BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND

ALLEGATIONS OF BAD FAITH AND UNLAWFUL ACTIVITY

WRITTEN SUBMISSIONS OF THE COMMISSIONERS

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I. OVERVIEW

1. BCFIRB established this supervisory review to investigate three sets of allegations against five current and former members of the BC Vegetable Marketing Commission, as well as its general manager. In particular, the proceeding was established to investigate "allegations of bad faith and unlawful activity raised in court filings [by Prokam Enterprises Ltd. and MPL BC Distributors Inc.] alleging misfeasance of public office by members and staff of the [Commission]" and "determine whether these allegations can be substantiated and what resulting orders… may be required".[1] BCFIRB recognized its "statutory obligation to investigate in order to protect the public interest and ensure public confidence in the orderly marketing of regulated vegetables". Given the threat to such confidence while such allegations persisted, BCFIRB likewise confirmed that it was necessary to "proceed with the matter expeditiously". In other words, the complainants, and in particular Prokam and MPL, unleashed allegations seen by BCFIRB as requiring this review against individuals who as a matter of ordinary decency and law should be presumed to have acted in good faith, and the public interest urgently demanded an answer to the question "is there any there, there?"

2. Misfeasance in public office is among the most egregious of tortious misconduct.[2] As recognized by this panel,[3] bodies like the Commission depend on the faith and confidence of the public and regulated industry to effectively govern, and allegations that they are motivated by dishonesty and malice undermines that confidence. Such allegations likewise inevitably have a chilling effect on government actors, particularly where they operate – as Commissioners do – in a complicated

[1] BCFIRB, *Notice of Supervisory Review: Vegetable Marketing Commission – Allegations of Bad Faith and Unlawful Activity* dated May 26, 2021.
[2] *J.P. v. British Columbia (Children and Family Development)*, 2017 BCCA 308 at para. 320.
[3] Notice of Supervisory Review: Vegetable Marketing Commission – Allegations of Bad Faith and Unlawful Activity dated May 26, 2021 ("Given the gravity and potential implications of the allegations, the supervisory review will take the form of an oral hearing. BCFIRB recognizes the need to proceed with this matter expeditiously in order to ensure public confidence in the administration of the regulated vegetable industry in British Columbia.").

environment where they must consider the conflicting positions and needs of multiple participants.[4]

3. In the face of that seriousness, courts consider these claims on an exacting standard. They are to be advanced with "caution and restraint" and considered "skeptically".[5] If the claim is to be made, the acts or conduct at issue must be precisely described.[6] Establishing the claim likewise requires "clear proof commensurate with the seriousness of the wrong".[7]

4. The complainants' very position that there should have been yet more process, more witnesses, and more investigation simply serves to demonstrate there was no basis for the allegations they made, consistent with their seriousness, or at all. Had there been, it could readily have been identified. Instead, after months of investigation and sixteen days of hearings, there is no evidence on which any of the allegations made could be supported against the Commissioners. Instead, this hearing has shown that the allegations rely entirely on the suspicions, speculation, and self-victimization of the complainants and their principals; the minimization of the seriousness of the allegations made; and the bad faith exaggeration or misinterpretation of the Commissioners' actions and evidence.

5. In accordance with the purpose of this supervisory review, BCFIRB should confirm that the allegations are unsubstantiated and restore confidence in both Commission and its members.

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[4] *J.P.* at para. 320.
[5] *Muldoe v. Derzak,* 2021 BCCA 199 at para. 49; *Stephen v. HMTQ,* 2008 BCSC 1656 at paras. 49 and 60.
[6] *G.H. v. Alcock*, 2013 ABCA 24 at para. 58; *Taylor v. British Columbia*, 2020 BCSC 1936 at para. 53.
[7] *Powder Mountain Resorts Ltd. v. British Columbia*, 2001 BCCA 619 at para. 8; *Rain Coast Water Corp. v. British Columbia,* 2019 BCCA 201 at para. 108.

II. FACTS

a. Regulation of the British Columbia Vegetable Industry

6. The Commission is the first instance regulator of the British Columbia vegetable industry. The *British Columbia Vegetable Scheme*,[8] as promulgated under the *Natural Products Marketing (BC) Act*,[9] establishes the Commission and its associated powers. BCFIRB has general supervisory powers over the Commission and hears appeals from orders, decisions, or determinations made by the Commission.[10]

7. Under the *Vegetable Scheme*, the Commission has the power and duty to "promote control and regulate in any respect the production, transportation, packing, storage and marketing of a regulated product".[11] The Commission's powers, duties, and obligations include to: (a) make orders and rules necessary or advisable to promote, control, and regulate effectively the marketing of a regulated product; (b) regulate where, when, and through which agency a regulated product must be marketed; (c) require persons engaged in marketing regulated vegetables to register and obtain licenses; and (d) to cancel a license for violation of a provision of the scheme, regulations, or an order of the Commission.[12]

8. The Commission, as the first instance regulator of the vegetable industry, "sets a strategic vision, establishes rules, makes regulatory decisions and carries out enforcement activities in support of producers, the industry and the public interest."[13] It does so in a complex regulatory environment—regulating a wide range of vegetables in a rapidly-changing industry that is subject to changes in the market and consumer demand, increasingly stringent food safety requirements, and uncontrolled imports.

9. Reflecting this complexity and the importance of industry expertise to regulating vegetables, the Commission is composed of one appointed Chair and up to eight

[8] *British Columbia Vegetable Scheme*, B.C. Reg. 96/80 [*Vegetable Scheme*].
[9] *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, C. 330 [*NPMA*].
[10] *NPMA*, s. 8.
[11] *Vegetable Scheme*, s. 4.
[12] *NPMA*, s. 11.
[13] Ex. 1 at p. 4174 (2019-20 Vegetable Review Decision dated December 22, 2020, at para. 54).

producers, elected to their positions by other producers in the industry.[14] The Commission also has a General Manager with delegated powers under the *NPMA* and staff members who carry out the day-to-day administration of the Commission.[15]

10. The consequence of the regulatory scheme is that (except in limited circumstances), all producers of regulated vegetables must market through designated agencies.[16] Designated agencies are private vegetable marketing businesses that are licensed by the Commission and delegated regulatory authority.[17]

11. Designated agencies thus play a critical role in the regulation of the vegetable industry. Reflecting that importance, the issuance or renewal of an agency license is a privilege, not a right—potential agencies must go through an application process and licenses for existing agencies are reissued annually and subject to review at the Commission's discretion.[18]

12. In turn, designated agencies are subject to obligations and duties under the regulatory scheme. In particular, the Commission's general orders provide, among other things: (a) that with respect to wholesalers, any sales of regulated product subject to minimum pricing rules must receive prior Commission approval to ensure minimum prices are respected; and (b) agency's supply needs are determined by their producer's "delivery allocation" or "DA". Producers must not (i) produce;[19] or (ii) ship regulated product without a corresponding DA without prior Commission approval. [20]

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[14] *Vegetable Scheme*, s. 4.
[15] Under the *NPMA* the General Manager may exercise any and all powers of the Commission, except those powers in paragraphs 11(f), (g) (h) or (i), respecting (f) the requirement of persons to register with and obtain licences, (g) the setting and collection of licence fees and (h) the classification of persons into groups thereon, or (i) the cancellation of a licence for violation of a provision of the scheme or of an order of the marketing board or commission or of the regulation.
[16] British Columbia Vegetable Marketing Commission, General Orders, Part XIV, s. 1.
[17] General Orders, Part IV, s. 2.
[18] General Orders, Part XIV, ss. 10 – 16.
[19] As BCFIRB noted in its decision in the 2019 appeal, General Prohibition 12 provides that producers may not produce or ship regulated product without DA: Ex. 1 at p. 4106 (Decision – *Prokam Enterprises Ltd. and Thomas Fresh Inc. v. British Columbia Vegetable Marketing Commission* et al. dated February 28, 2019 at p. 3, FN 1). As a matter of administration, however, the Commission generally does not take an active role in the oversight of production: Transcript Day 9 (A. Solymosi) at p. 44, l. 28-39 [**Tab 1**].
[20] Ex. 1 at p. 5106 (BCFIRB Decision dated February 28, 2019, at para. 6).

b. Allegations of Prokam - Background

i. Prokam's 2016-2017 Growing Season

13. In 2017, Prokam increased its production of potatoes well in excess of its DA to 380 acres in response to IVCA's growth plan to fill the premium early wholesale retail market. In April 2017, Mr. Dhillon's brother-in-law Mr. Gill was hired as IVCA's mainland sales representative primarily to sell Prokam's potatoes.

14. Prior to Mr. Gill's hiring, IVCA was actively soliciting out-of-province sales with Thomas Fresh in Calgary and Saskatoon. IVCA supplied Prokam potatoes to Thomas Fresh in 2016. In March 2017, Thomas Fresh sent signed 60-day forward contracts to IVCA and in April 2017, Mr. Gill executed these contracts to supply Thomas Fresh with Prokam's potatoes at a set price.

15. In late January 2017, the Commission was made aware of Prokam's planting potatoes in excess of its DA and initiated a review process to coordinate agency production planning. Despite numerous requests to IVCA to submit a production plan, confirm planting intentions and agency growth expectations, IVCA remained silent on its planned market for Prokam's potatoes and its business relationship with Thomas Fresh, deflecting the request by referencing an earlier submission in the Vancouver Island Agency Review.

16. The Commission made it clear that this earlier application for agency license was not a marketing plan for IVCA's regulated product and issued a warning notice. IVCA remained non-compliant with Part XV of the General Orders requiring Commission approval where an agency intended to market new product (product not covered by DA). Mr. Dhillon in his role as vice-president of IVCA and Mr. Gill as an IVCA employee participated in these decisions to thwart Commission authority.

ii. The CDOs/Compliance Notices

17. On October 10, 2017, the Commission issued cease and desist orders against Prokam, Thomas Fresh and IVCA alleging that potatoes were being marketed and sold

without Commission authorization below minimum price and without DA, knowingly permitting IVCA to be put in a position of noncompliance.

iii. Show Cause Hearing and Variation Decision

18. From October 10 to December 14, 2017, the Commission conducted a written show cause process in which each of Prokam, Thomas Fresh and IVCA were permitted to make written submissions and produce evidence in respect of the allegations particularized in the CDOs.

19. In its decision of December 22, 2017, the Commission released its decision in those proceedings. The Commission's ultimate determination was that that Mr. Dhillon, with the assistance of Mr. Gill, essentially co-opted the regulatory authority of IVCA and bypassed agency staff, allowing Prokam to sell potatoes in excess of DA directly to Thomas Fresh (which such impugned transactions "papered" through IVCA) at prices below the Commission's minimum pricing, with IVCA largely unaware of these "backdoor activities". As a result, it revoked and replaced Prokam's class 1 licenses with class 4 licenses and directed Prokam to BCFresh "as it is better equipped to manage the producer [Prokam] and ensure pricing rules are followed".

20. Upon Prokam's application to vary the order, the Commission upheld the designation of BCFresh as Prokam's agency in a decision dated January 30, 2018.

iv. Appeal to BCFIRB

21. On appeal of the show cause decision, BCFIRB confirmed that Mr. Dhillon, in his role as IVCA vice-president and director, contributed to both Prokam and IVCA's breach of the General Order. In particular, it found that Mr. Dhillon was a force to be reckoned with within IVCA: Prokam was a big player in IVCA, in contrast to the other smaller growers; and Mr. Dhillon was not beneath threatening to fire staff or pulling his money from the agency in order to get his way.[21] With respect to Mr. Gill, Mr. Dhillon was

[21] While the fact of IVCA's disfunction was sufficient to warrant Commission intervention and its precise cause is of limited relevance to this review, these determinations were only reinforced by the evidence in these proceedings. Contrary to Mr. Dhillon's evidence, then and now, that he had no role in IVCA and

instrumental in bringing him into IVCA and supported his employment handling IVCA's "mainland sales" which in fact were the sales of Prokam potatoes to Thomas Fresh and negotiated for his father's company to pay half of Mr. Gill's salary.

22. Flowing from those conclusions, BCFIRB confirmed Prokam's and Mr. Dhillon's conduct (with respect to the production and marketing of potatoes in excess of Prokam's DA and IVCA's deficient administrative processes) was not beyond reproach. Arising from those findings, and the issues otherwise before it, BCFIRB, and:

a. referred back to the Commission the replacement of Prokam's Class 1 Producer Licence with a Class 4 Licence (to be replaced with a Class 3 or Class 5 licence on review of the producer's compliance); and

b. referred back to the Commission the direction of Prokam to BCFresh. In that regard, BCFIRB did not accept that Mr. Guichon or any of the other commissioners would be in a conflict of interest by virtue of the fact that they are producers whose personal interests may be affected in that capacity, but otherwise found that they had a limited record on the question of consideration of reasonable apprehension of bias by the Commission. BCFIRB accordingly ordered that the Commission was to canvas Prokam's views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration, and form a panel to deliberate the matter thereafter; and

c. affirmed the Commission's order that Prokam's 2017-18 Crop Year potato shipments on Kennebec potatoes and all potato exports were not to be included in the calculation of DA for the 2018-19 crop year.

