IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF COMPLAINTS ABOUT
NOISE, ODOUR, PESTS AND TRUCK TRAFFIC
ON A PROPERTY IN CENTRAL SAANICH, B.C.

BETWEEN:

LEE HARDY
MICHELE AND DAVID BOND

COMPLAINANTS

AND:

STANHOPE DAIRY FARM LTD., GORDON JAMES RENDLE,
ROBERT RODERICK RENDLE, FOUNDATION ORGANICS LTD.,
MATTHEW MANSELL carrying on business as FOUNDATION ORGANICS,
FINISH LINE TRANSPORT LIMITED, AND
0916231 B.C. LTD. carrying on business as ORGANICO WASTE RECOVERY SYSTEMS

RESPONDENTS

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board	Suzanne K. Wiltshire, Presiding Member Ron Bertrand, BCFIRB Vice Chair Carrie Manarin, Member
For the Complainants	Richard Margetts, Counsel (for Lee Hardy) Michele and David Bond
For the Respondents	John Alexander, Counsel

	(for Stanhope Dairy Farm Ltd., Gordon Rendle, Robert Rendle, and Foundation Organics Ltd.) Heather Wellman, Counsel (for Matthew Mansell carrying on business as Foundation Organics and Finish Line Transport Limited) Graham Rudyk, Counsel (for 0916231 B.C. Ltd. carrying on business as OrganiCo Waste Recovery Systems) Vitto Cheli
For District of Central Saanich	Alyssa Bradley, Counsel (permission to make submissions prior to determination of party status)
Date and Place of Hearing:	Written submissions and October 4, 2013 teleconference

I. INTRODUCTION

1. On April 30, 2013, the panel adjourned the hearing of these complaints and deferred taking any further steps in these matters until it could receive and consider submissions and make a decision about whether to refuse to proceed with these complaints, pursuant to section 6(2) of the *Farm Practices Protection (Right to Farm) Act* (*FPPA*).

II. ISSUE

2. The specific issue before us is whether it is a legitimate use of the *FPPA*'s processes for a complainant to file a complaint for the main purpose of obtaining a finding that an operation is not a farm operation.

III. DECISION

3. Having received and carefully considered the submissions, the panel has decided, for the reasons that follow, to refuse to continue the hearing, pursuant to section 6(2)(b) of the *FPPA*.

IV. STATUTORY PROVISIONS

4. Section 3 of the *FPPA* authorizes a person to file a complaint to the British Columbia Farm Industry Review Board (BCFIRB):

> **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.
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> (2) Every application under subsection (1) must
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> > (a) contain a statement of the nature of the complaint, the name and address of the person making the application, the name and address of the farmer and the location of the farm,
> >
> > (b) be in a form acceptable to the chair of the board, and
> >
> > (c) be accompanied by the fee prescribed by the Lieutenant Governor in Council.

5. Section 6 provides as follows:

> **6** (1) The panel established to hear an application must hold a hearing and must
>
> > (a) dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, or
> >
> > (b) order the farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.
>
> (2) The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which

an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,

(a) the subject matter of the application is trivial,
(b) the application is frivolous or vexatious or is not made in good faith, or
(c) the complainant does not have a sufficient personal interest in the subject matter of the application.

(3) The chair of the board must give written reasons for a decision under subsection (2) refusing to refer an application to a panel.

(4) A panel must give written reasons for a decision under subsection (1) or (2).

(5) Written notice of the decision, under this section, of the chair of the board or a panel, accompanied by the written reasons for the decision, must be delivered to the complainant and the farmer affected by the decision.

V. THE COMPLAINTS AND OUR APRIL 30, 2013 LETTER

6. In our April 30, 2013 letter, the panel took the unusual step of addressing, in some detail, the background and reasons that caused us to request submissions. We do not intend to repeat the entirety of that discussion. However, for these reasons to make sense when read on their own, some repetition is necessary.

7. Lee Hardy's original complaint was filed March 1, 2012. Her complaint states in part:

> I want to make a complaint as follows; Noise from Composting Facility
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> I, Lee Hardy and my Husband Ray Baker live next door to Stanhope Farm. Stanhope used to be a dairy farm until 2009 when they sold the business. Since then they have been bring in fill and developing an industrial/commercial composting facility called Foundation Organics Limited, and Organico Waste Recovery.
>
> A; The noise complaint comes from the grinding of logs, construction waste, pallets etc. along with the excavators, loaders, conveyer, backhoes and bobcats and the fans from the composting buildings. Also there are a number and variety of trucks delivering various things as well as trucks removing compost garbage etc. Often there is activity at random times through the night as well as fans and other machinery turning on and off.
>
> B; I am wondering if Foundation Organics and Organico is in fact a legitimate farming activity?
>
> C; There is also a commercial trucking business known as "Finish Line" Trucking operating out of the farm.... Is this an allowable use of farm land? [emphasis added]

8. On October 29, 2012, Michele Bond filed a complaint with regard to the same facility. That complaint stated in part:

> Stanhope used to be a dairy farm until 2009 when they sold their milking cows. Since then they have been bringing in fill and composting materials to develop an industrial/organic composting facility which is now called Foundation Organics Limited, and Organico Waste Recovery. This is no longer a farm but an industrial operation on agricultural land. [emphasis added]

9. On January 7, 2013, Ms. Hardy's legal counsel filed a written submission responding to a November 29, 2012 submission made by counsel for Gordon James Rendle and Robert Roderick Rendle concerning issues related to "Jurisdiction" and "Proper Parties". The January 7, 2013 submission from Ms. Hardy's legal counsel states:

