

# **BC FARM INDUSTRY REVIEW BOARD 2021/22 Annual Report**



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**BC Farm Industry  
Review Board**

**December 2022**

## Message from the Chair

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I respectfully submit the Annual Report for the British Columbia Farm Industry Review Board (BCFIRB) for the period April 1, 2021, through March 31, 2022, per section 59.2 of the *Administrative Tribunals Act*.

Despite the ongoing impacts of the COVID-19 pandemic and recovery from a number of natural disasters and flooding events, the latter part of the 2021/22 fiscal year began to see a return to market and sector stability. The extraordinary work and efforts by the agricultural commodity boards and commissions was instrumental to this recovery.

Throughout 2021/22, BCFIRB continued to meet with the commodity boards and commissions, the BC Council of Marketing Boards, the National Association of Agri-Supervisory Agencies and the Farm Products Council of Canada. Information and support were provided to the Ministry of Agriculture and Food on various matters.

Significant events in 2021/22 included the commencement of a supervisory review looking into very serious allegations of bad faith and unlawful activity made against certain elected directors and staff members of the BC Vegetable Marketing Commission by two private companies. A key focus of the review was to determine whether the serious allegations of wrongdoing could be substantiated and what resulting BCFIRB orders or directions may be required.

BCFIRB's chicken pricing supervisory review continued throughout 2021/22. I am very pleased to report that in March 2022, the BC Broiler Hatching Egg Commission completed a two-year process to develop a transparent and accountable long-term cost of production-based pricing formula, supported by its stakeholders. The BC Chicken Marketing Board developed a workplan and continued moving forward. BCFIRB will continue to work with these boards throughout 2022/23 as this work carries on.

There were 74 appeals and complaints filed with BCFIRB in 2021/22, 38 of which proceeded to formal hearing. BCFIRB issued its third annual Public Accountability and Reporting Project (PARP) Summary Report in March 2022, which can be found on [BCFIRB's website](#).

Per the *Declaration on the Rights of Indigenous Peoples Act*, which was brought into force in British Columbia in late 2019, BCFIRB commenced discussions with the agricultural boards and commissions regarding reconciliation expectations and opportunities for First Nations and indigenous agriculture.

On behalf of all members and staff of BCFIRB, a heartfelt thank you to all of the commodity boards and commissions and their staff. All the best in 2023.

Sincerely,

Peter Donkers, Chair  
BC Farm Industry Review Board

## Tribunal Team

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There are currently eight part-time BCFIRB members appointed by the Lieutenant Governor-in-Council. Members make decisions about sound regulated marketing policy and adjudicate and make decisions on appeals and complaints under BCFIRB's various legislative mandates. BCFIRB staff and contractors are an integral part of BCFIRB'S professional team. They support BCFIRB to the highest standards of integrity and professionalism.

### STAFF

Executive Director and Registrar  
Kirsten Pedersen

A/Board Services Coordinator  
Lisa Stride

Assistant Case Manager  
Molly Gagne

Manager, Issues and Planning  
Wanda Gorsuch

Issues Management Analyst  
Matthew Huijsmans

A/Issues Management Analyst  
Justine Lafontaine

A/Case Manager  
Sara Thiesson

General Legal Counsel  
Christine Elsaesser  
Chris Wendell, Porter Ramsay

Administrative Law and Litigation  
Services  
Mark Underhill and Legal Team, Arvay  
Finlay

### MEMBERS

Chair  
Peter Donkers

Vice-chair  
Al Sakalauskas

Member  
Wendy Holm

Member  
Pawan Joshi

Member  
Dennis Lapierre

Member  
Harveen Thauli

Member  
Neil Turner

Member  
David Zirnhelt

## Purpose of the BC Farm Industry Review Board

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The British Columbia Farm Industry Review Board (BCFIRB) is an independent administrative tribunal that operates at arm's-length from government. As the regulatory tribunal responsible for the general supervision of British Columbia's agricultural commodity boards and commissions, BCFIRB provides oversight, policy direction and decisions to protect the public interest. In its adjudicative capacities, BCFIRB provides a less formal system than the court for resolving disputes in a timely and cost-effective way. BCFIRB consists of a part-time board of up to ten members and nine full-time staff, and is accountable to government for its administrative operations.

The BCFIRB 2021/22 Annual Report describes achievements and results met from April 1, 2021, to March 31, 2022.

BCFIRB's statutory responsibilities are established in the [Natural Products Marketing Act \(NPMA\)](#), the [Farm Practices Protection \(Right to Farm\) Act \(FPPA\)](#), and the [Prevention of Cruelty to Animals Act \(PCAA\)](#), and are supported by the [Administrative Tribunals Act \(ATA\)](#).

