

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT ARISING FROM
A HORSE OPERATION IN SUMMERLAND, BRITISH COLUMBIA

BETWEEN:

ALLAN LYCHOWYD

COMPLAINANT

AND:

THERESE WASHTOCK and RICHARD BARKWILL

RESPONDENTS

AND:

HORSE COUNCIL OF BRITISH COLUMBIA

INTERVENER

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Carrie Manarin, Presiding Member
Ron Bertrand, Vice-Chair
Andreas Dolberg, Member

For the Complainant

Al Lychowyd

For the Respondents

Therese Washtock
Richard Barkwill

For the Intervener, HCBC

Isabel Pritchard

Date of Hearing

March 19-20, 2014

Place of Hearing

Kelowna, British Columbia

BACKGROUND

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 section 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice.
2. On June 18 2013, Al Lychowyd (the complainant) filed a complaint with BCFIRB alleging that he was disturbed by dust, noise, odour and manure management practices from horse related activities conducted on Therese Washtock's neighbouring property. Mr. Lychowyd claimed that Ms. Washtock piled horse manure and urine soaked bedding on their common property line and that it creates strong odours when the wind blows towards his home. He also claimed that Ms. Washtock chain harrows a horse riding ring which creates large amounts of dust and that she operates a skid steer in the late evenings that creates noise.
3. Therese Washtock and Richard Barkwill (the respondents) are co-owners of the property on which Ms. Washtock conducts horse-related activities. The property is located within the Agricultural Land Reserve (ALR) in the area known as Prairie Valley in the District of Summerland, British Columbia. Mr. Lychowyd lives next door. He currently produces hay for sale on his property and previously had a small cattle herd on the property.
4. From June 27, 2013 until September 20, 2013, the parties participated in a written submission process at the direction of the former Chair of BCFIRB, Ron Kilmury, to address an issue initially raised by Ms. Washtock regarding BCFIRB's "jurisdiction" to hear the complaint. The parties were directed to provide written submissions and supporting documentary evidence on the issue of whether the horse-related activities conducted by Ms. Washtock were farm operations conducted as part of a farm business, as required under section 3 of the *Act* in order for BCFIRB to have jurisdiction in this matter.
5. On October 2, 2013, Mr. Kilmury concluded from these submissions that Mr. Lychowyd "had established a *prima facie* case from which it could be concluded that there is some form of economic activity being undertaken with respect to horses on the respondent's property" and that Ms. Washtock had not adduced evidence sufficient to make the case that there is not a farm business being conducted on her property.
6. Mr. Kilmury referred the matter to a panel for the purpose of conducting a hearing during which the parties would give their sworn oral evidence and produce any supporting documentary evidence on the sole issue of whether the horse-related activities on the respondents' property that are the subject of this complaint were farm operations conducted as part of a farm business.

7. The hearing was held on October 25, 2013 by teleconference call, but Ms. Washtock did not attend the hearing to give oral evidence and provided no documentary evidence in support of her previously stated position that she did not operate a horse related business¹. In the absence of any evidence from Ms. Washtock upon which to make a determination, the panel decided to remit all of the issues in dispute (including the “jurisdiction” issue) to a full hearing. That decision was communicated in writing to the parties on October 28, 2014.
8. The Horse Council of British Columbia (HCBC) applied for and was granted limited intervener status to make submissions at the hearing.
9. On December 27, 2013, Ms. Washtock filed an application for judicial review of amongst other things, the interlocutory decision to set this matter down for a full hearing and sought a stay of the complaint hearing. The application for a stay was dismissed by the Supreme Court on February 21, 2014.
10. The complaint was heard in Kelowna, British Columbia on March 19 and 20, 2014. Prior to the hearing, the panel conducted site visits of the respondents’ and complainant’s respective properties in order to place them in geographical context.
10. At the end of the hearing, the panel directed the parties to give their final arguments by written submission.

