got raw milk?
Legal Issues Drive Community Supported Dairies

By Jan Steinman

By now, everyone has heard about Community Supported Agriculture (CSA) programs as a way of involving the greater community in the production of their food. CSAs vary in form, from merely a way to collect payment “up-front” in order to finance the season’s production, to actively involving the greater community in planting, weeding, harvesting, and other farming activities.

Until recently, the CSA concept was largely limited to vegetable gardening, but it is increasingly seen as a way for individuals who don’t have the luxury of farmland and animals to enjoy dairy products as nature intended they be enjoyed – organic and raw, rather than engineered and industrialized.

It is illegal throughout Canada to sell or distribute unpasteurized milk. Health authorities claim that raw milk “may contain pathogens” as justification, while allowing the sale and distribution of far more dangerous foods like raw oysters and other shellfish. Even hamburger and spinach cause much more illness than carefully produced raw milk.

And yet, there is increasing demand for traditional foods, including carefully produced raw milk. Many respected professionals, including medical doctors, nutritionists, and epidemiologists claim that carefully produced raw milk has much to offer over the industrially manufactured milk-like product that is commonly available. It contains its own immune system, with heat-sensitive enzymes like lactoferrin, a potent natural antibiotic, which is completely destroyed by pasteurization. Many other beneficial enzymes found in raw milk are destroyed, as is a significant portion of many water-soluble nutrients, such as Vitamin C.

There is one thing about raw milk that the health authorities got right – it contains bacteria – the naturally-occurring beneficial lactobacillus and acidophilus bacteria that consume lactose, or milk sugar, and produce lactic acid, which is deadly to harmful bacteria such as E. coli and Campylobacter jejuni. Such “living milk” bacteria is considered so beneficial that industrial factory dairies add them back into certain dairy products after killing them with pasteurization, while charging consumers a premium for things like “probiotic” yoghurt!

I always talk about “carefully produced raw milk” because not all raw milk is created equal. Raw milk produced by concentrated animal feeding operations (CAFOs) cannot be produced safely. Indeed, industrial dairies depend on pasteurization to clean up any sanitary problems that occur in production, and people do get ill or even die when pasteurized milk is contaminated by raw milk that is intended for pasteurization. Health authorities often disingenuously cite such contamination as justification for banning carefully produced raw milk that is intended to be consumed raw.

But carefully produced raw milk has a nearly spotless health record – you are much more likely to be struck by lightning than to become ill from consuming carefully produced raw milk. There is general agreement that such milk comes from small herds of cows, goats, or sheep that are primarily fed naturally-occurring grass or browse, that the milk endures little or no pro-
cessing other than rapid chilling and filtering, and that organic practices be followed. It is often hand-milked, which can be more sensitive to potential problems, such as sub-clinical mastitis. Hand milking can also be more sanitary, as the pipes and tubes of milking machines can be difficult to keep clean.

So if this elixir is so good for you, and yet illegal, what is a health-conscious raw milk fan to do?

Luckily, there is a large loophole in the raw milk ban: the owner of a milk-producing animal is legally able to consume the milk produced by that animal. And Section Two of the Canadian Charter of Rights and Freedoms gives us “freedom of association,” or the freedom to collectively do that which it is legal to do individually. Thus, it is argued that a number of people can associate, pool their resources, and purchase a dairy animal and legally consume its milk, and even pay an agister, or person who cares for livestock owned by others, to care for the animal and milk it for them.

In 1990, an Ontario dairy farmer started providing carefully produced organic raw milk to cow co-owners, using the herd share model. In the twenty years since, Michael Schmidt has since undergone numerous raids and persecution by health authorities, culminating in twenty charges of willful violations of various health protection laws. On January 21, 2010, Schmidt was found not guilty of all charges in the Ontario Court of Justice in a scathing 44-page judgement. By February 11, 2010, the Crown filed a five-page appeal, with a decision scheduled for September 16, 2011. So things may be different by the time you read this, but until this decision, the Ontario Court of Justice decision stands.

At EcoReality Co-op, we use our existing organization (as a BC Cooperative Association) as the herd share mechanism. We added a class of investment shares to segregate the herd share funds from other Co-op business. We are careful to limit the number of shares available to the actual value of our flock of Nubian goats and associated infrastructure, and we do not promise a certain quantity of milk. So, much as the sole owner of a cow or goat must be prepared to “take the bad with the good,” EcoReality dairy herd shareholders are not guaranteed a certain quantity of dairy product. These may well be important points in discriminating a true collective ownership situation from one that is merely a run around the prohibition of sale to the public.

We are currently supplying 37 dairy herd sharehold-