



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **FARM PRACTICES ACT**

## PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## FARM PRACTICES ACT

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## FARM PRACTICES ACT

### CHAPTER F-4.1

#### PREAMBLE

WHEREAS it is desirable to encourage the development and improvement of agricultural lands for the production of food, fibre, and other agricultural or horticultural products;

AND WHEREAS agriculture is very important to the rural way of life on Prince Edward Island where 4.5 per cent of the population live on farms;

AND WHEREAS rural Prince Edward Island is changing and the issue of residential development adjacent to farm land is one of serious concern to all residents of the province;

AND WHEREAS farmers appreciate the value of rural tranquillity, sense of community and lifestyle, but also see rural Prince Edward Island as their place of business;

AND WHEREAS agricultural activities can include intensive operations that may cause discomfort and inconveniences to users of adjacent lands;

AND WHEREAS the pressures exerted on the agricultural community make it increasingly difficult for agricultural owners and operators to effectively produce food, fibre and other agricultural products;

THEREFORE it is in the provincial interest that in agricultural areas, agricultural uses and normal farm practices are promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety, and environmental concerns. 2012(2nd),c.9,s.1.

#### 1. Purposes

The purposes of this Act are

- (a) to provide a mechanism for the establishment of normal farm practices;
- (b) to protect farmers who are following normal farm practices from civil action in nuisance; and
- (c) to establish a process as a substitute for proceedings in court to resolve concerns and complaints about farm practices. 1998,c.87,s.1; 2004,c.36,s.3; 2009,c.73,s.2; 2012(2nd),c.9,s.1.

#### INTERPRETATION

##### 1.1 Definitions

In this Act,

- (a) “**agricultural operation**” means an operation that is carried out by a farmer in the expectation of gain or reward and for the purpose of producing agricultural products or services; an agricultural operation includes, but is not limited to
  - (i) clearing, draining, irrigating and cultivating land,

- (ii) raising or keeping livestock, including poultry and horses,
  - (iii) raising or keeping fur-bearing animals, honey bees, game birds and game animals,
  - (iv) producing agricultural, horticultural, or silvicultural crops, including non-food crops,
  - (v) operating agricultural machinery and equipment, including noise-scare devices,
  - (vi) preparing a farm product for on-farm use or distribution from the farm gate, including storage, mixing, cleaning, grading and packaging,
  - (vii) on-farm processing of farm products for the purpose of preparing farm products for wholesale or retail distribution and consumption,
  - (viii) applying fertilizers, soil conditioners and pesticides, including ground and aerial application,
  - (ix) storing, using or disposing of organic wastes for farm purposes,
  - (x) operating pick-your-own farms, road-side farm produce stands, and farm tourist operations as part of the farm operation, and
  - (xi) any other agricultural activity or process prescribed by regulation;
- (b) “**applicant**” means a person who makes an application pursuant to subsection 5(1);
- (c) “**beneficial management practice**” means a beneficial management practice designated by the board under section 14;
- (d) “**board**” means the Farm Practices Review Board established pursuant to section 3;
- (e) “**complaint**” means a complaint contained in an application made pursuant to subsection 5(1);
- (f) “**farm organization**” means an organization prescribed by regulation as a farm organization;
- (g) “**farmer**” means an individual, a farm corporation, a farm education or research institute, or a co-operative corporation owning or operating an agricultural operation, and an unincorporated association or partnership of individuals owning or operating an agricultural operation;
- (h) “**Minister**” means the Minister of Agriculture and Fisheries;
- (i) “**normal farm practice**” means a farm practice followed by a farmer that
- (i) is consistent with the beneficial management practices designated by the board, and
  - (ii) is conducted in a manner that is consistent with accepted farming customs and standards as established and followed by other farmers in similar agricultural operations under similar circumstances, in the province or in the same agricultural sector,
- and includes practices that make use of innovative technology in a manner consistent with advanced farm management practices in appropriate circumstances;
- (j) “**panel**” means three or more board members selected by the chairperson pursuant to subsection 10(1). 2012(2nd),c.9,s.1; 2015,c.28,s.3.



