



June 23, 2016

Files: #16-01 & #16-02

DELIVERED BY EMAIL

Ron and Lori Ruck
[REDACTED]
[REDACTED]

Gerry and Roberta Deleurme
[REDACTED]
[REDACTED]

John Tuovila
[REDACTED]
[REDACTED]

Dear Sirs/Mesdames:

A COMPLAINT FILED UNDER THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT CONCERNING MANURE MANAGEMENT PRACTICES AND MORTALITY DISPOSAL

On April 22, 2016 Ron and Lori Ruck and John Tuovila filed separate complaints with the BC Farm Industry Review Board (BCFIRB) regarding the manure management practices (odour), runoff and mortality disposal on what they describe as a neighbouring feedlot owned by Gerry and Roberta Deleurme.

On May 3, 2016, BCFIRB case management staff spoke with the respondent Mr. Deleurme and a preliminary issue was identified relating to whether the complaint related to a farm business. BCFIRB sent a letter to the parties which stated in part:

Before taking any further steps with respect to this complaint, it must be confirmed that the practice complained of (manure management and mortality disposal) result from a farm operation conducted as part of a farm business. To assist in that determination, I am requesting that the parties provide written submissions on this issue (i.e., does the complained of practice relate to a farm business?).

The parties have now provided their submission on this matter and I have reviewed them all along with the supporting documents.

Submissions of Respondent (Mr. Deleurme)

In his May 5, 2016 submission, the respondent states that despite the fact that his land is in the Agriculture Land Reserve (ALR) and the land is used for agriculture, it has never been used as a farm business. It does not have farm status, does not qualify for tax credit, nor is it used for farm education or research. The respondent believes that the complainants are being unreasonable and their claims

with respect to his operation are exaggerated. He says if they do not like the sight of farm animals perhaps they should move to a more urban area.

Submission of Complainants

In his May 12, 2016 submission, Mr. Ruck states that he believes the respondent has been operating a “farm business” for many years and with respect to the definition of “farm operation”, he has witnessed the following activities on the respondent’s property:

- Buying, selling, breeding and slaughtering beef, sales of slaughtered beef;
- More than 30 cattle on the property during the winter months – cattle numbers vary after winter, there is a bull on property;
- Buying, selling and slaughtering chickens, sales of slaughtered chickens, as many as 50 at a time, egg sales, 100+ chickens in the coop, they have a rooster;
- Buying, selling and breeding goats;
- Buying, selling of sheep and pigs;
- Buying and selling hay, round and square bales;
- Growing and selling of corn;
- Irrigation of pasture
- There is a barn, hay shed a shelter for sick animals, chicken coop, a heated livestock water trough, a livestock squeeze and livestock loading chute;
- There appears to be a walk-in freezer or fridge;
- Farm machinery includes an orchard tractor with a bucket and blade, a large tractor to move and stack bales of hay, livestock trailer, machine for chopping up cattle feed;
- Manure is applied to the pasture;
- Confined livestock area is approximately 500 square meters with hard, compacted manure that is 40-50 cm deep;
- Processes and directly markets products from the farm.

In his May 16, 2016 submission, Mr. Tuovila included undated photos of a number of cows standing in a muddy enclosure and a photo of the muddy slurry that builds up against his retaining wall. He also includes copies of the respondent’s internet advertisements offering goats, pigs and sheep for sale.

In terms of the location and magnitude of the farming operation in comparison to other operations producing similar agricultural products, Mr. Tuovila says the only agriculture in the surrounding area is orchards and alfalfa. Compared to other commercial feedlots as described on the internet, he says the respondent’s stocking density appears equal or higher. While he cannot find numbers for specific feedlots, Mr. Tuovila says in the available literature density ranges of 12 to 20 m² per head are described as a maximum. He calculates the respondent’s animal density in the range of 15 – 16 m². In Mr. Tuovila’s view, given the size of the farm, the respondent is operating a commercial farm.

On the issue of whether the farm operates or is intended to operate on the basis of generating income or profit, Mr. Tuovila acknowledges that it is difficult to prove another person’s income and intentions. However, he has included documents with his submission that show some of the respondent’s non-cattle (pigs and sheep) sales over the past few months which total in excess of \$3,000. There are also sales of goats, chickens, ducks and geese which he does not provide ads for as online ads expire after

only a few months so he has no evidence of these sales. Mr. Tuovila has seen as many as 16 goats on the property at one time and one ad suggested that the respondent intended to continue breeding them.

