

IN THE MATTER OF  
*THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*, RSBC 1996 C. 131  
AND IN THE MATTER OF A COMPLAINT REGARDING A BARKING DOG ON A  
SHEEP FARM IN GRAND FORKS, BRITISH COLUMBIA

**BETWEEN:**

**MICHAEL AND NANCY HARRISON**

**COMPLAINANTS**

**AND:**

**ADOLF JAEGER**

**RESPONDENT**

**DECISION**

**APPEARANCES:**

For the British Columbia  
Farm Industry Review Board:

John Les, Chair and Presiding Member  
Al Sakalauskas, Member

For the Complainants:

self-represented

For the Respondent:

self-represented

Date of Hearing:

May 5, 2017

Place of Hearing:

Grand Forks, British Columbia

## A. INTRODUCTION

1. The British Columbia Farm Industry Review Board (BCFIRB) hears complaints about farm practices under the *Farm Practices Protection (Right to Farm) Act* RSBC 1996, c. 131 (the *Act*). Under s. 3 of the *Act*, a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business may apply to the BCFIRB for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, a panel of the BCFIRB is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the complaint is dismissed. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice causing the disturbance.

2. In their Notice of Complaint filed on October 6, 2016, the complainants, Michael and Nancy Harrison, allege that they are aggrieved by nuisance barking from a dog. In their view, the dog was not a livestock protection or guardian dog but rather a pet. They also raise the issue of whether the respondent Adolf Jaeger was a *bona fide* farmer stating in part:

We have lived in the ALR for 30+ years (in Cloverdale, Enderby and now Grand Forks) and for twenty of those years, raised alpacas. We understand the basics of farming and good animal husbandry, and have no objections to any normal noises/odors commonly associated with operating a farm. However, it is our contention that this barking dog is not acting as protection for Mr. Jaeger's sheep. We believe his dog is an untrained family pet that feels so territorial that he will bark at anything that falls within his view, day or night, including visitors to the new neighbours across the street, in order to protect his owner's property, NOT his sheep. (emphasis in original)

3. Given that s. 3 of the *Act* requires that a complaint arise out of a farm operation carried on by a farm business, and in light of the complainants' query whether the respondent was a *bona fide* farmer, BCFIRB set up a submission schedule to address the following two issues:

- a) Is the disturbance complained of (barking dog) resulting from a farm operation conducted as part of a farm business?
- b) Is the barking dog an integrated and functional part of the farm operation?

4. On November 22, 2016, the presiding member found that the Notice of Complaint was within the jurisdiction of BCFIRB and referred the complaint to a panel for hearing, stating in part:

I have considered these submissions and while agree that the respondent could have been more forthcoming with evidence in support of his farm business, I am prepared to find that he has established a prima facie case that his raising of sheep is a farm business....

In this case, the disturbance complained of is a barking dog. The respondent asserts that this dog is an integral part of his farm business as it protects his sheep from

predation. Based on this assertion, I am prepared to find that the disturbance complained (dog barking) may relate to a farm operation carried out by a farm business (the raising of sheep) such that this matter can be referred to a panel for hearing.

However, I would observe that it remains open to the complainants to argue at the hearing of this complaint that some, or all, of the barking that they are aggrieved by is in fact not related to the protection of sheep but is instead nuisance barking. If a panel were to find that the dog barking was not connected with livestock protection, the complaint would be dismissed and the complainants would need to pursue alternative remedies for nuisance actions either through the courts or local government. That determination can only be made by a panel after hearing all the evidence.

5. On January 6, 2017, a pre-hearing conference was conducted.
6. On January 30, 2017, the complainants wrote to BCFIRB asking that the presiding member recuse himself from hearing this complaint alleging bias. Following a submission process, the presiding member issued his decision dismissing the application on March 16, 2017. In considering the application, the presiding member found that a party must point to a prior statement, relationship, or interest that may lead an informed person to conclude, on a demonstrable foundation, that a perception of bias exists. He concluded that his decision to refer the complaint to hearing did not support a bias allegation, stating in part:

In this case, the decision to refer this matter to a hearing based on the respondent's farm status through BC Assessment Notices and farm vehicle plates issued through the Insurance Corporation of British Columbia is some evidence that the respondent is carrying on a farm business such that BCFIRB has the jurisdiction to hear the complaint. Other than questioning the adequacy of this evidence, the complainants (who in fact seek a remedy from BCFIRB modifying the respondent's farm practices) did not introduce evidence that the respondent is not operating a farm business.

