



April 20, 2017

Files: #17-02, #17-03, #17-04,
#17-05, #17-06, #17-07,
#17-08, #17-09, #17-10,
#17-11

DELIVERED BY EMAIL AND COURIER

Ronald Kaye
[REDACTED]
[REDACTED]

Jack and Larissa Rozendaal
[REDACTED]
[REDACTED]

Chang Yu Xu
[REDACTED]
[REDACTED]

Arnold Sterkenburg
[REDACTED]
[REDACTED]

Arnold de Vrij
[REDACTED]
[REDACTED]

M. and B. Eeltink
[REDACTED]
[REDACTED]

Corney Les
[REDACTED]
[REDACTED]

Art and Christine Breugem
[REDACTED]
[REDACTED]

Andy and Angela Den Boer
[REDACTED]
[REDACTED]

Jerry Neels
[REDACTED]
[REDACTED]

Stuart and Linda Muxlow
[REDACTED]
[REDACTED]

Kaye et al v Chang Yu Xu - #17-02, #17-03, #17-04, #17-05, #17-06, #17-07, #17-08, #17-09, #17-10, #17-11

Dear Sirs/Mesdames:

The British Columbia Farm Industry Review Board (BCFIRB) received 10 Notices of Complaint under the *Farm Practice Protection (Right to Farm) Act (FPPA)* regarding a marijuana grow operation (the farm property) located at [REDACTED], Chilliwack, BC. The Notices of Complaint allege disturbances related to odour, general unsightliness related to fencing, yard

**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:
780 Blanshard St
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

waste and trash. They also raise concerns regarding possible criminal activity and personal safety. The first four Notices of Complaint were received by BCFIRB on March 14, 2017 with the remaining six Notices of Complaint being received on March 15 and March 16, 2017.

To address this issue efficiently, and as all 10 of these complaints dealt with the same subject matter and raised similar allegations relating to odour and other disturbances from a farm operation, I made an order pursuant to section 37(1)(a) of the *Administrative Tribunals Act* to combine these 10 complaints for the purpose of addressing the need for an adjournment.

In a complaint filed under the *FPPA*, BCFIRB's remedial power allows for it to order a farm to either cease or modify farm practices where those practices are inconsistent with "normal farm practice." As the farm property here has ceased operations (at least in the short-term), there is a need to consider whether these complaints ought to be adjourned.

Therefore, I asked the ten complainants and the respondent farm to provide to BCFIRB (copied to the other parties) their positions on whether these complaints ought to be adjourned generally, pending future developments.

No response was received from the respondent farm. Given BCFIRB's delay in forwarding the submissions of the complainants to the respondent, parties were advised that the respondent farm would be provided with additional time, until April 12, 2017, to respond. It did not.

The complainants did provide a written response from Corney Les, on behalf of all complainants. It said, in part:

While the immediate issue has been dealt with upon the RCMP shutting down the marijuana grow operation since it was illegal, the use of farmland for this activity remains a genuine concern for the farm at [REDACTED], and for other greenhouses situated on farmland close to residences, schools and populated areas.

The growing of marijuana is permitted on farmland by the Province of British Columbia. There are few guidelines governing this activity in place. Due to the serious odour concerns and the personal safety concerns expressed by all of the affected members of the neighborhood in this case especially, we request that BCFIRB implement some guidelines for the growing of marijuana on farmland.

I understand that it is within the mandate of BCFIRB to develop and implement such guidelines and establish what are the best farm practices for the growing of marijuana.

Developing such guidelines would prevent entire neighborhoods from enduring the appalling stink that this crop produces and further would not subject the neighbors to fearing for their personal safety due to the criminal element that is often associated with the growth of marijuana. We respectfully request that our complaints are not adjourned by BCFIRB for these reasons.

There are two issues for me. The first is whether or not this matter should be adjourned generally. The second is whether or not BCFIRB can or even should develop guidelines around the issue of marijuana farming.

Should this matter be generally adjourned?

There is no evidence that the marijuana farm is still in operation. The respondent farm did not reply. The complainants state that the “immediate issue has been dealt with upon the RCMP shutting down the marijuana grow operation since it was illegal” and the complainants do not allege that the operation has restarted.

In the absence of an operating farm, there is nothing for a Panel to adjudicate. Should this farm resume operation as before, this appeal can be set down for a hearing. However, should this farm resume under a new regulatory regime, the operation may be changed and hence, a new appeal would need to be filed.

Accordingly, the complaint is adjourned generally in accordance with s. 39 of the *ATA*.

BCFIRB will continue to monitor this issue in consultation with the parties. This adjournment is without prejudice to any of the parties’ right to apply to BCFIRB for further directions relating to case management and/or setting this matter down for hearing should circumstances change and so warrant.

Should BC FIRB develop guidelines regarding the issue of marijuana farming?

In his letter on behalf of the complainants in this matter, Mr. Corney Les states that due to the serious odour concerns and the personal safety concerns expressed by all of the affected members of the neighborhood in this case especially, he requests that BCFIRB implement some guidelines for the growing of marijuana on farmland. He said he understood that it is within the mandate of BCFIRB to develop and implement such guidelines and establish what are the best farm practices for the growing of marijuana.

Unfortunately, this information is not correct. BCFIRB does not have the authority to implement guidelines. In reality, BCFIRB determines “normal farm practices” based on evidence from parties and Knowledgeable Persons in a complaint hearing. In our inquiry or study role under section 11 of [FPPA](#), BCFIRB can report and make recommendations regarding farm practices but cannot require adoption or enforcement of the recommendations. It is the Minister who implements guidelines.

Having said that, it is important for the complainants to understand that BCFIRB’s study or inquiry/reporting function is triggered by BCFIRB itself, a local government, or the Minister. The inquiry or study role function is not triggered by a request from a complainant as part of its Notice of Complaint.

Given that the marijuana farming industry is a new industry, and given that the Ministry of Agriculture is currently working on the regulatory requirements, it would not be appropriate for BCFIRB to investigate and make recommendations regarding marijuana production practices at this early stage. Although BCFIRB has, in the past, and under very limited circumstances and in response to intense public pressure in contentious areas of farm practices, exercised its study

Kaye et al
Chang Yu Xu
April 20, 2017
Page 4

role, it remains to be seen whether it may be appropriate for BCFIRB to undertake, at some future date, such a study regarding marijuana production practices should the need arise or a request, as described above, be made.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in black ink, appearing to read "Corey Van't Haaff". The signature is written in a cursive, flowing style.

Corey Van't Haaff
Presiding Member