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deferred entirely to IVCA with respect to matters of managing delivery allocation or communicating with the Commission, the evidence in these proceedings established, variously, that he was a primary author of IVCA's letter to the Commission July 10, 2017, wherein it refused to adhere to the Commission's policy and related rules concerning delivery allocation and accused it, *inter alia*, of "harassment", "threats", and "borderline prejudicial human rights violations" (Transcript Day 6 (B. Gill) at p. 104, l. 44-p.105, l. 1 [**Tab 2**]); and, in the face of those ongoing concerns, directed IVCA to adopt a confrontational approach to the Commission and strongly oppose requests for reports or information regarding Prokam's sales (replying to one such inquiry "fuck them"): Ex. 1 at pp. 3408 and 3414-16; Transcript Day 6 (B. Dhillon) at p. 61, l. 3-p. 62, l. 15 and p. 62, l. 40-p. 70, l. 4 [**Tab 2**].

v. Reconsideration of Show Cause Decision

23. Beginning March 15, 2019, the Commission undertook the reconsideration of its show cause decision in accordance with the directions of BCFIRB. In its ultimate decision, the Commission (with a panel of Messrs. Newell, Schlacht, Reed, and Royal) confirmed that:

a. the decisions to plant Kennebec potatoes without DA, additional acreage in early potatoes that would yield a massive volume of potatoes in excess of DA, and not seek approval by the Commission each rested with Prokam;[22]

b. regardless of any finding on the validity of the minimum export pricing orders, Prokam did not comply with the Commission's authority over DA and approving new DA to service new markets;[23] and

c. Prokam made the impugned decisions in a coordinated effort to circumvent the orderly marketing system of regulated BC-grown vegetables, and as an intentional and direct violation of the principles of DA and the producer's obligations that are part of that privilege.[24]

24. The Commission accordingly recommended that the Class IV Licence issued to Prokam be replaced with a Class III Licence.[25]

25. Similarly, after review of submissions from Prokam and all potato producers and designated storage crop agencies, the panel directed Prokam to market any regulated vegetables through BCFresh under the terms of the three-year GMA that it previously entered into. [26]

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[22] Ex. 1 at p. 4210 (BC Vegetable Marketing Commission Decision dated November 18, 2019, at para. 54 [Reconsideration Decision]).
[23] *Ibid* at 4210-11 (*ibid* at paras. 54 and 56).
[24] *Ibid*.
[25] *Ibid* at 4212 (*ibid* at paras. 59-60).
[26] *Ibid* at 4215 (*ibid* at paras. 65-67 and 72).

vi. 2019-20 Vegetable Review and Concurrent Proceedings

26. On September 10, 2019, a BCFIRB panel, after hearing from the parties, deferred an appeal by CFP Marketing Corporation (CFP) of a Commission decision (June 28, 2019) to dismiss CFP's agency application and place a moratorium on new agency and producer-shipper applications until a supervisory process was completed. CFP alleged that the Commission had conducted itself in a procedurally unfair manner that gave rise to reasonable apprehension of bias.

27. Following the commencement of the 2019-20 vegetable review, Prokam further appealed the Commission's reconsideration decision on November 20, 2019. After consulting with the parties, BCFIRB deferred consideration of Prokam's appeal and established a submission process in the extant review to address Prokam's on-going requests for relief in advance of the 2020/21 growing season. When Prokam sought alternate marketing arrangements to those directed by the Commission in its reconsideration decision, and alternate DA approvals, the panel interrupted the review to hear submissions before (a) declining to consider Prokam's request for a Class I licence in place of the more costly Class III licence, as Prokam had a valid licence and could produce and market regulated vegetables; (b) concluding the Commission took reasonable steps to address the administrative fairness issues identified in the February 2019 appeal decision and noted that Prokam did not raise conflict of interest in its appeal to BCFIRB of the Commission's reconsideration decision; and (c) affirming the Commission's direction that Prokam market through BCFresh unless Prokam chose not to grow regulated vegetables or BCFresh released Prokam given, *inter alia*, Prokam's non-compliance with the Commission's Orders as found in the February 2019 appeal decision (2017/18 crop year).

28. Despite the interim relief decision, the granted relief on its DA and the meeting with BCFresh and the Commission to discuss market opportunities, Prokam chose not to grow regulated crops for the third consecutive year (2020/21 crop year).

29. In June 2020, Prokam and CFP filed a petition for judicial review with the Supreme Court of BC, appearing to impugn no less than thirteen (13) decisions made

by the Commission and/or BCFIRB in the administration of the provincial regulated vegetable industry going back to October 2017. In addition, the petition sought to restrict or curtail the 2019-20 vegetable review. The judicial review proceedings proceeded on a parallel but separate track to the supervisory review until, on December 2, 2020, the Supreme Court of BC dismissed Prokam's petition in its entirety.

vii. Prokam NOCC

30. Prokam filed its claim on March 25, 2021.

31. In the matter of *Prokam Enterprises Ltd. v. BCVMC*, File N1908, BCFIRB circulated a copy of a Notice of Civil Claim and asked that the parties address the implications of that claim at the Pre-Hearing Conference on April 20, 2021. In a letter dated April 20, 2021, Prokam submitted that the claim was filed because the applicable limitation period was set to expire, but that its appeal process should proceed.[27]

c. Background to the Allegations of MPL

i. The Agency Moratorium and the 2019–20 Vegetable Review

32. In June 2019, the Commission placed a moratorium on all new agency applications. The purpose of the moratorium was to allow the Commission to complete an ongoing review of the Commission's governance and structure. The expected (and ultimate) consequence of these review procedures included comprehensive amendments to the Commission's General Orders. The Commission concluded that these "fundamental regulatory issues" needed to be resolved before any new agencies were established.[28]

33. On appeal of the moratorium decision, BCFIRB:

a. deferred the appeal; and

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[27] See Ex. 1 at p. 5096 (LF C. Hunter, Q.C. to BCFIRB dated May 27, 2021 at p. 8).
[28] *Ibid* at p. 4169 (BCVMC Decision - CFP Marketing Corporation Agency Application Moratorium on Applications for Agency & Producer-Shipper Status dated June 28, 2019 [CFP Agency Application and Moratorium Decision]).

b. began a supervisory review to considers aspects of the Commission's structure and agency accountability requirements (the 2019-20 vegetable review). The question of whether the moratorium was appropriate and what changes needed to be implemented prior to it being lifted was deferred to the supervisory panel.[29]

34. The 2019-20 vegetable review proceeded from September 2019 through December 2020 and involved extensive consultation with industry stakeholders on the Commission's structure and agency accountability. The Commission's own strategic review process proceeded in tandem with that supervisory review.

ii. MPL's Agency Application

35. On June 22, 2020, MPL contacted BCFIRB about the Commission's moratorium on agency applications. MPL expressed its intention to seek an agency license to market regulated greenhouse vegetables in BC. MPL sought BCFIRB's commitment to a prompt target date for the lifting of the moratorium and a timeline for the review of new agency applications once lifted.[30]

36. On July 14, 2020, BCFIRB responded to MPL's inquiries, confirming that it was aiming to release its decision on the 2019-20 vegetable review and to make directions on the moratorium in early fall. BCFIRB invited MPL to participate in the review process.[31]

37. On July 20, 2020, MPL informed BCFIRB that it would file an agency application before the moratorium was lifted. MPL requested that BCFIRB direct the Commission to process and consider its agency application immediately upon receipt of the application, effectively seeking an exemption from the moratorium. MPL expressed its concern that,

[29] *Ibid* at p. 4708 (2019-20 Vegetable Review Decision at para. 33).
[30] *Ibid* at p. 4379 (LF M. Camley to BCFIRB dated June 22, 2020).
[31] *Ibid* at p. 4392 (LF BCFIRB to M. Camley dated July 14, 2020).

if the moratorium was not lifted promptly, MPL would "lose out on the opportunity to market", resulting in a "substantial loss" to MPL.[32]

38. On July 27, 2020, BCFIRB declined to issue any directions to the Commission as premature in light of the ongoing review process. BCFIRB confirmed that the panel would take MPL's concerns into consideration as part of its deliberations.[33]

39. Despite the ongoing moratorium and the responses from BCFIRB, on September 10, 2020, MPL brought an application before the Commission for a Class 1 Agency designation.[34] In a letter enclosing that application, MPL immediately adopted an aggressive and confrontational stance in that it (a) demanded that the Commission expeditiously review and process the application; and (b) raised the first version of its unparticularized allegations of bias and conflict of interest, stating that it had been advised that "there was a movement to discredit its application by certain entities that may have a direct role in deciding its agency application".[35] At the same time, MPL wrote to BCFIRB again demanded it direct the Commission to consider MPL's application immediately, despite the moratorium.[36]

40. On September 18, 2020, the Commission wrote to confirm receipt of MPL's agency license application.[37] Together with that confirmation, the Commission wrote to advise that MPL's demand to have the application expeditiously reviewed would be put in front of a panel of the Commission for review. The Commission otherwise requested the particulars of or basis for its serious allegations, writing:

> … can you please expand on the concerning facts you mention involving certain entities that are communicating misinformation to BC growers and may have a direct role in deciding on the agency application. The Commission wishes to know what misinformation is being communicated and which entities are involved.

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[32] *Ibid* at p. 4396 (LF M. Camley to BCFIRB dated July 20, 2020).
[33] *Ibid* at p. 4400 (LF BCFIRB to M. Camley dated July 27, 2020).
[34] *Ibid* at p. 4441 (LF MPL to Commission dated September 10, 2020).
[35] Ex. 1 at p. 4442 (LF M. Camley to Commission dated September 11, 2020).
[36] *Ibid* at p. 4449 (LF M. Camley to BCFIRB dated September 14, 2020)
[37] *Ibid* at p. 4457 (LF Commission to M. Camley dated September 22, 2020).

41. On September 22, 2020, BCFIRB wrote to confirm receipt of MPL's letter and advised it would take its request into account in its upcoming hearing to lift the moratorium[38]

42. No further particulars were provided by MPL in response to the Commission's September 18 letter. Instead, on September 29, 2020, MPL wrote again saying baldly that it had been advised that the Commission had no intention of reviewing its claim promptly, that it intended to delay processing to November 2020, after expiry of the October 31, 2020 deadline,[39] and requested, without further particularization, that John Newell recuse himself from consideration of MPL's agency application.[40]

iii. Lifting of Moratorium and Processing of MPL's Agency Application

43. On October 21, 2020, after ongoing discussions with the Commission, BCFIRB concluded that the Commission's progress on its strategic planning and agency accountability projects, although not yet complete, was sufficient to allow the Commission to begin considering agency applications.[41]

44. BCFIRB accordingly directed the Commission to:

a. assign panels to consider current applications by October 30, 2020; and

b. advise all applicants that the Commission may need to request additional information or adjust the process currently required under Part XIV of the General Order as the Commission and BCFIRB finalized the agency accountability framework.

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[38] *Ibid* at p. 4459 (LF BCFIRB to M. Camley dated September 22, 2020).
[39] Notably, this allegation did not arise in the Supervisory Review and the evidentiary basis for it was not presented to the panel.
[40] As addressed in the Commission's letter of January 6, 2021, and otherwise established in this judicial review, Mr. Newell recused himself from consideration of MPL's agency application, including the denial of the request to extend the deadline in the Grower Transfer Policy: Ex. 1 at p. 4775 (LF R. Hrabinsky to BCFIRB dated January 6, 2021 at p. 3); Ex. 1 at p. 4514 (EF Andre Solymosi to Panel dated October 30, 2020).
[41] Ex. 1 at p. 4475 (LF BCFIRB to D. Etsell dated October 21, 2020).

