

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT
ARISING FROM THE USE OF PROPANE CANNONS ON
A BLUEBERRY FARM IN LANGLEY, BRITISH COLUMBIA

BETWEEN:

KEVIN MITCHELL

COMPLAINANT

AND:

GURINDERJIT and DALJIT BHULLAR
dba BHULLAR FARM PRODUCE

RESPONDENTS

AND:

BC BLUEBERRY COUNCIL

INTERVENER

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Suzanne K. Wiltshire, Presiding Member
Sandi Ulmi, Vice Chair
Derek Janzen, Member

For the Complainant:

Kevin Mitchell

For the Respondent:

Amritpaul Bhullar
Daljit Bhullar
Devinder Bhullar

For the Intervener:
BC Blueberry Council

Debbie Etsell, Executive Director

Date of Hearing:
Place of Hearing:

April 5, 2011
Abbotsford, British Columbia

INTRODUCTION

1. The respondents, Gurinderjit and Daljit Bhullar, own and operate a blueberry farm in Langley, British Columbia. The farm is located on the west side of 240th Street, north of 26th Avenue and is in the Agricultural Land Reserve. The Bhullars reside on the farm.
2. The complainant, Kevin Mitchell, lives to the east of 240th Street on the south side of 26th Avenue. His residence is more than 300 metres from the nearest Bhullar blueberry field edge and is slightly elevated above the blueberry field. He states that he is aggrieved by noise resulting from the use and management of propane cannons on the Bhullar farm.
3. The complaint was received by the British Columbia Farm Industry Review Board (BCFIRB) on July 20, 2010. The complainant alleges that the propane cannons on the Bhullar blueberry farm are not being operated in compliance with the revised provincial guidelines for propane cannons.
4. The respondents' position is that their use of propane cannons as part of the bird predation management practices of the farm is in keeping with all current guidelines and the cannons are being operated in accordance with normal farm practices in compliance with the *Farm Practices Protection (Right to Farm) Act* RSBC 1996 c. 131 (the *Act*).
5. The BC Blueberry Council was granted intervener status. Debbie Etsell, Executive Director provided a written submission and made a further oral submission at the hearing with respect to the Council's position and its educational activities regarding predatory bird management on blueberry farms in the Lower Mainland of British Columbia.
6. The complaint was heard in Abbotsford on April 5, 2011.

ISSUE

7. Does the noise arising from the propane cannon use and management practices on the Bhullar blueberry farm result from normal farm practices?

BACKGROUND

Ministry Guidelines

8. The British Columbia Ministry of Agriculture has published guidelines for the use of audible bird scare devices in south coastal British Columbia. The guidelines, first adopted in 1996, have been the subject of revisions over the years. The August

2009 version of the Ministry guidelines¹ continues to be the current version of the guidelines.

British Columbia Blueberry Council

9. The BC Blueberry Council's written submission provides information as to its activities and efforts in relation to bird predation management issues and the use of propane cannons.
10. The Council works closely with blueberry growers to inform, educate and assist them with the use of bird management tools and to encourage growers to follow the Ministry guidelines.
11. The Council responds proactively to complaints and works to find solutions to bird management issues. It does so by employing a liaison officer, Nazam Dulat, from May 15 to October 15 each year to respond to complaints regarding contraventions of the Ministry guidelines. It also invests in research to find alternate tools for use as part of growers' bird management.

Knowledgeable Person

12. BCFIRB retained Mark Sweeney, P.Ag., Berry Industry Specialist, Ministry of Agriculture, as a knowledgeable person pursuant to section 4 of the *Act*. Mr. Sweeney conducted a site visit on September 2, 2010. He then prepared a report assessing the bird predation management practices on the farm site and in particular, the operation of propane cannons. In accordance with the terms of engagement for knowledgeable persons, his report dated October 2, 2010 was provided to the parties shortly after its completion in support of settlement discussions and subsequently disclosed to the intervener in connection with the hearing.
13. Mr. Sweeney was called to give evidence at the hearing. He was qualified as an expert witness in the area of crop production, marketing and related matters, including bird predation management, with respect to blueberry farming operations.

