participants are at liberty to seek an order from the Review Panel that a particular document not be used in cross-examination or otherwise admitted into the record.

Role of Hearing and Review Panel Counsel

13. 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.
14. Hearing counsel may demand answers to written questions or interview any person who they believe may have information or records that have any bearing upon the subject matter of the Supervisory Review. If hearing counsel conducts such an interview or demands answers to questions, then hearing counsel shall produce a summary of the interview or answers received and provide a copy to all participants.
15. A person may be required by summons issued under s. 7.1(3) of the *Natural Products Marketing Act* to answer questions, either at a meeting with hearing counsel or in writing, or produce documents. If hearing counsel conducts an interview, the interviewee may have their own legal counsel attend any such meeting.
16. Hearing counsel may meet with and/or interview the same person more than once.
17. Counsel for the Review Panel (panel counsel) may attend all or part of the Oral Hearing, but will not participate in examining witnesses or making submissions.

Oral Hearing

18. An oral hearing shall be held, either by videoconference or in-person, depending on public health restrictions in place at the time.
19. The Review Panel may receive any evidence considered helpful in fulfilling the Terms of Reference of the Supervisory Review. The strict rules of evidence used in a court of law to determine admissibility of evidence will not apply.

20. Witnesses who testify will give their evidence under oath or upon affirmation. However, the Review Panel is entitled to receive relevant evidence at the Oral Hearing even where no oath or affirmation has been given after affording all counsel and participants to make submissions.
21. On the advice of hearing counsel, the Review Panel will issue a summons to every witness before he or she testifies.
22. Witnesses may be called to testify more than once.
23. Unless the Review Panel otherwise orders, hearing counsel will call and question witnesses who testify at the Oral Hearing. Counsel for a party or witness may apply to the Review Panel to lead a particular witness's evidence-in-chief. If leave is granted, the examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Review Panel.
24. Unless the Review Panel otherwise orders, the order of examination will be as follows:
 - a. Hearing counsel will lead the evidence from each witness. Except as otherwise directed by the Review Panel, hearing counsel are entitled to ask both leading and non-leading questions;
 - b. Participants will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination of each witness will be determined by the participants and, if they are unable to reach agreement, by the Review Panel;
 - c. Counsel for a particular witness will examine last, unless he or she has questioned the witness as examination-in-chief, in which case there will be a right to re-examine the witness; and

- d. Hearing counsel will have a final opportunity to cross-examine all witnesses.
25. If hearing counsel elect not to call a witness or to file a document as an exhibit, a party may apply to the Review Panel to do so or to have the Review Panel direct hearing counsel to do so where the Review Panel is satisfied that the document or the evidence of the witness is necessary.
26. The Oral Hearing will be open to the public. However, the Review Panel may exclude the public from any part of the hearing where it determines that such an order is required.
27. Applications from witnesses or participants to hold any part of the Oral Hearing in camera should be made to the Review Panel at the earliest possible opportunity.

General

28. These Rules may be amended and new Rules may be added if the Review Panel finds it necessary to do so to fulfill the Review Panel's mandate and to ensure that the process is fair.
29. The Review Panel may extend or abridge any time prescribed by these Rules.
30. All participants and their counsel shall adhere to these Rules. Any party may raise any issue of non-compliance with the Review Panel at any time, and any breach of the Rules will be dealt with by the Review Panel as it sees fit.
31. Documents may be served on a party, hearing counsel or the Review Panel by email or any other such method as agreed to between legal counsel or as directed by the Review Panel.