BCFIRB's mandated responsibilities are listed below:

- General supervision of B.C.'s regulated marketing boards and commissions.
- Signatory to formal federal-provincial cooperation agreements in regulated marketing.
- Hearing appeals of regulated marketing board and commission orders, decisions and determinations.
- Hearing appeals related to certain animal custody and cost decisions of the BC Society for the Prevention of Cruelty to Animals (BCSPCA).
- Hearing farm practices complaints from persons disturbed by odour, noise, dust or other disturbances arising from agriculture or certain aquaculture operations.
- Conducting farm practices studies.

BCFIRB supervises the following agricultural commodity boards and commissions:

BC Broiler Hatching Egg Commission

BC Chicken Marketing Board

BC Cranberry Marketing Commission

BC Egg Marketing Board

BC Hog Marketing Commission

BC Milk Marketing Board

BC Turkey Marketing Board

BC Vegetable Marketing Commission

BCFIRB is accountable to the Courts for its decisions through Judicial Review and the BC Ombudsperson for its practices and procedures.

## BCFIRB 2021/22 Goals at a Glance

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### **Goal 1:**

**A regulated marketing system with effective self-governance.**

### **Objective 1.1:**

BCFIRB and marketing boards and commissions practice good governance in their external and internal operations.

### **Performance Measure (PM) #1**

Programs, policies and decisions show legislative intent, sound marketing policy and consider the public interest.

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### **PM #2**

Appropriate governance and fiscal procedures exercised.

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### **Goal 2:**

**A principles-based, outcomes-oriented approach to regulation**

### **Objective 2.1:**

BCFIRB and marketing boards and commissions use a principles-based approach to regulating.

### **PM #3**

Application of the SAFETI (strategic, accountable, fair, effective, transparent and inclusive) principles is demonstrated.

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### **PM #4**

Orders, decisions & determinations are published promptly.

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### **Goal 3:**

**Effective, fair and independent resolution of inquiries & disputes**

### **Objective 3.1:**

Ensure issues and disputes arising within BCFIRB's jurisdiction are resolved in a fair and timely manner, including use of Alternative Dispute Resolution (ADR) methods where appropriate.

### **PM #5**

BCFIRB reports on appeal and complaint cases, including timeframes and costs.

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# BCFIRB 2021/22 Performance Measures and Results

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## Goal 1: A regulated marketing system with effective self-governance.

**Objective: - BCFIRB and marketing boards and commissions practice good governance in their external and internal operations.**

### **Strategies:**

- Ensuring that marketing board and commission activities and decisions are administratively fair, comply with legislation/regulations, and accord with sound marketing policy.
- Requiring boards to give consideration to the government policy framework and the public interest.
- BCFIRB provides supervisory intervention when necessary.
- Working to achieve priorities within budget while continuing to place importance on board and staff development and training.
- While preserving its independence as a tribunal, continuing to work to ensure effective relations with the Ministry of Agriculture and Food, regulatory agencies at all levels, and stakeholders.

### **Performance Measure 1:**

***BCFIRB, boards and commissions demonstrate that their programs, policies and decisions reflect legislative intent, sound marketing policy and consider the public interest.***

### **2021/22 Results**

BCFIRB held six full board meetings between April 1, 2021, and March 31, 2022. Minutes were taken and all necessary member recusals from board discussions were documented, per BCFIRB's current [Code of Conduct](#).

BCFIRB is mandated to supervise and provide policy direction to the commodity boards and commissions to ensure sound marketing policy and to protect the public interest. BCFIRB posts [regulated marketing industry snapshots](#) that contain overviews of the regulated agricultural commodity sectors.

BCFIRB's chair, members and staff met with commodity board and commission chairs, board members and staff numerous times on key files and issues in its supervisory capacity in 2021/22. BCFIRB provided supervisory intervention when necessary in various sectors (e.g., chicken, broiler hatching eggs, table eggs, vegetables). Details on all supervisory reviews, past and present, along with all BCFIRB supervisory decisions, can be found on [BCFIRB's website](#).

BCFIRB reviews meeting minutes, correspondence and board and commission submissions and decisions, to monitor how boards and commissions are demonstrating that their programs, policies and decisions are in accord with legislative intent and sound marketing policy in the public interest. BCFIRB communicated with boards and commissions regarding supervisory matters that affected them, or necessitated BCFIRB's involvement.

BCFIRB also ensured that any parties affected by a supervisory matter were involved as appropriate, usually by a board or commission directly.

BCFIRB supported the Ministry of Agriculture and Food as appropriate, in its capacity as an independent administrative tribunal. Numerous meetings were held between the BCFIRB Chair and Executive Director, the Minister and ministry officials.

BCFIRB engaged with the BC Council of Marketing Boards, the National Association of Agri-Supervisory Agencies and the Farm Products Council of Canada.

