

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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

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**TRANSCRIPT EXTRACT BOOK OF PROKAM ENTERPRISES LTD.**

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1                   Thomas Fresh business would cause  
2                   irreparable harm ...

3  
4                   -- et cetera, they dismissed the stay?

5           A        Correct.

6           Q        All right. And of course in April of 2018, there  
7                   was a hearing before BCFIRB on the appeals of  
8                   Prokam of the cease and desist orders and for the  
9                   Commission's December 22nd, 2017 order, right?

10          A        Correct.

11          Q        And you were a witness at that hearing?

12          A        Yes.

13          Q        And BCFIRB issued its decision -- I'm just going  
14                   to briefly take you to that. This is the  
15                   decision that was issued in February 2019. I can  
16                   take you to the end of it, just to show you the  
17                   -- on February 28th, 2019. Do you see that?

18          A        Correct.

19          Q        All right. Now, as you're aware -- I'm going to  
20                   take you to page 4112. At 4112, there's a  
21                   finding by BCFIRB that:

22  
23                   The Commission did not have authority to  
24                   apply its minimum pricing rules to these and  
25                   to provincial sales, or to issue any related  
26                   cease and desist orders respecting such  
27                   sales. We reached this conclusion because  
28                   the Commission has not complied with the  
29                   *Federal Statutory Instruments Act*, the step  
30                   that is required for the Commission to be  
31                   able to avail itself of the interprovincial  
32                   price-setting authority that is provided by  
33                   the *Federal Agricultural Products Marketing*  
34                   *Act* and the British Columbia Vegetable  
35                   Order.

36  
37                   Do you see that?

38          A        Correct.

39          Q        All right. So you became aware, of course, that  
40                   BCFIRB was of the view that the Commission could  
41                   not set the pricing because it hadn't complied  
42                   with the *Statutory Instrument Act*?

43          A        Correct.

44          Q        All right. And I can take you to it, but I'm  
45                   going to put a proposition to you and see if you  
46                   recall. In the Notice of Civil Claim at a  
47                   particular paragraph, 65, Prokam alleges that you

1           knew or you were recklessly or willfully blind to  
2           the fact that the export minimum pricing orders  
3           were invalid because of your failure to cause the  
4           Commission to adhere to the registration  
5           requirements. Do you recall them making that  
6           allegation?

7           A     Yes.

8           Q     All right. So what do you say in response to the  
9           allegation that you knew, or you were recklessly  
10          or willfully blind, and that you failed to cause  
11          the Commission to adhere to the registration  
12          requirements? Registration and gazetting  
13          requirements.

14          A     Well, as I said before, prior to this FIRB  
15          decision, I never understood that the pricing  
16          required -- pricing outside of the Province  
17          required federal gazetting. One would assume you  
18          set pricing based on the purpose of why we do set  
19          pricing, and that purpose is to regulate AC  
20          production, marketed by B.C. agencies. We  
21          regulate B.C. agencies to get the best returns  
22          for B.C. producers. I -- you know, I'm not a  
23          lawyer, but I never thought that I was doing  
24          anything wrong or unlawful by issuing these  
25          pricing orders.

26          CNSL N. MITHA: Mr. Chair, I see it's 12 o'clock, and  
27          I wanted to see if I could finish this topic. I  
28          might be another five -- at the very most, 10  
29          minutes. I wonder if I could ask the indulgence  
30          to just complete this piece, because after I  
31          finish this, I'm moving on to the Bajwa matter,  
32          and it'd be easier if I could finish this before  
33          we take the break.

34          THE CHAIRPERSON: Yeah, go ahead, Mr. Mitha.

35          CNSL N. MITHA: Thank you.

36          Q     So were you aware of the parliamentary  
37          discussions which occurred in 2008? And I say --  
38          when I say were you aware of them, were you aware  
39          of them before you set the pricing orders in --  
40          or the pricing -- minimum pricing in August 2017,  
41          were you aware of those --

42          A     No.

43          Q     -- 2008 discussions?

44          A     No.

45          Q     When is the first time you did become aware of  
46          them?

47          A     The first time I became aware of those

1 Q All right. And again, I'm not going to take you  
2 through the decision. Now -- wait a minute.  
3 This, sir, is the -- sorry, the interview report  
4 of MPL for Mr. Mastronardi and legal counsel  
5 where there was discussions between Mastronardi  
6 and legal counsel. And Mr. Mastronardi said  
7 various things about concerns that he raises  
8 about improper conduct, and I want to take you to  
9 some of the allegations.

10 CNSL R. BASHAM: Mr. Mitha, can you tell me what  
11 document number this is?

12 CNSL N. MITHA: Sorry, yes. My apologies. 5320.

13 CNSL R. BASHAM: Okay, thank you.

14 CNSL N. MITHA:

15 Q And on page 5 of 5320, in the last paragraph, it  
16 says:

17  
18 In response to questions about the  
19 allegations of improper conduct and/or  
20 conduct constituting misfeasance, the  
21 particulars provided were that Paul  
22 Mastronardi spoke with Steve Newell, CEO of  
23 Windset Farms, who is also John Newell's  
24 brother, who is president of Windset Farms,  
25 and Greenhouse Grown Foods, in October 2018.  
26 Steve informed Paul that he would make sure  
27 that MPL would not get a licence if they  
28 applied in B.C. when speaking with Steve, as  
29 he had heard Windset was for sale and MPL  
30 [indiscernible] request.

31  
32 So first of all, had you ever heard of any such  
33 conversation to the effect that either Steve or  
34 John or anyone of the Newells had said they would  
35 make sure MPL would never get a licence?

36 A No, I never heard that.

37 Q And were either of them on the Panel that was  
38 selected?

39 A No.

40 Q  
41 MPL's perspective is that MPL is seen as the  
42 leading greenhouse player in North America  
43 and that Steve Newell was trying to protect  
44 Windset's market share in B.C.

45  
46 Had you ever herd that type of sentiment?

47 A No.

1 Q Another example is set out on page 5321 in the  
2 third paragraph.

3  
4 High-level Windset Sales employee Jeff  
5 Madu ...

6  
7 -- I believe it was --

8  
9 ... told Paul Mastronardi in August 20o21,  
10 while playing golf, to drop his case as John  
11 and Steve would make sure MPL would not get  
12 a licence.

13  
14 Did you ever hear anything of that --

15 A No.

16 Q -- at any time?

17 A Never.

18 Q When is the first time you heard that?

19 A Upon reading this.

20 Q All right. And the other allegation is that --  
21 I'm sorry. Just give me a moment. Sorry. Yes,  
22 it's at the bottom of page 5321.

23  
24 Another concern raised was that Andre  
25 Solymosi was not honouring the timeline  
26 commitments for replies to Paul's queries.

27  
28 Let me stop there. Can you tell me what your  
29 recollection is of discussions between yourself  
30 and Mr. Mastronardi about timeline commitments?

31 A There were -- there's no commitments. I -- I  
32 communicated with Paul through email, and -- and  
33 I sent him an email back in -- was it October?  
34 And that was -- telling him that my thought was  
35 it would be four weeks

36 Q And why did it take longer?

37 A It took longer because it -- the Commission took  
38 longer to address the -- I guess the outcome,  
39 which was amending order 52, which were the  
40 changes that were made to the criteria and  
41 application process to deal with agency  
42 applications.

43 Q That's the first part. Then he goes on to say:

44  
45 Additionally, an MPL employee had lunch with  
46 Linda Delli Santi.

47

1 Q Do you know who that is, first of all?

2 A Linda Delli Santi is the executive director of  
3 the Greenhouse -- BC Greenhouse Growers  
4 Association, and they -- they have office space  
5 within our office.

6 Q And it says Linda Delli Santi --

7  
8 Linda works in an adjacent office ...  
9

10 That's adjacent to you, is that correct?

11 A Well, it's in the same office, but not adjacent  
12 -- right to -- right next door to my office.  
13 It's in the same office.

14 Q  
15 ... and was told by Andre Solymosi that MPL  
16 is the enemy when she left for lunch.  
17

18 Did you ever make any comments to the effect --  
19 to Ms. Linda Delli Santi to say that MPL is the  
20 enemy, or words to that effect?

21 A I did not, and -- and those are not my words.

22 Q Did you make any comment to Ms. Delli Santi, that  
23 you can recall, about him, to characterize MPL in  
24 any way --

25 A No.

26 Q -- do you recall?

27 A No.

28 Q So are you saying you didn't, or you don't  
29 recall?

30 A Pardon me?

31 Q Are you saying you did not make any such comment,  
32 or you simply don't recall making the comment?

33 A No, I did not make such comments.

34 Q Sorry, this is your interview report, it's  
35 document 5536. I want to take you to page 5543,  
36 where there's a heading "MPL issues" --

37 A Yes.

38 Q -- and I want to take you through some of these  
39 questions and -- or responses. You've seen MPL's  
40 Notice of Civil Claim, and your answer was yes,  
41 and that's correct?

42 A Yes.

43 Q

44 MPL provided its application for agency  
45 status to the commission on September 10th,  
46 2020. It was not dealt with at the time.  
47 Why is that?

1 And your response is:  
2

3 Close to the time MPL submitted its  
4 application, there was a moratorium on  
5 agency applications. This was lifted in  
6 October 2020 and the Panel was struck. The  
7 Commission contacted the applicant. The  
8 Panel sent requests for further clarity.  
9 The Commission is working on amending the  
10 general orders for the agency applications  
11 at the time and put the application on hold  
12 while amendments were dealt with. This was  
13 completed in March 2021.  
14

15 Is that all correct?

16 A That is correct.

17 Q Number 28, the question was:  
18

19 To your knowledge, did Mr. Newell ever  
20 express any negative views about MPL at or  
21 around the time MPL was making its  
22 application?  
23

24 And your answer was you have no knowledge of any  
25 negative views expressed by John about MPL at  
26 around -- at or around the time MPL was making  
27 its application. Is that correct?

28 A That is correct.

29 Q Did Mr. Newell, to your knowledge, make any  
30 negative comments about MPL to you or, in your  
31 presence, to anybody else?

32 A Not in my presence.

33 Q Do you know if he made comments that you're aware  
34 of, that you've heard from others?

35 A No.

36 Q I put to you -- I've covered those two, sorry.  
37 I've dealt with paragraph 31, I already asked you  
38 about that.

39 Do you know Mr. Ravi Cheema? And you were  
40 asked whether he ever expressed any views about  
41 MPL to the Commission or you personally. You say  
42 you know Mr. Cheema, you -- you say I've not  
43 heard or expressed views about MPL to the  
44 Commission or personally -- that is, he has not  
45 heard. Has he ever expressed any views to you or  
46 the Commission, that you know of, about MPL?

47 A Not -- not that I know of. And not to me.

1 Q

2 Mr. Reed was a member of the Commission at  
3 the time MPL first made its application for  
4 agency status. Mr. Reed worked for  
5 [indiscernible] Houweling. Did he ever  
6 communicate to you or others, to your  
7 knowledge, any views about MPL that he had?

8

9

And your response was:

10

11

Mike was a member of the Commission at the  
12 time. Yes, Mr. Reed worked for a competitor  
13 of MPL, Houweling [indiscernible]. Agencies  
14 have direct market access. Yes, MPL will be  
15 a direct competitor if they receive an  
16 agency licence. I do not recall Mr. Reed  
17 ever communicating his views about MPL that  
18 he had. I don't recall. He was on the  
19 Panel.

20

21

Is that correct?

22

A That's correct.

23

Q Okay. Paragraph 37:

24

25

As you can see from paragraph 25 of the  
26 Notice of Civil Claim filed by MPL, a key  
27 concern is that certain of the Commission  
28 members were making decisions about MPL's  
29 application and direct ownership interests,  
30 and competitors of MPL, as a starting point,  
31 might take it that the statement is accurate  
32 that certain members of the Commission who  
33 would have been deciding on MPL's  
34 application had interests in competitors of  
35 MPL.

36

37

Answer:

38

39

The Panel of five was struck, including the  
40 chair ...

41

42

-- and you set out all of their names.

43

44

A Panel of five was struck to ensure no bias  
45 or conflict of interest. This is how panels  
46 are struck and why they are struck.

45

46

47

1 Is that a correct answer?

2 A That is correct.

3 Q You go on to say, paragraph 39:

4

5 John Newell was not a panel member. I  
6 believe he never saw the application. Mike  
7 Reed never saw the application, Corey  
8 Gerrard never saw the application,  
9 [indiscernible] may have seen the  
10 application.

11

12 He is a panel member, is he not?

13 A Originally he was a Panel member, and then he --

14 I -- I -- he was not re-elected as a  
15 commissioner, and so he could not be a panel  
16 member subsequently.

17 Q So he was initially selected and then -- and then  
18 because he wasn't re-elected, he was --

19 A Correct.

20 Q -- released from the Panel?

21 A Correct.

22 Q And so there were [indiscernible] saw the  
23 application?

24 A Correct.

25 Q All right. At paragraph 408 -- I turn to -- and  
26 I think you've heard a lot of evidence about  
27 this, about what is referred to as this mutual  
28 exchange or you scratch my back, I scratch your  
29 back agreement, and that was put to you at  
30 paragraph 40. You recall -- you know what I'm  
31 talking about?

32 A Yes, I heard that through the hearing process.

33 Q All right. And you say -- you said in response:

34

35 The first time I heard of this agreement was  
36 when I saw MPL's NOC. I had no knowledge,  
37 formal or informal, agreement as such.

38

39 Is that true?

40 A That's correct.

41 Q And then paragraph 42:

42

43 The overall concern raised by MPL is that  
44 there is a movement to restrict any new  
45 agencies entering the market. MPL claims  
46 that the Commission has not approved any new  
47 agency for over 10 years. Is it accurate

1 the Commission has not approved any new  
2 agency for over 10 years? To your  
3 knowledge, is there resistance to the  
4 approval of new agencies? Is there any  
5 specific reason the Commission does not want  
6 to approve the application of MPL to be an  
7 agency?  
8

9 And then you say -- respond by saying:

10 I'll see if any applications were put  
11 forward in the last 10 years and how many  
12 were approved. I have no knowledge of  
13 resistance by the Commission to the approval  
14 of new agencies. I have no knowledge of any  
15 specific reason the Commission does not want  
16 to approve MPL's application.  
17

18 Right?

19 A Correct.

20 Q And you subsequently did in fact look at the  
21 issue, and I'll quickly turn to that. This is a  
22 letter from your legal counsel on January 4th,  
23 2022, and it's document 5353. Right?  
24

25 A Yes.

26 Q Okay. And I'm going to turn to page 5315. And  
27 sir, in response to a request for --  
28

29 In the last 10 years were there any agency  
30 applications submitted to the Commission?  
31 If so, how many were submitted, how many  
32 were approved?  
33

34 And you say:

35  
36 Below is a response, provided with the  
37 caveat that Mr. Solymosi did not commence  
38 acting as a general manager until 2015. Mr.  
39 Solymosi reviewed the Commission meeting  
40 minutes from January '11 to June 2015; one  
41 application submitted by Vancouver Island  
42 Farm Products.  
43

44 In March 2012, it was discovered  
45 [indiscernible] a hearing on VIM. The  
46 application was held in Nanaimo on April  
47 25th, 2012 and the Commission issued a  
decision to grant VIFP's request for agency

1 designation of market greenhouse regulated  
2 vegetables shortly thereafter.

3 There was no indication of any other  
4 agency applications before the Commission  
5 between June '11 and 2015.

6 From June 2015 onwards, being the date  
7 Mr. Solymosi started as general manager on  
8 the Commission, there were three  
9 applications received by the Commission as  
10 part of the Vancouver Island Supervisory  
11 Review. The three applicants were VIFP,  
12 Island Vegetable Co-Operative and V.I.P.  
13 Produce Inc. Both VIFP and IVCA were  
14 granted a continuation of their agency  
15 licence. V.I.P. Produce Inc. was granted a  
16 producership licence.

17 After completion of the Vancouver  
18 Island Supervisory Review, the Commission  
19 received two agency applications, one from  
20 CFP Marketing Corporation, and one from  
21 Mastronardi Produce Ltd.

22 In total, excluding the Vancouver  
23 Island Supervisory Review, three  
24 applications were submitted to the  
25 Commission in the last 10 years. One was  
26 approved, the other two agency applications  
27 are currently before Panels and the  
28 Commission.

29  
30 All of that is accurate, sir?

31 A Yeah. I can add that initially, which had never  
32 occurred to me, I never thought about it, but  
33 initially CFP was -- had submitted an application  
34 that was denied, and then an application was  
35 resubmitted for CFP. So my thought there was  
36 that that application was still before the  
37 Commission.

38 Q All right. And in the end, the last question is  
39 that MPL's application was eventually recently  
40 approved by the Commission in January 2022, is  
41 that correct?

42 A Correct.

43 CNSL N. MITHA: Those are all my questions, Mr.  
44 Solymosi. Thank you.

45 CNSL R. BASHAM: Mr. Mitha and Mr. Hira, before we go  
46 to the next point, we've noticed that Mr.  
47 Solymosi was making notes or writing something

1 A Yeah. As soon as I see a contract for 22  
2 cents a pound and they've been selling all  
3 year, I'm not very happy about it.  
4

5 So that is the portion of the transcript that is  
6 set out in the letter to establish in part the  
7 allegation that you were motivated by personal  
8 self-interest or the interest of BCfresh growers.  
9 So that is the allegation. I'm going to back to  
10 the answer that you provided now, okay? And the  
11 question that you were asked is:  
12

13 Q Please go to page 10 of Prokam's July 23rd  
14 letter. There's an allegation of missing  
15 documents, et cetera. That isn't the  
16 correct allegation. Page 10 is what we just  
17 saw which was the portion of the -- the  
18 portion -- the portion of the transcript.  
19

20 And I believe your answer and I put it in the  
21 wrong place. You say:  
22

23 This is not accurate. The export for  
24 BCfresh was in no worse position because of  
25 Prokam. BCfresh sells through summer/fall.  
26 Thomas Fresh indicated all along we're not  
27 displacing BC produce. This is the claim  
28 made at the hearing BCFIRB 2018. What  
29 bothered everyone was the 22 cent price  
30 because that left money on the table. All  
31 cease and desist orders said was report  
32 sales. The cease and desist orders did not  
33 say stop harvesting and selling. It is well  
34 known that Prokam harvested and sold after  
35 the date, cease and desist orders. All  
36 Prokam had to do was report. A commission  
37 was concerned about information not flowing  
38 to the agency the way it should have. That  
39 was the biggest reason for the cease and  
40 desist orders. It had not prohibited  
41 growing potatoes next year.  
42

43 Is that accurate, that's your answer to the  
44 allegation of the July 23rd transcript piece that  
45 we read?

46 A It is. There's probably -- something should be  
47 added or I guess I thought maybe there was more

- 1           there to it but about the cease and desist  
2           orders, probably one of the biggest things was  
3           the non-compliance part aside from the 22 cent  
4           thing. The way the cease and desist orders read  
5           is that what it was doing was getting three  
6           parties back into compliance, putting the orders  
7           through IVCA's desk rather than selling direct to  
8           a wholesaler. So that was as big a concern but  
9           that wasn't really known until after, so.
- 10          Q       And, sir, at the time, the cease and desist  
11           orders were presented to you in that email from  
12           Mr. Solymosi and your subsequent discussion with  
13           Mr. Krause. They informed you of their  
14           investigation learning of the non-compliance, I  
15           take it?
- 16          A       Yes, it was more the non-compliance than the  
17           22 cent contracts that I believe they saw. I  
18           didn't -- I didn't realize that -- until they  
19           told me that virtually the agency and the grower  
20           weren't even together anymore and the  
21           relationship between the grower and the agency  
22           was totally broken.
- 23          Q       All right. And that's --
- 24          A       My big concern was about the orderly marketing.
- 25          Q       That's what was communicated to you at the time  
26           and that's the basis on which you made your  
27           decision; is that correct?
- 28          A       Yes.
- 29          Q       All right. Sir, the next -- the next thing I'd  
30           like to discuss with you apart from the cease and  
31           desist orders that were issued on October 2017,  
32           is the suggestion that your involvement  
33           constituted a conflict of interest, and there's a  
34           bunch of different times when you're involved.  
35           So let's deal with them separately, although  
36           there's an overall allegation of conflict of  
37           interest, let's break it down. So the first  
38           allegation is that your approval of the cease and  
39           desist orders was to protect your own economic  
40           interest and was therefore a conflict of  
41           interest. What is your response to that  
42           allegation, sir?
- 43          A       First of all, as I mentioned earlier, I did not  
44           approve them.
- 45          Q       Right.
- 46          A       I consented on them being sent out and that would  
47           be sent out to the commission and they would have

- 1 to meet and approve them or deal with them  
2 themselves.
- 3 Q Okay. Well, even in consenting to send them out,  
4 sir, would you have consented based on your own  
5 economic interests?
- 6 A No, absolutely not. I mean, getting -- sending  
7 out orders to get -- try and get compliance back  
8 and orderly marketing back does not serve me  
9 personally. It serves the whole industry, and  
10 that's what I was elected to do was serve the  
11 whole industry.
- 12 Q All right. Okay. Now, sir, you were aware that  
13 the commission had a conflict of interest policy;  
14 right?
- 15 A Yes.
- 16 Q I'm not going to take you to that policy but you  
17 understood that as a result of that policy you  
18 were not to act in a conflict with your position  
19 as a commissioner?
- 20 A For a personal gain, yes.
- 21 Q Okay. Sir, I want to take you to part of your  
22 involvement after the cease and desist order  
23 vis-à-vis the show cause hearing. So I'm going  
24 to take you to a few documents. Just give me a  
25 moment. The first document I'm going to take you  
26 to, sir, is page 1358. These are minutes of the  
27 commission's meeting on December 14, 2017, and  
28 you'll see, sir, that you are in attendance  
29 there; right?
- 30 A Yes.
- 31 Q All right. And I'm going to take you to the part  
32 of the minutes. You can see that the meeting was  
33 called to order at 9:04 A.M. I'm going to take  
34 you to item 6.2 of the minutes. So you can see  
35 6.2 says:
- 36  
37 IVCA Prokam Thomas Fresh cease and desist  
38 orders.
- 39
- 40 Do you see that?
- 41 A Yes.
- 42 Q Goes on to say:
- 43  
44 The specific issues to be addressed are  
45 taken from the cease and desist orders and  
46 are summarized as follows: Number 1, Prokam  
47 Ltd. Prokam Enterprises and Bob Dhillon have

1                   for October 30th. Each of IVCA, Prokam, and  
2                   Thomas Fresh are now represented by legal  
3                   counsel as well as the commission.  
4

5                   And then there's a bunch of stuff redacted. So  
6                   do you recall, sir, in general terms, I don't  
7                   want to breach any solicitor-client privilege if  
8                   that's what the redactions are. Do you recall in  
9                   general terms, sir, what this meeting was about?

10          A       Not for sure. Could you scroll up a bit, please?

11          Q       Certainly. It's a fairly short set of minutes.  
12                   You can see ...

13          A       Sorry. I meant scroll down, sorry.

14          Q       Yeah. There was a motion to adjourn the hearing  
15                   schedule for October 30 and proceed by way of  
16                   written submissions and then there was -- the  
17                   meeting was adjourned at 4:25 P.M. So it looks  
18                   like it was a fairly short meeting. It was  
19                   called to order at 4:00 and adjourned at 4:25.  
20                   Do you see that?

21          A       Yes.

22          Q       And it sounds like a hearing was scheduled but  
23                   then there was a decision to proceed by way of  
24                   written submissions; right?

25          A       I see that and I moved second and carried the  
26                   section, yes.

27          Q       Right. Do you recall any discussion now? Does  
28                   that ring a bell as to what this meeting was  
29                   about?

30          A       I can't recall but maybe it was to --

31          Q       Well, if you don't recall --

32          A       I believe that -- is that the meeting that --  
33                   there was a meeting that the commission, I think,  
34                   invited the parties to come in and talk about it.  
35                   And I think they either refused or I'm done  
36                   discussing here, now, and maybe refused and  
37                   that's why they went to written submissions at  
38                   that point, I don't recall.

39          Q       All right. Well, the issue here, sir, to address  
40                   it more clearly or more squarely, is whether your  
41                   involvement in this meeting where the cease and  
42                   desist orders are being dealt with in some way,  
43                   whether your involvement in this constitutes a  
44                   conflict of interest. Do you have anything to  
45                   say about that, sir?

46          A       No. I would doubt if -- I would say, I would  
47                   have recused myself from voting but it doesn't

1 say that in the minutes.

2 Q All right. Now, we can see, sir, also that --  
3 I'm just going to go to a different document  
4 here. All right, sir, I'm going to take you to  
5 page 813 of Exhibit 1, and if you just give me a  
6 second. These are minutes of April 4th, 2017, of  
7 the commission. Do you see that, sir?

8 A Yes.

9 Q And again, you're in attendance at this meeting?

10 A Yes.

11 Q I'm going to take you to item 7.1 of this  
12 document. So you'll see the heading is "Annual  
13 Storage Crop Agency Production Plan Review,"  
14 initiated January 23rd, 2017:

15  
16 The annual storage crop agency production  
17 plan review is to go ahead this year with a  
18 thorough review. At that time if there are  
19 any concerns, then a recommendation will be  
20 put forward to the commission, et cetera.

21  
22 Then the second paragraph says:

23  
24 There will also be a discussion with the  
25 committee about Bob Dhillon and what his  
26 plans are. He is not renting any of his  
27 land out this year because he will be using  
28 it himself. It is believed he is planting  
29 more than his DA. Agencies will be held  
30 accountable to their forecasts.

31  
32 Do you see that sir?

33 A I see it, yes.

34 Q All right. Was it you that made this comment  
35 about Mr. Dhillon not renting out his land and  
36 that he was planting more than his DA; do you  
37 recall?

38 A Was this 2015 or 2017?

39 Q 2017, yes. April 2017. So this is long before  
40 the cease and desist orders.

41 A Yes.

42 Q This would have been probably before the -- let  
43 me understand that potatoes usually are planted  
44 sometime around April or May; is that right?

45 A Yeah, or earlier maybe, March.

46 Q Fair enough. Should you put it in this context  
47 then, does that help you recall? Do you recall

1 reach a resolution on how Prokam would be  
2 represented by BCfresh?

3 A Yes, I knew that.

4 Q And did you instruct or were you briefed on those  
5 meetings that Mr. Driediger had?

6 A No, I wasn't. I found out about -- I heard about  
7 the meetings after but not beforehand.

8 Q Okay. Just give me a moment. Well, those are  
9 the questions, sir, I have for you vis-à-vis the  
10 allegations of your being in a conflict in terms  
11 of being involved in decisions concerning Prokam.  
12 Before I move on to a separate issue, do you have  
13 any other comments you want to make about the  
14 allegations of your being in a conflict of  
15 interest?

16 A No. All's I want to say is I did what the  
17 chair -- what the chair required. I didn't vote  
18 on any of them so I was asked to stay and answer  
19 questions along with some other members along  
20 with BCfresh and that's it.

21 Q All right. Sir, the next topic I want to raise  
22 with you is the allegation that you knew or ought  
23 to have known that the commission couldn't set  
24 minimum prices for exporting of potatoes without  
25 properly gazetting and registering the orders as  
26 required under the *Statutory Instruments Act*.  
27 And so, to put in the simplest terms, the  
28 allegation is that you knew that the commission  
29 could only deal with interprovincial trade i.e.,  
30 trade outside the borders of BC, of product grown  
31 in BC, if they are properly gazetted federal  
32 orders. You knew the minimum price that was set  
33 in BC for the potatoes was not valid and  
34 therefore the cease and desist orders were not  
35 valid. That's the allegation, so let me start by  
36 saying this.

37 The evidence, the uncontroverted evidence in  
38 this hearing so far is that in 2017, the first  
39 time that the commission set prices for the  
40 export of potatoes outside of BC was in August --  
41 in early August 2017. Do you have a recollection  
42 of that or do I need to take you to that  
43 document.

44 A No, I have a recollection of that.

45 Q All right. So export prices -- prices for export  
46 were set and I believe the evidence is they were  
47 set at 40 cents a pound and Prokam was selling

1 the record, page 1162 of Exhibit 1, and you'll  
2 see it's dated October 10th and it's addressed to  
3 Brian Meyer and Terry Michell and it's a cease  
4 and desist order; all right?

5 A Yes.

6 Q And what I want to take you to is the cease and  
7 desist order and specifically -- just give me a  
8 second, sorry, I just saw it here, the violation  
9 details?

10 A Yes.

11 Q And it says:

12  
13 Prokam enterprises and Bob Dhillon have  
14 knowingly supported the actions of Bob Gill  
15 in marketing and selling of potatoes without  
16 commission authorization at pricing below  
17 the authorized minimum price.

18  
19 That's the first violation detail that's listed.  
20 You can see that?

21 A Yes.

22 Q So you understood here the concern was that  
23 Prokam and Bob Dhillon are marketing potatoes  
24 below the minimum export price that was set;  
25 right?

26 A Yes.

27 Q Right. And the allegation, sir, quite simply is,  
28 that violation is improper because the commission  
29 did not have the authority to set minimum export  
30 price. And you knew that and you ought to have  
31 known that, and therefore, this key allegation,  
32 for example, is just invalid. That's the  
33 allegation. And I want to put to you, what was  
34 your knowledge about whether the commission could  
35 set this minimum price and whether this  
36 allegation has any validity?

37 A As I said before, sir, the commission was under  
38 the understanding and we had the legal -- we had  
39 FIRB, we had Mr. Leroux, we had everybody, and  
40 they've done their homework. We've never been --  
41 no commission member has ever been on a pricing  
42 call. We thought because they were -- the  
43 purpose, our purpose, was to regulate BC-grown,  
44 call it potatoes in this case, in the province of  
45 British Columbia, that we did have minimum  
46 pricing authority.

47 Q All right. And therefore, you would say that if

1 the violation -- if that's correct, then the  
2 violation, the alleged violation is correct. In  
3 other words -- sorry, in other words, because the  
4 commission has the legal authority to set minimum  
5 prices the violation alleged is not inaccurate?  
6 A That's correct.  
7 Q All right. Lastly, sir, I'm going to take you  
8 again to your -- to your interview report. Let  
9 me know when you can see it on the screen, sir.  
10 A I'm fine.  
11 Q Okay. I'm going to take you to question 16:  
12  
13 Another theme in Prokam's complaint is that  
14 the commission and BCfresh have too cozy a  
15 relationship, and the commission, in effect,  
16 does the bidding of BCfresh. Included in  
17 that allegations that you are a director of  
18 BCfresh, in fact, the chair, and therefore  
19 have a fiscal interest in seeing BCfresh  
20 profit in having the commission do its  
21 bidding.  
22  
23 Put quite simply, sir, you are a member of the  
24 commission, you're a chair of BCfresh, and you do  
25 all you can to make sure the commission does  
26 the -- acts in the best interest of BCfresh and  
27 not necessarily the industry as a whole. That's  
28 the allegation, sir, and in your response you  
29 have responded, perhaps you can read that  
30 response and tell me whether you want to add  
31 anything to that?  
32 A The only question I would have is what is  
33 "bidding" -- "commission do its bidding." I  
34 didn't understand that.  
35 Q Well, meaning, acting in the best interest,  
36 meaning, the commission acts in the best interest  
37 of BCfresh or acts in the interest of BCfresh  
38 rather than the interest of the industry.  
39 A Well, my first paragraph, I think, that's  
40 accurate. That couldn't be further from the  
41 truth. In fact, we've gone above and beyond the  
42 other way. At the hearings, we wanted Prokam on  
43 board as a BC potato producer and they should be  
44 part of the game. We need product provincially,  
45 we have lots of potatoes imported that could be  
46 grown here. Not a threat, in other words, Prokam  
47 would not be a threat. Their times wouldn't be a

Peter Guichon (a witness)  
In chief by Cnsl K. McEwan

1 threat to whatever agency they wound up shipping  
2 to. Here it says, "no reason why BCfresh  
3 would --

4 Q "Refuse to represent."

5 A -- refuse to represent Prokam." I've gone out --  
6 I've gone out of my way as BCfresh chair to  
7 include everyone when commission designated him  
8 to BCfresh. He wasn't growing -- he wasn't  
9 growing.

10 Q Right. At the time?

11 A BCfresh board made room for three times his  
12 production and wanted the business even though it  
13 was going to come out of the other expense of  
14 other growers and they weren't happy.  
15 Apparently, there may be some bad blood with  
16 Murray Driediger, but I don't know that is.

17 Q All right. Do you want to add anything to that,  
18 sir?

19 A No. I just believe that in hindsight or after  
20 seeing some of this hearing, it could be over a  
21 cabbage issue over previous years, I don't know.

22 CNSL N. MITHA: All right. I believe, sir, those are  
23 my questions for you. Just give me one moment.

24 Yes, those are my questions. Thank you,  
25 Mr. Chair.

26 THE CHAIR: Thank you, Mr. Mitha. Mr. McEwan.

27 CNSL K. MCEWAN: Waiting for the screen to go down.

28 Mr. Chair, given what Mr. Mitha's done, I do  
29 expect to be well within my allocated time. I'm  
30 wondering if I could do that Friday morning given  
31 we're being pushed to being here in any event.

32 THE CHAIR: I'm a little concerned about Friday  
33 morning and finishing by noon and can you finish  
34 your direct by 4:30?

35 CNSL K. MCEWAN: Well, I want to look at a few things.  
36 I'll do what I can, but if I could prevail upon  
37 you, Mr. Chairman, not to complete, be able to  
38 come back and ask a few questions if I need to.

39 THE CHAIR: That's fine, Mr. McEwan. Let's do it that  
40 way.

41 CNSL K. MCEWAN: Thank you.  
42

43 **EXAMINATION IN CHIEF BY CNSL K. MCEWAN:**

44 Q Mr. Guichon, I just want to ask you a couple more  
45 questions about your background. It's accurate  
46 that your family had an industry producing  
47 potatoes for 70 or 80 years?

Terrence Michell (a witness)  
Cross-exam by Cnsl R. Androsoff

1 schedule, the days, months, and minutes in the  
2 chain. I guess that's what that says, yes.  
3 Q So I'm going to suggest to you that it must be  
4 that it was you and only you who made the  
5 decision on behalf of IVCA that IVCA would take  
6 the position it would not submit a new marketing  
7 plan because one had already been submitted in  
8 November 2016. Do you agree with me?  
9 A No. I wouldn't agree with that. I would say  
10 that there must have been a discussion around  
11 that. And what happened after this, I don't  
12 know.  
13 Q When you say, "there must have been a  
14 discussion," you don't -- you don't have a  
15 recollection of any such discussion, do you?  
16 A No. Because we were -- we were pretty adamant  
17 that the one that was sent previous was what we  
18 were going to go with.  
19 CNSL R. ANDROSOFF: Okay. Mr. Chair, perhaps now  
20 is --  
21 THE WITNESS: This is --  
22 CNSL R. ANDROSOFF: Oh, sorry. Go ahead, Mr. Michell.  
23 THE WITNESS: This is discussion between Brian and  
24 Bob. Yeah. So I can't -- I think the general  
25 discussion was that we were just going to  
26 resubmit the ones that we had. Because, really,  
27 we had no new plan. That's my recollection.  
28 That's what stands out in my mind.  
29 CNSL R. ANDROSOFF: Thank you, Mr. Michell.  
30 Mr. Donkers, perhaps it's -- about to move to a  
31 new area, so perhaps it's a good time for the  
32 lunch break.  
33 THE CHAIR: Yes. Thanks --  
34 CNSL N. MITHA: Can we just canvass how long you may  
35 be?  
36 CNSL R. ANDROSOFF: Sure. Mr. Mitha, as you can  
37 probably appreciate, this is taking quite a bit  
38 longer than I anticipated it taking. We went  
39 pretty smoothly near the beginning, and we've run  
40 into some rocky ground toward the end. I am  
41 about maybe halfway through the questions I had,  
42 and I'm hoping that it will go more smoothly  
43 after lunch, and I can endeavour to try to be  
44 finished within half hour, 45 minutes. It really  
45 depends on the nature of the responses I get to  
46 my questions.  
47 CNSL N. MITHA: All right. Well, look, I will say, I

1 haven't objected to your questions on the  
2 marketing plan. And with the greatest of  
3 respect, I don't see the relevance of this line  
4 of questioning to the allegations against  
5 Mr. Solymosi and Mr. Guichon, and further, the  
6 nature of the allegations made on the July 23rd,  
7 letter. I mean --

8 CNSL R. ANDROSOFF: Mr. Mitha, I can help you out with  
9 that. I'm happy to help you out with that. It  
10 appears that --

11 THE CHAIR: Should we let the witness go to lunch --

12 CNSL R. ANDROSOFF: Sure.

13 CNSL N. MITHA: Sure.

14 THE CHAIR: -- before we continue this discussion?

15 Mr. Michell, we're going to take a break for  
16 lunch, and we're going to need to have you back  
17 in an hour, so five after 1:00 o'clock?

18 THE WITNESS: Okay, sure.

19 THE CHAIR: We'll go off the record.

20  
21 **(WITNESS STOOD DOWN)**

22 **(PROCEEDINGS RECESSED AT 12:06 P.M.)**

23 **(PROCEEDINGS COMMENCED AT 1:05 P.M.)**

24  
25 THE CHAIR: Mr. Androsoff.

26 CNSL R. ANDROSOFF: Thank you, Mr. Chair. I've  
27 requested that Mr. Michell be excused briefly  
28 while I make a submission on timing and I would  
29 like to request, Mr. Chair, approximately half of  
30 the afternoon to finish Mr. Michell and I have  
31 some submissions related to that request. But  
32 first is that, aside from hearing counsel, I'm  
33 the last counsel to examine Mr. Michell.

34 We do have flexibility built into the  
35 schedule and we have an extra day and Mr. Guichon  
36 is available on that day. Our current time  
37 estimate for Prokam's cross of Mr. Guichon is  
38 half a day and so if we get started on  
39 Mr. Guichon today, we'll have a day and a  
40 quarter, which I suppose is around seven hours of  
41 time with Mr. Guichon. The topics on which I've  
42 been examining Mr. Michell are the same topics as  
43 Mr. Dhillon and Mr. Gill were examined on. We  
44 objected to the relevance of these topics at the  
45 time. That objection was overruled as we  
46 understand it and hearing counsel and counsel for  
47 the non-compliant participants were permitted to

1 cross-examine Mr. Dhillon on those topics for  
2 over six hours and Mr. Gill for an additional  
3 period of time. And in my submission, it's only  
4 fair that we be permitted to examine Mr. Michell  
5 for some additional allotment of time.

6 I've only been 1.5 hours so far with  
7 Mr. Michell. I think I'm about halfway through  
8 my questions and Mr. Michell has been, in my  
9 respectful submission, somewhat evasive with  
10 respect to the substantial number of my questions  
11 and that wasn't anticipated. I'm also in the  
12 position of having to ask Mr. Michell questions  
13 that I would have preferred to ask Mr. Meyer on  
14 cross on his affidavit that had -- if that cross  
15 had been permitted and so for all of those  
16 reasons, Mr. Chair, I'm asking for the review  
17 panel's indulgence for another one and a half  
18 hours of time this afternoon with Mr. Michell.

19 THE CHAIR: Thank you, Mr. Androsoff. Mr. Mitha.

20 CNSL N. MITHA: Thank you, Chair Donkers. I am  
21 concerned about -- very concerned about the time  
22 limits, and I want to say a few things. Look, I  
23 do appreciate that, you know, cross-examination  
24 can be lengthy, but we have to take into account  
25 that there's been a ruling on setting these time  
26 limits and while we can afford some flexibility  
27 and we have been affording flexibility with  
28 respect to these time limits, in most cases,  
29 we've been doubling the time limits available  
30 primarily to Ms. Hunter and Mr. Androsoff and  
31 Mr. Dalke. All the of the other witnesses, of  
32 course -- all of the other counsel have been  
33 within their time frames, you know, give or take  
34 five minutes. And as Mr. Androsoff indicated,  
35 he's already been an hour and a half but it was  
36 contemplated that they would have, I believe,  
37 that they would have an hour and so he's asking,  
38 again, for, you know, a doubling of the time  
39 limit. And to the extent that -- to the extent  
40 that, you know, these questions are relevant,  
41 they're only relevant if they're helpful to the  
42 chair. And with the greatest of respect, some of  
43 the areas of questioning so far, while I haven't  
44 objected to them because I don't want to presume  
45 how a party is going to control their  
46 cross-examination, and going back to amending  
47 order 43 and all of the historical knowledge,

65

Peter Guichon (for Appellants)  
Cross-exam by Ms. Hunter

1 Q -- why wasn't it included in the cease and desist  
2 order?  
3 A Well, I'm looking at page 62 here, and there's  
4 four compliance infractions indicated.  
5 Q This is -- this is the letter against IVCA?  
6 A Pardon?  
7 Q Page 62, you're looking at the IVCA letter?  
8 A Yeah, but I think they're all the same, are they  
9 not? I ...  
10 Q No.  
11 A Here's page 67. Page 68 there's a compliance  
12 infraction there, section 9.  
13 Q Yes.  
14 A So --  
15 Q I'm asking specif--  
16 A -- that -- that would -- that would be -- that  
17 would be about the forward contracts.  
18 Q Okay. I -- I guess what I'm asking, though, is  
19 in terms of the -- in terms of providing notice  
20 to Thomas Fresh of what they are said to have  
21 done wrong, there's no reference made to the  
22 forward contracts and I'm asking why not.  
23 A I -- that would be something you'd have to ask  
24 the general manager.  
25 Q All right.  
26 A I mean, we discussed this, about the -- the  
27 compliance infractions, but I didn't send the  
28 stuff out.  
29 Q No. You did review it and approve it?  
30 A Yes.  
31 Q Yes. But you don't recall there being any  
32 discussion about the need to give notice to  
33 Thomas Fresh of what they were said to have done  
34 wrong?  
35 A Well, I guess -- no, we never -- we didn't talk  
36 about any notice, but I think time was of the  
37 essence. We had only found out about this 22  
38 cent thing and we didn't -- we couldn't figure  
39 out why we couldn't sell potatoes into Alberta at  
40 our price, and we realized, "we" being BCfresh  
41 realized something that was going on, so.  
42 Q All right. Now, you're -- you're here as a  
43 commissioner.  
44 A I'm -- I have been asked questions at every  
45 facet, so I talked about -- I identified BCfresh  
46 right now as I was talking, so --  
47 Q Yes.

66

Peter Guichon (for Appellants)  
Cross-exam by Ms. Hunter

1 A -- and that -- that's where the urgency came  
2 from. Whether we had to issue a notice, I don't  
3 know.  
4 Q All right. So -- so, BC--  
5 A I don't know that.  
6 Q -- BCfresh believed there was urgency?  
7 A No, I did.  
8 Q You did?  
9 A Yes, as a grower.  
10 Q As a grower.  
11 A That had a whole bunch of potatoes in storage --  
12 Q All right.  
13 A -- to sell.  
14 Q All right. So -- so, you were considering this  
15 issue of the cease and desist order from your  
16 perspective as a grower?  
17 A Yeah. As soon as I see a contract for 22 cents a  
18 pound and they've been selling all year, I'm not  
19 very happy about it.  
20 Q All right. All right. You didn't consider  
21 whether your concerns as a grower made it  
22 inappropriate for you to be the decision-maker in  
23 respect of sending out the cease and desist order  
24 to Thomas Fresh, did you?  
25 A I -- I don't -- I don't know if we were the only  
26 two that sent that out or -- I mean, whether it  
27 was talked about at the -- at the Commission  
28 level or not. Probably not, but I -- otherwise,  
29 I guess, you'd have a copy of it.  
30 Q I would hope so, yes.  
31 A Yeah. And I don't know who else Andre talked to  
32 at -- other commissioners, who else he talked to  
33 about it --  
34 Q All right.  
35 A -- so. It wouldn't be myself and Alf acting  
36 alone without consulting with the rest, as far as  
37 I know.  
38 Q Okay. Can I ask you to turn to page eleven forty  
39 of the -- the second binder.  
40 A Okay.  
41 Q Okay. So, this is the next day, October 6, 2017.  
42 A What page, ten forty?  
43 Q Eleven forty.  
44 A Oh, eleven forty, sorry. Okay.  
45 Q Okay. So, you see this is a -- at the bottom of  
46 page eleven forty is the same e-mail from the day  
47 before, "Peter, I want to bring you up to speed

1 orders and if I take you part way down, there's a  
2 reference here that says on page 1363:

3  
4 On completion of this review, Peter  
5 [indiscernible] recuse themselves from the  
6 meeting to avoid any appearance of a  
7 conflict of interest in the deliberations  
8 and any final decision to be made by the  
9 Commission.

10  
11 Do you see that?

12 A Yes, and it's regarding the [indiscernible] issue  
13 to be addressed.

14 Q Yes, but this is the only recusal that we see in  
15 any of the minutes, is that correct?

16 A That is correct.

17 Q And so in the meetings that occurred prior to  
18 December 14th, meetings in October and in  
19 November of the Commission, there were no  
20 recusals in respect of this issue, correct?

21 A I would have to doublecheck on that but to the  
22 best of my recollection, there was none.

23 Q Thank you. Now, I'm going to turn to your  
24 delegated authority and you agree with me that  
25 the Commission has delegated authority to you to  
26 do certain things as part of your role, correct?

27 A Correct.

28 Q And I'm going to take you back to the Legislation  
29 Provision Book that's Exhibit 18. I'm going to  
30 start with the B.C. Vegetable Scheme which is at  
31 page 29 of the book.

32 CNSL R. HIRA: Do you have a tab number? It's just  
33 easier for us still stuck in the stone age. Oh,  
34 there we are.

35 CNSL C. HUNTER: It looks like it's at tab -- do you  
36 see it? I -- strange organization. Tab 5, it  
37 looks like.

38 CNSL R. HIRA: Thank you.

39 CNSL C. HUNTER: Okay.

40 Q And I'm going to start at section 4 of the  
41 scheme. So section 4 provides the Commission  
42 with its general authority, grants the Commission  
43 at 4.1. It says:

44  
45 The Commission is vested with the power in  
46 the province to promote, control and  
47 regulate in any respect the production,

1                   transportation, packing, storage and  
2                   marketing of a regulated product.

3  
4                   Do you see that?

5           A        That is correct.

6           Q        And then moving down to -- oh, I'm sorry. Now,  
7                   I'm going to move into -- the scheme also  
8                   authorizes -- it grants certain powers under the  
9                   -- section 11 of the *Act* which is the *Natural*  
10                  *Products Marketing (BC) Act*, and this is at 4.2:

11  
12                   Without restricting the generality of  
13                   subsection 1, the Commission is vested with  
14                   the power described in section 11 of the  
15                   *Act*...

16  
17                   And with some additional powers as well. Do you  
18                   see that?

19           A        Yes, correct.

20           Q        And then I'm going to turn to the -- to the *Act*  
21                   itself which I hope is at the prior tab. I have  
22                   it at page 13 of the book and I'm going to take  
23                   you to section 11 which sets out the powers that  
24                   are granted to the Commission and the scheme and  
25                   I want to draw your attention to 11(p) in  
26                   particular -- 11(1)(p) which is the power:

27  
28                   To delegate its powers to the extent and in  
29                   the manner of the marketing board a  
30                   Commission considers necessary or advisable  
31                   for the proper operation of the scheme under  
32                   which the marketing board or Commission is  
33                   constituted by the power in paragraph (f),  
34                   (g), (h) or (i) must not be exercised by any  
35                   person other than the federal board, a  
36                   marketing board or a Commission.

37  
38                   And those -- I don't know if you will know  
39                   without going through them, my understanding is  
40                   that was all related to licencing. Do you -- do  
41                   you have a sense of what's -- what is exempted  
42                   from the power -- power to delegate?

43           A        Well, can we go through it again?

44           Q        Sure. Sure. So it's (f), (g), (h) and (i) which  
45                   are -- are excluded from this provision and so  
46                   (f) is the power to require persons engaged in  
47                   marketing of a regulated product to register with

- 1 and obtain licences. (g) is to set and collect  
2 yearly or half-yearly, quarterly or monthly  
3 licence fees. (h) is for the purposes of  
4 paragraph (g) and in respect to the persons  
5 affected by regulation in that paragraph to  
6 classify those persons into groups and set  
7 licence fees payable, et cetera and (i) is to  
8 cancel a licence. So do you agree with me those  
9 -- those exemptions are all in relation to  
10 licencing in particular?
- 11 A Correct.
- 12 Q And otherwise the -- the Commission has the power  
13 to delegate?
- 14 A Correct.
- 15 Q And they have delegated certain powers to you?
- 16 A Correct.
- 17 Q They delegated the power to set price?
- 18 A To set the minimum price?
- 19 Q Yes, and they've given you a general authority to  
20 take certain enforcement action like the cease  
21 and desist orders, correct?
- 22 A No, I do not have the authority to issue a cease  
23 and desist order.
- 24 Q I'm going to take you to -- well, why don't we  
25 start with -- we'll start with Exhibit 1 at page  
26 4402. Okay. So this is minutes of the BC  
27 Vegetable Marketing Commission on August 18, 2020  
28 and I'd like to go to item 6.1 which is on page  
29 4404 and this is a discussion about delegation of  
30 authority and it's from 2020 but I want to ask  
31 you if you -- if you agree with me that this is  
32 the same as the delegation of authority that was  
33 in place in 2017 and so the third bullet on the  
34 page says:
- 35
- 36 Generally, no formal delegation of authority  
37 would be required of BCVMC general manager  
38 since the GM is acting at all times as a  
39 representative of the Commission itself.  
40
- 41 Do you see that?
- 42 A Correct.
- 43 Q And do you agree that was true of as of 2017,  
44 generally no formal delegation of authority is  
45 required?
- 46 A Correct.
- 47 Q Without a formal delegation of authority, you act

1 on behalf of the Commission as a representative  
2 of the Commission itself?

3 A Can we just go through this -- hold on here. So  
4 sections 2 and 3 of part 2 of the general order,  
5 do you have that -- those sections?

6 Q I don't -- I actually don't want to take the time  
7 to go to it so if you're -- if you're not able to  
8 agree with me that this is the power that was  
9 delegated in 2017, that's fine then. I'm going  
10 to take you to a different document instead. Why  
11 don't we go to -- this -- we're going to have to  
12 mark this as a new exhibit I think but this is  
13 the Prokam production dated July, first book of  
14 documents of Prokam, dated July 23rd, 2021.

15 THE CHAIRPERSON: Which supplemental book is that?

16 CNSL C. HUNTER: It's -- it's the original book. It's  
17 the first --

18 THE CHAIRPERSON: [indiscernible]

19 CNSL C. HUNTER: Yeah, the -- the original book dated  
20 July 23rd, 2021, and it's -- it should be quite  
21 voluminous. It's got about 4000 pages, I  
22 believe.

23 CNSL R. HIRA: May I just respectfully suggest that  
24 rather than marking the entire book as an  
25 exhibit, you identify individual documents and we  
26 mark those.

27 CNSL C. HUNTER: I'm happy to do that. I'm happy to  
28 do it that way. I think that makes some sense.  
29 We may have to -- we may have to identify a few  
30 others but why don't we do that.

31 Q So this is page 154 of the Prokam production  
32 dated July 23, 2021, and it's an email dated  
33 November 2nd, 2017 from Mr. Hrabinsky to me and  
34 Wendy Baker as she then was. Do you see that?

35 A [indiscernible], correct.

36 Q And I'll ask that that be marked as the next  
37 exhibit which I think is Exhibit 19.

38 JOANNE HAMILTON: Yes, I'll mark that as Exhibit 19  
39 with the description you outlined.

40 CNSL C. HUNTER: Thank you.

41  
42 **EXHIBIT 19:** Page 154 of Prokam Production  
43 dated July 23, 2021, Email November 2, 2017,  
44 from Mr. Hrabinsky to Ms. Hunter and  
45 Wendy Baker  
46  
47

1 CNSL C. HUNTER:

2 Q And you see this is an email, November, so after  
3 the cease and desist orders were issued and  
4 before the show cause hearing from Commission  
5 counsel to myself, correct?

6 A Yes, correct.

7 Q Now, it has a page number at the bottom, BCVMC  
8 0149 and do you agree with me that's -- that was  
9 the [indiscernible] that was used in the  
10 original, the 2018 hearing? This is -- this was  
11 from the production -- the Commission production,  
12 the 2018 hearing?

13 A [indiscernible] can you repeat that?

14 Q This is -- the Bates number at the bottom, the  
15 BCVMC 0149, it was the range that was used --  
16 this is how documents were identified in the 2018  
17 appeal hearing?

18 A I -- I would assume.

19 Q And I'll ask you to turn -- I'm taking you to  
20 page 156 of the book -- continuation of the email  
21 and I'll just scroll up so you can see the bottom  
22 of the page before. This is Mr. Hrabinsky  
23 answering questions that I posed in a letter and  
24 he says at 5 in response to my question any --  
25 for -- or request for any documents reflecting  
26 the Commission's decision to issue the cease and  
27 desist letters to my clients including any  
28 document reflecting the Commission's safety  
29 analysis and the first letter of the response is:  
30

31 The Commission's general manager issued the  
32 cease and desist order acting on his general  
33 authority.  
34

35 Do you see that?

36 A Correct.

37 Q Do you agree with me that you issued the cease  
38 and desist order acting on your general  
39 authority?

40 A After we had a meeting, [indiscernible], myself  
41 and Peter.

42 Q You issued it after you had a meeting but you  
43 issued it. It was under your authority that it  
44 was issued, correct?

45 A Well, it appears so in the way this is written so  
46 that would be correct.

47 Q Thank you. I'd like to take you to the notice of

1 civil claim. So this is -- I'm going to go to  
2 Exhibit 3, the Pleadings Book and I'm actually  
3 going to start in your response to civil claim  
4 which is at tab 2.

5 THE CHAIRPERSON: Ms. Hunter, can you just give me a  
6 minute? I'm just going through a bunch of --

7 CNSL C. HUNTER: Yes.

8 THE CHAIRPERSON: -- [indiscernible]. Sorry, I was  
9 unmuted there. Hopefully didn't want to hear  
10 that and if they -- go ahead.

11 CNSL C. HUNTER: Thank you, Mr. Chair.

12 Q I'm going to start at tab -- I believe this is  
13 tab 2 of the Pleadings Book and it's Mr.  
14 Solymosi's response to civil claim filed August  
15 31st, 2021.

16 A Correct.

17 Q Do you see that Mr. Solymosi?

18 A Yes.

19 Q And have you -- have you reviewed this document  
20 before?

21 A Yes.

22 Q And I'll take you down to the bottom. It's  
23 signed by Kenneth Blake who is listed as lawyer  
24 -- your lawyer in the civil action. Do you see  
25 that?

