

# **BCFIRB Learmonth vs Coral Beach Farms Ltd. Case File 1701**

## **Closing Summary;**

Robert Learmonth, February 14, 2018

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## **1/ What is not normal about the circumstances at this location?**

### **a/ Topography Lavington valley**

The location of this new orchard develops special circumstances as it is in a natural bowl with steep hills on the north and south which influences sound aspects.

This concave location affords line of site view to the orchard operations which unfortunately also means unmitigated noise travel back to the residences.

This is not a typical situation for cherry orchards. Therefore, when a farm operates in a topographical landscape of this nature, the farm should function in a manner that will not impact the surrounding neighbourhood to any greater degree than would occur under a typical landform.

What is normal in one area may not suffice in another area, and the operation may accordingly have to alter their practices to achieve an equivalent normalcy.

### **b/ Topography Learmonth residence**

The site specific topography at the Learmonth residence is unlikely to be found elsewhere in BC cherry production.

The residence is 30 meters above the new orchard and is subject to unmitigated sound travel from all of the operating machinery.

There is excessive noise at the residences, to a level and duration that is unusual, not normal, and unreasonable to endure.

We heard my neighbours Cole Peterson and Joel Allen describe their level of stress, Cole moving to his basement in effort to sleep, and Joel missing three nights sleep in a row.

Sprayers operating from 8:00 pm to 6:00 am 5 nights a week during July and August, and blowers and helicopters at other durations are greatly impairing the usefulness of our environment and taking a toll on our health and wellbeing.

Whether the main factor is the slopes of 100% to 200% (cliffs) on the three sides of the hillside backstopping the 165 acre property, and area, or the equipment and function, we know for certain it's excessively noisy in a major way.

### **c/ Climate challenges**

There has been lots of evidence by myself and KP Withler that changes in climate have allowed progressive growers to advance cherry production into areas that have been previously unsuitable.

But climate change is an inexact happening at best with swings back into unsuitable cold and wet (2016) as well as leaps into hot and dry (2017)

2016 was an unusual year but it most certainly can happen again any year.

When such a cold, wet year is encountered the operator has to protect the crop and has no alternatives other than to use unusual amounts of mechanical husbandry.

In the hearing we heard how cherries can be sprayed in excess of 60 times in a growing season, with many of the sprayings following treatment by blowers, or helicopters, each producing noise.

This develops a situation that is not normal farm practice as to the amount the equipment is used. A few years ago nobody would have dreamed that cherry farming would employ helicopters for routine orchard maintenance.

Further concerning is that at the hearing we heard that noise related cherry farm activity can span 5 months of the year, with harvesting occurring into September.

This is best described in KP Withler report; end of first paragraph "D. Climate data..."

*"This "perfect storm" of early harvest and traditional rain period meant that neighbouring residents endured hours of noise generally unheard of in the industry"*

This concretely confirms that the year this complaint was based on (2016) was not normal farm practice.

If this is to be the new "normal" during a wet season, then I would argue that this is beyond sound rational reason for what is fitting for the area.

Coral Beach Farms Ltd. (CBFL) knew that the Lavington location was wetter and colder and would likely require more intensive mechanical husbandry.

## **2/ What is not normal about the degree of disturbance?**

### **a/ Multiple occurrence of machinery operation**

In 2016 the equipment had to be used to an unusually excessive amount to protect the crop.

The month we have the best data for was presented in the chart "2016 JUNE". There were only 4 days in the month that excessive noise was not produced. Back to back night spraying occurred twice one day apart.

Although witnesses confirmed use of similar equipment none of them had a use of equipment that came close to the requirements of the CBFL Lavington challenges of 2016. Not normal farm practice.

### **b/ Length of daily operation**

Not only was the noisy equipment run almost every day but CBFL found it necessary to operate it many hours at a time.

The frost fans come on at 1 or 2 am and run until the sun works its way around the hills and onto the orchard, about 7 am most days. So we often get a 5 hour exposure to the sleep depriving cyclic noise.

The Turbo Sprayers often run all day with brief quiet periods when they go back for a refill; turbo sprayers are also used as blowers to remove rain water.

### **c/ Audible level of noise onto the residential property**

The noise level transmitted onto the Learmonth residential property and neighbours is extreme and unusual. This is the fundamental core of the complaint.

The operation of the equipment elsewhere and the associated noise production at those sites may well qualify as normal farm practice, possibly by mere default of complaint; a factor that shouldn't stipulate what is deemed "normal farm practice".

But in this circumstance factors have combined to create a degree of disturbance that is unprecedented in the industry. Perhaps it is the "bowl" topography, the elevated residence, the backstop hills, but whatever the causes, we attempted to objectively exhibit the level of the scientifically measured noise levels.

They are;

Inside the house, frost fans 70db, sprayers 80 db

On the residential property, frost fans 83 db, sprayers 95 db, helicopters 95 db

The degree of disturbance is not normal farm practice, and wouldn't be tolerated if this was another industry such as a mill or manufacturing plant; the industry would have to alter their operation or install available mitigation measures.

