

## BCVMC DECISION

### CFP Marketing Corporation Agency Application Moratorium on Applications for Agency & Producer-Shipper Status

Effective Date: **June 28<sup>th</sup>, 2019**

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#### INTRODUCTION

On May 9th, 2019, the Chair and General Manager of the Commission received a “Class 1 Agency Application” from CFP Marketing Corporation (CFP), doing business as “Canada Fresh”.

The application was provided in confidence by Bob Gill, Robin Smith and John Les, and was accompanied by a written Executive Summary. The Chair and General Manger were also provided with a confidentiality notice that instructed: “Except for the Executive Summary this application cannot be discussed with or shown to any person who is connected to any other field crop vegetable marketing agency including staff, directors, shareholders or those shipping to that agency”

The Executive Summary, which was not provided in confidence, is attached in appendix A. The application requests the Agency to be operational in time for the 2020 growing season.

On May 14<sup>th</sup> 2019 the members of the Commission were informed of the existence of the agency application, details contained in the confidentiality notice, and information set out in the non-confidential Executive Summary; which also informed that the Board of Directors is composed of: Bob Dhillon, Sam Dhillon, Bob Gill, Brian Schwartz, Ian Sparkes, Robin Smith, and John Les.

Applications for designation as an Agency are governed by Part XIV of the Commission's General Order. Among other things, Part XIV provides that the Commission shall designate a five-member panel to meet with the proposed Agency, consult with industry stakeholders, and consider the merit of the application having regard to various, specified criteria.

Commissioners met on May 30<sup>th</sup> and attendees were provided with a copy of the agency application executive summary. They were also informed of an issue of concern with the application arising from the involvement of the former BCFIRB Chair who sat as the Presiding Member on the Prokam appeal that was heard by the BCFIRB in 2018 (the decision was issued in February 2019). It was resolved at this meeting that further discussion is required prior to moving forward with the agency application process.

On June 19<sup>th</sup> the Commission Chair received a letter from the BCFIRB addressing certain concerns arising from John Les' involvement with the CFP agency application. A reply to this letter from CFP's legal council was also submitted to the Chair. Copies of these letters can be found in appendix C.

On June 24<sup>th</sup> members of the Commission met again to discuss how to move forward with the agency application. Commissioners Peter Guichon, Corry Gerard, and Hugh Reynolds were recused by the Chair to partake in this discussion and in the decision issued by participating board members at this meeting.

## *SUMMARY OF DECISION*

For reasons that will be detailed below, the Commission has decided as follows:

1. to summarily dismiss the CFP Marketing Corporation Class 1 Agency Application;
2. to impose a moratorium on all applications for Agency and Producer-Shipper status.

It is the Commission's considered view that a summary dismissal of this particular application is absolutely necessary to preserve the trust and confidence of stakeholders and the public in the regulatory system.

The Commission has also concluded that a moratorium on Agency and Producer-Shipper applications is required in any event to permit the Commission to complete its important work on the Strategic Review and the Agency Review. Both theses undertakings had been initiated prior to receipt of this CFP agency application with the objective to clarify foundational building blocks, enhance accountability, and build trust with stakeholders in the BCVMC's administration of the BC Vegetable Marketing Scheme. These undertakings will assist the Commission in determining what changes to the Orderly Marketing framework may need to be adopted in order to maintain an effective, rules-based system in the current and projected business environment. Furthermore, it is expected that these actions will result in comprehensive amendments to the General Order that clarify how delivery allocation should be managed in a multi-agency / producer-shipper marketing model. These fundamental regulatory issues need to be addressed before the status quo is altered by establishing a new Agency.

## BACKGROUND

### Circumstances Leading Up to CFP Marketing Corporation

The unusual circumstances leading up to the application submitted by CFP Marketing Corporation may be summarized as follows:

1. Prokam Enterprises Ltd. is a potato producer. The principal of Prokam is Mr. Bob Dhillon.
2. Over the 2016-17 crop year, Prokam's potato shipments were significantly greater than its assigned delivery allocation. In particular, shipments were nine times Prokam's delivery allocation entitlement in period A, and seven times its entitlement in period B.
3. On June 14, 2017, the Commission issued a warning letter to Prokam. The warning letter provided, in part:

...Prokam has intentionally planted far in excess of its Delivery Allocation rights. It is the Commission's responsibility to all Producers to ensure this growth is approved and supported by a marketing plan that services new market demand for BC product. This is a requirement of the General Order under PART XV - Marketing "New" or Additional Regulated Product By Existing Agencies.

.....

Prokam Enterprises Ltd. is approved for market access of the Delivery Allocation granted to it by the Commission. Shipping in excess of this approved Delivery Allocation is subject to approval by IVCA. IVCA is only authorized to supply a volume of product to the market that is equivalent to the approved Delivery Allocation under its management for each Delivery Allocation Period. Any shipment above the approved Delivery Allocation managed by IVCA will require Commission authorization.

Failure to abide by the General Order and Policy will result in enforcement and put both the Producer License and your Marketing Agency's License in jeopardy. This non-compliance is considered a fundamental defiance that challenges the core principles of Delivery Allocation and the Orderly Marketing of Regulated Vegetables. The Commission is prepared to enforce such challenges with significant repercussions to ensure Orderly Marketing and its components are observed in the actions of all Producers and Agencies.

4. On October 3, 2017 the general manager of Prokam's designated Agency, IVCA, advised the Commission that he had not been able to retain marketing and sales control over regulated potatoes produced by Prokam. He also advised that Mr. Bob Gill, an employee of IVCA located on the mainland (and Mr. Dhillon's brother-in-law), had been granted authority as a sales representative of IVCA, but had refused to take direction from the general manager to comply with IVCA protocol.

5. On October 10, 2017, the Commission issued a “Compliance Notice / Cease and Desist Order” to Prokam which described the following “compliance infractions” and “violation details”:

#### **COMPLIANCE INFRACTIONS**

- **PART IX - Section 12** No producers shall produce or ship Regulated product without Delivery or Production Allocation for the product in question, unless otherwise authorized by the Commission.
- **PART IX - Section 9** No Producer or Agency shall sell or offer for sale Regulated Crops subject to Commission minimum pricing, and no Person shall buy Regulated Crops subject to Commission minimum pricing, at a price less than the minimum price fixed by the Commission from time to time for the variety and grade of the Regulated Product offered for sale, sold or purchased, unless authorized by the Commission.
- **PART IX – Section 11** No Producer, shall market or transport any Regulated Product unless the Producer is currently licensed with the Commission, except as expressly authorized by the Commission pursuant to Section 4 of Part IV of the General Order.
- **PART XXI – Section 2** The Commission may issue a Certificate of Authority, which authorizes a Person to perform specific tasks on behalf of the Commission under the direction of the Commission within a specified time frame.

