

CANADA AGRICULTURAL REVIEW TRIBUNAL



ANNUAL REPORT

2008-2009

**Canada Agricultural
Review Tribunal**



**Commission de révision
agricole du Canada**

2008-2009 Annual Report

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MESSAGE FROM THE CHAIRPERSON

It is with great pleasure that I present to you, Minister, the 2008-2009 Annual Report of the Canada Agricultural Review Tribunal. This report is ground-breaking in that it represents the very first Annual Report produced by the Tribunal. The report covers the activities of the Tribunal between April 1, 2008 and March 31, 2009. This period represents the last full year of operation of the Tribunal under the leadership of its first Chairperson, Mr. Thomas Barton. The activities of the Tribunal set out in this report highlight the specific and important role the Tribunal plays in assisting the Government of Canada achieve its dual goals of enhancing food safety and sustaining the economic viability of Canadian agriculture.

The fiscal year 2008-2009 started an important time of change for the Tribunal. In early 2009, the Tribunal's name was changed from "Review Tribunal" to "Canada Agricultural Review Tribunal", a change which was welcomed by the Tribunal as a positive step in representing to government and to all Canadians, a more fulsome and accurate picture of the Tribunal's mandate and work. Also, in early 2009, in a series of letters between you, Minister, and the Chairperson, you requested that the Tribunal work towards greater transparency and accountability. You suggested that four new elements be incorporated into the work of the Tribunal: (1) web-accessible proactive disclosure; (2) a web-accessible database of the Tribunal's decisions; (3) preparation of annual reports; and (4) conclusion of service agreements with the Department of Agriculture and Agri-Food, or others who provide essential services to the Tribunal.

In May 2009, after the conclusion of the fiscal year 2008-2009, Thomas Barton completed his third term as Chairperson of the Tribunal. I was honoured to take up the role as the Tribunal's second Chairperson, starting on July 1, 2009. Prior to my arrival, Mr. Barton had already started to address your requests for greater transparency and accountability at the Tribunal, and had, during the fiscal year 2008-2009, taken steps to update the Tribunal's website so that it included proactive disclosure and a publically accessible database of all Tribunal decisions. Certain service agreements with your Department had also been completed. This 2008-2009 report responds to the third item outlined in your letter to the Chairperson, the preparation and presentation of annual reports. While I did not preside over the Tribunal during this period, it is indeed my pleasure to prepare and present this Annual Report.

I trust that this first Annual Report will meet with your satisfaction and will provide greater transparency and accountability of the Tribunal. In subsequent years, the Tribunal will endeavour to present its annual Report to you on or before June 30 of the following fiscal year.

Dr. Donald Buckingham, Chairperson

OVERVIEW

Mandate

The Canada Agricultural Review Tribunal (CART) was established under the *Canada Agricultural Products (CAP) Act* and continued under the *Agriculture and Agri-Food Administrative Monetary Penalties (AMP) Act*. The *AMP Act*, assented to on December 5, 1995, establishes, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of nine agri-food Acts.

CART's primary role is to provide independent oversight, through the exercise of its review mandate, of federal agencies' use of Administrative Monetary Penalties (AMP). AMP systems, in relation to agriculture and agri-food, form part of several federal agencies' "escalating scale of enforcement", providing such agencies with an expeditious non-punitive means to promote regulatory compliance. Oversight of AMP provides alleged violators with the right to seek a review of any AMP violation before CART. Three agencies—Canadian Food Inspection Agency (CFIA), Canada Border Services Agency (CBSA) and the Pest Management Regulatory Agency (PMRA)—currently depend on CART for such oversight.

The *AMP Act*, through its *Regulations*, establishes AMP violations for over 500 regulatory infractions currently outlined in the *Health of Animals Act* and the *Health of Animals Regulations*, the *Plant Protection Act* and the *Plant Protection Regulations* and the *Pest Control Products Act* and the *Pest Control Products Regulations*.

CART is also mandated to conduct a second type of review under the *CAP Act* when a party disagrees with a decision made by a Board of Arbitration. Unlike a review under the *AMP Act*, this type is very restrictive in that the applicant must show that there is either an error in law in the Board's decision or that there was a lack of natural justice in the process.

Mission

CART exists to provide a timely, independent, informal and fair review of the validity of any AMP issued to a person by a federal agency under the *AMP Act*.

