



September 27, 2019

File F1902

DELIVERED BY E-MAIL AND MAIL

Dean Dragland
[REDACTED]

Elsie Zdralek
[REDACTED]

Dear Sir/Madame:

A COMPLAINT RE: BARKING DOGS FILED UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*

On May 6, 2019, the BC Farm Industry Review Board (BCFIRB) received a complaint and the \$100.00 filing fee from the complainant, Dean Dragland, of West Kelowna, BC. The complainant is aggrieved by noise generated by barking dogs on a neighbouring farm, a property owned and occupied by Elsie Zdralek.

The complaint involved a barking disturbance from two dogs, a Rottweiler (Rena) and a German Shepherd (Daisy), that allegedly barked constantly for the past three years, typically from 3 AM to 6 AM. The notice of complaint stated that despite several conversations with the owners, there was nothing they could do about it because it was a working farm.

Section 3 of the *Farm Practices Protection (Right to Farm) Act (FPPA)* requires that a complaint of a disturbance arise out of a farm operation carried on by a farm business. In this case, as it was unclear whether the dog barking related to a farm operation, BCFIRB set up a submission schedule to address whether the complained of practices result from a farm operation conducted as part of a farm business. It states:

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.

In his decision letter dated June 27, 2019, the Chair of BCFIRB referred the complaint to a Panel for hearing to me, the presiding member of that Panel. In his letter he concluded:

Clearly there is significant dispute on this issue. The respondent says the dogs are used to alert to and chase wildlife that may eat or damage her hay field and as such, are an integral part of the farm business. The complainant disputes that the dogs are playing any role in protecting the hay crop given that the barking occurs at night when much of the wildlife that is described as feeding

on the hay are asleep. It is unclear from the submission what threat raccoons, bears or coyotes would be to a hay crop; I accept that deer could be a potential threat.

I cannot resolve this issue without the benefit of evidence. I am prepared to accept that the disturbance complained (dog barking) may relate to a farm operation carried out by a farm business (hay operation) such that this matter can be referred to a panel for hearing. However, I would observe that it remains open to the complainant to argue at the hearing of this complaint that the use of dogs to protect a hay crop is not consistent with normal farm practice or alternatively, that some or all of the barking that they are aggrieved by is in fact not related to the protection of the hay crop but is instead nuisance barking.

If a panel were to find that the dog barking was not sufficiently connected with the protecting the hay crop, the complaint would be dismissed and the complainant would need to pursue alternative remedies for nuisance actions, either through the courts or with local government. If the dog barking was found not to be consistent with normal farm practice, the panel may make an order that the respondent cease or modify its practices related to the dog. These determinations can only be made by a panel after hearing all the evidence.

Following a Case Management call (CMC) on July 15, 2019, a CMC report was circulated and then BCFIRB staff and a Knowledgeable Person (KP) Christina Forbes, P. Ag. Regional Agrologist with the Ministry of Agriculture, attended the subject property on July 23, 2019 and spoke to both the complainant and the respondent.

As a result of that attendance, I have now received the attached letter from the KP which advised as follows:

On July 23, 2019 I, along with BCFIRB staff Gloria Chojnacki conducted a site visit for a complaint filed by Mr. Dragland regarding a barking dog on a neighbouring farm in West Kelowna, BC. Ms. Chojnacki and I met with Mr. and Mrs. Dragland and were advised that it was their understanding that the dog which was the subject of the complaint was no longer on the farm and that the barking has stopped since the dog disappeared.

Following the meeting with the complainants, Ms. Chojnacki and I met with Geri and Francis Huggins (daughter and son in law of the respondent) and did a tour of the farm. When we arrived at the farm we were greeted by an older Rottweiler dog. Ms. Huggins advised that this dog, Rena, was currently the only dog on site. The dog which was the subject of the complaint, Daisy, had disappeared from the farm the day they were informed a complaint had been filed. Mr. Huggins stated that Rena was not part of the farming operation. Daisy had been the lead dog with respect to predator control....

The July 23, 2019 visit confirmed that the dog (that initiated the filing of the complaint) is no longer on the farm and as such, the barking has stopped. The remaining dog is not used in the farming operation. Given this information, it is not possible for me to prepare a report that would meet the criteria of the Terms of Reference.

Brief summary of summary dismissal submissions:

On August 29, 2019, and in light of the KP's above response, that as the dog of concern was no longer on the farm and the barking had stopped, she was not able to complete her Terms of Reference (TOR), I asked the parties to provide submissions addressing whether there were sufficient reasons to continue the process and schedule an in person hearing or whether the complaint should be summarily dismissed pursuant to s. 6 of the *FPPA* which states:

- 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.