#### **VIOLATION DETAILS**

- Prokam Enterprises and Bob Dhillon have knowingly supported the actions of Bob Gill in the marketing and selling of potatoes (a regulated vegetable) without Commission authorization at pricing below the authorized minimum price.
- Prokam Enterprises and Bob Dhillon, a director of the Island Vegetable Cooperative Association (IVCA), has knowingly permitted, through the actions of Bob Gill, IVCA to be put into a position of non-compliance with the General Order and thereby putting IVCA’s Agency License at risk of being revoked.
- Prokam Enterprises and Bob Dhillon do not have the authority to represent IVCA in the marketing and sales of regulated products. All customers of regulated product are Agency customers and all accounts are managed under the direction of IVCA’s General Manager.
- Prokam Enterprises has also shipped Kennebec Potatoes in September 2017 but has not been granted Delivery Allocation rights for Kennebec Potatoes and is not permitted to ship any Kennebec Potatoes to the market / Agency customers.

6. Subsequently, and after engaging in a written hearing process, the Commission issued a written decision on December 22, 2017, and made various orders, including the following:

48.1. Effective February 1st, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency’s standard terms.

48.2. Prokam’s 2017-18 Crop Year potato shipments on Kennebec potatoes and all potato exports are not to be included in the calculation of delivery allocation for the 2018-19 crop year.

48.3. The Class 1 Producer Licence issued to Prokam is to be revoked and replaced with a Class 4 Licence. The Commission may choose to replace this licence with a Class 3 or Class 5 licence on review of the producer's compliance with these orders.

48.4. The suspension of Mr. Bob Gill's 2017-18 certificate of authority is to be addressed as an Agency matter. IVCA is to inform the Commission General Manager on if the certificate is to be re-instated or cancelled.

7. Prokam, together with IVCA and Thomas Fresh, appealed the Commission's decisions to the BC Farm Industry Review Board. The appeal was heard over the course of 8 days in April, May and June, 2018 by a BCFIRB panel comprised of Diane Pastoor, Al Sakalauskas, and then BCFIRB Chair, John Les. Mr. Les sat as the "Presiding member".

8. The appeal involved extensive materials and vigorous submission from all parties. The BCFIRB described the appeal in this way:

11. We have been provided with a very large amount of materials and submissions, which include:

- A 163 page Memorandum of Argument filed by the appellants
- A 63 page Memorandum of Argument filed by the Commission
- A two page reply from the intervener BC Fresh,
- A 21 page Memorandum of Argument filed by the appellants,
- A bound volume of documents entitled "List of Documents of Prokam Enterprises Limited and Thomas Fresh Inc. ",
- A bound volume of documents entitled "Supplemental List of Documents of Prokam Enterprises Limited and Thomas Fresh Inc. ",
- A bound volume of documents entitled "Second Supplemental List of Documents of Prokam Enterprises Limited and Thomas Fresh Inc. ",
- A bound volume of documents entitled "Third supplemental list of documents of Prokam Enterprises Limited and Thomas Fresh Inc.",
- Two large binders entitled "Respondent's brief of documents",
- A smaller binder entitled "Respondent's Mini Book of IVCA Documents",
- A bound volume entitled "Application Record re Affidavit of Documents" ,
- A bound volume entitled "Documents Produced by Commission after May 24, 2018", and
- Approximately 3000 pages of authorities.

12. In addition, an oral hearing – originally scheduled for 2 days – was held over an eight-day period in April, May and June 2018, resulting in approximately 1123 pages of transcripts and some further exhibits.

9. Throughout the course of the hearing, BCFIRB Chair and Presiding Member, John Les, heard evidence and argument from all of the parties; he made various interlocutory rulings; and he undoubtedly participated in confidential deliberations with his fellow panel members.

10. On November 15, 2018 (approximately 5 months after the BCFIRB hearing concluded, and approximately 3 months before the BCFIRB released its reasons for decision), the appointment of John Les as Chair of the BCFIRB was rescinded. It is impossible to know the extent to which Mr. Les was involved in the post-hearing deliberations and analysis that led up to the release of the BCFIRB's reasons for decision on February 28, 2019.
11. Among other things, the BCFIRB directed that the Commission reconsider its decision to designate BCfresh as the Agency for Prokam, as well as its decision to revoke the Class 1 Producer Licence issued to Prokam and to replace it with a Class 4 Licence.
12. On April 10, 2019, legal counsel for Prokam (represented by its principal, Bob Dhillon) wrote to the Commission as follows:

...we understand that there may be an application to approve the establishment of a new lower mainland Agency to which Prokam would, if approved, seek to be directed as an alternative to BCfresh or IVCA. Prokam's position is that the timeline for submissions should include a date by which any application for a new Agency to which Prokam would request to be directed be made so that any such application may be considered together with the other alternatives for Prokam.
13. When the "application" referenced in Prokam's counsel's letter was received on May 9, 2019, the Commission learned for the first time that the principals of the corporate applicant include Mr. Dhillon, Mr. Gill, and former BCFIRB Chair, John Les, who presided over the hearing that led to the reconsideration directions.
14. On May 29, 2019, the Commission's General Manager wrote to former BCFIRB Chair and Presiding Member, John Les, as follows:

*Hi John,*

*In reference to your telephone call to me yesterday morning in which you requested a meeting with me to discuss the application for an agency designation submitted by CFP Marketing Corporation, represented by directors Bob Dhillon, Sam Dhillon, Bob Gill, Brian Schwartz, Ian Sparkes, Robin Smith and John Les.*

*I have shared with the Commission that an application was received along with details that were written in the executive summary document. I want to bring it to your attention that there are some concerns about the involvement of Mr. Les in this application that could give rise to an appearance of bias or conflict, or, could otherwise undermine the trust of stakeholders and the public in the regulatory system.*

*In light of the above, a meeting should not occur until after the Commission has had an opportunity to address its awareness on this issue. The Commission will be meeting shortly to discuss these concerns.*

15. On May 31, 2019, former BCFIRB Chair and Presiding Member, John Les, wrote to the Commission's General Manager as follows:

*Hi Andre*

*Thank you for your email.*

*With regard to your alleged concern about bias or conflict of interest, given my previous role with BCFIRB and my current role as a director of CFP, I reject any assertion that such conflict or bias exists.*

*It is not unusual for people to undertake different roles in life. We have seen former commodity board members or staff subsequently serve with BCFIRB, for example. Sometimes people serve different organizations concurrently, such as directors of the BCVMC and BC Fresh. There are established guidelines and expectations as to how people should manage those situations. We've also seen Canadian Supreme Court judges retire from the bench and take on a variety of corporate and other advisory roles. You should also know that I have advised BCFIRB of my involvement with CFP. There have been no objections or expressions of concern to my knowledge, other than yours.*

