



# **British Columbia Farm Industry Review Board**

*Rules of Practice and Procedure for  
Complaints under the Farm Practices  
Protection (Right to Farm) Act, R.S.B.C.  
1996, c. 131*

*Approved by the British Columbia Farm Industry Review Board, February 8, 2017*

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# INTRODUCTION

## *About BCFIRB*

BCFIRB is an administrative tribunal that exercises legal authority under several statutes, including the [Natural Products Marketing \(BC\) Act](#), (NPMA) R.S.B.C. 1996, c. 330, the [Farm Practices Protection \(Right to Farm\) Act](#), (FPPA) R.S.B.C. 1996, c. 131 (FPPA), and the [Prevention of Cruelty to Animals Act](#), (PCAA) R.S.B.C. 1996, c. 372.

Sections 1 to 10, 27 to 30, 43, 45, 46, 46.2, 48, 55, 57, 58, 59.1, 59.2 and 61 of the [Administrative Tribunals Act](#), S.B.C. 2004, c. 45 ([ATA](#)) apply to BCFIRB in all its functions under each of those statutes, except where otherwise specified: [NPMA](#), s. 3.1.

When BCFIRB hears farm practices complaints, the additional [ATA](#) powers set out in s. 11.1 of the [FPPA](#) apply:

### **Application of Administrative Tribunals Act**

11.1 (1) For the purposes of carrying out its powers and duties under this Act, the following provisions of the *Administrative Tribunals Act* apply to the board in addition to those incorporated under section 3.1 [*application of Administrative Tribunals Act to the board*] of the *Natural Products Marketing (BC) Act*:

- (a) Part 4 [Practice and Procedure], **except the following**:
  - (i) section 21 [notice of hearing by publication];
  - (ii) section 22 [notice of appeal (inclusive of prescribed fee)];
  - (iii) section 23 [notice of appeal (exclusive of prescribed fee)];
  - (iv) section 24 [time limit for appeals];
  - (v) section 25 [appeal does not operate as stay];
  - (vi) section 31(1)(b) [summary dismissal for not filing within time limit]
  - (vii) section 34 (1) and (2) [party power to compel witnesses and order disclosure];
- (b) section 47 [power to award costs];
- (d) section 49 [contempt proceedings for uncooperative witness or other person];
- (e) Part 7 [Decisions] except section 50(1) [money order set out as principal and interest];
- (f) section 56 [immunity protection for tribunal and members];
- (g) section 60 (1) (a) to (i) and (2) [power to make regulations].

(2) Despite section 3.1 of the *Natural Products Marketing (BC) Act*, the following provisions of the *Administrative Tribunals Act* do not apply to the board in carrying out its powers and duties under this Act:

- (a) section 57 [time limit for judicial review];
- (b) section 58 [standard of review with privative clause].  
[emphasis added]

The [FPPA](#) allows a person who is aggrieved by odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business to file a complaint with BCFIRB. BCFIRB's Chair may attempt to resolve a complaint and, if a complaint is not resolved or summarily dismissed, must refer it to a BCFIRB panel for a hearing. If the panel

finds the practice that causes the odour, noise, dust or other disturbance is not a “normal farm practice” the panel may order the farmer to cease or modify the practice.

BCFIRB’s [ATA](#) powers include a number of powers and procedures relevant to the hearing of complaints, including a general power to make rules “respecting practice and procedure to facilitate the just and timely resolution of the matters before it.” The Rules of Practice and Procedure in this document apply to the filing and BCFIRB’s management of complaints under the [FPPA](#).<sup>1</sup> BCFIRB may waive or modify these Rules in any particular case if it considers the circumstances warrant such action. Further, BCFIRB reserves the right to amend these Rules of Practice and Procedure, or to make any other procedural order it considers necessary.

These Rules are effective as of February 8, 2017. Persons involved in a complaint should proceed on the basis that these Rules apply unless BCFIRB directs otherwise. Where there may be a discrepancy between these rules and the legislation, the legislation applies.

For further information regarding BCFIRB including its processes, prior decisions and applicable legislation, please see [www.firb.gov.bc.ca](http://www.firb.gov.bc.ca)

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<sup>1</sup> For the Rules of Practice and Procedure that govern [NPMA](#) appeals, see [http://www.firb.gov.bc.ca/appeals/rules\\_appeals\\_dec07.pdf](http://www.firb.gov.bc.ca/appeals/rules_appeals_dec07.pdf)

## **PART I: DEFINITIONS AND COMPUTING TIME (DEADLINES)**

### **DEFINITIONS**

(1) Terms used in these Rules of Practice and Procedure are as defined in the [FPPA](#), the regulations established under the [FPPA](#), or the [ATA](#), unless otherwise stated in this document.