45. Following the lifting of the moratorium, counsel for MPL wrote to the Commission renewing its request for an expedited review. In a letter of October 27, 2020 MPL demanded the Commission immediately process and make a determination on the merits of its agency application and extend an October 31, 2020, deadline in its grower transfer policy.[42] On October 28, 2020, and after being informed by the Commission that it takes approximately two months to process applications for new agencies under the General Order, MPL wrote to the Commission demanding that its application be processed within 10 days.[43]

46. On October 29, 2020, the Commission struck a panel to consider MPL's agency application.[44] The members of the panel were Arman Vander Meulen, Brent Royal, Peter Guichon, Hugh Reynolds, and Debbie Estell (Chair). Each of John Newell, Mike Reed, Cory Gerrard, and Blair Lodder (all later sued by MPL in relation to these events) recused themselves from the hearing of the application.[45]

47. On October 30, 2020, the Commission responded to MPL's letters. The Commission confirmed its intention to expeditiously process the application; however, the Commission made clear that the timeline MPL sought to impose was not achievable. The Commission noted that the designation of new agencies requires careful consideration given the implications to the industry as a whole, and that the Commission could not consider MPL's application in a manner that risked compromising the interests of the industry. The Commission further noted that it had no present plans to extend the October 31, 2020, deadline in its grower transfer policy.[46]

48. On November 13, 2020, Mr. Solymosi wrote to MPL to advise that the panel convened for its agency application had been asked to defer consideration of the application until the Commission finalized its new criteria, considerations, and process

[42] *Ibid* at p. 4481 (LF M. Camley to Commission dated October 27, 2020).
[43] *Ibid* at p. 4485 (LF M. Camley to Commission dated October 28, 2020).
[44] Ex. 1 at p. 4493 (Minutes of the Commission dated October 29, 2020, at para. 8.2)
[45] *Ibid* at p. 4514 (EF A. Solymosi to Panel dated October 30, 2020).
[46] *Ibid* at p. 4518 (LF Commission to M. Camley dated October 30, 2020).

for agency applications, at which time MPL would have the opportunity to address matters not already included in the application.[47]

49. MPL filed an appeal from the October 30, 2020, letter thereafter.[48]

50. BCFIRB then concluded and issued the 2019-20 vegetable review decision. On December 11, 2020, BCFIRB directed the Commission to not issue any orders, until it received the Panel's further directions and recommendations.[49] The ultimate decision was issued on December 22, 2020.[50]

iv. Appeal to BCFIRB and Judicial Review

51. MPL's notice of appeal sought a review of the Commission's decision not to extend the deadline in its grower transfer policy, and what it alleged was an "effective denial" of MPL's agency application.

52. MPL's grounds of appeal were several but included:

a. that the Commission failed to consider that the delay to date was unreasonable and has prejudiced MPL; and

b. that, despite its failure or refusal to particularize such concerns before the Commission, that it "expressed its significant concerns regarding the bias, conflict of interest, and perceived conflict of interests of Commissioners who may have participated in making the Decision" and "requested that the Commission address these concerns by confirming a process for ensuring that conflicts were addressed in making the Decision", and that the Commission had failed to do so. [51]

[47] *Ibid* at p. 4592 (EF A. Solymosi to P. Mastronardi dated November 13, 2020).
[48] *Ibid* at p. 4662 (MPL Notice of Appeal dated November 24, 2020).
[49] *Ibid* at p. 4682 (LF BCFIRB to D. Etsell dated December 11, 2020).
[50] *Ibid* at p. 4698 (2019-20 Vegetable Review Decision).
[51] Ex. 1 at 4653 (Notice of Appeal of MPL dated November 24, 2020 at Schedule "A", para. 2).

53. On December 14, 2020, counsel for the Commission applied for summary dismissal of MPL's appeal on the basis that there was no reasonable prospect of success because no decision on MPL's agency application had yet been made.[52]

54. On January 20, 2021, a BCFIRB panel dismissed MPL's appeal summarily. In doing so, BCFIRB panel held:

a. the real grievance in the appeal was that it has taken too long to process MPL's agency application for 2021, and that MPL wanted BCFIRB to order the Commission to immediately grant the license, which relief was not appropriately sought;[53]

b. the delays in completing the review process, while regrettable, were part of the reality of operating within a regulated industry. Review of an agency application, BCFIRB noted, is not a mere administrative function guaranteeing the issuance of a license, but an involved and extensive process. The Commission was required to assess the impact on the market, ensure it had all necessary information to consider the application, and hold a public hearing where industry stakeholders could make their positions known;[54]

c. there was no basis to challenge the decision not to extend the producer notice deadline. As BCFIRB confirmed, to grant an industry-wide extension of the deadline for grower transfers at the request of a prospective agency applicant pending its application would be extremely disruptive. Existing relationships between producers and their agencies would be destabilized if producers sought to transfer late into 2020 and there would be negative financial impacts on existing agencies should they lose planned production for 2021. The planning which had already taken place for the 2021 crop season could be seriously undermined or negated if agencies could not rely on prior commitments with producers. In such circumstances, the balancing of

[52] Ex. 1 at p. 4684 (LF R. Hrabinsky to BCFIRB dated December 14, 2020).
[53] Ex. 1 at p. 4787 (BCFIRB, *MPL BC Distributors Inc. v. BC Vegetable Marketing Commission*, File No. N2006 - Decision dated January 20, 2021).
[54] *Ibid* at pp. 4787-4788.

industry interests favoured preserving existing producer-agency relationships over ensuring a prospective applicant's access to a stable of producers. Otherwise, a decision about industry-wide deadlines for producer transfers had to be made sufficiently in advance of the crop year to allow for agencies and producers to plan production to fill markets in support of orderly marketing. The timing of MPL's request did not permit that planning;[55]

d. the appeal had little practical utility, was frivolous, and to hear it would be an abuse of process;[56] and

e. the procedural fairness concerns advanced by MPL as justification for the appeal (now recast as allegations of actual bias and conspiracy) were speculative, unparticularized, and anticipatory of an agency decision that had and has yet to be made.[57]

55. On March 19, 2021, MPL filed a petition seeking judicial review of BCFIRB's summary dismissal.[58] MPL has since confirmed that it has stopped and has no intention of proceeding with such review.

v. The MPL Action

56. On April 23, 2021, despite its extant judicial review and consistent with its confrontational approach throughout, MPL commenced its action. The defendants included Andre Solymosi, John Newell, Mike Reed, Blair Lodder, Cory Gerrard, and Peter Guichon. The allegations therein included that:

a. the Commissioners arbitrarily and unlawfully acted to prevent MPL from entering the BC market for their own financial benefit (MPL NOCC at Part 1, para. 23(a));

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[55] *Ibid* at p. 4789.
[56] *Ibid*.
[57] Ex. 1 at 4789-4790 (BCFIRB, *MPL British Columbia Distributors Inc. v. British Columbia Vegetable Marketing Commission*, File N2006 – Decision dated January 20, 2021].
[58] Transcript Day 1 (P. Mastronardi) at p. 14, l. 38-p. 15, l. 13 [**Tab 3**].

b. the defendant Mike Reed interfered with and prevented the granting of additional production allocation to growers thought to be aligned with MPL for their own economic benefit (MPL NOCC at Part 1, para. 23(b));

c. the commissioners failed to recuse themselves from the decision-making process in respect of MPL's application for a 2021 agency designation despite conflicts of interest (MPL NOCC at Part 1, para. 23(c)(i));[59]

d. the commissioners ignored and failed to apply the criteria for evaluating agency applications in denying MPL's agency application (again, despite BCFIRB's express finding to the contrary) (MPL NOCC at Part 1, para. 23(c)(ii)); and

e. the commissioners entered into a vote-swapping scheme in order to improperly circumvent the Commission's conflict of interest policy (MPL NOCC at Part 1, para. 23(c)(iii)).

57. MPL's notice of civil claim alleges that these acts were deliberate and done for the express purposes of harming it. The purported basis for this allegation is that the defendants stand to benefit financially from the vote trading scheme, the refusal to apply the regulatory framework, and the exclusion of MPL from the market. MPL claims that the defendants have caused MPL to suffer loss of the expenses for preparing for the growing season and for preparing the agency application and loss of profit and opportunity for the 2021 growing season.

58. Although it raises these serious allegations, MPL's notice of civil claim is substantively barren: there are no material facts pleaded beyond the bare allegations of general misconduct.

59. Following service, the Commissioners served a demand for particulars under Rule 3-7(23) seeking, among other particulars:

[59] As addressed above, each of Messrs. Newell, Reed, Lowell, and Gerrard did in fact recuse themselves in respect of MPL BC's application.

a. the precise acts each applicant has taken to keep MPL out of the market;

b. when and how the applicants are alleged to have declined MPL's agency application; and

c. in respect of the vote-swapping scheme, what matters were voted upon in furtherance of this scheme.

60. On July 16, 2021, MPL served on the applicants a response to demand for particulars pleading, *inter alia*:

a. that it had no particulars of the precise acts taken or decisions made by the applicants to keep MPL out of the market;

b. that the unparticularized acts "cumulatively had the effect of denying MPL's 2021 agency application", despite the express finding of BCFIRB that no such decision was made; and

c. that it had no particulars of what decisions were allegedly made pursuant to the scheme.

61. During this time, counsel for the applicants repeatedly asserted the inadequacy of the pleadings and drew MPL's attention to authority supporting the need for particularized pleadings in misfeasance claims.[60] Those positions tellingly received no response from counsel for MPL

MPL's Participation in the Supervisory Review

62. On May 26, 2021, BCFIRB established this judicial review.

63. On July 19, 2021, and after BCFIRB issued the final terms of reference and final rules of practice and procedure for its investigation of MPL's allegations, MPL advised that it would refuse to participate in the supervisory review on the purported basis of

[60] See PB at Tab 13, paras. 14-17.

concerns over prejudice to its action and what it has described as a lack of procedural constraints or protections in the investigative process.[61]

64. MPL thereafter sought to limit its participation in the supervisory review, including by opposing an order that MPL produce all relevant documents in its possession and control,[62] by taking the position that it was not compelled by the rules of practice and procedure to provide documents within the prescribed time period,[63] and by refusing to answer questions or provide – including remarkably, despite the allegations it had made in open court of dishonesty and corruption on the part of the six defendants, claiming privilege over "particulars" said to support their allegations,[64] before (a) purporting to "waive" such privilege, and (b) admitting that MPL had no further particulars to provide.[65]

d. Background to the Allegations of Bajwa Farms

65. The commissioners adopt and rely on the summary of Hearing Counsel provided at paras. 237-249.

III. ANALYSIS

a. Purpose of the Supervisory Review and Law of Administrative Investigations

66. As outlined above, the purpose of the supervisory review is to (a) make a determination on the truth, if any, of the allegations of wrongdoing underlying the complainant' actions or other allegations, and (b) determine what immediate steps are necessary if such allegations are made out (or otherwise).

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[61] Ex. 1 at p. 5117 (LF D. Wotherspoon to BCFIRB dated July 19, 2021).
[62] See Ex. 1 at p. 5216 (LF C. Lee to BCFIRB dated August 13, 2021) and p. 5217 (BCFIRB Document Disclosure Order Extension).
[63] Ex. 1 at p. 5320 (Interview Report of MPL dated November 23, 2021).
[64] As a matter of trite law, privilege only protects communications between client and solicitor or details of the solicitor's brief, not the underlying facts which may be communicated by a client to her solicitor or identified by investigation: *Maranda v. Richer*, [2003] 3 S.C.R. 193 at para. 30 (S.C.C.).
[65] Transcript Day 1 (P. Mastronardi) at p. 42, l. 18–p. 45, l. 4 [**Tab 4**].

67. That purpose is well established under the regulatory framework and the terms of reference.

68. Section 7.1(1) of the *NPMA* provides that BCFIRB has general supervision over all marketing boards or commissions established under that act. Supervisory reviews, like the subject proceeding, are the formal exercise of BCFIRB's supervisory powers and a necessary basis for any decisions and directions to the boards it supervises. Reflecting the potential breadth of the issues or matters that may be addressed, ss. 7.2(2) and (7) and provide BCFIRB flexibility as to the basis on which BCFIRB initiates or conducts such proceedings: it may exercise its supervisory authority at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances, and may, after establishing a supervisory panel, adopt whatever procedures it deems best suit the circumstances.[66]

69. Where an administrative investigation is commenced to further those goals, the law thereon supports that flexibility. While the hallmarks of a proper investigation are thoroughness and fairness, the circumstances of each case dictate the degree or content of those duties. A thorough investigation, for example, does not require that the investigator interview every person proposed by the complainant, but only "crucial evidence".[67] Likewise, while the content of the duty of fairness depends on the context, the duty of fairness at the investigative stage has generally been described as a limited duty of fairness (with particular regard to the subjects of an investigation), not the broad duty of fairness that is typically associated with rights to complete disclosure and to a full hearing.[68]

70. As stated in the Overview, the scope of this supervisory review has been clear from the outset: to investigate "allegations of bad faith and unlawful activity raised in court filings alleging misfeasance of public office by members and staff of the

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[66] See also British Columbia Farm Industry Review Board, *Supervisory Rules* (effective August 19, 2010 – reviewed and confirmed November 14, 2019).
[67] *Slattery v. Canada (Human Rights Commission)*, [1994] 2 F.C. 574 at paras. 55-56 and 69, aff'd (1996), 205 N.R. 383 (C.A.).
[68] See *Swanson v Institute of Chartered Accountants (Professional Conduct Committee)*, 2007 SKQB 480, *Violette v. New Brunswick Dental Society*, 2004 NBCA 1 at pp. 13-16.

