



MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS

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Annual Report of the Normal Farm Practices Protection Board April 1, 2016 to March 31, 2017

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Message from the Chair

I am pleased to present the Annual Report of the Normal Farm Practices Protection Board for the fiscal year ending March 31, 2017. The report focuses on the Board's achievements for the year. On behalf of the members of the Normal Farm Practices Protection Board, I wish to thank the Minister of Agriculture, Food and Rural Affairs for the services provided to the Board according to the Memorandum of Understanding, and for facilitating the smooth and effective operation of the Board.

The Normal Farm Practices Protection Board (the "NFPPB" or the "Board") is established under the *Farming and Food Production Protection Act, 1998* (the "Act") to hear and rule on issues pertaining to farm practices. By protecting normal farm practices, the Board helps to preserve the competitiveness of Ontario farmers in the face of increasing external pressures.

In accordance with the Preamble of the Act, the Board seeks to balance the needs of the agricultural community with provincial health, safety and environmental concerns. Under the Act, the Board holds hearings on nuisance complaints about farm practices, applications seeking non-application of municipal by-laws, and referrals from judges. The Board rules on whether the farm practices at issue are "normal farm practices."

The Act provides, under s.2(1) "A farmer is not liable in nuisance to any person for a disturbance resulting from an agricultural operation carried on as a normal farm practice." Disturbance is further defined as meaning odour, dust, flies, light, smoke, noise and vibration. The Act further preserves the ability to conduct normal farm practices as part of an agricultural operation pursuant to s.6(1), "No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation."

Board proceedings are subject to the *Farming and Food Production Protection Act, 1998* ("the Act") and the *Statutory Powers Procedure Act (SPPA)*. Board hearings are less formal than court proceedings, but follow the rules of natural justice. Hearings are managed in such a way that any complainant or respondent may present their case with or without representation by legal counsel. This promotes access to the services of the Board for all.

The Board is governed by the Agency Appointments Directive (AAD), the Travel, Meal and Hospitality Expenses Directive, and other applicable Directives from Management Board of Cabinet and Treasury

Board. Board members are made aware of the AAD and its requirements. All accountability and governance documents required for the Board have been published on the Board's web page in accordance with the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA). Reimbursements of Board members' expenses were all within the guidelines of the Travel, Meal and Hospitality Expenses Directive.

On behalf of the Board members, I look forward to continuing to serve the agriculture and food sectors, as well as rural communities, throughout Ontario.

Yours truly,

Kirk W. Walstedt, Chair
Normal Farm Practices Protection Board

Introduction

The Normal Farm Practices Protection Board (the Board) is established under the *Farming and Food Production Protection Act, 1998* (the Act) to rule on issues pertaining to farm practices. The Act protects farmers from disturbance complaints, provided the farmer is following normal farm practices. Disturbances covered are those arising from odour, dust, flies, light, smoke, noise and vibration. The Act also protects farmers from municipal by-laws that restrict their normal farm practices. The Act defines "normal farm practice" as a practice that:

- a. is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or
- b. makes use of innovative technology in a manner consistent with proper advanced farm management practices.

OMAFRA agricultural engineers or environmental specialists conduct conflict resolution on each complaint. This Ministry-led conflict resolution process successfully resolved 95 percent of all complaints in the 2016-17 fiscal year.

For unresolved cases, the Board may conduct a pre-hearing/settlement conference with the parties. The pre-hearing conference identifies issues and determines hearing logistics, and the settlement conference is a further attempt at settlement. If the settlement conference is unsuccessful, the Board conducts a hearing to determine, among other things, whether the farm practice involved is a "normal farm practice."

Operating Principles

Values

The Board values:

- 1. Timely, evidence-based, impartial and independent decision making with clearly reasoned and expressed decisions
- 2. Respect and consideration
- 3. Fairness and accessibility
- 4. Adherence to customer service and adjudicative process principles

Mandate and Mission Statement

The mandate of the Board is established by the Act. Section 3 establishes the Board and provides for the Minister of Agriculture, Food and Rural Affairs to appoint the Chair, Vice-Chair and members. Subsection 4(2) states that the Board has the power to:

- a. inquire into and to resolve disputes respecting agricultural operations and to determine what constitutes a normal farm practice;
- b. make necessary inquiries and orders to ensure compliance with its decisions.

