

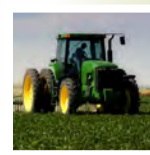


# Canada Agricultural Review Tribunal (CART)



2014-2015  
Annual Report

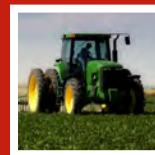




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## Message from the Chairperson

It has been another busy year at the Canada Agricultural Review Tribunal (CART). This is my seventh Annual Report since assuming the role of Chairperson of the CART. It is my pleasure to highlight some of the important activities undertaken at the CART between April 1, 2014 and March 31, 2015.

### **An accessible Tribunal delivering its core mandate – decisions, motions and new rules to improve case management**

The core mandate of the CART remains the timely and cost-effective review of notices of violation issued under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act) and the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations). This year, with the CART's caseload levelling out, additional time and resources were devoted to making the CART's processes more transparent and efficient. By providing quality information and timely dispute resolution, the CART was in a better position to serve the applicants who received a Notice of Violation, as well as the government agencies who issued the Notice of Violation.

This year, the CART resolved more than 150 procedural requests and issued 35 decisions in an effort to efficiently manage an increasingly complex field of dispute resolution. Since 2012, CART personnel, in consultation with stakeholders, have been drafting new rules of procedure that were completed in May 2015.

### **A new partner supporting the CART – Administrative Tribunals Support Service of Canada**

On November 1, 2014, the CART's support services were transferred from Agriculture and Agri-Food Canada to the newly created Administrative Tribunals Support Service of Canada (ATSSC). The ATSSC now provides these services to the CART, as well as to 10 other federal tribunals. With the exception of the Chairperson and the part-time member, who remain Order-in-Council Appointees accountable to Parliament through the Minister of Agriculture and Agri-Food, all other persons working for the CART are now employees of the ATSSC, which reports to the Minister of Justice.

### **New Personnel at the CART**

The CART continues to attract new talent. This year, I was happy to supervise the CART's second full-time articling student who was completing his program as required by the Barreau du Québec. With the transition to the ATSSC, the Tribunal gained a new Executive Director and General Counsel, as well as another full-time Administrative Officer in the CART Secretariat of the ATSSC. Both these positions enhanced the CART's administrative capacities. With respect to decision-makers at the CART, my appointment as Chairperson and full-time member was renewed for three years, and part-time member Dr. Bruce La Rochelle was renewed for a further three years as well.

With another productive year completed at the CART, on behalf of all of us, we look forward to the challenges and opportunities that await us in the coming year.

**Dr. Donald Buckingham**  
**Chairperson**  
Summer, 2015





## ■ About the Members of the CART

### Donald Buckingham (LL.B., Dip. Int. Law, LL.D.)

Before assuming the position of Chairperson of the CART on July 1, 2009, Dr. Buckingham acted as a private lawyer, government lawyer, law professor, author and consultant in the areas of agricultural law, food law and international trade in agricultural products. Dr. Buckingham has been a member of the Law Society of Upper Canada since 1988. Between 2006 and 2009, he worked as Legal Counsel at Agriculture and Agri-Food Canada (AAFC). In this capacity, he advised AAFC officials and the Minister on specific matters affecting agriculture and agri-food. His career as a law professor spanned the period 1990 to 2009 at three universities: the University of Western Ontario, the University of Saskatchewan and the University of Ottawa. During this time, he taught courses and conducted research on agriculture law, food law, constitutional law, administrative law, international law and tort law. Prior to 1990, he was a lawyer with the Halifax law firm of Patterson Kitz.



Dr. Buckingham is the co-author of five books, including *Agriculture Law in Canada* (Butterworths: 1999), and is the sole author of *Halsbury's Laws of Canada: Agriculture* (LexisNexis: 2014 and 2009) and *Halsbury's Laws of Canada: Food* (LexisNexis: 2014 and 2009). He was Chair of the Heads of Federal Administrative Tribunals Forum for 2014, board member of the Council of Canadian Administrative Tribunals (CCAT), as well as Co-President of the 2014 CCAT National Conference. An active farmer in Lloydminster, Saskatchewan during the 1970s and 1980s, Dr. Buckingham has been residing with his family in Ottawa since 1999.

### Bruce La Rochelle (LL.B., Ph.D., C.P.A.)

Dr. Bruce La Rochelle was initially appointed as a part-time member of the CART in June of 2012, by Order-in-Council, for a period of three years. In December of 2014, it was announced by the Honorable Gerry Ritz, Minister of Agriculture and Agri-Food, that Dr. La Rochelle had been reappointed, again by Order-in-Council, for a further three years, to June of 2018.

Dr. La Rochelle is a lawyer, practising in association with an Ottawa law firm. He also is a part-time instructor at the Telfer School of Management of the University of Ottawa, primarily teaching accounting and commercial law courses, in English and French.

Dr. La Rochelle is a graduate in general arts from St. Michael's College, University of Toronto (1973), and a graduate in law (*magna cum laude*) from the Common Law Section of the Faculty of Law, University of Ottawa (1976). He holds an M.B.A. degree from the Rotman School of Management, University of Toronto (1981), and a doctorate in business administration (major: Organizational Behaviour) from the Schulich School of Business, York University (1993). His doctoral dissertation, *Canadian Financial Institution Failures: The Pathologies of Regulatory Inaction*, is a study of the regulatory processes associated with the closures of the Canadian Commercial Bank and the Northland Bank, in 1985, and the closure of the Principal Group, in 1987.

Dr. La Rochelle has been a member of the Law Society of Upper Canada since 1978. He is also a Chartered Professional Accountant, having qualified as a Chartered Accountant (1982) and as a Certified Management Accountant (1991).

Dr. La Rochelle, whose childhood was spent in Saskatchewan, resides in Ottawa.





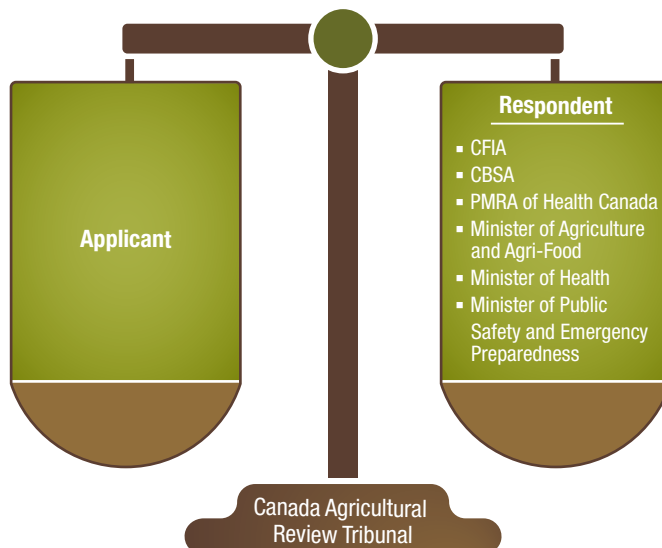
## Section 2: The Tribunal and What it Does

### Vision

The CART's vision is to safeguard the integrity of the administrative monetary penalties system used by federal agencies to ensure compliance with agriculture and agri-food statutes. The CART seeks to balance the rights of Canadians receiving such penalties with the responsibilities of federal regulators who issue the penalties to protect human, animal and plant health so as to enhance the vibrancy and sustainability of Canadian agriculture.

