



BC Farm Industry Review Board

April 29, 2022

File: 44200-60\AREV

DELIVERED BY EMAIL

Claire Hunter, Q.C.
Hunter Litigation Chambers

Rose-Mary Basham, Q.C.
Basham Law

Ravi Hira, Q.C.
Hira Rowan

Kenneth McEwan, Q.C.
McEwan Partners

Robert Hrabinsky
Affleck Hrabinsky Burgoyne

Robert McDonell
Farris LLP

Dean Dalke
DLA Piper

Emma Irving
Dentons Canada LLP

Dear All:

RULING REGARDING D. GLYKHERR AND A. SOLYMOSI

This is my ruling on two matters on which I received oral submissions on April 20, 2022: (1) an application for an order calling Dawn Glyckherr as a witness, and (2) an application for an order that Andre Solymosi be recalled for further examination.

I. Dawn Glyckherr

MPL British Columbia Distributors Inc. (MPL) renews its application to have Ms. Glyckherr called as witness in relation to her strategic planning work with the BC Vegetable Marketing (Commission), which apparently resulted in over 100 interviews of growers and other stakeholders during which she heard concerns about the way the Commission was conducting its affairs. In oral submissions, counsel for MPL placed particular emphasis on the issue of why Ms. Glyckherr did not complete her work for the Commission, noting Mr. Solymosi's evidence about the importance of, and his personal support for, her work. In addition, counsel noted that Hearing Counsel questioned the Commissioners on that issue, and that it would be unfair not to hear from Ms. Glyckherr to get her perspective and evidence.

Prokam Enterprises Ltd. (Prokam) supports MPL, but also advanced a broader submission in respect of other witnesses, emphasizing that the calling of witnesses in this supervisory review was always intended to be iterative in nature and informed by the evidence given in the hearing. Prokam suggests that before any decision is taken on

Web:

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Phone:

Info: 250 356-8945

Fax: 250 356-5131

Mail:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Office:

2975 Jutland Rd
Victoria, BC V8T 5J9

additional witnesses, I should direct Hearing Counsel to perform additional interviews which can inform a decision whether direct evidence from additional witnesses, such as John Walsh, will be helpful.

Hearing Counsel takes the position that there is not a proper evidentiary foundation for Ms. Glyckherr to be called as a witness. Similar to the earlier applications in respect of this issue, he emphasizes that there has not been any evidence adduced in this supervisory review that Ms. Glyckherr knows of or has evidence relevant to the specific allegations against Messrs. Solymosi, Newell, Reed, Gerrard, Lodder or Guichon which are set out in the terms of reference. At best, he says the evidence to date suggests that Ms. Glyckherr would say that she is aware of general concerns and unhappiness in the industry, such as comments like “old boys club”, and “you scratch my back, I scratch yours”. However, there is no basis for concluding that she would have anything to say about the treatment of MPL, despite hearing counsel’s questions aimed at eliciting such evidence from the Commissioners. In his submission, nothing has changed since I ruled on March 18, 2022 that it was not necessary for Ms. Glyckherr to be interviewed or called as a witness.

For their part, the Commissioners emphasize that the purpose of this inquiry is to serve BCFIRB in getting to the bottom of the allegations which form the basis of the terms of reference for this supervisory review. While the process is iterative, it is up to the panel to determine if anything worthwhile can be elicited from further evidence or witnesses. They say that nothing in Mr. Cheema’s evidence supports the need to call Ms. Glyckherr, particularly since Mr. Cheema confirmed that he did give any specific names of Commissioners to Mr. Mastronardi.

Mr. Solymosi agrees. He says that Mr. Cheema’s evidence was nothing more than his thoughts and feelings, and any evidence from Ms. Glyckherr would be of the same character.

The Commission and BC Fresh Vegetables Inc. (BCFresh) support the submissions of Hearing Counsel, the Commissioners, and Mr. Solymosi.

This issue has been before me previously. In my most recent ruling on March 18, 2022, I said this:

Second, on February 3, 2022, I ruled that it was premature to require Hearing Counsel to interview and call Ms. Glyckherr. I advised at that time that, “[o]nce I have all the evidence before me, I will consider whether there is a need to go farther and explore other matters, including whatever allegations Ms. Glyckherr may be aware of.” The evidence is not yet all before me, and Mr. Solymosi’s evidence does not persuade me that it is necessary to revisit my previous ruling. The general nature of the allegations that Ms. Glyckherr apparently raised with Mr. Solymosi, all of which are based on second-hand information, are well outside the specific terms of reference for this review. Again, I am retaining the discretion to revisit this issue on a proper application brought at the conclusion of the evidence.

Subject to these applications, the evidence has now concluded. I have now heard from Ravi Cheema, who might have shed more light on the specific evidence that Ms. Glyckherr would offer. However, his evidence was cast at the same level of generality as all of the other evidence I have heard to date about Ms. Glyckherr, and he did not provide any basis for concluding that Ms. Glyckherr will be able provide evidence about any of the specific allegations of wrongdoing against Mr. Solymosi or the Commissioners.

It has been open to all counsel to interview Ms. Glyckherr (and any other witness for that matter), and to in turn provide me with a foundation for believing that she might have specific and relevant evidence to give regarding the allegations which are at the heart of the terms of reference. To date, I have not been provided with that foundation. Hearing Counsel provided multiple witnesses the opportunity to put forward that kind of evidence, and they did not do so. I am therefore left with the same conclusion that Ms. Glyckherr's evidence is likely to be general in nature, and grounded in hearsay or double hearsay. I have now heard that evidence from several witnesses, and it is not necessary for me to hear it again from Ms. Glyckherr.

