

IN THE MATTER OF THE  
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131  
AND IN THE MATTER OF A COMPLAINT ARISING FROM THE OPERATION OF A  
DAIRY FARM IN BLACK CREEK, BRITISH COLUMBIA

**BETWEEN:**

DEBBIE JORY

COMPLAINANT

**AND:**

BRUCE AND BOB BEACHAM

RESPONDENTS

**DECISION**

For the British Columbia  
Farm Industry Review Board

Ron Kilmury, Chair

For the Complainant

Debbie Jory

For the Respondents

Bruce Beacham

Location of Hearing

By Written Submission

Date of Decision

November 6, 2012

## BACKGROUND

1. On August 31, 2012 following a full hearing on the merits, a panel of the BC Farm Industry Review Board (BCFIRB) issued its decision for Complaint File #11-04 in *Jory v. Beacham*.<sup>1</sup> That complaint dealt with the issue of whether the dust and diesel exhaust fumes blowing onto the Jory property from truck and tractor traffic on the Beacham farm, resulted from normal farm practices. By way of remedy, the complainant sought an order that the respondents relocate their silage bag site, use an alternate route to access their property and enforce truck speed limits.
2. The panel's decision also considered farm practices beyond the vehicle traffic issue, namely, the use of farm equipment on the silage bag/manure pit site and the adequacy of the buffer to contain dust and diesel fumes: Decision, para. 7. It is noted as well that while the complainant had originally emphasized the disturbances of concern being dust, particulate matter from manure spillage and diesel exhaust, the panel also considered the complainant's concerns regarding noise in relation to the practices complained of: Decision, paras. 32-33, 36, 75, 79-81.
3. The panel took into account the proximity of the complainant's property, including the remaining tree buffers and prevailing winds, the nature and level of the farming activities on the farm and the measures taken to mitigate the effects of dust, diesel exhaust fumes and traffic noise arising from the farm operations and concluded that the disturbances complained of resulted from normal farm practices. The complaint was dismissed, with the panel emphasizing that its decision was based on the measures already taken by the respondents: Decision, para. 83.
4. Subsequent to the filing of the May 2011 complaint and before the release of August 2012 decision, Ms. Jory filed an additional 14 complaints (the subsequent complaints). Given that the subsequent complaints had the "potential to touch upon matters which are already before a panel which had yet to be ruled on", I ordered that they be held in abeyance pending the release of the panel's decision.

## SUBMISSION PROCESS

5. After the release of the panel's decision, I wrote to the parties on September 12, 2012 setting out a submission process to help me to determine whether, or to what extent, I should refer the subsequent complaints to a panel. In that letter, I drew the parties' attention to section 6(2) of the *Farm Practices Protection (Right to Farm) Act (FPPA)* which states as follows:

### Hearing of complaints

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.

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<sup>1</sup> [Jory v Beacham – August 31, 2012](#)

6. The purpose of the submission process was to give the complainant an opportunity to identify any issues in the subsequent complaints which had not been adjudicated upon in the panel's decision, within the jurisdiction of this board and otherwise in compliance with s. 6(2), which in her view should be referred to a panel for hearing. The respondents were given the opportunity to respond and explain whether the issues raised by the complainant in the subsequent complaints had been adequately addressed by the August 2012 decision and to address the merits of the new issues, the issue of jurisdiction and the application of s. 6(2) to any or all of the complaints. The complainant was given the opportunity to reply to the respondents' submissions.
7. Ms. Jory's submission was received on September 24, 2012. Mr. Beacham's response submission was received on October 10, 2012 and Ms. Jory's final reply was received on October 13, 2012. Ms. Jory sent a further 20 page submission on October 15, 2012 which appears to be in the form of a new complaint, but without the filing fee, raising issues of odour, noise, emissions, fly nuisance, stench and seeking the same remedy as sought in the complaint hearing of alternate access and relocation of the silage bag site.

