



June 30, 2015

File #15-04

DELIVERED BY EMAIL

Walter and Susan Shawlee
[REDACTED]
[REDACTED]

Quails' Gate Estate Winery
[REDACTED]
[REDACTED]

Dear Sirs/Mesdames:

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

On May 6, 2015, Walter and Susan Shawlee filed a complaint with the British Columbia Farm Industry Review Board (BCFIRB) regarding the alleged noise disturbance arising out of the use of the Quails' Gate Okanagan Valley property as a venue for various events and activities. In a letter dated May 13, 2015, a preliminary issue was identified as to whether the practices complained of (holding of various events) resulted from farm operations conducted as part of a farm business as defined in the *Farm Practices Protection (Right to Farm) Act (FPPA)*. The parties were referred to section 3 of the *FPPA* which establishes the complaint process to BCFIRB and the definitions of farm business and farm operation.

The parties were also referred to the to the decisions in [*Hanson and LeBourdais v. Asquini, October 31, 2003*](#); [*Hodge v. Eben, November 20, 2008*](#); and [*Ridgeway v. Luckie, September 2, 2011*](#) which confirm that in order for BCFIRB to hear a complaint, the disturbance complained of must arise out of a farm operation conducted as part of a farm business. The parties were asked to provide their submissions on the preliminary issue as well as any supporting documentation on whether the disturbance and practice complained of relate to a farm business.

I have received and reviewed the following written submissions from the parties:

1. respondent (Quails' Gate) submission dated May 22 , 2015 with attached winery license;
2. complainants' (Walter and Susan Shawlee) submission dated June 2, 2015 with attached email string.

The Legislation

Section 3 of the *Act* provides for complaints to BCFIRB:

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.

Given that section 3 requires that a complaint arise out of a farm operation carried on by a farm business, the complaint must relate to a farm business.

“Farm business” and “farm operation” are defined as follows:

"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;
- ...
- (k) processing or direct marketing by a farmer of one or both of
 - (i) the products of a farm owned or operated by the farmer, and
 - (ii) within limits prescribed by the minister, products not of that farm,

The “farm business” requirement makes it clear that this legislation was never intended as redress for *every* complaint between neighbours involving practices on a piece of farm land. Where the *FPPA* does apply, it has significant implications. It gives a neighbour a potentially powerful remedy, namely 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 (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 *FPPA*, its drafters wanted to focus its scope and boundaries. This recognized that where the *FPPA* does *not* apply, the general law does, meaning that when neighbours cannot work things out in a neighbourly way they have the usual remedies of going to the municipality or to the courts to resolve their disputes.

Notice of Complaint

In their complaint, the Shawlees say that they have resided on their property since 1992 in proximity to the Quails' Gate Vineyard. Their neighbourhood was quiet apart from the usual tractor sounds and cannon noise expected of an agricultural enterprise. Subsequent to their purchase, the vineyard has become a large estate winery, traffic has increased, but again the noise was acceptable as part of running a winery business. However, more recently Quails' Gate has become a venue for all manner of events (weddings, concerts, operas, sponsor races, movie making, and political rallies). The property has a heli-pad and the location of these events (including sound stages) is adjacent to the complainants' yard and home. While the events are largely local, the complainants say it would be difficult to consider them agricultural.

The complainants say that they have tried to be a good neighbour by keeping their dogs inside during events and in one instance providing power; however they say that Quails' Gate has not reciprocated. The complainants describe the disturbance caused by these events as an assault on their ears and noise so egregious as to warrant calling the police.

The Submissions

On the issue of whether the disturbances complained of arise from a farm operation conducted as part of an underlying farm business, Tony Stewart, CEO writing on behalf of the respondent, Quails' Gate says the winery has operated on the property since 1990. He says that the particular complaint is in regards to an event which was part of the Okanagan Spring Wine festival. The disturbance did not relate to activities in relation to the farming operation nor do they relate to activities related to growing or managing the vineyards. Mr. Stewart says that the winery holds a few events each year under a special occasion license or under the existing winery license. He says Quail's Gate tries to work out any issues with its neighbours which efforts they say have been appreciated. He says he is deeply concerned about the Shawlee's complaint and he intends to meet with them to try and address their concerns.

