

CANADA AGRICULTURAL REVIEW TRIBUNAL ANNUAL REPORT



2015-2016







TABLE OF CONTENTS

Message From the Chairperson..... 5

Contact the Tribunal..... 31

Appendix – New Rules of the CART..... 32

SECTION 01

About the CART, Our Values and Activities

Pages 6-13

SECTION 02

Reviewing the 2015-2016 Fiscal Year

Pages 14-21

SECTION 03

Opportunities and Challenges

Pages 22-23

SECTION 04

Tables and Graphs

Pages 24-29



MESSAGE FROM THE CHAIRPERSON



2015-2016 HIGHLIGHTS

As Chairperson of the Canada Agricultural Review Tribunal (CART), it is my pleasure to report to you on the various activities, highlights and challenges at the CART in this recently concluded fiscal year of April 1, 2015 to March 31, 2016. In the following pages, we outline the details of the CART's activities this year.

Overall, the CART continues to receive a steady stream of cases, to experience a rich and evolving array of legal issues, and to be blessed with a productive and energetic staff complement.

Our caseload comes from persons challenging Notices of Violation issued to them by the Canadian Food Inspection Agency, the Canada Border Services Agency or the Pest Management Regulatory Agency of Health Canada. While these agencies collectively issue over 5,000 such notices annually, it is difficult to predict, in any given year, how many requests for review will come to the CART. Statistically though, the CART carries approximately 100 cases per year. More precisely, this year the CART had a slight increase in caseload with 98 cases compared to 92 cases last year.

A highlight of 2015-2016 was the enactment of a new set of procedural rules for the CART. These new rules, which were more than four years in the drafting and approval stage, replaced the first set of rules enacted in 1999.

The CART's new rules (reproduced in the Appendix to this report) came into force on May 8, 2015. The new rules, along with increasing case law from the Federal Court of Appeal and the CART itself, now offer a clearer and more complete legal understanding of how the Tribunal is to operate and how it will approach the cases that come before it and the decisions it issues.

Finally, this year marked the first full year of the CART operating with a staff complement entirely sourced from the federal Administrative Tribunals Support Service of Canada (ATSSC). With fuller access to ATSSC's central services and with specific access to the ATSSC's CART Secretariat, the Tribunal has been able to provide improved service to the parties appearing before it and to Canadians generally interested in the operation of the CART in the justice system of Canada.

I am excited by, and look forward to, my ongoing role of providing solid leadership and legal excellence at the CART in 2016-2017.

Don Buckingham

June 2016



SECTION

ABOUT THE CART

OUR VALUES AND ACTIVITIES

Our Working Philosophy – The CART’s Commitment to Canadians

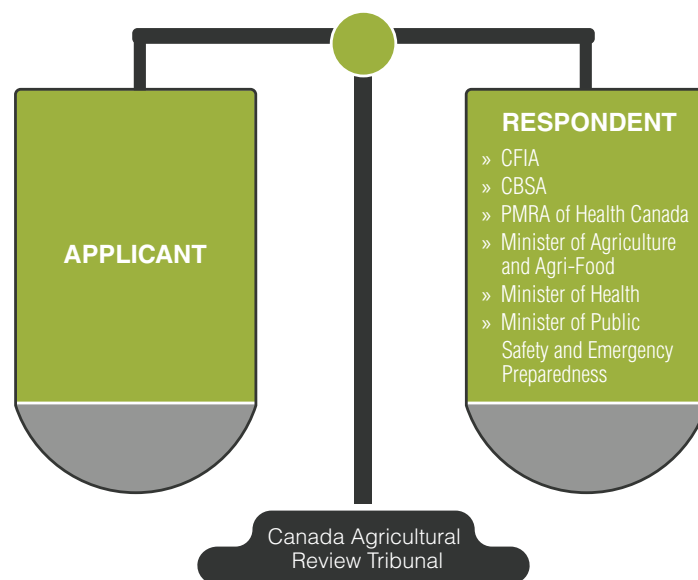
The **vision** of the Canada Agricultural Review Tribunal (CART) is to ensure the fairness, reliability and integrity of the administrative monetary penalties (AMPs) system used by a range of federal Agencies to enhance compliance with agriculture and agri-food statutes. The CART seeks to balance the rights of Canadians receiving such penalties with the responsibilities of federal regulators who issue the penalties to protect human, animal and plant health.

THE CART’S VALUES:

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

Canadians a forum to challenge the validity of the violations and fines levied against them. Through the exercise of its review powers, the CART may uphold, vary or set aside federal Agencies’ and Ministers’ enforcement of agriculture and agri-food AMPs for agriculture and food violations.

Our **mission** is to provide oversight of the use of AMPs by giving



The CART's **mandate** is to provide independent, neutral, cost-effective and timely review of the validity of AMPs issued to any person by a federal Agency in the field of agriculture and agri-food. As an independent quasi-judicial body, the CART maintains an arm's length relationship from Agriculture and Agri-Food Canada, Health Canada, Public Safety Canada and their Ministers.

The CART is dedicated to safeguarding the vibrancy and sustainability of Canadian agriculture.



A large, cylindrical hay bale sits in a field of golden-brown crops under a sunset sky. In the background, other smaller hay bales are visible in a field, and distant hills are silhouetted against the orange and pink light of the setting sun. A dark, semi-transparent box with white text is overlaid on the left side of the image.

**Federal Agencies under
the CART's oversight
includes the Canadian
Food Inspection Agency
(CFIA), the Canada
Border Services Agency
(CBSA) and the Pest
Management Regulatory
Agency of Health
Canada (PMRA).**

