

Citation: *The Farmer's Truck Inc. v Michael David Tripp*, 2026 NBKB 189

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

MM-251-2026

BETWEEN:

THE FARMER'S TRUCK INC.,

APPLICANT,

-and-

MICHAEL DAVID TRIPP,

RESPONDENT

DECISION

BEFORE: Justice Maya Hamou

DATE OF HEARING: September 14, 2026

DATE OF DECISION: September 18, 2026

DATE OF WRITTEN REASONS: September 23, 2026

APPEARANCES: Michael Gooding, counsel on behalf of the Applicant
No one present on behalf of the Respondent

BACKGROUND

1. The Farmer's Truck Inc., the Applicant ("Farmer's Truck"), a corporation established under the laws of New Brunswick, comes before this Court to have the issuance of shares to the Respondent, Michael David Tripp, set aside. Alternatively, Farmer's Truck request to have the shares transferred from Mr. Tripp to Farmer's Truck.
2. Farmer's Truck is an extra-provincial corporation formed under the laws of New Brunswick which is engaged in social impact activities. Farmer's Truck works with non-profit organizations across North America to deliver fresh food to underserved communities.
3. Mr. Tripp acted as legal counsel for Farmer's Truck and accepted 30 common shares (voting shares) in Farmer's Truck as payment for legal services rendered in incorporating the company (representing 3% of the corporation's shares) on June 1, 2015. At the time, Mr. Tripp was a registered and practising lawyer.
4. The Record contains no indication of costs for legal services.
5. According to Frederic Laforge, a Director of Farmer's Truck, Mr. Tripp, in the course of the transaction, did not advise Farmer's Truck to seek independent legal advice regarding the share issuance transaction. Mr. Laforge located no records or documentation pertaining to the disclosure of a conflict of interest from Mr. Tripp.
6. In 2021, Farmer's Truck began buying back its outstanding shares from shareholders. In August of 2021, Mr. Tripp executed a Letter of Intent ("LOI") agreeing to transfer his shares in Farmer's Truck for \$12,000.00. Subsequently, in March of 2022, a Share Purchase Agreement ("SPA") executed by Mr. Tripp outlined similar terms as those provided for in the LOI.
7. At one point, in March of 2022, Mr. Tripp responded to requests to finalize the transfer, advising that he was requesting updated shareholders and financial information. Mr. Tripp suggested he may require a legal opinion before proceeding with the sale of the shares. Counsel for Farmer's Truck also requested copies of the minute book which Mr. Tripp never provided.
8. On July 21, 2022, and on July 21, 2023, Mr. Tripp followed up on the SPA, however, the parties were unable to connect or proceed with the transaction. By all indications, Mr. Tripp was out of the country during this period. An email was sent to Mr. Tripp on January 21, 2025,

to follow up on the conclusion of the SPA but Farmer's Truck and their solicitors received no response. In fact, after July 21, 2023, there were no further communications from Mr. Tripp.

9. Mr. Tripp never completed the share transfer as outlined in the LOI and the SPA. Mr. Tripp has failed to respond to inquiries and cannot be located despite significant efforts on the part of Farmer's Truck.
10. Prior to the hearing of the Application, Farmer's Truck sought and obtained an Order for Substituted Service on Mr. Tripp issued by the Court on September 1, 2026. Mr. Tripp did not communicate with the Court or submit materials in response to the Application. Mr. Tripp did not attend the hearing.
11. Farmer's Truck seeks relief based on an alleged breach of fiduciary duties by Mr. Tripp in acting as legal counsel and becoming a shareholder of Farmer's Truck. Farmer's Truck requests the setting aside of the June 1, 2015, share issuance based on this alleged breach of fiduciary duty. In the alternative, Farmer's Truck argues Mr. Tripp's conduct in failing to complete the agreed upon share transfer is oppressive, unfairly prejudicial to Farmer's Truck and unfairly disregards the interests of Farmer's Truck. As relief, Farmer's Truck requests that the Court direct the transfer of shares as provided for in the LOI and SPA or the setting aside of the initial share issuance.
12. Farmer's Truck currently requires the setting aside of the share issuance or the completion of the share transfer to enable it to proceed with a capital raising initiative for its social impact mandate.

ISSUES

13. Did Mr. Tripp breach fiduciary duties to Farmer's Truck in acquiring shares of the company as compensation for the incorporation of the company? May the Court set aside the share issuance as a result of a breach of fiduciary duties?
14. Does Mr. Tripp's conduct in failing to complete an agreed upon share transfer constitute oppressive and prejudicial conduct under section 166 of the *Business Corporations Act*, SNB 1981, c B-9.1? May the Court invalidate the transfer of shares to Mr. Tripp or direct the transfer of shares to the company as per the LOI and the SPA?
15. What costs may the Applicant recover?