Coldstream Council's report details 27 formal complaints in 2016 / 2017 about Coral Beach Lavington excessive noise.

### **3/ Effects of the disturbance on residents**

#### **a/ Sleep derivation**

Sleep is disturbed by the frost fans and the Turbo Sprayers when they are operated at night. It is not just a benign passing disturbance such as a train passing.

The haunting cyclic nature of the frost fans disturbance precludes returning to sleep as the mind seems to try to anticipate the changes in pitch and volume.

Once awake it is difficult to regain sleep even with hearing protection. And wearing hearing protection in your house so that you can get some sleep is unreasonable, and to repetitively encounter such conditions night after night is incomprehensible, Neanderthal.

The disturbance from the Turbo Sprayers is different in nature as the pitch is constant and the volume changes as the equipment approaches or recedes from the residence. But the volume is louder than the frost fans and sleep is deprived.

We are not alone in our concerns; neighbouring residential witnesses Allen and Peterson related how the excessive noise disturbs their life, and others in the area are contemplating filing a complaint with the FIRB if this is not resolved.

#### **b/ Detrimental health effects**

It is common sense that repeated nights of deprived sleep is not good for residents, and that this prolonged state of deprived sleep will negatively impact health. This negative health consequence appeared to have unanimous agreement during the hearing and was not context of debate.

We heard that the FIRB Board must follow the *Farm Practices Protection (Right to Farm) Act*, which as per Section 2(2)(c), the farm operation must not contravene the *Public Health Act*, *Integrated Pest Management Act*, and the *Environmental Management Act*. Accordingly, “normal farm practice” as deemed by the Board should ensure adherence to this statutory requirement of operation upon farmers; doing anything to the contrary would be a conundrum and flawed adjudication.

The *Public Health Act*;

“The definition of Health Hazard under the BC Public Health Act

(a) a condition, a thing or activity that

(i) endangers, or is likely to endanger, public health...”

Clearly, the *Public Health Act* definition of “health hazard” is open to a condition, thing or activity that is likely to endanger public health. This definition is open to a circumstance that may not in the immediate moment present itself in a negative consequence to human health, but if allowed to continue is likely to result in degraded health, a health hazard.

This constitutes endangerment to the health of the population within the receiving range. Myself, my wife, and my witnesses Joel Allen and Cole Peterson are convinced that this prolonged seasonal exposure to noise from the activities at CFBL, will deprive sleep and exacerbate negative health consequences (as per generally accepted physiological and mental health literature).

I’m concerned that this may reach the point of safety concerns through impaired cognizance, and reduced alertness and reaction.

The extreme degree of disturbance at this residence exhibits a health hazard not normal to farm practice.

Under the *Environmental Management Act* “pollution” is described to mean the presence in the environment of substances or contaminants that substantially alters or impair the usefulness of the environment.

I argue that when people living in the neighbourhood can’t sleep, miss three consecutive nights of sleep yet have to work and function on the third day, move to the basement to find a location of reduced noise, and can’t enjoy their patio, that the usefulness of the environment is substantially altered and impaired.

The environment that I am speaking about here is an environment for which taxes are paid under the context of having a useful suitable environment to enjoy, function and sleep. My land is zoned Residential, and CBFL is rendering my house on this land non-habitable.

#### **4/ Source of disturbance;**

##### **a/ Frost Fans**

The 8 frost fans come on automatically 1 or 2 am and run until the sun warms the orchard, around 7 am.

They are used in the spring months when cold dictates that the crop needs protection, in 2016, 6 or 8 times a month, in 2017 only twice all spring.

They are also used to combat water on the crop but this is in daytime and is therefore not sleep depriving for those who don't work nights and have to sleep in the day.

##### **b/ Turbo Sprayers**

These machines are the most disturbing as they are much louder and scream at a very high pitch.

They are used day and night from April thru October; 2016 being a regressive year in the climate change phenomenon there saw excessive use; 2017 had less use and less disturbance.

##### **c/ Helicopters**

In many ways the use of helicopters is the most dramatic but is in fact the least disturbing as they are not used at night.

There are safety issues with the helicopter operation within 90 meters and below the occupied residence but this is not the forum for that concern.

#### **5/ Alternatives**

##### **a/ Frost Fans**

This brings forward one of the odd things about this hearing.

It is apparent that the only person that has ever heard one of the alternative Frost Boss fans operate is myself.

Respondent Geens witness Mike Malloy gave us information comparing the Frost Boss and Orchard Rite as being close to the same, but then admitted he had never seen or heard a Frost Boss.

KP Withler supplied an excellent review of Best Practices (New Zealand) in orchards adjacent to residences. The Frost Boss is so much quieter that they come with a guarantee of 55 db at 250 meters.

55 db is about how loud people speak when they are not excited.

We heard how the Frost Boss cannot be considered as;

- there is no dealer in BC
- there are no spare parts stocked in BC

The manufacturer of the Frost Boss is open to global trade and receptive to expanding into other countries; this will come with establishment of need on Canadian soil.