*Perhaps your concern arises as a result of my chairing the Prokam/BCVMC appeal hearings almost a year ago. I would remind you that I was not an author of, or signatory to, the resulting decision in late February, 2019.*

*It should also be noted that I am not in any adjudicative role with CFP. I am simply an independent director of the board, along with Robin Smith, using whatever insights and knowledge I've been able to garner over a lifetime of experience, including my five years with BCFIRB, to ensure that upon issuance of their requested agency license they will be successful and operate in a way that is within the guidelines and regulations as established by the BCVMC.*

*I was sorry to deduce from your email that apparently nothing has been done to evaluate and begin processing the CFP application. That is concerning. We would ask that you begin that process without further delay.*

*Regards*

*John*

## **Perception of Bias and Conflict, and the Preservation of Trust and Confidence**

It is true that people "undertake different roles in life", and that sometimes "people serve different organizations concurrently". However, these observations are simply not analogous to the present circumstances:

- Mr. Les, the then Chair of the BCFIRB, sat as the “Presiding Member” on an appeal brought by Prokam (represented by Bob Dhillon) against the Commission.
- Over the course of an 8 day hearing in April, May and June, 2018, Mr. Les heard evidence and argument from all of the parties; he made various interlocutory rulings; and he undoubtedly participated in confidential deliberations with his fellow panel members.
- On November 15, 2018 (approximately 5 months after the BCFIRB hearing concluded, and approximately 3 months before the BCFIRB released its reasons for decision), the appointment of John Les as Chair of the BCFIRB was rescinded. It is impossible to know the extent to which Mr. Les was involved in the post-hearing deliberations and analysis that led up to the release of the BCFIRB’s reasons for decision on February 28, 2019.
- In its reasons for decision, the BCFIRB directed that the Commission reconsider its decision to designate BCfresh as the Agency for Prokam, as well as its decision to revoke the Class 1 Producer Licence issued to Prokam and to replace it with a Class 4 Licence.
- Legal counsel for Prokam (represented by its principal, Bob Dhillon) asked that the Commission consider a forthcoming application for a new Agency as part of the very reconsideration process that had been directed by the BCFIRB panel on which Mr. Les sat as the Presiding Member.
- At some point prior to May 9, 2019, Mr. Les took a directorship position in CFP Marketing Corporation along with Bob Dhillon. Mr. Dhillon is the principal of Prokam – the Appellant that appeared before Mr. Les in the appeal which led to the reconsideration direction.
- CFP, represented by Bob Dhillon and John Les, submitted the application referenced in the letter sent by Prokam’s legal counsel.

It may be noted that the BCFIRB Code of Conduct contains provisions that describe various continuing duties of BCFIRB members. These include:

16. A member must, during and after the expiry of the member’s term, keep confidential all information obtained as a member, and must not disclose that information except as permitted in the governing Act.
17. A member shall not, during and after the expiry of the member’s term, use confidential information obtained as a member to gain personal profit or as a tip to others unless such information has been made generally available to the public.
18. A member shall at all times maintain the security of all information and records that are the property of BCFIRB and shall not make use of or reveal such information.

In addition, the General Conduct Principles for Public Appointees published by the Government of British Columbia (<https://www2.gov.bc.ca/gov/content/governments/services-for-government/public-sector-management/appointments/general-conduct-principles>) state:

Appointees must avoid any conflict of interest that might impair or impugn the independence, integrity or impartiality of their agency, board or commission. There must be no apprehension of bias, based on what a reasonable person might perceive.



Appointees should ensure that activities undertaken as a private citizen do not create or appear to create a conflict with any responsibilities held as a member of an agency, board or commission.

Appointees should ensure that activities undertaken as a member of an agency, board or commission do not create or appear to create a conflict with any activities undertaken as a private citizen.

Appointees should ensure that personal employment is not dependent on any decision, information or other matter that may be heard by or acted upon by the agency, board or commission.

Confidential information must not be used for any purpose outside that of undertaking the work of the agency, board or commission to which they have been appointed.

Agency, board or commission work should not result in any personal or private financial or other substantive gain for public appointees.

Post-adjudicative conduct that is far more subtle than that which is present here can undoubtedly give rise to an appearance of conflict or bias, or may otherwise undermine the trust and confidence of litigants and the public in the adjudicative system. In a paper dated May, 2016, the Federation of Law Societies of Canada Standing Committee on the Model Code of Professional Conduct published a discussion paper on “Post-Judicial Return to Practice”. Though the authors were obviously focused on issues that may arise when a judge retires, some of the issues identified have application here:

#### Apprehension of Bias

...Former judges also have special knowledge of the inner workings of the court. It is possible they will know which arguments are more likely to find favour. There may be a preferred way to receive a case that can then be reflected in how it is submitted by that former judge.

.....

#### Public Perception and Confidence in the Justice System

...The example commentators raise most often is of a self-represented litigant who finds their opposing party is represented by a former judge. There is a significant possibility that if the case goes badly the litigant will assume the former judge was favoured in their former court. Lawyers who do not achieve success in court for their clients may be inclined to the same belief. Again this may be perception only and the case decided entirely on its merits, but perception does count in preserving the public’s confidence in their courts.

Here, the circumstances are considerably more unusual than those which typically arise when a judge retires. The former Chair of the BCFIRB, who also sat as the presiding member on the appeal hearing between Prokam and the Commission, has now joined forces with the principal of the Appellant to advance an application to the Commission for designated Agency status. That application is itself closely

connected with the very subject matter of the appeal over which Mr. Les presided – so much so, in fact, that the Appellant’s own counsel had asked that the application be considered in the context of the reconsideration that was directed by the BCFIRB panel on which Mr. Les served as Presiding Member during the hearing phase.

In these circumstances, stakeholders and members of the public could wonder if the appeal process itself might have been tainted by the prospect of future business opportunities with the principal of the Appellant. Of course, it is essential to note that there is no factual basis to support any allegation of actual impropriety. On the contrary, it is reasonable to assume that Mr. Dhillon sought to benefit from Mr. Les’s general knowledge and experience, rather than from his standing as the Presiding Member who had chaired the panel hearing the appeal. The issue, however, is an appearance of bias that may arise from the fact that the BCFIRB member, who presided over the appeal, has joined forces with the Appellant that had appeared before him, and that this business relationship is closely connected with the subject matter of the appeal.

In addition, it may appear that in joining forces with the Appellant that previously appeared him, Mr. Les is leveraging his position of authority and influence, not only as the former Chair of the BCFIRB, but also as the “Presiding member” of the panel that heard the appeal which gave rise to the extant reconsideration process. In addition, it could appear that Mr. Les is leveraging his unique privity to confidential deliberations that occurred among the panel members when he was serving as the Presiding Member on the appeal between Prokam and the Commission.