[Commission]" and "determine whether these allegations can be substantiated and what resulting orders or directions may be required".[69] BCFIRB recognized its "statutory obligation to investigate in order to protect the public interest and ensure public confidence in the orderly marketing of regulated vegetables" and, given the threat to such confidence while such allegations persisted, confirmed it was necessary to investigate them "expeditiously". Doing so requires a determination on the evidence before this panel as to the validity of the allegations made,[70] and the procedure adopted by hearing counsel, and repeatedly affirmed by this panel, have to this point facilitated the same.

71. In the face of the that clarity, and no doubt given its anticipation of the outcome of the hearing, Prokam's effort at paras. 23-29 of its submissions to obfuscate that result in re-defining the purpose of the supervisory review, like its previous efforts to misinterpret or misstate, *inter alia*, the *Rules of Procedure and Procedure* and the *Terms of Reference*, should be rejected.[71] Likewise, the renewal at paras. 15-22 of its previously rejected positions regarding the interpretation of the *Rules of Procedure*, the alleged need to interview and call various witnesses, the alleged need to adjourn the proceedings, the scope and time of cross-examination, and the inquisitorial (rather than adversarial) nature of these proceedings—each in the face of the cogent reasons of the panel through this review—should be dismissed.[72]

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[69] *Supra* note 1.

[70] Importantly, this determination is separate and distinct from a determination on liability or the award of damages, which is within the proper jurisdiction of the Supreme Court of British Columbia. Nothing in Prokam or MPL filing such claims, however, limits this panel's jurisdiction to appropriate determinations arising out of these proceedings and its investigation.

[71] See, *inter alia*, BCFIRB, *Decision – Preliminary Matters: Allegations of Bad Faith and Unlawful Activity Review* dated January 26, 2022 at p. 4 ("**III.I. Witness Lists"**) and at p. 7 ("**III.I. Production of Additional Documents**").

[72] Indeed, Prokam has a history of failing to respect previous decisions of BCFIRB or seeking to use new proceedings or reviews to request BCFIRB revisit or reconsider prior decisions: see, *inter alia*, *Prokam Enterprises Ltd. v British Columbia Farm Industry Review Board*, 2020 BCSC 2138 at paras. 95-100; LF BCFIRB to Claire Hunter, Q.C. re: Vegetable Supervisory Review (Review), File 44200-60/VEG dated May 22, 2020 ("With respect to the various grievances raised in your letter… they have been addressed in previous decisions of BCFIRB in its appellate and supervisory capacity… The panel does not intend to revisit or reconsider any of these decisions…").

b. Law of Misfeasance of Public Office and Bias

72. As observed by hearing counsel at para. 20 of his written submissions, both Prokam and MPL specifically allege misfeasance in public office. The complaint of Bajwa Farms does not specifically allege misfeasance, but rather alleges conduct which constitutes bad faith, conduct which is without procedural fairness, and is not impartial or not consistent with best practices.

73. With respect to Prokam's and MPL's claims, the commissioners adopt and rely on hearing counsel's position at para. 21 of his submissions that the jurisprudence on misfeasance of public office provides a helpful framework for the completion of this supervisory review, and his outline of same (at paras. 22-32).

74. In addition to that jurisprudence, the law on which allegations of misfeasance are properly made or claimed is similarly helpful. Consistent with misfeasance of public office being "among the most egregious of tortious misconduct" and requiring proof commensurate with that seriousness,[73] such claims must be advanced with "caution and restraint" and the courts will undertake a "careful scrutiny of pleadings" where such claims are made.[74] In that regard, "[p]articularized pleadings are essential for responding to a claim of this nature".[75] A plaintiff alleging misfeasance in public office "may not make only completely bald assertions of knowledge and intent, but rather, the allegations must be as detailed and as fact-specific as is possible at the pleading stage."[76]

75. Similarly, where bias forms part of such allegations, or are advanced separate, those are held to a similar standard. With reference to the law developed around issues of procedural fairness, strong evidence—not mere accusations—must be presented. As outlined by our Court of Appeal in *Adams*:

> An accusation of that nature is an adverse imputation on the integrity of the person against whom it is made. The sting and doubt about integrity lingers even

[73] *Taylor* at paras. 53 – 54.
[74] *Alcock* at para. 58; see also *Stephen* at paras. 49 – 50.
[75] *Rain Coast* at paras. 108, 144 and 150; see also *Taylor* at paras. 53 – 54.
[76] *M.M. v. British Columbia (Ministry of Child and Family Development)*, 2021 BCSC 588 at para. 48.

> when the allegation is rejected. It is the kind of allegation that is easily made but impossible to refute except by a general denial. It ought not be made unless supported by sufficient evidence to demonstrate that, to a reasonable person, there is a sound basis for apprehending that the person against whom it is made will not bring an impartial mind to bear upon the cause. [77]

c. Allegations of Prokam

76. In its Notice of Civil Claim ("**Prokam NOCC**"), addressed below, Prokam alleges that Mr. Peter Guichon and Mr. Andre Solymosi committed misfeasance in public office.

77. The allegations against Mr. Guichon impugn three orders or decisions in which Prokam alleges he exercised some statutory power. In particular, Prokam alleges:

a. Mr. Guichon exercised his powers as Vice Chair of the Commission to approve the Cease & Desist Orders made in October 2017 ("CDOs") in bad faith and for improper purposes (*i.e.* to protect and advance his own economic interests as a BCFresh grower and shareholder and his fellow BC Fresh growers' economic interests, and to harm Prokam's). Prokam further alleges that Mr. Guichon's exercise of his statutory powers concerning the CDO was motivated by malice he felt for Prokam and Prokam's principal, Mr. Bob Dhillon (Prokam NOCC at para. 53);

b. Mr. Guichon knew, or was reckless or wilfully blind to the fact, that the Export Minimum Pricing Orders were invalid and that there was no lawful basis for the issuance of the CDO (Prokam NOCC at para. 54);

c. Mr. Guichon "exercised [his power as member and Vice Chair of the Commission to participate in the discussions and deliberations that preceded the show cause decision]" in bad faith and for improper purposes – again, to protect and advance his own economic interests as a BCFresh grower and shareholder and his fellow BCFresh growers' economic interests, and to harm

[77] *Adams v. British Columbia (Workers' Compensation Board)*, [1989] B.C.J. No 2478 (C.A.); See also *Vancouver Stock Exchange v. British Columbia (Securities Commission)*, 1990 CanLII 1675 (B.C.C.A.) ("To say that someone is unable to give an unbiased decision when he sits, in whatever capacity, deciding things between other people, is an affront of the worst kind, and unless it is well founded upon the evidence, it is not something that should ever be said").

Prokam's. Prokam again further alleges that such "exercise of his statutory power" was motivated primarily by the malice he felt for the plaintiff and Mr. Dhillon (Prokam NOCC at para. 56).

d. Mr. Guichon knew, or in the alternative was reckless or willfully blind to the fact, that his personal interests as the BCFresh chair and a shareholder and director of BCFresh rendered him ineligible to participate in the Show Cause Decision or the discussions and deliberations that preceded it (Prokam NOCC at para. 57)

e. Mr. Guichon "exercised [his power as member and Vice Chair of the Commission to participate in the Variation Decision]" in bad faith and for improper purposes – again, to protect and advance his own economic interests as a BCFresh grower and shareholder and his fellow BCFresh growers' economic interests, and to harm Prokam's (Prokam NOCC at para. 59); and

f. Mr. Guichon knew, or was reckless or willfully blind to the fact, that his personal interests as the BCFresh chair and a shareholder and director of BCFresh rendered him ineligible to participate in the Variation Decision (Prokam NOCC at para. 60).

78. In its submission to hearing counsel dated July 23, 2021, Prokam summarized the main issues arising from its allegations against Mr. Guichon as follows:

> (i) 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;
>
> (ii) 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";
>
> (iii) Evidence that Mr. Guichon was motivated by personal self-interest or the interests of BC Fresh or its growers in participating in decisions adverse to Prokam; and

(iv) BCFresh commissioners were motivated by self-interest in seeking to avoid or delay the licensing of a second lower mainland storage crop agency.[78]

79. Each of these allegations, speculative at best when made, are demonstrably without merit, and rather than seek more process, given the law above, properly should have been abandoned by Prokam.

i. Exercise of Powers as Vice-Chair to Approve the CDOs in Bad Faith and with Malice

80. Mr. Guichon neither exercised any power in or around the issuance of the CDOs, or otherwise participated in any discussion of the CDOs with any bad faith or malice. None of the allegations underlying the claim in misfeasance are supportable.

81. With respect to former, Mr. Guichon's involvement in the issuing of the CDOs was his receipt of an email bringing him up to speed on Prokam, Thomas Fresh, and IVCA's compliance issues (attaching the CDOs, and his participation on a call before their issuance.[79] He was not involved in the investigation leading to their drafting and was involved only after the decision was made between Mr. Solymosi (pursuant to his authority as General Manager) and Mr. Krause to issue them,[80] and in no way altered the substance of the CDOs following their initial drafting.[81] The decision, as Mr. Krause stated, "had already been made".

82. To the extent that Mr. Guichon had any independent view or involvement in the substantial determination that the CDOs should be issued, there was no impropriety in him doing so.

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[78] This purported issue is a reference to the rejection of the application for agency licensure by CFP Marketing Corporation, of which Mr. Dhillon and his brother-in-law, Bob Gill are or were directors. Despite its counsel raising this issue in Prokam's materials, CFP declined to participate in the Supervisory Review and no direct evidence was introduced in support of the suggestion underlying the issue. The Commissioners respectfully submitted that the panel should dismiss this suggestion as unfounded.
[79] Ex. 1 at p. 1135 (EF A. Solymosi to P. Guichon and A. Krause dated October 6, 2017).
[80] Transcript Day 12 (A. Krause) at p. 98, l. 3-34, p. 154, l. 37-47, and p. 156, l. 25-p. 157, l. 13 [**Tab 5**].
[81] *Ibid* at p. 157, ll. 21-33 [**Tab 5**].

83. The fact that any decision may affected Mr. Guichon's personal interests does not establish a conflict or misfeasance.[82] The structure of the Commission, requiring members be elected from a specified industry, reflects that legislation is prepared to accept a significant degree of "conflict" in the larger interests of producer governance. The Commission's motto is "Growers Working for Growers." Commissioners are required to, and Mr. Guichon did, approach issues from that perspective.[83]

84. Prokam's theory as to how Mr. Guichon's involvement represents a conflict, or amounts to misfeasance, with respect, is fanciful. First, in that regard, Prokam relies heavily on select statements from the 2019 appeal that Mr. Guichon was "not very happy" in learning that Prokam had, in breach of the General Orders, entered into forward contracts with a wholesaler for a price below the agency's minimum prices, and came to that feeling "as a grower". There focus on the latter point, "as a grower", in particular ignores both the structure of the commission and the fact that Prokam's conduct impacted the regulated market (and thus all growers) as a whole. It likewise ignores the convincing evidence that the breakdown of the relationship between Prokam and IVCA – regardless of its cause – was a threat to orderly marketing. Relatedly, there is no sensible argument that the CDOs did or would harm Prokam. The sole purpose of the directions included in the Prokam CDO was to ensure that administrative steps and requirements were honoured pending a full review of the evidence gathered by Messrs. Solymosi and Krause by the Commission.[84] They had no effect on Prokam's ability to properly market product through IVCA.[85] Prokam's refusal to follow those guidelines following the issuance of the CDOs, or the continuing difficulties between Prokam and IVCA – which Mr. Dhillon identified in his direct as the sole cause of Prokam's subsequent alleged issues – have no connection to the Commission's actions.[86] The amplification of those statement into the foundational allegation of a misfeasance claim is shocking, and the bare statement that damage resulted, reflects the same efforts to exaggerate or misinterpret the evidence to further their interests.

