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# Agricultural Law NetLetter™

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditors rights, animals, grain, import/export and other matters in an agricultural context.

**Thursday, May 20, 2010 - Issue 201**

Bi-weekly issues are added on Thursdays.

## **\*\* HIGHLIGHTS \*\***

- \* A Master of the Ontario Superior Court of Justice has held that the Ontario Farming and Food Production Protection Act may be pled in a damage action against a municipality which relied upon a land use bylaw to attempt to prevent the farmer from raising wild boars. The Act provides that no municipal bylaw may restrict "a normal farm practice carried on as part of an agricultural operation". The City of Pickering's land use bylaw permitted raising domestic livestock in designated areas, but not "exotic" animals. (Rausch v. Pickering (City), [CALN/2010-014](#), [\[2010\] O.J. No. 1889](#), Ontario Superior Court of Justice)

## **\*\* NEW CASE LAW \*\***

*Rausch v. Pickering (City)*; [CALN/2010-014](#), Full text: [\[2010\] O.J. No. 1889](#); 2010 ONSC 2393, Ontario Superior Court of Justice, Master D.E. Short, May 5, 2010.

Right to Farm Legislation -- Ontario -- Invalidity of Incompatible Land Use Bylaws.

Summary of Facts: James Rausch ("Rausch") farmed within the municipal boundaries of the City of Pickering (the "City"). Rausch sued the City for damages allegedly sustained as a result of steps taken by the City to require Rausch to remove wild boars he was raising on his farm, and as a result of charges laid by the City against Rausch under its "Exotic Animal" Bylaw which prohibited the keeping of "Artiodactyl Ungulates", other than domestic cattle, goats, pigs and sheep".

Rausch's wild boars had apparently escaped, resulting in complaints by neighbours to the City.

The City withdrew the charges after the wild boars had been removed from the farm.

Rausch brought an application to amend his Statement of Claim to plead the provisions of Section 6 of the Farming and Food Production Protection Act, 1998 S.O. 1998, c. 1, as amended (the "Act"). Section 6(1) of the Act provides:

- 6(1) No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.

Section 6(2) provides that municipalities may apply to the Normal Farm Practices Protection Board for determination as to whether a practice is a normal farm practice for the purposes of the "non-application of a municipal by-law".

Decision: Master D. Short allowed the amendment [at para. 45]. The Master held [at para. 30] that the Act was potentially relevant to Rausch's claim.

The Master referred to two Ontario cases and considered the Act, both of which indicated that the Act was intended to protect legitimate farming operations from bylaws, including zoning bylaws, stating [at para. 32, 33]:

[32] Counsel could only point to two cases that have considered the FFPPA. In 2006 in *Hill and Hill Farms Ltd. v. The Municipality of Bluewater* [2006 CanLII 31802](#) (ON C.A.), (2006 CanLII 31802), the Court of Appeal considered the powers of the Normal Farm Practices Protection Board. The Court held that the term "municipal by-law" included a zoning by-law and thus in the present case both by-laws would appear to be covered by the FFPPA.

[33] More recently in *Oakville (Town) v. Wayne Read (Read Farms)*, 2010 ONSC 170 (CanLII), 2010 ONSC 170, Justice M. Dambrot sitting on the Divisional Court held:

"[53] I do not believe that I am niggling in making a distinction between farming practice and land use. In my view, the distinction goes to the heart of the purpose of s. 6. Section 6 is intended as a shield to protect legitimate farms with legitimate farming operations from having the use of normal farm practices restricted. This is consistent in turn, with the fundamental purpose of the Act. As Weiler J.A. put it in *Bluewater*, at para. 19, the Act is intended to address "issues arising from the competing interests of agricultural operations and adjacent properties."

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### **\*\* CREDITS \*\***

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