

BC FARM INDUSTRY REVIEW BOARD 2022/23 Annual Report



**BC Farm Industry
Review Board**

December 2023

Message from the Chair

I respectfully submit the Annual Report for the British Columbia Farm Industry Review Board (BCFIRB) for the period April 1, 2022, through March 31, 2023, per section 59.2 of the *Administrative Tribunals Act*.

This year saw the continuation of recovery from ongoing environmental disasters that affected all eight regulated marketing commodities, and the arrival of avian influenza in British Columbia in April 2022 which impacted small lot and commercial poultry flocks and challenged poultry producers across the Fraser Valley and beyond throughout 2022-23. As in years past, the hard work and exemplary collaboration by regulated marketing boards and commissions and all key stakeholders was critical to recovery.

In 2022-23, BCFIRB continued to meet regularly with BC's commodity boards and commissions, 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 and opportunities to exchange information with regulated marketing sector stakeholders were pursued with a goal of increased awareness and understanding of challenges and opportunities across the sector.

Significant events in 2022-23 included the completion of the first phase of BCFIRB's supervisory review that looked into the serious allegations of bad faith and unlawful activity made against certain elected directors and staff of the BC Vegetable Marketing Commission by two private companies. A key focus of the review had been to determine whether the allegations could be substantiated and what resulting BCFIRB orders or directions may be required. In July 2022, BCFIRB issued its decision that the allegations of serious wrongdoing by Commission directors and staff were entirely without merit. BCFIRB also confirmed new process steps for a second phase of the review, which continued through 2022 and 2023, to determine what if any orders or other direction BCFIRB would require in order to support the integrity and return stability to the regulated marketing vegetable sector.

BCFIRB's long-term chicken pricing supervisory review, which began in 2020 in response to years of pricing challenges and uncertainty in BC's chicken sector, also continued through 2022-23. In June 2022, BCFIRB approved the BC Broiler Hatching Egg Commission's long-term cost of production pricing formula following a two-year process that included extensive stakeholder engagement. In November 2022, BCFIRB released a decision providing directions in relation to the BC Chicken Marketing Board's (BCCMB) plan to complete a long-term pricing proposal further to a BCFIRB-approved 2020 Terms of Reference. Following this in February 2023, the BCCMB restructured its Cost Recovery Model Committee to a Joint Working Group. In April 2023, BCFIRB approved the BCCMB's Interim Pricing Formula Upper Guardrail Trigger to support transparent and accountable pricing while the long-term pricing work continued.

There were 73 active appeals and complaints with BCFIRB in 2022-23, 13 of which proceeded to formal hearing, and 7 that were resolved through alternative dispute resolution. In 2022-23, BCFIRB directed the five supply managed commodity boards and commissions to provide additional information on their new entrant programs for

inclusion in BCFIRB Public Accountability and Reporting Project summary reports, to demonstrate how supply managed boards and commissions are supporting opportunities for new farmers and the continued growth and resilience of these commodities.

In 2022-23, BCFIRB continued work initiated before the COVID-19 pandemic to develop a new Strategic Plan. The Strategic Plan will support awareness and understanding of BC's regulated marketing sector and the supervisory mandate of BCFIRB, as well as BCFIRB's three administrative tribunal mandates under the *Natural Products Marketing (BC) Act*, the *Farm Practices Protection (Right to Farm Act)*, and the *Prevention of Cruelty to Animals Act*.

On behalf of all members and staff of BCFIRB, a heartfelt thank you to all of the commodity boards and commissions and their staff, and best wishes in 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Donkers". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter Donkers
Chair
BC Farm Industry Review Board

Tribunal Team

There are currently eight part-time BCFIRB members appointed by the Lieutenant Governor-in-Council. Members supervise, adjudicate and resolve disputes in the public interest under BCFIRB's four mandates. BCFIRB staff and contractors are an integral part of BCFIRB's professional team, supporting BCFIRB to the highest standards of integrity and accountability.

