1985 CarswellBC 920
British Columbia County Court

Hudson, and Colebrook

1985 CarswellBC 920, [1985] B.C.W.L.D. 1021, [1985] B.C.W.L.D. 971, 30 A.C.W.S. (2d) 487

In the Matter of the Agrologists Act

In the Matter of an Inquiry Concerning J.T.R. Husdon and A.L. Colebrook

Catliff C. Co. Ct. J.

Heard: January 8, 1985
Judgment: February 15, 1985
Docket: Vancouver CC840231

Counsel: *R.H. Hamilton, Esq.*, for the Appellants
R.W. Hunter, Esq., for the Respondents

Subject: Public

Headnote

Administrative law --- Judicial review — Appeals from administrative tribunals

The appellant agrologists prepared a report on the feasibility of agricultural production on certain lands. They found that agricultural practice was restricted, based, among other things, on the special intermingling of the soils. They examined nine neighbouring properties and concluded that they were not comparable, "in terms of soil intermingling and topography", for the purposes of assessing the subject lands' agricultural suitability. A complaint was laid and the council of the Institute of Agrologists found the appellants guilty of a breach of s. 6 of their code of ethics. They found that the appellants had made a very superficial comparison of the nine properties to the subject lands and that at least three were comparable and that a "proper" comparison should have been done. Their opinion was not founded on "adequate knowledge and honest conviction" as required by s. 6 of the Code. The appellants had not made a soil survey. The appellants appealed under s. 29 of the *Agrologists Act* which provides for an appeal to a County Court in the same way as an appeal under the *Offence Act*. Section 99 of that Act provides that where such an appeal is taken, ss. 610 to 616 of the *Criminal Code* (except s. 613(5)) apply. Section 613(1)(a)(i) of the Code provides that the court may allow an appeal if it is of the opinion that it is "unreasonable or cannot be supported by the evidence". the appellant argued that the verdict was unreasonable and unsupported by the evidence and that the charge only alleged that they "may" have contravened the code of ethics. *Held*, appeal dismissed. No soil survey was made and from this the council could reasonably come to the conclusion it did insofar as the appellants' opinion was based on the special intermingling of soils on the subject lands. There was evidence to support the council's verdict and the verdict based on such evidence was not unreasonable. The use of "may" in the charge was unfortunate but the appellants knew they were facing a complaint that they had breached the code, not that they might have breached it.

***Catliff C. Co. Ct. J.*:**

1 The appellants are agrologists. They are qualified to give advice in the field of agricultural management. The appellants were retained to make a report about the feasibility of agricultural production on certain lands. In an addendum to their report they examined nine neighbouring properties with a view to further assessing this feasibility.

2 The appellants are members of the British Columbia Institute of Agrologists. The Institute is regulated by the *Agrologists Act* (the Act).

3 The ruling body of the Institute is the Council. A complaint was made to the Council concerning the appellants' report and addendum. After a hearing lasting three days, the Council dismissed all complaints except one. In consequence, an appeal was taken by the appellants under s.29 of the Act which provides for an appeal to a County Court in the same way as an appeal under the *Offence Act*. S.99 of that Act provides that where such a appeal is taken, ss.610 to 616 of the *Criminal Code* (except s.613(5)) apply. S.613(1)(a)(i) of the *Criminal Code* provides that the Court may allow an appeal if it is of the opinion that the verdict should be set aside on the ground that it is "unreasonable or cannot be supported by the evidence".

4 Accordingly, I propose to address myself to these questions: (1) Was there evidence before the Council to support their verdict; and (2) If there was, was the weight of the evidence so weak that Council's decision was unreasonable?

5 Gloucester Properties Ltd. (the "owner") owns 640 acres of undeveloped land near Aldergrove, British Columbia. The land was in the Agricultural Land Reserve. Some 10 years ago the owner sought, unsuccessfully, to sell the land to the Agricultural Land Commission. The owner then applied to the Commission for removal of the property from the Agricultural Land Reserve. In support of their application the owner filed a report dated January 1977 and prepared by Western Agricultural Consultants Ltd. ("Wesago"). The conclusion of the report (para.1.11) was that:

> ... these properties, in the Langley Uplands, due to the severe degree of soil limitations and hazard to agricultural production should not be classified as farmable land. The major limitations imposed on the use of the land through topigraphical micro-environment of intermixed soil types, when subjected to interpretation under the *Canada Land Inventory Guides*, correctly places these properties under classification 6 because of the impossibility of separating the closely and intimately mixed soil types.

