

NEW WESTMINSTER
COURT

Affidavit of Alice Jongerden #2
Affirmed January 19, 2011

No. S-124618
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FRASER HEALTH AUTHORITY

PETITIONER

AND:

ALICE JONGERDEN carrying on business as
HOME ON THE RANGE, JANE DOE and JOHN DOE

RESPONDENTS

AFFIDAVIT

I, Alice Jongerden, Agister, of 49682 Yale Road, in the City of Chilliwack, in the Province of British Columbia, AFFIRM AND SAY AS FOLLOWS:

1. I am a respondent in this matter, and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case I believe the source of the information to be reliable and I believe the information to be true.

2. From May of 2007 to September 14, 2010, I was the agister, or operator, of a cowshare operating as Home on the Range. Home on the Range produced and distributed milk that was not pasteurized, homogenized or processed in any way ("Fresh Milk"). During the time of its operation, Home on the Range had up to 450 members, each of whom was entitled to a share of the herd of up to 22 cows and a share of the Fresh Milk and Fresh Milk products derived from the herd. Fresh Milk was not sold to any of the members; the members were always already the owners of the milk produced by their cows. I was employed by the cowshare to care for, feed

and milk the herd, and manage the cowshare. The Home on the Range herd was grass-fed free-range and the herd was regularly tested for bovine illness.

3. Members of Home on the Range sought out Fresh Milk and toured the farm before becoming members. Milk that has been pasteurized and homogenized ("Processed Milk") is widely available for sale to the public and is much easier and less expensive to obtain than Fresh Milk. Members of the cowshare became members because they did not want to drink Processed Milk. Each member of Home on the Range was aware of the political dispute surrounding Fresh Milk, has heard the risk warnings of public officials and is aware of enforcement efforts made by public authorities to restrict or prohibit them from gaining access to Fresh Milk. Each member of Home on the Range to whom I spoke, and I dealt with all of them, considered the nutritional value and health promoting effects of Fresh Milk to be worth the extra time and expense and uncertainty associated with choosing Fresh Milk over Processed Milk.

4. Many members of Home on the Range advised me that they drank Fresh Milk because they were lactose intolerant and were unable to drink Processed Milk. At least two members of Home on the Range told me that they drank Fresh Milk because Fresh Milk resolved chronic eczema problems. Many members of Home on the Range told me that drinking Fresh Milk makes them feel healthy and strong, manifested by, among other things, healthy skin, healthy fingernails and strong and shiny hair. Many members of Home on the Range told me that they are less likely to fall ill with flus, colds and coughs when they drink Fresh Milk. Members reported to me that these health benefits do not result from drinking Processed Milk.

5. In addition to being an employee of Home on the Range, I was a member of the Home on the Range cowshare. I had a share in the Home on the Range herd and I received and drank Fresh Milk. At the moment, I am not able to obtain Fresh Milk for my personal consumption from a lawful producer.

6. I grew up on a farm and was raised on Fresh Milk. Drinking Fresh Milk has been critical part of my diet for most of my life. The only exceptions have been periods when I have been away from farms and unable to access Fresh Milk. During those periods, when I did not drink Fresh Milk and instead drank Processed Milk, I generally was relatively lacking in energy and was susceptible to illness, especially colds and flus, and my teeth were very sensitive to hot and

cold. When I have access to Fresh Milk and drink Fresh Milk regularly, I have lots of energy and I rarely get ill and my illnesses are less severe and of shorter duration, and my teeth are not sensitive to hot and cold. I believe in the nutritional value of Fresh Milk in part because I trust the messages my body gives me.

7. Drinking Fresh Milk is a conscious health choice made by myself and my husband. I consider good nutrition be a key determinant of long-term health. After extensively researching the issue, I concluded that Fresh Milk is a very healthy and nutritious food and offers health and nutritional benefits that far exceed its risks. I do not know of any food, or readily available basket of foods, that can substitute for the nutritional value of Fresh Milk.

8. My entire family, myself included, all experienced bodily health benefits from Fresh Milk, ranging from reduced rates of sickness to increases in strength and energy. I never got sick from Fresh Milk and no one I know got sick from drinking Fresh Milk. On the contrary, whenever my family drinks Fresh Milk on a regular basis, there is a strong tendency for us not to get sick or, on the rare occasion when one of us does get sick, our illnesses are for shorter periods and are less severe. When we do not drink Fresh Milk on a regular basis, my family and I get sick on a regular basis. While these illnesses and lessened sense of well-being are not life-threatening, they amount when taken together to a significantly diminished quality of life and significantly decreased overall health.

9. In my opinion, Fresh Milk is significantly healthier than Processed Milk. Fresh Milk has vitamins, enzymes and bacteria that are destroyed or deteriorated by pasteurizing the milk. Fresh Milk contains proteins that are modified by pushing the milk at high pressure through small pressure nozzles to blend the butterfat with other liquids, which is an industrial process known as homogenization. Pasteurization destroys the lactase contained in raw milk. Lactase aids the digestion of lactose, so that lactose intolerant people can drink raw milk but not pasteurized milk. Homogenization also makes milk more difficult to digest for many people, including myself, who are not diagnosed as lactose intolerant, but find that drinking Processed Milk tends to cause bloating, gas and other digestive difficulties. Pasteurization also makes it harder to absorb calcium. I believe that processing destroys or drastically reduces the level of vitamins, enzymes,

bacteria and proteins contained in Fresh Milk, and that the nutritional and health value of Processed Milk is negligible.

10. In my view, there are few, if any, health benefits from drinking Processed Milk, and the health risks from drinking Processed Milk are greater than the risks from drinking Fresh Milk. Most of my family will not drink Processed Milk or consume Processed Milk products.