ABOUT THE PERSONNEL OF THE CART



Some of the personnel of the CART

Donald Buckingham

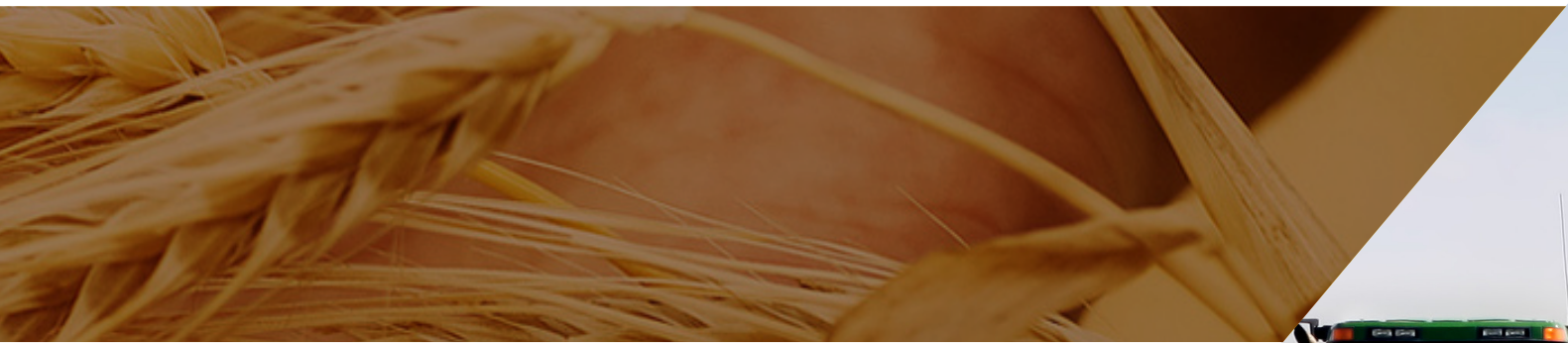
(LL.B., Dip. Int. Law (Cambridge), LL.D.) – Chairperson

Before assuming the position of Chairperson of the CART on July 1, 2009, Dr. Buckingham acted as a lawyer, law professor, author and consultant in the areas of agricultural law, food law and international trade in agricultural products. 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 2009 and 2014) and *Halsbury's Laws of Canada: Food* (LexisNexis 2009 and 2014). After having previously acted as the chair of the Heads of Federal Administrative Tribunals Forum, he was elected, in 2015, president of the Council of Canadian Administrative Tribunals.

Bruce La Rochelle

(LL.B., Ph.D., C.P.A.) – Part-time Member

Bruce La Rochelle spent his childhood in Saskatchewan and later qualified in Ontario as a lawyer and Chartered Professional Accountant. In addition to being a part-time Member at the CART, he practices law in Ottawa and is a part-time instructor at the Telfer School of Management. His doctorate, from the Schulich School of Business, is in Organizational Behaviour. His dissertation is a study of dimensions of regulation.



Stuart Campbell

(B.Sc, M.Sc., P. Eng.) – Executive Director

In December 2015, Stuart Campbell took on the role of Executive Director of the Secretariat to the CART. Stuart is also the Executive Director of the Secretariat of the Specific Claims Tribunal, the Director General of Business Transformation and Chief Information Officer for ATSSC. Since joining the federal government in 1991 at Agriculture Canada, Stuart has worked in six federal departments. He has extensive experience in both operations and policy roles, including program evaluation, food safety, environmental engineering and program delivery. Before the ATSSC was established, he was the Registrar and Deputy Head of the Public Servants Disclosure Protection Tribunal (PSDPT).

Lise Sabourin

Senior Registry Officer

With over 12 years of experience in a quasi-judicial environment in an Executive Office, Lise Sabourin started at the CART in September 2007 as an Administrative Assistant. In 2012, her position was reclassified as the Administration, Finance and Registry Services Coordinator and again in early 2016, as the Senior Registry Officer. Her current position is the focal contact point for assigned cases and provides pertinent information, advice and guidance to the Tribunal Members and all interested parties, as well as to members of the public.

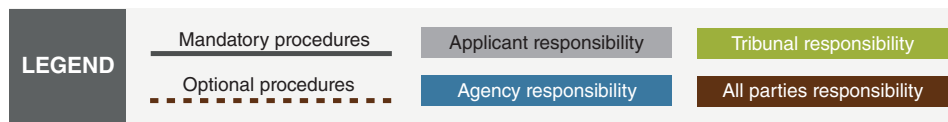
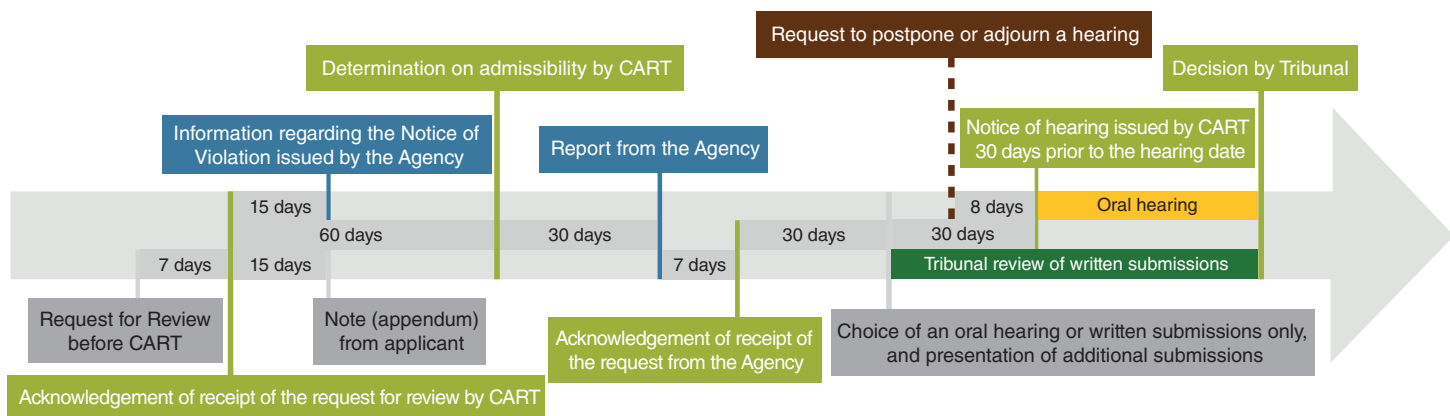


THE CART AT WORK

PROCESSING YOUR REQUEST FOR REVIEW

The CART performs two different types of review. After receiving a Notice of Violation (NOV) issued under the AMPs system, an applicant can choose to have the NOV reviewed by either the appropriate Minister or by the CART. The CART will either review the NOV directly or may, after the Minister has rendered a decision, be asked to review the Minister's decision.

The primary role of the CART is to make quasi-judicial decisions regarding the validity of AMPs issued by the CFIA, CBSA and PMRA. In this decision-making process, there are several steps and responsibilities for all involved parties (applicant, respondent and the Tribunal itself). Throughout the process, the CART seeks to provide a fair, effective and efficient process that takes into account the specific facts of the case, as well as the applicable law.



