

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT
ARISING FROM THE OPERATION OF A HORSE FARM
IN OLIVER, BRITISH COLUMBIA

BETWEEN:

EUNICE FARNHAM

COMPLAINANT

AND:

LOUKIE SCHUURMAN

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry Review Board	Christine Elsaesser, Panel Chair Satwinder Bains, Member Wayne Wickens, Member
For the Complainant	Eunice Farnham
For the Respondent	Loukie Schuurman Terry Johnson, Agent
Date of Hearing	June 3, 2004
Place of Hearing	Penticton, British Columbia

INTRODUCTION

1. Under the *Farm Practices Protection (Right to Farm) Act* (the “Act”), a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, may apply to the British Columbia Farm Industry Review Board (the “Provincial board”) for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, the Provincial board is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the complaint is dismissed. If the practice is not a normal farm practice, the Provincial board is empowered to order the farmer to cease or modify the practice.
2. By letter dated October 26, 2001, Eunice Farnham, proprietor of Avalon Acres Farm in Oliver, BC applied to the Provincial board for relief from dust and materials encroaching on Avalon Acres Farm located on White Lake Road in Oliver, BC. In her letter, she complains of “excessive blowing soil, dust, weed seeds along with pulverized manure containing parasitic ova that is continuing to virtually envelope my farm property...It has been affecting and continues to interfer[e] (sic) with the use and enjoyment of my property”.
3. Following the filing of the complaint the parties attempted to settle the issues with the assistance of the Provincial board.
4. At the hearing, Ms. Farnham represented herself and provided photos and video footage for the Panel to view.
5. The Respondent Loukie Schuurman resides on an adjacent acreage on White Lake Road. She had the assistance of Terry Johnson, a former neighbour, in presenting her case.
6. The matter proceeded to hearing on June 3, 2004 in Penticton, BC.

ISSUES

7. Does the soil, dust, weed seeds and manure blowing onto Ms. Farnham’s property from Ms. Schuurman’s property result from normal farm practices?
8. Is Ms. Schuurman maintaining her fencing in accordance with normal farm practice?

FACTS

9. The Schuurman and Farnham acreages are located in the Sonora Desert region of the Okanagan Valley. The land in this area is very arid, especially in the spring and summer months. Any winter moisture on the land dissipates quickly due to

the high winds. For a number of years, the area has suffered from drought and acute shortages of water.

10. Ms. Farnham is a retired health care worker. She owns just over 10 acres where she initially farmed alfalfa and grass. However, after demonstrating an interest in breeding Warmbloods many years ago Ms. Schuurman gave her a mare to breed. Since that time, she has bred Warmbloods, Welsh Cobs and ponies. Her house is situated toward the north side of her property and roughly midway east-west on the property. She irrigates her pastures with three wells she has on her property.
11. The Respondent, Ms. Schuurman, resides alone on the acreage immediately adjacent and to the north of the Farnham property. She has lived on this property since coming to Canada from Holland in 1980. She brought one stallion and three brood mares in foal with her to start a business on her 10 acre parcel of land. She has been in the horse breeding business since then. At the time of hearing, Ms. Schuurman was 75 years of age.
12. To the east of these acreages is the Willowbrook subdivision. This is a residential neighbourhood that is serviced by Willowbrook Utilities, a private water utility. Mr. Johnson, who appeared with Ms. Schuurman, owns this utility and developed the Willowbrook subdivision.

SUBMISSION OF COMPLAINANT

13. Ms. Farnham takes issue with a number of Ms. Schuurman's present farm management practices. There have not always been problems with the Schuurman property but things began to decline in 1997 when routine maintenance appeared to stop. The property now is arid, barren, full of weeds, with no grass or ground cover. Since 1997, Ms. Schuurman has only seeded her land once (in 2002) but since she did not irrigate, the grass did not take. Ms. Farnham believes that to maintain good pasture, the soil must be disked or harrowed, then seeded. Appropriate fertiliser and irrigation are required. One must also keep horses off the pasture to allow ground cover time to mature. At the present time according to Ms. Farnham, Ms. Schuurman's horses have no fresh grass for grazing - just weeds.
14. As a result of Ms. Schuurman's failure to maintain her pastures, the area is plagued with dust clouds. Further, as Ms. Schuurman does not regularly weed her pasture or remove horse manure, the wind carries not just dust but weed seeds, ova from parasites and manure particles. As a result, Ms. Farnham has difficulty controlling the weeds on her property and is very worried about the negative impact on her health and the health of her horses.
15. Ms. Farnham showed photos (taken in 1999) and a video (from 2000 - 2001) which depict large dust clouds originating on the Schuurman property and blowing onto the Farnham property, into her house, loafing sheds and onto her

