

January 18, 2022

File No.: 8006-029

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

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Dear Ms. Gorsuch:

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

Prokam's submissions on the matter of Parliamentary privilege dated January 17, 2022 have brought into focus a question of law that should be resolved as a preliminary matter.

Prokam appears to assert that the powers vested in Parliament and the provinces are "bifurcated" (as that term was used in *Pelland*), meaning that any regulation having an incidental extraprovincial element will require federal legislative authority, regardless of the dominant purpose of the regulation. Then, at paragraphs 11 and 12(a) of its submissions, Prokam asserts that Mr. Solymosi and Mr. Guichon knew that this was the law when the minimum export pricing orders were made.

However, Prokam has not established that this "bifurcated" view of the division of power under the *Constitution Act, 1867* was the law prior to the BCFIRB's decision on the appeals. Indeed, this approach was decisively rejected by the Supreme Court of Canada in *Pelland*.

Therefore, it would be sensible to address the issue of the state of the law when the export pricing orders were made, as a preliminary matter. The question resolves to this: prior to the BCFIRB's decision on the appeals, was the state of the law such that any regulation having an incidental extraprovincial element requires federal legislative authority, regardless of the dominant purpose of the regulation?

The Commission respectfully submits that a preliminary resolution of this central question of law would contribute to the efficient resolution of the issues before the BCFIRB.

Yours truly,

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Per:



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