

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 SUBMISSIONS OF BAJWA FARMS LTD.

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

TABLE OF CONTENTS

OVERVIEW	1
BACKGROUND	2
Harjeet's application to the Commission for use of Bajwa Farm's cabbage allocation	3
Animosity toward Prokam affected the Commission's and BC Fresh's dealings with Bajwa Farms.....	4
BC Fresh acted to favour Harjeet's interests.....	8
The Commission acted to favour Harjeet's interests	11
Commission decision of November 2, 2020	13
The Commission ignored Nupinder's concerns about market access for the cabbage	15
The change in ownership of the cabbage to Van Eekelen was suspicious ...	16
The Commission ignored and bent the rules to assist Harjeet and Van Eekelen	24
CONCLUSIONS REGARDING THE COMMISSION'S CONDUCT.....	26

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 SUBMISSIONS OF BAJWA FARMS LTD.

Overview

1. Nupinder Bajwa (“**Nupinder**”) has been operating Bajwa Farms Ltd. (“**Bajwa Farms**”) on her own since separating from her husband Harjeet Bajwa (“**Harjeet**”) as a result of domestic abuse.
2. After their separation, Harjeet grew cabbage on lands that were previously leased by Bajwa Farms. Cabbage was a crop traditionally grown by Bajwa Farms.
3. Harjeet sought assistance from the British Columbia Vegetable Marketing Commission (“**Commission**”) and BC Fresh to bring that cabbage to market in a way that avoided any claims against that cabbage by Bajwa Farms. The Commission and BC Fresh gave Harjeet that assistance.
4. The Commission and BC Fresh knew that Nupinder controlled Bajwa Farms, and knew that the ownership of the cabbage delivery allocation was an issue in the marital dispute. Nonetheless, they ignored the interests of Nupinder and Bajwa Farms and facilitated the marketing of cabbage despite being aware of Nupinder’s concerns that Harjeet grew the cabbage in breach of his fiduciary obligations.
5. In so doing, the Commission acted in in bad faith, without procedural fairness, and based on personal animosity. The only explanation for the Commission’s disregard of Nupinder’s interests is that she is related to Bob Dhillon, whose company Prokam Enterprises Ltd. (“**Prokam**”) has been locked in a long-running dispute with the Commission.

Background

6. Bajwa Farms is a family company, owned equally by Nupinder and Harjeet. Nupinder and Harjeet were married and are now separated.
7. Bajwa Farms is in the business of farming in Abbotsford, British Columbia. It farms a variety of crops including kale, parsley, zucchini, cabbage, carrots, beans, beets, cilantro, and peppers.
8. Nupinder is a director and shareholder of Bajwa Farms. She is the sole operator of Bajwa Farms, pursuant to an order of the BC Supreme Court, dated October 30, 2019.¹
9. Although Harjeet remained a director and shareholder of Bajwa Farms, he was prohibited by court order from attending at the Bajwa Farms properties pending criminal charges against him. He was also prohibited from attending at any of the workplaces of Nupinder or their children.² He subsequently plead guilty to assault and has been sentenced.³
10. Bajwa Farms owns a 60 acre parcel of land, of which 55 acres is crop land. Prior to Nupinder and Harjeet's separation, Bajwa Farms leased an additional 100 acres of crop land. The cabbage traditionally grown by Bajwa Farms was planted primarily on leased lands, including lands leased from Van Eekelen Enterprises Ltd. ("**Van Eekelen**")⁴

¹ Common Book, vol. 1, p. 5144 to 5146

² Evidence of Nupinder Bajwa, direct examination by Mr. Mitha, QC. Specifically, Harjeet was charged with criminal assault causing bodily harm and uttering threats, fear of injury and damage by another person in relation to Nupinder and two of their children

³ Transcript of Mr. Driediger's examination, March 28, 2022 ("**Mr. Driediger TR Mar 28**"), p. 140, lines 27 to 30

⁴ Evidence of Nupinder Bajwa, cross examination by Claire Hunter, QC

11. In the 2020 crop year, Bajwa Farms had commitments to supply unregulated crops, including a commitment to supply zucchini to Loblaws, and the 55 acres of land owned by Bajwa Farms were needed to meet those commitments.⁵
12. In the Spring of 2020, Nupinder learned that Harjeet was working with Van Eekelen; she later learned that Harjeet had planted cabbage on lands that Bajwa Farms had previously leased from Van Eekelen.⁶ Nupinder had observed that cabbage was planted on Van Eekelen lands, and testified that in the usual course BC Fresh and the Commission would have known about the crop being grown.⁷
13. In the 2020/21 growing season, Bajwa Farms did not grow cabbage, because Bajwa Farms was not able to secure the land to grow cabbage. In particular, Bajwa Farms was not able to secure the land from Van Eekelen that it previously leased. Bajwa Farms attempted to secure additional land to plant late cabbage, but was ultimately unable to do so.⁸ If Bajwa Farms had been able to secure additional lands, it would have been in a position to grow cabbage.⁹
14. In total, there were three parcels of land that Bajwa Farms previously leased, that Bajwa Farms was unable to secure in the 2020 crop year. Each of those parcels were leased to friends of Harjeet, and each of those friends was a BC Fresh grower.¹⁰

Harjeet's application to the Commission for use of Bajwa Farm's cabbage allocation

15. In the 2020/21 growing season, Harjeet grew cabbage for his own account, in breach of his fiduciary duties to Bajwa Farms. Harjeet sought to market that

⁵ Evidence of Nupinder Bajwa, cross examination by Claire Hunter, QC

⁶ Evidence of Nupinder Bajwa, cross examination by Claire Hunter, QC

⁷ Evidence of Nupinder Bajwa, direct examination by Mr. Mitha, QC

⁸ Evidence of Nupinder Bajwa, cross examination by Ravi Hira, QC and cross examination by Claire Hunter, QC

⁹ Evidence of Nupinder Bajwa, direct examination by Mr. Mitha, QC

¹⁰ Evidence of Nupinder Bajwa, cross examination by Claire Hunter, QC

cabbage using the delivery allocation earned by Bajwa Farms. In September 2020, Harjeet applied to the Commission to use Bajwa Farms' cabbage delivery allocation.¹¹

16. Instead of directing Harjeet to negotiate terms with Nupinder on which the cabbage could be marketed using Bajwa Farms' delivery allocation, the Commission's General Manager Andre Solymosi came up with a recommendation under which Harjeet could market the cabbage as a producer without delivery allocation (as a multi-registered farm associated with Bajwa Farms).¹² Mr. Solymosi made this recommendation even though the Commission's General Orders require a producer to obtain a licence before even planning to grow a regulated crop. Harjeet held no licences to grow cabbage.
17. The Commission made these arrangements for Harjeet at the initiative of BC Fresh. Neither BC Fresh nor the Commission bothered to advise Nupinder of these plans. Nupinder was not consulted even though BC Fresh was aware that she was concerned about Harjeet absconding with Bajwa Farms' funds and that she had asked whether Harjeet was growing cabbage for BC Fresh.¹³

