

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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

**REPLY SUBMISSIONS OF BAJWA FARMS LTD.**

**Dean Dalke  
DLA Piper (Canada) LLP  
2800 – 666 Burrard Street  
Vancouver, BC V6C 2Z7  
Tel. No. 604.643.6369  
Email [dean.dalke@dlapiper.com](mailto:dean.dalke@dlapiper.com)**

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1. The submissions of Mr. Solymosi, the Commissioners, and BC Fresh misconceive the submissions of Bajwa Farms and ignore the actual evidence of Messrs. Solymosi and Driediger.
2. The submissions of Mr. Solymosi are inconsistent with his own evidence. At paragraph 59, Mr. Solymosi argues that he cannot be held responsible for what others put in their emails, but Mr. Solymosi testified that Mr. Driediger called him by phone before sending his September 18, 2020 email, and Mr. Solymosi asked Mr. Driediger to repeat the contents of their telephone conversation in Mr. Driediger's September 18 email. Mr. Solymosi did not ask Mr. Driediger to leave out of his email the fact that Bob Dhillon was Nupinder's brother.<sup>1</sup>
3. In paragraph 59 Mr. Solymosi argues that Mr. Dhillon's name in the email was due to Mr. Dhillon's litigious history. This ignores that Mr. Dhillon's litigation was against the Commission. Mr. Dhillon's relationship to Nupinder Bajwa should have been irrelevant to a request from Harjeet Bajwa.
4. Mr. Solymosi's argument at paragraph 63 that he was entitled to rely on information from Mr. Driediger without scrutiny ignores the context of the information in issue here. The information from Mr. Driediger on November 3, 2020 that the cabbage was owned by Van Eekelen conflicted with the information that: Mr. Driediger previously told Mr. Solymosi (that the cabbage was grown by Harjeet); Mr. Solymosi heard from Harjeet; and Mr. Solymosi presented to the

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<sup>1</sup> Mr. Solymosi TR Feb 10, p. 24, line 3 to p. 25, line 6

Commissioners about the ownership of the cabbage. Yet according to Mr. Solymosi, he simply accepted Mr. Driediger's new information about the cabbage ownership on November 3, 2020 without question or surprise.<sup>2</sup>

5. At paragraph 5, Mr. Solymosi argues he was not a decision maker, but it was indeed Mr. Solymosi who decided that the cabbage belonged to Van Eekelen, and that Van Eekelen could have market access for the cabbage despite not being properly licensed.
6. Mr. Solymosi argues he did not interfere with Bajwa Farms' delivery allocation in any way. This misconceives Bajwa Farms' submissions and ignores the fact that Mr. Solymosi assisted BC Fresh, Van Eekelen and Harjeet in finding a way to provide market access for the cabbage in a way that avoided the need to contact Nupinder, all while bending the Commission's general orders to do so.<sup>3</sup> Mr. Solymosi ignored any interest Bajwa Farms had in the cabbage even when it was clear from Mr. Driediger's September 18 email that Nupinder would have asserted an interest on behalf of Bajwa Farms had she been asked about it.
7. The Commissioners also misunderstand the submissions of Bajwa Farms (see paragraph 135). Bajwa Farms does challenge the Commission's decisions to accept the cabbage as being produced by Van Eekelen and licensing Van Eekelen to market that cabbage.<sup>4</sup> While those decisions were not made by the Commissioners, those decisions were made by Mr. Solymosi, acting as general manager of the Commission.<sup>5</sup>
8. Mr. Solymosi declined to put the contested ownership of the cabbage to the Commissioners, instead simply taking Mr. Driediger's word for it. In so doing,

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<sup>2</sup> Mr. Solymosi TR Feb 10, p. 6, lines 7 to 10 and 34 to 37, p. 8, lines 41 to 46, p. 9, lines 32 to 47 and p. 10, lines 1 to 14

<sup>3</sup> Mr. Solymosi TR Feb 9, p. 149, lines 38 to 42; Mr. Solymosi TR Feb 10, p. 7, lines 31 to 42, p. 30, lines 2 to 16

<sup>4</sup> See e.g., Bajwa Farms' Closing Submissions, paras. 124, 127 and 131

<sup>5</sup> Mr. Driediger TR Mar 29, p. 12, line 22 to p. 13, line 8, but compare with Mr. Solymosi TR Feb 10, pp. 5 and 6

Mr. Solymosi, acting for the Commission, favoured the interests of one private party at the expense of another, with no good or objective reason.