(2) In these Rules:

**“address of record”** means a current postal address, and includes an email address and/or fax number if available.

**“business day”** means 8:30 am to 4:30 pm Monday through Friday, excluding statutory holidays.

**“calendar day”** means any day of the week and includes weekends and statutory holidays.

**“complainant”** means the person filing a complaint.

**“complaint”** means an application for a determination under section 3 of the [FPPA](#).

**“document”** means any form of recorded information, including information recorded in electronic form.

**“Executive Director”** means the Executive Director of BCFIRB and includes any case manager or other staff member the Executive Director assigns to provide administrative support to BCFIRB or to a panel of BCFIRB.

**“facilitated settlement process”** means a confidential and without prejudice process, including mediation, whether undertaken voluntarily or required by BCFIRB under these rules, the purpose of which is to resolve the dispute or narrow the issues needing to be addressed in a formal hearing of a complaint.

**“file”** means effective delivery under Rule 24(3)-(5) of a communication to BCFIRB.

**“hearing”** means a hearing whether oral or written, as follows:

- (a) **“oral hearing”** means a hearing involving the parties or their representatives attending in person before a panel.
- (b) **“electronic hearing”** means a hearing held by telephone, teleconference or other electronic means.
- (c) **“written hearing”** means a hearing held by means of exchange of documents.

“**intervener**” means a person other than a party to whom the panel has granted the right to participate in a complaint hearing.

“**party**” means a complainant, a respondent or any other person to whom BCFIRB has granted party status, but does not include an intervener.

“**respondent**” means the person or persons against whom a complaint is filed.

“**serve**” or “**service**” means the effective delivery of a document to the party, intervener, representative or other person required to be served under the [FPPA](#), [ATA](#) or these Rules.

“**summons**” means an order under s. 34(3) of the [ATA](#) requiring a person to attend a hearing to give evidence or produce documents and Rule 11.

### **COMPUTING TIME (DEADLINES)**

- (1) Statutory deadlines (e.g. the deadline for requesting correction or clarification of a decision) are calculated using calendar days.
- (2) BCFIRB’s procedural deadlines (e.g. the deadline to file or respond to an application and disclose documents) are calculated using business days.
- (3) If the calculation of calendar days results in the time for doing an act falling or expiring on a Saturday, Sunday or statutory holiday, the time is extended to the next business day.
- (4) In the calculation of business days or calendar days, the first day must be excluded and the last day included.
- (5) When a document is delivered on to BCFIRB a Saturday, Sunday or statutory holiday, or any day after 4:30 pm, it will be deemed to be received on the next business day.
- (6) If the time for doing an act at BCFIRB’s office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next business day.

## PART II: FILING AND WITHDRAWING COMPLAINTS

### RULE 1: HOW TO FILE A COMPLAINT

- (1) To file a complaint, a person must file a written complaint with BCFIRB together with a cheque or money order for the \$100 filing fee (payable to the Minister of Finance). The complaint may be in FORM A, or any other form acceptable to the Chair, so long as it contains the following information required by s. 3(2) of the [FPPA](#):
  - (a) statement of the nature of the complaint;
  - (b) name and address of record (including any fax or email) of the person making the complaint; and
  - (c) name and address of the farmer and the location of the farm.
- (2) A person may file a complaint by sending it by mail, courier, fax or e-mail to the following address:

<b>Mail:</b> Attention: Executive Director British Columbia Farm Industry Review Board PO Box 9129 Stn Prov Govt Victoria BC V8W 9B5	<b>Courier:</b> Attention: Executive Director British Columbia Farm Industry Review Board 780 Blanshard Street Victoria BC V8W 2H1
<b>Fax:</b> 250 356-5131	<b>E-Mail:</b> <a href="mailto:firb@gov.bc.ca">firb@gov.bc.ca</a>

- (3) A complaint must be accompanied by payment of the prescribed filing fee of \$100 ([ATA](#), s. 22(3), British Columbia Farm Industry Review Board Regulation, s. 1). Payment may be made by cheque, money order or bank draft (payable to the Minister of Finance), or by cash in person.
- (4) If the complaint is filed by fax or e-mail, the \$100 filing fee must be dated and received by BCFIRB no later than **2 business days** after the date the complaint was filed. If the filing fee is not received within 2 business days after the complaint was filed, the complaint will not be accepted unless the complainant applies for and is granted an extension of time for payment and the fee is received within the required period of time.
- (5) There is no provision in the [FPPA](#) allowing multiple persons to file a single complaint. Each person who wishes to make a complaint must file a separate complaint together with payment of the required filing fee. Where multiple complaints are filed involving the same or similar circumstances, BCFIRB may combine some or all of the complaints under Rule 2.

- (6) The complainant must serve the respondent with a copy of the Notice of Complaint at the same time the complainant files it with BCFIRB.
- (7) If the complaint is deficient, the chair or the chair's delegate may allow a reasonable period of time within which the complaint may be corrected. If such a period of time is granted and the complaint is not corrected within the time period allocated, BCFIRB may summarily dismiss the complaint after giving the person an opportunity to be heard ([ATA](#), s. 31(1)(e)).
- (8) BCFIRB may give notice it has received a complaint and provide a copy of the complaint to any other person BCFIRB considers may have an interest in the outcome of the complaint.

