



April 16, 2013

File #13-04

DELIVERED BY E-MAIL

Aron Lee
[REDACTED]

Richard Acre and Julie Johnson
[REDACTED]

Dear Sirs/Madam:

A COMPLAINT FILED UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*

On February 14, 2013, Aron Lee filed a complaint regarding barking dogs at 1730 Boone Court, Kelowna with the British Columbia Farm Industry Review Board (BCFIRB). BCFIRB staff identified a preliminary issue as to whether the complaint was within the jurisdiction of BCFIRB as it was unclear whether the respondents operate a farm business to which this dog barking relates. By letter dated March 8, 2013, a submission process was established. I have had the opportunity to review the submissions and supporting documents submitted by both parties in detail.

DECISION

Section 3 of the *Farm Practices (Right to Farm) Act* (the *Act*) provides for complaints to BCFIRB where a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business. Given the requirement that a complaint arise out of a farm operation carried on by a farm business, the excessive dog barking which is the subject of this complaint must relate to a farm business.

Farm business and farm operation are defined by the *Act*:

"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;

"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;
- ...

Is this a Farm Business?

The respondents reside on a small acreage on Boone Court. They have two horses and provide “care, riding and horsemanship lessons to customers”. They attached receipts as proof of this economic activity. They have in the past boarded a horse but have since bought it “for her outstanding bloodlines”. They indicate that they intend to breed the horse and sell the foal. The respondents also indicate that they intend to purchase “a small number of cattle” for personal consumption as well as for sale and profit. In a subsequent telephone conversation with the BCFIRB Case Manager, Mr. Acres confirmed that he is purchasing two beef cattle in the next few weeks. As for the subject matter of the complaint, the respondents indicate that they have two livestock protection dogs to protect their horses and children from “possible large animal predation”.

The complainants argue that the respondents are not farming. Rather, they keep horses and dogs as pets. They say that the *Act* should not protect the respondents and the Regional District should be able to enforce its nuisance bylaws to address the excessive dog barking issue.

The “farm business” requirement makes it clear that the *Act* was never intended as redress for every complaint between neighbours involving practices relating to plants or animals on a piece of property. Where the *Act* applies, it gives a neighbour a potentially powerful remedy, i.e., the right to ask BCFIRB to require a farmer to cease or modify a farm practice. At the same time, it gives a farmer potentially significant protection where he acts in accordance with normal farm practice (i.e., the right to be protected against a nuisance action and the right to be protected against municipal bylaw enforcement). Given the significant effects of the *Act*, its drafters wanted to focus its scope and its boundaries. Where the *Act* does *not* apply, the general law does, meaning that where neighbours cannot work things out in a neighbourly way, they can seek a remedy from local government or the courts.

In addressing the jurisdiction issue of whether there is a farm business in this case, I rely on the approach set out in *Hanson v. Asquini*, October 31, 2003:

The Canadian Oxford English Dictionary (1998) defines “business” amongst other things as “one’s regular occupation, profession or trade”. Black’s Law Dictionary (7th ed. 1999) defines “business” as “(a) a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain”.

Implicit in the definition of “business” as it is used in the *Act* is some aspect of an agricultural undertaking carried out for the purposes of generating income or profit (except perhaps in the special case of farm education and research institutions which, for obvious reasons, have also been given the *Act*’s protections). Thus, as a bare minimum, in order to establish that a farmer has a “farm business”, there should be documentation supporting revenue or an intention to generate income from recognised farming operations or activities....

I also considered the following indicia set out in *Asquini* to assist in determining whether there is a “farm business”:

- a) What is the location and magnitude of the farming operation in comparison to other operations producing similar agricultural products?
- b) Does the farm operation operate or intend to operate on the basis of generating income or profit?

- c) Do the farm operation's plans clearly contemplate future commercial activities and is income anticipated as a result of defined development plans (such as plantings that may not be productive for several years)?
- d) Does the farm qualify for a farm tax credit under the *Income Tax Act*?
- e) Does the farm hold licences related to agricultural or aquacultural activities?
- f) Is the operation a farm education or farm research institution?

In this case, the respondents have failed to provide satisfactory evidence in support of these indicia. The respondents did demonstrate that some money was made providing riding and horsemanship lessons and boarding a horse in the past. They also intend to raise beef cattle for personal consumption and to sell. In my view, these nominal income generating activities are not sufficient to demonstrate that the respondents are carrying on a farm business for the purpose of generating income or profit. There is no indication that farm income is reported for tax purposes, no profit and loss statements were provided, no evidence of farm status or licences were given. This is, at most, a hobby farm that generates a nominal amount of money to offset lifestyle choices. It is not a commercial enterprise.

Are the dogs part of a farm operation?

Even if I was to find that the nominal income generating activities (relating to 2 horses and 2 cows) was a farm business, I am also not satisfied that the keeping of dogs is, in these circumstances, a farm operation. While I can envisage circumstances where dogs could be considered integral to a farm operation such as on a working ranch or sheep farm, here dogs are kept as pets. The fact that they ward off predators and potential trespassers does not make them part of a farm operation.

Accordingly, in the circumstances of this case, I conclude that the *Act* has no application and the only appropriate outcome is to refuse to refer this complaint to a panel. The complaint is dismissed.

Section 8 of the *Act* states:

Appeal

- 8** (1) Within 60 days after receiving written notice, in accordance with section 6 (5), of a decision of the chair or a panel of the board made under section 6, the complainant or farmer affected by the decision may appeal the decision to the Supreme Court on a question of law or jurisdiction.
- (2) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



Ron Kilmury
Chair