BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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

Closing Argument of Hearing Counsel

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Overview

1. I will begin by discussing the scope and focus of the Supervisory Review as described and discussed by the BC Farm Industry Review Board Panel ("Panel") in the terms of reference and subsequent decisions.

2. I will then discuss the specific allegations made by the complaint participants.

3. Next, I discuss some legal principles which should inform the Panel's approach to the allegations.

4. The bulk of the submission will address evidence relating to each of the complainant participants' allegations, the responses provided by the participants accused of wrongdoing, and what conclusions should be drawn from that evidence.

5. I have focused on the allegations, the responses to the allegations and the evidence which surrounds the allegations and responses. I have considered but not set out significant portions of the testimony on collateral matters. For example, much of the evidence of Mr. Terry Michell and some of the evidence of Mr. Alfred Krause was not directly relevant. Significant portions of the evidence of even the main witnesses delved into collateral matters or into issues of credibility. I have only dealt with such evidence where it is directly relevant to the allegations made and responses to them.

6. In sum, it is the position of hearing counsel that there is no cogent evidence to support any of the very serious allegations in the terms of reference. The evidence amounted in the main to no more than the speculation of the complainant participants, and insufficient evidence emerged to support the inferences that the Panel is asked to make, notwithstanding extensive cross-examination of multiple witnesses.

Scope and Focus of Supervisory Review

7. The Panel, in its Final Terms of Reference ("FTOR"), ordered a supervisory review ("Review") pursuant to section 7.1 of the *Natural Products Marketing (BC) Act*

("NMPA") into allegations of bad faith and unlawful activity raised in court filings alleging misfeasance of public office by members and staff of the BC Vegetable Marketing Commission ("Commission").

8. The FTOR described the scope and focus of the Review and the allegations to be considered as follows:

> a. The Commission's exercise of powers to direct producers to agencies and the issuance of new agency licenses in a manner that is designed to further the self interest of members of the Commission, including:
>
> > i. Self-interested prevention of new agencies from entering the British Columbia market to further the Commission members' economic interests, by both failing to adjudicate agency license applications, and preventing the granting of additional production allocation to growers thought to be aligned with applicants;
> >
> > ii. Collusion by members to 'vote swap' on agency applications; and
> >
> > iii. Self-interested direction of producers to agencies in which the Commission members have a financial or personal interest.
>
> b. Commission members and staff exercising or failing to exercise statutory duties in bad faith, for improper purposes, and without procedural fairness due to a personal animosity toward at least one producer, specifically Prokam.

9. In a January 25, 2022 decision, the Panel discussed the scope and focus of the Review as follows:

> It appears from the submissions before me that there is broad agreement between the participants that the initial focus of the supervisory review must be on the allegations raised by Prokam and MPL in their notices of civil claim (along with the allegations made by Bajwa Farms in this review), and in turn the responses of those accused of wrongdoing. (page 2)
>
> As discussed at the outset, the focus of this supervisory review is on the specific allegations that have been advanced by the complainant participants and the evidence that supports them. (page 7)

10. As a result of the nature and scope of the Review, it is necessary to closely examine the allegations made by each of the complaint participants.

Allegations Made by Prokam

11. In its Notice of Civil Claim ("Prokam NOCC"), Prokam alleges that Mr. Peter Guichon and Mr. Andre Solymosi exercised powers conferred to them in a manner that constituted misfeasance in public office.

12. The allegations in the Prokam NOCC against Mr. Guichon include:

    a. He exercised his powers as Vice Chair of the Commission to approve the Cease & Desist Order made against Prokam in October 2017 ("C&D Order") in bad faith and for improper purposes, namely to protect and advance his own economic interests as a BC Fresh grower and shareholder and his fellow BC Fresh growers' economic interests, and to harm the economic interests of Prokam. Mr. Guichon's exercise of his statutory powers concerning the C&D Order was motivated by malice he felt for Prokam and Prokam's principal, Mr. Bob Dhillon.

    b. Mr. Guichon knew, or alternatively was reckless or wilfully blind to the fact that the Export Minimum Pricing Orders were invalid and that there was no lawful basis for the issuance of the C&D Order.

    c. In participating in the discussion and deliberations that preceded the Commission's Show Cause Decision and in the Variation Decision, Mr. Guichon acted in bad faith and for improper purposes to protect and advance his own economic interests as a BC Fresh grower and shareholder and his fellow BC Fresh growers' economic interests, and to harm the economic interests of Prokam. Mr. Guichon's exercise of his statutory powers concerning the C&D Order was motivated by malice he felt for Prokam and Prokam's principal, Mr. Bob Dhillon.

    d. Alternatively, Mr. Guichon was reckless or wilfully blind to the fact that his personal interests as the BC Fresh chair and a shareholder and director of BC Fresh rendered him ineligible to participate in the Show Cause Decision and the Variation Decision or the discussions and deliberations that preceded them.

13. The Prokam NOCC alleges that Mr. Solymosi is a public officer by virtue of his role as General Manager of the Commission exercising powers conferred and performing duties imposed by legislation which were delegated to him by the Commission.

14. Prokam alleges that Mr. Solymosi:

    a. carried out an investigation of whether Prokam had violated the Export Minimum Pricing Orders in bad faith and that Mr. Solymosi had predetermined that Prokam was a “rogue producer” that needed to be punished;

    b. intentionally failed to provide Prokam the opportunity to be heard orally and to contribute to the evidentiary record that he provided to the IVCA and to the managers of other agencies at an Agency managers’ meeting;

    c. failed to disclose to Prokam all of the evidence which was put before the Commission in connection with the Show Cause Decision;

    d. knew or was reckless or wilfully blind to the fact that the Export Minimum Pricing Orders were invalid because of his failure to cause the Commission to adhere to the Registration and Gazetting Requirements and that, as a result, the C&D Order delivered to Prokam was invalid.

15. In its submission to hearing counsel dated July 23, 2021, Prokam summarizes the allegations raised in its NOCC and considers the main issues in the Review, as against Mr. Guichon and Mr. Solymosi, as follows:

> (i) The state of the actual or constructive knowledge of former Messrs. Guichon and Solymosi of the requirement that the Commission “gazette” and register orders in order to validly regulate interprovincial trade;
>
> (ii) Evidence that Mr. Solymosi’s investigation of Prokam was motivated by and carried out with the improper purpose of creating an evidentiary record consistent with his predetermination that Prokam was a “rogue producer”;
>
> (iii) Evidence that Mr. Guichon was motivated by personal self-interest or the interests of BC Fresh or its growers in participating in decisions adverse to Prokam; and

(iv) BCfresh commissioners were motivated by self-interest in seeking to avoid or delay the licensing of a second lower mainland storage crop agency.

16. Prokam acknowledges that the first three of the above areas relate to the Prokam Claim while the fourth area relates to the terms of reference and perhaps the Mastronardi Claim, but not the Prokam Claim.

Allegations Made by MPL

17. In its Notice of Civil Claim, (“MPL NOCC”) MPL British Columbia Distributors Inc (“MPL”) alleges that the following persons acted in a manner that constitutes misfeasance of public office: John Newell, Mike Reed, Corey Gerrard, Blair Lodder, Peter Guichon and Andre Solymosi.

18. The key allegations against the above named individuals are described in paragraph 23 of the MPL NOCC. In summary, the allegations are that:

   a. all of the above persons failed to recuse themselves from the decision-making process in respect of MPL’s application for a 2021 agency designation despite conflicts of interest;

   b. all of the above persons ignored, and failed to apply, the clear criteria outlined in the General Orders for evaluation of agency applications in making the determination to decline MPL’s BC’s agency application;

   c. the defendants, John Newell and Mike Reed, have entered into an agreement with the defendants Corey Gerrard, Blair Lodder, and Peter Guichon, to improperly circumvent the Commission’s conflict of interest policy, whereby the defendants, Corey Gerrard, Blair Lodder and Peter Guichon, will vote as requested by the defendants, John Newell and Mike Reed, on matters related to greenhouse crops in exchange for the agreement of votes from John Newell and Mike Reed in relation to storage crop matters, without regard to the criteria under the General Orders.

Allegations Made by Bajwa Farms

19. The allegations made by Bajwa Farms are set out in its submission to hearing counsel dated July 23, 2021. In summary, the allegations are that:

    a. the Commission acted in bad faith, without procedural fairness, and based on personal animosity on the part of certain Commissioners and/or the Commission's general manager; and

    b. members of the Dhillon family have been treated unfairly as a result of animus toward Bob Dhillon and Prokam, and the Commission has dealt with cabbage delivery allocations or cabbage producer licenses in a way that is not impartial and not consistent with best practices.

Summary of Allegations

20. It is noteworthy that Prokam and MPL specifically allege misfeasance in public office. The complaint of Bajwa Farms does not specifically allege misfeasance, but rather alleges conduct which constitutes bad faith, conduct which is without procedural fairness, and is not impartial or not consistent with best practices.

21. It is not for the Panel to determine whether the tort of misfeasance in public office has been established; rather its task is to determine whether there is evidence to support the specific allegations in the FTOR. However, the jurisprudence on misfeasance in public office provides some helpful guidance as to how this Panel should approach its consideration of the very serious allegations advanced by the complainant participants.

Jurisprudence on Misfeasance

22. Courts have commented on the general nature of the tort of misfeasance, noting that claims for damages for misuse of public power must be advanced, scrutinized and resolved with caution and restraint. The reason is that the tort is intended to provide redress for egregious intentional misconduct and not for what may be, at worst, maladministration, official incompetence or bad judgment. In *Rain Coast Water Corp. v. British Columbia*, 2019 BCCA 201; leave to appeal dismissed: [2109] SCCA No.321 ("*Rain Coast")*, Justice Dickson stated at paragraph 3:

> The appeal raises issues of procedural fairness, limitations and the requirements of proof of serious allegations of wrongdoing against public officers in the discharge of their duties. Primarily fact-driven, it serves to remind all concerned that claims for damages for the misuse of public power by dissatisfied citizens must be advanced, scrutinized and resolved with caution and restraint. As Justice Newbury explained in *Powder Mountain Resorts Ltd. v. British Columbia*, 2001 BCCA 619, the tort of misfeasance in public office provides redress for egregious intentional misconduct, not for what may be, at worst, maladministration, official incompetence or bad judgment in the execution of public duties. For this reason, when addressing claims of misfeasance in public office, the courts strike a careful balance between curbing unlawful behaviour by governmental officials, on the one hand, and, on the other, protecting those charged with making decisions for the public good from unmeritorious claims by those adversely affected by their decisions.

23. At paragraph 108 in *Rain Coast,* the Court also cautioned that an allegation that a public official abused his or her office for an ulterior motive **is an extremely serious claim and proof commensurate with the seriousness of the alleged wrong is required**.

24. Finally, the Court noted at paragraphs 144 and 150 that misfeasance in public office is among **the most egregious of tortious conduct and it carries with it, the "stench of dishonesty"**. As a result, the ambit of the tort is narrow and proof of the requisite mental element must be commensurate with the seriousness of the wrong alleged.

