



NORMAL FARM PRACTICES PROTECTION BOARD

ANNUAL REPORT

2018-19

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, 2019. 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.

The Board secretariat support has been transitioned from the Ministry of Agriculture, Food and Rural Affairs, Environmental Management Branch to the Adjudicative Agencies Support Unit within the Ministry of Agriculture, Food and Rural Affairs.

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 “NFPPB” or 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.

Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) agricultural engineers or environmental specialists conduct conflict resolution on each complaint. This Ministry-led conflict resolution process successfully resolved 93 percent of all complaints in the 2018-19 fiscal year.

For unresolved cases, parties may submit an application for a hearing before the Board. The Board conducts 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.” By protecting normal farm practices, the Board helps to preserve the competitiveness of Ontario farmers in the face of increasing external pressures.

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.

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; and
- 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.

2018-19 Highlights

COMPLAINTS ABOUT FARM PRACTICES

The operations of the Board are governed by the *Farming and Food Production Protection Act, 1998* 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.

The type of complaints received are either disturbance complaints or municipal by-law complaints. Through the conflict resolution process, OMAFRA advises that Ministry staff were able to resolve (i.e. conflict resolution successful or on-going) 93 percent (87 out of the 96) of nuisance and by-law complaints received in 2018-2019, thereby avoiding 87 potential Board hearings.

BOARD ACTIVITIES

One application received in the 2017-2018 fiscal year continued to be dealt with in this fiscal year. In 2018-2019 the Board received 9 new applications. Of the total 10 case files, 1 was withdrawn, 2 applications were denied, and in 1 case the Board found it had no jurisdiction to hear the application. The Board issued 4 decisions and has 5 applications going forward.

The Board conducts 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 resolution. The 2 applications withdrawn are an indication of a successful settlement thus avoiding a costly hearing.

By-Law complaints continue to centralize on one distinct type of municipal by-law: tree-cutting. Tree-cutting by-laws limit the trees that can be cut on a lot in the municipality.

Noise and odour complaints made up over 60% of the complaints received in 2018-2019. Nuisance complaints centralize around noise, dust, light and odour from agricultural operations. An example of such issue would be the use of bird bangers/cannons or the amount of vehicle traffic to and from an operation.

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 3 areas:

1. **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 nine applications for a hearing during the 2018-19 fiscal year and responded within 20 calendar days of receipt of the application whether the application is accepted or denied 100% of the time.

2. **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 business days between the completion of the hearing and the release of the decision.

Results: During the 2018-19 fiscal year, the Board met its decision release performance standards in every case.

3. **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: The Board has received only 4 responses to the survey regarding performance of the Tribunal during a hearing. Of the four responses, 49 % of respondents were satisfied with overall appeal process. While 13% indicated "dissatisfied" or "very dissatisfied", 18% of the respondents indicated no comment or had a neutral response. Many of the questions had no response which makes it difficult to have a true outcome.

FINANCIAL PERFORMANCE

The Board secretariat support is funded by the ministry. A Memorandum of Understanding (MOU) is signed by the Minister of Agriculture, Food and Rural Affairs and the Chair of the Board. The MOU sets out the accountability relationships between the Board, OMAFRA and the Minister to enable the Board to operate "at arm's length" from OMAFRA. The "arm's length" relationship is vital to ensure the Board can operate

independently and that OMAFRA does not have any influence on the decisions of the Board regarding cases that come before it.

The Board operates under a budget from the Ministry of Agriculture, Food and Rural Affairs and as such does not have its own audited financial statements. The budget is used to deliver the hearing services and other business priorities of the Board across the province. The budget includes money for members and staff for agency operating expenses related to transportation, communication, services, supplies and equipment.

The Board was allotted a total budget of \$108,300 for the 2018-2019 fiscal year. Of that amount \$5,300 was dedicated to transportation and communications related expenses. The per diems for members and other costs related to service provision was allocated \$102,500. Supplies and equipment was budgeted \$500.

The actual total amount spent on operating expenses was \$141,993. The Board overspent the allotted budget by 31%. This was due to an unpredicted increase in hearings, carryover service costs from the previous fiscal year and court reporter fees. The total spending for Board operating expenses in the category of transportation and communications was \$17,183 and services \$124,810. Nothing was spent on supplies or equipment.

When compared to the previous fiscal years, spending in 2017-2018 was similar in the categories on supplies and equipment where nothing was spent both years. \$18,604 was spent in 2017-2018 on those expenses related to transportation and communications which is \$1,421 more than the current fiscal year. Cost of services in the previous year was \$81,255 which is \$43,555 less than the current fiscal year.

STAFF RESOURCES

The ministry has four full-time employees that support and provide services to OMAFRA's three adjudicative agencies which include the Board. The four full-time employees assigned include two Adjudicative Services Coordinators/Board Secretaries, one of which is bilingual to better serve our francophone clients across the province; one Adjudicative Administrative Assistant supports the Coordinators and membership and one temporary Project Coordinator who supports the public and governance accountability requirements of the agencies and various projects. 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 the Attorney General through the Legal Services Branch of the Ministry of Agriculture, Food and Rural Affairs.

Remuneration

2018-2019 Total remuneration was \$88, 044.30

Table 4. Board Members 2018-2019				
Name	Location	Occupation	Term	
Kirk W. Walstedt, Chair	Maidstone	Lawyer	July 1, 2017	Dec 30, 2019
Glenn Walker, Vice-Chair	Ridgetown	Lawyer	May 11, 2017	May 10, 2020,
Robert Brander	Caledon	Beef and cash crop farmer	Oct 26, 2017	Oct 25, 2020
Jane Sadler Richards	Ailsa Craig	Scientist and cash crop farmer	Oct 26, 2015	Oct 25, 2020
Marinus Byl	Niagara-on- the-Lake	Grape grower	July 17, 2017	July 16, 2019
Douglas Eadie	Kincardine	Cash crop farmer	Apr 15, 2019	Apr 14, 2021
Tom Field	Glencoe	Dairy, beef, sheep, cash crop farmer	Feb 27, 2014	Feb 26, 2019
Donald Woolcott	New Hamburg	Dairy and cash crop farmer	Oct 18, 2017	Oct 17, 2019
John Lohuis	Tillsonburg	Dairy background	Jan 29, 2018	Jan 28, 2020

RECRUITMENT ACTIVITY

For the period of April 1, 2018 to March 31, 2019, one new Vice-Chair (Mr. Kurtis Andrews) was appointed to the Board. 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 2019-2020 fiscal year.

Inquiries

Copies of full Board decisions are available online at www.canlii.org or can be requested from the Board directly.

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:

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