



**BC Farm Industry  
Review Board**

March 2, 2023

File: F2208, F2209  
F2210, F2211, F2213,  
F2214

**DELIVERED BY EMAIL**

Ryan Jones  
[REDACTED]

David Gamage  
Don Lupul  
[REDACTED]

Valerie Davidson  
[REDACTED]

Aaron Lee  
[REDACTED]

Gale Brownlee  
[REDACTED]

Marie-Josée Labrecque  
[REDACTED]

Lawrence Malinoski  
[REDACTED]

Dear Parties:

**A COMPLAINT FILED UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT* CONCERNING ODOUR FROM A FIELD GROWN CANNABIS OPERATION**

The BC Farm Industry Review Board (BCFIRB) had initially received seven complaints with respect to odour on a field grown cannabis operation carried out by Kootenay Krush Farm Ltd within the Agricultural Land Reserve in Parson, BC. One complaint was withdrawn on December 18, 2022, from Meadow Smith, F2215, leaving the following six complaints:

1. Ryan Jones (F2208) on September 6, 2022  
Issue: Odour
2. Valerie Davidson (F2209) on October 7, 2022  
Issue: Odour
3. Gale Brownlee (F2210) on October 7, 2022  
Issue: Odour
4. Aaron Lee (F2211) on October 7, 2022  
Issue: Odour
5. Marie-Josée Labrecque (F2213) on October 19, 2022  
Issue: Odour

6. Lawrence Malinosky (F2214) on October 19, 2022  
Issue: Odour

On October 26, 2022, BCFIRB staff held an informal information session for the complainants via telephone where BCFIRB's role with respect to the protections offered to farms under section 2 and 3 of the [Farm Practices Protection \(Right to Farm\) Act \(FPPA\)](#), was clarified. Given that field production of cannabis is a relatively new undertaking, the complainants were put in contact with the Ministry of Agriculture's Rajiv Dasangh, P. Ag, Horticulture Team Lead & Emerging Markets Specialist to better understand the regulatory environment associated with cannabis production.

On November 17, 2023, BCFIRB established a submission schedule to determine whether the substance of the disturbance complained of (odour) results from a farm practice that falls within the jurisdiction of BCFIRB, as opposed to the growth of the commodity itself. The letter explained in part:

Section 6(2) gives the Chair of BCFIRB authority to refuse to refer an application to a panel for the purpose of a hearing where the subject matter of the application is trivial, frivolous or vexatious, not made in good faith, or where the complainant does not have a sufficient personal interest in the subject matter of the application. The terms "vexatious" and "frivolous" may appear harsh or extreme to persons who are not legally trained. However, as used in statutes, they have established meanings. A "vexatious" complaint, which has no application here, is made with an intent to harass, or abuses the board's process because it is asking the board, and the opposing party, to commit resources to matters that have been fully and finally adjudicated. A "frivolous" complaint, which may have application here, is one that is inappropriate to refer to a panel because it has no reasonable prospect of success. While this is a judgment that needs to be exercised wisely and with restraint, it recognizes that it is fundamentally unfair to the other party, and contrary to the public interest, to establish a hearing process where there is no reasonable prospect of success.[emphasis added]

The purpose of the submission process was to give the complainants an opportunity to be heard prior to my consideration of whether to refer these complaints to a panel for hearing. The complainants were specifically asked to identify the farm practice that the farm was allegedly doing that is causing the disturbance and which is inconsistent with normal farm practice (the proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances).

BCFIRB did not receive any submissions from the complainants or the respondent in response to my request.

## **Decision**

Currently there are six odour complaints before BCFIRB related to the production of field grown cannabis by Kootenay Krush, a licensed cannabis field operation located in the Agricultural Land Reserve (ALR).

According to the Agriculture Land Commission's current policy regarding cannabis production in the ALR (Information Bulletin 4), all forms of cannabis production are a "farm use" and as such "cannabis production in the ALR does not contravene the

*Agricultural Land Commission Act* even if engaged in without the Commission's approval."

Further, section 8 of the *Agricultural Land Use Regulation* provides:

- (1) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced
  - (a) outdoors in a field, or
  - (b) inside a structure that, subject to subsection (2), has a base consisting entirely of soil.

Based on the foregoing, Kootenay Krush can grow field cannabis as specified under the terms of its license. Local government cannot prohibit the production of field cannabis and there are no regulatory setbacks or restrictions on where, within the ALR, cannabis may be grown.

It is common knowledge that the production of cannabis has an associated odour. As plants mature, the associated odour increases. All six complainants report experiencing overwhelming odour, both inside and outside their homes. Their notices of complaint describe the odour lingering, sticking to their clothing and impacting their ability to work and play outside their homes.

I accept that growing field cannabis is a farm operation as defined by the *FPPA*. I also accept that the complainants are aggrieved by odour from growing field cannabis on a seasonal basis. However, in their notices of complaints the complainants did not identify a farm practice, other than the growing of cannabis, that this farm is doing that causes their disturbance. Further and despite being given an opportunity to clarify the practices of the farm that are not consistent with normal farm practice, I received no further submissions identifying a practice conducted by Kootenay Krush that is inconsistent with proper and accepted customs and standards associated with outdoor production of cannabis.

Where cannabis is produced in a facility, there are extensive regulatory requirements relating to ventilation which a farm must follow. In those situations, BCFIRB can retain a knowledgeable person to offer an opinion on whether standards are being met and whether there is something more that the farm needs to do to mitigate the impact of their cannabis operation on neighbours.

However, with field grown cannabis, there is no practice that I can order the farm to modify so as to mitigate the seasonal odour arising out of the normal maturation process of the plants. There are no established setbacks or buffers required for field grown cannabis and it is questionable whether either would manage the ambient odour associated with cannabis in any event. There is no ventilation system required with open air production. Further, I do not have the authority to order that the farm cease growing cannabis when licensed field production of cannabis is a permitted farm use in the ALR.

In light of my conclusions above, and without diminishing the significance of this issue for the complainants, I am satisfied that there is no prospect that these complaints could

succeed and as such, they must be dismissed under section 6(2)(b) as they fall within the meaning of “frivolous” as set out above.

This decision is restricted to the jurisdiction of BCFIRB and does not address the jurisdiction of other government agencies, or other legal remedies that may be available to the complainants.

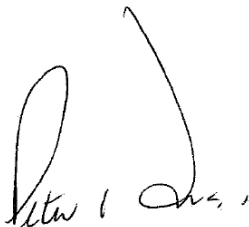
**Order**

These complaints are dismissed pursuant to section 6(2)(b) of the *FPPA*.

Dated at Victoria, British Columbia this 2<sup>nd</sup> day of March, 2023

**BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per:**

A handwritten signature in black ink, appearing to read "Peter Donkers", written in a cursive style.

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Peter Donkers

Chair, BC Farm Industry Review Board