25. Further because misfeasance in public office is an intentional tort, the actions and motivations of each individual actor involved must be considered separately.

26. As explained by the Court beginning at paragraph 152, the tort of misfeasance in public office has two distinct branches commonly referred to as Category A and Category B misfeasance. The two branches share common elements: (i) **deliberate unlawful conduct by a public officer** in the exercise of his or her powers; and (ii) **knowledge that the unlawful conduct is likely to injure the plaintiff**.

27. In *Powder Mountain Resorts Ltd. v. British Columbia,* 2001 BCCA 619, ("*Powder Mountain")* the British Columbia Court of Appeal discussed the court of misfeasance of public office. In that case, Powder Mountain Resorts Ltd. ("PMR") was negotiating with the Lands Ministry about the possibility of developing a winter sports facility at

Powder Mountain. PMR had provided a proposal and the Ministry had responded to the proposal stating it was deficient.

28. During the course of negotiations, another company, Callahan Resorts, submitted its own proposal for the ski area. The Lands Ministry ceased negotiating with PMR and commenced negotiating with Callahan Resorts without informing PMR that Callahan Resorts had provided a proposal. For various reasons, PMR alleged that the Province and various individuals, including the Premier, acted with misfeasance in public office.

29. In *Powder Mountain,* between paragraphs 64 and 70, the Court of Appeal discussed the two branches of the tort. The first branch (Category A) involves conduct specifically intended to injure a person or persons. It involves an official's **deliberate use of the power of his office to injure the plaintiff. This conduct is actuated by malice**. In the first branch, the tort could be proven even if the official's act lay within his power, viewed objectively. That is, he can still be found liable in the sense that he has acted in bad faith for an improper or ulterior motive, or to gain a private advantage.

30. The second branch of the tort (Category B) is more complex. The plaintiff must prove that the public official purported to exercise a power he or she did not have, or otherwise **acted unlawfully, or omitted to do a legally required act**. As the court summarized at paragraph 69:

> The authorities are consistent, then, with the proposition that the second branch of the port requires an illegal act or excess of power on the public official's part.

31. Finally, at paragraph 70, the Court noted that the tort must strike a balance between enlisting tort law to combat executive and administrative abuse of power and not allowing public officers to be assailed by unmeritorious actions. That balance is struck on the second branch of the tort by the requirement for an unlawful act on the part of the official: otherwise, any who suffers loss or damage due to a valid act of government would have a cause of action.

32. Accordingly, the following points should be considered by the Panel in addressing the allegations before it:

    a. they are of the most serious nature;

    b. there must be a finding of intentional wrongdoing and/or malice or intentional unlawful conduct;

    c. there must be evidence commensurate with the seriousness of the allegations.

33. The allegations made by Prokam and MPL can be properly characterized as allegations of corruption. Therefore, in this submission, I will refer to the allegations as corruption rather than misfeasance or any other terms.

34. It is also important to consider the allegations made in the context of the various proceedings that occurred prior to the allegations of misfeasance being advanced, to which I turn next.

Context of Proceedings Prior to Misfeasance Allegations

Context Relevant to Prokam

35. On October 10, 2017, the Commission issued the C&D Order to Prokam (Ex. 1, p. 1165). There were two other C&D orders issued on the same day, one against Thomas Fresh Inc. ("Thomas Fresh") and one against Island Vegetable Growers Association ("IVCA").

36. The Commission set up a "show cause" hearing to consider whether the C&D Orders should be upheld.

37. All parties, including Prokam, had the opportunity to make submissions to the Commission regarding the C&D Orders: (Ex. 1, p. 1341). In its submission, Prokam argued that no action pertaining to its license is appropriate in respect of the conduct raised by the C&D Orders for three reasons:

a. the sales at issue are interprovincial and took place outside of British Columbia;

b. Prokam entered into sale transactions based on an understanding that the Commission did not purport to regulate minimum price sales for BC potatoes in Alberta and Saskatchewan; and

c. there is no sound marketing policy that would support a decision of the Commission to impose a minimum price on sale of BC potatoes in Alberta and Saskatchewan.

38. On December 22, 2017, the Commission, after considering submissions from relevant parties, issued its decision (Ex. 1, p. 1382). The Commission upheld the C&D Orders and made various other orders including that BC Fresh is to be the designated Agency for Prokam and Prokam is to sign a GMA with BC Fresh; and Prokam's Class I Producer License is to be revoked and replaced with a Class 4 license.

39. On January 4, 2018, Prokam filed a notice of appeal of the December 22, 2017 Commission decision (Ex. 1, p. 1423). Prokam advanced its appeal on various grounds including that: the Commission had no jurisdiction to regulate interprovincial potato sales; the Commission's decision was contrary to the principles of procedural fairness; and the order designating BC Fresh as the designated agency for Prokam did not accord with principles of sound marketing policy or procedural fairness.

40. Prokam sought: an order the Commission's December 22, 2017 decision be vacated; a declaration that the interprovincial sale of potatoes at a market price below the minimum price set for sales within British Columbia is permitted; and orders reinstating Prokam's Class I license and permitting Prokam to negotiate and sign a GMA with the agency of its choice.

41. On January 25, 2018, Prokam applied to the Commission to vary the order requiring Prokam to sign a GMA with BC Fresh (Ex. 1, p. 1508).

42. On January 30, 2018. the Commission issued its decision denying Prokam's variance application, stating that BC Fresh was the best agency to monitor Prokam and maintain orderly marketing. However, the Commission extended the deadline for Prokam to sign a GMA with BC Fresh (Ex. 1, p. 1513).

43. On February 9, 2018, Prokam applied to the BC Farm Industry Review Board ("BCFIRB") seeking a stay of the Commission's decision requiring it to enter into a GMA with BC Fresh. On February 14, 2018, BCFIRB issued a decision denying Prokam's application for a stay of the Commission's decision (Ex. 1, p. 1769).

44. BCFIRB held a hearing on Prokam's appeal of the Commission December 22, 2017 decision. The hearing occupied 8 days: April 3-5, May 22-24 & June 13 and 14, 2018. On February 18, 2019, BCFIRB handed down its decision on Prokam's appeal (Ex. 1, p. 4104).

45. BCFIRB made various findings including that the Commission did not have authority to set interprovincial pricing without complying with the federal *Statutory Instruments Act* (which requires the Commission to register and gazette before it can set prices for interprovincial trade).

46. BCFIRB considered whether to overturn the C&D Orders because the Commission's December 22, 2017 decision relied, to some degree, on the Commission's belief that it had the authority to apply minimum pricing to interprovincial trade. However, BCFIRB did not reverse the C&D Orders because as it explained, at paragraph 52:

> However, we also note that this case involves a very complex set of facts, interconnected parties, challenging relationships, deficient administrative processes and some remaining findings against Prokam in respect of DA issues (discussed below). We further note that a full review of the materials presented to us makes clear that the conduct of Prokam and/or its officers was not beyond reproach.

47. Accordingly, instead of reversing the C&D Orders and the Commission's December 22, 2017 decision, BCFIRB referred various matters back to the Commission for reconsideration, but required the Commission to canvass the parties' views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration.

48. On April 23, 2019, the Commission wrote to all parties to solicit their views concerning the composition of the commission panel to be struck for the purposes of reconsidering the issues which BCFIRB sent back to the panel for reconsideration (Ex. 1, p. 4143).

49. Prokam made submissions on the composition of the panel (Ex. 1, p. 4144), and the Commission, after hearing submissions from all of the parties, constituted the panel for reconsideration (Ex. 1, p. 4145). No one suggested at the time that the panel selected was in any way biased or otherwise improper.

50. The Commission also sought written submissions on the four issues which BCFIRB required it to reconsider (Ex. 1, p. 4145).

51. On May 10, 2019, Prokam provided its submissions in response to the four issues (Ex. 1, p. 4151), and on May 24, 2019 provided a reply submission in response to submissions made by other parties (Ex. 1, pp. 4163).

52. On November 18, 2019, after considering submissions from all the parties, the Commission issued its reconsideration decision (i.e., reconsideration of its December 22, 2017 decision).

53. The Commission altered some of its December 22, 2017 decisions. For example, instead of issuing Prokam a class IV license, the decision was made to issue Prokam a Class III license. Further, Prokam was given various options concerning BC Fresh acting as its agency.

54. On November 20, 2019, Prokam appealed the Commission's November 18, 2019 reconsideration decision. That appeal is still pending (Ex. 1, p. 5596, para. 9).

55. In September 2019, BCFIRB established a supervisory review to consider the following issues: perception of bias and potential conflict of interest in Commission decision-making; the Commission's oversight of agencies who exercise delegated legislated authorities to fulfil their role in the regulated vegetable marketing system; and certain aspects of the Commission's storage crop Delivery Allocation orders and management.

56. On December 22, 2020, BCFIRB issued its Review Decision concerning the above matters (Ex. 1, p. 4698).

Context Relevant to MPL

57. On June 28, 2019, the Commission imposed a moratorium on all applications for agency and producer/shipper status until the Commission completed its Strategic Review and Agency Review. On March 4, 2020, MPL formally notified BCFIRB it intended to apply for an agency licence and requested participant status in the 2020 Vegetable Review.

58. On September 10, 2020, MPL submitted its agency application to the Commission (Ex. 1, p. 4441).

59. On October 21, 2020, BCFIRB made a decision directing the Commission to lift its moratorium on new agency licenses (Ex. 1, p. 4475). However, BCFIRB also noted in its decision that the Commission had some flexibility on dealing with its agency process and stated:

> The panel recognizes that the Commission may wish to enhance its Agency application process to reflect some of the concerns identified in the supervisory review by the Commission and sector members. The panel is of the view the Commission's authority and General Orders provide a degree of flexibility. If the Commission is of the view that there are new criteria or process steps which could or should form part of the agency application process, it may wish to adopt a transitional policy until such time as the Commission determines if rule changes are required to finalize and agency accountability framework. That is a decision for the Commission to make.

60. On October 27 and 28, 2020, MPL requested that the Commission process MPL's agency application and confirm that the Commission would extend the October 31, 2020 deadline for greenhouse producers to transfer from one agency to another (Ex. 1, pp. 4481 and 4485).

61. On October 30, 2020, the Commission responded to MPL's request stating that it would process MPL's agency application in due course but would not be extending the October 31, 2020 deadline as requested (Ex. 1, p. 4518).

62. On November 24, 2020, MPL filed an appeal to BCFIRB of the Commission's October 30, 2020 decision (Ex. 1, p. 4651).

63. There were various submissions exchanged concerning MPL's appeal (Ex. 1, pp. 4684, 4758, 4774). In its submission, MPL argued, *inter alia,* that there were procedural fairness concerns which included delay in processing the MPL Agency application; bias on the part of John Newell; that the Commission was ignoring whether members had prejudged the application; and a failure by the Commission to take steps to ensure that members who had a perceived or real conflict of interest recused themselves.