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[82] Ex. 1 at p. 4119 (BCFIRB Appeal Decision dated February 28, 2019 at para. 57).
[83] Transcript Day 14 (P. Guichon) at p. 22, l. 7-25 [**Tab 6**].
[84] Transcript Day 12 (A. Krause) at p. 155, l. 4-p. 156, l. 19 [**Tab 5**]; Transcript Day 13 (P. Guichon) at p. 114, l. 46-p. 115, l. 9 [**Tab 7**].
[85] Transcript Day 13 (P. Guichon) at p. 113, l. 3-p. 115, l. 24 [**Tab 7**].
[86] Transcript Day 5 (B. Dhillon) at p. 52, l. 6-16; see also *ibid* at p. 57, l. 16-28 [**Tab 8**].

ii. Knowledge, or Recklessness or Wilful Blindness, to the fact that the Minimum Export Price Orders were invalid

85. Prokam's claim against Mr. Guichon is founded on the allegations that he knew, or ought to have known, that the minimum export pricing orders were invalid in respect of exported produce and provided no lawful basis for the Commission's issue of those portions of the CDOs. As Prokam argues, its case is solely based on the premise that public officers must only exercise their powers for the public good and not deliberately and unlawfully for ulterior or improper purpose.[87]

86. Prokam's argument is highly selective and misleading. A holistic view of the events surrounding the issue of the CDOs can only lead to the conclusion that the Commission's belief in the legitimacy of the CDOs was reasonable, in good faith and aligned with their public office. The Commission's *bona fides* undercuts Prokam's central argument as to malice in and arising from the issuing of the CDOs:

a. Firstly, the rationale the Commission's issuing of the CDOs did not singularly entail pricing control. It concerned Prokam's shipment of a BC regulated product without any DA rights for that product, notionally papered through a BC regulated agency, and then the marketing and selling of this product below the authorized minimum price for that regulated product. This conduct understandably concerned the Commission as an activity that affected the regulation of vegetables within BC.[88]

b. Secondly, and whilst the commissioners do not of course seek any ruling in this regard, the unlawfulness of the CDOs is far from 'unimpeachable' as Prokam alleges, and there remains substantive argument to the contrary.

87. With regard to the first aspect, the commission has consistently referred to the purpose of the disciplinary measures taken against Prokam as the management of Prokam's failure, as a producer of a regulated product, to comply with the Commission's

[87] Prokam Written Submissions at para. 35.
[88] Ex. 1 at p. 1165 (Compliance Notice to Prokam Enterprises dated October 10, 2017).

authority and the effects of Prokam's non-compliance within the regulated BC industry.[89] The minimum pricing orders are applicable only to BC agencies and were made for the purpose of preventing unwanted inter-agency competition that would impede the maximization of returns for BC producers. The Commission has repeatedly set out that price coordination is an inter-related component of this regulated industry in its stabilizing of demand, and the DA component of the BC industry can only function if a coordinated pricing approach to the market is enforced.[90]

88. In its 2017 show cause decision, the Commission explicitly took a holistic view of the three inter-related components of agency, pricing and DA needed to regulate BC storage crops. The DA component manages an individual producer's access to the market and can only function if there is a coordinated pricing approach. In turn, the pricing coordination provided by minimum pricing stabilizes demand. [91]

89. The Commission set out the role of the agency within this context to be as delegate of the Commission charged with the responsibility of promoting orderly marketing as licensees, and with the regulatory role of harnessing the collective power of producers to enhance market access for regulated product. It was further to IVCA's failure to fulfil such responsibilities that Prokam was moved to BCFresh as the only agency held (with Mr. Guichon excusing himself from the vote) to be robust enough, following an evaluation of objective criteria, to uphold such responsibilities.[92]

90. Accordingly, Prokam's dogmatic focus on the premise that the Commission's imposition of minimum pricing for interprovincial sales is *ultra vires* and inevitably leads to the *mala fides* of the disciplinary measures taken against Prokam completely overlooks and fails to speak to the Commission's consistent concern with Prokam's failure to comply with the Commission's authority over transactions which require a

[89] This concern, separate and apart from the minimum pricing component, remained the focus of the Commission's subsequent decisions, and particularly the reconsideration decision.
[90] See Ex. 1 at pp. 1390 (Show Cause Decision at 13.10) and 4178 (CFP Agency Application and Moratorium Decision).
[91] *Ibid*.
[92] *Ibid* at pp. 1393-1397 (Show Cause Decision at paras. 20-41).

designated allowance, licensing and pricing control, and the effects of Prokam's non-compliance within the regulated BC industry.

91. A logical conclusion of Prokam's argument is that it is seeking to evade the regulations applied to BC produced regulated product. Nevertheless, the Commission did not go so far as to make such findings in its show cause decision.[93] Instead, the Commission sought to explain, in great detail, the foundation and need for its efforts to regulate the industry, the role of an agency within this, and the need to allow for the orderly co-existence of multiple designated agencies within the province in order to benefit BC producers.[94]

92. With regard to the second aspect, and as set out above, Mr. Guichon was excluded from the panel deciding the issues raised in the CDOs/compliance notices. When BCFIRB referred the orders back to the Commission for reconsideration, further to BCFIRB's finding that the question of whether Prokam's conduct warranted further action, the Commission panel was specifically constituted by members with "less conscious or perceived levels of bias with this issue" and "deemed to have less conflict-of-interest, based on their arms-length involvement with the storage crop sector" (and therefore, in light of Prokam's allegations, deliberately excluded Mr. Guichon).[95]

93. The third aspect is that the unlawfulness of the issue of the CDOs is far from the 'unimpeachability' Prokam submits as underpinning its central argument of bad faith.[96] Prokam founds this argument on BCFIRB's 2019 appeal decision.[97] This is despite the lack of inevitability of BCFIRB's 2019 determination of the unlawfulness of the minimum export pricing orders after the CDOs were issued and after the Commission's own deliberations and determinations as to the legitimacy of the CDOs in the Commission's show cause decision,[98] as well as:

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[93] Ex. 1 at p. 1391 (Commission Decision Re: Allegations of Non-Compliance by IVCA, Prokam and Thomas Fresh dated December 22, 2017 [Show Cause Decision]).
[94] *Ibid* (*Ibid* at para. 15).
[95] *Ibid* at p. 4198 (Reconsideration Decision).
[96] Prokam Written Submissions at para. 88.
[97] *Ibid*.
[98] Ex. 1 at p. 1391 (Show Cause Decision).

a. the Commission's issuing of the CDOs as part of a SAFETI process of investigation into the nature of activities entailed in Prokam's production and selling of a regulated product absent the requisite designated allowance[99]

b. the Commission's show cause, variation, and reconsideration decisions reflecting extensive consideration and reasoning and including an account for Prokam's arguments that the Commission was not empowered to impose minimum pricing on an exported product;[100]

c. the 2019 BCFIRB appeal decision, similarly, showing extensive deliberation in respect of the decisions already undertaken by the Commission. Likewise, BCFIRB's February 2018 stay decision observed the "significant dispute between the parties as to how the regulatory framework operates in the vegetable industry and the appropriate interpretation and conclusions which can be drawn from that framework when applied to the particular facts of this case, many of which are also in dispute";[101]

d. the Commission's findings, in its reconsideration of the measures imposed on Prokam subsequent to and as remitted by BCFIRB's 2019 appeal decision, that notwithstanding BCFIRB's findings that there was no valid minimum price that could be issued in respect of the impugned interprovincial sales, Prokam remained deserving of a more costly Class III license further to non-compliance of 'moderate' severity because it had operated in intentional and direct violation of the principles of the designated allowance whilst effectively contracting directly with a wholesaler and deliberately circumventing the Commission's authority. This was a modification, further to BCFIRB's findings, of the Commission's previous imposition of the more stringent Class IV

[99] As set out above, despite numerous requests, IVCA failed or refused to provide details on its planned market for Prokam's potatoes, its business relationship with Thomas Fresh, or its marketing of new or additional regulated product.
[100] See *inter alia* Ex. 1 at pp. 5262 (Statement of Position re: Minimum Export Pricing Orders of the Commission dated October 25, 2021) and 5447 (Submissions of The British Columbia Vegetable Marketing Board Regarding the Immateriality and Inadmissibility of a Transcript of Proceedings before the Standing Joint Committee for the Scrutiny of Regulations dated January 20, 2022, at para. 14-15).
[101] *Ibid* at p. 1770 (BCFIRB, *Prokam and Thomas Fresh v. BCVMC*, File N1715, N1617, N1718, N1719-Stay Decision dated February 14, 2018).

license.[102] BCFIRB had specifically referred the orders back to the Commission for reconsideration in its findings that, although BCFIRB believed the Commission's orders relied "to some degree" on the Commission's belief in its authority to apply minimum export pricing controls, the case "involves a very complex set of facts, interconnected parties, challenging relationships, deficient administrative processes and some remaining findings against Prokam in respect of DA issues" and BCFIRB believed "the question of whether the appellants' conduct warrants any further action by the Commission (irrespective of the minimum pricing rules in relation to interprovincial sales) is one that must still be answered, and it is one more appropriately considered in the first instance by the Commission - not the panel";[103] and

e. the arguments that remain, as set out below, in support of the Commission's incidental regulation of interprovincial pricing during the direct exercise of its authority under the empowering provincial legislation.

94. As set out above, the Commission derives its provincial authority from the *NPMA* and the *Vegetable Scheme*. Sections 2 and 12 of the *NPMA* establish the Commission "to administer, under the supervision of the Provincial board, regulations for the promotion, control and regulation of the marketing of a regulated product." Under the *Vegetable Scheme*, the Commission has all the powers set out under s. 11 of the *NPMA* in respect of regulating the production, transportation, packing, storage, and marketing of regulated product, including product grown in the province. The Commission's powers are listed under s. 11 "(w)ithout limiting other provisions of this Act" and include:

a. the setting of pricing at which a regulated product "may be bought or sold in British Columbia" (s. 11(k)) and

[102] Ex. 1 at p. 4212 (Reconsideration Decision at paras. 60-61).
[103] *Ibid* at p. 5017 (BCFIRB 2019 Appeal Decision at paras. 52 and 53).

b. the making of orders and rules the Commission considers "necessary or advisable to promote, control and regulate effectively the marketing of a regulated product" (s. 11(q)).

Likewise, under s. 4(1) of the *Vegetable Scheme*, the Commission has the power "in the Province" to promote, control and regulate "in any respect" the production and marketing of vegetables.

95. The 2003 case of *Global Greenhouse Produce*, confirmed that the exercise of the Commission's powers "in the Province…in any respect", as to the production and marketing of vegetables under section 4(1) of the *Vegetable Scheme* inferred a core competence over a BC agency that is not limited by any impact outside of BC. [104] There, as in the current circumstances, the Commission solely sought to regulate persons within the province and with any enforcement action deemed necessary taking place in BC. Accordingly, Justice Drost held that any impact of the implementation of this regulation outside of Canada did not constitute the extraterritorial regulation of trade.[105]

96. In its 2019 appeal decision, BCFIRB precluded the Commission from regulating prices on products for export by relying on the terms "in British Columbia" in s. 11(k) of the *NPMA* and "in the Province" in s. 4(1) of the *Vegetable Scheme*.[106] Because the Commission may otherwise be empowered to regulate the pricing of interprovincial transactions under federal legislation,[107] BCFIRB held "(t)here is no compelling reason to stretch the interpretation of the provincial regime to find for the Commission authority to regulate minimum prices for product sold outside BC on the basis that such authority would be an integral part of an overall effective regime for management *within* BC."[108]

97. Similarly, BCFIRB did not accept the Commission's argument that the words "within the province" and "in British Columbia", as used throughout the *Vegetable Scheme* and the *NPMA*, should be understood to "referentially incorporate expansions

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[104] *Global Greenhouse Produce Inc. et. al. v. BCMB et. al.*, 2003 BCSC 1508, aff'd 2005 BCCA 476.
[105] *Ibid* at paras 101-103.
[106] Ex. 1 at pp. 4115- 4117 (BCFIRB 2019 Appeal Decision at paras. 40-47.
[107] *Agricultural Products Marketing Act*, RSC 1985, c. [A-6] and *British Columbia Vegetable Order* SOR/81-49.
[108] Ex. 1 at p. 4117 [BCFIRB 2019 Appeal Decision at para. 47].

that may have occurred in *constitutional law cases*". The inapplicability of those analyses, BCFIRB held, was based particularly on "the complex interrelationship between federal and principal aspects of regulated marketing, eventually resulting in an elegant constitutional equilibrium involving integrated federal and provincial legislation."[109]

98. While the Commissioners naturally do not seek any ruling in relation to the necessary declaration by Prokam of the 'unimpeachability' of the unlawfulness of the CDOs, not only is it clear there was a basis for argument advanced by the Commission prior to the BCFIRB finding against it, but respectfully, there are multiple grounds on which the conclusion could be challenged in the courts. Arguably, for example, it disregards the pith and substance of the provincial legislation at issue. Sections 91 and 92 of the *Constitution Act 1867* divide the sovereignty of specifically listed areas of jurisdiction between the federal and provincial government. The pith and substance doctrine is a fundamental tool of analysis recognized and used by Canadian courts to characterize legislation and determine whether the area it seeks to regulate is valid because it accords with the constitutionally recognized division of powers.[110] The analysis is not concerned with the incidental effects of the legislation- it is the core substance of the legislation that is relevant to the determination of whether it falls under the constitutionally recognized head of power.[111]

99. BCFIRB's determinations in this regard are arguably exceptional. The judicially recognized principles of the constitutional separation of powers and the pith and substance analysis, unlike the decisions of an administrative tribunal which are necessarily flexible and individualistic,[112] are binding as precedent under the Canadian common law.

