

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

**IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
A HEARING REGARDING AN APPARENT “REBATE” SCHEME**

March 11, 2026

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Procedural Chronology

1. On or about July 24, 2025, the British Columbia Vegetable Marketing Commission (the “Commission”) received correspondence from legal counsel for Thomas Fresh Inc. (“Thomas Fresh”), a licensed wholesaler, disclosing a series of transactions involving the purchase of potatoes grown by Prokam Enterprises Ltd. (“Prokam”) and marketed through Okanagan Grown Produce Ltd. (“Okanagan”), for which “rebate” invoices were issued by Thomas Fresh to Sam Enterprises Ltd. (“Sam Enterprises”). Thomas Fresh’s disclosure indicated that:
 - (a) Okanagan issued invoices to Thomas Fresh for the purchase of potatoes grown by Prokam at a price of \$0.46/lb to \$0.48/lb, which Thomas Fresh understood was the mandated minimum price set by the Commission.
 - (b) Thomas Fresh paid the full amount of these invoices to Okanagan.
 - (c) In connection with these invoices, Thomas Fresh would then issue a “rebate” invoice to Sam Enterprises in an amount ranging from \$0.15/lb to \$0.17/lb. The amount of the rebate invoices issued by Thomas Fresh, and paid by Sam Enterprises, directly corresponds to the invoices and amounts issued by Okanagan.
 - (d) Thomas Fresh internally tracked potato orders placed with Okanagan at the net price after accounting for the rebate amount, as opposed to the minimum pricing reflected in the invoices issued by Okanagan.
 - (e) To the best of Thomas Fresh’s knowledge, Okanagan was unaware of the rebate transactions.
2. Those facts raised serious questions about whether the Commission’s minimum pricing requirements may have been circumvented, thereby undermining orderly marketing. Consequently, by Notice of Investigation dated July 31, 2025, the Commission initiated a formal investigation to determine the relevant facts and circumstances. The Notice of Investigation was delivered to Thomas Fresh, Prokam, Okanagan and Sam Enterprises, and directed each to provide certain information and documentation to the Commission.
3. The Commission received responses from each of Thomas Fresh, Prokam, Okanagan and Sam Enterprises. That material was organized into a cohesive package and circulated to the parties, subject to the Commission’s direction that each party should maintain the material in confidence, and that the material should not be disclosed except among the Commission and the parties hereto, their respective

legal advisors, and as otherwise may be authorized or required by the Commission or by law.

4. Based on the information obtained, the Commission had reasonable grounds to believe that Prokam, Sam Enterprises and Thomas Fresh may have engaged in a surreptitious “rebate” scheme that was calculated to circumvent the Commission’s minimum pricing requirements.
5. Further, the Commission had reasonable grounds to believe that Prokam, Sam Enterprises, and Thomas Fresh may have engaged in conduct contrary to the Commission’s General Order, including, but not limited to, the following:
 - (a) Prokam, as a licensed Producer of Storage Crops, was required to market potatoes solely through its designated Agency and at no less than the applicable Commission-ordered minimum price. By participating in transactions that resulted in net returns below the minimum price, Prokam may have directly breached paragraph 16(1)(a) and subsection 4(1) of the General Order.
 - (b) Thomas Fresh, as a licensed Wholesaler, was prohibited from receiving or purchasing Storage Crops other than through an Agency or Producer-Shipper, and was obliged to comply with all Commission Orders. By issuing “rebate” invoices to Sam Enterprises which effectively reduced the price of potatoes below the Commission’s minimum price, Thomas Fresh may have directly breached section 29 and the licensing condition in subsection 4(1).
 - (c) Sam Enterprises, although not directly licensed to market Storage Crops through the Agency system, acted as a conduit for transactions designed to circumvent the minimum price regime. Sam Enterprises participated in transactions that had the substance and effect of undermining the Commission’s minimum price regime, and may therefore be held accountable as an accessory, by aiding, abetting, counselling or procuring breaches of the General Order.
6. On September 22, 2025, the Commission issued a Notice of Hearing to the parties which provided, in part, as follows:

A written and/or oral hearing will be convened before the Commission at a time and place to be communicated to the parties. In the course of the hearing, Prokam, Sam Enterprises, and Thomas Fresh shall be required to show cause why regulatory sanctions should not be imposed against them, including but not limited to:

1. Suspension or cancellation of licence;
2. The imposition of a prohibition against marketing regulated product;
3. The imposition of terms or conditions on licences;
4. The imposition of administrative charges or levies; and
5. Any other order necessary to ensure compliance with the Commission's General Order and/or to protect or promote the orderly marketing of regulated products.

Procedural Directions

The Commission proposes a panel comprised of the following members: Wes Shoemaker (Chair), Craig Evans (Vice Chair), Daphne Stancil (Member), Hugh Reynolds (Secretary), and Kevin Husband (Member). Wes Shoemaker, Craig Evans, and Daphne Stancil are each independent members appointed to the Commission. Hugh Reynolds and Kevin Husband are elected producers representing storage crops. Panel members will receive and review confidential and proprietary information submitted by the parties and are bound by a fiduciary duty owed to the Commission to hold that information in confidence.

Each party is directed to make written submissions to the Commission regarding panel composition and process no later than 4:00 pm, October 6, 2025.

Each Party is entitled to be represented by counsel and to present evidence and submissions in the course of the hearing.

7. On October 31, 2025, the Commission issued Directions Regarding Process to the parties as follows:

In its Notice of Hearing dated September 22, 2025, the British Columbia Vegetable Marketing Commission (the "Commission") invited the participants to make written submissions to the Commission regarding panel composition and process no later than 4:00 pm, October 6, 2025. No submissions were received from any party.

Consequently, the Commission confirms that the panel composition will be as proposed in the Notice Hearing, namely: Wes Shoemaker (Chair), Craig Evans (Vice Chair), Daphne Stancil (Member), Hugh Reynolds (Secretary), and Kevin Husband (Member).

The principal issues to be addressed by the parties are as follows:

1. Did Prokam, Sam Enterprises and/or Thomas Fresh engage in a surreptitious “rebate” scheme calculated to circumvent the Commission’s minimum pricing requirements?
2. In particular, did Prokam, Sam Enterprises, and/or Thomas Fresh engage in conduct contrary to the Commission’s General Order?
 - (a) Did Prokam participate in or facilitate transactions that resulted in a net price for potatoes sold by Okanagan Grown to Thomas Fresh below the minimum price? If so, did Prokam breach paragraph 16(1)(a) and/or subsection 4(1) of the General Order?
 - (b) Did Thomas Fresh issue “rebate” invoices to Sam Enterprises which effectively reduced the price of potatoes below the Commission’s minimum price? If so, did Thomas Fresh breach section 29 and/or subsection 4(1) of the General Order?
 - (c) Did Sam Enterprises act as a conduit for or facilitate transactions designed to circumvent the minimum price regime? Did Sam Enterprises participate in transactions that had the substance and effect of undermining the Commission’s minimum price regime? If so, is Sam Enterprises accountable as an accessory, by aiding, abetting, counselling or procuring breaches of the General Order?
3. Are there any mitigating considerations?
4. Should regulatory sanctions be imposed against Prokam, Sam Enterprises and/or Thomas Fresh? If so, what is an appropriate regulatory sanction?