Farm Operations

14. As described in Mr. Sweeney's report, the Bhullar blueberry farm site is a long, narrow parcel approximately 800 metres long by 100 metres wide, and is 20.35 acres in size. The Bhullars' residence, with a barn and shed to the rear of the house, fronts onto 240th Street. Mature blueberry fields run the length of the site behind the barn. Plantings consist of 14 acres of Duke variety (early maturing) in the east portion and 1 acre each of Bluecrop (early) and Elliot (late) at the west end of the property. In 2010 plants ranged from three to eight years old. There is also a small blueberry field with immature plantings lying to the north of the residence between the residence/farm buildings and the northern site boundary.

¹ Ministry of Agriculture and Lands *Farm Practices South Coastal BC Wildlife Damage Control*, August 2009, at pp. 3 and 4 http://www.agf.gov.bc.ca/resmgmt/fppa/refguide/activity/870218-59_Wildlife_Damage_South_BC.pdf

15. A bird predation management plan was provided by the respondents to Mr. Sweeney and includes a field map. This field map and an aerial Google image of the farm site show a transmission line crossing the site diagonally from approximately the middle of the farm's southern boundary north-westerly to the northern boundary. There are areas of bush and/or trees along most of the southern boundary of the site, all of the western boundary and a small portion of the northern boundary.
16. Two triple-shot rotating propane cannons were put into operation in the mature blueberry fields about June 26, 2010. One cannon was placed near the back section of the field west of the power lines and one was placed in the front section to the east of the power lines. Automatic timers were set to start the cannons at 6:30 a.m., shut off at noon, restart at 3 p.m., and shut off at 8 p.m.

COMPLAINANT'S SUBMISSIONS

17. The complainant submits that he is aggrieved by noise from the continuous firing of timer-activated propane cannons on the Bhullar blueberry farm, as are many of his neighbours. The complainant states that the two propane cannons on the Bhullar blueberry farm started up on June 26, 2010 and continued operating unchanged from 6:30 a.m. to noon and from 3 p.m. to 8 p.m. each day until July 10 when they stopped at 8:15 a.m. and resumed at 4 p.m. From July 12 one cannon continued to operate and was still doing so at the time he made his complaint on July 19, 2010.
18. The complainant submits that the respondents have failed to strategically manage their use of propane cannons as called for by Ministry guidelines and have failed to take due measures to minimize the noise impact from the use of cannons on neighbours. The complainant argues that the Bhullar blueberry farm propane cannons were operated outside the parameters of the Ministry guidelines in the following respects:
 - Bird pressure and monitoring – There was inadequate bird pressure and damage to justify the extensive use of the cannons. Cannons should be activated based on bird pressure and not by automatic timer.
 - Approaches and techniques – There was little, if any, use of other methods of bird control, such as birds of prey, nets, streamers or other options.
 - Other – During the course of the hearing the complainant raised issues with respect to cannon location, repositioning and direction.
19. The complainant argues that the respondents' use and operation of the propane cannons is therefore not in compliance with the Ministry guidelines.

20. At the pre-hearing conference the complainant requested an order requiring the respondents to follow the Ministry guidelines and implement an integrated bird management plan. At the hearing he requested that cannon use be discontinued.

RESPONDENTS' SUBMISSIONS

21. The respondents submit that the use of propane cannons as part of the bird predation management practices of the Bhullar blueberry farm is in keeping with the Ministry guidelines and consistent with normal farm practice.
22. The respondents say they have been diligent in seeking out information and becoming knowledgeable about the Ministry guidelines and then implementing the things they have learned.
23. The respondents indicate they are prepared to take into consideration the recommendations made by Mr. Sweeney in his October 2, 2010 report.
24. The respondents' position is that bird pressure on the farm is heavy and they should be allowed to use propane cannons to prevent crop loss.

