



---

## BC Farm Industry Review Board

February 3, 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 FEBRUARY 2, 2022 ADJOURNMENT APPLICATION

These are my reasons with respect to Prokam Enterprise's ("Prokam") application to adjourn this proceeding, brought on February 2, 2022, the third day of the hearing. I had initially understood that MPL British Columbia Distributors Inc. ("MPL") was merely supporting the application, but counsel for MPL appeared to suggest in reply that it too was seeking an adjournment. In any event, I have addressed MPL's submissions below. Given the need for an expeditious ruling, I will not summarize all of counsel's submissions, but I have considered all of them even where I do not expressly refer to them.

Prokam takes the position that it is necessary to adjourn these proceedings because, in its view, the investigation is incomplete and further document production is required. Notably, the grounds for this application have considerable similarity to those that underpinned Prokam's adjournment application on January 10, 2022, for which I gave reasons on January 26, 2022.

In my January 26 decision, I noted that this is a supervisory review, which by its nature, is iterative. I also noted that considerable work had been done investigating the claims made by Prokam, MPL and Bajwa Farms, and all of the key participants are ready to

---

**Web:**

Email: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)

Website: [www.gov.bc.ca/BCFarmIndustryReviewBoard](http://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

testify, including those raising the allegations and those accused of wrongdoing. I therefore concluded that those allegations could be fully explored based on the investigations to date. However, I also made clear that in the event it becomes apparent from the evidence brought forward in this hearing that there are other areas that must be explored, then it will be open to the participants at the close of evidence to make application to me for the investigation and hearing to be continued. I have some concern, therefore, about the fact that we are now dealing with an adjournment application on day three of the hearing, when only two witnesses have completed their evidence.

I will first address the issue of document production. I understand Prokam's current concerns on this issue to be set out in counsel's letter delivered in the early morning of February 2, 2022. First, Prokam addresses at some length its concerns with the BC Vegetable Marketing Commission's ("Commission") explanations of its redactions for privilege in documents disclosed on January 30, 2022. In addition, Prokam further suggests that the document production of BC Fresh Vegetables Inc. ("BCFresh"), Mr. Solymosi and the Commission is incomplete, and seeks particulars with respect to how document searches were conducted. I understand this request to be largely grounded in Prokam's late discovery of two email chains which it says ought to have been produced by BCFresh and Mr. Solymosi.

With respect to the issue of the Commission's redactions for privilege, the Commission provided a detailed response in a letter delivered mid-day on February 2, 2022. Commission counsel has clarified that many of the redactions were for relevance, and has indicated which redactions were for relevance and which were for privilege. If there remain any concerns on this issue, then those concerns should be raised with Hearing Counsel pursuant to Rule 2(c), and Hearing Counsel can in turn address them with Commission counsel as soon as practicable.

I do not see, however, that this issue can be a basis for an adjournment at this stage of the hearing. The next witnesses to testify are the representatives of Prokam. Their testimony will principally address the basis for the allegations of unlawful conduct in their Notice of Civil Claim, which are in turn reflected in the Final Terms of Reference. That evidence will undoubtedly be tested under cross-examination, which is vital in assisting me with the truth-seeking function of this supervisory review. I simply do not see how parts of any documents over which the Commission may currently be claiming privilege, or that they have redacted for relevance, will be relevant to that testimony.

I turn now to deal with Prokam's request that various participants particularize their search for documents. While there was some interesting debate in the submissions about the proper characterization of this supervisory review, the bottom line is that it is not a court proceeding. As the panel found in its decision in the 2018 appeal refusing the request for an Affidavit of Documents from IVCA (BCVMC-A-04644), the BC Farm

Industry Review Board (“BCFIRB”) should be “reluctant to impose formal processes from civil trial proceedings unless there is clear and convincing reason based in BCFIRB’s duty to ensure a fair hearing.” Those comments are even more apposite to this supervisory review.

Bearing that in mind, the additional production of two email chains, that until recently were also overlooked by Prokam, is not a sufficient basis for me to order the relief sought by Prokam. That is particularly so in light of the fact that these issues can be addressed in cross-examination, as the panel ruled in BCVMC-A-04644. I also do not believe that such an order would be proportional absent a much stronger evidentiary foundation that counsel have failed in their duties under the Rules of Procedure.