26 A Yes.

27 Q Yes. I believe notice of change has since been  
28 filed to a different person, a Mr. McLean, is  
29 that right?

30 A I believe so.

31 Q Now, I'm just going to take you briefly to the  
32 facts, response to the notice of civil claim  
33 facts and then I'm going take you into the --  
34 into the notice of civil claim to see what you're  
35 responding to. And so in the first section, you  
36 have the facts alleged in paragraph 4 of part 1  
37 of the notice of civil claim are admitted. So  
38 paragraph 4 is admitted and the balance of the  
39 facts are either denied -- so here at 2, the  
40 facts alleged at paragraphs 2, 5 through 8, 10  
41 through 14 and 16 through 50 of part 1 of the  
42 notice of civil claim were denied. Do you see  
43 that?

44 A Okay. Yeah.

45 Q And then some of the facts are said to be outside  
46 of your knowledge. I'm going to ask you about  
47 paragraphs 5 through 10 of the notice of civil

1 claim. I'm going to take you into those, but I  
2 just want to start with you've denied paragraphs  
3 5, 6, 7, 8 and 10 and you've said 9 is outside  
4 your knowledge. So I want to take you into the  
5 notice of civil claim and -- and get your  
6 evidence about those paragraphs. We're just  
7 switching to the -- it's at tab 1. All right.  
8 So this is the notice of civil claim filed March  
9 25th, 2021, that the other was in response to and  
10 I'm taking you to 5 through 10 which are the  
11 paragraphs that are denied or said to be outside  
12 of your knowledge. So I'm going to start with  
13 paragraph 5:  
14

15 The Commission is a marketing commission  
16 established by section 3 of the British  
17 Columbia Vegetable Scheme.  
18

19 You agree with that, correct?

20 A Correct.

21 Q Paragraph 6:  
22

23 The purpose of the scheme is the promotion  
24 and regulation in British Columbia of the  
25 production, transportation, packing, storage  
26 and marketing of vegetables. The scheme is  
27 administered by the Commission under the  
28 supervision of the British Columbia Farm  
29 Industry Review Board.  
30

31 That's correct?

32 A Correct.  
33

34 Q  
35

36 The Commission's powers in carrying out its  
37 mandate under the scheme are derived from  
38 the scheme and its enabling statute, *Natural  
39 Products Marketing Act*. The Commission has  
40 promulgated the general orders as it  
41 exercises its regulatory authority.  
42

43 Do you agree with that?

44 A That is correct.  
45

46 Q Paragraph 8:  
47

48 The Commission has discretion to regulate  
49 certain vegetables and to decline to

- 1 regulate other vegetables. Potatoes are  
2 among the vegetables the Commission has  
3 chosen to regulate.  
4
- 5 Do you agree with that?  
6 A I do, yes.  
7 Q Paragraph 9:  
8  
9 The Commission is comprised of an appointed  
10 Chair and up to eight elected members who  
11 are commercial producers of regulated  
12 product. Mr. Guichon is and at all material  
13 times was an elected member of the  
14 Commission holding the position and title of  
15 Vice Chair. Mr. Guichon has been a member  
16 off the Commission for approximately 28  
17 consecutive years and Vice Chair for  
18 approximately nine consecutive years.  
19
- 20 As of March of 2021, was that accurate?  
21 A I would need to doublecheck but if it says it  
22 there then I would -- I would think that it's  
23 accurate.  
24 Q Up to a point in time, all of this was accurate  
25 and then at a certain point in 2021, Mr. Guichon  
26 left the Commission and the composition changed?  
27 A Correct.  
28 Q And then at paragraph 10, it says:  
29  
30 Mr. Solymosi in his capacity as general  
31 manager of the Commission reports to the  
32 Commission members and exercises statutory  
33 powers that have been delegated to him by  
34 the Commission including pursuant to  
35 paragraph 11(1)(p) of the Act.  
36
- 37 That's correct, isn't it?  
38 A What would 11(1)(p) of the Act be?  
39 Q You want to look at 11(1)(p) of the Act again?  
40 CNSL R. HIRA: He does.  
41 CNSL C. HUNTER: All right. I'm happy to show  
42 11(1)(p) of the Act again. Mr. Androsoff will  
43 pull it up for us. All right.  
44 Q Mr. Solymosi, you see 11 then (1) and I'll scroll  
45 down to (p) and this is the power to delegate.  
46 Do you see that?  
47 A Yeah, I see that.

- 1 Q And so you agree with me that the paragraph 10 of  
2 the notice of civil claim that I read a moment  
3 ago that you exercised powers -- delegated powers  
4 pursuant to section 11(1)(p) of the *Natural*  
5 *Products Marketing (BC) Act* is accurate?  
6 A Correct.  
7 Q Thank you. All right. In 2018, we have a  
8 hearing before the British Columbia Farm Industry  
9 Review Board in respect of appeals brought by  
10 Prokam and Thomas Fresh. Do you recall that?  
11 A In 2018, I do recall that, correct.  
12 Q Yes, and you gave evidence at that hearing,  
13 correct?  
14 A I did, yes.  
15 Q And you attended the entire hearing?  
16 A Correct.  
17 Q Now, Prokam and Thomas Fresh were appealing at  
18 that hearing the October 2017 issuance of the  
19 cease and desist orders, correct?  
20 A Correct.  
21 Q And also the December 2017 decision following the  
22 show cause process, correct?  
23 A The which one -- the 2017 decision on the show  
24 cause --  
25 Q The December -- December 2017 issued decision --  
26 there's a decision date of December 22nd, 2017 --  
27 A Yeah, correct.  
28 Q Yes. So those are the two decisions under  
29 appeal, cease and desist and the decision  
30 following the show cause process?  
31 A Correct.  
32 Q Yes, and you were responsible for providing the  
33 Commission's document production during that  
34 hearing, correct?  
35 A Correct.  
36 Q I'm going to take you back to Exhibit 18, the  
37 Legislative Provisions and -- I think we can  
38 share it right now. I'm going to go to section 8  
39 of the *Natural Products Marketing Act*. Do you  
40 see -- do you have before you section 8 of the  
41 *Natural Products Marketing (BC) Act*?  
42 A Yes, it's small but I can see it.  
43 CNSL R. HIRA: He has a paper copy.  
44 CNSL C. HUNTER:  
45 Q And I want to draw your attention to 8(4) which  
46 describes the document production obligation in  
47 the BCFIRB hearing and it says:

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: Okay.  
2 MS. HUNTER: -- and you can answer the question, okay?  
3 On page seven ninety-nine we were looking at an  
4 e-mail --  
5 MR. SOLYMOSI: Yes.  
6 MS. HUNTER: -- that had you scheduling a call for  
7 9:45 a.m. on September 27.  
8 MR. SOLYMOSI: Yes.  
9 MS. HUNTER: And I asked you if you recall who  
10 participated --  
11 MR. SOLYMOSI: Yes.  
12 MS. HUNTER: -- and -- and you didn't recall. And so  
13 now I'm asking you to look at seven ninety-one.  
14 And if you look at the e-mail from yourself at  
15 11:53 a.m. that same day, it's sent to  
16 Mr. Driediger and to Mr. Meyer.  
17 MR. SOLYMOSI: Seven ninety-one?  
18 MS. HUNTER: Yes.  
19 MR. SOLYMOSI: Yes.  
20 MS. HUNTER: And -- and the e-mail to Mr. Driediger  
21 and Mr. Meyer says, "Notes from the conference  
22 call held today to review bulk product pricing on  
23 exports to the Prairies."  
24 MR. SOLYMOSI: Yes.  
25 MS. HUNTER: And I'm asking if that refreshes your  
26 recollection that the attendees of the call were  
27 yourself, Mr. Driediger, and Mr. Meyer?  
28 MR. SOLYMOSI: Yes.  
29 MS. HUNTER: All right. Now, I'll ask you to turn  
30 back to seven ninety-nine. And so we were  
31 looking at the 9:38 a.m. e-mail, and I had asked  
32 you to move to seven ninety-eight, which is the  
33 next e-mail up the chain at 11:34 a.m.  
34 MR. SOLYMOSI: Yes.  
35 MS. HUNTER: And this is a -- an e-mail to Mr. Meyer.  
36 It says, "As per our discussion today, I am  
37 requesting the following documents from IVCA."  
38 MR. SOLYMOSI: Yes.  
39 MS. HUNTER: Do you see that? And was -- is the  
40 discussion that's referenced the same call, the  
41 9:45 a.m. call?  
42 MR. SOLYMOSI: No.  
43 MS. HUNTER: There was a second call with Mr. Meyer?  
44 MR. SOLYMOSI: Yeah, I think it appears so because  
45 there's --  
46 MS. HUNTER: Do you --  
47 MR. SOLYMOSI: -- two different things here happening.

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MS. HUNTER: Do you recall?  
2 MR. SOLYMOSI: I -- I can't remember.  
3 MS. HUNTER: All right. So, we know a call occurred  
4 at 9:45 that involved yourself, Mr. Meyer, and  
5 Mr. Driediger. And you recall that assisted by  
6 the other e-mail that we've looked at? Correct?  
7 MR. SOLYMOSI: Yes.  
8 MS. HUNTER: And then by 11:34, so less than two hours  
9 later, there's an e-mail to Mr. Meyer referencing  
10 a discussion and it -- you're not certain whether  
11 that was the same discussion at 9:45 or a  
12 different discussion?  
13 MR. SOLYMOSI: Can -- can I look at this in a sec?  
14 Can I --  
15 MS. HUNTER: Sure.  
16 MR. SOLYMOSI: -- just look through these things?  
17 MS. HUNTER: Sure.  
18 MR. SOLYMOSI: These are two -- these are two separate  
19 e-mail trains and so they're two separate calls.  
20 As you see on this one dated Friday, February --  
21 September 29th, 2017, this is o-seven nine seven.  
22 This is the e-mail that was printed and it has  
23 the backup e-mails here.  
24 MS. HUNTER: I'm not looking at that e-mail. I'm  
25 looking at --  
26 MR. SOLYMOSI: Well, I'm -- I'm looking at that one  
27 because it relates to seven nine nine.  
28 MS. HUNTER: All right. Well, have -- have a look at  
29 the document and then -- then listen to my  
30 question --  
31 MR. SOLYMOSI: Yes.  
32 MS. HUNTER: -- and answer my question, please. Have  
33 you looked at the document?  
34 MR. SOLYMOSI: Yes.  
35 MS. HUNTER: All right. So, my question relates to  
36 the e-mail on seven nine eight.  
37 MR. SOLYMOSI: Seven nine eight.  
38 MS. HUNTER: Yes.  
39 MR. SOLYMOSI: Yes.  
40 MS. HUNTER: And it's an e-mail from you to Mr. Meyer.  
41 MR. SOLYMOSI: Yes.  
42 MS. HUNTER: And -- and it's an e-mail that says, "At  
43 11:34 a.m. --"  
44 MR. SOLYMOSI: Yes.  
45 MS. HUNTER: "-- as per our discussion today, I am  
46 requesting the following documents."  
47 MR. SOLYMOSI: Correct.

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MS. HUNTER: And my question is given that we've  
2 established there was a call with Mr. Meyer and  
3 Mr. Driediger that same day at 9:45, was that  
4 discussion that's referenced in this e-mail at  
5 11:34 the same discussion or was there --  
6 MR. SOLYMOSI: No, it was a separate call.  
7 MS. HUNTER: -- separate discussion? All right.  
8 Well, what can you tell me about that separate  
9 call?  
10 MR. SOLYMOSI: The call with Brian?  
11 MS. HUNTER: Yes.  
12 MR. SOLYMOSI: Basically saying that he has --  
13 basically these points that are listed here at  
14 o-seven nine eight. He said that he has --  
15 basically he's saying he has an issue with their  
16 producer. I wanted to know what corrective  
17 actions that IVCA had taken to address these  
18 issues. And I wanted them to request assistance  
19 from BCVMC to confirm that they wanted assistance  
20 on this matter, and an explanation of how  
21 procedures are done within the agency.  
22 MS. HUNTER: All right. Now, in terms of the phone  
23 call itself, how long was the call with  
24 Mr. Driediger and Mr. Meyer, 9:45 call?  
25 MR. SOLYMOSI: Where is that? Which -- which page is  
26 that? Sorry.  
27 MS. HUNTER: Well, it's the one that's referenced just  
28 on the e-mail at seven ninety-nine and then we  
29 looked at the e-mail on seven ninety-one  
30 summarizing it.  
31 MR. SOLYMOSI: The 9:48 -- 5 a.m. call was just with  
32 Brian --  
33 MS. HUNTER: All right. Well, let me --  
34 MR. SOLYMOSI: -- right?  
35 MS. HUNTER: -- take you back to seven ninety-one.  
36 MR. SOLYMOSI: Seven ninety-one. This was a separate  
37 call.  
38 MS. HUNTER: Okay. So, when did that call take place?  
39 MR. SOLYMOSI: Seven ninety-one?  
40 MS. HUNTER: Yes.  
41 MR. SOLYMOSI: It took place obviously that morning  
42 also.  
43 MS. HUNTER: Yes. And -- and which call took place  
44 first?  
45 MR. SOLYMOSI: I can't recall.  
46 MS. HUNTER: All right. So, your -- your recollection  
47 is that there were two calls?

Marcel Andre Solymosi  
Cross-exam by Cnsl C. Hunter

- 1 Q And that was how Mr. Meyer had described the  
2 relationship with Prokam that morning, correct?  
3 A He -- he could describe as, you know, the agency  
4 was not able to comply with his minimum pricing  
5 and these were the reasons.  
6 Q You believed when you sent this email that Prokam  
7 was a rogue producer, correct?  
8 A Well, I believe what Brian said, that he had a  
9 producer that was not complying with -- with the  
10 rules and the authority of IVCA.  
11 Q My question was when you wrote this email you  
12 believed that Prokam was a rogue producer,  
13 correct?  
14 A Correct.  
15 Q Now, the last sentence of this email says:  
16  
17 I can honestly attest that the commission  
18 wants IVCA to succeed as an agency. As long  
19 as we are honest and up-front, work together  
20 in support of the orderly marketing system  
21 and request assistance when needed your  
22 agency licence is protected.  
23  
24 Do you see that?  
25 A Correct.  
26 Q You felt sorry for Mr. Meyer, who was in over his  
27 head?  
28 A No. An agency licence is protected if the agency  
29 acts as it should to comply with the general  
30 orders.  
31 Q Mr. Meyer had admitted that IVCA was not  
32 compliant with the general orders, correct?  
33 A Correct.  
34 Q But you wanted to ensure that Mr. Meyer would  
35 provide you with the information you asked for so  
36 you could continue to investigate Prokam and  
37 Thomas Fresh, correct?  
38 A Can you repeat that, please?  
39 Q You wanted to ensure that Mr. Meyer provided you  
40 with the information you'd asked for so that you  
41 could continue to investigate Prokam and Thomas  
42 Fresh?  
43 A Well, we need the facts, so we --  
44 Q Yes, but --  
45 CNSL R. HIRA: Just a moment.  
46 A So we need the facts and this was -- the request  
47 is to present us with the facts. And -- and

1 Q Great, thank you. Okay. Mr. Guichon, I'm just  
2 going to take you to a section of your evidence  
3 in 2018, page 2150 of the Exhibit 1, starting at  
4 line 44:

5  
6 Q Well, I'm not talking about the grower. I'm  
7 talking about the commission from the  
8 commission's perspective. You're a  
9 commissioner; you've been a commissioner for  
10 more than 25 years. So from the  
11 commission's perspective, the commission  
12 wants to enforce its rules. There's no rule  
13 that a grower cannot plant in excess of  
14 their delivery allocation; correct?

15 A That's correct.

16 Q So in the circumstance that a grower plants  
17 in excess of the delivery allocation, they  
18 didn't do anything wrong vis-a-vis the  
19 commission. The commission is not going to  
20 enforce any rule against them because they  
21 didn't violate a rule; right?

22 A That's right.

23  
24 Were you asked those questions, and did you give  
25 those answers?

26 A Yes.

27 Q And were they true?

28 A Yes.

29 Q Going to take you to 2181, page 2181 in  
30 Exhibit 1, and line 2, continuing in the  
31 evidence:

32  
33 Q Okay. So the concern here was that you were  
34 aware that Prokam had planted significantly  
35 in excess of their delivery allocation?

36 A Yes.

37 Q You weren't aware of anything else that they  
38 had done that caused you concern at that  
39 time; correct?

40 A I don't believe, at that time, no.

41 Q All right. And there was nothing wrong with  
42 them planting in excess of their delivery  
43 allocation?

44 A No, that's right.

45  
46 Were you asked those questions, and did you give  
47 those answers?

- 1 A I did. Again, I'll stress that there's nothing  
2 wrong with the planting, but I said earlier and  
3 at that hearing that they had to come with a  
4 marketing plan; that's the big thing, the  
5 marketing plan to the agency to sell that crop  
6 because it's well in excess what they planted.  
7 And, yes, I did say, there's nothing wrong with  
8 that, but coupled with that has to be a marketing  
9 plan to come before the commission, and they  
10 never did so.
- 11 Q And that's IVCA that's to submit the marketing  
12 plan, the agency; correct?
- 13 A Well, them along with their grower that's done  
14 this, and I believe the grower was on the board  
15 at the time.
- 16 Q Continuing at Exhibit 1, 2227, line 5:  
17
- 18 Q All right. So there were complaints by  
19 other BCfresh growers about Prokam's  
20 planting in excess of delivery allocation?
- 21 A Yes.
- 22 Q And that's -- that's what's animating the  
23 concern that's being expressed?
- 24 A Well, that's -- that would be only  
25 growers -- the only growers that are in the  
26 area. I mean, the whole, I mean, that's  
27 80 percent of the area as BCfresh growers,  
28 so, yes, it would be those growers.
- 29 Q Yes, but that's the concern that's animating  
30 this issue coming back to the commission  
31 table; correct?
- 32 A The BCfresh growers do not care about the  
33 extra acreage being planted providing there  
34 is a marketing plan for it.
- 35 Q All right.
- 36 A BCfresh growers themselves may plant a few  
37 extra acres here and there, but there's a  
38 marketing plan in place for it. Orderly  
39 marketing, I should stress.
- 40 Q All right. And so what -- what -- what the  
41 growers, the other growers were concerned  
42 about was orderly marketing. It wasn't  
43 about Prokam planting in excess of delivery  
44 allocation?
- 45 A That's correct.
- 46 Q And what the commission was concerned about  
47 was IVCA hadn't provided an appropriate

1 marketing plan; correct?  
2 A Yeah. That was -- that was a concern.  
3 Q Yes, but the commission couldn't have been  
4 concerned that about Prokam planting in  
5 excess of delivery allocation?  
6 A Within reason, but those numbers are pretty  
7 big, and I think what the BCfresh growers  
8 are thinking, if one person can go out and  
9 plant double or triple of delivery  
10 allocation, why can't we all do it.  
11 Q All right.  
12 A And --  
13 Q So that's what the growers might have been  
14 thinking?  
15 A Yes.  
16 Q But the commission was presumably thinking,  
17 are any rules being broken; correct?  
18 A Yes. And there was no rule broken as far as  
19 planting, but it's common sense you -- if  
20 every grower -- every grower did what Prokam  
21 did, it would be a blood bath and the market  
22 would be finished.  
23 Q But that -- that again is not -- there's no  
24 concern that the commission had, at that  
25 time, that Prokam was breaking any rules?  
26 A Not breaking rules, no.  
27  
28 Were you asked those questions, and did you give  
29 those answers?  
30 A Yes.  
31 Q And were they true?  
32 A Yes.  
33 Q You were a commissioner in 1993 and 2021;  
34 correct?  
35 A Yes.  
36 Q And the commission has produced some signed  
37 conflict of interest undertakings, and I want to  
38 take you to those. And this is Exhibit 30 at  
39 page 12. Mr. Guichon, do you see commission  
40 member of disclosure of membership and other  
41 organizations that you prepared?  
42 A Yes.  
43 Q And do you see your signature here at the bottom,  
44 April 5th, 2013?  
45 A Yes.  
46 Q And you've disclosed the other organizations that  
47 you have membership in including that you're the

1 27th, 2017 email to Brian Meyer, referring to  
2 Prokam as a rogue producer. The whole matter  
3 goes back to Brian Meyer starting in April/May by  
4 IBCA. There was a meeting with -- in April with  
5 all the BC managers about growth conditions,  
6 pricing, gap fillers and delivery allocation.  
7 There was a follow-up meeting in May to talk  
8 about the pricing policy. There was discussion  
9 about structural things, how to improve, how to  
10 regulate industry [indiscernible] production.  
11 This was the big-picture approach.  
12

13 The Commission began to realize that there  
14 were growth ambitions at IVCA that were not  
15 in line with the general orders re producing  
16 new additional production. There was no  
17 business plan, marketing plan which was  
18 required to be sent to the Commission on  
19 product realized to be produced. We wrote  
20 letters to IVCA in June at the direction of  
21 the Commission. I asked for a marketing  
22 plan, a business plan on how to manage extra  
23 production. The Commission was told IVCA  
24 was not prepared to provide a marketing plan  
25 or business plan. At this time, the  
26 Commission was also working on general  
27 orders, new pricing objectives and  
28 regulation of agencies.

29 At the September pricing call, we  
30 became aware there was product needed that  
31 needed a price set. I told Brian Meyer to  
32 reinforce these are agency obligations.  
33 Agencies are the extension of the Commission  
34 and have authority to market on behalf of  
35 producers for the benefit of producers and  
36 to work with other agencies. All agencies  
37 are in the same marketing scenario. Brian  
38 Meyer was aware of agency requirements.  
39 Brian Meyer said they, Prokam, are trying to  
40 gain control of my agency. Brian Meyer  
41 communicated that there were issues at IVCA  
42 with Prokam, principals trying to dominate  
43 the decisions being made by IVCA. The  
44 Commission relies on general managers of  
45 agencies to be honest and they are  
46 responsible for their agencies. I asked  
47 Brian Meyer for information on how they do

1 things. I knew he was struggling with the  
2 situation at Prokam, trying to influence how  
3 IVCA operated.

4 I brought the issues being communicated  
5 to me by Brian Meyer to the attention of Al  
6 Krause, the Commission chair. We went and  
7 met with Brian to discuss the issues in more  
8 detail. At the meeting, Brian advised us of  
9 the difficulties he was having trying to  
10 make decisions at IVCA. He informed us that  
11 the decisions seemed to have been made by  
12 Prokam to control IVCA. The September  
13 27th, 2017 email reflected what was heard  
14 from Mr. Meyer about non-compliance with  
15 rules and procedures. The characterization  
16 in the email was based on what I was hearing  
17 from Brian Meyer, that Bob Dhillon/Bob Gill  
18 were trying to influence IVCA.  
19

20 Those are the answers that you gave at that time,  
21 sir? Or that summarizes the answers that you  
22 gave that time?

23 A Yes.

24 Q Right. I -- and I want to take you through some  
25 of the details of what you say in your answers,  
26 so the -- I'm going to take you through -- as you  
27 said, it first started in April. You indicated  
28 here that the whole matter goes back to Brian  
29 Meyer starting in April/May.

30 I want to take you to document 820. So this  
31 is BC Vegetable Marketing Commission Agency  
32 Managers meeting on April 5th, 2017. Do you  
33 recall this? It sets out an agenda for the  
34 meeting.

35 A I do, yeah.

36 Q And I want to take you to page 822, and at item  
37 5, it says:

38  
39 The BC [indiscernible] issue the minimum  
40 price report by 3:00 p.m. once all ads are  
41 verified.  
42

43 And then there's some further highlighted bullet  
44 points which discuss -- which discusses this.  
45 What I wanted you to explain to the Panel is --  
46 can you explain how the pricing works and what  
47 the Commission's pricing policy is?

1 letter that addresses the need to hold  
2 Prokam and to prices at IVCA accountable to  
3 all licenced producers ...  
4

5 et cetera.

6 Now, I want to understand -- we -- we're now  
7 at -- we've gone through April and May where  
8 there's been discussions, as you've indicated, on  
9 the various topics that we've seen. There's been  
10 discussion of the pricing policy and the fact  
11 that it'll be approved at the next Commission  
12 meeting, and then you send out this email, and  
13 you also attach a letter, which I'll take you to,  
14 and it says "subject, 2017/06/13 letter to Prokam  
15 and IVCA." So why on June 14th -- what prompted  
16 the sending of this letter, or this email and the  
17 attached letter?

18 A What prompted was that we knew that IVCA had  
19 growth ambitions. We had been asking for a  
20 marketing business plan from them, and we never  
21 received one. I looked at historical information  
22 that was part of that April growth ambition  
23 information that we brought forward at that  
24 meeting, looking at shipments over the past year  
25 on -- shipments versus [indiscernible]  
26 allocation. We saw that there was growth and we  
27 saw there were ambitions, and we needed a  
28 marketing plan about where this product was  
29 placed -- being placed into the market.

30 Q In any event, in this email you talk about  
31 various points, and I've highlighted a portion  
32 where you talk about delivery allocation being  
33 one of two critical components of orderly  
34 marketing that are essential [indiscernible] and  
35 the other is minimum price.

36 A Correct.

37 Q And you then say:

38  
39 Over the past couple of years, there has  
40 been considerable between storage  
41 [indiscernible] agencies, producers and  
42 commissioners about orderly marketing and  
43 tools that are being used to manage the  
44 system. The importance to enforce delivery  
45 allocation at an industry level has also  
46 been well documented as an outcome of the  
47 supervisory review on Vancouver Island that

1 A I did, yes.

2 Q I'm going to talk about that in a bit more  
3 detail. Go back to document 10 -- page number  
4 1098. 1098. So first of all, here, at the  
5 bottom of 1098, there's an email from yourself  
6 dated Wednesday, September 27th, to Mr. Meyer.  
7 It says:

8  
9 Request for Information from IVCA. Hi  
10 Brian, re: BCVMB request for information.

11  
12 And you then ask for veracious categories of  
13 information, right?

14 A Correct.

15 Q And then you have a note at the bottom:

16  
17 This request is based on the current  
18 processes in place between IVCA and Prokam.

19  
20 Right?

21 A Yes.

22 Q And then you say:

23  
24 Prokam is not to be solicited for any  
25 information that is out of the ordinary.

26  
27 What did you mean --

28 A Correct.

29 Q -- by that?

30 A Well, this issue is an agency issue, and as an  
31 agent of the Commission, you have  
32 responsibilities. And Brian was saying that he  
33 could not comply with those responsibilities. So  
34 my working was with IVCA, no one else. And so  
35 that's why it was just directed that he should  
36 just be continuing as -- as he has been.

37 Q Well, what I want to understand is prior to  
38 September 27th -- prior to sending this email,  
39 had you had any discussions with Mr. Meyer, Mr.  
40 Mitchell or anyone else at IVCA?

41 A Right. So Brian was letting me know the week up  
42 to this email -- we'd had some calls prior to  
43 this email, saying that he was having difficulty.  
44 As you know, they were instructed to present  
45 their business and marketing plan at the  
46 September 6th meeting of the Commission. So we  
47 wanted that marketing plan, and as you also know

1 in the minutes of that September 6th meeting, it  
2 was mentioned that they were actively -- they had  
3 some internal matters that they had to deal with,  
4 and that they were actively seeking a solution  
5 that would bring stability to the industry. And  
6 this was end of September, and so doing my due  
7 diligence, I was following up.

8 Q All right. So you'd had some discussions with  
9 Mr. Meyer prior to September 27th, this email?

10 A Correct.

11 Q And he commune -- what had he communicated to  
12 you, over and above what you've said, about what  
13 was going on?

14 A Basically he could not -- he was having issues  
15 with maintaining control of the agency. As a  
16 general manager, it's your responsibility, and he  
17 was reaching out here to say look, there's an  
18 issue, and I reach -- I was reaching back to him  
19 to ask for further information in writing about  
20 the issues.

21 Q I guess what I wanted to understand a bit better  
22 was why do you say Prokam is not to be solicited  
23 for any information that is out of the ordinary?  
24 What is the purpose of that statement?

25 A 'Cause Brian was saying that IVCA -- the cause of  
26 this, of why they could not comply with their  
27 agency obligations, the cause of that was because  
28 of the producer, Prokam.

29 Q And that's why you put that in there?

30 A Correct.

31 Q I want to go to the next email which you sent,  
32 also on September 27th, which is at page 1097, at  
33 the bottom of 1097. It's sent at -- let me just  
34 take a look. The first email was sent at 11:34  
35 a.m. on September 27th. This email is sent at  
36 1:47 p.m., a couple of hours later?

37 A Yeah, correct.

38 Q Now, first of all, was there some communication  
39 between 11:30 and 1:47 that prompted you sending  
40 this email? Or what was --

41 A No. No, there was no communication, it was just  
42 providing further information for him.

43 Q All right. And in this email, you start by  
44 saying:

45  
46 I want to reiterate that selling below the  
47 minimum pricing is a serious matter that

- 1 Q Mr. Solymosi, do you agree with me that one of  
2 the issues you were seeking to address in the  
3 cease and desist order was that Prokam had  
4 shipped its potatoes in excess of its delivery  
5 allocation?
- 6 A It had shipped its potatoes below the minimum  
7 price.
- 8 Q So you weren't -- you're disagreeing with me you  
9 are not concerned -- you were not concerned in  
10 the cease and desist orders with the fact that  
11 Prokam had shipped potatoes in excess of its  
12 delivery allocation?
- 13 A No.
- 14 Q You're agreeing with me that was not a concern?
- 15 A That was a consequence of the reason -- shipping  
16 under minimum pricing. As a consequence of that,  
17 they gained the volume of delivering -- delivery  
18 allocation -- that's in excess of delivery  
19 allocation.
- 20 Q You recall the June letter that you had sent to  
21 Mr. Michell and Mr. Dhillon made reference to  
22 Prokam planting far in excess of its delivery  
23 allocation and you advised that the Commission  
24 was monitoring that. Do you recall that?
- 25 A Correct.
- 26 Q But you're telling me that in issuing the cease  
27 and desist order, you were not concerned with  
28 Prokam having shipped potatoes in excess of its  
29 delivery allocation?
- 30 A I was concerned there was no marketing plan in  
31 place by IVCA and they were not complying with  
32 minimum pricing and so these orders -- these  
33 cease and desist orders were directed to bring  
34 IVCA back into compliance with minimum pricing  
35 and control -- have control back of their agency.
- 36 Q So why was the cease and desist order issued to  
37 Prokam?
- 38 A Well, to bring notice to them that this is --  
39 these are the violation details of the cause of  
40 the violation that IVCA was put into as an agency  
41 and it was because of Prokam and Mr. Gill's  
42 actions that that agency was put into non-  
43 compliance. And you can also see there's a  
44 violation detail here on -- with regards to  
45 Kennebec potatoes where product was shipped  
46 without any delivery allocation.
- 47 Q So is that -- is that a concern that's directed

Marcel Andre Solymosi  
Cross-exam by Cnsl C. Hunter

1 CNSL R. HIRA: I'm waiting for you to finish.  
2 CNSL C. HUNTER:  
3 Q Well, I've already tried this once. Madam  
4 Reporter, perhaps you could read back the last  
5 question I asked.  
6 CNSL R. HIRA: The last question you asked was it  
7 casts a dynamic between Mr. Michell and Mr. Gill  
8 which are different --  
9 THE CHAIRPERSON: Mr. Hira, I believe Ms. Hunter has  
10 asked the reporter to read back the last question  
11 she has on record.  
12 THE RECORDING SECRETARY: And I'm sorry, Counsel, it's  
13 quite an ordeal with this machine that I'm using,  
14 but I do have that you would agree that it casts  
15 the dynamic differently and that's my note. I  
16 apologize.  
17 CNSL C. HUNTER: That's okay. Let me try again.  
18 Q You received information from IVCA that pointed  
19 the finger at Prokam at Mr. Dhillon and at Mr.  
20 Gill and blamed them for the problems with IVCA's  
21 compliance, correct?  
22 A What was the date of that? That was later? That  
23 was not in July.  
24 Q I'm asking about the information you got in your  
25 investigation.  
26 A Correct.  
27 Q Yes. On -- in the meeting on October 3rd you  
28 were told Mr. Gill is at the heart of these  
29 problems, these compliance problems, correct?  
30 A Correct.  
31 Q And what I'm asking is whether -- if you'd seen  
32 this email between Mr. Michell and Mr. Gill, the  
33 dynamic between them might have been cast in a  
34 different light than it was at the October 3rd  
35 meeting?  
36 A It appears at this time in July that there was --  
37 it was cast in a different light as of July 4th,  
38 2017, I would agree. I would agree with -- with  
39 that.  
40 CNSL C. HUNTER: Yes. Mr. Chair, I see I'm at the ten  
41 minutes that I said I would be and I have  
42 probably two minutes more, but I'm -- I am happy  
43 if you wish to take the lunch break now, to just  
44 finish up after the break.  
45 CNSL R. HIRA: Can we finish --  
46 CNSL C. HUNTER: That's fine.  
47 CNSL R. HIRA: -- because my concern is the two



- 1 A We received some documents on October 2nd. And  
2 then we had the meeting.
- 3 Q All right. So I want to take you to -- you made  
4 some handwritten notes of the meeting. So are  
5 these your handwritten notes -- oh, sorry, it's  
6 not yet shared. Sorry, I'll just share the  
7 screen.
- 8 A That's correct.
- 9 Q So it's page 1100, 1-1-0-0, for the record, and  
10 you'll see it's a meeting with IVCA and the date  
11 is Tuesday, October 3rd. Is this your  
12 handwriting, sir?
- 13 A Correct.
- 14 Q All right. And are these your notes?
- 15 A Yes.
- 16 Q All right. Now, they're -- I presume they're not  
17 a transcript, as such. They're just your notes  
18 of the meeting, is that fair?
- 19 A Just my notes.
- 20 Q All right. And now I want to just go through  
21 some of the notes. So first, it says something  
22 here on the third bullet:  
23  
24 Transport orders not received in a timely  
25 manner.  
26
- 27 Is that what it says?
- 28 A Correct.
- 29 Q All right. Can you tell me what that note is  
30 about?
- 31 A Well, you have -- a PO is needed to issue a  
32 transport order, so you shouldn't really be  
33 issuing POs -- I mean you really shouldn't be  
34 issuing transport orders unless you have a PO in  
35 the system.
- 36 Q So what was being communicated to you. What was  
37 -- what were you noting here?
- 38 A So there was I guess IVCA wasn't getting the  
39 information in the manner that it needed it, in a  
40 timely manner.
- 41 Q Your next bullet, sir, says:  
42  
43 The agency does not have a transport order.  
44 We will issue a cease and desist order.  
45
- 46 Is that what it says?
- 47 A Correct.

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: Yes.  
2 MS. HUNTER: Yes. You -- do you recall having a  
3 conversation with Mr. Krause about this issue  
4 in -- in September?  
5 MR. SOLYMOSI: I -- yes.  
6 MS. HUNTER: All right. And -- and what do you recall  
7 telling him?  
8 MR. SOLYMOSI: I can't remember exactly --  
9 MS. HUNTER: Okay.  
10 MR. SOLYMOSI: -- but the outcome was to go have a  
11 meeting with IVCA and --  
12 MS. HUNTER: All right.  
13 MR. SOLYMOSI: -- understand the issues.  
14 MS. HUNTER: Now, let's just go through this e-mail  
15 briefly. You're requesting the following from  
16 IVCA: One, a letter from IVCA that acknowledges  
17 the issue with your -- with your producer, Prokam  
18 Enterprises?  
19 MR. SOLYMOSI: Yes.  
20 MS. HUNTER: And then there's some other information  
21 there. Two, an explanation of how sales are  
22 negotiated and purchase orders are received for  
23 products supplied by Prokam Enterprises?  
24 MR. SOLYMOSI: Yes.  
25 MS. HUNTER: There are a number of other requests  
26 related all to Prokam Enterprises on that page?  
27 MR. SOLYMOSI: Yeah, there's a number of requests  
28 stated.  
29 MS. HUNTER: And then over the page you say, "Prokam  
30 is not to be solicited for any information that  
31 is out of the ordinary." [as read] Do you see  
32 that?  
33 MR. SOLYMOSI: Correct.  
34 MS. HUNTER: And that's because you didn't want to  
35 alert Prokam --  
36 MR. SOLYMOSI: This is --  
37 MS. HUNTER: -- that you were looking into this issue?  
38 MR. SOLYMOSI: I didn't want to alert anyone. This is  
39 a confidential issue at this point between us --  
40 or between the agency and the Commission.  
41 MS. HUNTER: All right. You understand that before  
42 decisions of the Commission are made or when  
43 decisions of the Commission are made, one of the  
44 safety principles is transparency, correct?  
45 MR. SOLYMOSI: Correct.  
46 MS. HUNTER: And so in considering whether to make a  
47 decision that affected Prokam's interests quite

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: Yes.

2 MS. HUNTER: Yes. You -- do you recall having a  
3 conversation with Mr. Krause about this issue  
4 in -- in September?

5 MR. SOLYMOSI: I -- yes.

6 MS. HUNTER: All right. And -- and what do you recall  
7 telling him?

8 MR. SOLYMOSI: I can't remember exactly --

9 MS. HUNTER: Okay.

10 MR. SOLYMOSI: -- but the outcome was to go have a  
11 meeting with IVCA and --

12 MS. HUNTER: All right.

13 MR. SOLYMOSI: -- understand the issues.

14 MS. HUNTER: Now, let's just go through this e-mail  
15 briefly. You're requesting the following from  
16 IVCA: One, a letter from IVCA that acknowledges  
17 the issue with your -- with your producer, Prokam  
18 Enterprises?

19 MR. SOLYMOSI: Yes.

20 MS. HUNTER: And then there's some other information  
21 there. Two, an explanation of how sales are  
22 negotiated and purchase orders are received for  
23 products supplied by Prokam Enterprises?

24 MR. SOLYMOSI: Yes.

25 MS. HUNTER: There are a number of other requests  
26 related all to Prokam Enterprises on that page?

27 MR. SOLYMOSI: Yeah, there's a number of requests  
28 stated.

29 MS. HUNTER: And then over the page you say, "Prokam  
30 is not to be solicited for any information that  
31 is out of the ordinary." [as read] Do you see  
32 that?

33 MR. SOLYMOSI: Correct.

34 MS. HUNTER: And that's because you didn't want to  
35 alert Prokam --

36 MR. SOLYMOSI: This is --

37 MS. HUNTER: -- that you were looking into this issue?

38 MR. SOLYMOSI: I didn't want to alert anyone. This is  
39 a confidential issue at this point between us --  
40 or between the agency and the Commission.

41 MS. HUNTER: All right. You understand that before  
42 decisions of the Commission are made or when  
43 decisions of the Commission are made, one of the  
44 safety principles is transparency, correct?

45 MR. SOLYMOSI: Correct.

46 MS. HUNTER: And so in considering whether to make a  
47 decision that affected Prokam's interests quite

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1           seriously to issue the cease and desist order,  
2           the Commission should have been transparent in  
3           making that decision?  
4       MR. SOLYMOSI: Transparent in -- in what regard?  
5       MS. HUNTER: Well, however you understand the word.  
6       MR. SOLYMOSI: The acronym doesn't apply to all  
7           situations --  
8       MS. HUNTER: All right.  
9       MR. SOLYMOSI: -- so it's relative to the situation at  
10           hand. This was the appropriate action to be  
11           taken.  
12       MS. HUNTER: So, you -- you did consider whether the  
13           safety principles applied in deciding to issue  
14           the cease and desist order and decided they did  
15           not apply in that situation, correct?  
16       MR. SOLYMOSI: We decided that certain safety  
17           principles did not apply, such as engaging Prokam  
18           at that point in discussion.  
19       MS. HUNTER: When you say "we", who -- who decided  
20           that?  
21       MR. SOLYMOSI: Well, Alf and I --  
22       MS. HUNTER: All right. You had a discussion --  
23       MR. SOLYMOSI: -- and --  
24       MS. HUNTER: -- with Mr. Krause in which you discussed  
25           whether the safety principles applied to your  
26           decision-making?  
27       MR. SOLYMOSI: We have a discussion in general.  
28       MS. HUNTER: All right. But you said a minute ago  
29           that "we decided --"  
30       MR. SOLYMOSI: We consider all -- we consider  
31           everything. We consider the safety principles as  
32           part of our decision-making, strategic,  
33           accountable, fair, transparent, inclusive, and  
34           effective. Certain ones are high -- have higher  
35           weight, certain ones have lower weight depending  
36           on the circumstances of the decision being made.  
37       MS. HUNTER: But you decided in this circumstance that  
38           transparency had no weight at all, correct?  
39       MR. SOLYMOSI: With regards to Prokam.  
40       MS. HUNTER: Yes. And -- and --  
41       MR. SOLYMOSI: Correct.  
42       MS. HUNTER: -- quite the contrary to being  
43           transparent, you are directing Mr. Meyer to hide  
44           from Prokam that the Commission is making this  
45           decision?  
46       MR. SOLYMOSI: That the Commission is looking at --  
47           into at this point, correct.

- 1 A Urgent, correct.
- 2 Q Yes. And so you start the investigation that  
3 same morning that Mr. Meyer has alerted you to  
4 the problem with Prokam that he's articulated?
- 5 A I sent this email as a follow-up, correct?
- 6 Q And you wanted to ensure Prokam did not become  
7 aware of the investigation before you could  
8 gather the evidence to take enforcement action,  
9 correct?
- 10 A We were asking for information from IVCA and it  
11 was an IVCA issue and so I was asking them for  
12 this information and stating Prokam is not to be  
13 solicited for any information that is out of the  
14 ordinary, yes.
- 15 Q Right. You wanted to hide the existence of the  
16 investigation for Prokam to give IVCA enough time  
17 to gather the evidence against them, correct?
- 18 A No. It was -- the investigation was of IVCA and  
19 this is -- this is initiating the investigation.  
20 So...
- 21 Q I'm going to take you to the next email in the  
22 chain, about two hours later, 1:47 p.m.,  
23 September 27th; do you see that?
- 24 A Correct.
- 25 Q And you had not yet received any of the  
26 information you'd asked Mr. Meyer to provide you  
27 at the 11:30 -- in the 11:30 a.m. email, correct?
- 28 A I had not, no.
- 29 Q You had not received confirmation from IVCA  
30 acknowledging the issue with Prokam that you'd  
31 requested?
- 32 A I had not, no.
- 33 Q You had not received the list of corrective  
34 actions taken by IVCA to address the issue?
- 35 A No.
- 36 Q Mr. Meyer hadn't responded to your 11:34 email at  
37 all, correct?
- 38 A He hadn't, no.
- 39 Q But you wrote again at 1:47 p.m. and at the  
40 bottom of page 1097 in the email it says:
- 41
- 42 I am requesting the letter and documents to  
43 protect IVCA from the actions being taken by  
44 a rogue producer under IVCA control.
- 45
- 46 Do you see that?
- 47 A Correct.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MS. HUNTER: Yes. Now, can I take you up on page  
2 seven ninety-seven. There is a follow-up e-mail  
3 from you to Mr. Meyer a little bit later that  
4 afternoon. And you read much of this e-mail in  
5 your evidence --  
6 MR. SOLYMOSI: Yes.  
7 MS. HUNTER: -- so I won't ask you to read it again.  
8 Do you know why between 11:34 and -- and  
9 1:47 p.m. that day you decided to send the second  
10 e-mail?  
11 MR. SOLYMOSI: 11:34 and 1:47. No, I don't know. Just  
12 to reiterate the statements I made in this, I  
13 thought it was appropriate.  
14 MS. HUNTER: All right. Now, taking -- I'd like to  
15 take you to the end of that e-mail that's just at  
16 the top of page seven ninety-eight.  
17 MR. SOLYMOSI: Yes.  
18 MS. HUNTER: The last sentence is, "As long as we are  
19 honest, upfront, work together and support an  
20 orderly marketing system and request assistance  
21 when needed, your agency licence is protected."  
22 [as read] Do you see that?  
23 MR. SOLYMOSI: Yes.  
24 MS. HUNTER: Now, when the cease and desist order was  
25 issued, it -- it didn't say that, did it?  
26 MR. SOLYMOSI: No.  
27 MS. HUNTER: And the cease and desist order to IVCA,  
28 in fact, said the opposite, that their licence  
29 might be in jeopardy, correct?  
30 MR. SOLYMOSI: Correct.  
31 MS. HUNTER: But their licence wasn't in jeopardy,  
32 they were co-operating with the --  
33 MR. SOLYMOSI: I don't make that --  
34 MS. HUNTER: -- Commission?  
35 MR. SOLYMOSI: -- decision.  
36 MS. HUNTER: Sorry?  
37 MR. SOLYMOSI: I don't make that decision. That's a  
38 Commission decision.  
39 MS. HUNTER: Well, you've committed here to IVCA, "As  
40 long as we are honest and upfront, work together  
41 in support of the orderly marketing system and  
42 request assistance when needed, your agency  
43 licence is protected." [as read] Do you see that?  
44 MR. SOLYMOSI: That's my commitment.  
45 MS. HUNTER: Yes. And so you have committed to IVCA  
46 as long as they cooperate with the Commission  
47 their -- their licence is protected?

155

John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: It would help. And so if they  
2 cooperate, it would help, but there's no  
3 guarantee because it's the Commission that makes  
4 the final decision.  
5 MS. HUNTER: All right. Now, when the cease and  
6 desist orders were issued to Prokam, IVCA and  
7 Thomas Fresh, this assurance that it be provided  
8 to IVCA was not disclosed to Thomas Fresh or to  
9 Prokam, correct?  
10 MR. SOLYMOSI: Correct.  
11 MS. HUNTER: In fact, it wasn't disclosed anytime  
12 prior to the December 22nd, 2017 decision?  
13 MR. SOLYMOSI: Correct.  
14 MS. HUNTER: It was disclosed in March of this year,  
15 the response to document production requests?  
16 MR. SOLYMOSI: Correct.  
17 MS. HUNTER: Now, can I ask you to move up on seven  
18 ninety-seven to the next e-mail in the chain.  
19 This is to Mr. Meyer two days later.  
20 MR. SOLYMOSI: Yes.  
21 MS. HUNTER: And you're asking Mr. Meyer if it would  
22 help -- if it would help to set up a meeting.  
23 And you say, in the last line, "The next step I  
24 need to act on will be to issue a cease and  
25 desist order to Prokam." [as read] Do you see  
26 that?  
27 MR. SOLYMOSI: Correct.  
28 MS. HUNTER: And you decided at that time, based only  
29 on this conversation with Mr. Meyer, that you  
30 were going to issue a cease and desist order to  
31 Prokam, correct?  
32 MR. SOLYMOSI: It's not deciding, but it's basically  
33 saying -- stating the next step I would need to  
34 act on and so would it help to arrange that Alf  
35 and I meet with IVCA to review the evidence.  
36 Basically, that's the context of this e-mail.  
37 MS. HUNTER: You were hoping to receive some more  
38 evidence to support the decision to issue the  
39 cease and desist notice to Prokam?  
40 MR. SOLYMOSI: Well, we were going to go and look at  
41 the evidence at IVCA with IVCA management.  
42 MS. HUNTER: All right. Could you please turn to  
43 eight sixty-six. Eight sixty-six.  
44 MR. SOLYMOSI: Eight sixty-six?  
45 MS. HUNTER: Yeah.  
46 MR. SOLYMOSI: Agency managers' meeting November 7th,  
47 2017?

1                   The Commission needs to know that IVCA is  
2                   taking ownership of its obligations as the  
3                   agency, and that there is an issue beyond  
4                   its control that is placing the agency in a  
5                   position of non-compliance with its mandate.  
6

7                   And by that you're referring to what you  
8                   understood, which is that Prokam was placing the  
9                   agency to non -- into non-compliance?

10                  A        Correct.

11                  Q        You then say:

12  
13                            I can honestly attest that the Commission  
14                            wants IVCA to succeed as an agency, as long  
15                            as we are honest and upfront, working  
16                            together in support of orderly marketing  
17                            system and request assistance when needed so  
18                            our agency licence is protected.  
19

20                   Do you see that?

21                  A        Correct.

22                  Q        You appreciate that what you're saying there is  
23                            if he cooperates, his agency licence is  
24                            protected?

25                  A        No. What I'm saying is that if an agency is  
26                            doing what it's supposed to do, it's his licence  
27                            he's protecting. The agency is protecting its  
28                            own licenced. So they need to comply with the  
29                            general orders. They need to comply with agency  
30                            responsibilities.

31                  Q        Okay. Well, you appreciate it's been alleged  
32                            that the way in which you communicated here  
33                            suggests that you were offering either a threat  
34                            or inducement to get information against Prokam,  
35                            and in return, the *quid pro quo* is that you'll  
36                            protect IVCA?

37                  A        That's incorrect.

38                  Q        So why -- what was your intention here? Was it  
39                            -- in saying this, what was your intention?

40                  A        Well, as I said, as -- if an agency is acting as  
41                            it should be, in compliance of the general orders  
42                            and stepping up to the plate and taking  
43                            accountability for its own actions, that's what I  
44                            mean, is that they -- they need to take  
45                            accountability as an agency. An agency is an  
46                            agent of the Commission. It's a privilege to be  
47                            an agency. We rely on agencies to market product

1 on behalf of the producer group that they  
2 represent. It's -- it's not a licence that is  
3 handed out now, like freely. There's -- there's  
4 responsibilities there and they -- they need to  
5 be able to ensure that orderly marketing and  
6 minimum pricing is maintained.

7 Q At this point, had you at any time --  
8 CNSL R. HIRA: I think he was continuing. He said  
9 "so."

10 CNSL N. MITHA: I apologize, I didn't mean to interrupt  
11 you. Carry on.

12 A That -- that's fine.

13 Q At this point, had you at any time communicated  
14 to IVCA that you did not want them to tell Prokam  
15 that this information was being gathered and  
16 there was an investigation ongoing?

17 A At this point, we wanted to act swiftly to  
18 understand -- to get -- get Brian and IVCA to  
19 provide us with that information I requested. As  
20 you are aware, this was on the 28th of September,  
21 that -- it's a busy time of the year and this --  
22 this email led up to a meeting in person between  
23 Alf, myself and IVCA management.

24 Q Okay. I'm not sure if you answered the question  
25 and -- or if I missed it, but the question was  
26 had you communicated to IVCA at this time not to  
27 let Prokam know anything about the investigation,  
28 or words to that effect?

29 A Yes.

30 Q Okay. And what had you communicated to them?

31 A It was in that letter. In the email that I'd  
32 said here. Was it this email or the --

33 Q I see. So when you -- what you mean is Prokam is  
34 not to be solicited for any information. Is that  
35 what you mean?

36 A Correct.

37 Q Besides that, had you said anything further,  
38 verbally or otherwise?

39 A No.

40 Q And you mentioned a meeting, so I'm going to just  
41 follow up on this email of -- sent at 1:47 p.m.,  
42 to the next page, 1097. You'll see that there's  
43 an email from you on September 29th, at 11:02,  
44 saying:

45  
46 Brian, would it be helpful to arrange for  
47 Alf and myself to visit IVCA after

- 1 memory?  
2 A Yes.  
3 Q And so it was your understanding that  
4 Mr. Solymosi had only received information from  
5 IVCA at this time?  
6 A Yes.  
7 Q Okay. And you understood, as well, that  
8 Mr. Solymosi had spoken with Mr. Guichon and  
9 Mr. Krause and that they had approved the cease  
10 and desist orders; correct?  
11 A Correct.  
12 Q And did you understand at this time that  
13 Mr. Guichon had made his decision to approve or  
14 consent to the cease and desist orders based on  
15 his role as a grower of potatoes?  
16 A Yes, I believe so.  
17 Q I'm going to take you to Exhibit 23 now. I'll  
18 put it up on the screen. Do you see that up on  
19 your screen, Mr. Reed?  
20 A Yes.  
21 Q And so these are minutes of a meeting of the  
22 commission dated October 16th, 2017. You see  
23 that there?  
24 A I do, yes.  
25 Q And for the record, I'm on page 3 of Exhibit 23.  
26 And you're indicated as having attended the  
27 meeting; correct?  
28 A That's correct.  
29 Q And I'm not sure if you can see my cursor here,  
30 but do you see what I've highlighted under --  
31 beside agenda item 2.1.1?  
32 A I do, yes.  
33 Q It says:  
34  
35 Andre issued cease and desist letters to  
36 Thomas Fresh, Prokam, and IVCA.  
37 Thomas Fresh has a lawyer. Prokam will use  
38 the same one. IVCA has been cooperating in  
39 an effort to maintain their agency status.  
40  
41 Do you see that there?  
42 A Yes, I do.  
43 Q And do you recall Mr. Solymosi making those  
44 remarks about Prokam, Thomas Fresh, and IVCA?  
45 A I do after reading this, yes.  
46 Q Mr. Solymosi informed the commissioners at this  
47 meeting that he had told IVCA that as long as it

1 cooperated with the commission and its  
2 investigation, its agency licence would be  
3 protected; right?  
4 A Correct.  
5 Q Did Mr. Solymosi also tell the commissioners that  
6 he had decided to hide from Prokam the existence  
7 of the investigation and the fact of IVCA's  
8 co-operation?  
9 A Not that I'm aware of.  
10 Q Is that something that you became aware of at  
11 some point?  
12 A No.  
13 Q I'm going to move, now, to Exhibit 1 on page  
14 1213. Do you see that up on your screen,  
15 Mr. Reed?  
16 A Yes.  
17 Q And it's an email from Mr. Solymosi to you and  
18 other commissioners dated October 19th, 2017. Do  
19 you see that there?  
20 A Yes.  
21 Q Do you have a recollection of receiving this  
22 email?  
23 A I don't remember receiving it, but I'm on there  
24 so I would assume I did.  
25 Q Looking at it now, does it refresh your memory of  
26 having received it?  
27 A Not really, but I'm assuming I did.  
28 Q Now, Mr. Solymosi is asking to schedule a meeting  
29 to discuss the cease and desist orders and he's  
30 sending a Dropbox link to Bora Dogga [phonetic].  
31 Do you see that?  
32 A I do, yes.  
33 CNSL K. MCEWAN: Mr. Chair, can I ask that this be  
34 enlarged, please.  
35 CNSL R. ANDROSOFF: I can certainly try to do that.  
36 CNSL K. MCEWAN: Thank you.  
37 CNSL R. ANDROSOFF: Is that better, Mr. McEwan?  
38 CNSL K. MCEWAN: That's fine. Thank you. Appreciate  
39 it.  
40 CNSL R. ANDROSOFF:  
41 Q Now, it says -- Mr. Solymosi says:  
42  
43 Doc 1 is the current evidence I have from  
44 IVCA.  
45  
46 Do you see that?  
47 A I do, yes.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: It would help. And so if they  
2 cooperate, it would help, but there's no  
3 guarantee because it's the Commission that makes  
4 the final decision.