Indeed, I find it necessary to observe that the outcome of my *prima facie* ruling was in favour of the complainants. A complainant can only access a BCFIRB remedy if there is a farm business. If there is no farm business, the complainant is not entitled to complain to BCFIRB; he is required to go Court. As a previous BCFIRB panel held in the *Hardy v. Stanhope Dairy Farm Ltd.*<sup>1</sup>, while the evidence in some complaints has led to a conclusion that an operation complained of is not a farm business, it would abuse BCFIRB's process for a complainant to file a complaint with the object of seeking a ruling that a business is not a farm business. While more will be said on this below, I note the following brief passage from that detailed decision (para. 50):

... a complainant who comes before us with a complaint must do so with the *bona fide* intention of seeking the only remedy the *FPPA* can grant to that complainant –an order requiring the farmer to cease or modify the complained of practice. In our view, to come to BCFIRB primarily seeking the opposite

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<sup>1</sup> *Hardy v. Stanhope Dairy Farm Ltd.*, October 4, 2013, BCFIRB [http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/regulated-marketing-appeal-decisions/hardy\\_and\\_bond\\_v\\_stanhope\\_farms\\_ltd\\_decision\\_oct04\\_13.pdf](http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/regulated-marketing-appeal-decisions/hardy_and_bond_v_stanhope_farms_ltd_decision_oct04_13.pdf)

finding – that the person is not a “farmer” and is not even within the scope of the Act - abuses the Act’s processes and is therefore vexatious. It is vexatious because it does not in good faith seek as its main purpose the only remedy section 6 makes available to complainants.(emphasis added)

7. The presiding member then went on to consider the respondent’s application for summary dismissal, and stated:

Given the complainants’ submission here that the respondent is not a farm, and based on *Stanhope*, an issue arises about whether the complainants are in fact seeking to advance a section 3 “complaint”, or whether this complaint is viewed instead as a basis to show that a person whose conduct they find objectionable cannot access the FPPA. The *Stanhope* decision is clear that if complainants are not prepared to proceed on the basis that a respondent is a farmer – which is the only way they can seek a remedy available under the *FPPA* - the appropriate course would be to refuse to hear a complaint on the basis that the complaint is trivial, frivolous, vexatious or not made in good faith: *FPPA*, s. 6(2)(a),(b),(c).

If the complainants wish to proceed with this complaint, they will need to confirm that they are not asking for a finding from BCFIRB that Mr. Jaeger is not a “farmer”. If they are not prepared to provide that confirmation, they have until Friday, March 24, 2017 to provide their submission as to why this complaint should not be summarily dismissed.

8. By email dated March 24, 2017, the complainants confirmed that they did not intend to argue that the respondent was not a “farmer” and agreed he was operating a farm business. The complaint proceeded to hearing on that basis in Grand Forks, British Columbia on May 5, 2017.
9. On the evening prior to the hearing, the panel conducted a site visit of the farm and the complainants’ property for the purpose of putting the complaint into geographical context.

## **B. ISSUE**

10. Is the noise generated from the barking dog used for protecting livestock from predation in accordance with normal farm practices?

## **C. SUBMISSIONS OF THE PARTIES**

11. The complainants’ argument is twofold; they allege that they are aggrieved on an ongoing basis by the barking of the respondent’s mixed breed 9 year old dog which they say is a family pet and not a livestock protection dog. According to the Notice of Complaint, the respondent also has a sheep dog but it is not part of this complaint. In the alternative, they argue that the respondent’s use of his dog is not consistent with normal farm practice.
12. The complainants reside across the street from the respondent’s five acre property and residence. Their master bedroom faces the respondent’s property and, as their house

does not have air-conditioning, they sleep with the windows open during warmer weather.