The issues described above are expressed in slightly broader terms than that which was set out in the Notice of Hearing dated

September 22, 2025. Henceforth, the Notice of Hearing should be read and understood as encompassing that broader characterization.

The panel has directed that the hearing proceed primarily as a written hearing, as follows:

1. Each party is directed to submit to the Commission and to each other party their written submissions addressing the issues described above, on or before 4:00 pm, November 21, 2025.
 2. Each party may submit a reply submission to the Commission and to each other party on or before 4:00 pm, December 5, 2025.
8. Between November 19, 2025 and December 5, 2025, the Commission received submissions from the parties in accordance with its directions of October 31, 2025.
9. On February 9, 2026, the Commission wrote to the parties as follows:

The Commission Panel is writing to invite supplementary written submissions, not to exceed 5 pages, addressing the following matters:

1. The Commission Panel hereby notifies the parties that, in the course of its deliberations, it may take official notice of certain findings of fact and credibility made in previous regulatory proceedings involving Prokam and/or Thomas Fresh between 2017 and 2024. These findings are potentially relevant to the assessment of witness credibility, the evaluation of the defenses raised (including economic duress), and the determination of appropriate regulatory sanctions, if any, under the SAFETI framework. The Commission therefore invites the parties to provide supplementary written submissions regarding the relevance and weight that should be afforded to these past findings, if any, in the present context. For convenience, a schedule of past findings in previous regulatory proceedings is attached.
2. In an email dated September 12, 2024 from Roy Hinchey to Thomas Fresh personnel (also copied to Bob Dhillon), Mr. Hinchey stated: "Our newest owner at Thomas Fresh is Sam Enterprises." This email can be found within the Book of Documents provided by Thomas Fresh at "TFI000389." Did Sam

Enterprises Ltd. (or its directors, officers, or shareholders) ever have a direct or indirect equity interest in Thomas Fresh Inc.? If so: (a) what is the nature of that equity interest? (b) Does that equity interest persist, or if not, when did that equity interest end and under what circumstances?

Submissions must be received by **Thursday, February 19, 2026**. Once received, the Commission will circulate the submissions to the parties. The Commission does not intend to invite responding submissions in the absence of a specific request to make a responding submission from any of the parties, which request must be made within 3 days from the date that the Commission has circulated the submissions.

10. The “schedule of past findings in previous regulatory proceedings” that was provided to the parties is attached hereto as Appendix “A”.
11. Between February 13, 2026 and February 25, 2026, the Commission received submissions from the parties in accordance with its directions of February 9, 2026.

Summary of the Parties’ Positions

Prokam

12. Prokam admits that the rebate arrangement reduced the net price of potatoes but argues that it was not a “willing” participant. Its core defense rests on the following assertions:
 - (a) Economic Duress and Extortion: Prokam alleges it was “extorted” and placed under “economic duress” by Warren Rood, a director and senior employee of Thomas Fresh. Prokam claims that after planting proprietary Thomas Fresh seeds, Mr. Rood demanded a rebate as a “take-it-or-leave-it” condition for purchasing the crop, which Prokam feared would otherwise go to waste.
 - (b) Lack of Secrecy: Prokam asserts that the rebate scheme was not surreptitious and that Sam Enterprises was used only because it had greater liquidity than Prokam at the time. It argues that a failure to proactively disclose the scheme is not tantamount to secrecy and that no such disclosure obligation existed.
 - (c) Market Impact: Prokam contends that because the potatoes were sold into the Alberta market, there was a diminished impact on local British Columbia markets.

- (d) Opposition to Official Notice of Regulatory History: Prokam strongly opposes the Commission taking official notice of prior findings of fact and credibility. Citing *Fouad v. Longman*, 2014 BCSC 785, Prokam argues that evidence from unrelated trials cannot be used to assess current credibility and that doing so would be a “denial of justice.” Prokam further argues that this history constitutes “bad character” or “propensity” evidence that is presumptively inadmissible under the test articulated in *R. v. Handy*, 2002 SCC 56, as its prejudicial effect outweighs any probative value.
- (e) Clarification on Ownership: Prokam asserts that neither Sam Enterprises nor its directors hold any equity interest in Thomas Fresh. It claims that former CEO Roy Hinchey’s email was a mistake, likely mixing up the company names because Prokam’s principal, Bob Dhillon, became a shareholder in August 2024.
- (f) Sanctions: Prokam argues that sanctions are not required against it, because it “will voluntarily undertake not to engage in any such arrangements going forward.” Prokam says that if sanctions must be imposed, “the most appropriate sanction is disgorgement by Thomas Fresh of the equivalent value of the rebates to the Commission.”

Thomas Fresh

- 13. Thomas Fresh concedes that the rebate scheme was contrary to the Commission’s General Orders but it asserts that there are significant mitigating factors:
 - (a) Blame on Former Management: Thomas Fresh argues that the scheme was the work of its former CEO, Roy Hinchey, and former CFO, Ronda Bateman, both of whom have been terminated. It strongly denies that Warren Rood was the “directing mind,” asserting internal records show the scheme was coordinated between the former executives and the Dhillon family.
 - (b) Self-Reporting: Thomas Fresh emphasizes its “prompt and voluntary” self-reporting on July 24, 2025, as a significant mitigating factor.
- 14. Thomas Fresh does not oppose the Commission taking official notice of the scheduled findings of fact and credibility from 2017 to 2024.
- 15. Thomas Fresh argues that Sam Enterprises holds an “indirect” equity interest in the wholesaler by virtue of Bob Dhillon’s shareholdings. Through Dhillon2 Investments Ltd., Mr. Dhillon holds 2,822 Class A common shares, representing approximately 32% of the company. Thomas Fresh also notes that Prokam and Sam Enterprises

operate from the same office premises, and that Sam Enterprises is a family-owned company owned by Mr. Dhillon's parents, Harbans Dhillon and Surmukh Singh.

16. Thomas Fresh argues that no sanctions should be imposed against it given its proactive disclosure.

Sam Enterprises

17. Sam Enterprises challenges the Commission's jurisdiction but provided a response "to preserve goodwill." Its position includes the following:
 - (a) Accessory Liability and Mens Rea: Sam Enterprises admits to being the conduit for the rebates but claims it acted out of "family obligation." It argues that accessory liability should not apply to administrative breaches and that it lacked the necessary *mens rea* (intent) because it was unfamiliar with the minimum price regime and does not deal in regulated products.
 - (b) Ownership Denial: Sam Enterprises denies ever holding any direct or indirect equity interest in Thomas Fresh, characterizing Roy Hinchey's internal email as a mistake. Sam Enterprises also argues that the familial relationships between the principals of Sam Enterprises, Prokam and Dhillon2 Investments Ltd. cannot alone give rise to an "indirect equity interest" held by Sam Enterprises in Thomas Fresh.
 - (c) Limited Context for Regulatory History: Sam Enterprises argues that prior findings involving Prokam or Thomas Fresh should be afforded, at most, "limited contextual weight" and should not be used to determine credibility, liability, or sanctions in this proceeding.
 - (d) Mitigating Circumstances: Sam Enterprises lists five mitigating factors, including that it did not benefit from the transactions, its non-licensee status, and the assertion that Thomas Fresh reported the rebates in bad faith due to an ongoing shareholder dispute.
 - (e) Sanctions: Sam Enterprises argues against sanctions, stating that any such order would be an "unprecedented use of the Commission's authority."