Animosity toward Prokam affected the Commission's and BC Fresh's dealings with Bajwa Farms

18. BC Fresh and the Commission's partiality toward Harjeet and disregard for Nupinder's interests can be explained only by the fact that Nupinder is the sister of Bob Dhillon of Prokam. Because of that relationship, the Commission and BC

¹¹ Common Book, vol. 1, p. 4455

¹² Common Book, vol. 1, p. 4483

¹³ Mr. Driediger TR Mar 28, p. 140, line 31 to p. 141, line 19 and p. 141, lines 30 to 44; Exhibit 4, PDF pages 3 to 7 (July 19, 2019 email exchange between BC Fresh and Nupinder); Exhibit 27 (August 24, 2020 email from Rick Gilmour to Mr. Driediger)

Fresh were willing to assist Harjeet and ignore Nupinder's interests. Mr. Solymosi had referred to Prokam as a "rogue producer" in a September 27, 2017 email.¹⁴

19. Nupinder's relationship to Mr. Dhillon ought to have been completely irrelevant to the issue of market access for cabbage grown by Harjeet. Yet, the first time that Murray Driediger, president of BC Fresh, spoke to Mr. Solymosi about getting market access for Harjeet, Mr. Driediger mentioned Nupinder's relationship to Mr. Dhillon and included it in the September 18, 2020 email to Mr. Solymosi formally setting out Harjeet's request for market access ("**September 18 email**").¹⁵
20. Mr. Solymosi declined to tell Mr. Driediger to exclude any reference to Nupinder's relationship to Bob Dhillon from his email. Rather, Mr. Solymosi asked Mr. Driediger to put everything he was told by Mr. Driediger by phone into an email.¹⁶
21. When Mr. Solymosi sent his recommendation to the Commissioners regarding Harjeet's request to use the Bajwa Farms delivery allocation, he included the September 18, 2020 email from Mr. Driediger in which Mr. Driediger wrote:

"You should know that Nupinder is the sister of Bob Dhillon and Bob has been actively involved in this matter."¹⁷
22. Other aspects of Mr. Driediger's email that show partiality to Harjeet include:
 - (a) Mr. Driediger refers to a "messy marital dispute" between Harjeet and Nupinder but fails to mention that Nupinder's authority to operate Bajwa Farms resulted from criminal charges against Harjeet for assaults allegedly committed against Nupinder and the Bajwa children;

¹⁴ Transcript of Mr. Solymosi's examination, February 10, 2022 ("**Mr. Solymosi TR Feb 10**"), p. 23, line 45 to p. 24, line 2

¹⁵ Common Book, vol. 1, p. 4455

¹⁶ Mr. Solymosi TR Feb 10, p. 24, line 3 to p. 25, line 6

¹⁷ Transcript of Mr. Solymosi's examination, February 9, 2022 ("**Mr. Solymosi TR Feb 9**"), p. 142, line 34 to p. 143, line 2 and Feb 10, p. 23, lines 22 to 34; Common Book, Vol. 1, pp. 4455 and 4503

- (b) Mr. Driediger makes assertions about Harjeet's circumstances to paint Harjeet in a sympathetic light:

"[Harjeet] has grown the cabbage on his own without using any equipment or finances from Bajwa Farms. He is doing it with the help of other farms who are trying to help him get on his feet again."

"If his wife chose not to grow cabbage then he has a right to the delivery allocation..."

"Nupinder has control of Bajwa Farms but did not grow any cabbage. Harjeet chose to do so on his own. I do not believe Nupinder will transfer the delivery allocation to Harjeet."¹⁸

23. The statement in Mr. Driediger's email that "No one has done anything wrong" is a classic instance of one who "doth protest too much". At this point, the only accusations of wrongdoing were the criminal charges against Harjeet, so it is very curious that Mr. Driediger felt the need to include this statement in an email seeking relief from the Commission regarding use of Bajwa Farms' delivery allocation.
24. Mr. Driediger's attitude toward Prokam and Mr. Dhillon also comes through in his interview with Mr. Mitha, QC. The Interview Report includes the following:
- At delivery time, Mr. Driediger was told that they [Bajwa Farms] were short and would not have any cabbage. Mr. Driediger was not surprised as Bob Dhillon had removed all the equipment from the farm.¹⁹
25. This is a thinly veiled critique of Nupinder's management of Bajwa Farms which, on cross examination, Mr. Driediger admitted was: (a) wrong; (b) outside his personal knowledge; and (c) based entirely on rumour.²⁰

¹⁸ Common Book, Vol. 1, p. 4455

¹⁹ Common Book, Vol. 1, p. 5311

²⁰ Mr. Driediger TR Mar 28, pp. 146 to 147

26. It is also noteworthy that the allegation of equipment being removed from Bajwa Farms by Bob Dhillon is the subject of Harjeet's lawsuit against Bob Dhillon and others.²¹ The fact that Mr. Driediger was echoing the claim in Harjeet's lawsuit is another indication of his partiality toward Harjeet.
27. BC Fresh clearly had an interest in obtaining market access for the cabbage grown by Harjeet. Although Mr. Driediger claimed that BC Fresh did not need the cabbage,²² Mr. Solymosi understood that BC Fresh had an interest in obtaining market access for the cabbage grown by Harjeet, noting "it needed product".²³
28. Mr. Driediger characterized his September 18 email as seeking guidance from Mr. Solymosi about how to proceed,²⁴ but Mr. Solymosi characterized Mr. Driediger's September 18 email as a request to use Bajwa Farms' delivery allocation.²⁵
29. BC Fresh's interest in obtaining market access for Harjeet's cabbage, together with BC Fresh's animosity toward Mr. Dhillon, led BC Fresh to advance Harjeet's interests in marketing the cabbage to the exclusion of Nupinder's interests.
30. Mr. Driediger's explanation for why he told Mr. Solymosi that Nupinder was Bob Dhillon's sister defies common sense. Mr. Driediger asserted that he made this comment in order to put Mr. Solymosi on notice that he should tread carefully and do further diligence before the Commission made any decision.²⁶ If that was what Mr. Driediger intended to convey, he could have simply said that. Mr. Driediger also could have conducted the additional diligence he purportedly expected the Commission to do.