Vision

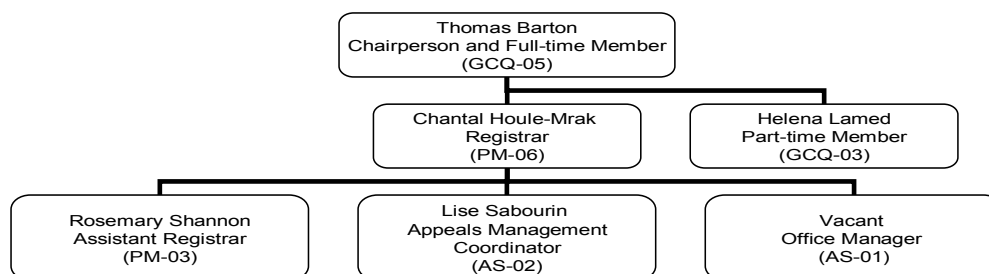
The vision of CART is to continue to safeguard the integrity of the use of the AMP system by federal agencies, so they can ensure compliance with agriculture and agri-food statutes that Parliament has passed both to protect the health and well-being of Canadian consumers and to enhance the economic vibrancy of Canadian agriculture.

2008-2009 Activities in Review

In 2008-2009, the Tribunal continued its core activity of quasi-judicial reviews. Pursuant to the *AMP Act*, the Tribunal has the power to review various Agencies' Notices of Violations. In this type of review, interested parties may call witnesses and they may enter new evidence. In 2008-2009, the Tribunal had 90 active *AMP Act* cases (see table at page 7) resulting in 43 decisions being rendered during the fiscal year (see charts at pages 8) with 33 of those decisions upholding, and 10 dismissing, Agency Notices of Violation. The Tribunal had no active *CAP Act* cases in 2008-2009.

Once a decision has been rendered, it is treated as a public document. The Tribunal, with respect to access and privacy, follows the common law “open court principle” and the statutory requirements under which it must operate. A decision by the Tribunal is final and not subject to appeal, except for judicial review by the Federal Court of Appeal, pursuant to section 28 of the *Federal Courts Act*. In 2008-2009, five decisions were rendered by the Federal Court of Appeal from reviews of Tribunal decisions. The Federal Court of Appeal received requests for judicial review of three Tribunal decisions during the fiscal year 2008-2009 (see footnote at page 7).

Canada Agricultural Review Tribunal Organizational Chart 2008-09 (as of March 31, 2009)



History of the Canada Agricultural Review Tribunal

- 1983** The Review Tribunal is established through an amendment to the *Canada Agricultural Products Standards Act R.S, c.A-8* (which becomes the *Canada Agricultural Products Act* in 1985). The Review Tribunal is responsible for reviewing decisions made by the Board of Arbitration in regards to licensing for fruit and vegetable dealers.
- 1988** The *Canada Agricultural Products Act 1985, c.20* comes into force, continuing the Review Tribunal, as established in *Canada Agricultural Products Standards Act* in 1983.
- 1997** The Canadian Food Inspection Agency is established through the *Canadian Food Inspection Agency Act S.C. 1997, c. 6*, as an amalgamation of inspection services branches of various governmental ministries, responsible for the administration and enforcement of twelve food and agriculture Acts.
- 1997** An agricultural administrative monetary penalties system is set up through the *Agriculture and Agri-Food Administrative Monetary Penalties Act 1995, c.40*. Monetary penalties imposed under the *Act* are to be reviewed by the Tribunal, established in section 4 of the *Canada Agricultural Products Act 1985, c.20 (4thsupp.)*.
- 2000** *Agriculture and Agri-Food Administrative Monetary Penalties Regulations for the Health of Animals Act 1990, c.21* and *Regulations for the Plant Protection Act 1990, c.22* are created.
- 2001** *Agriculture and Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations (SOR/ 2001-132)* are created.
- 2002** The *AMPS Regulations for Health of Animals Act 1990, c.21* and *Plant Protection Act 1990, c.22* are amended.
- 2005** The Canada Border Services Agency is created and acts on behalf of the CFIA concerning compliance and enforcement of border matters relating to the *Health of Animals Act* and the *Plant Protection Act*.
- 2008** Amendments to *AMPS Regulations for Health of Animals Act 1990, c.21* and for the *Plant Protection Act 1990, c.22* are passed.
- 2009** Tribunal name is changed with the approval of the Treasury Board of Canada from “Review Tribunal” to “Canada Agricultural Review Tribunal”.