A photograph of a wheat field at sunset, with a large, stylized number '13' overlaid in the foreground. The number is composed of two nested, slightly offset rectangular shapes, one in a lighter shade than the other, creating a 3D effect. The background shows a golden field of wheat under a bright, hazy sky with the sun low on the horizon.

**To ensure accessibility to
Canadians, the CART offers
96 possible hearing
locations in the 10 provinces
and 3 territories across Canada.**



SECTION

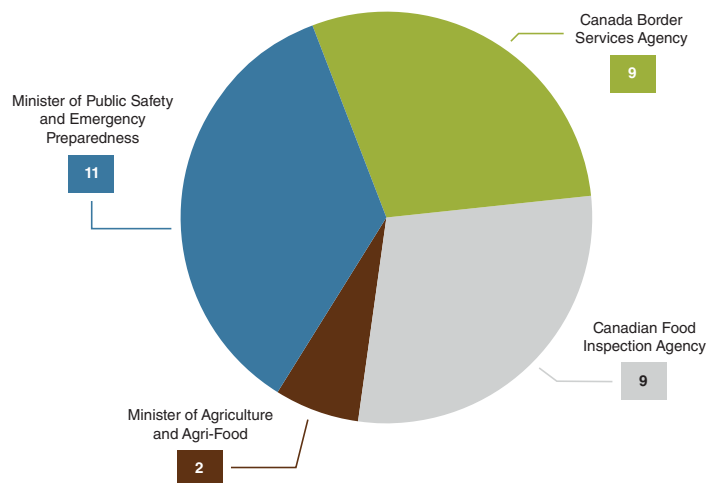
REVIEWING THE 2015-2016 FISCAL YEAR

AN OVERVIEW OF 2015-2016 CASELOAD AND DECISIONS

During the past fiscal year, the CART issued 31 decisions, each involving new applicant for reviews stemming from federal agency enforcement action including: 9 from the Canada Border Services Agency (CBSA) and 9 from Canadian Food Inspection Agency (CFIA) regarding Notices of Violation, as well as 13 requests for review of a Minister's decision. Here are a few highlights of the past fiscal year:

- » 77% of the Agency's NOVs were upheld by the CART, while 23% were dismissed or varied.
- » 85% of the Minister's decisions reviewed came from the Minister of Public Safety and Emergency Preparedness, a new actor before the CART, while 15% were from the Minister of Agriculture and Agri-Food.
- » 65% of the applicants chose English as the language of the proceeding before the CART, while 35% of the applicants chose French.
- » 42% of the cases decided proceeded by oral hearing, while 58% were by written submissions alone.

The 31 CART's Decisions in 2015-2016, by Institution of Origin



This year, the CART managed a caseload of 98 active cases and oversaw 182 procedural matters. Among the 31 decisions issued by the CART, 20 were related to travellers who failed to declare certain food or agricultural products when entering Canada.

A map of Canada with 12 red location pins indicating hearing locations. The pins are distributed across the country, with a concentration in the eastern provinces and one in the west. A large, semi-transparent green box is overlaid on the western part of the map, containing text.

**In 2015-2016,
the CART Members
travelled a collective
25,918 kilometers
across Canada to
conduct 20 hearings
in 12 cities.**



SAMPLE OF THE CART DECISIONS

**Charter challenge dismissed:
Mario Côté inc. v. Canada
(Canadian Food Inspection Agency),
2015 CART 25**

Unlike most cases, which centre on a specific violation, this case concerns a constitutional challenge to the CART's oversight of the AMPs system more generally, and the possibility that it interferes with individual rights protected by the *Canadian Charter of Rights and Freedoms* (Charter).

The CFIA alleged that Mario Côté inc., which transports animals between farms and slaughterhouses in Quebec, committed two violations in 2013 by causing pigs undue suffering under paragraph 138(2)(a) of the *Health of Animals Regulations*. In response, Mario Côté inc. asked the CART for a review arguing that certain provisions of the *AMP Act* infringe the *Charter* by limiting the defences that applicants may raise and by setting a lower standard of proof for the CFIA (balance of probabilities), thus making it easier to prove that violations were committed. Specifically, Mario Côté inc. invoked the security of the person (section 7 of the *Charter*) and the right to a fair trial (paragraph 11(d) of the *Charter*) in this claim.

The CART found that the CFIA had proved both violations and upheld the monetary penalties. Since AMPs are not criminal in nature, given that alleged violators do not suffer penal consequences and are not charged with an 'offence', subsection 11(d) of the *Charter* does not protect alleged AMP violators. Furthermore, section 7 of the *Charter* does not pure protect economic rights. Mario Côté inc. has sought judicial review of this decision to the Federal Court of Appeal.

**New standard for reviewing Ministers' decisions:
Hachey Livestock Transport Ltd. v. Canada
(Minister of Agriculture and Agri-Food),
2015 CART 19**

This case represents an evolution, in tandem with current trends in administrative law, in the way that the CART reviews Ministers' decisions. The CART's legislative regime allows applicants that requested an initial review of an NOV from a Minister to subsequently come to the CART for a review of the Minister's decision.

In April 2014, the Minister of Agriculture and Agri-Food upheld the NOV issued to Hachey Livestock Transport Ltd. (Hachey Livestock) for a 2011 incident in which eight pigs were found dead in a truck amongst pieces of steel from a collapsed compartment floor. The CFIA alleged that Hachey Livestock transported pigs in vehicles in which insecure fittings or projections were likely to injure the animals contrary to paragraph 143(1)(b) of the *Health of Animals Regulations*.

In reaching its decision, the CART first examined how it should review a Minister's decision. The CART concluded that it should complete a full and independent review of the facts with little or no deference to the Minister's findings. Ultimately, when the CART undertook this review, it set aside the Minister's decision because the Canadian Food Inspection Agency had failed to provide sufficient evidence to prove the violation had been committed.

The CART initiative goes beyond the legal process of review; in addition to its core mandate, the CART engages in significant ancillary activities.