The Board's mission statement is to provide a fair hearing and decision process to all parties involved in disputes regarding normal farm practices.

2016-17 Highlights

Complaints about Farm Practices

The operations of the Board are governed by the *Farming and Food Production Protection Act* and its own Rules of Practice and Procedure. The Rules require that complaints about farm practices go through the

conflict resolution process conducted by Ministry of Agriculture, Food and Rural Affairs agricultural engineers and environmental specialists. If this process is not successful then parties can bring an application before the Board.

Those parts of the province with high population density in an agricultural area often experience higher odour and noise complaints. For example, Niagara Region experiences a high volume of noise complaints from the use of bird cannons/bangers (noise-makers designed to protect grape harvests from birds). The distribution of complaints by county may be found in Appendix 1.

Complaints from farmers continue to centralize on two distinct types of municipal by-laws: site alteration and tree-cutting. Site alteration by-laws seek to limit the quantities of soil that can be imported onto farms in a municipality and set conditions for importing soil. Tree-cutting by-laws limit the trees that can be cut in the municipality. In instances where farmers consider these by-laws to be too restrictive, they have applied to the Board for a ruling exempting their farm practices from the by-laws.

Table 1. Farm Practice Complaints Received by OMAFRA

	Odour	Noise	Dust	Flies	Smoke	Light	Vibration	By-Law	Total
2016-2017	66	68	2	21	2	0	0	18	177
	38%	38%	1%	12%	1%	0%	0%	10%	
2015-2016	45	28	2	20	0	1	1	10	107
	40%	26%	1%	19%	0%	1%	1%	9%	
2014-2015	48	45	2	20	1	0	0	15	131
	37%	34%	2%	15%	1%	0%	0%	11%	
2013-2014	53	56	7	18	3	0	0	19	156
	34%	36%	4%	12%	2%	0%	0%	12%	
2012-2013	65	42	7	35	3	3	0	9	164
	40%	26%	4%	21%	2%	2%	0%	5%	

The Board successfully met performance standards for resolving complaints without a hearing and the length of time to issue Board decisions after the completion of hearings.

The Board received one complaint from a party in the matter of Cox v. Town of Mono (Board File 2014-05). The complainant felt both ministry staff involved in the conflict resolution process and the Board, on their own initiative, should have dismissed the case prior to conducting a costly hearing. Under the Board's Public Complaint Policy, the Board will accept complaints about the quality of service related to Board policies and procedures, and the application of those policies and procedures or the conduct of the Board members and staff. The concerns raised by the complainant were related to how the Board applied the law in this matter rather than how the Board or its staff conducted themselves over the course of the hearing process.

Board Activities

Hearings

Five cases, for which OMAFRA's agricultural engineers and environmental specialists were unable to elicit a resolution between the parties, applied to the Board for resolution. Of those cases, two are scheduled for pre-hearing conferences, and the others were either withdrawn or the applications were dismissed.

Table 2. Hearing Applications by Type

Fiscal Year	Nuisance Applications	By-law Applications	Total
2016-2017	1	4	5
2015-2016	5	7	12
2014-2015	2	3	5
2013-2014	1	4	5
2012-2013	2	3	5

The high volume of cases (12) received by the Board in 2015-16 resulted in a high number of cases carrying over into 2016-17 for the Board to manage.

Operational Performance

The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (ATAGAA)* came into force (in part) on April 7, 2010. The purpose of the ATAGAA is to ensure that adjudicative tribunals are accountable, transparent and efficient in their operations by having in place governance and public accountability documents which include a Memorandum of Understanding, Business Plan and Annual

Report; and a Mandate and Mission Statement, Consultation Policy, Service Standard Policy, Ethics Plan and Member Accountability Framework by April 1, 2012. The Board met those requirements.

In accordance with ATAGAA, the Board reviewed the public accountability documents in November of 2016 to determine whether any amendments were required. The Board was satisfied with the documents as written.

Performance Measures and Results

The Board measures the performance of its programs in four areas:

1. Ministry Conflict Resolution System: The effectiveness of NFPPB Rules of Practice and Procedure Rule 65(1) which states: "Before accepting an application for a hearing, the Board shall be satisfied that the Farm Practices Conflict Resolution Process established by the Environmental Management Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) has been applied and has been unsuccessful in resolving the conflict between the parties."

