

**Agriculture, Food and Rural Affairs
Appeal Tribunal**
1 Stone Road West
Guelph, (Ontario) N1G 4Y2
Tel: (519) 826-3433, Fax: (519) 826-4232
Email: appeals.tribunal.omafra@ontario.ca

**Tribunal d'appel de l'agriculture, de
l'alimentation et des affaires rurales**
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**IN THE MATTER OF THE *MINISTRY OF AGRICULTURE, FOOD AND
RURAL AFFAIRS ACT, R.S.O. 1990, CHAPTER M.16, AS AMENDED;***

AND IN THE MATTER OF: Appeals to the Agriculture, Food and Rural Affairs
Appeal Tribunal of a decision of the **Ontario Farm Products Marketing Commission**,
dated October 6, 2008, regarding the Ontario Pork Producers' Marketing Board;

AND IN THE MATTER OF: A Pre-Hearing Conference pursuant to Rule 24 of the
Tribunal's Rules of Procedure continued April 17, 2009, at the Ramada Hotel, Guelph.

TO:
Rein Minnema
c/o Elbert van Donkersgoed, Terra Coeur
22 Glasgow Street North
Guelph, Ontario N1H 4V5

AND TO:
Fields Farms Ltd.
c/o Toni and Rita Felder
4648 LaSalle Line
Petrolia, Ontario N0N 1R0

AND TO:
Huron County Pork Producers' Association
c/o Robert G. Shapiro, Barrister & Solicitor
11 Neville Park Blvd.
Toronto, Ontario M4E 3P5

AND TO:
Districts 10, 11 & 12 Pork Producers
c/o Rod de Wolde, District 11 Chairperson
12 Huston Street
Millbrook, Ontario L0A 1G0

AND TO:
Ontario Farm Products Marketing Commission
c/o Sara Blake
Ministry of the Attorney General
Crown Law Office Civil
8th Floor, 720 Bay Street
Toronto, Ontario M5G 2K1

AND TO:
Conestoga Meat Packers / Progressive Pork
Producers
c/o Bob Hunsberger
313 Menno Street, RR 2
Breslau, Ontario N0B 1M0

AND TO:
Maple Leaf Consumer Foods
c/o Don Davidson, Vice President
6897 Financial Drive
Mississauga, Ontario LN5 OA8

AND TO:
Ontario Pork Producers' Marketing Board
c/o Sean Foran, WeirFoulds LLP
The Exchange Tower
Suite 1300, PO Box 480
130 King Street West
Toronto, Ontario M5X 1J5

AND TO:
The Open Marketing Group
c/o Geoffrey P. Spurr, Wilson Spurr LLP
261 Martindale Road, Suite 16 B
St. Catharines, Ontario L2W 1A2

AND TO:
Quality Meat Packers
c/o Dan Cohoe
2 Tecumseh Street
Toronto, Ontario M5V 2R5

AND TO:

Synergy Swine, Paragon Farms, and RFW Farms
c/o Rob McDougall
131 Brock Street
Thamesford, Ontario N0M 2M0

AND TO:

Zantingh Direct Inc. and Zantingh Swine Inc.
c/o Nicholas Richter
Barrister and Solicitor
15 Bold Street
Hamilton, Ontario L8P 1T3

Before:

Frank Handy, Vice Chair; Kirk Walstedt, Chair; Paula Lombardi, Vice Chair

Appearances:

None

Opportunity for written submissions provided

INTERIM DECISION OF THE TRIBUNAL

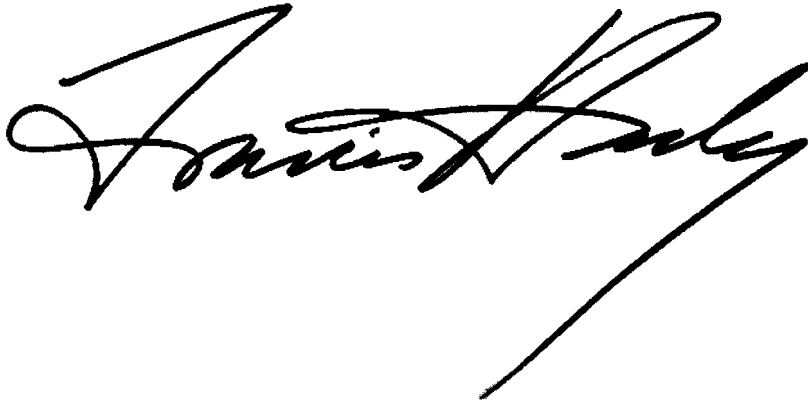
1. The Chair of the Tribunal has determined that Vice-Chairs Frank Handy and Paula Lombardi, and Chair, Kirk Walstedt will form the panel to hear these Appeals. Frank Handy will Chair the Hearing.
2. The Tribunal thanks all those who submitted materials to the Tribunal to assist it in determining the most appropriate manner of hearing the Appeals. The Tribunal received submissions from those listed on Schedule "A" to this decision.
3. The Tribunal reviewed the submissions and met to determine the most appropriate manner of hearing. In making its decision the Tribunal considered the issues identified in the written submissions, the importance of the matters under appeal, and the usual practices of the Tribunal.
4. The Tribunal notes that in accordance with Sections 16(1), (10) and (11) of the *MAFRA Act* there is a statutory right to bring and participate in an appeal, and a statutory power for the Tribunal to exercise: these rights and powers are independent of the Commission's procedure in reaching a decision or the scope of the decision rendered by the Commission. Parties may appeal "an order, direction, policy or decision of the Commission" by which they are "aggrieved". Any party

with “sufficient interest in the subject-matter of the appeal may be a party to the appeal”. Finally, the Tribunal stands in the place of the Commission in that it has the authority “by order to direct the Commission, local board [in this situation, the Ontario Pork Producers’ Marketing Board], the marketing board or the Director . . . to take such action as it or he or she is authorized to take” and “for this purpose the Tribunal may substitute its opinion for that of the Commission, the local board, the marketing board or the Director.”

5. There is nothing in the legislation that obligates the Tribunal to accept or assume the Commission’s hearing procedure, the evidence previously submitted, earlier decisions on standing or the scope of participation or lack thereof by parties who now seek to appeal or participate in the appeal hearing. These types of limitations are explicit in other appeal procedures, such as under the Planning Act, and the scope of the appeal rights granted and the Tribunal’s authority under the MAFRA Act are not fettered in such a manner.
6. Given the opposing submissions of the parties about how to proceed, the Tribunal must look to its primary obligation to provide a full and proper opportunity pursuant to the *Statutory Powers and Procedure Act* and the requirements of natural justice to hear the merits of the appeals of the decision of the Commission.
7. The Tribunal wishes to ensure that the scope of the issues in the appeal is properly identified, that the evidence will be fully and fairly presented and tested, and that both those in support of and those aggrieved by the decision will have an equal opportunity to make their best arguments. At the same time, the Tribunal is aware of the investment of time and effort required to hold a hearing, and therefore wishes to provide guidance for the parties to prepare for the remainder of the hearing.

8. Therefore, the Tribunal Orders as follows:

- I. The Tribunal will hold a *de novo* hearing of the Appeals. Parties will be permitted to submit and prove material from the hearing that was presented before the Commission, to update and submit revised material or to submit new material as required. Parties are encouraged to consolidate their submissions and evidence where their particular interests are congruent with those of others.
- II. A written list of proposed issues to be considered on the Appeals will be prepared by each person who receives a copy of this order and who wishes to participate in the Appeals, along with a final confirmation or statement of what status the person wishes to have in the Appeal.
- III. The list of proposed issues must arise from the decision of the Commission that has been appealed. Each Party will circulate its list of issues to all those circulated with this decision, and submit a copy to the Tribunal **by 4 pm on August 5, 2009**.
- IV. The first day of hearing for the Parties to attend in person will be on **August 12, 2009**. On this day the Tribunal will hear from the parties and determine:
 - a. Standing of participants in the Appeals;
 - b. The specific issues to be considered by the Tribunal on the Appeals;
 - c. Consolidation and/or order of hearing of the remaining Appeals;
 - d. The order of presentation by parties;
 - e. Any other issues to enhance the efficient presentation of evidence and submissions;
 - f. Expected length of the remainder of the hearing;
 - g. Schedule of dates for the remainder of the hearing.
- V. Each Party will come to the hearing prepared to make submissions on the issues listed in paragraph IV above.
- VI. The Tribunal will provide a further notice regarding the location and start time of proceedings on August 12.

