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This odour problem 'mushroomed'

Whitby residents protest 'putrid, really obnoxious' smell from mushroom farm

I'm the only person I know who will sit down to a delicious Chinese meal and pick out all the mushrooms. What broccoli is to former president George Bush, mushrooms are to me.

But even if I was a true fan of the edible fungi, I would be very tempted to give them up forever after learning of the plight of a group of homeowners on and near Heron Rd. in the town of Whitby. They all live within about a mile of the site of the Greenwood Mushroom Farm (GMF), which is a partnership owned by several corporations.

In 1993, GMF purchased its present farm site on Heron Rd. for \$1.1 million, and invested another \$4.1 million in capital improvements and equipment. Many of the neighbours in the rural area had already owned their homes for some time - some as long as 50 years - when GMF set up operations in what now looks like a medium-size light industrial complex.

Although the mushroom farm operates mostly indoors, the first phase of the growing operation is the process of manufacturing compost or substrate to feed the mushrooms. The ingredients used in this procedure are hay, straw, ground corn cob, stable bedding, chicken litter, agricultural gypsum, urea, dried grains and cocoa oils.

These materials are mixed, wetted, tamped and eventually shaped into haystack-like ricks which are seven feet high, seven feet wide and 200 to 250 feet long. To give an idea of the scope of the operation, at one point GMF changed its compost formula, reducing its consumption of chicken litter by 50,000 pounds a week.

I find it difficult to imagine what it must be like to live downwind of a composting operation like Greenwood Mushroom Farms, but after the neighbours' complaints turned into a lawsuit, the descriptions of the smells introduced in evidence became quite graphic.

One neighbour, who had lived in her home for 41 years, said that in all her years on the property she had never smelled anything "so dreadful, objectionable, and repugnant" as the odour from the GMF. Another described the odours as "decaying animals, cow manure, musty, rancid, rotten shrimp or fish, putrid, overpowering, really obnoxious."

Another neighbour kept a smell diary. On Sept. 14, 1995, she wrote, "Same smell if you were held upside down one inch away from excrement in an outhouse used by 400 people." A fourth witness described the stench as "having one's face buried in ..." Well, you get the idea.

Every neighbour gave testimony about how the smells affected their outdoor and even indoor activities. They had to stop walking their dogs, stop hanging laundry outside, and stop having picnics, campfires and corn roasts. Many got sore throats, their breathing was affected, and they became depressed. Once the fire department was called because of a pungent haze settling over the area.

In a masterful understatement, Justice Donald Ferguson wrote, "I find that there is no doubt that the composting process produces offensive odours." He had no hesitation in finding that the operations of GMF were a common law nuisance to the homeowners in the vicinity.

The smells, he said, affected their physical well-being and substantially disrupted their use of their lands. Every owner called as a witness described the interference with the enjoyment of their homes as "intolerable."

Justice Ferguson ruled that the use of the GMF lands for composting was unreasonable having regard to the fact that the mushroom farm has neighbours. The mushroom operation, he said, caused an unreasonable interference with the use and enjoyment of the neighbours' lands by producing offensive odours.

Unfortunately for the neighbours, that wasn't the end of the case. Greenwood argued that their operations were protected by the Farm Practices Protection Act and the Farming and Food Production Protection Act which replaced it in 1998.

In a nutshell, the "right to farm" legislation protects the owners of an agricultural operation from lawsuits based on claims of nuisance because of odour, noise or dust resulting from a "normal farm practice" as long as no other laws are being broken.

Essentially, under the statutes, a court is unable to award damages against the operator of a farm if the odour it produces is the result of a normal farm practice. The policy behind the legislation is to encourage food production for the benefit of society at large, and to balance the needs of the agricultural community with provincial health, safety and environmental concerns.

After a lengthy consideration of the purpose of the laws, and the legislative debates in which they were introduced, Justice Ferguson said that the mushroom farm operators were aware of the potential effect of the composting operations on neighbours and should not have started composting in the area. He ruled that the protections available for normal farm operations were not available to Greenwood. They far exceeded accepted customs and standards established by similar mushroom farms, he said, and GMF was not operating in a manner consistent with proper and acceptable customs and standards of similar agricultural operations.

Justice Ferguson awarded \$263,500 in damages, divided up among 16 plaintiffs in amounts ranging from \$10,000 to \$35,000. Based on his interpretation of the law, he said it was unfortunate that he did not have the power to grant an injunction to prohibit the composting operation.

Greenwood appealed and the case of Pyke v. Tri Gro reached the Court of Appeal in March. Its decision was handed down in early August. Despite a vigorous dissent by Justice Louise Charron, the majority of the Court came down heavily on the side of the homeowners. Justices Robert Sharpe and Rosalie Abella dismissed the appeal of Greenwood Mushroom Farm.

In a throwaway comment at the end of his judgment, Justice Sharpe said that he disagreed with the trial judge's determination that he had no power to issue an injunction. Conceivably, the homeowners could return to court now and ask for an injunction to stop the composting operation.

In Ontario today residential subdivisions are rapidly spreading into what has been farmland. There are many agricultural operations immediately beside housing subdivisions. Purchasers in these areas should ensure that they visit their potential new homes on a day when the house is downwind from the farm next door.

Having read the trial and appeal decisions in Pyke v. Tri Gro, I now know more about mushroom farming than I ever really wanted to. I still don't like mushrooms, but now I know why.

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Please send your inquiries and questions to bob@aaron.ca or call 416-364-9366.