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[109] Ex. 1 at p. 4116 (BCFIRB 2019 Appeal Decision at para. 46).
[110] *Reference re Securities Act*, 2011 SCC 66.
[111] *Reference re Same Sex Marriages*, 2004 SCC 79.
[112] As a general principle, *stare decisis* does not apply in administrative decision-making and there is no strict application of precedent between the decisions of administrative tribunals: *Technical Safety BC v BC Frozen Food (Ltd)*, 2019 BCSC 716 at para. 66; Paul Daly, "Precedent and Administrative Law – Again", *Administrative Law Matters* (17 September 2012). While administrative bodies should, of course, be generally concerned with the consistency of their decisions and the institutional inconsistency of a

100. A pith and substance analysis is inherently fact specific in its characterization of the relevant legislation. The facts of the Supreme Court of Canada's decisions in *Fédération des producteurs de volailles du Québec v. Pelland* (as referred to by BCFIRB to support its reference to the "elegant constitutional equilibrium" reached in regulated marketing) as well as in *Reference re Agricultural Products Marketing Act*, unlike in the current circumstances which concerns a provincial scheme with ancillary federal effect and no "federal-provincial merger", concerned a specifically designed federal-provincial scheme.[113] The Commission's arguments in this case are aligned with the principles of the pith and substance analysis conducted in the *Pelland* case so as to determine the core character of the legislation, and the findings in the *Egg Reference* that, agricultural production being *prima facie* within provincial jurisdiction, production quotas can be imposed by a province on all producers regardless of the ultimate destination of the goods.[114]

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decision, the use made of its past decision and the impact the allegations made on it have had on the industry, in the commissioners' submissions, may warrant its revisiting.

[113] *Fédération des producteurs de volailles du Québec v. Pelland*, 2005 SCC 20 at para. 38.

[114] *Pelland* at paras. 19 and 20 and at para. 25. A pith and substance analysis looks at the purpose and effects of the law to identify its "main thrust" in order to determine the substantive nature of that which the legislation seeks to regulate. Related to the pith and substance analysis is the significant judicial recognition of the overlap of trade and commerce, as a federally listed sphere of jurisdiction (*Constitution Act, 1867*, s. 91(2)), and the provincially regulated sphere of property and civil rights (*Constitution Act, 1867*, s. 92(13). The Canadian courts have managed this overlap by broadly interpreting the provincial power over property and civil rights and restricting the interpretation of the federal power over trade and commerce to international and interprovincial trade and general regulation affecting Canada as a whole (*Citizens' Insurance v Parsons* (1880), 4 S.C.R. 215). Any effect of this BC regulated regime on interprovincial trade is constitutionally valid as an incidental effect of the core control of BC regulated produce, a regime falling within the constitutionally valid provincial competence of property and civil rights. As set out in *Pelland* at para. 31: "(l)aws enacted under the jurisdiction of one level of government often overflow into or have incidental impact on the jurisdiction of the other governmental level. That is why a reviewing court is required to focus on the core character of the impugned legislation…"
On the bases that the Commission's general powers to regulate produce and the marketing thereof in the province may have incidental effect on interprovincial pricing, and the restriction of this incidental effect would undermine the Commission's general provincial regulatory power, Prokam's challenge to the CDOs and the underlying minimum pricing controls does indeed affect the constitutional validity and ambit of the NPMA's provincial regime. Accordingly, there remains a strongly arguable threshold issue that BCFIRB's jurisdiction to consider this challenge entails the constitutional applicability of these orders and therefore requires, and was not preceded by, notice given by the appellants to the attorney generals of Canada and BC in terms of s. 8 the *Constitutional Question Act*, R.S.B.C. 1996, c. 68. A minimum pricing order may have incidental effect on interprovincial trade without infringing the constitutional doctrines of federal paramountcy and/or extra-territoriality. Absent this incidental effect, the Commission's authority within the constitutional powers of the province is undermined as it is unable to meaningfully administer the promotion, control, and regulation of the marketing of a regulated product within its constitutional power over property and civil rights.

101. This is why the Commission continued to impose modified disciplinary measures against Prokam upon its reconsideration following BCFIRB's appeal findings against the imposition of pricing controls, and further to BCFIRB's general findings in respect of Prokam's sale of regulated product absent a designated allowance and substantively direct sale to Thomas Fresh absent the requisite inclusion of an agency.[115] The purpose of the Commission's disciplinary measures was not the regulation of exported products, but the regulation of the competition between BC agencies for the benefit of BC producers. Unlike in *Central Canada Potash*, in these circumstances the export market is only affected in ancillary fashion and is certainly not "(t)h only market for which the scheme had any significance".[116]

102. It is arguable that any incidental effect on the pricing of interprovincial sales does not render s. 11(k) of the *NPMA* superfluous as BCFIRB found.[117] Rather, s. 11(k) reinforces the federal core competence in respect of international and interprovincial sales in accordance with the constitutional division of powers and as distinct from the incidentally effected imposition of interprovincial pricing controls. Finding otherwise, respectfully, undermines the general powers of the Commission under its constating act,[118] and is contrary to general principles of interpretation of statutes, including the general principle that decision makers should "endeavour within the scope of the legislation to give effect to its provisions so that the administrative agencies created may function effectively, as the legislation intended" and to "wherever possible, avoid a narrow, technical construction, and endeavour to make effective the legislative intent as applied to the administrative scheme involved."[119]

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[115] Ex. 1 at p. 4121 (BCFIRB 2019 Appeal Decision at para. 68).
[116] *Central Canada Potash Co. v. Government of Saskatchewan*, [1979] 1 S.C.R. 42, cited in *Pelland* at paras. 39 and 40.
[117] Ex. 1 at p. 4116 (BCFIRB 2019 Appeal Decision at para. 45) .
[118] And, in particular: (1) in terms of s.11(q) of the *NPMA* to make orders and rules it considers necessary or advisable in effectively promoting, controlling and regulating the marketing of a regulated product; (2) further to the definition of the Commission under s. 12 of the *NPMA* as an entity established "to administer, under the supervision of the Provincial board, regulations for the promotion, control and regulation of the marketing of a regulated product"; and (3) in terms of s.4(1) of the *Vegetable Scheme* to be applied in BC "in any respect".
[119] *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42 at para. 26. With due respect, the commissioners disagree with BCFIRB's reasoning that the pricing control of the impugned transaction can be separated out from the application of disciplinary measures and managed by the gazetted

103. Historically, the Commission has imposed interprovincial pricing controls as an incidental effect of its provincial regulatory regime.[120]

104. This historic position is supported by the Parliamentary proceedings regarding the legality of certain levies between 2005 and 2008 (proceedings on which Prokam ironically relies in support of its allegations of *mal fides*). Both the Commission and BCFIRB's submissions to the Standing Joint Committee for the Scrutiny of Regulations defended the legality of the levies at issue in those proceedings, with the Commission citing *Pelland* and arguing that the levies were valid with "(t)he proper constitutional character of the various orders made by the Commission",[121] and BCFIRB submitting with reference to *Global Greenhouse Produce*:

> The *NPMA* authorizes marketing boards and commissions to accept federal powers in relation to natural products marketing in interprovincial and export trade. However, it is important to note that marketing boards and commissions – even if they have Agricultural Products Marketing Act (APMA) delegations – take many actions and issue orders and determinations (including levy orders) without need to rely on their federally delegated powers. The regulation of agricultural production is *prima facie* within provincial jurisdiction, regardless of the ultimate destination of the goods produced: … Consistent with this constitutional principle, it was held that the Vegetable Commission did not need to rely on its federal authority for the purpose of imposing producer levies, even though the purpose of the levies was to fund an international trade dispute… (Emphasis added.)[122]

105. In answer to the current allegations, it is clear from the arguments set out above, as well as others that might be made, that it is impossible to characterize the position taken by the Commission with respect to the disciplinary measures imposed on Prokam

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delegation of authority under the federal *APMA* regime. The practical effect of the requirement for gazetted authority in respect of the regulation of interprovincial trade is that the Commission would only be able to attempt to protect the regulated produce industry against the effects of the interprovincial pricing undercuts of and unregulated sales by BC producers and marketers after considerable delay and destabilization of the BC provincial regime. Further, the gazetting of such authority is likely to detract from the necessarily incidental effect of the subject pricing controls on exported products in the current circumstances (though such affects may be ameliorated by the replacement of *British Columbia Vegetable Order*, SOR/81-49 with *British Columbia Vegetable Order*, SOR/2020-259.

[120] As set out in the CFP Agency Application and Moratorium Decision at Ex. 1 at p. 4178, "(a) minimum price has historically been set for all regulated storage crop vegetables produced in BC, regardless if the product is shipped within the province or to a market located outside of the province".

[121] Ex. 5 at p. 43 (Written Brief of the Commission On its Appearance before the Standing Joint Committee for the Scrutiny of Regulations).

[122] Ex. 5 at p. 131 (LF BCFIRB to Standing Joint Committee for the Scrutiny of Regulations dated March 11, 2008).

as either frivolous or artificial, and beyond that impossible to impute knowledge to the contrary to one of its industry-elected members. The suggestion to the contrary is in contrast truly artificial.

106. It is clear from that set out above that at all material times the Commission reasonably and honestly believed that (1) the minimum export pricing orders were imposed in furtherance of an holistic purpose within the exclusive constitutional competence of the province to prevent unwanted competition among British Columbia agents that would impede the maximization of returns for British Columbia producers; (2) the Commission had the power and authority pursuant to the NPMA's provincial regime to promulgate the minimum export pricing orders in furtherance of this holistic purpose; and (3) as such, the Commission did not need federal legislative authority under federal legislation to support the minimum export pricing orders.

107. The evidence in the proceedings likewise supports Mr. Guichon's good faith understanding of the legality of such orders.

108. With respect to the current orders, Mr. Guichon testified repeatedly that he was always under the assumption that the Commission had the authority or jurisdiction to set export prices for products grown in British Columbia,[123] and the issue was presented to the Commissioners on that basis.[124]

109. Likewise, to the extent that similar issues may have arisen to the Commission's attention a decade earlier with respect to the Commission's federal levies, the evidence does not support the inference of actual and specific knowledge that Prokam wishes to infer or impute to Mr. Guichon.

110. Beyond the political dispute which precipitated the correspondence to the Commission in that regard or the accuracy of the views of federal counsel, the matter was raised to the Commissioners as a "potential issue with [the Commission's] orders

[123] Transcript Day 13 (P. Guichon) at p. 130, ll. 22-47; p. 131, ll. 1-5; p. 134, ll. 37-46 [**Tab 9**]; Transcript Day 14 (P. Guichon), p. 41, ll. 42-47; p. 42, ll. 1-2 [**Tab 10**].
[124] Transcript Day 8 (A. Solymosi) at p. 57, l. 12-p. 58, l. 8 [**Tab 11**].

being in compliance with the federal orders"[125] While there may have been some question of a vulnerability as a result of the non-registration of the orders, it was seen and presented as an administrative matter to be handled by Commission staff. Mr. Leroux in particular advised, from his time as general manager of the commission, that it was unlikely that the question of "gazetting" or "registering interprovincial levies" would be understood by any of the commissioners at the time, including Mr. Guichon.[126]

111. The contemporaneous documents support that impression. The Commission's minutes reflect the matter arising as a short agenda item 8 times over 30 months (Mr. Guichon absent from 3 such meetings), with limited or no discussion on each occasion.[127] The records of such discussions are that the levy orders at issue "may be out of date and requiring revision",[128] that staff was "working" on the issue,[129] that the Commission was required to pass a resolution,[130] and ultimately an order,[131] to finish those efforts. The final discussion of such topic at the Commission was that any issues "were corrected", and that amendments, "of a housekeeping nature", concluded the issue.[132] To the extent that the issue was dealt with in more detail at the Senate Committee meeting, including Mr. Leroux's speaking notes, Mr. Leroux confirmed that it was likely they were not put before the Commission members.[133] The suggestion that from these materials any of the Commissioners could be said to know, or ought to know, that such issues may be raised a decade later by the minimum export pricing-component of the Prokam decision and determined against the Commission is remarkable.

