

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT ABOUT THE
SPRAYING OF HERBICIDES ON A FARM NEAR ABBOTSFORD, BC

BETWEEN:

EDWARD TRUAX

COMPLAINANT

AND:

SID HLUSEK

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Carrie Manarin, Presiding Member
Ron Bertrand, Vice Chair
Corey Van't Haaff, Member

For the Complainant

Edward Truax

For the Respondent

By written submission

Date of Hearing

February 13, 2014

Place of Hearing

Oral Hearing via Conference Call

BACKGROUND:

1. On August 9, 2013, the British Columbia Farm Industry Review Board (BCFIRB) received a complaint from Edward Truax. The complainant states the respondent, Sid Hlusek, is spraying herbicide on both sides of an electrified fence that runs along their common property boundaries, killing a swath of the complainant's hay field. The complainant says that the respondent keeps between 4 - 10 cows and calves as well as two bulls on his property and relies on the electric fence to contain his livestock.
2. The complaint is brought under the *Farm Practices Protection (Right to Farm) Act* (the "FPPA"). One of the issues for BCFIRB to determine is whether or not the disturbance alleged in the complaint arises out of a farm operation carried on as part of a farm business as required by s. 3 of the *FPPA*.
3. By way of a letter to the parties dated August 26, 2013, the Chair of BCFIRB set up a written submission process in order to determine if the disturbance complained of resulted from a farm business. BCFIRB received written submissions from the complainant dated September 17 and 25, 2013 and a written submission from the respondent dated September 13, 2013. By way of a letter dated November 20, 2013, the Chair of BCFIRB advised the parties that

...the complainant had demonstrated on a *prima facie* basis that the disturbance complained of (spraying weeds) results from a farm operation (maintenance of the electric fence) conducted as part of a farm business (a small cow calf operation). [And] in the absence of any evidence or argument from the respondent to demonstrate that the beef he produces is not part of a farm business (that the beef is solely for personal consumption) I cannot summarily dismiss this complaint.
4. As a result, the Chair of BCFIRB referred the complaint to a three-member panel for hearing by written submission. The respondent made a written submission dated December 16, 2013 and the complainant made a written submission dated December 5, 2013. By way of a letter dated January 3, 2014, the hearing panel chair asked the respondent to provide further particulars regarding his cattle operation however he did not do so.
5. By way of a letter to the parties dated January 15, 2014, the hearing panel chair advised the parties that there was insufficient information upon which to make a decision and an oral hearing by teleconference call was convened for February 13, 2014. The date and time of the hearing as well as the dial in details were set out in the letter. The respondent acknowledged service of this letter on January 16, 2014 but did not attend the hearing.

SUBMISSIONS AND EVIDENCE OF THE PARTIES:

6. The complainant, Mr. Truax, alleges that the disturbance giving rise to his complaint has been going on for years. He alleges that his neighbor, Mr. Hlusek, has been spraying a herbicide not only along a fence line that runs the length of their common property line but that he also reaches over the fence to spray the grass that grows within a 2 to 4 foot swath on the Truax side of the property line, killing that grass and additional grass from wind-

carried overspray. He provided a number of photographs showing Mr. Hlusek spraying along the fence line as well as reaching over it and applying spray to the grass on Mr. Truax's side of the fence.