SUBMISSIONS OF THE BC BLUEBERRY COUNCIL

25. The Council acknowledges that propane cannons are just one of the devices available to control bird predation. The Council submits, however, that propane cannons have been proven effective as a tool in bird management when used along with other methods and that all tools are required to adequately protect crops and reduce losses to growers.
26. The Council advises that the most recent revision of the Ministry guidelines in August 2009 requiring that growers monitor bird populations and activity on their property and that bird pressure be sufficient to justify cannon use has been challenging for Council and growers because of a misunderstanding of that requirement. The Council notes that there are some who believe that bird pressure means flocks of birds have to be present and that growers must manually activate propane cannons.
27. The Council states that it instructs growers to monitor bird presence and bird damage regularly as part of the grower's integrated bird management plan and tells growers they may use deterrent devices once birds start feeding and there is pressure on the crop. The Council notes that it is important in bird management that feeding patterns are not established, so pre-emptive cannon use is key. The Council instructs that growers must visit fields regularly where timers are activated to ensure the devices are working properly and effective in managing bird pressure.

28. The Council's position is that it is not reasonable for a grower to be required to be constantly present during the harvest season in order to manually trigger propane cannons.
29. The Council advises that it continues to invest in research for alternative tools for use as part of bird management. Currently a plan to assist with a European starling trapping program is being developed. The Council says that while it has been scientifically shown that this will not solve the issue, it is one more tool that growers can use to protect their valuable crops.

ANALYSIS

30. The complaint was filed pursuant to s. 3(1) of the *Act*. That section provides 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.

A. Standing

31. A complaint under the *Act* involves a two-step analysis. The first step involves standing; a complainant must establish that they are aggrieved by the noise or other nuisance that is the subject of the complaint. In the present case, the complainant provided evidence as to the level of noise that propane cannons make. Testimony of neighbours called by the complainant was mainly directed to their being aggrieved in various ways by noise from the cannons. The panel accepts that propane cannons are loud and finds the complainant has satisfied the first step of establishing that he is aggrieved by noise as a result of the operation of propane cannons on the Bhullar blueberry farm.
32. Once the initial step has been satisfied, the panel must go on to make a determination as to whether the grievance results from a normal farm practice.

B. Normal Farm Practice

33. Section 1 of the *Act* defines normal farm practice:

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

(a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and

(b) any standards prescribed by the Lieutenant Governor in Council, and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

34. In addressing the appropriateness of the farm practices on the Bhullar farm, both of the parties and the intervener have done so in terms of the respondents' compliance with the Ministry guidelines.
35. In [*Morgan Creek Homeowners Association v Himmat Sekhon dba Sekhon Farm*, October 6, 2000](#), the BCFIRB panel hearing that case determined that the Ministry guidelines in existence at that time were proper and accepted customs and standards as established and followed by blueberry farms in Surrey.
36. In the more recent decision [*McMurtry v Sekhon*, January 29, 2010](#), the BCFIRB hearing panel determined, after considering the particular circumstances of a different Sekhon blueberry farm in west Cloverdale, that the current Ministry guidelines established normal farm practice for that farm. As noted in that decision at paragraphs 45 through 49:
 - The Ministry guidelines are not automatically determinative of what is normal farm practice with respect to propane cannon use for a specific farm.
 - The determination of normal farm practice is to be made by the hearing panel in each case, and in doing so, the panel looks to whether the complained of practice is consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances.
 - The Ministry guidelines, as updated from time to time, have become generally accepted by blueberry growers in the Lower Mainland as the prevailing standards for the use of propane cannons.
 - In general, for blueberry farms in the Lower Mainland the Ministry guidelines represent proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances.
37. Considering the present case, the panel notes that propane cannons are widely used in the Lower Mainland to prevent damage to the blueberry crop and their use as part of a bird predation management plan is consistent with the Ministry guidelines. The BC Blueberry Council continues to encourage and educate growers to follow the Ministry guidelines. The current Ministry guidelines are the standards referred to by the BC Blueberry Council's liaison, Mr. Dulat, in dealing with neighbour complaints. The panel concludes that, in general, for blueberry farms in the Lower Mainland the use of propane cannons in accordance with the Ministry guidelines continues to represent normal farm practice.