5 MS. HUNTER: All right. Now, when the cease and  
6 desist orders were issued to Prokam, IVCA and  
7 Thomas Fresh, this assurance that it be provided  
8 to IVCA was not disclosed to Thomas Fresh or to  
9 Prokam, correct?

10 MR. SOLYMOSI: Correct.

11 MS. HUNTER: In fact, it wasn't disclosed anytime  
12 prior to the December 22nd, 2017 decision?

13 MR. SOLYMOSI: Correct.

14 MS. HUNTER: It was disclosed in March of this year,  
15 the response to document production requests?

16 MR. SOLYMOSI: Correct.

17 MS. HUNTER: Now, can I ask you to move up on seven  
18 ninety-seven to the next e-mail in the chain.  
19 This is to Mr. Meyer two days later.

20 MR. SOLYMOSI: Yes.

21 MS. HUNTER: And you're asking Mr. Meyer if it would  
22 help -- if it would help to set up a meeting.  
23 And you say, in the last line, "The next step I  
24 need to act on will be to issue a cease and  
25 desist order to Prokam." [as read] Do you see  
26 that?

27 MR. SOLYMOSI: Correct.

28 MS. HUNTER: And you decided at that time, based only  
29 on this conversation with Mr. Meyer, that you  
30 were going to issue a cease and desist order to  
31 Prokam, correct?

32 MR. SOLYMOSI: It's not deciding, but it's basically  
33 saying -- stating the next step I would need to  
34 act on and so would it help to arrange that Alf  
35 and I meet with IVCA to review the evidence.  
36 Basically, that's the context of this e-mail.

37 MS. HUNTER: You were hoping to receive some more  
38 evidence to support the decision to issue the  
39 cease and desist notice to Prokam?

40 MR. SOLYMOSI: Well, we were going to go and look at  
41 the evidence at IVCA with IVCA management.

42 MS. HUNTER: All right. Could you please turn to  
43 eight sixty-six. Eight sixty-six.

44 MR. SOLYMOSI: Eight sixty-six?

45 MS. HUNTER: Yeah.

46 MR. SOLYMOSI: Agency managers' meeting November 7th,  
47 2017?

- 1 be protected is that he would provide you with  
2 information against Prokam, correct?
- 3 A Can you say that again, please?
- 4 Q What you were hoping by telling Mr. Meyer that  
5 IVCA's agency licence would be protected was that  
6 he would provide you with the information you  
7 needed to proceed to issue a cease and desist  
8 order against Prokam?
- 9 A The cease and desist orders were all directed to  
10 IVCA as an agency and giving them what they  
11 needed to regain control of the situation so that  
12 we were asking here for this -- all the  
13 information in understanding the situation in  
14 writing versus verbally. And it wasn't provided.  
15 It's a busy time of the year at this time of the  
16 year. Thanksgiving is around the corner. And so  
17 as an outcome of this, we -- Alf and I had  
18 proceeded with the in-person meeting that was  
19 held on October 3rd.
- 20 Q Yes. And you hadn't received any information  
21 that you'd asked for by October 3rd, correct?
- 22 A We received a package on October 2nd.
- 23 Q All right. So September 29th, the next email in  
24 the chain, the top of 1097, by September 29th you  
25 had not received any of the information you'd  
26 asked for, correct?
- 27 A That's correct.
- 28 Q And so you follow up with Mr. Meyer:
- 29
- 30 Would it be helpful to arrange for Alf and  
31 myself to visit IVCA after Thanksgiving to  
32 meet with you and Terry?
- 33
- 34 You see that?
- 35 A Correct.
- 36 Q And then you say this:
- 37
- 38 The next step I need to act on will be to  
39 issue a cease and desist order for Prokam.
- 40
- 41 Do you see that?
- 42 A Correct.
- 43 Q Not IVCA.
- 44 A Correct.
- 45 Q Not Thomas Fresh?
- 46 A Correct.
- 47 Q You were gathering evidence to issue a cease and

1 desist order to Prokam?  
2 A And the cease and desist order directed authority  
3 back to IVCA.  
4 Q Prokam was your primary target in this  
5 investigation, correct?  
6 A The issue was agency, why they were not -- you  
7 know, agency was in non-compliance and they were  
8 pricing and why was that happening?  
9 Q You relied entirely on IVCA to provide the  
10 information in your investigation, correct?  
11 A Correct.  
12 Q You did no independent investigation of your own  
13 prior to issuing the cease and desist orders?  
14 A Correct.  
15 Q And the information you received from IVCA was a  
16 highly-curated version of events and set of  
17 documents; do you agree with that?  
18 A Can you repeat, please?  
19 Q The information you received from IVCA was a  
20 highly-curated version of events and set of  
21 documents; do you agree with that?  
22 A We had a meeting and we reviewed documents there  
23 and the investigation was launched and was  
24 ongoing and then subject to a show cause hearing.  
25 So it was -- this was the start of an  
26 investigation and it was by no means the end of  
27 an investigation.  
28 Q Throughout the investigation you received  
29 documents from IVCA, correct?  
30 A Throughout the investigation, correct.  
31 Q And no one else, correct?  
32 A All parties had an opportunity to submit evidence  
33 for that written process that was initiated, the  
34 show cause process. Evidence submitted, we did  
35 gather evidence for IVCA and all parties had an  
36 opportunity to submit evidence as part of the  
37 process.  
38 Q There was a written show cause process where  
39 lawyers were permitted to make submissions on  
40 behalf of their clients, correct?  
41 A That's correct.  
42 Q But there was never any direct investigation on  
43 your part of what had occurred beyond being  
44 provided the information by IVCA, correct?  
45 A Correct.  
46 Q And in the course of the 2018 appeal hearing, you  
47 were shown that some of the documents, some of

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John Newell and Andre Solymosi (for Respondent)  
In chief by Mr. Hrabinsky

1 the orderly marketing system. The Commission  
2 needs to know that IVCA is taking ownership of  
3 its obligations as an agency and that there is an  
4 issue beyond its control that is placing the  
5 agency in a position of non-compliance with its  
6 mandate. I can honestly attest that the  
7 Commission wants IVCA to succeed as an agency.  
8 As long as we are honest and upfront, work  
9 together in support of the orderly marketing  
10 system and request assistance when needed, your  
11 agency license is protected." [as read]  
12 MR. HRABINSKY: All right. Let's move to October now.  
13 If I can ask you to turn to the other white  
14 binder, Exhibit 1A, pages one seventy-nine to one  
15 eighty.  
16 MR. SOLYMOSI: Which one?  
17 MR. NEWELL: What numbers, one seventy-nine?  
18 MR. HRABINSKY: One seven nine to one eight zero.  
19 MR. NEWELL: Thank you.  
20 MR. HRABINSKY: Do you have that before you?  
21 MR. SOLYMOSI: I've got one seventy-nine in front of  
22 me.  
23 MR. HRABINSKY: And -- and, first of all, what is this  
24 document?  
25 MR. SOLYMOSI: This is the e-mail that went out to --  
26 to the Commission members and this e-mail  
27 included some cease and desist orders that --  
28 letters that were going to be sent out to all  
29 parties, IVCA, Prokam Enterprises, and Thomas  
30 Fresh. Just to back up here, I just wanted to  
31 say before this happened we also had a meeting on  
32 October 3rd between Alf Krause, myself, and IVCA  
33 management, and -- and this was the outcome of  
34 that meeting.  
35 MR. HRABINSKY: Now, if you look at about midway on  
36 the page, it says, "On Tuesday, October 3rd, Alf  
37 and myself met with Brian Meyer." Do you see  
38 that?  
39 MR. SOLYMOSI: Yes.  
40 MR. HRABINSKY: Is that the meeting that you're  
41 referring to?  
42 MR. SOLYMOSI: That is the meeting.  
43 MR. HRABINSKY: All right. Can you tell us what  
44 happened at that meeting?  
45 MR. SOLYMOSI: At that meeting we -- we sat down with  
46 IVCA management and staff. Janice was there,  
47 Brian, I -- Ron Wittal I think -- I'm pretty sure

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John Newell and Andre Solymosi (for Respondent)

In chief by Mr. Hrabinsky

- 1 was there, and -- and Terry. We talked about the  
2 issue of non-compliance and minimum pricing.  
3 We -- we looked at evidence that was -- they were  
4 bringing forward, saying, look, we -- I guess,  
5 yes, we acknowledge we're noncompliant to minimum  
6 pricing. We -- we -- we confirmed that we had no  
7 control over this grower and what's been  
8 happening there in -- in the marketplace.
- 9 MR. HRABINSKY: All right. Now, just -- I just want  
10 to direct your attention to the paragraph  
11 following that, beginning "Brian had brought it  
12 to my attention". Just cast your eyes a bit,  
13 please, and can you confirm whether that is an  
14 accurate and fulsome description of what was  
15 discussed at that October 3rd meeting?
- 16 MR. SOLYMOSI: That's correct.
- 17 MR. HRABINSKY: Okay.
- 18 MR. SOLYMOSI: Did you want me to read it?
- 19 MR. HRABINSKY: Well, no, that's not necessary, but  
20 were there other matters discussed at that  
21 meeting or does that pretty much encapsulate what  
22 happened?
- 23 MR. SOLYMOSI: We -- we looked at evidence, and all  
24 the evidence that -- we verified evidence that  
25 sales were being sold below minimum pricing. We  
26 looked at enough -- you know, we had statements  
27 from Terry saying do what you've got to do to  
28 reign this in. As a Commission, it's your  
29 responsibility. And we talked to Brian, we  
30 talked to Janice, we had their perspective on  
31 things. And we came up with the cease and desist  
32 orders.
- 33 MR. HRABINSKY: Now, tell me a little bit more about  
34 the discussion you had with Mr. Mitchell.
- 35 MR. SOLYMOSI: Yeah.
- 36 MR. HRABINSKY: What did he have to say about the  
37 matter?
- 38 MR. SOLYMOSI: I can't recall the specifics right now,  
39 but he was basically saying do what you've got to  
40 do. As a Commission, you know, you have the  
41 authority over this and it's your responsibility  
42 to maintain orderly marketing.
- 43 MR. HRABINSKY: Okay. Now, take -- please take a look  
44 at document 64 to 66 in the same binder. Can you  
45 confirm for the Panel what this document is?
- 46 MR. SOLYMOSI: Okay, this document was issued  
47 October 10th, 2017, and it is -- it is a letter

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Janice Solotki (adverse witness)

Cross-exam by Ms. Hunter

1 would be.

2 Q And what were the choices from your perspective?

3 A I don't know. That we were waiting for Andre and

4 Alf to give us a game plan, if that's what you

5 want to call it.

6 Q All right. And you attended that meeting on

7 October 3rd; correct?

8 A I did.

9 Q And in advance of that meeting you and Mr. Meyer

10 had compiled some documents to provide to the

11 Commission; correct?

12 A I helped Brian compile his documents, correct.

13 Q Some of those documents appear to be printed by

14 you?

15 A Correct.

16 Q And so those are documents that you -- that you

17 compiled for the Commission?

18 A I think not prior to the meeting, after the

19 meeting when Andre had asked for certain

20 documentation. Is that what you're referring to

21 or are you referring to something for October?

22 When was the meeting, the 3rd?

23 Q The 3rd. I'm referring to some documents that

24 were provided to the Commission on October 2nd,

25 and if I can take you to the green book, Exhibit

26 12, tab 60.

27 A Tab, sorry?

28 Q Tab 60.

29 A Okay. Oh, this is what Brian provided to the

30 Commission.

31 Q Yes. And if you turn --

32 A 17 pages.

33 Q And if you turn into the documents you'll see the

34 first document appears to be printed by you.

35 A Correct, it looks like it's a detailed grower

36 report for the first two weeks in August.

37 Q And the second was printed by Mr. Meyer, next was

38 printed by you, a document starting on 1369 was

39 printed by you.

40 A Yes. These are the variance reports that Terry

41 had me produce on a weekly basis and forward to

42 both Bob Dhillon and Bob Gill.

43 Q Yes, but I want to ask you about compiling these

44 for the Commission.

45 A Correct. Okay.

46 Q So it looks from this document that the majority

47 of the documents that were provided to the

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Janice Solotki (adverse witness)

Cross-exam by Ms. Hunter

1 Commission were printed by you?  
2 A They were just the reports.  
3 Q Yes, but what I want to understand is how it came  
4 to be that those were the documents selected to  
5 provide to the Commission at this stage.  
6 A Brian asked me to provide them.  
7 Q He asked you to print specific documents?  
8 A Yes.  
9 Q And you didn't have a role in choosing which  
10 documents were to be provided?  
11 A No.  
12 Q Could you turn to 1361. I'm just looking at the  
13 handwriting on 1361.  
14 A Oh, right, yeah, we got no response from either  
15 of the Bobs.  
16 Q Whose handwriting is that?  
17 A That is mine.  
18 Q That's your handwriting?  
19 A Yes, it is. That one is.  
20 Q All right. And can you turn to 1366.  
21 A That would be my handwriting as well.  
22 Q All right. And can you tell me what steps --  
23 this was intended to convey to the Commission  
24 that Mr. Gill had not responded to these emails;  
25 correct?  
26 A Correct.  
27 Q You were indicating to the Commission this was  
28 part of a pattern of conduct by Mr. Gill, that he  
29 was non-responsive to your request for  
30 information?  
31 A Yeah. We wanted to find out are you aware that  
32 you're selling below minimum price? Here's what  
33 you sold for that week. This is BCVMC's minimum  
34 price. Please explain to us why it's below  
35 minimum pricing.  
36 Q Yes.  
37 A They felt that they didn't need to respond to our  
38 request.  
39 Q Yes. And you understood that when you indicated  
40 on these documents that there had been no  
41 response, the Commission was relying on you to  
42 have done a diligent search to confirm there was  
43 no response?  
44 A I never got a response. Now, if Terry or Brian  
45 got a response, that's something different. But  
46 they -- I think Mr. Gill responded on one because  
47 Brian made a pricing error. So we wore that and

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Janice Solotki (adverse witness)

Cross-exam by Ms. Hunter

- 1 we told the Commission that that was our problem,  
2 that we had a typo error on a pricing. But we  
3 let the Commission know that we had on a price  
4 list below minimum pricing on a certain product.
- 5 Q In these documents here that you've provided to  
6 the Commission there's only about four emails;  
7 correct?
- 8 A Correct.
- 9 Q Those are the only emails that were -- only  
10 documents provided to the Commission in advance  
11 of the meeting so far as you know?
- 12 A Correct.
- 13 Q On two of them you've indicated there was no  
14 response received from Mr. Gill?
- 15 A Correct.
- 16 Q You understood it was important that that  
17 information be accurate because the Commission  
18 was relying on it?
- 19 A I didn't know if they were relying on the report.  
20 This report I was asked to generate by Terry  
21 Michell, the president of IVCA, and Brian Meyer,  
22 who's the general manager because we wanted to  
23 try to get to the bottom of why they weren't  
24 complying with minimum pricing. We just happened  
25 to provide these to Andre when he came in October  
26 saying, yes, we made an attempt to find out why  
27 they weren't selling at minimum or above minimum  
28 pricing.
- 29 Q My question is just about the steps that were  
30 taken to verify that the information you were  
31 providing to the Commission was accurate, and I'm  
32 asking whether you agree with me that it was  
33 important, when you indicated no response, that  
34 that be truthful when you provided that to the  
35 Commission?
- 36 A Yes, because they never responded. They said --  
37 he -- Mr. Dhillon -- sorry, he, Mr. Dhillon made  
38 a phone call to Brian and said we're too busy to  
39 deal with this BS, we'll deal with it when we're  
40 not busy. He doesn't like to memorialize a lot  
41 in emails as far as certain things that he won't  
42 do; right? So that's probably why I wrote "no  
43 response" because they had no intentions of  
44 responding to Terry's request.
- 45 Q And I'm just asking you to confirm that you  
46 understood the Commission was going to rely on  
47 your info -- the information you were providing

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Janice Solotki (adverse witness)  
Cross-exam by Ms. Hunter

1 that there was no response?  
2 A But this -- but writing "no response" on this  
3 email was just for documentation purpose on IVCA,  
4 that we had sent this to Mr. Dhillon and to  
5 Mr. Gill. Brian provided it to the Commission.  
6 Q How did you confirm, prior to writing "no  
7 response" on this document, that in fact there  
8 had been no response?  
9 A Because Terry asked me have they said anything to  
10 you and Brian said the only thing we've gotten is  
11 Bob Gill phoned me and said we're too damn busy  
12 to deal with this crap.  
13 Q Did you look at your own emails to see if there  
14 had been a response?  
15 A The only one that I truly remember is the one  
16 that was the pricing error on Brian's price list,  
17 and Mr. Gill made -- and Mr. Dhillon made some  
18 funny remarks and Brian said, I'm human, I make  
19 mistakes too. That's vaguely what I remember.  
20 It was a pricing error that he sold a certain  
21 colour potatoes below minimum price.  
22 Q Yes. What I'm asking you about is when you wrote  
23 "no response" on the email, did you look at your  
24 own emails to verify that there had, in fact,  
25 been no response?  
26 A I can't remember. Sorry.  
27 Q All right. Do you recall any steps that you took  
28 to confirm that that information being provided  
29 to the Commission was accurate?  
30 A I can't remember.  
31 Q Can I ask you to turn to Exhibit 2B, the yellow  
32 book, tab 63.  
33 A 2, sorry, B?  
34 Q Yes. And if you turn over to the second page of  
35 tab 63 of Exhibit 2B, this is the same email that  
36 we have just been looking at that indicated "no  
37 response".  
38 A Yeah, this is the email about -- that there was a  
39 pricing error.  
40 Q Yes. This is Mr. Gill's response.  
41 A Yes. That was the only time. These were weekly  
42 variance reports.  
43 Q Yes. There were two variance reports provided to  
44 the Commission; correct? We just looked at them.  
45 A It looks like there may be three here. August  
46 1st -- is there one that's August 29th to 31st is  
47 the last page or is it the same? It doesn't have

1                   Bob Gill's authority is suspended until  
2                   further notice, pending further  
3                   investigation.  
4

5                   What -- was there a discussion about that? What  
6                   is that? Is that your thought, or is there a  
7                   discussion about that?

8           A        There was some discussion around that, and what  
9                   -- what did IVCA need.

10          Q        Is that what they communicated they needed?

11          A        Yes.

12          Q        And did you agree to do that at that meeting? Or  
13                   is this just a note -- I'm trying to understand  
14                   what this is.

15          A        Well, that was a note, based on discussion, and I  
16                   guess recommendation on what they needed to gain  
17                   back control of their agency. If the Commission  
18                   is going to step in to assist them, this is what  
19                   they needed.

20          Q        All right. So you had this meeting on October  
21                   the 3rd, right?

22          A        Correct.

23          Q        And I want to take you to the next document,  
24                   which is October 5th, 2015. It's an email from  
25                   yourself to Mr. Krause, where you attach cease  
26                   and desist orders for Prokam, IVCA and Thomas  
27                   Fresh. You say:

28  
29                   Let's talk tomorrow. I should arrange call  
30                   with Commissioners for Tuesday, or do we  
31                   just inform Commissioners of the letters and  
32                   we will review the violations and evidence  
33                   at the November 2nd meeting? I could send  
34                   out the letters by Tuesday at the latest.  
35

36                   That means the following Tuesday, right?

37          A        Correct.

38          Q        All right. So you ask him -- you asked the Chair  
39                   of the commission whether you should arrange a  
40                   call or inform them and review the violations.  
41                   What was the response to that?

42          A        That -- this one says that we had to have -- we  
43                   were going to arrange a call with the vice-chair  
44                   of the Commission and discuss how to proceed.  
45                   That's basically what happened.

46          Q        All right. So I'm going to -- actually I didn't  
47                   take you to the email below on October 5th at

1 A Just Alf -- Mr. Alf Krause, Mr. Peter Guichon and  
2 myself.

3 Q And you also then provided the cease and desist  
4 copies [indiscernible] -- on October the 6th, the  
5 following day, you provided the cease and desist  
6 letters to Mr. Meyer, and two or three emails  
7 that are set out here on 1160, right?

8 A That's correct.

9 Q And why were you providing the cease and desist  
10 letters to him?

11 A IVCA was asking for assistance, and so I wanted  
12 to make sure that the assistance that the  
13 Commission was providing was sufficient.

14 Q So you were seeking his input?

15 A Correct.

16 Q Did he provide any?

17 A No.

18 Q He did not provide any comment or input or  
19 response?

20 A He -- well, he did not provide any -- any  
21 amendments to be made to what was presented to  
22 him.

23 Q All right. On October 9th, he sends you an email  
24 saying:

25

26 When would be a good time to talk?

27

28 Do you see that?

29 A Correct.

30 Q Did you have a discussion with him?

31 A It would be -- appear so.

32 Q Yes, 'cause you respond on October the 10th,  
33 saying:

34

35 Sorry, I wasn't checking my email yesterday.  
36 Can we talk within the next half an hour?  
37 Text [indiscernible].

38

39 Do you see that?

40 A Correct.

41 Q So did you have a discussion with him?

42 A Yes.

43 Q And what was the nature of that discussion?

44 A Just for -- confirmation on the cease and desist  
45 letters, and when they would be sent out.

46 Q And they were sent out October the 10th, right?

47 A Yes.

1 Q So what was the -- how long was the call?  
2 A It would have been very short.  
3 Q When you say "would have been" --  
4 A I -- I don't know. Like a few -- couple minutes.  
5 Q Okay. That's -- is that your recollection, or is  
6 that your -- are you just --  
7 A That's my --  
8 Q -- assuming?  
9 A That's my recollection.  
10 Q Now --  
11 A Correct.  
12 Q -- before you -- so just to take you through the  
13 process, you received, you know, information from  
14 Mr. Meyer about compliance with various matters.  
15 You had email communication requesting  
16 information, correct?  
17 A Correct.  
18 Q And you then received various information, right?  
19 A Correct.  
20 Q You then had a meeting in person?  
21 A Correct.  
22 Q You then received more information, sent to you  
23 the following day?  
24 A Correct.  
25 Q You then drafted the cease and desist orders,  
26 right?  
27 A Correct.  
28 Q They -- they were then issued?  
29 A Correct.  
30 Q You didn't speak with anyone at Prokam before you  
31 issued the cease and desist orders, nor did you  
32 speak with anybody at Thomas Fresh, right?  
33 A No.  
34 Q Why didn't you do that?  
35 A Because this was an agency matter, and this was  
36 -- the reason for issuing these letters was to  
37 bring back control to the agency. The agency was  
38 saying they've lost control of their ability to  
39 manage their agency, and these letters were  
40 designed to provide control back to that agency.  
41 Q And one of the cease and desist orders was going  
42 to Prokam, right?  
43 A Correct.  
44 Q So it had -- it did involve Prokam, to that  
45 extent, right?  
46 A Correct.  
47 Q Did you consider that before you issued the cease

Marcel Andre Solymosi  
Exam by Cnsl N. Mitha

1 and desist to Prokam, you should discuss the  
2 concerns that had been raised with them?  
3 A No.  
4 Q And again, I suppose -- in light of the fact that  
5 you were -- you would agree the issuing of a  
6 cease and desist order is a fairly drastic step?  
7 A Correct.  
8 Q Before you took that step, why not speak to  
9 Prokam to get their perspective?  
10 A Because the agencies -- I rely on my agency  
11 manager and my agencies to perform their duties  
12 as agents of the Commission. And if an agency is  
13 telling me that they're not able to perform their  
14 duties, and because they -- and that the cause of  
15 that is because they're not able to maintain  
16 control of their agency due to a producer, then I  
17 didn't feel like there was an obligation to  
18 inform that producer of the cease and desist  
19 letters, because this was a first step in an  
20 enforcement process that would lead to a show  
21 cause hearing, where all the evidence and  
22 information can be brought forward or reviewed.  
23 Q Okay. I see. All right. So in other words, if  
24 your manager is wrong, that can be dealt with at  
25 a review. Was that your thinking?  
26 A Correct.  
27 Q It'd be fair to say that Prokam had no idea that  
28 this investigation was ongoing before the  
29 issuance of the cease and desist?  
30 A Well, it was pretty quick when we issued this  
31 letter, so I would not think they would be aware.  
32 Q I want to take you to the cease and desist order.  
33 So this is the cease and desist order that you  
34 issued. I'm just going to go to the beginning.  
35 This is the one you issued on October the 10th  
36 against Prokam, and you addressed it to Bob  
37 Dhillon as the principal, do you see that?  
38 A correct.  
39 Q And that's page 1165, for the record?  
40 A Correct.  
41 Q I want to go through each one of the -- you  
42 listed various compliance infractions, right?  
43 A Yes.  
44 Q Okay. The first one is:  
45  
46 No producers shall produce or ship regulated  
47 product without delivery or production

1 A Just Alf -- Mr. Alf Krause, Mr. Peter Guichon and  
2 myself.

3 Q And you also then provided the cease and desist  
4 copies [indiscernible] -- on October the 6th, the  
5 following day, you provided the cease and desist  
6 letters to Mr. Meyer, and two or three emails  
7 that are set out here on 1160, right?

8 A That's correct.

9 Q And why were you providing the cease and desist  
10 letters to him?

11 A IVCA was asking for assistance, and so I wanted  
12 to make sure that the assistance that the  
13 Commission was providing was sufficient.

14 Q So you were seeking his input?

15 A Correct.

16 Q Did he provide any?

17 A No.

18 Q He did not provide any comment or input or  
19 response?

20 A He -- well, he did not provide any -- any  
21 amendments to be made to what was presented to  
22 him.

23 Q All right. On October 9th, he sends you an email  
24 saying:

25

26 When would be a good time to talk?

27

28 Do you see that?

29 A Correct.

30 Q Did you have a discussion with him?

31 A It would be -- appear so.

32 Q Yes, 'cause you respond on October the 10th,  
33 saying:

34

35 Sorry, I wasn't checking my email yesterday.  
36 Can we talk within the next half an hour?  
37 Text [indiscernible].

38

39 Do you see that?

40 A Correct.

41 Q So did you have a discussion with him?

42 A Yes.

43 Q And what was the nature of that discussion?

44 A Just for -- confirmation on the cease and desist  
45 letters, and when they would be sent out.

46 Q And they were sent out October the 10th, right?

47 A Yes.

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John Newell and Andre Solymosi (for Respondent)

In chief by Mr. Hrabinsky

1 MR. HRABINSKY: Now --

2 MR. SOLYMOSI: Do you want me to go -- continue.

3 MR. HRABINSKY: Sorry?

4 MR. SOLYMOSI: Do you want me to go over the cease and  
5 desist order?

6 MR. HRABINSKY: That's fine for now. What I want to  
7 ask you -- we didn't -- we didn't spend time  
8 going over the cease and desist order directed at  
9 IVCA, but my question for you is -- is this, why  
10 issue these letters to Prokam and Thomas Fresh?  
11 Why not just focus the enforcement efforts on  
12 IVCA?

13 MR. SOLYMOSI: Because Brian -- Brian and IVCA were  
14 telling us they have no control over this grower.  
15 They -- they -- Brian had reached out to Thomas  
16 Fresh, saying that they're in non-compliance with  
17 the minimum pricing, not in those words exactly,  
18 but saying they're in non-compliance. And Thomas  
19 Fresh knows that a pricing list that's issued by  
20 IVCA is the pricing list. And if they're buying  
21 below that pricing list, then, you know, why is  
22 that occurring? And so -- so the reason why  
23 that's occurring is that there's Prokam, there's  
24 Bob Gill, and there's Thomas Fresh behind the  
25 scenes here that are acting -- colluding under --  
26 behind the scenes here in non-compliance of the  
27 IVCA general manager.

28 MR. HRABINSKY: Okay. Now, at the bottom of page 68  
29 there is a reference to an October 16 meeting and  
30 an invitation is extended for these stakeholders  
31 to appear. Did that meeting take place?

32 MR. SOLYMOSI: No, it did not. We went to a written  
33 process.

34 MR. HRABINSKY: Okay.

35 MR. SOLYMOSI: So, the plan was to have -- the whole  
36 intent of these letters was to bring everyone in  
37 front of the Commission and to have the -- the --  
38 the matters discussed in the open and have a  
39 decision made by the Commission on how to act --  
40 or what orders to be issue by the Commission.  
41 That did not happen. We went to a written  
42 process because it became evident that there was  
43 a lot of -- it would be better to deal with this  
44 matter in a written process than in a verbal  
45 presentation.

46 MR. HRABINSKY: Now, let me take you to pages one four  
47 three and one four four. This is a letter from

66

John Newell and Andre Solymosi (for Respondent)  
In chief by Mr. Hrabinsky

1 Fresh, and IVCA or more generally?

2 MR. SOLYMOSI: Yes, specifically to those actions but  
3 in general make it seem that, yes, we are  
4 enforcing the rules and regulations.

5 MR. HRABINSKY: And do you have any knowledge about  
6 how this letter came to be put together by the  
7 agencies?

8 MR. SOLYMOSI: We had an agency managers meeting back  
9 in November, it was the same kind of timeframe  
10 there, and each agency was talking about issues  
11 they were having. It's -- it was discussed what  
12 Brian was having -- the issues he was having  
13 with -- with his agency and there was -- this was  
14 a letter after the meeting. It -- Murray had  
15 sent me an e-mail saying, look, would it help  
16 if -- you know, if we all signed off on the  
17 letter of support, and I said, you know, whatever  
18 you guys want to do, and they submitted a letter.

19 MR. HRABINSKY: Now, you recall we talked a little bit  
20 about the meeting that you had with IVCA  
21 representatives on October 3rd. Do you recall  
22 that?

23 MR. SOLYMOSI: October 3rd, yes.

24 MR. HRABINSKY: And between October 3rd and  
25 November 10, the date of this letter, did you  
26 continue to have dealings with Mr. Meyer about  
27 this issue?

28 MR. SOLYMOSI: Well, October 3rd was when we had  
29 the -- the meeting with the staff. Alf and I  
30 went over there. And then in between that and  
31 this time we -- more evidence was brought  
32 forward, so we had more detail. I was -- I was  
33 working with Brian to have -- to go through the  
34 evidence, to have more evidence.

35 MR. HRABINSKY: And --

36 MR. SOLYMOSI: So, all that evidence was then pulled  
37 together and you have a -- you have a -- an  
38 e-mail that was sent out or something, I can't  
39 remember, a document that was sent out on  
40 November 23rd to all -- all the legal  
41 representatives and that summarized -- summarized  
42 all the evidence that was brought forward to the  
43 Commission.

44 MR. HRABINSKY: And who was providing that evidence to  
45 you?

46 MR. SOLYMOSI: IVCA, which would be Brian and Jas.

47 MR. HRABINSKY: Okay. Now, if I can ask you to turn

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 item 7 on the agenda on eight sixty-six.  
2 MR. SOLYMOSI: "How to deal with problem growers Why  
3 are they a problem?"  
4 MS. HUNTER: Yes, and that's a --  
5 MR. SOLYMOSI: Yeah.  
6 MS. HUNTER: -- reference to Prokam, correct?  
7 MR. SOLYMOSI: That's a reference to problem growers  
8 and why are they a problem.  
9 MS. HUNTER: All right.  
10 MR. SOLYMOSI: So, it's not particularly --  
11 MS. HUNTER: You didn't have any particular grower in  
12 mind?  
13 MR. SOLYMOSI: I didn't.  
14 MS. HUNTER: No, you set this agenda. There's no  
15 reference to Prokam or IVCA on the agenda.  
16 MR. SOLYMOSI: This agenda was set with participation  
17 from agencies providing feedback on what they  
18 want to discuss at the meeting.  
19 MS. HUNTER: And who provided that -- that --  
20 MR. SOLYMOSI: I can't -- I can't --  
21 MS. HUNTER: -- item?  
22 MR. SOLYMOSI: -- honestly remember --  
23 MS. HUNTER: All right.  
24 MR. SOLYMOSI: -- but it could have been IVCA. I  
25 think it might have even been Jamie on Vancouver  
26 Island. It could have been Murray. It could  
27 have been Lillian. I --  
28 MS. HUNTER: All right.  
29 MR. SOLYMOSI: -- I can't honestly remember.  
30 MS. HUNTER: Let -- let me take you to your notes of  
31 the meeting that start at the next page, page 67.  
32 These are your notes, correct?  
33 MR. SOLYMOSI: These are my notes, yes.  
34 MS. HUNTER: Yeah. And -- and that's of the same  
35 meeting, the agency managers' meeting?  
36 MR. SOLYMOSI: Yes.  
37 MS. HUNTER: Now, are these notes taken in the order  
38 that the meeting occurred?  
39 MR. SOLYMOSI: I don't know. You had section 2, you  
40 had section 3. In this case it looks like it  
41 was.  
42 MS. HUNTER: Okay. Now, I'd like to take you to a few  
43 section of these notes and -- and have you tell  
44 me what you can perhaps decipher of them and what  
45 you recall about them. And so the first is about  
46 halfway down page 2. It says, "Bob Dhillon IVCA  
47 issue." What -- what does the next line say?

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: "Backing Thomas Fresh. [Has --] has  
2 the money," or something, and, "It's hell."  
3 MS. HUNTER: And -- and who is -- what is that  
4 recording?  
5 MR. SOLYMOSI: What do you mean "recording"?  
6 MS. HUNTER: What are you recording here in your  
7 notes?  
8 MR. SOLYMOSI: Oh, these are just basically the --  
9 what item is this on the agenda? Item 2. We  
10 were going to look at agency role and  
11 accountability framework, and the question was,  
12 "How are we doing?" So, that question was posed  
13 to each agency manager individually and we went  
14 around the table and got feedback.  
15 MS. HUNTER: And so is this Mr. Meyer's speaking?  
16 MR. SOLYMOSI: Yes.  
17 MS. HUNTER: And these are Mr. Meyer's words so far as  
18 you -- you can recall?  
19 MR. SOLYMOSI: I -- I recall yes.  
20 MS. HUNTER: All right. Now --  
21 MR. SOLYMOSI: Not -- I don't know if all of them.  
22 Like, "It's hell", yes -- yes, that word in  
23 particular is not one -- that is mine.  
24 MS. HUNTER: Okay.  
25 MR. SOLYMOSI: That's why it's in quotation marks  
26 there.  
27 MS. HUNTER: Okay. Now, turn over to the next page,  
28 please. And this page is marked 1.1.  
29 MR. SOLYMOSI: Yes.  
30 MS. HUNTER: It doesn't have an agenda item on it. Do  
31 you -- do you think it's a continuation or is it  
32 a continuation of the page before or is it  
33 something that was added in later?  
34 MR. SOLYMOSI: It's -- I think it's a continuation --  
35 MS. HUNTER: Okay.  
36 MR. SOLYMOSI: -- is 1.1.  
37 MS. HUNTER: And so under "Issues", can you just read  
38 the first three lines for me?  
39 MR. SOLYMOSI: "Contract pricing and approval process.  
40 Thomas Fresh contracts with Bob Gill April 18th.  
41 July 1st Bob Gill authority given." [as read]  
42 MS. HUNTER: Okay. And -- and is this Mr. Meyer  
43 speaking still, that you're recording what he's  
44 saying, or is it something else?  
45 MR. SOLYMOSI: It says, "Never communicated with Brian  
46 from beginning." I believe so.  
47 MS. HUNTER: All right. And -- and then a couple of

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 lines down there is a line that says "Murray"  
2 and -- and then what are the words after that?  
3 MR. SOLYMOSI: I can't really -- I don't know.  
4 MS. HUNTER: All right. Do you recall a comment from  
5 Driediger about this issue towards the beginning  
6 of the meeting?  
7 MR. SOLYMOSI: Not -- I don't remember the particulars  
8 of the conversation. I can't -- I can't -- I --  
9 I can't remember Now.  
10 MS. HUNTER: All right. Could you turn over to  
11 page 2 -- or eight sixty-nine at the bottom.  
12 MR. SOLYMOSI: Eight sixty-nine?  
13 MS. HUNTER: Eight sixty-nine, yeah, the next page.  
14 There is a heading "Prokam". Can you just read  
15 those three bullets under that heading?  
16 MR. SOLYMOSI: Oh, on the top there?  
17 MS. HUNTER: Yeah.  
18 MR. SOLYMOSI: "Peak of Market only regulates in  
19 Manitoba. It is --" you want how many,  
20 everything? "It is --"  
21 MS. HUNTER: There's the three bullets under the  
22 heading "Prokam".  
23 MR. SOLYMOSI: "It is the grower's call if he wants to  
24 sell to Thomas Fresh outside the province.  
25 [Thomas --] Thomas Fresh looking for fresh --" I  
26 guess, "fresh meat," or "market" or something.  
27 "They are a poor receiver. [Clip --] Clip  
28 people's bills." [as read]  
29 MS. HUNTER: And -- and whose comments is that  
30 recording?  
31 MR. SOLYMOSI: I -- I would think that this would  
32 reflect an agency manager that has dealt with  
33 Thomas Fresh in the past and has extensive  
34 experience in the marketplace, and it -- it  
35 likely could be Murray.  
36 MS. HUNTER: You have -- do you recall?  
37 MR. SOLYMOSI: I can't remember the specifics of this  
38 conversation.  
39 MS. HUNTER: All right. Under -- under the straight  
40 line that says "Pricing" and can you read those  
41 first three bullets under the heading "Pricing"?  
42 MR. SOLYMOSI: "White --" the first three bullet  
43 points?  
44 MS. HUNTER: Yeah. "White potatoes new quotes on  
45 retail in Prairies through Thomas Fresh. No  
46 rules, no minimum price. Pricing sheets by  
47 market, B.C., Prairies, export price no, maybe

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 whole sale, repacking." [as read]  
2 MS. HUNTER: And does this reflect comments of  
3 Mr. Driediger's as well or do you recall?  
4 MR. SOLYMOSI: Well, we're looking at section 3?  
5 MS. HUNTER: Yeah.  
6 MR. SOLYMOSI: "Pricing policy, weekly market calls,  
7 weekly minimum price sheet, how is it working?"  
8 [as read] So, this is regarding the pricing  
9 policy document.  
10 MS. HUNTER: And whose documents are these -- these  
11 bullets recording?  
12 MR. SOLYMOSI: I can't remember.  
13 MS. HUNTER: Okay. Were you participating as a  
14 speaker at this meeting or were you just taking  
15 notes?  
16 MR. SOLYMOSI: I was chairing it.  
17 MS. HUNTER: All right. And so are your comments  
18 reflected in the notes?  
19 MR. SOLYMOSI: No.  
20 MS. HUNTER: Okay. Can you turn over to the next  
21 page, please. There's a bullet, there's a  
22 straight line, and then a -- it says, I think,  
23 "Public hearing and in camera session," do you  
24 see that?  
25 MR. SOLYMOSI: Yes.  
26 MS. HUNTER: And then "Outcome of the Prokam, IVCA,  
27 TF," and I assume that's Thomas Fresh?  
28 MR. SOLYMOSI: Yes.  
29 MS. HUNTER: What is that referring to?  
30 MR. SOLYMOSI: I think this is referring to the  
31 suggested process that we would have to go  
32 through.  
33 MS. HUNTER: And the agency managers were given an  
34 opportunity to comment on that process, correct?  
35 MR. SOLYMOSI: I don't know exactly the context of  
36 how -- how we -- what we discussed with regards  
37 to that note --  
38 MS. HUNTER: It --  
39 MR. SOLYMOSI: -- but --  
40 MS. HUNTER: -- in terms of this meeting, though --  
41 MR. SOLYMOSI: It could have been a comment saying  
42 this is what is expected to happen, I -- I can't  
43 remember --  
44 MS. HUNTER: All right.  
45 MR. SOLYMOSI: -- exactly, right?  
46 MS. HUNTER: Just in terms of the tenor of this  
47 meeting in general, it appears that quite a lot

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MS. HUNTER: Okay. And then skipping down a bullet,  
2 we have a reference to Thomas Fresh and can you  
3 read that -- read that bullet for us?  
4 MR. SOLYMOSI: "Thomas Fresh abide by orders and deal  
5 directly with Brian or your licence will be  
6 revoked." [as read]  
7 MS. HUNTER: All right. And -- and that was the --  
8 that was consistent with the discussions that you  
9 were having around the cease and desist order  
10 with the commissioners?  
11 MR. SOLYMOSI: Exactly, yeah.  
12 MS. HUNTER: And -- and who -- whose comment does that  
13 reflect?  
14 MR. SOLYMOSI: That would be me.  
15 MS. HUNTER: All right. So, you were telling the --  
16 the agency managers that was what was going to  
17 happen here?  
18 MR. SOLYMOSI: I was -- I guess I was explaining to  
19 them the parts of the cease and desist orders  
20 that were issued.  
21 MS. HUNTER: All right. And you were explaining to  
22 them what -- what the issue was and -- and what  
23 the Commission was going to do about?  
24 MR. SOLYMOSI: I can't -- no, I -- I can't remember  
25 that.  
26 MS. HUNTER: All right. Can you turn over to the next  
27 page. Eight seventy-two, under the heading  
28 "8. Districts" and there is a bullet that starts  
29 with "Prokam" and can you read that?  
30 MR. SOLYMOSI: "Districts 2 Island and Mainland  
31 Problem started with previous management at IVCA  
32 but really it's currently a problem grower.  
33 Program put up storage and abide by DA." [as  
34 read]  
35 MS. HUNTER: And -- and whose comments do those  
36 reflect?  
37 MR. SOLYMOSI: The industry.  
38 MS. HUNTER: Well, you're -- you're taking notes.  
39 MR. SOLYMOSI: Well, that reflects a discussion. This  
40 is all reflects discussion at the meeting, so.  
41 MS. HUNTER: Do you recall somebody saying ...  
42 MR. SOLYMOSI: I can't recall specifically, but the  
43 group of managers that were at the meeting had a  
44 really good discussion --  
45 MS. HUNTER: All right.  
46 MR. SOLYMOSI: -- and were all involved in the  
47 discussion.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

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2 we have a reference to Thomas Fresh and can you  
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40 is all reflects discussion at the meeting, so.  
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43 group of managers that were at the meeting had a  
44 really good discussion --  
45 MS. HUNTER: All right.  
46 MR. SOLYMOSI: -- and were all involved in the  
47 discussion.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MS. HUNTER: And -- and it appears most of the  
2 discussion at this meeting was about this issue  
3 about Prokam, IVCA, and Thomas Fresh, is that  
4 fair?  
5 MR. SOLYMOSI: It's fair. They were mentioned.  
6 MS. HUNTER: Well, they were more than mentioned.  
7 The -- the --  
8 MR. SOLYMOSI: Yeah.  
9 MS. HUNTER: -- majority of your notes covers --  
10 MR. SOLYMOSI: Yeah.  
11 MS. HUNTER: -- this issue. And -- and you provided  
12 some information to the agency managers?  
13 MR. SOLYMOSI: Correct.  
14 MS. HUNTER: And you received feedback from the agency  
15 managers on how they thought it should be dealt  
16 with, correct?  
17 MR. SOLYMOSI: Correct.  
18 MS. HUNTER: And -- and that information was conveyed  
19 to the Commission, correct?  
20 MR. SOLYMOSI: No.  
21 MS. HUNTER: It was not conveyed to the Commission?  
22 MR. SOLYMOSI: No.  
23 MS. HUNTER: All right. Now, these notes were never  
24 disclosed to Prokam or Thomas Fresh in the  
25 context of preparing submissions for the December  
26 decision, correct?  
27 MR. SOLYMOSI: Correct.  
28 MS. HUNTER: And -- and they weren't produced until  
29 after the March document demands, correct?  
30 MR. SOLYMOSI: Correct.  
31 MS. HUNTER: Can I take you to the other binder to two  
32 thirty-seven. Now, this -- this is a letter from  
33 yourself to Mr. Mitchell and Mr. Meyer dated two  
34 days later on November 9th?  
35 MR. SOLYMOSI: Correct.  
36 MS. HUNTER: And at the bottom of the first page, this  
37 is said to be pursuant to the cease and desist  
38 order issued to IVCA. Do you see that?  
39 MR. SOLYMOSI: Yes.  
40 MS. HUNTER: And there's no reference to the meeting,  
41 correct?  
42 MR. SOLYMOSI: No.  
43 MS. HUNTER: No reference to the fact that you were  
44 working with IVCA and that they're co-operating  
45 with the Commission at this point, correct?  
46 MR. SOLYMOSI: Terry is IVCA.  
47 MS. HUNTER: I'm saying there's no reference in the

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Murray Driediger (Intervener)  
Cross-exam by Ms. Hunter

- 1 industry support?" And my question is is what  
2 the industry support you wanted to show in the  
3 letter was support for the VMC to bring the  
4 Prokam/Thomas Fresh infractions to a satisfactory  
5 conclusion?
- 6 A No, in the end we felt we wanted to be more  
7 general because we didn't want to be specific  
8 with Thomas Fresh and the Prokam situation. We  
9 weren't aware of the evidence and the violations  
10 and we didn't want to make assumptions. So we  
11 thought it would be better to provide a general  
12 letter in support of -- for enforcement  
13 activities as a whole, and we encouraged them to  
14 continue down this road and not to stop there.
- 15 Q All right. And so when you say we decided in the  
16 end to make it more general, was there some  
17 further discussion about that with the other  
18 agencies?
- 19 A Well, there was an agreement to write a letter;  
20 okay? I was asked to provide the first draft and  
21 everybody else said that they would take a look  
22 at it and provide input and everybody did. And  
23 in the end over a period of a matter of days or  
24 whatever it was, we all agreed what should be in  
25 the letter and we all signed it.
- 26 Q All right. Now, I've never seen any drafts.  
27 I've only seen the final so perhaps you can tell  
28 me what was in the drafts. Was the first draft  
29 different than the final version?
- 30 A I don't recall, Ms. Hunter. I just don't recall.
- 31 Q Well, you've just given a lot of evidence about  
32 there being drafts and some decision making  
33 process?
- 34 A Look, I don't recall about, you know, what was  
35 changed from the first draft to the final draft.  
36 I have no idea.
- 37 Q Do you recall whether when you drafted the letter  
38 you mentioned Prokam/Thomas Fresh?
- 39 A No, I don't recall. I don't believe I did but I  
40 don't recall.
- 41 Q All right. And so what I'm trying to understand  
42 is how there was a transition that appears to  
43 have been made based on your evidence from what  
44 you say here in the email, you want to show  
45 support for the VMC to bring the Prokam/Thomas  
46 Fresh infractions to a conclusion to something  
47 more general, and I'm trying to understand what

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John Newell and Andre Solymosi (for Respondent)  
In chief by Mr. Hrabinsky

1 everything was, but on the evidence side of  
2 things here between one seventy-five or one  
3 seventy-six and all the evidence put forward here  
4 up until two one four I -- I know was put in  
5 there. All the evidence that was brought  
6 forward, pricing policy would be in there.

7 MR. HRABINSKY: Okay. Can I ask you to turn to pages  
8 two three one to two three six and are you able  
9 to comment on those records?

10 MR. SOLYMOSI: To which? To?

11 MR. HRABINSKY: Two three one to two three six.

12 MR. SOLYMOSI: Yeah.

13 MR. HRABINSKY: Did you cause that material to be sent  
14 by me to ...

15 MR. SOLYMOSI: Yes. Yeah. Yes, I did.

16 MR. HRABINSKY: Now, I'm going to have to take you to  
17 the other binder momentarily. Keep -- keep this  
18 binder in front of you, though. If you would  
19 turn to page one zero two nine.

20 MR. SOLYMOSI: One -- one zero ... Yes.

21 MR. HRABINSKY: And what can you tell me about this --

22 MR. SOLYMOSI: One-o two nine.

23 MR. HRABINSKY: -- document?

24 MR. SOLYMOSI: This is a letter dated November 10th  
25 and it's from -- it's signed by all agency  
26 managers, storage crop agency managers. It's  
27 thanking me for my effort to bring orderly  
28 marketing back to our industry. It's -- it's --  
29 it's basically saying that we support the  
30 industry and agencies to bring order back to our  
31 industry and to make sure we are playing by the  
32 same rules. It says, "Bad actors, they can  
33 destroy the system for their own personal benefit  
34 and must not be allowed to profit from making  
35 inruns on a regulated system under the guise of  
36 new market and prices below that established by  
37 the VMC while the rest of the industry follows  
38 the rules. The future of orderly marketing is at  
39 risk. This illegal activity must stop and the  
40 support of the industry is there to see that  
41 orderly marketing is maintained." [as read] So,  
42 this is a letter that was sent to me signed off  
43 by all the agencies supporting what we were  
44 doing, what we are doing.

45 MR. HRABINSKY: Now, did you understand that to be a  
46 specific reference to the actions being taken by  
47 the Commission in relation to Prokam, Thomas

66

John Newell and Andre Solymosi (for Respondent)

In chief by Mr. Hrabinsky

1 Fresh, and IVCA or more generally?

2 MR. SOLYMOSI: Yes, specifically to those actions but  
3 in general make it seem that, yes, we are  
4 enforcing the rules and regulations.

5 MR. HRABINSKY: And do you have any knowledge about  
6 how this letter came to be put together by the  
7 agencies?

8 MR. SOLYMOSI: We had an agency managers meeting back  
9 in November, it was the same kind of timeframe  
10 there, and each agency was talking about issues  
11 they were having. It's -- it was discussed what  
12 Brian was having -- the issues he was having  
13 with -- with his agency and there was -- this was  
14 a letter after the meeting. It -- Murray had  
15 sent me an e-mail saying, look, would it help  
16 if -- you know, if we all signed off on the  
17 letter of support, and I said, you know, whatever  
18 you guys want to do, and they submitted a letter.

19 MR. HRABINSKY: Now, you recall we talked a little bit  
20 about the meeting that you had with IVCA  
21 representatives on October 3rd. Do you recall  
22 that?

23 MR. SOLYMOSI: October 3rd, yes.

24 MR. HRABINSKY: And between October 3rd and  
25 November 10, the date of this letter, did you  
26 continue to have dealings with Mr. Meyer about  
27 this issue?

28 MR. SOLYMOSI: Well, October 3rd was when we had  
29 the -- the meeting with the staff. Alf and I  
30 went over there. And then in between that and  
31 this time we -- more evidence was brought  
32 forward, so we had more detail. I was -- I was  
33 working with Brian to have -- to go through the  
34 evidence, to have more evidence.

35 MR. HRABINSKY: And --

36 MR. SOLYMOSI: So, all that evidence was then pulled  
37 together and you have a -- you have a -- an  
38 e-mail that was sent out or something, I can't  
39 remember, a document that was sent out on  
40 November 23rd to all -- all the legal  
41 representatives and that summarized -- summarized  
42 all the evidence that was brought forward to the  
43 Commission.

44 MR. HRABINSKY: And who was providing that evidence to  
45 you?

46 MR. SOLYMOSI: IVCA, which would be Brian and Jas.

47 MR. HRABINSKY: Okay. Now, if I can ask you to turn

1 show industry support?

2

3 Right?

4 A Correct.

5 Q And you received that email?

6 A Yes.

7 Q And you respond by saying:

8

9 I think a letter would be great to provide  
10 the Commission at the next meeting, November  
11 22nd.

12

13 And that is at the bottom of page document number  
14 5622 and the top of 5623, right?

15 A Correct.

16 Q Okay. And then Mr. Driediger responds not  
17 everybody, saying:

18

19 We have all kind of discussed this, and I  
20 talked to Brian as well. He's agreed to add  
21 his name to the letter and for that I  
22 congratulate him. I've taken the time to  
23 draft a general letter of support for  
24 orderly marketing and have signed it. I  
25 will leave it up to the rest to sign.

26

27 Do you see that?

28 A Yes.

29 Q All right. And then there's various emails where  
30 various people are saying I will sign it and send  
31 it to you, et cetera, and eventually the whole  
32 thing gets signed, right?

33 A Correct.

34 Q I'm not going to take you through all the emails,  
35 but did you have any hand in preparing the  
36 letter?

37 A No, I did not.

38 Q And did you make any amendments, changes,  
39 suggestions of the wording?

40 A No, I did not.

41 Q Okay. After you got it, did you send it to the  
42 Commission?

43 A Probably not -- not immediately. It was -- it  
44 was sent as part of the I guess package put  
45 before them at the next Commission meeting, which  
46 -- to address the -- the -- the matters at hand.

47 Q And why didn't you send it to Prokam?

- 1 A I never -- to be honest, I never thought about  
2 it.
- 3 Q All right. I want to take you to document number  
4 1336, 1-3-3-6. So this is a document that shows  
5 there's a pre-hearing conference on November --  
6 the conference date was November 20th, and the  
7 report date is November 21st, 2017. Do you see  
8 that?
- 9 A Yes.
- 10 Q All right. And does -- it shows who was in  
11 attendance at this meeting and the various  
12 counsel, et cetera, and the principals of Prokam  
13 and Thomas Fresh, right?
- 14 A Correct.
- 15 Q And counsel for IVCA, and then Mr. Hrabinsky was  
16 there, and yourself, right?
- 17 A Correct.
- 18 Q And the issue is:  
19  
20 Did the British Columbia Vegetable Marketing  
21 Commission err in its October 10th, 2017  
22 decision to issue a cease and desist order  
23 denying the appellants, Thomas Fresh Inc.,  
24 Prokam Enterprises Ltd. and Island Vegetable  
25 Co-Operative Association the ability to  
26 market and sell potatoes at pricing below  
27 the authorized minimum price?  
28
- 29 That's the issue that's being considered?
- 30 A Correct.
- 31 Q All right. Each party got an opportunity to make  
32 written submissions, as you indicated earlier,  
33 right?
- 34 A As part of this appeal process, correct.
- 35 Q All right. And I'm just showing you a -- page  
36 1241, the written submission made on behalf of  
37 Prokam and Thomas Fresh by the offices of Hunter  
38 Litigation Chambers? You can see it says here:  
39  
40 We write in response to the Commission's  
41 invitation to make submissions in light of  
42 the cease and desist orders and to show  
43 cause why the Commission should not take  
44 action.  
45
- 46 Do you see that?
- 47 A Correct. Yeah.

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John Newell and Andre Solymosi (for Respondent)  
In chief by Mr. Hrabinsky

1 to page two three seven.