## ANALYSIS

8. In her submission, Ms. Jory confirms that she wishes to pursue all her complaints. She does not address the issue of duplication. Instead, after recounting the history of ownership of her property and of the farm operation, she asks for the same relief she requested in her earlier complaint, namely alternate access to the farm property. She also asks that trees that were killed be replaced and a ditch be filled in. Although this relief was not sought in the earlier hearing, the panel did consider the issue of the removed trees and ditch: Decision, para. 78.

The complainant also says that the ditch put in along the side of the gravel road nearest to her property caused some trees to die. While this may have been the case, the evidence did not in our view indicate any significant die back. We accept the evidence of the individual hired to clear the trees that trees were not cleared between the road and the Jory property.

9. The complainant now seeks a ventilation system in the barn to blow odours away from her property. This is a new remedy and more will be said on it later.
10. I have reviewed all the complaints filed. In my view, issues of dust, particulate matter, diesel exhaust and noise caused by truck traffic along the road adjacent to the Jory property and the operation of equipment at the silage bag / manure pit site as well as the adequacy of the buffer (including tree removal and the installation of a ditch) were fully addressed by the hearing on the merits and the August 2012 decision. The complainant was given an opportunity to describe any material changes in the farm's operation since the November 2011 hearing in her submissions. She has not demonstrated that the practices considered in the August 2012 decision are significantly different from the practices that she now takes issues with.
11. In that regard, the hearing panel made the following comments on the farm's practices: Decision, para. 73.

Harvesting forage crops, driving trucks, operating an ag bag site, emptying a manure pit and applying manure to fields are all usual practices of a dairy operations. The evidence establishes that not only are the respondents' practices on the Cedardale farm in keeping with the practices of similar dairy farms in the area, but that the respondents operate a modern, well organized, well kept dairy farm and

maintain high standards. In isolation then, the farm operations on the Cedardale farm that give rise to the disturbances complained of would clearly meet or exceed industry standards.

12. The panel considered proximity and site specific characteristics including the appropriateness of the buffer and historical land use and made its conclusions: Decision, para. 86.

The respondents and others before them have carried on a dairy operation on this farm for many years. Apart from the minor tree clearing referred to above there has been little change in land use. Further as set out ... above, the respondents have shown some threshold of consideration for their neighbor and modified their operations accordingly.

13. Taking into account proximity, the remaining tree buffers and prevailing winds, as well as the additional measures taken by the respondents described in paragraph 83 of the decision, the panel found that disturbances complained of resulted from normal farm practices.
14. Clearly, Ms. Jory is dissatisfied with the panel's decision. However, if the complainant was dissatisfied with the panel's decision, her remedy was to appeal that decision to the Supreme Court of British Columbia. She has not done so.
15. Under section 6(2) of the *FPPA*, quoted above, I have the authority to refuse to refer an application to a panel for the purpose of hearing where I find the subject matter of the application is trivial, frivolous or vexatious or is not made in good faith, or where the complainant does not have a sufficient personal interest in the subject matter of the application. The terms "vexatious" and "frivolous" appear as somewhat jarring terms to persons who are not legally trained. However, as used in statutes, they have established meanings. For the purposes of this case, it will suffice to note that a "vexatious" complaint will be a complaint that is made with an intent to harass, or even if not made with such intent, which abuses the board's process because it is asking the board, and the opposing party, to commit resources to matters that have been fully and finally adjudicated.
16. A "frivolous" complaint will be one that is inappropriate to refer to a panel because it has no reasonable prospect of success. While this is a judgment that needs to be exercised wisely and with restraint, it recognizes that it is fundamentally unfair to the other party, and contrary to the public interest, to establish a hearing process with regard to a complaint that has no reasonable prospect of success.
17. In my view, the complainant's attempts to relitigate the same issues of dust, particulate matter, diesel exhaust and noise caused by truck traffic and the operation of equipment at the silage bag site, or any of the other farm practices considered in the panel's decision, in the face of a full hearing on the merits and in circumstances where she was represented by counsel, abuse the Board's process and are therefore vexatious. She has not demonstrated reasonable or sufficient grounds to warrant a new hearing on these same issues and it would be wasteful, and unfair to the respondents, to allocate further resources of this board to hear matters already adjudicated. Nor does the addition of "odour" to the disturbances she perceives from the very same practices adjudicated on by the panel change my conclusion. If odour was a serious concern with respect to the practices at issue in the hearing, the complainant could and should have raised it. Nor does anything suggest that an "odour" complaint (as opposed to noise, dust, particulate and exhaust) could in this case have possibly changed the panel's assessment of whether the farm practices were normal farm practices.
18. The complainant did make an effort to re-characterize the odour, dust, particulate matter, and diesel exhaust issue as a matter of air pollution which is she alleges is causing carbon