The submissions received were brief. The complainant referenced the farm's position summarized in the CMC report and appeared to question why the farm had maintained its position that the dogs (plural) were integral to the farm operation when in fact the barking German Shephard dog disappeared shortly after the complaint was filed and the remaining Rottweiler was not part of the farm operation (as referenced by the KP in her letter). The complainant states "obviously neither dog was part of the farm operation for the past 3 years! I spend time and money and now they admit the truth. This is wrong and I feel they should at least reimburse the \$100.00 I spent filing the complaint."

The respondent's submission was also brief stating that BCFIRB staff and the KP only visited half the farm operation. She disputes that Rena (the Rottweiler) is not part of the farming operation, emphatically stating that her important role in the farm operation was demonstrated during the abbreviated site visit. She reiterates that they operate a legitimate farm and that the dogs were part of the protection of the farm commodities.

In his reply, the complainant again asserted that the dog(s) are definitely not part of the farm operation and are not required to protect farm commodities as there are no commodities (goats, chickens etc.). He does not believe the one horse and two cows need protection. He says these dogs are household pets that are a disturbance to the community.

Decision:

In order for there to be a hearing of a complaint, there must be a live dispute between the parties. Here, despite being given an opportunity to do so, the complainant's original submission does not dispute the KP's statement which was attributed to him and his wife "that the dog which was the subject of the complaint was no longer on the farm and that the barking has stopped since the dog disappeared". I am at a loss to understand why, when given an opportunity to do so at the CMC, the complainant did not make it clear that the primary target of his complaint (dog barking from Daisy) had long since ceased. Given that the only remedy a panel can give when it finds that a disturbance is not normal farm practice is an order to cease or modify a practice, I am not sure

why the complainant did not withdraw his complaint when the circumstances changed. In my view, such a complaint is the very definition of trivial and to continue to pursue a complaint in such circumstances is frivolous, vexatious and not made in good faith within the meaning of ss. 6(2)(a),(b). In the absence of the actual barking dog which led to this complaint, I also find the complainant lacks sufficient personal interest in pursuing a barking dog complaint: ss. 6(2)(c).

I suspect that the complainant is concerned that dog barking may become an issue again. I note that the complainant in his reply now says that Rena, the Rottweiler, is barking despite his comments made to the KP in July 2019. It appears that the complainant wants a ruling from BCFIRB that the current dog barking is not part of a farm operation in the hope that such a ruling may somehow assist him going forward should the respondent acquire another dog.

The respondent disputes the KP's statements attributed to her daughter and son-in-law which include that Rena, the older Rottweiler, was the only dog on site; the German Shephard dog Daisy which was the subject of the complaint disappeared the day they were informed of the complaint, confirmation that Rena was not part of the farming operation, and Daisy was the lead dog with respect to predator control. In contrast, the respondent now asserts that the Rottweiler is integral to the farming operation.

I do not agree with the respondent that the KP misunderstood comments made at the site visit. I suspect that, similar to the complainant, the respondent is seeking a ruling from this Panel which could potentially assist them in some future barking dog complaint before BCFIRB which would be an abuse of BCFIRB's process.

I cannot make determinations in an evidentiary vacuum. If there is no longer a barking dog issue which relates to a farm operation carried on by a farm business, there is nothing further for me to consider. While I note that the complainant now says there is barking from Rena, based on the representations of the KP (by both the complainant and respondent), I find any barking from Rena is not integral to the farm operation and as such is not a disturbance within the meaning of the *FPPA*. This view is supported by the fact that had the respondent not made an express acknowledgement to the KP and a BCFIRB staff member that Rena was not part of the farm operation at the site visit, the KP would have followed through on her Terms of Reference and provided a report to BCFIRB as she was retained to do.

I accept that the respondent made an express acknowledgement at the site visit that Rena is not part of the farm operation. On that basis, I find the complaint falls outside section 3 of the *FPPA* as any disturbance related to Daisy has ceased and any disturbance related to Rena is barking from a household pet, not connected to a farm practice.

If a future dog barking issue arises, that issue would turn on the facts as they exist at that point in time and whether it could be demonstrated that the disturbance (dog barking) related to a farm operation conducted by a farm business such that the dog barking was somehow integral to that farm operation.

In the absence of a finding that the dog barking is integral to the farm operation (connected with livestock or crop protection), the complainant would need to pursue alternative remedies for nuisance actions either through the courts or local government by law enforcement. For the foregoing reasons, the complaint is dismissed.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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A handwritten signature in cursive script, appearing to read "D LaPierre".

Dennis LaPierre
Presiding Member