CHARTS AND TABLES FOR 2008-2009 ACTIVITIES

AMPS Caseload in Fiscal Year 2008-2009

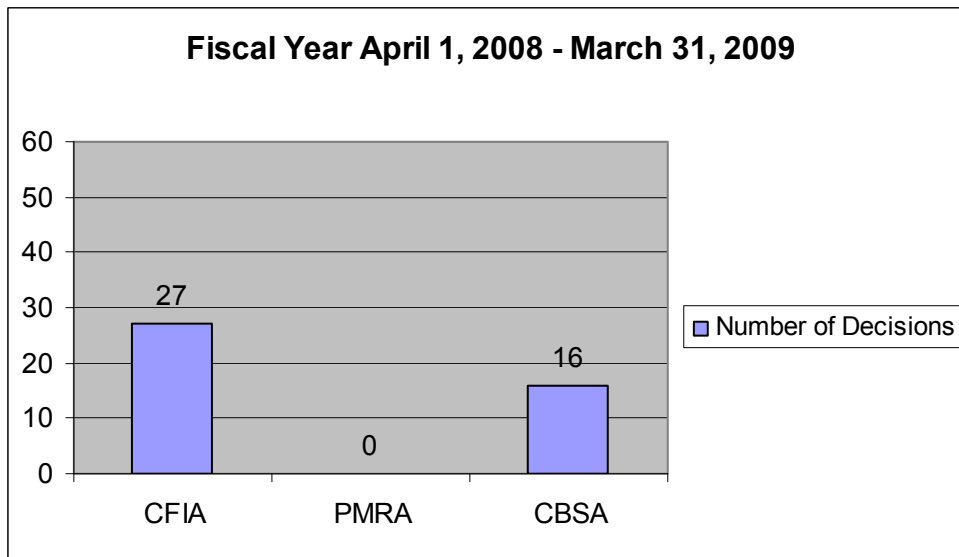
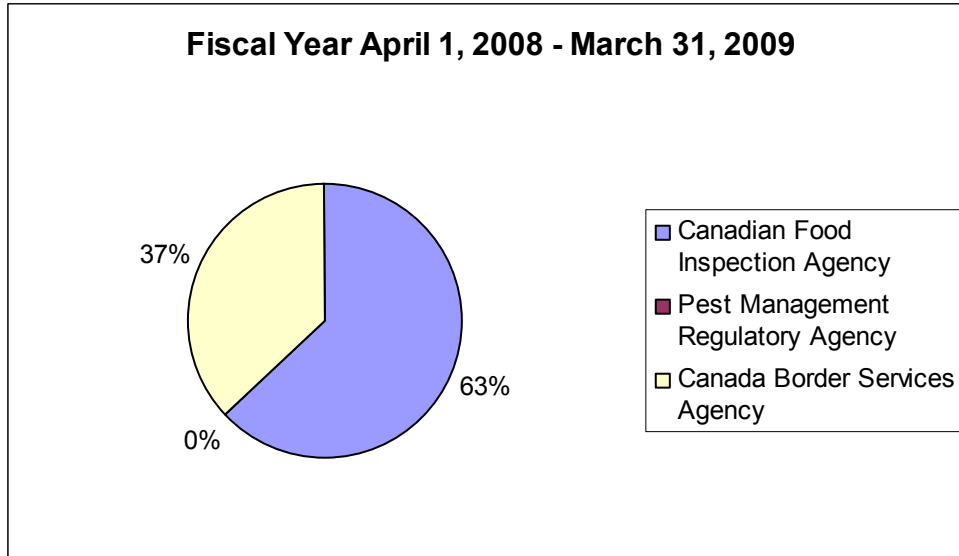
Total Active Cases:		90
Cases for which a hearing was requested	77	
Cases not yet scheduled		19
Cases with hearing scheduled		8
Cases with hearing held, awaiting decision		1
Cases withdrawn prior to a hearing		14
Cases withdrawn at or after hearing		0
Cases Dismissed		26
Cases Allowed		9
Cases Sent Back to Board		0
Cases for which a hearing was NOT requested:	13	
Cases not yet assigned		4
Cases assigned, awaiting decision		0
Cases withdrawn		1
Cases Dismissed		7
Cases Allowed		1
Cases sent back to Board		0
Reviews of Tribunal decisions at the Federal Court of Appeal:	8	
Cases filed ¹		3
Cases heard, awaiting decision		0
Cases withdrawn		0
Cases Dismissed ²		1
Cases Allowed ³		4

¹ *Doyon v. CFIA* (RTA #60323) August 26, 2008, filed with F.C.A. on October 9, 2008, *Doyon v. Canada (Attorney General)* (2009 FCA 152), rendered by F.C.A. on May 13, 2009; *Denfield Livestock Sales Limited v. CFIA* (RTA# 60328) October 21, 2008, filed with F.C.A. on November 19, 2008; *Vold, Jones and Vold Auction Co. Ltd. v. CFIA* (RTA# 60330) October 28, 2008, filed with F.C.A. on November 26, 2008.