²¹ Evidence of Nupinder Bajwa, cross examination by Mr. McDonnell

²² Mr. Driediger TR Mar 29, p. 5, lines 20 to 38

²³ Mr. Solymosi TR Feb 10, p. 31, lines 5 to 14

²⁴ Mr. Driediger TR Mar 28, p. 149, line 32 to p. 150, line 1

²⁵ Mr. Solymosi TR Feb 9, p. 77, lines 30 to 32; p. 81, lines 2 to 5; Mr. Solymosi TR Feb 9, p. 137, lines 40 to 42

²⁶ Mr. Driediger TR Mar 28, pp. 70 to 71 and p. 161

31. Mr. Driediger could have acted impartially by speaking to Nupinder and getting her position on Harjeet's request for market access, rather than putting only Harjeet's position to Mr. Solymosi. If Mr. Driediger expected the Commission to conduct further diligence, he could have cautioned Mr. Solymosi that his September 18 email contained only Harjeet's position, and that he had not spoken to Nupinder. Yet he did none of those things.
32. The sibling relationship between Nupinder and Bob Dhillon should have been irrelevant. Mr. Solymosi says he does not know why Mr. Driediger referred to it in his September 18 email,²⁷ that Bob Dhillon's relationship to Nupinder was irrelevant and that he did not know what Mr. Driediger was talking about by referring to Bob Dhillon.²⁸
33. Mr. Solymosi's conduct belies that he actually treated Nupinder's relationship to Bob Dhillon as irrelevant. He failed to do any diligence, simply accepting the statements in Mr. Driediger's September 18 email and passing them on to the Commissioners as fact.²⁹

BC Fresh acted to favour Harjeet's interests

34. In addition to the clear comments in Mr. Driediger's September 18 email, numerous other aspects of how Mr. Driediger handled Harjeet's request demonstrate a partiality to Harjeet's interests and a disregard of Nupinder's interests.
35. BC Fresh and Mr. Driediger were aware that Nupinder was concerned about Harjeet taking assets that belonged to Bajwa Farms. On July 19, 2019, Nupinder

²⁷ Mr. Solymosi TR Feb 9, p. 77, lines 5 to 24; If Mr. Driediger had truly intended the reference to be a caution to Mr. Solymosi to tread carefully, that caution was ineffective if one accepts Mr. Solymosi's evidence that he did not even know why Mr. Driediger mentioned Bob Dhillon

²⁸ Mr. Solymosi Interview Report, Common Book, vol. 1, p. 5542

²⁹ Compare the "Situation Analysis" prepared by Mr. Solymosi for the Commissioners (Common Book, vol. 1, p. 4483) with Mr. Driediger's September 18 email (Common Book, vol. 1, p. 4455)

sent an email to BC Fresh regarding payment of funds from BC Fresh to Bajwa Farms. Nupinder wrote: "Please ensure that the funds are not released to Harjeet Bajwa". Mr. Driediger, who was copied on Nupinder's email, responded on the same day writing: "Duly noted".³⁰

36. BC Fresh was aware that Nupinder wanted to know whether Harjeet was growing cabbage for BC Fresh. Nupinder asked Rick Gilmour about it when he met with her on August 24, 2020 – Mr. Gilmour writes in an email to Mr. Driediger that Nupinder asked him "is not Harjeet growing Cabbage for you guys this year?" and "I told her to my knowledge, no, and I have not had any contact with Harjeet this entire season."³¹
37. Mr. Driediger was alive to the need for Nupinder to consent to Harjeet's use of the Bajwa Farms delivery allocation.³²
38. Yet, even though Mr. Driediger knew that Nupinder wanted to know whether Harjeet was growing cabbage for BC Fresh, when Mr. Driediger spoke to Harjeet and Mr. Solymosi just a few weeks later, on September 18, 2020, about getting access for the cabbage grown by Harjeet, Mr. Driediger did not bother to let Nupinder know that Harjeet had grown cabbage and was seeking to market it through BC Fresh using Bajwa Farms' delivery allocation.³³
39. In fact, instead of telling Nupinder that Harjeet had grown cabbage, Mr. Driediger asked Rudi Jaster to email Nupinder to confirm she had not grown cabbage. Mr. Jaster emailed Nupinder on September 18, the same day that Mr. Driediger wrote to Mr. Solymosi to seek access for the cabbage grown by Harjeet.³⁴

³⁰ Mr. Driediger TR Mar 28, p. 140, line 31 to p. 141, line 19; Exhibit 4, PDF pages 3 to 7

³¹ Exhibit 27, August 24, 2020 email from Rick Gilmour to Mr. Driediger; Mr. Driediger TR Mar 28, p. 141, lines 30 to 44

³² Mr. Driediger TR Mar 28, p. 152, lines 28 to 45 (see also para. 4 of his September 18 email)

³³ Mr. Driediger TR Mar 28, p. 164, lines 2 to 7

³⁴ Mr. Driediger TR Mar 28, p. 162, line 37 to p. 163, line 33

40. Mr. Driediger told the hearing panel that he had admonished BC Fresh staff to remain neutral and not take sides as between Nupinder and Harjeet after their separation.³⁵ Yet his conduct was exactly the opposite.
41. He said of his communication to Mr. Solymosi on September 18, 2020 that he “wanted to try and get as many facts out as we could,” yet he viewed getting Nupinder’s position on Harjeet’s request to be “a Commission matter”.³⁶ In fact, Mr. Driediger never bothered to speak to Nupinder prior to sending his September 18 email to Mr. Solymosi.³⁷ Mr. Driediger thought it was not his place to speak to Nupinder.³⁸
42. Mr. Driediger acknowledged that he was very familiar with the Commission’s general orders and that food safety was very important to BC Fresh,³⁹ yet Mr. Driediger and BC Fresh ignored those rules when it came to Harjeet’s request for market access for his cabbage. He acknowledged that the general orders require obtaining a licence prior to planning to grow a regulated crop,⁴⁰ yet he was willing to facilitate obtaining market access for Harjeet despite Harjeet not obtaining a licence prior to growing the cabbage.
43. Despite the fact that Bajwa Farms grew crops for BC Fresh, Mr. Driediger relayed to the Commission only the information he received from Harjeet. He was content to advocate for Harjeet’s interests and ignore the interests of Nupinder and Bajwa Farms. Mr. Driediger never told Mr. Solymosi that he had not spoken to Nupinder⁴¹, even though Mr. Solymosi was trusting Mr. Driediger to provide true and accurate information.⁴²

³⁵ Mr. Driediger TR Mar 28, p. 152, line 46 to p. 153, line 5 *[see also earlier comment]

³⁶ Mr. Driediger TR Mar 28, p. 163, lines 20-33

³⁷ Mr. Driediger TR Mar 28, p. 153, lines 6 to 8

³⁸ Mr. Driediger TR Mar 28, p.75, lines 20 to 25

³⁹ Mr. Driediger TR, Mar 28, p. 139, line 38 to p. 140, line 12; Mr. Driediger TR Mar 28, p. 142 (Mr. Driediger confirms importance of food safety)

⁴⁰ Transcript of Mr. Driediger’s examination, March 29, 2022 (“**Mr. Driediger TR Mar 29**”) p. 13 line 45 to p. 14 line 2

⁴¹ Mr. Driediger TR Mar 28, p. 153, lines 19 to 28

⁴² Mr. Solymosi TR Feb 9, p. 138, lines 6 to 10

44. Mr. Driediger's view was that he could simply present Harjeet's position, and he expected the Commission to sort out any issues between Harjeet and Nupinder.⁴³
45. Mr. Driediger justified his lack of impartiality between Harjeet and Nupinder on the basis that he expected the Commission to do further diligence.⁴⁴

