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**AGRICULTURE, FOOD AND RURAL AFFAIRS APPEAL TRIBUNAL
ORDER-IN-COUNCIL APPOINTMENT OF
ROBERT FULLER ***

Prepared for:

Standing Committee on Government Agencies

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May 26, 2021

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INTRODUCTION

This document was prepared to assist the Members participating in the Committee's review of the Order-in-Council appointment of Robert Fuller to the Agriculture, Food and Rural Affairs Appeal Tribunal (Tribunal). It describes the role and operations of the Tribunal, presents information about the appointee, and suggests possible lines of questioning.

AGRICULTURE, FOOD AND RURAL AFFAIRS APPEAL TRIBUNAL

Enabling Statute	Responsible Ministry
<i>Ministry of Agriculture, Food and Rural Affairs Act</i>	Agriculture, Food and Rural Affairs
Agency Type	Most Recent Annual Report
Adjudicative ¹	2016-2017
Activities of the Agency	
The Tribunal hears and decides issues relative to: the technical and cost apportionment of projects under the <i>Drainage Act</i> ; disputes over the adjustment of loss under a crop insurance contract; exemptions for religious reasons from farm registration and/or paying the fee associated with joining an accredited farm organization; accreditation of farm organizations; disputes under the <i>Farm Products Marketing Act</i> ; farmland classification for municipal taxation purposes; disputes under the <i>Farm Implements Act</i> ; disputes under the <i>Agricultural Employees Protection Act</i> ; and a number of other disputes under various statutes. ²	
Board Membership	
Statutory Number of Members Not fewer than 10	Membership and Remuneration³ Chair (Part-Time): \$744/\$788 per diem Vice-Chairs (6, Part-Time): \$583/\$788 per diem Members (6, Part-Time): \$472/\$788 per diem
Number Appointed by Cabinet All ⁴	
Term of Office Members are appointed for an initial term of two years and are eligible for reappointment to a maximum of 10 years in total. ⁵	
Qualifications	

¹ Agriculture, Food and Rural Affairs Appeal Tribunal, [Annual Report 2016-17](#).

² Public Appointments Secretariat, ["Agriculture, Food And Rural Affairs Appeal Tribunal."](#)

³ Treasury Board Secretariat, [Schedule B: remuneration of appointees to adjudicative tribunals and regulatory agencies](#). Persons appointed in their professional capacity, as required by statute or on a labour-related board, receive the higher amount.

⁴ [Ministry of Agriculture, Food and Rural Affairs Act](#), R.S.O. 1990, c. M.16, s. 14(1.1).

⁵ Public Appointments Secretariat, "Agriculture, Food and Rural Affairs Appeal Tribunal."

Candidates should have experience in interpreting and applying legislation. Understanding of the justice system and administrative law and the concepts of fairness/natural justice are considered as assets.⁶

ROLE OF THE TRIBUNAL

According to its website, the Tribunal is “an independent, quasi-judicial appeal body set up to hear appeals concerning matters in the agriculture and food industry.”⁷ Tribunal members have also been appointed to the Board of Negotiation (BON) under the [Environmental Protection Act](#). The operations of the Tribunal and the BON were both set out in a [Memorandum of Understanding](#) with the Minister of Agriculture, Food and Rural Affairs (OMAFRA). Notably, legislative changes that took effect in August 2020 led to the end of the BON (further information follows under “Recent Developments”).

The Tribunal is constituted under Section 14 of the [Ministry of Agriculture, Food and Rural Affairs Act](#) (MAFRAA). As outlined on its website, the Tribunal’s mandate is “to provide an independent, accessible avenue of appeal on a variety of agricultural issues” under legislation such as the *Assessment Act*, the *Drainage Act*, and the *Farm Registration and Farm Organizations Funding Act*, 1993.⁸

The Tribunal’s mission statement is “to provide a fair and impartial hearing and decision process for those who are aggrieved by a direction, policy, order or decision, or who require the resolution of a dispute pursuant to legislation” that falls under its mandate.⁹

The Tribunal typically sits in panels of three and its practices and procedures are governed by the [Statutory Powers Procedure Act](#). However, the Tribunal does have its own [Rules of Procedure](#).¹⁰

Under the MAFRAA, where a Tribunal panel hears proceedings under the *Agricultural Products Insurance Act*, 1996 or the *Drainage Act*, “one of the members of the panel and one of the members constituting a quorum of the panel shall be a barrister and solicitor entitled to practise in Ontario.”¹¹ The MAFRAA also requires that the appointment of at least two of the Tribunal members shall specifically state that the person is entitled to hear matters under the *Agricultural Employees Protection Act*, 2002, in order to recognize that the Tribunal’s jurisdiction under this Act differs in nature from the rest of its jurisdiction.¹²

The Tribunal is based in Guelph, Ontario. Although it is an independent body, the Tribunal receives support from assigned staff of OMAFRA.¹³

⁶ Public Appointments Secretariat, “Agriculture, Food And Rural Affairs Appeal Tribunal.”

⁷ Agriculture, Food and Rural Affairs Appeal Tribunal, [“What is the Tribunal?”](#)

⁸ Agriculture, Food and Rural Affairs Appeal Tribunal, [“About.”](#)

⁹ Ibid.

¹⁰ Agriculture, Food and Rural Affairs Appeal Tribunal, “What is the Tribunal?”