It is not the Commission’s role to assess whether the BCFIRB Code of Conduct, or the General Conduct Principles for Public Appointees published by the Government of British Columbia, have any application in these circumstances. However, it is the Commission’s responsibility “to promote, control and regulate in any respect the production, transportation, packing, storage and marketing of a regulated product.” While there is no basis to assert any actual bias or conflict, it is the Commission’s considered view it should not engage in any substantive consideration of the merits of the application in these highly unusual circumstances. Doing so would undermine the trust and confidence of stakeholders and members of the public in the regulatory system, and could give rise to questions concerning the decision made by the BCFIRB in the appeal presided over by Mr. Les.

## **On-Going Reviews and Pending Regulatory Change**

The Commission is the first instance regulator of BC grown vegetables and has been in existence since the 1930’s. It is responsible for applying the *British Columbia Vegetable Scheme* (the “Scheme”), including coordinating producer activities, to ensure orderly marketing. Orderly marketing is achieved through managing the promotion, control, and regulation of production, transportation, packing, storage, and marketing of vegetables.

The Commission exercises broad provincial legislative powers delegated to it under the *Natural Products Marketing (BC) Act*. The Commission is also able to exercise federal legislative powers by virtue of the *British Columbia Vegetable Order* made under the *Agricultural Products Marketing Act*.

The Commission’s General Order sets out how the Commission manages the promotion, control, and regulation of production, transportation, packing, storage, and marketing of the vegetables it regulates. In 2005 the former General Orders were replaced with a new General Order. Since then, both the

greenhouse and storage crop industries have evolved and adapted to changes in the business environment. There have also been numerous amending orders and policies that have also been implemented in response to these changes. However, the implications of regulatory amendments on the business environment for regulated vegetables have not been fully considered. Ambiguity in the regulations and clarity on the obligations of licensed stakeholders that form the accountability framework of the Orderly Marketing system need to be addressed. Such an undertaking can best be accomplished by a thorough review and redrafting of the General Order.

Orderly marketing of regulated storage crops is dependent on three fundamental components that facilitate the flow of regulated product to the marketplace: the agency; minimum pricing; and delivery allocation. Together, these three components form the orderly marketing system for regulated BC grown storage vegetables. Each component serves its own purpose as follows:

- Agencies represent groups of producers in the market and are responsible for the marketing and sales of regulated product. The Commission designates its marketing authority to agencies. For the system to be effective, Agencies need to be diligent in managing their responsibility and robust in ensuring compliance to commission regulations and policies in its decision making. Agencies are held accountable for ensuring that a coordinated approach to the market is sustained for the benefit of its producers and in agreement with the interests of the industry.
- Minimum price provides for price coordination. It stabilizes demand and allows for multiple agencies to compete in the same market on quality and service. 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.
- Delivery allocation is allocated by the Commission to storage crop producers and is calculated on the 5-year average of a producer's shipments. It is used by an Agency to manage a producer's access to the market. The delivery allocation component can only function in a multi-agency environment if a coordinated pricing approach to the market is maintained and enforced.

In 2010, the removal of regulation that restricted producers to ship to an agency located in their district allowed for multiple storage crop agencies to compete for producers across the province. Prior to its removal, producers were designated an agency that was located within their district. There was only one storage crop agency located in the interior (District III), one in the lower mainland (District I), and two on Vancouver Island (District II).

Agencies were historically established to represent producers in the market defined by the district in which they were established. Over time, the business environment has expanded beyond these districts. When the Commission removed this district restriction, the management of delivery allocation at an industry level was not properly addressed in the General Order. Though policies have since been developed to control this issue, there is ambiguity in the management of delivery allocation that remains to be addressed at an industry level. Clear rules need to be developed and written into the General Order on how delivery allocation is to be allocated and managed in a multi-agency / producer-shipper marketing model.

The recent ruling by the BCFIRB on the Prokam appeal regarding federal pricing authority has impacted the Commission's process on how it regulates pricing in the storage crop sector. The federal regulation (the *British Columbia Vegetable Order* (SOR/81-49)) in its current form significantly impedes the Commission's ability to act quickly when it is required to act on delegated federal legislative authority. Market pricing is volatile and can fluctuate weekly or daily. To be an effective tool at maintaining orderly

marketing, the Commission needs to be able to adjust minimum prices as the market dictates. The Commission is a price taker and does not set the market price for regulated product. Without the authority to act quickly to adjust minimum pricing in all markets for BC product, minimum pricing becomes ineffective as a tool to maintain orderly marketing.

Though the federal regulation is currently being reviewed and changes to allow for this flexibility are pending, the Commission cannot rely on minimum pricing alone as the core instrument used to maintain orderly marketing in a multi-agency marketing model for storage crops. Agencies also compete in the same marketplace with agencies and producers on non-regulated vegetables. Using minimum price as a tool to manage market rights (delivery allocation) of regulated vegetables between competing agencies becomes ineffective when pricing adjustments on non-regulated products can have an influence on a customer's buying behavior of regulated vegetables. The degree to which this applies to the vegetable industry is unknown. However, a stakeholder can easily gain a competitive advantage through a manipulation of price on an un-regulated vegetable. Furthermore, such behavior or just the presumption of this behavior casts doubt on the integrity of stakeholders who market both regulated and unregulated product, and thus erodes trust in the orderly marketing system. To mitigate this risk, it is essential that the Commission strengthen other components of the regulatory system so that there is less reliance on minimum pricing to maintain orderly marketing..

Agencies compete on both regulated and non-regulated vegetables. Not all BC grown vegetables are regulated. And, a significant portion of an Agency's sales can be in non-regulated vegetables. A non-regulated vegetable may also include a vegetable that is regulated within the province of BC but is imported by an agency or a producer from another growing region. The Commission needs to assure producers of regulated vegetables that an agency operates in consideration of industry interests. This can be accomplished with the Commission taking a more active role in monitoring and facilitating some level of transparency in an Agency's business practices.

All these considerations underscore the need for the Commission to complete its important work on the Strategic Review and the Agency Review. Detail on both these reviews can be found in appendix B. These undertakings will assist the Commission in determining what changes to the Orderly Marketing framework may need to be adopted in order to maintain an effective, rules-based system in the current and projected business environment. Furthermore, it is expected that these actions are expected to result in comprehensive amendments to the General Order that will clarify how delivery allocation should be managed in a multi-agency / producer-shipper marketing model. These fundamental regulatory issues need to be addressed before the status quo is altered by establishing a new Agency.

## **DECISION**

1. The "Class 1 Agency Application" from CFP Marketing Corporation, doing business as "Canada Fresh" is summarily dismissed.
2. Further, the Commission hereby imposes a moratorium on all applications for Agency and Producer-Shipper status. The moratorium is to remain in place until such time as the Commission has completed its Strategic Review and Agency Review, and implemented any consequential amendments to the General Order, or until further order of the Commission.