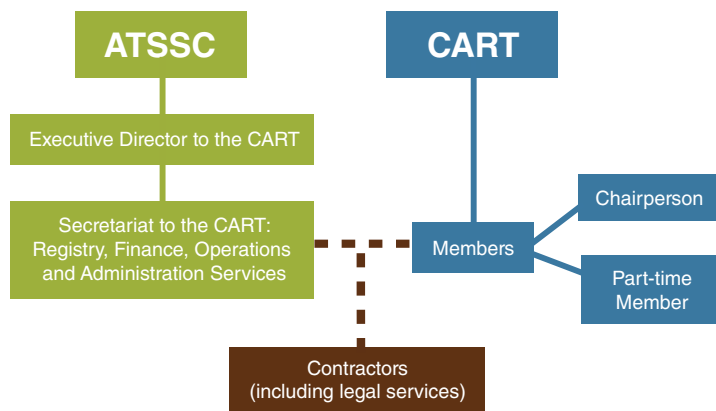


MANAGING REGISTRY SERVICES, OPERATIONS AND ADMINISTRATION

WORKING WITH THE ATSSC

Since 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 did not affect the mandate of the CART as all the files continue to be submitted and managed in accordance with the Tribunal's existing procedures.

The ATSSC provides the CART with an integrated administrative approach, facilitating the CART's daily activities.



CART Organizational Chart (as of March 31st, 2016)

THE CART'S LEADERSHIP – DEVELOPING BEST PRACTICES

By advancing its electronic identity through the CART website and media, the Tribunal strives to be a leading Canadian administrative tribunal.

NEW RULES OF THE CART

The CART achieved a significant milestone with the coming into force of the Tribunal's new Rules of Procedure. The *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* were approved and registered by the Federal Cabinet in May 2015. The objectives of the new Rules of Procedure are to clarify the procedural rights of parties appearing before the CART and to permit the Tribunal to apply transparent rules in a manner leading to more fair, expeditious and cost-effective hearings. To consult the new Rules, please see the Appendix in the present report, or online at the CART's website (<http://cart-crac.gc.ca/>).

DID YOU KNOW
that it has been over
15 years since the
**CART Rules of
Procedure** have
been revised?

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 them throughout the process. The CART personnel, however, is not authorized to provide legal advice, but will direct the applicants who are self-represented to the Tribunal's informative Guide provided for that purpose. This updated document, as well as the related series of Practice Notes, can be found online at: <http://cart-crac.gc.ca/>.

New: During the past fiscal year, the Guide for Self-Represented Litigants was updated to become more user-friendly

EDUCATION, TRAINING AND OUTREACH

The CART greatly values the role and contribution of articling students and interns. This year, the CART had the good fortune of welcoming three student interns as part of its Tribunal-Internship Program. In addition, the CART hosted its third articling student. These students, full of enthusiasm and innovative ideas, bring energy and additional value to the CART, while receiving practical work experience in a real-life administrative tribunal setting.

“““ My internship at the Tribunal was incredibly valuable. [...] I especially appreciated the ability to speak with the decision makers about conducting hearings and rendering decisions.

Leanna Reiss,
1st year JD student, University of
Ottawa, Summer intern 2015

“““ I can only think of positive things to say about CART. This experience taught me so much in such a short amount of time. I feel incredibly lucky to have had this educational experience in an office full of so many wonderful individuals.

Stephanie Pepneck,
4th year Arts student, Trinity Western
University, Fall intern 2015

“““ Interning at the CART was the highlight of my summer! [...] I particularly developed my legal research and writing skills, [...] and gained a deeper understanding of regulatory compliance. [...] I highly recommend an internship at the CART.

Anisha Visvanatha,
1st year JD student, University of
Ottawa, Summer intern 2015

“““ By the time that I attend my call to the bar ceremony, I will have benefited tremendously from relationships cultivated, as well as knowledge acquired, in a heritage farmhouse steeped in traditions derived from Canada's scientific and legal heritage.

Samina Essajee,
Articling student, Law Society of
Upper Canada, 2015-2016

The CART outreach has been promoted with another original project. Based on a suggestion from the CART part-time Member, letters were sent to law schools and legal clinics across Canada to encourage law students to represent parties before the Tribunal. The CART is looking forward to improving support for self-represented litigants and offering law students some early practical expertise in administrative law.

In the last fiscal year, the CART contacted 23 Canadian Law Schools and Legal Clinics to promote a new promising initiative.

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 Tribunal. While the CART is an independent tribunal, it does not exist in a vacuum. The Chairperson continues to nurture structural connections with the Ministry of Agriculture and Agri-Food and the ATSSC. As the Council of Canadian Administrative Tribunal's president (CCAT), CART's chairperson hosted the 7th International and 32th Annual Symposium organized by the CCAT in Ottawa in May 2016, addressing national and international topics related to administrative justice and tribunal excellence, and thus continues to build relationships in the administrative law community across Canada.





SECTION 3



OPPORTUNITIES AND CHALLENGES

INCREASING DIVERSITY AND COMPLEXITY OF THE CART'S WORK

The CART caseload in 2015-2016 was slightly higher than the one experienced in 2014-2015. Yet, 2015-2016 yielded fewer decisions (31 compared to 35). Actually, masked within these numbers is the fact that, going into the fiscal year 2016-2017, 16 cases are being held in abeyance pending a review of the CART's decision in *Mario Côté inc. v. Canada (CFIA)*, 2015 CART 25.

This judicial review, currently before the Federal Court of Appeal, challenges the constitutional foundation of the AMPs system under which the CART operates.

With more cases originating from new aspects of the CART's mandate, along with more sophisticated legal representation of applicants, the increasingly common appearance of foreign applicants and witnesses, as well as increasing willingness of the parties and the CART to embrace electronic conferencing for proceedings, a new

series of challenges awaits the Tribunal. As a result, a diversified and increasingly complex caseload is expected in the next fiscal year. The counterbalance to this complexity is the CART's adoption of a more fluid, fair and effective case management system with the timely resolution of procedural motions based on the CART's new Rules of Procedure.

Overall, this set of challenges provides the CART with an excellent opportunity, as well as the responsibility, for oversight of government action in the Canadian agriculture and agri-food sectors.