Okanagan

18. Okanagan asserts that it had no knowledge of the rebate transactions. Based on its review of the available documentation, Okanagan concludes that Prokam, Thomas

Fresh, and Sam Enterprises engaged in conduct that clearly circumvented the Commission's General Orders and undermined the integrity of the regulated marketing system.

Issues

19. The Commission must resolve a series of threshold, substantive, and remedial issues, as follows:

Threshold Jurisdictional and Procedural Issues

- (a) Jurisdiction over Sam Enterprises: Does the Commission's authority under the *Natural Products Marketing (BC) Act* and the *British Columbia Vegetable Scheme* extend to Sam Enterprises, a non-licensee that claims to deal only in "unregulated vegetables"?
- (b) Official Notice of Regulatory History: To what extent, if any, should the Commission take official notice of the findings of fact and credibility made in previous regulatory proceedings (2017–2024) involving Prokam and Thomas Fresh?
 - (i) Does the principle in *Fouad v. Longman* prevent the Commission from using prior credibility findings to assess current testimony?
 - (ii) Does the proposed use of historical findings constitute "bad character" or "propensity" evidence that is inadmissible under the *R. v. Handy* test?

Substantive Liability and the Rebate Scheme

- (c) Existence of the Rebate Scheme: Did Prokam, Sam Enterprises, and Thomas Fresh engage in a structured rebate arrangement calculated to circumvent the Commission's minimum pricing requirements?
- (d) Breach of the General Order:
 - (i) Prokam: Did Prokam participate in transactions that resulted in a net price for potatoes below the mandated minimum, thereby breaching paragraph 16(1)(a) and subsection 4(1) of the General Order?

- (ii) Thomas Fresh: Did Thomas Fresh issue “rebate” invoices that effectively reduced the price of potatoes below the minimum price, thereby breaching section 29 and subsection 4(1) of the General Order?
- (e) Accessory Liability of Sam Enterprises: Can Sam Enterprises be held accountable for aiding, abetting, or facilitating breaches of the General Order? Does administrative accessory liability require proof of actual knowledge (*mens rea*) of the Commission’s minimum pricing orders?

Evaluation of Defenses and Other Fact-Finding

- (f) The Defense of Economic Duress: Should the Commission accept Prokam’s assertion that it was “extorted” into the rebate arrangement by Thomas Fresh due to the threat of crop waste, or was the scheme a partnership of mutual economic gain?
- (g) Identification of the “Directing Mind”: Was the arrangement orchestrated by former Thomas Fresh executives (Roy Hinchey and Ronda Bateman) as a “rogue” operation, or was it directed by current management, specifically director Warren Rood?
- (h) Corporate Interconnectivity and Ownership: What is the nature of the relationship between the parties, and specifically, did Sam Enterprises hold an equity interest in Thomas Fresh during the period of the rebate scheme?

Sanctions and Remedial Orders

- (i) Mitigating and Aggravating Factors:
 - (i) Does Thomas Fresh’s self-reporting on July 24, 2025, constitute a significant mitigating factor, or was it a tactical move related to a shareholder dispute?
 - (ii) Does the parties’ regulatory history serve as an aggravating factor that necessitates more severe deterrence?
- (j) Appropriate Regulatory Sanctions: If liability is established, what sanctions are “Strategic”, “Fair”, and “Effective” under the SAFETI framework to ensure future compliance and protect the orderly marketing of regulated products?

Analysis

Jurisdiction over Sam Enterprises

20. In a letter dated August 29, 2025, Sam Enterprises claimed that it “is not engaged in the marketing of any regulated products” and asserted “the Commission does not have the power to investigate non-regulated producers.”
21. While it is true that the Commission’s General Order imposes many rules and requirements in relation to the production and marketing of “Greenhouse Crops”, “Processing Crops” and “Storage Crops”, the Commission’s jurisdictional reach is not limited to those who engage in the production of such crops.
22. Pursuant to section 4 of the *British Columbia Vegetable Scheme*, the Commission is vested with full authority concerning the promotion, control and regulation, in any respect, of the production, transportation, packing, storage and marketing of a “regulated product.” “Regulated Product” is defined in the Scheme as “vegetables, and includes (a) potatoes, and (b) strawberries intended expressly for manufacturing purposes, grown in the Province.”
23. Consequently, the Commission concludes that Sam Enterprises Ltd. is not exempted from the Commission’s statutory oversight merely because the vegetables marketed by it are not “Greenhouse Crops”, “Processing Crops” or “Storage Crops” as defined in the Commission’s General Order.
24. Furthermore, the Commission observes that jurisdictional characterization must look to the substance of the activity rather than the formal label of the actor. If Sam Enterprises acted as the financial conduit for transactions involving the sale and movement of potatoes (a regulated “Storage Crop”), it was effectively participating in the marketing of those crops. The mere fact that Sam Enterprises is not a licensed producer or wholesaler does not permit it to facilitate the trade of Storage Crops outside the oversight of the Commission, as such an interpretation would allow the minimum pricing regime to be circumvented simply by involving a non-licensee in the payment stream.

Official Notice of Regulatory History

Introduction and Procedural Context

25. On February 9, 2026, the Commission notified the parties of its intention to take official notice of certain findings of fact and credibility made in prior regulatory proceedings involving Prokam and Thomas Fresh between 2017 and 2024. This

history, summarized in Appendix “A”, documents a series of “backdoor activities” and deliberate challenges to the orderly marketing system.

26. Thomas Fresh does not oppose the Commission taking official notice of these findings. Sam Enterprises argues the findings should be afforded only “limited contextual weight.” Prokam, however, strongly opposes the use of this history, asserting that prior credibility findings are inadmissible under *Fouad v. Longman*, 2014 BCSC 785 and that the history constitutes prohibited “propensity evidence” under the test in *R. v. Handy*, 2002 SCC 56.

The Legal Framework for Official Notice in Administrative Proceedings

27. As a threshold matter, the Commission notes that administrative tribunals are not bound by the strict laws of evidence that apply in a court of law. Administrative bodies are “masters of their own procedure”¹. Furthermore, the Supreme Court of Canada has further clarified that while courts may exclude relevant evidence under technical rules, these rules are not binding on boards that must instead ensure the information upon which they act is “reliable and persuasive.”² This flexibility is essential for a specialized regulator to fulfill its mandate. In the specific context of the BC vegetable industry, the Commission must be permitted to consider the cumulative record of a licensee’s conduct to ensure “Strategic” and “Effective” regulation.

