



June 13, 2018

Files F1803 & F1804

DELIVERED BY EMAIL

Don Church and Ghislaine Jauselon
[REDACTED]
[REDACTED]

Wiebke Ortlepp
Stephanie Ortlepp
Cusheon Lake Farm
[REDACTED]
[REDACTED]

Barbara and Gregory Bird
[REDACTED]
[REDACTED] [REDACTED]

Dear Sirs/Mesdames:

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

On May 18, 2018, I wrote to the parties setting up a submission schedule to hear from the parties on the issue of whether the substance of the complaints has been substantively altered since the Notice of Complaints were filed in January 2018.

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

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.

Section 6(2) of the *Act* sets out the summary dismissal provision:

6(2) The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,

- (a) the subject matter of the application is trivial,
- (b) the application is frivolous or vexatious or is not made in good faith, or
- (c) the complainant does not have a sufficient personal interest in the subject matter of the application.

In my May 18, 2018 letter, I referenced excerpts from the Knowledgeable Person's (KP) report that indicate that while both Notices of Complaint referenced "barking dogs" it appears that the

complainants' primary issue was with the dog known as Max. The KP report confirms that Max was euthanized earlier this year. However, it was unclear what, if any, disturbance remains.

In order to proceed with this complaint, I must be satisfied that there remains a live issue between the parties. Accordingly, I requested that the parties provide further submissions, specifically addressing the issue of the nature of any remaining disturbance assuming the facts as reported by the KP are correct. If either party takes the view that the KP report is in error on this material question, they should provide evidence which supports their position.

I also asked the parties to consider the application of section 6(2) of the *Act* and whether, given the death of Max, the remaining subject matter of the complaint should now be considered trivial, frivolous or vexatious or not made in good faith, or that the complainants do not have a sufficient personal interest in the subject matter of the complaints.

Submission of Complainants Mr. Church/ Ms Jauselon

These complainants used the submission process to criticize the KP report and challenge his independence. With respect to the dog Max, they state:

Even though Max, perhaps the worst barking of the two dogs, is dead (not by poisoning as suggested three times in the KP report), does not remove the fact that it was the lack of professional training and responsible dog ownership that led to the original complaint. The Ortlepps and the KP are of the opinion that Great Pyrenees dogs are a unique breed that do not require professional training and are born with their farm protecting skills. The Ortlepps have replaced Max with another young boisterous Great Pyrenees. We have observed no training or disciplining of the dogs barking at passerby on the road by the owners.

These complainants say that they have over twenty comments and signatures of angry neighbours complaining about the dogs' barking and bad behaviour. They disagree that the other dog Mia did not bark during the KP visit, calling that observation "unbelievable drivel". They say that they have a thick file of the history of this neighborhood disturbance and say that lack of professional training and poor to non-existent dog restraint. They do not agree that the "live issue" between parties died with Max. They say they would again be keeping barking dog logs over the summer to monitor the dogs. In light of this, they do not think that it would be appropriate for BCFIRB to close the file. They say that "if the disturbance continues, we will wish to pursue the case, in formal hearings, in the fall of 2018".

Submission of Complainants Mr. and Mrs. Bird

These complainants say they have been listening to "these dogs" on the Cusheon Lake Farm for many years. Approximately two years ago, with the arrival of Max, they were subjected to constant uncontrolled barking and they made dog barking logs.

After a year and half of trying to get relief from the Regional District, this complaint was filed to address the uncontrolled dogs barking all day and night, constantly bothering the neighbourhood. They say the youngest dog (Max) was the lead in the barking but the other dog joined right in as well.

These complainants agree with the Church/Jauselon submission. They too are critical of the KP and his report. They too ask for the complaint to be kept open. They do not want another summer like the last few years and so they will be keeping a dog log.

The respondents have said that their Great Pyrenees dogs were born and bred to guard and are highly trained. These complainants want to “wait and see” if the new dog and older dog are trained to acceptable standards so people in their neighbourhood can go back to riding their bikes along a country road, enjoying their docks on the lake, sleeping outside in summer, just basic peace and calm in the neighbourhood.

Submission of Respondents Ortlepp

The respondents indicate their desire for this complaint to be referred to a hearing. They say that the initial letters of complaint submitted by both parties on January 15, 2018 referred to “dogs” barking and despite singling Max out, the complainants have always complained about both dogs. They say it is not surprising that the complainants have not provided any supporting documentation in their submissions of May 24th and 29th.

The respondents address the complainants’ accusations of bias on the part of the KP and point to the complainants’ criticism that “the KP statement that Mia [sic] did not bark during his visit is unbelievable drivel”. Their view is that the KP statement is quite true, as neither of the dogs barked during his visit and they offer to provide proof at the BCFIRB’s request.

The respondents would like to resolve this matter and welcome mediation. Failing this, they ask that the complaint be referred to a panel for hearing, as the complaints have always been about both dogs (Maia and Max). They say they rely heavily on Maia as a working dog, and as a replacement for Max and are now training a new puppy for protecting the sheep.

Further Correspondence from Complainants

On June 9, 2018 and after the close of the submission process, BCFIRB received an email from the Mr. Church/ Ms Jauselon, advising that they wished to “forgo with the hearing process before the board. It seems that the matter of abusive barking from the neighbours dogs has stopped. However, we would request that this file be retained by the BCFIRB should the problem at hand reoccur.”

On June 11, 2018, Mr. and Mrs. Bird sent their own email advising that they would like “to step out of the hearing process” as with the dog passing there have been no real disturbances. They say peace and harmony seem to be returning to the neighbourhood.

Decision

Although the complainants’ submissions did not address the issue of what disturbance actually remains following the death of Max, from their most recent correspondence it is clear that the dog barking disturbance ended with the death of Max. Despite the fact that the respondents have two other dogs, the complainants do not allege that there is any ongoing disturbance.

While the respondents appear interested in getting a determination that their dogs are integral to the farm operation and fall within normal farm practice, BCFIRB cannot make these types of determinations in the absence of evidence that there is a party aggrieved by a disturbance (in this case barking).

As a result, I dismiss these complaints. There will be no order as to costs.

I note that the complainants have asked that BCFIRB retain their files. I note here that should there be further issues related to dog barking on the Cusheon Lake Farm, a new complaint would need to be filed referencing the circumstances as they exist at that time.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in cursive script, appearing to read "John Les".

John Les, Chair