

July 27, 2022

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By Email

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Our file 1041-001

BC Farm Industry Review Board
1st Floor, 780 Blanshard Street
Victoria, BC V8W 2H1

Attention: Wanda Gorsuch

Dear Sirs and Mesdames:

**Re: BCFIRB Allegations of Bad Faith and Unlawful Activity Review Decision of July 14, 2022
("Decision")**

Ms. Gorsuch, please bring this letter to the attention of Chair Donkers.

I write this letter to address the order made in the Decision requesting written submissions from Hearing Counsel on appropriate next steps.

Before setting out my recommended next steps, I summarize the key findings made in the Decision.

Key Findings in the Decision

Paragraphs 34 to 40: The scope of the Supervisory Review was not narrow as argued by Prokam Enterprises Ltd. (Prokam). Rather, it was to investigate the allegations made by the complainant parties (that fell within the terms of the Final Terms of Reference) to determine whether they could be substantiated in the sense of weighing the evidence and making findings.

Paragraphs 41 to 53: The Decision dismissed the procedural fairness issues raised by Prokam and MPL British Columbia Distributors Inc. (MPL).

Paragraphs 54 to 61: The Decision reviewed the rulings made during the course of the hearing and dismissed Prokam and MPL's allegations of procedural unfairness arising out of the conduct of Hearing Counsel and the Panel's rulings.

Paragraphs 83 to 85: The Decision found that there were significant issues with Mr. Dhillon's credibility.

Paragraph 110: All of the events starting with the investigation of Prokam up to the BC Vegetable Marketing Commission's (Commission) show cause decision in December 22, 2017 which flowed from the Commission's concern with Prokam's overall failure to comply with the Commission's authority over transactions which require DA, licensing and pricing control. It was these concerns that motivated the Commission to take action with respect to Prokam.

Paragraphs 112 to 114: Mr. Guichon participated in discussions about Prokam because he was asked to do so by then Commission Chair, Mr. Krause. Mr. Guichon did not participate in any deliberations or actual decisions. Mr. Guichon recused himself from the January 2018 reconsideration decision of the Commission.

Paragraphs 134 to 135: There is no basis to conclude that Mr. Solymosi commenced investigating Prokam out of some "malicious belief" that Prokam was a rogue producer. Mr. Solymosi's main concern in issuing the Cease & Desist Orders ("CDO's") was orderly marketing.

Paragraph 142: Mr. Solymosi's investigation into Prokam was not perfect. There were some letters he should have disclosed at the show cause hearing. At its highest, the lack of disclosure was an inadvertent error and not reckless or malicious conduct.

Paragraph 145: Mr. Solymosi had a reasonable, honestly held belief that the Commission's minimum price orders for product marketed out of Province were lawful. Mr. Solymosi was not wilfully blind or reckless as to the validity of the minimum pricing orders and resulting CDO's.

Paragraphs 146 to 149: Mr. Solymosi did not act improperly to induce cooperation from the Island Vegetable Cooperative Association (IVCA).

Paragraphs 151 to 158: Mr. Guichon did not exercise his powers as vice chair of the Commission to approve the CDO's in bad faith and with malice.

Paragraphs 159 – 161: Mr. Guichon was always under the assumption that the Commission had the authority to set export prices for products grown in British Columbia.

Paragraph 165: While Mr. Guichon participated in some discussions concerning Prokam, he did not act in a manner that was unlawful or to intentionally cause harm to Prokam or to benefit himself.

Paragraphs 166 to 168: Prokam's allegations are not substantiated. The evidence relied upon by Prokam falls far short of the evidentiary threshold for proving the type of serious allegations that Prokam advanced against Messiers. Guichon and Solymosi.

Paragraph 175: There was no evidence that Mr. Newell's views influenced the actions of the Commission or its general manager at any time in regards to the eventual imposition of a temporary moratorium on agency applications, or MPL more generally.

Paragraphs 176 to 202 and 224: There is no evidentiary basis for MPL's allegation that the imposition and maintenance of a moratorium on agency license applications was aimed to prevent MPL from making an agency application. The moratorium was put in place for various legitimate reasons. It was not put in place or maintained for the intention of preventing MPL from entering the marketplace.

Paragraphs 211 to 213: There is no basis for MPL's complaint that the failure to interview and/or call Ms. Glyckherr as a witness at the hearing compromised the truth seeking function or fairness of the Supervisory Review.

Paragraph 229: There were some serious concerns about Mr. Mastronardi's credibility concerning allegations made by MPL, including the serious allegation of a vote swapping agreement.

Paragraph 231: The allegations raised by MPL were advanced without any foundation. They were based on generalized rumours and innuendo.

Paragraph 234: MPL's allegation that Commissioner Reed improperly interfered with Mr. Cheema's application as a way of causing harm to MPL was frivolous.

Paragraph 236: MPL's allegations against Mr. Solymosi were frivolous.

Paragraph 237: The allegations that MPL advanced against the Commissioners and Mr. Solymosi had no basis in evidence, and were largely frivolous.