Admissibility of Prior Credibility Findings

28. Prokam relies on *Fouad v. Longman*, 2014 BCSC 785 for the proposition that a witness’s evidence in an “unrelated trial” cannot be used to assess credibility in a current proceeding. The Commission finds this reliance fundamentally flawed in the administrative context. The proceedings summarized in Appendix “A” are not “unrelated.” On the contrary, they are the formal regulatory record of these specific parties within the very system the Commission is charged with protecting.
29. The principle in *Fouad* is designed for generalist judges who cannot know the factual foundation of another judge’s assessment. This does not apply to an expert regulator taking official notice of its own past decisions or those of its oversight body, the BCFIRB. Furthermore, the Commission adopts the principle of non-compartmentalization of credibility as articulated in *Outram v. College of Massage Therapists of Ontario*, 2025 ONSC 4201 and *Aslam v. Ontario College of Pharmacists*, 2023 ONSC 2549. These cases establish that credibility should be evaluated holistically. If a licensee has an established record of being an “evasive and untruthful

¹ *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560

² *Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75

witness” regarding their marketing obligations, that record is a legitimate factor in determining the weight to be given to their current, uncorroborated testimony.

The Application of *R. v. Handy* and Propensity Evidence

30. Prokam argues that the regulatory history is “bad character” evidence and therefore presumptively inadmissible under *R. v. Handy*, 2002 SCC 56. The Commission disagrees. The *Handy* test is a rigorous standard in criminal law that is designed to prevent a person from being convicted just for being a “bad person.” In the administrative law context, evidence of past conduct, especially evidence of compliance with the Commission’s orders and associated behaviour, is admissible where its probative value outweighs its prejudicial effect.
31. The Commission finds that the probative value of the regulatory history in this proceeding is high for the following reasons:
 - (a) Rebuttal of Specific Defenses: Prokam has raised the defense of “economic duress” and “extortion.” The history of Mr. Dhillon as a “sophisticated businessman” who “knew exactly what he was doing” is highly relevant to evaluating whether he was truly a helpless victim of extortion.
 - (b) Evidence of a System or Pattern: The 2025 rebate scheme, which is characterized by “outside the system” invoicing and “sensitive” communications, mirrors the “backdoor activities” identified by the Commission and BCFIRB in 2017. This suggests a consistent *modus operandi* designed to thwart Commission authority.
 - (c) Specific Relevance to Deterrence: To be “Strategic”, “Fair” and “Effective,” the Commission must know if it is dealing with a first-time offender or a chronic violator when determining sanctions.

Conclusion on Official Notice

32. The Commission has satisfied the requirements of procedural fairness by providing the parties with explicit notice on February 9, 2026 of the specific findings it intended to notice, and by providing a full opportunity for written submissions. The parties have had a “meaningful and fair opportunity” to address the weight and relevance of this history.
33. The Commission concludes that it is both fair and necessary to take official notice of the findings of fact and credibility set out in Appendix “A”. These findings will be used to provide context, to weigh the credibility of the defenses raised, and to ensure that

any sanctions imposed are sufficient to achieve the deterrent goals of the SAFETI framework. The Commission emphasizes that regulatory history is not a substitute for evidence of the current breach, but rather a necessary lens through which to evaluate the parties' conduct and testimony.

The Rebate Scheme

Factual Findings on the Operation of the Scheme

34. Based on the disclosure provided by Thomas Fresh and the subsequent documentary evidence obtained during the investigation, the Commission finds that Prokam, Sam Enterprises, and Thomas Fresh engaged in a systematic rebate arrangement calculated to circumvent mandated minimum pricing.
35. The mechanics of the scheme involved a two-tier invoicing process:
 - (a) Primary Audit Trail: Okanagan issued invoices to Thomas Fresh for potatoes grown by Prokam at the mandated minimum price of \$0.46/lb to \$0.48/lb. Thomas Fresh paid the Okanagan invoices in full.
 - (b) Shadow Rebates: Thomas Fresh simultaneously issued secondary "rebate" invoices to Sam Enterprises.
 - (c) Net Pricing Target: These rebates, ranging from \$0.15/lb to \$0.17/lb, were specifically calculated to reduce the wholesaler's actual cost to a fixed net price of \$0.31/lb.
36. The target net price of \$0.31/lb was applied regardless of the potato variety, size, or grade. This total disregard for regulated pricing demonstrates a profound departure from the principles of orderly marketing.

Scale and Financial Scope

37. The Commission accepts the financial analysis provided by Thomas Fresh, which is corroborated by internal accounting records and remains undisputed by the other parties. The evidence establishes that:
 - (a) Approximately \$500,000.00 worth of potatoes were sold under this arrangement.
 - (b) The effective rebate rate applied was between 35% and 37%.

38. The Commission accepts the midpoint estimate of 36% and finds that the total aggregate amount of rebates paid, representing the loss of value to the regulated system, was \$180,000.00.

The Impact on Orderly Marketing and the “Alberta Defense”

39. Prokam and Sam Enterprises argue that because the potatoes were sold into the Alberta market, there was a “diminished impact” on local British Columbia markets and the scheme may have benefited consumers.
40. The Commission rejects these arguments. The primary objective of the Commission is to maximize net producer returns and prevent price erosion. A secret rebate scheme in an export market is no less damaging than one occurring locally. Undercutting mandated prices in Alberta undermines the collective bargaining power of the designated agency system and creates an uneven playing field. It encourages a “race to the bottom” that harms all BC producers, regardless of where their crop is eventually consumed.
41. The destination of the potatoes provides no regulatory excuse. To accept the “Alberta Defense” would signal that the General Order can be ignored so long as the product leaves the province. This would effectively render the Commission’s price-setting authority a nullity.

The Surreptitious Nature of the Arrangement

42. The Commission concludes that the parties acted with a high degree of deliberate secrecy. This is evidenced by internal Thomas Fresh communications:
- (a) Avoidance of Text Records: In an email to Thomas Fresh staff dated July 16, 2024, former CEO Roy Hinchey established a strict “boundary” regarding BC partners. He explicitly ordered that any “potato conversation” must be conducted live by phone, stating, “They will not be having conversations over text as sometimes texts fall into the wrong hands”. (Sam Enterprises’ Book of Documents, p. 1 - 2);
- (b) Extra-Systemic Invoicing: In an email from CFO Ronda Bateman to Bob Dhillon and Bob Gill dated September 25, 2024, Ms. Bateman indicates that she will send the rebate invoices “outside of the system to be cognizant of the sensitive nature of the information.” (Sam Enterprises’ Book of Documents, p. 3 - 4);

- (c) Shadow Accounting: The internal Thomas Fresh document titled “BC Agent – Sam Enterprises Process” directed that any variance between the Commission-mandated price and the actual \$0.31/lb cost be coded to “5125-xxx” (Rebates) and handled via separate invoices to Sam Enterprises rather than being reflected in the primary Okanagan Grown audit trail. (Thomas Fresh’s Book of Documents, p. 1459).

- 43. The Commission concludes that these steps were purposeful measures taken to hide the existence of the rebate scheme from Okanagan and from the Commission. This sophisticated level of financial “papering” confirms that the parties possessed full knowledge that their actions were contrary to the regulatory framework.

Breach of the General Order

- 44. Having established the existence and operation of the rebate scheme, the Commission must now determine whether this conduct constitutes a breach of the specific regulatory requirements set out in the General Order.