6 The Commission also considered a letter opinion by a Mr. Driehuyzen dated 20 July 1978. This report provided:

> Based on field checks of July 20, 1978, as well as on other field investigation, capability ratings of soils of Gloucester Properties have been confirmed to agree essentially with those shown in the Langley Soil Survey Report. Capability ranges from Class 2-5 with only a minor portion of the land (less than 3%) of lower capability due to adverse topography ... Active production of crops on soils identical to some of those present in the Gloucester properties attest to the production potential of the majority of soils of the **Gloucester Estate**.
>
> There is no evidence to support changing the status of the Agricultural Land Reserve on the basis of soil capability.

7 The Agricultural Land Commission refused to remove the land from the Agricultural Land Reserve. The owner then appealed to the Environmental Land Us Committee of the Provincial Cabinet (ELUC). For this purpose, the owner engaged R. & H. Services Ltd. to prepare a report. The appellant Husdon is the principal of R. & H. Services Ltd. In this report the opinion is expressed (p.6) that the close association of low lying Scat and Albion soils with the Whatcom series "restricts agricultural practice on such intermingled soils to the production of perennial forage crops for use as hay or pasture". The opinion is also given that "the low lying Scat and Albion soils not closely associated with other soil series are not suitable for annual cultivation because of the continuing soil structure and wetness limitation even where drainage could be implemented". A second factor affecting the feasibility of establishing agricultural production is difficulty in clearing the lands. In the case of Whatcom soils "considerable care" is needed "to ensure the productivity is not impaired" and "the close association of the wet low lying areas makes this clearing task even more difficult".

8 The ELUC granted the owner's appeal and the lands were excluded from the Agricultural Land Reserve in July 1979. In 1980 the Agricultural Land Commission sought to reinclude the Gloucester properties into the Reserve. A hearing was scheduled and the Commission retained Roxanna Kuurne to prepare a report (Ex.10).

9 The owner retained the appellants to make a presentation to the Commission. This is dated 27 January 1982. In Part 1 the appellants reviewed the previous report prepared by R. & H. Services Ltd. and adopted its findings and conclusions. Part 2 of the report is headed "Regional Agricultural Developments" and is as follows:

A visual examination was carried out by the writers of nine farms in the region of the subject lands. These properties are identified in Appendix 1.

Our general assessment is that the farms in question producing more intensive crops than pasture or hay occupy more gentle continual slopes than those found on the subject lands. The soils on these farms are located in higher areas relative to the surrounding landscape and are probably more representative of the Whatcom, Nicholson or Sunshine than the Scat soils series. Where the farms occupy relatively level areas of the landscape they have been developed for pasture or hay production and not for more intensive soil-based farming.

10 In Part 5 the authors concluded:

The agricultural viability of the vast majority of the subject property is limited by the close association of the Whatcom and Scat soils occurring on relatively level areas thereby creating serious difficulties in agricultural management as well as economic problems.

11 The nine farms mentioned in Part 2 of the appellants' presentation had apparently first been referred to in a list of properties submitted to the ELUC by the Agricultural Land Commission as neighbouring agricultural production units of the same soil type as the Gloucester lands.

12 The appellants prepared an addendum dated 8 March 1982 to their presentation to the Commission. The purpose of the addendum was "to expand on the review of regional agricultural developments and agricultural suitability contained in our January 27 brief and to assess the feasibility of agricultural production on the Gloucester lands". The addendum makes an assessment of the nine farms in question, both in general and in particular, and on p.7 the appellants state:

Agricultural suitability is determined by obtaining information on the types and yields of crops grown on similar soils and on similar topography in the same general area as the soils being assessed. As enumerated in the section on regional agricultural developments, we believe that there is not an agricultural management unit currently in production in the area of the subject lands which is comparable to the Gloucester lands in terms of soil intermingling and topography from which to assess accurately the agricultural suitability of the Gloucester lands for more intensive soil-based farming than hay or pasture.

13 At this time, I gather, the chairman of the Ethics Committee of the Institute of Agrologists was a Mr. Bertram. He and others felt concern "about matters relative to the Gloucester property issue". A general complaint was made to the Council who directed a hearing be held. Thereafter the Ethics Committee drew up a formal written complaint against the appellants. Because the formal complaint had emerged only after Council had decided to hold a hearing, Berger, J., in October 1982, made an order of prohibition restraining the Council from proceeding with its hearing into the conduct of the appellants. The following day the appellants' solicitors wrote to Mr. Runka, one of the complainants, putting him on notice that "if you should make any statements to the effect that our clients did not have an honest belief or adequate knowledge on which to base their reports, or that their statements in their reports were in any way calculated to mislead, our instructions will require that we immediately commence action against you for damages for libel".