2 MR. SOLYMOSI: Okay.

3 MR. HRABINSKY: Can you just please walk the Panel  
4 through?

5 MR. SOLYMOSI: Okay, so this is a -- a letter dated  
6 November 9th addressed to Terry and carbon copied  
7 to Brian Meyer or Terry Mitchell -- addressed to  
8 Terry Mitchell and carbon copied to Brian Meyer  
9 and Wendy Baker, the legal of IVCA. Just saying  
10 that we've had discussions, I've had discussions  
11 with IVCA general manager. That they have  
12 further documentation supporting the violation  
13 details presented in the cease and desist orders  
14 issued to Prokam Enterprises and Thomas Fresh.  
15 I'm also alleging that these documents might  
16 provide evidence that these two parties, through  
17 the cooperation of Bob Gill and an IVCA employee,  
18 have acted in non-compliance with the Commission  
19 general order and policies and have consequently  
20 put IVCA's Class 1 license at risk of being  
21 revoked. So, I'm asking for this further  
22 information, quoting some sections in the *Natural*  
23 *Products Marketing Act* that talk about all  
24 contracts, including ministerial exemption  
25 documentation and 60-day forward contracts for  
26 regulated product that are signed and approved by  
27 Bob Gill. Also -- I also request this  
28 information. And ...

29 MR. HRABINSKY: I just want to --

30 MR. SOLYMOSI: And then -- yeah.

31 MR. HRABINSKY: -- direct your attention now to the  
32 second numbered paragraph appearing on page two  
33 three eight. What's going on there?

34 MR. SOLYMOSI: Yeah, and -- and in the second part  
35 here I -- I ask that they confirm from  
36 discussions I have had with IVCA's general --  
37 general manager my understanding and it puts down  
38 all the points here of what has been brought out  
39 for discussion with IVC-- with Brian Meyer. My  
40 understanding was that, "IVCA's attempts to work  
41 with Prokam Enterprises and Bob Gill have been  
42 futile and have resulted in extensive verbal  
43 abuse and constant refusal to communicate  
44 effectively and take action from Brian Myers,  
45 IVCA general manager." The second point, "The  
46 actions of Bob Dhillon and Bob Gill demonstrate a  
47 complete lack of acknowledgement of the IVCA

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John Newell and Andre Solymosi (for Respondent)  
In chief by Mr. Hrabinsky

1 general manager's authority over the operations  
2 of IVCA and the agency's authority to manage the  
3 marketing of regulated products." Point three,  
4 "The actions of Bob Dhillon and Bob Gill have put  
5 undue stress on IVCA staff and created a toxic  
6 environment that impedes on their ability to  
7 operate effectively as an agency to fairly  
8 represent all its producers in the marketplace  
9 and function in accordance of the authority  
10 granted to it by the Commission." Point (d) is,  
11 "Through the actions of Bob Dhillon, Prokam  
12 Enterprises, and Bob Gill, their refusal to  
13 communicate effectively with IVCA general manager  
14 and his staff has inadvertently allowed for  
15 regulated product to be sold without a price  
16 being set and approved by the Commission and  
17 impedes the general manager from performing his  
18 responsibility to market and sell regulated  
19 product managed by IVCA." The last point here  
20 is, "Bob Gill has deleted records from IVCA's  
21 order entry system and has refused to identify  
22 exactly what was deleted. This action has put  
23 IVCA into non-compliance with accounting  
24 traceability requirements and may provide further  
25 evidence to support the revocation of Bob Gill's  
26 authority to handle regulated product." [as read]  
27 So, I'm asking IVCA that IVCA forthwith provide  
28 the Commission with a brief written report  
29 confirming, denying or otherwise clarifying the  
30 matters described above.

31 MR. HRABINSKY: And did you receive something from  
32 IVCA confirming, denying, or otherwise clarifying  
33 those matters?

34 MR. SOLYMOSI: I -- yes, I did, and always confirmed.

35 MR. HRABINSKY: All right. Let me take you to page  
36 two four one, and I just want to direct your  
37 attention to the second numbered paragraph on  
38 that document.

39 MR. SOLYMOSI: Okay. Okay, so this just relates to  
40 the -- the letter -- in the Commission's letter  
41 at paragraph 2 five subparagraphs I set out  
42 documenting Mr. Solymosi's understanding of his  
43 discussions with Mr. Meyer, the general manager  
44 of my client. "I confirm that the statements in  
45 paragraph 2 of the Commission's letter are  
46 accurate." So, this is from Wendy Baker, the  
47 legal for IVCA.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 letter. This is a letter that was disclosed to  
2 Prokam and Thomas Fresh, and I'm saying --  
3 MR. SOLYMOSI: Yes.  
4 MS. HUNTER: -- there's no reference in this letter to  
5 the fact that IVCA is co-operating with the  
6 commission?  
7 MR. SOLYMOSI: No. I would think --  
8 MS. HUNTER: And that there's been an assurance that  
9 their licence will be safe if they do so?  
10 MR. SOLYMOSI: No, because there's no assurance.  
11 MS. HUNTER: Can I ask you to look at item 1 on the  
12 first page.  
13 MR. SOLYMOSI: What's that?  
14 MS. HUNTER: Item 1.  
15 MR. SOLYMOSI: Item 1.  
16 MS. HUNTER: Your --  
17 MR. SOLYMOSI: Okay.  
18 MS. HUNTER: -- you've asked for -- you've requested a  
19 number of documents and -- and the first is  
20 contracts, including ministerial exemption  
21 documentation, 60-day forward contracts. You  
22 say, "It is my understanding the contracts for  
23 supply and regulated product to Thomas Fresh were  
24 signed by Bob Gill between Sam Enterprises and  
25 Thomas Fresh and the request includes those  
26 contracts." [as read] And -- and that was  
27 information that you had received at the  
28 November 7th meeting, correct?  
29 MR. SOLYMOSI: It was through discussions with Brian  
30 and I'm not entirely sure if it was all at the --  
31 at the meeting in November or in other  
32 discussions.  
33 MS. HUNTER: All right. Well, there was -- there's  
34 discussion reflected in the notes --  
35 MR. SOLYMOSI: Correct.  
36 MS. HUNTER: -- about contracts with Thomas Fresh.  
37 MR. SOLYMOSI: Correct.  
38 MS. HUNTER: And -- and then two days later this  
39 letter is sent.  
40 MR. SOLYMOSI: Yes.  
41 MS. HUNTER: But you're not certain whether that's --  
42 you got that information that's referred to in  
43 the letter at the November 7th meeting?  
44 MR. SOLYMOSI: In the letter ... What do you mean the  
45 letter? I -- I'm confused.  
46 MS. HUNTER: This letter that we were just looking at,  
47 page two thirty-seven, you say, "It is my

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 understanding that contracts for supplying  
2 regulated product to Thomas Fresh were signed by  
3 Bob Gill ..., " and continuing. And I'm just  
4 asking you to confirm that your understanding on  
5 that subject came from the meeting on  
6 November 7th?  
7 MR. SOLYMOSI: It came from discussions with Brian.  
8 MS. HUNTER: On November 7th or at other times?  
9 MR. SOLYMOSI: I don't know if it was before that  
10 meeting or -- or it was at the meeting. I'm  
11 not -- I'm not a hundred percent sure when  
12 exactly --  
13 MS. HUNTER: All right. And --  
14 MR. SOLYMOSI: -- but Brian and I -- Brian and I were  
15 in contact --  
16 MS. HUNTER: All right.  
17 MR. SOLYMOSI: -- and it was -- it was not an e-mail,  
18 it was more of a -- it was a phone call.  
19 MS. HUNTER: It could have been a phone call?  
20 MR. SOLYMOSI: It was a phone call.  
21 MS. HUNTER: It was a phone call?  
22 MR. SOLYMOSI: It could be a phone call. It was  
23 talking to him, not an e-mail -- e-mail  
24 transcript -- a transcript, so.  
25 MS. HUNTER: All right. I'm just trying to understand  
26 where you got information from.  
27 MR. SOLYMOSI: Yes.  
28 MS. HUNTER: And you say --  
29 MR. SOLYMOSI: It was from Brian.  
30 MS. HUNTER: -- from Mr. Meyer --  
31 MR. SOLYMOSI: Exactly.  
32 MS. HUNTER: -- but you're not sure when?  
33 MR. SOLYMOSI: Exactly.  
34 MS. HUNTER: All right. And -- and then that's  
35 November 9th. November 10th is the e-mail that  
36 we've looked at earlier. I don't think I need to  
37 take you back to it for Mr. Driediger, where he  
38 offers to write the letter indicating the support  
39 of all the agencies on the Prokam and Thomas  
40 Fresh infractions. You recall that e-mail we  
41 looked at earlier today?  
42 MR. SOLYMOSI: Yes.  
43 MS. HUNTER: And then the letter is sent that's signed  
44 by the five agency managers.  
45 MR. SOLYMOSI: Yes.  
46 MS. HUNTER: All of that occurs before the  
47 December 22nd decision is made?

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John Newell and Andre Solymosi (for Respondent)  
In chief by Mr. Hrabinsky

1 general manager's authority over the operations  
2 of IVCA and the agency's authority to manage the  
3 marketing of regulated products." Point three,  
4 "The actions of Bob Dhillon and Bob Gill have put  
5 undue stress on IVCA staff and created a toxic  
6 environment that impedes on their ability to  
7 operate effectively as an agency to fairly  
8 represent all its producers in the marketplace  
9 and function in accordance of the authority  
10 granted to it by the Commission." Point (d) is,  
11 "Through the actions of Bob Dhillon, Prokam  
12 Enterprises, and Bob Gill, their refusal to  
13 communicate effectively with IVCA general manager  
14 and his staff has inadvertently allowed for  
15 regulated product to be sold without a price  
16 being set and approved by the Commission and  
17 impedes the general manager from performing his  
18 responsibility to market and sell regulated  
19 product managed by IVCA." The last point here  
20 is, "Bob Gill has deleted records from IVCA's  
21 order entry system and has refused to identify  
22 exactly what was deleted. This action has put  
23 IVCA into non-compliance with accounting  
24 traceability requirements and may provide further  
25 evidence to support the revocation of Bob Gill's  
26 authority to handle regulated product." [as read]  
27 So, I'm asking IVCA that IVCA forthwith provide  
28 the Commission with a brief written report  
29 confirming, denying or otherwise clarifying the  
30 matters described above.

31 MR. HRABINSKY: And did you receive something from  
32 IVCA confirming, denying, or otherwise clarifying  
33 those matters?

34 MR. SOLYMOSI: I -- yes, I did, and always confirmed.

35 MR. HRABINSKY: All right. Let me take you to page  
36 two four one, and I just want to direct your  
37 attention to the second numbered paragraph on  
38 that document.

39 MR. SOLYMOSI: Okay. Okay, so this just relates to  
40 the -- the letter -- in the Commission's letter  
41 at paragraph 2 five subparagraphs I set out  
42 documenting Mr. Solymosi's understanding of his  
43 discussions with Mr. Meyer, the general manager  
44 of my client. "I confirm that the statements in  
45 paragraph 2 of the Commission's letter are  
46 accurate." So, this is from Wendy Baker, the  
47 legal for IVCA.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1           already appealed the [CDO --] C & D orders, and  
2           the prehearing call is scheduled for 9:30." [as  
3           read] Do you see that?  
4       MR. SOLYMOSI: Correct.  
5       MS. HUNTER: There's no reference here to Thomas  
6           Fresh. Thomas Fresh, of course, had filed an  
7           appeal as well, correct?  
8       MR. SOLYMOSI: Correct.  
9       MS. HUNTER: It -- now, does this reference to "the  
10          letter I sent to them after the storage crop  
11          agency managers' meeting held on November 7th",  
12          does that refresh your recollection as to where  
13          the information in that letter came from, the  
14          November 9th letter we looked at?  
15       MR. SOLYMOSI: I've got to go back here --  
16       MS. HUNTER: All right.  
17       MR. SOLYMOSI: -- to the ... The -- the November 9th  
18          letter, where was that again?  
19       MS. HUNTER: It was on page two thirty-seven.  
20       MR. SOLYMOSI: Do I have that binder [indiscernible]?  
21          That's correct.  
22       MS. HUNTER: The information in the November 9th  
23          letter came from the November 7th meeting,  
24          correct?  
25       MR. SOLYMOSI: Well, I -- I sent them after the  
26          November 7th meeting. That's all I can verify at  
27          this point.  
28       MS. HUNTER: All right. Now, in -- in paragraph 2 on  
29          the document at eleven forty-five, you have a  
30          reference to Prokam -- this is the last sentence,  
31          "Note that Prokam," and then in brackets, "(and  
32          IVCA to protect their interests) has already  
33          appealed." [as read] Now, what did you mean by  
34          that, "to protect their interests"?  
35       MR. SOLYMOSI: Where is this?  
36       MS. HUNTER: The last sentence of item 2 on eleven  
37          forty-five. "Note that Prokam (and IVCA to  
38          protect their interests) has already appealed."  
39          [as read]  
40       MR. SOLYMOSI: Well, that was a -- a comment. So,  
41          IVCA appealed to protect their interests and so  
42          that was -- those are words that I remember  
43          getting from IVCA.  
44       MS. HUNTER: All right. You understood that IVCA  
45          didn't intend to proceed with their appeal  
46          because they were co-operating with the  
47          Commission?

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: I didn't -- I didn't understand at that  
2 time.  
3 MS. HUNTER: Okay. That -- that -- that phrase, "to  
4 protect their interests" doesn't have any meaning  
5 for you?  
6 MR. SOLYMOSI: No. It's all in brackets and that's  
7 what IVCA had quoted to me, to protect their  
8 interests and that's why they're submitting or  
9 that they've --  
10 MS. HUNTER: All right. And then at --  
11 MR. SOLYMOSI: -- appealed.  
12 MS. HUNTER: -- paragraph 3 you say, "We have now set  
13 a schedule for written submissions. We needed  
14 IVCA to reply to the letter first before we could  
15 set the schedule." [as read] And why was that?  
16 Why did you need IVCA?  
17 MR. SOLYMOSI: Where is this? Where is ...  
18 MS. HUNTER: Paragraph 3 at the same -- just the next  
19 paragraph. "We have now set a schedule for  
20 written submissions. We needed IVCA to reply to  
21 the letter first before we could set the  
22 schedule." [as read] Why did you need IVCA to  
23 reply to the letter before you could set a  
24 schedule for submissions?  
25 MR. SOLYMOSI: Because we wanted all the evidence.  
26 MS. HUNTER: Before you could set a schedule for  
27 submissions?  
28 MR. SOLYMOSI: Exactly, so we can share all the  
29 evidence.  
30 MS. HUNTER: So you can share the evidence?  
31 MR. SOLYMOSI: Exactly.  
32 MS. HUNTER: But you chose not to share the fact or  
33 the notes of the November 7th meeting, the  
34 November 10th letter from the storage crop agency  
35 managers, or the letter from Hothi Farms that's  
36 in the materials, correct?  
37 MR. SOLYMOSI: Those are things that completely  
38 slipped my mind and so I didn't have it in there.  
39 MS. HUNTER: All right. This is the last document.  
40 Can I ask you to turn to four seventy. This is a  
41 letter -- an e-mail from Commission counsel to  
42 Ms. Baker, who is then counsel for IVCA, and --  
43 and to me. And is this, Mr. Solymosi, an e-mail  
44 you caused to be sent?  
45 MR. SOLYMOSI: Hold on.  
46 It was through legal, yes.  
47 MS. HUNTER: Sorry, the answer is yes?

1 Q Now, I'm going to stay in Exhibit 1 and move  
2 ahead to page 1410. And there's an email from  
3 Mr. Solymosi dated November 20th, 2017, to you  
4 and the other commissioners. Do you see that?

5 A I do, yes.

6 Q Do you -- just taking a quick moment to review  
7 it, do you recall receiving this email?

8 A Yes, I do.

9 Q And Mr. Solymosi is writing to request that the  
10 meeting to consider the cease and desist orders  
11 be delayed; right?

12 A Yes.

13 Q And he's providing reasons for that request. And  
14 do you see bullet point number 2?

15 A Yes, I do.

16 Q Do you see here where it says -- where I've  
17 highlighted with my cursor:

18

19 Note that Prokam (and IVCA to protect their  
20 interest) has already appealed the C and D  
21 orders, and the prehearing call is scheduled  
22 for 9:30 this morning.

23

24 Do you see that?

25 A Yes.

26 Q And when Mr. Solymosi writes, "and IVCA to  
27 protect their interests," you understood that to  
28 mean that Mr. Solymosi's view was that IVCA's  
29 appeal wasn't likely to be pursued; correct?

30 A I read from this that it was IVCA still  
31 protecting their interests for the agency.

32 Q Right. But there's a distinction being made here  
33 between IVCA's appeal and Prokam's appeal. Do  
34 you see that?

35 A Yes.

36 Q And I'm going to suggest to you that the reason  
37 there's being a distinction made here is because  
38 you understood that Mr. Solymosi was  
39 communicating to you it was unlikely that IVCA  
40 would proceed with its appeal?

41 CNSL K. MCEWAN: I'm going to object. He's twice now  
42 asked for Mr. Solymosi's mind rather than simply  
43 the words on the page, and it becomes argument at  
44 that point.

45 CNSL R. ANDROSOFF: Mr. Chair, I'm not asking for  
46 Mr. Reed to call for the operation of  
47 Mr. Solymosi's mind. I'm asking for Mr. Reed's

1 understanding of what's being communicated to him  
2 here.  
3 THE CHAIR: Then ask him that, Mr. Androsoff.  
4 CNSL R. ANDROSOFF: Okay. I believe I did, but I'm  
5 happy to repeat the question.  
6 Q So you've agreed with me that there's a  
7 distinction here being made between IVCA's appeal  
8 and Prokam's appeal, and my question to you is  
9 that you understood that that distinction was  
10 being made because you understood Mr. Solymosi  
11 was communicating to you his view that IVCA was  
12 unlikely to proceed with its appeal; correct?  
13 A That is my understanding.  
14 Q And the reason for that is because IVCA was  
15 cooperating with the commission and Mr. Solymosi  
16 had promised IVCA that if it cooperated, its  
17 agency licence would be protected; right? That  
18 was your understanding?  
19 CNSL K. MCEWAN: Objection. That's a compound  
20 question. Break it down, please.  
21 CNSL R. ANDROSOFF: Sure. I'm happy to.  
22 Q The reason that you -- your understanding of what  
23 Mr. Solymosi's saying here is that his view was  
24 IVCA was unlikely to pursue its appeal is because  
25 you knew that IVCA and the commission were  
26 cooperating with respect to the investigation;  
27 right?  
28 A My understanding was IVCA was cooperating with  
29 the investigation, yes.  
30 Q And you knew about Mr. Solymosi's promise to IVCA  
31 that as long as it cooperated with the  
32 commission, its agency licence would be  
33 protected; right? You already gave that  
34 evidence?  
35 A Yes, it was in there that that was one of the --  
36 yes.  
37 Q I'm going to move ahead, now, to page 1358 of  
38 Exhibit 1. And you see that up on your screen,  
39 Mr. Reed?  
40 A I do, yes.  
41 Q And you recall attending a meeting on  
42 December 14th, 2017, to discuss and make a  
43 decision with respect to the cease and desist  
44 orders?  
45 A Yes.  
46 Q And BCfresh commissioners were present for the  
47 discussion of the evidence; correct?

1           September just before the cease and desist orders  
2           were issued, correct?  
3        A     It was part of the cease and desist orders, so  
4           correct.  
5        Q     When you issued the cease and desist orders, you  
6           had no information as to whether the Hothi  
7           Kennebecs were ready to ship, correct?  
8        A     Any information would've been discussed at that  
9           meeting, but I -- I don't have a -- right now, I  
10          cannot recollect if that was [indiscernible].  
11        Q     You later asked IVCA to get a letter from Hothi  
12          confirming that they had had Kennebecs ready to  
13          ship in September. You recall that?  
14        A     I do recall. Correct.  
15        Q     And -- and that letter was obtained after the  
16          cease and desist orders were issued, correct?  
17        A     Correct.  
18        Q     And at no time did you inquire as to whether any  
19          Kennebecs that Hothi had produced were of  
20          marketable quality.  
21        A     It -- it -- like do -- do you have a copy of that  
22          letter? Can I...  
23        Q     Sure. We're going to show you Exhibit 1, page 1-  
24          1 -- 1 -- 1339.  
25        A     Sorry, 11339 did you say?  
26        Q     1 -- 1339.  
27        A     Thank you.  
28        Q     And, Mr. Solymosi, you see this is a November  
29          24th email from Mr. Meyer to yourself, copied to  
30          Ms. Solotki?  
31        A     That is correct.  
32        Q     And so that's over a month after the cease and  
33          desist order was issued? You see that?  
34        A     Yes.  
35        Q     And it attaches the email -- or the letter that  
36          is at page 1340.  
37        A     That is correct.  
38        Q     And the letter has a faxed line at the bottom and  
39          I'm not sure if you can see that, but it's --  
40          it's upside down and it says:  
41  
42                            Received 11 24 2017.  
43  
44            You see that?  
45        CNSL R. HIRA: He has a paper copy in front of him.  
46        A     Yes. Correct.  
47        CNSL C. HUNTER:

- 1 Q And so you see the faxed line, the "11 24 2017"  
2 faxed line is the same date as the email was sent  
3 from you to Mr. Meyer?
- 4 CNSL R. HIRA: You -- you mean the date that -- sorry.  
5 You got it right. I beg your pardon. Sorry, I  
6 interrupted.
- 7 A The same date. Yeah, so Brian Meyer had sent  
8 this [indiscernible].
- 9 CNSL C. HUNTER:
- 10 Q Yes.
- 11 A Yeah.
- 12 Q And -- and the fax is -- is received by IVCA.
- 13 A That is correct.
- 14 Q So it appears it was sent from the Hothi Farms to  
15 IVCA on November 24th.
- 16 A Correct.
- 17 Q It is dated though on its face October 25th.
- 18 A That is correct.
- 19 Q But you never saw it until -- until this email on  
20 November 24th, correct?
- 21 A That is -- that is correct.
- 22 Q And it says:
- 23
- 24 To Whom it May Concern:
- 25
- 26 We would like to inform you that Hothi  
27 Farms' Kennebec crop for the 2017 season was  
28 ready by September 1st, 2017. We were  
29 informed that Prokam Enterprises planted  
30 Kennebec without any quota. Prokam sold  
31 this product while Hothi Farms had quota and  
32 the product was ready to ship out.
- 33
- 34 You see that?
- 35 A Yes.
- 36 Q And -- and you asked Mr. Meyer to obtain a letter  
37 with that information from Hothi Farms, correct?
- 38 A I recall asking -- I -- I -- no, I can't -- I  
39 can't recall if this was just sent to me or there  
40 was some discussion at some point regarding this  
41 matter.
- 42 Q The issue of whether Hothi had Kennebecs ready to  
43 ship on September 1st, 2017 was important because  
44 if they didn't, Prokam Kennebecs could be sold by  
45 IVCA to fill the gap, correct?
- 46 A Yeah. Yes, and -- but he'd need permission to do  
47 that.

147

Bob Dhillon (for Appellants)

In chief by Ms. Hunter

- 1 A Yeah. Sorry.
- 2 Q You're talking about the episode you discussed  
3 earlier in your evidence --
- 4 A Yeah.
- 5 Q -- about the cabbage?
- 6 A Yeah.
- 7 Q All right. In terms of in 2017, after the cease  
8 and desist order was delivered, did you have any  
9 indication from the Commission that they were  
10 considering directing you to BCfresh?
- 11 A No.
- 12 Q Okay. Did you have an opportunity to make  
13 submissions on that issue prior to the receipt of  
14 this decision?
- 15 A No.
- 16 Q And -- and what was your reaction to that order?
- 17 A I thought it was ridiculous. I -- I just  
18 couldn't -- I couldn't wrap my head around it,  
19 why they would do that.
- 20 Q All right. The next one, 48.2, "Prokam's 2017-18  
21 crop year potato shipments on Kennebec potatoes  
22 and all potato exports are not to be included in  
23 the calculation of delivery allocation for the  
24 2018-2019 crop year." Starting with the first  
25 part about the Kennebec potatoes, do you know  
26 what that's all about?
- 27 A Yes. We -- I had a discussion with the  
28 president, Terry Mitchell, at IVCA, and they  
29 wanted to make sure that if there was a -- a gap,  
30 which there usually was, which there always was,  
31 is because of the inconsistency of Hothi  
32 potatoes. They had already lost Sysco Victoria  
33 and Vancouver, and -- and Thomas wasn't happy  
34 either, so they wanted an alternative potato.  
35 So, they asked me to grow Kennebec potatoes for  
36 that void.
- 37 Q All right. And -- and do you know whether any of  
38 those were shipped?
- 39 A After I got the cease and desist order, I think I  
40 shipped one bag.
- 41 Q All right.
- 42 A That's it.
- 43 Q And, sorry, when -- when do you think you shipped  
44 that bag?
- 45 A Probably August. Probably in August, I would  
46 think.
- 47 Q All right. So, sometime in the summer?

20

Bob Dhillon (for Appellants)

Cross-exam by Mr. Hrabinsky

1 by name or my company, but I find it pretty  
2 straightforward what they're talking about. I  
3 don't think any of it's true or ... And whatever  
4 they're trying to fix, I -- I don't know what --  
5 you know, what's broken. We're just -- we're  
6 just conducting business through IVCA, or were.

7 Q Now I'll ask you to go back a page to document  
8 nine-o-nine. I understand that you gave evidence  
9 yesterday that this document as well you just saw  
10 very recently --

11 A Yes.

12 Q -- and had no opportunity to comment on it in  
13 your submissions to the Commission, correct?  
14 You'll have to say yes or no.

15 A Yes.

16 Q What comment would you like to make today to this  
17 Panel about this letter at page nine-o-nine?

18 A Hothi Farms has come up a few times and I  
19 think -- you know, I don't want to talk ill of  
20 him, but he has quality issues. And every year  
21 we've -- IVCA has lost Sysco's, they've lost a  
22 lot of customers due to that. So, me and Terry  
23 Mitchell, we decided through that whole gap  
24 filling and not having a decent Kennebec potato  
25 for our agency was to grow 10, 15 acres of  
26 Kennebecs. a. I would be earlier than him, and  
27 we can use more because I had other avenues to  
28 get rid of them. And -- and we produced -- I  
29 don't know what he means by that, like,  
30 Kennebecs. Like, if he had Kennebecs, his  
31 Kennebecs would have gotten sold. We wouldn't  
32 have -- we -- you know, I -- I wouldn't have said  
33 that, oh, my Kennebecs gotta go first or anything  
34 or delivery allocation. He has the delivery  
35 allocation. Terry Mitchell knew this, too. If  
36 he had -- he had delivery allocation, it's his  
37 right to ship those potatoes. But if he can't  
38 control his quality and we're losing customers,  
39 well, then a gap filler could come into play.

40 Q Anything else you'd like to say to the Panel  
41 about this letter?

42 A I don't know why -- why this letter was written.  
43 Obviously it was written by Hothi Farms. IVCA  
44 brought it to their attention. I don't know why  
45 I-- IVCA would do this, just colluding like this.  
46 They could have very well just talked to me about  
47 it, but for some reason between IVCA and the

21

Bob Dhillon (for Appellants)

Cross-exam by Mr. Hrabinsky

1 Commission there's some kind of -- something  
2 going on. It's because ... The past -- the past  
3 will tell what Hothis has done in the past five  
4 years, and he hasn't had quality product. So, I  
5 believe I haven't done anything wrong. And I  
6 think it's very unfair of IVCA to put this e-mail  
7 out here right now and make me look like the bad  
8 guy is when I -- all I was trying to do was  
9 develop a good product of Kennebec potatoes for  
10 their agency to sell. I wasn't stepping on  
11 anybody's toes, I wasn't doing anything, it was  
12 simply because our agency needed Kennebec  
13 potatoes.

14 Q Now, when you refer to "colluding", you're  
15 talking about communications between a designated  
16 agency and the Commission, correct?

17 A Yes.

18 Q All right. All right. Now, you don't have  
19 delivery allocation for Kennebec potatoes,  
20 correct?

21 A No.

22 Q And I think your evidence in chief was that you  
23 sold one bag of Kennebecs, correct?

24 A Yes.

25 Q I put it to you that you marketed substantially  
26 more than a single bag of potatoes, that you  
27 sold --

28 A Kennebecs?

29 Q -- approximately 4,000 pounds of Kennebecs.

30 A I sold four --

31 Q Yes.

32 A Yeah, one bag, 4,000 -- yeah, about ... One bag  
33 is about 2,000 pounds, yeah.

34 Q I put it to you that you sold about 4,000 pounds  
35 of Kennebecs.

36 A Was it one or two? I don't recall. It might  
37 have been one or two bags.

38 Q Okay.

39 A Yeah.

40 Q Now, Sam Enterprises is your father's company,  
41 correct?

42 A Yes.

43 Q Mr. Bob Gill works for Sam Enterprises?

44 A Yes.

45 Q And I think you gave evidence in chief that you  
46 think he has an accounting background?

47 A Yes.

1 A I wouldn't know whether it was the first time or  
2 not. I wouldn't know that.

3 Q You may not have known that, but you certainly  
4 would have known sometime around this time that  
5 there was now a price set for the export of  
6 potatoes to the prairies?

7 A I probably would have been told about it.

8 Q Okay. And you can see there's an email in  
9 response where Bob Gill copies Brian Meyer and  
10 Bob Dhillon saying:

11  
12 Hi, Brian, how are you going to handle this  
13 new change in policy by the commission?  
14

15 And then Brian Meyer responds:

16  
17 We'll let you know when I know.  
18

19 Do you see that?

20 A Yeah. I see that, yes.

21 Q So certainly, IVCA would have known about this  
22 change that occurred in August 2017; right?

23 A I would think so, yes.

24 Q All right.

25 A Obviously, the manager knew, yes.

26 Q All right. Now, sir, I want to just move  
27 slightly differently, ask you slightly different  
28 questions.

29 You were aware in early 2017 that Prokam did  
30 not have delivery allocation for Kennebec  
31 potatoes; right?

32 A I don't -- I think that I was -- I was aware. I  
33 think I was aware that they did not have delivery  
34 allocation.

35 Q But you had a discussion with Mr. Dhillon or  
36 others at Prokam to grow Kennebec potatoes on  
37 speculation that IVCA may need them to fill a  
38 gap. Do you recall that or discussions around  
39 that?

40 A I think there was discussions around that.

41 Q Can you tell us, was it a discussion you had with  
42 Mr. Dhillon, then?

43 A I think it was a general conversation on filling  
44 gaps on, you know, I mean, growers, you know, we  
45 take risks on everything we grow, and we have,  
46 you know, we produce a bit extra above our quota  
47 possibly to -- if there's shortages, then we have

1 it. It's entirely up to the grower. If there's  
2 not a sale for it, then they have to destroy it,  
3 so -- it would have been a general -- I think I  
4 heard later at some point that he had planted  
5 some.  
6 Q And did he discuss with you that he was going to  
7 plant some and seek your approval or your  
8 agreement to do so?  
9 A I don't think it would be up to me to approve it  
10 or disapprove it.  
11 Q Okay. But did he seek your -- if not approval,  
12 at least agreement or tacit understanding that he  
13 was growing that?  
14 A Probably be an understanding that -- I would say  
15 it would be an understanding that, you know, you  
16 have to test the market, obviously, but I didn't  
17 know whether he had quota or not. I didn't  
18 really -- I didn't really look into that at all.  
19 Q So do you recall any specific conversation with  
20 him, sir, as you sit here today? Do you recall  
21 any specific conversation about growing Kennebec  
22 potatoes?  
23 A I don't think I heard it from him. I think Brian  
24 may have told me. I'm just -- just trying to  
25 recall.  
26 Q Sure. It's a long time ago, and if you don't  
27 recall --  
28 A I think the fact that -- I think the fact -- I  
29 recall that, you know, there was discussion on  
30 growing a very limited amount to test the waters,  
31 and I'm not sure whether there were -- he had  
32 purchased quota from another grower as he did  
33 with his reds and yellow and so forth.  
34 Q Right.  
35 A I would say, there was a general discussion about  
36 it. And I, at that time, probably I wouldn't  
37 even know what time of the year that would have  
38 been, whether it was the spring, the fall before.  
39 I don't really know. Because it takes, you know,  
40 it gets seed and one thing or another, but I  
41 don't recall a planting intention of it as, you  
42 know, being sent to the office.  
43 Q All right. You recall being interviewed by me  
44 earlier, sir?  
45 A Yes.  
46 Q And I provided you with an interview report. You  
47 had a chance to review that?

Terrence Michell (a witness)  
Exam by Cnsl N. Mitha

1 A Yes.

2 Q And have you had a chance to look at that  
3 interview report recently, sir?

4 A Not in the last week or so, no.

5 Q All right. But at the time, it accurately  
6 summarized our discussion?

7 A Yes.

8 Q I'm going to take you to that interview report,  
9 sir, and I'm going to take you to the first page  
10 where -- I'm going to take you to the third  
11 paragraph, it says:

12  
13 Mr. Michell was asked about Prokam planting  
14 Kennebec potatoes when it did not have  
15 delivery allocation for Kennebec potatoes.  
16 His response was, he doesn't recall Prokam  
17 planted Kennebec potatoes -- sorry -- he  
18 does recall Prokam planted Kennebec potatoes  
19 with the risk they may not sell; however,  
20 the potatoes were planted with the view that  
21 our different producer, Three Star Farms,  
22 may not have been able to fill its DA, and  
23 thus potatoes planted by Prokam could fill  
24 the gap that Three Star may have. He  
25 acknowledged that Prokam took the risk in  
26 growing these potatoes.

27

28 Sir, is that accurate?

29 A Yes, that's accurate.

30 Q And then, sir, the next thing you say is:

31

32 Mr. Michell was asked about the relationship  
33 between IVCA and Prokam. His response was  
34 that IVCA had a huge difficulty dealing with  
35 Prokam, and the principal of Prokam,  
36 Mr. Dhillon. Mr. Michell's view was that  
37 through the summer of 2017, Prokam was  
38 acting inappropriately and was not providing  
39 the information required for the selling of  
40 its potatoes. IVCA tried to get Prokam to  
41 comply with the rules of the commission but  
42 felt that Prokam, in his words, ran  
43 roughshod over IVCA. Mr. Dhillon made  
44 threats of litigation and continually failed  
45 to comply with the request he made by IVCA.  
46 IVCA regularly requested information from  
47 Prokam, which Prokam refused or failed to

1 text messages between Brian Meyer and  
2 Bob Dhillon. Bob Dhillon is in the green, and  
3 Brian Meyer is in the grey. Do you see this up  
4 on your screen?  
5 A I can see that, but I'm not sure what it's  
6 referring to.  
7 Q That's okay. And I'll just help you by letting  
8 you know that the evidence that's been given in  
9 this proceeding is that the green is Bob Dhillon,  
10 and he's messaged Mr. Meyer saying -- and this is  
11 May 31st, 2017. You can see above my cursor  
12 there?  
13 A I see that, yes.  
14 Q  
15 Keep on the down-low acres potato I got.  
16  
17 And then Mr. Meyer responds:  
18  
19 The only people that know are me and Terry.  
20  
21 Do you see that?  
22 A I see that.  
23 Q Okay. So I'm suggesting to you that you did, in  
24 fact, know not just the varieties that Prokam was  
25 planting, but also the acreage for each variety  
26 for the 2017 and 2018 growing season.  
27 A Is he referring to acres? Or is he referring to  
28 varieties there? I don't know.  
29 Q He says, "acres," here. "Acres potato I got."  
30 A Acres. Okay. Yeah. I see that there, yeah.  
31 Q Okay. And the reason that you did know was  
32 because you and Mr. Meyer and Mr. Dhillon had a  
33 conversation planning what acreage Prokam should  
34 plant for that growing season; correct?  
35 A Yeah. But I was not sure what was followed  
36 through on there. In acres, that is.  
37 Q Right. Now, as part of that discussion, do you  
38 recall that you asked Mr. Dhillon to plant  
39 Kennebec potatoes?  
40 A Did I ask him to? I don't think I asked him to  
41 do much of -- he would -- he would basically tell  
42 us what he was intending on planting.  
43 Q Okay. I'm going to take you to your interview  
44 summary. The summary of the interview that you  
45 had with Mr. Wittal on January 27th, 2022. I'll  
46 just put that up on the screen. It's page 5658  
47 of Exhibit 1. Is that large enough for you to be

1           able to read the text on the screen?

2           A        Could you make it larger?

3           Q        I can. Let's see. This is going to be good.

4           A        That's better.

5           Q        It is better? Okay. Just above my cursor here  
6           where it says, Mr. Michell. Do you see that?

7           A        Yes.

8           Q        It says:

9

10                    Mr. Michell is asked about Prokam planting  
11                    Kennebec potatoes when it did not have a  
12                    delivery allocation DA for Kennebec  
13                    potatoes. His response is that he does  
14                    recall that Prokam planted Kennebec potatoes  
15                    with the risk that they may not be able to  
16                    sell.

17

18                    And that's because they didn't have DA; right?

19           A        Yes.

20           Q        IVCA had to honour delivery allocation first.

21                    Producers within the agency with delivery  
22                    allocation, first, but if there was a customer  
23                    who wanted Kennebecs and there wasn't any  
24                    Kennebecs within the agency ready to sell, then  
25                    if Mr. Dhillon planted Kennebecs, then that gap  
26                    could be filled; right?

27           A        It could possibly be filled, yes.

28           Q        Okay. And, yeah. It says right here:

29

30                    However, the potatoes were planted with the  
31                    view that a different producer, Three Star  
32                    Farms, may not have been able to fill its  
33                    DA, and thus the potatoes planted by Prokam  
34                    could fill the gap that Three Star may have.

35

36                    Do you see that?

37           A        Yes.

38           Q        And where it says here, with a view, that was  
39                    your view; correct?

40           A        With the view, yeah. That would have been --  
41                    actually, it's the view. Yeah. I'm included in  
42                    that. It's the view of our agency, basically.

43           Q        Right. It would have been either your view or  
44                    Mr. Meyer's view; right? It would have been  
45                    somebody with the knowledge of what Three Star  
46                    Farms quota with respect to Kennebecs and the  
47                    quality of those Kennebecs was?

45

John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1           handwritten notes. And if you move over to 6.2  
2           on page nine twelve --  
3       MR. SOLYMOSI: Yeah.  
4       MS. HUNTER: -- under "Compliance", there is IVCA,  
5           Prokam, Thomas Fresh cease and desist letters,  
6           and reference at 6.2.1 to the letter from Hothi  
7           Farms, and 6.2.2 to the storage crop agency  
8           letter of support. Do you see that?  
9       MR. SOLYMOSI: Exactly, yes.  
10      MS. HUNTER: And so both of those letters were before  
11      the Commission?  
12      MR. SOLYMOSI: Yes.  
13      MS. HUNTER: Do you know when the first time they were  
14      produced was?  
15      MR. SOLYMOSI: What do you mean the first time they  
16      were produced?  
17      MS. HUNTER: The first time they were produced in this  
18      appeal.  
19      MR. SOLYMOSI: On the first day, I guess, was it? I  
20      can't remember.  
21      MS. HUNTER: All right. They -- they certainly  
22      weren't produced to Prokam or Thomas Fresh prior  
23      to --  
24      MR. SOLYMOSI: No.  
25      MS. HUNTER: -- the December 22nd decision being made?  
26      MR. SOLYMOSI: No. It was --  
27      MS. HUNTER: And --  
28      MR. SOLYMOSI: -- something that I missed in the  
29      binder that was sent out to commissioners and I  
30      added it to the agenda at that meeting.  
31      MS. HUNTER: All right, but it -- it -- so, it was  
32      provided in person at the meeting on  
33      November 14th?  
34      MR. SOLYMOSI: Yes.  
35      MS. HUNTER: But it wasn't after the meeting on  
36      November 14th produced to Prokam or Thomas Fresh?  
37      MR. SOLYMOSI: December 14th, not November 14th.  
38      December 14th meeting.  
39      MS. HUNTER: Sorry. Sorry if that was unclear, but it  
40      wasn't after the December 14th meeting and before  
41      the --  
42      MR. SOLYMOSI: No.  
43      MS. HUNTER: -- decision produced to Thomas Fresh or  
44      Prokam?  
45      MR. SOLYMOSI: No. It was at the December 14th  
46      meeting. That's when the Commission became aware  
47      of those letters.

46

John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MS. HUNTER: No, I understand about the Commission.  
2 I'm asking you about when it was produced to --  
3 to my clients.  
4 MR. SOLYMOSI: It was produced at this hearing.  
5 MS. HUNTER: It -- all right. It was produced in the  
6 second set of binders, which I -- I believe was  
7 produced --  
8 MR. SOLYMOSI: Mm-hm.  
9 MS. HUNTER: -- in March. Does that sound right to  
10 you?  
11 MR. SOLYMOSI: That ... I can't recall. It could be,  
12 yeah.  
13 MS. HUNTER: It was following a -- following a  
14 document demand --  
15 MR. SOLYMOSI: Yeah.  
16 MS. HUNTER: -- made by my clients.  
17 MR. SOLYMOSI: Okay.  
18 MS. HUNTER: It -- it wasn't produced in the first  
19 tranche of documents produced by the Commission?  
20 MR. SOLYMOSI: I agree.  
21 MS. HUNTER: All right. And what was the reason for  
22 that?  
23 MR. SOLYMOSI: I forgot to add it.  
24 MS. HUNTER: All right. I would like to take you into  
25 the December 22nd decision, which is back --  
26 you know, while we're here, let's just save us a  
27 little bit of time, go to ten -- ten ninety-six.  
28 Oh, I'm sorry, ten thirty. Ten thirty. It  
29 doesn't pay to rush.  
30 MR. NEWELL: Ten thirty?  
31 MS. HUNTER: Yes, ten thirty.  
32 MR. NEWELL: [indiscernible]  
33 MR. SOLYMOSI: Okay, hold on.  
34 MR. NEWELL: Oh, you were at eleven thirty?  
35 MR. SOLYMOSI: [indiscernible] Ten thirty, sorry.  
36 Okay.  
37 MS. HUNTER: And this is dated November 10th?  
38 MR. SOLYMOSI: Yes.  
39 MS. HUNTER: The same day as the date on the agency --  
40 MR. SOLYMOSI: Yes.  
41 MS. HUNTER: -- letter, but -- but perhaps not when it  
42 was sent to you.  
43 MR. SOLYMOSI: At ... Yeah, at this point there  
44 was ... Let me just read this.  
45 So, Murray is asking would it help if we  
46 were to sign a joint letter of some kind to -- to  
47 show industry support. And at this time

14

John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MR. NEWELL: At that time I didn't see a lot of the  
2 evidence myself before the cease and desist was  
3 issued.

4 MS. HUNTER: All right. So, your -- your recollection  
5 of the evidence --

6 MR. NEWELL: Other than until later in December.

7 MS. HUNTER: Well, that's what we're talking about is  
8 later in December.

9 MR. NEWELL: Yeah.

10 MS. HUNTER: I -- I want -- I just want to be clear on  
11 what evidence you had. The Commission has made  
12 a -- has made a finding and it has made some very  
13 serious orders against Prokam. And so I want to  
14 understand -- as a person who was involved in  
15 that decision and the only person who has been  
16 put up to explain that decision, I want to  
17 understand what your -- what evidence you relied  
18 on in finding that Prokam had direct involvement  
19 in negotiating the transactions with -- with  
20 Thomas Fresh or ...

21 MR. NEWELL: We relied on Andre's assessment of the  
22 situation based on his meetings with Prokam and  
23 IVCA, et cetera, and managers and farm. And  
24 based on -- based on the evidence that he had  
25 seen in some of those meetings and -- and then  
26 had gathered later, we made a decision based on  
27 that.

28 MS. HUNTER: Now, I understood from Mr. Solymosi's  
29 evidence yesterday that the only meetings he had  
30 were with IVCA representatives, not with Prokam.  
31 Do you have a different understanding?

32 MR. NEWELL: No, I don't have a -- I have a -- I  
33 have the same understanding; however, I believe  
34 that from a practical point of view the  
35 Commission were concerned that -- that Bob Gill  
36 being the -- being paid half his salary and being  
37 the brother-in-law of the -- of Prokam, of -- of  
38 Bob Dhillon, that that might create some issues  
39 and so we were concerned about that.

40 MS. HUNTER: Now -- but I'm just focusing on the  
41 evidence that was before you. The evidence, as I  
42 understand what you said just now, was  
43 Mr. Solymosi reporting on his conversations with  
44 representatives of IVCA. Is that -- is that the  
45 evidence that you based the decision on?

46 MR. NEWELL: That's -- that's right.

47 MS. HUNTER: And -- and you didn't speak directly or

15

John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1           hear directly from any representatives of IVCA?  
2 MR. NEWELL: No, not -- not us, no.  
3 MS. HUNTER: And --  
4 MR. NEWELL: Not me personally.  
5 MS. HUNTER: And neither Mr. Solymosi nor any of the  
6           commissioners spoke to anyone from Prokam,  
7           correct?  
8 MR. NEWELL: I don't know that.  
9 MS. HUNTER: All right. You didn't rely on a report  
10          of a conversation with anyone from Prokam?  
11 MR. NEWELL: I don't believe so --  
12 MS. HUNTER: Mr. --  
13 MR. NEWELL: -- but I don't recall.  
14 MS. HUNTER: You -- you didn't rely on a report of a  
15          conversation with Mr. Gill?  
16 MR. NEWELL: I personally assumed myself that some of  
17          those conversations had happened. I know that  
18          based on Mr. Solymosi actually trying to get a  
19          hold of Prokam, that -- that that was something  
20          that was never -- there was no reply. So, I --  
21          based on verbal conversations, however ...  
22 MS. HUNTER: So, your -- your understanding was  
23          Mr. Solymosi had -- had attempted to contact  
24          Prokam and was unable to, and that's why there  
25          was no report from Prokam?  
26 MR. NEWELL: I believe he did, but I don't recall  
27          exactly, but I believe he did.  
28 MS. HUNTER: All right. You --  
29 MR. NEWELL: But he -- he would have and should have.  
30 MS. HUNTER: He would have and should have?  
31 MR. NEWELL: Mm-hm.  
32 MS. HUNTER: All right. And what about Thomas Fresh?  
33          Did you rely on any information that came through  
34          Mr. Solymosi from Thomas Fresh? Were you aware  
35          of any discussions with Thomas Fresh?  
36 MR. NEWELL: I don't recall. I don't recall.  
37 MS. HUNTER: All right. So, the evidence that you  
38          relied on was a second-hand report of a -- of a  
39          conversation or conversations with various  
40          representatives from IVCA?  
41 MR. NEWELL: I believe so.  
42 MS. HUNTER: And no attempt so far as you know was  
43          made to confirm the information received from  
44          IVCA with either Prokam or Thomas Fresh?  
45 MR. NEWELL: By the Commission?  
46 MS. HUNTER: Yes.  
47 MR. NEWELL: I don't believe so.

- 1           compromised solution with Prokam; right?
- 2           A       No, I didn't hear that. Mostly it was they were
- 3           in favour of a compromise trying to bridge a gap
- 4           and trying to find a solution where Prokam would
- 5           be happy with another agency other than BCfresh.
- 6           And that was the intent of my -- I've always been
- 7           a proponent of trying to make sure that people
- 8           come together under circumstances like that.
- 9           Q       Okay. Well, if your best recollection is that
- 10          most or all of the commissioners were in favour
- 11          of a compromise solution, then why did the
- 12          commission end up going down the enforcement path
- 13          instead?
- 14          A       I think during discussion, it was more or less
- 15          decided that there was no compromise to be had.
- 16          That we -- it would be difficult to find that
- 17          compromise. It just made a suggestion to see if
- 18          there was during a discussion of what could be
- 19          possible and that that would be a preferred route
- 20          and that didn't happen.
- 21          Q       I'll suggest to you that Mr. Guichon in
- 22          particular stated that he was against the idea of
- 23          a compromise deal with Prokam; correct?
- 24          A       I didn't hear anyone say that they didn't want to
- 25          compromise.
- 26          Q       Okay. Now, your evidence in May of 2018 was that
- 27          you and the other commissioners, to the best of
- 28          your knowledge, relied heavily on information
- 29          from Mr. Solymosi and his assessment of the
- 30          situation in making the decision, and that
- 31          reliance was in relation to making the decision
- 32          that Prokam had done something wrong; correct?
- 33          A       It was based on information coming back from
- 34          email chains and paperwork, minimum pricing
- 35          issues, et cetera, delivery allocation, and --
- 36          et cetera, that could possibly be in breach. And
- 37          when that information came back to the commission
- 38          from IVCA, it gets handled by the general manager
- 39          and then presented to the commission.
- 40          Q       M'mm-hmm. There was no discussion at the
- 41          December 14th, 2017 meeting of whether IVCA
- 42          should be sanctioned for its role in the events
- 43          being considered or of any wrongdoing on the part
- 44          of IVCA; correct?
- 45          A       There was some discussion regarding IVCA and its
- 46          agency status knowing that it was in breach or
- 47          possibly in breach of general orders, et cetera,

- 1 was actually a discussion that went on with the  
2 commission itself. He had no -- no  
3 recommendations that I recall in any discussions  
4 around the table with the commission as to what  
5 licence class any of them should be in.
- 6 Q So when you testified in May of 2018 that you  
7 relied heavily on information from Mr. Solymosi  
8 and his assessment of the situation, what  
9 assessment would you refer to?
- 10 A Referred to the toxic environment that was  
11 explained by the IVCA management, the hostility  
12 you can tell between -- on email strings between  
13 all of the parties involved. And that was the  
14 concern that the agency itself is being -- is  
15 being -- is in an upheaval kind of situation  
16 where it wasn't repairable in any way because the  
17 managers weren't in position to control the  
18 situation. And that was the biggest concern that  
19 there's an agency floundering with no governance  
20 at all. It seems to be no governance. And that  
21 was the biggest concern by the commission or of  
22 the commission.
- 23 Q Mr. Solymosi's assessment of the situation which  
24 he communicated to commissioners at this  
25 December 14th meeting was that as between Prokam  
26 and IVCA, it was Prokam who should be sanctioned;  
27 right?
- 28 A Again, I'd have to have the minutes in front of  
29 me if he presented that to us. But he presented  
30 information regarding the -- sorry, IVCA and the  
31 environment that was happening there between all  
32 of the parties and how it was being --
- 33 Q Right.
- 34 A And that was the concern. And that was presented  
35 to us, and he didn't suggest any licence class  
36 whatsoever. That was a discussion amongst the  
37 commission strictly.
- 38 Q In terms of what you've just given evidence about  
39 as to Mr. Solymosi's assessment of the toxic  
40 environment between Prokam and IVCA, it was his  
41 assessment as communicated to you at this meeting  
42 that it was Prokam who was responsible for that  
43 toxic environment and not IVCA; correct?
- 44 A He had given us email strings and put forward  
45 communications between all of the parties that  
46 was presented to us, and we were then able to see  
47 for ourselves that this was not a very healthy

1 situation in the co-op, being IVCA. And then the  
2 commission then deliberated on what should be  
3 done and that's when I was suggesting some type  
4 of compromise to cool the situation down and then  
5 move forward with the plan that would work for  
6 everybody and that was decided -- that was  
7 obviously decided by the commission not to occur,  
8 not to happen, not to go down that path,  
9 unfortunately.

10 But certainly we were relying on the  
11 information gathered by Andre, the general  
12 manager, and we weren't relying on his  
13 recommendation because he just presented  
14 information to us that the commission made  
15 decisions on after reviewing it themselves.

16 Q All right. You gave evidence about marketing  
17 versus the production and that there's nothing  
18 wrong with Prokam producing more than its DA.  
19 And you also gave that evidence in 2018. You  
20 recall that?

21 A I recall talking about DA and Prokam. I can't  
22 remember exactly what the exact subject was,  
23 though, Mr. Androsoff. Do you have a transcript  
24 that I can recall or look at?

25 Q I do, but my time, I think, is running short and  
26 in the interest of time, I just want to ask you  
27 questions about -- the transcript speaks for  
28 itself, but you recall giving evidence in 2018  
29 that you questioned whether the outcome whereby  
30 Prokam was sanctioned and IVCA wasn't was fair;  
31 right? You questioned the fairness of that  
32 outcome?

33 A Yes, I did.

34 Q And, in fact, your evidence was that you didn't  
35 think it was -- having heard all of the evidence,  
36 you didn't think that outcome was entirely fair;  
37 correct?

38 A Certainly looking back on it, I don't think it  
39 was fair. And at that point I did -- I do recall  
40 saying that I questioned the fairness of that  
41 particular call because I was very much of the  
42 stance of trying to figure out a compromise and  
43 bringing the groups together and/or find a  
44 solution for everybody, which didn't happen.

45 CNSL R. ANDROSOFF: Mr. Chair, I made the mistake,  
46 again, of not noting the time at which I began  
47 questioning. I probably have about two more

1           it. So just give me a minute, please.  
2       CNSL K. MCEWAN: Well over without objections.  
3       THE CHAIR: All right. Mr. Androsoff, I'm going to  
4           need you to wrap up very quickly. In the  
5           meantime, I think it's fair to allow you to ask  
6           Mr. Reed of his understanding or his recollection  
7           of events at those meetings but only those  
8           meetings that he attended.

9       CNSL R. ANDROSOFF: Thank you, Mr. Chair.  
10      Q     Mr. Reed, you don't recall any discussion at this  
11           December 14th, 2017 meeting of any suggestion  
12           that IVCA ought to be punished in relation to the  
13           cease and desist orders; correct?

14      A     Not to my recollection.  
15      CNSL R. ANDROSOFF: Thank you, Mr. Chair. Those are  
16           my questions for Mr. Reed.

17      THE CHAIR: Thank you, Mr. Androsoff. Mr. Mitha.  
18      CNSL N. MITHA: Yes, I believe, then, we'll move on to  
19           Ms. Basham.

20      CNSL R. BASHAM: I'm back.  
21      THE CHAIR: Ms. Basham.

22

23       **CROSS-EXAMINATION BY CNSL R. BASHAM:**

24      Q     Mr. Reed, I'm Rose-Mary Basham, and I represent  
25           MPL, so I'm going to be asking you some questions  
26           about the evidence you've given and other matters  
27           relating to this matter.

28           I think you've said that you were a  
29           commissioner from about April of 2017 through to  
30           about May of 2021.

31      A     That's correct.

32      Q     Would you agree with me that whenever you had  
33           commissioner's meetings, during that time, even  
34           if you did not attend them, minutes of the  
35           meetings would be circulated to you?

36      A     That is also correct.

37      Q     Would you also agree with me that all commission  
38           matters are confidential for the commissioners  
39           only?

40      A     Yes.

41      Q     I'd just like to go to your various roles.  
42           Houweling Management and Marketing Services  
43           Canada Inc. is a company, I believe, that you  
44           have an association with.