## FARM PRACTICES PROTECTION

### 2. Farm practices protection

- (1) A farmer who
- (a) uses normal farm practices; and
  - (b) complies with the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9, *Pesticides Control Act* R.S.P.E.I. 1988, Cap. P-4, *Public Health Act* R.S.P.E.I. 1988, Cap. P-30, *Planning Act* R.S.P.E.I. 1988, Cap. P-8, *Agricultural Crop Rotation Act* R.S.P.E.I. 1988, Cap. A-8.01 and the regulations made pursuant to those Acts

is not liable for damages in nuisance to any person for any noise, odour, dust, vibration, light, smoke or other disturbance resulting from an agricultural operation and shall not be prevented, by injunction or other order, from conducting an agricultural operation because it causes or creates any noise, odour, dust, vibration, light, smoke or other disturbance.

#### Exception

- (2) Subsection (1) does not apply to a farmer who fails to comply with an order of a panel issued pursuant to subsection 11(2).

#### Change in ownership, etc.

- (3) The protection provided by subsection (1) applies notwithstanding the occurrence of one or more of the following:
- (a) a change in the ownership of the land or buildings on or in which the agricultural operation is situated;
  - (b) the transfer of the agricultural operation;
  - (c) a change in the use of land or buildings near to the land or buildings on or in which the agricultural operation is carried on. *1998,c.87,s.2; 2002,c.9,s.1.*

## FARM PRACTICES REVIEW BOARD

### 3. Farm Practices Review Board

- (1) The Lieutenant Governor in Council shall appoint a Farm Practices Review Board consisting of
- (a) 3 members who are not farmers; and
  - (b) 6 members recommended by farm organizations in the province.

#### Chair person and vice-chairperson

- (2) The Lieutenant Governor in Council shall
- (a) designate one of the board members recommended by farm organizations as chairperson; and
  - (b) designate one of the board members who is not a farmer as vice-chairperson.

#### Duties of chair

- (3) The chairperson of the board is responsible for the general supervision and direction over the conduct and affairs of the board.

**Absence of chair**

- (4) In the absence of the chairperson, or where the chairperson is unable to carry out the duties conferred by this Act, the vice-chairperson shall have all the powers of the chairperson.

**Term**

- (5) The members of the board may be appointed to hold office for a term not exceeding three years and may be *re*-appointed.

**Procedure**

- (6) Subject to any regulations, the board may make rules of procedure for the conduct and management of its affairs and for the practice and procedures to be observed in matters before it.

**Quorum**

- (7) Every quorum of the board shall
- (a) include the chairperson or vice-chairperson of the board;
  - (b) include at least three members of the board who were recommended to the board by farm organizations;
  - (c) include at least two members of the board who are not farmers; and
  - (d) consist of a majority of members of the board who were recommended to the board by farm organizations.

**Idem**

- (8) A quorum of the board is sufficient for the exercise of all the jurisdiction and powers of the board.

**Remuneration**

- (9) The members of the board may be remunerated for their services and receive reimbursement for expenses at rates fixed by the Lieutenant Governor in Council. *1998,c.87,s.3.*

**4. Resources**

The Minister may provide the board with any supplies and the service of any employees that the Minister considers necessary for the board to exercise its powers and carry out its duties pursuant to this Act. *1998,c.87,s.4.*

## COMPLAINTS

**5. Complaint**

- (1) A person who is aggrieved by any odour, noise, dust, vibration, light, smoke or other disturbance resulting from an agricultural operation may make an application in writing to the board for a determination as to whether the disturbance results from a normal farm practice.

**Information on farm practices**

- (1.1) Any person may request information
- (a) on farm practices from the Department of Agriculture and Fisheries; and
  - (b) on beneficial management practices from the board.