Paragraph 238: The allegations that MPL advanced in a notice of civil claim pleading misfeasance in public office, which caused destabilization in the industry, gives rise to the concerns about the basis for the filing of the claim as well as MPL's future participation in the regulated vegetable industry.

Paragraph 259 to 260: Mr. Solymosi did not act out of any animus towards Ms. Bajwa or Mr. Dhillon in dealing with Bajwa Farms or Mr. Harjeet Bajwa. There is not the necessary evidentiary support to substantiate the serious allegations raised by Bajwa Farms, particularly in light of the lack of any evidence that Mr. Solymosi or the Commissioners took decisions because of a negative animus toward Prokam or Mr. Dhillon.

Paragraph 261: In conclusion, there was no cogent evidence presented to substantiate the very serious allegations of wrongdoing made by the Complainant Participants.

Paragraphs 262 to 269: Serious concerns have been raised about the significant impact the Complainant's allegations have had, especially as the allegations were made without any proper factual foundation.

The serious concerns arising out of the allegations include:

- a. MPL's demands, allegations and conduct are nothing more than bullying tactics;
- b. The misfeasance claims were commenced for strategic or ulterior purposes and not to recover actual damages suffered;
- c. The unsubstantiated allegations were made for strategic purposes, specifically to harass, intimidate, cause expense and cast a pall of suspicion over the conduct of regulated marketing in the Province;
- d. The allegations were advanced without any evidence of actual harm or damages;
- e. The serious allegations made by Prokam and MPL were based principally on speculation, which reduced the Supervisory Review to largely being an unsuccessful fishing expedition on the part of the Complainant Participants, at extraordinary expense to the Non-Complainant Participants and BCFIRB;
- f. The allegations made and the necessity of the Supervisory Review destabilized and caused a lack of confidence in the regulated vegetable industry and to some extent paralyzed aspects of the Commission's operations; and,
- g. The Commission has been deprived access to its General Manager in relation to the issues advanced by Prokam, CFP Marketing Corporation (CFP), MPL and their principals; and there has been a chilling effect on the willingness of producers to serve as elected Commission members.

Regardless of all of these concerns, the specific question of whether the allegations were advanced in bad faith, or for the improper purpose of exerting influence over the Commission, was never put squarely in issue in this Supervisory Review, and was not put to any of the Complainant Participants' witnesses.

The determination of whether there has been bad faith potentially gives rise to larger issues regarding the suitability of Prokam, CFP and MPL's participation in the regulated vegetable industry.

Request for Submissions from Hearing Counsel

In light of the above findings, you have requested written submissions from Hearing Counsel on what next steps are appropriate to address the serious concerns raised and what other consequences should flow from your findings in the Decision, including issues of costs and legislative reform raised by the Commission.

Recommendations of Hearing Counsel

Based on the findings in the Decision and the serious concerns as outlined above, I have considered what steps should be taken to address those concerns and any consequences of your findings. In doing so, I am mindful of the requirements of procedural fairness as well as the need to have an efficient process to address the concerns, conclude this review, and restore confidence in the regulated vegetable industry.

My recommendations of what steps are appropriate consists of 2 phases, which I set out below.

Phase One

1. Hearing Counsel should investigate whether the Complainant witnesses have any evidence, not already introduced at the hearing, to support the allegations made. In conducting the investigation, Hearing Counsel should interview the principals of the Complainants along with their counsel with a focus on what evidence the Complainant participants had at the time they made the allegations.
2. The investigation should be limited to Prokam and MPL (and their principals) as they were the only parties that filed Notices of Civil Claim against members and employees of the Commission.
3. Hearing Counsel should also inquire of Mr. Dhillon particulars of his relationship to, and role in, CFP. The investigation should also examine what, if any affiliation or other connection (financial or otherwise) Prokam has to CFP.
4. Hearing Counsel should also explore the issue of what damages Prokam says it suffered as a result of the CDOs and the process after the CDOs.
5. Hearing Counsel should explore the damages MPL says it has suffered.
6. Once Hearing Counsel has completed the investigation, Hearing Counsel should provide his Investigation Report to all parties.

Phase Two

1. Taking into account the findings in the Decision and the Phase One Investigation Report, Hearing Counsel will provide submissions on how to address the concerns summarized in paragraphs a – g above. The submissions will focus on what inferences can or should be drawn and what, if any, consequences should be considered, taking into account, among other things, the comments made in paragraphs 238 and 269 of the Decision.
2. All the Supervisory Review participants (other than Bajwa Farms) will be provided the opportunity to make submissions in response to Hearing Counsel's submissions on how to

address the concerns outlined in paragraphs a – g above, any inferences to be drawn, and commenting on any consequences recommended by Hearing Counsel.

3. BCFIRB will make its final decision on the inferences to be drawn and what, if any, consequences should flow.

It is recommended that prior to considering the process in this letter, you seek brief written submissions from all parties, and provide Hearing Counsel an opportunity to file a short reply submission.

After consideration of all submissions, you can make a decision regarding the process to move forward.

Yours very truly,
Mitha Law Group

Per:

A handwritten signature in blue ink, appearing to be 'N. Mitha', with a long horizontal flourish underneath.

Nazeer T. Mitha, QC *
* Law Corporation

NTM/kk