45      A     Yes, I do.

46      Q     And I'll call it "HMM" for short?

47      A     Sure.

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 want to come back to Thomas Fresh because you  
2 haven't really addressed Thomas Fresh in that  
3 answer, but --

4 MR. NEWELL: Okay, sure.

5 MS. HUNTER: -- but let's just focus on the Prokam and  
6 IVCA. And so -- so as I understand the evidence,  
7 it's that IVCA Mr. Solymosi put it came clean and  
8 was asking for the Commission's assistance, and  
9 so in that circumstance you didn't consider it  
10 would be fair to do anything -- to take any  
11 enforcement action with respect to the licence.  
12 Is that -- is that right?

13 MR. NEWELL: Yes, if 90 percent of the volume of an  
14 agency -- and we all know how agencies work.  
15 Agencies are run by throughput, they're run by  
16 volume. So when you have someone who is  
17 90 percent or 80 percent plus of a volume, they  
18 will start to -- and they have a potential to  
19 start to run the show. They can bully the  
20 agency, especially when the agency manager is  
21 green. In other words, hasn't had that position  
22 for a while, doesn't know the structure of the  
23 regulated marketing system maybe as much as  
24 others; therefore, it can be manipulated. And so  
25 that's what we didn't want to have happen because  
26 it will then start to trickle down to the rest of  
27 the industry, where you have a -- a -- a huge  
28 oversupply situation in a short season that  
29 affects pricing for the greater industry.

30 MS. HUNTER: All right. And so -- so in terms of  
31 coming to that understanding of the facts that  
32 that answer is based on, you had information from  
33 Mr. Meyer through Mr. Solymosi, correct?

34 MR. NEWELL: I believe so.

35 MS. HUNTER: You had some documents that you looked at  
36 presumably in advance of the meeting?

37 MR. NEWELL: Yes.

38 MS. HUNTER: Anything else?

39 MR. NEWELL: No.

40 MS. HUNTER: All right. There -- you didn't speak  
41 directly to Mr. Meyer or anyone else at IVCA?

42 MR. NEWELL: No.

43 MS. HUNTER: You never spoke directly to Mr. Dhillon  
44 or to Mr. Gill?

45 MR. NEWELL: No.

46 MS. HUNTER: There wasn't any effort made so far as  
47 you're aware to verify -- outside of with IVCA

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 we use that as a guideline, but we are not  
2 putting SAFETI down on paper and actually using  
3 it as -- the acronym on a -- you know, on a daily  
4 basis. Generally, yes, we do, and he keeps us,  
5 like, on that track.

6 MS. HUNTER: Okay.

7 MR. NEWELL: But we're not going to have, you know,  
8 SAFETI written down with lines underneath  
9 every -- you know. Some decisions are so complex  
10 that you just can't fit it in an acronym.

11 MS. HUNTER: Okay.

12 MR. NEWELL: We try to --

13 MS. HUNTER: All right.

14 MR. NEWELL: -- but it's difficult.

15 MS. HUNTER: Well, perhaps I -- I appreciate it's not  
16 written down because I have a lot of paper and I  
17 don't see it written down anywhere in the paper,  
18 but I'm trying to focus on these licence  
19 decisions, and you have three different parties  
20 here that the Commission issued cease and desist  
21 orders to --

22 MR. NEWELL: Yeah.

23 MS. HUNTER: -- Prokam, IVCA, and Thomas Fresh. One  
24 of the -- one of the letters in SAFETI is F for  
25 fairness.

26 MR. NEWELL: Yes.

27 MS. HUNTER: And so maybe we can just limit it to  
28 fairness. Can you take me through your thinking  
29 as a commissioner on how it is fair in the  
30 circumstances and based on the evidence you  
31 reviewed that Prokam and Thomas Fresh's licence  
32 classes would be changed and IVCA's would not?

33 MR. NEWELL: Thinking back to all the discussions  
34 six -- six months ago, I don't know actually if  
35 it's perfectly fair. And, in fact, in 48.3 we  
36 actually state, "The Commission may choose to  
37 replace this licence with a Class 3 or [a]  
38 Class 5 ..." So, it could improve or get worse  
39 depending on what we see. And -- and I don't  
40 know, I can't tell you that. Specifically, at  
41 the time I believe the Commission thought that  
42 was an appropriate licence class. That doesn't  
43 mean that it couldn't change. And we have even  
44 put a provision in there in -- in -- for -- for  
45 Prokam.

46 MS. HUNTER: All right. Well, I -- I don't want to  
47 belabour this unduly and perhaps I already have,

1 situation in the co-op, being IVCA. And then the  
2 commission then deliberated on what should be  
3 done and that's when I was suggesting some type  
4 of compromise to cool the situation down and then  
5 move forward with the plan that would work for  
6 everybody and that was decided -- that was  
7 obviously decided by the commission not to occur,  
8 not to happen, not to go down that path,  
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14 information to us that the commission made  
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18 wrong with Prokam producing more than its DA.  
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23 though, Mr. Androsoff. Do you have a transcript  
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26 in the interest of time, I just want to ask you  
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28 itself, but you recall giving evidence in 2018  
29 that you questioned whether the outcome whereby  
30 Prokam was sanctioned and IVCA wasn't was fair;  
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32 outcome?

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35 think it was -- having heard all of the evidence,  
36 you didn't think that outcome was entirely fair;  
37 correct?

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39 was fair. And at that point I did -- I do recall  
40 saying that I questioned the fairness of that  
41 particular call because I was very much of the  
42 stance of trying to figure out a compromise and  
43 bringing the groups together and/or find a  
44 solution for everybody, which didn't happen.

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46 again, of not noting the time at which I began  
47 questioning. I probably have about two more

Marcel Andre Solymosi  
Exam by Cnsl N. Mitha

1           knew or you were recklessly or willfully blind to  
2           the fact that the export minimum pricing orders  
3           were invalid because of your failure to cause the  
4           Commission to adhere to the registration  
5           requirements. Do you recall them making that  
6           allegation?

7           A     Yes.

8           Q     All right. So what do you say in response to the  
9           allegation that you knew, or you were recklessly  
10          or willfully blind, and that you failed to cause  
11          the Commission to adhere to the registration  
12          requirements? Registration and gazetting  
13          requirements.

14          A     Well, as I said before, prior to this FIRB  
15          decision, I never understood that the pricing  
16          required -- pricing outside of the Province  
17          required federal gazetting. One would assume you  
18          set pricing based on the purpose of why we do set  
19          pricing, and that purpose is to regulate AC  
20          production, marketed by B.C. agencies. We  
21          regulate B.C. agencies to get the best returns  
22          for B.C. producers. I -- you know, I'm not a  
23          lawyer, but I never thought that I was doing  
24          anything wrong or unlawful by issuing these  
25          pricing orders.

26          CNSL N. MITHA: Mr. Chair, I see it's 12 o'clock, and  
27          I wanted to see if I could finish this topic. I  
28          might be another five -- at the very most, 10  
29          minutes. I wonder if I could ask the indulgence  
30          to just complete this piece, because after I  
31          finish this, I'm moving on to the Bajwa matter,  
32          and it'd be easier if I could finish this before  
33          we take the break.

34          THE CHAIRPERSON: Yeah, go ahead, Mr. Mitha.

35          CNSL N. MITHA: Thank you.

36          Q     So were you aware of the parliamentary  
37          discussions which occurred in 2008? And I say --  
38          when I say were you aware of them, were you aware  
39          of them before you set the pricing orders in --  
40          or the pricing -- minimum pricing in August 2017,  
41          were you aware of those --

42          A     No.

43          Q     -- 2008 discussions?

44          A     No.

45          Q     When is the first time you did become aware of  
46          them?

47          A     The first time I became aware of those

Marcel Andre Solymosi  
Exam by Cnsl N. Mitha

1 discussions was when I received the email on  
2 October 13th from counsel. And that was the  
3 email from Ms. Hunter.  
4 Q Right. When you joined the Commission in 2015,  
5 did you have any information or knowledge about  
6 the ability to set export pricing?  
7 A Well, I -- I did work for the Commission back in  
8 2004 through to 2008, and in '97, in different  
9 roles. I was aware that minimum pricing was a  
10 tool used by the Commission to regulate B.C.  
11 production marketed by B.C. agencies. And that  
12 was my awareness.  
13 Q In your role as general manager between October -  
14 - sorry, between 2015 when you joined and October  
15 2016, were there any export minimum prices set?  
16 A Not that I know of.  
17 Q So is it fair to say that the first time as  
18 general manager that you set minimum prices was  
19 in August 2017?  
20 A Correct.  
21 Q Were you aware if the Commission had previously  
22 set minimum prices prior to 2015, while you were  
23 not general manager? Were you aware if any  
24 minimum prices had been set prior to that? For  
25 exports.  
26 A I was not aware.  
27 Q I'll take you -- oops, that's wrong. Sorry. One  
28 second, sorry.  
29 CNSL N. MITHA: Mr. Chair, I may have one more  
30 question on this issue, but I don't have the  
31 correct document number. Why don't we take the  
32 break now, and if I need to come back to that one  
33 last question, I can do that after lunch.  
34 THE CHAIRPERSON: Mr. Mitha, before we break, just --  
35 can you just give us an update on kind of where  
36 you are --  
37 CNSL N. MITHA: Yes.  
38 THE CHAIRPERSON: -- with Mr. Solymosi?  
39 CNSL N. MITHA: I anticipate -- unfortunately, I  
40 didn't finish as quickly as I thought I would. I  
41 don't anticipate being more than -- let's see  
42 here. An hour. One hour.  
43 THE CHAIRPERSON: Okay. So why don't -- if everyone  
44 is in agreement, should we shorten lunch today to  
45 45 minutes?  
46 CNSL N. MITHA: What -- and come back at one o'clock?  
47 THE CHAIRPERSON: Come back at one o'clock. There's

- 1 as a market information and policy analyst was  
2 the title.
- 3 Q All right. And you were reporting initially to  
4 Mr. Driediger who was the general manager and  
5 then later to Tom [indiscernible], is that right?
- 6 A Yeah, Murray was there maybe a couple of years.  
7 I don't -- maybe not even a couple of years and  
8 then it was mostly Tom [indiscernible].
- 9 Q And towards the end of your time there in March  
10 of 2008, we've heard some evidence that there was  
11 an attendance at a standing joint committee for  
12 the scrutiny of regulations by Mr. Leroux, then  
13 Chair, and Mr. Hrabinsky, counsel for the  
14 Commission. Do you recall -- do you recall that  
15 evidence first of all?
- 16 A I recall -- I recall that evidence, correct.
- 17 Q And were you aware at the time when you were at  
18 the Commission in March of 2008, were you aware  
19 of that appearance, that that was going on?
- 20 A I was not aware.
- 21 Q One of the documents that has been produced very  
22 recently is a written brief that was provided by  
23 the Vegetable Marketing Commission at that  
24 hearing and I'm -- we're going to share our  
25 screen, I think, to just make sure that you know  
26 what I'm talking about. This is Exhibit 5 and  
27 we've -- we've numbered the pages at the top.
- 28 THE CHAIRPERSON: Can you just give me a moment,  
29 please?
- 30 CNSL C. HUNTER: Yes, of course.
- 31 THE CHAIRPERSON: Okay. Thank you.
- 32 CNSL R. HIRA: A copy of that is before the witness.
- 33 CNSL C. HUNTER: Thank you.
- 34 Q And so the page that I'm looking at and now, I --  
35 we've numbered the pages in the top-right hand  
36 corner but I don't believe the produced copy has  
37 those numbers but there are Bates numbers at the  
38 bottom that may assist and it's BCVMC A06169.
- 39 A Okay.
- 40 Q And so, Mr. Solymosi, when did you first see this  
41 document?
- 42 A At this hearing.
- 43 Q Okay. You gave some evidence that at a certain  
44 point you became aware of the proceedings in  
45 2008, aware that they had occurred?
- 46 A Correct.
- 47 Q And when was that -- when did you become aware

1 A Until September 7th, correct.

2 Q And just taking you down the page to the  
3 highlighted portion of -- under the heading  
4 British Columbia Vegetable Marketing Levies Order  
5 and it says:

6  
7 The British Columbia Vegetable Marketing  
8 Commission pursuant to section 3 and  
9 paragraph 4(a) of British Columbia Vegetable  
10 Order hereby makes the annexed British  
11 Columbia Vegetable Marketing Levies Order.  
12

13 And it's indicated to be signed in Surrey,  
14 British Columbia on August 12th, 2008. Do you  
15 see that?

16 A Correct.

17 Q And then if I take you down to Application on  
18 page 10 of the PDF, section 1.1 of the regulation  
19 and it says:

20  
21 This order applies only to the marketing of  
22 vegetables in interprovincial and export  
23 trade and to persons and properties situated  
24 within British Columbia.  
25

26 Do you see that?

27 A Yes, correct.

28 Q So during the 2016 season when the Commission  
29 collected levies on interprovincial sales of  
30 potatoes that was pursuant to this regulation,  
31 correct?

32 A Correct.

33 Q And if I can take you to the attachment, the  
34 schedule 2 levies, you see there's under storage  
35 crop levies that are set for fresh potatoes under  
36 B and levies set for contract potatoes under D.

37 A Correct.

38 Q And so these were the levies that were collected  
39 on -- on Prokam potatoes sold through IVCA to  
40 Thomas Fresh in Alberta and Saskatchewan up until  
41 September 7th, 2017. Is that right?

42 A Until -- what date was that?

43 Q Up until September 7th, 2017.

44 A Yes, correct.

45 Q Thank you. Now, you were the person at the  
46 Commission who was charged with ensuring that  
47 these levies orders were properly gazetted during

- 1 your time as general manager, correct?  
2 A Yes, correct.  
3 Q And on September 6th, 2017, the Commission caused  
4 an amendment to the levies order to be  
5 implemented, correct?  
6 A Hold on. September 6th, 2017?  
7 Q Yes.  
8 A That was a process that started back in January  
9 of 2017.  
10 Q Yes, so you'd be involved in the amendment to the  
11 levies order for some time?  
12 A Correct.  
13 Q Yes, throughout 2017, from January to September  
14 2017?  
15 A Correct.  
16 Q I'm going to start with some emails from  
17 September. This is Exhibit 1, page 1086. So,  
18 Mr. Solymosi, do you see the document 1086 from  
19 Exhibit 1?  
20 A Yes, I do.  
21 Q And these are emails between you and Pierre  
22 Bigras?  
23 A Yes.  
24 Q And Mr. Bigras was at Natural Farm Products  
25 Council, is that right?  
26 A Farm Products Council of Canada.  
27 Q Yes, Farm Products Council of Canada. You're  
28 right. Thank you. And [indiscernible] signature  
29 line on page 1086. He's manager of Regulatory  
30 Affairs, Farm Products Council of Canada.  
31 A Correct.  
32 Q And what Mr. Bigras is sending you on September  
33 20th is:  
34  
35 Please find attached a link to the Canada  
36 Gazette. This is useful if you want to keep  
37 a copy to the official amendment to the  
38 levies order for your files.  
39  
40 Do you see that?  
41 A Correct.  
42 Q And you say, "Thank you." Now, the attachment --  
43 it's unfortunately ahead of this in the comment  
44 book but it starts at page 1044 and you see this  
45 is the registration. It says September 8th, 2017  
46 at the top?  
47 A Correct.

- 1 your time as general manager, correct?  
2 A Yes, correct.  
3 Q And on September 6th, 2017, the Commission caused  
4 an amendment to the levies order to be  
5 implemented, correct?  
6 A Hold on. September 6th, 2017?  
7 Q Yes.  
8 A That was a process that started back in January  
9 of 2017.  
10 Q Yes, so you'd be involved in the amendment to the  
11 levies order for some time?  
12 A Correct.  
13 Q Yes, throughout 2017, from January to September  
14 2017?  
15 A Correct.  
16 Q I'm going to start with some emails from  
17 September. This is Exhibit 1, page 1086. So,  
18 Mr. Solymosi, do you see the document 1086 from  
19 Exhibit 1?  
20 A Yes, I do.  
21 Q And these are emails between you and Pierre  
22 Bigras?  
23 A Yes.  
24 Q And Mr. Bigras was at Natural Farm Products  
25 Council, is that right?  
26 A Farm Products Council of Canada.  
27 Q Yes, Farm Products Council of Canada. You're  
28 right. Thank you. And [indiscernible] signature  
29 line on page 1086. He's manager of Regulatory  
30 Affairs, Farm Products Council of Canada.  
31 A Correct.  
32 Q And what Mr. Bigras is sending you on September  
33 20th is:  
34  
35 Please find attached a link to the Canada  
36 Gazette. This is useful if you want to keep  
37 a copy to the official amendment to the  
38 levies order for your files.  
39  
40 Do you see that?  
41 A Correct.  
42 Q And you say, "Thank you." Now, the attachment --  
43 it's unfortunately ahead of this in the comment  
44 book but it starts at page 1044 and you see this  
45 is the registration. It says September 8th, 2017  
46 at the top?  
47 A Correct.

1 Q And an order amending the British Columbia  
2 Vegetable Marketing Levies Order and you see just  
3 below the text, Surrey, September 6th, 2017.

4 A That's correct.

5 Q And so it was signed by the Chair of the  
6 Commission at that time, Mr. Krause, on September  
7 6th, 2017. Is that right?

8 A That is correct.

9 Q Now, you were involved -- this was a culmination  
10 of a process that started in January, this  
11 effecting of the amendment to the levies,  
12 correct.

13 A Yeah, that is correct.

14 Q And I'm going to take you to Exhibit 5 and I'll  
15 -- it's going to be page 206 of Exhibit 5 and  
16 there are documents -- there are document numbers  
17 at the bottom if others don't have the numbering.  
18 These are the -- the documents produced by the  
19 Commission on January 30th. The document number  
20 at the bottom is BCVMC A06338.

21 A January 13th --

22 Q Yes.

23 A -- date.

24 Q Yes, and so, Mr. Solymosi, this is an email from  
25 you to Ms. Gorsuch on January 13th, 2017, and the  
26 subject line is levies were changed June 17th,  
27 2015, correct?

28 A Correct.

29 Q And you say in the email:

30

31 The [indiscernible] levies for greenhouse  
32 growers were changed in June 2015 so we will  
33 need to complete the paperwork. See  
34 attached approvals.

35

36 See that?

37 A Correct.

38 Q How is it that a change from June of 2015 was --  
39 the paperwork was just being worked on now in  
40 January of 2017, a year-and-a-half later?

41 A Yeah, I became aware of the requirement to  
42 gazette these -- these price levies through --  
43 through discussion with Wanda at BCFIRB.

44 Q And when did that discussion take place?

45 A Right around this time.

46 Q Around January of 2017?

47 A Correct.

- 1 Q And -- and she told you that certain types of  
2 levies were required to be gazetted, correct?
- 3 A Well, levies -- any change in levies would be  
4 required to be gazetted. The change in levies  
5 that we had since my time -- I started in June,  
6 right at June 2015, the only change I was aware  
7 of was the [indiscernible] levies for greenhouse  
8 producers.
- 9 Q You understood that any levies relating to  
10 interprovincial trade were required to be  
11 gazetted, is that right?
- 12 A Can you repeat that, please?
- 13 Q You understood that any levies in respect of  
14 interprovincial trade were required to be  
15 gazetted?
- 16 A The levies need to be, I guess, gazetted not to  
17 be -- they needed to be gazetted, correct.
- 18 Q Not all levies though, just levies that were  
19 required the use of the -- federal jurisdiction,  
20 correct?
- 21 A That is correct.
- 22 Q And so that included interprovincial -- levies on  
23 interprovincial sales. You knew that levies on  
24 interprovincial sales were required to be  
25 gazetted?
- 26 A All levies on product that is sold into that  
27 market space, you need to have -- the levy has to  
28 be gazetted.
- 29 Q All products sold to different provinces need to  
30 be gazetted?
- 31 A Outside B.C. --
- 32 Q Yes.
- 33 A -- correct.
- 34 Q Yes. So levies that are payable on the sale of  
35 Prokam potatoes to Thomas Fresh in Alberta, those  
36 levies would have to be gazetted?
- 37 A Well, there would be levies -- once they're  
38 gazetted, they're on -- on file, right? So that  
39 would be the -- you would want that to be up to  
40 date at the most current levies that are being  
41 collected by the Commission on those sales.
- 42 Q Yes, and Ms. Gorsuch explained to you in January  
43 of 2017 that levies on interprovincial sales were  
44 required to be gazetted, correct?
- 45 A Well, any change -- so, you have -- if there's  
46 any change in the levies, then they would need to  
47 be gazetted.

- 1 Q Yes, to the interprovincial levies?  
2 A Correct.  
3 Q Now, I'll take you to page 209 of the same  
4 document. This is January 16th, 2017, and Ms.  
5 Gorsuch put you in touch with Pierre at Farm  
6 Products Council of Canada, do you see that?  
7 A That's correct.  
8 Q And that was Pierre Bigras?  
9 A Correct.  
10 Q And if I take you to page 218 of Exhibit 5. This  
11 is an email from Mr. Bigras to you, copy to Ms.  
12 Gorsuch and others and on April 11th, he says:  
13  
14 Good afternoon,  
15  
16 On January 24th, 2017, Wanda Gorsuch  
17 provided you with copies of a proposed  
18 amendment to the Vegetable Levies Order made  
19 pursuant to the *Agricultural Products*  
20 *Marketing Act*. I'm inquiring if you have  
21 had a chance to verify the document.  
22  
23 If you have any questions, please do not  
24 hesitate to contact me. I've attached the  
25 documents for your ease of verification.  
26  
27 Do you see that?  
28 A Correct.  
29 Q And so Mr. Bigras was following up with you about  
30 the January correspondence in April?  
31 A That is correct.  
32 Q And then taking you to page 227 of Exhibit 5 and  
33 this is a -- I'll scroll up a little bit so you  
34 can see the full document. This is the document  
35 signed by the then Chairman of the Commission,  
36 Mr. Krause, on September 6th, 2017, correct?  
37 A That is correct.  
38 Q And so that's the document that effected that  
39 change in the federal levies order that became  
40 effective on September 8th, 2017, correct?  
41 A Correct.  
42 Q Thank you. And so you were engaged in this  
43 process of amending the levies order between  
44 January and September of 2017, correct?  
45 A That is correct.  
46 Q And during that entire period, you were aware of  
47 the requirement that levies under the federal

- 1 Q You were setting a minimum price for product  
2 delivered into Alberta, correct?
- 3 A That is export price -- export minimum price for  
4 B.C. production marketed by B.C. agencies into  
5 Alberta.
- 6 Q So minimum price for product delivered into  
7 Alberta?
- 8 A Can you restate that? Like, I guess I thought I  
9 just answered that.
- 10 Q You added some extra words. I'm just asking if  
11 you agree with me that what you were setting when  
12 you set the export price was a price for -- a  
13 minimum price for product delivered into Alberta?
- 14 A No, I would say it's a minimum price for B.C.  
15 product marketed by B.C. agencies into Alberta.
- 16 Q And on the price list what is indicated is export  
17 prairies, correct?
- 18 A Export prairies because that's the market that  
19 the B.C. agencies are servicing with B.C.  
20 product.
- 21 Q All right. I'm going to move forward in time to  
22 the cease and desist orders and I'm going to take  
23 you to an email chain that's at Exhibit 1, 1195.
- 24 CNSL R. HIRA: Can I put this away then?
- 25 CNSL C. HUNTER: I -- I don't have an opinion about  
26 whether you can put it away. I -- I'm taking the  
27 witness to Exhibit 1, 1195.
- 28 CNSL R. HIRA: Fair enough. So you're through with  
29 these notes for the time being?
- 30 CNSL C. HUNTER: I'm on a different document. That's  
31 right. Exhibit 1, 1195.
- 32 Q Do you see that, Mr. Solymosi?
- 33 CNSL R. HIRA: Let me just have a moment. Thank you.  
34 do you want the paper copy in front of him?
- 35 CNSL C. HUNTER: If he would like the paper copy,  
36 that's fine. I have the copy up on the screen  
37 and so I'll -- I'll be referring to that version.
- 38 CNSL R. HIRA: It's 1195 and 1196 that's in front of  
39 him.
- 40 CNSL C. HUNTER: Thank you.
- 41 Q Well -- so you'll see in 1195 at the top -- the  
42 top email is from you to Ms. Gorsuch and I'm  
43 going to start at the beginning of the chain so  
44 down on 1196. So you see the first email in the  
45 chain is Tuesday October 10th at 2:38 p.m., an  
46 email from yourself to Ms. Gorsuch attaching the  
47 cease and desist orders.

- 1 authority being relied on to set export prices?  
2 A No, no. This was -- this -- I was just relaying  
3 the information that was provided to, I guess,  
4 John Walsh related to his question.  
5 Q This is August 2017 and Mr. Meyer has been  
6 working in the vegetable sector for how long by  
7 this time, about four months?  
8 A Since April.  
9 Q Since April. And -- and so presumably Mr. Meyer  
10 had asked you something about the authority, the  
11 BCVMC's vegetable pricing authority, is that  
12 right?  
13 A Could you repeat that, please?  
14 Q Is this -- is this email to Mr. Meyer because he  
15 had asked a question about the authority under  
16 which the export prices were set?  
17 A I can't recall.  
18 Q But you agree with me that Mr. Meyer would rely  
19 on you to set out fully the authority on which  
20 your decision rested when you're communicating  
21 with him given his inexperience in the industry?  
22 A It would be the [indiscernible] on the market  
23 call which was more than myself.  
24 Q Right. But you're sending him an email that says  
25 VMC Pricing Authority Questions and you've given  
26 him these provisions that were provided by Ms.  
27 Gorsuch. Presumably that's because you think  
28 that these are an accurate representation of the  
29 VMC's pricing authority.  
30 A No.  
31 Q Now, Mr. Walsh did follow up with you and you  
32 gave some evidence yesterday that he had sent you  
33 a letter on August 14th. Do you recall that?  
34 A Yes, so -- yeah, I remember seeing that email.  
35 Yes, correct.  
36 Q And he not only sent you a letter, but he filed  
37 an appeal from the pricing order, correct?  
38 A Correct.  
39 Q And I'm going to share the screen. It's in  
40 Exhibit 15, your documents that were produced I  
41 believe on January 26th at page 46. Do you see  
42 that?  
43 A I do, yes.  
44 THE CHAIRPERSON: Ms. Hunter?  
45 CNSL C. HUNTER: Yes?  
46 THE CHAIRPERSON: We have the exhibit, but we don't  
47 have the page numbers.

1 CNSL C. HUNTER: Oh, I'm sorry. I believe they're  
2 bookmarked -- oh, you have it in hardcopy though.

3 THE CHAIRPERSON: I have it in hardcopy so  
4 approximately it would be -- so I have it now,  
5 it's -- there's 1 of 6 up top. It comes from a  
6 fax number it looks like, 555 --

7 CNSL C. HUNTER: That's right. That's right. It  
8 comes from a fax number. Thank you. And just  
9 while we're on the fax line, it appears that the  
10 fax was sent August 10th at 2:19 p.m. so just --  
11 just a short time before Ms. Gorsuch's email was  
12 sent to you -- the same day as Ms. Gorsuch's  
13 email that you were copied on.

14 A That was sent to the Farm Industry -- BC Farm  
15 Industry Review Board.

16 Q Yes, was it sent to you as well?

17 A I saw it eventually, but I can't recall when.

18 Q It has at the bottom right corner, there's a  
19 little box that asks about the filing fee and  
20 copy to Marketing Board Commission and  
21 documentation attached and there's a note that  
22 the \$100 filing is being couriered but the copy  
23 to Marketing Board Commission is checked. Do you  
24 -- does that assist in -- in your recollection of  
25 whether you received it around when it was filed  
26 on August 10th?

27 A I know I got an email from John Walsh on the  
28 14th.

29 Q Had you seen the appeal -- that he'd filed an  
30 appeal by the time you got his email on the 14th?

31 A I was -- yeah, I was made aware of it, yes.

32 Q And if I take you down -- so he's attached some  
33 documentation to the appeal and I'm going to take  
34 you to this. It's page 2 of 6 of the facts and a  
35 handwritten page 1 on the top-left corner and  
36 there's -- there were two issues he was concerned  
37 about and I'm only interested in the second which  
38 is the export pricing issue. So taking you down  
39 to that, halfway through -- down the page,  
40 there's a heading Export Pricing Grounds for  
41 Appeal and the first line is not material but the  
42 second says this:

43

44 Promoted by persons or agency with conflict  
45 of interest resulting in the restraint of  
46 trade through price fixing in an area of no  
47 jurisdictional pricing authority.

1

2 Do you see that?

3 A I see that, yes.

4 Q And so he was expressly challenging the  
5 jurisdiction to make the export pricing orders in  
6 this appeal, correct?

7 A It appears -- it appears so, yeah.

8 Q And you knew that in the time sometime around  
9 August 2017?

10 A I received a copy of the notice of appeal --

11 Q So you have an appeal -- I'm sorry, I didn't mean  
12 to cut you off.13 A Well, the notice of appeal, the fee -- the fee  
14 was never filed so this -- this notice -- this  
15 appeal never was brought forward and so it was  
16 never addressed and so it just -- nothing  
17 happened on this appeal.18 Q The appeal didn't proceed but you were aware of  
19 the allegations made in the notice of appeal,  
20 correct?

21 A I'm aware of it, yes.

22 Q Yes, and so you're aware that Mr. Walsh had  
23 asserted whether he pressed the appeal or not, he  
24 had asserted that those export prices in August  
25 of 2017 were in an area of no jurisdictional  
26 pricing authority. Do you see that?

27 A He asserted his opinion.

28 Q Yes, and Ms. Gorsuch had provided the information  
29 to you about the source of the authority to set  
30 export prices, correct?31 CNSL R. HIRA: Well, just a moment. Ms. Gorsuch's  
32 email speaks for itself. That's not what the  
33 email says.34 CNSL C. HUNTER: Well, Mr. Chair, I'd like a ruling on  
35 whether I may continue with my cross-examination  
36 and ask this witness questions about the  
37 documents and what he understood from the  
38 documents.39 CNSL R. HIRA: That's not the question asked, Mr.  
40 Chair. She has misstated the email and put it as  
41 a proposition to my client. She's welcome to put  
42 the email forward and say -- and ask is this what  
43 you took the email to mean. There's nothing  
44 wrong with that question. That isn't the  
45 question that she has asked.46 THE CHAIRPERSON: Ms. Hunter, could you ask Mr.  
47 Solymosi perhaps what his understanding of the

1 it in that way.

2 Q I --

3 A Before -- you know, when you look at the -- the  
4 orderly marketing system in B.C., there's three  
5 components. You've got delivery allocation  
6 that's managed by agencies and services, the need  
7 to provide a system to rotate access to the  
8 market amongst a group of growers in that agency.

9 And then you've got agencies that represent  
10 groups of producers in the marketplace and then  
11 you have minimum pricing and that minimum pricing  
12 component is the only tool that a Commission has  
13 to ensure orderly market marketing is maintained  
14 in a multi-agency environment and so it's applied  
15 when you -- the only reason we have minimum  
16 pricing is to regulate B.C. production marketed  
17 by B.C. agencies so that you get the best return  
18 for B.C. producers. If you didn't have that, it  
19 would be a race to the bottom. It's as simple as  
20 that.

21 Q Ms. Gorsuch says your export price question  
22 brings in the federal *Agricultural Products*  
23 *Marketing Act* and the British Columbia Vegetable  
24 Order and you understood that she was correct?

25 A No, I understood that if you're going to be  
26 relying on federal authority to -- for the  
27 purpose of regulating commerce -- the flow of  
28 commerce and trade then you'd rely on your  
29 federal authority but we're not doing that and  
30 the Commission has never done that and the  
31 Commission uses the minimum pricing as I've said  
32 all along here to regulate B.C. production  
33 marketed by B.C. agencies to get the best  
34 products for B.C. producers. I don't know how to  
35 explain it otherwise.

36 Q And so your view is that Ms. Gorsuch's response  
37 to Mr. Walsh was incomplete, is that right?

38 A I would -- yeah, what she says at the bottom  
39 there:

40  
41 If you have a specific question or concerns  
42 regarding the Commission's price sheet and  
43 its pricing policy, I suggest you contact  
44 [indiscernible] directly and  
45 [indiscernible].

46  
47 I think that's sent about recent pricing policy

- 1 document that initiated this conversation here  
2 and then I had a follow-up meeting  
3 [indiscernible].
- 4 Q So -- so the way -- the way Ms. Gorsuch puts it  
5 here, that the export price question brings in  
6 the federal authorities, you don't say she's  
7 wrong but that's not how you would put it in  
8 explaining the authority to set export prices, is  
9 that right?
- 10 A We're not relying on that authority to set the  
11 minimum pricing.
- 12 Q Okay. I'm going to take you to a document at  
13 977. So this is just to situate it, this email  
14 from Ms. Gorsuch is August 10th, 2017 and this  
15 document at 977 is August 28th, so 18 days later.  
16 Do you see the document?
- 17 A Correct.
- 18 Q And this is an email from you to Mr. Meyer?
- 19 A Correct.
- 20 Q And its subject is VMC Pricing Authority  
21 Questions?
- 22 A Correct.
- 23 Q And what you say to Mr. Meyer is this:  
24  
25 See below. BCFIRB was asked a question  
26 about our authority to set price. I was  
27 cc'd on the reply. I copied the relevant  
28 sections and pasted below.  
29
- 30 Do you see that?
- 31 A Yeah, correct.
- 32 Q And what is cut and pasted below is from Ms.  
33 Gorsuch's email, correct?
- 34 A That is correct.
- 35 Q And so with respect to export price, what you say  
36 or what -- what is cut and pasted from Ms.  
37 Gorsuch's email is:  
38  
39 Your export price question brings in the  
40 federal *Agricultural Products Marketing Act*.  
41 Under *APMA* there is the British Columbia  
42 Vegetable Order and then sets out that  
43 provision.  
44
- 45 Do you see that?
- 46 A Correct.
- 47 Q Because you knew at the time, that was the

1 email was?

2 CNSL C. HUNTER:

3 Q You had received this notice of appeal  
4 challenging jurisdictional pricing authority,  
5 correct?

6 A Challenging -- yes, correct.

7 Q And you had received Ms. Gorsuch's email which  
8 you understood described the federal authority to  
9 set export prices, correct?

10 A Described the federal -- the federal authority.

11 Q And Ms. Gorsuch's email was expressly addressed  
12 to export prices, correct?

13 A If the -- the way I interpreted that email is  
14 that if you're relying on that federal authority  
15 to set pricing then that authority would apply  
16 but we're not relying on that authority.

17 Q Right. Now, continuing in Mr. Walsh's notice of  
18 appeal, the next bullets says:

19  
20 Limitation of competing agencies from  
21 potential growth without industry  
22 consultation and implementation process, the  
23 correct pricing policy of October 2016 gives  
24 a competitive advantage to one agency to set  
25 prices in and of markets outside the  
26 regulated area that VMC has no authority  
27 over disrupting trade in areas where access  
28 is needed to sell product beyond  
29 [indiscernible] quotas implemented to  
30 protect one agency's possible sales  
31 contracts to national chain outlets stopping  
32 competing wholesalers from accessing B.C.  
33 grown product from other agencies to fill  
34 their requirements in an unregulated market  
35 area.

36  
37 Do you see that?

38 A I see -- yeah, I see what he wrote.

39 Q And you understand who he's referring to as the  
40 agency that has -- that he asserts has an unfair  
41 advantage?

42 A To what agency I would -- you know, the  
43 assumption there would be it's BCfresh.

44 Q Yes, and then there's a reference to competing  
45 wholesalers, do you know who he's referring to  
46 there?

47 A I would assume -- yeah, I assume it would be

- 1 document that initiated this conversation here  
2 and then I had a follow-up meeting  
3 [indiscernible].
- 4 Q So -- so the way -- the way Ms. Gorsuch puts it  
5 here, that the export price question brings in  
6 the federal authorities, you don't say she's  
7 wrong but that's not how you would put it in  
8 explaining the authority to set export prices, is  
9 that right?
- 10 A We're not relying on that authority to set the  
11 minimum pricing.
- 12 Q Okay. I'm going to take you to a document at  
13 977. So this is just to situate it, this email  
14 from Ms. Gorsuch is August 10th, 2017 and this  
15 document at 977 is August 28th, so 18 days later.  
16 Do you see the document?
- 17 A Correct.
- 18 Q And this is an email from you to Mr. Meyer?
- 19 A Correct.
- 20 Q And its subject is VMC Pricing Authority  
21 Questions?
- 22 A Correct.
- 23 Q And what you say to Mr. Meyer is this:  
24  
25 See below. BCFIRB was asked a question  
26 about our authority to set price. I was  
27 cc'd on the reply. I copied the relevant  
28 sections and pasted below.  
29
- 30 Do you see that?
- 31 A Yeah, correct.
- 32 Q And what is cut and pasted below is from Ms.  
33 Gorsuch's email, correct?
- 34 A That is correct.
- 35 Q And so with respect to export price, what you say  
36 or what -- what is cut and pasted from Ms.  
37 Gorsuch's email is:  
38  
39 Your export price question brings in the  
40 federal *Agricultural Products Marketing Act*.  
41 Under *APMA* there is the British Columbia  
42 Vegetable Order and then sets out that  
43 provision.  
44
- 45 Do you see that?
- 46 A Correct.
- 47 Q Because you knew at the time, that was the

1 authority being relied on to set export prices?  
2 A No, no. This was -- this -- I was just relaying  
3 the information that was provided to, I guess,  
4 John Walsh related to his question.  
5 Q This is August 2017 and Mr. Meyer has been  
6 working in the vegetable sector for how long by  
7 this time, about four months?  
8 A Since April.  
9 Q Since April. And -- and so presumably Mr. Meyer  
10 had asked you something about the authority, the  
11 BCVMC's vegetable pricing authority, is that  
12 right?  
13 A Could you repeat that, please?  
14 Q Is this -- is this email to Mr. Meyer because he  
15 had asked a question about the authority under  
16 which the export prices were set?  
17 A I can't recall.  
18 Q But you agree with me that Mr. Meyer would rely  
19 on you to set out fully the authority on which  
20 your decision rested when you're communicating  
21 with him given his inexperience in the industry?  
22 A It would be the [indiscernible] on the market  
23 call which was more than myself.  
24 Q Right. But you're sending him an email that says  
25 VMC Pricing Authority Questions and you've given  
26 him these provisions that were provided by Ms.  
27 Gorsuch. Presumably that's because you think  
28 that these are an accurate representation of the  
29 VMC's pricing authority.  
30 A No.  
31 Q Now, Mr. Walsh did follow up with you and you  
32 gave some evidence yesterday that he had sent you  
33 a letter on August 14th. Do you recall that?  
34 A Yes, so -- yeah, I remember seeing that email.  
35 Yes, correct.  
36 Q And he not only sent you a letter, but he filed  
37 an appeal from the pricing order, correct?  
38 A Correct.  
39 Q And I'm going to share the screen. It's in  
40 Exhibit 15, your documents that were produced I  
41 believe on January 26th at page 46. Do you see  
42 that?  
43 A I do, yes.  
44 THE CHAIRPERSON: Ms. Hunter?  
45 CNSL C. HUNTER: Yes?  
46 THE CHAIRPERSON: We have the exhibit, but we don't  
47 have the page numbers.

1 asking is that everyone focus on that today in  
2 going forward.

3 So speaking of which it's -- it's clear as  
4 the -- we're going forward, it's clear to me that  
5 we've got to -- to work together to improve this  
6 hearing process when -- when we're able to  
7 resume. Therefore, I'll be asking for brief  
8 written submissions on certain measures that I'm  
9 considering including time limits on  
10 examinations, page limits on written submissions,  
11 and an -- an a abbreviated hearing for oral  
12 argument. I'll be issuing a -- issuing a  
13 direction on a schedule for submissions as I said  
14 earlier in the near future.

15 Lastly, I know that Mr. Mitha is currently  
16 canvassing counsel on their availability for the  
17 next phase of the hearing. I do not want to  
18 discuss that now or even at the end of the day  
19 today. Rather, I just ask each of you to do what  
20 you can to make sure that we can complete the  
21 evidence by the end of April. I'm determined to  
22 get a decision rendered before the summer because  
23 the industry requires it. We'll need time for  
24 written submissions and then I would like a later  
25 opportunity for brief oral arguments. So,  
26 please, I implore you, work with Mr. Mitha to  
27 find a way to make that work.

28 With that, unless Mr. Mitha has anything  
29 else that needs to be addressed, I'll ask Ms.  
30 Hunter to continue with her cross-examination.

31 CNSL N. MITHA: Thank you, Chair Donkers. I have -- I  
32 have nothing that needs to be addressed.

33 THE CHAIRPERSON: All right. Ms. Hunter.

34 CNSL C. HUNTER: Thank you.

35  
36 **MARCEL ANDRE SOLYMOSI**, a  
37 witness, recalled.  
38

39 **CROSS-EXAMINATION BY CNSL C. HUNTER, continuing:**  
40

41 Q Mr. Solymosi, we were looking yesterday at  
42 discussing an email from Ms. Gorsuch on August  
43 10th, responding to Mr. Walsh's inquiry, copying  
44 you. Do you recall that?

45 A I do.

46 Q And on August 10th, the export prices had been  
47 set on August 8th, but they had not yet taken

1 effort, correct?  
2 A The pricing takes -- we set the pricing the week  
3 prior, so --  
4 Q That's --  
5 A -- it's for the week of the August 13th.  
6 Q Right. And -- and so on August 10th, when you  
7 received Ms. Gorsuch's email, you could have  
8 delayed implementation of the export prices to  
9 look into the question of the Commission's  
10 authority to set prices in that way, correct?  
11 A There's no -- never any doubt in our minds that  
12 the minimum pricing that's being set is according  
13 to the purpose of why it's being set. And I've,  
14 you know, said that many times here over the  
15 course of the hearing that that purpose was or is  
16 to regulate B.C. production marketed by B.C.  
17 agencies and that's -- that's the whole reason  
18 that we set the minimum pricing.  
19 Q And I think you said in your evidence that the  
20 two B.C. agencies that were selling into the  
21 Albert and Saskatchewan market at that time were  
22 BCfresh and IVCA, correct?  
23 A If you can repeat that?  
24 Q I -- I think you said that the two B.C. agencies  
25 that were selling potatoes into Alberta and  
26 Saskatchewan at that time were BCfresh and IVCA,  
27 correct?  
28 A That's when we became aware that we need to set  
29 the minimum pricing on the price sheets for those  
30 markets at that time. We had become aware that  
31 IVCA was also in that market space. Correct.  
32 Q You were regulating to ensure there wasn't  
33 competition that drove price down between BCfresh  
34 and IVCA, correct?  
35 A We set pricing so that agencies compete on  
36 quality and service and that's it. So that is  
37 the reason why we set the prices so they don't  
38 compete on pricing.  
39 Q And, now, when Mr. Walsh raised concerns about  
40 favouring BCfresh in his letter, you did not  
41 investigate those. You told me that yesterday,  
42 correct?  
43 A Can you repeat that please?  
44 Q When Mr. Walsh raised concerns in his letter to  
45 you about favouring BCfresh in setting those  
46 prices, you did not investigate those concerns,  
47 correct?

1 your time as general manager, correct?

2 A Yes, correct.

3 Q And on September 6th, 2017, the Commission caused  
4 an amendment to the levies order to be  
5 implemented, correct?

6 A Hold on. September 6th, 2017?

7 Q Yes.

8 A That was a process that started back in January  
9 of 2017.

10 Q Yes, so you'd be involved in the amendment to the  
11 levies order for some time?

12 A Correct.

13 Q Yes, throughout 2017, from January to September  
14 2017?

15 A Correct.

16 Q I'm going to start with some emails from  
17 September. This is Exhibit 1, page 1086. So,  
18 Mr. Solymosi, do you see the document 1086 from  
19 Exhibit 1?

20 A Yes, I do.

21 Q And these are emails between you and Pierre  
22 Bigras?

23 A Yes.

24 Q And Mr. Bigras was at Natural Farm Products  
25 Council, is that right?

26 A Farm Products Council of Canada.

27 Q Yes, Farm Products Council of Canada. You're  
28 right. Thank you. And [indiscernible] signature  
29 line on page 1086. He's manager of Regulatory  
30 Affairs, Farm Products Council of Canada.

31 A Correct.

32 Q And what Mr. Bigras is sending you on September  
33 20th is:

34

35 Please find attached a link to the Canada  
36 Gazette. This is useful if you want to keep  
37 a copy to the official amendment to the  
38 levies order for your files.

39

40 Do you see that?

41 A Correct.

42 Q And you say, "Thank you." Now, the attachment --  
43 it's unfortunately ahead of this in the comment  
44 book but it starts at page 1044 and you see this  
45 is the registration. It says September 8th, 2017  
46 at the top?

47 A Correct.

- 1 Q And an order amending the British Columbia  
2 Vegetable Marketing Levies Order and you see just  
3 below the text, Surrey, September 6th, 2017.
- 4 A That's correct.
- 5 Q And so it was signed by the Chair of the  
6 Commission at that time, Mr. Krause, on September  
7 6th, 2017. Is that right?
- 8 A That is correct.
- 9 Q Now, you were involved -- this was a culmination  
10 of a process that started in January, this  
11 effecting of the amendment to the levies,  
12 correct.
- 13 A Yeah, that is correct.
- 14 Q And I'm going to take you to Exhibit 5 and I'll  
15 -- it's going to be page 206 of Exhibit 5 and  
16 there are documents -- there are document numbers  
17 at the bottom if others don't have the numbering.  
18 These are the -- the documents produced by the  
19 Commission on January 30th. The document number  
20 at the bottom is BCVMC A06338.
- 21 A January 13th --
- 22 Q Yes.
- 23 A -- date.
- 24 Q Yes, and so, Mr. Solymosi, this is an email from  
25 you to Ms. Gorsuch on January 13th, 2017, and the  
26 subject line is levies were changed June 17th,  
27 2015, correct?
- 28 A Correct.
- 29 Q And you say in the email:
- 30
- 31 The [indiscernible] levies for greenhouse  
32 growers were changed in June 2015 so we will  
33 need to complete the paperwork. See  
34 attached approvals.
- 35
- 36 See that?
- 37 A Correct.
- 38 Q How is it that a change from June of 2015 was --  
39 the paperwork was just being worked on now in  
40 January of 2017, a year-and-a-half later?
- 41 A Yeah, I became aware of the requirement to  
42 gazette these -- these price levies through --  
43 through discussion with Wanda at BCFIRB.
- 44 Q And when did that discussion take place?
- 45 A Right around this time.
- 46 Q Around January of 2017?
- 47 A Correct.

1 CNSL R. HIRA: So that question can be asked. I have  
2 no difficulty with it --

3 CNSL C. HUNTER: All right.

4 CNSL R. HIRA: -- but not in reference to this  
5 document. She can ask what did you know about  
6 the proceedings as of -- I guess, October 13th,  
7 2017 and thereafter. I've no difficulty with  
8 that.

9 CNSL C. HUNTER: That's fine. I really was putting  
10 this document to the witness just in an effort to  
11 be fair to him to see -- to understand what was  
12 in the documents given his comment that he  
13 thought it was about something more.

14 THE CHAIRPERSON: Ms. Hunter, just ask the question.

15 CNSL C. HUNTER: All right.

16 Q So, Mr. Solymosi, what did you understand the  
17 2008 proceeding was about when you learned of it  
18 on October 13th, 2017?

19 A Well, what I learned on October 13th that there  
20 is a possibility of a legal challenge that could  
21 come forth because of specific wording that is in  
22 the federal order that states via order or  
23 regulation and I also learned that, you know,  
24 what we are doing which is regulating B.C.  
25 production that is marketed by B.C. agencies is  
26 not relying on that federal authority but when  
27 you brought it up, it appeared that there could  
28 be a legal challenge here that is being brought  
29 forward.

30 Q So on October 13th, 2017, you understood that the  
31 setting of export prices could be vulnerable to  
32 challenge, is that fair?

33 A If you're setting it based on federal authority  
34 to regulate commerce and trade someone can put  
35 that forward saying that's what we're doing but  
36 the reason why we're setting the minimum pricing  
37 for that specific marketplace is and always has  
38 been to regulate B.C. production that is marketed  
39 by B.C. agencies and the reason why we regulate  
40 B.C. agencies is that we want to get the best  
41 prices for B.C. producers.

42 Q I note the time. Perhaps this would be a  
43 convenient time for the lunchbreak.

44 THE CHAIRPERSON: You beat me to it. So it's 12:05.  
45 We'll come back at one o'clock.

46 CNSL R. HIRA: And I'll instruct the witness not to  
47 discuss his evidence with anybody. In other

1 for B.C. producers and that's the -- that's the  
2 only reason why we set minimum pricing on B.C.  
3 production.

4 Q The words I chose are from your email, so the  
5 last line of your email says:

6  
7 The question has come up as to if we ever  
8 gazetted our authority to set an export or  
9 interprovincial minimum price.

10  
11 And my question is you were asking that question  
12 because you hoped you would find that you had  
13 already gazetted the authority to set an export  
14 or interprovincial minimum price.

15 A No, it was inquisitive. It would have been -- it  
16 would be -- it would be a shock if we ever found  
17 any price that was gazetted. It's not expected  
18 that we would have found something because it was  
19 inconceivable that this would have ever occurred  
20 in the past and I say that because of what I've  
21 been telling you for the last how many hours that  
22 the purpose is to regulate B.C. production  
23 marketed by B.C. agencies and we do that -- we  
24 regulate B.C. agencies to get the best price for  
25 B.C. producers and that's the reason why we set  
26 minimum pricing.

27 Q Yes, and you have put it that way quite a number  
28 of times over the last few hours and yesterday as  
29 well, but I never heard that way of framing it  
30 before -- before this hearing. When's the first  
31 time that you understood that that was the source  
32 of the authority to set export minimum prices,  
33 the purpose?

34 A I've always understood it.

35 Q I'm going to take you to Exhibit 1, page 1205.

36 CNSL R. HIRA: Hold there. I'd like to find out,  
37 because it just sounded tired, whether Mr.  
38 Solymosi needs a break of five minutes. If he  
39 does, I'd request that. I'm not seeking to end  
40 things early. Do you need a break?

41 A It would be nice to take five minutes.

42 CNSL C. HUNTER: Sure. Let's do that.

43 CNSL R. HIRA: Thank you. I'll remain here and  
44 obviously we're not -- he's not discussing his  
45 evidence.

46 JOANNE HAMILTON: Off the record for five minutes.

47

1 Q And -- and do you -- do you still have this book  
2 that you had made this copy from?  
3 A I -- I guess so.  
4 Q Do you have the file that the book came from?  
5 A I -- I guess so.  
6 Q And this -- so this first attachment is copies of  
7 the regulation it looks like and you can see the  
8 -- just kind of -- of on the side from the B.C.  
9 Vegetable Order s. 3 which is the provision that  
10 has the [indiscernible] Order or regulation  
11 within it. You see that?  
12 A Yes.  
13 Q And -- and that was the provision that Ms.  
14 Gorsuch had sent to you on August 10th in  
15 response to Mr. Walsh's inquiry, correct?  
16 A I -- I got to see what she sent me, that email  
17 again.  
18 CNSL C. HUNTER: All right. I'm showing the witness  
19 Exhibit 1, 924.  
20 Q This is Ms. Gorsuch's email of August 10th, 2017  
21 and I'm directing you to the heading "Export  
22 Price Question" and s. 3 below it.  
23 A So that would be the federal authority part of  
24 it, and then you have -- the top part is  
25 regarding the authority within the Province of  
26 B.C. which is what we've been relying on to --  
27 because of the purpose of why we set minimum  
28 pricing.  
29 Q Yes. My question was --  
30 A Sorry. Go ahead.  
31 Q My -- my question was whether s. 3 in the -- the  
32 document that we just looked at, the B.C.  
33 Vegetable Order was the provision that Ms.  
34 Gorsuch had drawn your attention to in her August  
35 10th email.  
36 A That's correct.  
37 Q Thank you. Now, the second attachment to the  
38 email that you sent Ms. Gorsuch in October, is  
39 this single page and it's described in the  
40 attachment title as a front page of a Supreme  
41 Court of Canada decision. It appears to be a  
42 cover page for an application for leave to appeal  
43 to the Supreme Court of Canada. Where -- where  
44 did you find this document?  
45 A Would be -- it would've been in my office or in  
46 the office.  
47 Q In -- in the same file as the other -- as the

1 other...

2 A I -- I believe so.

3 Q Is there anything else in that file?

4 A I think there were -- there was documents around  
5 this appeal process or this application and the  
6 whole process. So was -- it was -- it was a --  
7 all the documents related to this were I think --  
8 I believe in there. It was like a box.

9 Q And -- and you believed that the -- that these  
10 documents answered your question about the  
11 federal pricing authority?

12 A It was related to the reference of the I-5  
13 corridor and that's what I was referring to in  
14 the past and the decision around the marketing of  
15 B.C. product by B.C. agencies and the global and  
16 not being allowed in that I-5 corridor for a  
17 limited time and BCfresh -- not BCfresh, BC Hot  
18 House servicing that corridor.

19 Q All right. Now, the -- the emails we were just  
20 looking at were in -- were on October 17th. This  
21 is October 19th, first thing in the morning  
22 and --

23 A [indiscernible]

24 Q -- you write to the -- sorry, this is Exhibit 1,  
25 page 1213.

26 CNSL R. HIRA: Can we have a moment? I just got a  
27 paper copy of it in front of him.

28 CNSL C. HUNTER:

29 Q Mr. Solymosi, this is an email from you to the  
30 full Commission, correct?

31 A That is correct.

32 Q Including the BCfresh commissioners?

33 A Correct.

34 Q And this is a -- setting up a meeting -- an email  
35 setting up a meeting to discuss the cease and  
36 desist orders, correct?

37 A Correct.

38 Q And at the bottom, the last paragraph says:

39

40 The purpose of the meeting is to hear from  
41 each of Prokam, IVCA, and Thomas Fresh in  
42 relation to the matters set out in the cease  
43 and desist orders. The Commission will make  
44 further orders or decisions after hearing  
45 from the parties or it may make further  
46 directions with respect to process.

47

1 Q And, of course, it doesn't say evidence submitted  
2 by Prokam or Thomas Fresh, right, just IVCA?

3 A Correct.

4 Q And that wasn't surprising to you because you  
5 knew that Mr. Solymosi and IVCA were cooperating  
6 with respect to the investigation; right?