**Application**

- (2) An application under subsection (1) shall
- (a) contain a statement of the nature of the complaint, the name and address of the applicant, the name and address of the farmer and the location of the agricultural operation, and any other information prescribed by regulation;
  - (b) be in a form acceptable to the board; and
  - (c) be accompanied by any fee prescribed by regulation.

**Acknowledgement**

- (3) The board shall acknowledge, in writing, receipt of the application to the applicant, within 30 days of receiving the application.

**Parties**

- (4) The parties to an application are the applicant, the farmer and any other person added as a party by the board.

**Notice**

- (5) The board may require that an applicant give notice of the application, in such form and manner that the board specifies, to the farmer and any other person specified by the board.

**Similar fact applications**

- (6) The board may consider two or more applications together where
- (a) the facts of the applications are determined by the board to be similar; and
  - (b) the complaint is made against the same agricultural operation and the same farmer.  
*1998,c.87,s.5; 2012(2nd),c.9,s.2; 2015,c.28,s.3.*

**6. Nuisance action prohibited**

- (1) Notwithstanding any other Act or regulation, but subject to subsection (2), no person shall
- (a) commence an action in nuisance for any odour, noise, dust, vibration, light, smoke or other disturbance resulting from an agricultural operation; or
  - (b) apply for an injunction or other order of a court preventing or restricting the carrying on of the agricultural operation because it causes any odour, noise, dust, vibration, light, smoke or other disturbance.

**Exception**

- (2) Where a person has filed an application with the board pursuant to subsection 5(1) of this Act, and
- (a) the board has not acknowledged receipt of the application pursuant to subsection 5(3);
  - (b) the board has failed to make a decision on the application within a reasonable time; or
  - (c) a panel of the board has made an order pursuant to subsection 11(2) and the farmer has failed to comply with that order within a reasonable time,
- the provisions of subsection (1) do not apply to that person. *1998,c.87,s.6.*

**7. Refusal of application**

- (1) The board may refuse to consider an application or to make a decision if, in its opinion:

- (a) the subject-matter of the application is trivial;
- (b) the application is frivolous or vexatious or is not in good faith;
- (c) the applicant does not have a sufficient personal interest in the subject-matter of the application; or
- (d) the substance of the application has already been heard and a decision rendered by the board or a panel of the board.

**Notice**

- (2) The board shall notify the parties of its refusal to consider an application or to make a decision under subsection (1), and give written reasons for its actions. *1998,c.87,s.7.*

**8. Inspection**

Where an application is made to the board pursuant to subsection 5(1) the board may

- (a) inspect any agricultural operation that is directly or indirectly involved in the application, or authorize any member of the board or any other person to conduct an inspection; and
- (b) appoint or direct any person to inquire into and report on the matter that is the subject to the application. *1998,c.87,s.8.*

## MEDIATION

**9. Mediation**

- (1) Upon receiving an application and completing any necessary inspections or inquiries pursuant to section 8, the board may
  - (a) refer the matter to mediation; and
  - (b) appoint a mediator to carry out the mediation, and establish terms and conditions for the mediation.

**Report**

- (2) Where a mediator appointed pursuant to subsection one has completed the mediation, the mediator shall
  - (a) file a report regarding the outcome of the mediation with the board; and
  - (b) distribute a copy of the report to each of the parties.

**Consideration of report**

- (3) The board shall consider the report before making an order regarding the application.

**Order**

- (4) The board may make an order that incorporates the terms of any agreement signed by the parties as a result of a mediation where
  - (a) the complaint is resolved through the mediation;
  - (b) the board is satisfied that the agricultural operation will be operated in accordance with normal farm practices; and
  - (c) the terms agreed to by the parties to the mediation are not in violation of this or any other enactment. *1998,c.87,s.9; 2012(2nd),c.9,s.3.*



**PANEL****10. Panel**

- (1) The chairperson shall select three or more members of the board to act as a panel of the board where
- (a) a complaint is not referred to mediation;
  - (b) a complaint is not resolved through mediation; or
  - (c) a decision made under the *Agricultural Crop Rotation Act* is appealed pursuant to section 12.1.

