

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT AND
ALLEGATIONS OF UNLAWFUL ACTIVITY

**WRITTEN REPLY SUBMISSIONS
OF PROKAM ENTERPRISES LTD.**

COUNSEL FOR PROKAM ENTERPRISES LTD.

Claire E. Hunter, Q.C. &

Ryan J.M. Androsoff

Hunter Litigation Chambers

2100 – 1040 West Georgia Street

Vancouver, BC V6E 4H1

Tel: 604-891-2400

Fax: 604-647-4554

chunter@litigationchambers.com

randrosoff@litigationchambers.com

1. “The best defence is a good offence.” This adage aptly captures all three Non-Complainant Participants’ approaches to this supervisory review. Rather than squarely address Prokam’s allegations head-on, their primary strategy in attempting to justify Messrs. Solymosi’s and Guichon’s misconduct is to go on the attack, clinging to the revisionist narrative that Prokam, and specifically Bob Dhillon and Bob Gill, were guilty of wrongdoing in 2016 and 2017, by:
 - (a) producing more than Prokam’s delivery allocation (“DA”);
 - (b) selling directly to Thomas Fresh below minimum price and in excess of DA without IVCA’s knowledge;
 - (c) failing to submit a marketing plan to the Commission, and
 - (d) effectively hijacking IVCA to thwart the Commission’s regulatory authority.

As set out in more detail below, there is no merit to any of these contentions.

2. **Prokam did not breach General Order in planting in Excess of DA:** Hearing Counsel and the Non-Complainant Participants focus on the fact that Prokam’s production in 2017 was greater than its DA in an attempt to justify both the label of “rogue producer” and the investigation and enforcement proceedings against Prokam that ensued.¹ This focus is misguided. As Mr. Solymosi acknowledged, the Commission does not regulate planted acreage and does not prevent growers from overplanting in excess of DA.² Mr. Guichon also confirmed both in 2018 and again in 2022 that Prokam was not violating any rule and had done nothing wrong in planting in excess of DA.³
3. Both Mr. Solymosi and Mr. Guichon testified repeatedly that the Commission’s primary concern in 2016 and 2017 was not Prokam planting in excess of its DA, but rather IVCA’s failure to submit a marketing plan in relation to that excess acreage.⁴ Both Mr. Guichon⁵ and Mr. Solymosi⁶ acknowledged that marketing is

¹ Hearing Counsel submission at paras. 115-116; Solymosi submission at paras. 11, 19-20; 32; BCfresh submission at para. 23, subparas. 29(c) and (d), and para. 35; Commissioners’ submission at para. 139.

² 2022-02-10 Cross-examination of Mr. Solymosi, p. 44:28-32 (**PRTEB, Tab 1**).

³ 2022-04-01 Cross-examination of Mr. Guichon, p. 6:7 – p. 9:32 (**PRTEB, Tab 2**). See also BCfresh submission at para. 30 and 2022-02-03 Cross-examination of Mr. Dhillon, p. 13:29-39; p. 13:45 – p. 14:2 (**PRTEB, Tab 3**).

⁴ 2022-02-09 Cross-examination of Mr. Solymosi, p. 17:6-29; p. 18:37-47; p. 20:34-42 (**PRTEB, Tab 4**); 2022-03-30 Cross-examination of Mr. Guichon, p. 125:11-27 (**PRTEB, Tab 5**); 2022-04-01 Cross-examination of Mr. Guichon, p. 6:15-34 (**PRTEB, Tab 6**).

the agency's responsibility, and not the grower's, and it is the agency (i.e. IVCA) that is required to submit a marketing plan for acreage grown in excess of DA.