monoxide poisoning and other serious health impacts. She alleges violations of the *Waste Management Act*, the *Health Act* and the *Environmental Management Act*. These re-characterizations of the nature of the complaint do not give BCFIRB the jurisdiction to rehear matters already determined. Further, BCFIRB does not have jurisdiction to deal with matters of pollution or violations of other statutes. Such determinations must be made by the appropriate agency with jurisdiction over the particular issue or contravention alleged.

19. Thus, to the extent that the subsequent complaints seek to advance issues that have already been decided in the August 2012 decision, I find them to be vexatious and I decline to refer them to a panel.
20. This brings me, finally, to a review of those issues in the subsequent complaints which were not identified as issues in the August 2012 decision and which were not subject to determination by BCFIRB. I have framed the “new” issues as follows:
  - Reconfiguration of barn resulting in increased odour from manure and tractor exhaust;
  - Poor manure management - including hauling, spillage and spraying of manure coupled with inadequate buffer;
  - Poor pest management (flies and rodents)
21. Of these three issues, I observe that issues relating to manure management were in fact raised by the complainant in her September 2009 complaint which was settled by agreement in May 2010 but which agreement ultimately failed resulting in the May 2011 complaint that was adjudicated. In her 2009 complaint, the complainant alleged that the respondent was hauling manure and spilling it on the road and particulate matter from the manure was contaminating her pond and well. The KP addressed manure management issues in relation to the clean out of the manure pit as well as the hauling of manure. He found the equipment in good repair and observed that spillage from the type of manure tanker used was “almost impossible”.
22. In the hearing of the 2011 complaint, the complainant represented by counsel, chose not to focus on manure management issues. However, to the extent that manure was raised as an issue, the panel considered it and in paragraph 73 which I referred to above concluded that the farm’s manure management practices clearly meet or exceed industry standards.
23. In light of the panel’s conclusion, I am of the view that the manure management issues raised by the complainant have been addressed by the adjudication process. If manure management was a serious concern, the complainant could and should have said more at the hearing. I find that issues relating to manure management have no reasonable prospect of success and accordingly, I decline to refer this issue to a panel for hearing.
24. The remaining two issues relating to pest management and barn reconfiguration are not well developed (despite the opportunity to describe them fully in this submission process) and appear secondary to the complainant’s ongoing concerns about odour, dust, particulate matter, and diesel exhaust caused by truck traffic and the operation of equipment which have already been adjudicated. Interestingly, the complainant does not identify any remedy regarding pest management. She does however seek a ventilation system to address her concerns regarding odour from the reconfigured barn.