### **RULE 2: COMPLAINTS INVOLVING SIMILAR ISSUES**

- (1) If 2 or more complaints involve the same or similar questions, BCFIRB, at its discretion, may:
  - (a) combine the complaints or any part of them,
  - (b) hear the complaints at the same time,
  - (c) hear the complaints one immediately after the other, or
  - (d) stay one or more of the complaints until after the determination of another one of them.
- (2) Before making an order under section 37 of the [ATA](#), BCFIRB will provide the parties with an opportunity to comment on the appropriateness of the appeals being combined.
- (3) BCFIRB may make additional orders respecting the procedure to be followed with respect to such complaints.

### **RULE 3: HOW TO WITHDRAW A COMPLAINT**

- (1) A complainant may withdraw all or part of a complaint by filing a written Notice of Withdrawal with BCFIRB in which case BCFIRB must order that part of the complaint dismissed ([ATA](#), s. 17). The complainant must also serve a copy of the Notice of Withdrawal on every other party and intervener.
- (2) The Notice of Withdrawal must identify the complaint and the parties, and be signed by the complainant or the complainant's representative.
- (3) Where a respondent does not agree to the complainant's withdrawal of the complaint on a "without costs" basis and considers that the withdrawal of the complaint has resulted in costs thrown away, that party may apply for an order for costs ([ATA](#), s. 47, Rule 20).

- (4) If the parties also seek a consent order, or an order including the terms of a settlement ([ATA](#), ss. 16, 17), the parties must:
  - (a) set out the particulars of the proposed order; and
  - (b) provide proof satisfactory to BCFIRB that the order is consented to by all parties to the complaint.
- (5) The decision whether to issue a consent order under section 16 or 17 of the [ATA](#) is one for BCFIRB's discretion and BCFIRB is not required to issue a consent order solely on the basis that the parties have requested one. If BCFIRB has questions or otherwise considers it necessary to hear further from the parties on this question before deciding whether to issue a consent order, it will specify a process for hearing from the parties on the matters at issue. If BCFIRB declines to make a consent order, it will provide the parties with written reasons.

## **PART II: HEARING ALTERNATIVES**

### **RULE 4: FACILITATED AND/OR MANDATORY FACILITATED SETTLEMENT**

- (1) On receipt of a complaint, BCFIRB will notify the parties to the complaint and will schedule and conduct one or more case management calls with the parties. The initial case management call will canvas the issues on the complaint and assess the potential for settlement through a facilitated settlement process and the potential engagement of a knowledgeable person (see Rule 5).
- (2) At any time during the complaint process, on its own initiative or at the request of a party, BCFIRB may require the parties to participate in a mandatory facilitated settlement process to explore the potential for resolving one or more issues in dispute on the appeal ([ATA](#), s. 28, [FPPA](#), s. 4)).
- (3) If a party wishes to apply for a facilitated settlement process at any time during the complaint process, an application under Rule 4(1) must:
  - (a) be made to the Executive Director,
  - (b) specify what issues are proposed for the facilitated settlement process and the reasons why the party believes that to be appropriate in the circumstances, and
  - (c) be copied to the other parties to which the process applies.
- (4) A party receiving a copy of an application under this Rule may provide his or her views on the submission within the time the Executive Director allows.
- (5) Despite Rule 4(3), at a pre-hearing conference (see Rule 6) a party may request that the BCFIRB conduct a facilitated settlement process.

- (6) Despite Rule 4(3) - (5), a facilitated settlement process may proceed with the consent of the parties.
- (7) Where a facilitated settlement or mandatory facilitated settlement proceeds, the Executive Director will advise whether the facilitated settlement process will be conducted by a staff person, board member or another person and, as necessary, establish Terms of Reference.
- (8) A board member participating in a facilitated settlement process, other than a pre-hearing conference under Rule 6, will not participate should the matter eventually proceed to a hearing, unless all parties agree.
- (9) Before commencing a facilitated settlement process, the Executive Director or the person responsible for the process will confirm agreement on procedural issues BCFIRB considers necessary for an effective process. These may include:
  - (a) confirming the purpose of the facilitated settlement process and the specific issues to be addressed;
  - (b) determining who will be present for and represent the parties, and the extent of the representative's authority to enter into a binding agreement;
  - (c) whether written submissions will be used;
  - (d) the extent to which information shared may be used or cited for other purposes or in legal proceedings;
  - (e) the process for documenting any resulting agreement;
  - (f) the process for seeking a consent order from the panel, if applicable; and
  - (g) when and how the facilitated settlement process may be terminated.
- (10) The facilitated settlement process will proceed in accordance with the framework outlined by the Executive Director. Usually the process will begin after receipt of the reports of any knowledgeable person(s) engaged by BCFIRB with respect to the complaint.
- (11) Following resolution of a complaint or part of a complaint through a facilitated settlement process, the complainant must advise BCFIRB as to whether all or part of the complaint will be withdrawn in accordance with Rule 3. If the complaint or part of the complaint is not resolved through the facilitated settlement process, the complaint or part of the complaint not resolved will proceed to a hearing.