4. **IVCA's President and GM authorized Prokam's production and IVCA's sales to Thomas Fresh:** BCfresh continues to cast Prokam, and particularly Bob Gill and Bob Dhillon, as the primary architects of the sale of Prokam's potatoes to Thomas Fresh on the Prairies in excess of Prokam's DA, and the contracts between IVCA and Thomas Fresh for this purpose,⁷ despite BCFIRB firmly rejecting this proposition in February 2019.⁸ It is clear from Mr. Michell's evidence that the sales relationship between IVCA and Thomas Fresh was cultivated by IVCA's then general manager, Mr. Pollock in consultation with Mr. Michell in 2016, at a time that predated Bob Gill's employment with IVCA.⁹ Mr. Michell testified that Thomas Fresh was an IVCA customer before Prokam was an IVCA grower.¹⁰
5. Mr. Michell agreed that as IVCA's President, longest-serving director, and largest grower by tonnage, he held considerable influence over decisions affecting IVCA.¹¹ He confirmed that Prokam's planted acreage in 2016 was decided after a discussion between himself and Messrs. Pollock and Dhillon.¹² Mr. Michell testified that he understood IVCA's 2016 sales of Prokam potatoes to Thomas Fresh on the Prairies were believed to capture a new market.¹³ He acknowledged that he knew at that time that Mr. Pollock was selling Prokam potatoes to Thomas Fresh on the Prairies in excess of Prokam's DA.¹⁴
6. With respect to the 2017-18 growing season, Mr. Michell testified that he expected IVCA's sales of Prokam potatoes to Thomas Fresh on the Prairies to

⁵ 2022-04-01 Cross-examination of Mr. Guichon, p. 6:15-34; p. 8:32 – p. 9:2; p. 18:18 – p. 19:17 (**PRTEB, Tab 7**).

⁶ Exhibit 1, p. 2345:8-13 (**PRTEB, Tab 8**).

⁷ BCfresh submission, subpara. 29(f), para. 36.

⁸ February 28, 2019 Appeal Decision, para. 34.

⁹ 2022-03-30 Cross-examination of Mr. Michell ("**Michell Cross**"), p. 32:6-41 (**PRTEB, Tab 9**).

¹⁰ Michell Cross, p. 35:14-30 (**PRTEB, Tab 10**). This was consistent with Mr. Pollock's evidence in 2018: Exhibit 1, p. 1984:20 - p. 1985:3 (**PRTEB, Tab 11**).

¹¹ Michell Cross, p. 30:31 – p. 31:20 (**PRTEB, Tab 12**).

¹² Michell Cross, p. 34:37 – 35:13 (**PRTEB, Tab 13**).

¹³ Michell Cross, p. 35:31 – p. 36:3 (**PRTEB, Tab 14**).

¹⁴ Michell Cross, p. 36:30-47 (**PRTEB, Tab 15**).

be in similar volumes as sold in the previous growing season by Mr. Pollock.¹⁵ Mr. Michell agreed that in 2017, he had a conversation similar to the previous year's with Mr. Meyer and Mr. Dhillon about Prokam's planting acreage.¹⁶

7. Significantly, Mr. Michell acknowledged during this hearing that he and IVCA's new GM, Mr. Meyer, asked Prokam to plant Kennebec potatoes in order to fill any gap left by quality issues at Hothi Farm.¹⁷ This was Mr. Dhillon's evidence as well both at this hearing¹⁸ and at the 2018 hearing.¹⁹ The 2018 Appeal Panel did not have the benefit of Mr. Michell's evidence on this issue.
8. Mr. Dhillon's evidence was that when it came to Prokam's planting, he took direction from his agency and relied on his agency to market Prokam's product in accordance with the rules.²⁰ While Hearing Counsel and Mr. Solymosi criticize Mr. Dhillon for taking this approach,²¹ Mr. Solymosi's evidence as to why he immediately came to the view that Prokam was a "rogue producer", and did not bother to solicit any information from Prokam or Thomas Fresh, was that he too trusts in and relies on his agencies and the agency managers who run them.²²
9. **The Decision not to submit a Marketing Plan was Terry Michell's Decision:**
The evidence indicates that the decision that IVCA would not submit a marketing plan in 2016 or 2017 was made wholly or primarily by Mr. Michell.²³ While the Non-Complainant Participants, in an attempt to justify Mr. Solymosi's investigatory focus on Prokam rather than IVCA, seek to attribute this decision to Prokam and Messrs. Gill and Dhillon,²⁴ it is clear that in June 2017, Mr. Gill thought that a new marketing plan would be drafted, and took steps to cause this

¹⁵ Michell Cross, p. 47:43 – p. 48:11 (PRTEB, Tab 16).