25. The respondents agree that the complainant raises some new issues but says her complaints about flies and rodents are grossly exaggerated. They acknowledge that, between the date of the panel hearing and the release of its decision, there have been renovations to the barn and construction of a new paddock.
26. The hearing panel concluded that the respondents operate their modern dairy farm to a high standard. This conclusion, together with my finding above that the complainant's efforts to relitigate the same issues are vexatious *and* the fact that the issues relating to manure management and pests could have been fully canvassed in the original complaint, caused me to debate whether either of the "new" issues should also be considered vexatious and summarily dismissed.
27. I recognize that this is an emotionally charged issue for the complainant and I am prepared to give her the benefit of the doubt. I also recognize that the reconfigured barn complaint relates to subsequent events. But that does not mean that I am prepared to commit further board resources to addressing the complainant's concerns without some basic evidentiary threshold to warrant a full hearing.
28. As noted above, if a complaint has no reasonable prospect of success, it should not be referred to a panel. The history and dynamics of this matter are such that I consider it incumbent on me to make that determination. I stress that I am doing so not for the purpose of conducting a disguised adjudication of the merits, but for the purpose of assessing, on a preliminary and threshold basis, whether in fact there is enough in these complaints to warrant the time, expense and further delay for all of a further hearing and decision.
29. To assist me in making that determination, I have decided, pursuant to s. 10(3) of the *FPPA* to direct that a specialist or specialists knowledgeable in dairy operations and pest control be retained by BCFIRB to attend at the respondents' farm and to write a report to the Chair. That report will address two subjects. First, to what extent are the practices in question impacting on the complainant's property? Second, do the farm's practices in question raise any normal farm practice issue(s) that warrants further consideration? Upon receipt of that report, I will provide a copy to the parties, give them an opportunity to comment, and then decide whether to refer this matter to a hearing panel.
30. Finally, I wish to address an administrative matter on which I intend to give directions to BCFIRB staff pending the conclusion of the current process. The context here is that the complainant has in this matter been engaged in lengthy, repetitive and unrelenting communications with BCFIRB and its staff in relation to this matter. While I fully appreciate the subjective importance of this matter to her, and while BCFIRB did its utmost to be responsive to her concerns while the panel's decision was pending, the reality is that BCFIRB can no longer commit the time and resources to responding to numerous and repetitive phone calls, emails and faxes. We have limited staff resources and a considerable caseload which requires us to administer complex statutes as well we are preparing to implement a fourth.
31. BCFIRB has addressed the complainant's concerns in good faith. It has already rendered a decision, and it is continuing in good faith to address the remaining issues. However, BCFIRB cannot be inundated with further communications that are not invited as part of a submissions process.

32. I would hope that the foregoing will be sufficient to ensure that BCFIRB only receives further communications in response to invitations by BCFIRB to do so via the proper processes of the board. However, I consider it appropriate also to direct BCFIRB staff that, except as invited by BCFIRB pursuant to the ongoing process described in this letter or except with leave of the Chair, staff are not to accept for filing any further communications from the complainant, and are not to accept any new complaints in relation to these respondents. It is my hope that this direction will assist all parties to proceed with the remaining aspects of this matter in a fair and orderly manner.

### **Order**

33. Complaints #11-25, 11-26, 11-27, 12-01, 12-02, 12-04, 12-05, 12-06, 12-12, 12-15, 12-17, 12-18 and #12-21 will not be referred to a panel for hearing.
34. Complaint #12-20, to the extent that it refers to farm activities which include noise, odour, dust, particulate matter from manure, and diesel exhaust caused by truck traffic, operation of equipment at the silage bag site or any other farm practice adjudicated on by the panel in the August 2012 decision, will not be referred to a panel for hearing.
35. The remaining issues which remain live in Complaint #12-20 relate to reconfiguration of barn resulting in increased odour from manure and tractor exhaust and poor pest management (flies and rodents).
36. No further steps will be taken with respect to the live issues in Complaint #12-20 until BCFIRB retains a specialist or specialists to attend at the respondents' farm and prepare a report to assist me in determining whether there is sufficient substance to those issues to warrant referral to a hearing panel.
37. The parties will be provided with a copy of any report prepared by the specialist(s).
38. The parties will be given an opportunity to make submissions before I make a decision to refer any or all of the above issues to a panel for hearing and to impose any further procedural directions necessary to manage this dispute.
39. Until such time as this process concludes, BCFIRB will not accept any new complaints from the complainant with respect to these respondents, and will not accept any further communications from the complainant except with leave (prior permission) of the Chair.

Dated at **Victoria, British Columbia**, this **6<sup>th</sup>** day of **November, 2012**.

### **BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD**

**Per**



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Ron Kilmury  
Chair