The Commission acted to favour Harjeet's interests

46. The partiality of BC Fresh toward Harjeet's interests was mirrored by the Commission's approach.
47. The Commission did not conduct any due diligence regarding Harjeet's request for market access. The Commission was content to rely on information from Mr. Driediger, without testing it, even though Mr. Driediger advocated only for Harjeet's interests. It should have been apparent to Mr. Solymosi upon receiving the September 18 email that it was essential to obtain Nupinder's views.
48. After receiving Mr. Driediger's September 18 email, Mr. Solymosi would have known:
 - a) Nupinder and Harjeet both owned Bajwa Farms;
 - b) They were involved in a "messy marital dispute" that was before the courts;
 - c) The Court gave Nupinder possession of the farm; Nupinder had control of Bajwa Farms but did not grow cabbage;
 - d) Bajwa Farms had delivery allocation for cabbage;
 - e) Harjeet wanted to use Bajwa Farms' delivery allocation but did not want the proceeds of the cabbage sale to go through Bajwa Farms; and

⁴³ Mr. Driediger TR Mar 28, p. 153, lines 29 to 44

⁴⁴ Mr. Driediger TR Mar 28, p. 159, lines 14 to 18; Mr. Driediger TR Mar 28, p. 161, line 43 to p. 162, line 9; Mr. Driediger TR, Mar 29, p. 2, lines 16 to 26

- f) The “ownership” of the delivery allocation between Harjeet and Nupinder was unlikely to be resolved until a broader settlement is reached.⁴⁵
49. Yet, after receiving Mr. Driediger’s September 18 email, Mr. Solymosi called only Harjeet to verify the request.⁴⁶
50. It never even occurred to Mr. Solymosi to contact Nupinder to get her side of the story,⁴⁷ and he in fact never did contact her,⁴⁸ even though Mr. Driediger’s email speculated about what Nupinder’s position was (“I do not believe Nupinder will transfer the delivery allocation to Harjeet”).⁴⁹
51. Even though Mr. Driediger’s September 18 email made reference to a court order, Mr. Solymosi never bothered to find out specifics of it.⁵⁰
52. In response to Mr. Driediger’s request for market access for the cabbage grown by Harjeet, Mr. Solymosi prepared a “Situation Analysis” that included a recommendation for the Commissioners to review and discuss at their meeting.⁵¹
53. Mr. Solymosi never contacted Nupinder prior to preparing the Situation Analysis.⁵²
54. Mr. Solymosi characterizes his role as merely passing on information he received. This despite the fact that Mr. Solymosi was making a recommendation to the Commissioners about a matter that would affect the livelihoods of Nupinder and Harjeet.⁵³ Mr. Solymosi’s view that he could simply pass along information to the Commissioners as fact without conducting due diligence about the information he

⁴⁵ Common Book, vol. 1, p. 4455

⁴⁶ Mr. Solymosi TR Feb 9, p. 139, lines 40 to 46

⁴⁷ Mr. Solymosi TR Feb 9, p. 82, lines 4 to 9

⁴⁸ Mr. Solymosi TR Feb 9, p. 141, lines 11 to 47; Mr. Solymosi TR Feb 10, p. 20, lines 41 to 47

⁴⁹ Common Book, vol. 1, p. 4455

⁵⁰ Mr. Solymosi TR Feb 9, p. 140, lines 25 to 29

⁵¹ Common Book, vol. 1, p. 4483

⁵² Mr. Solymosi TR Feb 9, p. 145, lines 24 to 46

⁵³ Mr. Solymosi TR Feb 9, p. 147, lines 24 to 40

received is inconsistent with Mr. Driediger's expectation that Mr. Solymosi would verify the information he provided.⁵⁴

55. Yet Mr. Solymosi stated that his recommendation to the Commissioners was based entirely on the email from Mr. Driediger.⁵⁵

Commission decision of November 2, 2020

56. On November 2, 2020, Mr. Solymosi wrote to Harjeet, with a copy to Mr. Driediger, advising that the Commission decided that Harjeet "cannot use the delivery allocation that has been earned by Bajwa Farms Ltd. unless the product is shipped through Bajwa Farms Ltd. Therefore, Mr. Bajwa's crop is to be treated as if it were planted without delivery allocation."⁵⁶
57. Mr. Solymosi and Mr. Driediger point to this decision as showing that the Commission did not favour Harjeet's interests, having rejected his request to use the Bajwa Farms delivery allocation. That position does not withstand scrutiny.
58. The effect of the Commission's November 2, 2020 decision and the subsequent conduct of Mr. Solymosi and Mr. Driediger was to eliminate the need to seek Nupinder's consent to using Bajwa Farms' delivery allocation (Mr. Solymosi acknowledged that if Bajwa Farms' delivery allocation was used, Nupinder's consent would have been required)⁵⁷ and the need to advise Nupinder of the situation entirely.
59. Indeed, Mr. Solymosi testified that once the Commission declined Harjeet's application to use Bajwa Farms' delivery allocation, he "did not think that it would be necessary to contact Ms. Bajwa."⁵⁸

⁵⁴ Mr. Driediger TR, Mar 28, p. 149, line 32 to p. 150, line 1

⁵⁵ Mr. Solymosi TR Feb 9, p. 142, lines 34 to 45

⁵⁶ Common Book, vol. 1, pp. 4540 & 4541

⁵⁷ Mr. Solymosi TR Feb 9, p. 146, lines 12 to 18

⁵⁸ Mr. Solymosi TR Feb 9, p. 82, lines 4 to 9

60. The switch in “ownership” of the cabbage from Harjeet to Van Eekelen gave the Commission another reason not to involve Nupinder.
61. Mr. Solymosi’s Nov. 2 letter states “We will also write a letter addressed to Nupinder Bajwa asking for written confirmation that Bajwa Farms Ltd. is not producing cabbage for the 2020/21 Crop Year...” but no letter was ever sent to Nupinder because Mr. Solymosi “forgot”.⁵⁹
62. In fact, the very next day, the “ownership” of the cabbage changed from Harjeet to Van Eekelen, a switch the Commission and BC Fresh may well have made so that it would not be necessary to notify Nupinder about the marketing of this cabbage.
63. Nupinder was never consulted about the cabbage grown by Harjeet. It was only by inadvertence that Nupinder found out for the first time on November 2, 2020 that BC Fresh, the Commission, Harjeet and Van Eekelen were working together to bring this cabbage to market: the email to Harjeet was sent to the Bajwa Farms email address to which Nupinder had access.⁶⁰
64. If the Commission’s November 2, 2020 letter had not been mistakenly sent to Nupinder, the conduct of Messrs. Solymosi and Driediger would have had the effect of keeping Nupinder in the dark about Harjeet’s breach of his fiduciary duties, and allowed the cabbage grown by Harjeet in breach of those duties to be brought to market without any of the proceeds going to Bajwa Farms, quite apart from whether it was marketed with or without the benefit of Bajwa Farms’ delivery allocation.