SECTION 4

The CART's Caseload based on Decision-Making Process

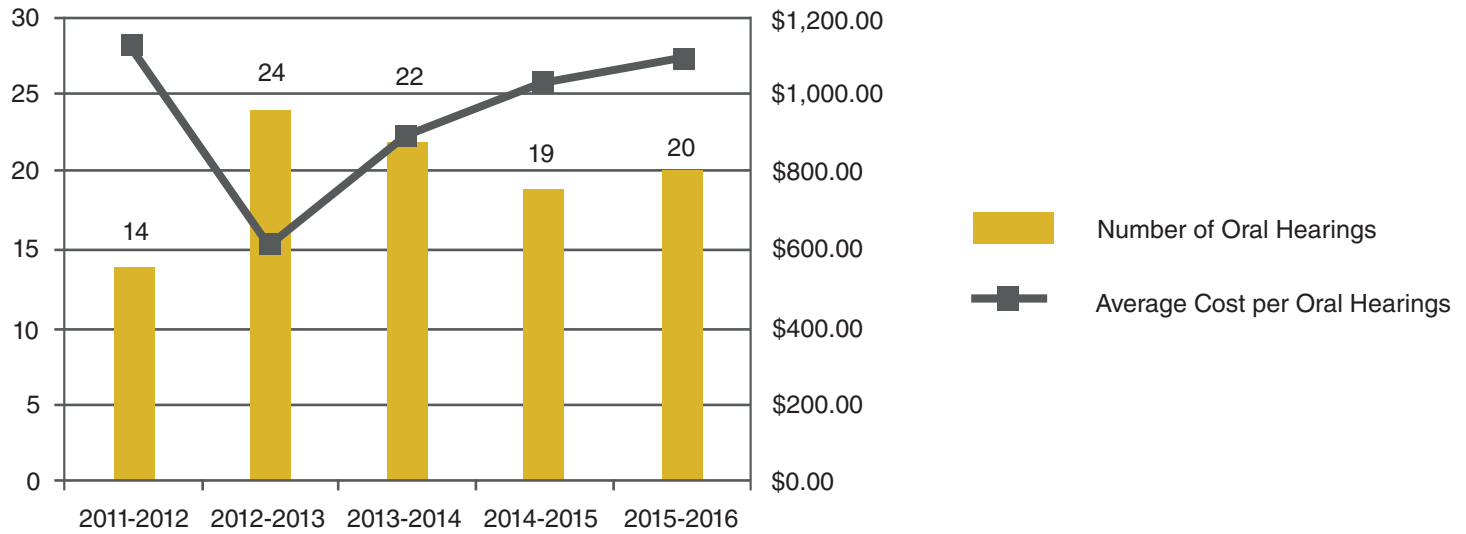
	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
Total Active Cases	95	122	111	92	98
Cases Deemed Inadmissible by Statute	16	9	10	6	8
Total Cases Requiring Determinations	79	113	101	86	90
Oral Hearings	52	73	74	59	60
Hearing not yet scheduled	18	35	22	28	33
Hearing scheduled	10	6	9	9	6
Hearing completed awaiting decision	0	6	1	0	1
Cases withdrawn prior to a hearing	10	8	12	5	7
Cases withdrawn at or after hearing	0	1	0	0	0
Cases for reconsideration (FCA)	0	0	5	3	0
Hearing cases where decision issued	14	17	25	14	13
Written Submissions	27	40	27	27	30
Cases not yet assigned	2	5	9	5	5
Cases assigned, awaiting decision	6	11	2	0	1
Cases withdrawn	7	11	3	4	6
Written cases where decision issued	12	13	13	18	18
Total First Instance Decisions by Result	26	30	38	32	31
Oral Hearings	14	17	25	14	13
Dismissed (decision of Agency upheld)	8	10	20	4	6
Allowed (decision of Agency overturned)	5	4	5	10	3
Dismissed (decision of Minister upheld)	0	0	0	0	3
Allowed (decision of Minister overturned)	1	3	0	0	1
Written Submissions	12	13	13	18	18
Dismissed (decision of Agency upheld)	10	6	5	8	8
Allowed (decision of Agency overturned)	1	5	8	3	1
Dismissed (decision of Minister upheld)	0	0	0	0	7
Allowed (decision of Minister overturned)	1	2	0	0	2
Reassessed (decision Minister returned)	0	0	0	7	0
FCA-Directed Reconsiderations by the Tribunal	0	0	5	3	0
Total Decisions Rendered	26	30	43	35	31

The CART's Decisions by Language, Source and Result

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
Language (total)	26	30	43	35	31
Oral Hearings	14	17	25	14	13
English	12	10	19	12	8
French	2	7	6	2	5
Written Submissions	12	13	13	18	18
English	8	6	11	13	12
French	4	7	2	5	6
FCA-Directed Reconsiderations	0	0	5	3	0
English	0	0	2	3	0
French	0	0	3	0	0
Source (total)	26	30	43	35	31
CFIA	11	9	14	14	9
Oral Hearings	8	1	10	11	6
Written Submissions	3	8	4	3	3
CBSA	12	16	24	11	9
Oral Hearings	4	13	15	3	3
Written Submissions	8	3	9	8	6
PMRA	1	0	0	0	0
Oral Hearings	1	0	0	0	0
Written Submissions	0	0	0	0	0
Minister of AAFC	2	5	0	7	2
Oral Hearings	1	3	0	0	2
Written Submissions	1	2	0	7	0
Minister of PSEP	X	X	X	X	11
Oral Hearings	X	X	X	X	2
Written Submissions	X	X	X	X	9
FCA-Directed Reconsiderations	0	0	5	3	0
Oral Hearings	0	0	0	0	0
Written Submissions	0	0	5	3	0

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
Result (total) not including reconsiderations	26	30	38	32	31
Notices of Violation from CFIA	11	9	14	14	9
Upheld	8	6	9	4	7
Dismissed	3	3	5	10	2
Notices of Violation from CBSA	12	16	24	11	9
Upheld	10	10	15	8	7
Dismissed	2	6	9	3	2
Notices of Violation from PMRA	1	0	0	0	0
Upheld	0	0	0	0	0
Dismissed	1	0	0	0	0
Decisions by Minister of AAFC	2	5	0	7	2
Confirmed	0	0	0	0	1
Varied or set aside	2	5	0	0	1
Returned by Tribunal to Minister for reassessment	0	0	0	7	0
Decisions by Minister of Health	0	0	0	0	0
Confirmed	0	0	0	0	0
Varied or set aside	0	0	0	0	0
Decision by Minister of PSEP	X	X	X	X	11
Confirmed	X	X	X	X	9
Varied or set aside	X	X	X	X	2