## S.A.F.E.T.I. PRINCIPLE

This decision satisfies the S.A.F.E.T.I. principles that are a foundation of the BCFIRB accountability framework and guide decision making by the Commission. Commissioners are committed to be pro-active risk managers and applying principles-based decision making to achieve responsive governance. These decisions are determined to be in the best interest of sound, orderly marketing within British Columbia and reflects a principle-based approach to regulation. They are validated for the following reasons:

<b>STRATEGIC</b>	<ol style="list-style-type: none"> <li>1. Dismissal of the CFP agency application is, without question, necessary to preserve the trust and confidence of stakeholders and the public in the regulatory system.</li> <li>2. Imposing a moratorium on agency applications will allow the Commission to complete its strategic and agency reviews so that it can determine what changes to the Orderly Marketing framework may need to be adopted in order to maintain an effective, rules-based system in the current and projected business environment.</li> </ol>
<b>ACCOUNTABLE</b>	<ol style="list-style-type: none"> <li>1. It is the Commission’s considered view that it should not engage in any substantive consideration of the merits of the agency application in these highly unusual circumstances. Doing so would undermine the trust and confidence of stakeholders and members of the public in the regulatory system, and give rise to questions concerning the decision made by the BCFIRB in the appeal presided over by Mr. Les.</li> <li>2. Supports and demonstrates effective governance and sound leadership of the regulated vegetable sector by ensuring all information gathered as part of the strategic and agency review process are considered and necessary amendments to the Orderly Marketing framework are implemented prior to addressing the merits of any new agency application.</li> </ol>
<b>FAIR</b>	<ol style="list-style-type: none"> <li>1. Permits the Commission to proceed with the process established to reconsider its decisions on Prokam, Thomas Fresh, and IVCA as directed by BCFIRB within the context of the current agency framework.</li> <li>2. Allows the agency review process and strategic plan review process to proceed and conclude prior to considering the merit of any new agency application.</li> </ol>
<b>EFFECTIVE</b>	<ol style="list-style-type: none"> <li>1. Dismissing the application demonstrates the Commission’s commitment to preserving trust and confidence in the regulatory system.</li> <li>2. Allows for assessment of the current regulatory system and the implementation of any necessary changes to the Orderly Marketing framework.</li> </ol>
<b>TRANSPARENT</b>	<ul style="list-style-type: none"> <li>• These decisions are clear and fully communicated by this document.</li> </ul>
<b>INCLUSIVE</b>	<ul style="list-style-type: none"> <li>• These decisions support the interest of stakeholders and the public that the Commission apply and administer the BC Vegetable Marketing Scheme in a manner that preserves trust and confidence in the regulatory system.</li> </ul>

Respectfully submitted on behalf of the BC Vegetable Marketing Commission,

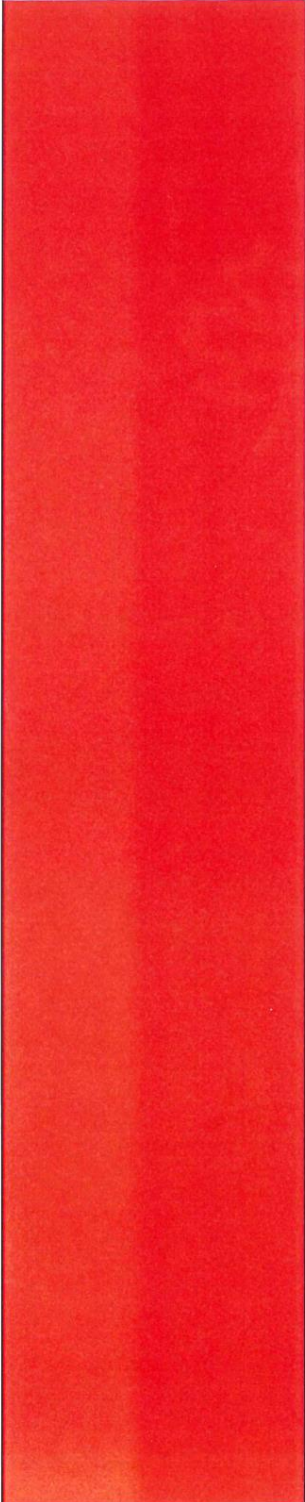



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Debbie Etsell, Chair

APPENDIX A

CFP Marketing Corporation Executive Summary



APPLICATION FOR AGENCY DESIGNATION FOR  
*CFP MARKETING CORPORATION*

**Executive Summary**

May 10 2019

**APPLICATION FOR AGENCY DESIGNATION  
For  
CFP MARKETING CORPORATION**

**EXECUTIVE SUMMARY**

This document is the application to the BC Vegetable Marketing Commission (BCVMC) for a vegetable marketing agency Class 1 licence for CFP Marketing Corporation (CFPMC) doing business as "*Canada Fresh*". The application follows the format set out in Part XIV of the General Orders of the BCVMC Procedure for Designation of Agencies.

CFPMC believes that there is an opportunity for the BCVMC to encourage competition in the Lower Mainland by designating a second agency. A second agency will provide producers with a choice and would lead to innovations and new markets. Currently there is only one vegetable marketing agency for field crops in the lower Mainland, leaving no choice for growers who may not want to deal with that agency. By comparison Vancouver Island is serviced by two agencies and one grower shipper and the Interior by another agency. The greenhouse industry with fewer growers is serviced by five agencies.

Competition in the marketplace is favourable to the industry as it leads to innovation and efficiency. CFPMC intends to introduce concepts that will benefit growers such as:

- A commitment of \$300,000 for grower services and new technologies for shipping, tracking and tracing produce from the field to customers.
- Provision of a comprehensive health plan
- A new and innovative web site that will appeal to both growers and customers
- New ideas for branding and marketing, working with retailers on in store promotions

**Vision, Mission and Goals**

The Vision of CFPMC is: to become the most innovative and successful vegetable marketing agency in western Canada.

The Mission of CFPMC is: to provide marketing services to British Columbia vegetable growers to maximize their returns through developing and servicing markets in British Columbia and outside of the Province.

CFPMC will achieve their Vision and Mission by implementing the following goals:

- Generate a significant percentage of sales in markets outside of BC
- Increase the number of growers it represents and the number of clients it is marketing to thus increasing sales tonnage and revenue
- Working with growers to achieve year round supply to clients for a variety of products
- Be demand driven by growing and supplying products that the market wants when they require them and in the format that they request
- Work to replace imported products with BC grown product

- Ensure that there is a communication plan to keep growers informed and up to date on market conditions
- Implement education initiatives for present and future generations by spending time in schools educating children about the health value of eating local vegetables
- Partner with retail clients on in store promotions and displays

### **Office facility**

CFPMC's plans to establish a central office in the Langley/Abbotsford area close to major traffic arteries. This will allow for ease of access to the whole Lower Mainland/Fraser Valley region. In particular this facility will assist smaller growers by providing a place where their product could be graded, packaged and sold by CFPMC.

