



BC FARM INDUSTRY
REVIEW BOARD

July 31, 2025

File: F2503

DELIVERED BY EMAIL

Mia Frankl
District of Central Saanich

Farm to Garden Organics

Dear Parties:

A COMPLAINT FILED UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT* CONCERNING NOISE AND DUST

The BC Farm Industry Review Board (BCFIRB) received a notice of complaint (NOC) and filing fee from Mia Frankl, a Bylaw Officer with the District of Central Saanich, on March 25, 2025 under the *Farm Practices Protection (Right to Farm) Act* (FPPA). The District of Central Saanich (the Complainant) is seeking a determination by BCFIRB as to whether a 'soil development' business operated by Farm to Garden Organics (the Respondent), purportedly as a subset of its dairy farm, is a normal farm practice. Importantly, the NOC does not allege that the District of Central Saanich is aggrieved by any specific disturbance related to the 'soil development' business.

By letter dated May 1, 2025, BCFIRB set a submission schedule to hear from the parties on two preliminary issues. The first issue is whether the complaint is vexatious and otherwise an abuse of process based on the principles set out in *Hardy & Bond v Stanhope Farms Ltd. (October 4, 2013) (Hardy)* at paragraphs 50-51. Specifically, submissions were sought on whether the complaint has been brought with the *bona fide* intention of seeking a remedy that the FPPA can grant, or for the purpose of establishing that the Respondent's operation is not a farm operation and therefore not able to rely on the nuisance protections granted to such operations in the FPPA.

The second issue is whether the Complainant meets the definition of an aggrieved person as defined by the FPPA. The NOC states that the Complainant, as the local government, has received complaints from the Respondent's neighbours concerning its operations. Submissions were sought on whether the Complainant can bring an FPPA complaint to BCFIRB based on the complaints that residents have made to it as the local government, or whether the Complainant needs to demonstrate that it has been directly aggrieved by the Respondent's operations.

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Submissions

Complainant

Vexatious Proceeding

In their submissions, the Complainant asserts that their complaint was made in good faith to determine whether or not the Respondent's 'soil development' operation represents a normal farm practice. They assert that their request for a determination as to normal farm practices is contemplated in s. 3 of the FPPA in which a person may file a complaint from a disturbance of a farm operation conducted as part of a farm business.

The Complainant refers to *Central Saanich (District) v Kimoff*, 2002 BCCA 169 (*Kimoff*) in which the Court of Appeal upheld the decision of the chambers judge to adjourn a trial in order to obtain a decision from BCFIRB as to whether the conduct at issue was "normal farm practice". In that instance, the chambers judge held that BCFIRB was the appropriate adjudicator as to "normal farm practice".

Jurisdiction – Aggrieved Party

The Complainant refers to the following statement in BCFIRB's letter of May 1, 2025 (emphasis added by Complainant):

"Local governments may bring complaints to BCFIRB pursuant to the FPPA, but **only in instances where**...a local government suffers physical injury or damage to its land and it believes this is as a result of a farmer's practices." (see *Abbotsford v. Kapoor*, March 19, 2015).

The Complainant asserts the above quote misstates the referenced decision *Abbotsford v. Kapoor*, March 19, 2015 (*Kapoor*) which held that a physical injury to City property was "sufficient" for a local government to fall within the definition of an aggrieved party, but that this was not the **only** instance in which a local government complaint could proceed.

The Complainant further states that prior BCFIRB decisions have held that local governments are not categorically excluded from making complaints as seen in *Corporation of Delta v. Hothi Farms*. They further point to the *Kimoff* decision to illustrate that local governments have standing to bring FPPA complaints before BCFIRB.

Respondent

Vexatious Proceeding

In their submissions, the Respondent asserts that the complaint is vexatious in nature and is also an abuse of process and a collateral attack on the decision already issued by BCFIRB in the aforementioned *Hardy* case. The Complainant was permitted to submit evidence in the *Hardy* case and BCFIRB's findings were that the complainants in that case had filed their complaint for the express purpose of receiving a ruling from BCFIRB

that the respondent (Stanhope Farms Ltd.) was not a farm business and therefore had no right to protection under the FPPA.

The Respondent asserts that the subject matter of the complaint in *Hardy* is the same subject matter being addressed in this complaint. They state this complaint deals with the same composting operations on the same property as the Respondent purchased and assumed Stanhope Farms Ltd.'s operations in 2021.

The Respondent further asserts in paragraph 13 of their submissions:

The Complainant has now returned to the Board, as a party, seeking a binding determination on essentially the exact same grounds and facts as were dismissed by the Board in *Hardy & Bond v Stanhope Farms Ltd. (October 4, 2013)*, while at the same time threatening the Respondent with bylaw enforcement proceedings and, presumably, assessing the viability of initiating court action against the Respondent on the bylaw issues.

Further, the Respondent submits that the Complainant has been clear in their position that the Respondent is not a farmer and they seek confirmation of this in a decision from BCFIRB, which is an abuse of BCFIRB process.