ISSUES

11. Are the horse related activities undertaken on the respondents’ property, farm operations conducted as part of a farm business as required by s. 3 of the *Act* in order for BCFIRB to have “jurisdiction” to hear this complaint?
12. The panel wishes to clarify that although BCFIRB and the respondents had framed the above issue as one of “jurisdiction” throughout the preliminary processes as well as at the hearing, in the panel’s view the issue of whether the respondent’s horse related activities are a farm business is not a true question of jurisdiction in the sense that it does not raise the issue of the *authority* of BCFIRB to conduct this particular inquiry (emphasis added). The issue here is actually one of mixed fact and law involving statutory interpretation, so the panel will have to determine whether the facts alleged in the complaint fall within the statutory definition of a “farm operation conducted as part of a farm business”.
13. If they do, do the horse operations that cause the dust, noise, odour and manure management disturbances accord with normal farm practices?

¹ Richard Barkwill attended the October 25, 2013 hearing but he was not added as a Respondent until December 17, 2013.

DOES THE COMPLAINT ARISE FROM A “FARM OPERATION CONDUCTED AS PART OF A FARM BUSINESS?”

14. The panel notes that the *Act* was never intended to redress every complaint between neighbours involving practices relating to plants or animals on a piece of property. Where the *Act* does apply, however, it gives a neighbour a potentially powerful remedy given that BCFIRB could require a farmer to cease or modify a farming practice. It also gives a farmer significant protection against a nuisance action or some municipal by-law enforcement actions, but only if he or she conducts the operations of the farm business in accordance with normal farm practice.

Complainant’s Evidence and Submissions

15. The complainant, Mr. Lychowyd, submits that the complaint is properly brought under the *Act*. It is his position that the disturbances set out in his filed complaint (dust, noise, odour and manure management practices) result from horse operations which are conducted as part of Ms. Washtock’s horse related farm business. In particular, Mr. Lychowyd alleges that Ms. Washtock’s business activities include raising horses for sale, boarding and training horses and instructing riders.
16. The complainant believes the respondents operate a farm business because they have farm status through BC Assessment and Ms. Washtock admitted in her previous written submissions and testified at the hearing that she had sold a horse in 2013. Mr. Lychowyd also submits that there is no other apparent source of farming activity on the respondents’ property.
17. Mr. Lychowyd testified that he personally observed that the respondents brought large quantities of hay and woodchips onto the property for horse feed and bedding. He also relied on photographs and a video of vehicles he took of a camper and horse trailer on the respondents’ property. Noting that the entire property is set up for riding activities, the complainant testified that he has observed Ms. Washtock training riders on numerous occasions.
18. The complainant also testified that he observed a truck and horse trailer with Washington State license plates at the respondents’ property in approximately June 2013. Prior to this occurrence, the complainant testified that there had often been many horses on the property and that on one occasion he had counted nine horses in the pasture, adding there were likely more in the barn as well. He speculated that a number of horses had likely been sold at that time, but acknowledged that he could not verify this.
19. In his final written submissions, Mr. Lychowyd states that it is not up to him to prove that Ms. Washtock’s activities fall under the jurisdiction of BCFIRB. Mr. Lychowyd submits that he has provided observational evidence on this point

and that BCFIRB need only obtain the respondents' financial documents to confirm if they operated a farm business.

20. With respect to the disturbances complained of, Mr. Lychowyd's position is that they were the direct result of poor farming practices. Mr. Lychowyd testified that he is aggrieved by noise from a skid steer (and its backup beeper) that Ms. Washtock frequently operates late at night to move woodchips and at least on one occasion to hammer in a post. He described the noise of the beeper as loud, frequent, disrupting, disturbing and harassing and submits that it is not normal farm practice to operate a skid steer at night. He testified that this occurs mostly in the summer months but acknowledged that the noise disturbance has been less since September 2013.
21. Mr. Lychowyd also testified that he is aggrieved by dust that is generated when Ms. Washtock chain harrows the horse riding rings. He claims that this activity creates large dust plumes and on at least one occasion, a "dust storm" that drifts across the neighbourhood, with coarse dust settling on the complainant's hay field and fine dust particles getting into neighbours' houses. Mr. Lychowyd submits that Ms. Washtock's method of harrowing the riding rings is not a normal farm practice and that the respondents should water the rings before harrowing.
22. Mr. Lychowyd testified that he is aggrieved by odours which he believes are the result of improper manure management practices. He described the odour as overpowering and offensive. He testified that in the winter of 2012 leachate seeped from a manure pile located close to the property line onto his property and some pieces of horse manure also fell through the fence. The complainant also referred to a record of inspection carried out by the Ministry of Environment in May 2013 in response to a complaint he filed with that agency concerning a manure pile on the respondents' property close to his boundary line, among other things. Mr. Lychowyd submits that the location of the manure pile did not accord with normal farm practices; however he stated that he believes the respondents moved the manure pile in September of 2013 and that he has only gotten the "odd whiff" of an odour since the winter of 2012.
23. Mr. Lychowyd referred the panel to numerous photographs and videos that he says show that Ms. Washtock's horse operations have had, and continue to have, a significant impact on him and his neighbours, as follows:
 - a. Videos of Ms. Washtock operating a skid steer in the evening.
 - b. Photographs and videos showing dust from harrowing of the respondents' riding rings.
 - c. Photographs showing manure (and other materials) in an area adjacent to the complainant's property.
 - d. Photographs demonstrating snow melt on the complainant's property line, which Mr. Lychowyd alleges to be a result of leachate from the respondents' manure pile on their property.

