

January 20, 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

This letter represents the Commission's response to the submissions made by Prokam and MPL on January 17, 2022.

The Commission is opposed to all of the relief sought by Prokam and MPL, for the following reasons:

1. For all of the reasons already expressed by the Commission in its submission dated January 10, 2022, the Gazetting requirements are not (and never were) material issues. The Commission has consistently taken the position that "any order made by the Commission which depends on delegated federal legislative authority will only come into force after the order has been "Gazetted". Further, it does not appear that Mr. Solymosi or any of the Commission members had at any time taken a different view with respect to those requirements.

The central legal issues concerning the minimum export pricing orders that *were* before the BCFIRB in the original appeals were: (a) whether the Commission's minimum export pricing orders require federal legislative authority; and (b) whether it was the intention of the Legislature to make available to commodity boards the full scope of regulatory powers within the constitutional competence of the Province as are necessary to provide for the effective promotion, control and regulation of the marketing of natural products.

Consequently, evidence concerning the Gazetting requirements serves no useful purpose.

In his letter dated January 12, 2022, hearing counsel correctly and accurately addressed this point as follows:

In its supervisory review submission to hearing counsel dated July 23, 2021 Prokam identified 4 topic areas, one of which is:

"The state of the actual or constructive knowledge of former Messrs Guichon and Solymosi of the requirement that the Commission "gazette" and register orders in order to validly regulate interprovincial trade"

The evidence which Prokam seeks to elicit from the Proposed Jurisdiction Witnesses is the actual or constructive knowledge of Messrs. Guichon and Solymosi of the requirement that the Commission "Gazette" and Register orders.

In my view, the Proposed Jurisdiction Witnesses will not add anything regarding this issue because Mr. Solymosi has acknowledged (in his November 29, 2021 interview) that he was aware of the Registration and Gazetting requirements. He says in spite of this knowledge, he considered the BC Vegetable Marketing Commission ("Commission") was entitled to set the Export Minimum Price Orders. He provides an explanation why. His explanation may or may not be accepted. He can be questioned on his explanation. However, there is no need to establish Mr. Solymosi's knowledge of the requirement for Registration and Gazetting.

In his December 8, 2021 interview, Mr. Guichon said he was not aware of the Registration and Gazetting requirements but also said he was of the view that the Commission could regulate crops grown in BC but sold outside of the province. Mr. Guichon states he never attended the Parliamentary Committee meetings. He can be questioned on all of that, but I do not see how any of the Proposed Jurisdiction Witnesses could speak to Mr. Guichon's knowledge.

Since Mr. Solymosi acknowledges that he is aware of the Registration and Gazetting requirements and none of the Proposed Jurisdiction Witnesses can speak to Mr. Guichon's knowledge, they do not add anything to the issue.

2. With respect to the question of whether the Commission's minimum export pricing orders required federal legislative authority, Prokam asserts in its submission dated January 18, 2022 that "there can be no question that the export minimum pricing orders required the exercise of federally delegated legislative authority." This assertion simply cannot be reconciled with reality. Obviously, there was a question as to whether the export minimum pricing orders required the exercise of federally delegated legislative authority. This was a central issue before the BCFIRB in the original appeals. The Commission's submissions on this question occupied 22 pages in its brief.

Interestingly, in its January 18, 2022 submissions, Prokam now asserts that the requirement for federal legislative authority is a "fact". This is not so. First, it would be absurd to suggest that the Defendants should be retroactively vested with knowledge of the BCFIRB's February 28, 2019 ruling before it was even made. Second, the "law" regarding the constitutional character of the minimum export pricing orders is not a matter of evidence. While the Defendants can be questioned on their understanding of the lawfulness of their actions, the state of the law when the minimum pricing orders were made is a question of pure law. The "law" cannot be established through the "evidence" of Prokam's proposed lay witnesses.

3. The Commission adopts the submissions made by Mr. Stransky on January 17, 2022.
4. With respect to Prokam's request that it have "leave to introduce into evidence transcripts of the evidence of Tom Pollock from the prior proceedings before FIRB for the truth of the content of that evidence", the Commission notes that the parties and issues before the BCFIRB in the original appeals are not the same as the parties and issues that are now before the BCFIRB in this proceeding. Consequently, the effect of this request would be to deprive other parties of the opportunity to cross-examine Mr. Pollock. This should not be permitted.
5. At paragraphs 6 and 44 to 47 of its submission, Prokam seeks to assume the powers of hearing counsel in this proceeding. This would subvert the process and should not be permitted.
6. With respect to the documents sought by Prokam:
 - (a) The documents described in paragraphs 7(a) through (g) and (q) relate to the Gazetting and registration requirements, which are not (and never were) material issues for all the reasons outlined above;
 - (b) The documents described in paragraphs 7(h) to (m) have already been disclosed by the Commission, to the extent those documents are available, and subject to any applicable claims of privilege; and
 - (c) The documents described in 7(n) and (o) have not been disclosed, but are not material to any issue before the BCFIRB in this proceeding.

7. The Commission submits that MPL has not been deprived of the ability to participate in this proceeding, as it appears to assert in its January 17, 2022 submission. Furthermore, Ms. Irving's submission that "the present situation is analogous to where new counsel is appointed and seeks an adjournment of a hearing or trial in order to properly prepare" is tenuous. Though MPL has been represented at various times by various counsel at Dentons, and is now represented by Ms. Basham, it is to be noted that Ms. Basham is affiliated with Dentons. As noted on Ms. Basham's website: "All clients of Basham Law have access to the resources of Dentons' global platform for a seamless experience."

This proceeding involves many parties and many counsel. It should not be adjourned as a consequence of the reversal of MPL's own decision with respect to its participation.

Yours truly,

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Per:


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