

Appendix A

FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT

[RSBC 1996] CHAPTER 131

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Part 1 — Definitions

Definitions

1 In this Act:

"board" means the Farm Practices Board established under section 9;

"complainant" means a person who under section 3 applies for a determination referred to in that section;

"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;

and includes

(f) intensively cultivating in plantations, any

- (i) specialty wood crops, or
- (ii) specialty fibre crops

prescribed by the minister;

(g) conducting turf production

- (i) outside of an agricultural land reserve, or
- (ii) in an agricultural land reserve with the approval under the *Agricultural Land Reserve Act* of the Land Reserve Commission;

(h) aquaculture as defined in the *Fisheries Act* if carried on by a person licensed, under Part 3 of that Act, to carry on the business of aquaculture;

(i) raising or keeping game, within the meaning of the *Game Farm Act*, by a person licensed to do so under that Act;

(j) raising or keeping fur bearing animals, within the meaning of the *Fur Farm Act*, by a person licensed to do so under that Act;

(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;

but does not include

(l) an activity, other than grazing or hay cutting, if the activity constitutes a forest practice as defined in the *Forest Practices Code of British Columbia Act*;

(m) breeding pets or operating a kennel;

(n) growing, producing, raising or keeping exotic animals, except types of exotic animals prescribed by the minister;

"farmer" means the owner or operator of a farm business;

"land use regulation" means an enactment that restricts or prescribes the use to which land or premises may be put or the nature of business or activities that may be conducted on land or premises but does not include a bylaw under section 703, 704, 724, 725 or 728 of the *Local Government Act*;

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

(a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and

(b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

Part 2 — Right to Farm

Normal farm practices protected

2 (1) If each of the requirements of subsection (2) is fulfilled in relation to a farm operation conducted as part of a farm business,

(a) the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation, and

(b) the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.

(2) The requirements referred to in subsection (1) are that the farm operation must

(a) be conducted in accordance with normal farm practices,

(b) be conducted on, in or over land

(i) that is in an agricultural land reserve,

(ii) on which, under the *Local Government Act*, farm use is allowed, or

(iii) as permitted by a valid and subsisting licence, issued to that person under the *Fisheries Act*, for aquaculture, and

(c) not be conducted in contravention of the *Health Act*, *Pesticide Control Act*, *Waste Management Act*, the regulations under those Acts or any land use regulation.

(3) If each of the requirements of subsection (2), except subsection (2) (b) (ii), is fulfilled in relation to a farm operation conducted as part of a farm business,

(a) despite section 267 of the *Local Government Act*, and despite section 794 (5) of that Act under which section 267 is made applicable for the purposes of Part 24 of that Act, the farmer does not contravene a bylaw made under section 703, 704, 724, 725, 728 or 797.1 (1) (c) or (d) of the *Local Government Act*, by the council of a municipality or by the board of a regional district, only because of conducting that farm operation, and

(b) despite section 281 of the *Local Government Act*, and despite section 847 (1) of that Act under which section 281 is made applicable to a regional district and its board, the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.

Complaints to Farm Practices Board

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.

Settlement of complaints

4 In the interest of reaching a settlement of a complaint that is the subject of an application under section 3 (1), the chair of the board, at any time before a panel of the board has decided the application, may inquire into matters relevant to the complaint, and, as part of that inquiry, may

- (a) obtain the advice of persons who are knowledgeable about normal farm practices, and
- (b) consult with the farmer identified in the application and the complainant.

Establishing panels to hear complaints

5 After receipt of an application that meets the requirements of section 3, the chair of the board, if satisfied that any consultations under section 4 have been terminated without achieving a settlement of the complaint, or that settlement is unlikely, must

- (a) establish a panel of the board to hear the complaint, and
- (b) appoint 3 members of the board to the panel.

Hearing of complaints

6 (1) The panel established to hear an application must hold a hearing and must

- (a) dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, or

- (b) order the farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.
- (2) The chair of the board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the chair of the board or the panel, as the case may be,
- (a) the subject matter of the application is trivial,
 - (b) the application is frivolous or vexatious or is not made in good faith, or
 - (c) the complainant does not have a sufficient personal interest in the subject matter of the application.
- (3) The chair of the board must give written reasons for a decision under subsection (2) refusing to refer an application to a panel.
- (4) A panel must give written reasons for a decision under subsection (1) or (2).
- (5) Written notice of the decision, under this section, of the chair of the board or a panel, accompanied by the written reasons for the decision, must be delivered to the complainant and the farmer affected by the decision.