13. The dog barking appears to have become an issue in the summer of 2016; the complainants kept a record of nights they were disturbed by dog barking in August (16 nights out of 31) and September (10 nights out of 30). Based on these records, they argue that their sleep was disturbed by the barking dog 42% of nights during for this period. They argue that they are entitled to uninterrupted sleep between 10:00 pm and 6:00 am, and this current level of disturbance is unconscionable.
14. The complainants say that when the dog barks, no lights come on at the respondent's property and they see no evidence of anyone investigating the cause of the barking. Initially, Nancy Harrison spoke to the respondent about the barking issue and he agreed to remedy the problem by moving the dog to the other side of the out buildings (in the rear further from the complainants' residence). They say that the barking issue did not improve and they provided a further barking record showing that the barking dog disturbed their sleep on April 2, 3, 11, 14 and 27, 2017.
15. The complainants argue that Grand Forks has the highest population of deer in BC, with well over 300 deer roaming neighbourhoods. They argue that if there are predators in the area they would go after the deer.
16. The complainants rely on excerpts from two publications, *Sheep 201, A Beginners Guide to Raising Sheep* and the National Farm Animal Care Council's *Code of Practice for the Care and Handling of Sheep*<sup>2</sup> and argue that a sheep farmer's first line of defence is a good fence. According to *Sheep 201* "(a) fence is the first line of defense against intruders. However, predators can penetrate a fence by digging under, jumping between the wires, crawling through the holes in the mesh, or jumping over the top of the fence."
17. As for livestock guardians, *Sheep 201* recognizes that livestock guardians are becoming an increasingly popular method of controlling predators and according to an American study, 45 percent of sheep farms employ a livestock guardian which may include dogs, llamas and donkeys.
18. The National Farm Animal Care Council *Code of Practice* recognizes that there are a range of potential methods of predator control including supervision, fencing, confinement, moving sheep to a less vulnerable areas, repellants, livestock guardian animals and lethal control. The complainants point to their photographs of the respondent's fence which show it is in part made of pallets and at some places is only 24" in height. Another section of the fence is made of vinyl fencing which they say offers little protection from predators.

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<sup>2</sup> The Codes of Practice are nationally developed guidelines for the care and handling of farm animals and provide the National Farm Care Council's national understanding of animal care requirements and recommended practices.

19. As for the respondent's dog that is the subject of this complaint, the complainants maintain that the dog is not a properly trained livestock guardian dog and, instead, describe it as a territorial family pet protecting the family home. They say that much of the barking does not relate to sheep protection and, as such, is not part of normal farm practices. During the day, they have observed the dog barking at strangers to the neighbourhood, such as Telus and Fortis workers, walkers and other visitors. They describe the daytime bark and night time bark as the same.
20. The complainants argue that even if this dog was one of the recognized livestock guardian breeds, this dog does not sleep with the sheep but is instead housed in the front yard, some 75 yards away from the sheep pen. They question how this can be effective predator control.
21. The complainants have raised alpacas and sheep for over 20 years (six years on this property) and say they have never had a predator incident. They have always had adequate fencing and have kept their dog in at night. The complainants also introduced anecdotal evidence from two other sheep farmers in the area that have not experienced problems with predators and have dogs that sleep inside at night.
22. The respondent argues that his property is located within the Agricultural Land Reserve and he has farm status. He has been breeding, raising and selling sheep and lambs since 2012. He has had as many as 34 sheep but currently has 15. He also sells table eggs as well as ducks. Most of his farm income is generated from the sale of table eggs.
23. With respect to his dog, the respondent maintains that his dog is a livestock protection dog and he is following normal farm practices. He says owning a dog for livestock protection is an established practice going back thousands of years (referencing *The History of Animals* by Aristotle and *The Georgics* by Virgil<sup>3</sup>) and he is not doing anything inconsistent with normal farm practice.
24. With respect to predation risk, the respondent introduced a letter from a local conservation officer, dated April 12, 2017, which confirms that the main predators in the Grand Forks area are black bears, cougars and coyotes. The letter discusses an incident where a cougar killed one of the respondent's sheep and injured four others in an enclosed field on Well Road (not on the subject property). The cougar was not caught. There was another livestock predation complaint on July 18, 2016 and the cougar was caught and euthanized. As there have been no further complaints since then, the conservation officer believes that the cougar removed from the area in July 2016 was the same cougar responsible for the respondent's killed and injured sheep.
25. The respondent introduced pictures of his fencing and says it is 55" high with electric wire on top. He observes however, that cougars can jump 15'. His sheep pen is less than 76 yards from his house and it is 12 yards from the corner of the pen to the house.