7 A Correct.

8 Q Now, it says later in that sentence:

9

10 Docs 3 and 4 are related to pricing  
11 authority on interprovincial and exports.

12

13 Do you see that there?

14 A I do, yes.

15 Q And these documents were being included, to your  
16 understanding, because there was a concern that  
17 setting the export minimum prices required the  
18 commission to exercise its federal regulatory  
19 authority; right?

20 A Correct.

21 Q And there was a concern that the commission might  
22 not have complied with legal requirements for the  
23 exercise of that federal authority. Was that  
24 your understanding?

25 A Yes.

26 CNSL K. MCEWAN: Objection. Concern by who, please?

27 CNSL R. ANDROSOFF: A general concern on the part of  
28 the commission. I'm happy to clarify the  
29 question.

30 Q Did you understand, Mr. Reed, that the reason  
31 that Mr. Solymosi was forwarding these documents  
32 is because there had been a general concern  
33 communicated by Mr. Solymosi or discussed between  
34 you and the other commissioners that the  
35 commission might not have complied with the legal  
36 requirements for the exercise of the federal  
37 authority to set minimum pricing?

38 A I believe there was concern about whether or not  
39 when it was interprovincial it was required to be  
40 gazetted, and that's why it was included in the  
41 evidence.

42 Q And in or around October of 2017, you recall  
43 there being discussion between you and the other  
44 commissioners about the existence of this  
45 concern; is that right?

46 A It was brought up at some point about the  
47 interprovincial, yes.

1 Q And I want to draw your attention to what he says  
2 about documents three and four related to pricing  
3 authority on interprovincial and exports. Do you  
4 see that?

5 A Yes.

6 Q And Mr. Solymosi is forwarding a Dropbox link and  
7 two of those documents, he says, are related to  
8 pricing authority on interprovincial and exports;  
9 correct?

10 A Yes.

11 Q And was it your understanding that these  
12 documents were being included because there had  
13 been a concern discussed in October 2017 amongst  
14 the commissioners, including you, that setting  
15 the export minimum prices required the commission  
16 to exercise its federal regulatory authority?

17 A This was very confusing, quite frankly, to the  
18 commission because traditionally we had always  
19 been told by previous managers and previous  
20 commissioners and others that the commission had  
21 authority to set a minimum price for any product  
22 grown in British Columbia whether it went to an  
23 export market or not.

24 And that was our understanding years ago in  
25 the greenhouse business because the BC Vegetable  
26 Marketing Commission put an interim minimum  
27 pricing order on greenhouse products during US  
28 tomato trade action against Canadian tomatoes  
29 and -- years ago. And so we -- a lot of us were  
30 under the assumption that the commission had that  
31 authority.

32 Q Okay. I don't think that answered my --

33 A I said, informed -- misinformed of course.

34 Q I don't think that quite answers my question. My  
35 question is, was it your understanding that these  
36 documents were being included by Mr. Solymosi  
37 because there had been discussion in October 2017  
38 amongst the commissioners, including you, of a  
39 concern that setting the export minimum prices  
40 required the commission to exercise its federal  
41 regulatory authority?

42 A Yes.

43 Q Okay. And do you recall in October 2017 that  
44 there is discussion amongst the commissioners,  
45 including you, that there was a concern that the  
46 commission might not have complied with the legal  
47 requirements for the exercise of that authority?

John Newell (a witness)  
Cross-exam by Cnsl R. Androsoff

1 A Yes.

2 Q Okay. And do you recall that Mr. Guichon was  
3 president during those discussions?

4 A That he was present?

5 Q Yes.

6 A Yes.

7 Q Now, I'm going to move ahead in Exhibit 1 to page  
8 1410. Do you see that up there on your screen?

9 A Yes.

10 Q Do you have a recollection of receiving this  
11 email from Mr. Solymosi on November 28th, 2017?

12 A I don't. Obviously I received it. I'm copied on  
13 it. But I don't recall this one. I did see it  
14 up when I was on earlier with -- when you were  
15 talking to Mike Reed about it. It's the first  
16 I've seen this.

17 Q Well, it may be the first that you recall seeing  
18 it, but I do know that you saw it in 2018 because  
19 I was there when it was shown to you?

20 A Yeah, yeah, yeah.

21 Q But I just want to ask you here about bullet  
22 point number 2, and this is Mr. Solymosi writing.  
23 He says:

24

25 As of Friday, I finally have all the  
26 information needed from IVCA for the  
27 commission to review and make decisions on  
28 the cease and desist orders. I have  
29 attached a letter I sent to them after the  
30 storage crop agency managers meeting held on  
31 November 7th. Last Friday they sent the  
32 information to confirm that the stated facts  
33 are correct.

34

35 Do you see that?

36 A I do.

37 Q And this would have been consistent with your  
38 understanding at the time that the commission and  
39 IVCA were cooperating with respect to the  
40 investigation against Prokam and Thomas Fresh;  
41 correct?

42 A Yes.

43 Q And then Mr. Solymosi says:

44

45 Note that Prokam (and IVCA to protect their  
46 interest) has already appealed the C and D  
47 orders, and the prehearing call is scheduled

1 Commission?

2 A I guess to -- the -- well, these are all -- after  
3 I became aware that there would be a legal  
4 challenge on this presumption that we're using  
5 federal authority, it was on October 13th, I  
6 began to investigate into whether or not any  
7 gazetting has been done in the past on pricing.

8 And among discussions and investigating on  
9 that and speaking with [distorted audio] external  
10 legal counsel that these are documents I found  
11 that reaffirmed what the order is on the federal  
12 level, like B.C. Vegetable Order SOR/18 -- 81-49  
13 which is current to March 9, 2005, and also that  
14 decision regarding the global and BC Hot House.  
15 So I thought those were relevant document to  
16 bring forward.

17 Q You were sending documents about pricing  
18 authority on interprovincial and exports,  
19 correct?

20 A No. I was sending documents around gazetting and  
21 the decision which had the -- addressed the  
22 matter of the BCVMC authority to regulate B.C.  
23 supply marketed by B.C. agencies regarding the  
24 decision on global versus BC Hot House.

25 Q Right before the redacted portion it says:

26  
27 Documents 3 and 4 are related to pricing  
28 authority on interprovincial and exports.  
29

30 You see that?

31 A Correct.

32 Q And -- and that's because they were documents  
33 related to -- to pricing authority on  
34 interprovincial and exports, correct?

35 A I guess that's not correct.

36 Q They were mis-described in this email?

37 A Correct.

38 Q Because you didn't think there was any problem to  
39 address with the Commission relating to  
40 interprovincial pricing or exports?

41 A Well, pricing is -- has always been set based on  
42 the purpose of regulating B.C. production  
43 marketed by B.C. agencies and it's done to  
44 maximize or get the best returns to B.C.  
45 producers and that's why we regulate B.C.  
46 agencies. And that's the simple -- you know, the  
47 simple explanation that was reaffirmed.

1 Q These documents from 2005 predate the joint  
2 parliamentary committee meeting in 2008, correct?

3 A Correct.

4 Q And you had been working throughout this year to  
5 implement amendments to the Levies Order which  
6 was being gazetted, correct?

7 A That is correct.

8 Q I'm going to suggest to you that you were aware  
9 at this point that there was a significant risk  
10 that the export prices were not valid because  
11 they had not been gazetted and you were letting  
12 the Commission know about that risk by sending  
13 them these documents.

14 A No. I was -- I -- I -- my understanding was  
15 there is a possible legal challenge on the  
16 assumption that that's -- what the purpose of  
17 minimum pricing would rely on federal authority,  
18 but the fact of the matter is minimum pricing has  
19 never relied on that authority.

20 The purpose has always been to regulate B.C.  
21 production marketed by B.C. agencies and it's  
22 going back to that triangle which I talked about  
23 before where you have agencies representing  
24 groups of producers in the marketplace and you  
25 have delivery allocation that manages the flow  
26 between producers within the agency and it gives  
27 them their opportunity to ship product to fill a  
28 purchase order.

29 And then you have the minimum pricing that  
30 -- that allows multiple agencies to compete in  
31 the market and that's -- it's all about the  
32 purpose of -- of minimum pricing and that is to  
33 regulate B.C. production marketed by B.C.  
34 agencies to get the best return for B.C.  
35 producers.

36 Q But that -- that line that you've just given that  
37 you were regulating B.C. grown product and B.C.  
38 agencies for the benefit of B.C. growers, what's  
39 the first time you've put it that way? I haven't  
40 heard it until these proceedings this week.

41 A [indiscernible] -- I never thought it was --  
42 there was a reason to explain it that way because  
43 I thought it's -- it's -- that's the only reason  
44 why we have it, have the minimum pricing. It's  
45 -- it should be evident --

46 Q I --

47 A -- is -- the short answer is -- I -- I guess

1 that's...

2 Q The -- the email from you to the Commission where  
3 you provide the documents relating to pricing  
4 authority on interprovincial and exports is  
5 October 19th at 7:09 a.m. And by that time, Mr.  
6 Hrabinsky was communicating with me on behalf of  
7 the Commission and I'm going to take you to his  
8 email from later that same day. And it is in  
9 Prokam's book of documents, the July 23rd, 2021  
10 production at page 91. Now, we'll put that up on  
11 the screen.

12 CNSL R. HIRA: You have the Bates number of that  
13 [indiscernible].

14 CNSL C. HUNTER: BCVMC0086 is the Bates number.

15 Q You see that, Mr. Solymosi?

16 CNSL R. HIRA: One moment. Yes. Hold on. He's got  
17 the paper version that's 86 and 87.

18 A I can't see the whole thing on the screen there.

19 CNSL C. HUNTER:

20 Q All right. I'm happy to -- can you see the whole  
21 thing now?

22 A Yes.

23 Q And so this is the same day as the October 19th  
24 communication to the Commission with the  
25 information about interprovincial pricing and  
26 exports. And the communication from Commission  
27 counsel, the highlighted portion says:

28

29 With respect to pricing, I'm instructed that  
30 the Commission is here concerned only with  
31 the minimum price for regulated product  
32 marketed within the province.

33

34 You see that?

35 A Correct.

36 Q And -- and I asked you about that email in the  
37 2018 appeal and your answer as to what this meant  
38 was that the Commission was concerned with all  
39 B.C. grown product that is marketed period;  
40 doesn't matter whether it was exported or sold  
41 within B.C. This -- is that what you believe was  
42 meant by Commission counsel on October 19th?

43 A Can you --

44 CNSL R. HIRA: Okay. Well, wait a minute. What  
45 Commission counsel has written is there. His  
46 belief of what was meant by Commission counsel is  
47 wholly irrelevant. You can ask the question a

1 that's...

2 Q The -- the email from you to the Commission where  
3 you provide the documents relating to pricing  
4 authority on interprovincial and exports is  
5 October 19th at 7:09 a.m. And by that time, Mr.  
6 Hrabinsky was communicating with me on behalf of  
7 the Commission and I'm going to take you to his  
8 email from later that same day. And it is in  
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16 CNSL R. HIRA: One moment. Yes. Hold on. He's got  
17 the paper version that's 86 and 87.

18 A I can't see the whole thing on the screen there.

19 CNSL C. HUNTER:

20 Q All right. I'm happy to -- can you see the whole  
21 thing now?

22 A Yes.

23 Q And so this is the same day as the October 19th  
24 communication to the Commission with the  
25 information about interprovincial pricing and  
26 exports. And the communication from Commission  
27 counsel, the highlighted portion says:

28  
29 With respect to pricing, I'm instructed that  
30 the Commission is here concerned only with  
31 the minimum price for regulated product  
32 marketed within the province.

33  
34 You see that?

35 A Correct.

36 Q And -- and I asked you about that email in the  
37 2018 appeal and your answer as to what this meant  
38 was that the Commission was concerned with all  
39 B.C. grown product that is marketed period;  
40 doesn't matter whether it was exported or sold  
41 within B.C. This -- is that what you believe was  
42 meant by Commission counsel on October 19th?

43 A Can you --

44 CNSL R. HIRA: Okay. Well, wait a minute. What  
45 Commission counsel has written is there. His  
46 belief of what was meant by Commission counsel is  
47 wholly irrelevant. You can ask the question a

1 different way without getting into his beliefs of  
2 what Commission counsel meant.  
3 CNSL C. HUNTER:  
4 Q Mr. Solymosi, I'm going to take you to the  
5 transcript of your evidence in October -- sorry,  
6 in 2018 about this email.  
7 CNSL R. HIRA: It -- [distorted audio] is the  
8 reference?  
9 CNSL C. HUNTER: It's Exhibit 1, page 2518.  
10 CNSL R. HIRA: Let us get there.  
11 CNSL C. HUNTER: It's up on the screen.  
12 CNSL R. HIRA: It may well be, but I need to get  
13 there. Yes. I have that, the transcript.  
14 CNSL C. HUNTER:  
15 Q Mr. Solymosi, I'm starting at line 7 and this is  
16 part of your answer in line 7. Mr. Solymosi,  
17 okay, this is an email from Thursday, October  
18 19th, 2017 [as read in]:  
19  
20 Q Yes, and Mr. Solymosi, this is an email  
21 sent on behalf of the Commission to me.  
22 Is this an email you cause to be sent?  
23 A Yes.  
24 Q And I want to ask you about the second  
25 paragraph and just before I ask you, to  
26 be fair, I want to note Mr. Hrabinsky  
27 has since advised me this may have been  
28 an error. So I want to be -- you to be  
29 aware of that when I'm asking you about  
30 it. But what is said on behalf of the  
31 Commission is with respect to pricing.  
32 I'm instructed that the Commission is  
33 here concerned only with the minimum  
34 price for regulated product marketed  
35 within the province, that it was the  
36 Commission's view at that time on  
37 October 19th just after the cease and  
38 desist orders were issued.  
39 A Well, minimum price for regulated  
40 product marketed and any product grown  
41 in the -- in the province --  
42  
43 And there's an:  
44  
45 UNIDENTIFIED SPEAKER: Can I get the witness  
46 to speak up, please?  
47

1 MR. SOLYMOSI: Oh, that's any product grown  
2 within the province.  
3 A Yes, I -- I see. Right. Right.  
4 Q What it says -- what I'm asking is that was  
5 that the Commission's -- it says the  
6 Commission is here concerned only with  
7 minimum pricing for regulated product  
8 marketed within the province. Is that what  
9 the Commission was concerned about at that  
10 time, October?  
11 A Well, if there was -- this was any  
12 product marketed -- B.C. product  
13 marketed period. So it's any product  
14 marketed so that -- so there was an  
15 error and Rob corrected it.  
16  
17 And the question:  
18  
19 Q All right -- well, let's -- I just want  
20 to focus on the email the Commissions  
21 -- what the Commission said, when. And  
22 so the Commission said they were  
23 concerned with -- you were concerned  
24 with the product marketed within the  
25 province but that was an error. At the  
26 time you were concerned with something  
27 else?  
28 A Well, it's any product that -- any B.C.  
29 product that is marketed.  
30 Q All right.  
31 A Any B.C. product that is marketed --  
32 any regulated product grown in B.C.  
33 that is marketed period.  
34  
35 Q Were you asked those questions? Did you give  
36 those answers?  
37 A Correct.  
38 Q And were they true?  
39 A That -- that is true.  
40 Q Now...  
41 CNSL R. HIRA: Are you finished with the transcript  
42 for the time being?  
43 CNSL C. HUNTER: For -- for the moment. Yes.  
44 CNSL R. HIRA: Just let's put it away.  
45 CNSL C. HUNTER:  
46 Q Mr. Solymosi, I'm going to ask you about a second  
47 communication from Mr. Hrabinsky about what

1 prices were at issue and this is on October 24th,  
2 2017. And, again, it is in Prokam's book of  
3 documents, initial book of documents, and it is  
4 at 146 and the Bates number on the document is  
5 BCVMC0141. [indiscernible]

6 CNSL R. HIRA: [indiscernible] paper document in front  
7 of him.

8 CNSL C. HUNTER:

9 Q All right. You should see on the screen an email  
10 from Mr. Hrabinsky to me five days later, October  
11 24th, 2017. You see that?

12 A Correct.

13 Q And there's some bullet points from the  
14 Commission's minimum pricing policy and the  
15 paragraph underneath that says:

16  
17 I am instructed that the Commission's price  
18 list does indeed specify prices for  
19 "export", but that this should be understood  
20 as the minimum price for regulated product  
21 purchased in B.C. for further marketing  
22 outside of B.C., but not the price of which  
23 regulated product may be resold outside of  
24 B.C.

25

26 You see that?

27 A Correct.

28 Q And when you were setting the export prices, is  
29 this what you meant be set?

30 A When setting export prices, it's all about the  
31 pricing to allow for agencies to compete in the  
32 market space that they all compete in. My  
33 thought has always been that this authority was  
34 the -- the authority within the province with  
35 what has been relied on as this B.C. production  
36 marketed by B.C. agencies and -- and that's --  
37 that was my logic and that's -- it's always been  
38 the belief that it was the purpose behind why we  
39 have minimum pricing.

40 Q This formulation that the -- that the export  
41 price should be understood as the minimum price  
42 for regulated product purchased in B.C. for  
43 further marketing outside of B.C., you had never  
44 used that formulation yourself as a definition of  
45 export, had you?

46 A It -- I guess it hadn't been put into the minimum  
47 pricing list as of this date, I guess for -- for

1 November onward of that year. And is that -- are  
2 you waiting for a further response?

3 Q Oh, I -- I was just making sure you were  
4 finished. It -- it looked like you were waiting  
5 to say something.

6 I -- I want to confirm this formulation,  
7 this definition of export was not the definition  
8 of export that you were using when you issued the  
9 minimum pricing orders for export to the Prairies  
10 on October 8th -- I'm sorry. Let me start that  
11 again. This definition of export set out here,  
12 that export should be understood as:

13  
14 The minimum price for regulated product  
15 purchased in B.C. for further marketing  
16 outside of B.C.  
17

18 That was not -- not the definition of export you  
19 were using when you set the minimum prices for  
20 exports to the Prairies on August 8th, 2017,  
21 correct?

22 A Well, at that -- yeah. That's correct. It's all  
23 product produced by B.C. producers that is  
24 marketed by B.C. agencies regardless of where  
25 it's going and that's -- that was the overarching  
26 definition.

27 Q When you set the export Prairie prices on August  
28 8th, 2017, you were setting prices for product  
29 sold to the Prairies, correct?

30 A We were setting prices for that market space that  
31 was currently being serviced and now you had two  
32 agencies in that market space.

33 Q Thank you. I'm -- I'm going to show you some  
34 minutes from an October 25th meeting of the  
35 Commission and these are part of Exhibit 23 that  
36 we just marked, a second set of minutes. Now,  
37 this was [indiscernible] reproduced by the  
38 Commission counsel on February 7th, 2022, so four  
39 days ago.

40 A Yes.

41 Q They were not produced in the 2018 appeal,  
42 correct?

43 A I -- I have no recollection.

44 Q This is a meeting that related entirely to the  
45 issue of the cease and desist orders, correct?

46 A This was related entirely to this. Yeah, the  
47 cease and desist orders and I believe it was the

1 CNSL C. HUNTER: All right. It should be on the  
2 screen as well.

3 Q And this is an email, Mr. Solymosi, from you to  
4 Ms. Babcock on October 30th. You see that?

5 A That's correct.

6 Q And you say:  
7  
8 Minimum price for white potatoes purchased  
9 in B.C. for further marketing outside of  
10 B.C. Need to add this as the definition of  
11 an export price on the minimum price sheet  
12 or talk to me about this.  
13

14 You see that?

15 A That's correct.

16 Q And -- and those are the precise words that were  
17 used by Mr. Hrabinsky in his communication to me  
18 that we looked at a few minutes ago?

19 A Correct.

20 Q Those are words that had never previously been  
21 used on a price sheet, correct?

22 A Correct.

23 Q And -- and they're words that carry a very  
24 different meaning from the ordinary meaning of  
25 export, correct?

26 A Correct.

27 Q You ask Ms. Babcock to add this definition to the  
28 minimum price list because by this time you were  
29 concerned that setting prices for interprovincial  
30 or export sales require the prices to be  
31 registered and gazetted.

32 A I knew there was a legal challenge regarding the  
33 -- I guess it's legal challenge that we would be  
34 relying on that authority. At this time there  
35 was only one agency in that market space and for  
36 transparency, there was no need to -- to -- to --  
37 I guess -- transparency and for I guess clarity  
38 that we're just relying on our provincial  
39 authority to regulate B.C. production by B.C.  
40 agencies that we would continue posting that  
41 minimum price on the pricing sheet. If it falls  
42 -- if we're supplying that market space and it  
43 falls below the price that's within B.C. for the  
44 B.C. market. So as -- that's the whole -- that's  
45 why it was put on there.

46 Q You were hoping that by characterizing the prices  
47 that had been called "Export Prairies" prices in

1 CNSL C. HUNTER: All right. It should be on the  
2 screen as well.

3 Q And this is an email, Mr. Solymosi, from you to  
4 Ms. Babcock on October 30th. You see that?

5 A That's correct.

6 Q And you say:

7

8 Minimum price for white potatoes purchased  
9 in B.C. for further marketing outside of  
10 B.C. Need to add this as the definition of  
11 an export price on the minimum price sheet  
12 or talk to me about this.

13

14 You see that?

15 A That's correct.

16 Q And -- and those are the precise words that were  
17 used by Mr. Hrabinsky in his communication to me  
18 that we looked at a few minutes ago?

19 A Correct.

20 Q Those are words that had never previously been  
21 used on a price sheet, correct?

22 A Correct.

23 Q And -- and they're words that carry a very  
24 different meaning from the ordinary meaning of  
25 export, correct?

26 A Correct.

27 Q You ask Ms. Babcock to add this definition to the  
28 minimum price list because by this time you were  
29 concerned that setting prices for interprovincial  
30 or export sales require the prices to be  
31 registered and gazetted.

32 A I knew there was a legal challenge regarding the  
33 -- I guess it's legal challenge that we would be  
34 relying on that authority. At this time there  
35 was only one agency in that market space and for  
36 transparency, there was no need to -- to -- to --  
37 I guess -- transparency and for I guess clarity  
38 that we're just relying on our provincial  
39 authority to regulate B.C. production by B.C.  
40 agencies that we would continue posting that  
41 minimum price on the pricing sheet. If it falls  
42 -- if we're supplying that market space and it  
43 falls below the price that's within B.C. for the  
44 B.C. market. So as -- that's the whole -- that's  
45 why it was put on there.

46 Q You were hoping that by characterizing the prices  
47 that had been called "Export Prairies" prices in

- 1 this way, you would avoid the requirement of  
2 gazetting, correct?
- 3 A No. It's just that we knew there was a legal  
4 challenge and I became aware of all the -- the --  
5 the proceedings that happened in 2000 -- I guess  
6 2008 and -- and this is what -- this is what --  
7 out -- out of an abundance of I guess caution  
8 that until -- I guess my thought has always been  
9 that we have the authority under B.C. -- you  
10 know, under the B.C. legislation and it was just  
11 done as -- as I guess an abundance of caution.
- 12 Q You gave evidence yesterday or perhaps on --  
13 perhaps on Wednesday that the first time you  
14 discussed the cease and desist orders against  
15 Prokam and IVCA and Thomas Fresh with Mr. Guichon  
16 was on October 5th after you and Mr. Krause had  
17 already decided to issue them, correct?
- 18 A First time was on a conference call. So we had a  
19 call between Alf, myself, and Peter Guichon.
- 20 Q Yes. October 5th was not the first time you and  
21 Mr. Guichon had been in a meeting where Prokam  
22 was discussed, correct?
- 23 A Can you repeat that?
- 24 Q October 5th was not the first time that you and  
25 Mr. Guichon had been at a meeting where Prokam  
26 was discussed, correct?
- 27 A I -- I would need to look at the minutes, that --  
28 were any discussions. I can't recall at this  
29 time.
- 30 Q I'm going to take you to Exhibit 1, page 687.
- 31 A [distorted audio]
- 32 Q This is a June 15th, 2016 Minute of a Vegetable  
33 Marketing Commission regular meeting. You see  
34 that?
- 35 A That's correct.
- 36 CNSL R. HIRA: Could I have a moment to get to that  
37 page? All right. We're there.
- 38 CNSL C. HUNTER:
- 39 Q And, Mr. Solymosi, you see yourself and Mr.  
40 Guichon are both listed as having attended?
- 41 A Correct.
- 42 Q And I'm going to take you down to page -- item  
43 2.1 at the bottom of the first page onto the  
44 second page, so six -- page 687 onto 688. This  
45 is part of your General Manager's Report. And  
46 you say or -- or it is indicated in the minutes  
47 that it was said:

1           6.2, top left-hand corner; you see that?  
2       A     Correct.  
3       Q     And 6.2 is the agenda item, the cease and desist  
4           orders, correct?  
5       A     I don't have the agenda in front of me.  
6       Q     All right. I'm going to take you down to the end  
7           of the notes and that might assist, but it  
8           appears that 6.2 was not discussed in order of  
9           the agenda items. If we look at 6.1 and then  
10          6.3, 6.4 on page 3, you see that?  
11       A     Correct.  
12       Q     And then if we turn down to page 1371 --  
13       A     Correct.  
14       Q     -- so it appears that a new sheet of paper was  
15           started with item 6.2 in it; you see that?  
16       A     Is that page 5?  
17       Q     Yes.  
18       A     Correct.  
19       Q     And so there's some -- some blank space at the  
20           end of page 4 and then a separate sheet is  
21           started.  
22       A     Okay.  
23       Q     Do you have a recollection of whether the -- this  
24           item 6.2 was started on a separate sheet and  
25           taken in order or whether it occurred at the end  
26           of the meeting?  
27       A     It would have occurred at the end of the meeting.  
28       Q     All right. And then if I take you down your  
29           notes, and I'm just going to scan through them,  
30           you're welcome to stop and read them if you like,  
31           but what appears to have been recorded is, first,  
32           the heading, "IVCA, Prokam, Thomas Fresh Cease  
33           and Desist Orders", that's what you were  
34           discussing, correct?  
35       A     Correct.  
36       Q     Then look up the case and can you read the --  
37           what it says after that?  
38       A     The case of [indiscernible] versus basically I  
39           see the Global and B.C. Hothouse, I-5 corridor  
40           case.  
41       Q     All right. And then there's a note BCVMC has  
42           authority over all regulated product grown in  
43           B.C.; you see that?  
44       A     Correct.  
45       Q     And so do I take it there was some discussion of  
46           whether there was authority to set export prices  
47           out of that I-5 corridor case?

- 1 A There was discussion around the authority to set  
2 minimum pricing on all product that is produced  
3 in B.C. and marketed by agencies and that case,  
4 the decision around the I-5 corridor supported  
5 regulatory being applied in that manner.
- 6 Q And did you discuss with the commission in this  
7 portion of the meeting or at all the change in  
8 the definition to export that you'd placed on the  
9 pricing list?
- 10 A I do not.
- 11 Q And along the line it says, "Discussion - Hands-  
12 on approach needed to manage grower  
13 [indiscernible]" that's a reference to Mr.  
14 Dhillon, correct?
- 15 A Hands-on approach needed to manage grower  
16 [indiscernible] that would -- I would think so.
- 17 Q And this represents the beginning of the  
18 discussion of what to do about Prokam, IVCA and  
19 Thomas Fresh, correct?
- 20 A Sorry?
- 21 Q And the next line says BCfresh one load this  
22 year, last year 52 loads, does it say "sent in"  
23 at the end?
- 24 A Sent in, correct.
- 25 Q What does that mean?
- 26 A Well, basically one load this year and last year  
27 52 loads for whatever [indiscernible]. There was  
28 an impact -- I can imply here there was an impact  
29 on BCfresh.
- 30 Q And one of the BCfresh commissioners provided  
31 that information to you, correct?
- 32 A Correct.
- 33 Q Who was it that said that, do you remember?
- 34 A I can't recall.
- 35 Q But it was one of the -- Mr. Guichon, Mr. Gerrard  
36 or Mr. Reynolds who was in attendance at the  
37 meeting?
- 38 A It would be, correct.
- 39 Q And then there's a graphic and to the right of it  
40 it says:  
41  
42 Commission has the right to redirect a  
43 grower, sales directed to BCfresh. All DA  
44 earned at below minimum price is not to  
45 count.
- 46  
47 See that?

1  
2           You see that there?  
3   A       I do, yes.  
4   Q       And then it says:  
5  
6           Look up the case.  
7  
8           And then there's a case name:  
9  
10           BCVMC has authority on all regulated product  
11           grown in BC.  
12  
13           Do you see that there?  
14   A       I do.  
15   Q       There was a discussion at this meeting of the  
16           concern that we had been talking about earlier as  
17           to whether the commission had validly exercised  
18           it's authority to set interprovincial prices;  
19           correct?  
20   A       Correct.  
21   Q       And there was a discussion at this meeting about  
22           the risk that the commission and in particular  
23           Mr. Solymosi had not exercised this authority  
24           properly; right?  
25   A       I would say, yes.  
26   Q       And then further down the page, there's a heading  
27           discussion, it says:  
28  
29           Hands on approach needed to manage grower.  
30  
31           You see that there?  
32   A       I do, yes.  
33   Q       Am I right that the focus of the decision  
34           immediately turned to Prokam and the idea that it  
35           was a problem grower?  
36   A       I can't recollect whether that was the case or  
37           not.  
38   Q       Okay. Do you recall any discussion at this  
39           meeting of the notion that IVCA was a problem  
40           agency?  
41   A       Again, I can't recall.  
42   Q       Okay. Midway through the page on page 1371  
43           there's a note "sales directed to BCfresh." That  
44           was something that a BCfresh commissioner said.  
45           Do you recall that?  
46   A       I don't recall. I remember a discussion about,  
47           you know, the potential of our group after the

65

Peter Guichon (for Appellants)  
Cross-exam by Ms. Hunter

1 Q -- why wasn't it included in the cease and desist  
2 order?  
3 A Well, I'm looking at page 62 here, and there's  
4 four compliance infractions indicated.  
5 Q This is -- this is the letter against IVCA?  
6 A Pardon?  
7 Q Page 62, you're looking at the IVCA letter?  
8 A Yeah, but I think they're all the same, are they  
9 not? I ...  
10 Q No.  
11 A Here's page 67. Page 68 there's a compliance  
12 infraction there, section 9.  
13 Q Yes.  
14 A So --  
15 Q I'm asking specif--  
16 A -- that -- that would -- that would be -- that  
17 would be about the forward contracts.  
18 Q Okay. I -- I guess what I'm asking, though, is  
19 in terms of the -- in terms of providing notice  
20 to Thomas Fresh of what they are said to have  
21 done wrong, there's no reference made to the  
22 forward contracts and I'm asking why not.  
23 A I -- that would be something you'd have to ask  
24 the general manager.  
25 Q All right.  
26 A I mean, we discussed this, about the -- the  
27 compliance infractions, but I didn't send the  
28 stuff out.  
29 Q No. You did review it and approve it?  
30 A Yes.  
31 Q Yes. But you don't recall there being any  
32 discussion about the need to give notice to  
33 Thomas Fresh of what they were said to have done  
34 wrong?  
35 A Well, I guess -- no, we never -- we didn't talk  
36 about any notice, but I think time was of the  
37 essence. We had only found out about this 22  
38 cent thing and we didn't -- we couldn't figure  
39 out why we couldn't sell potatoes into Alberta at  
40 our price, and we realized, "we" being BCfresh  
41 realized something that was going on, so.  
42 Q All right. Now, you're -- you're here as a  
43 commissioner.  
44 A I'm -- I have been asked questions at every  
45 facet, so I talked about -- I identified BCfresh  
46 right now as I was talking, so --  
47 Q Yes.

66

Peter Guichon (for Appellants)  
Cross-exam by Ms. Hunter

1 A -- and that -- that's where the urgency came  
2 from. Whether we had to issue a notice, I don't  
3 know.  
4 Q All right. So -- so, BC--  
5 A I don't know that.  
6 Q -- BCfresh believed there was urgency?  
7 A No, I did.  
8 Q You did?  
9 A Yes, as a grower.  
10 Q As a grower.  
11 A That had a whole bunch of potatoes in storage --  
12 Q All right.  
13 A -- to sell.  
14 Q All right. So -- so, you were considering this  
15 issue of the cease and desist order from your  
16 perspective as a grower?  
17 A Yeah. As soon as I see a contract for 22 cents a  
18 pound and they've been selling all year, I'm not  
19 very happy about it.  
20 Q All right. All right. You didn't consider  
21 whether your concerns as a grower made it  
22 inappropriate for you to be the decision-maker in  
23 respect of sending out the cease and desist order  
24 to Thomas Fresh, did you?  
25 A I -- I don't -- I don't know if we were the only  
26 two that sent that out or -- I mean, whether it  
27 was talked about at the -- at the Commission  
28 level or not. Probably not, but I -- otherwise,  
29 I guess, you'd have a copy of it.  
30 Q I would hope so, yes.  
31 A Yeah. And I don't know who else Andre talked to  
32 at -- other commissioners, who else he talked to  
33 about it --  
34 Q All right.  
35 A -- so. It wouldn't be myself and Alf acting  
36 alone without consulting with the rest, as far as  
37 I know.  
38 Q Okay. Can I ask you to turn to page eleven forty  
39 of the -- the second binder.  
40 A Okay.  
41 Q Okay. So, this is the next day, October 6, 2017.  
42 A What page, ten forty?  
43 Q Eleven forty.  
44 A Oh, eleven forty, sorry. Okay.  
45 Q Okay. So, you see this is a -- at the bottom of  
46 page eleven forty is the same e-mail from the day  
47 before, "Peter, I want to bring you up to speed

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

- 1 Q And I'm going to take you into the records to  
2 look at the transcript to -- I'm in Exhibit 1 at  
3 page 2028. You'll see this is a transcript of an  
4 April 4th, 2018 hearing of the Farm Industry  
5 Review Board. Do you see that, Mr. Guichon?  
6 A Yes.  
7 Q Yes. And if we look at the second page, it  
8 reflects the transcript of your evidence  
9 beginning on page 77. Do you see that?  
10 A Yes.  
11 Q I want to go to Exhibit 1, page 2106, and further  
12 in the transcript where the evidence starts, and  
13 you'll see -- and you'll recall here at line 40,  
14 I called you as an adverse witness. Do you see  
15 that?  
16 A Yes.  
17 Q And you swore the tell the truth on that  
18 proceeding; correct?  
19 A Yes.  
20 Q And you did tell the truth in that proceeding to  
21 the best of your knowledge and belief; correct?  
22 A Yes.  
23 Q And April 2018, when you gave evidence in the  
24 first FIRB appeal, that was just a few months  
25 after the cease and desist orders were issued and  
26 the show cause process; correct?  
27 A April when?  
28 Q April 2018 when you gave evidence in the first  
29 FIRB proceeding?  
30 A Yes.  
31 Q And you had a good recollection at that time of  
32 the events that we've been talking about in this  
33 proceeding?  
34 A Yes.  
35 Q A much better recollection than you have now,  
36 four years later; correct?  
37 A I don't know if it's a better recollection or  
38 not.  
39 Q It might have gotten better over the past four  
40 years?  
41 A I don't think it got any better, no.  
42 Q All right. So it's either the same or better.  
43 Your recollection in 2018 is either the same or  
44 better as it is now; correct?  
45 A Yes.  
46 Q Okay. And you had an opportunity to review the  
47 transcript of your evidence in that proceeding?

1 comment, though, from you, is that -- are  
2 you speaking as a commissioner, or are you  
3 expressing concern?  
4 A No. I'm speaking as a potato grower.  
5  
6 Were you asked those questions, and did you give  
7 those answers?  
8 A Yes.  
9 Q And were they true?  
10 A Yes.  
11 Q I'm going to take you to Exhibit 1, page 2250,  
12 continuing your transcript starting at line 18:  
13  
14 Q Okay. I guess what I'm asking, though, is  
15 in terms the -- in terms of providing notice  
16 to Thomas Fresh of what they were said to  
17 have done wrong, there is no reference made  
18 to the forward contracts, and I'm asking why  
19 not?  
20 A That would be something you'd have to ask  
21 the general manager.  
22 Q All right.  
23 A I mean, we discussed this about the  
24 compliance infractions, but I didn't send  
25 the stuff out.  
26 Q No. You did review it and approve it?  
27 A Yes.  
28 Q Yes, but you don't recall there being any  
29 discussion about the need to give notice to  
30 Thomas Fresh of what they were said to have  
31 done wrong?  
32 A No. I guess, no. We never -- we didn't  
33 talk about any notice, but I think time was  
34 of the essence. We had only found out about  
35 this 22 cent thing, and we didn't -- we  
36 couldn't figure out why we couldn't sell  
37 potatoes into Alberta at our price, and we  
38 realized, we being BCfresh, realized that  
39 something was going on, so --  
40 Q All right. Now, you're here as a  
41 commissioner?  
42 A I've been asked questions at every facet, so  
43 I talked about -- I identified BCfresh right  
44 now as I was talking so --  
45 Q Yes.  
46 A And that -- that's where the urgency came  
47 from. Whether we had to issue a notice, I

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

1 don't know.  
2 Q All right. So, so BC --  
3 A I don't know that.  
4 Q BCfresh believed there was urgency?  
5 A No. I did.  
6 Q You did?  
7 A Yes. As a grower.  
8 Q As a grower?  
9 A That had a whole bunch of potatoes in  
10 storage.  
11 Q All right.  
12 A To sell.  
13 Q All right. So you were considering this  
14 issue, the cease and desist order, from your  
15 perspective as a grower?  
16 A Yeah. As soon as I see a contract for  
17 22 cents a pound, and they've been selling  
18 all year, I'm not very happy about it.  
19 Q All right. All right. You didn't consider  
20 whether your concerns as a grower made it  
21 inappropriate for you to be the  
22 decision-maker in respect of sending out the  
23 cease and desist order to Thomas Fresh, did  
24 you?  
25 A I don't know. I don't know if we were the  
26 only two that sent that out. I mean,  
27 whether it was talked about at the  
28 commission level or not, probably not, but  
29 I -- otherwise, I guess you would have a  
30 copy of it.  
31 Q I would hope so, yes.  
32 A Yeah. And I don't know who else Andre  
33 talked to at -- other commissioners, who  
34 else he talked to about it.  
35 Q All right.  
36 A So it wouldn't be myself and Alf acting  
37 alone without consulting with the rest, as  
38 far as I know.  
39  
40 Were you asked those questions, and did you give  
41 those answers?  
42 A I gave these answers, yes, but --  
43 Q And were they true?  
44 A Yes, they were.  
45 CNSL K. MCEWAN: Mr. Chair, he was in the middle of  
46 saying "but," probably something, when Ms. Hunter  
47 cut him off. She has to wait and let him give

66

Peter Guichon (for Appellants)  
Cross-exam by Ms. Hunter

1 A -- and that -- that's where the urgency came  
2 from. Whether we had to issue a notice, I don't  
3 know.  
4 Q All right. So -- so, BC--  
5 A I don't know that.  
6 Q -- BCfresh believed there was urgency?  
7 A No, I did.  
8 Q You did?  
9 A Yes, as a grower.  
10 Q As a grower.  
11 A That had a whole bunch of potatoes in storage --  
12 Q All right.  
13 A -- to sell.  
14 Q All right. So -- so, you were considering this  
15 issue of the cease and desist order from your  
16 perspective as a grower?  
17 A Yeah. As soon as I see a contract for 22 cents a  
18 pound and they've been selling all year, I'm not  
19 very happy about it.  
20 Q All right. All right. You didn't consider  
21 whether your concerns as a grower made it  
22 inappropriate for you to be the decision-maker in  
23 respect of sending out the cease and desist order  
24 to Thomas Fresh, did you?  
25 A I -- I don't -- I don't know if we were the only  
26 two that sent that out or -- I mean, whether it  
27 was talked about at the -- at the Commission  
28 level or not. Probably not, but I -- otherwise,  
29 I guess, you'd have a copy of it.  
30 Q I would hope so, yes.  
31 A Yeah. And I don't know who else Andre talked to  
32 at -- other commissioners, who else he talked to  
33 about it --  
34 Q All right.  
35 A -- so. It wouldn't be myself and Alf acting  
36 alone without consulting with the rest, as far as  
37 I know.  
38 Q Okay. Can I ask you to turn to page eleven forty  
39 of the -- the second binder.  
40 A Okay.  
41 Q Okay. So, this is the next day, October 6, 2017.  
42 A What page, ten forty?  
43 Q Eleven forty.  
44 A Oh, eleven forty, sorry. Okay.  
45 Q Okay. So, you see this is a -- at the bottom of  
46 page eleven forty is the same e-mail from the day  
47 before, "Peter, I want to bring you up to speed

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 A Yes.
- 2 Q Yes. There's no reference to the specific  
3 contracts that -- that you say were an issue?
- 4 A Well, they must have known. I mean, if you get a  
5 speeding ticket, you're cited 163 dash 3 of  
6 the -- the Code, so I mean ...
- 7 Q Yes, and -- and typically if you're stopped you'd  
8 be told, "How fast do you think you were going?"
- 9 A Yeah. Okay.
- 10 Q I clocked you at whatever --
- 11 A Yeah.
- 12 Q -- speed, right? And so -- so, you know, here  
13 you've said here's the provision of the Code, but  
14 you haven't said to Thomas Fresh this is how fast  
15 you were going?
- 16 A Well, I think if you read the Code it spells it  
17 out pretty clear --
- 18 Q All right.
- 19 A -- or the order, I should say.
- 20 Q All right. And in terms of Prokam and -- and  
21 IVCA for that matter, did you consider or discuss  
22 on the conference call when this decision to  
23 issue the -- the cease and desist orders was  
24 being made, whether it was fair to those industry  
25 stakeholders that a BCfresh potato grower was  
26 effectively making the decision to issue cease  
27 and desist orders against them?
- 28 A I don't think I made the decision by myself.
- 29 Q No. With -- with Mr. Kraus?
- 30 A Yes.
- 31 Q All right. So, the two of you?
- 32 A Yes, and Mr. Kraus didn't object to me being part  
33 of it.
- 34 Q Right. But what I'm asking is did you consider  
35 whether it was fair within the meaning of the  
36 SAFETI principles to those industry stakeholders  
37 that, let's say, one of the two people making the  
38 decision to issue the cease and desist orders was  
39 a BCfresh potato grower?
- 40 A I relied on the chair for that, to make sure that  
41 we were above board, and I -- I thought -- I  
42 didn't see anything wrong -- wrongdoing in that.
- 43 Q All right. Do I understand from that answer  
44 you -- the chair may have considered whether it  
45 was fair, but --
- 46 A That's right.
- 47 Q -- but you didn't really consider whether it was

1 Q All right. I'm going to take you, sir, to  
2 that -- into the report if you just give me a  
3 minute. Sorry, I got the wrong -- all right,  
4 sir, can you see this interview report? I'm  
5 going to increase the size of it again so you  
6 have -- can you see that okay or do you need it  
7 enlarged?  
8 A Maybe a little bit larger would be --  
9 Q Sure, no problem at all. Is that better?  
10 A Yes.  
11 Q Okay. So, sir, what I'd like to start with is to  
12 take you to paragraph 7. Let's start with  
13 paragraph 7. The question is Mr. Solymosi shared  
14 the cease and desist orders only with you and  
15 Mr. Krause at the time, and the two of you  
16 approved the cease and desist orders. Can you  
17 tell me what was your involvement, to your  
18 recollection, about the cease and desist orders?  
19 Do you want to have a look at them before you  
20 answer that? Do you need to look at the  
21 documents, sir?  
22 A I don't think so.  
23 Q Okay. Can you tell me what you recall your  
24 involvement was with the cease and desist orders?  
25 A Yes. Well, I got an email from Mr. Solymosi  
26 saying that him and Mr. Krause have gone to  
27 Vancouver Island and they had something to share  
28 with me and it was -- they wanted to set up a  
29 conference call. They found some things over  
30 there they thought were in non-compliance but  
31 number 7, the way it's written, we did not --  
32 between the three of us or Alf and I anyway -- we  
33 didn't approve the C and D orders. What we did  
34 was consent to them being sent out --  
35 Q Okay.  
36 A -- to the parties.  
37 Q So you read them and you agreed they be sent out?  
38 A Yes.  
39 Q All right. And, sir, did you understand -- well,  
40 at the time, of course, it wasn't provided to the  
41 full commission for review or consideration or  
42 approval; correct?  
43 A Not at that time, no.  
44 Q Okay. It was subsequently though, through the  
45 show cause hearing the full commission dealt with  
46 it or a group of commission members dealt with  
47 it?

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

1 his answers, with respect.

2 THE CHAIR: Thank you, Mr. McEwan. I didn't hear  
3 that, that he wasn't able to complete his  
4 response.

5 THE WITNESS: Yes.

6 THE CHAIR: Could you give him a chance again, please.

7 THE WITNESS: Thank you. Yeah, up above "I don't  
8 know." Scroll back a bit. I can just tell you.  
9 The word "approve," as I said in my statement to  
10 Mr. Mitha, I said, "approve" at this hearing, but  
11 what I meant by "approve," was consented to them  
12 being sent out. There was no vote with the three  
13 of us, so it was just the consensual thing to  
14 send it out. And then, you'll have to bear with  
15 me for a minute. I saw something else there too.  
16 To do with the grower, there was a -- you  
17 questioned as a grower and -- to be a commission  
18 member, you have to be a grower, so I'm having a  
19 tough time distinguishing between the two.  
20 Obviously, I have a grower background, but as a  
21 commissioner -- and it's the same thing for being  
22 on the board, you have to be a grower to be on  
23 the board of an agency too. So I wanted to  
24 clarify that. That was in my mind when I was  
25 giving these answers. Thank you.

26 CNSL C. HUNTER:

27 Q Thank you, Mr. Guichon. Now, after the cease and  
28 desist order was issued, you participated fully  
29 in commission discussions about Prokam?

30 A No.

31 Q And you voted on matters relating to the cease  
32 and desist orders until you recused yourself  
33 before the vote of the December 14th meeting?

34 A No. I didn't -- I didn't do any voting on  
35 details of Prokam.

36 Q Your evidence is, you didn't participate in votes  
37 about the Prokam cease and desist order?

38 A I did not vote, no. On the cease and desist  
39 orders? No.

40 Q I was asking -- after the cease and desist orders  
41 were issued, did you participate in any votes  
42 about the cease and desist orders between  
43 October 10th, 2017, when they were issued, and  
44 the December 14th, 2017 meeting when you recused  
45 yourself?

46 A No votes, no.

47 Q I'm going to take you to Exhibit 23, page 10.

- 1 Q All right. I'm going to take you, sir, to  
2 that -- into the report if you just give me a  
3 minute. Sorry, I got the wrong -- all right,  
4 sir, can you see this interview report? I'm  
5 going to increase the size of it again so you  
6 have -- can you see that okay or do you need it  
7 enlarged?
- 8 A Maybe a little bit larger would be --
- 9 Q Sure, no problem at all. Is that better?
- 10 A Yes.
- 11 Q Okay. So, sir, what I'd like to start with is to  
12 take you to paragraph 7. Let's start with  
13 paragraph 7. The question is Mr. Solymosi shared  
14 the cease and desist orders only with you and  
15 Mr. Krause at the time, and the two of you  
16 approved the cease and desist orders. Can you  
17 tell me what was your involvement, to your  
18 recollection, about the cease and desist orders?  
19 Do you want to have a look at them before you  
20 answer that? Do you need to look at the  
21 documents, sir?
- 22 A I don't think so.
- 23 Q Okay. Can you tell me what you recall your  
24 involvement was with the cease and desist orders?
- 25 A Yes. Well, I got an email from Mr. Solymosi  
26 saying that him and Mr. Krause have gone to  
27 Vancouver Island and they had something to share  
28 with me and it was -- they wanted to set up a  
29 conference call. They found some things over  
30 there they thought were in non-compliance but  
31 number 7, the way it's written, we did not --  
32 between the three of us or Alf and I anyway -- we  
33 didn't approve the C and D orders. What we did  
34 was consent to them being sent out --
- 35 Q Okay.
- 36 A -- to the parties.
- 37 Q So you read them and you agreed they be sent out?
- 38 A Yes.
- 39 Q All right. And, sir, did you understand -- well,  
40 at the time, of course, it wasn't provided to the  
41 full commission for review or consideration or  
42 approval; correct?
- 43 A Not at that time, no.
- 44 Q Okay. It was subsequently though, through the  
45 show cause hearing the full commission dealt with  
46 it or a group of commission members dealt with  
47 it?

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 part of. The rest I was not a part of.  
2 Q We're going to get to that.  
3 A Okay.  
4 Q But I -- but I want to start with the appeal that  
5 we have from the cease and desist orders. And --  
6 and I'm just -- I'm letting you know that that's  
7 why we're here because I want to sort of situate  
8 these questions around the Commission taking  
9 enforcement action, which is what a cease and  
10 desist order is. The Commission is saying to  
11 these industry participants you are breaking our  
12 rules, stop doing it. You understand that's  
13 what -- what that -- that cease and desist order  
14 is?  
15 A Yes.  
16 Q All right. And so focusing on the enforcement  
17 context, the Commission has rules, the Commission  
18 goes out to enforce them, and I want to talk to  
19 you about the situation that we have been talking  
20 where a grower plants in excess of their delivery  
21 allocation And for whatever reason the agency  
22 markets in a way that breaks the rules. And --  
23 and that's what the -- that's what you believe  
24 happened here, correct?  
25 A Yes.  
26 Q All right. So, in that situation the grower has  
27 planted in excess of delivery allocation and the  
28 agency has marketed it in a way that the  
29 Commission says is inconsistent with the rules.  
30 I am suggesting to you it is the agency against  
31 which the Commission properly enforces those  
32 rules. Do you agree with me?  
33 A That's correct.  
34 Q All right. Now, in 2016 it came to the  
35 Commission's attention that Prokam was planting  
36 in excess of its delivery allocation, correct?  
37 A In 2016?  
38 Q Yes.  
39 A I don't know.  
40 Q All right.  
41 A Planting, I don't know.  
42 Q All right. Well, let's go to a document and it's  
43 Volume 2 of the white binders. Page nine  
44 twenty-eight.  
45 A This one here?  
46 Q It's one of the two white binders. If you look  
47 at the pages at the bottom, they should start at

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 IVCA board member? He's planting as a grower,  
2 isn't he?

3 A That's correct, yeah.

4 Q Yeah. All right. It just seems that there's  
5 quite a lot of attention on Mr. Dhillon and his  
6 planting when we've agreed that -- that there's  
7 nothing wrong with that. And I'm just curious as  
8 to why it is that the Commission is repeatedly  
9 having this issue arise. I haven't seen  
10 reference in these minutes to any other grower  
11 being discussed in the same way.

12 A Okay. I'll -- you know what, I will address  
13 that.

14 Q All right.

15 A There is a group of growers sitting behind us  
16 that have been farming for 70 and 80 and 60 years  
17 and have delivery allocations the same as  
18 Mr. Dhillon or smaller. The average farm in the  
19 Lower Mainland potato farm is about a hundred and  
20 twenty acres. Mr. Dhillon is a hundred and  
21 twenty the first and the second year and he went  
22 to three eighty, according to him, last year.  
23 You know what, it's time that market was shared.  
24 Nobody walks in in three years and does the kind  
25 of stuff he has done. And he's -- he's planted  
26 the product, that's -- that's good and it has  
27 been marketed at -- whether it's below minimum  
28 price or not, that's the allegations. And it's  
29 not a very happy crowd out there, I can tell you  
30 that.

31 Q Well, I've gotten that sense over the course of  
32 the couple of days we've been here. That  
33 comment, though, from you, is that -- are you  
34 speaking as a commissioner? Are you expressing  
35 concern?

36 A No, I'm speaking as a potato grower.

37 Q All right. I -- I want to ask you questions as a  
38 Commissioner and -- and I want to understand from  
39 the Commission's perspective why is the  
40 Commission going after Prokam for doing something  
41 that they are allowed to do?

42 A I think -- I don't think IVCA had a clue what  
43 happened last year with these forward agreements  
44 and stuff. They weren't even part of that.  
45 Mr. Bob Gill was. He signed that 10 days or  
46 12 days after he was hired by IVCA and they  
47 didn't know anything about it, so.

60

Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 A Of -- of obtaining them?
- 2 Q Yes.
- 3 A I would imagine they were forwarded by IVCA.
- 4 Q All right. We'll see some documents that reflect
- 5 them being forwarded by IVCA later, but I'm not
- 6 aware of any that reflect them being forwarded by
- 7 IVCA before this date. But your impression is
- 8 that somehow or another the Commission had them
- 9 before October 5th?
- 10 A Well, they must have. I'm -- I'm pretty sure
- 11 they had knowledge of it, but I --
- 12 Q All right. Because if they didn't have knowledge
- 13 of those forward contracts, there's nothing else
- 14 that the Commission had a quibble with Thomas
- 15 Fresh about, correct?
- 16 A That's right.
- 17 Q All right. And we'd expect in that case that the
- 18 cease and desist order against Thomas Fresh would
- 19 make reference to those contracts, correct?
- 20 A Probably, yeah.
- 21 Q Okay. When -- when you --
- 22 A Or -- or maybe it cited a -- a clause in the
- 23 general orders that it was in violation of.
- 24 Q All right. But you understand that a cease and
- 25 desist order, it's an enforcement proceeding and
- 26 it's important that it tell the recipient what
- 27 they've done wrong, correct?
- 28 A Yes.
- 29 Q All right. And -- and so if what the Commission
- 30 believed Thomas Fresh had done wrong on October
- 31 5th was that it entered into those April 2017
- 32 forward contracts that Bob Gill signed, that
- 33 should have been indicated in the cease and
- 34 desist order?
- 35 A Yes.
- 36 Q All right. And -- and do you have a recollection
- 37 of discussing that issue on the conference call?
- 38 A I can't recall the exact conference call. I
- 39 know -- well, I -- I think it was discussing
- 40 that.
- 41 Q Okay. Now, ultimately the cease and desist
- 42 letter that was sent to Thomas Fresh is sent to
- 43 the Surrey branch?
- 44 A I guess so. I don't know.
- 45 Q Well, why don't we -- why don't we go to it.
- 46 It's at tabs -- or, sorry, it's at page 67 in the
- 47 same book, a little bit forward.

