

KURTIS R. ANDREWS

Farm & Animal Welfare Lawyer

P.O. Box 12032 Main P.O., Ottawa, Ontario, K1S 3M1

tel: 613-565-3276; fax: 613-565-7192; email: kurtis@kurtisandrews.ca

VIA FAX: 613 548-8460

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Jannette Amini
Manager of Legislative Services /Clerk, Frontenac County
2069 Battersea Road
Glenburnie, Ontario, K0H 1S0

Dear Ms. Amini:

Re: Heavy vehicle restrictions on Howe Island ferry

I am writing to you regarding the decision to lift weight related restrictions on vehicles supporting farm operations on the Howe Island County ferry. I have been retained to represent residents of Howe Island who are concerned about this decision, and I respectfully ask the County to review and reverse this decision for the following reasons.

My practice happens to focus on agricultural law in Ontario. As part of my practice, I am very familiar with the *Farming and Food Production Protection Act* [FFPPA]. I know the Act's scope and limitations very well.

It is my understanding that the County decided to lift restrictions pertaining to farm-vehicles upon the belief that the subject policy was in contravention of the FFPPA. I can assure you that this interpretation of the FFPPA is incorrect. The former policy was not illegal.

The FFPPA (by way of ss. 6 & 7) pertains only to by-laws that have the effect of limiting a normal farm practice. The Act does not apply to any sort of policy or administrative decision rendered by a municipality. This is not only my opinion, but it is a fact that was recently confirmed directly to me by the Normal Farm Practices Board. The powers and jurisdiction of the Board are strictly limited to only that which are provided by the FFPPA – a principle that was confirmed by the Ontario Court of Appeal in 2011.

The purpose of the FFPPA is to protect farmers from civil and regulatory offence liability that might arise by employing a normal farm practice. It is not intended to, *per se*, act as a mechanism of quasi-judicial review with respect to administrative decisions. Put another way, if a commercial farm-vehicle was loaded onto the ferry during restricted hours, there would be no contravention of a by-law that would expose a farmer to penal consequences. By all accounts, the practice of restricting commercial travel on the Howe Island ferry was merely a policy decision. As a result, the FFPPA does not apply nor does it have any effect on the decision.

I therefore respectfully ask the County to review its decision and properly reverse it to reflect the fact that the former policy was not illegal.

If necessary, I encourage you to satisfy yourself regarding what I have stated above by contacting the Normal Farm Practices Board and put the question directly to them. If this is not enough to satisfy the County, I respectfully suggest that the County employ section 7(2) of the FFPPA (which it should have done from the beginning) and apply to the Board to determine if

the former restrictions were legal. I note that such an application is relatively straightforward and quick to resolve.

I appreciate the fact that the County simply acted in error, erroneously believing that the former policy broke the law and it had no choice but to lift the farm-vehicle restrictions. However, by making this error, the County has now exposed itself to civil court liability. While we would prefer it if the County would simply rectify its error by reversing its decision, I have instructions to commence court proceedings in the event that the County declines to do so.

I understand that there will be another opportunity for concerned citizens to be heard regarding this matter on December 21, 2016. I ask that this letter be included on the agenda. I also respectfully ask the County to reply to me and indicate if it will, at a minimum, review this matter from a legal standpoint before then.

Please also ensure that this letter is forwarded to all members of council.

Thank you and best regards,



Kurtis R. Andrews

cc. *Warden Frances Smith, via email: mayor_smith@centralfrontenac.com*
Deputy Warden Ron Vandewal, via email: ron.vandewal@frontenacounty.ca
Councillor John McDougall, via email: john.mcdougall@frontenacounty.ca
Councillor Tom Dewey, via email: tdeweyone@gmail.com
Councillor Natalie Nossal, via email: nossaln@hotmail.com
Councillor Denis Doyle, via email: denisdoyle@kos.net
Councillor Ron Higgins, via email: ron.higgins@xplornet.com
Councillor John Inglis, via email: john@lwl.ca
Mr. Kelly Pender, CAO, via email: kpender@frontenacounty.ca