

May 12, 2021

**File No.: 8006.009**

**VIA EMAIL: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)**

Mr. Peter Donkers, Chair  
B.C. Farm Industry Review Board  
780 Blanshard Street  
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Dear Mr. Donkers:

**Re: BCVMC ats. Prokam and BCVMV ats. MPL**

I am writing to the BCFIRB in its supervisory capacity on behalf of the BC Vegetable Marketing Commission.

The purpose of this letter is to request that the BCFIRB issue directions as described in greater detail below.

**Background**

In the matter of *Prokam Enterprises Ltd. v. BCVMC* (N1908), the BCFIRB circulated a copy of a Notice of Civil Claim filed in the matter of *Prokam Enterprises Ltd. v. Guichon and Solymosi* (Vancouver Registry S-212980) (the "Prokam Claim"), and asked that the parties address the implications of that claim at the Pre-Hearing Conference on April 20, 2021. The Prokam Claim alleges misfeasance in public office and bad faith against Mr. Guichon (a member of the Commission) and Mr. Solymosi (the Commission's General Manager).

At the Pre-Hearing Conference, the Commission sought an adjournment of five weeks in order to better assess the implications of the Prokam Claim. By decision dated April 27, the BCFIRB granted the adjournment and directed that the Commission provide its submissions in writing no later than May 25, 2021.

On April 27, 2021, the Commission became aware of a second Notice of Civil Claim in the matter of *MPL British Columbia Distributors Inc. v. Newell, Reed, Gerrard, Lodder, Guichon and Solymosi* (Vancouver Registry S-214043) (the "MPL Claim). Like the Prokam Claim, MPL alleges misfeasance in public office and bad faith against the named Commission members and the Commission's General Manager.

Prokam wishes to proceed with its appeal. Both MPL and CFP Marketing Corporation (a "related company" to Prokam) have applications to serve as designated agents of the Commission that are extant before the Commission.

Mr. Guichon's and Mr. Reed's tenure as members of the Commission expired on April 30, 2021.

Today, the Commission filed its written submission in the Prokam appeal as directed by the BCFIRB, a copy of which is attached. In brief, the Commission asked that the BCFIRB adjourn generally the Prokam appeal until such time as there is a final disposition of the allegations made against Mr. Solymosi in the Prokam Claim.

Though the Prokam and MPL matters are distinct, similar issues arise from the nature of the allegations made by each in their respective civil proceedings. For the reasons that follow, the Commission asks the BCFIRB, in its supervisory capacity, to direct that the Commission:

1. defer any decisions in relation to existing or future applications made by or in relation to Prokam, CFP Marketing Corporation, or their affiliates and related companies, until such time as there is a final disposition of the allegations made against Mr. Solymosi in the Prokam claim; and
2. defer any decisions in relation to existing or future applications made by or in relation to MPL, or its affiliates and related companies, until such time as there is a final disposition of the allegations made against the named defendants in the MPL Claim.

### Argument

At the outset, it is important to state that the writer does not represent any of the named defendants in the Prokam Claim or the MPL Claim. The submissions made herein are advanced only on behalf of the Commission.

It is the Commission's view that the Prokam Claim and the MPL Claim are both entirely without merit. Further, it is the Commission's view that these claims have been filed to harass; to intimidate; to cause expense; and to cast a pall of suspicion over the conduct of the Commission. In short, the Commission submits that the Prokam Claim and the MPL Claim have been advanced for strategic purposes only.

The Prokam Claim alleges, among other things:

10. Mr. Solymosi, in his capacity as General Manager of the Commission, reports to the Commission members and exercises statutory powers that have been delegated to him by the Commission, including pursuant to paragraph 11(1)(p) of the Act.

.....

62. In his role as General Manager of the Commission, exercising powers conferred and performing duties imposed by legislation that have been delegated to him by the Commission, Mr. Solymosi is a public officer.

63. In conducting the Investigation, Mr. Solymosi's object was not to determine in good faith whether there had been a violation of the Export Minimum Pricing Orders. Rather, Mr. Solymosi had predetermined at the time he commenced the Investigation that the plaintiff was a "rogue producer" that needed to be punished, and Mr. Solymosi carried out the Investigation in bad faith and for the improper purpose of creating the evidentiary record he believed was necessary to achieve that objective at the Show Cause Hearing.

64. Additionally, Mr. Solymosi's intentional failures to provide the plaintiff with the same opportunity to be heard orally and to contribute to the evidentiary record that he provided to IVCA and to the managers of other agencies at the Agency Managers Meeting, and to disclose to the plaintiff all of the evidence that was put before the Commission in connection with the Show Cause Decision, were unlawful breaches of procedural fairness, which Mr. Solymosi either knew were unlawful or was reckless or wilfully blind as to their unlawfulness.