1 A Yeah. As soon as I see a contract for 22  
2 cents a pound and they've been selling all  
3 year, I'm not very happy about it.  
4

5 So that is the portion of the transcript that is  
6 set out in the letter to establish in part the  
7 allegation that you were motivated by personal  
8 self-interest or the interest of BCfresh growers.  
9 So that is the allegation. I'm going to back to  
10 the answer that you provided now, okay? And the  
11 question that you were asked is:  
12

13 Q Please go to page 10 of Prokam's July 23rd  
14 letter. There's an allegation of missing  
15 documents, et cetera. That isn't the  
16 correct allegation. Page 10 is what we just  
17 saw which was the portion of the -- the  
18 portion -- the portion of the transcript.  
19

20 And I believe your answer and I put it in the  
21 wrong place. You say:  
22

23 This is not accurate. The export for  
24 BCfresh was in no worse position because of  
25 Prokam. BCfresh sells through summer/fall.  
26 Thomas Fresh indicated all along we're not  
27 displacing BC produce. This is the claim  
28 made at the hearing BCFIRB 2018. What  
29 bothered everyone was the 22 cent price  
30 because that left money on the table. All  
31 cease and desist orders said was report  
32 sales. The cease and desist orders did not  
33 say stop harvesting and selling. It is well  
34 known that Prokam harvested and sold after  
35 the date, cease and desist orders. All  
36 Prokam had to do was report. A commission  
37 was concerned about information not flowing  
38 to the agency the way it should have. That  
39 was the biggest reason for the cease and  
40 desist orders. It had not prohibited  
41 growing potatoes next year.  
42

43 Is that accurate, that's your answer to the  
44 allegation of the July 23rd transcript piece that  
45 we read?

46 A It is. There's probably -- something should be  
47 added or I guess I thought maybe there was more

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 ask if you recall whether it was addressed in the  
2 portion of the meeting you attended is whether  
3 the Commission has the right to redirect a grower  
4 to a different agency. Is that a topic that you  
5 recall having discussion over the portion you  
6 attended?
- 7 A No, I don't recall that.
- 8 Q All right. So -- so if in the notes it records  
9 that, just beside this vertical line --
- 10 A What page?
- 11 Q On page 5.
- 12 A Yes.
- 13 Q And it says, "Commission has the right to  
14 redirect a grower."
- 15 A I think -- I was there for that. I think -- I  
16 think one of the -- one of the greenhouse members  
17 asked that.
- 18 Q All right. So, you do recall a discussion about  
19 the Commission having the right to redirect the  
20 grower in the portion you attended?
- 21 A I believe so, yes.
- 22 Q All right.
- 23 A It was -- it was about whether it was in the  
24 order or not. That was -- we were talking about  
25 the orders with that, but I was not part of any  
26 discussion about talking about Mr. Dhillon going  
27 to another agency. The question came up about is  
28 there -- is there a provision in the orders for  
29 that.
- 30 Q Okay. Was there discussion in the portion of the  
31 meeting you attended of the difference between  
32 the loads that BCfresh shipped to Alberta in 2016  
33 versus 2017?
- 34 A That -- that could have come up. I -- I can't  
35 say for sure. If it's in the minutes, and I  
36 haven't read these minutes, that's why I want to  
37 read them first, but ...
- 38 Q I'm happy for you to read them. Should we  
39 take --
- 40 A That's okay. No, it -- it could have. It could  
41 have.
- 42 Q Okay.
- 43 A Very well could have.
- 44 Q All right. There's -- there's a reference --
- 45 A I know from my own knowing, BCfresh couldn't get  
46 anything into Alberta last year because of  
47 pricing. That I do know.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Q All right. And so if the notes reflect BCfresh  
2 one load this year, last year 52 loads sent in,  
3 is that -- do you recall discussion about that?  
4 A That -- that could have been discussed, yes.  
5 Q And that was in the portion of the meeting you  
6 attended?  
7 A But the -- you know, one of the reasons for that  
8 might have been not as good a year. I mean, it's  
9 not all to do with pricing, but I think in this  
10 case pricing was -- was -- was a lot to do with  
11 it.  
12 Q And 2017 was definitely not as good a year as  
13 2016?  
14 A That's correct. Yeah.  
15 Q Yes. But -- but this issue appears to have  
16 arisen in the context of a discussion about cease  
17 and desist orders sent to Prokam, IVCA and Thomas  
18 Fresh. And do you recall in the context of that  
19 discussion discussing the reduction of BCfresh's  
20 exports to Alberta from 2016 to 2017?  
21 A In the cease and desist part?  
22 Q In the portion item 6.2 on the agenda, in that  
23 part of the discussion.  
24 A No.  
25 Q No. And so if the notes reflect that under the  
26 heading, 6.2 IVCA Prokam, TF cease and desist  
27 orders, that's been put in the wrong place in the  
28 notes?  
29 A What page are you talking about now again?  
30 Q Page 5. Just above the little diagram with the  
31 triangles. I think that says, "BCfresh one load  
32 this year, last year 52 loads sent in." [as read]  
33 A Yes, I see that.  
34 Q Yes. And does that refresh your recollection  
35 about a discussion about that issue, the  
36 reduction in BCfresh's exports in the context of  
37 the Prokam --  
38 A I don't recall talking about that. No, I don't.  
39 Q You don't?  
40 A No.  
41 Q A minute ago you said you recalled talking about  
42 it but perhaps not in this context, is that your  
43 evidence, or is it that you don't recall at all?  
44 A I remember -- I remember talking to Murray about  
45 it way prior to that.  
46 Q Way prior to --  
47 A Yeah.

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

1 his answers, with respect.

2 THE CHAIR: Thank you, Mr. McEwan. I didn't hear  
3 that, that he wasn't able to complete his  
4 response.

5 THE WITNESS: Yes.

6 THE CHAIR: Could you give him a chance again, please.

7 THE WITNESS: Thank you. Yeah, up above "I don't  
8 know." Scroll back a bit. I can just tell you.  
9 The word "approve," as I said in my statement to  
10 Mr. Mitha, I said, "approve" at this hearing, but  
11 what I meant by "approve," was consented to them  
12 being sent out. There was no vote with the three  
13 of us, so it was just the consensual thing to  
14 send it out. And then, you'll have to bear with  
15 me for a minute. I saw something else there too.  
16 To do with the grower, there was a -- you  
17 questioned as a grower and -- to be a commission  
18 member, you have to be a grower, so I'm having a  
19 tough time distinguishing between the two.  
20 Obviously, I have a grower background, but as a  
21 commissioner -- and it's the same thing for being  
22 on the board, you have to be a grower to be on  
23 the board of an agency too. So I wanted to  
24 clarify that. That was in my mind when I was  
25 giving these answers. Thank you.

26 CNSL C. HUNTER:

27 Q Thank you, Mr. Guichon. Now, after the cease and  
28 desist order was issued, you participated fully  
29 in commission discussions about Prokam?

30 A No.

31 Q And you voted on matters relating to the cease  
32 and desist orders until you recused yourself  
33 before the vote of the December 14th meeting?

34 A No. I didn't -- I didn't do any voting on  
35 details of Prokam.

36 Q Your evidence is, you didn't participate in votes  
37 about the Prokam cease and desist order?

38 A I did not vote, no. On the cease and desist  
39 orders? No.

40 Q I was asking -- after the cease and desist orders  
41 were issued, did you participate in any votes  
42 about the cease and desist orders between  
43 October 10th, 2017, when they were issued, and  
44 the December 14th, 2017 meeting when you recused  
45 yourself?

46 A No votes, no.

47 Q I'm going to take you to Exhibit 23, page 10.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 A Not -- not to do with this letter, no.  
2 Q Right.  
3 A To my knowledge.  
4 Q Right. And that's the majority of growers?  
5 A Yes, it is. It's something that can be put to  
6 Mr. Driediger.  
7 Q I expect it may be.  
8 A He signed it, not me.  
9 Q All right. Can I ask you to turn to ten  
10 thirty-five, please.  
11 A Okay.  
12 Q All right. So, this is the minutes for the  
13 December 14th meeting that we were speaking of  
14 earlier. Do you see that?  
15 A Yes.  
16 Q All right. And you're listed as having been in  
17 attendance.  
18 A Mm-hm.  
19 Q And can I take you to 6.2. And there is a -- a  
20 description of this item. And it's quite  
21 lengthy, so I don't propose to read it all, but  
22 if -- would you like to take some time to read it  
23 to familiarize yourself with it before we --  
24 A Would that be that page and the next page --  
25 Q Yeah, this --  
26 A -- or just the --  
27 Q -- this item --  
28 A Oh, there's --  
29 Q -- 6.2.  
30 A -- there's three pages.  
31 Q Yes. You don't need to, but if you would like  
32 to.  
33 A Well, maybe if you asked me a question about a  
34 certain paragraph, I can read it first. Would  
35 that be okay?  
36 Q Sure. That would be just fine.  
37 A All right.  
38 Q I would like to start at the second page, page --  
39 page 6, but the second page of this section. And  
40 it -- the paragraph that starts with "All  
41 commissioners", do you see that?  
42 A Yes.  
43 Q "All commissioners were present for the review of  
44 the binder of evidence and all submissions from  
45 each party and BCVMC staff on the matter that  
46 were submitted up to and including December 13,  
47 2017." [as read] Do you see that?

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 A Yes.
- 2 Q And -- and so you were part of the all  
3 commissioners who were present for that part of  
4 the meeting?
- 5 A Yes, I started the meeting.
- 6 Q Yes. And -- and that part of the meeting covered  
7 a review of all the evidence?
- 8 A Yes.
- 9 Q A review of the submissions that were made by  
10 each of the parties?
- 11 A Yes, I believe so, yeah.
- 12 Q And the submission from BCVMC staff?
- 13 A What paragraph is that?
- 14 Q Sorry?
- 15 A Is that the same paragraph, where it says "All  
16 commissioners"?
- 17 Q Yes, it says, "All submissions from each  
18 party --"
- 19 A Yes. Okay.
- 20 Q "-- and BCVMC staff."
- 21 A Sorry. Yeah.
- 22 Q Now -- now, do you know what that refers to,  
23 "submissions from BCVMC staff"?
- 24 A I guess that would be Andre.
- 25 Q And do you recall there being submissions or  
26 information provided by Mr. Solymosi?
- 27 A Well, he puts the binders together, so I  
28 imagine -- he's VMC staff, so whether it came  
29 from another party to him and into our binder, I  
30 don't know who else on staff put stuff in in the  
31 binder other than himself.
- 32 Q All right. Well, I -- I take this paragraph,  
33 though, to be describing the contents of the  
34 binder. It says "the binder of evidence and all  
35 submissions from each party and BCVMC staff", and  
36 I'm just wondering if you recall what -- other  
37 than evidence and submissions from each party  
38 what else was included in the binder?
- 39 A To me it was just -- to me it was the evidence  
40 and all the submissions from each party that was  
41 there.
- 42 Q Okay. And so you don't recall there being  
43 anything additional in the binders that was  
44 authored by BCVMC staff?
- 45 A No, I don't.
- 46 Q All right.
- 47 A No.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 Q And the next paragraph says, "On completion of  
2 this review, Peter, Cory, and Hugh recused  
3 themselves from the meeting to avoid any  
4 appearance of conflict of interest in the  
5 deliberations and any final decision to be made  
6 by the Commission." [as read] Do you see that?  
7 A Yes.  
8 Q And that occurred, you -- you and the other  
9 BCfresh commissioners recused yourselves from  
10 this part of the meeting?  
11 A That's right.  
12 Q And -- and as I -- I'm going to take you to some  
13 notes of the meeting in a moment, but as I  
14 understand the way the meeting progressed, this  
15 item was taken out of order, so it was left until  
16 the end of the meeting so that you recused  
17 yourself just before the end of the meeting, is  
18 that right?  
19 A It could have been. I can't recall that.  
20 Q You don't recall.  
21 A We didn't -- we didn't recuse ourselves for  
22 anything beyond that point.  
23 Q All right. And -- and --  
24 A Because I -- I think there was talk about a panel  
25 being struck, so.  
26 Q About a panel being struck?  
27 A Yeah.  
28 Q What do you mean by that?  
29 A Well, obviously it was -- they were going to --  
30 the rest of the Commission was going to go into  
31 more detail here --  
32 Q Mm-hm.  
33 A -- and that's why we recused ourselves.  
34 Q All right. Now, so, this is December 14th. We  
35 have seen documents of -- of meetings reaching  
36 back into December -- or into 2016 and the summer  
37 of 2017, where the issues involving IVCA and  
38 Prokam and Thomas Fresh to some extent are  
39 discussed, and you didn't consider it necessary  
40 to recuse yourself from those meetings, correct?  
41 A No, there was no decisions being made.  
42 Q All right.  
43 A It was just general discussion.  
44 Q All right. And -- and then in October there's a  
45 cease and desist order, and -- and there's the  
46 decision that appears to have been made by  
47 yourself and Mr. Kraus on the call with

1 knowingly supported the actions of Bob Gill  
2 in the marketing and selling of potatoes, a  
3 regulated vegetable without commission  
4 authorization and pricing below the  
5 authorized minimum price. Paragraph B,  
6 Prokam Enterprises and Bob Dhillon, a  
7 director of Island Vegetable Co-Operative  
8 Association, IVCA, has knowingly permitted  
9 through the actions of Bob Gill, IVCA to be  
10 put in a position of non-compliance with the  
11 general order and thereby putting IVCA's  
12 agency licence at risk of being revoked. C,  
13 Prokam Enterprises has also shipped Kennebec  
14 potatoes in September 2017, but has not been  
15 granted delivery allocation rights for  
16 Kennebec potatoes and is not permitted to  
17 ship any Kennebec potatoes to the  
18 market/agency customers --  
19

20 And then it deals -- the next point is  
21 paragraph 2. Thomas Fresh talks a little bit  
22 about Thomas Fresh, you can see, I'm not going to  
23 read that. And then, Number 3, Island Vegetable  
24 Co-Operative Association. Paragraph A:  
25

26 Prokam Enterprises and Bob Dhillon do not  
27 have the authority to represent IVCA in the  
28 marketing and sales of all regulated  
29 products. All customers of regulated  
30 products are agency customers and all  
31 accounts are managed under the direction of  
32 IVCA's general manager and then BC Island  
33 Vegetable Co-Operative Association sold  
34 product to Thomas Fresh at pricing that was  
35 below the established FOB minimum price and  
36 did not have approval to do so by the  
37 commission. The factual issue to be  
38 addressed was IVCA selling regulated potato  
39 to Thomas Fresh less than the commissions  
40 minimum FOB price. And if so, how and why  
41 did this occur.  
42

43 And it goes on to say:  
44

45 All commissioners were present for the  
46 review of the binder of evidence and all  
47 submissions of each party and BCVMC staff on

1 the matter that were submitted up to and  
2 including December 13, 2017.

3  
4 Then it carries on to say:

5  
6 On completion of this review, Peter, Cory,  
7 and Hugh recused themselves from the meeting  
8 to avoid any appearance of conflict of  
9 interest in the deliberations and any final  
10 decision to be made by the commission.

11  
12 So as I read this, sir, what has appeared to have  
13 happened is that the commission as a whole  
14 discussed the issues of the cease and desist  
15 orders, discussed the topics that we just  
16 summarized on Prokam. We didn't summarize what  
17 we see on the document regarding Thomas Fresh and  
18 that we read out on the record concerning IVCA  
19 and then you also reviewed all of the evidence  
20 and all of the submissions from each of the  
21 parties, and then only after the review did you,  
22 Cory, and Hugh recuse yourselves. Is that an  
23 accurate summary of the sequence of events, sir?

24 A No. That's accurate, but I'd like to talk about  
25 my involvement.

26 Q Yes?

27 A Before this meeting, I talked to Mr. Krause and I  
28 said, 6.2 is to do with the cease and desist  
29 orders. He said it was "his stake," and we  
30 talked about this before. He said that he would  
31 like -- he said, me for sure, but I don't know if  
32 he was indicating about Cory and Hugh to stay  
33 there until the deliberations start and just be  
34 available for questions, to answer questions and  
35 no input. So that's what I did at that meeting.

36 Q Okay. And so when you say, "questions," do you  
37 recall questions being asked of you, sir, by any  
38 of the commissioners? Do you recall what was  
39 discussed?

40 A No. They were discussing stuff but I didn't say  
41 a word and there was no questions. It's  
42 pretty -- I think the way it was written was  
43 pretty straightforward, the way I saw it, so I  
44 didn't anticipate any questions and didn't.

45 Q Are you saying you recall that, in fact, none of  
46 the commissioners asked you any questions about  
47 it; is that right?

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Q All right. Well, in any event, these are  
2 entitled "Commission meeting December 14, 2017".  
3 They were produced by the Commission. They -- I  
4 take it they are what they say they are and I  
5 don't know otherwise because you haven't seen  
6 them before, is that right?
- 7 A I haven't seen this. Maybe were these  
8 transcribed into writing, I -- on the 14th  
9 meeting, I don't know. At least I haven't seen  
10 it here, but, yeah, these are what they are.
- 11 Q They're -- they're produced at BCVMC --
- 12 A Yeah.
- 13 Q -- ten forty-four. And -- and it appears that  
14 the -- these notes just progressed through the  
15 various items on the agenda?
- 16 A I haven't read them, so can I do that or?
- 17 Q Yes, absolutely.
- 18 A Or is there a certain page that you want to  
19 question me on I should --
- 20 Q Well, I will be -- I will be asking you some  
21 questions.
- 22 A Well, let's ...
- 23 Q Should we -- should we start with the questions?
- 24 A In the essence of time, why don't you take me to  
25 a section and let me read it first, is that okay?
- 26 Q Yes, that's just fine. That's just fine. Why  
27 don't I take you to the page marked ten  
28 forty-nine to -- to start.
- 29 A Okay.
- 30 Q And if you look at the bottom of this --
- 31 A Yes.
- 32 Q -- it says, "Motion to adjourn 12:15 p.m."
- 33 A Yes.
- 34 Q And so that's the end of the meeting, presumably?
- 35 A That's the end of the meeting for three of us.
- 36 Q Well, if you look one -- one sort of text block  
37 up, it appears that it reflects you leaving the  
38 meeting at 11:55 a.m. It says, "BCfresh Peter,  
39 Cory, Hugh left the meeting at 11:55 a.m. "
- 40 A Yes.
- 41 Q And does that sound about right?
- 42 A Probably if somebody -- yeah. I -- I can't say  
43 yes or no, but if it's written down here and  
44 Andre did it, I -- I believe it.
- 45 Q Well, I don't -- I don't know that -- I don't  
46 want to put it in your mind that Andre did it.
- 47 A Well, it's either him or -- it's either him or

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Nidia --
- 2 Q Okay.
- 3 A -- so it was a Commission person that did it, so
- 4 I'm okay with that.
- 5 Q All right. And then after that reference it
- 6 says, "Requested that they be excused from the
- 7 meeting." And then it looks like something may
- 8 have been erased, and I -- I take it you haven't
- 9 seen this before, so you don't know what that is?
- 10 A No.
- 11 Q All right. And then it says, "Motion to adjourn
- 12 12:15 p.m."
- 13 A Yes.
- 14 Q So, it -- it appears from this that there was
- 15 about 20 minutes at the end of the meeting, after
- 16 you and the others recused yourselves.
- 17 A Yes.
- 18 Q And does that sound about right from your
- 19 recollection?
- 20 A Yes, it does, yeah.
- 21 Q All right. And so I -- I am -- from reading
- 22 this, I -- I'm assuming that what is recorded
- 23 prior to the notation that BCfresh, Peter, Cory,
- 24 Hugh left the meeting is a record of the portion
- 25 of the meeting that you did attend. Do you agree
- 26 with that?
- 27 A So, you're saying -- or you're asking me to
- 28 confirm whether I was there from the -- when the
- 29 meeting started to 11:55?
- 30 Q Well, I'm -- I -- I think you've already done
- 31 that, but I'm looking at the notes and I just
- 32 want to -- I -- I want take you through page 5
- 33 and 6, which look like this item 6.2, which is
- 34 the IVCA, Prokam TF cease and desist orders.
- 35 A Okay.
- 36 Q And most of that, most of the notes in that
- 37 section occur before the entry that says BCfresh
- 38 Peter, Cory, Hugh left the meeting at 11:55.
- 39 MR. HRABINSKY: Mr. Chair, I -- I'm going to object.
- 40 I have no problem with my friend asking the
- 41 witness were you present for this part of the
- 42 discussion or that part of the discussion, but
- 43 asking the witness to provide his commentary on a
- 44 document that he did not author is not
- 45 appropriate. It's inviting the witness to
- 46 speculate.
- 47 THE CHAIRPERSON: I -- I think you can probably get

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 the answers you need by phrasing them slightly  
2 differently in the way that is suggested by  
3 respondent counsel.
- 4 MS. HUNTER: All right.
- 5 Q Well, why don't we go up -- I -- I mean, I ...  
6 I'll ask questions without reference to the  
7 notes. I, again, think it may be more fair to  
8 the witness to let him look at the notes, but why  
9 don't I -- why don't I start divorced from them.  
10 There is a -- a section entitled "Discussion" and  
11 you need not look at it, but I will ask you do  
12 you recall a discussion of "freeze his DA"?
- 13 A Of what?
- 14 Q "Freeze his DA".
- 15 A Freeze it?
- 16 Q Yes.
- 17 A There -- there could have been discussion about  
18 that. I mean, it was alluded to earlier, to  
19 freeze it. So, in other words -- well, none of  
20 those -- none of those computations for next  
21 year's quota are done until the two or three  
22 months after that, but, yes, that was probably  
23 discussed, yes.
- 24 Q And -- and the issue that was -- that -- that may  
25 have been discussed and I'd like to have your  
26 recollection if it was discussed at this part of  
27 the meeting that you attended was whether  
28 Mr. Dhillon's and Prokam's delivery allocation  
29 should be frozen such that it would not account  
30 for the sales, the 2017 sales in the future?
- 31 A No. No, it doesn't -- freezing of DA does not  
32 have anything to do with sales.
- 33 Q All right. Well, explain what it means.
- 34 A What it means was if the -- if the -- if the  
35 sales were deemed to be illegal for some reason,  
36 that then the Commission has the power to not  
37 allow those to accumulate as a five year rolling  
38 average.
- 39 Q Right. And so -- so the -- the topic that I  
40 suggest was discussed in this portion of the  
41 meeting you attended was that Prokam's delivery  
42 allocation should be frozen such that it would  
43 not include in the five year rolling average the  
44 sales in 2017 to Thomas Fresh. Is that your  
45 recollection of what was discussed?
- 46 A Well, it would be for -- it would be for 2018s.  
47 It would be for the -- this crop year.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Q Yes, but --
- 2 A What -- no, what would get plugged in when you
- 3 freeze a quota like that, what would get plugged
- 4 in is quota numbers would be plugged in for that
- 5 year. In other words, he would have been deemed
- 6 to ship what his delivery allocation was, but the
- 7 excess, and there was lots of it, would not be
- 8 factored into that, providing it was -- it was an
- 9 illegal sale in the -- in the eyes of the
- 10 Commission.
- 11 Q Right. I think we're saying the same thing.
- 12 A Okay. Well -- yeah, well, I wasn't sure, that's
- 13 I didn't said how -- how it does work.
- 14 Q Okay. Well, let -- let me give it a try and just
- 15 make sure we're saying the same thing.
- 16 A Okay.
- 17 Q The topic that was discussed at the meeting in
- 18 the section that you attended was that Prokam's
- 19 delivery allocation after 2017, so in the future,
- 20 2018 --
- 21 A Yeah, 2017's shipments formed part of a five year
- 22 average.
- 23 Q That -- that they would not, that --
- 24 A No, no. The -- the delivery allocation
- 25 portion -- let's say he -- let's say he had --
- 26 I'll make this simple for the Panel. Let's say
- 27 he had 300 ton of delivery allocation, let's say,
- 28 in every period.
- 29 Q Yeah.
- 30 A So, those numbers would be plugged in as is
- 31 shipments. And let's say he shipped 600 ton on
- 32 each period. The extra 300 would not be.
- 33 Q Right.
- 34 A Okay.
- 35 Q His delivery --
- 36 A So, he wouldn't lose -- he wouldn't lose a whole
- 37 year shipping. He would be deemed to have
- 38 shipped what he was entitled to.
- 39 Q Yes, he wouldn't get credit for the transactions
- 40 that were being challenged by the Commission.
- 41 A That's correct.
- 42 Q And that was --
- 43 A That was the idea in the discussion, yes.
- 44 Q Yes. So, that -- and that was discussed in the
- 45 portion of the meeting that you attended?
- 46 A Yes, I believe so, yeah.
- 47 Q Yes. And ... Now, another topic that I want to

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 Q Yes, but --

2 A What -- no, what would get plugged in when you  
3 freeze a quota like that, what would get plugged  
4 in is quota numbers would be plugged in for that  
5 year. In other words, he would have been deemed  
6 to ship what his delivery allocation was, but the  
7 excess, and there was lots of it, would not be  
8 factored into that, providing it was -- it was an  
9 illegal sale in the -- in the eyes of the  
10 Commission.

11 Q Right. I think we're saying the same thing.

12 A Okay. Well -- yeah, well, I wasn't sure, that's  
13 I didn't said how -- how it does work.

14 Q Okay. Well, let -- let me give it a try and just  
15 make sure we're saying the same thing.

16 A Okay.

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18 the section that you attended was that Prokam's  
19 delivery allocation after 2017, so in the future,  
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22 average.

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25 portion -- let's say he -- let's say he had --  
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27 he had 300 ton of delivery allocation, let's say,  
28 in every period.

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31 shipments. And let's say he shipped 600 ton on  
32 each period. The extra 300 would not be.

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37 year shipping. He would be deemed to have  
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40 that were being challenged by the Commission.

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45 portion of the meeting that you attended?

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47 Q Yes. And ... Now, another topic that I want to

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 ask if you recall whether it was addressed in the  
2 portion of the meeting you attended is whether  
3 the Commission has the right to redirect a grower  
4 to a different agency. Is that a topic that you  
5 recall having discussion over the portion you  
6 attended?
- 7 A No, I don't recall that.
- 8 Q All right. So -- so if in the notes it records  
9 that, just beside this vertical line --
- 10 A What page?
- 11 Q On page 5.
- 12 A Yes.
- 13 Q And it says, "Commission has the right to  
14 redirect a grower."
- 15 A I think -- I was there for that. I think -- I  
16 think one of the -- one of the greenhouse members  
17 asked that.
- 18 Q All right. So, you do recall a discussion about  
19 the Commission having the right to redirect the  
20 grower in the portion you attended?
- 21 A I believe so, yes.
- 22 Q All right.
- 23 A It was -- it was about whether it was in the  
24 order or not. That was -- we were talking about  
25 the orders with that, but I was not part of any  
26 discussion about talking about Mr. Dhillon going  
27 to another agency. The question came up about is  
28 there -- is there a provision in the orders for  
29 that.
- 30 Q Okay. Was there discussion in the portion of the  
31 meeting you attended of the difference between  
32 the loads that BCfresh shipped to Alberta in 2016  
33 versus 2017?
- 34 A That -- that could have come up. I -- I can't  
35 say for sure. If it's in the minutes, and I  
36 haven't read these minutes, that's why I want to  
37 read them first, but ...
- 38 Q I'm happy for you to read them. Should we  
39 take --
- 40 A That's okay. No, it -- it could have. It could  
41 have.
- 42 Q Okay.
- 43 A Very well could have.
- 44 Q All right. There's -- there's a reference --
- 45 A I know from my own knowing, BCfresh couldn't get  
46 anything into Alberta last year because of  
47 pricing. That I do know.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

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2 portion of the meeting you attended is whether  
3 the Commission has the right to redirect a grower  
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20 grower in the portion you attended?
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24 order or not. That was -- we were talking about  
25 the orders with that, but I was not part of any  
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46 anything into Alberta last year because of  
47 pricing. That I do know.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Q All right. And so if the notes reflect BCfresh  
2 one load this year, last year 52 loads sent in,  
3 is that -- do you recall discussion about that?  
4 A That -- that could have been discussed, yes.  
5 Q And that was in the portion of the meeting you  
6 attended?  
7 A But the -- you know, one of the reasons for that  
8 might have been not as good a year. I mean, it's  
9 not all to do with pricing, but I think in this  
10 case pricing was -- was -- was a lot to do with  
11 it.  
12 Q And 2017 was definitely not as good a year as  
13 2016?  
14 A That's correct. Yeah.  
15 Q Yes. But -- but this issue appears to have  
16 arisen in the context of a discussion about cease  
17 and desist orders sent to Prokam, IVCA and Thomas  
18 Fresh. And do you recall in the context of that  
19 discussion discussing the reduction of BCfresh's  
20 exports to Alberta from 2016 to 2017?  
21 A In the cease and desist part?  
22 Q In the portion item 6.2 on the agenda, in that  
23 part of the discussion.  
24 A No.  
25 Q No. And so if the notes reflect that under the  
26 heading, 6.2 IVCA Prokam, TF cease and desist  
27 orders, that's been put in the wrong place in the  
28 notes?  
29 A What page are you talking about now again?  
30 Q Page 5. Just above the little diagram with the  
31 triangles. I think that says, "BCfresh one load  
32 this year, last year 52 loads sent in." [as read]  
33 A Yes, I see that.  
34 Q Yes. And does that refresh your recollection  
35 about a discussion about that issue, the  
36 reduction in BCfresh's exports in the context of  
37 the Prokam --  
38 A I don't recall talking about that. No, I don't.  
39 Q You don't?  
40 A No.  
41 Q A minute ago you said you recalled talking about  
42 it but perhaps not in this context, is that your  
43 evidence, or is it that you don't recall at all?  
44 A I remember -- I remember talking to Murray about  
45 it way prior to that.  
46 Q Way prior to --  
47 A Yeah.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Q All right. And so if the notes reflect BCfresh  
2 one load this year, last year 52 loads sent in,  
3 is that -- do you recall discussion about that?  
4 A That -- that could have been discussed, yes.  
5 Q And that was in the portion of the meeting you  
6 attended?  
7 A But the -- you know, one of the reasons for that  
8 might have been not as good a year. I mean, it's  
9 not all to do with pricing, but I think in this  
10 case pricing was -- was -- was a lot to do with  
11 it.  
12 Q And 2017 was definitely not as good a year as  
13 2016?  
14 A That's correct. Yeah.  
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16 arisen in the context of a discussion about cease  
17 and desist orders sent to Prokam, IVCA and Thomas  
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19 discussion discussing the reduction of BCfresh's  
20 exports to Alberta from 2016 to 2017?  
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23 part of the discussion.  
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25 Q No. And so if the notes reflect that under the  
26 heading, 6.2 IVCA Prokam, TF cease and desist  
27 orders, that's been put in the wrong place in the  
28 notes?  
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31 triangles. I think that says, "BCfresh one load  
32 this year, last year 52 loads sent in." [as read]  
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35 about a discussion about that issue, the  
36 reduction in BCfresh's exports in the context of  
37 the Prokam --  
38 A I don't recall talking about that. No, I don't.  
39 Q You don't?  
40 A No.  
41 Q A minute ago you said you recalled talking about  
42 it but perhaps not in this context, is that your  
43 evidence, or is it that you don't recall at all?  
44 A I remember -- I remember talking to Murray about  
45 it way prior to that.  
46 Q Way prior to --  
47 A Yeah.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 Q -- talking to Murray --  
2 A Yes.  
3 Q --Driediger.  
4 A Mm-hm.  
5 Q What about the Commission?  
6 A No.  
7 Q No. So, you don't recall any discussion in front  
8 of the Commission or at the Commission meetings  
9 about the BCfresh exports being reduced?  
10 A No. No.  
11 Q All right. And so if that's reflected in notes,  
12 why -- where -- where else would that information  
13 have come from to the Commission?  
14 A It could have been between Murray and -- and  
15 Andre, I don't know that.  
16 Q Well, Murray is not on the Commission, is he?  
17 A No --  
18 Q No.  
19 A -- but he's president of BCfresh.  
20 Q No. Well, I -- I'm just trying to understand in  
21 the Commission meeting --  
22 A Yeah.  
23 Q -- if that issue was discussed.  
24 A If it wasn't discussed, maybe it was presented,  
25 but I don't remember talking about it, no.  
26 Q All right. All right. Do you recall a  
27 discussion in the portion of the meeting you  
28 attended about all delivery allocation earned at  
29 below minimum price is not to count for next  
30 year?  
31 A There was discussion about that, yes.  
32 Q All right. Do you recall there being discussion  
33 about -- at the part of the meeting you attended  
34 about the sales from Prokam to Thomas Fresh  
35 through IVCA into Alberta and Saskatchewan being  
36 sales that were diverted from BCfresh?  
37 A No. Diverted from BCfresh, you mean -- I'm not  
38 sure.  
39 Q Well --  
40 A You mean BCfresh sold them and they were divert  
41 -- the load was diverted? I ... Because I don't  
42 know what you mean by that.  
43 Q Well, I'm just asking was there any discussion  
44 about the relationship between a reduction in  
45 sales of BCfresh into Alberta in 2017, what might  
46 happen in the future if Prokam were not permitted  
47 to produce with IVCA and Thomas Fresh and the

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

- 1 relationship that might have to BCfresh  
2 production in the future? Do you recall any  
3 discussion about that?
- 4 A No. As a matter of fact, long after this there  
5 was a meeting set up by Andre off the record  
6 after the Commission had directed Prokam to  
7 BCfresh, they had two or three cordial meetings  
8 themselves and talking about how Mr. Dhillon's  
9 stuff could be sold.
- 10 Q All right. Well, I don't -- I don't want to get  
11 into those meetings because, as you say, I think  
12 they were without prejudice, but --
- 13 A Yes, they were.
- 14 Q -- I -- if the notes reflect in this section  
15 under the heading "IVCA, Prokam, TF cease and  
16 desist orders" and before the portion where it  
17 indicates you having been recused they indicate,  
18 and I'm reading, if you want to follow along,  
19 just to the right of the vertical line --
- 20 A Mm-hm.
- 21 Q -- "Commission has the right to redirect a  
22 grower. Sales diverted either to or from  
23 BCfresh," I'm not sure, "and all DA earned at  
24 below minimum price is not to count." That  
25 doesn't reflect that there was any discussion  
26 about any relationship between the sales to  
27 Thomas Fresh and a reduction in sales to BCfresh  
28 and the power to direct a grower to a different  
29 agency, but you don't recall there being any  
30 discussion about that the portion of the meeting  
31 you attended?
- 32 A No.
- 33 Q All right. Now, do you recall any discussion at  
34 the portion you meeting you attended about Sam  
35 Enterprises?
- 36 A I think one of the comments by somebody was that  
37 he just wasn't a registered grower. I think  
38 that's all I heard.
- 39 Q All right.
- 40 A And he was part of one of the signatories on some  
41 of the forward contracts, but he was not a  
42 registered grower. That's all I recollect from  
43 that.
- 44 Q All right. And -- and do you recall any  
45 discussion about a possible direction of Prokam  
46 to BCfresh to sign a three year GMA?
- 47 A I wasn't part of that.

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 witness. He's a member of the Commission. I  
2 gave notice to my friend.

3 MR. McDONELL: Well, all right. I don't want to fuss  
4 about it in, but in any event.

5 THE CHAIRPERSON: It's -- you know, again, I'd like  
6 the questions and the answers to be as factual as  
7 possible and, you know, I -- I understand where  
8 you're going and this is obviously important  
9 evidence, I -- I understand that, so I'm trying  
10 to be lenient.

11 MS. HUNTER: All right.

12 THE CHAIRPERSON: At -- at the same time we -- we  
13 don't want to be hearing or having Mr. Guichon  
14 being asked to speculate on, you know, what may  
15 have been or what could have been, or, in fact,  
16 even what might have been appropriate if -- so,  
17 I'll leave it there, but just try and keep it  
18 within those boundaries if we can.

19 MS. HUNTER: All right.

20 Q On December 14th, when you attended this meeting,  
21 you knew it was not appropriate for you to  
22 participate in a meeting about whether Prokam  
23 should be directed to sign a three year GMA with  
24 BCfresh?

25 A As a -- as a commission member and a grower,  
26 maybe one day I'll be in the same boat with no  
27 agency to sell your product to. I was happy to  
28 have Mr. Dhillon be directed to BCfresh if he was  
29 or even a discussion about that. So, I don't see  
30 why I'm in a conflict while I'm trying to  
31 resolve -- resolve an issue in front of the B.C.  
32 Vegetable Marketing Commission that involves a  
33 grower that wants to be in the industry, does a  
34 good job in the industry, and want to get his  
35 product sold. I want to make sure Mr. Dhillon's  
36 product is sold orderly and I can't think of a  
37 better place for him to be other than BCfresh  
38 because that's their -- a lot of their business  
39 model.

40 Q And there was discussion about that at the  
41 portion of the meeting you attended, whether  
42 BCfresh was the best agency for Mr. Dhillon,  
43 correct?

44 A Which meeting?

45 Q The December 14th meeting we're talking about  
46 prior to the point you recused yourself.

47 A There was discussion about a --

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Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 Q There was --

2 A Obviously it's -- I was -- there was some  
3 discussion, but I -- I was -- I guess the reason  
4 I didn't recuse myself from that is I -- I  
5 thought I had a lot to add to the meeting  
6 positive. Positive for Mr. Dhillon, positive for  
7 the Commission, and putting a good grower in a  
8 house that he doesn't have a house to go to.

9 Q You --

10 A That's -- that's my recollection of that  
11 discussion at that time.

12 Q Yes, you're -- you're very knowledgeable about  
13 BCfresh and -- and about the industry, correct?

14 A I'm -- I'm knowledgeable about the -- the  
15 industry --

16 Q Yes.

17 A -- and BCfresh, yes.

18 Q Yes. And so -- so you've had a lot to add on the  
19 subject of what would be the most appropriate  
20 agency for Prokam and Mr. Dhillon?

21 A Yeah, and I think he was refused, that none of  
22 the other agencies stepped up to take him, so I  
23 felt I had a fiduciary responsibility as a  
24 Commission member to find him a -- a good place.  
25 And whether it worked out or not in the end, I  
26 don't know that, but at least I didn't have a  
27 problem having some preliminary discussions with  
28 the rest of the greenhouse members on our Board  
29 who are maybe not as familiar with that, so.

30 Q All right.

31 A And I -- I -- I wouldn't have cared if it was --  
32 if he was going to another agency either, but at  
33 this point in time there was no agency for  
34 Mr. Dhillon to go to, it appeared, in front of  
35 the Commission, so I wanted to leave that door  
36 open and I'd welcome him -- I'd welcome Bob  
37 Dhillon to BCfresh with open arms.

38 Q All right. And so your evidence is that at the  
39 meeting on December 14th, you considered -- or  
40 you provided input on the appropriateness of  
41 BCfresh as an agency for Mr. Dhillon and Prokam,  
42 correct?

43 A I didn't talk about BCfresh -- about the  
44 appropriateness?

45 Q Yes.

46 A No, I talked to about trying to find him a place  
47 to market his product this year.

1 the matter that were submitted up to and  
2 including December 13, 2017.

3  
4 Then it carries on to say:

5  
6 On completion of this review, Peter, Cory,  
7 and Hugh recused themselves from the meeting  
8 to avoid any appearance of conflict of  
9 interest in the deliberations and any final  
10 decision to be made by the commission.

11  
12 So as I read this, sir, what has appeared to have  
13 happened is that the commission as a whole  
14 discussed the issues of the cease and desist  
15 orders, discussed the topics that we just  
16 summarized on Prokam. We didn't summarize what  
17 we see on the document regarding Thomas Fresh and  
18 that we read out on the record concerning IVCA  
19 and then you also reviewed all of the evidence  
20 and all of the submissions from each of the  
21 parties, and then only after the review did you,  
22 Cory, and Hugh recuse yourselves. Is that an  
23 accurate summary of the sequence of events, sir?

24 A No. That's accurate, but I'd like to talk about  
25 my involvement.

26 Q Yes?

27 A Before this meeting, I talked to Mr. Krause and I  
28 said, 6.2 is to do with the cease and desist  
29 orders. He said it was "his stake," and we  
30 talked about this before. He said that he would  
31 like -- he said, me for sure, but I don't know if  
32 he was indicating about Cory and Hugh to stay  
33 there until the deliberations start and just be  
34 available for questions, to answer questions and  
35 no input. So that's what I did at that meeting.

36 Q Okay. And so when you say, "questions," do you  
37 recall questions being asked of you, sir, by any  
38 of the commissioners? Do you recall what was  
39 discussed?

40 A No. They were discussing stuff but I didn't say  
41 a word and there was no questions. It's  
42 pretty -- I think the way it was written was  
43 pretty straightforward, the way I saw it, so I  
44 didn't anticipate any questions and didn't.

45 Q Are you saying you recall that, in fact, none of  
46 the commissioners asked you any questions about  
47 it; is that right?

1 A No, they didn't.  
2 Q So who was doing the review, was it Mr. Solymosi  
3 or others?  
4 A Mr. Solymosi was presenting it but, you know, Alf  
5 was the chair so Andre was doing the presentation  
6 of those four points or that part of the meeting  
7 anyway.  
8 Q Okay. All right. Thank you. Going to take you  
9 to a different document. Just give me a moment.  
10 Sir, I'm showing you another set of minutes. Can  
11 you see them on the screen? I'm just going to  
12 enlarge it for you.  
13 A Yes.  
14 Q All right. So these are minutes, sir, of  
15 October 25th, 2017. Now, just to place in this  
16 context, remember the cease and desist orders  
17 were issued on October 10th, 2017; right?  
18 A Yes.  
19 Q And we're now at October 25, 2017; do you see  
20 that?  
21 A Yeah.  
22 Q And in this particular matter, it shows you  
23 attended by telephone as vice chair and  
24 Mr. Krause was not there as chair; correct?  
25 A Yes.  
26 Q And presumably as vice chair you would have  
27 chaired that meeting?  
28 A No, I didn't chair that meeting. Andre chaired  
29 that meeting. If you look where it says, call to  
30 order, below that, it says, "the meeting was  
31 called to order at 4:05." And all of the other  
32 minutes, it says in there who called the meeting  
33 to order.  
34 Q Okay.  
35 A I believe Andre chaired that meeting. Possibly,  
36 if I hadn't have been on the via telephone, I  
37 might have chaired it, but I was on the phone and  
38 I talked to Andre before that and he said he  
39 would chair it.  
40 Q All right. Thank you. And you'll see that the  
41 issue is set out as being:  
42  
43 The cease and desist orders were issued  
44 October 10, 2017, to IVCA, Prokam, and  
45 Thomas Fresh. Invited each party to appear  
46 before the commission to address the alleged  
47 violations. This hearing has been set up

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

1 of the meetings, I was asked a question. I want  
2 to say, it's this meeting, but I didn't have time  
3 to look at it. I want to say, it's a meeting  
4 that I was asked about what if a grower -- it was  
5 to do with including the shipments in the --  
6 like, to create your five-year average, and I  
7 made a statement saying that I didn't think those  
8 excess shipments of stuff should count in a  
9 rolling average, but I don't know what meeting  
10 that was at. I thought it was this one, but  
11 maybe it wasn't. And I was asked that question  
12 by -- I think it was a greenhouse producer.  
13 Hugh Reynolds also had a comment at that -- it's  
14 that meeting.

15 Q Okay. Thank you. This meeting, this  
16 December 14th meeting where you recused yourself  
17 from the vote --

18 A And -- okay. I'll listen and I'll ...

19 Q No. I'm sorry?

20 A I recused myself from the votes and the  
21 deliberations.

22 Q Oh, okay. What I was just going to ask about  
23 was, there was -- there was ultimately a  
24 direction of Prokam to BCfresh as an agency; you  
25 know that?

26 A At this meeting?

27 Q Well, in the decision that was made. That was  
28 ultimately a direction of Prokam to BCfresh?

29 CNSL K. MCEWAN: Objection. I think he's --  
30 is "ultimately" at this meeting? Is that what  
31 Ms. Hunter is saying, Mr. Chair? Is "ultimately"  
32 another time? It's not clear.

33 CNSL C. HUNTER:

34 Q All right. Well, my understanding is that, at  
35 the part of the meeting that Mr. Guichon didn't  
36 participate in, the vote, there was a vote that  
37 directed Prokam to BCfresh, but my question is  
38 really about the part that Mr. Guichon did  
39 participate in. I just want to ask whether you  
40 participated in any discussions about whether  
41 BCfresh was an appropriate agency to direct  
42 Prokam to.

43 A Absolutely not. I was not part of any of that  
44 discussion, and I don't believe -- my  
45 recollection is that was decided by a panel on  
46 December 22nd. And I think, if I recall from the  
47 previous days here, that Andre made notes of this

1 meeting after we were recused, and -- or I don't  
2 know if after we were recused or not, but he made  
3 notes, and it had to do with the -- I believe it  
4 had to do with the deliberations after we had  
5 left.

6 Q I'm going to suggest to you that you participated  
7 in a discussion at the December 14th meeting  
8 about which agency Prokam should be directed to.

9 A It's absolutely not true.

10 Q I'm going to suggest to you that you stayed for  
11 that discussion because you believed you had a  
12 lot to add to the meeting on the subject of what  
13 agency Prokam should grow for.

14 A That's not true.

15 Q Going to take you back into the transcript from  
16 the 2018 hearing, page 2296 of Exhibit 1. And  
17 starting at line 40:

18

19 Q And there was discussion about that at the  
20 portion of the meeting you attended, whether  
21 BCfresh was the best agency for Mr. Dhillon;  
22 correct?

23 A Which meeting?

24 Q The December 14th meeting we're talking  
25 about prior to the point you recused  
26 yourself.

27 A There was discussion about --

28 Q There was --

29 A Obviously, it's -- I was there for some  
30 discussion, but I was -- I guess the reason  
31 I didn't recuse myself from that is I  
32 thought I had a lot to add to the meeting  
33 positive. Positive for Mr. Dhillon,  
34 positive for the commission, and putting a  
35 good grower in a house that he doesn't have  
36 a house to go to.

37 Q You --

38 A That's -- that's my recollection of that  
39 discussion at that time.

40 Q Yes. You're very knowledgeable about  
41 BCfresh and about the industry; correct?

42 A I'm knowledgeable about the industry.

43 Q Yes.

44 A And BCfresh, yes.

45 Q Yes. And so -- so you've had a lot to add  
46 on the subject of what would be the most  
47 appropriate agency for Prokam and

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

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2 know if after we were recused or not, but he made  
3 notes, and it had to do with the -- I believe it  
4 had to do with the deliberations after we had  
5 left.

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20 portion of the meeting you attended, whether  
21 BCfresh was the best agency for Mr. Dhillon;  
22 correct?

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25 about prior to the point you recused  
26 yourself.

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29 A Obviously, it's -- I was there for some  
30 discussion, but I was -- I guess the reason  
31 I didn't recuse myself from that is I  
32 thought I had a lot to add to the meeting  
33 positive. Positive for Mr. Dhillon,  
34 positive for the commission, and putting a  
35 good grower in a house that he doesn't have  
36 a house to go to.

37 Q You --

38 A That's -- that's my recollection of that  
39 discussion at that time.

40 Q Yes. You're very knowledgeable about  
41 BCfresh and about the industry; correct?

42 A I'm knowledgeable about the industry.

43 Q Yes.

44 A And BCfresh, yes.

45 Q Yes. And so -- so you've had a lot to add  
46 on the subject of what would be the most  
47 appropriate agency for Prokam and

- 1 Mr. Dhillon?  
2 A Yeah. And I think he was refused, but none  
3 of the other agencies stepped up to take  
4 him, so I felt I had a fiduciary  
5 responsibility as a commission member to  
6 find him a good place, and whether it worked  
7 out or not in the end, I don't know that.  
8 But at least I didn't have a problem with  
9 having some preliminary discussions with the  
10 rest of the greenhouse members on our board  
11 who are maybe not as familiar with that, so.  
12 Q All right.  
13 A And I wouldn't have cared if it was -- if he  
14 was going to another agency either, but at  
15 this point in time, there was no agency for  
16 Mr. Dhillon to go to. It appeared in front  
17 of the commission, so I wanted to leave that  
18 door open, and I'd welcome him. I'd welcome  
19 Bob Dhillon with BCfresh with open arms.  
20 Q All right. So your evidence is that at the  
21 meeting on December 14th, you considered or  
22 you provided input on the appropriateness of  
23 BCfresh as an agency for Mr. Dhillon and  
24 Prokam; correct?  
25 A I didn't talk about BCfresh about the  
26 appropriateness.  
27 Q Yes.  
28 A No. I talked about trying to find him a  
29 place to market his product this year.  
30  
31 Were you asked those questions, and did you give  
32 those answers?  
33 A Yes. I gave those answers, but as a commission  
34 member, I had a responsibility that he wind up  
35 somewhere. But my own personal opinion, I didn't  
36 want him going to BCfresh.  
37 Q Were the answers that you provided in the excerpt  
38 from the transcript that I just read true?  
39 A Can you scroll back to it, please. That's good.  
40 Yes, I think that's all true, but -- yeah.  
41 Q I'm going to take you down to page 2298 of the --  
42 continuing your evidence of 2018 at line 37.  
43  
44 Q And this is the second page of a letter from  
45 Miller Thomson if you look at the first  
46 page.  
47 A From who?

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. NEWELL: Yeah. Mm-hm.

2 MS. HUNTER: Now, I haven't seen any evidence at all  
3 that was before the Commission about BCfresh or  
4 its appropriateness. Are you aware of any  
5 evidence that was before the Commission that  
6 would support these findings?

7 MR. NEWELL: In -- in -- on paper, no, I don't.

8 MS. HUNTER: So, where -- where did the information  
9 come from?

10 MR. NEWELL: It comes from the industry at large and  
11 it comes from the -- and it comes from the -- the  
12 Commission members as well because many of the  
13 commissioners, including the -- the greenhouse  
14 commissioners, they do have neighbours, they do  
15 have friends that are in the root crop industry.  
16 They glean information from the market. We glean  
17 information from retailers, et cetera. We know  
18 the -- the -- as the Commission we know which  
19 agencies are actually trying to uphold the  
20 regulated marketing system effectively and those  
21 that aren't. And it became apparent that --  
22 for -- for us that we had one option at the time.  
23 We wanted to be speedy, we wanted to make a  
24 speedy decision, not too speedy, but speedy  
25 enough that we can actually get on with the  
26 business. We want -- we want Prokam to be  
27 successful. We want them to actually go on  
28 the -- and do -- and -- and grow and be a  
29 successful grower. As a Commission member  
30 that's -- that's my -- that's my role.

31 MS. HUNTER: All right. So, the information that  
32 supports the findings and the decision about  
33 BCfresh come from neighbours, friends in the  
34 industry, general knowledge about the industry --

35 MR. NEWELL: Commission members, et cetera.

36 MS. HUNTER: -- Commission members?

37 MR. NEWELL: Yes, of course.

38 MS. HUNTER: And that includes the BCfresh  
39 commissioners?

40 MR. NEWELL: Yeah, it can.

41 MS. HUNTER: Did they participate in the discussion  
42 about this?

43 MR. NEWELL: Some brief discussion about it until they  
44 recused themselves.

45 MS. HUNTER: All right. Do you recall what -- what  
46 they said?

47 MR. NEWELL: I don't recall what they said, no.

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 the discussion of item 6.2.  
2 MR. SOLYMOSI: Okay.  
3 MS. HUNTER: One way we might assess it is to look at  
4 your notes. You've got six pages of notes and  
5 two of them are devoted to item 6.2. I don't  
6 know if that is a fair representation of the time  
7 spent, but I'm asking for your recollection.  
8 It's -- it's an important decision. You have a  
9 number of other items on the agenda. We know the  
10 meeting was around three hours. How long about  
11 was the discussion on item 6.2?  
12 MR. SOLYMOSI: I can't honestly remember. It could be  
13 an hour.  
14 MR. NEWELL: It could have been an hour.  
15 MS. HUNTER: All right.  
16 MR. NEWELL: I mean, I'm not going to say exactly how  
17 much, how many we used, but -- but it could have  
18 definitely been an hour.  
19 MS. HUNTER: All right. So, that's fine. So, let's  
20 work with that. So, we think that on page 5,  
21 when we move to --  
22 MR. NEWELL: What's the date of this?  
23 MS. HUNTER: -- item 6.2 --  
24 MR. SOLYMOSI: December 14.  
25 MR. NEWELL: Yeah.  
26 MS. HUNTER: -- we think that's around 11:15, is that  
27 right, or 11:00, something like that?  
28 MR. SOLYMOSI: Where is that?  
29 MS. HUNTER: Page 5 of your notes. It's the  
30 beginning --  
31 MR. SOLYMOSI: Okay, sure.  
32 MS. HUNTER: -- of item 6.2. Okay. And so I'm trying  
33 to understand which portion of the notes reflects  
34 the discussion between 11:00 or 11:15, whenever  
35 this discussion started, and 11:55 when these  
36 folks recused themselves. Can you help me with  
37 that?  
38 MR. SOLYMOSI: You know, I honestly don't know. All I  
39 know is that they were present for a discussion,  
40 but when the decision and the motion -- the  
41 motion was put forward for a decision and the  
42 decision was discussed, they were not present.  
43 So, they were not there for the discussion.  
44 MS. HUNTER: Yes. You've said that, all right.  
45 MR. SOLYMOSI: They were there for the discussion.  
46 MS. HUNTER: So -- so if we look on page 6, it appears  
47 there was a motion made.

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 the discussion of item 6.2.  
2 MR. SOLYMOSI: Okay.  
3 MS. HUNTER: One way we might assess it is to look at  
4 your notes. You've got six pages of notes and  
5 two of them are devoted to item 6.2. I don't  
6 know if that is a fair representation of the time  
7 spent, but I'm asking for your recollection.  
8 It's -- it's an important decision. You have a  
9 number of other items on the agenda. We know the  
10 meeting was around three hours. How long about  
11 was the discussion on item 6.2?  
12 MR. SOLYMOSI: I can't honestly remember. It could be  
13 an hour.  
14 MR. NEWELL: It could have been an hour.  
15 MS. HUNTER: All right.  
16 MR. NEWELL: I mean, I'm not going to say exactly how  
17 much, how many we used, but -- but it could have  
18 definitely been an hour.  
19 MS. HUNTER: All right. So, that's fine. So, let's  
20 work with that. So, we think that on page 5,  
21 when we move to --  
22 MR. NEWELL: What's the date of this?  
23 MS. HUNTER: -- item 6.2 --  
24 MR. SOLYMOSI: December 14.  
25 MR. NEWELL: Yeah.  
26 MS. HUNTER: -- we think that's around 11:15, is that  
27 right, or 11:00, something like that?  
28 MR. SOLYMOSI: Where is that?  
29 MS. HUNTER: Page 5 of your notes. It's the  
30 beginning --  
31 MR. SOLYMOSI: Okay, sure.  
32 MS. HUNTER: -- of item 6.2. Okay. And so I'm trying  
33 to understand which portion of the notes reflects  
34 the discussion between 11:00 or 11:15, whenever  
35 this discussion started, and 11:55 when these  
36 folks recused themselves. Can you help me with  
37 that?  
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39 know is that they were present for a discussion,  
40 but when the decision and the motion -- the  
41 motion was put forward for a decision and the  
42 decision was discussed, they were not present.  
43 So, they were not there for the discussion.  
44 MS. HUNTER: Yes. You've said that, all right.  
45 MR. SOLYMOSI: They were there for the discussion.  
46 MS. HUNTER: So -- so if we look on page 6, it appears  
47 there was a motion made.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 12:15, so.

