



May 26, 2015

File #15-03

DELIVERED BY E-MAIL

Lynn Taylor
[REDACTED]
[REDACTED]

Scott and Marnie Holt
[REDACTED]
[REDACTED]

Dear Sir/Mesdames:

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

On April 2, 2015, the BC Farm Industry Review Board (BCFIRB) received a formal complaint from Lynn Taylor regarding odour, noise and flies generated from a neighbouring property owned by Scott and Marnie Holt. A preliminary issue was identified as to whether the complaint related to a farm business. In BCFIRB's April 15, 2015 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 *Farm Practices Protection (Right to Farm) Act (Act)* has no application. The decision sets out the following test:

In determining whether a person is carrying out a "farm business" a number of factors can be considered (this list is neither exhaustive nor exclusive, and not all factors are necessarily of equal weight):

- 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 farm a farm education or farm research institution?

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

The parties were also asked to provide submissions and any supporting documentation on whether the disturbance and practice complained of relate to a farm business.

**British Columbia
Farm Industry Review Board**

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
780 Blanshard St
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.firb.gov.bc.ca

Section 6(2) of the *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.

I have received and reviewed the following written submissions from the parties:

1. Respondent (Holt) submission dated April 21, 2015 & May 4, 2015;
2. Complainant (Taylor) submission dated April 27, 2015 with supporting documents.

The Legislation

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.

Notice of Complaint

In this complaint, Ms. Taylor says she is aggrieved by the siting of a livestock shelter and pen built to contain goats, located approximately 12 meters from the common property line. The disturbances complained of include odour, noise and flies.

Submissions

Although the submissions raise a number of issues existing between the parties, I am here only concerned with the issues on the complaint and whether they relate to a farm business.

On the issue of whether the disturbances complained of arise from a farm operation conducted as part of an underlying farm business, the respondent, Scott Holt, advises that his family lives on 3.03 acre property within the Agricultural Land Reserve on which they keep a number of animals (4 horses, 6 pigs, 11 goats (4 does and 7 babies) and a small flock of Banty chickens). Each year, his children raise goats for showing and selling as part of 4-H. These animals are a hobby and not a business even though from time to time an animal is sold. Sale proceeds go to cover the cost of feed, housing, bedding, minerals, supplies, first aid and vet bills. Mr. Holt also provided particulars of the other animals his family keeps although it is unclear that they are the subject matter of this complaint (the notice of complaint only references goats). Although the animals raised on this property and manure sales may generate a small amount of money, Mr. Holt says these undertakings are a hobby done for pleasure and entertainment and are not a business. As such, Mr. Holt says that BCFIRB does not have jurisdiction to hear this complaint.

By way of reply, Ms. Taylor maintains that the Holts do have a farm operation. They breed and raise livestock and poultry and admit to selling and auctioning off pigs, steers and goats. They use farm machinery. She estimates that 357 tons of manure has been produced by the various animals over the last 8 years and she says very little manure has been sold off or given away. She says the Holts show little consideration for their neighbours in how they manage their animals and manure. The disturbances from the Holt farm operation make it impossible for Ms. Taylor and her elderly father to enjoy their property.

In response, Mr. Holt says that auctioning off animals through 4-H is not a farm business. He also says the goat herd has been reduced with no further intent of breeding. Even if the breeding and selling of goats could be considered a farm business, as his family has no intent to continue selling goats, any such business has ceased. Mr. Holt also takes issue with Ms. Taylor's manure calculations, finding them "disconcerting". He also says that a neighbour has removed significant amounts of manure with a large dump trailer.

Analysis

The raising and keeping of animals such as goats, pigs and cattle fall within the definition of "farm operation" in section 1 of the *Act*. However, not every farm operation is carried on by a farm business. On the submissions before me I accept that this farm operation is being done on a sufficiently small scale so as to be a hobby rather than a "farm business". In coming to this conclusion, I have considered all the animals raised on the respondent's property and not just the goats as it was unclear whether the animals in the "livestock shelter" included animals other than goats.

The dictionary definitions set out in the passage from *Asquini* quoted above, demonstrate that “business” amongst other things is “one’s regular occupation, profession or trade” and includes a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain”. The fact that the respondent may sell an animal or manure from time to time, does not, in and of itself, make this a commercial undertaking. Even if the sale of animals was sufficient to give the respondent farm status with BC Assessment (which on the facts it is not), farm status alone may not be sufficient to prove a farm business. In the recent case of *Lychowyd v. Washtock*, July 31, 2014, a panel found that an equestrian facility that raised horses (one of which had been sold to maintain farm status) was not a commercial enterprise as the horse related activities on the property were not being conducted as part of a farm business but rather were a hobby or recreational pastime.

In my view, there is no commercial enterprise being carried on for profit on the respondent’s property; the occasional sale of a steer or goat cannot be considered employment habitually engaged in for livelihood or gain. As such, I conclude that the respondent is not operating a farm business and I decline to refer this complaint to a panel as, in my view, the *Act* does not apply. The complainant’s remedies lie with the local government or alternatively, a civil action in nuisance.

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