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## BC Farm Industry Review Board

January 25, 2022

File: 44200-60\AREV

### DELIVERED BY EMAIL

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Dear All:

### PRELIMINARY MATTERS: ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY REVIEW

This is my decision on a number of preliminary issues that have arisen with respect to the oral hearing of this supervisory review, which is currently scheduled to be heard over ten days commencing on January 31, 2022. Those issues are:

1. Prokam Enterprises Ltd. ("Prokam") and MPL British Columbia Distributors Inc.'s ("MPL") applications for an adjournment of the oral hearing;
2. Prokam's application for leave to call additional witnesses and for powers to investigate and compel their evidence;
3. Prokam's application for relief concerning other non-compliance with the Rules of Procedure ("Rules"), specifically:
  - a. Failure of other participants to produce witness lists;
  - b. Failure of the Commission to properly describe privileged documents;
  - c. Prokam's application for additional document disclosure by other participants;
4. Prokam's application for its counsel to lead the evidence of its witnesses;
5. The BC Vegetable Marketing Commission's ("Commission") application to exclude a document on the basis of parliamentary privilege; and,

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6. MPL's application to participate in the supervisory review, serve a late witness list, call additional witnesses, and for its counsel to lead its principals' evidence.

I have received submissions from all participants (except Bajwa Farms) and MPL, as well as reply submissions from Prokam and MPL, and a sur-reply from Mr. Solymosi. I have considered all of the submissions even if I do not directly address them in this decision.

## **I. Applications for an Adjournment**

Prokam and MPL both seek an adjournment of the oral hearing. Prokam takes the position that Hearing Counsel's investigation is far from complete, and there is little hope it will be ready for the commencement of the oral hearing on January 31, 2022. In their view, if the oral hearing were to proceed on the basis of the investigation conducted to date, the supervisory review would not fulfill its truth-seeking function. In its reply submission, Prokam adds that the inadequate investigation gives rise to concerns about the ability of the public and parties to have confidence in the legitimacy of this supervisory review. In its submissions of January 21 and 24, 2022 MPL adopts and agrees with Prokam's submissions, and clarifies that it is not seeking an adjournment based on its recent decision to seek to participate in this review, or on the appointment of Ms. Basham as a member of the legal team.

Hearing Counsel opposes an adjournment. From his perspective, other than possible interviews of a couple of Prokam's proposed witnesses, the investigation is complete. He further suggests that if it becomes apparent in the course of the hearing that it is necessary to conduct further investigation or obtain further documents, that can be dealt with in the hearing. In his view, adjourning the hearing would not be in the public interest. Counsel for the Commission, Commission Members Newell, Reed, Gerrard, Lodder, and Guichon (the "Commissioners"), Mr. Solymosi and BC Fresh Vegetables Inc. ("BCFresh") likewise take the position that an adjournment is unnecessary.

Supervisory reviews are, by their nature, iterative. It is not uncommon for a review panel to undertake some investigation, then, based on the progress of the proceeding, determine more investigative work is necessary and continue on to consider other issues. In my view, this supervisory review is no different.

It appears from the submissions before me that there is broad agreement between the participants that the initial focus of the supervisory review must be on the allegations raised by Prokam and MPL in their notices of civil claim (along with the allegations made by Bajwa Farms in this review), and in turn the responses of those accused of wrongdoing. As I understand it, considerable work has been done to investigate those allegations. Multiple witnesses have been interviewed, and thousands of pages of documents have been produced and reviewed. Perhaps most importantly, the key participants, being the individuals who have raised the allegations and those who stand accused, will all be testifying in the hearing and subjected to rigorous cross-examination by experienced counsel. The allegations can therefore be fully explored during the hearing on the basis of the investigation done to date (later in this decision I address an

important caveat to this, being the claim of privilege being asserted by MPL over certain particulars of its allegations).

