

# Hunter Litigation Chambers

KAARDAL/SMART/STEPHENS/OULTON/OLTHUIS/HUNTER

January 10, 2022

File No: 3211.002

## **BY EMAIL**

BC Farm Industry Review Board  
1<sup>st</sup> Floor, 780 Blanshard Street  
Victoria, BV B8W 2H1

**Attention: Wanda Gorsuch**

Dear Sirs/Mesdames:

**Re: Supervisory Review re. Allegations of bad faith and unlawful activity;  
Request for extension of time**

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We write further to the Christmas Eve letter of hearing counsel reporting on his investigation to date, and the January 5, 2022 letters from the hearing panel chair to all participants and from us to hearing counsel (a copy of the latter of which is enclosed).

In the hearing panel chair's letter, he required submissions from the parties by January 11, 2022 on applications:

1. by any participant represented by counsel, for leave to have their counsel lead their witness's evidence-in-chief; and
2. by Prokam, for leave to call any of the witnesses hearing counsel does not propose to call.


Our letter to hearing counsel of January 5, 2021 requested certain information about the investigation process, including notes of interviews of the witnesses hearing counsel has decided not to call and information about hearing counsel's efforts to obtain production of relevant documents from the non-complainant participants, including categories of documents we identified as material in our initial submission to hearing counsel in July 2021. In light of the schedule requiring applications by January 11, 2021, we requested a response from hearing counsel by January 10, 2021. Unfortunately, we have had no response from hearing counsel to our letter of January 5, 2021, necessitating the requests set out below for extension of the date to apply to call additional witnesses and for a prehearing conference.

### *Application to lead evidence-in-chief of Bob Dhillon and Bob Gill*

The Christmas Eve letter from hearing counsel indicates that he intends to call Bob Dhillon as a representative of our client Prokam and Bob Gill, who is a representative of our client CFP. We have been counsel for Prokam since 2017 and for CFP since 2019. We called and

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led evidence from Mr. Dhillon and Mr. Gill in the 2018 appeal to FIRB from the orders of the Commission that are at issue in the misfeasance claim filed by Prokam in BC Supreme Court and in this Allegations Review. We attended at hearing counsel's interview of our clients along with Mr. Dhillon and Mr. Gill as their representatives. In our clients' submission, it is appropriate and will enhance the fairness and efficiency of the hearing process for their counsel to be permitted to lead the evidence-in-chief of Bob Dhillon and Bob Gill.

*Request for Extension to Apply to Call Additional Witnesses*

Prokam seeks an extension of the January 11, 2021 deadline to apply to call additional witnesses until after hearing counsel has responded to its request for information about the decision not to call certain witnesses.


In July 2021, Prokam complied with the requirement in the Rules of Practice and Procedure to produce – within fourteen days after the Rules were finalized – documents, an initial list of witnesses, and a detailed statement of the evidence each witness was anticipated to be able to provide at the oral hearing. Together with Prokam's initial witness list and documents, Prokam identified for hearing counsel a number of areas of potential inquiry including a number of categories of documents material to the review that it expected would be in the possession or control of the non-complainant participants. This additional information was not required by the Rules, but was provided by Prokam in an attempt to provide as much assistance to hearing counsel as possible in the very short amount of time provided.

This hearing was initially scheduled to commence on September 27, 2021. On September 2, 2021, we wrote to hearing counsel to express concerns related to what appeared to be insufficient time to complete the procedural steps required to be completed before the scheduled commencement of the hearing. On September 10, 2021, the Chair sought submissions on adjournment and ultimately on September 16, 2021 the hearing was adjourned to the present dates, scheduled to commence on January 31, 2022.

On September 24, 2021, hearing counsel circulated an investigation schedule leading to the January 31, 2022 hearing dates which provided that documents and interview summaries would be circulated to counsel for Prokam, Bajwa Farms and MPL the week of November 15, 2021. The letter concluded that:

The above schedule will give all the parties approximately two months to prepare for the hearing, including adequate time to request further documents if needed and to respond to and document disclosure requests.

On September 27, 2021, we wrote to hearing counsel and provided some comments on the investigation schedule set out in the September 24, 2021 letter, including that "We understand from the Investigation Schedule. . .that no interviews with any of the potential



witnesses identified on our list delivered July 23, 2021 have been conducted to date, and that the only interviews contemplated on the investigation schedule are interviews of the BC Vegetable Marketing Commission, Commissioners and staff named in the notices of civil claim”. We expressed the hope that “the additional time provided by the adjournment of the hearing of this matter will permit interviews to be conducted more broadly of non-participant witnesses identified by the parties, as well as any additional witnesses who may be identified by Hearing Counsel as part of a thorough review of the matters included in the terms of reference”.

On October 15, 2021, hearing counsel responded to our comments on the process and schedule. Hearing counsel wrote:

- “I confirm that my interviews of potential witnesses are ongoing, and summaries of my interviews (with supporting documents) will be circulated among all hearing participants as they are completed”
- “The investigation schedule is not intended to provide an exhaustive list of all individuals who will be interviewed by me. The scheduling of interviews is in many respects an iterative process, and the list of individuals I determine are or are not necessary for me to interview will evolved as I complete more interviews”
- “Where I decide that I will not lead evidence from a proposed witness, I will provide the participants with notice of my decision. To the extent that a participant disagrees with my view, Rule 30 allows a participant to apply to the Hearing Panel for an order requiring that the witness be called if the witness’s evidence is necessary”
- “Finally, I note to the extent you disagree with my approach, you can apply to the panel for a ruling on these matters, as Mr. Donkers will be the final arbiter of what issues and evidence will be before him”.

