



January 8, 2009

File #08-05

DELIVERED BY EMAIL

Myrtle Miller
[REDACTED]
[REDACTED]

David Schaefer
Alan Francis Pringle LLP
Justice Park Place
[REDACTED]
[REDACTED]

Dear Sirs/Mesdames:

A COMPLAINT UNDER THE *FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT*- MILLER V. PAN-O-RAMIC FARMS LTD.,

In the Pre-hearing Conference Report dated November 7, 2008, Pan-O-Ramic Farms identified a concern with respect to the standing of persons identified by Ms. Miller as “co-complainants” in her Notice of Complaint which reads in part:

My neighbours and I wish to lodge a complaint with the Review board against Panoramic Farms operations in Coldstream owned and operated by Mr. Rod Palfrey...

Enclosed is a list of signatures from property owners in the affected area, some photographs illustrating the deep manure and farm waste spread across the farmland within 300 feet from residences, and a cheque for \$100 to satisfy the filing fee.

The enclosed list of signatures was a petition signed by Ms. Miller and 27 other people. The petition is prefaced with the following statement:

We, the undersigned, support the action of Filing a Farm Practices Complaint with the British Columbia Farm Industry Review Board in regard to Panoramic Farms frequent practice during the hot summer months and other holidays of dumping a thick layer of previously stored manure upon their fields creating a foul odour which impacts local residents by precluding them from enjoying their outdoor grounds, decks, and patios, and even from opening their windows to air out their homes at the end of the day to release hot air accumulated during the day, and thereby suffering uncomfortably high temperatures as they attempt to sleep. We believe that disposal of manure can be adequately done at other times of the year.

A submission process was arranged during the Pre-hearing Conference to address amongst other matters, the standing issue. In its submission dated November 21, 2008 the Farm did not directly address its concerns regarding standing beyond setting out these facts:

British Columbia
Farm Industry Review Board

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria, BC V8W 9B5

Telephone: (250) 356-8945
Facsimile: (250) 356-5131

Location:
3rd Floor – 1007 Fort St
Victoria V8V 3K5

Email: firb@gov.bc.ca
Website: <http://www.firb.gov.bc.ca>

The Complainant, Myrtle Miller, is the spokesperson for a group of 28 people that signed a petition to the FIRB (and potentially others that did not sign – the spokesperson says the number may be as many as (100) complaining of odours resulting from manure management practices of the Farm.

The spokesperson advised the Case Manager that each of the parties that signed the petition contributed to the required \$100.00 filing fee but advised that they had chosen not to be represented by counsel or an experienced representative because they did not wish to incur the expense.

The Farm then went on to address its concerns that as Ms. Miller had advised that potentially all of the signatories to the petition as well as other area residents wished to testify, it required disclosure of any documents and expert evidence that the “co-complainants” proposed to tender at the hearing to avoid the Farm being “ambushed” by new or undisclosed issues.

The Panel has previously addressed the disclosure issues in our letter dated December 29, 2008. However, based upon a review of the legislation, there remains an outstanding issue with respect to the standing of the “co-complainants” which is addressed below.

DECISION

The *Farm Practices Protection (Right to Farm) Act* (the *Act*) defines a “complainant” as a person who under section 3 applies for a determination referred to in that section. Section 3 provides:

- 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.
- (2) Every application under subsection (1) must
 - (a) contain a statement of the nature of the complaint, the name and address of the person making the application, the name and address of the farmer and the location of the farm,
 - (b) be in a form acceptable to the chair of board, and
 - (c) be accompanied by the fee prescribed by the Lieutenant Governor in Council.

In this case, a group of people have signed a petition purporting to support the filing of a complaint against Pan-O-Ramic Farms. According to Ms. Miller, the signatories to the petition each contributed to the \$100 filing fee. In light of s. 3 of the *Act*, the question arises as to whether the signatories to the petition can properly be considered as “co-complainants”.