- 45. The Commission finds that Prokam committed the following breaches:

- (a) Unauthorized Marketing [Paragraph 16(1)(a)]: Licensed Producers are prohibited from marketing storage crops “except to... the Producer’s designated Agency.” By entering into a private financial arrangement with the wholesaler to achieve a specific net price, Prokam co-opted the agency’s role and effectively marketed the product directly to Thomas Fresh. This bypasses the mandatory marketing system intended to protect the industry from price-cutting.
- (b) Breach of Licence Condition [Subsection 4(1)]: It is a mandatory condition of every licence that the holder “complies with all applicable orders of the Commission from time to time in force.” This includes minimum pricing orders. By participating in transactions that reduced the price payable by Thomas Fresh to \$0.31/lb, Prokam failed to comply with the Commission’s pricing orders, thereby breaching its basic licensing obligations.

- 46. Thomas Fresh, as a licensed wholesaler, is similarly bound by the General Order. The Commission finds that Thomas Fresh committed the following breaches:

- (a) Unauthorized Receipt of Product [Section 29]: Wholesalers are prohibited from receiving or purchasing Storage Crops “except from an Agency or Producer-Shipper.” While the potatoes were technically invoiced by Okanagan, the “purchase” was in reality a private transaction between

Thomas Fresh and the Dhillon family entities. By using the agency merely as a passthrough for a private, sub-minimum-price deal, Thomas Fresh violated the restriction on how wholesalers must source regulated product.

- (b) Breach of Licensing Obligations [Subsection 4(1)]: Like the producer, the wholesaler is required to comply with all Commission orders as a condition of its licence. The issuance of shadow “rebate” invoices was a deliberate mechanism used to circumvent the Commission’s minimum price regime.

Liability of Sam Enterprises

- 47. For the reasons that follow, the Commission finds that Sam Enterprises is liable for the circumvention of the General Order as an accessory who aided and abetted the breaches committed by Prokam and Thomas Fresh.
- 48. Sam Enterprises argues that the concept of “party liability” (aiding and abetting) is a creature of criminal and quasi-criminal law and does not extend to administrative regulatory rules. This argument relies on a formalistic distinction that does not align with the broad protective mandate of the *Natural Products Marketing (BC) Act*. Administrative oversight could be rendered toothless if a regulator could not reach the affiliates and conduits used by licensees to facilitate a breach.
- 49. Sam Enterprises relies on *Salt Spring Island Local Trust Committee v. Westcoast Vacations Inc.*, 2012 BCSC 1590 to argue that assisting a person to breach a regulatory enactment is fundamentally different from assisting a person to commit a crime. However, the *Salt Spring Island* case is distinguishable on two grounds:
 - (a) In *Salt Spring Island*, the defendant operated a website hosting advertisements for third parties. In the present case, Sam Enterprises was a direct and active participant in a sophisticated financial arrangement specifically designed to “paper” over a regulatory violation.
 - (b) Unlike a municipal zoning bylaw, the Commission operates a comprehensive regulatory scheme. To hold that the Commission can only sanction the “direct” parties while being powerless against an affiliate used to launder the illegal rebate could render the minimum pricing regime effectively unenforceable. At a minimum, this would provide those who wish to hide their illicit activities from the Commission with the means to do so.
- 50. Sam Enterprises also asserts that aiding and abetting liability requires “actual knowledge” of the circumstances constituting the offence, citing *R. v. Helsdon*, 2007 ONCA 54. It claims that it acted out of “family obligation” and lacked specific

knowledge of the Commission's minimum pricing orders. However, regulatory infractions are not akin to criminal offences. While criminal "party liability" under s. 21(1)(b) of the *Criminal Code* requires a "purpose" or specific intent, administrative regimes typically do not unless the enactment expressly uses words like "wilfully" or "knowingly".

51. Nevertheless, even if the Commission adopted an "actual knowledge" standard for accessories, the evidence supports a finding that Sam Enterprises possessed such knowledge:
 - (a) The rebate invoices issued to Sam Enterprises were not random; they were meticulously calculated to reduce the agency price (\$0.46-\$0.48/lb) down to a specific net cost of \$0.31/lb.
 - (b) Internal emails from Thomas Fresh explicitly referenced the "sensitive nature" of the rebate invoices and directed that they be handled "outside of the system". This indicates that Sam Enterprises knew that the transactions were not "ordinary course" business favors.
 - (c) Sam Enterprises is owned by the parents of Bob Dhillon (Prokam's principal) and operated by his brother-in-law and son.
52. The claim that Sam Enterprises, an entity deeply entwined with a "rogue producer" and a sophisticated wholesaler, was "unaware" of the existence of minimum pricing is not a tenable explanation. Given the sophisticated nature of the rebate scheme, which mirrors past "backdoor activities" identified by the BCFIRB in the 2017-2019 proceedings, the panel concludes that Sam Enterprises acted with the intent to facilitate a circumvention of the General Order.
53. In summary, the Commission rejects Sam Enterprises' attempts to apply restrictive criminal law doctrines to a flexible administrative environment. In addition, the evidentiary record establishes that Sam Enterprises was a knowing participant in the price erosion scheme. The Commission therefore finds that Sam Enterprises is accountable as an accessory, by aiding and abetting breaches of the General Order.
54. In reaching this conclusion, the Commission further observes that by participating in the sale of regulated Storage Crops, Sam Enterprises' conduct was functionally indistinguishable from the activities reserved for an Agency or a Wholesaler under the regulatory scheme. While the Notice of Hearing focused on accessory liability to the primary breaches committed by Prokam and Thomas Fresh, the evidence of Sam Enterprises' active role in the invoicing and payment stream suggests that it was, in effect, operating in a capacity that would require a valid licence under subsection 3(1)

of the General Order. Even though the Commission does not rely on subsection 3(1) as an independent basis for sanction in this proceeding, the fact that Sam Enterprises' actions mirrored those of a regulated marketing entity further justifies the necessity of bringing its conduct within the Commission's remedial oversight.

Evaluation of Defenses and Other Fact-Finding

The Defense of Economic Duress

55. Prokam admits its participation in the rebate scheme but asserts a defence of economic duress. It alleges that after it had already planted proprietary Thomas Fresh seeds, Mr. Rood issued a "take-it-or-leave-it" demand for a rebate as a condition for purchasing the crop. Prokam claims it was "extorted" into the arrangement because it feared the crop would otherwise go to waste.
56. A leading authority on economic duress is *NAV Canada v. Greater Fredericton Airport Authority Inc.*, 2008 NBCA 28 (CanLII). To establish economic duress, Prokam must prove:
 - (a) That the rebate was extracted as a result of pressure; and
 - (b) That Prokam had "no reasonable alternative" but to agree to the rebate scheme.
57. If these conditions are met, the Commission must then evaluate whether Prokam protested at the time or took reasonable steps to disaffirm the arrangement as soon as possible.
58. The Commission finds Prokam's narrative of extortion to be fundamentally inconsistent with the corporate structure of the parties. Thomas Fresh's supplementary submission confirms that Bob Dhillon, the principal of Prokam, is not merely a minor stakeholder, but one who owns approximately 32% of the common shares of Thomas Fresh through Dhillon2 Investments Ltd. It is conceptually difficult to accept that a sophisticated businessman like Mr. Dhillon, who BCFIRB has previously noted "knew exactly what he was doing", was "extorted" by a director (Mr. Rood) of a company in which Mr. Dhillon himself holds a one-third interest. The corporate interconnectivity suggests a collaborative financial maneuver rather than the coercion of a vulnerable farmer.
59. Even if the Commission accepted that pressure was applied, Prokam fails the second branch of the *NAV Canada* test. Prokam operates within a highly structured regulated market. If a producer is being pressured by a wholesaler to break the law, the