### **Highlights of BCFIRB's 2021/22 Supervisory Activities:**

#### ***Review of Allegations of Bad Faith and Unlawful Activities – BC Vegetable Marketing Commission***

In May 2021, BCFIRB initiated a supervisory review looking into allegations of bad faith and unlawful activity made against certain members and staff of the BC Vegetable Marketing Commission.

B.C.'s regulated marketing system is a government-legislated system that provides for the orderly production and marketing of certain agricultural commodities. Agricultural commodity boards and commissions regulate each of these sectors.

BCFIRB's supervisory role enables it to review, oversee and, where deemed necessary and appropriate, give direction to marketing boards and commissions. This proactive role is complementary to BCFIRB's appeal role.

Under the *NPMA*, BCFIRB may exercise its general supervisory powers at any time, with or without a hearing, and in the manner it considers appropriate, in the circumstances. BCFIRB's supervisory role has been interpreted in several landmark court decisions.

The purpose of the review was to determine whether the serious allegations of wrongdoing could be substantiated and what resulting orders or directions may be required.

The allegations arose from Prokam Enterprises Ltd., a storage crop producer, and MPL British Columbia Distributors Inc, a greenhouse vegetable operation, seeking an agency licence in BC. Both businesses had filed Notices of Civil Claim in the BC Supreme Court. BCFIRB subsequently invited any others who

wished to advance similar allegations to apply to participate in the supervisory review. Through that process, Bajwa Farms Ltd. was granted participant standing.

A thorough investigation was initially conducted by BCFIRB Hearing Counsel, including extensive document production by participants and numerous witness interviews. Participants then had the opportunity to present their evidence, call and cross examine witnesses and make their arguments before the BCFIRB Chair over 17 days of oral hearing in February, March, and April of 2022.

BCFIRB concluded in a [July 2022 Supervisory Decision](#) that the allegations were not substantiated. The Review will be continued in 2022/23 and BCFIRB will consider what, if any, resulting orders or directions may be required given its findings.

### ***Chicken Sector Pricing Review – BC Chicken Marketing Board and BC Broiler Hatching Egg Commission***

BCFIRB's supervisory review on chicken supply chain pricing continued in 2021/22. In March 2022, the BC Broiler Hatching Egg Commission completed a two-year process to develop a transparent and accountable long-term cost of production-based pricing formula, supported by all of its stakeholders. The new cost of production-based formula was approved by BCFIRB in June 2022 and subsequently implemented in the fall of 2022.

In March 2022, the BC Chicken Marketing Board submitted a workplan setting out an approach to develop a long-term pricing formula. The BCFIRB panel on chicken pricing panel held a number of meetings with the members of both the Chicken Board and the Broiler Hatching Egg Commission. BCFIRB made a number of interim decisions on the live price of chicken based on Chicken Board recommendations and stakeholder input, to support industry stability in the face of escalating feed differential costs with Ontario. Work continues in 2022 /23.

### ***Administrative Monetary Penalties***

BCFIRB continued to work with the commodity boards and commissions to explore the implementation of administrative monetary penalties. Under the *NPMA*, a commodity board or commission may use administrative monetary penalties, up to a maximum of \$10,000, to enforce mandatory biosecurity programs where a farmer has failed to comply with a requirement of the program. BCFIRB finalized its expectations and directions to boards in a framework developed with the boards and the Ministry of Agriculture and Food.

### ***Quota Allocation Approvals – BC Egg Marketing Board***

BCFIRB worked in October 2021 with the BC Egg Marketing Board to approve the Egg Board's plan to distribute additional quota to egg producers under its Multi-Allocation Policy. The Policy is intended to support the Egg Boards' five priorities: promote animal welfare, support growth of small farms and new entrants; support regional growth, meet emerging market needs; and, encourage producers to transition from conventional housing systems.

### ***Egg Federal Provincial Agreement***

In 2021/22, BCFIRB worked with the BC Egg Board and the Ministry of Agriculture and Food to review proposed changes to the existing Federal Provincial Territorial Egg Agreement in Canada. The existing Agreement has not been updated since the early 1970's and will significantly streamline and modernize the framework. The policy and legal review continues in 2022/23.



## ***Public Accountability and Reporting Project***

BCFIRB published its third Public Accountability and Reporting Project (PARP) Summary Report in March 2022, which covered regulated marketing data and production during the 2020 reporting period.

BCFIRB initiated the PARP in March 2018 to assist it in meeting its required supervisory obligations over the commodity boards and commissions. The PARP supports and demonstrates effective governance and sound leadership of B.C.'s regulated agriculture sectors. Good governance and informed, strategic decision-making are essential elements required for the delivery of sound marketing policy outcomes in the public interest.