### Mission

The CART's mission is to provide independent oversight through the exercise of its review powers over federal agencies' and Ministers' enforcement of agriculture and agri-food administrative monetary penalties (AMPs) against persons for agriculture and food violations. Federal agencies, including the Canadian Food Inspection Agency (CFIA), the Canada Border Services Agency (CBSA) and the Pest Management Regulatory Agency of Health Canada (PMRA), use AMPs in conjunction with other enforcement measures to provide expeditious non-punitive means to promote regulatory compliance. As such, the CART provides oversight of the use of AMPs by giving Canadians a forum to challenge the validity of the violations and fines levied against them.



The CART's role is to ensure that applicants receive a fair and balanced review

### The CART's values:

accessibility, accountability, diligence, effectiveness, efficiency, fairness, integrity, stewardship, risk management, timeliness and transparency

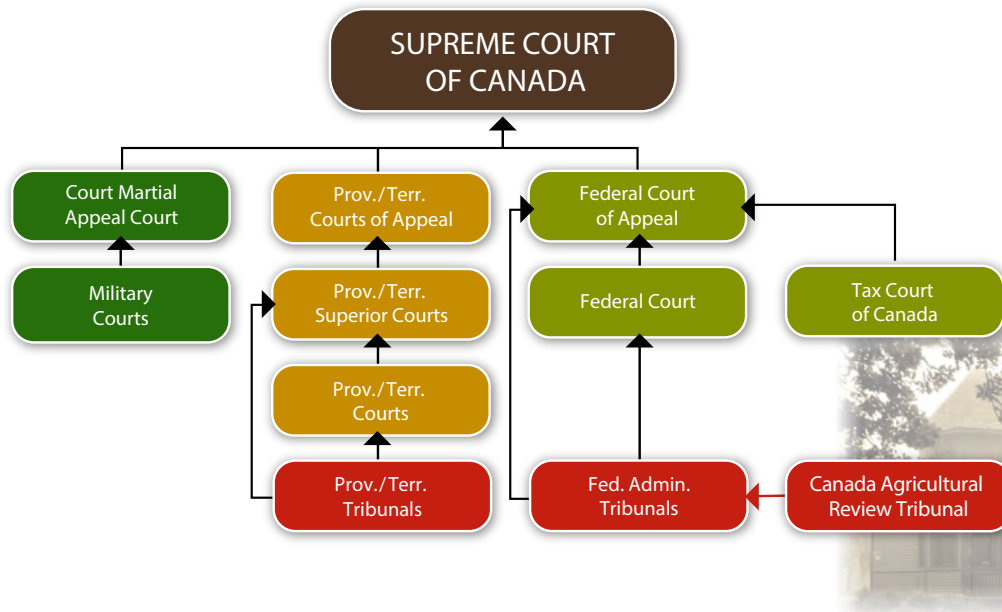
### Mandate

In line with its mission, the CART's mandate is to provide independent, fair, cost-effective and timely review of the validity of administrative monetary penalties issued to any person by a federal agency under the *AMP Act*. As an independent quasi-judicial body established by Parliament, under the *Canada Agricultural Products Act* and the *AMP Act*, the CART maintains an arm's length relationship from Agriculture and Agri-Food Canada, Health Canada, Public Safety Canada and their Ministers. Each member of the CART is appointed for a fixed term and may not be employed in the federal public service.



## ■ The CART in the Canadian Legal System

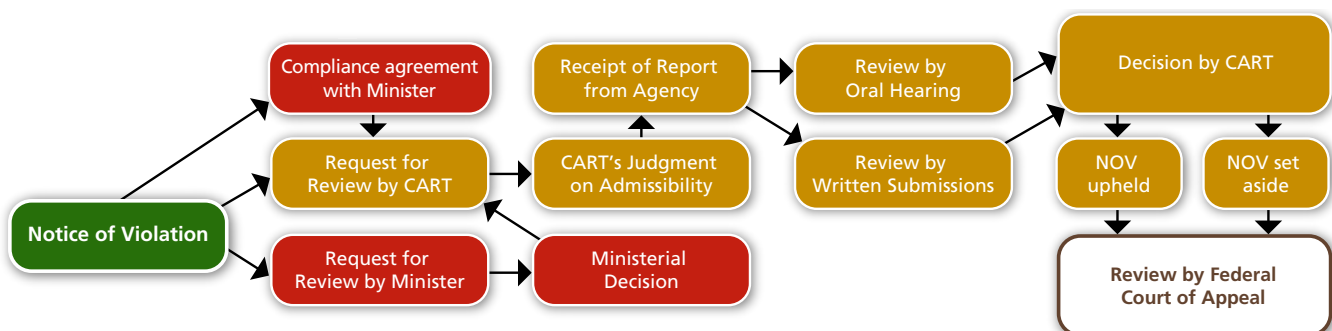
The CART operates within the family of federal administrative tribunals. Each of the various tribunals provides oversight concerning many types of government interactions and over different regulatory regimes.



## ■ The CART at Work – Reviewing Notices of Violation and Ministers' Decisions

The CART performs two different types of reviews depending on whether the applicant chooses to have the appropriate Minister or the CART review the Notice of Violation (NOV). The applicant may wish that the Minister review the facts of the case (first instance review), after which the applicant may choose to have the Minister's decision reviewed by the CART. Alternatively, the applicant may choose to have the CART perform a first instance review of the facts and issue its decision on the validity of the NOV. However, both types of review undertaken by the CART are then subject to judicial review by the Federal Court of Appeal.

- CART's review process
- Judicial review process
- Ministerial process





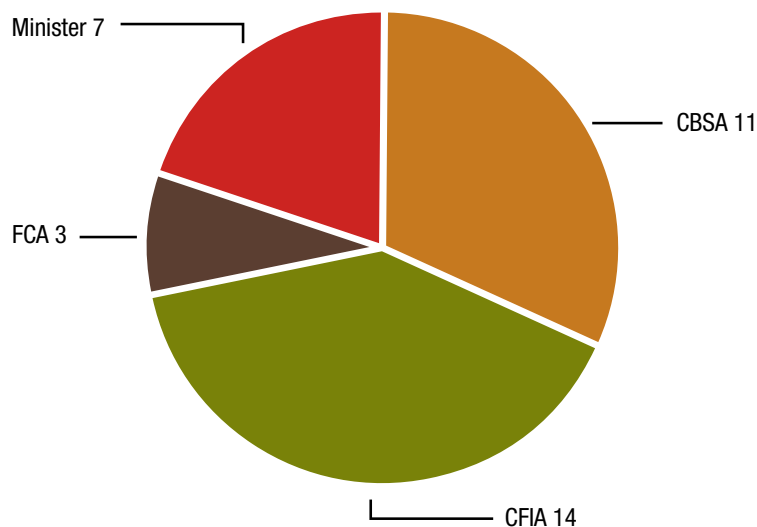


## Section 3: The 2014-2015 Year in Review

### ■ Quasi-Judicial Decision-Making

#### 35 Decisions in 2014-2015

In the fiscal year 2014-2015, the CART issued 35 decisions. Of these 35 decisions, 32 involved new applicant requests for review stemming from federal agency enforcement action including: 11 from the Canada Border Services Agency (CBSA) and 14 from Canadian Food Inspection Agency (CFIA) regarding Notices of Violation, as well as seven requests for review of a Minister's decision. Apart from these new decisions, three decisions were reconsiderations of prior CART decisions sent back with directions from the Federal Court of Appeal (FCA). Of the 32 new case decisions issued, seven were sent back to the Minister of Agriculture and Agri-Food, as per the instructions of the FCA. Of those remaining, the CART upheld the Agency's Notice of Violation (NOV) 48% of the time (12 of 25), while 52% of the time (13 of 25), the CART dismissed the Agency's NOV. This fiscal year, 80% of the applicants chose English, rather than French, as the language of the proceeding before the CART. Of the 35 cases decided this year, 14 proceeded by oral hearing while the other 21 were by written submissions.