STAFF

Executive Director and Registrar
Martha Anslow

Board Services Coordinator
Lisa Stride

Senior Manager, Sector Policy & Planning
Olivia Mattan

Senior Manager, Sector Policy & Planning
Justine Lafontaine

Policy Analyst
Matthew Huijsmans

Adeeb Noorani
Policy Officer (Co-op)

Senior Case Manager
Sara Thiesson

Case Manager
Molly Gagne

Erica Day
Case Manager

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 (retired
November 2023)

Vice-Chair
Gunta Vitins

Member
Wendy Holm

Member
Pawan Joshi

Member
Dennis Lapierre

Member
Jane Pritchard

Member
Neil Turner

Member
David Zirnhelt

Member
Harveen Thauli (retired July
2023)

Purpose of the BC Farm Industry Review Board

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 in the public interest. As an adjudicator, BCFIRB supports access to justice, providing a less formal system for resolving disputes than the court. BCFIRB currently consists of a part-time board of eight members and ten full-time staff, and is accountable to the Ministry of Agriculture and Food for its administrative operations.

The BCFIRB 2022-23 Annual Report describes achievements and results from April 1, 2022 to March 31, 2023.

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](#).

BCFIRB's mandated responsibilities include:

- General supervision of BC'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 animal seizure 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 decisions may be judicially reviewed by, or appealed to, the Supreme Court of British Columbia. BCFIRB is accountable to BC's Office of the Ombudsperson for its processes and procedures.

BCFIRB supervises the following agricultural commodity boards and commissions, which are BC's 'first instance' regulators for their respective commodity:

[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 2022-23 Goals at a Glance

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.

PM #2

Appropriate governance and fiscal procedures exercised.

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.

PM #4

Orders, decisions & determinations are published promptly.

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.

BCFIRB 2022-23 Performance Measures and Results

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.

2022-23 Results

BCFIRB held nine full board meetings between April 1, 2022, and March 31, 2023. Minutes were taken and all necessary member recusals from board discussions were documented, per BCFIRB's [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 publicly posts [regulated marketing industry snapshots](#) that contain overviews of each of the regulated agriculture commodity sectors.

In its supervisory capacity, BCFIRB's Chair, members and staff met with commodity board and commission chairs, board members and staff on key files and issues throughout 2022-23. BCFIRB provided supervisory intervention when necessary in various sectors (e.g., chicken, broiler hatching eggs, vegetables). Details on all supervisory reviews, past and present, along with all BCFIRB supervisory decisions, can be found on [BCFIRB's website](#).

BCFIRB receives and 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 and/or approval.

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, and meetings were held between the BCFIRB Chair and Executive Director with the Minister and ministry staff.

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 2022-23 Supervisory Activities:

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

BC'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 boards and commissions. This proactive role is complementary to BCFIRB's appeal role.

Under the *Natural Products Marketing (BC) Act*, 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.

In July 2022, BCFIRB concluded Phase 1 of a supervisory review which began in May 2021 when BCFIRB initiated investigations into serious allegations of bad faith and unlawful activity made against certain members and staff of the BC Vegetable Marketing Commission.

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

The investigation was conducted by BCFIRB Hearing Counsel and participants had the opportunity to present evidence, call and cross examine witnesses, and make arguments before the BCFIRB Panel over 17 days of oral hearing that ended in April 2022. BCFIRB concluded in its [July 2022 Supervisory Decision](#) that there was no cogent evidence to support the Allegations. A further process on a second phase of the review continued through 2022-23 and will conclude once BCFIRB determines what, if any, resulting orders or directions may be required given its Phase I findings.

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

BCFIRB's [supervisory review of long-term chicken pricing](#), which began in 2020, continued in 2022-23. In June 2022, BCFIRB approved the BC Broiler Hatching Egg Commission's long-term cost of production pricing formula, developed through a two-year process that included stakeholder engagement and issues resolution. The new pricing formula was implemented in the fall of 2022. In November 2022, BCFIRB released a decision providing directions in relation to the BC Chicken Marketing Board's (BCCMB) plan to complete a long-term pricing proposal further to a BCFIRB-approved 2020 Terms of Reference. Following this in February 2023, the BCCMB restructured its Cost Recovery Model Committee to a Joint Working Group which included producer and processor representatives. In April 2023, BCFIRB approved the BCCMB's Interim Pricing Formula Upper Guardrail Trigger to support transparent and accountable pricing while the long-term pricing work continued.

Administrative Monetary Penalties

BCFIRB continued to work with the boards and commissions to explore the potential implementation of administrative monetary penalties (AMPs) as a biosecurity graduated enforcement tool. Under the *NPMA*, a commodity board or commission may use AMPs 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 expectations and directions to boards in a [framework](#) developed with the boards and the Ministry of Agriculture and Food in 2021 and sought feedback from boards and commissions on the potential use and efficacy of AMPs through 2022-23. In order to support greater transparency and accountability around biosecurity compliance and enforcement (C&E), BCFIRB also worked with boards and commissions towards increased C&E reporting to BCFIRB and for publishing on board and commission websites.