Mr. Tuovila also provided the following observations. His home office is 20m from the feedlot and he is aware of the “comings and goings on the farm” and observes regular customers. While there may only be 20-30 head of cattle on the farm at any given time, the respondent buys and sells cattle, taking them to auction on Tuesday’s and Thursday’s. The respondent spends time daily grinding fruit for the cattle and a truckload of bread is brought in every Monday morning. As for equipment, the respondent has two tractors, a flat-bed trailer used exclusively for hauling hay and a walk-in freezer. Mr. Tuovila says the operation is the respondent’s sole occupation and is operated with intensity equal to any other business.

On the issue of whether the farm qualifies for a farm tax credit under the *Income Tax Act*, Mr. Tuovila does not dispute the respondent’s claim that his farm does not qualify for the farm tax credit, his belief is that this is a personal choice. He does not know how much profit the respondent makes from cattle sales but, based on the small sample of just the most recent ads, it appears he easily makes enough revenue from farming to meet the \$10,000 (annual value of primary agricultural production) threshold for a property of this size.

In his May 19, 2016 reply submission, the respondent again denied using his 1.79 acre piece of land as a feedlot and says this is not a farm business. He does not try and explain any of the photos or ads produced and instead says these complainants’ submissions are over exaggerations, half-truths and assumptions. He says the animals are his ‘way of life’. Running a hobby farm is expensive and there is no financial gain or profit from the operation. He says right now, he has 1 milk cow and 2 calves, three Holstein steers, a Holstein-cross heifer and a bull. The 3 steers will be slaughtered in June, and the meat will be shared among family and friends. The bull will leave in July. He has 31 laying chickens, 10-12 hens and 2 roosters. The fertile eggs are incubated and the chicks are raised as pets. There are also 2 geese, 5 ducks, a pig and a Nigerian Dwarf goat. This is not a feedlot run as a business rather he describes it as “a couple that enjoys a variety of animals and poultry”.

DECISION

Section 3 of the *Act* requires that a complaint arise out of a farm operation carried on by 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;

...

The question for me is essentially one of statutory interpretation, namely do the facts alleged in the complaint fall within the statutory definition of a “farm operation conducted as part of a farm business”. The “farm business” requirement makes it clear that the *Act* was not intended as redress for every complaint between neighbours involving practices relating to plants or animals on a piece of land. 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 and recognized that 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 issue of whether the complaint relates to a farm business, I have adopted the approach set out in *Hanson v. Asquini*:

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 operation a farm education or farm research institution?

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....

In his November 20, 2010 decision dismissing the *Hodge v. Eben* complaint, my predecessor made the following comments:

The term “farm operation” is broad, and it includes “using farm machinery, equipment, devices, materials and structures”. But while the definition is broad, it has limits. It is clear from the definition itself, and the overall purpose of the *Act*, that the use of equipment must be incidental to a farming activity....

While the Provincial board has a specialized role to play in deciding questions such as what constitutes a farm operation, that role does not exclude the application of common sense. ..

In short, if the complaint does not relate to an underlying farm business, it must be dismissed and the complainant is left to access any private law remedies that might be available.

Here, the complainants submit that the respondent's livestock and poultry related activities (including manure management) are conducted as part of a farm business. They rely on observations of varying numbers of livestock including cattle, goats, sheep, pigs as well as poultry, ducks and geese housed and fed on the property and then butchered or sold. They have seen these practices over many years. They see activities related to feed, including the buying and selling of hay and corn, grinding of fruit and delivery of bread. They report seeing a large walk-in freezer and regular customers. They have also seen ads on the internet selling livestock and/or poultry.

The respondent says despite the fact that his land is in the ALR and used for agricultural purposes, it has never been a farm business. It does not have farm status and does not qualify for tax credit. He says this is a 'way of life', a hobby farm and butchered animals are shared among family and friends with no anticipation of financial gain or profit.

Based on the submissions received, I cannot summarily dismiss this complaint as I am uncertain whether the respondent is carrying on some form of farm business given the magnitude of operations and activity reported by the complainants. In this instance, the only course open to me is to accept this complaint as filed and refer it to a panel for hearing. The panel, with the benefit of oral evidence and argument, can make its own determination as to whether the on-farm practices complained of relate to a farm operations conducted as part of a farm business and, if so, whether they accord with normal farm practice.

I therefore refer this complaint to hearing in accordance with s. 5 of the *FPPA*.

BCFIRB case management staff will contact the parties to arrange to a pre-hearing conference.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



John Les, Chair
BC Farm Industry Review Board