However, it may be that at the conclusion of the evidence, it becomes apparent that there are other areas that must be explored, or additional documents and witnesses to be produced. If there is a credible basis arising out of the evidence in the hearing for these additional steps to be taken, then it will be open to the participants to apply to me at the conclusion of the evidence. In that regard, I wish to make clear that I see no impediment, either under our Rules of Procedure or the BC Supreme Court Rules, to counsel for any of the participants interviewing whatever witnesses they so choose, and presenting me with an evidentiary foundation based on those interviews. I also appreciate that this may mean that certain witnesses need to be re-called, but I am of the view that any potential inconvenience arising out of that eventuality is outweighed by the pressing need to move forward to examine these very serious allegations of wrongdoing against members and staff of the Commission.

In sum, the door is not closed to further investigations, witnesses, and documentary evidence (and hence the continuation of the supervisory review). However, this hearing must get underway to avoid the significant delay that would inevitably flow from an adjournment. Such a delay is not in the public interest. Accordingly, the applications for the adjournments are denied.

I turn now to the more specific relief sought by the participants.

## **II. Prokam's Application for Leave to Call Witnesses**

Prokam applies for leave to call a number of witnesses, specifically:

- Jim Collins (Former Executive Director of BCFIRB; current director IVCA)
- Tom Demma (Former Commission General Manager)
- Jeavan Hothi (Three Star Farms)
- Alf Krause (Former Commission Chair)
- George Leroux (Former Commission Chair)
- Terry Mitchell (President IVCA)
- Lillian Posch (General Manager Okanagan Grown Produce Ltd.)
- John Walsh (Vancouver Island Product Ltd; former Commissioner)

In addition, Prokam seeks to put into evidence the evidence of Tom Pollock from Prokam's 2018 appeal to BCFIRB (the "Original Appeal") (and potentially other prior proceedings of BCFIRB) into evidence for the truth of its contents, or call him as a witness.

Prokam goes on to seek consequential relief permitting its counsel to demand answers to written questions or to interview any of the witnesses above, as well as advise the Panel with respect to the issuance of summonses of these witnesses.

In Prokam's view, the witnesses may provide evidence that is relevant to the Terms of Reference. It says that the various witnesses will give evidence on the following topics:

1. The state of the actual or constructive knowledge of Messrs. Guichon and Solymosi of the requirement that the Commission "gazette" and register orders in order to validly regulate interprovincial trade (Messrs. Collins, Demma, Krause, Leroux and Walsh);
2. Evidence that Mr. Solymosi's investigation of Prokam was motivated by and carried out with the improper purpose of creating an evidentiary record consistent with his predetermination that Prokam was a "rogue producer" (Messrs. Michell, Walsh and Krause, and Ms. Posch);
3. Evidence Commissioners, who were also part of BCFresh, were motivated by self-interest in seeking to avoid or delay the licensing of new entrant potato growers and/or a second lower mainland storage crop agency (Messrs. Walsh, Leroux, Hothi).

Prokam suggests that Hearing Counsel has not been diligently exercising his duties in the public interest, noting that it provided a list of 18 potential witnesses with will say statements, but Hearing Counsel refused to interview 14 of those individuals. Prokam therefore says that Hearing Counsel cannot take the position that those witnesses do not have relevant evidence to give.

In response, Hearing Counsel emphasizes that his role is to investigate the matters raised in the final Terms of Reference, which relate directly to the allegations made by the complainant participants in this supervisory review. He does not see that his role is to independently investigate matters not alleged by any party, or which fall outside the scope of the Terms of Reference, unless relevant matters come to his attention in the course of the investigation. He further observes that the Rules do not require him to call all witnesses identified by the participants. To the contrary, he has the sole discretion to determine what further investigations or interviews are appropriate, and to collect and present the evidence that he determines is relevant.

