



NORMAL FARM PRACTICES PROTECTION BOARD

ANNUAL REPORT

2019-20

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, 2020. 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 is provided by the Business Services Branch 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,

A handwritten signature in black ink, appearing to read 'Glenn C. Walker', with a stylized, flowing script.

Glenn C. Walker, 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 a “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 attempt conflict resolution on each complaint. This ministry-led conflict resolution process successfully resolved 72 per cent of all complaints in the 2019-20 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 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 and Appointments Directive (AAD), the Travel, Meal and Hospitality Expenses Directive, and other applicable directives from Treasury Board/Management Board of Cabinet. 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-chairs 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.

2019-20 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 (OMAFRA) 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) 72 per cent (79 out of the 109) of nuisance and by-law complaints received in 2019-20; thereby, avoiding 79 potential Board hearings.

BOARD ACTIVITIES

Six applications received in the 2018-19 fiscal year continued to be dealt with in the 2019-20 fiscal year. In 2019-20 the Board received 20 new applications. Of the total 26 case files, seven were withdrawn, one application was denied, and in one case the Board found it had no jurisdiction to hear the application. The Board issued four decisions and has 16 applications going forward.

	Continued	Received Current Year	Withdrawn / Invalid	Decisions	Continuing into next fiscal year
2019/2020	6	20	8	4*	16

* Total number of decisions may be higher than total number of cases and/or may skew total numbers due to more than one type of decision on the same file e.g. motion decision, interim, final decision or cost decision.

The Board conducts a pre-hearing/settlement conference with the parties for each application received. The pre-hearing conference identifies issues and determines hearing logistics, and the settlement conference is a further attempt at resolution. The seven applications withdrawn may be an indication of a successful settlement thus avoiding a costly hearing.

By-Law complaints received in 2019-20 centralized on permitted land use and restrictions with respect to cannabis production.

Odour complaints made up 60 per cent of the complaints received in 2019-20, while noise complaints made up 29 per cent of the complaints received. Nuisance complaints centralize around noise, dust, light, odour and flies from agricultural operations. An example of such issue would be the use of bird bangers/cannons or the odour emanating from cannabis operations.

OPERATIONAL PERFORMANCE

The 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 accountability documents (which include a Memorandum of Understanding (MOU), Business Plan, and Annual Report) and public accountability documents (which include 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 three 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 20 applications for a hearing during the 2019-20 fiscal year and responded within 20 calendar days of receipt of the application, whether the application is accepted or denied, 85 per cent 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 five days: decision released within 60 business days.
 - b) Hearing lasting five 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 must 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 2019-20 fiscal year, the Board was able to meet its decision release performance standards in two of the four cases.

3. **Quality of Service:** The Board's goal is fewer than three 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 received five responses to the Board performance survey for hearings held during the 2019-20 fiscal year. Of the five responses, 60 per cent of respondents were satisfied with the overall appeal process, while 40 per cent of the respondents indicated no comment or had a neutral response.

FINANCIAL PERFORMANCE

The Board secretariat support is funded by the ministry. A 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 undue influence on the decisions of the Board regarding cases that come before it.

The Board operates under a budget from OMAFRA 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, communications, services, supplies and equipment.

The Board was allotted a total budget of \$130,500 for the 2019-20 fiscal year. Of that amount, \$15,000 was dedicated to transportation and communications related expenses. The per diems for members and other costs related to service provision was allocated \$115,000. Supplies and equipment was budgeted \$500.

The actual total amount spent on operating expenses was \$99,209. The Board underspent its allotted budget by 24 per cent. The total spending for Board operating expenses in the category of transportation and communications was \$15,534 and services \$83,675. Nothing was spent on supplies or equipment.

When compared to the previous fiscal years, spending in 2019-20 was similar in the categories on supplies and equipment, with no funds being spent. In 2018-19, the Board overspent its allotted budget by 31 per cent 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 \$17,138 and services \$124,810.

As can be seen from the table below, the Board’s actual expenditures fluctuate from year to year. Spending during the 2019-20 fiscal is in line with spending during the 2017-18 fiscal but was much less than during the 2018-19 fiscal. The expenditures fluctuate due to the number of applications received by the Board and is entirely out of the Board’s control. Expenditures were particularly high during the 2018-19 fiscal due to a large number of applications being carried over from previous years, one hearing being unexpectedly protracted, and increased court reporter fees in association with the protracted hearing.

Operating Expenditures

Category	2019-20 (\$) Budget	2019-20 (\$) Actual	2019-20 (\$) Variance	2018-19 (\$) Actual	2017-18 (\$) Actual	2016-17 (\$) Actual
Transportation & Communications	15,000	15,534	(534)	17,138	12,788	18,918
Services	115,000	83,675	31,325	124,810	81,255	102,090
Supplies & Equipment	500	0	500	0	0	78
Total	140,500	99,209	41,291	141,948	94,043	121,086

STAFF RESOURCES

The ministry has three full-time employees who support and provide services to OMAFRA's three adjudicative agencies, which include the Board. The three full-time employees assigned include two Adjudicative Services Coordinators/Board Secretaries, one of whom is bilingual to better serve francophone clients across the province, and one Adjudicative Administrative Assistant, who supports the coordinators and Board members. 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 at OMAFRA.

Remuneration

2019-20 Total remuneration was \$69,935.

Table 4. Board Members 2019-2020				
Name	Location	Occupation	Term	
Kirk W. Walstedt, Chair	Maidstone	Lawyer	July 1, 2017	Dec 30, 2019
Glenn Walker, Vice-Chair	Chatham	Lawyer	May 11, 2017	Dec 31, 2020
Glenn Walker, Chair	Chatham	Lawyer	Jan 1, 2020	Dec 31, 2021
Kurtis Andrews	Ottawa	Lawyer	Mar 1, 2019	Feb 28, 2021
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 30, 2018 Jan 30, 2020	Jan 29, 2020 Jan 29, 2023
Rod de Wolde	Millbrook	Swine producer	Jun 10, 2019	Jun 9, 2021
Lisa Hern	Kenilworth	Beef, cow, calf, and sheep background	May 22, 2019	May 21, 2021

RECRUITMENT ACTIVITY

For the period of April 1, 2019 to March 31, 2020, two new members, Mr. Rod de Wolde and Ms. Lisa Hern, were appointed to the Board. Mr. Kirk Walstedt's appointment as Chair of the Board ended on December 30, 2019. Mr. Glenn Walker was appointed as the new Chair of the Board effective January 1, 2020.

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 MOU 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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