- fields. Ms. Farnham states that the result of these dust clouds is a layer of dust and debris on all surfaces inside and out. In addition, some of the photos depict large accumulations of mustard weed along the fence line between the Farnham and Schuurman properties.
16. Ms. Farnham argues that the dust interferes with her enjoyment of her property. As mentioned, she is also concerned for her health as well as the health of her horses as the dust contains parasite ova and manure particles. She is concerned about the impact of the dust on her business. Clients visiting the property with a view to leaving their horses for breeding have expressed concern about the excessive dust blowing around the property. In the past, one foal died from sustained coughs complicated by pneumonia despite veterinary intervention. While Ms. Farnham has no proof that this foal died because of the dust she suspects that this is the case.
 17. Unfortunately, the prevailing wind is from the north, blowing the dust from the Schuurman fields in a southeasterly direction towards the Farnham property and beyond. Ms. Schuurman's horses make the situation worse as they kick up more dust when they move around.
 18. In terms of remedy, Ms. Farnham would like to see Ms. Schuurman seed her pastures so that the horses have fresh grass and there is adequate ground cover to prevent excessive dust. The cost is not excessive. Ms. Farnham has done her own disking and harrowing on four and a half acres. It cost her \$400.00 for the seeds, \$300.00 for contract seeding and further costs associated with fertiliser and soil analysis and the actual purchase of fertiliser.
 19. Ms. Farnham does not accept the argument that there is insufficient water to irrigate the property. The Willowbrook Fire Department initially did not have enough water on its property so it drilled a well on the property just north of the Schuurman property. The well fills two 13,000 gallon tanks to be ready for fire calls. Ms. Farnham argues that this is ample evidence of the availability of water in this area. As for her property, Ms. Farnham has three wells on her property all producing water. Furthermore, the Willowbrook Utility well is located less than 300 ft from Ms. Schuurman's wells. This well produces more than 60 gallons/minute. Also in the immediate neighbourhood, fields are irrigated effectively to maintain a silviculture nursery and several alfalfa fields. Ms. Farnham suggested that Ms. Schuurman may have to re-drill her well, extend it or possibly install a submersible pump but the water supply is there to irrigate her fields.
 20. Ms. Farnham does concede that in 2001, a persistent drought did not let the grasses that she had seeded mature and as a result she also has one pasture that contributes to the dust problem in the area. This was also exacerbated by the fact that she was busy with foaling and did not effectively irrigate the seeded pasture and instead applied irrigation to her already established pasture. She does

however intend to fall seed and move her irrigation guns to try and resurrect any of the previous seeding.

21. Ms. Farnham argues that good husbandry and farm management practices require harrowing of fields on a routine basis to spread manure into the soil or alternatively collection and removal of manure. Ms. Schuurman does neither; she leaves manure in the field to eventually break up into wind borne debris. Ms. Schuurman does not mow the weeds to prevent reseeding. As a result, Ms. Farnham has a difficult time controlling the spread of noxious weeds.
22. Ms. Farnham alleges that some of the other neighbours in this area have taken issue with the dust and weed problems.
23. Ms. Farnham also takes issue with Ms. Schuurman failure to keep her fencing in good repair. The fence on the Schuurman property has collapsed in places and is a hazard for the horses on both sides of the fence. As a result, Ms. Farnham has established a new fence line all the way around her property. On the north side, where her property borders the Schuurman property, she has installed a new fence so that if Ms. Shuurmans's horses destroy her fence there will still be an intact fence preventing the horses from getting onto the Farnham property. In the past, Ms. Schuurman's horses have trampled on the fence and occasionally come over the fence. These horses are constantly pawing and prodding on the fence line as they appear attracted to the greener pasture and lawn on the Farnham property. Ms. Farnham's attempts at maintaining electrical fencing has not worked as Ms. Schuurman's horses wear halters which disrupt the electrical current.
24. In summary, Ms. Farnham would like to see proper farm management practices employed on the Schuurman farm such as fall seeding, irrigation in the spring and summer, proper maintenance of irrigation lines and fences, picking up of manure, regular harrowing (four times a year) and adequate weed control.

SUBMISSION OF RESPONDENT

25. Ms. Schuurman argues that she is keenly aware of the water shortage problem in the area. Her priority is to use the available water for the horses to drink and domestic use.
26. Ms. Schuurman acknowledges that she was notified by the District Agrologists to seed her farm in 2002 and she did comply. However, the ensuing drought did not allow the seeding to take very well and as a result it is not in optimum condition. She does not agree that she needs to irrigate her seeded field from 2002 and prefers to wait for rain to provide moisture. She states that her home well has run dry and she now must use her irrigation well to provide water for her animals and for domestic use.