In undertaking his investigations, I understand that Hearing Counsel formed the view that Prokam's will say statements did not always accurately reflect the evidence he heard, and he notes that the majority of the statements were prepared without actually speaking to the proposed witnesses. With respect to the specific witnesses and the issues Prokam suggested the witnesses might address, Hearing Counsel made the following submissions:

1. Knowledge of Mr. Solymosi and Guichon: Hearing Counsel notes that Mr. Solymosi and the Commission have admitted knowledge of the requirement that the Commission gazette and register orders. As a result, it is unnecessary to call additional witnesses to speak to this issue given the actual evidence of Messrs. Guichon and Solymosi will be available.
2. Mr. Solymosi's investigation: Hearing Counsel will present the evidence of other witnesses who will give testimony about the matters in issue. Nevertheless, Hearing Counsel agreed to contact Messrs. Krause and Michell. With respect to Mr. Walsh, the evidence relates to collateral issues and is stale dated as it dates back to prior to 2012 and is therefore of limited relevance. Evidence concerning

Amending Order 43 was previously dealt with before BCFIRB in its appeal decision on that issue, and has limited connection to this proceeding.

3. BCFresh Commissioners motivated by self interest: The evidence Prokam suggests these individuals will give is significantly dated. Hearing Counsel will call more relevant and recent evidence about these issues.

For their part, counsel for the Commission, Commissioners, Solymosi and BCFresh take the same position as Hearing Counsel. Those participants are particularly opposed to Prokam assuming the investigative powers of Hearing Counsel, as they say doing so would subvert the supervisory review process and be procedurally unfair.

As all participants appear to agree, Hearing Counsel has the primary responsibility for collecting and presenting all of the evidence, ensuring an orderly and fair hearing, and representing the public interest in this process. Hearing Counsel has significant - and sole - discretion with respect to who he interviews. None of the complainant participants were entitled to have Hearing Counsel interview every person whom they identified. It is for Hearing Counsel to determine, based on the course of his investigations, whether it is necessary and in the public interest for an individual to be interviewed.

As I see it, it is entirely appropriate and in the best interests of this supervisory review for Hearing Counsel to exercise his duties with a view to proportionality. To hold otherwise would give rise to concerns about fishing expeditions and the waste of public resources, particularly when will say statements were not based on actual knowledge of evidence witnesses would give. That is not in the public interest.

The bottom line is that Hearing Counsel has formed the opinion, in his discretion, that, with a couple of exceptions, the additional witnesses were either unnecessary or irrelevant. At this point, on the basis of the submissions I have received, I am not prepared to override that exercise of discretion, particularly taking into account that Prokam has not actually spoken to many of the third party witnesses it sought leave to call. As I noted above, I see no impediment to Prokam speaking with those witnesses at any time, and it was open to them to do since they filed their claim in March of 2021, well before this supervisory review commenced.

Nevertheless, I reiterate that I am not closing the door at this stage to additional witnesses being called after the evidence has concluded in the upcoming hearing, and that it will be open to any participant to bring such an application before me with a proper evidentiary basis. That includes, for example, the evidence of Mr. Pollock that Prokam is seeking to bring forward.

It would also be inappropriate for me to grant to Prokam the powers of Hearing Counsel to investigate and require answers to questions. To the extent that I determine that additional investigations may be required following an application, it is the role of Hearing Counsel, who is vested with duties to investigate in the public interest, to undertake that work.

### **III. Other Non-Compliance with Rules**

Prokam raises what it says are a number of instances of non-compliance with the Rules.

#### **I. WITNESS LISTS**

First, Prokam says that it was contrary to the Rules for no participant other than Prokam to prepare a witness list. In Prokam's submission, witness lists were intended to provide a starting point for a robust investigation. Hearing Counsel responds that this is an inquisitorial process, not a civil trial, and there must be a balance between a fair and reasonable review process and the trappings of an adversarial trial process. Further, as I understand it, Hearing Counsel is calling each of the Commissioners and Mr. Solymosi, all of whom he has interviewed and produced interview reports for.