A handwritten signature in black ink, appearing to read "Frank Handy". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Frank Handy
Vice Chair

Dated at Guelph, Ontario, this 14th day of July 2009.

Submissions submitted to Tribunal pursuant to point "60. i." of the June 19 Interim Decision

| Submission by (or on behalf of): | Document(s) Submitted: |
|--|--|
| 1. Ontario Pork Producers' Marketing Board | <ul style="list-style-type: none"> • "Affidavit of Service of Helen Reeves", dated June 22, 2009 • "Ontario Pork Producers' Marketing Board Submissions on Form of Hearing", dated June 22, 2009 |
| 2. Conestoga Meat Packers / Progressive Pork Producers | <ul style="list-style-type: none"> • Letter from Conestoga 3P, received on June 23, 2009 |
| 3. Ontario Farm Products Marketing Commission | <ul style="list-style-type: none"> • Letter from Commission staff, dated June 24, 2009, affirming provision of submissions to other parties • "Supplementary Pre-Hearing Submission on behalf of the [Commission]", dated March 24, 2009 |
| 4. Open Marketing Group (OMG) | <ul style="list-style-type: none"> • "Affidavit of Service" of Michelle Stretton, dated June 25, 2009 • "Submissions of the [OMG] regarding the Nature of the Appeal", dated June 25, 2009 |
| 5. Maple Leaf Foods (MLF) | <ul style="list-style-type: none"> • "Submission by [MLF] Inc. to the [Tribunal]" • "Presentation by [MLF] Inc. to the [Commission]" • "Update on Sale Process of Burlington Business", News Release, dated April 2, 2009 |
| 6. Fields Farms Ltd. | <ul style="list-style-type: none"> • Letter from Fields Farms Ltd., dated April 23, 2009 • Letter from Fields Farms Ltd., dated June 26, 2009 |
| 7. Zantingh Direct Inc. | <ul style="list-style-type: none"> • Letter from counsel, dated June 26, 2009, affirming provision of submissions to other parties • "Submissions of [Zantingh] Regarding the Form of Hearing", dated June 26, 2009 |
| 8. Quality Meat Packers (QMP) | <ul style="list-style-type: none"> • Letter from QMP, dated June 26, 2009 |
| 9. Rein Minnema | <ul style="list-style-type: none"> • Letter from agent, dated June 26, 2009, affirming provision of submissions to other parties • "Rein Minnema Submissions ...", dated June 26, 2009 • "Affidavit of Rein Minnema", dated April 3, 2009 • "Affidavit of Jasper Vanderbas", dated June 26, 2009 |
| 10. Synergy Swine, RFW Farms, and Paragon Farms | <ul style="list-style-type: none"> • Letter dated June 25, 2009 |
| 11. Districts 10, 11, and 12 Pork Producers | <ul style="list-style-type: none"> • Letter dated June 26, 2009 |

Submissions submitted to Tribunal pursuant to point "60. ii." of the June 19 Interim Decision

| Submission by (or on behalf of): | Document(s) Submitted: |
|---|---|
| 1. HCPPA | <ul style="list-style-type: none">• Letter from counsel, dated June 30, 2009 |
| 2. Rein Minnema | <ul style="list-style-type: none">• Letter from agent, dated July 2, 2009, affirming provision of submissions to other parties• "Rein Minnema Response to Submissions ...", dated July 2, 2009 |
| 3. Ontario Farm Products Marketing Commission | <ul style="list-style-type: none">• Letter from Commission staff, dated July 2, 2009, to the Tribunal (cc all parties) with reply submissions• "Reply of [Commission] to Submissions on behalf of Minnema", dated July 2, 2009• "Affidavit of John Fitzgerald", dated July 2, 2009• "Reply of [Commission] to Submissions on behalf of [HCPPA]", dated July 2, 2009• Letter from Commission staff, dated July 2, 2009, to the Tribunal (cc all parties) with additional documents• "Binder 5"• "Binder 6" |
| 4. Fields Farms Ltd. | <ul style="list-style-type: none">• Letter from Fields Farms Ltd., received on July 3, 2009 |