¹⁶ Michell Cross, p. 48:12-29; p. 49:23-36 (PRTEB, Tab 17).

¹⁷ Michell Cross, p. 8:26 – p. 9:42; p. 10:8-29; p. 50:8-42; p. 55:21-24 (PRTEB, Tab 18).

¹⁸ 2022-02-04 Direct examination of Mr. Dhillon, p. 44:34-45; 51:7-15 (PRTEB, Tab 19).

¹⁹ Exhibit 1, p. 2007:20-46 (PRTEB, Tab 20).

²⁰ 2022-02-03 Cross-examination of Mr. Dhillon, pp. 54:37 – 55:4; p. 55:34-42; p. 56:9 – 57:21; p. 70:9-20 (PRTEB, Tab 21).

²¹ Hearing Counsel submission at paras. 116-118; Solymosi submission at paras. 68-69.

²² 2022-02-09 Cross-examination of Mr. Solymosi, p. 34:20-30; p. 47:4-22 (PRTEB, Tab 22); 2022-02-11 Cross-examination of Mr. Solymosi, p. 64:6-14; 67:9-14; p. 74:9-20 (PRTEB, Tab 23).

²³ Exhibit 1, p. 862; 2022-02-11 Cross-examination of Mr. Solymosi, p. 70:25 – p. 73:39 (PRTEB, Tab 24); Michell Cross, p. 3:42 – p. 4:8; p. 56:28-46; 59:22 – p. 63:18 (PRTEB, Tab 25); 2022-02-08 Direct examination of Mr. Gill, p. 20:14 – p. 21:23 (PRTEB, Tab 26).

²⁴ Commissioners' submission, para. 16; BCfresh submission, para. 31.

to occur.²⁵ By contrast, Mr. Michell permitted Mr. Meyer to represent to Mr. Solymosi that IVCA was trying to put a business plan together when he knew that this information was not true.²⁶

10. Moreover, despite Hearing Counsel's and the Non-Complainant Participants' efforts to characterize the July 10, 2017 letter from IVCA to the Commission as originating with Bob Gill and Bob Dhillon,²⁷ it is clear on the evidence of both Mr. Michell²⁸ and Mr. Gill²⁹ that the initial draft letter authored by Mr. Gill at Mr. Michell's request³⁰ was decidedly more conciliatory and deferential in tone than the final version. Mr. Michell also acknowledged in his evidence that he was the source of a considerable proportion of the more incendiary content of the July 10, 2017 letter, which was finalized after Mr. Gill's initial draft was discussed among the IVCA board and Messrs. Wittal, Meyer, and Gill.³¹
11. **Prokam did not Hijack IVCA:** Viewed properly in context, it is clear that what occurred in the spring, summer and fall of 2017 was simply a continuation along the path forged by Mr. Pollock and Mr. Michell in 2016. It is also clear, as Mr. Michell recognized at the time, that primary responsibility for the toxic dynamic that developed between Ms. Solotki and Mr. Gill rested with Ms. Solotki,³² who openly referred to Mr. Gill as an "idiot" and testified in respect of him, "you can't fix stupid".³³
12. Mr. Michell attempted to resolve this problem by replacing Ms. Solotki. When she found out and quit, and Mr. Michell realized IVCA could not function with her, Messrs. Michell and Meyer turned against Prokam and Bob Gill instead.³⁴ It is known now that the information that IVCA provided to Mr. Solymosi was curated and designed to conceal Messrs. Michell's and Meyer's roles in determining how

²⁵ Exhibit 1, pp. 3192-3194; Michell Cross, p. 63:19 – p. 64:33 (PRTEB, Tab 27).