11. I am well aware of the health risks posed by Fresh Milk, because I have researched it extensively. While I am not a doctor or a scientist, I am at least as qualified to conduct nutritional research and make nutritional choices as any other person and I have, as a result of my work as an agister, had personal communication with a number of scientifically trained experts who have confirmed my research. There is a very small probability (which never actualized at Home on the Range) that Fresh Milk will contain pathogens such as E. Coli O157:H7, Listeria and Salmonella, all of which can have serious adverse health consequences. In my view, however, the unpasteurized milk containing dangerous pathogens tends to be industrial grain-fed milk meant for pasteurization that has not yet been pasteurized. The risks from grass-fed free-range cows is significantly smaller. I am prepared to take the small risk that Fresh Milk from healthy grass-fed free-range cows contains virulent pathogens because I believe that the health benefits of Fresh Milk far exceed the risks.

12. Although I have been in contact with hundreds of people who have been drinking Fresh Milk and eating Fresh Milk products on a daily basis, I have never met a single person who has fallen ill from consumption of Fresh Milk, with the exception of people who drank unpasteurized milk from a commercial dairy that was intended for pasteurization. Unpasteurized milk produced by large-scale industrial dairies from grain-fed cows have much higher level of pathogens than small-farm grass-fed free-range cows, because grain feeding promotes the growth and spread of virulent pathogens in dairy products and because sanitation standards at large-scale industrial dairies tend to be lower.

13. I am aware that Fresh Milk and Fresh Milk products are available for purchase or from cowshares in at least 20 states in the United States of America, including Alaska, Washington, Oregon and California. Fresh Milk and Fresh Milk products are widely and lawfully available

for sale in the European Union. Fresh Milk and Fresh Milk products are lawfully available for sale in the United Kingdom, with the exception of Scotland.

14. While it was in operation, Home on the Range took steps to ensure the health of our milking herd. In particular, the cows were grass-fed rather than grain feed, and the herd was looked after by veterinarians on a regular basis. The cows and their milk were tested on a regular basis for tuberculosis, brucellosis and Q-fever. No one ever got sick from consuming the milk produced by Home on the Range.

15. In November of 2007, Mark McAfee visited British Columbia. Mark McAfee is the owner of Organic Pastures, the largest Fresh Milk and Fresh Milk products producer in California. Organic Pastures has over 60,000 customers, and is subject to close regulation by California health and food regulators. I met personally with Mark McAfee and he advised me of the standards for testing, producing and distributing Fresh Milk that are used by Organic Pastures and are considered satisfactory to California regulators. Home on the Range implemented (or had already implemented) all of Mr. McAfee's recommendations.

16. In 2009, inspectors from the Fraser Health Authority delivered an Executive Order to me to stop the distribution of Fresh Milk. Because Home on the Range did not engage in any commercial sale of Fresh Milk or other commercial transaction involving milk, and because the members' milk was marked "Not for Sale", I believed that I was not involved in "distribution" of Fresh Milk, and I did not stop the operation of Home on the Range.

17. On March 18, 2010, Madam Justice Gropper prohibited me from "packaging and/or distributing raw milk and/or raw milk products for human consumption". The phrase "raw milk" is sometimes used to refer to Fresh Milk. A copy of the reasons for judgment of Madam Justice Gropper are attached as **Exhibit "A"**. A copy of the entered order, served on me on or about March 22, 2010, is attached to this affidavit as **Exhibit "B"**.

18. After March 18, 2010, I began distributing Fresh Milk clearly labelled as being "not for human consumption". I believed that labelling the Fresh Milk in this way put me in compliance with the March 18, 2010 Order of Madam Justice Gropper. On September 14, 2010, the Petitioner obtained an interim order from Mr. Justice Saunders preventing me from "producing

and/or distributing” Fresh Milk, without reference to human consumption. A copy of the interim order dated September 14, 2010 is attached as **Exhibit “C”** to this affidavit.

19. The Home on the Range cowshare ceased its operations entirely on September 14, 2010. Since September 14, 2010, I have not packaged, produced or distributed Fresh Milk for human consumption or otherwise.

20. On December 8, 2010, Mr. Justice Smith decided that the March 18, 2010 Order of Madam Justice Gropper clearly intended to prevent the distribution of Fresh Milk in circumstances where milk consumption is known to be a real and substantial possibility, and found me in contempt of court. A copy of the reasons for judgment of Mr. Justice Smith are attached as **Exhibit “D”** to this affidavit.

21. The Order of Madam Justice Gropper, as elaborated by the reasons for judgment of Mr. Justice Smith, prevents me from resuming my work as a Fresh Milk agister. The Order of Madam Justice Gropper prevents Home on the Range cowshare from resuming its operation and distributing Fresh Milk to its members for human consumption. I do not intend to contravene the Order of Madam Justice Gropper.

22. I am applying to set aside the order of Madam Justice Gropper. If the Order of Madam Justice Gropper is set aside, I will resume my work for Home on the Range members and work to re-establish the operation of the cowshare. If the order of Madam Justice Gropper were set aside, I would immediately resume caring for, feeding and milking the cowshare’s herd. I am also applying to set aside the order of Madam Justice Gropper so that I can have a lawful supply of Fresh Milk for my own personal consumption.

23. When establishing the standards and processes for Home on the Range, I had in hand the Washington State Regulations for Fresh Milk production, which are attached as **Exhibit “E”** to this affidavit. With a few trivial exceptions, Home on the Range met or exceeded the Washington State health and safety standards for Fresh Milk. Although inspectors attended Home on the Range, the inspectors never alleged any type of unsanitary procedure or unhealthy practice took place at our facilities.