Egg Federal Provincial Territorial Agreement

In 2022-23, BCFIRB continued to work with the BC Egg Board and the Ministry of Agriculture and Food to review proposed changes to the existing Federal-Provincial-Territorial Agreement on Guiding Principles for the Marketing of Eggs in Canada (Egg FPTA), and provided substantive feedback directly to Egg Farmers of Canada. The proposed changes to the Egg FPTA will streamline and modernize the framework for eggs in Canada. The new Agreement is anticipated to be finalized in 2023.

Public Accountability and Reporting Project

In May 2022, BCFIRB directed the five supply managed commodity boards and commissions (milk, eggs, hatching eggs, chicken, turkey) to provide BCFIRB with additional information on their new entrant programs (NEPs). NEPs support opportunities for new farmers and continued growth and resilience of each commodity. In August 2023, after BCFIRB reviewed the additional information received from the boards and commissions. BCFIRB directed staff to work with boards and commissions

to include the data and overall NEPs goals and objectives in future BCFIRB [Public Accountability and Reporting Project \(PARP\) summary reports](#).

BCFIRB's PARP, initiated in March 2018, supports and reports on the effective governance and leadership of BC's regulated agriculture sectors. The PARP has a different focus from the information boards and commissions provide to their sectors and stakeholders in their annual reports. Good governance and informed decision-making ensure sound marketing policy outcomes in the public interest.

In addition to providing further NEP data, boards and commissions reported to BCFIRB on their key performance targets and progress in meeting their goals. Data on production volume, types of commodities being produced, region of production and sizes of producers provides information to the public, helps the boards and commissions demonstrate good governance, and helps BCFIRB demonstrate effective supervisory leadership that supports orderly marketing in the public interest.

Performance Measure 2:

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

2022-23 Results

BCFIRB expended \$1,763,939 in 2022-23. About \$1,016,178 of this amount was expended on operating costs, which include both contracted legal services and board member time and expenses. Just over \$775,000 was expended on public service staff salaries and benefits.

All commodity boards and commissions reported having audited financial statements in 2022-23, 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 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.

2022-23 Results

Progress continues to be made on the application of SAFETI principles in board and commission operations and decision-making. [BCFIRB implemented the SAFETI principles in June 2016](#), after a five-year development and consultation process with the boards and commissions, the Ministry of Agriculture and Food and other stakeholders.

<i>Principle</i>	<i>Description</i>
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 2022-23 decisions and submissions to BCFIRB, demonstrating that application of the principles is now part of BC’s regulated marketing board and commission culture. BCFIRB and commodity board and commission members and staff have noted the value and usefulness of SAFETI principles as an analytical policy lens and tool.

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.

2022-23 Results

BCFIRB 2022-23 administrative and supervisory records demonstrated that publishing expectations were met. BCFIRB posted all of its appeals and complaints decisions to its website within timelines established under BCFIRB’s Rules of Practice and Procedures for each BCFIRB mandate.

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 board and commission publishing of orders, determinations, decisions and other information in a timely manner. Timely publication of decisions supports orderly marketing and the 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.

2022-23 Results

In total BCFIRB administered 73 cases in 2022-23 (please see Appendix for a detailed case list). Of these, 42 were resolved within the fiscal year, 13 were decided following a hearing, 7 were settled through BCFIRB’s ADR settlement process, 11 were withdrawn, and 11 were dismissed.

Summary of BCFIRB’s appeals and complaints in 2022-23

2022-23 CASES	FPPA	NPMA	PCAA	TOTAL
Carried forward from 2021-22	10	24	2	36
New appeals/complaints in 2022-23	14	7	16	37
Total appeals/ complaints in 2022-23	24	31	18	73
Total appeals/complaints resolved in 2022-23	19	7	16	42
Total appeals carried forward to 2022-23	18	23	3	31

There is considerable cost variability from case to case, due to complexity and time required for members and legal counsel. There were 29 cases resolved in 2022-23 without a hearing ranging in cost from \$200-\$20,000. Cases resolved with a hearing ranged significantly in cost. The average cost-per-case for the PCAA mandate was \$9,000 in 2022-23 with 11 cases resolved, while the NPMA mandate total cost was \$78,000 with 2 cases resolved, and no cases under the FPPA mandate were resolved with a hearing.