> As we understand the process, the threshold issue in the Board's determination as to whether it assumes jurisdiction is that the substance of the complaint must necessarily involve a "farm operation" as that term is defined in the [*Act*]....
>
> We understand the Respondent claims that the composting activities undertaken on the lands at issue ("the Farm") are in accord with "normal farm practice".
>
> The allegation of the Hardy complainant (and though we have no instructions to make submission on behalf of Ms. Bond, we understand similarly) is that the composting and related activities, being the production, marketing and transportation of composted material, undertaken on the Farm are not a "farm operation" or, to the extent that they may fall inside the parameter of a farm operation, may fall outside the scope of "normal farm practice" as those terms are defined in this Act....
>
> ... It is the Complainant's submission that the business operation is being conducted under the guise of a "farm operation"...
>
> We are unable to be more specific as the Complainant is not sufficiently conversant with the nature of the business and farming operations and relationship of the parties using the lands at issue.
>
> The focus of the complaint is that the nature and extent to which composting and the related activities are being undertaken on the Farm do not constitute a farming operation or are otherwise not undertaken in accordance with normal farm practice, and by reason thereof the Farm does not garner the protection of the Act, or, to the extent they do constitute normal farm practices, are subject to the remedial jurisdiction created in the Board by the Act. [emphasis added]

10. Our April 30, 2013 letter made reference to our January 29, 2013 ruling which had considered the submissions of counsel on "jurisdiction" and "proper parties". Our April 30, 2013 letter stated (paras. 12-15):

> 12. As just noted, Mr. Alexander couched his original objection as one of "jurisdiction". He stated that "to the extent that orders are sought on the basis that the composting operation is not a farm operation, the Board has no jurisdiction."
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> 13. The subsequent submission of Mr. Margetts stated that his client would be taking the position that the composting and related activities "are not a farm operation or, to the extent that they may fall inside the parameter of a farm operation, may fall outside the scope of "normal farm practice" as those terms are defined in the Act…"
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> 14. Our January 29, 2013 decision considered it appropriate to defer any decision on jurisdiction "with leave to reapply at the hearing", on the basis that "it would be both premature and contrary to the rules of natural justice to require the complainants to take a final position (rather than alternative positions) on jurisdiction prior to the hearing of this matter".
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> 15. To defer or not defer an issue such as this is a case management decision. Information (summarized below) has come to our attention since January 29, 2013, which gives us much greater clarity that the complainants' primary position in this matter is a considered strategic position rather than a position based on "insufficient evidence". This makes it necessary in our

view to have the parties revisit the issue as to whether this matter ought to properly proceed at all, before any further steps are taken in relation to these complaints.

11. The additional information referenced in the quotation above was information related to a concurrent Supreme Court proceeding, commenced in September 2011 by the Corporation of the District of Central Saanich against the Rendles, Matthew Mansell and Finish Line Transport Limited, seeking an injunction concerning a "commercial trucking business or terminal" on the Stanhope property. With regard to this litigation, our April 30, 2013 letter stated (paras. 21-23):

> 21. But the more important point for present purposes – the significance of our having reviewed the Response to Civil Claim - is that the complainants would not, in light of that litigation, likely see it as being in their interest to adopt the position that these are farm operations conducted as part of a farm business, when that would be contrary to the District's position in support of its injunction application and would in fact be supportive of the farm's position in that action.
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> 22. The link between the parties, the Court action and the District is made even more evident now that the District has applied for leave to intervene in these proceedings. The rationale for the District's application transparently outlines the larger context in which all this arises:
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> > …the threshold question that the FIRB must determine as to whether the compost facility or any other activities on the Property which have resulted in the complaints from District residents to the FIRB is a "farm operation" conducted as part of a "farm business" could potentially affect the District in its ability to pursue any enforcement proceedings regarding its land use regulations and in particular, those dealing with permitted "agricultural" uses. The District therefore has an interest in the evidence and the outcome of the hearing and considers that it is important to appear as an intervenor with full participating status in the hearing and raise its concerns that the FIRB have sufficient information regarding the activities on the Property before the FIRB makes that threshold determination.
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> 23. We recognize that the District's court action is only about the trucking and not the composting operation *per se*. However, it is evident from the Defendant's pleading in reliance on the "normal farm practice" defence, and from the District's application, that they all see the questions before BCFIRB as bearing on the court application.

12. In this context, our April 30, 2013 letter outlined the need for the panel to reassess these complaints (paras. 27-29):

> 27. It is of course the complainants' right to assert that these are not farm operations. However, in view of that position, which has now become much clearer based on our review of the underlying context, we find it necessary to directly confront the fundamental question of how that considered position can be reconciled with the filing of a complaint and the seeking of a remedy under the *Farm Practices Protection (Right to Farm) Act*.
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> 28. An *FPPA* complaint is a serious legal proceeding. BCFIRB has considerable legal power to compel evidence from a party or witness in the course of a complaint: s. 11(5). Even more significantly, it has broad remedial powers that can be exercised over a farmer – powers that are akin to injunctions and specific performance, and which orders can furthermore be filed and enforced as orders of the British Columbia Supreme Court:
>
> > **6** (1) The panel established to hear an application must hold a hearing and must

(a) dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, or

(b) order the farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.

6.1 (1) A party in whose favour the board makes an order under section 6 (1) (b), or a person designated in the order, may file a certified copy of the order with the Supreme Court.

(2) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

29. Complaint processes typically involve a complainant having some onus to demonstrate why the complaint is valid and the remedy available to complainants under a statute should be granted. While farm practices complaints pose special challenges in that a great deal of information is often only in the hands of the farmer or third parties (hence BCFIRB's regular use of a "knowledgeable person's report"), it was held in an early decision of the board that a complainant must be prepared to advance the various elements necessary to ground a complaint under the *Act*: see *Clapham Complaint*, September 22, 1997, paras. 24-27:

24. The complaints process is structured so that this Board operates as an independent adjudicative body. This Panel can operate much more informally than a court of law (Section 7 of the Act stipulates that hearings may be conducted informally and without strict adherence to rules of evidence) but the Panel is subject to the rule of law. This means that the Panel must not only uphold its statute, it must also conduct itself objectively and independently.

25. A "hearing" (ss. 6,7) initiated by a "complaint" (ss. 3,4) must be "procedurally fair" as that term is applied in administrative law. The Panel must consider the evidence of the parties, and then make a decision in accordance with the law. Because the process is initiated by a complaint, the onus is on the complainant to produce evidence and make submissions in support of the complaint.

26. It is important to emphasize that being aggrieved by "odour, noise, dust or other disturbance" from a farm operation is necessary, but not sufficient, to make a valid complaint under the Act. In this case, the evidence given by the Complainants satisfies the Panel that they have been aggrieved by the noise from the propane cannon.