64. MPL also argued that the Commission's failure to remove its moratorium on all Agency applications was contrary to sound marketing policy.

65. On January 20, 2021, BCFIRB dismissed MPL's appeal (Ex. 1, p. 4783). In its reasoning, BCFIRB noted, among other things, that while there was delay in lifting the moratorium on agency applications, that is the reality of operating within a regulated industry.

66. On March 15, 2021, after completion of its review, the Commission enacted Amending Order 54 amending agency application requirements.

67. On May 27, 2021, the Commission received MPL's amended application, which was amended to comply with Amending Order 54.

68. On August 21, 2021, the BCFIRB issued an order as to the Commission panel composition to consider the MPL amended application as part of this supervisory review.

69. On December 21, 2021, the Commission issued a decision approving MPL's application and requesting BCFIRB's prior approval under section 8 of the *Natural Products Marketing (BC) Act Regulations*.

Prokam's Evidence Against Mr. Solymosi

70. Prokam's NOCC, its July 23, 2021 submission, and the evidence of Mr. Dhillon all make clear that there are three allegations against Mr. Solymosi: the first is that he

engaged in an improper investigation in the fall of 2017, which led to the C&D Orders. The allegation is that he had a predetermined and improper negative view of Prokam, and conducted a sham investigation, in order to arrive at the decision to recommend that the Commission issue a C&D order against Prokam. As part of this allegation, it is also claimed that Mr. Solymosi improperly shared information with IVCA (such as the draft C&D orders) and gave IVCA assurances that he would protect their agency license if IVCA provided the Commission with information to implicate Prokam. It is alleged that all of this was done intentionally to harm Prokam.

71. The second allegation is that he intentionally failed to provide Prokam with a fair hearing and opportunity to be heard. Key to this allegation is that Mr. Solymosi was involved in convincing agency managers to write a letter to the Commission implicating Prokam and provided this letter to the Commission in the context of the Commission's consideration of its December 22, 2017 decision, but failed to inform Prokam of the existence of this letter, and failed to provide Prokam the opportunity to respond to this letter before the Commission made its December 22, 2017 decision.

72. The third allegation against Mr. Solymosi is that he knew or ought to have known that the export minimum pricing orders which were set by the Commission were invalid, such that the C&D Orders were also invalid and should not have been issued to Prokam.

73. I deal with each of the above in turn.

Improper Investigation by Mr. Solymosi Leading to the C&D Order Against Prokam

74. As a starting point, it should be noted that Mr. Solymosi is not a Commission member and does not have the authority to make decisions about issuing any orders. He can make recommendations to Commission members and Commission members are empowered to make decisions.

75. Having said that, it is recognized that the evidence established that as the general manager of the Commission, Mr. Solymosi's recommendations had significant weight.

76. Mr. Solymosi's investigation of Prokam's conduct in the fall of 2017 must also be examined in the context in which it was occurring. As will be discussed below, the context was that there had been a number of concerns raised about Prokam and its agency IVCA from the spring through to the fall of 2017.

77. Also important to the context is that the principal of Prokam, Bob Dhillon, was also a director of IVCA, the agency through which Prokam marketed its potato crop.

78. On April 5, 2017 there was an agency managers' meeting (Ex. 1, p. 820) where there was discussion about, among other things, production and delivery allocations ("DA") and marketing of new or additional productions by existing agencies.

79. On May 18, 2017, Mr. Solymosi sent an email (Ex. 1, p. 838) to various persons including Mr. Dhillon discussing the April 5 meeting, noting that there was going to be enforcement on producers who produce far in excess of their DA without prior approval from the Commission. It was also noted that there was going to be enforcement upon agencies that did not comply with Commission policy and the General Orders.

80. Attached to the email was a letter dated May 18, 2017, which also summarized what was discussed at the agency managers meeting (Ex. 1, p. 838). The letter set out in some detail the discussions about DAs and complying with the General Order and also described in some detail the penalties for any agency or grower that deliberately grew volumes in excess of their DA. Mr. Dhillon acknowledged in his evidence that he understood at the time that the May 18 letter made clear that the Commission was taking a strict approach to issues concerning DA (Transcript of B. Dhillon, February 3, 2022, p. 51, ll. 25-34) (Transcript Extract Book ("TEB"), Tab 1).

81. On June 14, 2017, Mr. Solymosi sent an email and letter to IVCA and Prokam (Ex. 1, p. 846). The letter commenced by stating that there was a need to hold Prokam and IVCA accountable for DA. The letter went on to discuss two critical components of orderly marketing, one being minimum price and the other being compliance with DA.

82. The June 14, 2017 letter set out clearly the Commission's view that IVCA and Prokam had failed to comply with Prokam's DA for the 2016/2017 crop year. There was a clear warning notice issued to Prokam and IVCA that the Commission intended to monitor Prokam and IVCA's non-compliance with various matters including DA.

83. The last page of the letter also set out that failure to comply could result in the cancellation of a Producers License.

84. Mr. Dhillon acknowledged in his evidence that the June 14, 2017 letter was accurate when it stated that Prokam had shipped significantly in excess of its DA (Transcript of B. Dhillon, February 3, 2022, p. 53, ll. 27-40) (TEB, Tab 2).

85. Prokam and IVCA responded to the June 14, 2017 letter by letter dated July 10, 2017 (Ex. 1, p. 891). In his evidence at the hearing, Mr. Dhillon essentially denied that he had been involved in preparing the response letter and suggested that he simply signed it without reading it closely. Mr. Dhillon suggested he was relying on the agency to deal with the response (Transcript of B. Dhillon, February 3, 2022, pp. 55-60) (TEB, Tab 3).

86. The evidence of Mr. Bob Gill was that he prepared the July 10 letter, and the board of directors of IVCA, including Mr. Dhillon, went over it line by line, changes were made, and the letter was then finalized (Transcript of B. Gill, February 7, 2022, pp. 100-101) (TEB, Tab 4). In other words, contrary to Mr. Dhillon's testimony, Mr. Dhillon knew exactly what the letter contained at the time it was written and sent.

87. When Mr. Dhillon was taken through the specific contents of the letter at the hearing, he acknowledged that he agreed with significant portions of the content of the July 10, 2017 letter (Transcript of B. Dhillon, February 3, 2022, pp. 60-67) (TEB, Tab 5).

88. Mr. Dhillon admitted that the July 10, 2017 letter was critical of the Commission and that it was Prokam's position that Prokam had done nothing wrong and that the Commission was incorrect in its allegations set out in the June 14, 2017 letter (Transcript of B. Dhillon, February 3, 2022, p. 66; p. 67, ll. 1-27) (TEB, Tab 6).

89. On August 14, 2017, Mr. Solymosi, on behalf of the Commission, responded to the July 10, 2017 letter (Ex. 1, p. 931). In the response, there was a request that Mr. Dhillon and Michell attend the September 6, 2017 Commission meeting.

90. Neither Mr. Dhillon or Mr. Michell attended the meeting (Transcript of A. Solymosi, February 9, 2022, p. 21, ll. 5-14) (TEB, Tab 7).

91. Thus, by early September 2017, the following had occurred:

    a. There was a meeting of Agency managers in April 2017 where the importance of complying with the rules was discussed;

    b. There was a May 18, 2017 letter distributed to various parties, including Mr. Dhillon, where the matters discussed in April 2017 were summarized and there was a clear warning that agencies and growers must not deliberately grow volumes far in excess of their DA;

    c. On June 14, 2017, the Commission wrote a detailed letter to IVCA and Prokam indicating that they were both in breach of the General Orders in various respects and concerning Prokam, it had acted contrary to the rules by growing and shipping amounts significantly in excess of its DA.

    d. On July 10, 2017, IVCA and Prokam responded to the June 14, 2017 letter essentially denying any wrongdoing and significantly criticizing the Commission for the content of the June 14, 2017 letter;

    e. IVCA and Prokam were invited to attend a September 6, 2017 Commission meeting to discuss the issues in the correspondence and neither attended; and

    f. Mr. Dhillon, in addition to being the principle of Prokam, was a director and officer of IVCA.

92. Also relevant to the context is that on or about August 8, 2017, the Commission set a minimum price for the export of potatoes.

93. Sometime in the month of September, Mr. Brian Meyer (the General Manager of IVCA) contacted Mr. Solymosi to advise that IVCA was having problems complying with the minimum price set for exports (Transcript of A. Solymosi, February 9, 2022, p. 31, ll. 29-39) (TEB, Tab 8).

94. Through the month of September 2017, there was an exchange of correspondence and information from IVCA to Mr. Solymosi. In addition, Mr. Solymosi was having discussions with Mr. Meyer who was communicating to him that he was having trouble controlling the agency and the cause of the difficulty was Prokam (Transcript of A. Solymosi, February 9, 2022, pp. 31-32) (TEB, Tab 9).

95. On September 27, 2017, Mr. Solymosi sent two emails to Mr. Meyer, the first one at 11:34 am requesting various information including the issues that IVCA was having with Prokam (Ex.1, p. 1098). This email also informed IVCA not to solicit Prokam for any information out of the ordinary.

96. The second email sent at 1:47 pm starts by communicating that selling below minimum price is a serious matter that puts the Agency in non-compliance. The email goes on to state:

> I am requesting the letter and documents to protect IVCA from the actions being taken by a <u>rogue producer</u> under IVCA control. I believe and entrust that your efforts and those of IVCA to take corrective action on the matter are genuine and in the interest of preserving integrity in the orderly marketing system. The Commission needs to know that IVCA is taking ownership of its obligations as an Agency and that there is an issue beyond its control that is placing the Agency in a position of non-compliance with its mandate. I can honestly attest that the Commission wants IVCA to succeed as an Agency. As long as we are honest and upfront, work together in support of the orderly marketing system, and request assistance when needed, your Agency license is protected. [emphasis added]

97. Prokam argues that this email demonstrates that Mr. Solymosi prejudged the investigation he was engaging in because he refers to Prokam as a “rogue producer”. Further, Prokam argues that this email is evidence that Mr. Solymosi was trying to protect IVCA’s license, and enlist IVCA to find evidence against Prokam, especially when looked at in the context of the previous correspondence where Mr.

Solymosi requested IVCA not to communicate any information about the investigation to Prokam.

98. Mr. Solymosi was questioned about the content of this by hearing counsel and Ms. Hunter. When asked by hearing counsel why he referred to Prokam as a “rogue producer”, his response was that that was based on Mr. Meyer’s description of how Prokam was acting. Mr. Solymosi testified that he trusted his general managers to be upfront and honest, and he was told that it was Prokam that was putting IVCA into non-compliance and that Mr. Meyer wanted to regain control of the agency (Transcript of A. Solymosi, February 9, 2022, p. 34, ll. 24-33) (TEB, Tab 10).