24. Mr. Lychowyd also relied on the testimony of five witnesses, two of whom are current neighbours, one a former neighbour and one being the complainant's spouse who resides with him. This testimony overall corroborated the complainant's position concerning the dust, noise and odour disturbances set out in his filed complaint. Mr. Lychowyd's spouse, Carol Cockrill also testified that she and her grandson observed what appeared to be horse manure and leachate coming from the respondent property onto their property in December 2012.

Respondents' Evidence and Submissions

25. It is the respondents' position that while they formerly had a horse-related business, that business ceased in or about 2008 and any horse related activities undertaken on their property since that time are no longer part of a farm business. The respondents submit that even if their horse related operations were part of a farm business at the time of the complaint, they accord with the practices of other BC horse farm operations.
26. The respondents also submit that the complaint is frivolous and an abuse of process and that it was motivated by a history of animosity between themselves and Mr. Lychowyd.
27. Therese Washtock acknowledged that she received a summons to produce her Income Tax returns for 2012 and 2013 but testified that she did not have those documents because she did not file returns for those years. She also testified that although the respondents had no qualifying farm sales for 2012, they were granted farm status by BC Assessment and that she could not explain why. She testified that in 2013 she sold a 14 year old horse which qualified the property for farm status for that year.
28. Ms. Washtock testified that she operated a horse operation as part of a farm business until 2008 but has not done so since that time. She said she currently keeps two aged horses for pleasure riding and that it was her intention to undertake other farming operations in order to retain farm status with BC Assessment. She testified that she has planted two rows of Christmas trees, other perennial plants including cottonwoods and that she will be starting a small chicken operation.
29. Ms. Washtock testified that she did not receive income from boarding horses in 2012 or 2013 nor does she currently. Ms. Washtock denied that she has ever received income from transporting (or trailering) horses and denied that she received income from giving riding lessons in 2013 or currently. She testified that while she received income from training horses in the past, she did not do so in 2012 or 2013. Ms. Washtock also testified that while she has hosted riding clinics she has never charged participants or organizers for using the facilities on the respondents' property.

30. Jaimie Kidston is a family friend of Ms. Washtock and a competitor in equestrian sports. Ms. Kidston testified that she has an arrangement to live on the respondents' property in her trailer, which she also uses when travelling to competitions. She has taken many lessons from Ms. Washtock over the years but has not paid for them in at least 10 years. She also testified that she does not pay the respondents to board the three horses she had on their property, two of which she said she sold in 2013.
31. Luis Rodriguez has 40 years riding experience throughout Mexico, Texas and various locations in British Columbia. He testified that he had been to the respondents' property several times with his horse to train and that he is a good friend of Ms. Washtock's. He also testified that Ms. Washtock has never accepted any payment for riding lessons or for keeping his horse on her property, even on the one occasion when he left his horse there for a period of 1½ months. He further testified that he has also given riding lessons to others and has not charged for them because he does it for "the passion."
32. Dan Preston is a neighbour of the respondents and testified that he uses the riding rings on the respondents' property to ride his three horses at no charge.
33. Jody Sloper was qualified as an expert in equine facility and horse care management, horse rider training including teaching and accreditation in international sport, horse farming in the Okanagan area and sponsorship and volunteer practices in international horse sport. Her report dated February 14, 2014 was entered into evidence at the hearing.
34. Ms. Sloper's report sets out her opinion of the respondents' manure management practices, harrowing practices and use of a skid steer. Her report indicated that it was common for equipment to be used at any time of day on small horse operations. Ms. Sloper testified that she does not have a relationship with the respondents and inspected their property in February of 2014. Ms. Sloper also testified that it is customary in the equine community to provide sponsorship to new riders in a number of ways including providing training or mentorship at no cost. She noted that Ms. Washtock would have received support when she was training for the Olympics as an equestrian and that there is now an expectation that she contribute back to that community.
35. The respondents deny that Mr. Lychowyd is genuinely aggrieved by dust, noise, odours and manure management practices, and submit that their farming activities are consistent with the practices used by other BC horse operations.
36. The respondents also relied on the testimony of Gerri Huggins, an Environment Protection Officer with the BC Ministry of Environment. Ms. Huggins testified that she inspected the respondents' property on May 29, 2013 in response to a complaint by Mr. Lychowyd regarding various disposal issues on the property line between the complainant and respondents. Ms. Huggins prepared a report