The Respondent asserts that:

...the Complaint expressly refers to the Complainant's ulterior motive in advancing the Complaint which is evidenced in the Complainant stating: "... *next steps in the District's compliance review is to seek a determination from the Farm Industry Review Board...*". The Respondent submits that this is indicative of the Complainant's intent to use the Board's processes to advance its collateral bylaw enforcement objectives rather than for the purposes of engaging the Board's proper role and functions under the *FPPA* in asking the Board to order the modification or cessation of a farming operation.

Finally, the Respondent refers to the complaint submitted by the Complainant to the Agricultural Land Commission (ALC) seeking a determination of non-farm use by the Respondent. In their September 2024 decision, the ALC found that the wood processing component of the Respondent's farm operation was "normal farm practice". The Respondent asserts that after receiving this adverse ruling, the Complainant turned to BCFIRB seeking a ruling of non-farm status.

In summary, the Respondent submits:

...that the Complaint does not in good faith seek any remedy under the *FPPA*, but rather is a transparent attempt by the Complainant to sweep aside any future opposition to bylaw enforcement or anticipated court action by the Complainant against the Respondent."

"The Respondent submits that the analysis in *Hardy & Bond v Stanhope Farms Ltd.* applies wholesale to the complaint and that the complaint ought to be dismissed as being both vexatious and an abuse of process.

Jurisdiction – Aggrieved Party

The Respondent submits that the second issue directly intersects with the first, in that the only grievance the complaint seeks to address relates to the Complainant's bylaw enforcement and future litigation interests.

The Respondent asserts that the circumstances in both *Kapoor* and *Corporation of Delta v. Hothi Farms (Hothi)* are readily distinguishable from this complaint. They state that in *Kapoor* the complainant municipality claimed physical damages to the municipality's property (ditches). In *Hothi*, the local government alleged it was aggrieved by unsightly activities of the farm negatively impacting park property owned and operated by the municipality, once again making them directly aggrieved.

The Respondent further submits that:

The Board in *The Corporation of Delta v Westcoast Instant Lawns, September 24, 2004* noted that there are certain classes of nuisance complaints which cannot be brought by a municipality as a municipality, being not human, cannot be "aggrieved" by otherwise nuisances such as odours which only a human can be aggrieved of.

The Complaint raises no issues relating to interference with the Complainant's property or property interests, directly or indirectly. Likewise, the Complainant here cannot be aggrieved of sounds, or the timing of sounds, as that complaint is a grievance of a class of strictly human grievances.

The Respondent submits that BCFIRB should dismiss the complaint on the basis that the Complainant is not a person "*directly and adversely affected*" by any of the conduct alleged in the complaint.

Complainant - Reply

In their reply submission, the Complainant first addresses the allegations made in paragraph 13 of the Respondent submissions and states the following:

There is no foundation for the allegations found at paragraph 13 of the Respondent's submissions. In *Hardy & Bond v Stanhope Farms Ltd. (October 4, 2013)* two private parties were the complainants, and the respondents were distinct from the Respondent in this proceeding. The District was involved in a limited capacity, and it took no position on the complaint per se: para 23. Further, the District's court proceeding that triggered its involvement in the matter before BCFIRB related to commercial trucking, not compost: para 11 of the October 4, 2013 decision, referring to para 23 of the April 30, 2013 letter from BCFIRB.

The District also objects to the statement that it is "threatening the Respondent with bylaw enforcement proceedings". The District is an order of government with the responsibility to consider the interests and well-being of the community. Municipal bylaws are enacted in the public interest, and the public interest is in ensuring compliance with the law.

The Complainant reiterates their position that the complaint was made in good faith in requesting a determination of “normal farm practice”. They further state that the Complainant:

- a) Has a *bona fide* intention of seeking the only remedy the FPPA can grant to a complainant – an order requiring the farmer to cease or modify the complained of practice (*Hardy & Bond v Stanhope Farms Ltd. (October 4, 2013)* at para 50; and
- b) **Accepts that the dairy farm is a farm operation conducted as part of a farm business** (*Hardy & Bond v Stanhope Farms Ltd. (October 4, 2013)* at para 54.

In summary, the Complainant submits that its request for a determination of “normal farm practice” is consistent with the FPPA, the decisions of BCFIRB under the FPPA, and the courts in British Columbia.

Decision

BCFIRB has the authority to summarily dismiss the hearing of a complaint on the application of a party pursuant to the *Administrative Tribunals Act (ATA)* s. 31 (1), and the *Farm Practices Protection (Right to Farm) Act (FPPA)*, s. 6 (2).

Section 6(2) of the FPPA reads as follows:

- 6** (2) The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,
- (a) the subject matter of the application is trivial,
 - (b) the application is frivolous or vexatious or is not made in good faith, or
 - (c) the complainant does not have a sufficient personal interest in the subject matter of the application.

I have reviewed the submissions of the parties. I agree with Respondent’s submission that the two issues are interrelated and that the Complainant’s position as a local government responding to the complaints of its residents, who are the Respondent’s neighbours, informs the analysis of whether the complaint has been brought with *bona fide* intent. As such, the consideration of the issues posed to the parties is better considered in reverse order to the manner in which they were presented in our May 1, 2025 letter, and that is the manner in which I have considered the issues below.