27. Having proved that they are aggrieved by cannon noise, the Complainants must provide sufficient evidence in support of their Complaint to allow this Panel to enter into a proper inquiry as to whether the practice complained of is not a "normal farm practice" as defined in Section 1 of the Act - i.e., that it was not conducted in a manner consistent with "proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances"

13. Against this background, our April 30, 2013 letter stated as follows under the heading "Nature of the Issue":

30. The fundamental question these complaints raise for us is whether the legal process and legal forum provided for under the *Act* for complainants to obtain remedies against farmers are legitimately utilized by a party whose primary interest is in asserting and proving the opposite – that an operation is <u>not</u> a farm operation carried on by a farm

business and the person is not a farmer with regard to the disturbance complained of. The question may be put another way – is the legal process under the *Act* appropriately invoked by a party whose main interest is in utilizing BCFIRB as essentially an advisory or inquiry body on the question whether an undertaking is a farm operation, but whose main position within that process will be that it is *not* a farm operation?

31. In addressing this issue, the parties may wish to consider the *Act* as compared with the Ontario *Farming and Food Production Protection Act*, S.O. 1998, c. 1, s. 6.

32. We wish to make clear that the question we are raising does not concern a complainant who is prepared in good faith to assert a complaint and seek a remedy on the basis that there is farm operation carried on by a farm business. We recognize that in some of these cases, since most of the information in question is in the hands of the farm operator or third parties, BCFIRB may have to consider at some point the issue of whether the operation is a farm operation and therefore whether the complaint should be dismissed. Rather, the specific issue we are concerned with here is whether complainants can properly utilize this forum and this Act when they have set out as their primary purpose to demonstrate that this is not a farm operation. We think the issue requires further analysis and more careful study than it has been given to date.

33. While Mr. Alexander couched his original objection in terms of "jurisdiction", we do not think that is really the proper characterization of the issue here: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] 2 S C.R. 654; *Canada (Canadian Human Rights Tribunal) v. Canada (Attorney General)*, [2011] 3 S.C.R. 471. In our view, the real issue – and the issue the parties must address before any further steps are taken in this matter – relates to the issue of abuse of process.

34. If a complainant comes to BCFIRB seeking a remedy that can only be granted against a farmer, but it becomes clear after the complaint is filed that the complainant's primary purpose is to demonstrate that the person is not a farmer and the operation is not a farm operation against which a remedy can be granted, is it appropriate for the complaint to be allowed to proceed? Is such a complaint made in good faith within the meaning of s. 6(2)(a) of the *Act*? Is it "vexatious" within the meaning of s. 6(2)(b) of the *FPPA*?

VI. SECTION 6(2) OF THE *FPPA*

14. As noted above, section 6(2) of the *FPPA* reads as follows:

> 6(2) The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,
>
> (a) the subject matter of the application is trivial,
>
> (b) the application is frivolous or vexatious or is not made in good faith, or
>
> (c) the complainant does not have a sufficient personal interest in the subject matter of the application.

15. The terms "frivolous", "vexatious" and "not made in good faith" are all set out in section 6(2)(b).[1]

VII. POSITIONS OF THE PARTIES

(i) Lee Hardy

16. Counsel for Lee Hardy submits firstly that the panel made an unsupported finding when we stated in the April 30, 2013 letter (para. 26) that it was apparent from her witness list that many of her proposed witnesses would be called to testify on matters other than normal farm practice. She submits that the witness list "is equally applicable to the consideration of what might constitute normal farm practice as to whether the activities are being undertaken as a farming operation", and submits that the bulk of witnesses would give evidence regarding the "ramifications of activities" on the farm as they pertain to section 6 of the *Act*. Counsel submits that the government agency witnesses were listed "in anticipation of disclosure difficulties" and to ensure the respondents would not be taken by surprise.

17. Counsel also takes issue with any suggestion that the complaints were not made in good faith. Counsel submits that the knowledgeable person reports "underscore the *prima facie* validity of the complaints with reference to the foregoing statutory criteria". Counsel states that "the mere questioning of jurisdiction does not provide a basis by which the Board loses jurisdiction, or otherwise amount to bad faith".

18. Counsel submits that this issue ought to have been taken by the respondents at the outset, not now by the Board "*nunc pro tunc*". Counsel submits that: "Simply, the Complainant does not know whether the activities at issue fall within the nature of a farming operation, and her ability to proceed is contingent upon that determination by reason of the application of the principle set out in *Central Saanich v. Kimoff*, [2002] B.C.J. No. 453. She also emphasizes that, for their part, the respondents *have* claimed the benefit of the *Act*'s protection, and it is difficult to understand how this issue is being raised now given the January 29, 2013 decision.

19. On the issue "whether the *Act* is properly invoked by a party whose main interest is in utilizing BCFIRB as essentially an advisory or inquiry body on the question whether an undertaking is a farm operation, but whose main position within that process will be that it is not a farm operation", the complainants submit that BCFIRB has previously accepted complaints on this footing, citing *Feehan v. Ferguson* (August 17, 2010); *Hodge v. Eben* (November 20, 2008) and *Maddalozzo v. Pacific Coast Fruit Products Ltd.* (September 17, 2011). The Complainants submit that the Supreme Court's decision in *Agricultural Land Commission v. Munro*, [2006] B.C.J. No. 2149 (S.C.) supports BCFIRB's approach in the cases to date, and does not stand for the proposition that civil proceedings must be commenced in order to engage the Board's jurisdiction. With regard to the Ontario Court

[1] The reference, in our April 30, 2013 letter (para. 34), to "good faith" being referenced in s. 6(2)(a) of the *FPPA* was a typographical error.

of Appeal decision in *Pyke v. Tri Gro Enterprises*, [2001] O.J. No. 3209 (application for leave to appeal to S.C.C. dismissed [2001] S.C.C.A. No. 493) in which the court determined normal farm practice on the facts of that case, counsel submits that that decision is not consistent with *Kimoff* and cannot be considered a statement of the law in British Columbia. Counsel submits that BCFIRB's traditional willingness to determine its jurisdiction where it is unclear whether the farming activities are a "farm operation" is reasonable and reflects its expertise.