The PARP has a different focus from the information boards and commissions provide to their sectors and stakeholders in their annual reports.

Boards reported on their key performance targets and progress in meeting goals. All boards continued to demonstrate use of good governance tools. The data on production volume, types of commodities being produced, region of production and sizes of producers is informative and has become helpful in demonstrating sector leadership and making sound marketing decisions. A fourth Summary Report is expected in early spring 2023.

### **Performance Measure 2:**

***BCFIRB and the boards and commissions it supervises exercise appropriate governance and fiscal procedures in exercising their mandates.***

### **2021/22 Results**

BCFIRB expended \$1,733,436 in 2021/22. About \$1,003,000 of this amount was expended on operating costs, which include both contracted legal services and board member time and expenses. Just over \$730,000 was expended on public service staff salaries.

All commodity boards and commissions reported having audited financial statements in 2021/22, with most also reporting financial accountability frameworks and approved board member remuneration and internal financial policies and controls in place.

All boards and commissions reported on a series of governance measures in their 2022 PARP reports. In addition to financial accountability, measures included planning and reporting, performance evaluation, accountability and transparency around rules, operational policies and decisions, management of conflict of interest and stakeholder consultation.

## Goal 2: A principles-based, outcomes-oriented approach to regulation.

**Objective: BCFIRB and marketing boards and commissions use a principles-based approach to regulating.**

### **Strategies:**

- Working with boards and commissions to develop, adopt and employ a principles-based approach to regulation.
- Requiring all BCFIRB, marketing board and commission orders, decisions and determinations to be made available to the public, except where privacy legislation and policies apply.
- Promoting policies that reflect provincial interests at federal and provincial levels.

### **Performance Measure 3:**

***BCFIRB and the boards and commissions demonstrate the application of the SAFETI principles (Strategic, Accountable, Fair, Effective, Transparent and Inclusive) in their programs, policies and decisions.***

### **2021/22 Results**

BCFIRB believes that progress continues to be made on the implementation of the application of the SAFETI principles in board operations and decision-making. BCFIRB implemented the SAFETI principles in June 2016, after a five-year development and consultation process with the commodity boards and commissions, the Ministry of Agriculture and Food and other stakeholders.

<b><i>Principle</i></b>	<b><i>Description</i></b>
Strategic	Identifying key opportunities and systemic challenges, and plan for actions to effectively manage risks and take advantage of future opportunities.
Accountable	Maintaining legitimacy and integrity through understanding and discharging responsibilities and reporting performance.
Fair	Ensuring procedural fairness in processes and decision-making.
Effective	Ensuring clearly defined outcomes with appropriate processes and measures.
Transparent	Ensuring that processes, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed.
Inclusive	Ensuring that appropriate interests, including the public interest, are considered.

Boards and commissions included SAFETI analyses in their 2020/21 decisions, as well as in submissions to BCFIRB. Application of the principles is becoming a part of board culture, including BCFIRB. BCFIRB and commodity board members and staff have noted the value and usefulness of the principles, as an analytical lens and tool, on numerous occasions.

There have also been several workshops and training sessions on the SAFETI principles put on by the BC Council of Marketing Boards, under their Centre for Organizational Governance in Agriculture (COGA) Committee.

#### **Performance Measure 4:**

***BCFIRB orders, decisions, determinations, practices and procedures and other information are published promptly. Marketing board and commission orders, decisions and determinations are published promptly after being made in order to preserve rights of appeal under the NPMA.***

#### **2021/22 Results**

BCFIRB 2021/22 administrative and supervisory records demonstrated publishing expectations were met. BCFIRB posted all of its complaints and appeals decisions to its website no later than seven days following all decisions made, as specified in its Rules of Practice and Procedures.

Supervisory decisions, all significant correspondence and all updates to policies and procedures were also published on BCFIRB's website in a timely fashion.

BCFIRB continues to be satisfied with the progress boards and commissions are making publishing orders, determinations, decisions and other information in a timely manner. Timely publication of decisions supports producer business planning and right of appeal to BCFIRB.

### **Goal 3: Effective, fair and independent resolution of inquiries and disputes.**

**Objective: Ensure issues and disputes arising within BCFIRB's jurisdiction are resolved in a fair and timely manner, including use of Alternative Dispute Resolution methods where appropriate.**

#### **Strategies:**

- Using supervisory processes, and farm practice studies as necessary, to help prevent and resolve disputes.
- Using timely, fair and accessible processes to help resolve complaints under the FPPA and appeals under the NPMA and PCAA.

#### **Performance Measure 5:**

***BCFIRB reports on time from appeal or complaint filing to resolution, average costs per case, and user satisfaction for each of its statutory mandates and associated adjudicative processes.***

#### **2021/22 Results**

In total BCFIRB administered 74 cases in 2021/22. See Appendix One for a detailed case list. Of these, 38 were resolved within the fiscal year, with 20 decided following a hearing, 3 settled through BCFIRB's ADR settlement process, 7 withdrawn and 8 dismissed.