In 2022-23, there were three judicial reviews (JRs) of BCFIRB appeal and complaint decisions filed with the Supreme Court of British Columbia, two JRs of *NPMA* decisions, and one JR of a *PCAA* decision. All JRs are continuing into 2023-24. The average cost of these JRs in 2022-23 to date was \$7,000.

BCFIRB has published policy and procedure documents that set out the process, steps and timelines associated with the filing and hearing of appeals and complaints under its different statutory mandates. In 2022-23, 100% of all cases that went to a hearing were decided within established timelines.

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.

An FPPA complaint involves a two-step analysis. First, the BCFIRB hearing panel must be satisfied that the complainant is aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation, and second, that the disturbance results from a farm practice conducted as part of a farm operation. If so, the panel must then make a determination about whether the grievance results from a “normal farm practice”. BCFIRB works with parties throughout the complaint process to help resolve these disputes wherever possible.

BCFIRB Case Highlights 2022-23

Farm Practices Protection (Right to Farm) Act (FPPA): Britschgi v Jealous Fruits

This case involved complaints filed with BCFIRB under the *FPPA* on June 29 and July 6, 2022 from a complainant aggrieved by noise from helicopters that were used to dry cherries on a neighbouring farm owned and operated by Jealous Fruits Ltd. On July 27,

2022, a site visit was conducted by BCFIRB case management staff and a Knowledgeable Person from the Ministry of Agriculture and Food at both the complainant’s and the respondent’s properties, and on November 4, 2022, a Knowledgeable Persons Report was presented by BCFIRB to both parties.

On November 21, 2022, the respondent applied for a summary dismissal of the notice of complaint under section 6(2) of the *FPPA*, which allows BCFIRB’s Chair to refuse to refer a complaint to a panel where the complaint is considered trivial, frivolous, vexatious or not made in good faith. While terms like ‘vexatious’ and ‘frivolous’ can appear jarring terms outside of a legal process, their use in statutes have established meanings. In the case of *FPPA* complaints to BCFIRB, a vexatious complaint is one made with an intent to harass or which abuses BCFIRB’s process because it asks the board and the opposing party to commit resources to matters that have been previously adjudicated or brought for improper purposes. A frivolous complaint is one that is inappropriate to refer to a BCFIRB panel because it has no reasonable prospect of success and would be unfair to the other party, and contrary to the public interest, to

establish a hearing process for it. To consider the respondent's application for summary dismissal, BCFIRB held a submission process to hear the views of both parties.

The key question for BCFIRB was whether the noise disturbance identified in the complaints resulted from a normal farm practice. BCFIRB reviewed the submissions of both parties, and the Knowledgeable Person's report which concluded that the respondent was following practices consistent with those used by similar farms under similar circumstances and that there were no identified contextual factors that would cause the Knowledgeable Person to recommend any modifications to the farm's use of helicopters. BCFIRB concluded that the respondent's use of helicopters conformed with 'normal farm practice' and on January 12, 2023, summarily dismissed the complaint.

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. While BCFIRB supports efforts by parties to work together to mitigate impacts from normal farm practices where possible, and the FPPA creates an expectation that farmers take reasonable steps where appropriate to mitigate the impacts of their farm practices on neighbours, the FPPA serves to protect the operational and economic viability of farm practices in BC.

Prevention of Cruelty to Animals Act (PCAA): Latour v BC Society for the Prevention of Cruelty to Animals

The Appellant, who had started a dog rescue in 1993 and had it registered as a society in 2011, appealed a January 2023 seizure of 63 of its dogs by the BC Society for the

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.

Prevention of Cruelty to Animals (BCSPCA). Under the PCAA, where the BCSPCA (authorized agent) believes an animal is in distress and the person responsible for the animal does not promptly take steps that will relieve its distress, or cannot be found immediately and informed of the animal's distress, the BCSPCA may take any action it considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

A BCFIRB panel hearing was held on March 1 and 2, 2023, with the Appellant and Respondent each represented by counsel and each calling witnesses. Per the PCAA, the BCFIRB panel was tasked with addressing two primary issues:

1. Were the animals in distress at the time of the seizure?
2. Is it in the best interests of the animals to be returned to the Appellant's care?

The panel received and considered the parties' submissions and all evidence including witness and expert testimony for both the Appellant and the BCSPCA. Based on the evidence and in particular the expert testimony, on March 14, 2023, the panel found the animals were in distress under the definition in the PCAA at the time of seizure and that a return to the Appellant would carry a significant risk of returning them to a condition of distress.