As I noted in my July 9, 2021 decision on the Rules (the "Rules Decision"), the initial witness list was intended first, to provide proper notice to those responding to allegations of what allegations they were facing, and second, to provide a place for Hearing Counsel to begin his investigation (para. 16). Given the steps taken by Hearing Counsel to interview and produce reports for the Commissioners and Mr. Solymosi, and to call them as witnesses, I do not see any substantive non-compliance with the Rules or any unfairness that has compromised this process or the rights of Prokam.

I address issues relating to MPL's lack of a witness list separately below.

#### **II. THE COMMISSION'S LIST OF DOCUMENTS**

Second, Prokam raises issue with the Commission not properly describing the documents over which it asserts privilege, and simply referring to "bundle of records", "bundle of unredacted records", "unredacted record" and "bundle of unredacted minutes". I did not receive any additional submissions on this issue, including from the Commission. In the circumstances, assuming that Prokam is correct that this is the extent of the descriptions provided, then I agree that a further and better description of the documents is required to comply with the Rules. The Commission should produce a revised list of documents that describes the documents over which it asserts privilege in a manner that will enable the participants to assess the validity of the privilege claim (Rule 4(c)) forthwith, and in any event no later than 12:00 p.m. on Friday, January 28, 2022.

#### **III. PRODUCTION OF ADDITIONAL DOCUMENTS**

Third, Prokam also seeks production of a number of documents that it says are relevant to the issues in this supervisory review. Prokam notes that BCFresh has not produced a list of documents despite being granted participant status in this supervisory review. Prokam has provided a list of documents it believes to be relevant and ought to have been produced, and provides some rationale for how each category of documents are relevant:

- With respect to documents 1-7 (documents concerning the gazetting requirement), Prokam suggests that the requested documents are relevant to Messrs. Guichon's and Solymosi's knowledge of the gazetting requirements, and particularly their knowledge that the minimum pricing orders were required to be gazetted (rather than the gazetting of orders in the abstract).
- With respect to documents 8 and 11 (concerning the treatment of CFP Marketing Corporation's ("CFP") agency application), Prokam says the documents are relevant because they touch upon the subject matter of the Terms of Reference, despite not forming the basis of any of Prokam's complaints.
- In connection with documents 14 and 15 (concerning the Hothi-Prokam-Three Star delivery allocation transfer in 2014), Prokam says the records touch on an instance of Commissioners attempting to block Prokam from acquiring delivery allocation, and are thus relevant to the Terms of Reference.
- In connection with document 16 (concerning 2020 amendments to the federal *British Columbia Vegetable Order*), Prokam suggests that Mr. Solymosi was a party to some of the correspondence and they touch on the extent of Messrs. Solymosi's and Guichon's knowledge of interprovincial trade gazetting requirements, and when the knowledge might have been acquired.

In his submissions, Hearing Counsel advises that he has responded to Prokam's concerns about lack of production, has requested production of documents (including from BCFresh), and that additional documents (to the extent there are any) have since been produced. Hearing Counsel further suggests that to the extent Prokam can establish the relevance or need for certain documents in the course of cross-examination, the Hearing Panel can deal with the necessity for producing those documents at that time.

In my view, Prokam's request for documents is based on an exceedingly broad reading of the Terms of Reference, giving rise to the concerns of proportionality I identified above. For example, it is not clear at this point that the 2014 delivery allocation issue or the treatment of CFP's agency application will prove relevant to this supervisory review and warrant investigation. While Prokam also points to documents relevant to the gazetting requirements, Prokam itself acknowledged in the pre-hearing conference that to the extent Mr. Solymosi were to admit knowledge of certain gazetting requirements, it might obviate the need to canvas those issues in evidence (Rules Decision, para. 11).