7. In his September 9, 2013 letter, Mr. Hlusek states that his property is approximately 10 acres in size and that he operates a roofing business on it. In his December 16, 2013 letter, Mr. Hlusek states that he also operates a "part-time farm". He submits that the pasture area on his property is used for grazing of cattle but that he does not generate income or profit from the use of the pasture. Mr. Hlusek also submits that he does not contemplate any future farming business activities, he does not qualify for the farm tax credit under the *Income Tax Act*, he does not hold any licenses related to agricultural activities and he does not participate in research or education for farming.
8. Mr. Hlusek submits that he sprays herbicides along Mr. Truax's side of the electric fence line because Mr. Truax allows grass to fall over it causing it to short out. Mr. Hlusek claims that Mr. Truax's daughter-in-law agreed to trim the area but failed to do so. Mr. Hlusek states he uses an herbicide that is not contraindicated for use with grazing animals. Mr. Hlusek also submits that he maintains an electrified strand close to the ground to keep out coyotes.
9. In his September 25, 2013 letter, Mr. Truax provided a BC Assessment record that shows Mr. Hlusek has farm status. Mr. Truax submits that in order for Mr. Hlusek to be eligible for farm status with BC Assessment, he would have had to apply for and to have provided proof of qualifying farm income. Mr. Truax states that Mr. Hlusek's property is in the Agricultural Land Reserve. He submits that Mr. Hlusek keeps a tractor to move large bales of hay (for animal feed) as well as for mowing the swamp grass on parts of his property. He also submits that Mr. Hlusek has a livestock trailer and that during the course of the year there can be between 4 and 10 cows and calves as well as 2 bulls and a horse. Mr. Truax provided photographs showing cattle, bales of hay and some farm equipment on Mr. Hlusek's property as well as the area along the fence line affected by Mr. Hlusek's spraying.
10. Mr. Truax submits that the extent of grass damaged on his side of the fence as a result of Mr. Hlusek's spraying of herbicide is unnecessary and malicious. Mr. Truax denies that the grass that touches the electric fence shorts it out and says he does not want any sprays or contaminants on his side of the fence and has to cut his grass farther from the fence line to avoid the risk of contamination.
11. In his September 16, 2013 letter, Mr. Truax provided an unsigned e-mail from his son's girlfriend, "Traci", dated September 16, 2013 in which she claims that she spoke to Mr. Hlusek about his spraying herbicide on the fence line. She claims that Mr. Hlusek advised her that he would not be spraying again for several weeks and would stop spraying provided that Mr. Truax's family kept the grass from touching the fence. When she told Mr. Truax of this, he said he would fertilize along the fence line area to re-grow the grass that had been killed. Traci claimed that when she returned to Mr. Truax's property a week

later she was advised by the complainant that Mr. Hlusek had started spraying herbicide along the fence line again.

12. A hearing by teleconference call took place on February 13, 2014. Mr. Hlusek did not attend the hearing although duly served with notice of it. Mr. Truax attended the hearing with a witness, George Houle.
13. The written submissions of the complainant dated September 17, 2013, September 25, 2013 and December 1, 2013 and the written submissions of the respondent dated September 13 and December 16, 2013 were entered into evidence.
14. Mr. Truax testified that he and Mr. Hlusek are neighbours with a common property line that runs east to west for approximately one-quarter of a mile. Mr. Truax purchased his property in 1998 and has resided on it since 2000. Mr. Hlusek purchased his property in 2003. Mr. Truax's property is bordered to the south by municipal property that has a water tower, to the north by the Hlusek property, to the east (or front of the property) by a road and to the west (or rear of the property) by another farm. An electrified fence is located on the common property line separating the Truax and Hlusek properties and was in place prior to the parties purchasing their respective properties.
15. Mr. Truax testified that he uses most of his property to grow hay and occasionally allows a friend to bring his cows onto another section of his property to graze. He said it is his desire to grow his grass right to the property line.
16. Mr. Truax relies on a copy of a BC Assessment document which shows that the Hlusek property has farm status. Mr. Truax says he believes that in order to get farm status you must have qualifying farm revenue from the property. He says Mr. Hlusek keeps 6 cows, 2 bulls and 1 horse on his property. He said he has observed that every year the cows each produce a calf and that up to six calves are then removed from Mr. Hlusek's property each Fall. Mr. Truax said he has also observed that Mr. Hlusek has slaughtered 4 cattle since he purchased his property – most recently he slaughtered two cattle a year ago. Mr. Truax said he does not know who owned the slaughtered cattle or where the calves went to but that Mr. Hlusek keeps a stock trailer to transport animals. Mr. Truax also testified that Mr. Hlusek also maintains a tractor to move large, round bales of hay, to harrow and to mow areas that are not suitable for grazing.
17. Mr. Truax testified that he maintained the fence up until Mr. Hlusek purchased his property and then Mr. Hlusek took over its maintenance. Mr. Truax testified that the electric fence was already there when he purchased his property and that he maintained it by replacing posts and insulators on the electric wire on his side of the fence prior to Mr. Hlusek purchasing his property. He said prior to Mr. Hlusek purchasing his property grass grew up to the fence line on both sides of the fence and was kept down by animals grazing. A year after Mr. Hlusek purchased his property, however, Mr. Hlusek began spraying herbicides along the fence line to remove the grass and that he does this approximately 3 to 4 times per year during the growing season.