38. Since a complaint under the *Act* is made with respect to disturbance resulting from a farm operation of a specific farm business, in determining normal farm practice the panel must also consider the relevance of any site specific circumstances of the Bhullar farm business. The question thus becomes whether or not there is anything specific to this farm site calling for a change to what would otherwise be normal farm practice. We conclude there is not. The Bhullar farm is located in a primarily agricultural area with a mix of smaller and larger farm sites as is common in this area. The farmsite is of a comparable size to many other blueberry farm sites in the Lower Mainland. The evidence establishes that there is crop damage as a result of bird predation on the Bhullar farm and that there is a need for the use of cannons as a tool in an integrated bird predation management plan as contemplated by the Ministry guidelines. Having considered the particular circumstances of the Bhullar blueberry farm site, the panel finds that the use of propane cannons in accordance with the Ministry guidelines establishes normal farm practice with respect to this complaint.
39. The complainant initially sought an order that the respondents comply with the Ministry guidelines. At the hearing, he requested an outright ban on the use of propane cannons on the Bhullar farm. Pursuant to section 6 of the *Act*, we are limited to either dismissing the complaint if we are of the opinion that the disturbance results from a normal farm practice, or ordering that the respondent farmer cease a practice that is not normal farm practice or modify a practice to be consistent with normal farm practice. Given our conclusion that the use of propane cannons in accordance with the Ministry guidelines constitutes normal farm practice for the Bhullar farm, there is no basis for us to make an order that would prohibit the use of cannons on the farm.

C. Strategic Approach

40. The August 2009 version of the Ministry guidelines requires growers to strategically manage the use of propane cannons and other devices as part of an overall bird predation management plan. This more strategic, outcomes-based approach is reflected in the following excerpt from the current Ministry guidelines:

Farmers are responsible for the strategic management of devices, and must take due measures to minimize noise impact on neighbours. To achieve this, farmers:

- should ensure that a Bird Predation Management Plan is completed before the first use of devices in each growing season and that the plan is kept up to date throughout the season. A Bird Predation Management Plan requires that producers monitor bird populations and activity on their properties, utilize a range of approaches or techniques to prevent bird damage, and undertake strategies to minimize both device use and bird habituation to devices;...

41. Mr. Sweeney is of the opinion that “the farm was in compliance with the guidelines.” It is his view that the key elements of an integrated bird management

plan were in place. He notes in his report that the Bhullars live on the farm and were active in their observations of crop stage and bird pressure. Given the adjacent bush and power lines, he accepts that the respondents faced a severe threat to their crop and did indeed sustain loss. He believes there are a few areas where improvements could be made to enhance bird control and potentially moderate cannon use.

42. Mr. Sweeney recommends three changes to the respondents' bird management program in the hope that these changes might result in improved crop protection and less heavy cannon use. At the same time he recognizes that because of very heavy bird pressure in the area, losses could be severe if propane cannons are not used. He concludes that given the complainant's displeasure over any cannon use, it might not be possible to mitigate the complainant's noise concerns without compromising the crop.
43. The recommended changes are:
 - To start the season with the cannons at the lowest frequency setting and increase the frequency as the crop matures and bird pressure increases.
 - To make greater use of other techniques, such as visual devices and electronic devices, as they may result in better bird control and improve cannon effectiveness.
 - In monitoring, to note the species of birds present and around the field and only operate cannons when starlings are of concern.
44. During the hearing the respondents indicated areas where they could improve their planning and monitoring record keeping so as to more completely record their observations and actions. In keeping with the guidelines' requirement to take a strategic approach, we recommend they do so for 2011. Similarly, the respondents indicated a willingness to consider Mr. Sweeney's recommendations for improvement to their bird predation management. Again, we recommend that in keeping with the call to take a strategic approach, the respondents implement these recommendations for the 2011 season.