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<sup>3</sup>The *Georgics* is a Roman poem about rural life and farming written in 29 BCE.

26. With respect to his dog, the respondent says it is a cross breed, possibly part Golden Retriever and part Australian Sheep Dog, but he is unsure. The dog was acquired at 2-3 months of age at a time when the respondent did not have sheep. The dog does not have special training. However, prior to the dog sleeping outside, the respondent says he lost 3 sheep to predators<sup>4</sup>. He says the best evidence the dog is working is that he has not lost any sheep since the dog has been sleeping outside. The respondent also reports that his dog protects his property from thefts.
27. The respondent says that when his dog barks at night, he does not turn on his porch light as that would impede his vision. He goes out in the dark with his cross bow. The dog sleeps outside in various locations but not the sheep pen because the fencing, is such that once in the pen, the dog cannot exit to provide protection for other farm animals. Further, and in acknowledgment of the complaints, the respondent says he recently purchased a dog shock collar to be worn at night. His practice now is to “zap” the dog when he barks and then check on what is happening outside.

#### **D. ANALYSIS**

28. The complaints were filed pursuant to s. 3(1) of the *Act* which provides 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.

#### **Are the Complainants Aggrieved By a Disturbance Resulting From a Farm Operation Conducted as Part of A Farm Business?**

29. Section 3 requires the complainants to establish that they are aggrieved by a disturbance that results from a farm operation conducted as part of a farm business. This language involves three components that must be satisfied before the panel can determine what is “normal farm practice”: (a) the matter complained of must actually be a “disturbance” within the meaning of the *Act*, (b) the disturbance must have sufficient personal impact on the complainant as to meet the definition of “aggrieved”, and (c) there must be a sufficient connection between the disturbance and the farm as to conclude that the disturbance *results* from the farm operation.
30. First, it is not enough for a complainant to simply demonstrate that he or she is aggrieved by a particular disturbance. If that alone was the test, based on the evidence we have heard in this hearing, we would have no difficulty concluding that the complainants here are aggrieved by dog barking. However, before BCFIRB can hear and determine a complaint we must be satisfied that the disturbance complained of results from a farm operation conducted as part of a farm business.

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<sup>4</sup> This is a reference to the July 2016 incident.

31. The farm business question was the subject of a preliminary submission process. The presiding member concluded that the respondent had initially demonstrated that his raising of sheep “established a *prima facie* case that his raising of sheep is a farm business” (i.e. there was sufficient evidence to demonstrate that there was an underlying farm business) Based on the evidence we heard in this hearing, we agree that the respondent operates a small sheep and poultry business.
32. The outstanding question for us to answer before determining “normal farm practice” under the *Act*, is whether the disturbance complained of (barking dog) is caused by an animal whose functional purpose is an integrated and functional part of a farm operation. There are certainly circumstances where dogs are integral to a farm operation, such as on a working cattle ranch or sheep farm. However, the *Act* was not intended to offer protection to all barking dog complaints that may occur on a farm property, and the fact that dogs may ward off predators and potential trespassers does not necessarily make them an integral part of a farm operation. See: *Lee v. Johnston*, BCFIRB, April 15, 2013.
33. Looking at the circumstances of this complaint, the respondent has argued that this barking dog complaint relates to his livestock protection (or guardian) dog. His argument is, essentially, that farmers have been keeping dogs for protection for thousands of years and, therefore, his dog’s barking should be protected under the *Act*. Implicit in this argument is that the magnitude of this disturbance does not exceed the tolerance limits of a reasonable neighbour.
34. In approaching this question, we have asked ourselves whether this dog (and the dog’s barking) is an integral and functional part of this small sheep and poultry operation.
35. We note here the complainants’ argument that the dog in question is a family pet and not a livestock protection dog (i.e. it is not a farm practice). In our view, this argument raises similar issues to the preliminary issue referred to above when the complainants filed their Notice of Complaint with BCFIRB and then sought to argue that the respondent did not operate a farm business. The complaint process under the *Act* was not intended to be used to obtain preliminary determinations that the *Act* does not apply, either because the business complained of is not a farm business or the practice complained of is not a farm practice, in an attempt to remove a defence a farmer might rely on in subsequent court proceedings.
36. In considering how the complainants approached this complaint, despite their argument that the disturbance relates to a family pet and not a farm practice, we find that the complainants are not using the complaint process to obtain a determination for a collateral purpose and that they have a *bona fide* intention of seeking the only remedy the *Act* can grant – an order requiring the farmer to cease or modify the complained of practice. This is not a circumstance where the complainants seek to abuse BCFIRB’s complaint process.
37. Given that conclusion, we turn now to consider the question of whether the dog barking complained of results from a farm operation conducted as part of a farm business. Unfortunately we did not hear much in the way of evidence on this critical issue. However, in our view, several factors are significant. The dog in question is not a recognized

