



**Ontario Federation of Agriculture**

**Ontario AgriCentre**

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September 11, 2013

Ms. Shain Cameron  
Policy Advisor  
Ontario Ministry of Agriculture and Food  
Farm Finance Branch  
1 Stone Road West, 2<sup>nd</sup> Floor  
Guelph, Ontario  
N1G 4Y2

Dear Ms. Cameron,

**RE: Proposal no. 13-MAF011 – Review of the Farm Business Registration Program**

The Ontario Federation of Agriculture (OFA) welcomes this opportunity to provide comment on the review of the Farm Business Registration Program. Our comments are organized under three headings, Accreditation Process, Eligibility Criteria and the Farm Registration Process.

**1. Accreditation Process**

OFA believes that an arm's-length, independent body should ensure that only general farm organizations that meet or can meet the prescribed criteria for accreditation are granted accreditation. Currently that independent body is the Agriculture, Food and Rural Affairs Appeal Tribunal (the Tribunal). The OFA assumes the Tribunal will remain this independent body named in the *Farm Registration and Farm Organizations Funding Act* (the Act). However, our suggestions below would be applicable to an alternative independent body in the event the Act is amended to replace the Tribunal with an alternate.

The OFA believes the accreditation criteria as contained in the regulations must be clear and concise. Careful wording of accreditation criteria will ensure an efficient accreditation process with minimal controversy.

However, as the circumstances evolve across fixed regulations, there may be need in the future for the Tribunal to provide guidance or clarification to farm organizations seeking accreditation.

Consequently, the mandate of the Tribunal should be expanded to enable the provision of guidance to farm organizations seeking accreditation or reaccreditation. As an



accredited general farm organization, the OFA has presented its evidence before several panels of the Tribunal over the years. Although previous Tribunal panel rulings have been informative, there appears to be no way for a farm organization to seek clarification of the requirements for accreditation.

This was demonstrated when the OFA sought clarification from the Tribunal Chair on what constituted a “member” with respect to the OFA’s 2011 fiscal year and the Tribunal Chair’s June 15<sup>th</sup> response letter stated:

“Once a panel has rendered a decision, that panel, the Chair or staff cannot provide advice on how another panel may interpret that decision or a section of a regulation. As well, it would not be appropriate for me or any new panel to advise how that panel will interpret a regulation without hearing the parties [sic] evidence and argument regarding that regulation.”

A process that leaves farm organizations without a means to seek clarification or guidance on what is required to comply with the criteria creates a trial and error circumstance, increasing the likelihood of unintended noncompliance. This increases the risk of an organization losing its bid for accredited status or reaccreditation.

The OFA recommends that the process be revised to improve both compliance and predictability. The Tribunal should be able to provide relevant clarification and guidance to organizations. Such clarification and guidance should be provided within 30 days of the request and it should be binding on the Tribunal panel hearing a subsequent application by the farm organization if it is submitted as evidence by the farm organization as part of its application.

The current regulations allow either the provision or denial of accreditation status. The OFA believes the Tribunal should be given the discretion to provisionally grant accreditation status for a period of no longer than six months in situations where the Tribunal believes corrective actions can be taken by the organization, within that time frame, to come into full compliance with the accreditation criteria. It is anticipated this would have limited applicability as the criteria generally rely on historical practice and performance.

The Tribunal should be required to prescribe the corrective actions that an organization must take to come into compliance and follow up to confirm that corrective actions were taken within the specified timeframe.

The OMAF discussion paper states that “accreditation is an independent appraisal of general farm organizations, against criteria set out in the regulations, during which the general organization’s membership, activities and finances are evaluated”. However in reality an organization’s finances do not appear to be evaluated. Instead only the reporting of financial information is evaluated. Accredited organizations are obliged to provide funding to their local affiliates and obliged to provide funding to the eligible francophone organization. Given local affiliates and the eligible francophone



organization have a vested interest in receiving their funding; it is not necessary for the Tribunal to closely monitor those financial transactions. Instead, the Tribunal should investigate complaints by local affiliates and/or eligible francophone organization who allege that they have not received their entitlement.

From a financial perspective, however, it seems reasonable to empower the Tribunal to assess financial performance with regards the establishment of the prescribed fee for general farm organizations.

Presently the fee is set in regulation. Given the periodic review of general farm organization “performance” by the Tribunal, including financial performance it would be appropriate to have the Tribunal assess presentations on the appropriate fee over the accreditation period. The Tribunal would receive a presentation on a proposed fee, assess the application against a set of criteria and approve or deny the change in the fee. This would put the onus of the organizations to collaboratively establish and defend a fee. The Tribunal would assess the fee requirements against objective criteria and approve a fee as part of the accreditation process.