The goal is that a minimum of 80 percent of complaints should be resolved by the conflict resolution system.

Results: Through the dispute resolution process, OMAFRA advises that Ministry staff were able to resolve 94 percent (166 of the 177) of the nuisance and by-law complaints received in 2016-2017, thereby avoiding potential Board hearings.

2. Timeliness of response to request for hearing: Number of days between receipt of a hearing application and response to applicant on whether the application is set for a hearing.

On receipt of a complete application for a hearing, the Board will issue a decision on whether the case is accepted for hearing within 20 calendar days.

The measure begins when the Board receives a complete application; it does not include time taken for the applicant to provide missing information.

Results: The Board received eight applications for a hearing during the 2016-17 fiscal year. In all of those cases, the Board surpassed its acceptance metric in 7 out of 8 instances.

3. Timeliness of Board decisions: Following completion of a hearing, the Board endeavors to release its written decision, with reasons, to the parties according to the following schedule:

- a. Hearing lasting less than 5 days: decision released within 60 business days
- b. Hearing lasting 5 to 20 days: decision released within 90 business days
- c. Hearing lasting more than 20 days: decision released within 120 business days.

This is a measure of the length of time the parties have to wait for the Board's decision after the hearing has ended. It is calculated by counting the number of days between the completion of the hearing and the release of the decision.

Results: During the 2016-17 fiscal year, the Board met its decision release performance standards in every case.

There were three hearings held during the 2016-17 fiscal year. For the two hearings lasting less than five days, both of those decisions were released well within the 60 business day goal at 16 and 26 business days. There was one hearing held lasting five to 20 business days. Its decision release met the performance standard of 90 business days; it was released in 5 business days.

4. Quality of Service: The Board's goal is fewer than 3 complaints about the quality of service received for the fiscal year.

The measure is the incidence of complaints from parties about any aspect of the quality of the provision of the Board's service.

Results: There were no complaints regarding quality of the Board's service during the 2016-17 fiscal year.

Financial Performance

The Board is funded by the ministry under a Memorandum of Understanding (MOU) signed by the Minister of Agriculture, Food and Rural Affairs and the Chair of the Board. The MOU sets out the relationship between the Board and OMAFRA, to enable the Board to operate "at arm's length" from OMAFRA. The "arm's length" relationship is vital to ensure that OMAFRA does not have any influence on the decisions of the Board regarding cases that come before it.

The total remuneration paid to Board members for adjudicative services rendered during 2016-17 was \$109,907; this amount includes per diem payments and travel expenses.

Table 3. Financial Performance

	2015-2016 Actual	2016-2017 Projected	2016-2017 Actual	Explanation of Variances
Board Member Per Diems	\$80,392	\$49,000	\$90, 989	The high volume of cases (12) received by the Board in 2015-2016 resulted in still a high number of cases being managed in 2016-2017.
Travel Expenses	\$18,642	\$8,000	\$18,918	
Translation Services (Decision Summaries)	\$1,811	\$5,000	\$3,792	Board released four decisions in 2016-2017
Court Reporters	\$5,781	\$3,000	\$3,050	Anticipated target for court reporter services was not met last year.
Miscellaneous	\$8,653	\$2,000	\$4,550	Required security services for one case.
Total	\$ 115,279	\$67,000	\$121,088	Outstanding cases from 2015-2016 increased the Board workload in 2016-2107

Staff Resources

The ministry has three full-time employees that support and provide services to OMAFRA's three adjudicative agencies which includes the Board. The ministry provides administrative and financial support through the Business Services Branch, Research and Corporate Services Division. Legal services to the Board are provided by the Ministry of Attorney General through the Legal Services Branch of the Ministry of Agriculture, Food and Rural Affairs.