65. Moreover, at all material times Mr. Solymosi knew or was reckless or wilfully blind to the fact that the Export Minimum Pricing Orders were invalid because of his failure to cause the Commission to adhere to the Registration and Gazetting Requirements. Accordingly, he knew or in the alternative was reckless or wilfully blind to the fact that the C&D Orders he delivered purporting to enforce the Export Minimum Pricing Orders and enjoin the Export Sales were unlawful.

The MPL Claim alleges, among other things:

4. The defendant, John Newell, is an individual residing in British Columbia, C/O BC Vegetable Marketing Commission, #207 - 15252 32<sup>nd</sup> Avenue, Surrey, British Columbia.

5. The defendant, Mike Reed, is an individual residing in British Columbia, C/O BC Vegetable Marketing Commission, #207 - 15252 32<sup>nd</sup> Avenue, Surrey, British Columbia.

6. The defendant, Corey Gerrard, is an individual residing in British Columbia, C/O BC Vegetable Marketing Commission, #207 - 15252 32<sup>nd</sup> Avenue, Surrey, British Columbia.

7. The defendant, Blair Lodder, is an individual residing in British Columbia, C/O BC Vegetable Marketing Commission, #207 - 15252 32<sup>nd</sup> Avenue, Surrey, British Columbia.

8. The defendant, Peter Guichon, is an individual residing in British Columbia, C/O BC Vegetable Marketing Commission, #207 - 15252 32<sup>nd</sup> Avenue, Surrey, British Columbia.

9. The defendant, Andre Solymosi is an individual residing in British Columbia, C/O BC Vegetable Marketing Commission, #207 - 15252 32<sup>nd</sup> Avenue, Surrey, British Columbia, and is the General Manager of the British Columbia Vegetable Marketing Commission (the "Commission") (John Newell, Mike Reed, Corey Gerrard, Blair Lodder, Peter Guichon, and Andre Solymosi are referred to collectively herein as the "Defendants").

.....

21. The Defendants are public officers, pursuant to the authority granted in the NPMA, Vegetable Scheme, and General Orders. The defendants John Newell, Mike Reed, Corey Gerrard, Blair Lodder, and Peter Guichon are members of the Commission, elected to a term of office by a vote of regulated vegetable producers in BC. The defendant, Andre Solymosi, is the Commission's General Manager.

.....

23. The Defendants have deliberately committed ... unlawful acts while acting in their capacity as public officers of the Commission.

.....

25. The conduct of the Defendants in relation to the Unlawful Acts was done for the express purpose of harming MPL...

28. The Defendants were aware, at all material times, that the Unlawful Acts were unlawful and likely to harm MPL BC.

29. In the alternative, the Defendants knew that the Unlawful Acts were not authorized, and were prohibited, by the provisions of the regulatory scheme and were unlawful, or acted with a reckless indifference to the illegality of their actions.

30. In the further alternative, the Defendants knew that the Unlawful Acts contravened the requirements of the regulatory scheme, or acted with reckless indifference to the legality of their conduct.

31. At all material times the Defendants knew that their conduct was likely to injure MPL BC, or acted with reckless indifference to this fact.

Thus, Prokam alleges that Mr. Solymosi has an animus towards Prokam; that he sought to “punish” Prokam; that he so acted “intentionally”; and that he did so knowing that his actions were unlawful, or was otherwise reckless or willfully blind as to the unlawfulness of his conduct. Similarly, MPL alleges that Mr. Solymosi and 5 members of the Commission deliberately committed unlawful acts for the express purpose of harming MPL.

Against this backdrop, both MPL and CFP Marketing Corporation (a “related company” to Prokam) have applications to serve as designated agents of the Commission that are extant before the Commission. Presumably, both applicants expect the Commission to process these applications while these allegations of bad faith and misfeasance in public office linger. This is not feasible.

Mr. Solymosi remains the Commission’s General Manager, and he will continue to act in that capacity while the applications are extant. Though Mr. Guichon’s and Mr. Reed’s tenure as Commission members has expired, the other three Commission members named as defendants by MPL remain as members of the Commission. If the Commission’s General Manger and the Commission members named as defendants do indeed harbour the alleged animus towards Prokam and MPL, (which is denied), then that animus would bear directly on the Commission’s ability to process the applications with the requisite impartiality required on an independent and impartial decision-maker. To put the matter simply, if such animus existed as alleged, it would undoubtedly have significant implications for the Commission’s dealings with MPL and CFP Marketing Corporation, including those arising from their applications to serve as designated agents of the Commission.