Natural Products Marketing (BC) Act (NPMA): K&M Farms v BC Chicken Marketing Board

The Appellant, a commercial poultry producer that grows a small portion of its chicken quota allocation on pasture, appealed decisions made by the BC Chicken Marketing Board (Chicken Board) in late June and early July 2022 that required the Appellant to meet the requirements of orders made by BC's Chief Veterinary Officer (CVO) between April and June, 2022, to protect commercial poultry operations from highly pathogenic avian influenza (AI). Avian influenza is a virulent disease carried by wild birds, and the CVO's orders, made under BC's *Animal Health Act*, required commercial producers to keep all flocks indoors for specific periods of time to avoid contact with wild birds. In 2004 alone, an AI outbreak in BC infected 42 producer premises resulting in the destruction of 17 million birds and estimated losses to the industry of \$350 million. At the time of the CVO's first order in April 2022, AI had reappeared in other Canadian provinces and in 25 US states, resulting in depopulation of over 46 million birds in those jurisdictions.

The CVO's May 2022 order, which extended the timeframe for keeping birds indoors in the April 2022 order, had

Under the *NPMA*, the Chicken Board is established by the BC Chicken Marketing Scheme to provide for effective promotion, control and regulation of chicken production, transportation, processing, packing, storage and marketing within BC. Under the Scheme, the Chicken Board has broad powers which it exercises through its General Orders. In addition to setting rules for quota, permits and licenses, the Chicken Board may refuse to allot a quota, or reduce, refuse to increase, or cancel a quota allotted to a grower who fails to comply with or has contravened any provision of the *NPMA*, the Scheme, the Chicken Board's General Orders, orders or direction of the BC Farm Industry Review Board, or any other order or direction of the Chicken Board.

included an exclusion for small scale producers who followed specific enhanced biosecurity guidelines. The Appellant asserted that the exclusion applied to its small flock of pasture raised chicken despite the Appellant being a quota-holding commercial producer.

In June 2022, when the CVO amended the May 2022 order to delegate the power to issue order exemptions to poultry boards including the Chicken Board, the Appellant applied to the Chicken Board for an exclusion, and was

denied. The Chicken Board further required the Appellant to come into compliance with the CVO's order by keeping all of its chickens indoors, and indicated non-compliance would specifically impact future placement of chicks with the Appellant. From June 30 to July 3, 2022, Chicken Board staff observed and video taped the Appellant's continued non-compliance with the Chicken Board's direction/the CVO's orders.

The BCFIRB panel considered submissions from the parties as well as the BC Chicken Growers' Association and other interveners in the appeal, and heard from parties and their witnesses. In its December 13, 2022 decision, the panel found that the Chicken Board did not err in issuing its decisions denying the Appellant an exemption, ordering the Appellant's birds be moved indoors until they could be processed, and declining July 2022 placements of 7,600 and 3,500 chicks with the Appellant due to non-compliance. The panel furthered agreed with submissions of the Intervenors that, given the serious nature of AI, the Chicken Board had been very measured in its response to the Appellant.

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

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

Telephone: 250 356-8945

Facsimile: 250 356-5131

Email: firb@gov.bc.ca

Appendix – BCFIRB Cases in 2022-23

<i>Farm Practices Protection (Right to Farm) Act: Cases 2022-23</i>	
Case Name	Decision
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	Settled: February 14, 2023
Kingsdale Dairy v U&D Meier Dairy – filed January 19, 2021 Issue: Noise from a propane cannon	Settled: May 13, 2022
Cipes v Waterside Farms – filed October 27, 2021 Issue: Noise from audible bird scare device	Settled: June 1, 2022
Cowichan Station Creamery v San Sujo Farm – filed November 17, 2021 Issue: Inadequate fencing	In process
Bal dba Valley Orchards v Frind Estate Winery – filed March 22, 2022 Issue: Run off water	In process
Britschgi v Hillcrest Farm Market – filed May 12, 2022 Issue: Noise from helicopter	Summarily Dismissed: January 12, 2023
Granberg v McKay and Granberg – filed June 9, 2022 Issue: Water contamination and manure disposal	Withdrawn: July 12, 2022
Britschgi v Jealous Fruits Ltd. – filed July 6, 2022 Issue: Noise from helicopter	Dismissed: January 12, 2023
Schreiber v Bonnett – filed July 26, 2022 Issue: Noise from propane cannon	In process
Jones v Kootenay Krush Farms Ltd – filed September 6, 2022 Davidson v Kootenay Krush Farms Ltd – filed October 7, 2022 Brownlee v Kootenay Krush Farms Ltd – filed October 7, 2022 Lee v Kootenay Krush Farms Ltd – filed October 7, 2022 Labrecque v Kootenay Krush Farms Ltd – filed October 19, 2022 Malinoski v Kootenay Krush Farms Ltd – filed October 19, 2022 Smith v Kootenay Krush Farms Ltd – filed October 25, 2022 Issue: Odour from field grown cannabis	Dismissed: March 2, 2023

