

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Nauss v. Waalderbos*, 2014 NSSC 245

**Date:** 20140718  
**Docket:** Amh No. 301680  
**Registry:** Amherst

**Between:**

John Nauss and Linda Nauss

*Plaintiffs*

v.

John Waalderbos and Viking Crest Farm Ltd., a body corporate

*Respondents*

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** March 5, 2014 in Truro, Nova Scotia

**Final Written Submissions:** March 31, 2014

**Written Decision:** July 18, 2014

**Subject:** Negligence Claims, Farm Practices Act, Stay of Proceedings, Dismissal

**Summary:** Plaintiffs commenced negligence action alleging that defendants' crop spraying activities caused herbicide to drift onto the plaintiffs' property, causing losses including health issues for one plaintiff, crop damage, and horses' miscarriage. Plaintiffs also claimed that defendants' ditching activities led to contaminated run-off, causing loss and damage. Defendants successfully moved for stay of the court proceeding (the "Stay") on the basis that the activities which the plaintiffs alleged occurred (spraying and ditching) could not be the subject of a civil action unless the Farm Practices Board (the "Board") determined under the *Farm Practices Act*

(the “Act”) that an agricultural operation did not comply with "normal farm practices.” The plaintiffs then made an application to the Board, which ruled that the defendants did not act in a manner inconsistent with normal farm practices and dismissed the complaint. In its decision the Board stated that its mandate did not extend to consideration of the plaintiffs’ health or the horses’ health. The plaintiffs’ appeal of the Board's decision to the Supreme Court was dismissed; the Judge who heard the appeal upheld the Board's finding that the defendants’ activities were carried out as normal farm practices, and ruled the Board had jurisdiction to make that determination. That Judge’s order directed that the issue of the Stay be revisited by the Judge who granted it. Both parties moved to have the stay lifted; the plaintiffs sought to have the action proceed and the defendants requested dismissal pursuant to the provisions of the Act.

**Issues:**

Should the action continue or be dismissed?

**Result:**

The Stay was lifted and the action dismissed as no issues would remain for adjudication if the claim were to proceed. Civil action in negligence is prohibited under the Act because the Board found the defendants carried out spraying and ditching activities in accordance with normal farm practice. The applicable standard of care for agricultural operations is determined with reference to the definition of normal farm practice in the Act. This Court's decision in the appeal to confirm the Board’s finding that the defendants complied with normal farm practice constitutes a determination that they met the appropriate standard of care. As the Court should not revisit that issue, the motion for dismissal was granted.

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