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**FARRIS**

File No: 332958-0007

January 21, 2022

BY EMAIL

BC Farm Industry Review Board  
2975 Jutland Road  
Victoria, BC V8T 5J9

**Attention: Wanda Gorsuch, Manager, Issues and Planning**

Dear Madame:

**Re: Supervisory Review – Allegations of Bad Faith and Unlawful Activity**

Further to the letter dated January 18, 2022 from Chair Donkers requiring submissions on various preliminary matters by January 21, 2022, I write to provide the response of BC Fresh to the Notice of Application of Prokam Enterprises Ltd. (“Prokam”) for various orders contained in its submission dated January 17, 2022 as well as the letter from Mr. Mitha dated January 13, 2022 requesting disclosure of documents by BC Fresh.

BC Fresh is opposed to all of the orders sought by Prokam, as further described below wherein the paragraph numbers used by Prokam in its submission are used for ease of reference.

4. In response to Prokam’s application to call further witnesses at the hearing, BC Fresh opposes this order as Prokam has not shown that these witnesses are necessary. Prokam’s application to call these witnesses at the same time it is seeking orders (paragraph 6) to interview these proposed witnesses strongly indicates that Prokam at present is speculating that these witnesses may “possibly” have necessary evidence to give. BC Fresh respectfully agrees with Hearing Counsel’s determination, informed by a fair and objective investigation to date, of the witnesses to be called at the hearing.

5. Prokam seeks an order granting leave to introduce into evidence the transcript of evidence of Tom Pollock from a prior FIRB proceeding for the truth of the content of that evidence with no right of the parties to cross-examine Mr. Pollock or, in the alternative, for leave to call Mr. Pollock as a witness at the hearing.

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BC Fresh opposes this order on the basis that it would be unfair to deprive the parties to this Supervisory Review of the right to cross-examine Mr. Pollock on his evidence at the hearing. The issues in the proceeding in which Mr. Pollock testified (the 2017 Prokam FIRB Appeal) are different from the issues in this Supervisory Review. The parties are also different and, accordingly, there would be unfairness to the parties to the introduction into evidence of a transcript from a previous, different and distinct, proceeding without permitting the parties a right of cross-examination. The Rules of Procedure in this matter require witnesses to attend at the oral hearing and give their evidence under oath or affirmation. In response to Prokam's application to call Tom Pollock as a witness at the hearing, in its submission, Prokam has not identified any grounds for an order that Mr. Pollock attend to give evidence at the hearing.

6. Prokam seeks an order permitting it to now take on the role of demanding that third parties provide answers to unidentified questions Prokam may view as possibly relevant and to conduct interviews of third parties. Prokam also seeks the statutory power to cause the Review Panel to issue summons based on the "advice" of Prokam's counsel. There is every reason to refuse this order, and, in particular, the requirement in this proceeding that Hearing Counsel perform the functions described in the Rules of Procedure in calling witnesses. If Prokam wishes to apply to the Review Panel for a summons to any witness, it can do so pursuant to the provisions of the *Natural Products Marketing (BC Act)*, [RSBC] 1996 c. 330.

8. In regard to the application for orders respecting documents of BC Fresh described in the Prokam submission and in Mr. Mitha's letter to the writer dated January 13, 2022, BC Fresh has, using the Terms of Reference of this Supervisory Review as a guide, conducted searches for relevant documents and, excluding those documents already in the record of the 2017 Prokam BCFIRB proceeding, has not been able to locate any further relevant documents. If Hearing Counsel or any other party can assist in identifying relevant documents, with specificity, that are thought to be in the possession of BC Fresh, BC Fresh stands ready to conduct further searches and produce relevant documents.

10. In regard to the application to adjourn the oral hearing, BC Fresh is opposed to the adjournment. An adjournment would cause substantial prejudice to the parties who have prepared to commence the hearing as scheduled. This Supervisory Review should be brought to closure as soon as possible, in the interest of all the parties and, indeed, in the interest of industry stakeholders generally. Also, with the

number of parties and counsel involved, it is very likely that the delay would be many months and that is simply too much delay resulting in too much prejudice and expense.

Prokam has had since March, 2021 when it commenced its BC Supreme Court action to interview witnesses and appears not to have done so. The other parties should not suffer the prejudice of an adjournment given Prokam's own delay in marshalling the evidence of its proposed witnesses and MPL's reversal of position after all these months as to participation in this Supervisory Review.

Yours truly,

FARRIS LLP

Per: 

Robert J. McDonell

RJM/lis

cc. All Counsel