I also do not believe it is necessary to hear from Ms. Glyckherr to address why she never provided any written report to the Commission, nor completed the strategic review process for the Commission. That issue has no relevance to the terms of reference for this supervisory review, and I will not be making any findings in that regard, such that no fairness concerns arise.

Accordingly, the application to have Ms. Glyckherr called as witness is denied. In response to Prokam's submission, I also see no proper foundation for directing that Hearing Counsel interview any other witnesses at this time.

II. Andre Solymosi

On April 18, counsel for Mr. Newell produced two additional email chains that had not been previously disclosed in this supervisory review.

The first is an email chain dated November 2017 between Messrs. Solymosi and Newell, as well as Jos Moerman and Jeff Madu, which was initiated by Mr. Moerman regarding peppers from Mexico being sold by MPL (the "2017 Email Chain"). In that chain, Mr. Newell references that Walmart switched over to MPL (from Windset Farms), and in turn Mr. Solymosi indicated that he had been contacted by a representative of MPL asking about securing BC product for the Walmart account. In response, Mr. Solymosi advised that one option was an agency application by MPL. He advised Mr. Newell and the other recipients that he was putting the issue on the agenda for the next Commission meeting, and indicated he would give Mr. Newell a call to discuss it.

The second is an email chain dated April 2018 that originated with Mr. Solymosi advising various individuals of an agency transfer for Randhawa Farms (the "2018 Email Chain"). Mr. Newell subsequently speculated the transfer was MPL finding a "way into our industry", to which Mr. Solymosi replied that the contract was in fact with a company called Oppenheimer.

MPL says Mr. Solymosi should be recalled to address evidence that as early as November 2017 Mr. Solymosi was assisting Mr. Newell in a bid to exclude MPL from the industry in British Columbia. MPL also suggests it is necessary to call Mr. Solymosi to properly test Mr. Newell's evidence regarding the content of the emails. In MPL's view, since the emails were put to Mr. Newell, fairness requires that they should also be put to Mr. Solymosi. MPL emphasizes that it could not examine Mr. Solymosi when he gave his initial evidence because the email chains were not produced by him or any other party at the time.

For its part, Prokam points to a third additional document produced after Mr. Solymosi's evidence, specifically a January 10, 2018 calendar entry for a meeting between Mr. Solymosi and Mr. Jaymie Collins in respect of whether Mr. Collins would accept Prokam as his agency (Vancouver Island Farm Products Inc.). Prokam wishes to examine Mr. Solymosi as to whether he might have discouraged Mr. Collins to accept Prokam at its agency at that meeting. Prokam asks that if Mr. Solymosi is recalled, questioning should be permitted on that subject.

Hearing Counsel takes the position that there is no need to recall Mr. Solymosi to deal with either email chain. With respect to the 2017 Email Chain, Hearing Counsel notes that at no point in his testimony did Mr. Solymosi say anything that contradicts what was said in the emails. Additionally, Mr. Solymosi was cross-examined at length on what was said about the issue of MPL's inquiry in the December 14, 2017 Commission meeting that followed. With respect to the 2018 Email Chain, Hearing Counsel notes that since Mr. Solymosi corrected Mr. Newell, the emails do not contain any evidence of potential animus on the part of Mr. Solymosi. Moreover, he says that MPL did not apply for an agency license until several years after both email chains, such that they are not relevant to the allegations at issue in this supervisory review.

Counsel for Mr. Solymosi agrees that his client should not be recalled. He submits that recalling witnesses is only done exceptionally. After detailing MPL's pleadings and its claim for damages starting in 2020 with MPL's agency application, he explained that the documents were not produced earlier because it was not evident that this kind of document going back to 2017 would be relevant. Counsel further argued that no new relevant evidence could be solicited from Mr. Solymosi, particularly since he already gave extensive evidence under cross-examination about the December 14, 2017 meeting.

The Commissioners adopt the submissions of Mr. Solymosi. They emphasize that the email chains predate both the moratorium and MPL's agency application, yet counsel for MPL spent a significant amount of time cross-examining on them, reinforcing that MPL's misfeasance claim constitutes "pleadings in search of a theory". In any event, the Commissioners say that the email chains only contain evidence regarding Mr. Newell's views, and that Mr. Newell recused himself from decision-making concerning MPL, such that the emails are nothing more than a distraction.

Again, the Commission and BCFresh adopted the submissions of Hearing Counsel, Mr. Solymosi, and the Commissioners.

In my view, the two email chains do not justify recalling Mr. Solymosi.

First, the emails significantly predate MPL's agency application, which is at the core of the terms of reference of this supervisory review. While MPL now appears to be potentially advancing a theory of wrongdoing dating back to 2017 and an initial inquiry from MPL, that theory is at the margins of, if not outside, the terms of reference.

Second, if anything, the two email chains speak to Mr. Newell's views or potential animus toward MPL, not Mr. Solymosi's. Given the unchallenged evidence that Mr. Newell recused himself from all decision-making in respect of MPL, it is not necessary to hear from Mr. Solymosi to test Mr. Newell's evidence about the email chains or his views.

Third, if Mr. Solymosi has any relevant evidence to give, it would be in respect of the events which followed the 2017 Email Chain, and in particular the December 14, 2017 meeting. Mr. Solymosi was extensively cross-examined on that meeting, including by MPL, and I do not see any rationale for allowing further examination. That reasoning also applies to Prokam's request to question Mr. Solymosi concerning the calendar entry that was produced subsequent to his testimony, as he was extensively cross-examined on the meeting in question.

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.

III. Conclusion

For these reasons, the applications to call Ms. Glyckherr and recall Mr. Solymosi are denied.

Regards,



Peter Donkers,
Chair

cc: Mark Underhill
Kate Phipps
Nazeer Mitha, Q.C.
BCFIRB web site