20. Counsel submits that section 6 of the *FPPA* is not applicable, and emphasizes that his client's life and the utility and enjoyment of her property are compromised on a daily basis by the activities on the farm. Counsel emphasizes his client's consistent assertion that she does not have a full and comprehensive understanding of the activities being undertaken on the property and that she openly conceded the issue of jurisdiction. He also emphasizes the respondents' effort to engage the protection of the *FPPA* on the basis that this is a farm operation. He submits that the factual background has not changed since the Board's January 29, 2013 decision. He submits that "where there is uncertainty, or where a complainant has disavowed the jurisdiction of the Board, the Board has directed and embarked on a consideration of the underlying activities in order to consider whether the complaint properly falls within Section 3 of the Act." Counsel submits that in the absence of bad faith, and consistent with BCFIRB's past practice, the panel is required to determine the complaint on its merits, and can only dismiss the complaint if it concludes that it lacks the jurisdiction contemplated by section 3 of the *Act*.

(ii) Michele Bond

21. Michele Bond adopts the submissions of Ms. Hardy's counsel, and emphasizes that her complaint was made in good faith, and in the belief that "we were appealing to the correct body (FIRB) in that we were, and are, seriously aggrieved by odour, noise, dust and vectors from what the respondents have *represented* (most of the time) as being a "normal farm practice" conduct as part of a "farm business". [emphasis added] Ms. Bond relies on *Kimoff* as authority for the proposition that a matter that properly could be before BCFIRB should not be dealt with by the Supreme Court until BCFIRB has had a chance to make a decision in relation to it.

22. Ms. Bond takes issue with the suggestion (April 30, 2013 letter, para. 15) that the complainant's primary position is a considered strategic position rather than a position based on insufficient evidence. She states that the complainants have provided much evidence in support of their complaints while the respondents have provided virtually no evidence in support of their position - "clear evidence we believe of acting in bad faith". Ms. Bond makes reference to the lack of documentation that 100% of the compost is being used on the farm, and alleges no substantiated soil remediation needs. She states that the complaints are not simply a considered strategic position, and that more evidence regarding compost use and many other aspects of the operation is essential before proceeding to any decision.

(iii) Corporation of the District of Central Saanich ("Central Saanich")

23. Central Saanich, which was given leave to comment on this issue, takes no position on the issue at hand. However it does take the position, in light of *Agricultural Land Commission v. Munro*, that where a local government is enforcing its land use regulations, the Court has jurisdiction to determine whether an operation is a farm operation or normal farm practice. Central Saanich takes the position that any determination by BCFIRB on these complaints will not be determinative of the issues in any land use enforcement proceedings. However, since the respondents have raised a common defence in both proceedings, the local government has a strong interest in any determination by BCFIRB.

(iv) Rendles, Stanhope and Foundation Organics

24. Counsel for these respondents takes the position that BCFIRB should properly dismiss all or part of any complaint that seeks to establish that the activities in question are not farm operations arising out of a farm business, "based on the obvious principle that the Board cannot make any orders of assistance to the parties in respect of activities that are not farm operations, or that are not being carried on by the owners or operator of a farm business".

25. Counsel emphasizes that his client's position is that these are farm operations, and does not object to a complaint proceeding on that basis. However, he submits that the Board should refuse to hear any claims based on the proposition that the composting operations are not farm operations.

26. Counsel agrees with the position of Central Saanich regarding *Munro*, suggests that *Kimoff* was based on a misunderstanding of the statutory scheme, and submits that *Kimoff* does not in any event support the view that the Board is the proper forum of first instance. With regard to *Maddalozzo*, counsel states as follows:

> I have spoken to counsel for the complainants in the *Maddalozzo* case, in an effort to understand the confusing nature of that case. The complainants made an application to the Board and then effectively applied to have their own application dismissed on the basis of jurisdiction. This was confusing to me. Counsel for the complainants explained the strategy, which was effectively to attempt to use the Board process as a preemptive strike, in order to remove the ability of the fruit packing business operation to claim a defence based on section 2(1) of the *Act* in a future Supreme Court proceeding that the neighbours were planning. Attached are the pleadings in the action commenced eight months after the Board's decision.
>
> It may well be that the issue of bad faith or abuse of process was not squarely raised by counsel or the Board, but in any event now that the Board is alive to the potential issue, the existence of the *Maddalozzo* case should not form any basis or precedent for utilization of the complaint process in front of this Board in this fashion.

27. Counsel submits that the Central Saanich court action against his clients has given rise to misunderstanding in these proceedings. Counsel asserts that there is nothing inconsistent about his clients asserting in this complaint process that the trucking companies are not proper respondents, while asserting in the concurrent civil proceedings that the trucking operation is part of an integrated farm operation to the extent that trucks are on or

travelling to and from the farm. Counsel also emphasizes that the local government's court action does not allege that the farm has been selling compost contrary to its bylaws.

28. Counsel concludes by stating that while the complainants are entitled to proceed with a "normal farm practice" complaint, "to the extent that the Complainants continue to allege that the composting operations are not farm operations, they should be prevented from doing so by a dismissal of a part or alternatively if necessary, all of their claim".

(v) Matthew Mansell and Finish Line

29. These parties adopt the submissions of the Rendles, Stanhope and Foundation Organics.

(vi) Organico

30. Counsel for Organico submits that BCFIRB should dismiss these complaints as being an abuse of process, which authority the BCFIRB must have to protect the integrity of its own process. The abuse of process arises because the complainants, in their primary and alternative arguments, take diametrically inconsistent positions, which is especially concerning for Organico because the first position seeks to draw Organico into the complaint as a respondent on the theory that this company, which is not a farm operation, is somehow operating in partnership with the other respondents, and with a view to showing that they are not farm operations either. Counsel alleges that this is unfair to the point of being oppressive and contrary to the interests of justice.

(vii) Lee Hardy Reply

31. Counsel for Lee Hardy states in reply that the distinction between "jurisdiction" and the grounds set out in section 6(2) of the *Act* is important in this case. As there is no evidence that the complaint is brought in bad faith, counsel submits that to dismiss the application, the Board must effectively conclude as a matter of law that a complainant who has no knowledge of the nature and extent of the operations forming the subject matter of the complaint is, by raising the issue of whether the operation may not be a farm operation, inherently acting in bad faith. Counsel says that cannot stand, and this would be especially problematic as BCFIRB does so without any substantive evidence of the nature of the operation that forms the subject matter of the complaint.

