



November 3, 2017

File #16-06

**DELIVERED BY EMAIL AND COURIER**

Leah and Kyle Pepper  
[REDACTED]

Mike and Johanna MacDonald  
[REDACTED]

Dear Sirs and Mesdames:

**A COMPLAINT FILED UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT* CONCERNING NOISE, DUST AND RUNOFF**

On October 21, 2016, the BC Farm Industry Review Board (BCFIRB) received a complaint from Leah and Kyle Pepper, of Princeton, BC (the complainants) regarding dust, noise and runoff generated by neighbouring property owned by Mike and Johanna MacDonald (the respondents) pursuant to section 3 of the *Farm Practices Protection (Right to Farm) Act (Act)*.

**Preliminary Determination**

In BCFIRB's October 31, 2016 correspondence responding to the filed complaint, the parties were requested to make submissions on the following matter:

Before taking any further steps with respect to this complaint, it must be confirmed that the practice complained of (noise, dust and runoff) 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?).

On November 24, 2016, the Chair of BCFIRB issued a preliminary ruling that there was a *prima facie* case that the complained of practices resulted from a farm business as follows:

Given the respondents' evidence of the number of birds they house on their property and the fact that they do not seem to be taking issue with the fact that they are a farm business, I am prepared to find that the complainants' submission (and the attached photographs) establishes a *prima facie* case that the respondents are operating a small poultry (egg and meat bird) operation and are a farm business within the meaning of the Act.

**Referral to Panel**

The Chair referred the complaint to a panel for hearing and pursuant to section 4 of the *Farm Practices Protection (Right to Farm) Act (Act)*, a Knowledgeable Person (KP) was engaged to

assist in the complaint. Due to winter conditions, a site visit could not be conducted until April 20, 2017. The KPs' report was delivered to the parties on June 1, 2017.

As presiding member, I reviewed the KPs' report and concluded that the preliminary issue of whether the respondents' farm was in fact a farm business was put in issue by the KPs' observations that the respondents kept the chickens (55 various breed hens and 13 males) as a hobby, largely for pleasure and paid the feed bill themselves. The respondents estimated their egg production at approximately 15 to 18 dozen eggs per week while the KPs' annualized estimate was 13 dozen per week.

On June 26, 2017, I wrote to the parties as follows:

Before I can proceed further with this complaint, I need to be satisfied that section 3 of the *Act* applies. Accordingly, I am requesting that the parties provide further submissions, specifically addressing the issue of whether the respondent can properly be seen as carrying out a farm business assuming the facts as reported by the KPs are correct. If either party takes the view that the KPs are in error in their report on this material question, they should provide evidence which supports their position.

BCFIRB set a schedule for the parties to provide their submissions. Unfortunately the submissions were significantly delayed due to the parties being on evacuation alert resulting from an extreme fire season. The respondents filed a submission with BCFIRB on August 17, 2017 which was provided to the complainants. On October 24, 2017 BCFIRB held a pre-hearing conference call to hear further evidence from both parties on whether the complaints relate to the practices of a farm business.

### **Submissions of the Parties**

Ms. MacDonald testified for the respondents and described their property as approximately 10 acres and not in the Agricultural Land Reserve. The chicken coop and run has been in existence since 1999 and is grandfathered under previous local government guidelines with which she says she is in compliance. The chicken coop was built in the current location because it is dry and does not flood. They currently have approximately 90 birds but will be getting rid of 35-40 birds, so will have a total of 55 mixed breed birds. She says she keeps the birds for her own enjoyment and for stress relief. The birds lay approximately 1.5 dozen eggs per day (for a total of 8 dozen eggs per week) which she sells to friends and neighbours and uses for her own consumption. She said she raised and sold meat birds in the past but has since stopped as the Ministry of Agriculture told her to stop. Ms. MacDonald testified that they do not operate a farm business, do not have farm status, and do not make any money from the sale of eggs as it costs an additional \$200 per month for feed and bedding for the chickens. She agrees with the findings of the KPs' report.

Ms. Pepper testified for the complainants and stated that the respondents do door egg sales. She introduced a photograph of the respondents' sign advertising egg sales (\$4 dozen) with free delivery. Further signage advertises a horse stall for rent and hay sales. She says that the Regional District of Okanagan Similkameen considers the respondents' operation a farm and has deferred bylaw enforcement saying this is a matter for BCFIRB. She agrees with the observations in the KPs' report in relation to the amount of egg production on the respondents' property.

## Analysis/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...

Thus, it is not enough to prove that the respondents operate a farm and that the complaint relates to farm operations. Clearly, the respondents here do operate a small poultry farm and the complainants’ have alleged disturbances that relate to poultry rearing practices. But not every complaint between neighbours involving practices relating to plants or animals supports a complaint under section 3 of the *Act*.

The question 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”. In addressing whether the complaint relates to a farm business, I have considered the factors set out in *Hanson v. Asquini* (October 31, 2003) which include such things as the location and magnitude of the farming operation in comparison to other operations producing similar agricultural products and whether the farm operation operates or intends to operate on the basis of generating income or profit.

Here, the complainants submit that the respondents’ poultry related activities are conducted as part of a farm business by pointing to evidence of farm gate sales and the fact that the Regional District considers the respondents’ operation a “farm”. The complainants did not however dispute the KPs’ observations as to the volume of egg production on the respondents’ property.

The respondents’ evidence is that their land is not in the ALR. Ms. MacDonald did not dispute that they have a farm and produce eggs but she does dispute that this is a farm business. They do not have farm status and do not qualify for a tax credit. She says this is a hobby, done for pleasure and stress release. Ms. MacDonald did not dispute that she sells eggs locally but says she has no expectation of financial gain or profit and pays for the costs of raising the chickens out of her own pocket.

In order for there to be a valid complaint before BCFIRB (or for that matter for a respondent to access the protections under either section 2 or section 3 of the *Act*), complaints must relate not just to a farm but to a farm business. I agree with the analysis in *Asquini* that in order for an operation to be a farm business, there must be some aspect of an agricultural undertaking carried out for the purposes of generating income or profit.

In my view, a farm business means more than what we see here, the selling of a small volume of agricultural product from one’s back door. Given the fact the neither the complainants nor the respondents dispute the observations of the KPs regarding the very small volume of the respondents’ egg production and given the uncontroverted evidence that this is a hobby and not a business, I conclude that this complaint does not relate to an underlying farm business.

In light of that conclusion, I must dismiss this complaint. What this means for the parties is that as the *Act* does *not* apply, the general law does. If it is not possible to resolve this dispute in a neighbourly way, the complainants' remedy is with local government or the courts.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read 'A Sakalauskas', with a long horizontal line extending to the right.

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Al Sakalauskas, Presiding Member