²⁶ *Ibid.*

²⁷ Hearing Counsel's submission, paras. 85-88; BCfresh submission, subpara. 29(e); Solymosi submission, paras. 13-14.

²⁸ Michell Cross, p. 76:2 – p. 77:15 (PRTEB, Tab 28).

²⁹ 2022-02-08 Direct examination of Mr. Gill, p. 18:9 – p. 19:12 (PRTEB, Tab 29).

³⁰ Exhibit 14, page 2 (marked page 1 in the top right corner).

³¹ Michell Cross, p. 79:44 – p. 85:9 (PRTEB, Tab 30).

³² Michell Cross, p. 86:45 – p. 87:23; 100:31 – p. 102:24 (PRTEB, Tab 31).

³³ Exhibit 1, p. 3641:43 – p. 3642:14; p. 3642:24-38; p. 3643:3-30; p. 3644:33-39 (PRTEB, Tab 32).

³⁴ Michell Cross, p. 88:17 – p. 92:31 (PRTEB, Tab 33).

Prokam's potatoes would be marketed to Thomas Fresh on the Prairies in 2017 and how IVCA would respond to the Commission's requests for a marketing plan, and to allocate blame for the fall 2017 breakdown to Prokam.³⁵

13. In this context, Mr. Solymosi decided not to solicit information from Prokam and Thomas Fresh, leading to a process and outcome that one of the decision-makers, Mr. Newell, acknowledged was unfair. Nevertheless, the Non-Complainant Participants continue to perpetuate the paradigm that has already been rejected by BCFIRB, according to which IVCA is innocent and Prokam is blameworthy.³⁶ Their efforts to do so should, once again, be rejected by BCFIRB.
14. Prokam does not contend that the information available to Mr. Solymosi as at September 27, 2017 did not warrant an investigation. What Prokam impugns is Mr. Solymosi coming to the malicious view on the very first day of his investigation that as between IVCA and Prokam, it was Prokam who was the "rogue". He did so based on information from only one of the two interested parties; because of his view that Prokam was a "rogue producer, he did not solicit information from Prokam that might contradict that view, and the die was cast.
15. **Commission's Submissions on Costs:** Prokam is in receipt this afternoon of the Commission's very troubling submission that the Review Panel should order the Complainant Participants to pay the Non-Complainant Participants' special costs of this supervisory review, or, if the Review Panel does not have jurisdiction to award costs, that it should sidestep this want of jurisdiction by ordering payment of a special costs analogue. Prokam's position is that the Review Panel does not have jurisdiction to award costs or a costs analogue for or against any participant. Like Mr. Solymosi and BCfresh, Prokam reserves the right to make submissions more comprehensive than space here allows on costs if the Review Panel deems it necessary to entertain them.

³⁵ 2022-02-11 Cross-examination of Mr. Solymosi, p. 67:9 – p. 73:39 (**PRTEB, Tab 34**). By way of an additional example, Ms. Solotki testified in 2018 that IVCA never told the Commission that Thomas Fresh sent unsigned contracts to Ron Wittal in March 2017: Exhibit 1, p. 3615:45 – p. 3616:14 (**PRTEB, Tab 35**). Moreover, Mr. Gill's evidence that he provided to IVCA in August and September 2017 all of the order information that Mr. Meyer and Ms. Solotki requested was not challenged on cross-examination: see 2022-02-08 Direct examination of Mr. Gill, p. 44:30 – p. 45:34; p. 48:46 – p. 50:9 (**PRTEB, Tab 36**).

³⁶ February 28, 2019 Appeal Decision, para. 82.