“reasonable alternative” is not to engage in a secret shadow-invoicing scheme; it is to seek the protection and intervention of the regulator. Prokam had at least two viable alternatives to the rebate scheme:

- (a) Reporting the “extortion” to the Commission immediately; or
 - (b) Seeking the assistance of its designated agency, Okanagan Grown Produce Ltd.
60. Prokam did neither of these. Instead, it facilitated a secret financial arrangement through Sam Enterprises, an entity owned by Mr. Dhillon’s parents, specifically designed to keep the transactions “outside of the system.”
61. The Commission also notes that there is no corroborative evidence that Prokam accommodated the rebate payments “under protest.” Furthermore, Prokam took no steps to disaffirm the arrangement or report it until after Thomas Fresh had voluntarily self-reported the records to the Commission on July 24, 2025. A party seeking relief from duress must act promptly to set the arrangement aside. A year of quiet participation while enjoying market access is inconsistent with a “coerced will.”
62. Applying the holistic approach to credibility mandated by *Outram v. College of Massage Therapists of Ontario*, 2025 ONSC 4201 and *Aslam v. Ontario College of Pharmacists*, 2023 ONSC 2549, the Commission also finds that Mr. Dhillon’s uncorroborated claim of extortion is not believable. His established history of providing “evasive and untruthful” testimony in previous proceedings involving this Commission informs the weight given to his current assertions.
63. The Commission concludes that the rebate scheme was not the result of economic duress but was a partnership of mutual economic gain. Thomas Fresh secured a supply of potatoes below the minimum price, and Prokam secured a guaranteed market for its crop by undercutting other producers. The defence of economic duress is therefore rejected.

Identification of the “Directing Mind” within Thomas Fresh

64. Prokam alleges that the rebate arrangement was directed by Warren Rood, a director and senior employee of Thomas Fresh. Thomas Fresh, on the other hand, argues that the scheme was the work of its former CEO, Roy Hinchey, and former CFO, Ronda Bateman, both of whom have been terminated. It strongly denies that Warren Rood was the “directing mind,” asserting that internal records show that the scheme was coordinated between the former executives and the Dhillon family.

65. The Commission finds that Roy Hinchey and Ronda Bateman were the directing minds of Thomas Fresh during the relevant period, at least with respect to the rebate scheme. As CEO and CFO, they held the highest executive authority within the company. Significantly, their intent to circumvent the General Order is explicitly reflected in their communications. In particular:
- (a) Roy Hinchey established the policy of phone-only communication to ensure that "texts [do not fall] into the wrong hands," showing a high-level strategic decision to avoid regulatory detection.
 - (b) Ronda Bateman directed that the rebate invoices be handled "outside of the system" to hide the "sensitive nature of the information," demonstrating control over the financial reporting and compliance infrastructure of the corporation.
66. The Commission rejects Prokam's assertion that Warren Rood was the primary orchestrator of the rebate scheme. While Mr. Rood was a shareholder, there is a lack of evidence to corroborate the claim that he was the primary orchestrator of the scheme. Internal Thomas Fresh records instead show the coordination occurring between the former executives and the Dhillon family.
67. In addition, Prokam's assertion should be assessed according to the holistic approach mandated by *Outram*. Consequently, the Commission may be informed by Mr. Dhillon's established history of being an "evasive and untruthful witness" in prior proceedings. His uncorroborated account of Mr. Rood's involvement is self-serving and inconsistent with the documentary evidence. Accordingly, the Commission finds that Mr. Rood was not a directing mind of Thomas Fresh in relation to the rebate arrangement.

Corporate Interconnectivity and Ownership

68. The relationship between the parties is not that of arm's length commercial actors, but a deeply entwined family and corporate ecosystem. The evidence establishes that Bob Dhillon, the directing mind of Prokam, held 2,822 Class A common shares in Thomas Fresh through Dhillon2 Investments Ltd., representing approximately 32% of the issued and outstanding shares. Furthermore, Sam Enterprises, the conduit for the shadow rebates, is owned by Mr. Dhillon's parents, and Prokam and Sam Enterprises operate from the same office premises.
69. The Commission finds there is insufficient evidence to conclude that Sam Enterprises Ltd. held a direct or indirect equity interest in Thomas Fresh during the relevant period. While Roy Hinchey's September 12, 2024 email refers to Sam

Enterprises as Thomas Fresh's "newest owner," the Commission concludes that this was likely a technical error arising from the familial connections between Prokam and Sam Enterprises.

Sanctions and Remedial Orders

Mitigating and Aggravating Factors

70. The Commission must determine the weight to be afforded to various mitigating and aggravating considerations when determining appropriate sanctions.
71. Thomas Fresh emphasizes its "prompt and voluntary" self-reporting on July 24, 2025, as a significant mitigating factor. While self-reporting is generally viewed favorably, the Commission must evaluate the motivation behind it. Prokam and Sam Enterprises assert that the disclosure was made in "bad faith" as a tactical move in an ongoing dispute between Thomas Fresh and Mr. Dhillon. However, even if the disclosure was strategically timed, the Commission finds that it did provide the primary evidentiary foundation for this investigation, and it regards Thomas Fresh's self-reporting as a significant mitigating factor.
72. Furthermore, the termination of Mr. Hinchey and Ms. Bateman is another significant component of Thomas Fresh's mitigation strategy. The Commission considers the removal of the specific individuals responsible for the breach as a compelling mitigating factor. These actions serve as evidence of a positive behavior shift and the establishment of a more ethical corporate culture, which can reduce the need for specific deterrence against the corporation itself. However, while the terminations are an indicator of remorse and a desire to reform, they cannot legally absolve the corporation of the liability incurred while those individuals were its "directing minds."
73. Prokam argues that sanctions against it are unnecessary because it will "voluntarily undertake" not to engage in any such arrangements going forward. Given Prokam's extensive and relevant regulatory history, the Commission finds that a mere voluntary undertaking is an insufficient response to a systemic and surreptitious breach.
74. Sam Enterprises advances five specific mitigating circumstances, including its non-licensee status and the claim that the effective lower price may have benefited consumers. The Commission rejects each of the mitigating circumstances advanced by Sam Enterprises. As previously determined, the destination (Alberta) provides no regulatory excuse, and price erosion harms the integrity of the provincial scheme as a whole. Furthermore, Sam Enterprises' role as a "family conduit" for \$180,000 in shadow rebates displays active participation that outweighs its claim of being "unfamiliar" with the regime.