¹¹ *Ministry of Agriculture, Food and Rural Affairs Act*, s. 14(6.1).

¹² Ibid., ss. 14 (1.2)-(1.3).

¹³ Agriculture, Food and Rural Affairs Appeal Tribunal, “What is the Tribunal?”

Decisions of the Tribunal with respect to licensing issues under certain statutes (e.g., the *Grains Act*) can be appealed to the Superior Court of Justice (Divisional Court). Certain Tribunal decisions, such as orders and decisions made under the *Farm Implements Act*, may be appealed to the Divisional Court on questions of law only. Note that decisions of the Tribunal may be subject to judicial review.¹⁴

Recent Activities

As of the date of this memo, the Tribunal has rendered 10 decisions in the 2021 calendar year.¹⁵

According to the CanLII database, there were 13 decisions rendered in the 2020 calendar year and 23 decisions rendered in 2019.

The most recent annual report available ([2016-17](#)) indicates there was a total of 151 hearings held and/or applications considered under active statutes in 2016-2017. Of this total, there were 93 applications for religious exemption under the *Farm Registration and Farm Organizations Funding Act* and 40 farm property class appeals under the *Assessment Act*.¹⁶

Financial Performance

The most recent information available on financial performance is again found in the Annual Report 2016-17, which reflects the combined budget and expenditures of the Tribunal and the now ceased Board of Negotiation (BON).

This report notes that the Tribunal and the BON “operate under a budget allocated by the Ministry of Agriculture, Food and Rural Affairs and as such do not have their own audited financial statements.” Resource requirements are incorporated under the ministry’s business plan.¹⁷

For 2016-2017, the Tribunal and the BON had a budget of \$292,000 and the majority of actual operating expenditures were on services (\$249,034).

RECENT DEVELOPMENTS

In October 2019, section 172 of the *Environmental Protection Act* was repealed, which led to the end of the Board of Negotiation.¹⁸ The BON was constituted under section 172 of the Act and handled “complaints of economic damage caused by contamination to livestock, crops, trees or other vegetation.”¹⁹ The repeal of section 172, according to the Ministry of the Environment, Conservation and Parks, was intended “to address overlap with existing investigative powers and other dispute resolution mechanisms.”²⁰ The repeal came into force on

¹⁴ Agriculture, Food and Rural Affairs Appeal Tribunal, *Annual Report 2016-17*.

¹⁵ CanLII, [“Agriculture, Food & Rural Affairs Appeal Tribunal — 2021.”](#)

¹⁶ Agriculture, Food and Rural Affairs Appeal Tribunal, *Annual Report 2016-17*.

¹⁷ Ibid.

¹⁸ Environmental Registry of Ontario, [“Repealing Section 172 of the Environmental Protection Act.”](#)

¹⁹ Ibid.

²⁰ Ibid.

August 1, 2020. Notably, OMAFRA indicates that no cases had been brought forward for a BON decision since 1999.²¹

In July 2020, the [COVID-19 Economic Recovery Act, 2020](#) created a new appeal process under the Farm Business Registration Program.²² The process allows a person who has been denied a farming business registration number to appeal to the Tribunal. Under the changes, the Tribunal is authorized to review decisions regarding the issuance of these registration numbers and may confirm or alter decisions, or direct the Director (appointed by the Minister of OMAFRA) to do any act that the Tribunal considers proper and that is authorized by the [Farm Registration and Farm Organizations Funding Act, 1993](#).²³ The amendments came into force on January 1, 2021.

New [Rules of Procedure](#) for the Tribunal were introduced and became effective as of April 30, 2021.²⁴ OMAFRA proposed an update to the Tribunal's Rules of Procedure "to make them easier for parties to understand and follow, and to streamline proceeding processes."²⁵ A public consultation was held from February 5, 2021 to March 8, 2021.

The Tribunal's [website](#) indicates that, due to the COVID-19 pandemic, in-person hearings have been postponed and hearings are being held using alternative hearing options (e.g., virtual hearings, written, and by telephone).

THE WITNESS

The witness, Robert Fuller of Simcoe, is seeking appointment as a Vice-Chair (part-time).

According to information provided by the Office of the Premier, Robert Fuller is a partner at Brimage Law Group, and has authored papers and presented at various agricultural-related organizations. He is a member of the Canadian Association of Farm Practitioners, and his community involvement includes serving as lead author of [Agriculture Law in Canada](#), 1st and 2nd Edition for LexisNexis Butterworths.

Possible Questions

What has motivated the witness to seek this position?

How will the witness's previous experience be of assistance to the Tribunal?

What contribution(s) does the witness hope to make as Vice-Chair of the Tribunal?

²¹ Ministry of Agriculture, Food and Rural Affairs, ["Published plans and annual reports 2020-2021."](#)

²² Office of the Premier, ["Ontario Starting Down the Path to Growth, Renewal and Economic Recovery."](#) backgrounder, July 8, 2020.

²³ [Farm Registration and Farm Organizations Funding Act, 1993](#), S.O. 1993, c. 21, s. 2.1.

²⁴ Agriculture, Food and Rural Affairs Appeal Tribunal, ["Updated Rules of Procedure."](#)

²⁵ Environmental Registry of Ontario, ["Public commenting period for proposed updates to the Rules of Procedure of the Agriculture, Food and Rural Affairs Appeal Tribunal."](#)