**35 CART Decisions in 2014-2015 by Institution of Origin**



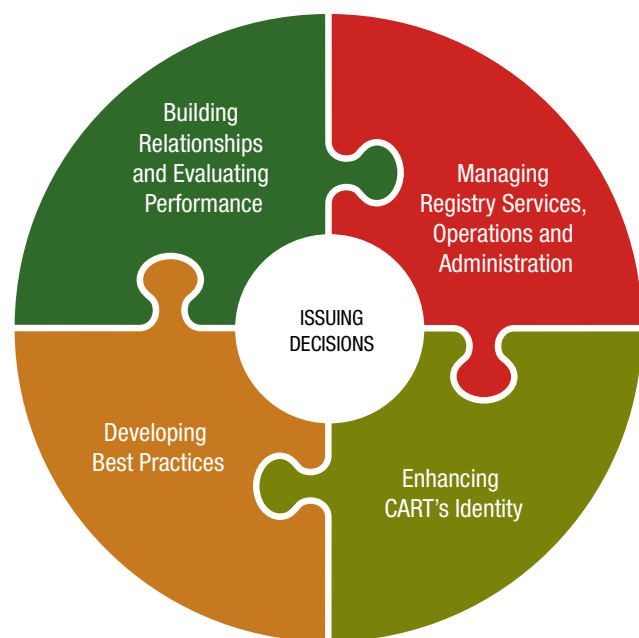
### Sample Decisions of the CART and Oversight by the Federal Court of Appeal

As identified above, the primary role of the CART is to make quasi-judicial decisions concerning the validity of administrative monetary penalties (AMPs) and warnings. These penalties and warnings are issued by the CFIA, CBSA and the Pest Management Regulatory Agency of Health Canada (PMRA) when they enforce agriculture and agri-food related rules and regulations. In this decision-making process, there are several steps, including the CART's initial determination on admissibility, its responses to procedural requests from the parties, reviewing parties' written submissions, holding a hearing, and finally, the writing and issuance of a final decision. Throughout all of these steps, the CART seeks to provide a fair, effective and efficient process that takes into account the facts of the case from both prospective parties, as well as the applicable law.

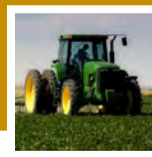
In line with these goals, on March 30, 2015, the CART submitted a regulatory package, to the Privy Council Office, requesting approval of its new rules of procedure. The objectives of the regulatory package were to clarify the procedural rights of parties appearing before the CART and to permit the CART to apply transparent rules in a manner leading to more fair, expeditious and cost-effective hearings of the cases coming before it. On May 7, 2015, the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* were approved by Cabinet and a day later, they were registered and came into force. The coming into force of these new rules represents the culmination of a five-year long process that sought to bring the CART's procedural rules in line with its actual operations.

This past year, the CART managed a caseload of 92 cases, of which 86 were found to be admissible according to the AMP Act and the AMP Regulations. More information on determining admissibility is available on the CART website in Practice Note #11 – "Determining Admissibility of Requests for Review and Practices Regarding the Exchange of Documents amongst Applicants, Respondents and the Tribunal". Since May 8, 2015, and the coming into force of the CART's new Rules of Procedure, a written admissibility determination is required in every case presented to the CART before it can proceed to a full hearing.

In the administration of these cases, the CART oversaw 151 procedural matters, such as requests for extensions of time to file documents, requests for adjournments and requests for summons to require the attendance of witnesses at hearings. This represents a steady and significant increase of 45 procedural motions compared to the same period last year. The new procedural rules will streamline the CART's processing of the procedural motions requested by parties. In particular, since the new rules clarify how documents should be submitted to the CART, they should reduce requests for extensions to submit documents.



**In addition to its core mandate, the CART engages in important ancillary activities**



Sample cases that illustrate the CART's quasi-judicial decision-making are provided below. While the last four cases relate to first instance review by the CART, the first two cases involve oversight of the CART's decisions by the FCA.

### **Sample Cases Judicially Reviewed by the Federal Court of Appeal**

#### ***Canada (Attorney General) v. Schoolcraft, 2014 FCA 259***

This case concerns a calf that was found in an auction barn without the electronically-readable identification tag in its ear required by the *Health of Animals Regulations*. As a result, the CFIA issued an NOV to Mr. Schoolcraft. Mr. Schoolcraft requested a review of the NOV by the CART. He argued that the calf had all its tags at loading and the tag must have fallen out sometime during the transport. Based on the fact that CFIA officials made very little effort to look for the tag in the transport vehicle, as well as the credibility of Mr. Schoolcraft's testimony, the CART determined that CFIA had not met its burden of proof in demonstrating that the calf was transported without its tag contrary to the law. The CFIA sought judicial review of the CART's decision at the FCA. The FCA applied a reasonableness standard of review, finding that the CART's decision fell within a range of reasonable outcomes based on the evidence on record. Thus, the FCA upheld the CART's decision.



#### ***Canada (Attorney General) v. Stanford, 2014 FCA 234***

This case concerns Ms. Stanford's importation of a horse from the United States (U.S.) into Canada without a certificate properly approved by U.S. veterinary authorities. As a result of these actions, the CFIA issued an NOV with penalty of \$10,000 to Ms. Stanford. She requested a review by the CART of the NOV. The CART did not examine the case on the merits but instead examined the statutory provision underlying the violation. The necessary elements of the violation included a knowledge component, namely that the alleged violator knew that a horse had been imported into Canada contrary to the statute. The CART also looked at one of its home statutes, the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which states, at section 18, that a defence based on a reasonable mistake of fact is excluded. The CART held, therefore, that section 18 of the law barred Ms. Stanford from making an adequate defence. The CART set aside the NOV based on the fact that to allow it to stand would unfairly subject Ms. Stanford to a legislative contradiction. The CFIA sought judicial review of this decision by the FCA. The FCA faulted the CART for ignoring the presumption of legislative coherence, a fundamental rule of statutory interpretation. The FCA did not agree that a contradiction existed between the two legislative provisions. Thus, the FCA set aside the CART's decision and referred the case back to the CART for reconsideration by a differently constituted panel in a manner consistent with the FCA's reasons.



### Sample cases decided by the CART

#### ***Espitia v. Canada (Canada Border Services Agency), 2015 CART 4***

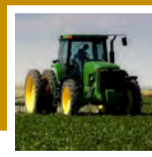
Ms. Espitia was returning to Winnipeg from a trip to Colombia when she was referred for secondary luggage inspection by a Border Services officer. At secondary luggage inspection, a pressure cooker was discovered among her belongings containing “Picada”, which is a traditional dish with chicken, pork and sausages. Given that Ms. Espitia had answered “No” to the question pertaining to food on her customs declaration card, she was issued an NOV with penalty by the CBSA. Ms. Espitia asked for a review of the NOV by the CART. The CART acknowledged that, without considering the overriding circumstances, the CBSA would have presented enough evidence to prove that Ms. Espitia had committed the violation. However, due to numerous and significant errors made by the CBSA on the NOV document, most notably the missing penalty amount, the CART held that the violation had not been proven against her because the NOV did not meet the requirements set out in law. Therefore, the CART found that these errors undermined the basis of the case, and as such, the NOV could not be upheld.

