



November 20, 2008

File #08-01

DELIVERED BY MAIL or EMAIL

Julie Hodge

William (Bill) Eben

Dear Sir/Madame:

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

On August 21, 2008, I wrote to both parties asking them to address the issue of whether the complaint as filed is within the jurisdiction of the British Columbia Farm Industry Review Board (the “Provincial board”). Ms. Hodge’s complaint relates to the unsightliness of the Eben property.

As it was my preliminary observation that it was unclear whether the alleged unsightliness could properly be described as resulting from a farm operation being conducted as part of a farm business, I asked for submissions from the Complainant and Respondent addressing this issue.

Despite asking Mr. Eben for documentary evidence (such as sales receipts or invoices, tax documents, or the types of documentation that might be provided to prove farm status for income tax or property tax purposes or to support entitlement to use agricultural plates) to support his position that he was operating a farm business, Mr. Eben chose not to produce any such documents. He takes the position that farm income statements are “defined by law as Confidential Information”. He instead provided a seven page narrative of the history of farming operations on the property, his current operation (“18 sheep and 270 large meat birds just processed”) and his indefinite future plans to build a greenhouse and barns from recycled materials and apply to be a new entrant chicken producer.

DECISION

There does not appear to be much dispute between the parties on the facts. Mr. Eben lives on a 13.5 acre property adjacent to Ms. Hodge. This is a rural area and the property is in the Agriculture Land Reserve. Ms. Hodge’s Notice of Complaint received May 9, 2008 states as follows:

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:
3rd Floor – 1007 Fort St
Victoria V8V 3K5

Email: firb@gov.bc.ca
Website: www.firb.gov.bc.ca

The Property in question has become a dumping ground for disposal companies, of non-farm equipment, massive amounts of construction demolition materials, old school buses and so on.

Mr. Eben does not deny this allegation but maintains that he uses or intends to use the materials on site for farm purposes and further, if Ms. Hodge had not removed certain trees along her fence line, his property would not even be visible.

Section 3 of the *Farm Practices Protection (Right to Farm) Act* (the “Act”) provides for complaints to the Provincial 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.

There is no doubt that Ms. Hodge is aggrieved by the practices of Mr. Eben in bringing salvaged materials onto his property and storing them for later recycling or retrofitting for other uses. She complains of:

...a bunch of broken trucks, cars, sailing boat that is part of his fence on Bench Road, which has not moved for 20 years, the year we purchased the adjoining properties. Items are so numerous along the property fence line, toilets, sinks etc. obviously from a hotel/motel demolition, that has been there for over 4 years.

However, to be a valid complaint, the alleged unsightliness must result “from a farm operation” being “conducted as part of a farm business”.

I turn to the first consideration of whether the alleged unsightliness complained of results from a farm operation. In reviewing Ms. Hodge’s complaint, the activity or operation that is the subject of this complaint is the storage of non-farm and farm equipment, massive amounts of construction demolition materials, old school buses and other vehicles. She alleges that the property is a dumping ground for disposal companies.

Mr. Eben maintains that the old machinery serves a useful purpose and that some of the machinery is used for farm operations. He argues that he collects what other people throw away. He never throws things out that might be needed again. As an example, he claims to have used cages from an egg barn he deconstructed in 1994 to recently transport his birds to slaughter. With the materials from a deconstructed barn, he hopes some time in the future to build a barn on his property and qualify as a new entrant chicken producer. He has a “wide variety of trucks” and has established “a fleet of single axle farm trucks adaptable to specialty usage to cover all aspects of farm operations and construction of farm buildings”. He states he purchases old equipment with an “eye to using it for custom tractor work”. He converted oil drums for cooking potatoes for his pigs 25 years ago and these “are ready to be used again”. Mr. Eben intends some time in the future to complete construction of his chicken barn as well as build another large barn (for an unspecified purpose) and a commercial greenhouse. He alleges that these structures when completed will “use up all the building material currently on the property”. Mr. Eben concedes that there are clearly non-farm items on his property but this is his home and he does have other interests.