**Summary of BCFIRB's appeals and complaints in 2021/22**

<b>2021/22 CASES</b>	<b>FPPA</b>	<b>NPMA</b>	<b>PCAA</b>	<b>TOTAL</b>
Carried forward from 2020/21	15	4	1	20
New appeals/complaints in 2021/22	11	21	22	54
<b>Total appeals/ complaints in 2021/22</b>	<b>26</b>	<b>25</b>	<b>23</b>	<b>74</b>
Total appeals/complaints resolved in 2021/22	16	1	21	38
Total appeals carried forward to 2022/23	10	24	2	36

There is considerable cost variability from case to case, due to complexity and time required for members and legal counsel. There were 18 cases resolved in 2021/22 without a hearing ranging in cost from \$300-\$5,000. Cases resolved with a hearing ranged significantly in cost. The average cost-per-case for the *PCAA* mandate was \$9,000 in 2021/22 with 12 cases resolved, while the *NPMA* mandate total cost was \$32,000 with 1 case resolved, and 2 cases under the *FPPA* mandate cost approximately \$48,000 each.

In 2021/22, there were three Judicial Reviews (JRs) of BCFIRB appeal and complaint decisions filed with the B.C. Supreme Court, one of an *NPMA* decision and two of *PCAA* decisions. All JRs are continuing into 2022/23. The average cost of these JRs in 2021/22 to date was \$6,000.

BCFIRB has published policy and procedure documents that set out the process, steps and timeframes associated with the filing and hearing of appeals and complaints under its different statutory mandates. In 2021/22, 90% of all cases that went to a hearing were decided within established timelines, with 100% of the animal custody appeals that went to hearing decided within the established time period.

BCFIRB continues to gather feedback about the appeal and complaints process, website and staff response times through a user response survey. Feedback and suggestions for improvement are now routinely examined to help identify appropriate areas for service improvements.

## BCFIRB Case Highlights 2021/22

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### *Farm Practices Protection (Right to Farm) Act (FPPA)* *Warcup et al v Daybreak Farms Ltd.*

This case involved six complaints filed with BCFIRB under the *FPPA*, with the first complaint filed in August 2020. An in-person hearing was held in Terrace on September 14-17, 2021. Together, the complainants alleged that they were aggrieved by excessive flies coming from Daybreak Farms (Daybreak), and that Daybreak was causing the fly disturbance by not following proper manure management practices.

An *FPPA* complaint involves a two-step analysis. First, a hearing panel must be satisfied that the Complainant is aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation and that the disturbance results from a farm practice conducted as part of a farm operation. If these threshold questions are met, the panel must then go on to make a determination about whether the grievance results from a “**normal farm practice**”.

Daybreak, the respondent farm, operates an egg layer farm and feed mill in Terrace, on a 15-acre property. The property has three barns that house approximately 39,000 birds among them. Daybreak sells approximately one million dozen eggs per year to 60 customers, including Overwaitea, Loblaw's, Sysco as well as mining and pipeline camps within the northwestern B.C. region, from Topley to Haida Gwaii to Dease Lake.

Daybreak's farm and its feed mill are not within the Agricultural Land Reserve. The farm was previously zoned by the local government for intensive agriculture, but the City of Terrace changed the zoning in 1995. This zoning restricted Daybreak's use of its property and ability to upgrade, improve and expand its farm operation.

This was a complex case involving multiple parties with a long and extensive history involving the Complainants and the local government. The City of Terrace and the BC Egg Marketing Board were both granted Intervenor status in this case.

For a variety of reasons detailed in the decision, the hearing panel found that there was insufficient evidence to conclude that the Complainants were aggrieved by a disturbance resulting from a farm operation conducted as part of a farm business. The onus resides on the Complainant of an *FPPA* case to show a sufficient causal connection between the disturbance and the farm that allows a panel to conclude that the disturbance results from the farm's operation.

The decision could have ended once this finding had been made, but given the history of complaints made against Daybreak and the involvement of the Intervenors, the Panel chose to analyze whether Daybreak's manure management practices were in accordance with normal farm practice.

In this case, the Panel considered the proximity of the neighbours to the farm, weather conditions and Daybreak's zoning issues in place at the time of the hearing.

In determining “**normal farm practice**”, a hearing panel looks at whether it is consistent with “proper and accepted customs and standards as established and followed by similar farm business under similar circumstances. This analysis involves a close examination and weighing of industry practices as well as an evaluation of the context out of which the complaint arises. The context may include factors such as the proximity of neighbours, use of lands, geographical features, weather conditions and the size and type of operation.