The *Act* sets out the rules by which a person can lodge a complaint with the British Columbia Farm Industry Review Board (BCFIRB). There is no provision allowing for

multiple persons to file one complaint. Rather the *Act* provides that a person who is aggrieved by a farm practice may file a complaint; the notice of complaint must contain a statement of the nature of the complaint and the name and address of the person making the application and be accompanied by the prescribed fee. These minimal requirements are intended to give the farmer a general idea as to the nature of the complaint and the name and address of the complainant. They also show that a farm practices complaint is personal to the person making it, in the same way as a nuisance complaint would be in a court of law.

The legislation recognizes that each person likely has a unique perspective as to the nature of the complaint as a result of personal circumstances (such as the proximity of his or her residence in relation to the farm, the use of his or her property, varying microclimates or geographical features). Here, other than the views of Ms. Miller advanced in writing and through her attendance at the Case Management and Pre-Hearing Conferences, there is no way of knowing whether the general statement prefacing the petition adequately summarizes each person's issues. Moreover, it is difficult to know whether a person who made a decision to sign a petition understood the rights and responsibilities attendant on filing a complaint to BCFIRB.

To allow one complaint to proceed with multiple complainants creates a number of procedural issues in addition to the uncertainty as to the precise nature of each person's complaint. The *Act* focuses on settlement and dispute resolution. How does BCFIRB ensure that all persons' views are adequately addressed? What would happen to a complaint where the extent to which a farmer is prepared to compromise causes some persons to want to settle and others not?

Prior to the hearing of the complaint, there needs to be adequate document disclosure. Given each person's unique relationship to the farm, it is conceivable and likely that each person would have his or her own documents in support of the complaint. Where these persons have not participated in the pre-hearing management processes, it is difficult to gauge whether they know and understand the obligation to disclose documents.

In a hearing of the complaint, the panel undertakes a two-step analysis where the complainant must demonstrate that he or she is individually aggrieved by a farm practice. Where a person fails to establish that he or she is aggrieved, the complaint is dismissed without considering whether the alleged source of the grievance results from a normal farm practice. With multiple co-complainants, it is conceivable that some complaints could be dismissed at the first step of the analysis while others would need a further determination of whether the grievance results from a normal farm practice.

Following the release of a decision, further complications potentially arise. Section 6.1 of the *Act* allows for decisions of BCFIRB to be filed with the Supreme Court and to have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court. Where there are multiple co-complainants, would they each have an independent right to seek enforcement? Further, if some or all of the co-complainants are unhappy with the decision of BCFIRB, do they each have an

independent right of appeal to the Supreme Court? How would the appeal rights be affected when co-complainants may be affected differently by a decision?

In the Panel's view, s. 3 of the *Act* cannot be interpreted so as to allow multiple persons to file one complaint. To do so, would for the reasons set out above, create a procedurally unworkable system not contemplated by the Legislature.

Given this conclusion, the Panel makes the following directions.

1. Each signatory to the petition needs to individually determine whether he or she wishes to file a complaint to BCFIRB.
2. If a person does wish to file a complaint, s. 3 of the *Act* requires each complainant to commence his or her own complaint by providing a statement of the nature of the complaint, his or her name and address and the name and address of the farmer and the location of the farm. Each application must be accompanied by the prescribed fee. The *Act* does not give BCFIRB the jurisdiction to waive the payment of the prescribed fee.
3. If a new complaint is filed, BCFIRB has the option to schedule the complaints to be heard together and engage in appropriate case management for the multiple complaints.
4. If a person does not wish to file a new complaint, he or she could apply for intervener status in Ms. Miller's complaint or, if Ms. Miller agrees, appear as a witness in her case. However, it is important to understand that an intervener or witness does not have the right to appeal the decision to the Supreme Court or enforce any order made with respect to the complaint in the Supreme Court. Further, an intervener only has the rights of participation granted by the Board.
5. The signatories to the petition have until January 16, 2009 to advise BCFIRB in writing of their intentions with respect to this complaint. If necessary, a further Pre-Hearing Conference will be scheduled to address any issues which may arise out of these directions.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Suzanne K Wiltshire
Presiding Member