livestock protection or guardian breed and has not received any special training. Usually livestock guardian dogs are trained from an early age to stay with the herd or flock, blending in with the animals they are protecting and watching for intruders. Their presence may be enough to ward off some predators but they may also confront predators aggressively. The respondent did not testify regarding any special experience he has in training dogs generally or livestock protection or guardian dogs in particular.

38. We also observe that the dog was acquired when the respondent lived in Revelstoke and he did not have sheep farm. His evidence is that he just wanted a dog and, at that time, the dog provided theft protection and kept bears off the property. From this testimony, we conclude that the dog was a family pet before coming to the sheep farm in Grand Forks.
39. In addition, we observe that for some period of time, the respondent's dog did not sleep outside as the respondent's evidence is that he lost three sheep to predation prior to the dog sleeping outside in 2016 (after the predation incident referenced by the conservation officer on Well Road). It is fair to say then that the practice of keeping the dog outside is fairly new for the respondent. This would also explain why this complaint arose in 2016 and not earlier.
40. We also observe that while this dog now sleeps outside he did not do so for many years. Further, he does not sleep with the flock at the rear of the property, but according to the complainants, spends much of its time in the front yard where its bark is more noticeable.
41. The respondent described Grand Forks as having many deer and many predators in support of his claim that this is a livestock protection dog. He relies heavily on the cougar incident. However, we note that this incident did not occur at the respondent's property but at another location. There is no evidence that the respondent's dog was with the sheep at this other location protecting the flock. When questioned about why he did not move the dog to be with his flock after the predation incident, the respondent said he kept the dog as there were still some lambs at the farm. He did not elaborate further.
42. While the respondent argues that absence of predation incidents since the dog began sleeping outside is evidence that supports of the effectiveness of his dog as a livestock protection dog, we have come to the opposite conclusion. The fact that the dog was not with the flock when they were pastured away from the respondent's property (and presumably more vulnerable) is consistent with the dog being a family pet as opposed to being an integral part of the sheep business. In our view, a properly trained livestock protection dog would be with the flock wherever they were being kept.
43. Further, we note the respondent's testimony that he has purchased a shock collar which he says has been effective in reducing the frequency of barking. While we commend the respondent for trying to manage the dog barking issue, we question the practical application of a bark reducing device if the dog's actual purpose is predator control. Given that a livestock protection dog's purpose is in part to raise an alert of actual threats to the flock, the use of this collar would seem to indicate an acknowledgement by the respondent that his dog's barking is often unrelated to any threat to the flock.

44. The complainants describe this dog as a territorial house pet, determined to protect his home. They have observed the dog barking at various strangers to the neighbourhood during the daytime in addition to his night time barking.
45. Based on all of the evidence we heard, we find that the dog in question is not a livestock protection or guardian dog but is rather a family pet. The respondent has failed to demonstrate that this dog (and its barking) is integral to his sheep operation. While the dog may bark on occasion to ward off predators, it would appear that it barks day or night, for a whole host of reasons unrelated to predation. Further and perhaps most significantly, when the sheep are moved off farm, the evidence is that the dog stays with the family not the flock.
46. In these circumstances, we find that the complainants have not demonstrated that they are aggrieved by a disturbance (dog barking) that results from a farm operation conducted as part of a farm business. As such, we conclude that this is not a valid complaint under s. 3(1) of the *Act*. Where the *Act* does not apply, the general law does, meaning that where neighbours cannot work things out in a neighbourly way, their remedy lies with bylaw enforcement through local government or a nuisance action in court.
47. The reasons given above are sufficient to dispense with the issues on this complaint; however we have also turned our minds to the issue of normal farm practice, to give the parties the benefit of our views.