As discussed at the outset, the focus of this supervisory review is on the specific allegations that have been advanced by the complainant participants and the evidence that supports them. If after that evidence is heard, and the Commissioners and Mr. Solymosi are subjected to cross-examination on it, we

are led into other instances of wrong-doing, I will entertain applications to conduct further investigations or for the production of additional witnesses and documents. I do not see it as being consistent with the principle of proportionality, and to be in the public interest, to at this stage conduct what could be characterized as a forensic examination of all of the Commission's dealings with Prokam and its affiliates without a much stronger evidentiary foundation than what was put before me in the submissions on these applications.

I also rely on the professional responsibilities of the legal counsel involved to meet their document disclosure obligations. Absent a compelling case that those obligations have not been complied with, I am not prepared to make a further document production order at this time.

Nevertheless, I agree with Hearing Counsel that the door should not be closed to a future document production order. In the event that certain documents are shown to be relevant in the course of or at the end of the hearing, then I am open to revisiting this issue.

#### **IV. Prokam's Request to Lead Evidence**

Prokam has applied for leave for its counsel to lead the evidence of Bob Dhillon (a representative of Prokam) and Bob Gill. As I understand it, the basis for that application is that counsel previously led the evidence of Mr. Dhillon and Mr. Gill in the Original Appeal, and attended hearing counsel's interview of those individuals as their legal representatives. As a result, Prokam says that allowing Prokam's counsel to lead their evidence "will enhance the fairness and efficiency of the hearing process".

Hearing Counsel takes no position on the application, but the Commissioners, supported by Mr. Solymosi and the Commission, oppose it. In their submission, given that this proceeding is inquisitorial rather than adversarial, I must exercise some caution before granting participants rights that are commensurate with those given to parties at trial. In their view, the general practice should be for the equivalent of commission of inquiry counsel (in this case Hearing Counsel) to examine all witnesses in the first instance, subject to constrained exceptions for witnesses against whom some misconduct is alleged, citing John Sopinka, Q.C. "The Role of Commission Counsel in a Public Inquiry" (1990) 12:3 Dal. L.J. 75 ("Sopinka") at 81. They suggest that it would be inappropriate to grant Prokam an unrestrained ability to lead evidence in chief to advance their allegations given they are not subject to any duties and obligations to seek to ascertain the truth for the benefit of the panel.

While I do not read Sopinka as narrowly as the Commissioners, wherein the learned author appears to contemplate different hearing formats, I do find merit in the Commissioners' argument. As I have noted on several occasions, this is not an adversarial process; it is inquisitorial in nature. Hearing Counsel "has the primary responsibility for collecting and presenting all of the evidence counsel determines is relevant at the oral hearing, ensuring an orderly and fair hearing, and representing the



public interest throughout the process.” He has the role of ensuring that the proceedings allow me to obtain all the information needed for me to determine the issues in the Terms of Reference, while also ensuring that the evidence is properly constrained. Turning over the presentation of evidence at first instance to counsel for a witness would have the effect of allowing them to frame the issues and the direction of the hearing, which is the role designated to Hearing Counsel. It is therefore my view that Hearing Counsel should conduct the first examination of Messrs. Dhillon and Gill, which can take the form of a cross-examination as is necessary.

I am also satisfied that no procedural unfairness to Messrs. Dhillon and Gill arises out of that procedure. Those individuals are not the subject of any allegations of wrongdoing, and any rights they may have will not be in any way compromised by having Hearing Counsel conduct the first examination. I also note that counsel for the witness is entitled to examine the witness last before re-examination by hearing counsel, which affords an appropriate right to be heard.

## **V. Parliamentary Privilege**

The Commission lists among the documents a transcript of proceedings before the Standing Joint Committee for the Scrutiny of Regulations held on March 13, 2008 (“Transcript”). The Transcript is published on the Joint Committee’s website and is available to members of the public.