The Panel found that Daybreak's farm operation met, if not exceeded, normal farm practices.

The Panel noted that by enacting the *FPPA*, the Government of British Columbia determined it is the public interest to protect the economically important industry of

agriculture and support farmers throughout the province because of the intrinsic value in farming.

The *FPPA* gives farmers following normal farm practices and not contravening land use regulations, health and environmental legislation, protections from certain bylaw enforcement, court injunctions and nuisance lawsuits. The *FPPA* does, however create an expectation that farmers take reasonable steps, where appropriate, to mitigate the impact of their farm practices on neighbours.

### [Prevention of Cruelty to Animals Act \(PCAA\)](#) [Magaw v BC Society for the Prevention of Cruelty to Animals \(BCSPCA\)](#)

This was an appeal of a March 31, 2021, decision of the BCSPCA related to the seizure of 40 dogs from the Appellant, Alan Magaw, at his property in Salmo. The Appellant filed his appeal on April 6, 2021. A BCFIRB hearing panel held a teleconference hearing with the parties on May 3 and 7, 2021.

In this case, the Appellant alleged that the veterinarians and the BCSPCA were holding him to standards of care that did not conform with the requirements of the Sled Dog Standards of Care Regulation.

The BCSPCA specified that the Sled Dog Standards of Care Regulation and the *PCAA* work together to provide clarity about the standards of care and interpreting the definition of distress for sled dogs. “For example, in determining what is considered to be “adequate shelter” for a sled dog, one is guided by the relevant section of the Regulation. However, the Regulations are not to be considered in a vacuum and in fact, in order to interpret certain requirements, such as protection from excessive heat and cold, one can look to veterinary experts”.

In addressing the assertion that sled dogs are “born and bred to live and work in extreme cold climates,” and are uniquely adapted to live in these conditions, the BCSPCA noted that the sled dog regulations define a sled dog by the activity that it performs, not by a specific breed. The BCSPCA further stated that the breed mixes of some of the dogs meant that they were not equipped to be free from “cold” and adapt to the shelter that was provided the same way a northern breed would.

The BCSPCA found that the Appellant’s claim that sled dogs were inherently different from other dogs stood in contrast to the evidence of two veterinary experts that detail the nature of the dogs’ distress. Based on the veterinary evidence, the SPCA found that the animals were in distress.

**Per the definition in the PCAA, an animal is in distress if it is:**

- (a) Deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
  - (a.1) kept in conditions that are unsanitary
  - (a.2) not protected from excessive heat or cold
- (b) injured, sick, in pain or suffering, or
- (c) abused or neglected.

The first issue the Panel had to consider is whether the animals were in distress at the time of the seizure. Depending on the answer to that question, the Panel then needed to decide whether to return the remaining animals, or whether to do so would return them to a situation of distress.

The Panel was presented with much evidence and

witness and expert testimony from both the Appellant and the BCSPCA. Based on the totality of the evidence, the Panel found the animals were in distress under the definition in the *PCAA* and were appropriately and reasonably seized by the BCSPCA.

The Panel decided not to return any of the animals to the Appellant, as they determined that the return would carry a significant risk of returning them to a condition of distress.

**[Natural Products Marketing Act \(NPMA\)](#)  
**[Cross v BC Broiler Hatching Egg Commission](#)****

The Appellants, long-term broiler hatching egg producers in B.C., appealed a January 29, 2021 decision of the BC Broiler Hatching Egg Commission (Commission) to suspend their producer licenses. The suspension decision followed an earlier Commission decision issued on January 7, 2021, which found the Appellants were not compliant with the requirement to market broiler hatching eggs through the Commission, a hatchery or breaker.

Having found the Appellants non-compliant, the Commission did not immediately suspend their licences, but instead gave the Appellants two weeks to demonstrate to the satisfaction of the Commission that they were in full compliance with marketing requirements.

On January 22, the Commission inspected the Appellants' premises and prepared a site inspection report. The inspector observed a roadside sign advertising eggs for sale between 12:00 pm and 5:00 pm. The inspector indicated she was denied access to the farm gate shop which was advertising meat and eggs for sale. Commission staff subsequently confirmed that the Appellants were advertising eggs for sale on its website.

Following the suspension of the Appellants' licences, the Appellants raised concerns and filed an appeal of the Commission decision. The Appellants argued the inspection was not valid and the Commission erred by imposing licensing suspensions without giving the Appellants an opportunity to provide an explanation or response to the inspection report, the presence of signage and the use of the website. They indicated they were in compliance with all Commission requirements and that they were careful to

explain to the inspector that the eggs they were selling in their store were not any form of hatching egg from broiler breeder chickens.