⁵⁹ Common Book, vol. 1, pp. 4540 & 4541; Mr. Solymosi TR Feb 9, p. 83, lines 1 to 8

⁶⁰ Evidence of Nupinder Bajwa, direct examination by Mr. Mitha, QC

The Commission ignored Nupinder's concerns about market access for the cabbage

65. Once Nupinder discovered that Harjeet was seeking market access for cabbage he grew in breach of his fiduciary duties to Bajwa Farms, Bajwa Farms' counsel wrote to the Commission advising the Commission of Bajwa Farms' concerns.
66. By letter dated November 6, 2020, DLA Piper (Canada) LLP ("**DLA Piper**") advised Mr. Solymosi of Bajwa Farms' concerns regarding Harjeet's conduct and breaches of fiduciary duty, and the impact of those breaches on the business of Bajwa Farms.⁶¹ The Commission declined to intervene.⁶²
67. After receiving DLA Piper's November 6 letter, Mr. Solymosi made no investigations.⁶³ Mr. Solymosi sent a response to the DLA Piper letter rejecting Bajwa Farms' concerns out of hand, saying:
- ... it seems likely that [your client's position] would be contested by other persons. ... We encourage you to reach an agreement with all other affected parties regarding the proceeds from the sale of cabbage, or to otherwise obtain a court order ... the Commission cannot intervene on behalf of one party to a private dispute.
68. Interestingly, Mr. Solymosi did not even ask Harjeet or Van Eekelen for their position prior to sending the Commission's November 9, 2020 response to the November 6 letter from DLA Piper.⁶⁴
69. Mr. Solymosi's approach to the claims to ownership of the cabbage are telling. He accepted Mr. Driediger's word in the September 18 email that the cabbage was grown by Harjeet without bothering to seek Nupinder's views.

⁶¹ **TAB 2** of the Bajwa Farms Documents.

⁶² **TAB 3** of the Bajwa Farms Documents.

⁶³ Mr. Solymosi TR Feb 10, p. 20, lines 36 to 40

⁶⁴ Mr. Solymosi TR Feb 10, p. 20, lines 7 to 35

70. When Mr. Driediger later told Mr. Solymosi that the cabbage in fact belonged to Van Eekelen, he also took Mr. Driediger's word for it.
71. Yet, when Bajwa Farms asserted claims against the cabbage, he rejected those claims out of hand, without even confirming with Harjeet or Van Eekelen whether they would contest Bajwa Farms' claims.
72. After receiving the DLA Piper letter of November 6, 2020, the Commission continued to facilitate market access for the cabbage through Van Eekelen, ignoring or bending the Commission's general orders in the process.

The change in ownership of the cabbage to Van Eekelen was suspicious

73. In Mr. Driediger's September 18 email, the cabbage is described as being grown by Harjeet:

"Harjeet has grown green and red cabbage for storage this year. Financially, he has grown the cabbage on his own... He is doing it with the help of other farms... ." ⁶⁵

74. Mr. Solymosi acknowledged that all the documents up to and including November 2, 2020 are consistent with the cabbage being grown by Harjeet. ⁶⁶
75. Suddenly, on November 3, 2020, at the Commission's weekly market access conference, the cabbage is referred to as belonging to Van Eekelen. This change and the explanations Mr. Solymosi and Mr. Driediger provided for it are suspicious.
76. Until his cross examination by Bajwa Farms' counsel, Mr. Solymosi was not forthcoming and declined to provide any explanation for how, when or why the "ownership" of the cabbage changed. ⁶⁷ For example, in response to a second

⁶⁵ Common Book, vol. 1, p.4455

⁶⁶ Mr. Solymosi TR Feb 10, p. 1, lines 23 to 44.

⁶⁷ Mr. Solymosi TR Feb 9, p. 84, lines 27 to 40; p. 87, lines 3 to 8, p. 134, lines 6 to 41

question from Mr. Mitha, QC, on this issue in his direct examination, Mr. Solymosi says:

Well, I was under the impression initially it was Harjeet Bajwa that had produced the cabbage and was applying for this application on his own, and my understanding now is that it was Van Eekelen, and that Harjeet Bajwa was acting on behalf of Van Eekelen to submit the request.

77. Under cross examination, Mr. Solymosi at first confirmed that he knew nothing more about how the ownership of the cabbage changed beyond what he said in his direct examination.⁶⁸
78. Mr. Solymosi said that as of November 2, 2020 he still understood the cabbage was grown by Harjeet himself.⁶⁹ He also said that when he was preparing the Situation Analysis for the Commissioners, he believed the cabbage was grown by Harjeet.⁷⁰
79. Mr. Solymosi denied having any involvement in the change of ownership of the cabbage from Harjeet to Van Eekelen,⁷¹ even though the change in ownership occurred during the November 3, 2020 market access meeting which he attended.⁷²
80. Once the November 3, 2020 *Minutes of the BC Vegetable Marketing Commission re Market Access* were presented to Mr. Solymosi on cross examination,⁷³ he then claimed that Mr. Driediger explained for the first time in the November 3 meeting that the cabbage was in fact Van Eekelen's because Harjeet was an employee of Van Eekelen. Mr. Solymosi claimed that he simply accepted Mr.

⁶⁸ Mr. Solymosi TR Feb 9, p. 134, lines 6 to 36

⁶⁹ Mr. Solymosi TR Feb 9, p. 81, line 39 to p. 82, line 1

⁷⁰ Mr. Solymosi TR Feb 9, p. 145, lined 9 to 12

⁷¹ Mr. Solymosi TR Feb 10, p. 2, lines 3 to 5

⁷² Exhibit 17, *Minutes of the BC Vegetable Marketing Commission re Market Access*, PDF p. 1

⁷³ Exhibit 17, PDF p. 1

Driediger's explanation in the November 3 meeting and thereafter proceeded on the basis that the cabbage belonged to Van Eekelen.⁷⁴

81. Mr. Solymosi's evidence about how and when he learned that the cabbage actually belonged to Van Eekelen is incredulous.
82. If his evidence is true that he did not know prior to November 3, 2020 that the cabbage was grown by Van Eekelen, then his evidence that he expressed no surprise on November 3 when Mr. Driediger told him the cabbage belonged to Van Eekelen and not Harjeet is not believable.⁷⁵ He had presented as fact to the Commission in his Situation Analysis that the cabbage belonged to Harjeet.
83. If his evidence is true that he did not know the cabbage belonged to Van Eekelen until November 3, then he was incredibly reckless to simply accept the change in "ownership" based on Mr. Driediger's word for the first time in the November 3, 2020 meeting without investigating the matter further.
84. Mr. Solymosi's evidence that he was not surprised on November 3, 2020 is believable only if he knew all along that the cabbage actually belonged to Van Eekelen. Mr. Driediger suggests this was the case but that Mr. Solymosi simply forgot, because he had a lot going on. But Mr. Driediger's attempt to resuscitate Mr. Solymosi's credibility is inconsistent with Mr. Solymosi's own evidence about the change in ownership of the cabbage.⁷⁶
85. Mr. Solymosi was asked twice about the change in ownership by Mr. Mitha, QC, and was unforthcoming about how or when the change occurred.⁷⁷ And under

⁷⁴ Mr. Solymosi TR Feb 10, p. 8, line 41 to p. 9, line 3 and p. 9, lines 27 to 47; Mr. Driediger TR Mar 29, p. 12, line 22 to p. 13, line 8