32. Counsel submits that BCFIRB cannot dismiss a complaint for *potential* lack of jurisdiction or merely because jurisdiction is in issue. BCFIRB must engage in that deliberation on the evidence, and that is especially so where evidence is necessary to determine whether a given operation is or is not a farm operation.

33. Counsel submits as follows:

> Bearing in mind the precedential value of its decision, the Board must determine whether, in the circumstances where a complainant challenges the activities of a respondent on the basis that, *inter alia*, those activities may not constitute a farm operation as a matter of law, the complainant is first required to exhaust its remedy in the Supreme Court.

> If the answer to the foregoing is in the affirmative, then the Board should refuse to continue the hearing until there has been a judicial determination as to the application of the *Act*." These proceedings should be stayed pending that determination, and specifically on the understanding that the complaints are not to be prejudiced by reason of the necessity for a judicial determination.
>
> The Complainant says that there is no reason to require a complaint challenging the nature of an operation to be first heard in Supreme Court. Such an approach is inconsistent with the Board's past practice, and compromises the authority that has been conferred upon the Board, as an administrative tribunal with special expertise relative to farming activities.
>
> It is submitted that the appropriate outcome would be to allow the Board to assume a collateral jurisdiction to the Court: a complainant may advance his complaint in either forum and, in so doing and where circumstances allow, the Respondent may be at liberty to allege its activities constitute a farm operation garnering the protections of the Act, as the Respondents have in this matter.

(viii) Central Saanich Reply

34. Counsel for Central Saanich, in reply to the submission of counsel for the Rendles, Stanhope and Foundation Organics, submitted that while its court action is not about the composting operation *per se*, "the District wishes to make it clear that the District has not conceded that the composting operation on the Property complies with its Land Use Bylaw and any other applicable bylaws". Counsel states that if BCFIRB hears the complaints, it will be required to determine for its purposes whether the composting operation is a farm operation. While that will not determinative of land use proceedings, Central Saanich has a legitimate interest in the issue given that the Respondents have also raised the same issue in response to the Court action.

VIII. ANALYSIS

(i) Preliminary comments

35. The panel thanks all parties for their submissions. This ruling has required us to confront important questions about the *FPPA* and about what the legislature intended to be BCFIRB's role in adjudicating farm practices complaints within the larger policy context of the *Act*.

36. Our stated focus on legislative intent is important. Our job is not to interpret and apply our mandate as we wish it would read or as it might more conveniently read, but to interpret and apply the *FPPA* as it is. We must seek as best we can to adopt the approach to our role that accords best with the language, purpose and context of this novel piece of reform legislation enacted in 1995. If law reform is necessary, that is the job of the legislature.

(ii) Purpose and operation of the FPPA

37. Before we turn more directly to the question before us, it is worth recalling that the "right to farm" created by the *FPPA* significantly changed the pre-existing common law and statute law of this province.

38. As recognized in *Windset Greenhouses (Ladner) Ltd. v. Delta (Corp.)*, [2003] B.C.J. No. 839 (S.C.) at para. 32, the *FPPA* creates novel statutory rights and protections from court proceedings where certain conditions are met:

> … a central feature of the scheme appears to be the establishment of a 'Right to Farm' provided 'normal farm practices' are followed. To achieve this goal there are provisions exempting the farmer from liability in nuisance and from having his farm operations interrupted by injunction or court order.

39. The exemption from liability and court orders is set out in section 2:

> 2 (1) If each of the requirements of subsection (2) is fulfilled in relation to a farm operation conducted as part of a farm business,
>
> (a) the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation, and
>
> (b) the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.
>
> (2) The requirements referred to in subsection (1) are that the farm operation must
>
> (a) be conducted in accordance with normal farm practices,
>
> (b) be conducted on, in or over land
>
> (i) that is in an agricultural land reserve,
>
> (ii) on which, under the Local Government Act, farm use is allowed,
>
> (iii) as permitted by a valid and subsisting licence, issued to that person under the Fisheries Act, for aquaculture, or
>
> (iv) that is Crown land designated as a farming area under subsection (2.1), and
>
> (c) not be conducted in contravention of the Public Health Act, Integrated Pest Management Act, Environmental Management Act, the regulations under those Acts or any land use regulation.

40. The term "normal farm practice" is defined as follows:

> "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).

41. The term “farm business”, referenced in the above definition, is also defined:

> "farm business" means a business in which one or more farm operations are conducted, and includes a farm education or farm research institution to the extent that the institution conducts one or more farm operations;

42. “Farm operation” is in turn defined as follows:

> "farm operation" means any of the following activities involved in carrying on a farm business:
> (a) growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;
> (b) clearing, draining, irrigating or cultivating land;
> (c) using farm machinery, equipment, devices, materials and structures;
> (d) applying fertilizers, manure, pesticides and biological control agents, including by ground and aerial spraying;
> (e) conducting any other agricultural activity on, in or over agricultural land;
> and includes
> (f) intensively cultivating in plantations, any
> (i) specialty wood crops, or
> (ii) specialty fibre crops
> prescribed by the minister;
> (g) conducting turf production
> (i) outside of an agricultural land reserve, or
> (ii) in an agricultural land reserve with the approval under the *Agricultural Land Commission Act* of the Provincial Agricultural Land Commission;
> (h) aquaculture as defined in the *Fisheries Act* if carried on by a person licensed, under Part 3 of that Act, to carry on the business of aquaculture;
> (i) raising or keeping game, within the meaning of the *Game Farm Act*, by a person licensed to do so under that Act;
> (j) raising or keeping fur bearing animals, within the meaning of the *Fur Farm Act*, by a person licensed to do so under that Act;
> (k) processing or direct marketing by a farmer of one or both of
> (i) the products of a farm owned or operated by the farmer, and
> (ii) within limits prescribed by the minister, products not of that farm,
> to the extent that the processing or marketing of those products is conducted on the farmer's farm;
> but does not include
> (l) an activity, other than grazing or hay cutting, if the activity constitutes a forest practice as defined in the *Forest and Range Practices Act*;
> (m) breeding pets or operating a kennel;
> (n) growing, producing, raising or keeping exotic animals, except types of exotic animals prescribed by the minister;

43. In court proceedings where the “normal farm practice defence” is relied upon by the defendant, the pleadings may raise the questions (a) whether the operation is a “farm business”, and (b) whether, if it is a farm business, the practices in question are “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances”.

