



February 28, 2002

DELIVERED BY COURIER

Jim Wright
[address]
Complainant

Alex Lubchynski
[address]
Respondent

Dear Sirs:

A COMPLAINT CONCERNING THE OPERATION OF A PROPANE CANNON AT A VINEYARD LOCATED AT LOT 74 - PLAN 5381, KAMLOOPS LAND REGISTRY, KELOWNA, BC

On Friday February 22, 2002, by telephone conference call, as Vice Chair of the Farm Practices Board, I heard an application dated January 7, 2002 by Alex Lubchynski for dismissal of the Complaint dated November 2, 2001. Mr. Lubchynski seeks an Order under s. 6(2) of the *Farm Practices Protection (Right to Farm) Act* that the Farm Practices Board refuse to refer the Complaint to a hearing because:

- i) the subject matter of the Complaint is trivial
- ii) the Complaint is frivolous or vexatious or not made in good faith
- iii) the Complainant does not have a sufficient personal interest in the subject matter of the Complaint.

Mr. Lubchynski did not attend the telephone hearing however the Panel considered his written submissions dated January 7, 2002, and February 20, 2002. The Complainant Jim Wright participated in the telephone hearing and the Panel considered his written response dated February 4, 2002. Also participating in the telephone hearing on behalf of the Complainant were Ms. Pat Wright and Mr. Al Hunter, a neighbour of the Complainant.

The Respondent argues that the vineyard is using bird control methods that comply with those recommended by the Farm Practices Board and the August 1996 Wildlife Damage Control guidelines set out by the Ministry of Agriculture, Food and Fisheries. Accordingly, the Respondent submits the Complaint should not proceed for the reasons set out above.

Farm Practices Board

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The Complainant argues that the guidelines are not being observed in their entirety and in some respects cannot be measured. Specifically, the siting of the cannon on the farm in terms of its proximity to the neighbours may be less than called for by the guidelines. The Complainant argues also that there is a question of whether the farm should employ a cannon at all in view of the new February 2002 guidelines recommended by the Ministry.

The Respondent and the farming community are to be commended generally for their efforts to comply with any bird control guidelines. However, compliance or non-compliance with any such guidelines does not establish that a farm is operating in accordance with normal farm practice. A hearing on the merits is required to determine this issue.

I am not persuaded that the Complaint raises trivial concerns or is frivolous, vexatious and/or not made in good faith. The Complainant Jim Wright resides very near to the vineyard property and as such has a sufficient personal interest in the bird control devices used by the Respondent.

Accordingly, the request for dismissal of the Complaint is denied. A date for a hearing of the Complaint will be set by the Farm Practices Board in consultation with the parties.

ORDER

The application to dismiss the Complaint dated November 2, 2001 is denied.

FARM PRACTICES BOARD
Per

Original signed by

Carolyn Askew
Vice Chair