9. There is also no merit to the Commissioners' argument at footnote 162 of their submissions that Bajwa Farms is pursuing an argument that conflicts with the argument of Prokam. The General Orders require a producer to obtain a licence before planting a regulated crop. The General Orders do not prevent a producer from producing more than the producer's delivery allocation.
10. The BC Fresh submissions criticize Bajwa Farms' submission for lacking evidence that Bajwa Farms owned the cabbage. That criticism misses the point of this supervisory review.<sup>6</sup> The purpose of the supervisory review is not to determine ownership of the cabbage, but rather to determine whether the Commission acted in bad faith, based on personal animus, in disregarding Bajwa Farms' interests.
11. There is ample evidence of that: BC Fresh and the Commission did not bother contacting Nupinder at all in their machinations to grant market access to Harjeet and Van Eekelen for the cabbage, even after the November 6, 2020 letter from Bajwa Farms' lawyers to the Commission and BC Fresh.<sup>7</sup>
12. The submissions of BC Fresh ignore and are inconsistent with the evidence of Mr. Driediger, and they presume the very issue the Commission was to determine according to Mr. Driediger: the ownership of the cabbage.

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<sup>6</sup> There is in any case sufficient evidence to support Bajwa Farms' claims to the cabbage, or to market access for the cabbage: Harjeet was a director of Bajwa Farms, he grew the cabbage on Van Eekelen lands that were previously leased to Bajwa Farms, but not in the 2020/21 growing season. As a result, Bajwa Farms could not grow cabbage in the 2020/21 season. See generally paragraphs 6 to 14 of the *Closing Submissions of Bajwa Farms Ltd.*

<sup>7</sup> Common Book of Documents, p. 4561

13. Mr. Driediger's evidence was that he expected the Commission to engage in some due diligence to determine the ownership of the cabbage.<sup>8</sup> No such diligence ever occurred. The BC Fresh submissions assert, as fact, that the cabbage was owned by Van Eekelen, but the Commission simply took Mr. Driediger's word for that, even though Mr. Driediger said he expected the Commission to engage in some due diligence to determine ownership.

### Costs

14. Bajwa Farms wishes to respond to the submissions of the Commission, also filed on June 17, 2022, in which the Commission asks the FIRB to award costs against the complainant participants.
15. There is simply no merit to the Commission's argument on costs and Bajwa Farms reserves the right to respond more fully to that submission if the FIRB were inclined to consider it further. The Commission recognized that there is no express jurisdiction on the part of the FIRB to award costs of a supervisory review, and the Commission's attempt to find such jurisdiction in other provisions is without merit.
16. It would be particularly inappropriate to award costs against Bajwa Farms in circumstances where the FIRB initiated this proceeding as part of its supervisory jurisdiction over the Commission, and invited industry stakeholders to raise allegations similar to those set out in its May 26, 2021 notice.<sup>9</sup> The complainant parties' participation in this supervisory review assisted the FIRB in discharging its supervisory review, and they should not be penalized for doing so. Awarding costs against complainant participants would have a chilling effect that would not foster the objectives of the supervisory review process established under section

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<sup>8</sup> Mr. Driediger TR Mar 28, p. 149, line 32 to p. 150, line 1 and p. 159, lines 14 to 18; Mr. Driediger TR Mar 28, p. 161, line 43 to p. 162, line 9; Mr. Driediger TR, Mar 29, p. 2, lines 16 to 26

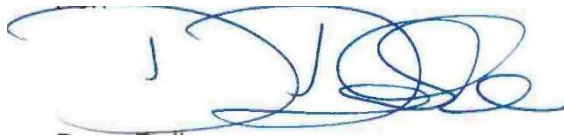
<sup>9</sup> [https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/current-supervisory-reviews/2021\\_may\\_26\\_notice\\_of\\_supervisory\\_review.pdf](https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/current-supervisory-reviews/2021_may_26_notice_of_supervisory_review.pdf) see page 5

7.1 of the *Natural Products Marketing (BC) Act*. It would also amount to changing the goal posts after the fact, since the rules for this proceeding contain no provisions regarding costs.

17. Bajwa Farms notes that Mr. Solymosi admitted that he was willing to bend the Commission's rules to afford Harjeet and Van Eekelen market access for cabbage.<sup>10</sup> As stated in the FIRB May 36, 2021 notice, "[the FIRB] is specifically empowered to investigate where it has reason to believe the Commission or one of its actors is not adhering to or enforcing the provisions of its scheme (*Regulation*, s. 4.1)."<sup>11</sup> Bajwa Farms' participation in this hearing brought to light that the Commission afforded market access to Harjeet and Van Eekelen even though they had not complied with the Commission's General Orders.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

June 17, 2022



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Dean Dalke  
Counsel for Bajwa Farms Ltd.

**DLA Piper (Canada) LLP**  
2800 Park Place - 666 Burrard Street  
Vancouver, BC V6C 2Z7

Telephone: 604.643.6369  
Email: [dean.dalke@dlapiper.com](mailto:dean.dalke@dlapiper.com)

CAN: 40689137.3

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<sup>10</sup> See Bajwa Farms' Closing Submissions, paras. 106 to 119

<sup>11</sup> See footnote 9, above, pages 4 to 5