Jmaeff v Dhaliwal – October 7, 2022 Issue: Noise from tractors, spray, propane cannons, rifles	Withdrawn: November 4, 2022
Cunningham v Seva Industrial Hemp Farm – filed November 15, 2022 Issue: Odour from field grown cannabis	In process
Butler v Jealous Fruits – filed November 22, 2022	In process
Prevention of Cruelty to Animals Act: Cases 2022-23	
Case Name	Decision
Grewal v BSPCA – filed March 1, 2022 Seizure: 1 dog	Decision: April 11, 2022
Kozyniak v BSPCA – filed March 15, 2022 Seizure: 1 dog	Decision: April 25, 2022
Watson & Rainier – filed May 5, 2022 Seizure: 16 dogs	Withdrawn: June 1, 2022
Graham v BCSPCA – July 26, 2022 Seizure: 1 dog	Decision: September 7, 2022
Tanaka v BCSPCA – August 3, 2022 Seizure: 1 dog	Decision: September 14, 2022
Pepper v BCSPCA – September 1, 2022 Seizure: 1 dog	Decision: November 14, 2022
Hoekstra & Simpson v BCSPCA – September 7, 2022 Seizure: 5 cats	Decision: October 19, 2022
Bollerup v BCSPCA – September 20, 2022 Seizure: 2 cats, 1 dog	Decision: November 2, 2022
Leduc v BCSPCA – filed on October 3, 2022 Seizure: 1 dog	Decision: November 15, 2022
Popp v BCSPCA – filed on October 11, 2022 Seizure: 1 cat, 5 kittens	Withdrawn: October 21, 2022
Williams & Nesbitt – filed on October 12, 2022 Seizure: 1 dog	Out of Time Decision: October 14, 2022
Ruelle v BCSPCA – filed January 9, 2023 Seizure: 1 dog	Withdrawn: January 18, 2023
Rose v BCSPCA – filed January 16, 2023 Seizure: 1 dog	Decision: February 27, 2023

Elliot v BCSPCA – filed January 26, 2023 Seizure: 4 dogs	Decision: March 9, 2023
Latour v BCSPCA – filed January 31, 2023 Seizure: 63 dogs	Decision: March 14, 2023
Sarkozi v BCSPCA – filed February 21, 2023 Seizure: 2 horses	In process
Allen v BCSPCA – filed March 10, 2023 Seizure: 4 horses, 1 pig	Withdrawn: March 27, 2023
Martin v BCSPCA – filed March 13, 2023 Seizure: 2 goats	In process
<i>Natural Products Marketing (BC) Act: Cases 2022-23</i>	
Case Name	Decision
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
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	Withdrawn: October 5, 2022

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
PPPABC v BCCMB – filed April 8, 2022 Issue: Chicken pricing order	Dismissed: May 19, 2022
CFP Marketing Corporation v BCVMC – June 9, 2022 Issue: Decision to not designate CFP as an agency	Adjourned: June 30, 2022
Golden Valley Foods v BCEMB – filed July 7, 2022 Issue: Tab 'B' Program	Withdrawn: January 31, 2023
Golden Valley Foods v BCEMB – filed July 7, 2022 Issue: Egg Grader Program Decision	Withdrawn: January 31, 2023
K&M Farms v BCCMB – filed July 5, 2022 Issue: Decision declining placement of chicks	Decision: December 13, 2022
Old Country Farms Ltd v BCEMB – filed December 28, 2022 Issue: Decision to deny application for the New Producer Program	Withdrawn: February 6, 2023
Global Greenhouse Produce Inc v BCVMC – filed February 10, 2023 Issue: Decision imposing conditions on agency license	Withdrawn: August 11, 2023