14 Notwithstanding this, three fellow agrologists and members of the Institute, Mr. Runka included, subsequently filed a complaint alleging that the appellants "have written or caused to be written reports concerning the land commonly known as the Gloucester property in the Minicipality of Langley in which statements are made that may contravene the Code of Ethics of the British Columbia Institute of Agrologists". Particulars of the complaint were given. Three particular complaints were made concerning the appellant's presentation to the Agricultural Land Commission dated 27 January 1982. Four particular complaints were made concerning the appellants' addendum to their presentation dated 8 March 1982. The hearing before the Council took place in June 1983 and lasted three days. In written reasons dated 18 November 1983 the Council found the appellants guilty of a breach of s.6 of the Code of Ethics in respect of one particular complaint set out in B-2. The Council dismissed all other complaints.

15 Council's observations and findings are set out at pp.11-12 of their written reasons:

> The next particular cited is from pages 7 and 8 of the Addendum which reads as follows:
>
> > Agricultural suitability is determined by obtaining information on the types and yields of crops grown on similar soils on similar topography in the same general area as the soils be assessed. As enumerated in the section on Regional Agriculture Developments, we believe that there is not an agricultural management unit currently in production in the area of the subject lands which is comparable to the Gloucester lands in terms of soil intermingling and topography from which to assess accurately the agricultural suitability of the Gloucester lands for more intensive soil based farming than hay or pasture.
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> The Council notes that in the Addendum nine properties were reported by Mr. Husdon and Mr. Colebrook. The nine properties were all found in a list provided to the Environment and Land Use Committee of the Provincial Cabinet by the Agricultural Land Commission in July 1979. Mr. Husdon and Mr. Colebrook do not cite any other agricultural managements units.
>
> Mr. Husdon and Mr. Colebrook made a very superficial comparison of all nine properties to the Gloucester Properties. The Council is of the view that at least three of the nine listed properties are comparable to the Gloucester Properties, specifically properties numbered 3, 8 and 9. Council finds that a proper comparison of at least these three properties must have been done by Mr. Husdon and Mr. Colebrook in order for Mr. Husdon and Mr. Colebrook to have expressed the opinion:
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> > ... we believe that there is not an agricultural management unit currently in production in the area of the subject Condo in terms of soil intermingling and topography from which to assess accurately the agricultural suitability of the Gloucester lands for more intensive soil based farming than hay or pasture.
>
> Council therefore finds that this statement found in the addendum at pages 7 and 8 above-noted was not founded on adequate knowledge and honest conviction. Messrs. Husdon and Colebrook are therefore guilty of a breach of Section 6 of the Code of Ethics, by this particular.

16 The essence of the opinion complained of is that the appellants, having inspected nine farms in the area, were of the view that there was not an agricultural management unit in production in the area "which is comparable to the Gloucester lands in terms of soil intermingling and topography from which to assess accurately the agricultural suitability of the Gloucester lands for more intensive soil based farming than hay or pasture". The Council found that the appellants had made a very superficial comparison of the nine properties to the Gloucester properties. That at least three of the nine were "comparable" and that a "proper" comparison of at least these three properties should have been done in order for the appellants to have expressed the opinion they did. Accordingly, the Council found that the opinion I have mentioned was not founded on "adequate knowledge and honest conviction". S.6 of the Code of Ethics requires such a foundation for the opinion of an agrologist.

17 The appellants grounds for appeal boil down to two. The first concerns the wording of the complaint which I shall deal with later. The second, and principal, ground is that the Council erred in holding the appellants "to a standard which was higher than it applied to itself". Counsel's submission, if I follow it correctly, is this. Council did not specify what a "proper" comparison of the nine properties would have entailed. Nevertheless, it is submitted, Council made a comparison of three properties and concluded that these three properties were comparable to the Gloucester properties. It is then submitted that on an analysis of the evidence Council had no more knowledge before it than did the appellants to base a conclusion that three properties were comparable to the Gloucester property. (By "comparable" I assume counsel means that there were sufficient similarities between the three properties and the Gloucester lands to warrant a different opinion than that reached by the appellants.) It is submitted that Council have on the same facts come to a different opinion than that of the appellants. It is therefore unjust for the Council to have disciplined the appellants for having an opinion based on allegedly inadequate facts, when Council itself has come to an opinion, albeit a different one, on the same facts. It is suggested the Council was employing a double standard, one for the appellants and one for itself.

18 In my view, this argument shows a misconception of the basis of the Council's finding.

19 The Shorter Oxford Dictionary defines "comparable" as "able to be compared (with), worthy of comparison. "Compare" (verb) is defined as "to mark the similarities and differences of". When Council found that at least three of the nine properties were "comparable" to the Gloucester properties, what I assume they meant was that the similarities between the three properties and the Gloucester properties allowed a comparison to be made. Accordingly, more than a superficial study of these properties was required to enable a conclusion to be made, based on a comparison, that the Gloucester properties were unsuitable for more intensive soil-based farming than hay or pasture. In other words, at least three of the nine properties were sufficiently like the Gloucester lands to warrant a full study of them before the Gloucester lands could be found unsuitable by comparison. I do not consider that Council came to a conclusion that the Gloucester properties *were* suitable for more intensive soil based farming than hay or pasture after a comparison with the other properties. Council was simply expressing the view that because of similarities in at least three other properties a finding of suitability could not be made on only a superficial comparison with those properties.