⁷⁵ Mr. Solymosi TR Feb 10, p. 6, lines 7 to 10 and 34 to 37, p. 8, lines 41 to 46, p. 9, lines 32 to 39

⁷⁶ Mr. Driediger TR Mar 29, p. 13, lines 10 to 23

⁷⁷ Mr. Solymosi TR Feb 9, 2022, p. 84, lines 17 to 40 and p. 86, line 44 to p. 87, line 8

cross examination by Bajwa Farms' counsel, Mr. Solymosi confirmed that he knew nothing more than what he said in his direct evidence.⁷⁸

86. Mr. Driediger's explanations about the change in ownership of the cabbage also raise suspicions.
87. Mr. Driediger says he spoke to Ria Van Eekelen about two weeks after September 18, 2020 and that he then discovered that the cabbage belonged to Van Eekelen and not Harjeet. He claims he immediately called Mr. Solymosi to explain that there was a discrepancy about the ownership of the cabbage.⁷⁹
88. It is rather odd that Mr. Driediger did not send an email to Mr. Solymosi on the change in ownership of the cabbage, given that he did send an email on September 18, 2020 to support Harjeet's request to use the Bajwa Farms delivery allocation and given that Mr. Driediger expected the Commission to conduct due diligence as to the ownership of the cabbage.⁸⁰
89. The evidence of Mr. Driediger and Mr. Solymosi is contradictory. Mr. Driediger says he told Mr. Solymosi about Van Eekelen growing cabbage as soon as he spoke to Ria Van Eekelen, but Mr. Solymosi was clear in his evidence that the first time he ever learned that the cabbage belonged to Van Eekelen was during the November 3 market call, based solely on information from Mr. Driediger.⁸¹
90. Mr. Driediger's explanation is also inconsistent with the Situation Analysis that Mr. Solymosi provided to the Commissioners, in which Mr. Solymosi wrote "I spoke to Harjeet the week of October 12th to get an update from him. He confirmed that he has not yet shipped any product... ." ⁸² Mr. Solymosi's reference to an October 12 call with Harjeet is after Mr. Driediger claims he told Mr. Solymosi the cabbage

⁷⁸ Mr. Solymosi TR Feb 9, p. 134, lines 6 to 36

⁷⁹ Mr. Driediger TR Mar 28, p. 155, lines 33 to 39

⁸⁰ Mr. Driediger TR Mar 29, p. 3, lines 32 to 37

⁸¹ Mr. Solymosi TR Feb 10, p. 8, line 41 to p. 9, line 3 and p. 9, lines 27 to 47

⁸² Common Book, vol. 1, p 4504

belonged to Van Eekelen, yet here Mr. Solymosi is describing a call with Harjeet in which the cabbage is still described as being Harjeet's cabbage.

91. Mr. Driediger's explanation about the timing of the change in ownership is also suspicious for a number of other reasons.
92. It is simply not credible that BC Fresh had no knowledge of the cabbage grown by Harjeet until September 18, 2020 and not credible that BC Fresh did not know in advance who was actually growing the cabbage for the following reasons:
 - a) Mr. Driediger testified that he knew Harjeet was working with Van Eekelen before his September 2020 call from Harjeet; Mr. Driediger said it was "common industry knowledge" that Harjeet was working for Van Eekelen.⁸³
 - b) Van Eekelen is a sophisticated farm operator that could be expected to be familiar with the Commission's rules for growing and marketing regulated crops.⁸⁴
 - c) It was highly unusual to have a grower like Van Eekelen come to BC Fresh for the first time in September regarding cabbage grown that year. BC Fresh was dealing with Van Eekelen throughout the year, and BC Fresh should have known what Van Eekelen was growing. Mr. Driediger acknowledged that BC Fresh would normally know about a grower's crop intentions even before the crops are planted.⁸⁵
 - d) Mr. Solymosi agreed that BC Fresh has detailed knowledge about what crops its producers grow⁸⁶ and Mr. Solymosi obtains info from Mr. Driediger, both general market info and producer specific info.⁸⁷

⁸³ Mr. Driediger TR Mar 28, p. 72, line 42 to p. 73, line 7

⁸⁴ Mr. Solymosi TR Feb 10, p. 14, lines 7 to 9

⁸⁵ Mr. Driediger TR Mar 28, p. 157, line 29 to p. 159, line 5

⁸⁶ Mr. Solymosi TR Feb 9, p. 136, line 32 to p. 137, line 3

⁸⁷ Mr. Solymosi TR Feb 9, p. 137, lines 8 to 12

93. If Van Eekelen was actually the one growing the cabbage crop all along, one would have expected Van Eekelen to have communicated with BC Fresh long before September, and to have obtained a licence from the Commission for cabbage prior to planting it.
94. Mr. Driediger argued on cross examination that the Commission did actually make a determination about the ownership of the cabbage, as he says he expected the Commission to do, and says the decision was made at the November 3, 2020 meeting.⁸⁸ Mr. Driediger's assertion is not supported by the minutes from the November 3 meeting. Nothing in those minutes purports to record a deliberative process resulting in a decision on the ownership of the cabbage; rather they refer to a request for market access for the cabbage.⁸⁹
95. Mr. Driediger's assertion that the Commission made a decision on ownership of the cabbage on November 3, 2020 is also inconsistent with Mr. Driediger's evidence about the November 3 meeting.
96. Mr. Driediger acknowledged that the "decision" that the cabbage belonged to Van Eekelen's was made by Mr. Solymosi alone, that no Commissioners were present, and that Mr. Solymosi's November 3 "decision" was based entirely on information from Mr. Driediger.⁹⁰ In contrast, when the Commission was dealing with whether Harjeet could use Bajwa Farms' delivery allocation, Mr. Solymosi put the decision to the Commissioners with a "Situation Analysis" and "Recommendation".
97. Mr. Driediger says that when he saw the November 2, 2020 decision of the Commission he called Mr. Solymosi and told Mr. Solymosi that he might have got it wrong, and that Mr. Solymosi needed to do some further due diligence on this.⁹¹

⁸⁸ Mr. Driediger TR Mar 29, p. 12, line 22 to p. 13, line 8

⁸⁹ Exhibit 17, Minutes of the BC Vegetable Marketing Commission re Market Access, PDF p. 1

⁹⁰ Mr. Driediger TR Mar 29, p. 12, line 22 to p. 13, line 8

⁹¹ Mr. Driediger TR Mar 29, p. 13, lines 10 to 23

This is contradicted by Mr. Solymosi, who denied having any discussions with Mr. Driediger between November 2 and 3, 2020.⁹²

