

May 28, 2021

File No.: 8006-029

VIA EMAIL: Wanda.Gorsuch@gov.bc.ca

Ms. Wanda Gorsuch
Manager, Issues and Planning
B.C. Farm Industry Review Board
780 Blanshard Street
Victoria, BC V8W 2H1

Robert P. Hrabinsky
Direct Tel: (604) 800-8026
Direct Fax: (604) 800-9026
Email: rhrabinsky@ahb-law.com

Dear Ms. Gorsuch:

Re: Supervisory Review into Allegations of Bad Faith and Unlawful Activity

I am legal counsel for the British Columbia Vegetable Marketing Commission with respect to the above-captioned matter. Please note that I do not represent any of the individual defendants named in the civil actions referenced in the Notice of Supervisory Review dated May 26, 2021, whom I understand are awaiting the appointment of legal counsel.

The Commission intends to participate in the Supervisory Review.

In its Notice of Supervisory Review, the BCFIRB issued the following direction:

In its May 12, 2021 letter, the Commission has requested that BCFIRB issue directions to prevent the Commission from considering applications for licences brought by Prokam, CFP, MPL and related bodies until the allegations in the civil claim have been resolved. Over and above the Commission's specific request for an interim order, given the serious nature of the allegations, BCFIRB is prepared to consider whether additional, and more restrictive interim orders may be required in the public interest to ensure the fair and accountable administration of the Vegetable Scheme pending the outcome of the supervisory review process. Broader orders could include restricting the Commission from dealing with all agency applications, or directing regulated producers to specific agencies.

Accordingly, BCFIRB is asking for written submissions from the participants in the supervisory process as of right, and any stakeholders who would be affected by BCFIRB making such interim orders. Those submissions should be received no later than close of business on June 4, 2021.

I am instructed to advise that the Commission is not seeking additional and more restrictive interim orders at this time. The Commission continues to advance its application for directions as set out in its letter dated May 12, 2021.

The Commission has received Prokam's submission to the Supervisory Panel dated May 27, 2021. Some of what is said in that submission cannot pass without comment.

At page 2 of its submission dated May 27, 2021, Prokam states:

"...there is no basis for the allegation that the Prokam Claim has been filed "to harass; to intimidate; to cause expense; and to cast a pall of suspicion over the conduct of the Commission".

The question as to "whether [Prokam's] allegations [of bad faith and unlawful conduct] can be substantiated" will be addressed by the BCFIRB in its supervisory review. While no attempt is made here to fully address that issue, it is essential to note that Prokam's civil claim is expressly premised on the assertion that:

"...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."

This assertion is deeply troubling to the Commission, given that Prokam has actual knowledge that the Commission was at all time proceeding on the basis that it was lawfully entitled to make the minimum pricing orders under the authority vested in it under the *Natural Products Marketing (BC) Act*. In fact, 22 pages were devoted to the Commission's analysis of its authority in its Written Submissions dated August 13, 2018 filed in the matter of *Prokam et. al. v. BCVMC* (Files: N1715, N1716, N1718, N1719). The Commission's authority under the NPMA to make the minimum pricing orders was a central issue in that contested appeal. Against that background, Prokam's assertion that minimum price orders were "knowingly made without jurisdiction" is astounding, to say the least.

In similar form, Prokam asserts at footnote 2:

In the Original Appeal, BCFIRB held not only that the export minimum pricing orders were unlawful, but also that the Commission must have known this at the time: see Original Appeal Decision dated February 28, 2019 (available at this link) at para. 49.

This is a profound and troubling mischaracterization of paragraph 49 of the BCFIRB's decision. At paragraph 49, the BCFIRB said:

These [*here the BCFIRB is referring to the requirement to "Gazette" orders made under the APMA*] are not minor issues or legal technicalities. Nor are they matters that the Commission can be excused for being unaware of.

By no stretch of the imagination was the BCFIRB holding "not only that the export minimum pricing orders were unlawful, but also that the Commission must have known this at the time." Nor was the BCFIRB in any way suggesting that the Commission was unaware of the requirement to Gazette orders made under the APMA. In fact, the Commission made extensive submissions with respect to this requirement in its Written Submissions dated August 13, 2018 filed in the matter of *Prokam et. al. v. BCVMC* (Files: N1715, N1716, N1718, N1719). Furthermore, in paragraph 48 of its decision, the BCFIRB stated:

48. But in order to actually avail itself of this authority under the federal legislation, the Commission is required to comply with the Statutory Instruments Act. This is accepted by the Commission, which stated in its submission, "in practical terms, this means that any order made by the Commission which depends on delegated federal legislative authority will only come into force after the order has been "Gazetted". (emphasis added)

That Prokam is here resorting to such profound and obvious mischaracterizations speaks to the lack of merit in its civil claim.

At pages 3 and 4 of its submission, Prokam argues that a deferral of the applications presently before the Commission in the face of the serious accusations made by Prokam and MPL is analogous to the following:

By way of analogy, it would mean that anytime a taxpayer sues officers of the Canada Revenue Agency, the Agency could refuse to deal with the taxpayer until the lawsuit is concluded. Police agencies could refuse to carry out their statutory duty to protect a plaintiff from crime while a lawsuit against officers for false imprisonment, wrongful arrest, or breaches of Charter rights is outstanding. Health authorities could refuse to provide medical services to plaintiffs while lawsuits against doctors for sexual assault or other breaches of duty remained unresolved.

The present circumstances are not analogous to the scenarios described by Prokam. Here, both Prokam and MPL are seeking to advance applications before the Commission that will necessarily engage some of the very same individuals who have been made the subject of their serious allegations.

The Commission will reserve its right to make further submissions in the context of the ongoing Supervisory Review into Allegations of Bad Faith and Unlawful Conduct.

Yours truly,

AFFLECK HRABINSKY BURGOYNE LLP

Per: 
ROBERT P. HRABINSKY

cc. chunter@litigationchambers.com

cc. morgan.camley@dentons.com