#### ***Gebreyesus v. Canada (Canada Border Services Agency), 2015 CART 5***

Mr. Gebreyesus returned to Winnipeg, from a trip to Eritrea, by way of Ottawa. In Ottawa, he was referred for secondary luggage inspection by Border Services officers at the primary inspection line and, later, by a dog handler who was roving the carousels. At secondary inspection, he was found to have four traditional wooden stools with animal hide

coverings in his luggage. Mr. Gebreyesus answered “No” on his customs declaration card to the question relating to food and animal by-products. He was subsequently issued an NOV with penalty of \$1,300 by the CBSA. Mr. Gebreyesus asked the CART for a review of the NOV. He argued that he had declared the stools in the section of the declaration card pertaining to goods purchased or received abroad, where he marked a value of \$150. However, the CART upheld the NOV on the basis that Mr. Gebreyesus had imported an animal by-product (stools with animal fur coverings), according to the legal definition found in the *Health of Animals Act*, without declaring the animal by-product to the primary inspection officer.





### ***Edgebrook Farm Ltd. v. Canada (Canadian Food Inspection Agency), 2015 CART 1***

Edgebrook Farm operates a livestock operation raising pigs and cattle in Taber, Alberta. On October 4, 2013, an outbreak of Glasser's Disease began spreading to the different rooms of the barns where the pigs were being raised. This disease spreads rapidly with a quick onset and death for infected pigs (often within a few hours), and frequently results in a very high death rate for the entire population. On the advice of their veterinarian, on October 5, 2013, Edgebrook Farm decided to ship healthy-looking pigs, from one of the suspected uninfected rooms, ahead of schedule to avoid the disease spreading to them. By the time the shipped pigs arrived for slaughter at Britco Pork at about 7:00 a.m. on the morning of October 7, 2013, 27 pigs from the load were found dead. As a result, Edgebrook Farm was issued an NOV by the CFIA for transporting the pigs in a way that caused them undue suffering. Edgebrook Farm asked for a review of the NOV by the CART. The CART found that there was no causal link between the transportation and the undue suffering. Furthermore, the CART found that the pigs would likely have suffered and died whether they had been transported or simply left back at the farm. Instead, the root cause of the undue suffering and death was the outbreak of a communicable disease among the pigs. As a result, Edgebrook Farm was found to have not committed the violation alleged.

### ***Ferme Alain Dufresne Inc. v. Canada (Canadian Food Inspection Agency), 2015 CART 6***

Ferme Alain Dufresne Inc. (Ferme Dufresne) is a chicken producer that raises chickens on a strict schedule for eventual slaughter. The chickens are produced by Ferme Dufresne, and then rounded up by chicken catchers and loaded onto a transport, to later be slaughtered at an abattoir. On February 27, 2013, a shipment of 20,074 chickens from Ferme Dufresne, in Sainte-Elisabeth, Québec, was loaded onto three transports. Upon arrival at the abattoir located in St-François-de-Madawaska, New Brunswick, 221 of those chickens were found dead. On March 18, 2014, Ferme Dufresne was issued an NOV with warning by the CFIA. The CFIA alleged that Ferme Dufresne loaded or caused to be loaded chickens in a manner likely to injure them or cause them to suffer unduly. Specifically, the chickens were alleged to have been exposed to snow during the loading process. Ferme Dufresne sent a request for review of the NOV with warning to the CART. The CART found that Ferme Dufresne's role in the loading process was minimal and amounted to opening the barn door and clearing snow. The CART also found that the CFIA had not sufficiently established that Ferme Dufresne exercised control over the loading of the chickens. As a result, the CART found that Ferme Dufresne was not a party to the loading or transport. Therefore, Ferme Dufresne was found to not have committed the violation alleged. The Tribunal acknowledged the validity of the Agency's position that a farmer could be a party to the transport, but held that the facts of the present case did not support such a position.

Tribunal members  
travelled a collective  
**25,750 kilometers**  
in 2014-2015 in order  
to conduct  
**19 oral hearings**  
in **11 cities.**

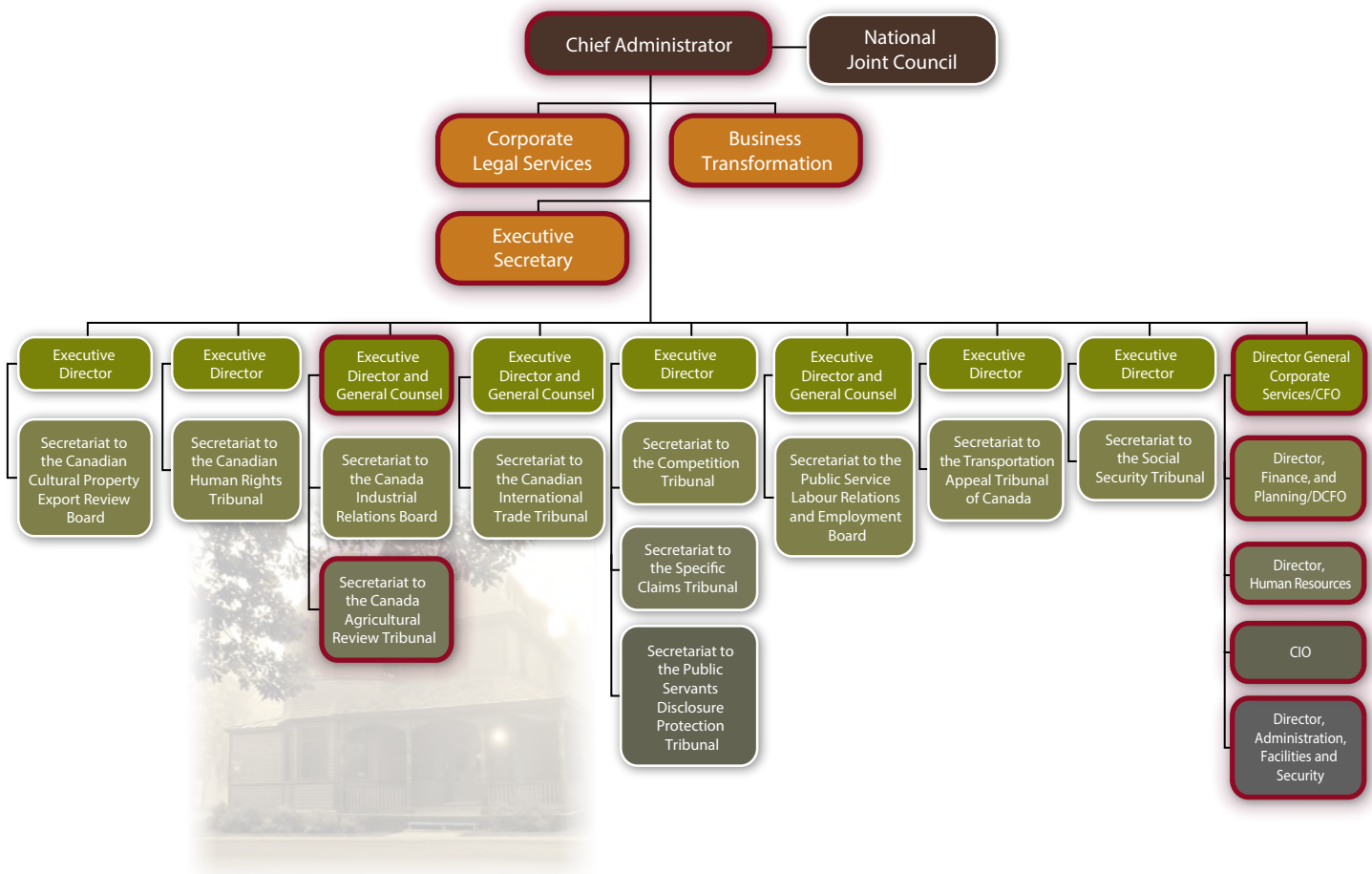


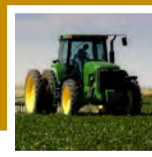


## ■ Registry Services, Operations and Administration

### New Organizational Chart

With the entry into force of the *Administrative Tribunals Support Service of Canada Act* on November 1, 2014, the Government of Canada provides services to support eleven administrative tribunals, including the CART, within a single organization—the Administrative Tribunals Support Service of Canada (ATSSC). This administrative change does not affect the mandate of the CART. All CART files will continue to be submitted, managed and protected in accordance with the CART’s existing procedures. Below is a detailed organizational chart which shows how the ATSSC provides necessary support services to the CART (see red highlights).