18. Referring to photographs he said he took from July to September 2013, Mr. Truax estimated Mr. Hlusek uses a 30-inch wand and sprays over the fence and that it leaves a dead line extending 4 to 5 feet wide on the Truax side of the fence. Mr. Truax testified that he has asked Mr. Hlusek not to spray on his side of the fence and has not given Mr. Hlusek permission to spray on his side of the fence. Mr. Truax also testified that he wants grass to grow up to the fence line so he must now fertilize the areas along the fence line that were killed off in order to re-grow the vegetation.
19. Mr. Truax testified that he maintains an electric fence on the south boundary of his property that he shares with the municipality by cutting about a one-foot swath of brush so that it would not touch the wire. Mr. Truax explained that he cuts the vegetation along this fence line because it is predominantly salmon berry bushes (or coarser vegetation) whereas the vegetation along the boundary he shares with Mr. Hlusek is grass that can be kept down by allowing animals to graze on it. He also noted that the fence he shares with the municipality has only 3 alternating electrified wires whereas the fence he shares with Mr. Hlusek has all five wires electrified with the bottom one being only 6 to 12 inches from the ground. Mr. Truax further submitted that wet foliage touching the fence might reduce the power of the electrical current but that it would not short it out. He also submitted that in the usual course, the electric wire would kill the vegetation when it was dry.
20. Mr. Truax testified that photographs of Mr. Hlusek's property show that Mr. Hlusek allows cows to graze on the grass that grows under electrified fences within his property boundaries. Mr. Truax said he does not believe that the lower electrified strands are necessary and that they are not effective at keeping out coyotes because he has seen many of them on the Hlusek property.
21. Mr. Houle testified that he has an agreement with Mr. Truax to cut the grass on Mr. Truax's property approximately 3 to 4 times per year and sell it as hay. He claimed that in order to maximize the use of the hayfield he can cut 6 inches from the fence without damage but that due to Mr. Hlusek's spraying herbicide along the fence line, he must cut further back from the dead line as a precaution because the hay is consumed by animals and he does not know what the spray contains. Mr. Houle testified that as a further precaution, he keeps records of where he harvested the bales of hay that he sells so that he can trace back the location of the harvested hay should there ever be a problem with the feed consumed by customers' animals.
22. Mr. Houle testified that he cuts about 1,000 acres of hay each year and the Hlusek property is the only property he is aware of on which herbicide is used to control grass along a fence line. In his opinion, spraying of herbicide in this manner is neither a necessary nor a proper and accepted practice. He also stated that in his experience, it was not a usual practice to have five electrified wires to contain livestock or to have a bottom wire that close to the ground. Mr. Houle said in his experience, the usual practice (and more cost efficient method) is to have one electrified wire about 2 feet from the ground to prevent cattle from pushing over a fence and to let the livestock graze the fence line to keep the area clear. He said electric wires are not effective at keeping coyotes out of livestock pastures and that page wire could solve the problem.

23. Mr. Houle testified that an electrified fence will only lose a minimal charge if wet grass falls over it and that the grass touching it will eventually dry out and die. Consequently, he said it is common to see an electrified fence line with grass growing up over it. In contrast, he stated that shrubs or salmonberries are coarser than grass and will not be burned off by the electricity in the wires. In this case, Mr. Houle stated that it was unnecessary for Mr. Hlusek to use herbicides given that the grass on Mr. Truax's side of the fence was cut too often for it to be an issue.
24. Mr. Houle testified that he only uses herbicides to control certain weeds. He noted that a spray guard should be used to prevent drifting from the wind. He claimed that the yellow areas shown in Mr. Truax's photographs along the fence line indicated areas of over-spraying because a spray guard was not used.

ANALYSIS AND DECISION

25. Section 3(1) of the *Farm Practices Protection (Right to Farm) Act* (the "FPPA") provides as follows :

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.

26. The *FPPA* defines a "farm business" and a "farm operation" as follows:

"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; ... (k) processing or direct marketing by a farmer of one or both of (i) the products of a farm owned or operated by the farmer, and (ii) within limits prescribed by the minister, products not of that farm, to the extent that the processing or marketing of those products is conducted on the farmer's farm;...

27. Having regard to these provisions, a complaint under the *Act* involves a three step analysis. The first step involves a determination of whether a complaint falls within the jurisdiction of BCFIRB and in particular is dependent on the panel finding that the practice complained of (that is causing a disturbance) is part of a farm operation conducted as part of a farm business. The second step involves making a determination as to whether a party has standing to bring a complaint or in other words, whether they are aggrieved of a disturbance. The third step

requires the panel to determine if the farm operation that is causing the disturbance is the result of a normal farm practice or not.