#### **RULE 5: KNOWLEDGEABLE PERSON**

- (1) In the interest of assisting the parties to resolve a complaint BCFIRB may, at its discretion, engage one or more persons who are knowledgeable about normal farm practices ([FPPA](#), s. 4(a)).

- (2) BCFIRB will advise the parties of any person it proposes to engage on its own initiative as a knowledgeable person and provide the parties with an opportunity to comment.
- (3) A party may request that BCFIRB engage a knowledgeable person. The request must be made in writing (copied to other parties), must explain why the requesting party believes a knowledgeable person may assist with the resolution of the complaint and, if a specific person is proposed, why that person is considered appropriate.
- (4) A party receiving a copy of a request under Rule 5(3) has 3 business days to file a response with BCFIRB (copy to the other parties).
- (5) If BCFIRB decides to engage a knowledgeable person, whether on its own initiative or at the request of a party, the terms of reference (TOR) for the engagement of the knowledgeable person will be established by BCFIRB.
- (6) The knowledgeable person will, where the TOR so provide, consult with the respondent farmer and the complainant.
- (7) The knowledgeable person will, where the TOR so provide, inspect the farm to review its management practices. This includes, but is not limited to, the farm's practices relating to this complaint. This inspection may be in the company of a BCFIRB representative.
- (8) The knowledgeable person will submit a report to BCFIRB which will be provided to all parties to the complaint and may, in addition to assisting any facilitated settlement process conducted under Rule 5, be submitted as expert opinion evidence at any hearing of the complaint, on the following conditions:
  - (a) the parties and the panel will have the right to question the knowledgeable person regarding the report, and
  - (b) the opinions expressed in the report will not be binding on the panel, which will ultimately decide how much if any weight to give to opinions expressed in a report.
- (9) A knowledgeable person may be required to testify at a hearing.

## **PART III: PRE-HEARING PROCEDURE**

### **RULE 6: PRE-HEARING CONFERENCE**

- (1) BCFIRB may issue written notice directing the parties and interveners to participate in one or more pre-hearing conferences.
- (2) A notice of pre-hearing conference will set out:
  - (a) the date, time, location or phone number for the pre-hearing conference; and;
  - (b) the pre-hearing conference agenda.
- (3) BCFIRB may direct the parties or interveners to file documents or submissions prior to the pre-hearing conference.
- (4) If a party or intervener fails to participate in a pre-hearing conference without satisfactory advance explanation to BCFIRB, the conference may proceed in that party or intervener's absence.
- (5) If a board member participates in a pre-hearing conference, the member may issue interim orders or directions regarding any matter arising at the pre-hearing conference. A board member participating in a pre-hearing conference may also participate in the hearing of the complaint.
- (6) BCFIRB will issue a pre-hearing conference report to the parties and interveners recording the orders, directions, agreements and undertakings made at a pre-hearing conference.

### **RULE 7: HOW TO MAKE A PRE-HEARING APPLICATION**

- (1) A party may file with BCFIRB a pre-hearing application to:
  - (a) vary the application of one or more of these Rules,
  - (b) summarily dismiss a complaint ([ATA](#), s. 31)
  - (c) adjourn the hearing of an complaint ([ATA](#), s. 39(2), Rule 13)
  - (d) address a jurisdictional issue, or
  - (e) address any other interim or procedural matter.
- (2) All pre-hearing applications must be made in writing unless BCFIRB gives leave for an application to be made orally. Applications will be decided based only on written submission unless BCFIRB concludes an electronic or in-person hearing is appropriate.

- (3) A pre-hearing application does not need to be in any particular form, but must set out the grounds for the application and the relief requested, and be accompanied by any evidence relied upon.
- (4) A pre-hearing application must be served on all other parties and interveners at the same time it is filed with BCFIRB.
- (5) BCFIRB may, in its discretion, set a submission schedule for the pre-hearing application.
- (6) A party or intervener making a submission on a prehearing application must serve their submissions and any evidence on the other parties and interveners at the same time they file them with BCFIRB.
- (7) A pre-hearing application will be decided based only on written submissions unless BCFIRB concludes an oral hearing is appropriate.
- (8) BCFIRB may, in its discretion, defer decision on a preliminary application until the hearing of the complaint or issuance of its decision.