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[125] Transcript Day 11 (G. Leroux) at p. 8, l. 21-29 [**Tab 12**].
[126] *Ibid* at p. 22 at l. 25-31 [**Tab 12**].
[127] Ex. 5 (Supplementary List of Documents of the Commission dated January 30, 2022).
[128] *Ibid* at p. 9 (Minutes of the BCVMC Regular Meeting dated September 7, 2006).
[129] *Ibid* at p. 21 (Minutes of the BCVMC Regular Meeting dated October 18, 2006).
[130] Ibid at p. 38 (Minutes of the BCVMC Regular Meeting dated September 5, 2007).
[131] *Ibid* at p. 162 (Minutes of the BCVMC Regular Meeting dated August 12, 2008).
[132] *Ibid* at p. 174 (Issue Document – Amended Federal Levy Order dated February 17, 2009); see also Transcript Day 13 (P. Guichon) at p. 131, l. 14-24 [**Tab 9**].
[133] Transcript Day 11 (G. Leroux) at p. 48, ll. 23-32 [**Tab 12**].

iii. Exercise of Powers to Participate in Show Cause and Reconsideration Hearings in Bad Faith, for an Improper Purpose, or with Malice

112. Finally, nothing in Mr. Guichon's "participation" in the show cause and reconsideration hearings was inappropriate or support Prokam's allegations.

113. The specific allegation made by Prokam is that Mr. Guichon was in a conflict with respect to any decision regarding Prokam and therefore, it says, should not have participated in any way in any of the discussions concerning Prokam.

114. With respect to the show cause decision of December 14, 2017, the uncontroversial evidence is that Mr. Guichon attended the hearing but recused himself prior to or the panel's final deliberations or decision regarding Prokam (done in the last portion of that meeting and a further meeting of December 22, 2017, which it is agreed Mr. Guichon did not attend). Mr. Guichon's participation in that capacity was in accordance with BCFIRB's and its BCFIRB-appointed chair's directions, whereby storage crop commissioners were encouraged to be involved or available in discussions regarding storage crop matters to provide or clarify pertinent information from their industry (and vice-versa).[134] Mr. Guichon recalls today that he was not involved in any such discussion,[135] with his evidence in the 2018 appeal being that he recalled saying or thinking that it was important to ensure an agency was made available to Prokam if the Commission determined its relationship with IVCA should be terminated.[136] Given the Commission's practices and the evidence of the nature of the "participation" alleged, this evidence does not and cannot reasonably support the allegation that Mr. Guichon "exercised a power to … participate in the discussions and decisions… in bad faith and for improper purposes" or in any way caused harm to Prokam.

115. With the panel established, the need to for other members to recuse themselves again (though Mr. Guichon remembers doing so) is unclear, and in any event Messrs.

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[134] Transcript Day 12 (A. Krause) at p. 93, l. 11-18; p. 102, l. 8-27; p. 158, l. 12-p. 159, l. 30 [**Tab 13**]; Transcript Day 13 (P. Guichon) at p. 140, l. 41-p. 141, l. 40 [**Tab 14**].
[135] Transcript Day 13 (P. Guichon) at p. 118, l. 46-p. 119, l. 1 [**Tab 15**].
[136] Transcript Day 14 (P. Guichon) at p. 29, ll. 20-36 [**Tab 16**]. Prokam's written submissions at paras. 125(f) and 126 that Mr. Guichon "had to… admit [he offered his views on the direction of Prokam to BCFresh]" is not reflected in the evidence cited in this regard.

Solymosi and Krause confirmed that with the panel established any recused commissioner would not have involved themselves in the decision making process.[137] With respect to the actual discussion, Mr. Guichon's unchallenged evidence was that he was in his truck, driving for the duration of the meeting, and that he had no involvement in it.[138] With respect to the draft decision directed thereafter, Mr. Guichon confirmed that he reviewed the same (without the benefit of the materials), and sought to clarify whether the result left a "window of hope" for Prokam to deal with another agency than BCFresh, on the hopes that such an avenue would or could be pursued.[139] Indeed, as observed by Mr. Krause, there "wasn't much of a decision" in that regard because, as was confirmed to Mr. Guichon following his email, no other agency was willing to work with Prokam.[140]

d. Allegations of MPL

116. In its Notice of Civil Claim ("**MPL NOCC**"), addressed below, MPL alleges that Messrs. John Newell, Mike Reed, Corey Gerrard, Blair Lodder, Peter Guichon and Andre Solymosi. committed misfeasance in public office.

117. The primary allegations against the commissioners are as follows:

a. that each named commissioner acted to prevent MPL from entering the BC market for to maintain their market interest and/or for the purpose of harming MPL (para. 23(a)). In evidence, and for the first time (despite MPL having delivered a response to demand for particulars and Mr. Mastronardi having sat for an interview with hearing counsel) Mr. Mastronardi sought to describe this allegation as directed toward the imposition of the moratorium;

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[137] Transcript Day 8 (A. Solymosi) at p. 124, l. 44-p. 125, l. 5 [**Tab 17**]; Transcript Day 12 (A. Krause) at p. 94, ll. 14-40 [**Tab 18**].
[138] Transcript Day 13 (P. Guichon) at p. 142, l. 22-p. 143, l. 10 [**Tab 19**].
[139] Transcript Day 13 (P. Guichon) at p. 127, l. 35-p. 128, l. 43 [**Tab 20**]. Again, Prokam's written submissions at para. 127(f) that Mr. Guichon "provide some substantive comments" on the decision is not a fair reading of the evidence cited or a basis on which to infer improper conduct or malice as Prokam seeks.
[140] Transcript Day 12 (A. Krause) at p. 107, ll. 2-18 [**Tab 21**].

b. that each named commissioner had an obligation to and failed to recuse themselves from the decision-making process in respect of MPL's application for a 2021 agency designation (para. 23(c)(i));

c. when participating in the decision, that each named commissioner ignored, and failed to apply, the clear criteria outlined in the General Orders for evaluation of agency applications in making the determination to decline MPL's BC's agency application (para. 23(c)(ii));

d. that Mr. Reed, in his capacity as a commissioner, interfered with and prevented the granting of additional production allocation to growers (later limited to Fresh4U) thought to be aligned with MPL for his own economic benefit, despite his conflict of interest (para. 23(b)); and

e. the defendants, John Newell and Mike Reed, have entered into an agreement with the defendants Corey Gerrard, Blair Lodder, and Peter Guichon, to improperly circumvent the Commission's conflict of interest policy, whereby the defendants, Corey Gerrard, Blair Lodder and Peter Guichon, will vote as requested by the defendants, John Newell and Mike Reed, on matters related to greenhouse crops in exchange for the agreement of votes from John Newell and Mike Reed in relation to storage crop matters, without regard to the criteria under the General Orders (s. 23(c)(iii)).

118. Each of these allegations are without merit.

i. Preventing MPL from Entering the Market – Imposition of the Moratorium

119. There is no compelling evidence supporting that the basis for adopting and keeping in place the moratorium differed from that outlined in the Commission's decisions.

120. First, the nature in which this allegation was raised is troubling in the extreme. Despite both its pleading and response to demand for particulars, and his interview of

November 23, 2021, MPL never raised the moratorium as a decision which informed its claim before the commencement of this hearing. After raising the moratorium on this basis in his evidence, Mr. Mastronardi admitted that it had never investigated the basis on which the moratorium was imposed.[141] Despite that lack of investigation, Mr. Mastronardi repeatedly asserted that Mr. Guichon, Mr. Gerrard, and Mr. Lodder were involved in the imposition of the moratorium and that such involvement ground or supported MPL's claim against them, despite their recusals.[142]

121. A review of the procedural history leading to the moratorium likewise undermines this allegation. The moratorium was adopted by the Commission in its decision on the CFP Marketing Corporation Agency application.[143] Beyond the particular issues raised by that application, the Commission addressed in detail the on-going reviews and pending regulatory change that necessitated an industry-wide moratorium. The Commission had at that time determined that a thorough review and redrafting of the General Order was required.[144] Since the last review in 2005, there had been significant changes in the regulated vegetable business environment: in 2010, district restrictions were removed without properly addressing the management of delivery allocation at an industry level; and the existing agency accountability framework failed, among other things, to accommodate the fact that agencies compete on both regulated and non-regulated vegetables and the import of regulated product.[145] These considerations, among others,[146] underscored the need for the Commission to complete its important

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[141] Transcript Day 3 (P. Mastronardi) at p. 58, l. 26-36 [**Tab 22**].
[142] *Ibid* at p. 59, l. 14-p. 60, l. 8; p. 75, l. 12-20; at p. 77, l. 32-p. 78, l. 4 [**Tab 22**].
[143] Ex. 1 at p. 4168 (CFP Agency Application and Moratorium Decision).
[144] *Ibid* at 4178.
[145] *Ibid* at 4179.
[146] The CFP application decision followed the BCFIRB Decision in Supervisory Review Future of Regulated Vegetable Production on Vancouver Island dated January 31, 2017. That process commenced on October 10, 2014, following the previous supervisory review in which BCFIRB expressed concern that there were "key areas where the Vegetable Commission processes [with respect to agency approvals] could have been more strategic and accountable": at para. 23. It was as part of that subsequent supervisory review that the Commission developed its initial "Agency Accountability Framework". The previous supervisory review in that regard concluded on the observation that it was incumbent on the Commission "to provide producers and agencies with a vision and overall industry strategic direction as well as to ensure accountability for the regulatory authorities delegated to agencies": at para. 125. After that decision, the Commission commenced the "significant initiatives" that predicated the moratorium, addressed *infra* below: see BCFIRB, British Columbia Vegetable Marketing Commission Election Rules and Procedures – Approval dated December 19, 2017.

work on its Strategic Review and the Agency Review,[147] to make comprehensive amendments to the General Order before altering the *status quo* by establishing new agencies.

122. With respect to the continuance of the moratorium, there is likewise no evidence that the failure to lift the moratorium had anything to do with MPL. At the outset, BCFIRB confirmed that the decision to impose a moratorium could not be separated from the context out of which it arose: namely, the different initiatives (including the agency review and strategic review) which, on their own and collectively, impacted the decision of the appropriateness of designating new agencies to the vegetable industry at that time.[148] Later in that Supervisory Review, BCFIRB affirmed the validity of the moratorium, incorporated a review process to consider and establish a timeline for its removal in the course of the Supervisory Review process,[149] and aligned the timing of the lifting of the moratorium with the strategic planning and agency accountability project.[150] The same position was repeated in correspondence from BCFIRB to MPL regarding the lifting of the moratorium on July 14, July 27, and September 22, 2020.

