



BC Farm Industry Review Board

February 4, 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

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McEwan Partners

Robert Hrabinsky
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Robert McDonell
Farris LLP

Dean Dalke
DLA Piper

Emma Irving
Dentons Canada LLP

Dear All:

RULING REGARDING EMAIL SENT TO HEARING COUNSEL

This is my ruling on an application by Prokam Enterprises Ltd. ("Prokam"), supported by MPL British Columbia Distributors Inc. ("MPL"), for various relief arising out of an email sent by Mr. Ravi Hira Q.C., counsel for Mr. Solymosi, to Mr. Nazeer Mitha Q.C., Hearing Counsel, in the morning of February 3, 2021 during the course of Mr. Mitha's examination of Prokam's principal, Mr. Bob Dhillon. The application was brought on orally shortly after the lunch break.

I will first briefly address the background to the application. During the course of Mr. Mitha's examination of Mr. Dhillon, Mr. Hira interjected, raising an issue of the consistency of Mr. Dhillon's evidence with an affidavit he had previously sworn. Shortly after that interjection, Mr. Hira sent Mr. Mitha an email that was briefly visible because Mr. Mitha was sharing his screen during the examination. This was commented on by Ms. Hunter at the time, asking that it be noted for the record. As I now understand it, after hearing submissions from counsel, Mr. Hira was providing a reference to the location of the affidavit in Exhibit 1, Common Book of Documents, Volume 1.

Both Prokam and MPL take the position that the sending of that email was highly improper, giving rise to serious concerns about collusion between Hearing Counsel and counsel for Mr. Solymosi, procedural unfairness, and reasonable apprehension of bias. They accordingly ask for: (a) production of that email; (b) preservation of the Zoom video; and (c) production of all other emails between Mr. Mitha and Mr. Hira since at

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least January 31, 2022. Prokam says that this investigation must first take place before an application for disqualification can be properly considered.

Hearing Counsel, joined by counsel for the non-complainant participants, say there was nothing improper about the email, and, in various ways, all say that such serious allegations of professional misconduct should not be made without proper evidence and authority, and without first speaking with counsel.

Mr. Mitha and Mr. Hira were forthright in explaining the content of the email during the course of their submissions, with Mr. Hira displaying the email on his phone, and Mr. Mitha volunteering to provide it to all participants. Both counsel confirmed that it was sent unsolicited by Mr. Hira. Mr. Hira emphasized that had this hearing been conducted in-person, he would have handed Mr. Mitha a note with that same information in plain view of all those attending the hearing (in that regard, counsel for the BC Vegetable Marketing Commission noted that the email could be seen as an artifact of the videoconference format of this hearing). Mr. Mitha also confirmed that this was the only email he has received from Mr. Hira outside of the emails that went back and forth between counsel on document production, witnesses, and other related hearing matters. Lastly, Mr. Mitha confirmed that he is well aware of his professional obligations as Hearing Counsel, and has not been colluding with any of the counsel for the non-complainant participants, including Mr. Hira.

I have no doubt that all of the senior counsel appearing before me, including Mr. Mitha, are well aware of their professional and ethical obligations. I am prepared to accept Mr. Mitha at his word as to the content of the email, that it was unsolicited, and that he has not improperly colluded with Mr. Hira or any other counsel in fulfilling his role as Hearing Counsel. In my view, that is the end of the matter. The application is dismissed.

Dated at Vancouver, British Columbia, this 4th day of February, 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Peter Donkers", written over a white background.

Peter Donkers,
Chair

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