The Commission takes the position that the Transcript is both irrelevant and inadmissible as a result of the operation of parliamentary privilege. With respect to parliamentary privilege, the Commission cites *Ontario v. Rothmans et al.*, 2014 ONSC 3382, and says that based on that authority, the Transcript is subject to an absolute privilege that cannot be waived except by Parliament itself, and therefore it cannot be used in this proceeding. With respect to relevance, the Commission notes that for the purpose of this proceeding, and in prior proceedings, the Commission acknowledges that orders requiring federal legislative authority must be “Gazetted”.

In response, Prokam suggests it would not be possible for me to render a preliminary ruling regarding the admissibility of the Transcript in the abstract, devoid of the evidentiary context and purpose for which the Transcript is sought to be used. In any event, Prokam agrees with the Commission that parliamentary privilege applies to the Transcript. However, it takes the position that parliamentary privilege only precludes use of testimony for certain purposes where it is used against a parliamentary witness. Its view is that the Transcript is appropriately used in this proceeding to identify lines of inquiry and relevant documents, and to question witnesses with respect to their knowledge of what was said at the proceeding. On the question of relevance, Prokam says the Transcript is material to the question of whether Peter Guichon and Andre Solymosi had actual or constructive knowledge that the Commission’s export minimum pricing orders were unlawful because they were not gazetted, which is an issue engaged by the Terms of Reference.

It appears to be common ground that the Transcript is subject to parliamentary privilege. I agree with counsel for Prokam that the real issue is what use may be made of the Transcript, and that it is difficult to determine that question in the abstract. At this point, I believe I can only provide some preliminary guidance on the principles I will apply when determining these issues should they arise at the hearing, which will hopefully expedite matters.

As I understand it, the courts have held that statements made in Parliament cannot form the basis of a cause of action and may be struck. For example, a statement cannot form the basis of an action in defamation or misrepresentation, as speakers are protected from civil proceedings in respect of the evidence they give before Parliament. Additionally, witnesses cannot be cross-examined on the statements that they made in Parliament, as doing so would prevent the free and frank testimony given before Parliament, and impinge upon Parliament's authority to initiate proceedings for misleading the house.

On the other hand, transcripts of debates and proceedings are admissible for the narrow purpose of showing what a particular person said on a particular day, so long as the extract is not questioned in a wide sense, or adjudged, in court or other proceedings.

I will apply these principles when determining the use to which the Transcript may be put at the oral hearing (leaving aside the issue of relevance). To the extent that witnesses are called who gave evidence before the committee, they may not be cross-examined on their statements. Counsel should likewise refrain from challenging the validity of the Transcript or what was said by witnesses. The Transcript may, however, be used for the narrow purpose of showing what was said on a given day, and thus invite inferences about what would be known to the Commissioners and Mr. Solymosi.

On the question of relevance, in making my determination, I will consider any admissions made by the various witnesses, including whether those admissions are sufficiently specific to knowledge of whether the orders at issue must be gazetted.

## **VI. Participation of MPL in the Supervisory Review**

MPL has applied to now be added as a participant in this supervisory review, after declining the opportunity to participate as of right on July 19, 2021. Since that date, however, MPL has produced certain documents in response to an order from the Panel, and produced its principal, Paul Mastronardi, for an interview with Hearing Counsel. MPL also produced additional information flowing from the interview.

MPL explains that it has decided to participate based on the advice of a new member of its legal team (although privilege has been claimed over the particulars of that advice), and following recent developments in the review process. Those developments are said to include the update from Hearing Counsel dated December 24, 2021, which revealed that Hearing Counsel did not interview certain individuals Mr. Mastronardi referred to in his interview with Hearing Counsel and subsequent letter.

The Commission, Commissioners and Mr. Solymosi all oppose the request to participate, largely on the basis that the request is coming late in the day and that the participation at this stage would be prejudicial (although that prejudice was not particularized in any meaningful way).

While I do not find MPL's reasons for their late decision to change course to be particularly compelling, I also do not have any specific evidence of prejudice before me that would justify refusing the request to participate. Subject to the issues I address below, I am of the view that MPL's participation, and in particular its evidence in support of the allegations it has made in its civil claim, will potentially assist in the truth-seeking function of this supervisory review.