B.C.'s broiler hatching egg farmers raise breeder chicks that they obtain from specialized suppliers in the United States. Once these chicks grow into male and female breeder chickens between 18-22 weeks of age, these flocks produce fertilized chicken eggs. Each breeder hen will typically lay 150-160 fertilized eggs over the course of a laying cycle that normally runs 34-36 weeks in duration. These eggs are then sold by broiler hatching egg farmers to hatcheries, who sell the chicks from these eggs to B.C. broiler chicken farmers.

Broiler hatching eggs are different from table eggs. It is illegal to sell hatching eggs in B.C. to people for consumption due to risk of salmonella or other disease.

The Panel found that the Appellants had full opportunity to respond to the Commission's concerns related to non-compliance and they had a grace period to get into compliance prior to having their licences suspended. The Panel did not agree with the Appellants' arguments about the validity of the inspection.

The Panel found that the Commission acted appropriately in the circumstances to protect the integrity of the broiler hatching egg and table egg industry.



***Further information about BCFIRB may be  
found at:***

<http://www2.gov.bc.ca/bcfarmindustryreviewboard>

Telephone: 250 356-8945

Facsimile: 250 356-5131

Email: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)

## **Appendix One – BCFIRB Cases in 2021/22**

<b>Farm Practices Protection Act (FPPA) Cases 2021/22</b>	
<b>Case Name</b>	<b>Decision</b>
Gardiner v Springbend Chicken Corp – filed: May 4, 2018 Issues: dust, odour from a poultry operation in Grindrod	Decision Issued: May 18, 2021
Gaudette v 93 Landing Co – filed December 12, 2019 Issue: odour from manure storage operation in Abbotsford	Adjourned: October 20, 2020
Tidball v Frind Winery – filed March 24, 2020 Wedan v Frind Winery – filed March 31, 2020 Fleishman v Frind Winery – filed April 2, 2020 Mayrs v Frind Winery – filed March 24, 2020 (not paid) Wedan v Frind Winery – filed March 31, 2020 (not paid) Issue: noise from chiller unit in vineyard in Kelowna	Adjourned: April 28, 2020
Warcup v Daybreak Farms – filed August 10, 2020 Gee v Daybreak Farms – filed August 13, 2020 Williamson v Daybreak Farms – filed August 13, 2020 Wright v Daybreak Farms – filed August 19, 2020 Miller v Daybreak Farms – filed August 24, 2020 Kokko v Daybreak Farms – filed August 31, 2020 Issue: Flies	Decision issued: January 12, 2022
Dhothar v Pansegrau – filed January 18, 2021 Issue: Drainage and flooding	ADR settled: August 27, 2021
Kingsdale Dairy v U&D Meier Dairy – filed January 19, 2021 Issue: Noise from a propane cannon	In process
Modenesi v Bains Berry Farm – filed April 20, 2021 Issue: Noise from a wind machine	ADR settled: May 18, 2021
De Raadt v Bring – filed April 16, 2021 Issue: Land development	Not perfected
Pinchak v Tam’s Family Farm – filed June 17, 2021 Issues: Odour, manure dust, flies, rodents	Withdrawn: November 2, 2021
Walton v Roslinsky – filed September 29, 2021 Issue: Noise from a rooster	Dismissed: January 6, 2022
Cipes v Waterside Farms – filed October 27, 2021 Issue: Noise from audible bird scare device	In process
Cowichan Station Creamery v San Sujo Farm – filed November 17, 2021 Issue: Inadequate fencing	In process

Brar v Windemere Farms – filed November 22, 2021 Issue: Dust	Withdrawn: March 22, 2022
Drummond v Gibson – filed December 1, 2021 Issue: Noise from a rooster	Dismissed: January 12, 2022
Little v Wardlaw – filed January 5, 2022 Issue: Odour and flies	ADR settled: March 2, 2022
Cohen v Elaraj/McNichol – filed January 31, 2022 Issue: Noise from a rooster	Dismissed: February 25, 2022
Bal dba Valley Orchards v Frind Estate Winery – filed March 22, 2022 Issue: Run off water	In process
<b>Prevention of Cruelty to Animals Act (PCAA) Cases 2021/22</b>	
<b>Case Name</b>	<b>Decision</b>
McAnerin v BCSPCA – March 15, 2021 Seizure: 2 dogs	Decision issued: April 27, 2021
Magaw v BCSPCA – filed April 6, 2021 Seizure: 40 dogs	Decision issued: May 21, 2021
McGarvey v BCSPCA – filed April 8, 2021 Seizure: 10 cats	Decision issued: May 19, 2021
Smith v BCSPCA – filed April 28, 2021 Seizure: 29 cats, 12 kittens	Withdrawn: May 28, 2021
Morse v BCSPCA – filed May 3, 2021 Seizure: 1 horse	Withdrawn: May 14, 2021
Seddon v BCSPCA – filed June 16, 2021 Seizure: 16 dogs	Decision issued: July 26, 2021
Booker v BCSPCA – filed July 6, 2021 Seizure: 1 horse	Decision issued: August 16, 2021
Shoaf v BCSPCA – filed August 30, 2021 Seizure: 6 sheep	Withdrawn: September 24, 2021
Baghaei v BCSPCA – filed September 3, 2021 Seizure: 7 chickens	Withdrawn: September 24, 2021
Chandler v BCSPCA – filed September 2, 2021 Seizure: 1 dog and 1 cat	Decision issued: October 19, 2021
McIntosh v BCSPCA – filed October 4, 2021 Seizure: 19 dogs	Decision issued: November 12, 2021