99. Hearing counsel put to Mr. Solymosi that his email to IVCA constituted a threat or inducement to get information against Prokam in return for protection of its license. Mr. Solymosi testified that was incorrect. He testified that his intention was to communicate that if an agency is acting as it should, in compliance with general orders, and taking accountability of its actions, then it would be able to keep its license. (Transcript of A. Solymosi, February 9, 2022, pp. 35-36) (TEB, Tab 11).

100. Subsequent to the email exchanges above, Mr. Solymosi and Mr. Krause met with Mr. Meyer and Mr. Michell in early October and received significant additional material. As a result of these meetings and the material received, they were of the view that the cease-and-desist orders needed to be issued, with the key concern being that there was selling below the minimum price contrary to the pricing set by the Commission.

101. Hearing counsel took Mr. Solymosi through the sequence of events concerning his investigation. Mr. Solymosi was asked why he did not speak with anyone at Prokam before the cease-and-desist orders were issued. Mr. Solymosi responded by saying that this was an agency matter and it was a matter of bringing control back to the agency. The agency was informing him it had lost control of its ability to manage itself. The cease-and-desist orders were designed to provide control back to the agency.

102. Mr. Solymosi testified that he did not feel like there was an obligation to inform the producer (Prokam) because the cease-and-desist orders were a first step in an

enforcement process that would lead to a show cause hearing, where all the evidence and information could be brought forward or reviewed (Transcript of A. Solymosi, February 9, 2022, pp. 46-47) (TEB, Tab 12).

103. In cross-examination by Ms. Hunter, Mr. Solymosi agreed that he considered Prokam to be a “rogue producer” by September 27, 2017. This was based on what he was being told by Mr. Meyer.

104. Mr. Solymosi was extensively cross-examined about the email to Mr. Meyer and in particular it was suggested to him that he was seeking to protect IVCA’s license if IVCA would provide information about Prokam.

105. Mr. Solymosi’s response was that at all times he was focusing on IVCA as an agency who was required to comply with the General Orders. His focus was to assist IVCA to regain control of its agency. (Transcript of A. Solymosi, February 11, 2022, pp. 63-66) (TEB, Tab 13).

106. Mr. Solymosi did concede that he relied entirely on IVCA to provide information in his investigation, and he did no other independent investigation prior to issuing the cease-and-desist orders (Transcript of A. Solymosi, February 11, 2022, p. 67, ll. 6-14) (TEB, Tab 14).

107. He also acknowledged there was no direct investigation on his part of what occurred beyond the information he was provided by IVCA (Transcript of A. Solymosi, February 11, 2022, p. 67, ll. 42-45) (TEB, Tab 14).

108. Mr. Solymosi also conceded that, in retrospect, at least some of the information IVCA provided to him was inaccurate. However, it was not established that he was aware the information was incorrect at the time. Rather, it is in retrospect that he recognized some of the information provided by IVCA was incorrect (Transcript of A. Solymosi, February 11, 2022, p. 69, ll. 1-37) (TEB, Tab 15).

109. Mr. Solymosi also conceded, in retrospect, that there was at least one email from Mr. Michell which was relevant to his investigation which should have been brought forward and was not at the time (Transcript of A. Solymosi, February 11, 2022, pp. 71-72) (TEB, Tab 16).

110. Mr. Solymosi was also questioned as to why he provided IVCA with the draft cease-and-desist orders. Again, his response was that his focus was on getting IVCA to comply with the cease-and-desist orders. As a result, the drafts were provided to determine whether IVCA had any comments on being able to comply with those orders.

111. The issue to be determined is whether Mr. Solymosi acted improperly in his investigation of Prokam throughout September 2017 and into early October 2017. Prokam argues that the Panel ought to draw inferences from the nature of the investigation along with the emails that Mr. Solymosi's conduct was corrupt.

112. In my view there is no proper basis to draw such an inference. As discussed earlier, the evidence establishes that beginning in April 2017, the Commission was taking seriously the matter of overproduction over and above the growers' DA, and also with respect to pricing. This was communicated to the growers and agencies in May 2017.

113. Subsequently, in June 2017, Prokam was specifically warned that it was producing and shipping far in excess of its DA. Instead of responding to address the matter, the response letter written by IVCA and Prokam on July 10, 2017 took the position that they were doing nothing wrong and levelled serious but completely unsupported allegations against the Commission.

114. By September 2017, IVCA, through Mr. Meyer, communicated to Mr. Solymosi that IVCA wanted to comply with the minimum export price but was unable to do so because of the conduct of Prokam.

115. IVCA also provided various evidence to Mr. Solymosi that Prokam was difficult to control. In the circumstances, whether or not it was entirely accurate that IVCA was having difficulty controlling Prokam, the fact is that Prokam had significantly overproduced and over shipped its DA without Commission approval and was continuing to sell potatoes below the minimum price set by the Commission.

116. In these circumstances, the reference by Mr. Solymosi to Prokam as a "rogue producer" in an email dated September 27 does not establish that Mr. Solymosi was

acting in a corrupt manner. Mr. Solymosi had a reasonable basis to make this characterization. Even to this date, Mr. Dhillon acknowledges that Prokam produced and shipped far in excess of its DA. Throughout his evidence, Mr. Dhillon's mantra was that Prokam had no responsibility for production and delivery far in excess of his DA; rather, he simply relied on his agency, IVCA (some examples are: Transcript of B. Dhillon, February 3, 2022, p. 55, ll. 8-17; p. 56, ll. 9-16, ll. 26-47; p. 57, ll. 16-21; Transcript of B. Dhillon, February 7, 2022, p. 51, ll. 36-47; p. 52, ll. 1-8, ll. 20-32; p. 53, ll. 4-27; p. 57, ll. 16-24) (TEB, Tab 17).

117. While Mr. Dhillon deflected responsibility to his agency for why he produced in excess of his DA, the Commission warned it was inappropriate and Prokam's response was that the Commission was wrong, and at no point in time did Prokam alter that position.

118. In the circumstances, by September 27, 2017, Mr. Solymosi had a basis to refer to Prokam as a "rogue producer".

119. With regard to the fact that Mr. Solymosi only obtained information from IVCA in his investigation and did not contact Prokam, that may be a basis to argue that he conducted a flawed or incomplete investigation, but it is not a basis for arguing that the investigation constituted corruption. Mr. Solymosi explained that his view was that this was a matter of providing control back to IVCA as an agency of the Commission. Therefore, his focus was on the information from the agency and not from other parties. Mr. Solymosi also explained that he considered that if cease-and-desist orders were issued, in due course, there would be a show cause hearing where Prokam could provide all of its evidence to the Commission for consideration.

120. Importantly, the then appointed Chair of the Commission, Mr. Krause, who was part of the investigation process in that he was at the October 3, 2017 meeting with Mr. Meyer and Mr. Michell, corroborated Mr. Solymosi's views about the intent being to bring orderly marketing back to the control of IVCA. Mr. Krause testified that after looking at the documents and considering the October 3, 2017 meeting, he became of the view that:

a. Prokam and Mr. Dhillon were using Mr. Gill who is part of IVCA to sell potatoes below the minimum price;

b. Prokam and Mr. Dhillon, a director of IVCA, permitted the actions of Mr. Gill and put IVCA into non-compliance;

c. Prokam and Mr. Dhillon, without proper authority, seemed to be representing IVCA in marketing and sales of potatoes;

d. Mr. Krause wanted to ensure that customers and accounts of IVCA were managed by Mr. Meyer;

e. Prokam had been shipping Kennebec potatoes in 2017 without DA;

f. this was a serious situation;

g. Prokam was trying to undermine the situation;

h. Mr. Krause directed Mr. Solymosi to put together cease-and-desist orders;

i. Mr. Solymosi drafted the cease-and-desist orders;

j. Mr. Krause reviewed them;

k. Mr. Krause then brought Mr. Guichon into the picture because he wanted the vice chair of the Commission involved in the matter as well;

l. Mr. Krause then authorized Mr. Solymosi to send the cease-and-desist orders;

m. Mr. Krause was trying to bring Prokam and IVCA under control so that potatoes could be marketed in an orderly fashion;

n. this was an ongoing investigation even after the cease-and-desist orders;

o. all the parties would have a chance to come before the Commission and present their evidence for a final decision by the Commission; and

p. this is exactly what happened by December 22, 2017.

(Transcript of A. Krause, March 29, 2022, p. 161, ll. 13-47; p. 162, ll. 12-46; p. 163, ll. 1-6) (TEB, Tab 18).

121. In these circumstances, this Panel cannot draw an inference that Mr. Solymosi's failure to conduct a less-than-perfect investigation constituted corruption. There is no evidence of malice towards Prokam or that Mr. Solymosi intentionally set out to hurt Prokam knowing that he had no proper basis to issue the C&D Order.

122. Finally, the suggestion that Mr. Solymosi promised to protect IVCA's license in exchange for information concerning Prokam is speculation. Mr. Solymosi explained the email in question by focusing on the fact that he was concerned about the agency and his focus was on getting the agency to comply; his focus was not on trying to improperly protect the agency as a favour because he wanted to obtain information to punish Prokam.

123. Finally, the content of the final C&D Order issued against Prokam is consistent with Mr. Solymosi's evidence that his goal was to give control back to IVCA. Hearing counsel took Mr. Dhillon through the C&D Order, and established that the terms of the Order were how the sales should function in any event, with the agency having control over the sales function (Ex. 1, p. 1167; Transcript of B. Dhillon, February 3, 2022, pp. 22-24) (TEB, Tab 19).

124. The key motivation for the Commission to issue the C&D Order was that IVCA and Prokam were selling below the minimum price set by the Commission. Thus, a key question is whether, as Prokam alleges, Mr. Solymosi was aware that the Commission did not have jurisdiction to set export prices without compliance with the *Statutory Instruments Act.* This question will be discussed in detail below.

125. In *Rain Coast (supra),* the BC Court of Appeal, overturned the trial judge's findings that there was misfeasance. In doing so, the court cautioned that the trial judge had made improper inferences. At paragraph 69, the court cautioned against making inferences without evidence:

> As to inferences, I note that a judge must rely on logic, common sense and experience, taking into account the totality of the evidence, when deciding whether to draw an inference… I also note the difference between an inference grounded in the evidence and speculation. An inference can be reasonably and logically drawn from an established fact or group of facts, whereas speculation is mere conjecture based on guesswork. **For this reason, if there is an evidentiary gap between the established facts and a proposed inference the inferences unavailable and it is an error for a judge to draw it.** [emphasis added]

126. The above caution from the Court of Appeal must be considered in the context where there are serious allegations being made. As the Court stated at paragraph 108, proof commensurate with the seriousness of an alleged wrong is required.

127. In the case at hand, there is an evidentiary gap between the facts and the inference that Prokam wishes this Panel to draw concerning Mr. Solymosi's conduct surrounding the investigation. It is not reasonable to draw the inference from the emails in question and the nature of the investigation conducted that Mr. Solymosi was corrupt or that he intentionally sought to harm Prokam. At best, Prokam may be able to establish that there was a flawed investigation. There is no evidence that Mr. Solymosi was "out to get Prokam" or that he knew his investigation at the time may not have been completely accurate. Given this evidentiary gap, as cautioned by the Court of Appeal, it would be improper for this Panel to draw the conclusion there was corruption.

