

Ministry of Agriculture,
Food and Rural Affairs

Ministère 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, C. 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**

On February 16, 2010, I received the decision of the Agriculture, Food and Rural Affairs Appeal Tribunal (Tribunal) decision dated February 16, 2010 on the above-noted proceeding. Pursuant to subsection 18(1) of the *Ministry of Agriculture, Food and Rural Affairs Act*, R.S.O. 1990, c. M. 16, as amended (*MAFRAA*), I have the following authority when reviewing a decision of the Tribunal:

- (a) I can confirm, vary or rescind the whole or any part of the Tribunal's decision;
- (b) I can substitute any part of the Tribunal's decision with my own decision as I consider to be appropriate; and
- (c) I can require the Tribunal to hold a new hearing of the whole or any part of the matter appealed to the Tribunal and reconsider its decision.

I have reviewed the decision and, just like the Tribunal, I have found that the question of how pork should be marketed in Ontario is a complex issue. Therefore, I have decided to extend my time to review the Tribunal's decision, pursuant to subsection 18(1) of the *MAFRAA* until May 26, 2010.

Given the complexity of the issue and the potential impact any decision(s) I reach in relation to reviewing the Tribunal's decision will have on Ontario's Pork Industry, I have decided to allow the parties to the Tribunal's decision to make submissions to the Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Those who wish to make submissions shall comply with the following conditions:

- All submissions shall be provided in writing and addressed to my Office.
- All submissions shall be submitted no later than 4:00pm on April 14, 2010
 - Any written submissions received after 4:00pm on April 14, 2010 will not be considered during my review.



- 2 -

Although I will consider all submissions that comply with the above conditions during my extended review period, I am particularly interested in receiving submissions regarding the "pros" and "cons" of having a dual desk/open market system versus the current single desk system. More specifically, I am looking for evidence as to what marketing system would best protect the interests of Ontario's Pork Industry and an explanation as to why Ontario should use that marketing system. I am also interested in receiving submissions regarding what change(s) would be needed to either make the existing current single desk system work more effectively or what should be included should I decide that Ontario's marketing policy should move to a dual desk/open market system.

In the interim, however, I believe that it is important that I clarify a couple of issues regarding the Tribunal's decision and my authority to review a Tribunal decision. First, and pursuant to subsection 18(2) of the *MAFRAA*, a decision of the Tribunal is not final until after the expiration of my review period (including any extensions) unless I vary, rescind or substitute a decision of the Tribunal with my own decision or I order the Tribunal to have a new hearing on the matter. In this case, the Tribunal's decision will not be final until the earlier of the day I issue a decision of my review of the Tribunal's decision or the elapse of my extension.

Second, and pursuant to subsection 18(1) of the *MAFRAA*, I have an independent statutory right to review a Tribunal decision. This means no one has to specifically ask that I review a Tribunal decision. However, I will, of course, consider any request that I do or do not review a Tribunal decision during my initial thirty-day review period or before I render my decision, whichever comes sooner.

I also believe it is important to address a specific part of the Tribunal's decision regarding the purpose of section 2 of the *Farm Products Marketing Act*, R.S.O. 1990, c. F. 9, as amended (*FPMA*) sooner rather than later. The Tribunal found that the Ontario Farm Products Marketing Commission (Commission) decision to move from the single desk to a dual desk/open marketing system for Ontario's Pork Industry was not in accordance with the purpose of the *FPMA*, as outlined in section 2 of the *FPMA*. I believe that the Tribunal's interpretation of section 2 of the *FPMA* is too narrow.

Section 2 of the *FPMA* provides that the purpose of the *FPMA* is "to provide for the control and regulation in any or all aspects of the producing or marketing within Ontario..." (emphasis added). Section 2 of the *FPMA* does not require a single type of regulatory system for a regulated product in Ontario. Rather, it sets out that the *FPMA* was enacted to allow the Commission and/or a local board (where the Commission has delegated its regulatory power to the local board) to make decisions on what area(s) (if any) of the market should be regulated and how that regulation should be undertaken. For example, it is possible to regulate a regulated product through a licencing system without necessarily requiring a single desk marketing system for that regulated product. Conversely, it is also possible to regulate a regulated product by requiring a single desk marketing system for the regulated product without a licencing system. The decision about the type(s) of regulatory tools that will be used to regulate a regulated product

- 3 -

(including whether a single desk or dual desk/open marketing system is used) is up to the Commission, in consultation with local boards.

The above point is further verified by section 7 of the *FPMA*. Subsection 7(1) of the *FPMA* gives the Commission the discretionary authority to enact regulations covering a vast variety of areas regarding the producing and marketing of a regulated farm product. Subsection 7(7) of the *FPMA* also gives the Commission the discretionary authority to delegate or revoke any delegation of its authority to enact regulations in relation to a regulated farm product to a local board. This, in turn, indicates that the *FPMA* does not require a single type of regulatory model to be used. Indeed, it indicates that a number of regulatory models exist and that it is up to the Commission, in consultation with local boards, to determine the appropriate regulatory model for a given farm product.

Accordingly, I believe that the Tribunal's interpretation of section 2 of the *FPMA* is too narrow and does not respect the policy choices that are available (and must be available) to regulate a regulated product. Simply put, section 2 of the *FPMA* does not set out a single type of regulatory system must be in use for a regulated product in Ontario and to reach a contrary conclusion undermines the true policy objective of the *FPMA*, which is to allow for a flexible and fluid regulatory system for all regulated products in Ontario. Therefore, I hereby rescind that portion of the Tribunal's decision interpreting the meaning of section 2 of the *FPMA*.

Finally, I would like to thank everyone who has participated in this process thus far before the Commission and the Tribunal. Your contributions have been important in resolving these very complex and important issues. I would also like to note that I look forward to receiving submissions on these issues and want to ensure everyone in Ontario's Pork Industry that I will carefully consider any submissions during my review of the Tribunal's decision. I take particular pride in Ontario's agricultural sector and I want to make sure that any decision(s) I reach in relation to the Tribunal's decision will serve to further strengthen Ontario's already great Pork Industry.

Sincerely,



Carol Mitchell
Minister of Agriculture, Food and Rural Affairs