following her investigation which was entered into evidence. Ms. Huggins testified that she observed only very minor concerns which were noted in her report and found no contravention of the *Environmental Protection Act*.

37. Mr. Rodriguez, Ms. Kidston and Ms. Sloper each testified that the respondents' facilities are comparable to other well-managed horse riding, training and boarding facilities in BC. Mr. Rodriguez added that he has ridden in many facilities and "wished that all were as well maintained" as the respondents' property, stating that the preparation of the riding rings was the best he had experienced and exceeds all rider requirements.
38. The respondents submit that they have made accommodations in an effort to address their neighbours' concerns. Ms. Washtock testified that the District of Summerland By-law Enforcement Officer, Gary Ellis, had mediated an agreement in 2006 (or 2007) between Ms. Washtock and her neighbours (Mr. Lychowyd and Ray Kolbus, one of the complainant's witnesses) regarding noise from her activities. The agreement set out that Ms. Washtock would not operate equipment outside of the hours of 7 am to 10 pm, unless it was completely unavoidable or an emergency situation. Ms. Washtock testified that she was "anal" about abiding to this timeline when operating equipment on the property and this was corroborated by the testimony of Ms. Kidston.
39. Ms. Washtock also testified that other measures she took to mitigate the effects of activities on the respondents' property included the construction of an earth berm planted with cedar trees to provide a barrier between her barn area and the complainant's property and the watering of the riding rings whenever possible to mitigate dust.

Intervener

40. The Horse Council of BC, which represents over 23,000 members, did not address the "farm business" issue in its submissions. The intervener testified that the practices complained of on the respondents' property were common on small horse farms across BC and that it is not uncommon to undertake horse-related activities during odd hours of the day. For example, Isabel Pritchard noted that it may be necessary to train horses in the early morning in order to avoid the extreme heat during the day or where one is employed off of the property, to do routine chores before and after work hours.

Analysis

41. The complaint was brought pursuant to section 3(1) of the *Act* which states 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. [Emphasis added]

42. The following definitions set out in section 1 of the *Act* are important in the determination of whether the complaint arises from a farm operation conducted as part of a farm business:

“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;...
43. The definition of “farm operation” goes on to itemize a number of areas that are expressly included and excluded, with no specific mention of horses being excluded. The panel accepts that the raising and keeping of horses is a farm operation within the meaning of ss. 1(a), “growing, producing, raising or keeping animals...”
44. As noted above, the threshold question is whether or not the complaint falls under section 3(1) of the *Act*, which we repeat here for clarity:

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***, [emphasis added] 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.

45. In other words, the panel must consider whether or not the disturbances alleged in the complaint, namely dust, noise, odour and manure management result from a “farm operation” (in this case the raising and keeping of horses) which is conducted as part of a farm business as defined above. If there is no farm business, the panel must dismiss the complaint and the complainant is left to any private law remedies that might be available.
46. The panel adopts the approach set out in *Hanson v Asquini* (BCFIRB, October 31, 2003) at p. 4 as follows:

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 farm a farm education or farm research institution?

