



November 24, 2016

File #16-06

DELIVERED BY EMAIL AND COURIER

Leah and Kyle Pepper

██████████
Princeton BC V0X 1W0

Mike and Johanna MacDonald

████████████████████
Princeton BC V0W 1W0

Dear Sirs and Mesdame:

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 and the \$100.00 filing fee from Leah and Kyle Pepper, of Princeton, BC alleging that they are aggrieved by noise, dust and runoff generated by neighbouring property owned by Mike and Johanna MacDonald.

Given that section 3 of the *Farm Practices Protection (Right to Farm) Act* (“*Act*”) requires that a complaint arise out of a farm operation carried on by a farm business, BCFIRB set up a submission schedule to address whether the complained of practices (noise, dust and runoff) result from a farm operation conducted as part of a farm business?

Decision

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 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;
- (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,

In addressing the issue of whether this complaint is properly before BCFIRB, I adopt the approach set out by the panel in *Hanson and Lebourdais v. Asquini*, (October 31, 2003) :

In determining whether a person is carrying out a “farm business”, a number of factors can be considered (this list is neither exhaustive nor exclusive, and not all factors are necessarily of equal weight):

- a) What is the location and magnitude of the farming operation in comparison to other operations producing similar agricultural products?
- b) Does the farm operation operate or intend to operate on the basis of generating income or profit?
- c) Do the farm operation’s plans clearly contemplate future commercial activities and is income anticipated as a result of defined development plans (such as plantings that may not be productive for several years)?
- d) Does the farm qualify for a farm tax credit under the Income Tax Act?
- e) Does the farm hold licences related to agricultural or aquacultural activities?
- f) Is the operation a farm education or farm research institution?

The Canadian Oxford English Dictionary (1998) defines “business” amongst other things as “one’s regular occupation, profession or trade”. Black’s Law Dictionary (7th ed. 1999) defines “business” as “(a) a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain”. Implicit in the definition of “business” as it is used in the Act is some aspect of an agricultural undertaking carried out for the purposes of generating income or profit (except perhaps in the special case of farm education and research institutions which, for obvious reasons, have also been given the Act’s protections). Thus, as a bare minimum, in order to establish that a farmer has a “farm business”, there should be documentation supporting revenue or an intention to generate income from recognised farming operations or activities....

I have considered the submissions of the parties. Unfortunately, the respondents’ 6 page submission attempts to argue the merits of their case and does not focus on the issue to be addressed by this submission process, namely whether the respondents operate a farm business. The respondents do say that they have two horses, one donkey and 80 chickens and roosters on their property. They deny that they operate a feedlot but do not address what, if any, farm business they are conducting on the property.

The complainants say the respondent operates a farm business that includes selling and delivering of chicken eggs, selling of turkeys and chickens and horse boarding which are evidenced in the photographs attached to their submission. They point to the respondents’ statement in their submission that they currently have 80 hens. Doing the math, the complainants say that with an average egg yield, the respondents would get 300 eggs annually per chicken (approximately 24,000 eggs). At \$4.00 per dozen, the complainants say this would yield \$8000 per year (gross) in egg production alone. In addition, the complainants say that there are sales of chicken and turkey meat birds, as well as eggs from the meat birds. In their view, this operation “most definitely qualifies as a farm business”. The complainants also say that in their original noise complaint to the Regional District of Okanagan Similkameen, the MacDonalds never claimed to be anything but a farm.

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*.

Turning to the disturbances complained of which relate to noise (related to chickens and roosters), dust and runoff (water draining year-round into the back lower section of complainants’ property

from behind the respondents' barn area), I find that these disturbances relate to the farm operation of raising poultry carried out by a farm business and as such, I direct that this matter be referred to a panel for hearing.

However, I would like to clarify a few matters to assist the parties on focussing on issues that are properly the subject of a complaint. Complaints to BCFIRB involve farm practices; BCFIRB does not have jurisdiction to adjudicate on matters relating to health or pollution and it does not hear prospective complaints about disturbances that may, or may not occur, at some point in the future (i.e. "possible or potential contamination of water supply"). BCFIRB can only hear complaints related to actual disturbances resulting from farm operations conducted as part of a farm business and the notion of who, as between the complainants and respondents, was there first may be relevant but is not determinative of the issue of "normal farm practice".

Ms. Chojnacki, Case Manager, will be in contact with both parties to schedule a case management call in due course.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



John Les
Chair