In response, the Shawlees say that their original complaint was not for a single specific event, but rather for an ongoing, long term series of events many of which are not a part of the Okanagan Spring Wine Festival. On 27 May, 2015, Mr. Shawlee met with the respondent to discuss the issues arising from the noise emanating from its property at egregious volumes and was assured that there will no longer be any helicopter activity nor will there be concerts or other similar events. Weddings may still be hosted but the complainants will be given advance notice. Future events will not be as raucous as previous events or as close to the complainants' property. The complainants say that they have no reason to doubt the sincerity of these representations and trust that they will be able to return to a peaceful and pleasant residential environment.

The complainants enclosed an email string from May 4, 2015 (which predates the meeting with Mr. Stewart) wherein an employee (Bill Wightman) indicates that the winery will continue to hold events in the same location during the year on week days and weekends. While he offers to inform the complainants when events will occur, they are unclear on how this will diminish the noise. The complainants say that Mr. Wightman suggested that a solution would be for the complainants to vacate their home so as not to be bothered by events but this would be most unacceptable.

The complainants observe that as the events complained of are claimed to be part of the operation of the vineyard, winery and restaurant for which Quails' Gate winery has appropriate permissions. However, they seek clarification as to who is responsible for complaints of this nature, BCFIRB or local government?

Analysis

There does not seem to be any issue here that the disturbance (excessive noise) is caused by the respondent's use of its property as a venue. The complained of noise relates to helicopter and other traffic, music and associated festivities and activities. The complainants themselves say their issue is not with the agricultural activities but rather the use of the property as a venue. Further, I note that the fact that the particular activity complained of may be properly licensed either by the local or provincial government or a permitted use under the applicable zoning is not relevant to the determination of whether this complaint is properly before BCFIRB.

In order for this matter to be properly before BCFIRB, the complained of activity must fit within the definition of "farm operation" found in the *FPPA* which sets out a list of specific activities involved in carrying on a farm business as well as a catch all provision which extends the definition of "farm operation" to any "other agricultural activity on, in or over agricultural land".

I have reviewed the list of specific activities (i.e., raising animals or plants, managing land, using farm equipment, applying chemicals, cultivating plantations or turf farms, processing or direct marketing) and conclude that the activities complained of here related to the use of the property as a venue do not fall within any of these subsections. It seems to me that in order for this complaint to be properly before BCFIRB, the venue activity would need to fall within the definition of "any other agricultural activity on, in or over agricultural land". The *Canadian Oxford Dictionary (1998)* defines "agricultural" in relation to "agriculture", the science or practice of cultivating the soil and rearing animals; The *Miriam Webster Online Dictionary* has a more expansive definition of agriculture and includes "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products".

Using either definition, I am of the view that the use of the winery and vineyard property as a venue is not an "agricultural activity". Direct marketing of wine may expand the definition of agricultural activity but I do not think the fact that wine may be available for consumption or purchase (so as to fall within the concept of direct marketing) at a wedding, concert or festival being held on agricultural land renders the activity of hosting that event an agricultural activity.

I conclude that the subject matters of this complaint (excessive noise resulting from the use of the vineyard and winery as a venue) do not fall within the definition of "farm operation" under the *FPPA* and as such, I decline to refer this complaint to a panel as, in my view, the *FPPA* has no application. The complainants' potential remedies lie with bylaw enforcement through local government or alternatively, a civil action in nuisance¹. Accordingly, the complaint is dismissed.

Section 8 of the *FPPA* provides for a right of appeal:

- 8 (1) Within 60 days after receiving written notice, in accordance with section 6 (5), of a decision of the chair or a panel of the board made under section 6, the complainant or farmer affected by the decision may appeal the decision to the Supreme Court on a question of law or jurisdiction.
- (2) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



John Les
Chair

¹¹ See for example *Lake Country (District) v. Kelowna Ogoopogo Radio Controllers Association*, 2014 BCCA 189 and *Palmer v. City of Burnaby*, 2006 BCSC 165.