For the same reason, it would not be fair or appropriate to require the Commission to process these applications while the integrity of its General Manger and five Commission members has been so profoundly impugned and this pall of suspicion is permitted to linger. The Commission respectfully submits that this is the true aim of the Prokam Claim and the MPL Claim: to harass; to intimidate; to cause expense; and to cast a pall of suspicion over the conduct of the Commission. To require the Commission to process the applications made by MPL and CFP Marketing Corporation while the serious allegations raised in the civil claims are unresolved would permit those entities to improperly benefit from what the Commission asserts is their true, strategic purpose. Conversely, the nature of the allegations is such that there ought to be a determination concerning Mr. Solymosi’s and the named Commission members’ alleged animus towards Prokam and MPL before the applications are processed. If it is ultimately found that the civil claims brought by Prokam and MPL are without merit, and should it appear that the civil claims were brought for strategic purposes only, then Prokam and MPL, together with their affiliates and related companies, might well establish themselves as being particularly unsuitable candidates to serve as designated agents of the Commission. Indeed, it is troubling that these sudden and explosive allegations of bad faith and misfeasance were never advanced by Prokam or MPL before the BCFIRB, whether in its supervisory capacity or otherwise.

Pursuant to section 7.1 of the NPMA, the BCFIRB has general supervision over the Commission, and may exercise its supervisory powers at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances.

The Commission therefore respectfully asks the BCFIRB, in its supervisory capacity, to direct that the Commission:

1. defer any decisions in relation to existing or future applications made by or in relation to Prokam, CFP Marketing Corporation, or their affiliates and related companies, until such time as there is a final disposition of the allegations made against Mr. Solymosi in the Prokam claim; and
2. defer any decisions in relation to existing or future applications made by or in relation to MPL, or its affiliates and related companies, until such time as there is a final disposition of the allegations made against the named defendants in the MPL Claim.

Thank you for your attention to this matter.

Yours truly,

**AFFLECK HRABINSKY BURGOYNE LLP**

Per:   
**ROBERT P. HRABINSKY**

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May 12, 2021

**File No.: 8006.022**

**VIA EMAIL: [Gloria.Chojnacki@gov.bc.ca](mailto:Gloria.Chojnacki@gov.bc.ca)**

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Dear Ms. Chojnacki:

**Re: BCVMC ats. Prokam (N1908)**

Background

By email dated April 19, 2021, the BCFIRB circulated a copy of the Notice of Civil Claim in the matter of *Prokam Enterprises Ltd. v. Guichon and Solymosi* (Vancouver Registry S-212980) (the "Prokam Claim"), and asked that the parties address the implications of that claim at the Pre-Hearing Conference on April 20, 2021. The Prokam Claim alleges misfeasance in public office and bad faith against Mr. Guichon (a member of the Commission) and Mr. Solymosi (the Commission's General Manager).

At the Pre-Hearing Conference, the Commission sought an adjournment of five weeks in order to better assess the implications of the Prokam Claim. By decision dated April 27, the BCFIRB granted the adjournment and directed that the Commission provide its submissions in writing no later than May 25, 2021.

On April 27, 2021, the Commission became aware of a second Notice of Civil Claim in the matter of *MPL British Columbia Distributors Inc. v. Newell, Reed, Gerrard, Lodder, Guichon and Solymosi* (Vancouver Registry S-214043) (the "MPL Claim"). Like the Prokam Claim, MPL alleges misfeasance in public office and bad faith against the named Commission members and the Commission's General Manager.

Prokam wishes to proceed with the within appeal. Both MPL and CFP Marketing Corporation (a “related company” to Prokam) have applications to serve as designated agents of the Commission that are extant before the Commission.

Mr. Guichon’s tenure as a member of the Commission expired on April 30, 2021.

#### Brief Statement of Position

For the reasons that follow, the Commission asks that the within appeal be adjourned generally, until such time as there is a final disposition of the allegations made against Mr. Solymosi in the Prokam Claim.

Under cover of separate letter, the Commission has written to the BCFIRB in its supervisory capacity requesting the BCFIRB to direct that the Commission:

1. defer any decisions in relation to existing or future applications made by or in relation to Prokam, CFP Marketing Corporation, or their affiliates and related companies, until such time as there is a final disposition of the allegations made against Mr. Solymosi in the Prokam claim; and
2. defer any decisions in relation to existing or future applications made by or in relation to MPL, or its affiliates and related companies, until such time as there is a final disposition of the allegations made against the named defendants in the MPL Claim.

#### Argument

At the outset, it is important to state that the writer does not represent either of the named defendants in the Prokam Claim. The submissions made herein are advanced only on behalf of the Commission.

It is the Commission’s view that the Prokam Claim is entirely without merit. Further, it is the Commission’s view that the claim has been filed to harass; to intimidate; to cause expense; and to cast a pall of suspicion over the conduct of the Commission. In short, the Commission submits that the Prokam Claim has been advanced for strategic purposes only.