D. Compliance with Ministry Guidelines

45. We now turn to consideration of the complainant's allegations that the respondents failed to operate the propane cannons on the farm in accordance with the Ministry guidelines.

Bird Predation Management Plan

46. As noted above, the current version of the Ministry guidelines calls on farmers to complete a bird predation management plan before the first use of propane cannons each season and to keep the plan up to date during the season.
47. In 2010, the respondents did complete a bird predation management plan, albeit a bit late. The plan was not put in place prior to the start of the season on June 26th

but only after attending a bird management workshop put on by the BC Blueberry Council on July 7, 2010. However, after learning of the most recent changes to the Ministry guidelines, the respondents completed a bird predation management plan and put it into operation the following day, July 8, 2010.

48. In addition, they immediately adopted the recommended practice of keeping daily logs to evidence their monitoring of bird populations and cannon use. This type of documentation, in our view, forms a part of the bird predation management plan and if the appropriate information is recorded can serve as the required plan update.
49. The respondents acknowledge that their implementation of this approach is a work in progress and say they now see where they could make improvements to their plan and monitoring records to make them more complete. They note the need to better record which cannons are operating and where, and when any cannon is turned off and the reason. They also acknowledge that the bird predation management plan was completed quickly on the evening of July 7 and could have been more carefully considered and more fully completed.
50. In this regard, the complainant noted the bird predation management plan failed to indicate the use of an ATV and a motorcycle as part of the respondent's control techniques. The panel observes there are other areas where the 2010 plan could have been more fully completed such as the date of the plan, the contact person's name and phone number, identification of additional bird species, identification of changes in firing frequencies and an update at the end of the season noting changes planned for next year.
51. While the respondents may have been late getting started with implementation of the Ministry guideline revisions calling for a more strategic approach through the use of a bird predation management plan, they are to be commended for their quick action once they understood the August 2009 guideline revisions. They quickly came into compliance with the planning, monitoring and recording aspects to act more strategically in their use and management of propane cannons. The monitoring records in particular have the potential to become useful to assess whether they are achieving the desired outcome of preventing bird damage while reducing propane cannon use and bird habituation. The respondents' acknowledgement of areas for improvement indicates their awareness of the value of taking a strategic approach and the need for ongoing improvement and refining in their planning and monitoring records.
52. 2010 was the first full season for implementation of the August 2009 revisions to the Ministry guidelines. While the respondents' planning and monitoring records may not be perfect, their intention to comply and improve is evident. Overall we consider their efforts in this regard to be satisfactory and in keeping with normal farm practice. In 2010, many growers were still coming to fully understand and implement this aspect of the recent revisions to the Ministry guidelines.