128. Additionally, Prokam did raise its concerns about the flawed investigation before BCFIRB in the appeal. BCFIRB heard this evidence, considered it, and still sent the matter back to the Commission for reconsideration.

129. In the end, a potentially flawed investigation does not constitute corruption. There is no proof that Mr. Solymosi intended to harm Prokam nor is there evidence from which such an inference could be drawn. Put simply, there is no evidence commensurate with the seriousness of the allegation to establish corruption.

Breach of Fair Hearing and Other Wrongdoing

130. Prokam also alleges that Mr. Solymosi engineered the November 10, 2017 letter written by the agency managers and he failed to provide that letter to Prokam before the show cause hearing. It is alleged that this is evidence of corruption.

131. Hearing counsel questioned Mr. Solymosi about the creation of the letter. Mr. Solymosi's responses made clear that the letter came about as a result of a November 7, 2017 Agency Managers meeting. After the meeting, it was Mr. Driediger who suggested preparing the letter in question. Mr. Driediger's evidence confirms this.

132. Mr. Driediger prepared the content of the letter, circulated it to other Agency managers who signed it and the signed letter was provided to Mr. Solymosi. Mr. Solymosi had no involvement in any way in asking for the letter or preparing the content of the letter.

133. Mr. Solymosi provided the letter to the Commission before the show cause hearing and not to Prokam. When asked why it was not provided to Prokam, Mr. Solymosi stated that he simply did not think of it at the time (Transcript of A. Solymosi, February 9, 2022, pp. 58-61) (TEB, Tab 20).

134. There is no basis to claim the failure to provide one piece of evidence to Prokam constitutes corruption. Mr. Solymosi was not involved in the creation of the letter. The letter was prepared by Mr. Driediger and the individual agency managers chose to sign it. While Mr. Solymosi likely should have provided the letter to Prokam before the show cause hearing, his failure to do so does not rise to the level of corruption. It is, at best, an error. Further, this error was brought to the attention of BCFIRB at the appeal hearing. As a result, Prokam had the opportunity to complain of this error and to seek a remedy.

135. There were various other allegations advanced against Mr. Solymosi, including that he coerced or influenced Mr. Jaymie Collins to write a letter advising that Vancouver Island Farm Products ("VIFP") declined to be the agency for Prokam. A review of the evidence makes clear that Mr. Solymosi did not improperly convince Mr. Collins or anyone else about whether IVCA should be the Agency for Prokam.

136. Mr. Collins was rigorously cross-examined about his meetings with Mr. Solymosi and Mr. Dhillon about the possibility of VIFP being the agency for Prokam. After significant cross-examination, it was suggested to Mr. Collins that VIFP decided not to add Prokam as a grower because he was discouraged by Mr. Solymosi or Mr. Driediger. Mr. Collins responded by saying that was incorrect (Transcript of J. Collins, March 29, 2022, p. 73, ll. 12-22) (TEB, Tab 21). His evidence was believable.

137. Mr. Collins was questioned by Mr. Hira who asked whether Mr. Solymosi ever told Mr. Collins not to take on Mr. Dhillon as a grower. Mr. Collins stated that did not occur (Transcript of J. Collins, March 29, 2022, p. 77, ll. 19-22) (TEB, Tab 22).

138. There is no evidentiary basis upon which this Panel could draw any inference or conclusion that Mr. Solymosi improperly influenced VIFP's decision not to represent Prokam as an agency. There is no basis to draw any inference or conclusion that Mr. Solymosi acted to force or convince IVCA not to engage Prokam as a grower.

Knowledge of the Invalidity of the Export Minimum Pricing Orders

139. A key allegation made against Mr. Solymosi is that he knew that the Export Minimum Price the Commission set on August 8, 2017 was invalid because it required registration and gazetting before the Commission could set the minimum price.

140. Indeed, in its February 18, 2019 decision, BCFIRB held that the Commission did not have the authority to apply its minimum pricing rules to interprovincial sales or to issue any related cease-and-desist orders respecting such sales because the Commission had not complied with the federal *Statutory Instruments Act* (Ex. 1, p. 4112).

141. Prokam claimed that because the Commission participated in Parliamentary debates in 2008 and forward, that it was common knowledge to the Commissioners and others working with the Commission that in order to set export minimum prices for British Columbia product, the Commission would have to comply with the federal *Statutory Instruments Act,* meaning before Export Minimum Prices could be set, the Commission would have to register and gazette the pricing orders.

142. Prokam alleges that Mr. Solymosi was aware that the Export Minimum Price set on August 8, 2017 was invalid and therefore the C&D Orders issued against Prokam were also invalid. In other words, Mr. Solymosi knew he was acting unlawfully.

143. The difficulty with Prokam's allegation is that there was no determination until BCFIRB's decision of February 2019 that the Commission was required to comply with the federal *Statutory Instruments Act* in order to set Export Minimum Prices.

144. The 2008 Parliamentary committee meetings discussed whether the Commission had the constitutional jurisdiction to set **levies**. These discussions did not discuss whether the same principles would apply to the setting of prices for exports. Therefore, even on their face, the meetings do not establish the principle Prokam seeks to advance, namely that those meetings conclusively established that the Commission could not set export prices without compliance with the *Statutory Instruments Act.*

145. The transcript of the proceedings of the joint committee in 2008 demonstrates that even considering the issue of the Commission setting levies, there were differing views. Mr. George Leroux, the then Chair of the Commission, in commenting on the Commission's ability to set extra Provincial **levies**, stated that there ought to be legislation which exempts the Commission from having to register and publish and comply with the *Statutory Instruments Act*. Mr. Leroux's comments to the Committee suggested that he was of the view that the Commission did not have legal authority to set extra Provincial levies without complying with the *Statutory Instruments Act* (Ex. 1, p. 10).

146. However, at the same meeting, Mr. Hrabinsky, counsel for the Commission, stated that he was of the view that the Commission had the authority to set interprovincial levies without complying with the *Statutory Instruments Act.*

147. As much as Prokam tried to establish that there was a settled belief or view that from 2008 onwards the Commission knew that it did not have authority to set interprovincial levies or prices without registration and gazetting, the fact is that the issue was never determined and there was no such general knowledge among Commissioners.

148. Moreover, and importantly, Mr. Solymosi testified that he genuinely and honestly believed that at all times the Commission had the jurisdiction to set prices for British Columbia storage crop even if that crop was being exported. Mr. Solymosi repeated this perspective throughout rigorous and extended cross-examination. His evidence was sincere and strongly held (Transcript of A. Solymosi, February 10, 2022, p. 123, ll. 11-34) (TEB, Tab 23).

149. This issue was a linchpin of Prokam's claim – that Mr. Solymosi (and Mr. Guichon) knew that the C&D Orders were invalid because the Export Minimum Prices set in August 2017 were also invalid. Prokam requested that Mr. Leroux be interviewed and called as a witness at the hearing because Prokam believed he would have relevant evidence to establish this fact.

150. When Mr. Leroux was specifically asked whether the Commission members were aware that the Commission did not have jurisdiction to set export prices, he responded by saying: "I don't know whether that would have been in the common understanding of the Commissioners at that time. They would have understood there is a vulnerability and that the orders might not be valid and could be challenged. Whether they knew the specifics of that, I can't speak to." (Transcript of G. Leroux, March 28, 2022, p. 22, ll. 22-31) (TEB, Tab 24).

151. Mr. Leroux also testified that he could not speak to the extent of Mr. Guichon's knowledge about the Commission's jurisdiction to set export minimum prices (Transcript of G. Leroux, March 28, 2022, p. 23, ll. 29-39) (TEB, Tab 25). Mr. Leroux could also not speak to Mr. Solymosi's knowledge.

152. Importantly, it was put to Mr. Leroux that there was a concern that the Commission was acting unlawfully. Mr. Leroux's response was that is an interesting use of words. He stated: "I don't think the sense was we were acting unlawfully. The sense was we had something where the regulations weren't lined up. Nobody felt they were acting unlawfully" (Transcript of G. Leroux, March 28, 2022, p. 38, ll. 38-43) (TEB, Tab 26).

153. Therefore, even the key person advocating on this issue on behalf of the Commission from 2008 forward did not consider that the Commission was acting unlawfully in setting extra-provincial pricing at the time.

154. It is also noteworthy that Mr. Krause testified that he too was of the view that the Commission was acting within its authority to set export prices. He had learned something about the I-5 corridor case which allowed the Commission to set prices for regulated product produced in British Columbia and destined for outside of British Columbia. At all times when setting the minimum export price, he considered that the Commission was doing it to further the aims of the Commission and not acting illegally (Transcript of A. Krause, March 29, 2022, p. 160, ll. 15-37) (TEB, Tab 27).

155. What is clear from all of the evidence is that there was no consensus that the Commission did not have jurisdiction to set interprovincial levies without registration and gazetting. As stated above, the committee meetings which Mr. Leroux was speaking to and attending dealt with levies, not prices for exports. There was no discussion, let alone a consensus, that levies and prices would be treated the same from a jurisdictional point of view.

156. In fact, the evidence is to the contrary; there was a consensus that the Commission could set export prices for BC grown crop. Mr. Solymosi and many of the Commissioners, including Mr. Guichon, were firmly of the view that as a result of the decision of *BC Vegetable Greenhouse v. BC Vegetable Commission*, 2003 BCSC 1508; aff'd 2005 BCCA 476 (referred to as the "I-5" decision), the Commission could set interprovincial prices for the export of storage crop grown in British Columbia.

157. Thus, there is no basis upon which this Panel could make an inference or draw a conclusion that Mr. Solymosi knew that the Export Minimum Price set by the Commission in August 2017 was invalid and that, as a result, the cease-and-desist orders issued to Prokam were also invalid.

158. Although in the end BCFIRB in its 2019 decision ruled that the Commission did not have jurisdiction to set interprovincial pricing without compliance with the *Statutory Instruments Act*, the fact that Mr. Solymosi and/or the Commission may have been incorrect in setting export prices does not rise to the level of unlawful conduct in the nature of corruption. It was simply incorrect for Mr. Solymosi to believe that the Commission could set export prices. It was not an act of intentional unlawful conduct rising to corruption.

159. Finally, in order to establish corruption against Mr. Solymosi, Prokam would have to establish that Mr. Solymosi was intentionally acting unlawfully or that he bore some dislike or animosity towards Prokam or its principals. There is no basis to conclude Mr. Solymosi intentionally acted unlawfully.