This facility will feature "state of the art" software systems and technologies for shipping, tracking and tracing of produce from field to consumer and back; including the use of drones to monitor crop conditions. Each grower will be licensed as a packing house which will be designed with the latest technology in washing, grading and packaging equipment to maximize efficiency and productivity. CFPMC's growers will be committed to having the very best in long term crop storage facilities to ensure a consistent, high quality supply of product to its clients throughout the year

### **Products**

At start up CFPMC plans to market all BCVMC regulated products except rutabagas, turnips and onions which be added later. The list of regulated products that CFPMC intends to market include: beets (tops off), red/green cabbage, standard and Nantes carrots, parsnips, early/red/ yellow/white and russet potatoes. A wide range of unregulated products will also be marketed by CFPMC.

All of CFPMC's growers will be Food Safe and CFIA Certified. A rigorous product tracing program will be instituted.

### **Markets**

The interest from retail grocers, wholesalers and distributors has been very encouraging as they welcome competition in the industry and are supportive of this application. CFPMC intends to partner with retailers on in-store promotions and displays.

CFPMC intends to grow their markets outside of British Columbia in the Prairie Provinces and to replace imports with BC grown products.

CFPMC will take advantage of the trend to healthy eating including the new Canada Health Guide that promotes more vegetable consumption. By establishing a new brand and packaging design the Canada Fresh logo will be unique. In store promotion with retailers will enhance sales. CFPMC intends to implement educational initiatives at schools. The new website and mobile app will contribute to brand awareness and will promote BC vegetable sales.



### **Committed Growers**

Currently there are five growers committed to ship to CFPMC. Other growers have shown an interest but they will not commit until an agency licence has been issued. Some of the committed growers do not currently have delivery allocation for regulated product however there is an intention to apply for new entry start up quota.

### **Corporate Governance**

CFP Marketing Corporation (CFPMC) is a limited company incorporated in British Columbia doing business as *Canada Fresh*. The company has a Board of Directors composed of both representatives of shareholders and independent directors (with no financial interest in the business). The independent directors are persons prominent in the agrifood industry in British Columbia who bring experience and integrity to the Board. The Board of Directors will ensure that CFPMC is fully compliant with all General Orders, rules and regulations of the BCVMC.

The Board of Directors is composed off:

Bob Dhillon, Sam Dhillon, Bob Gill, Brian Schwartz, Ian Sparkes, Robin Smith and John Les

### **Business Management**

CFPMC will have a full time staff. The General Manager Tom Pollock is a business executive with experience managing a vegetable marketing agency. The full time Controller Bob Gill is experienced in the accounting functions of the vegetable industry. The experienced staff will ensure that the company's record keeping, reporting and business administration are in full compliance with the Agency Accountability framework and the Consolidated General orders of the BCVMC.

### **CFPMC Commitment**

CFPMC commits to following all of the rules, regulations and General Orders of the BCVMC. The new agency will work to enhance the BC vegetable industry and to improve profitability for growers.

The plan is to have the new agency approved and in business by November 1, 2019 which will permit timely planting decisions and approvals for the 2020 season.

## APPENDIX B

### BCVMC Projects

#### Agency Reviews

The Agency review process and audit document was introduced in July 2018. The information gathering phase is nearly complete and will be presented to the Commission in the fall.

As the regulator of the BC Vegetable Scheme, the Commission is responsible for establishing the regulatory environment and policy framework for the marketing of regulated vegetables and monitoring compliance.

Agencies are granted authority by the Commission to market regulated product. The Commission can stipulate conditions on an Agency's mandate and review the designation of any Agency upon any material changes in the conditions giving rise to its initial approval.

An Agency may be a company with its own corporate purpose. It is within an Agency's mandate to set its business objectives and general purposes for their operations. However, as a designated Agency of the BCVMC it must operate in compliance of the authority granted to it. The overarching mandate of an Agency is to represent a group of licensed producers and carry out the marketing duties of regulated vegetables;

- (a) in compliance of the Consolidated General Order;
- (b) in respect of the operating principles of the orderly marketing system;
- (c) for the benefit of its producers;
- (d) in agreement with the interests of the industry.

To ensure Agencies are held accountable to the authorities delegated to them by the Commission under the *Natural Products Marketing (BC) Act* and the *Natural Products Marketing (BC) Act Regulations*, in 2018 the Commission started an in-depth Agency review process. An Agency Audit Guidance Document was developed to provide insight into the audit and assessment methodology and direct the information gathering work to be performed.

The fundamental objectives that guide the Agency review are as follows:

1. Evaluate governance and determine if the Agency is operating according to its core purpose & mandate in carrying out the marketing duties of regulated vegetables;
2. Evaluate Agency performance and regulatory compliance;
3. Ensure trust in industry – The foundation of an orderly market.

The Agency reviews will focus on providing the Commission with a comprehensive understanding of Agency corporate policy and procedures, and further insight on how each Agency performs in relation to regulatory compliance and expectations.

Through the review process the Commission will develop an understanding on how each Agency is currently functioning in accordance to its overarching purpose and mandate. And assess opportunities for improvement in monitoring accountability and Agency performance. It is anticipated that the review process will be completed by the fall of 2019, with outcomes determined in early 2020.

Moving forward, further discussion, and evaluation will continue to be held with Agency management to benchmark industry best practices and identify specific issues and opportunity that will enhance orderly marketing. An outcome of this process will eventually lead to the establishment of industry specific metrics and reports that provide sufficient transparency to producers, agencies and the Commission on agency performance.

### **Strategic Planning and Discovery Process**

In April 2019, the BC Vegetable Marketing Commission held its Annual General Meeting. On the Agenda was the formal announcement that the BCVMC had engaged a firm to begin its required Strategic Planning Process over the next few months.

To be effective the Commission seeks to grow in our discovery and understanding, from the entire collective, including growers, agencies, wholesalers, and associations we represent, of the expectations and what the Commission needs to do to keep at the forefront of our industry, and collectively be committed to leading, influencing and regulating our industry.

The process has set a goal of 65% participation from across the membership and regions and seeks to hear from as many participants as possible. Stakeholders are being encouraged to participate as fully as they can because what they have to say matters, and what we learn is intended to inform and increase the Board's understanding.

The board will be guided by stakeholder input and the independent outside Facilitator / Senior Business Analyst with experience in agriculture. What we learn from the process will be applied to shorter-term planning, (1 to 3 years), the mid-term (from 3 to 5 years from now), and the longer term (actions required to meet the potential needs for 5- 10 years from now).