I also do not see that such an order would be required to ensure procedural fairness for Prokam or the other complainant participants. As counsel for the individual Commissioners emphasized in his submission, the principals of Prokam are not accused of wrongdoing, and there is no issue of them not knowing the case they have to meet. I cannot find any logical basis to conclude that the evidence of the complainant participants will change or be otherwise impacted by late document production by the individuals they accuse of wrongdoing. In that regard, and as was highlighted by Hearing Counsel and counsel for BCFresh, I note Ms. Hunter’s submission that the evidence grounding the allegations in Prokam’s Notice of Civil Claim has been extant since the 2018 appeal and has been produced in this supervisory review.

I will briefly address Prokam’s submission in reply that an adjournment could be avoided if its representatives were permitted to testify after the non-complainant participants. That is an approach that would plainly give rise to procedural unfairness, as those accused of wrongdoing would be deprived of knowledge of the allegations being made against them. Accordingly, I will not make any such order.

Turning to the issue of the incomplete investigation, which was largely the focus of MPL’s submissions, the present concern of both complainant participants appears to rest with two individuals, Ravi Cheema and Dawn Glyckherr. MPL in particular was critical of Hearing Counsel for interviewing Mr. Cheema late in the day, which I understand Ms. Basham to say has or will cause prejudice to her client. Both Ms. Hunter and Ms. Basham also point to the failure of Hearing Counsel to interview Ms. Glyckherr, who may be the source of some of Mr. Cheema’s information.

With respect to Mr. Cheema, I understood Hearing Counsel to say that he decided to interview Mr. Cheema after hearing the evidence of Mr. Mastronardi, for the first time in this hearing, that Mr. Cheema’s information was a principal basis for the allegations in MPL’s civil claim. Hearing Counsel did not understand that to be the case from his review of Mr. Cheema’s will-say statement provided by MPL on January 28, 2022. In any event, Hearing Counsel notes that he did interview Mr. Cheema, and I understand he has now circulated his interview summary.

Hearing Counsel says that at this point, we only have speculation as to what Ms. Glyckherr's evidence might be, and that in any event her evidence would be double hearsay given that it is said to be based on interviews of many different growers and other individuals. Given that there is no evidence to date that any of the named defendants in the civil claims are implicated by what Ms. Glyckherr may have learned in her interviews, Hearing Counsel says it would not be proportional at this stage to attempt to explore any allegations she may be aware of.

I see no reason to depart from my ruling of January 26, 2022 on this issue. Mr. Cheema will be a witness in this proceeding, and counsel can make use of his interview summary in their cross-examinations of the non-complainant participants if they so choose. While I tend to agree with Hearing Counsel that calling Ms. Glyckherr would not be proportional, at least on the basis of the evidence I have seen so far, it is premature to make any such ruling. Once 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.

Again, and perhaps most importantly, I do not see any unfairness arising to either Prokam or MPL. There is no "case" against the complainant participants, and thus they are not being deprived of the knowledge necessary to meet that case. I want to hear the basis for Prokam's allegations against the defendants in their civil claim, and have it tested under cross-examination. That is at the core of the Terms of Reference of this supervisory review. Messrs. Dhillon and Gill have that information now, and I cannot see how it could change based on any evidence that Mr. Cheema or Ms. Glyckherr might give at a future date. Indeed, it would be highly troubling if the evidence of Prokam's principals were to change based on the evidence of other witnesses.

I conclude with a reference to my January 26 ruling, where I said the following:

As discussed at the outset, the focus of this supervisory review is on the specific allegations that have been advanced by the complainant participants and the evidence that supports them. If after that evidence is heard, and the Commissioners and Mr. Solymosi are subjected to cross-examination on it, we are led into other instances of wrong-doing, I will entertain applications to conduct further investigations or for the production of additional witnesses and documents. I do not see it as being consistent with the principle of proportionality, and to be in the public interest, to at this stage conduct what could be characterized as a forensic examination of all of the Commission's dealings with Prokam and its affiliates without a much stronger evidentiary foundation than what was put before me in the submissions on these applications.

This adjournment application is inconsistent with this approach. I have not heard a compelling case of procedural unfairness, and I therefore remain committed to proceeding with this hearing to fully explore the very serious allegations raised by

Prokam, MPL and Bajwa Farms. Again, if at the conclusion of the evidence there is a proper basis for additional matters to be investigated, then I will order that this review continue.

The application for an adjournment is refused.

Regards,

A handwritten signature in black ink, appearing to read "Peter Donkers". The signature is written in a cursive style with a large initial "P" and "D".

Peter Donkers,  
Chair

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