**Composition**

- (2) Every panel of the board shall
- (a) include the chairperson or vice-chairperson of the board;
  - (b) include at least one member of the board who is not a farmer; and
  - (c) consist of a majority of members of the board who were recommended to the board by farm organizations.

**Powers**

- (3) A panel
- (a) may exercise any of the powers and perform any of the duties of the board; and
  - (b) shall follow the procedures established by the board.

**Deeming**

- (4) A decision or action of a panel is a decision or action of the board. *1998, c.87, s.10; 2002, c.9, s.2.*

**11. Hearing**

- (1) Where a panel of the board has been selected pursuant to clause 10(1)(a) or (b), the panel shall hold a hearing, at a time and in a place determined by the panel.

**Disposition of complaint**

- (2) Subject to subsection (3), at the conclusion of a hearing, the panel shall
- (a) dismiss the complaint, if the panel is of the opinion that the agricultural operation is being carried out in accordance with normal farm practices;
  - (b) order the farmer to cease the practice causing the disturbance, if the panel determines it is not a normal farm practice; or
  - (c) order the farmer to modify the agricultural operation in the manner set out in the order to be consistent with normal farm practices.

**Considerations**

- (3) When making a decision pursuant to subsection (2) the panel shall
- (a) determine if the farmer is carrying on a normal farm practice in accordance with the definition of normal farm practice for the purposes of this Act;
  - (b) consider codes of practice designated by the board; and
  - (c) consider any provincial guidelines relevant to the complaint.

**Decision or order**

- (4) The panel shall give a copy of its decision or order, with written reasons for the decision or order, to each of the parties.

**Filing of decision or order**

- (5) A decision or order of a panel may be filed with the Registrar of the Supreme Court at any time thirty days after it is issued and, when so filed, the decision or order is of the same force and effect as if it were a judgment.

**Costs**

- (6) The panel may award costs to any party to an application. *1998,c.87,s.11; 2002,c.9,s.3.*

**12. Appeal**

Any party to an application made pursuant to subsection 5(1) or to an appeal made pursuant to section 12.1 may appeal an order of the board on a question of law to the Supreme Court within sixty days of the making of the order. *1998,c.87,s.12; 2002,c.9,s.4.*

**12.1 Appeal within 21 days**

- (1) A person who is dissatisfied with a decision made
- (a) under subsection 7(4) of the *Agricultural Crop Rotation Act*; or
  - (b) respecting the refusal of a management plan, or the conditions imposed on such a plan, under the regulations made under that Act,

may appeal the decision to the board by filing a written notice of appeal with the board not later than 21 days from the date of the decision.

**Copies of evidence**

- (2) Copies of all evidence considered by the decision-maker in making a decision referred to in subsection (1) shall be provided to the board not later than seven days from receipt of the notice of appeal by the decision-maker.

**Hearing and decision**

- (3) Subject to subsections (4) and (5), where a panel of the board has been selected pursuant to clause 10(1)(c), the panel shall
- (a) commence the hearing of an appeal within 30 days from the date on which the notice of appeal was filed; and
  - (b) issue its written decision on an appeal within 21 days from the conclusion of the hearing.

**Extension of time**

- (4) The panel may extend the time limits specified in subsection (3), where, in the opinion of the panel, one or more of the following circumstances apply:
- (a) the serious illness or death of a party to the appeal or of a member of the panel hearing the appeal;
  - (b) a lack of information necessary to determine the appeal;
  - (c) the complexity of the appeal.

**Adjournments**

- (5) The panel may adjourn an appeal hearing with the consent of the parties to the appeal.