27. Ms. Schuurman argues that she has always looked after her property. She built fences and maintained them for all these years. She does concede that things have slipped recently. She maintains that she follows good husbandry practices, collecting manure into piles and having it hauled away regularly. Her practice is to harrow her fields to spread the manure once a year. However, she concedes that she did not do it in the spring of 2004.
28. Ms. Schuurman wants to keep farming. She attributes the difficulties she is currently facing with dust control on the changing weather patterns in recent times. As she is getting older, she has reduced the number of horses on her farm to reduce some of her workload.
29. She argues that she is equally affected by dust and lack of weed control by Ms. Farnham. When the winds blow from the south, she is deeply affected by dust from the Farnham property. She also contends that the extreme dandelion growth on the Farnham property wreaks havoc on her farm. She believes that dust and weeds problems are just part and parcel of farming in this area.
30. She confesses that she does not have a cordial neighbourly relationship with Ms. Farnham anymore. At one time, they did.
31. Ms. Schuurman has part time help on her property to assist with the routine cleaning out of stalls as well as yearly maintenance of fences or harrowing. She does concede that some more maintenance work needs to be undertaken on the farm and that it has not been fully maintained for the last six or seven years. She contends that she has done the best she can. She was involved in a car accident in 1984 and as a result cannot walk the long distances to check on all the maintenance. She depends on her hired help to do the check-ups.
32. Ms. Schuurman is aware of the state of the fence on her property and would like to fix it but the cost is prohibitive, as she is a pensioner. It is a project she intends to undertake in the future when she can afford it.
33. Mr. Johnson appeared as a witness for Ms. Schuurman. He has known her for close to 24 years as a fellow farmer. He is the owner of Willowbrook Utilities and lives in nearby Oliver. His Utility provides water to the Willowbrook Subdivision to the north east of the Schuurman and Farnham properties.
34. Mr. Johnson stated that he did not really want to get involved between these two neighbours but felt that he had to as a bystander. He also suggested that neither the Appellant nor the Respondent, “practice real good farming practices” and both are caught up in a “personality battle”.
35. Mr. Johnson contends that because the area is generally dry, Ms. Farnham’s property also generates a lot of dust on windy days. The situation is not unique to the Schuurman property; dust goes both ways between the two properties as well

as from properties in the north east part of the valley that are not farmed. Mr. Johnson agrees that Ms. Farnham has more grass growing on her property than Ms. Schuurman but she uses a large water gun for irrigation. He believes that she wastes a lot of water. He is concerned about the shortage of water in the area for all the residents and farms alike. Further, Mr. Johnson contends that as both farms are in paddocks it is difficult to get a grass cover while horses are present. It is even more difficult to irrigate paddocks; without a grass cover, they turn to mud. Horses tend to destroy the grass and it needs time to mature.

36. Mr. Johnson also states that there is an abundance of noxious weeds in the entire area like Hound's-tongue, Cheatgrass and Knapweed. These weeds are especially prevalent on the properties surrounding these two farms which are not maintained by the property owners. Some government intervention has occurred but just on road sides and not on the private properties. Ms. Schuurman has not been made to comply with the *Weed Control Act*.
37. As owner of Willowbrook Utilities, Mr Johnson has made a study of the water in the area. He claims that the whole area draws from one big basin of water, approximately 800 acres in size. He has observed a reduction in the water table since 1972 and it is currently at the lowest levels he has ever seen. His Utility serves a little subdivision in the area. In 2003, subdivision residents were on a total garden sprinkler ban. Given the low water table, he put the Fire Department on notice that it could not rely on his Utility for water especially when residents might not have enough water to drink. Subdivision residents were also upset because they could see nearby irrigation while at the same time they did not have enough water for domestic use.
38. The Fire Department has since bought three water storage tanks (not two as stated by Ms. Farnham). They drilled and after one dry hole, found water at 94 feet producing 50 gallons/minute. They had hoped for 300 gallons/minute. This well is located right across from the Schuurman's well.
39. Mr. Johnson maintains that the suggestion that Ms. Schuurman dig a deeper well is futile in the long term. The area is running out of water due to the drought. Everyone in the area needs to decide what to do with the water that they do have. As everyone digs their wells deeper, they will soon find themselves at the bottom of the hole. Mr. Johnson believes that ultimately government controls will be needed to put in place long term conservation plans. In the short term however, area farmers should not waste water.

DECISION

40. A complaint under the *Act* involves a two-step analysis. First, the panel must be satisfied that the complainant is aggrieved by odour, dust, noise or some other disturbance emanating from a farm operation. If the complainant fails to establish that he is aggrieved, the complaint must be dismissed without need to consider

whether the alleged source of the grievance results from a normal farm practice. If however, the panel finds that the initial threshold question has been met, it must make a determination as to whether the grievance results from a normal farm practice.