Bird Pressure, Monitoring and Use of Automatic Timers

53. With the changes to the Ministry guidelines in August 2009, monitoring of bird presence and pressure became critical in order to justify the use of cannons in response to such pressure.
54. The evidence supports the respondents' submission that in 2010 bird pressure on the Bhullar blueberry farm was heavy. The treed and bush areas to the west and south, the creek on the south side, and the high tension wires crossing the blueberry field all provide desirable habitat for birds. As noted in Mr. Sweeney's report, these features provide ample cover and roosting areas from which birds can move back and forth into the field to feed. He also observed that birds can be difficult to see when hidden in the canopy. The blueberry grower to the southwest, the neighbour to the north running a beef operation, and the Bhullars' son all testified that there was heavy bird pressure, especially starlings. The Bhullars' son indicated that the most significant bird pressure was near the power lines and for this reason usually one cannon was located to the front and one to the back of the power lines. We also note Mr. Sweeney's evidence that Mr. Dulat had advised that he observed bird pressure and related crop damage on his visits to the Bhullar farm. Mr. Sweeney testified that his own observations of farms within 3 or 4 miles of the Bhullar farm confirmed 2010 had been a particularly heavy year for starlings in the south Langley area. He considers it reasonable to conclude that pressure from starlings had also been significant on the Bhullar farm. The Bhuller's son confirmed this with his evidence that the farm lost about 50% of its latest maturing crop when the cannons were left off for two days.
55. While the complainant questioned the species of birds present since the monitoring records did not distinguish which species were present, the panel finds the evidence is sufficient to conclude there was significant pressure from starlings during the 2010 season.
56. The Council raised a concern with respect to there being some misunderstanding that bird presence meant there had to be flocks flying over the field. The panel accepts that bird presence and pressure may not be discernible to the casual observer. Even though there may be no flocks of birds in the sky, bird presence and pressure can still be significant. This farm in particular provides many areas where birds may take cover in the trees, bushes and the blueberry canopy and not easily be seen. The farm must, however, be able to demonstrate this bird pressure to justify the use of cannons.
57. The complainant argues that from June 26 until July 10 the respondents were not complying with the guidelines but merely operating the cannons each day to the fullest extent without monitoring and without regard to bird pressure.
58. The respondents' evidence is that both cannons were started on June 26 because the berries were ripening and bird pressure was extremely high at the time. The intention was to scare off the birds at the beginning of the season in hopes they

would not return and then to keep them away. During the period through until July 8, the respondents checked at 6 a.m. each day for bird presence before the cannons began firing at 6:30 a.m. and also checked the cannons often during the day to see they were firing according to the guidelines.

59. The fact that the respondents only came to grips with the need to adopt a more strategic approach after the Council sponsored workshop on July 7 is consistent with the evidence that from the start of the cannons on June 26 to July 8, both cannons were in operation every day from 6:30 a.m. to 8 p.m. except for the required midday break. The respondents were trying to comply with the guidelines by not operating the cannons outside of the hours set for cannon operation. We do not doubt that there was bird pressure, including pressure from starlings, during this period. However, without evidence to establish that the bird pressure was constant during this period requiring operation of cannons daily during all possible hours, we are unable to conclude that cannon operation at this time was in compliance with the 2009 revision to the guidelines.
60. We observe however, that by the time the complaint was filed on July 20, the respondents had acted so as to bring their operations into compliance with the guidelines. The monitoring records kept by the respondents from July 8 through to August 10 when they ceased to operate any cannons show that from July 8 the respondents not only implemented monitoring but modified their use of cannons as bird pressure and presence required. This is exactly the type of strategic response called for in the Ministry guidelines and is encouraging to see. The respondents' comments at the hearing that they recognize areas where the monitoring records could be improved by including more information are even more encouraging. The monitoring thus becomes a more strategic tool for use by growers in refining their bird predation management in future. We find that from July 8, 2010, on the respondents were in compliance with the monitoring called for by the revised Ministry guidelines and with the requirement to operate cannons in response to bird pressure.
61. The complainant questioned whether the operation of propane cannons on automatic timers is in compliance with the Ministry guidelines.
62. Mr. Sweeney disagreed with the complainant's position that the requirement to monitor for bird pressure precludes the use of automatic timers. On cross-examination on this issue, Mr. Sweeney's response was that using automatic timers would only be a breach of the guidelines if there was no assessment of bird pressure to justify the use of the cannons.
63. The respondents confirmed their use of automatic timers to start the cannons, but noted their monitoring of bird presence and pressure and that cannons were turned off when bird pressure diminished.

64. The panel observes that not only is it customary practice in the Lower Mainland to operate cannons on timers but that the guidelines also contemplate the use of automatic timers, stating:

With respect to the operation of devices, farms:

...

- should maintain devices, including timing mechanisms, to ensure they operate properly and not outside the permitted hours of operation; ...

65. The panel concludes that the use of automatic timers in the operation of propane cannons is permitted under the guidelines but must be combined with monitoring and assessment of bird pressure to justify cannon use. In our opinion, the respondents' operation of propane cannons with automatic timers in combination with their active monitoring program is in compliance with the Ministry guidelines.