Oral Hearings and Average Cost per Hearing



The CART's Expenditures

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
Salaries and Benefits	328,652	342,218	350,753	343,102	353,858
Hearing & Travel Expenses	15,795	14,600	19,553	19,461	21,744
Property, Equipment Rental & Maintenance	39,119	39,286	41,715	44,027	4,999
Postage, Courier & Telecommunications	1,062	55	442	2,703	756
Publishing, Printing, Outreach	2,605	4,962	7,264	6,451	6,520
Training, Meetings & Conferences	3,750	7,832	5,300	7,760	9,895
Professional, Special & Contract Services	87,189	49,843	97,119	59,687	147,762
Materials, Supplies & Related Misc. Expenses	13,781	17,818	17,987	24,787	17,738
Total	491,953	476,614	540,133	507,978	563,272
Special Projects – Procedural Rules Project Services	12,626	46,000	33,913	15,326	0
Grand Total	504,579	522,614	574,046	523,304	563,272



CONTACT THE TRIBUNAL



Call our office:

613-792-2087



Send us a fax:

613-792-2088



Send mail to us:

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

Stay Connected!

Send us an email

infotribunal@cart-crac.gc.ca

Website:

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

RSS Feeds:

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

Decisions:

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

APPENDIX

NEW RULES OF THE CART

Rules of the Review Tribunal (Canada Agricultural Review Tribunal)

SOR/2015-103

CANADA AGRICULTURAL PRODUCTS ACT

Registration 2015-05-08

Rules of the Review Tribunal (Canada Agricultural Review Tribunal)

P.C. 2015-565 2015-05-07

Pursuant to subsection 8(3) of the *Canada Agricultural Products Act*, the Review Tribunal, continued by subsection 4.1(1) of that Act, makes the annexed *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)*.

Ottawa, March 27, 2015

DONALD BUCKINGHAM *Chairperson of the Review Tribunal*

His Excellency the Governor General in Council, on the recommendation of the Minister of Agriculture and Agri-Food, pursuant to subsection 8(3) of the *Canada Agricultural Products Act*, approves the making of the annexed *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* by the Review Tribunal.

PART 1 – APPLICATION AND INTERPRETATION

1. In the event of any inconsistency between these Rules and an Act of Parliament or any regulation made under such an Act, that Act or regulation prevails to the extent of the inconsistency.
2. In these Rules, *holiday* means a Saturday, Sunday or any other day defined as a holiday in subsection 35(1) of the *Interpretation Act*.
3. These Rules are to be interpreted and applied in order to permit the just, most expeditious and least expensive conduct of proceedings.
4. The Tribunal is to determine any procedural matter not provided for in these Rules in a manner that is consistent with these Rules.
5. Any time limit provided by these Rules or fixed by an order of the Tribunal that ends on a holiday is extended to the next day that is not a holiday.
6. The Tribunal may extend any time limit fixed in these Rules before or after the end of the time limit.

PART 2 – RULES APPLICABLE TO ALL PROCEEDINGS

7. All Tribunal proceedings are conducted in English or French, depending on the language chosen by the applicant.
8. (1) A party may use English or French in any oral or written communication with the Tribunal. However, once the applicant has selected a language, all oral and written communications, including in documents and exhibits, must be made in that language, unless the parties consent to do otherwise.

(2) If the applicant does not indicate their choice of official language in their request, all oral and written communications, including in documents and exhibits, must be made in the language in which the request to the Tribunal is made. That language is deemed to be the language for the proceeding.

(3) If a party requires interpretation services in order to participate in or have a witness testify at a hearing in the official language in which the proceeding is conducted, the party must, at least seven days before the hearing,
 - (a) notify the Tribunal of the requirement in writing; and
 - (b) indicate whether the party requires interpretation services from a language other than English or French.
(4) A party who requires interpretation services from a language other than English or French must pay for the costs of those services.
9. If the application of any rule would cause unfairness to a party, the Tribunal may release the party from the obligation of complying with the rule.
10. (1) The Tribunal may draw the attention of a party to any gap in the evidence of its case or any non-compliance with these Rules.

(2) On request, the Tribunal may permit the party to remedy any gap in its evidence or non-compliance on any conditions that the Tribunal considers just, before the end of the proceedings.
11. (1) On request, the Tribunal may order that documents and exhibits that are to be filed be treated as confidential.

(2) The request must set out
 - (a) the reasons for the confidential treatment of the documents and exhibits; and
 - (b) the nature and extent of potential harm that could result from the disclosure of the documents and exhibits.
(3) Before making an order under subrule (1), the Tribunal must be satisfied that the documents and exhibits are to be treated as confidential, given the public interest in open and accessible proceedings.
12. For the purposes of rules 15 to 17, *document* does not include a request for review.
13. Any request for review made under section 8, 9 or 11 or subsection 12(2) or 13(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* that was transmitted by fax or by electronic means must also be sent by registered mail to the Tribunal within 15 days after the day on which they are transmitted.
14. A party must notify the Tribunal of their full name, civic address, mailing address if different from their civic address and at least one of their telephone number, fax number and email address, and of any change in their contact information, without delay.

15. (1) A document may be filed with the Tribunal in any of the following manners:
- (a) by hand delivery to the Tribunal's head office;
 - (b) by registered mail to the Tribunal's mailing address;
 - (c) by courier to the Tribunal's mailing address;
 - (d) by fax or other electronic means to the Tribunal; or
 - (e) by ordinary mail to the Tribunal's mailing address.
- (2) A document that is filed with the Tribunal after 5:00 p.m., local time of the place where the sender is located, is considered to have been received on the next day that is not a holiday.
16. (1) A document may be served on a party in any of the following manners:
- (a) by hand delivery to the person that is the party;
 - (b) by registered mail to the party's mailing address;
 - (c) by courier to the party's mailing address;
 - (d) by fax or other electronic means to the party; or
 - (e) by ordinary mail to the party's mailing address.
- (2) A document may be served on a party who is represented by legal counsel or another duly authorized representative by serving it on that party's legal counsel or duly authorized representative.
- (3) A document that is served on a party after 5:00 p.m., local time of the place where the sender is located, is deemed to have been received on the next day that is not a holiday.
17. (1) The filing or service of a document by registered mail or courier is effective on the day indicated on the receipt issued by the post office or courier service, as the case may be.
- (2) The filing or service of a document by fax or other electronic means is effective on the day on which it is sent.
- (3) The filing or service of a document by ordinary mail is effective on the day indicated on the postmark stamped on the envelope or, if no postmark is legible, on the day of the receipt.
18. (1) An individual may act in person or be represented by legal counsel or by another duly authorized representative.
- (2) A corporation, partnership or unincorporated association must be represented by legal counsel or by an officer, partner or member.
- (3) A party who is represented by legal counsel or another duly authorized representative must notify the Tribunal of the legal counsel or representative's contact information and of any changes to such information within seven days after the day on which the change is made.
- (4) A party may change its legal counsel or representative by notifying the Tribunal of the change and the contact information of the new legal counsel or representative within seven days after the day on which that change is made.
19. (1) Proceedings of the Tribunal are public.
- (2) The Tribunal may order that a proceeding be held *in camera* at the request of any party if the party satisfies the Tribunal that the circumstances of the case warrant the request.