Jurisdiction – Aggrieved Party

The Complainant has not demonstrated that they are personally aggrieved by the complained of disturbance. Section 3(1) of the FPPA states as follows:

3 (1) If a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.

Local governments may bring complaints to BCFIRB pursuant to the FPPA in instances where, "...a local government suffers physical injury or damage to its land and it believes this is as a result of a farmer's practices." (*Kapoor*). Furthermore, in *Corporation of Delta v. Westcoast Instant Lawns*, September 24, 2004 (*Westcoast Instant Lawns*), BCFIRB found that "municipalities are not categorically excluded from making complaints" but "like any other person, they only have standing to do so where they are directly and adversely affected by a farm practice". The Panel in that case further noted that "there are certain types of complaints where it can properly be said that only human beings can be aggrieved. A corporation cannot have an odour complaint." As the local government in that case could point to no other municipal interest that was adversely affected by odour, the complaint proceeded as a complaint by a neighbour and the local government played a limited role as intervenor. That same process was followed by the City of Terrace in *Dams, Warcup and Ritter v. Daybreak Farms*, September 22, 2004 and the District of Coldstream in *Learmonth v. Coral Beach Farms Ltd.*, June 8, 2018.

In both *Kapoor* (drainage ditches) and *Hothi* (public park), the complaints made by the local government involved nuisances which directly impacted the local government as a neighbouring landowner. The Complainant argues that suffering physical injury or damage to government property is not the only instance in which a local government complaint could proceed. I disagree. In order for there to be a valid complaint, local government needs to demonstrate some evidence that its interests have been directly aggrieved either as a land owner or potentially as an employer where it can be shown its employees are aggrieved by the disturbance. Absent that evidentiary foundation, a corporate body cannot be directly aggrieved by noise as is alleged in this case. Similarly, the NOC notes that residents have made dust complaints, but the Complainant does not allege that its property has been affected by dust arising from the Respondent's operations.

A complainant cannot represent the interests of a broader pool of persons. To fall within the scope of the FPPA, a complainant must demonstrate that they are specifically aggrieved by the complained of disturbance. In this case, I find that the Complainant is not personally aggrieved by the complained of noise and odour disturbance and, pursuant to s. 6 (2)(c) of the FPPA, lacks sufficient personal interest in the subject matter of the application. As such the complaint must be dismissed.

Vexatious Proceedings and Abuse of Process

Having dismissed the complaint for lack of standing, it is not necessary for me to go further and consider whether this notice of complaint is vexatious or an abuse of process and should be dismissed on this ground as well. However, as the Complainant relies on *Kimoff* as justification for proceeding in the manner it has, some clarification is warranted.

In *Kimoff*, the District of Central Saanich was unsuccessful in obtaining leave to appeal a BC Supreme Court decision adjourning a bylaw enforcement trial related to a farm's sign usage to allow the parties to obtain a ruling from the Farm Practices Board (now BCFIRB) on the question of normal farm practice. As such, the lower court's finding that the municipality should exhaust its administrative remedies before the tribunal with expertise in normal farm practice before proceeding to the BC Supreme Court was not challenged. Neither party chose to raise the farm practices issue with BCFIRB.

Had the parties raised the normal farm practice issue with BCFIRB, the same threshold issues related to standing and whether local government was in fact aggrieved by a disturbance resulting from a farm operation conducted as part of a farm business would necessarily have been considered. The fact that the BC Supreme Court exercised its discretion to adjourn a summary trial is not determinative of the issue before BCFIRB. I say this because it is not readily apparent to me that there were in fact any administrative remedies to exhaust before BCFIRB as signage does not fall within the definition of farm operation under the FPPA, nor is it apparent that a sign could fall within the category of an "other disturbance" that local government could have been aggrieved by. In section 2, the FPPA expressly gives a court jurisdiction to make normal farm practices determinations in nuisance, injunction and bylaw enforcement proceedings. While a presiding judge may exercise discretion to defer a question of "normal farm practice" to BCFIRB, the FPPA does not require the judge to do so, presumably because such proceedings often involve other factors or interests well beyond the scope of BCFIRB. Similarly, a finding by BCFIRB that a particular practice is or is not consistent with "normal farm practice" is not binding on a court in any event.

In short, I find that *Kimoff* is not determinative and cannot be read as requiring BCFIRB to make determinations of normal farm practice in circumstances where a local government lacks standing or sufficient personal interest to bring the complaint. While I am satisfied this NOC is not vexatious, in my view it would be an abuse of process to allow local government to pursue a complaint without sufficient personal interest and on behalf of its constituents and I would dismiss the complaint on these grounds.

Order

The Respondent's application for summary dismissal is granted and the appeal is dismissed.

Dated at Victoria, British Columbia this 31st day of July, 2025.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read 'Gunta', with a long horizontal flourish extending to the right.

Gunta Vitins

Chair, British Columbia Farm Industry Review Board