160. All of the persons who worked with Mr. Solymosi testified that Mr. Solymosi always conducted himself professionally and seemingly without any animosity. Mr. Krause was specifically asked whether Mr. Solymosi demonstrated any personal animosity on his part towards Prokam, Messrs. Gill or Mr. Dhillon and Mr. Krause stated Mr. Solymosi did not (Transcript of A. Krause, March 29, 2022, p. 163, ll. 27-41) (TEB, Tab 28).

161. In summary, there is no cogent evidence upon which this Panel could find that Mr. Solymosi acted in a corrupt manner. There is no evidence that he intended to harm Prokam or that he acted intentionally unlawfully or that he acted with malice.

Prokam's Claims Against Mr. Guichon

Mr. Guichon's Involvement in the C&D Order Against Prokam

162. The allegation is that Mr. Guichon exercised his powers in bad faith and for improper purposes when he approved the C&D Orders issued by the Commission.

163. Mr. Guichon was not involved in the investigation which led to the C&D Orders. Mr. Guichon received an email on October 5, 2017 from Mr. Solymosi indicating that Mr. Solymosi wanted to bring him up to speed on compliance issues and attaching three cease-and-desist letters (Ex. 1, p. 1135).

164. Mr. Guichon subsequently had a telephone call with Mr. Solymosi and Mr. Krause. Mr. Guichon agreed to have the C&D Orders sent based on the information provided to him by Mr. Solymosi and Mr. Krause (Transcript of P. Guichon, March 30, 2022, p. 140) (TEB, Tab 29). There was no evidence that Mr. Guichon had an independent view or that he was involved in the substantial determination that the C&D Orders should be served.

165. In other words, Mr. Guichon was not the moving force behind the C&D Orders. They were just presented to him along with the information that had been gathered. Based on that, he agreed they should be sent out to the other Commissioners.

166. During the course of the hearing, there was a suggestion that Mr. Guichon was upset because in the 2016/2017 crop year, Mr. Dhillon refused to lease to Mr. Guichon, about 20 acres of land that Mr. Dhillon traditionally leased to Mr. Guichon.

167. Mr. Guichon denied that this cause him any upset because it was a small parcel that he was able to lease elsewhere (Transcript of P. Guichon, March 30, 2022, p. 105, ll. 43-47; p. 106, ll. 1-12) (TEB, Tab 30).

168. In summary, other than speculation, there is no basis for a claim that Mr. Guichon's conduct in consenting to the C&D Orders constituted corruption. There is no evidence that he acted with malice towards Prokam.

Mr. Guichon's Involvement in Various Proceedings Against Prokam

169. Prokam alleges that Mr. Guichon improperly participated in various proceedings against Prokam. The specific concern raised by Prokam is that pursuant to the Commission's conflict of interest policy, Mr. Guichon was in a conflict with decisions being made about Prokam and therefore should not have participated in any way in any of the discussions concerning Prokam.

170. Throughout his evidence, Mr. Guichon confirmed that in Commission meetings, he participated in discussions about Prokam, but recused himself from any deliberations or decisions being made by the Commission about Prokam.

171. Mr. Guichon stated that he participated in discussions because he was asked to do so by the then Chair of the Commission, Mr. Krause. Mr. Krause and Mr. Guichon were of the view that as long as Mr. Guichon did not participate in any deliberations or actual decisions, he was not acting contrary to the conflict of interest policy. This was also the process followed by the previous General Manager (Transcript of P. Guichon, March 30, 2022, p. 129, ll. 8-20; p. 141, ll. 1-40; Transcript of P. Guichon, April 1, 2022, p. 11, ll. 17-35) (TEB, Tab 31).

172. In accordance with the direction Mr. Guichon was provided by the Chair of the Commission, he participated in discussions relating to Prokam to the extent there were any questions (and his evidence was often there were none), but he never participated in any deliberations or decisions concerning Prokam (Transcript of P. Guichon, April 1, 2022, p. 22, ll. 27-35; p. 24, ll. 15-47) (TEB, Tab 32).

173. In his evidence, Mr. Krause confirmed that his view in 2017 was that it was acceptable for storage crop Commissioners to be involved in discussions and provide information and clarification to issues concerning Prokam but that they were not to be involved in any decision-making (Transcript of A. Krause, March 29, 2022, p. 93, ll. 11-18; p. 158, ll. 12-35) (TEB, Tab 33).

174. It is also noteworthy that Mr. Guichon testified that he never participated in any discussions about whether BC Fresh was the appropriate agency to direct Prokam to (Transcript of P. Guichon, April 1, 2022, p. 27, ll. 34-43; p. 28, ll. 6-14) (TEB, Tab 34).

175. In the end, whether Mr. Guichon was correct or incorrect as a matter of law about whether he should have recused himself from any participation in discussions about Prokam is not relevant. The issue is whether Mr. Guichon intentionally participated in discussions knowing that he was acting inappropriately and he did so for the purpose of harming Prokam.

176. In that regard, the evidence is clear. Mr. Guichon participated in some discussions at the Commission decision-making level concerning Prokam. But, he did so on the advice of the then Chair of the Commission, and genuinely believing that as long as he absented himself from deliberations and decisions, he was acting appropriately and not contrary to any conflict of interest policy.

177. There is no evidence whatsoever that Mr. Guichon participated in discussions concerning Prokam knowing that he was acting unlawfully or because he intentionally intended to cause harm to Prokam. Stated more simply, there is no evidence that Mr. Guichon’s participation in discussions about Prokam constituted corruption.

Mr. Guichon Knew or Ought to Have Known the Export Price set by the Commission was Unlawful

178. The final allegation of misfeasance against Mr. Guichon is that he knew or was wilfully blind to the fact that the export prices set by the Commission were unlawful and that therefore the C&D Orders issued by the Commission were also unlawful.

179. This allegation is without merit.

180. Mr. Guichon testified repeatedly that he was always under the assumption that the Commission had the authority or jurisdiction to set export prices for products grown in British Columbia (Transcript of P. Guichon, March 30, 2022, p. 130, ll. 22-47; p. 131, ll. 1-5; p. 134, ll. 37-46; Transcript of P. Guichon, April 1, 2022, p. 41, ll. 42-47; p. 42, ll. 1-2) (TEB, Tab 35).

181. There was no evidence that Mr. Guichon was aware or thought that the Commission could not set prices for exports without compliance with the federal *Statutory Instruments Act.* In that regard, see the discussion above about Mr. Solymosi's knowledge of the Commission's jurisdiction to set prices.

182. There is no evidence from which this Panel could conclude or infer that Mr. Guichon knew that the export prices set by the Commission were unlawful and that therefore, the C&D Orders were also unlawful.

183. In summary, there is no basis upon which this Panel could find that Mr. Guichon intentionally acted unlawfully or that he intended to harm Prokam and acted with malice to achieve that purpose.

Claims by MPL

184. In addition to the claims described in paragraphs 17 and 18 above, MPL claims that Mr. Solymosi made disparaging comments about MPL and in particular referred to MPL as "the enemy".

185. The other significant allegation made is that Mr. Solymosi and the MPL Defendants intentionally refused to lift a moratorium which was in place, thereby delaying the Commission's consideration of MPL's Agency application.

186. MPL stated that Steve Newell had told Mr. Paul Mastronardi words to the effect that his brother, Mr. John Newell, would ensure that MPL would never get a license in British Columbia.

187. Concerning the allegations made against Mr. Solymosi, initially Mr. Mastronardi suggested that Mr. Solymosi acted improperly by delaying the Commission's consideration of MPL's application and/or contributing to delaying the lifting of the moratorium.

188. However, in cross-examination, Mr. Mastronardi acknowledged that Mr. Solymosi was not a decision maker and had no control over the Commission panel making decisions (Transcript of P. Mastronardi, February 2, 2022, p. 29, ll. 29-35) (TEB, Tab 36).

189. Further, Mr. Mastronardi acknowledged that Mr. Solymosi had no control over when the panel made decisions unless Mr. Solymosi delayed getting information to the panel, but he had no evidence that Mr. Solymosi had done so (Transcript of P. Mastronardi, February 2, 2022, p. 30, ll. 13-35) (TEB, Tab 37).

190. Finally, Mr. Mastronardi acknowledged that Mr. Solymosi was not responsible for any delay between September 18, 2020 and March 5, 2021, and the only thing Mr. Solymosi did wrong was his tone on the phone (Transcript of P. Mastronardi, February 2, 2022, p. 31, ll. 5-18) (TEB, Tab 38).

191. In sum, MPL has no evidence that Mr. Solymosi did anything wrong. The suggestion that his tone of voice on the phone constitutes misfeasance is frivolous. There is no evidence from which this Panel could draw a conclusion or even an inference that Mr. Solymosi's conduct was corrupt.

192. Concerning the other defendants named in the MPL NOCC, Messrs. Guichon, Lodder, Gerrard, Newell and Reed, ("MPL Defendants") there is also no basis to claim that any of them acted in a corrupt manner vis-à-vis MPL (or otherwise).

193. The first allegation is that the MPL Defendants imposed a moratorium on Agency applications in June 2019 because they knew that MPL would eventually want to

make an Agency application in British Columbia. This allegation is entirely without merit.

194. As a starting point, Messiers Guichon and Gerard did not even participate in the decision to impose the moratorium (Ex. 1, p. 4169, para. 5).

195. The reason for the imposition of the moratorium is set out clearly in the Commission's June 28, 2019 decision (Ex. 1, p. 4168). The reasons were that the Commission felt it was important to complete a strategic review and agency review.

196. In June 2019, there was no agency application from MPL. In fact, MPL made its agency application in September 2020, more than a year after the moratorium was imposed. The suggestion that the Commission knew that MPL might be interested in making an agency application at some point in time, and therefore as a prophylactic the Commission diabolically made up a reason to impose a moratorium in June 2019, is entirely frivolous.

197. The second suggestion is that once MPL made its application, the MPL Defendants intentionally failed to lift the moratorium in a timely way because they wanted to delay or prevent MPL from obtaining an agency license.

198. There is no evidence whatsoever that the failure to lift the moratorium had anything to do with MPL. On October 21, 2020, approximately a month after MPL first made its Agency application, the Commission considered lifting the moratorium because it had received a letter from BCFIRB stating that the moratorium should be lifted.

199. The minutes of the October 21, 2020 meeting reflect the reasons why the moratorium was not lifted at that time, namely the Commission felt it was still important for it to complete the agency review and strategic review in order for it to implement amendments for the process for any agency application.

200. All of the MPL Defendants were at that meeting and testified that there was no substantive discussion whatsoever about MPL's Agency application or any suggestion that the moratorium should not be lifted in order to delay consideration of MPL's application (Transcript of P. Guichon, April 20, 2022, p. 33, ll. 11-16; Transcript of M. Reed, April 19, 2022, p. 9, ll. 17-40; Transcript of J. Newell, April 19,

2022, p. 57, ll. 45-47; p. 58, ll. 1-10; Transcript of C. Gerrard, April 20, 2022, p. 123, ll. 43-47; Transcript of B. Lodder, April 20, 2022, p. 9, ll. 31-40) (TEB, Tab 39).