44. Whether and how the court addresses the elements of that defence, given the existence of a specialized BCFIRB and the complaints process set out in section 3, has been the subject of case law and will be discussed in more detail below.

45. The statutory "right to farm" came with checks and balances.

46. One set of checks and balances is, as noted above, reflected in the several conditions set out in section 2(2) above, all of which a farmer must satisfy in order to claim statutory immunity from civil nuisance claims, injunctions or other orders of the court. As noted in section 2, "normal farm practice" is just one of the necessary conditions.

(iii) *The Complaint Process*

47. The second set of checks and balances is reflected in the statutory complaint process in section 3 of the *FPPA*, which provides a specialized statutory forum (BCFIRB) and potential remedies for persons aggrieved by farm practices.

48. The statutory complaint process is not properly understood as being a low-cost alternative for pursuing actions in nuisance. It is instead a specialized forum, applying the novel statutory concept "normal farm practice" which modifies the law of nuisance, by which a neighbour can seek significant and special remedies against a farm operation that creates a disturbance other than in accordance with normal farm practice:

> **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.
>
> **6** (1) The panel established to hear an application must hold a hearing and must
>
> > (a) dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, or
> >
> > (b) order the farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.

49. The statutory complaints process is significant not only because of the ultimate remedies BCFIRB can grant, which orders can be filed and enforced as orders of the Supreme Court: *FPPA*, section 6.1. It is significant also because the filing of a proper complaint entitles a complainant to apply for compulsory orders requiring the farmer and witnesses to produce documents and testimony, and to attend the hearing: section 11(5). These are significant compulsory powers. They can be intrusive, time-consuming and costly for all parties and witnesses.

50. These implications make it apparent that a complainant who comes before us with a complaint must do so with the *bona fide* intention of seeking the only remedy the *FPPA* can grant to that complainant – an order requiring the farmer to cease or modify the complained of practice. In our view, to come to BCFIRB primarily seeking the opposite finding – that the person is not a "farmer" and is not even within the scope of the *Act* - abuses the *Act*'s processes and is therefore vexatious. It is vexatious because it does not in good faith seek as its main purpose the only remedy section 6 makes available to

complainants. It seeks instead to expose the farmer to the complaints process with the primary motive of removing the farmer's ability to rely on that defense in collateral proceedings filed in court (whether planned or concurrent) against the farmer. The law is clear that a "vexatious" proceeding includes proceedings brought for an improper purpose, other than the assertion of legitimate rights. As noted in *Dixon v. Storkcraft Manufacturing Inc.*, 2013 BCSC 1117 at para. 33, the terms "vexatious" and "abuse of process" have "strikingly similar" features.

51. In our view, it is abusive and vexatious to bring a complaint to BCFIRB which can only be dismissed if the panel accepts the complainant's principal position. If a complainant's position is that the respondent does not fall within the scope of the *FPPA*, the complainant can and should pursue the existing common law remedies.

52. The complainants argue that BCFIRB cannot avoid dealing with jurisdictional issues where they arise, including whether an operation is a "farm operation". We agree. However, we think there is a significant difference between cases where complainants are willing to proceed on the basis that the operation is a farm operation but the evidence, as it emerges, raises a jurisdictional question, and cases where the complaint sets out with the clear purpose of asserting and showing the opposite. In the first case, the complainant is prepared to accept the essential condition for accessing the complaints process – that the person is a "farmer". In the second case, the person is in truth seeking to use the complaints process for possible use or benefit in a collateral court process.

53. There is no question that BCFIRB has jurisdiction to determine whether an operation is a "farm operation" or a "farm business". As just noted, where those questions must be confronted in a *bona fide* complaint, BCFIRB is required to address them. But the jurisdiction to determine whether an operation is a farm operation does not mean the BFIRB is required to do so where a complainant's purpose in using the complaints process is to impact a concurrent or planned court proceeding.

54. The wording and structure of section 3(1) in our view reinforce the view that a complainant who comes before BCFIRB for a determination as to whether a disturbance results from a normal farm practice must be prepared at least to proceed for the purposes of that complaint on the basis that the operation is a farm operation conducted as part of a farm business:

> **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.

55. The *FPPA* recognizes that complainants may not be able to prove every element of their complaint in a traditional, adversarial context. Much of the evidence regarding "normal farm practice" often lies only with the farmer, and thus the determination of normal farm practice may also require the appointment of a "knowledgeable person" or consultant appointed by the BCFIRB: *FPPA*, sections 4, 10(3). But even with this proactive or "inquiry" aspect of our mandate, section 3 is and remains a complaint process: *Clapham v.*

Monga (BCFIRB, September 22, 1997). A person who does not genuinely seek to file a section 3 "complaint" should be seeking their remedies in some other forum – in this case, by way of an action in nuisance. The fact that section 3 includes an inquiry element does not justify a party using section 3 to engage in a roving inquiry intended to prove that a person whose conduct they find objectionable cannot access the *FPPA*.

56. Consider the implications. If BCFIRB is required to proceed with any complaint that seeks primarily to prove that a "farmer" is not really a "farmer", what is to stop any neighbour with a potential nuisance action from applying to BCFIRB for a "prophylactic" advisory opinion as a matter of prudent practice, particularly since BCFIRB is less expensive than Court, and may well be a good vehicle for civil discovery? In our view that is abusive of the parties, and of BCFIRB, which should be deploying its limited resources for cases that genuinely seek the remedies available under the *FPPA*. In our view, section 6 allows BCFIRB to stop that kind of abuse.

57. The complainants emphasize that in this case, the respondents have relied on the "normal farm practice" defence in the collateral bylaw enforcement proceedings commenced by Central Saanich, and so the issue itself is clearly not vexatious – it is a real and live issue in the Court action. They further argue that BCFIRB should address the issue because, based on *Kimoff v. Central Saanich*, the court would be referring the matter to BCFIRB in any event.