² *Edwards Livestock Hauling Ltd. v. CFIA* (RTA# 60286), rendered by F.C.A. on June 25, 2008 (2008 FCA 224).

³ *Maple Lodge Farms Ltd. v. CFIA* (RTA# 60295), rendered by F.C.A. on February 9, 2009, *Maple Lodge Farms Ltd. v. CFIA* (RTA# 60296), rendered by F.C.A. on February 9, 2009, *Maple Lodge Farms Ltd. v. CFIA* (RTA# 60292), rendered by F.C.A. on February 9, 2009, *Maple Lodge Farms Ltd. v. CFIA* (RTA # 60291), rendered by F.C.A. on February 9, 2009.

AMPS Decisions in Fiscal Year 2008-2009



TRIBUNAL EXPENDITURES 2008-2009

Salaries and Benefits	380,254
Hearing and Travel Expenses	24,539
Property & equipment rental and maintenance	36,407
Postage, Courier and Telecommunications	5,305
Publishing, Printing and Education	28
Training, meetings and conferences	0
Professional, special and contract services	19,912
Materials, supplies and related misc. expenses	6,966
TOTAL for 2008-2009	473,411

CHALLENGES AND OPPORTUNITIES

The Canada Agricultural Review Tribunal is an independent, arm's length review body within the portfolio of departments and agencies that report through the Minister of Agriculture and Agri-Food. Three issues provide challenges and opportunities for the Tribunal as it is currently structured. They are:

1. maintenance of its arm's length identity from the Department of Agriculture and Agri-Food and from the Minister;
2. securing the ability to adequately staff the Tribunal, particularly with respect to procuring legal advice; and
3. securing assurances of an adequate financial base for the Tribunal.

During the formation of the Tribunal in the 1990's, there was discussion of it becoming a listed Schedule I.1 *Financial Administration Act (FAA)* agency. This has not yet occurred. While not necessary to ensure its independence through the *FAA* listing, such a listing would clearly establish the independence of the Tribunal and this is the usual scenario for federal tribunals. Without such recognition, the Minister, the Department, and the Tribunal must engage in on-going discussions to set appropriate parameters to ensure that proper administrative AAFC policies are followed while recognizing the need to preserve and respect the Tribunal's independence.

In 2008-2009, the Tribunal included a database of all of its decisions on its website www.rt.gc.ca (now <http://cart-crac.gc.ca>). Certain service arrangements were concluded to recognize the agreements for use of services from the Department offered to the Tribunal for a fee. Challenges did remain, however, with occasional inability to complete financial, information technology, human resources or security matters without reference to (and approval from) the Deputy Minister of the Department. In 2008-2009, the new name approved by Treasury Board for the Tribunal—the Canada Agricultural Review Tribunal—was a very positive step to position the Tribunal to be better identified and identifiable inside of the government and to the public for the real work it performs. Its expertise is recognized for matters of agriculture and agri-food in Canada. However, small identity problems remain, such as the Tribunal still being listed in the government-wide Government Electronic Directory Services (GEDS) under the Department's organizational hierarchy. The Tribunal is the only one of the Minister's "six-sisters" portfolio organizations--CDC, CGC, FCC, CFPC, CFIA, and CART--not to have its own GEDS listing.

In the next fiscal year, the Tribunal will be working diligently to improve transparency and accountability. Steps will be initiated to investigate the renovation of existing Tribunal structures and relationships with the Ministerial Office, the Department and with AAFC Portfolio Coordination Secretariat. Activities will include initiatives to make the Tribunal better known amongst the AAFC Portfolio and stakeholder groups, including the revamping of its website. The Tribunal's identity and new name will continue to be rolled out across the government and new initiatives will be conceived and communicated to the Government of Canada to permit the fuller use of the expertise of an independent arm's length body with considerable expertise in Canadian agriculture and agri-food matters.

HOW TO REACH THE TRIBUNAL

- ❖ **Call our office:**
 - (613) 792-2087
- ❖ **Send us a fax:**
 - (613) 792-2088
- ❖ **Send us an E-mail**
 - lise.sabourin@cart-crac.gc.ca
- ❖ **Send us a letter:**
 - Canada Agricultural Review Tribunal
Central Experimental Farm
Birch Drive, Building 60
Ottawa, Ontario K1A 0C6
- ❖ **Visit our website:**
 - <http://cart-crac.gc.ca>