Use of Other Devices

66. The complainant argues the respondents failed to use a variety of techniques to prevent bird damage to minimize cannon use as called for by the guidelines. He stated that from his observation, no other techniques were used.
67. The respondents argue that they have and continue to use other bird scare techniques. The evidence of the respondent's son was that in previous years, bird guard noise devices had been used but were only effective if birds were flying overhead and were not effective with respect to birds in the bushes and trees. Hawk kites had also been tried but had not been very effective. Reflective ribbons, orchard pistols, and an ATV and motorcycle had and continued to be used. In 2010 ribbons had been located along the tree and bush to the south and south east where bird presence was high but had not been used along the northern boundary because of the neighbour's concern that his cows might eat the ribbons and choke.
68. A neighbour called as a witness by the complainant said she had not seen the reflecting ribbon but had seen the respondents' sons using the ATV and could see from this that the respondents were trying to do something different.
69. The neighbour to the north raising beef cattle confirmed he had previously asked the respondents to reduce their use of reflecting tape because of his cows. He said the respondents had removed the tape the year he told them of his concern and then later reintroduced the reflecting tape in a limited capacity. He noted as well that Daljit Bhullar was in the field frequently and used his presence and equipment in the field to distract the birds.
70. The blueberry farmer to the southwest of the respondents testified that while he uses other methods such as reflecting tape and other noise-making devices to manage bird predation these are not very effective and it is therefore necessary to also use cannons.

71. While Mr. Sweeney considers the respondents to be in compliance with the guidelines, noting they had used several techniques and were also present in the field, he believes their bird predation management could be improved with the use of additional techniques for bird control. In response to questions from the complainant, he testified that in his opinion using birds of prey was too expensive for smaller operations such as the Bhullar farm.
72. We conclude that the respondents did use a number of techniques to prevent bird damage and accordingly were in compliance with the Ministry guidelines. However, we agree with Mr. Sweeney that bird predation management may be improved in future years with the use of additional techniques for bird control. We urge the respondents to expand their use of alternate devices and techniques to manage bird predation.
73. The complainant also pursued the viability of netting as an alternate to using cannons to manage bird predation. Mr. Warner, a witness for the claimant, who had been retained by BCFIRB as a knowledgeable person in an earlier case, [McLeod v Silver Rill Berry Farm, March 28, 2007](#), provided evidence as to the use of cannons in that case which involved a similar long and narrow property in Saanich on Vancouver Island. He noted, however, that in that case less than 1/3 of an acre was in blueberries and the issue had been related to cannon use for 10 cherry trees which were located on the property line close to a neighbour's house. In that case he had recommended netting for the cherry trees. Mr. Warner confirmed he had never been to the Bhullar farm and had no experience with bird patterns in south Langley. He testified that while many blueberry farms on Vancouver Island were netted, all were small farms of 10 acres or less and all produced berries for the retail market but that similar to this case there were many abutting properties with many different types of operations.
74. Mr. Sweeney indicated on cross-examination that most netted parcels were 10 acres or less and stated that use of netting was a question of the cost of netting and the return on investment for each specific farm.
75. The neighbouring blueberry grower to the southwest of the respondents testified that he did not use nets because they cost a lot and required lots of maintenance. He said the customary practice in south Langley and other areas of the Lower Mainland was to use propane cannons and follow the Ministry guidelines for their use.
76. The respondents' position is that nets are not economically viable. The respondents' son noted that because of high labour costs it may soon be necessary to move to mechanical picking and this makes netting even more costly. He observed that the farm operations had just been breaking even over the past couple of years making nets prohibitively expensive.
77. We have already concluded that the use of propane cannons in accordance with the Ministry guidelines constitutes normal farm practice for this farm. There is no

requirement for the respondents to use netting or any other alternate technique that is non-economic. Nor does the evidence establish that netting is a normal farm practice for Lower Mainland farms the size of the Bhullar farm.