The *Canadian Oxford Dictionary* (1998) defines “business” amongst other things as “one’s regular occupation, profession or trade”. *Black’s Law Dictionary* (7th edition, 1999) defines “business” as: “(a) commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain”.

47. The complainant submits that Ms. Washtock’s horse related activities are conducted as part of a farm business. Mr. Lychowyd relies on the respondents’ statement that their property received farm status with BC Assessment in 2012 and 2013 (when the disturbances were alleged to have occurred) and that they sold at least one horse in 2013. He also testified that there is no other apparent source of farming activity being undertaken on the respondents’ property.
48. The complainant also submits that there was a high level of horse-related activity that indicated an ongoing horse related business was taking place on the respondents’ property. In his pre-hearing written submission, he claimed that he observed up to 9 horses in the pasture and large quantities of feed and bedding which indicated to him that Ms. Washtock was boarding horses. He also testified that there were a number of people attending the property in 2012 to take riding lessons. The complainant also relied on his observation that a number of horses were removed from the property in June 2013, and he said he believes that farm income was received for the sale of these horses.
49. The respondents admitted that there was considerable horse-related activity occurring on their property at the time of the complaint and since then, but submitted that these horse-related activities were not conducted as part of a farm business.

50. Ms. Washtock testified that several riders have camped on the respondents' property and received training from her without payment. She said she has hosted riding clinics but has never charged for the use of the facilities on her property. She also testified that she has not received any income from teaching riders, training horses or boarding horses for several years and has never received income from transporting horses. She further testified that she did not sell any horses in 2012 and sold one horse in 2013.
51. Ms. Washtock's evidence was corroborated by Ms. Kidston who testified that she lived on the respondents' property and took many lessons from Ms. Washtock, but did not pay for any in at least 10 years. During this time, she also boarded three horses on the respondents' property, but never paid for this service. Mr. Rodriguez also testified that he received lessons from Ms. Washtock and left his horse in the respondents' care without paying for those services. Ms. Sloper testified that sponsorship and mentoring (by volunteering one's services, for example) is common practice and an expectation in the sport horse riding community.
52. The panel accepts the respondents' evidence that with the exception of the sale of a horse in 2013, the respondents did not receive any other income from horse related activities on their property in 2012 and 2013. The panel finds that while the sale of one aged horse may be sufficient to give the respondents' property farm status it does not constitute a farm business. There is no commercial enterprise carried on for profit nor can one sale be considered an occupation or trade habitually engaged in for livelihood or gain. Having concluded that the respondents' horse related activities in 2012 and 2013 were not conducted as part of a farm business within the meaning of the *Act*, the panel finds that the complaint must be dismissed.
53. With respect to Mr. Lychowyd's submission that it is not up to him to prove that the disturbance complained of arises from a farm operation conducted as part of a farm business, the panel recognizes that farm practices complaints pose challenges for a complainant; as much information is often only in the hands of the farmer or third parties. While this does not relieve the complainant of the responsibility to advance those elements of a complaint within his ability to advance (see Clapham Complaint, September 22, 1997 at paras. 22-27), it does mean that in some cases, such as this one, more information is required before the panel can make an informed decision.
54. In the preliminary stages of this complaint, the former Chair of BCFIRB found that Mr. Lychowyd had indeed established a *prima facie* case that this complaint involved a farm business, based on his observational evidence of apparent horse-related business activities on the respondents' property and the absence of any evidence from the respondents. This was not a final determination but, rather, a finding that there was sufficient evidence to remit the complaint to a hearing.

