

November 17, 2023

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By Email (Justine.Lafontaine@gov.bc.ca)

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Our file 1041.001

BC Farm Industry Review Board  
2975 Jutland Road, 1st Floor  
Victoria, BC V8T 5J9

Attention: Justine Lafontaine

Dear Sirs and Mesdames:

**Re: Continuation of Phase II of the Supervisory Review**

I write this letter in response to BC Fresh's submission dated November 8, 2023 seeking leave to introduce certain evidence pursuant to the Panel's schedule of October 20, 2023.

BC Fresh states that it intends to support the recommendation of hearing counsel regarding the Commission reviewing Prokam's Delivery Allocation ("DA") in a transparent process. However, BC Fresh says that in the event the Panel decides not to follow that recommendation, and ascertain Prokam's DA in this Supervisory Review, BC Fresh applies for leave to introduce various evidence relating to the issue of special circumstances, or the lack thereof, concerning the calculation of Prokam's DA.

In effect, BC Fresh submits that if the Panel intends to follow the recommendation of hearing counsel concerning Commission reviewing Prokam's DA in a transparent process, then BC Fresh will not need to call any evidence. In other words, BC Fresh only seeks to call evidence in the event that the Panel does not follow the recommendations of hearing counsel.

In the circumstances, I submit it is not necessary at this stage to grant leave to BC Fresh. My reasoning is as follows.

This Supervisory Review is an iterative process. This was recognized and accepted by Justice Brongers in *Prokam Enterprises Ltd. v. BCFIRB*, 2023 BCSC 403 at paras 84 and 85. In my view, the Panel does not need to consider the evidence sought to be introduced by BC Fresh at this stage of the process because that evidence may be unnecessary.

Instead, the Panel should first receive and consider submissions from all the other participants with respect to my recommendation, and make a determination as to whether it will be accepted. If it is accepted, there will be no need for the evidence sought to be called by BC Fresh, as BC Fresh impliedly acknowledges.

If the Panel decides not to follow my recommendation, it can provide its reasons for doing so and provide all participants with an opportunity to call evidence, including BC Fresh. This is exactly what an iterative process contemplates.

In summary, it is unnecessary at this stage to consider the nature of the evidence that BC Fresh wishes to call. The Panel should first consider submissions from all the participants and then make whatever decision it considers appropriate. Such a decision may contemplate the calling of evidence in the nature that BC Fresh seeks to call or it may not. But that decision should be made after hearing from all the participants and not at this stage of the process.

Yours very truly,  
Mitha Law Group

Per:

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

Nazeer T. Mitha, KC \*  
\* Law Corporation

*NTM/mf*

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