REASONS OF THE MAJORITY

Step 1: Jurisdiction

28. After receiving this complaint, BCFIRB advised the parties that there was an issue as to whether the complaint was within its jurisdiction or not because it was unclear whether the farm operation (maintaining an electric fence) creating the complained of disturbance (spraying herbicide) resulted from a farm business. Mr. Hlusek was given numerous opportunities to provide documentary or oral evidence that any farm operations he was conducting on his property were not carried out as part of a farm business at the time of the complaint. Mr. Hlusek was directed by the Chair of BCFIRB in his letter of November 20, 2013 to provide an explanation or some evidence regarding what he does with the cattle he raises and any beef that he produces but he failed or refused to do so. Mr. Hlusek also failed to respond to questions set out in a letter of the Panel Chair dated January 3, 2014 regarding what he does with his cattle and he failed or refused to attend the hearing of this matter to give any oral evidence to clarify that issue.
29. Mr. Truax relies on documentary and oral evidence showing that Mr. Hlusek has farm status with BC Assessment and therefore he submits that Mr. Hlusek must earn qualifying farm income. He also gave evidence that he has observed that Mr. Hlusek keeps 6 cows and a bull on the property and raises and subsequently removes from the property approximately 6 calves each year. Mr. Truax also gave evidence that Mr. Hlusek has a livestock trailer on the property for transporting cattle and that he brings in hay to feed his livestock. He knows of two mature cows in the past year that were slaughtered on Mr. Hlusek's property.
30. Based on the evidence of Mr. Truax and in the absence of any evidence to the contrary from Mr. Hlusek, the panel finds that the Mr. Hlusek's cow/calf operation generates income or other valuable consideration and is conducted as part of a farm business. We make this finding given in part that Mr. Hlusek has claimed farm status through BC Assessment, a requirement of which is disclosure of income from qualifying farming activities. We also note that Mr. Hlusek had an opportunity to attend the hearing and admit, deny or otherwise respond to the allegation that he operates a farm business (which was set out in Mr. Truax's written submission of September 25, 2013) but he did not attend and gave no reason for his non-attendance.
31. We find it significant that Mr. Hlusek raises approximately six calves each year and removes them from the property in the Fall. Mr. Hlusek does not say the calves are raised for personal consumption instead in his written submissions, Mr. Hlusek denied that he earned income from his pasture and stated that his farm plan did not "contemplate *future* commercial activities". Mr. Hlusek failed to respond to questions put to him about his current farm income (if any) that he receives from his cow/calf operation. Given that there is no other apparent source of farming activity on Mr. Hlusek's property, the panel

concludes that Mr. Hlusek is raising livestock, a “farm operation” and selling or disposing of livestock (approximately six calves each year) as part of a small farm business.

32. Given that the disturbance complained of relates to the maintenance of the electric fence used to contain Mr. Hlusek’s livestock, his maintenance of that fence is a farm operation conducted as part of a farm business. While there is some evidence that Mr. Hlusek may also operate an abattoir on his property, the panel finds that there is insufficient evidence to conclude that the cattle slaughtered on the property are those raised by Mr. Hlusek.
33. In coming to our conclusion on the issue of jurisdiction, we have had the opportunity to review the dissenting reasons. We respectfully differ, on the basis that the dissent does not adequately account for the fact that in order to receive and maintain farm status under the BC Assessment Authority, a person is required to demonstrate that their land generates income from a qualifying agricultural use and in this case, the only identifiable agricultural use on the Hlusek property relates to the raising of calves. Further, given Mr. Hlusek’s non-attendance at the hearing, it is our respectful view that little weight can be attached to his unsworn written submissions because their reliability cannot be tested (for example, by cross-examination).
34. Having found that the complaint falls within the jurisdiction of BCFIRB, we now turn to consider the issue of whether Mr. Truax is aggrieved by a disturbance as required under section 3 of the *FPPA*.

Step 2: Standing – Is the complainant aggrieved?