**RULE 8: HOW TO APPLY FOR INTERVENER STATUS**

- (1) Any person wishing to participate in a complaint as an intervener ([ATA](#), s. 33) must apply in writing to BCFIRB (copied to the parties to the complaint) describing:
  - (a) the proposed intervener's identity;
  - (b) how the proposed intervener can make a valuable contribution or provide a valuable perspective to the appeal that an existing party cannot provide;
  - (c) how the potential benefits of the intervention outweigh any prejudice or inconvenience to a party;
  - (d) the extent of participation that is sought (for example to provide a submission or to give evidence and/or cross examine witnesses); and
  - (e) the date the intervener became aware of the appeal and the reason for any significant delay between that date and the date of the application.
- (2) A party or intervener who receives a copy of an application under subsection (1) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (3) A person may participate in an appeal as an intervener only if approved by BCFIRB and only to the extent that BCFIRB determines appropriate.

- (4) A person granted intervener status under this Rule must provide BCFIRB with their address of record, which address is deemed to be their address for service or delivery of notices, orders or other documents.

**RULE 9: PRODUCTION OF DOCUMENTS AND WITNESS LISTS**

- (1) Unless otherwise ordered by BCFIRB, the parties and interveners must provide to BCFIRB and to one another (at no cost) copies of all documents that they intend to rely upon at a hearing as well as a list of all witnesses expected to appear for the party at the hearing. In the case of documents the party or intervener has already provided to BCFIRB, another party or intervener, it is sufficient for the party or intervener providing the documents to identify for BCFIRB and other parties and interveners which of those documents it intends to rely upon.
- (2) Unless the parties agree, or BCFIRB directs otherwise, documents and witness lists must be provided according to the following schedule:
- (a) the complainant's documents and witness list must be shared no later than 20 business days before the hearing;
  - (b) the respondent's documents and witness list must be shared no later than 15 business days before the hearing;
  - (c) where an intervener has been granted rights to tender evidence, the timing of the intervener's documents and witness list will be as directed by the panel.

**Non-disclosure**

- (3) A party or intervener who believes a document or portion thereof should not be disclosed to other parties or interveners at the time of filing with BCFIRB must make written application for non-disclosure ([ATA](#), s. 42). The applicant must:
- (a) identify the documents or portions of documents the person believes should not be disclosed, and the reasons for that position; and
  - (b) notify the other parties and interveners that an application is being made for non-disclosure of certain documents, and summarize the basis upon which the withholding request is being made (without disclosing the information in question).
- (4) A party or intervener given notice of an application for non-disclosure of documents under Rule 9(3) may, within 3 business days of receiving the notice, provide its position on the application.
- (5) Where BCFIRB decides further disclosure of documents is required, BCFIRB will either provide those documents to the parties and interveners that have not yet received them, or direct the person who made the application for non-disclosure to do

so. A person directed to disclose shall do so within 3 business days after BCFIRB's decision directing disclosure.

#### **RULE 10: HOW TO APPLY FOR DOCUMENT PRODUCTION**

- (1) A party or intervener may apply in writing to BCFIRB for production of documents ([ATA](#), s. 34(3)), no later than 15 business days before the hearing, specifying:
  - (a) the documents for which the order is requested;
  - (b) the identity of the person in possession of the documents; and
  - (c) the reasons the party considers the documents necessary for a full and fair hearing of the complaint.
- (2) A party or intervener who receives a copy of the application under subsection (1) has 3 business days from the date of receiving the application to provide BCFIRB with its position on the application.

#### **RULE 11: HOW TO APPLY FOR A SUMMONS**

- (1) At any time before or during a hearing but prior to issuing its decision, BCFIRB may order a person to attend an oral or electronic hearing to give evidence or to produce for BCFIRB or a party or intervener a relevant and admissible document or other thing in their possession.
- (2) A party or intervener may apply in writing to BCFIRB to request a summons for a witness to attend a hearing specifying:
  - (a) the name, address, telephone number and email address of the person for whom the order is requested;
  - (b) why the person's evidence is relevant to the appeal;
  - (c) what if any documents or things the person is asked to produce or bring to the hearing; and
  - (d) what efforts the applicant has made to have the person attend or produce the documents voluntarily.
- (3) An application under subsection (2) of this Rule does not have to be served on the witness or on any other party.
- (4) Where a proposed witness lives elsewhere than the place of hearing, BCFIRB may make it a condition of the summons that the applicant must pay the witness's reasonable traveling expenses to attend the hearing.
- (5) A person served with a summons may apply to BCFIRB, either in writing prior the hearing, or in person at the hearing, to set aside the summons.

- (6) BCFIRB may set aside a summons order for any reason it considers appropriate, including if it is satisfied that:
- (a) the summons was not properly served;
  - (b) the evidence of the person is not relevant;
  - (c) the evidence may be obtained through some other means;
  - (d) the evidence is protected by privilege;
  - (e) the person is not able to provide the evidence sought; or
  - (f) the attendance of the person will be unduly inconvenient to the witness.
- (7) Where BCFIRB sets aside a summons, it may make another order it thinks is fair, including an order changing the date of the witness's appearance at the hearing or providing some other means by which the witness's evidence will be obtained.

