



July 27, 2010

File #10-02

DELIVERED BY EMAIL

Jonathan Baker
Barristers & Solicitors'
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[REDACTED]
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Jesse Brar
BC Pacific Coast Fruit Products Ltd
[REDACTED]

Dear Sirs:

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

On May 17, 2010, the BC Farm Industry Review Board (BCFIRB) received a formal complaint from Jack and Colette Maddalozzo regarding the farm practices of their neighbour, BC Pacific Coast Fruit Products Ltd., a fruit processing plant. The complainants allege that they are aggrieved by the hours of operation, lights and noise generated of the processing plant.

Given that the notice of complaint raised an issue as to the jurisdiction of BCFIRB to hear the complaint, a submission process was initiated by letter from the former chair of BCFIRB dated May 20, 2010. The submissions have now been received and I have had the opportunity to review them.

Decision

The issue before me is whether the BC Pacific Coast Fruit Products processing plant is a farm operation conducted as part of a farm business as required by s. 3 of the *Farm Practices Protection (Right to Farm) Act (FPPA)* and as such whether the BCFIRB has jurisdiction to hear this complaint.

Based on the submissions received, I have concluded that BC Pacific Coast Fruit Products grows fruit at its location on 90 Winson Road and that it processes some or all of the fruit grown on that location in its processing plant. The processing plant may also process fruit from other locations.

The complainant relies on the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* and argues that activities including storing and processing of produce are designated as farm use if at least 50% of the farm product being stored, packed, prepared or processed is produced

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Farm Industry Review Board

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on the farm in which case the use may be regulated but not prohibited by local government. The respondent farm did not provide any evidence as to the proportion of on farm vs. off farm fruit stored and processed at this facility.

Based on the submissions received, I conclude that the respondent has demonstrated a *prima facie* case from which it could be concluded that the BC Pacific Coast Fruit Products processing plant is a farm operation. As such, I am not prepared to make any ruling regarding jurisdiction at this point in the proceedings. In these circumstances, the appropriate course is to establish a panel to hear this complaint and once the panel has had the benefit of oral evidence and argument, it can make a determination as to whether this is a farm operation and if so, whether the on-farm activities complained of accord with normal farm practices.

As for the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, while it may provide a useful guideline for determining whether this is a farm business as opposed to an industrial business, it is not determinative of the issue for the purposes of the *FPPA*. In this regard, I refer the parties to the decision of this board in *Lacey v. Instant Lawns Turf Farm (1994) Limited d.b.a. Westcoast Instant Lawns*, October 31, 2005 where a similar issue arose in the context of a composting operation associated with a turf farm. The parties may find some of the analysis in that decision helpful in preparing for this complaint.

BCFIRB staff will be contacting the parties to schedule a pre-hearing conference call, please contact Gloria Chojnacki at 250-356-1817 or via email at Gloria.chojnacki@gov.bc.ca if you have any questions.

Yours truly,



Ron Kilmury
Chair