35. Mr. Truax testified that he wants to grow his grass right up to his property line. He said that due to Mr Hlusek’s over-spraying of herbicide, that his grass is killed in a swath extending 4 to 5 feet wide on the Truax side of the fence. Mr. Truax testified that he is aggrieved because he loses hay production not only from the grass that is killed but also because Mr. Houle must leave a further buffer zone as a precaution against harvesting potentially contaminated hay. Mr. Truax also testified that he must now fertilize the areas along the fence line that were killed off in order to re-grow the vegetation killed by Mr. Hlusek.
36. Mr. Houle also testified that he would normally be able to cut grass 6 inches from the fence without damage to his equipment but that due to Mr. Hlusek’s spraying herbicide along the fence line, he must cut further back from the dead line as a precaution because the hay is consumed by animals and he does not know what the spray contains. He also said that as a further precaution, he keeps records of where he harvested the bales of hay that he sells so that he can trace back the location of the harvested hay should there ever be a problem with the feed consumed by customers’ animals.
37. Having regard to the testimony and documentary evidence of the complainant, we are satisfied that Mr. Truax is aggrieved by a disturbance, i.e. Mr. Hlusek’s spraying of herbicides on Mr. Truax’s side of the electrified fence. The panel finds that Mr. Truax has

lost hay production and has had to take remedial measures, namely fertilizing the dead zone, to mitigate the damage caused by this disturbance.

Step 3: Normal Farm Practice

38. Having found that Mr. Truax is aggrieved by Mr. Hlusek's spraying of herbicides along his side of a common fence line, we must now determine if that disturbance results from a normal farm practice.
39. Mr. Houle testified that based on his experience of cutting 1,000 acres of hay each year, he did not believe that it is necessary nor a usual or accepted practice to use herbicides to control grass along a fence line. He also testified that in his experience it was not a usual practice to contain cattle using a fence with an electrified bottom strand but rather that the usual and accepted practice was to let the cattle graze on the grass under the fence line. According to Mr. Houle, electric strands are not effective to exclude coyotes from a livestock enclosure compared to other options such as page wire.
40. Mr. Houle testified that it is common for electrified fences to have grass growing up onto them and he denied that the grass would short out an electrified strand as alleged by Mr. Hlusek. In Mr. Houle's view, over-growth is not an issue on Mr. Truax's property given that the grass is harvested 3 to 4 times during the growing season.
41. In his written submission dated December 10, 2013, Mr. Hlusek states that as a result of his roofing experience on farms, he has observed that "electric fences used in conjunction with herbicides are quite common with many farmers in the area." However, there was no way to determine the reliability of this statement given that Mr. Hlusek did not attend the hearing to be cross-examined on it or provide any other evidence in support. Consequently, the panel gives this evidence little weight.
42. The panel accepts the evidence of Mr. Truax and Mr. Houle and finds that it is proper and accepted practice not to electrify the bottom wire of a fence enclosing livestock but instead to allow cattle or livestock to graze along a fence line to keep grass down or alternatively to allow the grass to grow up along the fence line. The panel finds that Mr. Hlusek's practice of electrifying all five strands (including the bottom strand) and of spraying herbicides to maintain the lower electrified stands of the fence (not only on his own property but also on Mr. Truax's property) are not proper and accepted practices of maintaining a fence line and do not accord with normal farm practices.
43. Having found that Mr. Truax is aggrieved by Mr. Hlusek's spraying of herbicides on his property in order to maintain an electrified fence and having found that this practice does not accord with normal farm practices, the majority panel orders Mr. Hlusek as follows:
 - (a) to cease immediately his practice of spraying herbicides (or any other substance) on Mr. Truax's property without his written consent; and

(b) should he continue to use herbicides *on his side of the property line* then effective immediately, Mr. Hlusek must use a spray guard on the applicator and spray only when the wind is not blowing in the direction of Mr. Truax's property in order to ensure that herbicide (or any other substance) does not drift onto Mr. Truax's property.

Dated at Victoria, British Columbia this 27th day of May 2014.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Carrie Manarin, Presiding Member



Ron Bertrand, Vice-Chair

DISSENTING REASONS OF C. VAN'T HAAFF, MEMBER

1. I have read the reasons of the panel majority however I respectfully disagree with their conclusion that Mr. Hlusek's cow/calf operation generates income or other valuable consideration and is conducted as part of a farm business.
2. In my view, there is insufficient evidence to find that Mr. Hlusek carries on a farm operation conducted as part of a farm business. The only evidence presented by Mr. Truax is that the Hlusek property is the assessment classification as a farm. No evidence was produced on when or what formed the basis for application. There is a tax benefit certainly for seeking and maintaining farm status but the desire for some tax benefit cannot alone be conclusive proof that a farm operation exists and is part of a farm business. Any loophole in the classification process is not the responsibility of the panel to close and I cannot find that classification alone is proof of a farm business.
3. In [*Ridgeway v McLuckie*](#), the then-chair of FIRB, in considering the issue of jurisdiction, said...