### **What is Normal Farm Practice in These Circumstances?**

48. Section 1 of the *Act* defines “normal farm practice” as follows:

**“normal farm practice”** means a practice that is conducted by a farm business in a manner consistent with

- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
- (b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

49. In determining whether a complained of practice falls within the definition of “normal farm practice,” the panel looks to whether it is consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances. The panel also considers contextual factors or the circumstances of the farm itself and properties around it to determine if there are any site specific factors that are relevant to the determination of normal farm practice for the particular farm. In other words, the statutory requirement does not simply require that we apply an abstract test where a particular farm practice is condoned regardless of the different circumstances that may arise on different farms. Instead, the test requires us to consider what are proper and

accepted customs and standards that are established and followed by similar farm businesses under similar circumstances.

50. The respondent's farm property consists of five acres with a sheep barn and contiguous sheep pasture. The sheep barn is a visual separator between the sheep pasture and the complainants' residence. There is a chicken coop with 30 to 40 hens, farm machinery and several old vehicles as well as the respondent's residence. There are also ducks on the property. The respondent's dog has unlimited access to the property.
51. The complainants argue that the respondent's use of a dog and the related dog barking at night are not normal farm practice. They say that they have raised alpacas and sheep for over 20 years (six of which at their current location). In that time, they have never had an incident with predators. They attribute this to having a well maintained fence. They also say that their practice was to keep their dog in at night. In contrast, they argue that the respondent's dog spends much of his night equidistant from their bedroom window and the sheep he is supposed to be protecting. They say if the dog was moved to the rear of the property closer to the sheep he is supposed to be protecting the noise disturbance would be curtailed or at least reduced.
52. The complainants take issue with the respondent's fence pointing to photographs of sections of the fencing made of pallets and vinyl. They say this lack of secure perimeter fencing is inconsistent with the two publications on sheep management practices (see paragraphs 16-18 above) which state that a sheep farmer's first line of defence is a good fence. We understand the complainants' argument here to be that, if the respondent had adequate or better fencing the need for a livestock protection dog would be mitigated.
53. The complainants referred to two neighbours who own sheep, one on Centre Road approximately 1.4 km away and the other on Spencer Road approximately 4 km away. They say neither of these sheep owners has had issues with predators and both recognize the importance of good fencing to keep their animals safe. Both sheep owners have dogs which sleep inside at night. We observe that neither sheep owner was called to give evidence at the hearing.
54. The respondent did have an opportunity to respond to the complainants' evidence and introduce his own evidence in support of the complained of practice being consistent with proper and accepted customs and standards of similar farms in similar circumstances. Apart from his own assertions that he is following normal farm practice, that he fences his animals, that his dog protects his animals, and that this practice has been in existence for thousands of years (on which point he relies on Ancient Roman literary references), he chose not to call any evidence from other local sheep farmers. He denies that his dog is doing anything that is not normal farm practice.
55. Based on the evidence in this hearing, we are of the view that a sheep farmer, like other poultry and livestock farmers, must have an effective livestock predation protection strategy. Sheep, cows, goats, chickens and ducks are prey and they cannot protect themselves from predators. They need adequate supervision, a good fence and secure

housing. The more secure the animal is, the less vulnerable it will be to predators. We have had the benefit of viewing the respondent's farm and his fencing. In our view, the fence is poorly constructed. Fence posts for a new pasture were poorly installed. While we acknowledge that a fence alone cannot stop a determined predator, a poorly constructed fence is an invitation.

56. On the issue of the dog, we are not prepared to find, simply based on the assertion of the respondent, that his dog is a livestock protection dog nor can we accept that the barking from this dog necessarily relates to livestock protection. There is no evidence before us that other sheep farmers in the Grand Forks area leave their dogs outside in the evening to bark as a means of scaring away possible predators. What little evidence there is on this subject supports the finding that sheep farmers rely on a good secure fence and keep their dogs in at night.
57. In light of this conclusion, and had we not dismissed this complaint on the ground that the complainants were not aggrieved as the disturbance they complain of (dog barking) does not result from a farm operation, we would have found that the respondent is not following normal farm practice as defined in the *Act* and directed him to cease using this dog as a livestock guardian or protection dog.

## ORDER

58. The complaint is dismissed.
59. There is no order as to costs.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



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John Les, Chair and Presiding Member



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Al Sakalauskas, Member