**Powers of the board**

- (6) At the conclusion of the hearing, the panel shall give written reasons for its decision and it may
- (a) dismiss the appeal; or
  - (b) allow the appeal. *2002,c.9,s.5.*

**DETERMINATION OF NORMAL FARM PRACTICE****13. Application**

- (1) A farmer, group of farmers, a farm organization, or person may make application to the board to designate a farm practice, or any part of the farm practice, as a normal farm practice.

**Notice**

- (2) Upon receipt of an application made pursuant to subsection (1), the board shall
- (a) notify the Minister of the application; and
  - (b) require the farmer, group of farmers, or farm organization to publish notice of the application in a manner determined by the board.

**Hearing**

- (3) The board shall hold a hearing and determine whether the farm practice, or any part of the farm practice, is a normal farm practice. *1998,c.87,s.13.*

**BENEFICIAL MANAGEMENT PRACTICES****14. Beneficial management practices**

- (1) Subject to subsection (4), the board shall designate beneficial management practices for the purposes of this Act.

**Factors**

- (2) In making a designation under subsection (1), the board shall consider all relevant factors and, without limiting the generality of the foregoing, shall consider site-specific practices that take into consideration relevant legislation, practicality and the operational needs of specific operations.

**Principles, guidelines, etc.**

- (3) The board may
- (a) establish its own principles, guidelines and modes of assessment for the purpose of designating beneficial management practices; and
  - (b) prepare a guide respecting beneficial management practices.

**Consultation**

- (4) Prior to designating a beneficial management practice, the board
- (a) shall consult with all interested farm organizations respecting the beneficial management practice; and
  - (b) may consult with any other interested party or the public respecting the beneficial management practice. *1998,c.87,s.14; 2012(2nd),c.9,s.4.*

**15. Reference**

- (1) Any farm organization or any other interested party or the public may
  - (a) refer any beneficial management practice to the board; and
  - (b) request the board to determine if the beneficial management practice is consistent with normal farm practice.

**If beneficial management practice inferior**

- (2) Where the board determines that the beneficial management practice is inferior to normal farm practice, the board shall ensure that the beneficial management practice conforms with, or exceeds, normal farm practice.

**Notice**

- (3) The board shall
  - (a) publish notice of beneficial management practices and amended beneficial management practices designated by the board pursuant to this Act; and
  - (b) make the beneficial management practices available to any person upon request. *1998,c.87,s.15; 2012(2nd),c.9,s.5.*

## REVIEW

**16. Review**

- (1) Any farmer, farm group, or farm organization may refer any proposed enactment, policy or municipal by-law or undertaking that may adversely affect an agricultural operation or restrain normal farm practices to the board for review.

**Report**

- (2) The board shall
  - (a) consider the proposed enactment, policy or municipal by-law or undertaking;
  - (b) determine whether the proposed enactment, policy or municipal by-law or undertaking adversely affects an agricultural operation or is a restraint on a normal farm practice; and
  - (c) report its findings, together with any recommendations, to the Minister. *1998,c.87,s.16.*

## REGULATIONS

**17. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) prescribing any agricultural activity or process as an agricultural operation;
- (b) prescribing forms and providing for their use;
- (c) prescribing information to be included in an application;
- (d) prescribing fees payable in respect of an application pursuant to paragraph 5(2)(c) and authorizing refunds;
- (e) prescribing rules of procedure for the board;
- (f) governing practices and procedures for hearings before the board or a panel of the board;



- (g) prescribing the process to be used by the board to designate farm practices and beneficial management practices as consistent with normal farm practices;
- (h) designating organizations as farm organizations for the purposes of this Act; and
- (h.1) respecting appeals of decisions made under the *Agricultural Crop Rotation Act*;
- (i) generally, to carry out the purposes of this Act. *1998,c.87,s.17; 2002,c.9,s.6; 2012(2nd),c.9,s.6.*