55. At the hearing, the respondents through the testimony of Ms. Washtock and their witnesses adduced evidence (see paragraphs 25-34 above) which the panel found credible and sufficient to establish that the horse related activities are not conducted as part of a farm business but rather are a hobby or recreational pastime.
56. Mr. Lychowyd argued that it is the responsibility of BCFIRB to compel the respondents to provide financial evidence of a farm business. This is incorrect. The Rules of Practice and Procedure to the *Act* include procedures whereby one party may obtain documents from another party. In this case, the complainant applied for and was granted a summons to compel Ms. Washtock to attend the hearing to give oral evidence and to produce her 2012 and 2013 Income Tax returns. Ms. Washtock testified that she did not have those documents because she did not file returns for those years. Although Mr. Lychowyd argued that this did not stand to reason because there was a horse sale in 2013, he did not request any other financial documents from Ms. Washtock nor did he (as pointed out by the respondents) cross examine her regarding the nature of her income in 2012. The panel also notes that Mr. Lychowyd did not request a summons to compel the other respondent, Mr. Barkwill, to give evidence of the farm's financial affairs or to provide any financial documents (such as his Income Tax returns).
57. In his written submissions, Mr. Lychowyd also stated that he was not given sufficient time at the hearing to make his case and that he had further information that he did not get to use. The complainant had one full day to put in his own case forward, additional time the second day to cross-examine the witnesses for the respondents and a further week to provide written submissions. It is the view of the panel that Mr. Lychowyd was given more than adequate time, as he became quite repetitive during the hearing with both the presentation of his case and his questioning of witnesses.
58. Given our decision on this issue, it is unnecessary for the panel to make a determination on the merits of the complaint. However, given the great amount of time and resources that was expended by the parties and BCFIRB on pre-hearing matters as well as the hearing itself the panel wishes to make a few observations that it feels are significant with respect to this dispute.
59. During the pre-hearing written submission process, the respondents vehemently argued that Mr. Lychowyd's complaint should be dismissed because it was vexatious and had no merit. The respondents alleged that Mr. Lychowyd had previously made many unsubstantiated complaints to numerous agencies. While BCFIRB has procedures for summarily dismissing complaints, the attempts by the former Chair of BCFIRB and the hearing panel itself to use a summary procedure were frustrated by the respondents' refusal to provide any evidence in support of their position that their horse related activities were not part of a farm business. This ultimately made it necessary for BCFIRB to convene a full hearing on all issues in dispute.

60. Based on the evidence heard at the oral hearing, it was clear to the panel that there was little merit to Mr. Lychowyd's complaint. The photographs and videos he relied on did not show an appreciable amount of dust from harrowing of the respondents' riding rings as alleged in the complaint. Mr. Lychowyd's noise complaint focused primarily on the operation of a skid steer in the evenings. He referred the panel to videos he said were taken between 5 pm and 7 pm showing the complained of activity and associated noise, and his witness Jaimie Edge also confirmed that much of the skid steer noise occurred between 5 pm and 10 pm. However the panel notes that Mr. Lychowyd did not dispute that in 2006 or 2007 this issue was resolved with the assistance of a District of Summerland by-law officer, and at that time Mr. Lychowyd agreed to the respondents operating that machinery from 7 am until 10 pm.
61. Similarly with respect to odour and manure management, the complainant's numerous photographs did not demonstrate that horse manure in the area adjacent to the complainant's property was improperly managed, or was likely to cause leachate coming onto the complainant's property. Mr. Lychowyd asserted that an area of melted snow shown in his photographs resulted from leachate but he provided no other evidence in support of that assertion. The respondents on the other hand noted that the melted snow was confined to an area with underlying bedrock which in their and their witnesses' experience collects heat and therefore would likely be the first areas to have snow melt. The lack of substance to the complaint about manure (and odour) was also noted in the report and testimony of the Environment Protection Officer, Ms. Huggins, who had inspected the parties' property line at the request of the complainant. She observed that a couple pieces of manure may have fallen through the respondents' fence onto Mr. Lychowyd's side of the property line but there was no evidence of odour or leachate, and she reported only very minor concerns overall.
62. In summary, the panel concludes that even if BCFIRB was satisfied that this complaint involved a farm business, there was little evidence to demonstrate that the complainant was actually aggrieved by dust, noise, odour and manure management disturbances arising on the respondents' property or that the farm practices giving rise to these disturbances were inconsistent with "normal farm practice".
63. It is regrettable in the view of the panel that this matter had to proceed to a full hearing. Obviously this entire process could have been avoided if the complaint had not been filed in the first place. But similarly, had the respondents co-operated with BCFIRB by providing evidence requested by the Chair of BCFIRB during preliminary processes, a summary dismissal could have been made, thereby avoiding the time and expense of a full hearing to the parties, their witnesses, the intervener and BCFIRB.

64. The complaint is dismissed.

Dated at Victoria, British Columbia this 31st day of July, 2014.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Carrie Manarin, Presiding Member



Ron Bertrand, Vice-Chair



Andreas Dolberg, Member