

Dear Editor:

F.Y.I./Press Release

Resident sues City of Surrey for negligence City refuses to discharge its duty to enforce its own by-laws

Statement of Claim for \$25, 156 served to the City of Surrey August 19

Prologue:

The City turns a blind eye to many of its by-laws, from monster homes and truck parking on the ALR to cosmetic pesticides and the destruction of active bird nests. More to the point here, it neglects to ever fine a farmer that violates its noise law on the use of propane cannons.

Letter submitted with statement of claim:

I have lived in my house for ten years. The blueberry farms to the south of where I live in west Cloverdale have been in violation of provincial guidelines on the use of blueberry propane cannons for the past seven years, including leaving their cannons on all night long and through the noontime pause, and ignoring the law on cannon concentration, firing frequency, and positioning. Farmers also ignore the requirement to monitor their cannons, for they switch on their cannons at 6:30am for five hours and again at 3pm ó regardless of whether there is any bird pressure. I have also spoken to your by-law office on countless occasions about no toilets on fields and the wanton use of pesticides, and most recently about the cannons being on while pickers are metres away. With regard to the final point, the cannon-using farmer is obligated to measure noise exposure and keep his workers a safe distance away. The cannons are in excess of WorkSafeBC's 85 dBA Lex daily noise level limit.

The difficulty in communicating with the City of Surrey is that Mayor and Council and the By-Law Office duck from this issue by referring all propane cannon complaints to a representative of the B.C. Blueberry Council, which I liken to a wolf guarding the chicken's coop. Two years ago I went to the Farm Industry Review Board (FIRB) to complain that the farmer closest to me was in violation of the City's noise by-laws and acting with complete impunity. In its review (see "McMurtry vs. Sekhon" Decision" on its website) FIRB acknowledged (in part) the following:

60. The complainant said he went by the Sekhon blueberry fields frequently. He saw no one there monitoring the bird presence. While he sometimes saw birds, at other times he could not see any birds but the cannons continued to fire without diminishment.

FIRB then made the conclusion below:

CONCLUSION

109. The panel finds that the August 2009 Ministry Guidelines for the use of Audible BirdScare Devices for South Coastal BC establish normal farm practice in the case of the Sekhon blueberry farm operations located in Surrey on both sides of 168 Street along the south side of Highway #10 .

110. The panel also finds that the propane cannon use and management practices on the Sekhon blueberry farm were not, to the extent discussed above, in compliance with the August 2009 Ministry Guidelines. Accordingly and to that extent, the noise arising from the propane cannon use and management practices on the Sekhon blueberry farm does not result from normal farm practice.

111. The respondents are ordered to modify their bird predation management practices with respect to the use and operation of propane cannons to bring such practices into compliance with the August 2009 Ministry Guidelines for the use of Audible Bird Scare Devices for South Coastal BC.

While FIRB has ordered the Sekhon farm to comply with provincial Guidelines, the City of Surrey refuses to enforce the Guidelines. Indeed the City has never fined a farmer in Surrey for violating its noise by-laws ó never! Unlike many of my neighbours who have moved away since the cannons were introduced seven years ago, I have chosen to stay in my house. Yet my family has been so bothered that we have felt compelled to buy a summer property to allow us to be away from our house during cannon season (a.k.a. wartime). I seek partial damages for this unanticipated expense and for years of emotional harm to myself and family, with my wife suffering from symptoms of Post Traumatic Stress Disorder. (If you seek medical proof, my wife will provide it.)

The City of Surrey had the moral and legal responsibility long ago to enforce its noise by-laws. Yet local politicians have not acted because they calculate that there are more votes to lose among the blueberry farmers and their workers than among aggrieved neighbours. Their negligence is highly unfair to those of us who bought into a neighbour before there were loud gunshot sounds every few seconds all summer long.

The damages I seek are \$25,156.

Jim McMurtry

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