58. While we recognize that the "normal farm practice" issue is a live issue in the court proceedings (albeit limited to the truck transport issues), we think it would be incorrect and even presumptuous of us to assume that the Court will inevitably "refer" this matter to BCFIRB if and when it gets to court.

59. First, the Court may be able to resolve the existing bylaw litigation commenced by Central Saanich (or future nuisance litigation) without even having to address the "normal farm practice" issue, on the basis that the defendant has not satisfied the other statutory conditions set out in section 2: see *Agricultural Land Commission v. Munro*, 2006 BCSC 1408 at paras. 98-103. The determination of "farm practice" issues by the panel may thus be unnecessary, and serve only to add unnecessary cost, delay and complication to those proceedings.

60. Second, even if the court does find it necessary to address the issues of "farm business", "farm operation" and "normal farm practice", we think it would be presumptuous for BCFIRB to assume that all issues related to "farm practice" will inevitably be referred to BCFIRB. We cannot fairly read *Kimoff* as establishing a rule that these issues will be deferred to BCFIRB in every case. There is no statutory rule requiring all "farm practices" issues to be decided first by BCFIRB. While *Kimoff*, consistent with *Pyke v. Tri Gro Enterprises Ltd.*, *supra*, sets out a compelling rationale for the court exercising its *discretion* to defer to BCFIRB in appropriate cases, nothing in the *FPPA* removes the Court's jurisdiction to make those determinations in exceptional cases. As noted in *Pyke* [paras. 52-64], the Court's discretion to defer a "normal farm practice" determination to BCFIRB does not remove the Court's jurisdiction to decide the question in special

circumstances. It is not for us to presume to decide whether this is an exceptional case where the court would want to address the issues. For us to decide this issue on the basis that we will be "helping" the court would be to usurp the role of the Court.

61. Third, given that the complainants do not accept that the defendant's operation is a farm operation, it is not entirely clear to us that a court would be inclined to refer a complaint to BCFIRB on that issue. It is one thing for a court, based on BCFIRB's processes and expertise, to require parties to come before BCFIRB and hash out whether a practice reflects "proper and accepted standards followed by similar farm businesses in similar circumstances". It is quite another to expect that a court will force a complainant into a statutory process he says does not even apply because the person is not a "farmer". We note that in *Munro* itself (para. 84), the Court did not hesitate to comment on the preliminary issue of "farm business". In this kind of situation, given the position of complainants, it is possible that the Court would decide the "farm business" issue and defer only the "proper and accepted practices" issue to BCFIRB.

62. Fourth, we think that as a matter of judicial discretion, some bylaw enforcement cases may raise different considerations than nuisance actions. In a bylaw enforcement action, the Court's discretion may be impacted by other factors, such as the fact that the local government is the moving party, the matter may raise time sensitive issues of public interest and the local government - whose interests may not always be precisely the same as those of neighbours - may even lack standing under section 3 of the *FPPA* to make certain types of complaints: *Corporation of Delta v. Westcoast Instant Lawns: Preliminary Decision* (BCIRB, September 24, 2004). While *Kimoff* was a bylaw enforcement case in which deferral to BCFIRB was the appropriate exercise of discretion, we do not think it is safe to presume that it sets out a rule that would apply to every case in every circumstance.

63. Central Saanich has argued that if we did decide the normal farm practice issues in this case, nothing we decide would be binding on the Court in any event. We do not think it is as simple as that. The law of "issue estoppel" is complex, but it is clear that findings made in administrative proceedings can bind judicial proceedings: see generally, *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19. A properly constituted complaint and ruling by BCFIRB could well affect concurrent or subsequent court proceedings. Indeed, if as in *Pyke* or *Kimoff*, a court decided to defer an issue to BCFIRB, and BCFIRB made a decision, one would think that conclusion would be even more apparent. It would be strange for a court to defer its own processes in favour of BCFIRB, only to simply decide the same issue all over again in the court proceedings. It is precisely because our findings could impact the ongoing court proceedings that we need to be careful to ensure, for the reasons outlined above, that we do not improperly usurp the Court's role in a case like this.

64. The complainants argue that it is unfair and inappropriate to suggest that their complaints are "vexatious" when BCFIRB has accepted and decided similar complaints in prior cases, and when the panel in this case decided only on January 29, 2013 that the complaints could proceed despite the complainants' "alternative" positions.

65. We do understand the complainants' concern about the use of a term like "vexatious". To a lay person, it appears highly negative (and frankly, even in a legal context, it can be). But it must be understood that the term "vexatious" is a legal term of art and is a term customarily included in tribunal legislation. It is intended to allow tribunals to exercise appropriate discretion and control over the matters coming before them, and includes being able to address situations where legal proceedings are inappropriately used - even where, as here, a person's underlying grievance may be genuinely felt. Thus, while we do not question the complainants' good faith with regard to their grievances, we nonetheless have a responsibility to ensure that BCFIRB's processes are used properly.

66. With regard to the concern as to why we raised this issue in April given our previous decision in January, our April 30, 2013 letter explained the factors that led us to seek submissions on this important issue. We do not intend to repeat that discussion here.

67. The complainants' concern that the dismissal of their complaints would be contrary to previous decisions of BCFIRB warrants more detailed consideration. While administrative tribunals are not bound by their previous decisions, consistency remains an important legal value. Previous considered decisions, even if not binding, have significant weight, and there should be good reason to depart from them.

68. The complainants make reference to the BCFIRB decisions in *Hodge v. Eben*, *Feehan v. Ferguson* and *Maddalozzo v. Pacific Coast Fruit Products Ltd., supra.*

69. In *Hodge v. Eben*, Ms. Hodge filed a complaint alleging unsightliness on Mr. Eben's property. The Chair's decision in that case makes clear that the issue as to whether the operation was a "farm operation" was a preliminary issue identified by BCFIRB. The reasons contain no suggestion that Ms. Hodge had made the complaint with the primary intent to show that the operation was not a farm operation. The decision in *Hodge* clearly illustrates the difference between BCFIRB's power to decide "jurisdiction" questions, and the section 6 issues that might arise in a case such as this. The most that can be said about *Hodge* as applied here is that the issue under discussion in this decision was not raised or identified.