## ■ The CART's Leadership

In addition to advancing its electronic identity on the CART website, through print media and in social media, the CART strives to be a leading Canadian administrative tribunal. The CART Chairperson chaired the Heads of Federal Administrative Tribunals Forum for 2014 and has been named president of the Council of Canadian Administrative Tribunals (CCAT) from June 1, 2015 to May 31, 2017, after having previously acted as Co-President of the 2014 CCAT National Conference.

### Guidance for Self-Represented Litigants

The CART's team of front-line staff are sensitive to the challenges faced by self-represented litigants and work hard to guide persons who receive an NOV from the CFIA, CBSA, or the PMRA to bring their case to the CART. CART personnel do not provide legal advice, but will frequently direct applicants to the CART's informative guide for those who intend to present their case to the CART either orally or in writing. This Guide for Self-represented Litigants, as well as the related series of Practice Notes, can be found online at: [http://cart-crac.gc.ca/eng/preparing-your-case/guide-for-self-represented-litigants/?id=1378420300068#header\\_1](http://cart-crac.gc.ca/eng/preparing-your-case/guide-for-self-represented-litigants/?id=1378420300068#header_1).

When persons receive an NOV, they have the opportunity to write to the CART requesting a review within 30 days after the date of service of the NOV that was issued by the CBSA, CFIA or PMRA. When persons receive a Minister's decision concerning an NOV, they have the opportunity to write to the CART requesting a review within 15 days after the date of service of the Minister's decision. Persons who wish to challenge the NOV must not pay the penalty before requesting a review by the CART or the Minister. Requests to the CART can be submitted by hand, registered mail, courier, facsimile (fax) or email, but cannot be submitted by regular mail.

### Education and Training

Again this year, the CART had the privilege of welcoming three student interns as part of its Tribunal-Internship Program. In addition, the CART hosted its second articling student.

The CART's first intern of 2014-2015, Ms. Ebanehita Joan Edeko, Master of Laws student at the University of Ottawa and Barrister in Nigeria, contributed significantly to the CART's operations, notably by completing records for judicial reviews of CART's decisions at the FCA, by assisting the Chairperson with the preparation of hearings and by preparing legal briefs.

Mr. Richard Francis and Ms. Jacqueline Lau, third-year law students from the University of Ottawa, as part of their "Federal Tribunals Seminar" course, prepared pre-hearing briefs for the Chairperson and updated procedural records. In addition, Mr. Francis undertook a research project on accessibility issues in the administrative law context. Meanwhile, Ms. Lau researched and presented a project on procedural fairness with respect to self-represented litigants.

Between September 2009 and March 2015, the CART welcomed 26 student interns; 4 in the last fiscal year alone.



Mr. Robert McKenzie, while completing his articles with the CART for admission to the Barreau du Québec, performed a wide range of important duties. He drafted legal memos, legal case briefs, post-hearing memos, performed legal research, reviewed draft decisions and assisted the CART's Chairperson and part-time member at hearings. He also played an integral role in drafting and compiling the regulatory package for the CART's new rules of procedure. For his work on the rules, he received an award of recognition along with other staff at the CART. In addition, after completing his six-month articling requirement, Mr. McKenzie was called to the bar on April 15, 2015, and in so doing, proudly received the title of Maître McKenzie!

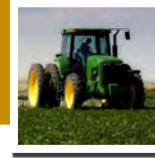
These students, full of enthusiasm and innovative ideas, bring energy to the CART while obtaining practical work experience in a real-life administrative tribunal setting. Here are some of their comments concerning their experiences at the CART.

**– Ebanehita Joan Edeko, Graduate Student in Law, University of Ottawa**

*Working at the CART (Summer 2014) – An unbeatable experience. An opportunity to learn from great and intelligent minds. As an intern at the CART, I was invited to contribute to a new but exciting area of legal practice—administrative law. Engulfed in a world of legal and practical intellect, I got to learn and understand the workings of a typical Canadian Administrative Tribunal. Being an international student, I was motivated to compare, contrast and challenge the agricultural and administrative laws of both Canada and Nigeria. The zeal to do more was further prompted by Dr. Buckingham's continued and ever growing interest in the workings of a foreign jurisdiction. A very warm and homely environment with an opportunity to learn new things every day- The CART. It was indeed one of my most treasured experiences as a master's student.*

**– Richard Francis, 3<sup>rd</sup> Year JD Student (Common Law), University of Ottawa**

*Having never worked in a tribunal setting before, I had no experience of the protocols for, or expectations of incoming law students prior to my work at the CART. Little did I know that the CART has hosted many eager law and policy students in recent years. My apprehensions were quickly laid to rest through the warm and friendly interactions I had with Dr. Buckingham and other Tribunal staff during the autumn semester of 2014. My work plan incorporated both structured legal research on Tribunal matters, and a less structured opportunity to explore my personal research interests through writing a paper of relevance to Tribunal work. Through integration into the ongoing work of the Tribunal, I was provided with many learning opportunities, such as the chance to watch a judicial review of a previous Tribunal decision. Through regular feedback opportunities, I received the guidance I needed to complete assigned work in a timely manner, and to a quality befitting a quasi-judicial institution. The outstanding mentorship provided by the Tribunal members, including opportunities to ask wide-ranging legal and practical questions of them (a rarity for law students), remains the highlight of my placement. It is with this kind of career support that I will be presenting a paper, which I started writing at the Tribunal, to a national justice conference this year. Thank you CART!*



**– Jacqueline Lau, 3<sup>rd</sup> Year JD Student (Common Law), University of Ottawa**

*As a law student, the majority of my learning happens in a classroom through lectures and case law. It is rare for a law student to experience the practice of law in a real legal setting – working at the CART gave me that experience. During my 3 months at the CART, I had the opportunity to enhance my understanding of the inner workings of a federal tribunal and apply my legal knowledge to real administrative law cases. The CART family was also responsible for helping me make the most of my experience at the tribunal. Under the guidance of Dr. Buckingham, Lise, Rachèle and Rob, I was able to learn more about administrative law in the 3 months I worked there than I ever would in a classroom. Their patience and kindness makes it a wonderful learning environment for any student. Also, having an endless supply of delicious food available is not so bad either.*