20. The Tribunal may order that a hearing, or any other step in a proceeding, be conducted in whole or in part by teleconference, videoconference or any other form of electronic communication.
21. (1) A party may present evidence by affidavit by serving the affidavit on the other party and filing it with the Tribunal,
- (a) in the case of a proceeding by written submissions, within 30 days after the expiry of the time limits set out in rules 36 or 52; or
- (b) in the case of a proceeding by oral hearing, at least 15 days before the hearing date.
- (2) A party who intends to present evidence by affidavit must ensure that the deponent of the affidavit is available for cross-examination. The timing of the cross-examination is to be decided on the parties' mutual consent or, if the parties do not consent, by the Tribunal.
- (3) A party who cross-examines the deponent of an affidavit must file the transcript of the cross-examination with the Tribunal within seven days after the day on which the cross-examination takes place.
22. The Tribunal may take notice of any matter in order to expedite any proceeding.
23. The Tribunal establishes the order of proceeding at the start of the oral hearing.
24. (1) The Tribunal may order witnesses to be excluded from the hearing while the other witnesses are called to give evidence.
- (2) Hearings before the Tribunal may be recorded.
25. (1) A person to be examined on an oral examination must take an oath or make a solemn affirmation before being examined.
- (2) A party at a hearing is entitled to examine their own witnesses, cross-examine any witnesses of the other party and re-examine their own witnesses on matters raised in cross-examination.
26. (1) A party that believes that a member of the Tribunal is not in a position to act impartially in a matter or is in a conflict of interest must immediately give written notice to the Tribunal, stating the reason for the opinion.
- (2) The Chairperson of the Tribunal must issue a decision within seven days after the day on which he or she receives a notice under subrule (1).
- (3) If the Chairperson determines that the member that was the subject of the notice is not in a position to act, the Chairperson must
- (a) exclude the member from the matter; and
- (b) give any directions that he or she considers necessary for the matter to be reconvened with a differently constituted Tribunal or order a new hearing.
27. If a member of the Tribunal feels that he or she is not in a position to act impartially or cannot review a matter due to a conflict of interest, the Chairperson must direct that the matter be reconvened with a differently constituted Tribunal or order a new hearing.

PART 3 – REVIEW OF NOTICES OF VIOLATION

28. This Part applies to all proceedings before the Tribunal initiated as a result of a request made in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* or the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations* under subsection 8(1), paragraph 9(2)(c) or paragraph 11(1)(b) of the *Agriculture and Agri-Food Administrative Penalties Act*.
29. Within seven days after the day on which the Tribunal receives a request referred to in rule 28, the Tribunal must send
- (a) an acknowledgement of receipt of the request for review to the applicant; and
 - (b) an acknowledgement of receipt of the request for review, along with a copy of the request for review, to the competent minister in relation to the violation or his or her delegated representative.
30. Within 15 days after the day on which the acknowledgement of receipt is sent, the Minister or his or her delegated representative must file with the Tribunal
- (a) proof of service of the notice of violation that is the subject of the review; and
 - (b) a statement that there is no monetary penalty set out by the notice of violation or, if there is one, that it has not already been paid by the applicant.
31. Within 15 days after the day on which a request referred in rule 28 is made, unless the following information is already contained in the applicant's request for review, the applicant must file with the Tribunal an addendum containing the following information:
- (a) the applicant's full name, civic address, mailing address if different from their civic address and at least one of their telephone number, fax number and email address;
 - (b) if the applicant is represented by a representative, written authority from the applicant for the representative to so act, as well as the representative's full name, civic address, mailing address if different from their civic address and at least one of their telephone number, fax number and email address;
 - (c) if the applicant is represented by legal counsel, their full name, civic address, mailing address if different from their civic address and at least one of their telephone number, fax number and email address;
 - (d) the applicant's reasons for the request, other than defences that are not allowed under subsection 18(1) of the *Agriculture and Agri-Food Administrative Penalties Act*, along with any supporting documents;
 - (e) the applicant's choice of official language for the proceeding; and
 - (f) a complete copy of the notice of violation issued by the Canadian Food Inspection Agency, Health Canada or the Canada Border Services Agency that is being challenged.
32. (1) The Tribunal must make a decision on the admissibility of a request for review within 60 days after the day on which the acknowledgement of receipt of the request is sent to the parties, and send that decision to the parties in writing without delay.
- (2) The Tribunal must, in coming to its decision on admissibility, consider any relevant factor, including whether

- (a) the Minister or his or her delegated representative has complied with all of the requirements of rule 30; and
 - (b) the applicant has complied with all of the requirements of rule 31.
33. The Minister or his or her delegated representative must, within 30 days after the day on which the Tribunal decides that the request for review is admissible,
- (a) serve on the applicant a report containing any information relating to the violation, along with any supporting documents, and, if applicable, a written confirmation of the Minister's refusal of the request to enter into a compliance agreement made under paragraph 9(2)(a) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*; and
 - (b) file the report, any supporting documents and, if applicable, the written confirmation of the refusal set out in paragraph (a), along with proof that the report, supporting documents and, if applicable, the written confirmation of the refusal set out in paragraph (a) have been served on the applicant, with the Tribunal.
34. Within seven days after the day on which the Tribunal receives the report, the Tribunal must send an acknowledgement of receipt to the parties.
35. Within 30 days after the day on which the report is served, the applicant must
- (a) indicate to the Tribunal whether they wish to proceed by way of oral hearing or by way of written submissions; and
 - (b) file any additional submissions in relation to the report with the Tribunal.
36. No further submissions are to be filed after
- (a) the expiry of the time limit for the filing of a Minister's report, if it has not been filed by the Minister or his or her delegated representative in accordance with rule 33;
 - (b) the filing of the applicant's additional submissions in accordance with rule 35; or
 - (c) the expiry of the time limit set out in rule 35 for the filing of the applicant's additional submissions, if none has been filed.
37. The Tribunal must, after the day on which no further submissions are to be filed in accordance with rule 36,
- (a) if a review is proceeding by way of written submissions, render a decision based on the documents and exhibits received from the parties; or
 - (b) if a review is proceeding by way of a hearing, send a notice of hearing to all parties at least 30 days before the hearing date.
38. At least 20 days before the hearing of a matter, each party must serve on the other party and file with the Tribunal a list of the witnesses it intends to call, along with their civic address, mailing address if different from their civic address and telephone number.
39. If one of the parties does not appear at the hearing, and if the Tribunal is satisfied that a notice of the hearing was sent to the most recent address on file of that party, the Tribunal may grant or dismiss the request for review, or proceed with the hearing in the party's absence and dispose of the review in any applicable manner referred to in section 14 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