I believe CBFL is well aware of global trade as they reached out to N Blosi in Russi Italy to purchase an orchard platform direct from the manufacturer in Euros to be shipped to Canada.

(Tab #5 in respondent's documents)

- there is no dealer in BC
- there are no spare parts stocked in BC

But this doesn't seem to be a problem on a much more specialized machine such as an orchard platform, than a fan with more blades.

It is only reasonable to conclude that the same global trade could be used to obtain Frost Boss blades into Canada.

Certainly the quiet Frost Boss comes at a cost, as it services an area 20% less than the noisier conventional fans.

This upgrade to Best Practice can happen and would be fitting with "normal farm practice" where interface residential exists.

### **b/ Turbo Sprayers**

We have heard from witnesses that alternative HSS sprayers are just not up to the job for cherry crops.

But we heard from witness Duane Holder that a spray canopy of 100 to 200 feet above the sprayer would not be normal farm practice. He stipulated that the top of the tree is the target.

The video supplied with the Learmonth Power Point, the video slide that is titled "alternate" objectively shows what happens when the Turbo Sprayers are operated at a lower sprayer rpm. The canopy reduces to twice the tree height and the noise decreases dramatically.

As we see canopy height above the sprayers in operation at CBDF are normally over 100 ft in height perhaps there is a better practice available with the existing equipment.

- Attached 2 snap shots from presented video.

### **c/ Helicopters**

We heard extensive testimony from George Cann presented by Mr. Geen as an expert.

I would argue that Mr. Cann, a helicopter pilot is an expert at flying helicopters but not by pilot alone; an expert at helicopter noise. In relation to question by Counsel for CBFL ; yes noise measurements were taken on the patio with the house wall behind, and yes sound bounces off the house wall (hence why it's louder on the deck than in the house), and yes it is extremely loud on the deck.

On page 3 of his report he lists 6 makes and models of helicopters in use locally.

All of them are reported as less than 80 db in hover (eg Drying Operations)

This is not what we scientifically recorded on the residential property at 6600 Buchanan but if Mr Geens expert witness states that the helicopters produce less than 80 db at hover then CBFL will have no problem agreeing to our request of maximum of 80 db during daylight hours from this source.

### **6/ Remedies Requested**

If there is one consistency in this matter it is what the residents at 6600 Buchanan are requesting.

Maximum of 70 db at night and 80 db during the day.

These noise levels are tolerant and easy to obtain with use of best practices used in more socially conscious countries.

We continue to not try to tell Coral Beach how to farm, rather point out that the extreme degree of disturbance unique to this topography can be mitigated with conventional equipment and operations.

BCFIRB;

*"The same practice may qualify as a normal farm practice in one situation but not in another where the circumstances are different".*

## 7/ What is Happening Here?

Over the course of this problem it was befuddling that no one in a responsible position would come to the residential site to hear the extent of the problem. Not one of the following came to actually experience the high degree of disturbance;

- MP Mel Arnold (helicopter safety concerns)
- Transport Canada, Kelowna (helicopter safety concerns)
- WorkSafe BC
- David Geen owner Coral Beach Farms
- Gayle Krahn manager Coral Beach Farms
- George Cann, Expert
- all of Mr Geens witnesses
- Alfred Kempf, Coral Beach council
- KP Withler
- any BCFIRB representatives
- the BCFIRB Board

There has to be some reason why no one would come. Let's have a look at what Wikipedia has to say about Willful Ignorance, or Willful Blindness:

*Description* [\[edit\]](#)

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*Willful blindness is a term used in [law](#) to describe a situation in which a person seeks to avoid [civil](#) or [criminal liability](#) for a wrongful act by intentionally keeping oneself unaware of facts that would render liability.*

*Although the term was originally—and still is—used in legal contexts, the phrase "willful ignorance" has come to mean any situation in which people intentionally turn their attention away from an ethical problem that is believed to be important by those using the phrase (for instance, because the problem is too disturbing for people to want it dominating their thoughts, or from the knowledge that solving the problem would require extensive effort).*

**Can this be what has been happening in this case?**

But, what do we do about it now?

During the hearing Mr. Geen acknowledged a will to try and reduce the impact upon the neighbours. We are now in a situation whereby the FIRB has to adjudicate on this case, yet no one involved has been onsite to witness the noise.

During my presentation I mentioned not discomforting the hearing attendees so I did not turn the recordings to the height of the db level encountered (95 db), yet I think all would agree that the level presented (80 db) was very loud.

The bottom line is that it's excessively loud, far beyond what should be deemed as "normal farm practice".

BCFIRB;

*"The same practice may qualify as a normal farm practice in one situation but not in another where the circumstances are different."*

The *Farm Practices Protection (Right to Farm) Act* defines "normal farm practice" to include practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices.

Significant effort has been undertaken by all parties in this hearing.

Success in moving forward hinges upon mutual cooperation; embracing Best Practices for the achievement of reasonable, rational, "normal farm practice".

End of Closing Summary