2 MS. HUNTER: All right. None of that answers my  
3 question.

4 MR. SOLYMOSI: Well.

5 MS. HUNTER: I'm trying to get you to plumb the  
6 recesses of your memory and to try to identify as  
7 best you can where in the notes, which I take it  
8 are largely, except the last part, in  
9 chronological order of the meeting, where that  
10 recusal should sit in the notes, which part of  
11 the meeting.

12 MR. SOLYMOSI: I -- I don't know. I honestly don't  
13 know.

14 MS. HUNTER: All right. Well, we started with you  
15 might have moved to this discussion around 11:00,  
16 11:15, so there's 40 minutes of discussion before  
17 the recusal.

18 MR. SOLYMOSI: Yeah, and they would have been there.

19 MS. HUNTER: And they would have been there for that  
20 part of it?

21 MR. SOLYMOSI: Yes.

22 MS. HUNTER: So, are you suggesting that the only part  
23 of the notes that reflects that 40 minute  
24 discussion is above the line "Discussion"?

25 MR. SOLYMOSI: I -- there was lots of general  
26 discussion. I took some key points on direction  
27 basically. I don't take all the notes of what's  
28 discussed. It's discussed and you guys are  
29 talking about it. And you come up with -- with a  
30 decision out of that discussion.

31 MS. HUNTER: All right. Mr. Newell, can you assist at  
32 all? Do you have any recollection of at what  
33 point in the discussion?

34 MR. NEWELL: Well, I wasn't taking these notes, but I  
35 know there was a large discussion with a greater  
36 group of -- of commissioners. We have to rely on  
37 their knowledge. We've got our own opinions,  
38 you've seen that in his notes. And we as an  
39 industry board, industry commission have to take  
40 advice from each other.

41 MS. HUNTER: Sure.

42 MR. NEWELL: And they are heavily invested, many of  
43 them for 40-plus years, in that industry, have  
44 taught me an enormous amount as a greenhouse  
45 commissioner, and I know there are other  
46 greenhouse commissioners are actually in the same  
47 boat. They rely on us equally for every --

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1 any -- anything that happens in the greenhouse  
2 business. And I am there not as an agency  
3 manager but a commissioner for the greater good  
4 of the industry. And I want to be a -- a pirate  
5 to make sure that this -- this regulated industry  
6 stays strong.

7 MS. HUNTER: All right. And perhaps this might  
8 assist. At the bottom of page 5 there is the  
9 reference to your having raised the possibility  
10 of a compromised deal, and you recalled having  
11 some discussion with the other commissioners  
12 about that and --

13 MR. NEWELL: Yeah.

14 MS. HUNTER: -- [indiscernible] supported it.

15 MR. NEWELL: Yeah, I -- I remember it.

16 MS. HUNTER: Were the BCfresh commissioners there for  
17 that part of the discussion?

18 MR. NEWELL: I -- I don't know if they were or not,  
19 but I -- I -- I can't recall if they were  
20 actually at that -- at that point in the meeting  
21 or whether that was the -- that was the thing  
22 that I had brought up with the -- the greenhouse  
23 panel that we created to actually make decisions  
24 on this thing. So, I just can't remember if they  
25 were all there or whether they had already  
26 recused themselves.

27 MS. HUNTER: All right. Just in terms of  
28 recordkeeping, Mr. Solymosi, you advised earlier  
29 that the media takes notes of the meetings and  
30 that they get converted to the minutes.

31 MR. SOLYMOSI: Yes.

32 MS. HUNTER: What -- what happens with those notes?

33 MR. SOLYMOSI: They get discarded.

34 MS. HUNTER: And so -- so those have been destroyed --

35 MR. SOLYMOSI: Yes.

36 MS. HUNTER: -- the notes of this meeting that they  
37 took? Is there a tape recording of the meeting?

38 MR. SOLYMOSI: No.

39 MS. HUNTER: All right. So -- so the only records  
40 that we have are your notes here that may or may  
41 not be reliable in terms of timing of when these  
42 folks left and -- and the minutes which don't say  
43 anything at all about the timing?

44 MR. SOLYMOSI: The official minutes.

45 MS. HUNTER: All right. All right. Well, Mr. Chair,  
46 I note the time, so perhaps we should break  
47 for -- I'm happy to go longer, but -- but if you

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John Newell and Andre Solymosi (for Respondent)  
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1 MR. SOLYMOSI: Yes.

2 MS. HUNTER: And that was sent at a time when the  
3 Commission knew that both Okanagan Growers and  
4 VIFP had already provided the November 10th  
5 letter on this issue?

6 MR. SOLYMOSI: Correct.

7 MS. HUNTER: And that letter had not been produced to  
8 Prokam?

9 MR. SOLYMOSI: Correct.

10 MS. HUNTER: If I can take you to 600, that's the  
11 decision. And I believe there was --  
12 Mr. Solymosi, I believe you took us to this  
13 document in your evidence in chief. At six-o-two  
14 it's signed by you, Mr. Solymosi?

15 MR. SOLYMOSI: Yes.

16 MS. HUNTER: It -- it doesn't indicate on here which  
17 commissioners participated in the decision.

18 MR. SOLYMOSI: It's the same panel.

19 MS. HUNTER: It's the same panel as what?

20 MR. SOLYMOSI: December 22nd that made the decision.

21 MS. HUNTER: All right. And that ... All right.  
22 Does that mean that the BCfresh commissioners did  
23 not participate in the decision?

24 MR. SOLYMOSI: Exactly.

25 MS. HUNTER: Okay. And is that recusal noted  
26 anywhere?

27 MR. SOLYMOSI: Well, by this time we already -- there  
28 was a panel set up to make a decision on  
29 December 22nd, right --

30 MS. HUNTER: Okay.

31 MR. SOLYMOSI: -- so the original decision issued  
32 December 22nd, it was the same group of  
33 commissioners that were on that panel that were  
34 issuing this decision on January 30th, 2018.

35 MS. HUNTER: And so information about the  
36 reconsideration application was only provided to  
37 that panel?

38 MR. SOLYMOSI: Yes.

39 MS. HUNTER: All right. Can I take you to page ten  
40 ninety-six. And this appears to be an e-mail  
41 chain that starts quite a few pages back. It  
42 looks like the first -- the beginning of it is at  
43 eleven-o-three.

44 MR. SOLYMOSI: Yeah. I see this.

45 MS. HUNTER: All right. And the first -- so, the  
46 first e-mail in the chain, the -- the from and to  
47 starts on eleven-o-one. And it's from yourself.

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: Yes.

2 MS. HUNTER: And that was sent at a time when the  
3 Commission knew that both Okanagan Growers and  
4 VIFP had already provided the November 10th  
5 letter on this issue?

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17 commissioners participated in the decision.

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26 anywhere?

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33 commissioners that were on that panel that were  
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36 reconsideration application was only provided to  
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40 ninety-six. And this appears to be an e-mail  
41 chain that starts quite a few pages back. It  
42 looks like the first -- the beginning of it is at  
43 eleven-o-three.

44 MR. SOLYMOSI: Yeah. I see this.

45 MS. HUNTER: All right. And the first -- so, the  
46 first e-mail in the chain, the -- the from and to  
47 starts on eleven-o-one. And it's from yourself.

55

John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 Do you see that?  
2 MR. SOLYMOSI: At eleven-o-one.  
3 MS. HUNTER: At the bottom of the page.  
4 MR. SOLYMOSI: Yes.  
5 MS. HUNTER: The addressees appear to be Mr. --  
6 MR. SOLYMOSI: Is to -- yeah.  
7 MS. HUNTER: -- Lodder --  
8 MR. SOLYMOSI: Yeah.  
9 MS. HUNTER: -- Mr. Gerrard, Ms. Etsell, Mr. Schlacht,  
10 Mr. Reynolds, Mr. Newell, and then over the page  
11 Mr. Mormon, Mr. Reed and Mr. Guichon, do you see  
12 that?  
13 MR. SOLYMOSI: Yes, so it's the full board.  
14 MS. HUNTER: The full board.  
15 MR. SOLYMOSI: The full Commission.  
16 MS. HUNTER: Yeah.  
17 MR. SOLYMOSI: So, I'm mistaken.  
18 MS. HUNTER: Okay. Well, let's -- let's just go  
19 through the e-mail.  
20 MR. SOLYMOSI: Yeah.  
21 MS. HUNTER: And so this e-mail, the subject of it,  
22 there's -- a lot of it is redacted, but there is  
23 a conference call that's going to be scheduled?  
24 MR. SOLYMOSI: Correct.  
25 MS. HUNTER: And you're asking the commissioners to  
26 reserve the dates for the appeal?  
27 MR. SOLYMOSI: Correct.  
28 MS. HUNTER: And then if we move up the chain, a week  
29 later, eleven -- starting at eleven hundred, this  
30 is another e-mail from you to the full board?  
31 MR. SOLYMOSI: Correct.  
32 MS. HUNTER: Again, about the -- about the conference  
33 call that you're scheduling?  
34 MR. SOLYMOSI: Yes.  
35 MS. HUNTER: Then on eleven-o-- eleven ninety-eight.  
36 THE CHAIRPERSON: Ten ninety-eight?  
37 MS. HUNTER: Sorry, ten ninety-eight. Thank you,  
38 Mr. Chair.  
39 MR. SOLYMOSI: Ten ...  
40 MS. HUNTER: This is a reminder about the conference  
41 call the same day, still to the full board. Some  
42 documents appear to be linked.  
43 MR. SOLYMOSI: Yeah, correct.  
44 MS. HUNTER: I don't think those have been produced,  
45 but presumably if they needed to be they would  
46 be. There under 3.1 you have a note, "Additional  
47 updates Prokam-Thomas Fresh appeal. I have added

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 a few more documents to Dropbox that have been  
2 submitted since last Friday. I have also  
3 attached them to this e-mail. VIFP  
4 [indiscernible] Prokam agency request  
5 [indiscernible] see VMC letter to BCFIRB.  
6 Okanagan Growers reply. BCFIRB reply. To  
7 summarize, VIP and OGP support the Commission's  
8 decision. BCFIRB's position, given that the  
9 Commission intends to make a decision on the  
10 variation application on Monday, it makes sense  
11 that any stay application be heard after that  
12 date." [as read] So, this is -- this conference  
13 call, one of the topics is going to be discuss  
14 that reconsideration application, correct?  
15 MR. SOLYMOSI: Correct.  
16 MS. HUNTER: And that's a conference call with the  
17 full board?  
18 MR. SOLYMOSI: Yes.  
19 MS. HUNTER: If you go over to the next page, ten  
20 ninety-seven. There is an e-mail from the next  
21 day. Is it the next day? Three days later. I  
22 guess that was a -- it was a Friday and then --  
23 that the conference call took place and then this  
24 is on the Monday. And there's a draft Commission  
25 decision for approval from yourself?  
26 MR. SOLYMOSI: Correct.  
27 MS. HUNTER: Were notes taken at that conference call?  
28 MR. SOLYMOSI: If I had notes, I would have  
29 surrendered it.  
30 MS. HUNTER: All right. And there's no -- there's no  
31 reference here to any of the commissioners who  
32 participated in that conference call having  
33 recused themselves from this decision?  
34 MR. SOLYMOSI: There is no reference, no.  
35 MS. HUNTER: I haven't seen a reference to that  
36 anywhere. Are you aware of there being any  
37 written document reflecting a recusal?  
38 MR. SOLYMOSI: I can't recall.  
39 MS. HUNTER: I'm going to suggest to you that none of  
40 the commissioners recused themselves from this  
41 decision. Do you agree with me?  
42 MR. SOLYMOSI: I -- well, if that's your position,  
43 then --  
44 MS. HUNTER: I'm asking.  
45 MR. SOLYMOSI: -- but I can't recall.  
46 MS. HUNTER: You can't recall if they did or they  
47 didn't?

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John Newell and Andre Solymosi (for Respondent)

Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: I can't recall. Honestly, I can't  
2 recall.

3 MS. HUNTER: But if they had, you would have written  
4 it down because you appreciate that's an  
5 important piece of information to record?

6 MR. SOLYMOSI: Probably it would -- yeah, it probably  
7 would be.

8 MS. HUNTER: All right. And you have a draft here,  
9 January 29th at 5:30 p.m., and later that night  
10 you have a response from Mr. Guichon providing  
11 some comments?

12 MR. SOLYMOSI: Correct.

13 MS. HUNTER: You agree with me that Mr. Guichon is  
14 commenting because he participated in the  
15 decision, correct?

16 MR. SOLYMOSI: Correct.

17 MS. HUNTER: And then over on ten ninety-six, the next  
18 morning -- or the next afternoon you say, "I have  
19 sign off from anyone on the decision document,"  
20 and you address the comments. Do you see that?

21 MR. SOLYMOSI: Yes.

22 MS. HUNTER: And by "everyone", you mean the full  
23 board, correct?

24 MR. SOLYMOSI: Yes.

25 MS. HUNTER: All right.  
26 Now, Mr. Solymosi, I want to turn to some  
27 general questions about the potato industry. Do  
28 you agree with me that on a national scale B.C.  
29 is a relatively small player --

30 MR. SOLYMOSI: Correct.

31 MS. HUNTER: -- in the potato industry?

32 UNIDENTIFIED SPEAKER: [indiscernible]

33 MS. HUNTER: B.C. potato plantings represents  
34 somewhere less than 2 percent of the national  
35 potato plantings?

36 MR. SOLYMOSI: I would say an international scale if  
37 you include the U.S., too.

38 MS. HUNTER: Sure. It's small either way?

39 MR. SOLYMOSI: It is very small.

40 MS. HUNTER: Yes. Can I take you in the yellow book,  
41 which is Exhibit 2B, to tab 57.

42 MR. SOLYMOSI: Yes.

43 MS. HUNTER: And this is a -- a document printed from  
44 the Potato Growers of Canada, United Potato  
45 Growers of Canada's website. It reflects what  
46 they say is the source, Statistics Canada. This  
47 isn't a document -- is this a document you're

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John Newell and Andre Solymosi (for Respondent)  
Cross-exam by Ms. Hunter

1 MR. SOLYMOSI: I can't recall. Honestly, I can't  
2 recall.

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18 morning -- or the next afternoon you say, "I have  
19 sign off from anyone on the decision document,"  
20 and you address the comments. Do you see that?

21 MR. SOLYMOSI: Yes.

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23 board, correct?

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25 MS. HUNTER: All right.

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27 general questions about the potato industry. Do  
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32 UNIDENTIFIED SPEAKER: [indiscernible]

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41 which is Exhibit 2B, to tab 57.

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43 MS. HUNTER: And this is a -- a document printed from  
44 the Potato Growers of Canada, United Potato  
45 Growers of Canada's website. It reflects what  
46 they say is the source, Statistics Canada. This  
47 isn't a document -- is this a document you're

Marcel Andre Solymosi  
Cross-exam by Cnsl C. Hunter

- 1 A Can you repeat that, please?
- 2 Q The implication in your evidence was that the  
3 BCfresh commissioners, Mr. Guichon, Mr. Gerrard  
4 and Mr. Reynolds, did not participate in the  
5 January 30th, 2018 decision not to vary the  
6 direction to BCfresh, correct?
- 7 CNSL R. HIRA: With respect, he can't speak to the  
8 implication of his evidence. What --
- 9 CNSL C. HUNTER: What do you mean?
- 10 CNSL R. HIRA: What he can speak to is whether or not  
11 they participated.
- 12 A Do you have the minutes on that meeting?
- 13 CNSL C. HUNTER:
- 14 Q No minutes have been produced, but I -- what I  
15 will show you -- I just want to confirm first,  
16 what is your evidence? Is your evidence that the  
17 BCfresh commissioners participated in the  
18 decision not to vary the direction to BCfresh?
- 19 A No, it would have been the same commissioners  
20 that were just made on the December 22nd meeting.
- 21 Q So excluding the BCfresh commissioners who had  
22 recused themselves from the final decision,  
23 correct?
- 24 A To the best of my recollection that would be the  
25 case.
- 26 Q All right. I'm going to take you to an email  
27 chain starting on page -- the top of the chain is  
28 starting on page 1518 -- or, I'm sorry, 1517, I  
29 believe.
- 30 CNSL R. HIRA: There is a lengthy document that does  
31 from 1516 to 1523.
- 32 CNSL C. HUNTER: That's the one.
- 33 CNSL R. HIRA: I'm going to put the entire document  
34 in front of the witness.
- 35 CNSL C. HUNTER: That's fine, and I'm going to start  
36 at the -- so that the top of the chain, so the  
37 end of the chain, is on 1516 but I'm going to ask  
38 you questions starting at the beginning, which I  
39 believe is on 1520. That's 1521. The part that  
40 I'm going to ask about starts on 1520/21.
- 41 Q So starting on the bottom of the page of 1520  
42 onto 1521 there's an email chain starting from  
43 you to the full commission on January 18, 2018;  
44 do you see that?
- 45 A Correct.
- 46 Q And the first agenda item on the email it says  
47 conference call Friday January 26th at 1:00 to

1           2:00 p.m. and it says, the second bullet:  
2

3           Most of the discussion is to be on the 2017-  
4           12-22 orders issued by the commission and a  
5           letter received from Prokam legal.  
6

7           Do you see that?

8           A     Correct.

9           Q     And that's being sent to the full commission?

10          A     That is correct.

11          Q     And then I'm going to ask we move up to the next  
12          email the next day, Friday, January 19th, again  
13          to the full commission, see that?

14          A     Correct.

15          Q     Confirming the conference call January 26th. See  
16          that?

17          A     That's correct.

18          Q     And again repeating:

19  
20                 The main discussions regarding a letter  
21                 received from Prokam legal. The commission  
22                 will need to reply to the letter. I have  
23                 indicated we will reply by Monday, January  
24                 29th.  
25

26           And there's documents for the meeting provided in  
27           the Dropbox link; do you see that?

28           A     Correct.

29           Q     And then moving up the chain, there's a portion  
30           that's redacted. And then this is on Friday,  
31           January 26th in the morning:  
32

33                 Just a reminder about the conference call  
34                 today at 1:00 p.m.  
35

36           And you see again this is sent to the full  
37           commission, including Mr. Guichon, Mr. Reynolds  
38           and Mr. Gerrard?

39           A     Correct.

40           Q     And the -- there's an additional item noted or  
41           additional update:  
42

43                 Prokam and Thomas Fresh appeal, I have added  
44                 a few more documents to the Dropbox that  
45                 have been submitted since last Friday. I  
46                 have also attached this email. They're  
47                 indicated to be VIFP reply, Prokam agency

1 request, BCVMC letter to BCFIRB, OGP  
2 reply..

3  
4 That's Okanagan Grown Produce reply:

5  
6 ...Prokam agency request and BCFIRB reply,  
7 Thomas Fresh Prokam letter.

8  
9 Do you see that?

10 A Correct.

11 Q And the bullet says:

12  
13 To summarize VIFP and OGP, support the  
14 commission's decision.

15  
16 A Correct.

17 Q And this is being provided to the full  
18 commission, including those commissioners who had  
19 already recused themselves.

20 A It appears so.

21 Q And then moving up the chain, on January 29th,  
22 this is attaching a draft decision for approval:

23  
24 Can you each reply to this email approving  
25 or suggesting edits to the text prepared  
26 that relays the decision made by the private  
27 commission on Friday, January 26th.  
28 Attached is draft document. Legal invited  
29 Prokam to a non-prejudice meeting that's  
30 separate to this discussion. This is not  
31 part of the decision document but has been  
32 offered. I'll send a separate email  
33 regarding this request once I have approval  
34 from all commissioners on this document. I  
35 will forward the final copy to legal to  
36 distribute and hope to be able to do this  
37 tomorrow morning.

38  
39 Do you see that?

40 A Correct.

41 Q And I'm going to suggest to you this -- that that  
42 email was sent to the full commission, including  
43 those commissioners who have recused themselves?

44 A It appears so, yes.

45 Q Is that a reply from Mr. Guichon on Monday,  
46 January 29th at 10:24 p.m. that night:

47

1 Looks good, Andre. Paragraph 5 a little  
2 confusing. OGP doesn't come out and say no  
3 to Prokam but thinks BCfresh is best suited  
4 to handle the volume and the problems in the  
5 past. Maybe that's how Lillian feels. I  
6 haven't seen any of the comments between you  
7 and her, but it could leave a window of hope  
8 for Prokam to go to OGP --  
9

10 Question mark, question mark. Do you see that?

11 A That is correct.

12 Q And so Mr. Guichon had participated in the  
13 conference call on the 26th, correct?

14 A Correct.

15 Q And he was provided comments on the decision,  
16 correct?

17 A That's correct.

18 Q He was -- the commission wanted to ensure there  
19 was no window of hope that Prokam could market  
20 through a different agency?

21 A It appears from those words.

22 Q And Mr. Guichon here was asking you to make clear  
23 that the only agency Prokam could market through  
24 is BCfresh?

25 A Correct.

26 Q He participated in the decision of January 30th,  
27 2018?

28 A Can you repeat that?

29 Q He participated in the decision of January 30th,  
30 2018?

31 A Correct.

32 Q And just to finish the chain, this is your  
33 response to everyone, including Mr. Guichon, Mr.  
34 Gerrard and Mr. Reynolds:

35  
36 I have sign-off from everyone on the  
37 decision document. I have made the word  
38 changes submitted by Mike. Regarding  
39 Peter's comments on paragraph 5, the  
40 paragraph is a direct quote from the letter  
41 submitted by Lillian OGP. I will need to  
42 keep as is. In my discussion with Lillian  
43 when the letter was submitted, it was clear  
44 that the agency has no interest in  
45 supporting Prokam. The agency supports the  
46 commission and views the decision as the  
47 best option to enhance orderly marketing.

1  
2 A Correct.  
3 Q And -- and so you provided this information to  
4 all commissioners who participated in the  
5 decision, correct?  
6 A To all commissioners, correct.  
7 Q Yes. And all commissioners had participated in  
8 this decision, correct?  
9 A Yes.  
10 Q Thank you. Now, you gave evidence on Wednesday  
11 that you did not reach out to Prokam before  
12 issuing the cease and desist orders, correct?  
13 A That's correct.  
14 Q And you never spoke to Thomas Fresh either,  
15 correct?  
16 A That is correct.  
17 Q You never spoke to Prokam or Thomas Fresh during  
18 the show cause process, correct?  
19 A That is correct.  
20 Q You spoke to IVCA representatives only prior to  
21 the cease and desist orders being issued?  
22 A That is correct.  
23 Q You sent Mr. Meyer a draft of the cease and  
24 desist order?  
25 A Correct.  
26 Q You told him if he cooperated, his licence would  
27 be safe?  
28 A No.  
29 Q You told him not to tell Prokam about the  
30 investigation?  
31 A Correct.  
32 Q You said during your interview with hearing  
33 counsel that you didn't speak to Prokam because  
34 you were primarily investigating IVCA; is that  
35 correct?  
36 A Can you repeat that, please?  
37 Q You were in your interview report, the interview  
38 you did with hearing counsel, you said that the  
39 reason you didn't speak to Prokam was because you  
40 were primarily investigating IVCA. Were you  
41 primarily investigating IVCA?  
42 A Correct.  
43 Q I'm going to suggest to you that your  
44 investigation of IVCA lasted less than 24 hours  
45 and after that, you were primarily investigating  
46 Prokam; do you agree?  
47 A No. We were investigating IVCA and the reason

John Newell (a witness)  
Cross-exam by Cnsl R. Androsoff

1 minutes of questions if that would be  
2 permissible.

3 THE CHAIR: Yes, I did make a note of the time and  
4 we'll give you two more minutes.

5 CNSL R. ANDROSOFF: Thank you, Mr. Chair.

6 Q Mr. Newell, you recall that there was a meeting  
7 of the commission held on January 26th of 2018;  
8 is that right?

9 A Yes.

10 Q And the purpose of that meeting was to discuss  
11 and deliberate on Prokam's application to vary  
12 the commission's direction of it to BCfresh;  
13 correct?

14 A Yes.

15 Q And do you recall that Mr. Reynolds, Mr. Guichon,  
16 and Mr. Gerrard were present at that meeting and  
17 participated in the discussion?

18 A I don't recall them being involved in that  
19 discussion.

20 Q Do you recall that they were present on the  
21 conference call.

22 A I think they were initially present on the  
23 conference call.

24 Q And when you say, "initially," what do you mean?

25 A Any discussion around this, particularly at that  
26 time, would have had -- Mr. Guichon himself would  
27 always recuse himself, and that's consistent very  
28 much to do with anything with Prokam, and the  
29 other two would follow.

30 Q I'm going to suggest to you that Mr. Guichon and  
31 Mr. Gerrard and Mr. Reynolds did not recuse  
32 themselves from the discussion at this  
33 January 26th, 2018 conference call meeting. Do  
34 you agree?

35 A I can't remember exactly. I'd have to look at  
36 the minutes. I always remember that Peter was  
37 never involved in any of the discussions post  
38 2017 due to his conflicts.

39 Q Okay. I'm going to show you Exhibit 1, try to  
40 anyway. And I'm on page 1517, and I'm showing  
41 you an email from Mr. Guichon to Mr. Solymosi and  
42 you and the other commissioners dated  
43 January 29th, 2018. Do you see that?

44 A I do.

45 Q And I'm wondering if this refreshes your  
46 recollection that Mr. Guichon did, in fact,  
47 participate in that decision.

John Newell (a witness)  
Cross-exam by Cnsl R. Basham

1 A It does.

2 Q Yeah, it was an email vote; correct? That's how  
3 that decision was made?

4 A I believe it was an email vote, now, that I see  
5 it.

6 Q And you'll agree with me that Mr. Guichon did  
7 participate and didn't recuse himself; correct?

8 A If I can read for one moment.

9 Q Yes, please do.

10 A It seems he did participate.

11 Q Okay.

12 A Within an email string, that's for sure.

13 CNSL R. ANDROSOFF: Okay. Thank you, Mr. Newell.

14 Mr. Chair, those are my questions for  
15 Mr. Newell.

16 THE CHAIR: Thank you, Mr. Androsoff. We're at lunch,  
17 now, for 12:10. Mr. Newell, we're going to come  
18 back at 1:10.

19 THE WITNESS: Okay.

20 THE CHAIR: And we'll continue with your  
21 cross-examinations, so just a reminder that  
22 you're under oath and during the break you should  
23 not be discussing your testimony with anyone.

24 THE WITNESS: Okay.

25 THE CHAIR: All right.

26 THE WITNESS: Thank you, Mr. Chair.

27 THE CHAIR: Thank you. We're off the record. We'll  
28 be back at 1:10.

29

30 **(WITNESS STOOD DOWN)**

31 **(PROCEEDINGS RECESSED AT 12:09 P.M.)**

32 **(PROCEEDINGS RECONVENED AT 1:10 P.M.)**

33

34 THE CHAIR: Mr. Mitha, I assume we're going to  
35 Ms. Basham.

36 CNSL N. MITHA: That's correct.

37 THE COURT: All right. Thank you. Ms. Basham.

38

39

**JOHN NEWELL, a  
witness, recalled.**

40

41

42 **CROSS-EXAMINATION BY CNSL R. BASHAM:**

43 Q I'm Rose-Mary Basham and I represent MPL and I  
44 have some questions for you.

45 You've already said that you considered MPL  
46 to be a competitor of yours. I have a few  
47 questions about that. First of all, is your

120

Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 correct?  
2 A About the qualifications?  
3 Q Yes.  
4 A No.  
5 Q Okay. And, in any event, you don't recall  
6 participating in a discussion about the relative  
7 merits of any agency versus -- versus another as  
8 an appropriate home for Prokam, correct?  
9 A No.  
10 Q And -- and you wouldn't have participated in --  
11 in a meeting about that given your role at  
12 BCfresh?  
13 A No.  
14 Q That would be a conflict of interest?  
15 A That's right.  
16 Q Now, paragraph 41, it says, "If Prokam wishes to  
17 argue that they should be directed to another  
18 agency, it may make such a submission and the  
19 Commission will give it due consideration. The  
20 submission is also to address the questions and  
21 considerations the Commission had reflected upon  
22 in making their choice." [as read] Do you see  
23 that?  
24 A Yes.  
25 Q And you're aware that Prokam did later argue that  
26 they should be directed to another agency?  
27 A They argued that? No, I wasn't part of that. Is  
28 it in here?  
29 Q I'm going to take you to it in a minute --  
30 A Okay.  
31 Q -- but are -- are you aware of that, that Prokam  
32 did -- did follow this advice in paragraph 41 if  
33 they wished to be directed to another agency  
34 other than BCfresh, it might make submissions and  
35 the Commission would give it due consideration?  
36 A No, I wasn't.  
37 Q You're not aware of that?  
38 A No.  
39 Q Okay. And you're -- you're not aware of the  
40 decision that was made by the Commission that  
41 Prokam should stay with BCfresh?  
42 A Yeah, I'm aware of that.  
43 Q You -- you are aware of that?  
44 A Yes.  
45 Q All right.  
46 A That was a decision.  
47 Q All right. All right. But you didn't participate

121

Peter Guichon (for Appellants)

Cross-exam by Ms. Hunter

1 in that decision, I take it?  
2 A No.  
3 Q All right. And because you had recused yourself  
4 already by this point and -- and you didn't  
5 unrecuse yourself, or you -- in respect of the  
6 issues about which agency was most appropriate  
7 for Prokam?  
8 A Yeah, I -- I had none of those discussions.  
9 Q Okay. I think you mentioned yesterday you hadn't  
10 talked to the other commissioners in about four  
11 months because of this issue?  
12 A That's right.  
13 Q And I take it that's because there were appeals  
14 that had been filed and -- and the issue was  
15 still sort of live as to whether there might be  
16 some change in the decision?  
17 A Yes, once the panel was struck to deal with this  
18 issue, that was it, I haven't had any  
19 communication with anyone.  
20 Q All right. Can I take you to page ten  
21 seventy-seven.  
22 A Okay.  
23 Q And -- and this is a letter dated January 17,  
24 2018, from my office and it says, "We write  
25 further to the decision of the Commission dated  
26 December 22nd ordering Prokam Enterprises to  
27 transfer and to sign a GMA with BCfresh in  
28 paragraph 4 of the decision inviting a  
29 submission --"  
30 A Excuse --  
31 Q "-- from Prokam."  
32 A Excuse me, what -- what page are you talking  
33 about?  
34 Q I'm sorry, I'm on ten seventy-seven.  
35 A Oh, ten seventy-seven. I'm sorry. I was at ten  
36 twenty-seven. Okay.  
37 Q And this is a letter from my office further to  
38 paragraph 41 of the decision. Do you see that in  
39 the first paragraph?  
40 A You're talking about the letter in ten  
41 seventy-seven?  
42 Q Yeah.  
43 A Yeah. I see it.  
44 Q Okay.  
45 A I haven't read it, but ...  
46 Q All right. But it wasn't a decision that -- that  
47 you reviewed -- or, sorry, it wasn't a letter

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

- 1 A Yes. I see that.  
2 Q So you had an opportunity to review those  
3 materials in the week between January 19th and  
4 the January 26th meeting; correct?  
5 A Whatever was in the Dropbox at that time, yes.  
6 Q And the email indicates that the main discussion  
7 is a letter received from Prokam legal?  
8 A Yes.  
9 Q And you knew at that time that you should recuse  
10 yourself from discussion of the letter received  
11 from Prokam legal and the commission's response;  
12 correct?  
13 A I didn't participate in any talk about that.  
14 Q You knew ahead of the January 26th meeting that  
15 that was an item from which you should recuse  
16 yourself; correct?  
17 A Yes, and I did -- I wasn't the only member that  
18 recused myself.  
19 Q Sorry. That last comment was in relation to the  
20 January 26th, 2018 meeting. You weren't the only  
21 member that recused yourself?  
22 A That's correct.  
23 Q Who else recused themselves?  
24 A Pardon?  
25 Q Who were the other members who recused  
26 themselves?  
27 A Mr. Gerrard did for sure. It was a bit -- I was  
28 travelling in my truck, and it was noisy, and  
29 most conference calls are a bit noisy, but I do  
30 recall him recusing himself.  
31 Q And I think your evidence on Wednesday was you  
32 weren't certain whether you were heard recusing  
33 yourself because it was noisy?  
34 A Yes. I did say that.  
35 Q And so do I take it that there wasn't  
36 confirmation by the chair or recording secretary  
37 or anyone else that they had heard you say that  
38 you were recusing yourself?  
39 A I don't know if they heard it or not.  
40 Q But you heard Mr. Gerrard recuse himself?  
41 A Yes, I did.  
42 Q And perhaps others? Or is that the only other  
43 member who recused themselves?  
44 A I don't know if Mr. Reynolds did or not. They  
45 said it was noisy. I couldn't hear everything,  
46 but I did hear Mr. Gerrard.  
47 Q Now, if I take you to the item 3.1, it's mostly

Peter Guichon (a witness)  
In chief by Cnsl K. McEwan

1 just abstained from voting.

2 Q All right.

3 A And there was a lot of noise -- there was a lot  
4 of noise, that was a conference call. There was  
5 a lot of noise so I don't know whether it was  
6 Debbie Etsell's first meeting as chair but I  
7 don't know whether it couldn't be heard that I  
8 recused myself but I think there was other  
9 members that recused themselves too. I'm not  
10 100 percent sure but that's what I heard.

11 CNSL K. MCEWAN: Chair Donkers, I've reached the point  
12 where if we could break and I could reserve  
13 10 minutes for myself on Friday morning, and I  
14 would greatly appreciate that accommodation.

15 THE CHAIR: Let's do that, Mr. McEwan, thank you very  
16 much. So, Mr. Guichon, you're going to come back  
17 Friday morning for 9:00 A.M. And until that time  
18 you're under direct examination so you can, you  
19 know, you can chat with your legal counsel, but  
20 you shouldn't be or can't be discussing your  
21 testimony with anyone else. And so with that, I  
22 guess the only other in closing today, I do want  
23 to talk a little bit about Friday's agenda, if I  
24 might. So recall Mr. McEwan raised it earlier  
25 today, my ruling on March 18 with respect to  
26 timelines and I continue to be concerned as to  
27 the witness the last couple of days about  
28 cross-examination.  
29

30  
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- 1 A Yes. I see that.
- 2 Q So you had an opportunity to review those  
3 materials in the week between January 19th and  
4 the January 26th meeting; correct?
- 5 A Whatever was in the Dropbox at that time, yes.
- 6 Q And the email indicates that the main discussion  
7 is a letter received from Prokam legal?
- 8 A Yes.
- 9 Q And you knew at that time that you should recuse  
10 yourself from discussion of the letter received  
11 from Prokam legal and the commission's response;  
12 correct?
- 13 A I didn't participate in any talk about that.
- 14 Q You knew ahead of the January 26th meeting that  
15 that was an item from which you should recuse  
16 yourself; correct?
- 17 A Yes, and I did -- I wasn't the only member that  
18 recused myself.
- 19 Q Sorry. That last comment was in relation to the  
20 January 26th, 2018 meeting. You weren't the only  
21 member that recused yourself?
- 22 A That's correct.
- 23 Q Who else recused themselves?
- 24 A Pardon?
- 25 Q Who were the other members who recused  
26 themselves?
- 27 A Mr. Gerrard did for sure. It was a bit -- I was  
28 travelling in my truck, and it was noisy, and  
29 most conference calls are a bit noisy, but I do  
30 recall him recusing himself.
- 31 Q And I think your evidence on Wednesday was you  
32 weren't certain whether you were heard recusing  
33 yourself because it was noisy?
- 34 A Yes. I did say that.
- 35 Q And so do I take it that there wasn't  
36 confirmation by the chair or recording secretary  
37 or anyone else that they had heard you say that  
38 you were recusing yourself?
- 39 A I don't know if they heard it or not.
- 40 Q But you heard Mr. Gerrard recuse himself?
- 41 A Yes, I did.
- 42 Q And perhaps others? Or is that the only other  
43 member who recused themselves?
- 44 A I don't know if Mr. Reynolds did or not. They  
45 said it was noisy. I couldn't hear everything,  
46 but I did hear Mr. Gerrard.
- 47 Q Now, if I take you to the item 3.1, it's mostly

Peter Guichon (a witness)  
Exam by Cnsl N. Mitha

1 Mr. Guichon -- more importantly, Mr. Guichon, but  
2 also me just to see that I now have a tie on.  
3 THE CHAIR: Yes. We can see you both. So,  
4 Mr. Guichon, my name is Peter Donkers, as you  
5 know. We're acquainted and I'm the presiding  
6 member on this panel. I'm also the chair of the  
7 Farm Industry Review Board. So I'm going to ask  
8 you to affirm your testimony after which I'm  
9 going to ask you to, for the record, to give us  
10 your full name and spell your last name, okay?

11  
12 **PETER GUICHON, a**  
13 **witness, affirmed.**  
14

15 CNSL N. MITHA: Good afternoon, Mr. Guichon. We've  
16 spoken before so I'm going to ask you some  
17 questions. If there's anything you don't  
18 understand or you can't hear me, please stop me  
19 and ask me -- to let me know that you can't hear  
20 or understand and I'll rephrase the question so  
21 that you can provide us an answer.  
22

23 **EXAMINATION BY CNSL N. MITHA:**

24 Q Sir, you were a member of the commission from  
25 approximately 1993 to 2021?

26 A Yes.

27 Q And you also have been on the board of BCfresh  
28 and, I believe, you're on the board from 1992 to  
29 about 2009; is that right?

30 A Yeah. I believe it was 2008.

31 Q 2008, okay. And then subsequently, you're on the  
32 board -- you became the board chair again in  
33 2015; is that right?

34 A No. I think the board chair, 2012 at BCfresh.

35 Q All right, 2012. All right. And you were the  
36 board chair of BCfresh through 2016 and 2017?

37 A Yes.

38 Q And 2018 as well?

39 A Yes.

40 Q In terms of your relationship to BCfresh, other  
41 than being the chair, you also own approximately  
42 4 percent of the shares of BCfresh?

43 A Yes.

44 Q And your family in total owns about 21 percent of  
45 the shares of BCfresh?

46 A Yes.

47 Q So you'd agree with me that Guichon family

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

1 the general manager that put the binder together.

2 Q You received a binder on the subjects of the  
3 meetings before the meetings; correct?

4 A Yes.

5 Q And they contained briefing notes from staff or  
6 correspondence relating to agenda items for you  
7 to review in advance of the meetings?

8 A Yes.

9 Q And your general practice was to review the  
10 briefing packages in advance of the meetings?

11 A Yes.

12 Q You did your best to be prepared for the board  
13 meetings?

14 A Yes.

15 Q And if there was an agenda item where information  
16 in the board package that you didn't understand,  
17 your practice was to ask questions of the chair  
18 or the general manager to ensure you could  
19 participate in the commission's decision-making?

20 A Yes.

21 Q And prior to voting on a resolution, there was  
22 always an opportunity to discuss the motion?

23 A Yes.

24 Q And prior to voting on a motion, there was always  
25 an opportunity to ask questions to ensure you  
26 understood the issue that you were voting on?

27 A Yes. And you're relating to this back in  
28 2006/2008?

29 Q Yes.

30 A Yes.

31 Q And when minutes were included in the board  
32 packages for approval, you reviewed the minutes,  
33 and if you noted any inaccuracies, you would  
34 advise the chair or secretary of the commission  
35 so they could be amended?

36 A If I recognized it, yes.

37 Q I'm going to take you back to your interview  
38 summary with Mr. Mitha at page 5314 of Exhibit 1.  
39 And the highlighted portion below, question 14:

40

41 Everyone thought that C and D orders were  
42 within commission jurisdiction. I don't  
43 know if the commission sought a legal  
44 opinion before issuing a cease and desist  
45 orders. At the time, I didn't know what  
46 gazetting even meant. I had heard about  
47 that back in 2012. Since that time, I

1                   thought the commission had jurisdiction over  
2                   anything grown in BC and sold anywhere.

3  
4                   See that?

5           A        Yes.

6           Q        And is that accurate?

7           A        No.

8           Q        Okay.

9           A        I heard what I said 2012. It should have been  
10           prior to that.

11          Q        Was that a reference to the 2002 decision that  
12           you've been referring to as the I5 decision?

13          A        No. It says:

14  
15                   At the time, I didn't know what gazetting  
16                   ever meant.

17  
18                   I heard of that back in 2012. That should have  
19                   been probably 2007 or '08.

20          Q        Okay. So when you say:

21  
22                   At the time, I didn't know what gazetting  
23                   even meant.

24  
25                   What time are you talking about?

26          A        I would say, right when the -- we started getting  
27           minutes regarding the kerfuffle back east. It  
28           would be 2006 -- wherever I saw the word  
29           "gazetting" for the first time. I didn't  
30           understand what it meant or the ramifications of  
31           it.

32          Q        And when you say:

33  
34                   Everyone thought that cease and desist  
35                   orders were within commission jurisdiction.

36  
37                   And then in the next line at the bottom:

38  
39                   I thought the commission had jurisdiction  
40                   over anything grown in BC and sold anywhere.

41  
42                   Do I understand your evidence that that  
43                   understanding came from the 2002 decision of  
44                   Mr. Justice Drost?

45          A        Yes. That, and then when it was appealed, it  
46           went to the BC Court of Appeal, and two or three  
47           judges there found that Judge Drost's decision

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

- 1 was in their favour or in the commission's  
2 favour, I should say.
- 3 Q And tell me what --
- 4 A Not since that, it was beyond that -- beyond the  
5 2008, the hearing that Mr. Leroux and Mr. Collins  
6 and Mr. Hrabinsky attended. Beyond that, our  
7 legal counsel was of the firm belief that --
- 8 CNSL K. MCEWAN: I'm sorry, Mr. Chair. And Ms. Hunter  
9 certainly wasn't asking for an answer as to what  
10 legal counsel was advising, but I think in  
11 fairness, it should be shut off without that  
12 answer.
- 13 THE CHAIR: Correct. Thank you, Mr. McEwan.
- 14 THE WITNESS: Okay.
- 15 CNSL C. HUNTER:
- 16 Q Mr. Guichon, do I understand that it was the  
17 decision of Justice Drost and then the court of  
18 appeal decision that gave you the view from which  
19 you took the view that the commission had  
20 jurisdiction over anything grown in BC and sold  
21 anywhere?
- 22 A No. Not just that.
- 23 Q All right. What other information, and I'm not  
24 asking about advice from counsel, but what other  
25 information did you have that in 2017 on which  
26 you relied in forming the view that the  
27 commission had jurisdiction over anything grown  
28 in BC and sold anywhere?
- 29 A The pricing calls that happen every Tuesday  
30 between 2009 and 2017, the commission general  
31 manager -- and there was two or three different  
32 ones through that period of time -- along with  
33 the agency managers set the minimum prices for --  
34 and we were not, to my knowledge, we were not  
35 relying on the federal orders; we were relying on  
36 the provincial orders, which the purpose was to  
37 regulate BC grown product in BC and sold  
38 wherever.
- 39 Q All right. And the idea that you were not  
40 relying on the federal orders; you were relying  
41 on the provincial orders. Tell me what that view  
42 was based on?
- 43 CNSL K. MCEWAN: Other than legal advice?
- 44 Q Yes, other than legal advice.
- 45 A Well, other than legal advice, well, the general  
46 manager, obviously, talks to legal, and that was  
47 our -- that was our take on the advice we had.

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

1 And FIRB was involved, parts of it, so they being  
2 our superior, we heard nothing from anybody that  
3 said that we were operating offside.

4 Q Now, you mentioned the episode when Mr. Leroux  
5 and Mr. Hrabinsky attended at a parliamentary  
6 meeting in Ottawa. That occurred in March of  
7 2008, and you were on the commission then;  
8 correct?

9 A Yes.

10 Q And you were aware of that event occurring at the  
11 time; correct?

12 A I wasn't aware of the details, but what was in  
13 our minutes, I was aware of.

14 Q You were aware that they went to Ottawa to give  
15 evidence at a joint parliamentary committee?

16 A Yes.

17 Q And on the subject of whether the commission was  
18 acting properly in collecting levies without a  
19 federal order?

20 A I didn't know the details, but the first set of  
21 minutes I saw back in that time, there was an  
22 excerpt in there that said we may -- may be able  
23 to be challenged.

24 Q I'm going to take you to Exhibit 5, page 121.  
25 This is a letter to Mr. Janelle at Farm Products  
26 Council; it's copied at the bottom to Tom Demma,  
27 and this received December 27th, 2007 stamp is  
28 Mr. Demma's stamp, as I understand it. First of  
29 all, have you seen this letter before?

30 A No. Just in the book of documents that's here.

31 Q Okay. Now, the first paragraph says:

32  
33 The above-mentioned instrument was again  
34 before the joint committee at its meeting of  
35 December 13th, 2007. At that time, members  
36 noted that more than 19 months after the  
37 absence of any valid order of the British  
38 Columbia Vegetable Marketing Commission  
39 fixing and imposing levies on persons  
40 engaged in the production for or marketing  
41 of vegetables in interprovincial or export  
42 trade was identified. No such order has yet  
43 been put in place. Thus the commission  
44 apparently continues to collect levies in  
45 respective vegetables marketed outside the  
46 province in the full knowledge that in doing  
47 so, it is acting illegally.

- 1 had the authority to set export levies they could  
2 also set prices for export of potatoes; is that  
3 right?
- 4 A In the written decision, it said, levies and  
5 interprovincial pricing.
- 6 Q Okay. So, sir, there was a bunch of evidence  
7 given by George Leroux in this hearing about the  
8 fact that there were parliamentary committee  
9 meetings in 2008, in March 2008 where there was  
10 discussion about setting of levies,  
11 extraprovincial levies. You were on -- you were  
12 a member of the commission in 2008; right?
- 13 A Yes.
- 14 Q Do you recall that being a big issue at the time  
15 in 2008?
- 16 A No. I don't recall it being an issue at all. We  
17 got a set of minutes, I think it was sometime in  
18 2006, and it was just a year after the other  
19 decision. And I don't know how it came about,  
20 but in our minutes there was just -- there was  
21 just a small section on that part of the meeting  
22 that said that we may be -- we may, that's what  
23 it says, may be able to be challenged on what it  
24 is.
- 25 Q Okay. I just want to go to that if you just give  
26 me a moment. I'll pull that up, just give me a  
27 second. All right. Sir, I'm going to take you  
28 to this document. Let me just enlarge it so that  
29 we got that. Can you see this document, sir?
- 30 A Yes.
- 31 Q And you'll see the heading is "Minutes of BC  
32 Vegetable Marketing Commission Regular Meeting  
33 held September 7, 2006"?
- 34 A Yes.
- 35 Q All right. And I'm just going to take you to --  
36 so it says, "BC Vegetable Marketing Commission  
37 Notice of Meeting and Agenda" and it sets out  
38 various items that are going to be discussed; do  
39 you see that?
- 40 A Yes.
- 41 Q And it indicates that George Leroux, the chair  
42 was there and indicates that you attended?
- 43 A Yes.
- 44 Q I'm going to take you to item 3.4. Sir, you'll  
45 see item 3.4?
- 46 A Yes.
- 47 Q It says, "federal orders." Do you see that?

Peter Guichoin (a witness)  
Cross-exam by Cnsl C. Hunter

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Peter Guichoin (a witness)  
Re-exam by Cnsl K. McEwan

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Do you see that?

A Yes.

Q And then there's a note, front page number 3,  
front page, 2005:

Supreme Court of Canada's decision on  
commission authority and for BC Vegetable  
order Canada Gazette, part 2.

See that?

A Yes.

Q And I'm going to suggest to you that there was a  
discussion as a commission on the question of  
whether the commission had authority to set  
minimum export prices. Do you recall that?

A No, I don't. When would that be?

Q I'm going to suggest that Mr. Solymosi was  
circulating these documents because there was to  
be a meeting about the cease and desist orders.  
And these documents 3 and 4 relating to pricing  
authority on interprovincial and exports were to  
be discussed at that meeting and they were.

CNSL K. MCEWAN: Objection, Mr. Chairman. Mr. Guichon  
asked to be directed to the time of this, and I  
think he should be given that, the date of it.

THE CHAIR: Ms. Hunter.

CNSL C. HUNTER: I don't know. There are -- there's a  
note in one meeting that may be the conversation,  
but I don't know when it occurred. I'm asking  
Mr. Guichon if it did.

THE WITNESS: I don't recall a discussion. I see this  
was sent out, but I don't recall a discussion  
about the issues there.

CNSL C. HUNTER:

Q Okay. The note that I have seen, and I will take  
you to it, in case it assists. You know what, I  
think it's going to take too long to do that.

Thank you, Mr. Guichon. Those are my questions.

THE CHAIR: Thank you, Ms. Hunter. Mr. McEwan.

CNSL K. MCEWAN: Yes, I have just a few questions for  
Mr. Guichon in reply.

**RE-EXAMINATION BY CNSL K. MCEWAN:**

Q Mr. Guichon, you understand that kind of  
stripped -- stripped away from a lot of the  
verbiage that you're essentially being -- you're

1 Q And, of course, it doesn't say evidence submitted  
2 by Prokam or Thomas Fresh, right, just IVCA?

3 A Correct.

4 Q And that wasn't surprising to you because you  
5 knew that Mr. Solymosi and IVCA were cooperating  
6 with respect to the investigation; right?

7 A Correct.

8 Q Now, it says later in that sentence:

9

10 Docs 3 and 4 are related to pricing  
11 authority on interprovincial and exports.

12

13 Do you see that there?

14 A I do, yes.

15 Q And these documents were being included, to your  
16 understanding, because there was a concern that  
17 setting the export minimum prices required the  
18 commission to exercise its federal regulatory  
19 authority; right?

20 A Correct.

21 Q And there was a concern that the commission might  
22 not have complied with legal requirements for the  
23 exercise of that federal authority. Was that  
24 your understanding?

25 A Yes.

26 CNSL K. MCEWAN: Objection. Concern by who, please?

27 CNSL R. ANDROSOFF: A general concern on the part of  
28 the commission. I'm happy to clarify the  
29 question.

30 Q Did you understand, Mr. Reed, that the reason  
31 that Mr. Solymosi was forwarding these documents  
32 is because there had been a general concern  
33 communicated by Mr. Solymosi or discussed between  
34 you and the other commissioners that the  
35 commission might not have complied with the legal  
36 requirements for the exercise of the federal  
37 authority to set minimum pricing?

38 A I believe there was concern about whether or not  
39 when it was interprovincial it was required to be  
40 gazetted, and that's why it was included in the  
41 evidence.

42 Q And in or around October of 2017, you recall  
43 there being discussion between you and the other  
44 commissioners about the existence of this  
45 concern; is that right?

46 A It was brought up at some point about the  
47 interprovincial, yes.

1 Q And I want to draw your attention to what he says  
2 about documents three and four related to pricing  
3 authority on interprovincial and exports. Do you  
4 see that?

5 A Yes.

6 Q And Mr. Solymosi is forwarding a Dropbox link and  
7 two of those documents, he says, are related to  
8 pricing authority on interprovincial and exports;  
9 correct?

10 A Yes.

11 Q And was it your understanding that these  
12 documents were being included because there had  
13 been a concern discussed in October 2017 amongst  
14 the commissioners, including you, that setting  
15 the export minimum prices required the commission  
16 to exercise its federal regulatory authority?

17 A This was very confusing, quite frankly, to the  
18 commission because traditionally we had always  
19 been told by previous managers and previous  
20 commissioners and others that the commission had  
21 authority to set a minimum price for any product  
22 grown in British Columbia whether it went to an  
23 export market or not.

24 And that was our understanding years ago in  
25 the greenhouse business because the BC Vegetable  
26 Marketing Commission put an interim minimum  
27 pricing order on greenhouse products during US  
28 tomato trade action against Canadian tomatoes  
29 and -- years ago. And so we -- a lot of us were  
30 under the assumption that the commission had that  
31 authority.

32 Q Okay. I don't think that answered my --

33 A I said, informed -- misinformed of course.

34 Q I don't think that quite answers my question. My  
35 question is, was it your understanding that these  
36 documents were being included by Mr. Solymosi  
37 because there had been discussion in October 2017  
38 amongst the commissioners, including you, of a  
39 concern that setting the export minimum prices  
40 required the commission to exercise its federal  
41 regulatory authority?

42 A Yes.

43 Q Okay. And do you recall in October 2017 that  
44 there is discussion amongst the commissioners,  
45 including you, that there was a concern that the  
46 commission might not have complied with the legal  
47 requirements for the exercise of that authority?

John Newell (a witness)  
Cross-exam by Cnsl R. Androsoff

1 A Yes.

2 Q Okay. And do you recall that Mr. Guichon was  
3 president during those discussions?

4 A That he was present?

5 Q Yes.

6 A Yes.

7 Q Now, I'm going to move ahead in Exhibit 1 to page  
8 1410. Do you see that up there on your screen?

9 A Yes.

10 Q Do you have a recollection of receiving this  
11 email from Mr. Solymosi on November 28th, 2017?

12 A I don't. Obviously I received it. I'm copied on  
13 it. But I don't recall this one. I did see it  
14 up when I was on earlier with -- when you were  
15 talking to Mike Reed about it. It's the first  
16 I've seen this.

17 Q Well, it may be the first that you recall seeing  
18 it, but I do know that you saw it in 2018 because  
19 I was there when it was shown to you?

20 A Yeah, yeah, yeah.

21 Q But I just want to ask you here about bullet  
22 point number 2, and this is Mr. Solymosi writing.  
23 He says:

24

25 As of Friday, I finally have all the  
26 information needed from IVCA for the  
27 commission to review and make decisions on  
28 the cease and desist orders. I have  
29 attached a letter I sent to them after the  
30 storage crop agency managers meeting held on  
31 November 7th. Last Friday they sent the  
32 information to confirm that the stated facts  
33 are correct.

34

35 Do you see that?

36 A I do.

37 Q And this would have been consistent with your  
38 understanding at the time that the commission and  
39 IVCA were cooperating with respect to the  
40 investigation against Prokam and Thomas Fresh;  
41 correct?

42 A Yes.

43 Q And then Mr. Solymosi says:

44

45 Note that Prokam (and IVCA to protect their  
46 interest) has already appealed the C and D  
47 orders, and the prehearing call is scheduled