



BC Farm Industry Review Board

January 6, 2022

File: F2106

DELIVERED BY EMAIL

Shawn Walton



Ashley Roslinsky



Dear Sirs/Mesdames:

A COMPLAINT FILED UNDER THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT CONCERNING NOISE FROM A ROOSTER

On September 29, 2021 the BC Farm Industry Review Board (BCFIRB) received a complaint and the \$100.00 filing fee from Shawn Walton, of Salt Spring Island, BC. The complaint states Mr. Walton is aggrieved by noise from a rooster on a neighbouring farm operated by Ashley Roslinsky.

A Case Management call was conducted on November 23, 2021. The Complainant explained that in the summer months the noise from the rooster starts at approximately 4:00 am which disrupts his sleep, hindering his ability to function during the day. In the call, Ms. Roslinsky advised that she kept 12 hens, 16 ducks and 1 rooster "for predator protection of hens and for breeding and hatching purposes." She described the farm business as a farm stand that sells eggs with peak egg sales in the summer months of \$300-\$400 per month.

By letter dated December 9, 2021, BCFIRB set up a submission schedule to hear from the parties on the threshold issue of whether the subject complaint involved a disturbance resulting from a farm operation conducted by a farm business as required by section 3 of the [Farm Practices Protection \(Right to Farm\) Act \(FPPA\)](#):

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.

Submissions

I have reviewed the parties' brief submissions.

The respondent says she lives on a small acreage on Salt Spring Island and keeps chickens, ducks and one rooster. She says she does not have many receipts or physical

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evidence to provide regarding her farm business. She says she operates a farm stand and all sales are either by cash or e-transfer. She states approximately \$2000 came into her farm account this past month alone for sales of feed, supplies, birds and eggs.

In response, the complainant states that the respondent's farm stand has had a "closed" sign since August 2021 and they have not observed any farm products being sold at the farm since late July 2021. The complainant maintains that the \$2000 in revenue reported by the respondent does not come from sales of farm-grown products but rather relates to the resale of feed and other goods purchased off island to residents.

The complainant does not take issue with the respondent's hens, geese, ducks or goats and her attempts at self-sufficiency but says he has a right to a peaceable existence as set out in local government bylaws. He maintains that the respondent is using the *FPPA* to avoid bylaw enforcement and further that she does not need a rooster to sell eggs, she is not farming and nor is she a farmer.

Decision

For the reasons set out below, I find that the subject matter of this complaint is not within the jurisdiction of BCFIRB under s. 3 of the *FPPA* and as such, I decline to refer the complaint to a panel for hearing.

Section 3 of the *FPPA* 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 respondent operates a farm, and that the complaint relates to farm operations. Clearly, the respondent here has a very small poultry operation and the complainant has alleged disturbances that relate to poultry rearing practices (related to a rooster). But not every complaint between neighbours involving practices relating to plants or animals supports a complaint under section 3 of the *FPPA*.

In this case, and despite being given an opportunity to do so, the respondent has produced limited evidence of her farm business apart from anecdotally reporting "\$2000 in sales" in the past month. She made no effort to break down what, if any, sales related to the 12 chickens on her property. I note in the Case Management call, the respondent indicated sales of \$300-\$400 per month. She has not provided any evidence of these sales or related expenses.

Further, the respondent did not explain in her submission how the source of the disturbance complained of (the rooster) is integral to a farm operation conducted by her farm business. A rooster is not necessary for egg production as table eggs are

unfertilized. While in the Case Management call the respondent indicated the rooster provided predator protection, she did not address this further in her submission. The complainant argues that the respondent is not carrying on any farm business and is not a farmer. He goes as far as saying that the respondent is hiding behind the *FPPA* to bully neighbours and avoid bylaw enforcement. Given the complainant's view that the respondent is not a farmer and is not carrying on a farm business, it is difficult to understand why he filed a farm practices complaint in the first place. Perhaps, his motivation is to get a determination from BCFIRB that may assist in dealings with local government but that would be an abuse of BCFIRB's complaint processes.

The question of whether there is a "farm business" 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 for the purpose of generating income or profit.

Applying this analysis, I find limited evidence from either party that the respondent's poultry related activities are conducted as part of a farm business. There is some anecdotal evidence of farm gate sales (although not specific to egg sales) and the respondent's land is zoned rural residential. The respondent did not produce evidence of farm status, eligibility for a tax credit or any expectation of financial gain or profit.

In my view, this case is similar to an earlier decision of *Pepper v. MacDonald* (BCFIRB, November 3, 2013) involving a noise complaint related to a small poultry operation of 55 hens and 13 males. In that case, the Presiding Member held:

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.

Similarly in this case, I conclude that the respondent's poultry operations do not fall within the definition of a farm business and in fact, are more in relation to a hobby or lifestyle preference. As such, I conclude that the noise complaint from the rooster does not relate to an underlying farm business and as such, I would dismiss the complaint on this basis.

Having found that there is not an underlying farm business, it is unnecessary to go further and consider whether the noise complaint actually relates to a farm operation conducted by a farm business. Such a determination requires an assessment of the nature of the disturbance (the rooster noise) and whether it plays an integral and necessary role in the poultry operation or whether it is simply a noisy pet. On the submissions, it is unclear to me why a rooster is necessary for producing unfertilized eggs or for predator protection. However, I make no finding in this regard.

Finally, in my view it was not appropriate for the complainant to bring a farm practices complaint to BCFIRB seeking to advance the position that the respondent is not a farm business. Essentially, the remedy the complainant is seeking is a dismissal of the complaint he brought. If a complainant's position is that the respondent does not fall within the scope of the *FPPA*, the complainant can and should pursue existing common

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law remedies. Alternatively, the complainant could take this matter up with local government. In court proceedings or bylaw enforcement actions however, farmers can still avail themselves of the “normal farm practice defence” where they meet the requirements in section 2 of the *FPPA*. That would appear to be the appropriate forum for this dispute.

As such, the complaint is dismissed.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Peter Donkers". The signature is stylized and cursive, with a large initial "P" and a long, sweeping underline.

Peter Donkers
Chair, BC Farm Industry Review Board

Enclosure