41. Section 1 defines “normal farm practice” as follows:

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
- (b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

42. In determining whether complained of practices fall within the definition of *normal farm practice*, the Panel looks to whether it is consistent with *proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances*. This analysis involves an examination and weighing of industry practices and includes an evaluation of the context out of which the complaint arises. This evaluation may include many relevant factors including the proximity of neighbours, their use of their lands, geographical or meteorological features, types of farming in the area, and the size and type of operation that is the subject of the complaint.
43. As to the threshold question, the Panel finds that the Complainant is aggrieved by the Respondent’s farm management practices. The proximity of the Complainant to the Respondent’s farm and the ongoing nature of the complaints over several years establishes sufficient personal interest in the subject matter of the complaint.
44. Having found the threshold question met, the Panel must determine whether the soil, dust, weed seeds and manure dust and weeds blowing onto Ms. Farnham’s property from the Schuurman property and Ms. Schuurman’s maintenance of her fence accord with normal farm practices.
45. The Complainant’s evidence with respect to normal farm practice involved a comparison of the present circumstances to practices several years ago on the Schuurman farm. In addition, as to evidence of similar farms in similar circumstances, the Complainant testified as to her practices on her own farm. Ms. Farnham testified that her property did not generate the same quantity of dust, manure particles or weed seeds as she generally maintained her pastures through regular irrigation and removal of manure and noxious weeds. In addition, she regularly maintained fences to keep her horses contained.

46. The Panel heard from Mr. Johnson regarding the general shortage of water in this area and the need for conservation. It is evident that there is a shortage of water in the area and that the water supply is diminishing. Both parties acknowledge that something will have to be done. Ms. Farnham is of the view that right now there is enough water so farms should follow good farming practices to maintain their farms. She believes that the time may come where farmers will have to build cisterns to collect rain water. Ms. Farnham is optimistic that while we are currently in a five-year drought cycle, things will improve. Ms. Schuurman on the other hand believes water is scarce and should be conserved.
47. The Panel recognises that water is in limited supply in this area. However, both the Complainant and Respondent have chosen to operate farms in this area. Accordingly, both have a responsibility to use good farm management practices. From the evidence, it is clear that Ms. Schuurman has let things slide around her operation. On her own evidence, regular maintenance has not been completely done for 6 or 7 years. As a result, Ms. Farnham sees more soil, dust, weed seeds and manure particles being blown onto her property.
48. It is an unfortunate reality that if the Respondent does not have the physical ability to maintain her operation, she must pay others to do so. If her fixed income precludes hiring help, then difficult decisions must be made with respect to the future of the operation.
49. Based on the evidence heard at this hearing, the Panel finds that Ms. Schuurman is not maintaining her pastures; she is not removing manure from the pastures at regular intervals throughout the year and she is not controlling weeds. Further, she is not maintaining the fence on her property. Accordingly, the Panel finds that the farm management practices complained of do not fall within the definition of “normal farm practices”.

ORDER

50. Given that we have found a breach on the *Act* insofar as the farm management practices complained of result in excessive wind borne soil, dust, weed seeds and manure and unmaintained fences, s. 6(1)(b) of the *Act* confers upon the Panel the jurisdiction to order the farm to modify the practice in the manner set out in the order, to be consistent with normal farm practice. Normal farm practice in this case requires the implementation of reasonable measures to attempt to mitigate these problems.
51. Accordingly, and pursuant to s. 6(1)(b) of the *Act*, the Panel orders the Respondent to modify her farm management practices to reduce wind borne soil, dust, weed seeds and manure, as follows:

1. Consult a qualified person to determine:
 - a) Good pasture management practices in an area of limited water;
 - b) Appropriate manure handling procedures; and
 - c) Appropriate noxious weeds control.
2. Once the foregoing have been determined, the Respondent is directed to implement and maintain these changes to her farm operation.
52. The Panel orders the Respondent to repair her fencing within 60 days of receipt of this decision and to maintain this fencing to prevent escape of horses.
53. In furtherance of the above and within 21 days of this decision, the Respondent must advise the Provincial board of the identity and credentials of the qualified person being retained in compliance with paragraph 51(1).
54. Within 60 days of this decision, the Respondent must provide the Provincial board with the qualified person's certification that appropriate systems and/or programs have been put in place to rectify the farm management practices referred to in paragraph 50 above, together with a proper plan to maintain and monitor those systems and/or programs.
55. The Panel recognises that the Respondent is elderly and on a fixed income. If the modifications outlined above cannot be implemented within the time lines set out, the Panel directs that the Respondent cease operating a horse breeding operation until such time as the modifications are made.

Dated at Victoria, British Columbia, this 22nd day of April, 2005.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

Original signed by

Christine J. Elsaesser, Vice Chair

Original signed by

Satwinder Bains, Member

Original signed by

Wayne Wickens, Member