123. On October 21, 2020, approximately a month after MPL first made its Agency application, the Commission considered lifting the moratorium following discussions between the Commission working group and BCFIRB.[151] As noted by hearing counsel: (a) the minutes of the October 21, 2020 meeting reflect the reasons why the moratorium

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[147] The Commission introduced the agency review process and audit document in July 2018, with the Strategic Planning and Discovery Process formally commenced in April 2019: Ex. 1 at p. 4185-4186 (CFP Agency Application and Moratorium Decision, Appendix B).
[148] BCFIRB, Decision: *CFP Marketing Corporation (Canada Fresh) v BC Vegetable Marketing Commission*, File N1905 dated September 10, 2019 at p. 2.
[149] BCFIRB, 2019-20 Vegetable Supervisory Review – Supervisory Review Topics for Consultation dated April 3, 2020 at p. 3.
[150] BCFIRB, 2019-20 Vegetable Supervisory Review: VMC Working Group and BCFIRB Panel Held: May 14, 2020 – Meeting Report at p. 2 ("The VMC is to consider CFP's agency application and any other agency or producer-shipper applications when the agency accountability framework is completed, and it makes any supporting changes to the General Orders (this date cannot be determined until the degree of change is determined after adoption of the accountability framework)"); BCFIRB, 2019-20 Vegetable Supervisory Review: VMC Working Group and BCFIRB Panel Held: June 15, 2020 – Meeting Report at p. 1 "(… Once the completion date [for the strategic planning process] is determined, the supervisory panel will revisit with the VMC Working Group on the timing of the lifting of the moratorium on agency licence applications… The agency accountability framework remains a key requirement for the VMC in determining a date for considering new agency and producer-shipper applications…").
[151] Ex. 1 at p. 4478-4479 (Minutes of the Commission dated October 21, 2020).

was not lifted at that time, namely the Commission felt it was still important for it to complete the agency review and strategic review in order for it to implement amendments for the process for any agency application; and (b) all of the named commissioner were at that meeting and testified that there was no substantive discussion whatsoever about MPL's agency application or any suggestion that the moratorium should not be lifted in order to delay consideration of MPL's application.[152]

124. Finally, MPL's allegations of "delay" or misfeasance after the lifting of the moratorium are equally groundless. Indeed, consistent with the concerns raised at its October 21 meeting, respectfully, the lifting of the moratorium in the manner it was put the Commission in an impossible position. While BCFIRB suggested that that the Commission was in a position to manage pending application with the strategic planning and accountability frameworks extant, including by way of the adoption of new criteria or process steps, the Commission was faced with how to "immediately" process the applications, as MPL immediately demanded, while maintaining procedural fairness and avoiding the allegation of tailoring new rules in response to MPL's application. Ultimately, Ms. Etsell, as Commission chair, determined that it was necessary to finalize the framework prior to advancing the consideration of MPL's application.[153] The effort to mitigate such concerns for MPL, however, ultimately failed: despite MPL being specifically advised by BCFIRB that the Commission may request additional information and/or adjust its process, it continues to challenge the Amending Order 54 on the unparticularized allegation that it effectively denied MPL's 2021 agency application and was "directed at the specifics of the MPL application" and to "[delay] and [deny] MPL's 2021 agency application.[154]

125. The need for the Commission's strategic and agency accountability review are well established in the regulatory proceedings preceding either CFP or MPL's agency applications, and the need for the moratorium to advance those efforts was the subject

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[152]Transcript Day 15 (M. Reed) at p. 9, ll. 17-40; Transcript Day 15 (J. Newell) at p. 57, ll. 45-47; p. 58, ll. 1-10; Transcript Day 16 (C. Gerrard) at p. 123, ll. 43-47 [**Tab 23**]; Transcript Day 16 (B. Lodder) at p. 9, ll. 31-40;; and Transcript Day 16 (P. Guichon) at p. 33, ll. 11-16 [**Tab 24**].
[153] Ex. 1 at p. 4555-4556 and Ex. 41; Transcript Day 10 (A. Solymosi) at p. 191, ll. 22-29 [**Tab 25**]; Transcript, Day 16 (P. Guichon) at p. 68, l. 11- p. 69, l. 26 [**Tab 26**].
[154] PB, Tab 9 at paras. 10(b) and (c) (Response to Demand for Particulars of MPL dated July 16, 2021).

of and confirmed in BCFIRB's 2019-20 vegetable review. MPL's allegations that the secret purpose of such efforts was that the named commissioners, or any combination of them, coordinated an effort to prevent or delay MPL's application (in whatever form it may seek to maintain or shift it) is frivolous, and they should be withdrawn or dismissed.

ii. Failure to Recuse from Consideration of MPL Agency Application

126. MPL's allegations that the named Commissioners refused to recuse themselves from the consideration of MPL's agency application is baseless and contrary to undisputed evidence in the record. As noted by hearing counsel, all of the named commissioners confirmed that they were not on any panel which was struck to consider MPL's application except Mr. Guichon, who was on the initial panel but replaced at the end of his term and after having no involvement with the application. This allegation is betrayed as pure speculation and colours MPL's pleading as a whole. In the fact of the law surrounding such allegations and their regulatory impact, the overwhelming inference is that MPL's demands, allegations and conduct are nothing more than bullying tactics, not grounded in any legally justifiable complaint, and the very making of them thus improper.

iii. Delay or Dismissal of Fresh4U Production Allocation Application

127. MPL alleges that Mr. Reed exercised some statutory authority to interfere with an application by Mr. Cheema for additional production allocation in an effort to interfere with or damage MPL's agency application.

128. There is no proper basis for this allegation. With respect to MPL's general allegations of wrongdoing, Mr. Reed explained the basis for his concern with Fresh4U's application within the context of his role in the management of CFP. He confirmed that: (a) the agreement between Houweling Management and Marketing Services Canada Inc., Houweling Nurseries Ltd., and Country Fresh Produce Inc. outlined that HMMSCI would be provide all marketing and agency services to and on behalf of the Houweling Nurseries and Country Fresh, including to other Country Fresh producers;[155] and (b)

[155] Transcript Day 16 (M. Reed) at p. 5, l. 47-p. 6, l. 23 [**Tab 27**].

that he wrote Mr. Solymosi regarding the application not to oppose the granting of delivery allocation, but to clarify his non-involvement.[156]

129. With respect to this review, however, Mr. Reed did not (and, shockingly, MPL does not allege) that any of his conduct involved his exercise statutory authority. The exercise of private or contractual rights, whether done wrongfully or otherwise, cannot ground a claim in misfeasance of public office.[157] In that regard, Mr. Reed testified, and MPL accepted, that he wrote to Mr. Solymosi in his capacity as Country Fresh's manager and HMMSCI's Executive Vice President of Sales.[158] All future steps with respect to such application were undertaking by Mr. Solymosi following the termination of Mr. Reed's time as a commissioner. Indeed, while providing his perspective to this dispute, Ravi Cheema confirmed in his evidence that Mr. Reed did nothing in his capacity as a commissioner to interfere with Fresh4U's application prior to its granting.[159] On MPL's own argument and evidence, this claim must fail.

iv. Vote-Swapping Agreement

130. Finally, MPL alleges that there was a "vote swap" agreement whereby the Commissioners entered and acted further to a formal agreement to vote in matters that furthered the others' interests.

131. There is no factual foundation for this allegation and it remains instead to be the product of the imagination of MPL's representatives. Despite MPL pleading the allegation in its claim, neither Mr. Mastronardi nor Mr. Cheema, who MPL cited as the sole source of its allegation, were able to identify a single decision made pursuant to such a scheme or a single Commissioner involved in such a decision (whether named in MPL's claim or otherwise). The Commissioners, in contrast, categorically denied that there was any such arrangement or that they had been asked to vote in any particular

[156] Transcript Day 16 (M. Reed) at p. 5, ll. 43-46 [**Tab 27**]; Transcript Day 10 (A. Solymosi) at p. 166, ll. 18-21 [**Tab 28**].
[157] *Taylor* at paras. 58-61.
[158] Transcript Day 16 (M. Reed) at p. 7, l. 7-17 [**Tab 27**]; see also Transcript Day 8 (A. Solymosi) at p. 126, l. 2-p. 127, l. 8 [**Tab 29**].
[159] Transcript Day 16 (R. Cheema) at p. 106, l. 20-24 [**Tab 30**].

way.[160] Properly, MPL should withdraw this allegation, with its others, rather than smear the reputation of the Commission and its members, and thereby cause embarrassment to the regulatory process of the industry.

132. MPL's reframing of the allegation – that the Commissioners have failed to consistently vote in a manner that is contrary to each others interest – should otherwise be dismissed as frivolous.[161] Among other basic points: (a) the fact that few of the commissioners could identify examples of such votes, when the question was never raised in MPL's action or in these proceedings prior to cross-examination, is of little evidentiary value; (b) the argument does nothing to advance MPL's core allegations as there is no connection between past decisions in which MPL imputes the Commissioners voted in the others' interest and MPL; and (c) there is no reasonable basis to connect the fact that past decisions are not harmful to other commissions' interests with the suggestion that such decisions are corrupt or otherwise contrary to the regulatory scheme.

e. Allegations of Bajwa Farms

133. Bajwa Farms' allegations are set out in its submission to hearing counsel dated July 23, 2021 and are summarized in hearing counsel's submissions at para. 19.

134. There is no evidence supporting corruption and wrongdoing by any commissioner, named or otherwise, with respect to Bajwa Farms. While Ms. Bajwa has alleged that unnamed Commissioners (or, in her written submissions, the "Commission" generally) have acted in bad faith, without procedural fairness, and based on a personal animosity against her and members of her family, she does not name any individual commissioner in those allegations and did not put her allegations to any of the commissioner in cross-examination. This supervisory review has not provided any evidentiary basis in support of those bare claims.

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[160] Transcript Day 15 (M. Reed) at p. 11, ll. 28-41; Transcript Day 15 (J. Newell) at p. 66, ll. 19-47; p. 67, ll. 1-47; Transcript Day 15 (C. Gerrard) at p. 126, ll. 41-47; p. 127, ll. 1-15 [**Tab 31**]; Transcript Day 16 (B. Lodder) at p. 12, ll. 9-29; Transcript Day 16 (P. Guichon) at p. 37, ll. 22-47 and p. 38, ll. 1- 7 [**Tab 32**].
[161] MPL Written Submissions at para. 34.

135. Reflecting the opacity as against who her allegations are made, what Ms. Bajwa's alleges the "Commission" to have wrongfully done is unclear. With respect to the decisions made, she does not challenge the jurisdiction of the Commission to register Mr. Bajwa in the database as a multi-registration farm (a registration which was not pursued). Likewise, she does not challenge the applicability of the avenue whereby, when it was submitted to Mr. Solymosi that the cabbage was produced by Van Eekelen Enterprises Ltd., it was provided licensure to permit it to so market that cabbage.[162]

136. Her core complaint is instead that, as an extension of her purported civil claim against her ex-husband and his employer, she should have been pro-actively granted standing to oppose the application, or the Commission should have proactively intervened to advance her personal interests.

137. Beyond the baselessness of her core allegations, that complaint fundamentally misconceives the role of the Commission. The purpose of the Commission is to ensure the orderly marketing of regulated vegetables. As the Commission advised in its correspondence to Ms. Bajwa, and except in exceptional circumstances (*e.g.* when ordered to by BCFIRB), it does not do so by intervening in commercial disputes between producers or agencies. While Ms. Bajwa may wish to advance a claim that her ex-husband diverted a corporate opportunity from their company, and that Van Eekelen assisted this, the Commission has no business in (a) determining (or, indeed, no clear power to determine) the factual disputes between those parties, (c) directing the withholding of funds, or (c) enjoining any alleged wrongful conduct as between those parties. Her attempted use of these proceedings to advance the same is unfortunate.

[162] Notably, Ms. Bajwa argues that Van Eekelen required Commission approval and licensure prior to producing cabbage while her brother advances his argument on the basis that he was free to produce any amount of potatoes in excess of his DA without approval. As Mr. Solymosi clarified in his evidence, the General Orders requires commission approval and licensure for both the production and marketing of potatoes, but the Commission focuses its resources on ensuring orderly marketing. The fact that the Dhillon family, despite coordinating their participation in these proceedings, would take opposing sides on this issue reflects those parties' willingness to make any argument that advances their perceived interests in his supervisory review or generally.

IV. CONCLUSION

138. The complainants expressed some degree of hesitance or discomfort with respect to the filing of their allegations or their participation in these proceedings. Prokam did not serve its claim until after the commencement of this review and explained or defended filing its claim as a matter of preserving its limitation date.[163] Mr. Mastronardi purported to acknowledge the seriousness of his allegations but felt he needed to believe and act on Mr. Cheema's "passionate" report of his concerns and theories.[164] The implication of these positions is apparently to suggest that they were obligated or compelled to advance them and should be lauded or excused for doing so.

139. There is nothing bold or praiseworthy, however, in making veiled charges of corruption or submissions maligning a public official, based on nothing more than the parties' suspicions or imaginings. Prokam and MPL, and Bajwa Farms with them, have not advanced the purposes of the Commission or the industry in doing so. Indeed, requiring BCFIRB to dedicate its limited resources to this Supervisory Review only furthers the harm caused by these parties' efforts to vex the Commission, despite: (a) with respect to Prokam, the obviousness of both the Commission's good faith concerns with respect to their overplanting and overmarketing and, following the investigation, the wrongdoing found as against them; and (b) with respect to MPL, the rejection of their complaints of conflict and delay prior to the approval of their agency application.

140. This supervisory review was necessary to investigate the urgent and serious allegations of corruption made against five members of the Commission and its general manager. Those allegations have hung over the Commission and its members for over a year and have been maintained despite (and reframed because of) the dearth of evidence produced in support of them after thorough investigation and over four weeks of proceedings. With regard to that evidence, this panel should rebuke the complainants for the making and maintenance of the allegations and clear the Commission and the subjects of this investigation of the allegations made against them.

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[163] See Ex. 1 at 5098-5097 (LF C. Hunter, Q.C. to BCFIRB dated May 27, 2021).
[164] Transcript Day 2 (P. Mastronardi) at p. 6, l. 27-p. 7, l. 7 [**Tab 33**].

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: June 13, 2022

J. Kenneth McEwan, Q.C./
William E. Stransky/Alison Pienaar