75. The most significant aggravating factor in this proceeding is the parties' extensive and repeated regulatory history (2017 - 2024), summarized in Appendix "A". This history demonstrates a persistent pattern of "backdoor activities" and a deliberate intent to "thwart Commission authority." The BCFIRB has previously identified Mr. Dhillon as an "evasive and untruthful witness" who "knew exactly what he was doing." The use of a complex financial arrangement involving shadow invoices sent "outside of the system" to hide an impermissible net price confirms a high degree of intentionality. Under the SAFETI principles, particularly "Strategic" and "Effective" regulation, a repeated course of conduct by sophisticated parties requires a robust sanction that provides meaningful specific and general deterrence.

Appropriate Regulatory Sanctions

76. Sanctions in a regulated marketing environment are designed to be protective and preventative rather than punitive. To ensure the integrity of the orderly marketing system, the Commission must apply the SAFETI principles to arrive at orders that provide both specific and general deterrence. In determining the fit and proportionate response to the proven breaches, the Commission is guided by the necessity of sending a clear signal to the industry that surreptitious circumvention of the minimum pricing regime carries substantial consequences.
77. The Commission considers the rebate scheme at issue to be an egregious violation of the regulatory compact. By deliberately engineering a shadow-invoicing system to facilitate sales below the mandated minimum price, the parties engaged in a calculated assault on the price-setting integrity of the Storage Crop industry. Such surreptitious conduct, involving the movement of approximately \$500,000.00 worth of regulated product "outside of the system," threatens to destabilize the collective bargaining power of all British Columbia producers. The gravity of this breach is further compounded by the high degree of sophistication and concealment employed, which demonstrates a profound disregard for the Commission's authority and orderly marketing principles.
78. The Commission finds that the aggregate rebates paid to Thomas Fresh (approximately \$180,000.00) are a reasonable approximation of the losses incurred by the industry as a result of the rebate scheme. These rebates represent the value by which the regulated minimum price was eroded. Pursuant to paragraph 11(1)(o)(iii) of the *Natural Products Marketing (BC) Act*, the Commission has the authority to impose a charge to recover such losses.
79. The Commission concludes that this charge to recover industry losses should be imposed upon Thomas Fresh, as it was the licensee that most directly realized the benefit of the reduced price by way of the rebate payments received by it. Pursuant to paragraph 11(1)(o)(iii) of the *Natural Products Marketing (BC) Act*, the Commission

hereby imposes a charge against Thomas Fresh in the amount of \$180,000.00 to recover the losses incurred by the industry. This charge must be paid within 30 days from the date of this decision.

80. In addition, the Commission has the authority pursuant to paragraph 11(1)(o)(ii) of the Act to impose a charge to recover its expenses associated with the investigation and hearing of this matter. The Commission is of the view that the Commission's expenses in connection with this matter, including legal fees on a solicitor and own client basis, should be recovered. As at this date, the Commission's total expenses incurred in connection with this matter amount to \$36,626.03.
81. Pursuant to its discretion to ensure "Accountable" and "Effective" regulation, the Commission directs that the total amount of the expenses incurred by the Commission be apportioned among Prokam, Thomas Fresh, and Sam Enterprises. This apportionment is based on the relative culpability of the parties: Prokam, who secured market access by undercutting the mandated price; Thomas Fresh as the wholesaler whose directing minds orchestrated the shadow-invoicing process; and Sam Enterprises as the active family conduit whose participation was essential to the scheme's surreptitious execution. Consequently, charges are imposed against those parties, payable within 30 days from the date of this decision, as follows:
 - (a) Prokam (45%) - \$16,481.71;
 - (b) Thomas Fresh (45%) - \$16,481.71; and
 - (c) Sam Enterprises (10%) - \$3,662.61.
82. Regarding the status of Thomas Fresh's Wholesaler licence, the Commission wishes to be clear: but for the significant mitigating factors identified (specifically the prompt self-reporting and the termination of Mr. Hinchey and Ms. Bateman), the licence would have been in immediate jeopardy of suspension or cancellation. However, in light of these mitigating circumstances, the Commission is not inclined to impose a licence suspension or cancellation at this time.
83. While financial payment removes impermissible gains, it does not provide an adequate "risk premium" to deter repeat offenders. The Commission views the conduct of Prokam and its principal, Bob Dhillon, with extreme gravity.
84. It is a significant aggravating factor that Prokam engaged in this sophisticated rebate scheme while Mr. Dhillon was already subject to a March 2024 BCFIRB order barring him from being involved with a designated agency or receiving a producer-shipper license for 24 months. That order was intended as a period of reflection and

rehabilitation following findings of bad faith and reckless conduct. The fact that Prokam, within months of that bar, initiated a new and surreptitious financial arrangement via a related party to “thwart Commission authority” demonstrates that Prokam remains a “rogue producer” for whom standard remedial orders are insufficient.

85. To achieve meaningful specific deterrence and to protect the orderly marketing of potatoes in the Province, the Commission hereby suspends Prokam’s producer license for a period of five (5) years, effective immediately. This suspension is necessary to separate a chronic violator from the regulated system and to satisfy the Strategic objective of maintaining industry stability. During the period of suspension, Mr. Dhillon shall also be prohibited from applying for any licence or other regulatory privilege from the Commission, whether in his own name or through association with another person or entity. At the conclusion of this period, should Prokam choose to re-enter the industry, it will be required to reapply for a license. The Commission will decide at that time under what specific terms or conditions such re-entry may be permitted.
86. The Commission further orders that Prokam’s delivery allocation is rescinded, effective immediately. Pursuant to subsection 11(3) of the General Order, the Commission has express discretion to retract Delivery Allocation where doing so promotes orderly marketing. This rescission is permanent. However, Prokam may apply for new delivery allocation if it chooses to re-enter the industry in the future (after 5 years), subject to the successful re-issuance of a producer license and any re-entry conditions imposed by the Commission.
87. These sanctions are proportionate to the systemic harm caused by the parties’ conduct. The rebate scheme was not an isolated error but a coordinated effort to bypass the marketing system led and coordinated by an agency, the means by which stability in the BC vegetable industry is attained. By imposing these orders, the Commission signals that those who orchestrate “outside the system” invoicing to avoid regulatory oversight will be held fully accountable.

SAFETI

88. It is the Commission’s considered view that its decision reflects a principles-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the "SAFETI" principles:
 - (a) Strategic: Being "Strategic" requires the Commission to look at the long-term impact of its decisions on the industry. Identifying "rogue producers" based on

a multi-year history of violations is a strategic necessity for protecting the integrity of the orderly marketing system.

- (b) **Accountable:** Being “Accountable” means holding parties responsible for their regulatory conduct. A party that repeatedly engages in surreptitious schemes must be held to a higher standard of scrutiny.
- (c) **Fair:** “Fairness” is not a one-way street. While the Commission must be fair to Prokam, Sam Enterprises and Thomas Fresh, it must also be fair to the vast majority of producers and wholesalers who comply with applicable regulatory requirements.
- (d) **Effective:** The decision is effective because it removes the financial incentive for circumvention through disgorgement of rebates and ensures future compliance by suspending Prokam’s licence.
- (e) **Transparent:** The Commission’s process has been clearly articulated to the participants.
- (f) **Inclusive:** “Inclusivity” requires that the interests of all producers are considered. If producers circumvent their designated agency by engaging in a rebate scheme, the orderly marketing system is threatened.