**– Robert McKenzie, Articling Student, Barreau du Québec (2014-2015)**

*On my first day at the CART, sitting in my newly assigned office in a heritage farmhouse, in the middle of the Central Experimental Farm, I was filled with both anticipation and excitement about the 10 months that lay ahead of me. As my time here now winds down, I have to say that my articling experience did not disappoint in the least. I feel incredibly privileged to have had the opportunity to fulfill the articling component of my bar admission process at the CART. In a small office setting, with a modest and friendly staff of 6 (at full capacity), I was exposed to a wide range of duties, both legal and non-legal in nature. On any given day I might review a draft decision, draft a legal memo, write a pre-hearing or post-hearing brief, attend a judicial review at the FCA, put together a regulatory package for the Minister's office, attend a meeting on behalf of the Chairperson, participate in a hiring process, update our website, or attend to any other pressing matter. My tasks and responsibilities varied greatly from day to day and certainly offered me the opportunity to learn time management and prioritization abilities, in addition to acquiring the practical legal skills necessary to the practice of law. I was also given the chance to represent the CART as a speaker at the 31<sup>st</sup> Annual CCAT Symposium on the issue of Charter remedies. I will be eternally grateful for Dr. Buckingham's mentorship; I could not have asked for a more dedicated and knowledgeable articling principal. I also want to thank Dr. La Rochelle for his continuous mentoring and guidance throughout my articling term and of course, Lise and Rachèle for all their hard work and dedication to the CART.*



### **A New Practice Note—an Electronic Registry at the CART**

As part of the development and dissemination of best practices, the CART continues to reach out to parties appearing before it. As well as providing self-represented applicants with a User's Guide, the CART prepares and disseminates Practice Notes to assist parties appearing before the CART. This year, the CART issued only one new Practice Note, but it was a significant one. Practice Note #14, issued on July 31, 2014, informed stakeholders that the CART was going digital. That Practice Note entitled "Creation of an E-Registry at the Canada Agricultural Review Tribunal – An Expansion of the Electronic Filing Project begun in 2011", invited parties to file all documents with the CART electronically. As of July 31, 2014, the CART keeps an electronic record of all materials relating to each new request for review.



### **■ Building Relationships and Evaluating Performance**

The network of relationships built between the CART and its stakeholders, in governmental and non-governmental positions, is important to the smooth operation of the CART. While the CART is an independent, arm's length entity, it does not exist in a vacuum. The Chairperson continues to nurture necessary structural connections with the Department of Agriculture and Agri-Food and the ATSSC for the delivery of certain administrative functions. In addition, he cultivates relationships in the federal administrative tribunal community and beyond. With the CART's administrative functions moving away completely from the Department of Agriculture and Agri-Food in the next fiscal year, the Chairperson has been actively cultivating relationships to assist in a smooth transition from one service provider to another. He is also active in several groups working in federal and national bodies in administrative law, including the Heads of Federal Agencies, the Heads of Federal Administrative Tribunals Forum, the CCAT and the Society of Ontario Adjudicators and Regulators (SOAR).





## Section 4: Opportunities and Challenges

The CART dealt effectively with many changes this past year, as has already been noted in this Annual Report. As noted in last year's Annual Report, the CART expected to see four trends in the fiscal year 2014-2015: an increasing CART caseload; more French language cases; improved processes; and initial impacts of the creation of the Administrative Tribunals Support Service of Canada (ATSSC) on the delivery of CART services. These trends unfolded largely as predicted and the CART was able to adapt to continue to provide timely decisions in a cost-effective manner over the past 12 months.

What new opportunities and challenges lie ahead for the CART and the CART Secretariat? The CART sees these opportunities and challenges falling into three broad categories: the CART's variable and dynamic caseload; the increasing complexity of cases coming before the CART; and the ongoing and fuller integration of the services from the ATSSC provided to the CART through the CART Secretariat.

### **Increasingly Variable and Dynamic Caseload**

#### **(1) Continuing High Levels of French Language Cases**

The trend identified last year, of the increasing CART caseload of French language cases, is likely to continue into 2015-2016. As the 2013-2014 fiscal year came to a close, the number of French language cases had been increasing from its traditional level of 25% to 50% of total cases before the CART. As the 2014-2015 fiscal year came to a close, the caseload for upcoming hearings in French has jumped to over 80% of the CART caseload. The CART members and the CART Secretariat staff will continue to strive to provide the necessary services of the CART in both official languages to parties and stakeholders.

#### **(2) Less CBSA and more CFIA cases**

Administrative Monetary Penalties (AMPs) can be levied by: the Canada Border Services Agency (CBSA) against travellers illegally importing food and agricultural products; by the Canadian Food Inspection Agency (CFIA) against players in the Canadian agri-food chain dealing with farm animals and agricultural products; and by the Pest Management Regulatory Agency for improper uses of agricultural pesticides. Traditionally, the caseload of the CART was almost evenly split between reviews emanating from the CFIA and the CBSA. However, the current caseload of the CART shows a marked increase in CFIA cases, such that over 90% of the current caseload emanates from CFIA-issued AMPs. This shift will potentially impact the speed at which the CART completes its reviews since CFIA cases historically are more complex, take longer to schedule and take longer to hear. In addition, they are generally more diligently contested by applicants than CBSA cases.



### **(3) AMPs in Place for Meat Inspection**

Regulations came into force on July 2, 2014, which permit the CFIA to issue AMPs for violations under the *Meat Inspection Act (MIA)* and *Meat Inspection Regulations (MIR)*. Although the CART has yet to receive any requests for review from these AMPs, 84 new violations from the MIA and MIR were added as AMPs for enforcement by the CFIA. As a result, it is likely that these AMPs will soon be making their way through for review by the CART. If there are many of these requests, the CART would experience a spike in its caseload.

### **(4) Minister of Public Safety Now Empowered to Issue Ministerial Decisions for AMPs**

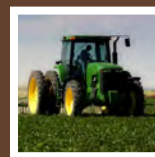
After an amendment to the *Agriculture and Agri-Food Monetary Penalties Act (AMP Act)* in February 2015, the Minister of Public Safety and Emergency Preparedness, or his delegates, are now empowered to issue Ministerial Decisions reviewing food and agriculture AMPs issued by the CBSA. The CART was given to understand that a number of such cases were being held in abeyance pending the formal recognition of this new power by Parliament. Now that it has been enacted, some Ministerial Decisions, where applicants have been unsuccessful, will be brought by those applicants to the CART for further review. If there are many of these requests, the CART will experience a further increase in its total caseload.

### **More Complexity for CART Cases and Case Management**

The Chairperson and part-time member believe that cases coming before the CART are becoming increasingly complex. Five factors can be identified to explain this increasing complexity: (1) several cases from the same applicant coming before the CART; (2) more sophisticated legal representation of applicant; (3) the raising of *Canadian Charter of Rights and Freedoms* arguments by applicants; (4) foreign applicants and witnesses; and (5) the increasing willingness of the parties and the CART to embrace tele- and video-conferencing for proceedings. Consequently, the CART must be more agile and flexible in managing cases so that it can deliver timely and cost-effective hearings and decisions. The CART's modernized Rules of Procedure will be pivotal in dealing fairly and quickly with increasing complexity arising from procedural developments.