98. Mr. Driediger's assertion that the Commission made a decision on November 3, 2020 about the ownership of the cabbage is also inconsistent with Mr. Solymosi's evidence. Mr. Solymosi did not say that he made any decision in the meeting. Mr. Solymosi said that he simply accepted Mr. Driediger's statements given for the first time on November 3, sought no explanation from Mr. Driediger about this change, and simply proceeded on the basis that the cabbage belonged to Van Eekelen.⁹³
99. Throughout his evidence, Mr. Driediger said he expected the Commission to conduct some due diligence about the ownership of the cabbage, yet the ownership changed on November 3, 2020 based simply on untested assertions by Mr. Driediger, with no one from the Commission seeking the views of Harjeet, Van Eekelen or, most importantly, Nupinder.
100. Mr. Solymosi saw no need to do any additional diligence once he heard from Mr. Driediger on November 3, 2020 that the cabbage belonged to Van Eekelen, not Harjeet.⁹⁴ Mr. Solymosi simply accepted Mr. Driediger's explanation in the November 3, 2020 meeting that because Harjeet was an employee of Van Eekelen, the cabbage was actually Van Eekelen's.⁹⁵ Mr. Solymosi never asked Mr. Driediger for any further explanation in their subsequent call on November 5, 2020 when Mr. Driediger sent Mr. Solymosi the signed licence application from Van Eekelen.⁹⁶

⁹² Mr. Solymosi TR Feb 10, p. 6, lines 20 to 23

⁹³ Mr. Solymosi TR Feb 10, pp. 5 and 6

⁹⁴ Mr. Solymosi TR Feb 10, p. 7, lines 8 to 20; Mr. Solymosi TR Feb 10, p. 8, lines 26 to 40

⁹⁵ Mr. Solymosi TR Feb 10, p. 9, lines 32 to 47 and p. 10, lines 1 to 14

⁹⁶ Mr. Solymosi TR Feb 10, p. 13, lines 9 to 14

101. The lack of due diligence by the Commission is particularly surprising given the extraordinary circumstances of Harjeet seeking access for the cabbage only to have the cabbage later marketed as belonging to Van Eekelen.
102. Ms. Babcock candidly characterized the process of licencing Van Eekelen to sell this cabbage as “extraordinary”⁹⁷ at the time, even before these transactions received the scrutiny of this process.
103. Mr. Solymosi noted that this was the first time he ever received a request from a producer who wanted to produce cabbage without a delivery allocation.⁹⁸
104. Mr. Solymosi conceded on cross examination the extraordinary nature of the situation, which included:
- a) a request to use delivery allocation from a producer he did not know and had never dealt with before (prior to Mr. Driediger’s September 18, 2020 email);
 - b) Harjeet was seeking to use delivery allocation for a company he did not control;
 - c) Harjeet did not control Bajwa Farms because Nupinder had control under a court order;
 - d) Nupinder was the sister of Bob Dhillon;
 - e) Harjeet and Nupinder were in a messy marital dispute;
 - f) the cabbage was initially referred to as being grown by Harjeet, but the Commission was later told it was grown by Van Eekelen; and
 - g) neither Harjeet nor Van Eekelen had a licence to grow cabbage.⁹⁹
105. These extraordinary circumstances ought to have led Mr. Solymosi to proceed with caution and due diligence. Instead, despite all these extraordinary

⁹⁷ Common Book, vol. 1, p 4572

⁹⁸ Mr. Solymosi TR Feb 10, p. 26, lines 20 to 23

⁹⁹ Mr. Solymosi TR Feb 10, p. 26, line 37 to p. 27, line 39

circumstances, Mr. Solymosi proceeded based entirely on information from Mr. Driediger (and a single conversation with Harjeet) and was willing to bend the Commission rules to bring the cabbage to market.

The Commission ignored and bent the rules to assist Harjeet and Van Eekelen

106. The Commission ignored its own rules, bending them to advance the interests of Harjeet and Van Eekelen at the expense of Bajwa Farms.
107. The Commission's General Orders prohibit a producer from growing a regulated product unless the producer obtains the appropriate licence and requires a person who plans to produce a regulated product to obtain a licence.¹⁰⁰
108. Mr. Solymosi acknowledged that orderly marketing requires that producers be licenced and that the General Orders require obtaining a licence prior to planning to grow the crop.¹⁰¹
109. Regardless of ownership, neither Harjeet nor Van Eekelen complied with the General Orders in relation to the cabbage crop in 2020. Neither obtained a licence to grow cabbage prior to planning to grow the cabbage crop in 2020.¹⁰² Van Eekelen also never obtained a CanadaGAP food safety certificate for cabbage in the 2020/21 crop season.¹⁰³
110. Mr. Driediger acknowledged that a grower needs a licence to grow regulated crop like cabbage, and to obtain that licence prior to even planning to grow the crop.¹⁰⁴ He also acknowledged the importance of food safety to BC Fresh.¹⁰⁵

¹⁰⁰ Common Book, vol. 1, 4602; see Part IV, s. 10 (p. 4611) and s. 21(c) (p. 4613)

¹⁰¹ Mr. Solymosi TR Feb 9, pp. 130 to 132

¹⁰² Mr. Solymosi TR Feb 10, p.14, line 46 to p. 15, line 5

¹⁰³ Mr. Solymosi TR Feb 10, pp. 15 to 17, Exhibit 4, PDF pp. 59 and 80

¹⁰⁴ Mr. Driediger TR Mar 28, p. 165, lines 10 to 19; Mr. Driediger TR Mar 29, p. 13, line 45 to p. 14, line 2

¹⁰⁵ Mr. Driediger TR Mar 28, p. 142, lines 8 to 37

111. Although Mr. Solymosi and Mr. Driediger claimed that the Commission's November 2, 2020 decision to grant Harjeet access was in accordance with the Commission's policy governing crops grown without delivery allocation, Mr. Solymosi conceded on cross examination that Harjeet did not meet the Commission's Administrative Policy: Harjeet did not have a licence from the Commission, had not signed a Grower Marketing Agreement with an agency, and did not have a valid food safety certificate.¹⁰⁶
112. Mr. Solymosi acknowledged he was willing to bend the rules to allow Harjeet to market the cabbage¹⁰⁷ and was willing to overlook that Harjeet grew cabbage without regulatory approvals.¹⁰⁸
113. In fact, Mr. Solymosi and Mr. Driediger were actively engaged in enabling Van Eekelen to market the cabbage despite its failure to obtain a licence in advance.
114. While a sophisticated grower like Van Eekelen would normally apply directly to the Commission to obtain a licence,¹⁰⁹ here, Mr. Driediger was closely involved in obtaining a licence for Van Eekelen after the fact. Van Eekelen sent its licence application to Mr. Driediger rather than to the Commission, and then Mr. Driediger called Mr. Solymosi and sent the licence application to Mr. Solymosi directly.¹¹⁰ Mr. Solymosi acknowledged that it was extraordinary or unusual for Mr. Driediger to send a licence application to Mr. Solymosi directly.¹¹¹
115. It was particularly unusual because Ms. Babcock of the Commission usually handled licence applications, not Mr. Solymosi as general manager.