Conduct of hearings

- 7 (1) Subject to any regulations under section 12 (2) (c), the board may determine the practices and procedures to be followed for the purposes of hearings required under section 6.
- (2) A hearing is open to the public and may be conducted in an informal manner.
- (3) The chair of the board or a panel may receive or accept evidence whether or not it would be admissible in a court of law.
- (4) If a member of a panel is absent or unable to attend a hearing, the member is disqualified from continuing to participate in the hearing, and the member or members remaining present may exercise and perform all the jurisdiction, powers and duties of the panel.
- (5) Despite subsection (2), a panel of the board may exclude the public from a hearing for the purpose of receiving evidence if the panel considers that the desirability of avoiding

disclosure of the evidence in order to protect the interest of any person, or to protect the public interest, outweighs the desirability of public disclosure.

Appeal

8 (1) Within 60 days after receiving written notice, in accordance with section 6 (5), of a decision of the chair or a panel of the board made under section 6, the complainant or farmer affected by the decision may appeal the decision to the Supreme Court on a question of law or jurisdiction.

(2) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 3 — Farm Practices Board

Establishment of the Farm Practices Board

9 (1) A board to be known as the Farm Practices Board is established, consisting of

(a) the members of the British Columbia Marketing Board, and

(b) not more than 10 additional members whom the minister may appoint to the Farm Practices Board.

(2) The chair of the British Columbia Marketing Board is also the chair of the Farm Practices Board.

(3) The chair may designate one or 2 vice chairs of the Farm Practices Board from among its members.

(4) In the absence of the chair, or if the chair is unable to act, a vice chair has the powers of the chair.

(5) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the chair, the vice chair and the members of the Farm Practices Board in relation to carrying out their responsibilities under this Act.

Staff

10. (1) The British Columbia Marketing Board may provide the Farm Practices Board with administrative and other services.

(2) Employees who are, after taking into account the availability of any services that may be provided to the board under subsection (1), considered necessary to carry out the powers and duties of the board under this Act may be appointed under the *Public Service Act*.

(3) In accordance with any regulations under section 12 (2) (d), the board may engage or retain specialists and consultants that the board, after taking into account the availability of any services that may be provided to the board under subsection (1), considers necessary to carry out the powers and duties of the board, and the board may determine their remuneration.

(4) The *Public Service Act* does not apply to the engagement, retention or remuneration of specialists and consultants engaged or retained under subsection (3).

Responsibilities of board

11 (1) The board, the chair of the board or a panel of the board may exercise the powers and perform the duties that are conferred or imposed on it by or under this Act.

(2) On the board's own initiative or at the request of a municipality or regional district, or of a trust council under the *Islands Trust Act*, the board may study, report on, and make recommendations concerning, any matter related to farm practices.

(3) The board must provide the minister with any information requested by the minister regarding the policies and procedures of the board.

(4) The minister may order the board to study any matter related to farm practices and the board must conduct the study and report its findings and recommendations to the minister.

(5) In carrying out their powers and duties under this Act, the board members have the powers, privileges and protections of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

Part 4 — Regulations

Power to make regulations

12 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing fees payable in respect of an application made under section 3;
- (b) respecting standards for the purpose of the definition of "normal farm practice";
- (c) governing practices and procedures for
 - (i) hearings before a panel of the board, and
 - (ii) inquiries and consultations respecting complaints or other matters before the board, the chair of the board or a panel of the board;
- (d) for the purpose of section 10 (3), respecting the engagement or retention of specialists and consultants by the board;
- (e) prescribing the number of members that constitutes a quorum at any meeting of the board.

(3) The minister may make regulations prescribing one or more of the following:

- (a) specialty wood crops or specialty fibre crops for the purpose of paragraph (f) of the definition of "farm operation";
- (b) limits referred to in paragraph (k) of the definition of "farm operation";
- (c) exceptions for the purpose of paragraph (n) of the definition of "farm operation".