## APPENDIX C

### BCFIRB – Letter on New Vegetable Marketing Agency Application



June 19, 2019

File: 44200-35 Designation of Agencies\VMC

#### **DELIVERED BY E-MAIL**

Debbie Etsell, Chair  
BC Vegetable Marketing Commission

Dear Ms. Etsell:

#### **Re: New Vegetable Marketing Agency Application**

#### **Background**

I write in follow up to a May telephone conversation former British Columbia Farm Industry Review Board (BCFIRB) Chair John Les had with BCFIRB's Manager of Issues and Planning, Wanda Gorsuch.

Mr. Les advised Ms. Gorsuch that vegetable producer Peter Dhillon (Prokam Enterprises Ltd.) intended to apply to the British Columbia Vegetable Marketing Commission (Commission) for a new vegetable agency license. Mr. Les advised of his intention to be a non-voting member of this new proposed agency along with the former chair of the Chicken Board. BCFIRB has since been advised by the Commission that Mr. Dhillon (Prokam) has applied for a licence for this new vegetable agency and Mr. Les is identified as a member of the proposed agency's board of directors.

BCFIRB has not yet seen the agency application as this is a matter for the Commission to address as first instance regulator of the vegetable industry. However, we would ask the Commission to provide us with a copy of the agency application including and any incorporation documents that may have been provided.

#### **Regulatory Framework**

Part XIV of the Commission's General Orders set out the comprehensive process to be followed by the Commission in designating new agencies. By virtue of section 8 of the Natural Products Marketing Act Regulations, the designation of any agency requires BCFIRB's prior approval. Depending on the specific circumstances of an agency application and despite BCFIRB's prior approval requirement, there is also a potential for an aggrieved person to file an appeal to

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**British Columbia  
Farm Industry Review Board**

**Mailing Address:**  
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Victoria BC V8W 9B5  
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250 356-8945  
**Facsimile:** 250 356-5131

**Location:**  
1<sup>st</sup> Floor, 780 Blanshard Street  
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**Email:** [firb@gov.bc.ca](mailto:firb@gov.bc.ca)  
**Website:** [www.gov.bc.ca/BCFarmIndustryReviewBoard](http://www.gov.bc.ca/BCFarmIndustryReviewBoard)

BCFIRB of the Commission's decision regarding the new agency application. The issue would then arise as to whether the appeal should be heard and whether it should be referred to the supervisory process. Both the supervisory and appeal processes would involve procedural issues including whether it is necessary to hear from witnesses.

#### **Mr. Dhillon's Appeal History**

Mr. Dhillon and his company Prokam Enterprises Ltd. were appellants in appeals brought before BCFIRB (Prokam appeals). Chair Les, as he then was, was the presiding member on those appeals from the time they were filed in late 2017 and early 2018. Chair Les participated in pre-hearing process management decisions as well as the eight day hearing and subsequent deliberations until his appointment ended in November 2018. In his role as presiding member, Chair Les issued a comprehensive decision related to document disclosure which weighed the risk of disclosing confidential pricing information against the need for the appellants to have access to pricing information relevant to the issues on the appeal. In excess of 1000 pages of documents were reviewed and some redactions were ordered removed while other redactions were retained. Although an order was issued to allow BCfresh to testify *in camera*, no evidence was received in *in camera*.

As those confidential records were in Chair Les's possession and as BCFIRB has no record of the documents being returned for disposal, I am separately following up with Mr. Les to confirm that he has not shared any information contained in these documents with anyone associated with Prokam or Mr. Dhillon. He has been asked to return any documents still in his possession to BCFIRB immediately and to confirm that he has neither made copies nor retained copies.

The decision in the appeals was released February 28, 2019. The matter is now back before the Commission for reconsideration based on the findings of the appeal panel.

#### **Discussion**

BCFIRB finds itself in the circumstance of having its former Chair involved in a business relationship with, and a fiduciary duty to, a party in whose matter the Chair was required to exercise an impartial adjudicative function in the very recent past. That party has now submitted a new vegetable marketing agency application to the Commission and will be seeking a future regulatory approval from BCFIRB if the Commission recommends the agency application or alternatively, appealing the Commission's decision should the agency application be refused.

BCFIRB is not aware of any legal authority it may have to direct former members regarding the business associations they may enter after they leave office. At the same time, BCFIRB may have legal remedies to enforce the Code of Conduct which governs all members:

#### **Confidentiality**

16. A member must, during and after the expiry of the member's term, keep confidential all information obtained as a member, and must not disclose that information except as permitted in the governing Act.

June 19, 2019  
Page 3

17. A member shall not, during and after the expiry of the member's term, use confidential information obtained as a member to gain personal profit or as a tip to others unless such information has been made generally available to the public.

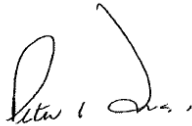
18. A member shall at all times maintain the security of all information and records that are the property of BCFIRB and shall not make use of or reveal such information.

BCFIRB is alive to the reality that this unprecedented situation may give rise to legal issues BCFIRB will have to address in its supervisory or appellate capacities. BCFIRB will address any such issues as they arise with the sole purpose of protecting and preserving the integrity and impartiality of BCFIRB's decision-making process.

As part of that is ensuring appropriate transparency, I confirm in advance that I have no difficulty with the Commission disclosing this memorandum to any party it considers appropriate as part of its agency assessment process.

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

Per:



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Peter Donkers, Chair

cc: Wes Shoemaker, Deputy Minister  
John Les

# Letter from Council to Prokam Enterprises Ltd. and CFP Marketing Corporation



June 20, 2019

File No: 3211.001

**Via Email**

British Columbia Farm Industry Review Board  
PO Box 9129 Stn Prov Govt  
Victoria, BC V8W 9B5

**Attention: Peter Donkers, Chair**

Dear Sir:

**Re: CFP Marketing Corporation Agency application**

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I write in my capacity as counsel to Prokam Enterprises Ltd. ("Prokam") and CFP Marketing Corporation ("CFP"). John Les has forwarded me your letters of yesterday's date to him and Debbie Estell, Chair of the BC Vegetable Marketing Commission ("BCVMC"), in which you raise questions about his involvement as an independent director on the board of CFP in light of his access to certain confidential documents during his term as Chair of BCFIRB and as the presiding member of the panel that heard appeals brought by my clients Prokam and Thomas Fresh from decisions of the BCVMC. While your correspondence was not addressed to me or to my clients, I hope the information in this letter will be helpful in providing context to certain of the matters raised in your letter.

CFP Marketing Corporation

In your correspondence you make reference to an application for an agency license having been made to the BCVMC by "vegetable producer Peter Dhillon (Prokam Enterprises Ltd.)" and to Mr. Les' involvement in that entity. I assume that this was intended to be a reference to Bob Dhillon who is the principal of Prokam and who gave evidence in the hearing of Prokam's appeal before BCFIRB last year. You request that the Commission provide you with a copy of the agency application, including any incorporation documents that have been provided.