Other Issues:

Cannon Location

78. The guidelines call on farmers to “maintain a 200 meter separation distance between a [propane cannon] and a neighbouring residence” unless written permission for a lesser distance is obtained from the owner of a neighbouring residence.
79. The complainant questioned whether the respondents had obtained a written waiver from the neighbour raising beef to the north of the respondents. While the evidence was that there was no written waiver, that neighbour was a witness who supported the respondents’ practices and made no complaint with respect to the use and management of the propane cannons. We also note that it is not clear from the evidence that cannons were placed within 200 metres of this neighbour’s residence. There was no allegation of any other failure to comply with the separation distance requirement and it is certainly not applicable to the complainant in this case. The respondents will however need to ensure for future years that placement of cannons in the field satisfies the 200 meter separation distance with respect to the residences of nearby neighbours or obtain written permission waiving the distance requirement.
80. The complainant raised a second question with respect to the meaning of “residence” and also referred to the 200 metre separation distance being applicable as well to any facility. There is no reference to the term “facility” in this guideline provision. As for the term “residence”, we interpret residence to have its usual meaning as being the house in which one lives. We reject the complainant’s argument that it means the entire property on which the house is located.

Cannon Repositioning

81. The Ministry guidelines provide that farmers “should alternate or relocate devices being used on a farm operation at least every 4 days”.
82. The complainant submits that the cannons were not moved every 4 days pointing to the monitoring records and the periods from July 17 to 29 with respect to cannon #1 and July 18 to August 8 with respect to cannon #2.
83. The respondents argue that since the cannons were, in each case, turned off and on in the periods referred to they did not operate continuously in the same spot for more than 4 days.
84. We note the provision calls for devices being used to be either alternated or relocated. We consider the respondents’ interpretation of this guideline provision to be reasonable in the specific circumstances of this case and in keeping with the

purpose of this provision which is to lessen habituation to cannons. Having reviewed the monitoring records, we conclude that the respondents were not in this instance in breach of the provision. However, we note that frequent relocation of cannons is desirable to lessen habituation and it may be that in another instance shutting a cannon off for a day or two would be insufficient to achieve the desired outcome. Failure to relocate the cannon might then be considered to be a breach of this guideline provision.

Cannon direction

85. The Ministry guidelines provide that farmers “should point directional devices away from the nearest neighbouring residence or facility and away from nearby roads”.
86. The complainant argues that because the cannons rotate they are not being operated in compliance with the guidelines.
87. We view this provision as being applicable to fixed cannons that point in only one direction and not to rotational cannons that may point randomly and briefly at a facility or at a residence that, unless the owner has consented to a lesser distance, will be located at least 200 metres away. In the case of this farm, properly locating its rotating cannons near the power lines enables the farm to maintain the required 200 metre distance separation from neighbouring residences. This also places the cannons behind the farm’s house and farm buildings, away from 240th Street, the only road adjacent to the property.
88. Accordingly, we find that although the cannons may, as they rotate, point briefly in the direction of 240th Street or a neighbouring residence or facility, given their placement this does not result in non-compliance with the guideline provision.

CONCLUSION

89. The panel finds that the use of propane cannons in accordance with the August 2009 Ministry Guidelines for the use of Audible Bird Scare Devices for South Coastal BC establishes normal farm practice in the case of the Bhullar blueberry farm operations.
90. The panel also finds that while the propane cannon use and management practices on the Bhullar blueberry farm prior to July 8, 2010 were, in some respects, not in compliance with the revisions to the Ministry guidelines made in August 2009, those practices came into compliance after July 7, 2010 and were in compliance when the complaint was filed. Thus, we conclude the noise arising from the

propane cannon use and management practices on the Bhullar blueberry farm after July 7, 2010 results from normal farm practice. That being the case, we make no order for cessation or modification of the respondents' propane cannon use and management practices.

Dated at **Victoria, British Columbia**, this 10th day of **June, 2011**.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



Suzanne K. Wiltshire, Presiding Member



Sandi Ulmi, Vice Chair



Derek Janzen, Member