Table 4. Board Members 2016-2017

Name	Address	Occupation	Original Appointment	Appointment Expiry Date
Kirk W. Walstedt, Chair	Maidstone	Lawyer	June 1, 2013	June 30, 2017
Glenn Walker, Vice-Chair	Ridgetown	Lawyer	May 11, 2015	May 10, 2017
Robert Brander	Caledon	Beef and cash crop farmer	Oct. 26, 2015	Oct. 25, 2017
Jane Sadler Richards	Aisla Craig	Scientist and cash crop farmer	Oct. 26, 2015	Oct. 25, 2017
Marty Byl	Niagara-on-the-Lake	grape grower	July 17, 2007	July 16, 2017
Douglas Eadie	Kincardine	cash crop farmer	Apr 15, 2011	Apr 14, 2019
Tom Field	Glencoe	dairy, beef, sheep, cash crop farmer	Feb 27, 2009	Feb 26, 2019

Recruitment Activity

For the period of April 1, 2016 to March 31, 2017, two members (Mr. Walker and Mr. Byl) were recommended for reappointment. The Board did place an advertisement on the Public Appointments Secretariat website for additional members. It is anticipated that additional members may be added to the Board in the 2017-18 fiscal year.

Appendix 1

Appendix 1. Distribution of Complaints Received in 2016/2017 by County

County	Odour	Noise	Dust	Flies	Smoke	By-Law	County Totals
Bruce	1	-	-	-	-	-	2
Chatham-Kent	1	2	-	-	-	-	3
District of Cochrane	1	-	-	-	-	-	1
District of Temiskaming	-	-	-	-	-	1	1

District of Muskoka	1	-	-	-	-	-	1
Dufferin	2	8	-	-	-	-	10
Durham	1	1	-	1	-	-	3
Elgin	-	3	-	-	-	-	3
Essex	5	6	-	1	1	1	14
Frontenac	1	-	-	-	-	3	4
Grey	5	-	-	1	-	1	7
Haldimand	1	-	-	1	-	5	7
Haliburton	-	-	-	-	-	1	1
Halton	-	1	-	-	-	-	1
Hamilton	1	-	1	-	-	-	2
Huron	2	1	-	-	-	1	4
Lambton	3	-	-	-	1	-	4
Leeds & Grenville	1	-	-	-	-	-	1
Lennox & Addington	-	1	-	-	-	-	1
Middlesex	5	2	-	-	-	-	7
Niagara	12	38	-	12	-	2	64
Norfolk	-	2	-	2	-		5
Ottawa	1	-	-	-	-	-	1
Oxford	1	-	-	2	-	-	3
Peel	1	-	-	-	-	-	1
Perth	4	-	-	-	-	-	4
Prescott & Russell	1	-	-	-	-	-	4
Prince Edward	1	1	-	-	-	-	2
Renfrew	2	-	-	-	-	-	2
Simcoe	5	1	-	1	-	1	8
Stormont, Dundas, Glengarry	6	1	-	-	-	-	7
Sudbury	1	-	-	-	-	-	1
Wellington	-	-	1	-	-	1	2
York	-	-	-	-	-	1	1
Total	66	68	2	21	2	18	177

Appendix 2

Reference Materials

Board documents are accessible to the public, as required by the *Adjudicative Tribunals Accessibility, Governance and Appointments Act (ATAGAA)*, in formats as addressed in the Board's Accessibility Document under the *Accessibility for Ontarians with Disabilities Act (AODA)*.

The following Board documents are accessible through the **website**:

Information pamphlets

- So, You're Moving to the Country
- Preparing for an NFPPB Hearing?
- The Hearing Procedure
- Citizen's Guide to the Normal Farm Practices Protection Board
- Normal Farm Practices Conflict Resolution Process

Legislation and Rules

- *Farming and Food Production Protection Act, 1998* (E-Laws)
- NFPPB Rules of Practices and Procedure

The Board's Accessibility Document
Public Accountability Documents:

- [Mandate and Mission Statement](#)
- [Consultation Policy](#)
- [Service Standard Policy](#)
- [Ethics Plan](#)
- [Member Accountability Framework](#)
- [Members' Code of Conduct](#)

Governance Accountability Documents:

- [Memorandum of Understanding](#)
- [Business Plans](#)
- [Annual Reports](#)

Copies of full Board decisions are available electronically and in print from the **Agricultural Information Contact Centre** and from Board offices at 519-826-4049. They are also available online at **www.canlii.org**.

Media requests made to the Board are addressed according to the Communications Protocol appended to the Memorandum of Understanding between the Minister and the Chair.

All questions or queries regarding any matter pertaining to the Board may be directed to:

The Secretary
Normal Farm Practices Protection Board
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Guelph, Ontario N1G 4Y2

For more information:
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E-mail: **ag.info.omafra@ontario.ca**