20 Was there evidence before the Council to support their view that a superficial comparison of all nine properties had been made by the appellants and that at least three of the nine had similarities to the Gloucester lands which justified a proper study? In my view, there was such evidence before the Council.

21 It was the opinion of the appellants that agricultural management units in production in the area of the Gloucester lands were not comparable to those lands "in terms of soil intermingling and topography". The nine properties which the appellants inspected are on soils mapped as W-SCdc. This is also the mapping for the Cloucester properteries. "W-SC"describes a mixture of two types of soil, i.e. Whatcom and Scat. "d.c." describes the topography of the land; "d" means gentle rolling slopes of 5 to 9 per cent; "c" describes undulating slopes of 2 to 5 per cent.

22 Property #3 on the appellants' list of properties inspected is one of the three properties referred to by the Council. No analysis of the soil, or of its intermingling, on property #3 was made by the appellants. It seems to me, therefore, Council were entitled for that reason alone to find that the appellants' opinion that property #3 was not comparable to the Gloucester lands was not based on adequate knowledge. In fact the appellants appeared to have no knowledge of the intermingling of soils on property #3.

23 The evidence presented concerning property #8 inspected by the appellants is also evidence from which the Council could reasonably find, in my view, that there had been an insufficient comparison of soils and topography to the Gloucester properties and that therefore the appellants opinion was based on inadequate knowledge. Counsel for the appellants indeed lists in his written submission the material that was unavailable in respect of property #8, including soil surveys, topographical maps and reports on drainage, irrigation and water supply. As the respondents' counsel points out, this is the very kind of information which Council were entitled to consider the appellants should have obtained before expressing the opinion they did. Whether or not the appellants had adequate knowledge upon which to base their opinion, I am of course incompetent to judge. But evidence that the appellants lacked admittedly relevant information is evidence from which Council could reasonably conclude that the appellants' opinion was based on inadequate knowledge.

24 The evidence presented concerning property #9 could also, in my view, have reasonably lead Council to the same conclusion. I have read the transcript of the hearing as well as the exhibits. I am aware that Mr. Husdon, at the hearing, gave his view that the mixture of Whatcom and Scat soils on the Gloucester lands contained a lower proportion of Whatcom soil than was common in the general area (although I note Mr. Luttmerding said surrounding soils were similar; p.82, Vol.1 Transcript). The fact remains, however, that there was no soil survey made or obtained by the appellants on any of the nine properties inspected by them. From this Council could reasonably have come to the conclusion it did insofar as the appellants' opinion was based on the special intermingling of soils on the Gloucester lands.

25 For these reasons I find that there was evidence before the Council to support their verdict and that the verdict based on such evidence was not unreasonable.

26 The other ground of appeal advanced concerns the allegation in the complaint that statements of the appellants "may contravene the Code of Ethics". The complaint should properly of course have referred to a charge that statements of the appellants "contravene the Code of Ethics". It seems clear that the complainants did not have in mind that the appellants might have contravened the Code of Ethics - except in the sense that the appellants might be found to have contravened the Code of Ethics. The reason for the "may" was that the compainants (or some of them) had received a letter from the appellants' solicitors threatening libel action if a complaint was made that the appellants had contravened the Code in the way suggested. The matter was raised by Mr. Hamilton at the beginning of the hearing, although he appears only to have desired the Council to be aware of his objection; he asked for no relief. The matter was again argued before Council at the end of the hearing. From reading the transcript it is clear that the appellants knew the particulars of the complaint made against them and that what they were facing was not a complaint that they might have breached the Code of Ethics, but in fact that they had done so. There is nothing in any of the comments from the tribunal members or in the evidence to suggest that the hearing was not dealing with a complaint that a breach had been committed. The wording of the charge was unfortunate, although the reason for it is explained. It was obviously a useless exercise for the Council to spend three days hearing a complaint that the appellants might have committed a breach of the Code of Ethics. No one involved in the hearing thought the Council was so engaged and it does not appear that the appellants were prejudiced or misled is anyway at all. I find there is no merit in this ground of appeal.

27 If the Council was wrong in law in finding that the appellants contravened the Code of Ethics on a complaint that they may have done so, I would apply s.616(1) (iii) of the *Criminal Code* as I am of the opinion that no wrong or miscarriage has occurred as a result.

28 The appeal is dismissed.

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