### **RULE 12: EXPERT EVIDENCE**

- (1) If a party or intervener wishes to qualify a witness as an expert in relation to a matter, the party must, at least 30 calendar days prior to hearing, provide BCFIRB and all parties and interveners with a report setting out:
- (a) the expert's qualifications; and
  - (b) a summary of the expert's opinion, including the facts and assumptions on which it is based.
- (2) A party who tenders a report under subsection (1) of this Rule is required to produce the expert at the hearing for cross-examination on the expert's qualifications and report, unless the parties and BCFIRB agree such attendance is not necessary.
- (3) BCFIRB may refuse to consider a report where subsections (1) and (2) of this Rule are not complied with.
- (4) BCFIRB may waive the requirements of this Rule where it considers appropriate, and may impose such other requirements regarding the receipt and exchange of expert evidence as it considers appropriate in the circumstances.
- (5) It is not necessary for a person to qualify as an expert in order to provide opinion evidence.

### **RULE 13: HOW TO APPLY FOR AN ADJOURNMENT**

- (1) BCFIRB may adjourn a hearing at any time on its own initiative ([ATA](#), s. 39(1)).
- (2) A party may apply in writing to BCFIRB to request an adjournment of a BCFIRB process explaining the reasons why the adjournment application is being made.

- (3) A party or intervener who receives a copy of an application under subsection (2) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (4) In deciding whether or not to grant an application for adjournment, BCFIRB will take into account the following factors:
  - (a) the reason for the adjournment;
  - (b) whether the adjournment would cause unreasonable delay;
  - (c) the impact of refusing the adjournment on the other parties including any interveners;
  - (d) the impact of granting the adjournment on the other parties including any interveners;
  - (e) the impact of the adjournment on the public interest.
- (5) If a hearing is adjourned, BCFIRB may order any terms and conditions respecting rescheduling, attendance at settlement conferences, production of documents or reports, or any other matters which may assist with the fair and efficient conduct of the complaint process.

## **PART IV: HEARING PROCEDURE**

### **RULE 14: NOTICE AND FORM OF HEARING**

- (1) BCFIRB will at the earliest practicable date notify the parties and interveners of the date, time and location for the hearing.
- (2) Complaint hearings will be oral in-person hearings, unless BCFIRB directs that all or part of a hearing is to be conducted through teleconference or in writing.
- (3) If part or all a hearing is held in writing, BCFIRB will provide directions regarding the process and timeframe for submissions.

### **RULE 15: PUBLIC ACCESS AND RECORDING**

- (1) Oral hearings will be open to the public unless BCFIRB is of the opinion that all or part of the information be received to the exclusion of the public on grounds that:
  - (a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that that hearings are open to the public, or
  - (b) that it is not practical to hold the hearing in a manner that is open to the public ([ATA](#), s. 41).

- (2) BCFIRB will make documents submitted in a hearing accessible to the public unless it is of the opinion that the desirability of avoiding disclosure of the document outweighs the desirability of public disclosure ([ATA](#), s. 41(2)(a), (3) and s. 42).
- (3) BCFIRB will determine whether or not an oral or electronic hearing will be officially recorded by BCFIRB and advise the parties in advance of the hearing.
- (4) Whether or not an oral or electronic hearing is officially recorded, no party or person may electronically record or photograph a hearing.
- (5) In any case where a hearing is recorded and a party wishes to obtain transcripts of the hearing, the party will be required to pay the costs of transcription and copying. Parties are to make arrangements for transcription and copying directly with the court reporter.

#### **RULE 16: PARTICIPATION AT HEARINGS**

- (1) All parties may make submissions on any question of fact, law or policy pertaining to a complaint. The complainant and respondent farmer are always parties.
- (2) Participation of persons granted intervener status shall be determined by BCFIRB under Rule 8.

#### **RULE 17: ORDER OF PRESENTATION AT ORAL HEARINGS**

- (1) The order of presentation and related questioning at an oral hearing will be as follows unless BCFIRB specifies otherwise:

##### Opening

- (a) Opening statement of complainant
- (b) Opening statement of respondent
- (c) Opening statement of intervener (if applicable)

##### Evidence

- (a) Presentation of knowledgeable person, if applicable (with questioning of each by complainant, respondent, intervener as applicable, and the panel)
- (b) Presentation of complainant's witnesses (with questioning of each witness by respondent, intervener as applicable, and the panel)
- (c) Presentation of respondent's witnesses (with questioning of each witness by complainant, intervener as applicable, and the panel)
- (d) Presentation of intervener's witnesses, if applicable (with questioning of each by complainant, respondent and the panel)

##### Closing

- (a) Argument of the complainant
- (b) Argument of the respondent
- (c) Argument of the intervener, if applicable
- (d) Reply by the complainant.