"The "farm business" requirement makes it clear that the Act was never intended as redress for every complaint between neighbours involving practices relating to plants or animals on a piece of land.

Where the Act does apply, it has significant implications. It gives a neighbour a potentially powerful remedy, i.e., the right to ask BCFIRB to require a farmer to cease or modify a farm practice. At the same time, it gives a farmer potentially significant protection where he acts in accordance with normal farm practice (i.e., the right to be protected against a nuisance action and the right to be protected against municipal by-law enforcement). Given the significant effects of the Act, its drafters wanted to focus its scope, and its boundaries. This recognized that where the Act does not apply, the general law does, meaning that when neighbours cannot work things out in a neighbourly way have their usual remedies going to the municipality or to the courts to resolve their disputes.

In addressing the jurisdiction issue in this case, I adopt the approach set out by the BCFIRB panel in *Hanson v. Asquini*:

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 operation a farm education or farm research institution?

The Canadian Oxford English Dictionary (1998) defines "business" amongst other things as "one's regular occupation, profession or trade". Black's Law Dictionary (7th ed. 1999) defines "business" as "(a) a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain". Implicit in the definition of "business" as it is used in the Act is some aspect of an agricultural undertaking carried out for the purposes of generating income or

profit (except perhaps in the special case of farm education and research institutions which, for obvious reasons, have also been given the Act's protections). Thus, as a bare minimum, in order to establish that a farmer has a "farm business", there should be documentation supporting revenue or an intention to generate income from recognised farming operations or activities....

4. In this instance, Mr. Hlusek has responded in the negative for each of the points set out in the *Hansen v Asquini* approach. In his September 13, 2013 letter, Mr. Hlusek says he has ten acres and operates a roofing business. He says that the pasture area on his property is used for grazing of cattle but that he does not generate income or profit from the use of the pasture. I find this compelling as Mr. Truax says he too provides grazing for other people's cows without generating income or revenue. In his December 10, 2013 letter Mr. Hlusek says he has a part time farm with a primary roofing business. A roofing truck is seen on the property. I am satisfied by the totality of Mr. Hlusek's statements that he is not operating a farm business, especially in light of a lack of evidence to the contrary.
5. Mr. Hlusek says the farm's operation plan does not contemplate any future commercial activities, which is one of the factors BCFIRB uses to determine if a person is carrying out a farm business, and that they do not qualify for the farm tax credit under the Income Tax Act. They do not hold any licenses related to agricultural activities and do not participate in research or education for farming. Mr. Truax provided no evidence to contradict these statements.
6. In my view, Mr. Truax does not say that Mr. Hlusek operates a farm operation as part of a farm business, nor does he say that there is a farm business. Mr. Truax says that he does not know what Mr. Hlusek does with the cows or calves and has only seen four cows slaughtered in the ten years since Mr. Hlusek purchased the farm. Mr. Truax offered no other evidence and in fact often expressed his lack of knowledge about any business activities on the Hlusek property other than there are cows and a bull, and there are calves which leave. Mr. Truax said he has no idea what is done with the cows that were killed and that he does not know what happens to the calves when they leave the property. When asked about revenue received by Mr. Hlusek, Mr. Truax responded that he does not know and all he knows is that Mr. Hlusek has cows there. I am not satisfied that Mr. Truax believes there is a farm business on Mr. Hlusek's property.
7. A decision that there is no jurisdiction does not preclude Mr. Truax from taking other actions in his dispute with Mr. Hlusek. As the previous BCFIRB Chair says *Ridgeway v McLuckie* (above), when neighbours cannot work things out in a neighbourly way, they have their usual remedies of going to the municipality or to the courts to resolve their disputes.
8. I am satisfied that there is insufficient evidence to conclude that there is a farm business on the Hlusek property. Mr. Hlusek does not claim the cows are his regular occupation. There is no doubt the hearing was hampered by the fact that Mr. Hlusek did not participate and ceased providing information after his second response, however I am unable to conclude, on the balance of probabilities, that there is an underlying farm business to which the alleged disturbance relates. I do not agree that farm classification alone, when taken into account with all other evidence including a dearth of evidence about any business

activities, is sufficient to support the conclusion that there must be a farm business nor do I find there is enough evidence to conclude that the cow-calf operation is a farm business.

9. As such, I would dismiss this complaint, as in my view it is not within BCFIRB's jurisdiction.

Dated at Victoria, British Columbia this 27th day of May 2014.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Member