



NORMAL FARM PRACTICES PROTECTION BOARD

ANNUAL REPORT

2020-21

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, 2021. 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, cursive 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*, S.O. 1998, c. 1 (the “Act”) to rule on issues pertaining to farm practices. 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. Disturbances covered are those arising from odour, dust, flies, light, smoke, noise and vibration. No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.

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 made to the Board respecting an agricultural operation. This ministry-led conflict resolution process successfully resolved 91 percent of all complaints in the 2020-21 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 and narrows issues and determines hearing logistics. 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.”

Board proceedings are subject to the Act and the *Statutory Powers Procedure Act* (SPPA). Board hearings are less formal than court proceedings but still follow the principles of natural justice. Hearings are managed in such a way that most complainants or respondents may present their case with or without representation by legal counsel if they so choose. This promotes greater 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 the Ontario 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; and
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. It also establishes the Minister of Agriculture, Food and Rural Affairs' power to appoint the chair, vice-chairs and members.

Subsection 4 (2) of the Act provides 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.

2020-21 Highlights

COMPLAINTS ABOUT FARM PRACTICES

The operations of the Board are governed by the *Farming and Food Production Protection Act, 1998*, the SPPA and its own *Rules of Practice and Procedure*. The Rules require that complaints about farm practices attempt the conflict resolution process conducted by Ministry of Agriculture, Food and Rural Affairs agricultural engineers and environmental specialists. If this process is not successful, a party 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) 91 per cent (153 out of 168) of nuisance and by-law complaints received in 2020-2021, thereby avoiding 153 potential Board hearings.

BOARD ACTIVITIES

Eleven applications received in the 2019-2020 fiscal year were carried over to the 2020-2021 fiscal year. In 2020-2021, the Board received 15 new applications. Of the total 26 case files, nine were withdrawn. The Board issued three decisions and has 14 applications pending.

	Continued	Received Current Year	Withdrawn / Invalid	Decisions	Continuing into next fiscal year
2020/2021	11	15	9	3*	14

* The total number of decisions may be higher than the total number of cases and/or may skew total numbers because more than one type of decision may be delivered on the same file (e.g. motion(s) decision(s), interim decision(s), final decision or costs decision).

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

By-Law complaints received in 2020-2021 primarily focused upon permitted land use and restrictions with respect to cannabis production.

Disturbance complaints received in 2020-2021 primarily focused upon noise and odour from agricultural 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, 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. Time 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 15 applications for a hearing during the 2020-21 fiscal year and responded within 20 calendar days of receipt of the application, whether the application was accepted or denied, 93 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) Hearings lasting less than five days: decision released within 60 business days
 - b) Hearings lasting five to 20 days: decision released within 90 business days
 - c) Hearings lasting more than 20 days: decision released within 120 business days.

This is a measure of the length of time that 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 2020-21 fiscal year, the Board was able to meet its decision release performance standards 100 per cent of the time.

3. **Quality of Service:** The Board's goal is fewer than three complaints about the quality of service received per 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 did not receive any complaints about any aspect of the quality of the Board's service during the 2020-21 fiscal year.

FINANCIAL PERFORMANCE

The Board secretariat support is funded by the ministry. A Memorandum of Understanding (MOU) is in place between 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 ensures that 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 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 \$102,500 for the 2020-2021 fiscal year. Of that amount, \$14,000 was dedicated to transportation and communications related expenses. The per diems for members and other costs related to service provision were allotted \$88,000. Supplies and equipment were allotted \$500.

The actual total amount spent on operating expenses was \$75,324. The Board underspent its allotted budget by 27 per cent. The total spending for Board operating expenses in the category of transportation and communications was \$505 and services \$73,869. Nothing was spent on supplies or equipment.

When compared to the previous fiscal years, spending in 2020-2021 was similar in the categories on supplies and equipment, with no funds being spent. In 2020-2021, the Board’s underspending of its allotted budget by 27 per cent can largely be attributed to the COVID-19 pandemic and the consequent abrupt cessation of in-person hearings. While services expenses remained fairly consistent at \$73,869 due to virtual hearings being implemented, the total spending for Board operating expenses in the category of transportation and communications was only \$505.

Operating Expenditures

Category	2020-21 (\$) Budget	2020-21 (\$) Actual	2020-21 (\$) Variance	2019-20 (\$) Actual	2018-19 (\$) Actual	2017-18 (\$) Actual	2016-17 (\$) Actual
Transportation & Communications	14,000	505	13,495	15,534	17,138	12,788	18,918
Services	88,000	73,869	14,131	83,675	124,810	81,255	102,090
Supplies & Equipment	500	0	500	0	0	0	78
Total	102,500	74,374	28,126	99,209	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 are provided to the Board by the Ministry of the Attorney General through dedicated counsel at the Legal Services Branch of the Ministry of Agriculture, Food and Rural Affairs.

Remuneration

2020-2021 fiscal year total remuneration was \$73,869.

Table 4. Board Members 2020-2021 Fiscal Year				
Name	Location	Occupation	Term	
Glenn Walker, Chair	Chatham	Lawyer	Jan 1, 2020	Dec 31, 2021
Kurtis Andrews, Vice-Chair	Ottawa	Lawyer	Mar 1, 2019	Feb 28, 2021
Brandi Neil, Vice-Chair	Orangeville	Lawyer	Mar 10, 2021	Mar 09, 2023
Robert Brander Member	Caledon	Beef and cash crop farmer	Oct 26, 2020	Oct 25, 2023
Jane Sadler Richards, Member	Ailsa Craig	Scientist and cash crop farmer	Oct 26, 2015	Oct 25, 2020
Douglas Eadie Member	Kincardine	Cash crop farmer	Apr 15, 2019	Apr 14, 2021
John Lohuis Member	Tillsonburg	Dairy and municipal administration background	Jan 30, 2020	Jan 29, 2023
Rod de Wolde Member	Millbrook	Swine producer	Jun 10, 2019	Jun 9, 2021
Lisa Hern Member	Kenilworth	Beef, cow, calf, and sheep background	May 22, 2019	May 21, 2021
William George Member	Beamsville	Grape grower and vineyard management business operator	May 22, 2019	May 21, 2021

RECRUITMENT ACTIVITY

For the period of April 1, 2020 to March 31, 2021, one new Vice-Chair, Ms. Brandi Neil, was appointed to the Board. Mr. Kurtis Andrews' appointment as Vice-Chair of the Board ended on February 28, 2021. 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 may 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 regarding any matter pertaining to the Board may be directed to:

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