ANALYSIS

Fiduciary Duty

16. Farmer's Truck raises Mr. Tripp's alleged breach of fiduciary duty in acting as their legal counsel in June 2015 while obtaining shares of Farmer's Truck as compensation for legal work. To support the alleged breach of fiduciary duty, Farmer's Truck relies on Mr. Tripp's failure to advise the corporation to seek independent legal advice regarding the share issuance transaction and Mr. Tripp's failure to fully disclose the implications and potential conflicts arising from such a share issuance. Additionally, Farmer's Truck maintains that the share issuance was not properly approved by the Farmer's Truck Board of Directors or shareholders.
17. While working as legal counsel for Farmer's Truck in connection with its incorporation, Mr. Tripp owed a fiduciary duty to his client. Justice Garnett, in *Buyting v Lourensse et al.*, 1999 CanLII 32737 (NBQB), confirmed on appeal in 1999 CanLII 4674 (NBCA), outlined that all lawyers owe a fiduciary duty to their client which includes the duty to disclose all relevant information to the client, the prohibition of a lawyer using their position to obtain personal gain, and the prohibition from having a personal interest which conflicts with that of their client.
18. Farmer's Truck relies upon the Alberta Court of Appeal decision in *Hudye Inc. v Rosowsky*, 2022 ABCA 279, which involved a lawyer entering into a business relationship with a client. The Alberta Court of Appeal held that the lawyer breached his fiduciary obligations to his client by failing to disclose conflicts of interest and not advising the client to seek independent legal advice. In *Hudye Inc. v Rosowsky*, the lawyer, while acting as outside counsel for his client, entered into several transactions with his client that benefited him directly. Counsel acquired an equity stake in his client's business and a commission agreement, pursuant to which counsel received commissions on his clients' transactions over and above his compensation for legal services rendered.
19. In *West v Elizabeth Wilbur, Kelly Fletcher, Edinburgh Holdings Ltd.*, 2007 NBQB 67, a decision upheld by the New Brunswick Court of Appeal in 2008 NBCA 50, Justice McNally found that counsel who acquired shares for a client and then appropriated them for personal benefit breached their fiduciary duties of utmost good faith, loyalty, and avoidance of conflicts of interest.
20. The Law Society of New Brunswick, Code of Professional Conduct, requires that lawyers avoid conflicts of interest. The exception to this general principle is that a client may consent

after being apprised of the conflict (see Rule 3). In this case, there is no indication of discussions between the parties as to potential conflicts of interest involved with the acquisition of shares by Mr. Tripp in exchange for incorporating the business. Additionally, Mr. Tripp did not advise Farmer's Truck to obtain independent legal advice when setting up the corporation in exchange for compensation in the form of shares.

21. Additionally, the Court observes that subsections 23(5) and 23(6) of the *Business Corporations Act*, outlines that shares may be issued for services of equivalent value. In determining whether the services are of equivalent value to the shares issued, the directors may consider the expected benefit to the corporation. There is no indication in this case that Farmer's Truck, the directors or shareholders were apprised of this requirement when the shares were issued to Mr. Tripp in exchange for incorporating the business. Further, there is no indication of the costs of the legal services or the value of the shares acquired at the time.
22. Considering the findings of the courts in *Hudye Inc. v Rosowsky* and *West v Elizabeth Wilbur, Kelly Fletcher, Edinburgh Holdings Ltd.* as it relates to counsel's fiduciary duties to their clients, the obligations to disclose the conflict of interest and advise the client to seek independent legal advice, and considering subsections 23(5) and 23(6) of the *Business Corporations Act*, and Rule 3.4-2 of the Law Society of New Brunswick, Code of Professional Conduct, the Court concludes that Mr. Tripp breached his fiduciary duty to Farmer's Truck.
23. The incorporation of Farmer's Truck was not a complicated or costly endeavour. The attribution of Farmer's Truck shares for this legal work, without disclosing a potential conflict of interest and without advising of the need to seek independent legal advice, resulted in an inequitable transfer.
24. In both *Hudye Inc. v Rosowsky* and *West v Elizabeth Wilbur, Kelly Fletcher, Edinburgh Holdings Ltd.*, the Court rescinded the share transfers to counsel as an equitable remedy for a breach of fiduciary duties. The underlying factual scenarios described in both cases are far more complex than the current situation. However, a similar remedy is appropriate in the circumstances of this case.
25. The Court therefore rescinds the June 1, 2015, transfer of shares from The Farmer's Truck Inc. to Michael David Tripp.

Oppression Remedy

26. As an alternative and secondary argument, Farmer's Truck requests that the Court, as a remedy to the alleged breach of section 166 of the *Business Corporations Act*, direct the transfer of shares as provided for in the LOI and the SPA, or set aside the June 2015 share transfer. Farmer's Truck suggests this remedy is appropriate as Mr. Tripp's conduct in failing to complete the agreed upon share transfer is oppressive, unfairly prejudicial to Farmer's Truck, and disregards the interests of Farmer's Truck.
27. An analysis under section 166 of the *Business Corporations Act* would require the Court to assume that the initial share issuance was valid. That assumption is inconsistent with the Court's finding that Mr. Tripp breached his fiduciary duty by obtaining the shares in June 2015. Accordingly, an oppression-remedy analysis would serve no useful purpose.

Costs

28. In accordance with Rules 59.08(1.1) and 59.08(8) of the *Rules of Court*, and Tarriff E, the Court awards costs in the amount of \$2,500 plus disbursements. Such costs are awarded at the lower end of the tariff considering the Application was undefended, which consequently reduced the time and effort required for preparation and attendance.

DISPOSITION

29. Based on the foregoing, the Court's disposition is as follows:
- (1) The issuance of 30 shares in The Farmer's Truck Inc. to Michael David Tripp on June 1, 2015, is rescinded.
 - (2) The Respondent shall pay the Applicant costs of \$2,500 plus disbursements.

Justice Maya Hamou
Court of King's Bench of New Brunswick