## **RULE 18: EVIDENCE AT HEARINGS**

- (1) Parties may file an agreed statement of facts, which will be determinative of those facts for purposes of the appeal. BCFIRB encourages the parties to explore this possibility as it has the potential to reduce the time, expense and complexity of hearings.
- (2) Evidence will be taken under oath or by affirmation.
- (3) BCFIRB is not bound by the rules of evidence that apply in a court of law. BCFIRB may in its discretion decide whether to admit evidence, its relevance and the amount of weight to be given to it ([ATA](#), s. 40).
- (4) All documents filed with BCFIRB in advance of a hearing will be evidence that BCFIRB may consider in its decision-making process unless a party objects and BCFIRB rules otherwise.
- (5) Prior to the hearing BCFIRB staff will confirm the number of copies of documents to be made available. The parties are to organize their documents and to sequentially number them so that a document may be readily located by BCFIRB and other parties when referred to during a hearing.
- (6) When presenting documents at the hearing each party will provide copies to:
  - (a) each BCFIRB panel member
  - (b) each party with participation status at hearing
  - (c) panel secretary
  - (d) witness table
  - (e) court reporter
- (7) Documents presented at the hearing but not previously disclosed in accordance with Rule 10 will not be considered by BCFIRB unless BCFIRB determines otherwise.
- (8) Where a party objects to BCFIRB receiving or considering evidence, BCFIRB may make a decision on that question at the time, or it may receive the evidence and consider the objection in the course of rendering its decision on the case.

## **RULE 19: AUTHORITIES**

- (1) Each party and intervener must, 5 business days prior to the hearing, provide to BCFIRB a copy of any authorities (e.g. prior board decisions, court decisions and legislation) that it intends to rely on, as directed by BCFIRB.
- (2) Where practicable, the parties must provide BCFIRB with a joint book of authorities.

- (3) At the hearing, each party must provide copies of the authorities referred to in subsection (1) to:
  - (a) each BCFIRB panel member
  - (b) each party with participation status at hearing
  - (c) panel secretary
  - (d) court reporter

#### **RULE 20: COSTS**

- (1) BCFIRB may award costs, on BCFIRB's initiative or upon request from any party ([ATA](#), s. 47).
- (2) Before making any order for costs, BCFIRB will provide the parties or interveners who may be affected by such an order with an opportunity to respond. This may occur either at the conclusion of a hearing, or following the issuance of a decision.

### **PART V: POST HEARING**

#### **RULE 21: ISSUE AND PUBLICATION OF DECISIONS**

- (1) BCFIRB's decision is effective on the date it is issued unless otherwise specified in the decision.
- (2) BCFIRB will send a complete copy of its decision, with written reasons, to all parties and interveners ([ATA](#), s. 51).
- (3) A party or person who objects to publication of specified information must advise BCFIRB in writing not more than 3 business days after the decision is rendered by describing:
  - (a) the information they request be removed from the decision that is to be posted on the website; and
  - (b) the reasons they believe the information should be removed.
- (4) BCFIRB will post a copy of its decision on BCFIRB's website not less than 6 business days after the decision is provided to the parties and interveners, and may remove information that would undermine the reasonable privacy interests of parties, interveners and third parties.
- (5) If a party believes there are special circumstances that make early delivery of a decision necessary, the party should advise BCFIRB in writing with a copy to the other parties and interveners identifying the date the decision is required and why.

- (6) Unless special circumstances have arisen after a hearing that make early delivery of a decision necessary, inquiries about the timing of delivery of decisions should not be made.

**RULE 22: CORRECTION OR CLARIFICATION OF DECISIONS**

- (1) A party or intervener who believes there is a clerical, typographical or arithmetical error or accidental omission in a decision must advise BCFIRB as soon as the matter comes to their attention and in any event, not later than 30 calendar days after being served with the final decision ([ATA](#), s. 53).
- (2) Upon receiving an application under Rule 22(1), BCFIRB will seek the views of other parties or interveners as to whether a correction is required unless, in BCFIRB's view, the application is unfounded or the error is so minor or obvious that there is no need to solicit the views of the parties before correcting the decision. BCFIRB may also make such corrections on its own initiative.
- (3) A party or intervener who believes clarification of a decision is required may apply to BCFIRB, with a copy to the other parties and interveners. Other parties and interveners will have 3 business days from the date of such application to advise BCFIRB of their views on the matter.
- (4) BCFIRB will issue further reasons to clarify or correct a decision only where it considers it essential to ensure a fair hearing and proper disposition of the case.
- (5) If BCFIRB corrects or clarifies a decision, it will advise the parties and interveners accordingly.