¹⁰⁶ Mr. Solymosi TR Feb 9, p.148, line 8 to p. 149, line 43; the Administrative Policy is attached to Mr. Solymosi's November 2, 2020 letter to Harjeet, Common Book, vol. 1, pp 4542 to 4545

¹⁰⁷ Mr. Solymosi TR Feb 9, p. 149, lines 38 to 42; Mr. Solymosi TR Feb 10, p. 7, lines 31 to 42

¹⁰⁸ Mr. Solymosi TR Feb 10, p. 30, lines 2 to 16

¹⁰⁹ Mr. Solymosi TR Feb 10, p. 14, lines 7 to 40

¹¹⁰ Mr. Driediger TR Mar 29, p. 14

¹¹¹ Mr. Solymosi TR Feb 10, p. 14, lines 37 to 45

116. Once Mr. Solymosi received the Van Eekelen licence application from Mr. Driediger, he admitted on cross examination that he instructed Ms. Babcock to approve the licence application, although he caught himself and modified his answer saying “Or I would say go through the process ... That’s more accurate or descriptive.”¹¹²
117. The Commission never took enforcement action against Harjeet or Van Eekelen for growing cabbage without a licence.¹¹³ The Commission never investigated whether Harjeet grew cabbage without regulatory approvals.¹¹⁴
118. Although neither Harjeet nor Van Eekelen could market the crop in compliance with the General Orders, having failed to seek a licence prior to growing the cabbage, the cabbage could have been marketed legally if the Commission chose to involve Bajwa Farms.
119. Bajwa Farms had a licence in place and had delivery allocation.¹¹⁵ This of course would have required Nupinder’s consent and, as is evident from Mr. Driediger’s September 18 email, Harjeet and Mr. Driediger had no intention of pursuing a route that would require involving Nupinder. As Mr. Driediger wrote in his September 18 email “[Harjeet] has a right to the DA but the proceeds cannot go through Bajwa Farms...”.¹¹⁶

Conclusions regarding the Commission’s conduct

120. When Harjeet sought Commission approval to use the Bajwa Farms delivery allocation, the Commission was faced with an unusual request made in extraordinary circumstances. Harjeet was a director, officer and owner of Bajwa Farms. Nupinder was the other owner. They were in “a messy marital dispute”.

¹¹² Mr. Solymosi TR Feb 10, p. 15, lines 10 to 45

¹¹³ Mr. Solymosi TR Feb 10, p. 29, lines 12 to 15

¹¹⁴ Mr. Solymosi TR Feb 10, p. 29 line 46 to p. 30, line 1

¹¹⁵ Mr. Solymosi TR Feb 10, p. 31, lines 23 to 30

¹¹⁶ Common Book, vol. 1, p. 4455

Ownership of the Bajwa Farms cabbage delivery allocation was an issue in that dispute.

121. These extraordinary circumstances ought to have put Mr. Solymosi on notice that he needed to proceed cautiously, with due diligence, and in a way that was impartial as between Harjeet and Nupinder.
122. Instead, Mr. Solymosi completely ignored Nupinder's interests and those of Bajwa Farms.
123. The Commission never consulted Nupinder about Harjeet's request. Instead, Mr. Solymosi put a recommendation to the Commissioners that would have allowed Harjeet to bring the cabbage to market without seeking Nupinder's consent.
124. Even though Harjeet and Mr. Driediger initially purported to request access on Harjeet's behalf, they must have at some point decided that it was more advantageous to market the cabbage under the Van Eekelen name. Doing so would completely avoid the need to involve Nupinder and Bajwa Farms in the issue.
125. On November 2, 2020, the Commission's decision on Harjeet's request to use Bajwa Farms' delivery allocation was inadvertently sent to Nupinder. The Commission's November 2 letter, which was addressed to Harjeet and Mr. Driediger, made reference to giving notice to Nupinder.
126. Up until November 2, all the documents reflected that the cabbage was grown by Harjeet.
127. It is surely no coincidence that, the very next day, on November 3, 2020 the "ownership" of the cabbage switched to Van Eekelen and Mr. Solymosi and Mr. Driediger were personally involved in ensuring that Van Eekelen was granted an after-the-fact licence to produce the cabbage.
128. Even after Bajwa Farms' counsel wrote to the Commission on November 6, 2020 advising of Harjeet's breach of fiduciary duties in growing cabbage on Van

Eekelen lands, the Commission rejected Bajwa Farms' concerns out of hand. The Commission continued to act based entirely on information from Mr. Driediger, and made no additional efforts to assess the situation or revisit its earlier decisions.

129. Mr. Driediger argued in cross examination that the claims raised by Bajwa Farms on November 6, 2020 raised legal matters, for the Courts to sort out.¹¹⁷ That argument is belied by his own evidence, in which he said he was content to advance information only from Harjeet, on the expectation that the Commission would conduct its own due diligence and make a decision on the issue.
130. Mr. Driediger's argument echoed what Mr. Solymosi wrote in his November 9, 2020 letter to DLA Piper: "In the absence of [an agreement or court order], the Commission cannot intervene on behalf of one party to a private dispute."¹¹⁸
131. But the Commission did in fact intervene on behalf of private parties. The Commission intervened by finding a way for Harjeet to market the cabbage without the need to contact Nupinder. And the Commission intervened again to ensure Van Eekelen could market the cabbage, ignoring and bending the Commission's General Orders in the process.
132. The Commission chose not to intervene on Bajwa Farms' behalf, but there was no rationale for the Commission to prefer Harjeet and Van Eekelen's position over Nupinder's. The Commission conducted no due diligence of its own and simply accepted Mr. Driediger's word on who owned the cabbage.
133. The Commission was not declining to get involved in a private dispute. It had already picked a side. What in fact occurred after the Commission received DLA Piper's November 6, 2020 letter is that Mr. Solymosi simply rejected out of hand any information that contradicted what he had been told by Mr. Driediger. This is clear from his November 9, 2020 letter to DLA Piper.

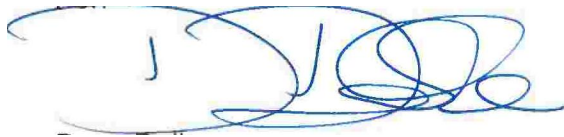
¹¹⁷ Mr. Driediger TR Mar 29, p. 12, lines 5 to 15

¹¹⁸ Common Book, vol. 1, p. 4586

134. The Commission's failure to conduct any due diligence shows a total disregard for the interests of Bajwa Farms and Nupinder and a clear partiality toward the interests of Harjeet and Van Eekelen.
135. There is a simple but troubling explanation for the Commission's conduct, set out in plain language in Mr. Driediger's September 18 email: "...Nupinder is the sister of Bob Dhillon and Bob has been actively involved in this matter."¹¹⁹
136. The clear conclusion is that the Commission acted in bad faith, without procedural fairness, and based on personal animosity. As a result, Bajwa Farms and Nupinder Bajwa were not treated fairly, and the Commission dealt with cabbage delivery in a way that was not impartial and fell short of expected and best regulatory practices.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

May 30, 2022



Dean Dalke
Counsel for Bajwa Farms Ltd.

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

Telephone: 604.643.6369
Email: dean.dalke@dlapiper.com

CAN: 40689137.3

¹¹⁹ Common Book, vol. 1, p. 4455