Cheema v BCSPCA – filed October 19, 2021 Seizure: 1 dog	Dismissed: October 27, 2021
Balcilek v BCSPCA – filed November 1, 2021 Seizure: 71 cats	Decision issued: December 15, 2021
Grelecki v BCSPCA – filed November 1, 2021 Seizure: 10 pigs	Withdrawn: November 26, 2021
Harris v BCSPCA – filed November 12, 2022 Seizure: 1 dog	Decision issued: December 24, 2021
Davison v BCSPCA – filed December 13, 2021 Seizure: 1 dog	Dismissed: December 22, 2021
Nichols v BCSPCA – filed December 15, 2021 Seizure: 2 dogs	Decision issued: January 21, 2021
Edward v BCSPCA – filed December 22, 2021 Seizure: 1 dog	Filed out of time
Orlaw v BSPCA – filed January 6, 2022 Seizure: 1 dog	Filed out of time
Pratt & Rauch v BSPCA – filed January 24, 2022 Seizure: 9 dogs	Decision issued: March 7, 2022
Theede v BSPCA – filed January 27, 2022 Seizure: 1 dog	Decision issued: March 10, 2022
Grewal v BSPCA – filed March 1, 2022 Seizure: 1 dog	In process
Kozyaniak v BSPCA – filed March 15, 2022 Seizure: 1 dog	In process
<b>Natural Products Marketing Act (NPMA) Cases 2021/22</b>	
<b>Case Name</b>	<b>Decision</b>
Prokam Enterprises v BCVMC – filed November 26, 2019 Issue: unfair process for reconsideration decision	Supervisory: November 2, 2021
PPPABC v BCBHEC – filed December 24, 2019 BCCGA v BCHEC – filed December 31, 2019 Issue: adjustment to price linkage formula	Supervisory: February 25, 2020
Cross v BCBHEC – filed February 10, 2021 Issue: License suspension	Decision Issued: December 23, 2021

PPPABC v BCBHEC – filed May 10, 2021 Issue: chicken pricing order	Supervisory: May 18, 2021
PPPABC v BCCMB – filed June 24, 2021 Issue: chicken pricing order	Supervisory: July 6, 2021
PPPABC v BCCMB – filed August 25, 2021 Issue: chicken pricing order	Supervisory: August 31, 2021
PPPABC v BCCMB – filed October 25, 2021 Issue: chicken pricing order	Supervisory: November 2, 2021
Stuyt v BCCMB – filed November 1, 2021 Issue: Show Cause Hearing Decision	In Process
BCCGA v BCCMB – filed December 15, 2021 Issue: chicken pricing order	Supervisory: January 21, 2022
PPPABC v BCCMB – filed December 17, 2021 Issue: chicken pricing order	Supervisory: January 21, 2022
Skye Hi Farms Inc v BCBHEC – filed January 31, 2022 Issue: hatchery criteria amending order	In process
GGFI and Windset Farms v BCVMC – filed February 9, 2022 Aljane Farms v BCVMC – filed February 8, 2022 Sunnyside Produce Ltd. v BCVMC – filed February 8, 2022 VF Operations Canada Inc. v BCVMC – filed February 3, 2022 Westcoast Vegetables Ltd. v BCVMC – filed February 11, 2022 Peppertree Farms Ltd. v BCVMC – filed February 8, 2022 Greenhouse Delight Foods Inc. v BCVMC – filed February 8, 2022 Canadian Valley Growers Veg Products Ltd. v BCVMC – filed February 11, 2022 Cheam View Greenhouse v BCVMC – filed February 11, 2022 Mt. Lehman Greenhouses v BCVMC – filed February 18, 2022 MB Greenhouse v BCVMC – filed February 11, 2022 Uppal Farms and Greenhouses v BCVMC – filed February 11, 2022 Issue: Decision to designate MPL BC as an Agency	Supervisory: March 21, 2022
PPPABC v BCCMB – filed February 16, 2022 Issue: chicken pricing order	Supervisory: February 25, 2022