Notwithstanding that the Investigation Schedule provided that documents and interview summaries would be disclosed to Prokam the week of November 15, no further update to the schedule or information about the investigation was provided to Prokam until December 24, 2021.

Hearing counsel’s Christmas Eve letter enclosed the only interview summaries that have been provided since the October 15, 2021 letter. It appears from the dates on the interview summaries that all of the interviews were conducted between December 8 and 14, 2021. Interview summaries have been provided for very few of the witnesses identified by Prokam in its July 23, 2021 witness list. There are no interview summaries provided for any of the witnesses that hearing counsel has decided not to call and the only information about his

decision not to call the witnesses is a single sentence explanation set out in the chart of witnesses in his covering letter.

In our letter to hearing counsel of January 5, 2022, written on behalf of Prokam, we posed several questions of hearing counsel arising from his December 24, 2021 correspondence reporting on the conclusion of his investigation. We wrote, *inter alia*:

...[W]e presume that you arrived at your determination (that these witnesses have no material evidence to give that isn't available from other witnesses or other testimony before FIRB in prior proceedings) after conducting interviews of these individuals and ascertaining specifically what evidence they have to offer.

We accordingly request that you disclose to us:

1. the steps that you took to locate and interview these witnesses;
2. the contact information you obtained for these witnesses;
3. any notes you took of your interviews of these witnesses and documents you received from these witnesses; and
4. any notes you took related to your determination not to call evidence from them at the hearing.

Prokam requires this information and documentation in order to assist it in deciding whether to exercise its right to apply pursuant to Rule 30 for leave from the hearing panel to call evidence from any of these witnesses.

...

As commencement of the hearing is now less than a month away and given the schedule for applications in respect of witnesses provided by Chair Donkers by letter today requiring that Prokam apply for leave to call any additional witnesses no later than Tuesday, January 11, 2022, please provide the disclosure requested in this letter and a response to Prokam's requests arising from deficiencies in the non-complainant participants' document production by Monday, January 10, 2022.

[Emphasis added.]

We have not received a response from hearing counsel to our January 5, 2022 correspondence. Accordingly, we are not in a position to receive instructions or express a position on an application for leave to call witnesses hearing counsel does not propose to call

by reason of “unnecessary duplication of evidence already before BCFIRB and/or interviews completed”.

Moreover, hearing counsel identified several witnesses who he proposes not to call because the issue of parliamentary privilege has been referred to the hearing panel for determination. It is unclear to us whether and to what degree hearing counsel’s determination not to call these witnesses is contingent on the hearing panel chair’s ruling on that issue. We have identified in our January 5 correspondence to hearing counsel several issues with his approach to these witnesses but, again, have received no reply.

In any event, Prokam cannot evaluate whether to apply to call witnesses proposed not to be called for this reason until after the hearing panel chair determines the parliamentary privilege issue, and hearing counsel then confirms whether his decision not to call these proposed witnesses is affected by the hearing panel’s ruling.

Thus, Prokam is respectfully requesting an extension of time to bring an application for leave to call additional witnesses. The extension of time that is being requested is:

1. in respect of the witnesses proposed not to be called by reason of “unnecessary duplication of evidence already before BCFRIB and/or interviews completed”, three business days after hearing counsel delivers a substantive reply to our January 5, 2022 letter; and
2. in respect of the witnesses proposed not to be called by reason of “issue of admissibility of parliamentary proceedings transcript referred to panel chair for determination”, three business days after hearing counsel confirms in light of the panel chair’s determination of this issue whether he is calling these witnesses.

*Request for a Pre-Hearing Conference*

Rule 36 provides that “Any party may raise any issue of non-compliance with the Review Panel at any time, and any breach of the Rules will be dealt with by the Review Panel as it sees fit.”

The information produced thus far suggests that there has been non-compliance with the Rules, including the apparent failure of the non-complainant participants to provide a list of witnesses they believe ought to be heard, together with a detailed statement of the evidence the witness is able to provide at the oral hearing and to produce all relevant documents within their possession, control or power (Rules 4(a) and (b)).

With respect to document disclosure, Rule 15 provides that “A party who believes that a participant has not provided copies of relevant documents must bring this to the attention of hearing counsel at the earliest opportunity”. Prokam drew its concerns with respect to document production, arising out of the information provided with the Christmas Eve letter,

in the January 5 letter to which there has been no response. Many of the categories of documents that appear not to have been produced were identified by Prokam to hearing counsel in July 2021, and it is unknown whether hearing counsel has considered whether to make orders for production of these or any documents to the non-complainant participants.

In the circumstances, in order to ensure the fairness of the oral hearing process, which is now scheduled to commence in only three weeks, direction from the Review Panel is required.

Yours truly,

Hunter Litigation Chambers

Per:



Claire E. Hunter, Q.C.

CEH/RJA