Mr. Dhillon and Prokam have not made an application for agency designation. Rather, a new entity -- CFP Marketing Corporation dba Canada Fresh -- of which Mr. Dhillon is one of seven directors, has made an application for agency designation. Enclosed with this letter is a BC Company Summary for CFP. You will see from the summary that CFP was created on April 16, 2019 by way of name change from a numbered company. The seven directors are Surmukh Singh Dhillon (Bob Dhillon's father), Kamaljit ("Bob") Dhillon, Bobby Singh Gill (Bob Dhillon's brother-in-law), John Les, Brian Schwartz, Robin Smith and Ian Sparkes.

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PRACTICE CONDUCTED THROUGH A LAW CORPORATION

The majority of the directors (being Mr. Les, Mr. Schwarz, Mr. Smith and Mr. Sparkes) are not involved with Prokam.

Relationship between Prokam, the appeals and CFP

As you know, I was counsel to Prokam and Thomas Fresh in appeals N1715, N1716, N1718 and N1719 which were heard over 8 days in April, May and June 2018. Mr. Les was the presiding member at the hearing. On February 28, 2019, we received BCFIRB's decision in respect of those appeals. It indicated at paragraph 2 that on November 15, 2018, the appointment of Chair Les was rescinded and that, accordingly, he had not participated in the decision.

The decision provided that certain matters were to be remitted to the BCVMC for reconsideration, including the direction of Prokam to BCfresh. Following the issuance of the Cease and Desist Orders that were the subject of the appeals but prior to the hearing of the appeals, Prokam had made an application to the BCVMC for a producer-shipper license to permit it to market regulated product. BCVMC declined to consider that application until after a decision on the appeals was received. In the interim, Prokam has not produced regulated product.

Following receipt of the decision, Prokam had discussions with other lower mainland vegetable producers who were interested in producing regulated product if they could do so without being required to sell to BCfresh. A group of growers, including Prokam, decided to form a corporation that would make an application for a new lower mainland agency license through which they could sell regulated product.

In March 2019, I contacted counsel for BCVMC on a number of occasions to attempt to set up a meeting between my clients and BCVMC to discuss the reconsideration process in respect of the agency to which Prokam would be directed. Ultimately, the Commission declined to meet with Prokam in favour of a written process. On April 10, I wrote to Commission counsel in respect of the process

“ . . .we understand that there may be an application to approve the establishment of a new lower mainland Agency to which Prokam would, if approved, seek to be directed as an alternative to BCfresh or IVCA. Prokam's position is that the timeline for submissions should include a date by which any application for a new Agency to which Prokam would request to be directed be made so that any such application may be considered together with the other alternatives for Prokam.”

On April 23, the Commission advised that it

“will not entertain submissions from any party concerning the possibility of directing Prokam to an agency that has not yet been approved or designated by the Commission. Any request that might be made by Prokam to transfer to another



agency may only be made in relation to agencies that are approved and designated by the Commission.” (emphasis in original)

On May 9, 2019, as will be returned to below, a group of CFP representatives met with Ms. Etsell and Mr. Solymosi to deliver CFP’s Agency application.

As a consequence of the Commission’s advice that it would not consider Prokam’s submission that it should be directed to CFP, on May 10, Prokam requested that it be granted “a producer-shipper licence on an interim basis until the outstanding Agency approval application is considered”.

The Commission has not communicated a decision in respect of any of the matters under reconsideration to Prokam (or Thomas Fresh) and has recently embarked on a new round of consultation with other stakeholders scheduled to extend at least into July on the matter of Prokam’s agency.

#### Mr. Les’ involvement with CFP

By March 2019, representatives of what would become CFP were starting to work on the application for an agency license. There was a perception that an application for a new lower mainland agency that would compete with BCfresh might be met with some resistance, and CFP wanted to ensure that its application fulfilled all of BCVMC’s requirements. In particular, being mindful of some of the Commission’s and BCFIRB’s criticisms of Prokam and IVCA in the appeals decision, CFP designed its governance structure in a manner that would provide comfort to the Commission and to BCFIRB of CFP’s intention and ability to comply with all applicable regulatory requirements. In order to achieve that objective, CFP wished to identify one or two independent directors who had significant experience and expertise in regulated marketing and could assist it in designing and implementing robust compliance mechanisms.

In early March 2019, I introduced CFP management to Robin Smith, former chair of the Chicken Board who I knew was now doing consulting work. Mr. Smith agreed to assist CFP with putting together its Agency application and to serve as an independent director on its board of directors. As contemplated, he also assisted CFP in designing a governance structure to ensure CFP’s compliance with regulatory requirements. CFP determined that as part of that structure a second independent director should be identified. Mr. Smith suggested Mr. Les might be available and interested in a board role and agreed to contact him to make inquiries. By that time, CFP was aware that Mr. Les had had no role in the decision following the appeals that had been heard almost a year previous. CFP was also aware that it is relatively common in regulated marketing for there to be movement of experienced personnel between different roles and did not consider that it would be out of the ordinary for Mr. Les to consult to an industry participant in the manner contemplated by CFP.

In April 2019, Mr. Les met with CFP representatives to discuss potential involvement as an independent director and in May 2019 he agreed to serve. From CFP's perspective, the involvement of Mr. Smith and Mr. Les as independent directors is anticipated to be of great assistance in ensuring CFP complies with all regulatory requirements in both the application process and ultimately during its operations if its license is granted.

CFP is aware that Mr. Les has confidentiality obligations towards BCfirb as well as in relation to other roles he previously held, including as Solicitor-General for British Columbia. CFP has not received any confidential information from Mr. Les.

CFP Application to BCVMC

As noted above, CFP made its application to BCVMC on May 9. At the meeting with Ms. Etsell and Mr. Solymosi, CFP representatives advised that they were concerned about the confidentiality of the application and asked that only the executive summary (which did not identify the growers who had indicated they wished to market through CFP if approved) be shared with any Commissioner associated with BCfresh. Nevertheless, soon after submission of the application to the BCVMC, one of the growers listed in the application received a call from a BCfresh representative advising that BCfresh was aware they were supporting CFP's application.

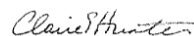
CFP is concerned about the confidential business information contained in its application being shared with BCfresh. In your letter to the BCVMC you asked for a copy of the agency application. I have included a copy with this letter but would request that it be kept confidential from representatives of BCfresh.

As the application was made to BCVMC over a month ago, we trust that BCVMC's process in considering the application has advanced and look forward to hearing from BCVMC in respect of the application shortly.

Yours truly,

Hunter Litigation Chambers

Per:



Claire E. Hunter, Q.C.

cc: Debbie Etsell  
Robert Hrabinsky  
Wes Shoemaker  
Andre Solymosi