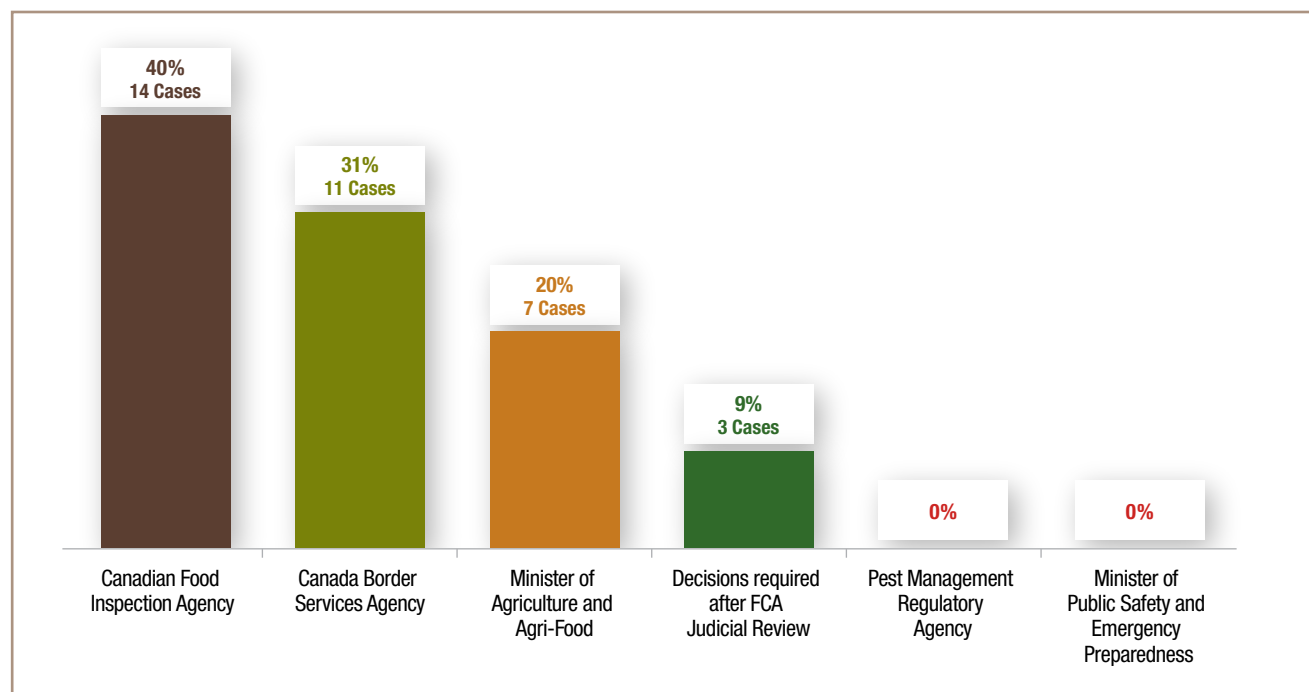
### **CART Services Becoming More Fully Integrated Into the ATSSC**

In the coming year, the CART expects to completely transfer its information technology and management functions to the ATSSC. This will complete the suite of support services provided by the ATSSC, which now include human resources, procurement, finance, payroll and accommodations. With all support services being provided by one service provider, the CART expects that it will be able to operate more efficiently with one responsive team supporting it.

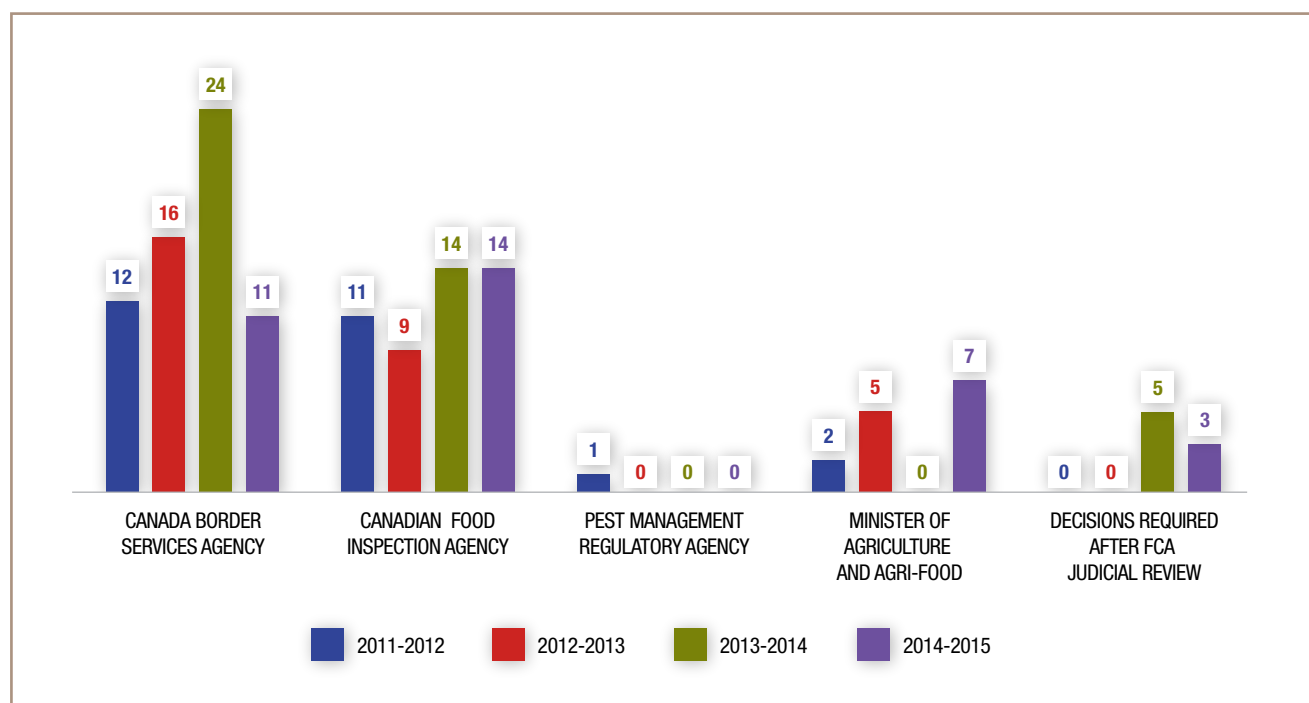


## Section 5: Tables and Graphs

### ■ Source of Work Coming to the CART in 2014-2015



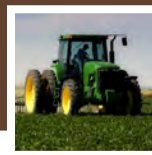
### ■ Source of Work Coming to the CART (Last Four Years)





## The CART's Caseload Based on Decision-Making Process

	2011-2012	2012-2013	2013-2014	2014-2015
<b>Total Active Cases</b>	<b>95</b>	<b>122</b>	<b>111</b>	<b>92</b>
Cases deemed inadmissible by statute	16	9	10	6
<b>Total Admissible Cases</b>	<b>79</b>	<b>113</b>	<b>101</b>	<b>86</b>
<b>Oral Hearings</b>	<b>52</b>	<b>73</b>	<b>74</b>	<b>59</b>
Hearing not yet scheduled	18	35	22	28
Hearing scheduled	10	6	9	9
Hearing completed awaiting decision	0	6	1	0
Cases withdrawn prior to a hearing	10	8	12	5
Cases withdrawn at or after hearing	0	1	0	0
Cases for reconsideration (FCA)	0	0	5	3
Decision issued after hearings	14	17	25	14
<b>Written Submissions</b>	<b>27</b>	<b>40</b>	<b>27</b>	<b>27</b>
Cases not yet assigned	2	5	9	5
Cases assigned, awaiting decision	6	11	2	0
Cases withdrawn	7	11	3	4
Decision issued after written submissions	12	13	13	18
<b>Total First Instance Decisions by Result</b>	<b>26</b>	<b>30</b>	<b>38</b>	<b>32</b>
<b>Oral Hearings</b>	<b>14</b>	<b>17</b>	<b>25</b>	<b>14</b>
Dismissed (decision of Agency upheld)	8	10	20	4
Allowed (decision of Agency overturned)	5	4	5	10
Dismissed (decision of Minister upheld)	0	0	0	0
Allowed (decision of Minister overturned)	1	3	0	0
<b>Written Submissions</b>	<b>12</b>	<b>13</b>	<b>13</b>	<b>18</b>
Dismissed (decision of Agency upheld)	10	6	5	8
Allowed (decision of Agency overturned)	1	5	8	3
Dismissed (decision of Minister upheld)	0	0	0	0
Allowed (decision of Minister overturned)	1	2	0	0
Reassessed (Minister's decision returned)	0	0	0	7
<b>FCA-Directed Reconsiderations</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>3</b>
<b>Total Decisions Rendered</b>	<b>26</b>	<b>30</b>	<b>43</b>	<b>35</b>



