



May 14, 2008

File: 44200-20 FARM PRAC

**DELIVERED BY EMAIL**

Kim Benson  
Chair  
Islands Trust Council  
200 – 1627 Fort St  
Victoria BC V8R 1H6

Dear Ms. Benson:

**DESIGNATING ORGANIC FARMING AS A NORMAL FARM PRACTICE IN THE ISLANDS TRUST AREA**

Thank you for your letter of April 30, 2008, addressed to the Minister of Agriculture and Lands and to the BC Farm Industry Review Board (BCFIRB) concerning the subject.

My response, on behalf of BCFIRB, will outline this board's farm practices role, particularly with respect to determining 'normal farm practice' in complaints. However, I must note at the outset that the *Farm Practices Protection (Right to Farm) Act (Act)* does not give BCFIRB the jurisdiction to make prescriptive declarations as to what constitutes a normal farm practice. BCFIRB can only make a finding of normal farm practice – which would apply only to the farm operation in question – following a full hearing of a complaint on its merits.

BCFIRB has two distinct responsibilities under the *Act*. One is to “study, report on, and make recommendations concerning, any matter related to farm practices.” The other is to determine 'normal farm practice' in complaints filed by persons aggrieved by disturbances resulting from farm operations conducted as part of farm businesses.

When determining 'normal farm practices' in a complaint, a panel considers a range of factors. The balance between farmers and their neighbours is established by the *Act* itself: where a farmer is carrying out a practice in a manner consistent with proper and accepted customs and standards as established by similar farm businesses under similar circumstances, and/or is following any standards prescribed by the Lieutenant Governor in Council, the complaint must be dismissed.

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British Columbia  
Farm Industry Review Board

**Mailing Address:**  
PO Box 9129 Stn Prov Govt  
Victoria BC V8W 9B5  
Telephone: 250 356-8945  
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3<sup>rd</sup> Floor, 1007 Fort Street  
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Farms do not automatically gain protection by showing that they follow some abstract definition of industry standards as the panel's inquiry involves both a fact and site specific consideration of the impugned practice.

Depending on the practice under review, other relevant factors may be considered in determining normal farm practice, including the farmer's proximity to neighbours and their use of land. Whether a farm – or another farm that is a “neighbour” – is organic may or may not be a relevant factor for a panel to take into consideration depending on the circumstances of an individual complaint. I am attaching a copy of a BCFIRB brochure that describes in more detail how a panel determines normal farm practice in a complaint.

On a separate but related topic, staff of our two agencies recently discussed whether it is time again for BCFIRB to provide a formal briefing on its farm practices mandate to Islands Trust Council. BCFIRB would be most happy to do that at the Council's convenience.

Yours truly,

A handwritten signature in dark ink, appearing to read 'R. Bullock', with a long horizontal stroke extending to the right.

Richard Bullock  
Chair

Attachment

pc: Honourable Pat Bell  
Minister of Agriculture and Lands

# BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

## Mandate

The British Columbia Farm Industry Review Board (the “Board”), formerly known as the Farm Practices Board, is a specialized administrative tribunal that, under the *Farm Practices Protection (Right to Farm) Act* (the “Act”), hears complaints from persons aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business. The Board also has the power to study, report on and make recommendations about any matter related to farm practices.

## What farm operations fall under the Act?

Farm operations falling under the *Act* include: producing or raising plants and animals; clearing, draining, irrigating or cultivating land; using farm machinery, equipment, devices, materials and structures; applying fertilizers, manure, pesticides and biological control agents; cultivating specialty wood or fibre crops; turf production; aquaculture (finfish, shellfish, plant); raising or keeping game or fur bearing animals; processing or direct farm marketing.

## What is the Board’s Complaint Role?

1. If the Board determines that the disturbance complained of results from a normal farm practice, the Board must dismiss the complaint. In this situation, the *Act* protects the farmer from being sued in court for that disturbance if provincial health and environmental standards are met and the farm use is a legal land use.
2. The Board may also dismiss a complaint, without ruling on “normal farm practice”, if the complaint is trivial, frivolous, vexatious, not in good faith or if the complainant does not have a sufficient personal interest in the matter.
3. If the Board determines the disturbance complained of does not result from a normal farm practice, the Board must order the farmer to cease the practice or modify it to be consistent with normal farm practice.

## What is the Board’s Study Role?

The Minister of Agriculture and Lands may order the Board to study and report on any matter related to farm practices. The Board may also conduct such studies and reports on its own initiative or at the request of a local government. The Board can make recommendations, not orders, in its study role.

## How to Contact the Board

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

Telephone: 250-356-8945

Fax: 250-356-5131

Email: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)

Website: [www.firb.gov.bc.ca](http://www.firb.gov.bc.ca)

## DETERMINING “NORMAL FARM PRACTICE” IN COMPLAINTS

The key issue in Board complaints is whether odour, noise, dust or other disturbance from a farm results from a “normal farm practice”. The *Act* states:

“**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).

Except in special circumstances, a person will not be allowed to seek a court injunction against a farmer or sue the farmer for nuisance unless the person has first received a ruling from the Board on whether the disturbance results from a normal farm practice.<sup>1</sup>

The principles to be applied in determining “normal farm practice” have been considered by the Board<sup>2</sup> and by the Ontario Court of Appeal<sup>3</sup>. They include:

- The balance between farmers and their neighbours has been established by the *Act* itself. Where a farmer is carrying out a practice in a manner consistent with proper and accepted customs and standards as established by similar farm businesses under similar circumstances, the complaint must be dismissed.
- Farm operations do not automatically gain protection by showing that they follow some abstract definition of industry standards. The Board’s task is not to inquire into simply whether the farm practice is “proper” in the abstract, but also whether it is consistent with proper and accepted customs as established and followed by similar farm businesses under similar circumstances. The inquiry is both fact and site-specific. The same practice may qualify as a normal farm practice in one situation but not in another where the circumstances are different.
- Depending on the practice under review, many relevant factors may be considered in determining normal farm practice, including proximity of the neighbours, their use of land and the degree of disturbance. It may also be relevant whether the farm operation came first.

For a copy of the Ontario decision in *Pyke v. Tri Gro* and Board decisions ruling on “normal farm practice”, please refer to the Board’s website at [www.firb.gov.bc.ca](http://www.firb.gov.bc.ca).

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<sup>1</sup> *Central Saanich (District) v. Kimoff*, [2002] B.C.J. No. 453 (C.A.); *Pyke v. TRI GRO Enterprises Ltd.* (2001), 204 D.L.R. (4<sup>th</sup>) (Ont. C.A.)

<sup>2</sup> The Ontario Court of Appeal decision and copies of the Board’s decisions are on the Board website.

<sup>3</sup> *Pyke v. TRI GRO Enterprises Ltd.* (2001), 204 D.L.R. (4<sup>th</sup>) Ont. C.A.