



February 7, 2014

File #13-12

DELIVERED BY EMAIL

Doug Taylor
[REDACTED]
[REDACTED]

Andrew Leasing
[REDACTED]
[REDACTED]

Dear Sirs:

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

On November 12, 2013, the BC Farm Industry Review Board (BCFIRB) received a formal complaint from Doug Taylor regarding noise generated from roosters on property co-owned by Andrew Leasing. The issue of jurisdiction was raised at the onset of the complaint and on January 29, 2014 BCFIRB held a telephone hearing with the parties to assist in determining whether the practice in question (noise from roosters) results from a farm operation conducted as part of a farm business.

Section 6(2) of the *Farm Practices Protection (Right to Farm) Act (Act)* allows the chair of BCFIRB, after giving the parties an opportunity to be heard, to refuse to refer an application to a panel for the purposes of a hearing on various grounds. A complaint about a matter that is outside the scope of the *Act* would fall within these grounds.

In BCFIRB staff's January 9, 2014 letter, the parties were referred to the *Hanson v. Asquini* (October 31, 2003) decision which confirms that where there is no underlying farm business, the *Act* has no application. The parties were also asked to provide submissions and any supporting documentation on whether the practice complained of relates to a farm business.

Mr. Leasing provided some documentary evidence which included a farm classification lease application to BC Assessment and a hand drawing of his property. No other written submissions were received.

Section 3 of the (*Act*) provides for complaints to the board:

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.

Given that section 3 requires that a complaint arise out of a farm operation carried on by a farm business, the 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;
- ...
- (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,

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 land.

Where the *Act* does apply, it has significant implications. 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. This recognized that where the *Act* does *not* apply, the general law does, meaning that when neighbours cannot work things out in a neighbourly way they have the usual remedies of going to the municipality or to the courts to resolve their disputes.

Mr. Leasing’s 10 acre property is in the Agricultural Land Reserve, is 167 feet wide by 2660 feet long and is divided into two parts. In his January 28, 2014 submission, Mr. Leasing advised that:

- a) the two parts are delineated by fences;
- b) the six acre part is leased out, for a four year period 2012-2016, to a farmer; and
- c) in 2012, Mr. Leasing applied to BC Assessment for “farm classification” status only for the six acre part of his property, with a copy of that application attached to his submission.

During the telephone hearing, Mr. Leasing provided the following evidence:

- a) the leasing arrangement was to provide a pasture for a dairy farm to dry out its cows;
- b) the leasing of the pasture is a business arrangement managed separately from the raising of birds;
- c) he has 8 heritage breeds of chicks (8 chicks per breed), raised from a total of 64 adult birds (with 1-2 roosters per 6-7 hens);
- d) the birds and chicks are raised on the 4 acre part of his property where his residence is located;
- e) his feed costs for the birds are \$3000 per year and he makes about \$1200 per year from the sale of birds; and
- f) the birds are raised strictly as a hobby, raised “for fun” and provide no farm status.

Mr. Taylor provided the following evidence during the hearing:

- a) he has not witnessed any evidence of road side sales or other commercial activity; and
- b) he agrees that Mr. Leasing’s raising of birds is a hobby and believes that any farm status would only apply to the part of the property leased out as a pasture for cattle dry out.

The raising and keeping of birds is a “farm operation” as defined in s. 1 of the *Act*. However, the uncontested evidence here is that Mr. Leasing’s raising and keeping of birds is entirely done as a “hobby” and not conducted as part of a “farm business”.

Given the foregoing, it is my view that the only appropriate outcome is to refuse to refer this complaint to a panel as the *Act* does not apply.

Accordingly, the complaint is dismissed.

Section 8 of the *Act* provides for a right of 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



John Les
Chair