I note, however, that MPL has not yet produced a witness list that provides details of what evidence the individuals on that list will give in respect of its allegations, which does create a potential unfairness for the non-complainant participants (although that specific issue was not raised in the submissions I received). I therefore direct that MPL must produce detailed will-say statements and a witness list forthwith, and in any event no later than 12:00 p.m. on Friday, January 28, 2022. For clarity, it is my expectation going forward that all will-say statements provided will be based on actual knowledge of what evidence those witnesses have to give. In most cases this will require interviews with those witnesses. It will be left to Hearing Counsel to determine what further steps should be taken, including conducting interviews and the calling of those witnesses.

Additionally, and for the reasons given with respect to Prokam's application, I am not granting leave to MPL to compel document production or call any witnesses at the hearing. Again, however, it is free to interview any witness it likes, and to bring an application to call witnesses after the evidence is complete, assuming Hearing Counsel chooses not to call them.

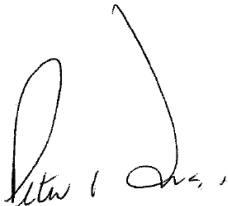
This issue is further complicated by the claim of privilege that I understand has been asserted by MPL with respect to a number of questions put to Mr. Mastronardi by Hearing Counsel regarding the particulars of the allegations that MPL is advancing. Hearing Counsel indicated that, at least as of January 21, 2022, MPL has not confirmed whether it is continuing to assert that privilege claim. This is in my view an important issue that could substantially affect the truth-seeking function of this supervisory review. I therefore direct that MPL respond to Hearing Counsel's letter of January 16, 2022 forthwith, and in any event no later than 12:00 p.m. on Friday, January 28, 2022. All participants should be prepared to address this issue on the first day of the hearing, although I will hear submissions on when this issue is most appropriately addressed in the course of the hearing.

MPL has also sought leave for its counsel to lead the evidence of its principals. For the reasons given with respect to Prokam's application, that application is refused.

## VII. Conclusion

1. Prokam and MPL's applications for an adjournment of the oral hearing are refused, although all participants (and Hearing Counsel) have leave to bring an application for additional investigations, or the production of additional documents and witnesses, after the evidence has concluded;
2. Prokam's application for leave to call additional witnesses is denied, subject to any further orders made at the conclusion of the evidence. Prokam's application for powers to investigate and compel the evidence of additional witnesses is denied.
3. Prokam's application for relief concerning the failure of other participants to produce witness lists is denied.
4. **The Commission shall produce a better description of the documents over which it claims privilege sufficient to allow the claim of privilege to be properly assessed forthwith, and in any event no later than 12:00 p.m. on January 28, 2022.**
5. Prokam's application for additional document disclosure by other participants is denied, subject to any further orders made at the conclusion of the oral hearing.
6. Prokam's application for its counsel to lead the evidence of its witnesses is denied.
7. The Commission's application to exclude the Transcript on the basis of parliamentary privilege and relevance is adjourned to the hearing, and the application will be considered in light of the principles articulated in this decision.
8. MPL's application to participate in the supervisory review is allowed. Its application to have its counsel lead its principals' witnesses is denied, as are its applications to call additional witnesses and to be vested with Hearing Counsel's investigative powers. **MPL must provide its witness list with will-say statements to Hearing Counsel forthwith, and in any event no later than 12:00 p.m. on January 28, 2022.**
9. **MPL must also provide Hearing Counsel with a response to his letter of January 16, 2022 forthwith, and in any event no later than 12:00 p.m. on Friday January 26, 2022. All participants should be prepared to address this issue on the first day of the hearing, although I will hear submissions on when this issue is most appropriately addressed in the course of the hearing.**

Regards,



Peter Donkers,  
Chair

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