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Thursday, December 16, 2010 - Issue 216

Bi-weekly issues are added on Thursdays.

**** HIGHLIGHTS ****

- * A Justice of the British Columbia Supreme Court has found a dairy farmer who attempted to avoid the operation of an injunction by labeling non pasteurized milk as "not for human consumption" in contempt. The conduct of the dairy farmer, who had attempted to avoid the provisions of the Public Health Act and the Milk Industry Act by setting up a private "cow share" scheme, committed what the court described as a wilful act of disobedience. (*Fraser Health Authority v. Jongerden (c.o.b. Home on the Range)*, [CALN/2010-034](#), [\[2010\] B.C.J. No. 2412](#), British Columbia Supreme Court)

**** NEW CASE LAW ****

Fraser Health Authority v. Jongerden (c.o.b. Home on the Range); [CALN/2010-034](#), Full text: [\[2010\] B.C.J. No. 2412](#); British Columbia Supreme Court, N.H. Smith J., December 2, 2010.

Marketing Boards -- Injunctions -- Contempt -- Public Health -- Pasteurized Milk.

Summary of Facts: The Defendant, Alice Jongerden ("Jongerden") operates a dairy farm and established a "cow share" in which registered members owned shares of the cows she cared for. Raw milk products were available for sale only to members of the cow share and not sold to the general public. On March 18, 2010, the Plaintiff, Fraser Health Authority ("Fraser") found that Jongerden's operation was in breach of the Public Health Act, [S.B.C. 2008, c. 28](#) (the "Heath Act") and the Public Health Act Transitional Regulations, B.C. Reg. 51/2009 (the "Regulations"). Section 15 of the Health Act provides that any person must not willingly cause a health hazard, or act in a manner that the person knows, or ought to know, will cause a health hazard. Section 111 of the regulation states that milk for human consumption that has not been pasteurized at a licensed dairy plant, in accordance with the Milk Industry Act, is prescribed as a health hazard. The Court issued an injunction prohibiting Jongerden from distributing raw milk products for human consumption.

Following the court's issuance of the injunction, the Plaintiff again found Jongerden's operation to be distributing raw milk for distribution to cow share members. However, the products now carried a label with the words "not for human consumption." Further, Jongerden posted a notice to the doors of the refrigerators which stored the products, which stated:

I have received an injunction from Fraser Health to cease and desist packaging and distributing raw milk for human consumption. I will continue to honour my private agreement with each of you, making your dividends available as usual, to continue to do with as you please.

...

Your dividends are clearly labelled "not for human consumption".

The Plaintiff asked that the Defendant be found in contempt of court.

Jongerden argued that her notice should exonerate her from any breach of the court order as it was the choice of the cow share members as to what use the raw milk products were put to. She stated that raw milk products have a diverse application, including shoe shining and glue, consumption by animals, and by humans for cosmetic purposes.

Decision: N. Smith J. found that the Health Act and the Regulations do not merely require consumers to be warned. The legislation provides for an absolute prohibition of raw milk products for human consumption [para. 13]. The court further held that she admitted to being aware of the possibility that some of the cow share members may consume the raw milk as the notice on the fridge invited them to continue their use of the products "as you please" [para. 14]. Her conduct was found to be something she knew, or ought to have known, that would cause a health hazard within the meaning of section 15 of the Health Act [para. 14].

N. Smith J. held that the injunction was not directed solely at distributions to people Jongerden knew would use it for human consumption [para. 19.] As a distributor Jongerden would not be able to assess the limitless possibilities of its use, nor its users. However, she would have reasonable expectations as to its use arising from the nature of the product and the nature of its distribution. Therefore, the injunction was intended to prevent the distribution of raw milk in circumstances where human consumption was known to be a real and substantial possibility [para. 19]. The court held that the use of the notice on the refrigerator invited cow share members to continue to use the product as they had previously been using it [para. 20]. In this context, the court found that Jongerden wilfully disobeyed the terms of the court ordered injunction as she must have anticipated that cow share members would continue to use the raw milk for human consumption. At para 20, N. Smith J. states:

"To authorise recipients of a product to continue to use it as they see fit when there is a history of that product being used in a certain (now prohibited) manner is equivalent to knowing and intending that usage will

continue."

Jongerden ultimately ceased all production and distribution of raw milk products prior to this application being made to the court. The court felt this purged her contempt and there was no need to consider a penalty for her breach of the court ordered injunction.

**** CREDITS ****

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