40. (1) The Tribunal may postpone or adjourn a hearing on any terms that it considers appropriate.

(2) Any request for a postponement or an adjournment must be made at least 8 days before the hearing date.

41. The Tribunal may render a decision orally at the end of a hearing or it may reserve its decision until a later date.

42. The Tribunal must provide a decision in writing and send a copy of it to all parties without delay.

PART 4 – REVIEW OF MINISTER’S DECISIONS

43. This Part applies to all proceedings before the Tribunal initiated as a result of a request made in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* or the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations* under subsection 12(2) or paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Penalties Act*.

44. The parties may present new evidence only with the permission of the Tribunal.

45. Within seven days after the day on which the Tribunal receives a request referred to in rule 43, the Tribunal must send

(a) an acknowledgement of receipt of the request for review to the applicant; and

(b) an acknowledgement of receipt of the request, along with a copy of the applicant’s request for review, to the competent minister in relation to the violation or his or her delegated representative.

46. Within 15 days after the day on which the acknowledgement of receipt is sent, the Minister or his or her delegated representative must file with the Tribunal proof that the Minister’s decision that is subject to the review has been served on the applicant.

47. Within 15 days after the day on which a request referred to in rule 43 is made, unless the following information is already contained in the applicant’s request for review, the applicant must file with the Tribunal an addendum containing the following information:

(a) the applicant’s full name, civic address, mailing address if different from their civic address and at least one of their telephone number, fax number and email address;

(b) if the applicant is represented by a representative, written authority from the applicant for the representative to so act, as well as the representative’s full name, civic address, mailing address if different from their civic address and at least one of their telephone number, fax number and email address;

(c) if the applicant is represented by legal counsel, their full name, civic address, mailing address if different from their civic address and at least one or more of their telephone number, fax number and email address;

(d) the applicant’s reasons to vary or set aside the Minister’s decision;

(e) the applicant’s choice of official language for the proceeding;

(f) a copy of the Minister’s decision, including any reasons; and

(g) a complete copy of the notice of violation issued by the Canadian Food Inspection Agency, Health Canada or by the Canada Border Services Agency that is being challenged.

48. (1) The Tribunal must make a decision on the admissibility of the request for review within 60 days after the day on which the acknowledgement of receipt of a request is sent to the parties, and send that decision to the parties in writing without delay.

(2) The Tribunal must, in coming to its decision on admissibility, consider any relevant factor, including whether

(a) the Minister or his or her delegated representative has complied with rule 46; and

(b) the applicant has complied with all of the requirements of rule 47.

49. The Minister or his or her delegated representative must, within 30 days after the day on which the Tribunal decides that the request for review is admissible,

(a) serve on the applicant a certified copy of all documents or exhibits relevant to the request for review that are in the possession of the Minister whose decision is subject to the review;

(b) file with the Tribunal the certified copy of all documents or exhibits relevant to the request for review that are in the possession of the Minister whose decision is subject to the review along with proof that the documents were served on the applicant and any written confirmation of the Minister's refusal to enter into a compliance agreement pursuant to a request made under paragraph 9(2)(a) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*; and

(c) if there are any documents or exhibits that cannot be reproduced,

(i) serve on the applicant a notice of filing containing a list of the documents or exhibits that cannot be reproduced, along with the reasons why they cannot be reproduced; and

(ii) file the original documents or exhibits with the Tribunal along with proof that the notice of filing and reasons were served on the applicant.

50. Within seven days after the day on which documents or exhibits were filed in accordance with rule 49, the Tribunal must send an acknowledgement of receipt of the material to the parties.

51. Within 30 days after the day on which the documents or exhibits that are in the possession of the Minister are filed in accordance with rule 49, the applicant must

(a) indicate to the Tribunal whether they wish to proceed by way of oral hearing or by way of written submissions; and

(b) file any additional reasons in response to the documents and exhibits filed by the Minister or his or her delegated representative with the Tribunal.

52. No further reasons can be filed after

(a) the expiry of the time limit for the filing of the Minister's documents or exhibits by the Minister or his or her delegated representative in accordance with rule 49, if they have not been filed;

(b) the filing of the applicant's additional reasons in accordance with rule 51; or

(c) the expiry of the time limit for the filing of the applicant's additional reasons in accordance with rule 51, if none has been filed.

53. The Tribunal must, after the day on which no further reasons are to be filed in accordance with rule 52,
- (a) if a review is proceeding by way of written submissions, render a decision based on the documents or exhibits received from the parties; or
 - (b) if a review is proceeding by way of oral hearing, send a notice of hearing to all parties at least 30 days before the hearing date.
54. If one of the parties does not appear at the hearing, and if the Tribunal is satisfied that a notice of the hearing was sent to the most recent address on file of that party, the Tribunal may grant or dismiss the request for review, or proceed with the hearing in the party's absence and dispose of the review in any manner referred to in section 14 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.
55. (1) The Tribunal may postpone or adjourn a hearing on any terms that it considers appropriate.
- (2) Any request for a postponement or an adjournment must be made at least 8 days before the hearing date.
56. The Tribunal may render a decision orally at the end of a hearing or it may reserve its decision until a later date.
57. The Tribunal must provide a decision in writing and send a copy of it to all parties without delay.
58. [Repeal]
59. These Rules come into force on the day on which they are registered.