Based on my review of the submissions and the Case Management Report and Site Report, there appears to be little question that the Eben property is unsightly. However, for the Provincial board to have jurisdiction, that unsightliness must relate to a farm operation as that term is defined in the *Act*.

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. Here, a significant portion of Mr. Eben’s property is being used to store salvage materials. Mr. Eben’s submissions fail to demonstrate that these salvage materials are incidental to any legitimate farming activity. While Mr. Eben’s says he has some sheep and until recently, meat birds, I find insufficient connection between these activities and the massive amount of construction and salvage materials on site.

Mr. Eben has tried very hard to connect the salvage materials to a farm purpose; he says he is building or plans to build barns and a greenhouse with these materials. He plans to convert vehicles and equipment for “special usage to cover all aspects of farm operations and construction of farm buildings”. These future plans however are non-specific and indefinite; they may or may not come to pass.

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 this situation, what a reasonable person would see is what Ms. Hodge sees and what Mr. Eben does not deny, a massive amount of farm and non-farm equipment, construction demolition materials and old vehicles. I do not think the test for being a farm operation is whether a creative and mechanically inclined person can find some future farm use for an item.

I want to be clear that this is not the case where the subject of the complaint is an area of discarded items adjacent to some other agricultural activity. This is not what is often called a “bone yard” where a farmer stores items which he is no longer using in his agricultural operation with the intention that they may have some future purpose or may be sold for scrap. In this case, Mr. Eben is attempting to argue that the “bone yard” *is* the agricultural activity.

I also find support for this position in the definition of “farm business”.

"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;

The *Act* speaks to current operations, farm businesses that *are* operating. The *Act* does not speak to future actions or future businesses that may be undertaken. The purpose of the *Act* is to recognize the vital role that farming has to British Columbia’s future. In balancing conflicts between farmers and their neighbours, the *Act* exempts responsible farmers using “normal farm practices” from nuisance actions and certain municipal by-laws. However, in my view the drafters of this legislation did not intend the protections of the *Act* to extend to what is primarily a salvage yard

operation, whether or not it could be argued that the salvage has a loose connection to some future potential agricultural activity.

In the circumstances, it is my conclusion that Ms. Hodge is aggrieved by unsightliness (an “other disturbance”). However, this disturbance does not result from a “farm operation”. Given my finding on the first issue, it is unnecessary for me to go further and make a determination as to whether this is a farm business. However, I do have a few comments on this point.

The analysis of this issue was hampered by Mr. Eben’s failure to produce any documents to support his claim that he indeed has a farm business. He has maintained that any documents provided to support his claim for farm classification are confidential by law. I disagree with this interpretation. The application documents do have a notation stating “the information on this form is confidential and will only be released if required by law”. However, what this means is the BC Assessment Authority cannot be compelled to release these documents in the absence of a court order. That does not mean that Mr. Eben is precluded from disclosing these documents or the information contained therein or even the actual assessment document which would confirm whether for assessment purposes the property has farm classification. Further, Mr. Eben could have disclosed invoices for feed, transport of livestock, slaughtering or documentation relating to sales. He claims to have had very recently processed 270 large meat birds. Presumably, there would be some form of documentation relating to the catching, processing and sale of these birds; none were provided. If he had vehicles with farm status, those records could have been disclosed. Given that Mr. Eben claims to work on his property full time, income tax records could also have been provided.

However, based on the materials provided, if I were to find there was a farm business on this property, I would have found that any farm business related to the sheep and the recently processed meat birds not the salvage yard. As I do not find that there exists a sufficient connection between unsightliness complained of and any sheep or meat bird business, I would have dismissed the complaint on this basis as well.

As I find that Mr. Eben is conducting a salvage yard, which is not a farm operation and not related to or necessarily incidental to any farm business on the property, the *Act* has no application. As such, Mr. Eben is not entitled to the protections of the *Act* to exempt him from nuisance actions and certain municipal by-laws.

Accordingly, the complaint is dismissed. Any remedies that the Complainant may wish to pursue will need to be advanced in some other forum.

Yours truly,



Richard Bullock
Chair

Copy: Nino Morano, Cowichan Valley Regional District