**PART VI: GENERAL**

**RULE 23: ADDRESS OF RECORD**

- (1) All parties and interveners must provide BCFIRB written notice of their address of record (i.e. current postal address or any fax number) for purposes of service of notices, documents and orders.
- (2) If a person's address of record changes, that person must immediately file notice of the change with BCFIRB and serve a copy of the notice on the other parties and interveners.
- (3) Parties and interveners must, in addition to the address of record, provide an email address if they wish to receive documents electronically.

**RULE 24: SERVING DOCUMENTS ON OTHER PARTIES,  
INTERVENERS AND BCFIRB**

- (1) A party required to serve a document on another party or an intervener must, subject to a more specific direction from BCFIRB, do so by one of the following means:
  - (a) personal delivery;
  - (b) regular, registered or certified mail to the party's address of record;
  - (c) fax transmission to the last known fax number of the party, but only if the document, inclusive of the cover sheet, does not exceed 30 pages, or where longer, if the receiving person consents;
  - (d) courier, including Priority Post, to a party's address of record;
  - (e) e-mail if the party or intervener receiving the documents has provided an e-mail address for delivery under Rule 23; or
  - (f) any other means authorized or permitted by BCFIRB.
- (2) If it is impractical to serve or deliver documents in accordance with subsection (1), BCFIRB may give directions for substituted service or delivery and where necessary, may dispense with service or delivery.
- (3) A party filing documents with BCFIRB must do so:
  - (a) to BCFIRB's address, fax number or e-mail address described in Rule 1(2);
  - (b) by one of the methods described in Rule 24(1), and for the purposes of filing materials with BCFIRB by e-mail, the party may use the following e-mail address: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)
- (4) A fax document must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission and a telephone number to call in case of transmission problems.
- (5) Service or delivery is deemed to take place on the date of actual delivery, except as follows:
  - (a) where service or delivery is by personal delivery, mail, fax, courier or e-mail, and is not received before 4:30 p.m. on a business day, the date of service or delivery is deemed to be on the next business day;
  - (b) where any other means of service or delivery is authorized or permitted by BCFIRB, on the date and time, or deemed date and time, specified in BCFIRB's direction.

## **RULE 25: COMMUNICATING WITH BCFIRB**

- (1) A complaint, and all other filings and correspondence with BCFIRB, are to be directed to the attention of the Executive Director.
- (2) All correspondence and documents including a Notice of Complaint may be filed with BCFIRB via e-mail unless BCFIRB directs otherwise. Parties and interveners wishing to file correspondence and documents via e-mail must use the following e-mail address unless otherwise authorized by BCFIRB: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)
- (3) A person must copy all other parties and interveners with all correspondence to BCFIRB regarding a complaint, except where these Rules expressly provide otherwise.
- (4) The Executive Director may communicate BCFIRB's orders, decisions or directions with regard to any matter covered by these Rules.

## **RULE 26: EXTENDING OR ABRIDGING TIME LIMITS**

- (1) Every time limit set out in these Practices and Procedures is subject to being extended or abridged by BCFIRB, on application or on its own initiative, whether before or after the time limit has expired, as BCFIRB considers fair and appropriate in the circumstances.

## **RULE 27: FAILURE TO COMPLY WITH THE RULES**

- (1) If any party believes it has been adversely affected by the failure of another party or intervener to comply with these Rules ([ATA](#), s. 18), the party may make written application to BCFIRB specifying:
  - (a) the alleged non-compliance,
  - (b) the reasons why it has had an adverse impact on the applying party;
  - (c) the remedy sought to address the non-compliance
- (2) A party or intervener who receives a copy of an application under subsection (1) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (3) BCFIRB may upon its own initiative, upon giving the parties an opportunity to be heard, make a determination of non-compliance
- (4) Where BCFIRB finds non-compliance with the Rules to have occurred, that non-compliance may be taken into account in making any further orders BCFIRB may have the authority to make under the [FPPA](#), the [ATA](#) or the common law. This includes but is not limited to the power to make awards for costs (see Rule 20).



British Columbia  
Farm Industry Review Board

Mailing Address:  
PO Box 9129 Stn Prov Govt  
Victoria BC V8W 9B5

Via Courier:  
780 Blanshard St  
Victoria BC V8W 2H1

### Complaints Form

This notice of complaint must be accompanied by a \$100.00 filing fee.  
Cheque or money order should be made payable to: The **"Minister of Finance"**  
***This filing fee is non-refundable.***

Date: \_\_\_\_\_

Name of Complainant: \_\_\_\_\_

Address of Complainant: \_\_\_\_\_

\_\_\_\_\_

Phone # of Complainant: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address of Complainant: \_\_\_\_\_

Name and Full Address (including phone number) of Farm Operation:

\_\_\_\_\_

\_\_\_\_\_ Phone #: \_\_\_\_\_

Please provide a complete and detailed explanation of the nature of your complaint.  
(If this form does not provide sufficient space, please provide your explanation on a separate sheet of paper and attach to this form)

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Signature: \_\_\_\_\_

- **Cheque attached**