201. MPL only speculates that the MPL Defendants intentionally chose not to lift the moratorium in order to delay consideration of MPL's agency application. It is just that: speculation. The actual evidence is to the contrary. There is no basis to allege corruption by any of the MPL Defendants in regard to the allegation that they intentionally delayed in lifting the moratorium.

202. In cross-examination, it was put to Mr. Guichon that one of the concerns that existed at the time MPL was seeking to lift the moratorium to have the Commission consider its application, was that if the Commission reviewed the MPL application before promulgating the final agency application rules, the Commission might well be accused of tailoring those rules in response to the particular application. Mr. Guichon agreed with that proposition (Transcript of P. Guichon, April 20, 2022, p. 68, ll. 11-22) (TEB, Tab 40).

203. It is also noteworthy that MPL appealed the Commission's decision not to lift the moratorium to BCFIRB and was unsuccessful (Ex. 1, p. 4789).

204. Finally, as described in the chronology above, on March 15, 2021, after completion of its reviews, the Commission created Amending Order 54 amending Agency application requirements; on May 27, 2021, the Commission received MPL's amended application, which was amended to comply with Amending Order 54; and, on December 21, 2021, the Commission issued a decision approving MPL's application and requesting BCFIRB's prior approval.

205. The evidence and the chronology confirm the Commission's reasons to complete its strategic and agency review before considering any agency applications. It had nothing to do with intentionally trying to delay MPL's agency application as alleged.

206. There is no evidentiary basis to argue that the MPL Defendants acted improperly in intentionally delaying the lifting of the moratorium in order to delay the consideration of MPL's Agency application, or to try to prevent MPL from obtaining an agency license.

207. MPL also alleges that the MPL Defendants refused to recuse themselves from the consideration of MPL's agency application. The allegation is without any evidentiary foundation.

208. It is also noteworthy that all of the MPL Defendants confirmed that:

a. The were not on any panel which was struck to consider MPL's application (except for Mr. Guichon who initially was on the panel but later was removed because his term as a Commissioner ended);

b. They never saw the MPL Agency application;

c. They did not discuss MPL's application with any other Commissioners;

d. No other Commissioners asked for their opinion on the MPL Agency application; and

e. They did not have any decision-making role in MPL's Agency application.

(Transcript of P. Guichon, April 20, 2022, p. 33, ll. 28-47; p. 34, ll. 33-47; p. 35, ll. 1-14; Transcript of M. Reed, April 19, 2022, p. 10, ll. 3-27; Transcript of J. Newell, April 19, 2022, p. 64, ll. 8-37; Transcript of C. Gerrard, April 20, 2022, p. 124, ll. 1-43; Transcript of B. Lodder, April 20, 2022, p. 10, ll. 7-24) (TEB, Tab 41).

209. The other significant allegation advanced by MPL was that there was a "vote swap" agreement as described in MPL's NOCC. Again, there is no factual foundation for this allegation.

210. Mr. Mastronardi was asked about this allegation specifically and asked if he could identify any specific decision made by the Commissioners where there was this vote swapping arrangement. Mr. Mastronardi could not identify a single decision.

211. Mr. Mastronardi testified that many of the allegations raised in MPL's NOCC were based on information which Mr. Mastronardi received from Mr. Ravi Cheema. However, Mr. Mastronardi also acknowledged that Mr. Cheema did not provide any particulars of the allegations. Instead the allegations were of a general nature (Transcript of P. Mastronardi, January 31, 2022, p. 19, ll. 1-41; p. 20, ll. 38-43; p. 21,

ll. 26-47; p. 22, ll. 1-10; p. 23, ll. 5-8; 27-47; p. 24, ll. 7-9, 27-40; p. 26, ll. 37-45; p. 37, ll. 43-47; p. 38, ll. 1-4, 19-26; Transcript of P. Mastronardi, February 1, 2022, p. 46, ll. 21-31, 41-47) (TEB, Tab 42).

212. Mr. Mastronardi acknowledged that all of the allegations of misfeasance MPL made are serious allegations. MPL chose to make those serious allegations based on general information about a vote swapping agreement communicated by Mr. Cheema (Transcript of P. Mastronardi, February 1, 2022, p. 6, ll. 27-37) (TEB, Tab 43).

213. Mr. Cheema testified at the hearing. He stated that his main complaint was that he felt Commissioners acted in a conflict of interest to benefit themselves when they made decisions. He felt that way because many of the Commissioners are owners of farms or agencies and make decisions in their economic interests.

214. Mr. Cheema was then asked whether he could point to any specific decision where a particular Commissioner voted in their own interest instead of the interest of the industry. He replied that he could not (Transcript of R. Cheema, April 20, 2022, p. 72, ll. 28-43) (TEB, Tab 44).

215. Mr. Cheema testified that Ms. Dawn Glyckherr, who did some work on a strategic review for the Commission, communicated to him that farmers felt that there was racism and “an old boys’ club; you scratch my back, I scratch your back sort of deal”. Mr. Cheema was asked whether she referred to any specific decisions which Commissioners made that gave rise to that conclusion. Again Mr. Cheema said he could not (Transcript of R. Cheema, April 20, 2022, p. 73, ll. 23-36) (TEB, Tab 45).

216. Mr. Cheema’s evidence was that the issue of “you scratch my back, I’ll scratch your back” was “common knowledge”. However, Mr. Cheema did not provide any specific decision where that occurred, nor did he name any Commissioner whom he said engaged in that practice.

217. Mr. Cheema was asked whether there was any specific Commission decision he could point to that negatively impacted or affected his farm and which benefited a

Commissioner. His only response was the delay in granting MPL's license (Transcript of R. Cheema, April 20, 2022, p. 79, ll. 14-23) (TEB, Tab 46).

218. Mr. Cheema was asked whether he knew which Commissioners were involved in making decisions about MPL and he responded he did not (Transcript of R. Cheema, April 20, 2022, p. 81, ll. 40-43) (TEB, Tab 47).

219. Mr. Cheema's evidence was based on his feelings and rumours. He had certain general beliefs and was aware of certain rumours. He communicated these general beliefs and rumours to Mr. Mastronardi but without any particulars or detailed knowledge. It would appear that was the sole basis upon which MPL filed its claim alleging misfeasance against the MPL Defendants. In this hearing, no credible evidence emerged to substantiate the very serious allegations in the FTOR.

220. MPL's evidence of any vote swapping agreement was a general allegation without any evidentiary foundation. Further and importantly, MPL could not establish that there was any specific decision affecting MPL where the MPL Defendants allegedly engaged in the vote swapping arrangement as pleaded.

221. In contrast, the MPL Defendants all testified as to the allegation concerning the alleged "vote swapping agreement". They all:

a. denied there was any vote swapping arrangement in the strongest terms;

b. denied they had ever been asked to vote in any particular way by other of the MPL Defendants; and

c. denied that they ever even exchanged views on MPL's application with the other MPL Defendants.

(Transcript of M. Reed, April 19, 2022, p. 11, ll. 28-41; Transcript of J. Newell, April 19, 2022, p. 66, ll. 19-47; p. 67, ll. 1-47; Transcript of C. Gerrard, April 19, 2022, p. 126, ll. 41-47; p. 127, ll. 1-15; Transcript of B. Lodder, April 20, 2022, p. 12, ll. 9-29; Transcript of P. Guichon, April 20, 2022, p. 37, ll. 22-47; p. 38, ll. 1- 7) (TEB, Tab 48).

222. In the absence of evidence of any vote swapping agreement concerning any decision made which affected MPL, and in light of the evidence of the MPL Defendants who:

   a. deny any vote swapping agreement as alleged;

   b. were not involved in any way concerning MPL's agency application;

   c. never even saw the MPL agency application;

   d. did not discuss MPL's agency application with any other Commissioners; and

   e. had no decision making involvement with MPL's application,

   the only conclusion that can be reached is that there is no basis for any of the allegations of corruption made by MPL and certainly no evidence of any vote swapping agreement as alleged or at all.

223. MPL also alleged, during the course of the hearing, that Mr. Reed interfered with an application by Mr. Cheema (by his company Fresh4U) to the Commission as a way of also interfering with MPL because Mr. Reed was aware that Mr. Cheema was a supporter of MPL.

224. There is no proper basis for this allegation. First, it is a stretch even on the face of the allegation to argue that Mr. Reed's opposition to Mr. Cheema's application for production allocation on behalf of Country Fresh is somehow misfeasance against MPL.

225. However, when examined in detail, it becomes even more clear that this allegation has no basis. Mr. Cheema made an application for quota to the Commission. Mr. Reed was surprised by the application because Mr. Reed would normally have made such application because Mr. Cheema's company used Country Fresh as its Agency.

226. In any event, the Commission granted Mr. Cheema's application. Mr. Reed did not involve himself as a Commissioner in Fresh4u's application, nor did he discuss it

with any other Commissioners (Transcript of M. Reed, April 19, 2022, p. 7, ll. 4-25) (TEB, Tab 49).

227. Thus, the claim that Mr. Reed's conduct constituted corruption is frivolous.

228. When Mr. Newell testified, he disclosed two new email chains (Ex. 38). The emails were from 2017 and 2018 and on a fair reading demonstrated that Mr. Newell expressed concern about MPL entering the BC market. The issue is whether this sentiment expressed in 2017 and 2018 manifested itself in Mr. Newell acting in a corrupt manner to delay or prevent MPL from entering the BC market.

229. In cross-examination it was suggested to Mr. Newell that he was opposed to MPL coming into BC since at least November 2017. Mr. Newell denied this. His response is that he was and is already doing business with MPL. He was not opposed to anyone applying, he never got involved and recused himself from every single greenhouse application, and never got in the way of any competitor's expansion plans (Transcript of J. Newell, April 19, 2022, p. 104, ll. 17-44) (TEB, Tab 50).

230. Whether Mr. Newell was opposed to MPL at any time is largely irrelevant because there is uncontradicted evidence that at no time did Mr. Newell have any discussions, decision-making involvement or in any other way consider MPL's Agency application. Nor did he discuss MPL's Agency application with any other Commissioners. Therefore, even if Mr. Newell was opposed to MPL coming into British Columbia (which he denies), he did not act on that sentiment.

231. Even if MPL could establish that Mr. Newell has always been concerned about MPL's entry into British Columbia, it is clear he did not act on that perspective as a Commissioner. As a result, the email chains in Exhibit 38 cannot form the basis of a claim of corruption against Mr. Newell.

232. MPL also alleged that about a year before MPL made its application for agency status, Mr. Mastronardi had a conversation with Mr. John Newell's brother, Mr. Steve Newell, who told Mr. Mastronardi that he and his brother would make sure that MPL never came to British Columbia or words to that effect.