89. Any person aggrieved or dissatisfied with the decisions herein may appeal these decisions to the BCFIRB within 30 days from the date hereof.



Wes Shoemaker, Chair

Appendix “A” – Previous History (Prokam and Thomas Fresh)

1. In 2017, the Commission became aware that Prokam had planted potatoes far in excess of its delivery allocation and without an approved marketing plan from its then agency, IVCA.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 22

2. 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.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 28

Allegations Review Decision (BCFIRB, July 14, 2022), par. 98

3. The Commission went on to hold a written “show cause” hearing to consider whether the cease and desist orders should be upheld.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 29

Allegations Review Decision (BCFIRB, July 14, 2022), par. 102

4. On December 22, 2017, the Commission made its decision on the show cause hearing, upholding the cease and desist orders. The Commission’s ultimate determination was that Prokam’s principal, Bob Dhillon, had 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 at prices below the Commission’s minimum pricing. Though the impugned transactions were “papered” through IVCA, it was the Commission’s view that IVCA was largely unaware of these “backdoor activities”.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 30

Allegations Review Decision (BCFIRB, July 14, 2022), par. 108

5. Ultimately, the Commission concluded that Prokam required a “hands-on” approach to ensure orderly marketing, and it therefore directed Prokam to market its production through BCfresh.

Commission Decision dated December 22, 2017

6. Prokam and Thomas Fresh appealed the Commission’s decision to the BCFIRB. In its February 28, 2019 decision, the BCFIRB largely upheld the Commission’s findings. The BCFIRB panel was satisfied that “the conduct of Prokam and/or its officers was not beyond reproach.” BCFIRB also found that:

[a]ll three parties [IVCA, Prokam and Thomas Fresh] had something to gain. IVCA wanted the tonnage fees, Prokam wanted the early market (periods A and B) for its potatoes to grow DA, Thomas Fresh wanted a cheap supply of premium potatoes to take to the market.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 34 and 52

Allegations Review Decision (BCFIRB, July 14, 2022), par. 116

7. Among other things, the BCFIRB also made the following findings:
 - (a) Prokam and IVCA made a “calculated decision” not to provide a business plan to the Commission for new production and intentionally avoided meeting with the Commission to explain their intentions.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 71

- (b) Prokam and IVCA failed to meet their obligations under the General Orders to obtain Commission authorization before producing, shipping, and marketing in excess of DA.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 73

- (c) Prokam grew and shipped Kennebec potatoes without any DA, in violation of the regulatory framework.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 26, 73 and 75

- (d) Prokam’s principal, Bob Dhillon, participated in decisions specifically designed to “thwart Commission authority”.

Prokam et. al. v. BCVMC (BCFIRB, February 28, 2019, N1715, N1716, N1718, N1719, N1802), par. 23

- 8. Ultimately, the BCFIRB directed the Commission to reconsider certain remedial aspects of its orders (such as the assignment to BCfresh and specific licensing terms). In accordance with those directions, the Commission undertook a reconsideration process and issued a new decision on November 18, 2019. In that decision, the Commission reiterated its concern that Prokam’s conduct had demonstrated a deliberate challenge to the orderly marketing system. It maintained the Class 4 licensing designation for Prokam (subject to time limits and possible upgrades) and reaffirmed its view that the earlier violations were serious and warranted ongoing regulatory oversight.

Commission Decision dated November 18, 2019

- 9. Among other things, the Commission made the following findings:
 - (a) Mr. Dhillon played a role in “deceptive behavior” and pursued an “unsanctioned business opportunity” in a partnership where all parties, including Thomas Fresh, sought to gain from unregulated activities.

Commission Decision dated November 18, 2019, par. 58

- (b) As a director and vice-president of IVCA, Mr. Dhillon was found to have used his “power and influence to get his way to his own benefit.”

Commission Decision dated November 18, 2019, par. 54 and 61

- (c) Thomas Fresh had “indirectly facilitated” Prokam’s circumvention of delivery allocation rules.

Commission Decision dated November 18, 2019, par. 46

- 10. On May 26, 2021, the BCFIRB ordered a supervisory review process to address certain allegations of bad faith and unlawful activity arising out of civil claims filed by Prokam

and another entity, both of which pled misfeasance in public office by certain members and the general manager of the Commission.

Allegations Review Decision (BCFIRB, July 14, 2022), par. 1

11. In its resulting supervisory review decision, the BCFIRB made the following findings:

- (a) Mr. Dhillon engaged in “repeated attempts to deflect responsibility for the conduct at issue because he was a ‘grower’ that ‘relied on his agency’”. However, “Mr. Dhillon is clearly a sophisticated businessman who... knew exactly what he was doing...”

Allegations Review Decision (BCFIRB, July 14, 2022), par. 84

- (b) “[T]here were significant issues with Mr. Dhillon’s credibility.” He was described as having “many of the characteristics of an evasive and untruthful witness.”

Allegations Review Decision (BCFIRB, July 14, 2022), par. 83 and 85

- (c) Mr. Dhillon made “repeated self-serving suggestions that he was in effect an unsophisticated farmer, acting at the direction of a third party agency...” The BCFIRB found that these suggestions were not credible.

Allegations Review Decision (BCFIRB, July 14, 2022), par. 84

- (d) Mr. Dhillon exhibited a “consistent tendency to deflect and avoid answering questions where the answers were not favourable to him.” His testimony that “he had no knowledge of any minimum pricing orders” was “simply not believable...”

Allegations Review Decision (BCFIRB, July 14, 2022), par. 85

- (e) The characterization of Prokam as a “rogue producer” is an “accurate description.”

Allegations Review Decision (BCFIRB, July 14, 2022), par. 136

- (f) Prokam’s allegations of bad faith against Commission members and staff were “based on no more than speculation, rumour, and innuendo.”

Allegations Review Decision (BCFIRB, July 14, 2022), par. 261

12. In a follow-up “Phase II” decision in the supervisory review, the BCFIRB made the following additional findings:

- (a) Prokam “advanced and maintained its very serious allegations of wrongdoing in this Supervisory Review in bad faith in the sense that it was reckless with respect to the truth of its allegations.”

Allegations Review Decision (BCFIRB, March 15, 2024), par. 3, 67 and 75

- (b) Prokam’s conduct in the review was an escalation of a “clear and continuing animus against the Commission” and “part of a continuing course of reckless conduct.”

Allegations Review Decision (BCFIRB, March 15, 2024), par. 73

- (c) “[T]he lack of a foundation for the allegations, and the fact [the BCFIRB previously] found [that] Prokam’s principal, Mr. Dhillon, lacked credibility, [gives rise to questions about] Mr. Dhillon’s willingness to participate in good faith in the BC regulated vegetable industry going forward.”

Allegations Review Decision (BCFIRB, March 15, 2024), par. 7

13. Due to the finding that Mr. Dhillon was acting in bad faith, the BCFIRB barred Mr. Dhillon from “from being involved with a designated agency or receiving a producer-shipper license for a minimum period of 24 months, after which any participation would be subject to prior approval by BCFIRB.”

Allegations Review Decision (BCFIRB, March 15, 2024), par. 4 and 133(c)