Prokam asserts that its civil claim should not impede the within appeal. It asserts that: (a) parties to the proceedings are different; (b) the civil claim deals with a subject matter that is different from the subject matter of the appeal; (c) the relief sought in the civil action is different from the relief sought in the appeal; and (d) there is no general prohibition against proceeding simultaneously in both administrative and judicial forums, unless the judicial proceeding is a collateral attack on the decision being impugned in the administrative appeal.

The Commission does not contest these assertions. However, it is submitted that these assertions do not speak to the central and obvious issue that arises from the presence of these serious allegations made against the Commission’s General Manager. The Prokam Claim alleges, among other things:



10. Mr. Solymosi, in his capacity as General Manager of the Commission, reports to the Commission members and exercises statutory powers that have been delegated to him by the Commission, including pursuant to paragraph 11(1)(p) of the Act.

.....

62. In his role as General Manager of the Commission, exercising powers conferred and performing duties imposed by legislation that have been delegated to him by the Commission, Mr. Solymosi is a public officer.

63. In conducting the Investigation, Mr. Solymosi's object was not to determine in good faith whether there had been a violation of the Export Minimum Pricing Orders. Rather, Mr. Solymosi had predetermined at the time he commenced the Investigation that the plaintiff was a "rogue producer" that needed to be punished, and Mr. Solymosi carried out the Investigation in bad faith and for the improper purpose of creating the evidentiary record he believed was necessary to achieve that objective at the Show Cause Hearing.

64. Additionally, Mr. Solymosi's intentional failures to provide the plaintiff with the same opportunity to be heard orally and to contribute to the evidentiary record that he provided to IVCA and to the managers of other agencies at the Agency Managers Meeting, and to disclose to the plaintiff all of the evidence that was put before the Commission in connection with the Show Cause Decision, were unlawful breaches of procedural fairness, which Mr. Solymosi either knew were unlawful or was reckless or wilfully blind as to their unlawfulness.

65. Moreover, at all material times Mr. Solymosi knew or was reckless or wilfully blind to the fact that the Export Minimum Pricing Orders were invalid because of his failure to cause the Commission to adhere to the Registration and Gazetting Requirements. Accordingly, he knew or in the alternative was reckless or wilfully blind to the fact that the C&D Orders he delivered purporting to enforce the Export Minimum Pricing Orders and enjoin the Export Sales were unlawful.

Thus, Prokam alleges that Mr. Solymosi has an animus towards Prokam; that he sought to "punish" Prokam; that he so acted "intentionally"; and that he did so knowing that his actions were unlawful, or was otherwise reckless or wilfully blind as to the unlawfulness of his conduct.

Mr. Solymosi remains the Commission's General Manager, and he acted in that capacity throughout the entirety of the events which are the subject matter of this appeal. If he does indeed harbour the alleged animus towards Prokam that is alleged in the Prokam Claim (which is denied), then that animus would bear directly on the circumstances which are the subject matter of the appeal. To put the matter simply, if such animus existed as alleged, it would undoubtedly bear upon all of Mr. Solymosi's dealings with Prokam, including those which are the subject matter of the appeal.

The allegations advanced in the Prokam Claim are so serious that it is not tenable for the BCFIRB to close its eyes to the lingering existence of these allegations in the appeal proceedings. Though Prokam does not expressly raise Mr. Solymosi's alleged animus towards it as an issue in the appeal, it is obvious that such animus (if it existed) could be determinative of the outcome.

For the same reason, it would not be fair or appropriate to require the Commission to proceed while the integrity of its General Manger has been so profoundly impugned and this pall of suspicion is permitted to linger. The Commission respectfully submits that this is the true aim of the Prokam Claim: to harass; to intimidate; to cause expense; and to cast a pall of suspicion over the conduct of the Commission. To proceed with the appeal in these circumstances would permit Prokam to improperly benefit from what the Commission asserts is the true, strategic purpose of the civil claim. Conversely, the nature of the allegations is such that there ought to be a determination concerning Mr. Solymosi's alleged animus towards Prokam before the appeal is heard. If it is ultimately found that the civil claim brought by Prokam is without merit, and should it appear that the civil claim was brought for strategic purposes only, then such *ex post facto* conduct could conceivably be material to the BCFIRB's *de novo* disposition of the issues arising on the appeal. Indeed, it is troubling that Prokam's sudden and explosive allegations of bad faith and misfeasance were never advanced before the BCFIRB, whether in its supervisory capacity or otherwise.

Pursuant to section 8.1 of the NPMA and section 11 of the *Administrative Tribunals Act*, the BCFIRB has the power to control its own processes.

The Commission therefore respectfully asks that the appeal be adjourned generally pending final disposition of the allegations made against Mr. Solymosi in the Prokam Claim.

Thank you for your attention to this matter.

Yours truly,

**AFFLECK HRABINSKY BURGOYNE LLP**

Per:

  
**ROBERT P. HRABINSKY**

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