70. In *Feehan v. Ferguson*, the facts giving rise to the panel's consideration of the issue were set out clearly at paragraphs 13-16:

> 13. Before the commencement of the hearing, Michelle Connerly, wife of the complainant Dan Feehan, raised the issue of BCFIRB's jurisdiction to hear this complaint on the basis that guinea fowl are not farm animals within the protection of the Act. Specifically, Ms. Connerly questioned whether guinea fowl are considered exotic animals or whether they fall within "partridge species, pheasant species, quail, silkie and squab" under the Specialty Farm Operations Regulation, BC Reg. 53/99.
>
> 14. Mr. Ferguson submits that guinea fowl are animals over which BCFIRB has jurisdiction pursuant to the Act where the guinea fowl are raised as part of a farm operation. His counsel provided evidence and argument in support of this position which is reflected in our reasons below.

> 15. In the course of the hearing, Mr. Feehan indicated he was no longer questioning BCFIRB's jurisdiction. In his subsequent written submissions, Mr. Feehan stated that after reading the respondent's submissions with respect to jurisdiction he had come to the conclusion that BCFIRB has jurisdiction under the Act over guinea fowl.
>
> 16. Despite the fact that Mr. Feehan no longer raises a question as to jurisdiction, since jurisdiction is a threshold issue, the panel has addressed this issue.... [emphasis added]

71. Unlike this case, the complainant in *Feehan*, while initially questioning jurisdiction, was prepared to proceed on the premise that the operations in question were farm operations. Like *Hodge*, *Feehan* clearly illustrates the difference between the power to decide jurisdiction issues and section 6 issues. Based on Mr. Feehan's position set out at paragraph 15 of that case, the issue addressed in this decision clearly did not arise.

72. *Maddalozzo v. Pacific Coast Fruit Products Ltd.* is closest to the facts of this case because the BCFIRB accepted and heard a complaint in which the jurisdiction issue not only arose, but the complainants took the position at the outset and throughout that the operation was not a "farm business" or "farm operation" (para. 45). However, it is apparent from the reasons in *Maddalozzo* that the section 6 issue was not raised by the parties or the panel, and that all parties proceeded on the premise that a complainant could lodge a complaint while at the same time alleging that its own complaint should be dismissed for lack of jurisdiction.

73. While we place little weight, for the truth of its contents, on counsel's unsworn hearsay account of his conversation with complainants' counsel in *Maddalozzo* concerning the "strategy" of his clients (quoted at para. 26 above), we can take notice of the nuisance action attached to Mr. Alexander's submission, which action the complainants in *Maddalozzo* filed several months after BCFIRB's decision in that case. The existence of that action demonstrates that situations can arise – and *Maddalozzo* was likely one of them - where a complainant's real purpose is not to obtain a remedy under section 6(1)(b), but rather to remove a defence the farmer might rely on in subsequent court proceedings. While the section 6(2) argument was not raised in that case, we think it shows that *Maddalozzo* was not a "one off", and we need to confront the issue here and for the future.

74. The complainants argue that they "simply do not know" whether the operations on the property are farm operations, and they should not be prejudiced based on this – they cannot possibly know the answer until they have had the discovery that only the farm can provide. While we appreciate this position, the fundamental difficulty with their complaints as presently constituted is that the complainants do seem to know enough to be prepared to take the primary position before BCFIRB that this is not a farm operation, and they have not resiled from that position in the current submissions process even while asserting that they do not know. The only reasonable inference we can draw from that is that they do not wish to make a "concession" that might prejudice their position in collateral or contemplated court proceedings.

75. The complainants' intention to use the complaints process to prove that the *FPPA* does not even apply creates a serious risk that BCFIRB's processes could be used in ways that result

in coercive procedural measures against the respondents and witnesses, and that may undermine the jurisdiction and discretion of the Court.

76. Had the legislature intended BCFIRB to act as a general inquiry body for complainants suing or intending to sue, or as an all-purpose forum where a party raises the farm practices defence in any other proceeding, the legislature could have said so, as it has for example in Ontario with regard to bylaw prosecutions.[2] While that may have been more convenient in some cases, and less convenient in others, that is not what the British Columbia legislature has done. If law reform is necessary, such reform is for the legislature which can carefully assess the pros and cons of one course of action over another.

IX. CONCLUSION

77. For the reasons set out in this decision, it is our view that these complaints are vexatious.

78. This finding raises the question as to what we should do under section 6(2):

> 6(2) The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,
>
> (a) the subject matter of the application is trivial,
>
> (b) the application is frivolous or vexatious or is not made in good faith, or
>
> (c) the complainant does not have a sufficient personal interest in the subject matter of the application.

79. We note that the complainants have not taken the position, suggested in the respondent's submission, that if we rule against their ability to seek a ruling on their primary ground, they are prepared to concede the point and proceed on their secondary ground that the disturbances do not arise from normal farm practice. Rather, the complainants submit in reply that if we find against them we should "refuse to continue the hearing", by staying the determination "specifically on the understanding that the complainants are not to be prejudiced by reason of the necessity for a judicial determination".

80. In the circumstance of this case, it is our view that the proper course of action is to refuse to continue the hearing in respect of these complaints pursuant to section 6(2)(b) of the *FPPA.*

[2] The Ontario *Food and Farming Protection Act*, S.O., 1998, c. 1, s. 6(2) specifically gives local governments and farmers the ability to come to the Ontario board and seek a "ruling" on any normal farm practice issue when bylaw proceedings are pending. This provision creates a direct statutory link between court proceedings and the Ontario board, which "link" is absent in the BC statute.

81. As the only issue we have finally adjudicated in this matter is the section 6(2)(b) issue, we wish to make clear that this decision is without prejudice to the complainants' ability to file new complaints that do not raise the section 6(2) issues should this properly arise in the context of current or future court proceedings.

Dated at Victoria, British Columbia, this 4th day of October 2013.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per:

Suzanne K. Wiltshire, Presiding Member

Ron Bertrand, Vice Chair

Carrie Manarin, Member