233. As a starting point, at no time was Mr. Steve Newell a Commissioner. This evidence is also in the nature of the evidence in Exhibit 38 - that is, that the Newell brothers have a negative view of MPL and were concerned about its entry into British Columbia. However, as stated above, there is no evidence that this sentiment was ever acted upon. A claim of corruption cannot be established on the basis that an official had a particular belief. There has to be some evidence that the official in question acted on their belief to harm the claimant. Here, that key evidence is missing. Therefore, regardless of whether Mr. Steve Newell made the alleged comment to Mr. Mastronardi, there is no evidence that Mr. John Newell ever acted to delay or prevent MPL from entering the British Columbia market. Stated simply, there is no basis for a claim of corruption against Mr. John Newell.

234. In summary, MPL has no basis to claim that Mr. Solymosi or any of the MPL Defendants acted in a corrupt way to harm MPL.

Claim by Bajwa Farms

235. As discussed above, Bajwa Farms alleges that the Commission acted in bad faith, without procedural fairness, and based on personal animosity on the part of certain Commissioners and/or the Commission’s general manager.

236. More specifically, the allegation is that Ms. Nupinder Bajwa was treated unfairly as a result of animus towards Mr. Bob Dhillon and Prokam, and the Commission dealt with cabbage DA belonging to Bajwa Farms improperly.

237. The undisputed background facts are that:

a. Bajwa Farms was owned by Ms. Nupinder Bajwa and Mr. Harjeet Bajwa;

b. Mr. and Ms. Bajwa had a marital break up;

c. In October 2019, the BC Supreme Court gave Ms. Nupinder Bajwa sole authority to operate Bajwa Farms;

d. For many years prior to 2019, Bajwa Farms had DA for cabbage and grew and marketed cabbage to BC Fresh; and

e. Nupinder Bajwa is the sister of Bob Dhillon, the principal of Prokam.

238. Sometime in September 2019, Mr. Driediger received a telephone call from Mr. Bajwa, who informed Mr. Driediger that he had grown cabbage without the assistance of Bajwa Farms and wanted to market it. At the time, Mr. Driediger knew that Mr. Bajwa was working with Van Ekelen farms.

239. By the time Mr. Driediger received the telephone call from Mr. Bajwa, he was also aware that Ms. Bajwa had not grown cabbage to be marketed. Mr. Driediger also knew that there was a split between the couple and that Ms. Bajwa had been given control of the operation of Bajwa Farm by a court order.

240. After his conversation with Mr. Bajwa, Mr. Driediger assumed that Mr. Bajwa had grown cabbage independent of Bajwa Farms and wanted to market it. As a result, Mr. Driediger telephoned Mr. Solymosi to advise him of the situation (Transcript of M. Driediger, March 28, 2022, p. 72) (TEB, Tab 51).

241. Mr. Solymosi asked Mr. Driediger to put the information in an email and send it to him.

242. On September 18, 2019, Mr. Solymosi received an email from Mr. Driediger concerning Mr. and Ms. Bajwa. More specifically, the email was seeking to have a way for Mr. Bajwa to sell cabbage he had apparently grown in 2020, to BC Fresh, independent of Bajwa Farms (Ex. 1, p. 4455).

243. At the time Mr. Solymosi received this email, he had no idea that Mr. and Ms. Bajwa were in a marital dispute. He knew that Bajwa Farms was a producer but didn't know either Mr. or Ms. Bajwa.

244. Mr. Solymosi then spoke with Mr. Bajwa in the week of October 12, 2019. Based on the email and his discussion with Mr. Bajwa, Mr. Solymosi prepared an analysis for the Commission (Ex. 1, p. 4483) and set out various options for the Commission to consider.

245. In the end, the Commission decided that Mr. Bajwa could not use the DA earned by Bajwa Farm unless the product was shipped through Bajwa Farm. An email was

sent to Mr. Bajwa on November 2, 2020 (Ex. 1, p. 4537). This email informed Mr. Bajwa of the decision and suggested that in order to qualify to sell the cabbage he could be registered as a multi-registration farm and eventually Mr. Bajwa was sent a producer application form so he could register with the Commission.

246. Mr. Bajwa never filled out the form.

247. About two weeks after Mr. Driediger received his first telephone call from Mr. Bajwa, he was having a conversation with the principal of Van Ekelen Farms. Through the conversation, he learned that it was Van Ekelen that had grown cabbage and that Mr. Bajwa was only an employee of Van Ekelen Farms.

248. Mr. Driediger communicated this information to Mr. Solymosi.

249. Subsequently, Van Ekelen applied for and was granted a license with the Commission to market the cabbage.

250. Ms. Bajwa raises various concerns which can be summarized as follows:

a. The September 18 email is suspicious because it points out that Ms. Bajwa is related to Mr. Dhillon;

b. After receiving the email, Mr. Solymosi spoke with Mr. Bajwa but did not contact Ms. Bajwa;

c. Subsequently, and mysteriously (as would be characterized by Ms. Bajwa), Van Ekelen becomes the owner of the cabbage in question and the Commission facilitates a license for Van Ekelen to be able to sell the cabbage.

251. Ms. Bajwa alleges that there was a conspiracy or, at least, improper conduct by BC Fresh in conjunction with the Commission to deprive Bajwa Farms of economic benefit which Mr. Bajwa was engaged in contrary to his fiduciary duties to Bajwa Farms.

252. In essence, Bajwa Farms alleges that they knew that the cabbage really did belong to Mr. Bajwa, but that in order to get around Mr. Bajwa's fiduciary duties and to

assist Mr. Bajwa to gain the economic benefit of cabbage he had grown, BC Fresh and the Commission cooperated to find a way around that, and that was to claim that the cabbage was owned and grown by Van Ekelen.

253. Although Bajwa Farms raises various suspicions, it does not establish in the evidence that the Commission or Mr. Solymosi did anything improper. For example, it is clear Mr. Solymosi did not know Mr. or Ms. Bajwa before he received the email on September 18, 2019. He had no reason to favour one over the other.

254. Mr. Solymosi spoke with Mr. Bajwa and then prepared a report for the Commission. The Commission considered the report and correctly concluded that Mr. Bajwa could not use Bajwa Farm DA to sell his cabbage.

255. It turned out later that Van Ekelen stated it was the owner of the cabbage; and when that was discovered, Van Ekelen applied for a license through the Commission to sell the cabbage and eventually did sell it to BC Fresh who paid the funds to Van Ekelen.

256. In terms of the email of September 18 stating that Ms. Bajwa was the sister of Mr. Dhillon, Mr. Driediger explains that he made that comment in the email because he knew it was a volatile situation because of the significant allegations that had been made against Mr. Bajwa. Mr. Driediger was trying to communicate to Mr. Solymosi that this was a volatile situation and that Mr. Dhillon may also be involved because at that time, Mr. Driediger knew that Mr. Dhillon was assisting his sister, Ms. Bajwa. Mr. Dhillon was also involved in litigation against the Commission.

257. Mr. Driediger explained that the purpose of including Mr. Dhillon’s name was not to prejudice the Commission against Ms. Bajwa; rather, it was to explain the potential volatility of the situation. In fact, Mr. Driediger insisted and testified that he had a very good working relationship with Ms. Bajwa and her son and had great respect for them (Transcript of M. Driediger, March 28, 2022, pp. 70-71) (TEB, Tab 52).

258. The fact that it was discovered that Van Ekelen was the owner of the cabbage and they eventually sold it to BC Fresh is what the Commission was presented with. Mr. Bajwa did not ever contest that Van Ekelen owned and grew the cabbage. In order

for Bajwa Farms to establish that the Commission acted improperly or that Mr. Solymosi acted improperly, Bajwa Farms would have to establish that Van Ekelen did not actually own or grow the cabbage.

259. While Bajwa Farms maybe suspicious of that fact, there is correspondence between counsel for Van Ekelen and counsel for Bajwa Farms discussing this issue where counsel for Van Ekelen challenges Bajwa Farms to prove otherwise. In other words, there is no evidence that Van Ekelen did not in fact own and grow the cabbage with Mr. Bajwa as its employee as claimed. Further, there is no evidence that the Commission knows that such was a ruse.

260. As far as the facts currently appear to exist, Van Ekelen was the owner of the cabbage, grew it, and marketed it to BC Fresh. If this is the case, then the Commission did nothing wrong as against Bajwa Farms.

261. Thus, the Commission was faced with an unusual and difficult situation. It does not appear that the Commission favoured Mr. Bajwa over Ms. Bajwa. The Commission accepted the facts as it was communicated to them: for example, it initially was told that Mr. Bajwa grew the cabbage and accepted that fact. Even accepting that, the Commission made the proper decision to state that Mr. Bajwa could not use the DA of Bajwa Farms to sell his cabbage. Far from being improper, this was the correct decision.

262. The Commission was subsequently informed that Van Ekelen owned the cabbage and grew the cabbage. Van Ekelen applied for a license with the Commission and there was no reason not to grant the license. While the situation which presented itself to the Commission was unusual, it does not appear that the Commission set out to deprive Bajwa Farms of any economic advantage or favour Mr. Bajwa over Ms. Bajwa.

263. There is no evidence to claim that Mr. Solymosi or the Commission acted improperly vis-à-vis Bajwa Farm.

Conclusion

264. Returning to the FTOR, the following conclusions can be made:

   a. there is no evidence commensurate with the seriousness of the allegations made;

   b. there is no evidence that any Commissioners acted in a self-interested manner to prevent new agencies from entering the British Columbia market or that Commission members acted in their own economic interests in the manner in which they adjudicated Agency applications;

   c. there is no evidence of any “vote swapping” by Commissioners on Agency applications;

   d. there is no evidence that Commissioners directed producers to certain Agencies in which they have a financial or personal interest; and

   e. there is no basis to claim that Commissioners exercised their statutory duties in bad faith or without procedural fairness due to personal animosity toward Prokam or any other producers.

265. This not mean that certain matters could have been done differently or better. As discussed above, the investigations on September and October 2017 could have been more detailed; for example, Mr. Solymosi likely should have provided the Agency Manager’s letter to Prokam before the show cause hearing. Similarly, Mr. Guichon and other storage crop Commissioners likely should not have participated in any discussions concerning Prokam.

266. However, none of this conduct was based on a personal animosity towards Prokam, nor can it be characterized as corruption. At best, they are errors which BCFIRB addressed through its appear process and the resulting supervisory review.

267. In this industry, it is easy to make allegations because of the structure of the industry. Commissioners are elected and most of them come from the industry, and therefore have personal interests which may be seen to conflict with their duties as

Commissioners. For example, some are growers, some have financial interests in agencies, etc.

268. However, the mere presence of other interests is not a basis upon which to claim that Commissioners acted in a conflict or in a corrupt manner in any particular decision. In my view many of the allegations made by the complainants in this case arise from the mere fact that Commissioners have seemingly conflicting interests, rather than from any specific evidence that the Commissioners actually acted improperly.

269. It is therefore my view that there is no basis to find that the general manager, Mr. Solymosi, or any of the Commissioners, acted in a manner that could be characterized as corruption.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: May 16, 2022

Nazeer T. Mitha, QC