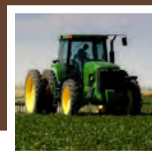
## ■ The CART's Decisions by Language, Source and Result

Number of decisions	2011-2012	2012-2013	2013-2014	2014-2015
<b>Language (total)</b>	<b>26</b>	<b>30</b>	<b>43</b>	<b>35</b>
Oral hearings	14	17	25	14
English	12	10	19	12
French	2	7	6	2
<b>Written submissions</b>	<b>12</b>	<b>13</b>	<b>13</b>	<b>18</b>
English	8	6	11	13
French	4	7	2	5
<b>FCA-Directed Reconsiderations</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>3</b>
English	0	0	2	3
French	0	0	3	0
<b>Source (total)</b>	<b>26</b>	<b>30</b>	<b>43</b>	<b>35</b>
<b>CFIA</b>	<b>11</b>	<b>9</b>	<b>14</b>	<b>14</b>
Oral hearings	8	1	10	11
Written submissions	3	8	4	3
<b>CBSA</b>	<b>12</b>	<b>16</b>	<b>24</b>	<b>11</b>
Oral hearings	4	13	15	3
Written submissions	8	3	9	8
<b>PMRA</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
Oral hearings	1	0	0	0
Written submissions	0	0	0	0
<b>Minister of AAF</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>7</b>
Oral hearings	1	3	0	0
Written submissions	1	2	0	7
<b>FCA-Directed Reconsiderations</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>3</b>
Oral hearings	0	0	0	0
Written submissions	0	0	5	3

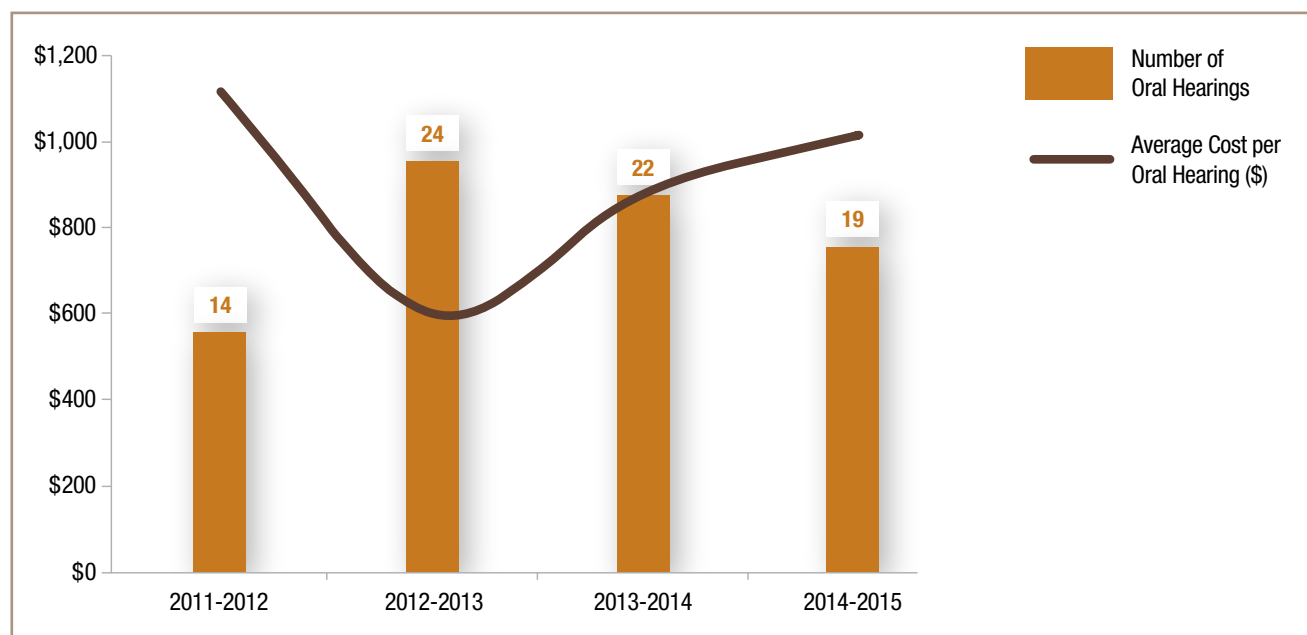




Number of decisions	2011-2012	2012-2013	2013-2014	2014-2015
<b>Result (total) <i>not including reconsiderations</i></b>	<b>26</b>	<b>30</b>	<b>38</b>	<b>32</b>
<b>Notices of Violation from CFIA</b>	<b>11</b>	<b>9</b>	<b>14</b>	<b>14</b>
Upheld	8	6	9	4
Dismissed	3	3	5	10
<b>Notices of Violation from CBSA</b>	<b>12</b>	<b>16</b>	<b>24</b>	<b>11</b>
Upheld	10	10	15	8
Dismissed	2	6	9	3
<b>Notices of Violation from PMRA</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
Upheld	0	0	0	0
Dismissed	1	0	0	0
<b>Decisions by Minister of AAF</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>7</b>
Confirmed	0	0	0	0
Varied or set aside	2	5	0	0
Returned by Tribunal to Minister for reassessment	0	0	0	7
<b>Decisions by Minister of Health</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Confirmed	0	0	0	0
Varied or set aside	0	0	0	0



### ■ Oral Hearings and Average Cost per Hearing (Last Four Years)



### ■ The CART's Expenditures

	2011-2012	2012-2013	2013-2014	2014-2015
Salaries & Benefits	328,652	342,218	350,753	343,102
Hearing & Travel Expenses	15,795	14,600	19,553	19,461
Property, Equipment Rental & Maintenance	39,119	39,286	41,715	44,027
Postage, Courier & Telecommunications	1,062	55	442	2,703
Publishing, Printing & Outreach	2,605	4,962	7,264	6,451
Training, Meetings & Conferences	3,750	7,832	5,300	7,760
Professional, Special & Contract Services	87,189	49,843	97,119	59,687
Materials, Supplies & Related Misc. Expenses	13,781	17,818	17,987	24,787
<b>Total</b>	<b>491,953</b>	<b>476,614</b>	<b>540,133</b>	<b>507,978</b>
Special Projects – Procedural Rules Project Services	12,626	46,000	33,913	15,326
<b>Grand Total</b>	<b>504,579</b>	<b>522,614</b>	<b>574,046</b>	<b>523,304</b>



## ■ How to Contact the CART



The CART's offices in Ottawa

### **Call our office**

613-792-2087

### **Send us a fax**

613-792-2088

### **Send us an email**

[infotribunal@cart-crac.gc.ca](mailto:infotribunal@cart-crac.gc.ca)

### **Follow us on Twitter**

[http://twitter.com/cart\\_crac](http://twitter.com/cart_crac)

### **Mail us**

(by registered mail if applying for review)

Canada Agricultural Review Tribunal  
960 Carling Avenue  
Central Experimental Farm  
Birch Drive, Building 60  
Ottawa, Ontario  
K1A 0C6

### **Website**

<http://cart-crac.gc.ca>

### **Decisions**

<http://decisions.cart-crac.gc.ca/cart-crac/en/nav.do>