## **2. Eligibility Criteria to be an Accredited Farm Organization**

Accreditation status will be revoked if the farm organization fails to meet any one of the eligibility criterion. Losing accreditation status is of severe financial consequence to a farm organization. Furthermore, an immediate remedy may not be available after failing to meet eligibility criterion as currently stated. As a result, there is no such thing as a minor defect. However when weighed against the loss of an organization’s accredited status if not satisfied, the significance of some of the criteria are questionable.

The OFA supports the criterion of requiring audited financial statements. This would obviously be of greater significance if the Tribunal were to be given the authority to set the fee.

However subsection 5(1)13, which stipulates that on an ongoing basis during the period of its accreditation the accredited organization must submit to the Tribunal its audited financial statements within ten days after each annual general meeting, should be omitted. It presumes that the Tribunal is providing ongoing oversight which it is not required to provide. Although the Tribunal may review accreditation if a panel of at least three members of the Tribunal believe that the organization no longer qualifies for the accreditation as per Section 8 of the Act, no such review was started after OFA failed to submit its financial statements and auditor’s report for 2008 and 2010 within the prescribed timeframe.

Furthermore subsection 5(1)13 should be omitted because the consequence of not meeting the criterion stated in subsection 5(1)13 is severe and without remedy as noted in the Tribunal’s OFA 2011 Reaccreditation Decision:



“The Tribunal considered whether deficiencies in the content and submission of the OFA's audited financial statements and audited reports could be remedied. The Tribunal determined that even if the OFA revises its financial statements and reports for the 2008, 2009 and 2010 fiscal years to meet the prescribed criteria in section 5(3)(c), they can never meet the prescribed criteria in section 5(1)13. The latter requires the submission of documents that first meet the prescribed criteria in section 5(3)(c) and then meet the prescribed criteria in section 5(1)13. In plain language, the OFA must submit compliant documents within the prescribed 10 day window on an ongoing basis during the period of its accreditation. Therefore, there is no remedy because the window of time when the OFA can submit compliant documents closes each year and cannot be re-opened. Furthermore, the Regulation does not bestow the Tribunal with any discretion in this matter.”

Also with regards to the financial statements, the OFA believes that the requirement to state the per cent of the applicable amounts contributed to the “branches” (i.e. local affiliates) should be deleted. The organization must already show evidence during a Tribunal hearing to prove it is in compliance with paragraph 12 of subsection 5(1) which outlines the required contributions to the local affiliates.

Insisting that such a percentage is shown in the financial statements, leaves an organization with no immediate way of correcting the stated percentage. Compliance would necessitate producing revised audited financial statements, which is disruptive and costly. Such a correction may be necessary if one of the organization's local affiliates is later determined to not to have satisfied the criteria found in subsection 5(4).

The OFA recommends clarifying the local affiliate requirements outlined in subsection 5(4) to add more certainty to the accreditation criteria. The current criteria do not specifically address the composition of the Boards of the local affiliates. However, the previous Tribunal panel commented on the composition of the local affiliate executives (taken by the Tribunal to be its Board of Directors), suggesting that all those on the local affiliate executive should be members.

The OFA suggests, if this is how general farm organizations will be judged, that the criteria are explicit and clear on the issue. The criteria in Section 5(4) need to include a clause that stipulates: “the local affiliate Board is comprised exclusively of members”. Also we suggest that subsection 5(4)(c), which stipulates an annual general meeting of the local affiliate be held should be omitted.

The OFA further recommends amendment to the criteria addressing the funding of local affiliates. Currently, subsection 5(12) requires that 25 per cent of FBR revenue be provided to local affiliates. OFA proposes this be lowered to “at least 10 per cent”. This would afford farm organizations the ability to comply with a reasonable threshold with the flexibility to fund local affiliates above that threshold as needed. Our experience shows that the rigidity of a high, regulated threshold presents other complexities.

In conjunction with the lowering from 25% to 10%, we recommend deleting the



unnecessary complexity of “less the amount that would be payable in taxes if this amount were being charged as a membership fee” from both subsection 5(12) i. and ii. This deletion will simplify the necessary calculations.

OFA believes the criteria must ensure general farm organizations qualify on the basis of effectively representing and working on behalf of a significant number of farming businesses in Ontario. In order to qualify as a general farm organization in the usual sense of the word “general”, the OFA submits it is necessary to amend the criterion found in Section 5.(1)1. to require that a farm organization must have “at least 2,000 members” rather than the present 250 members.

Given the diversity of our agriculture industry, the threshold of 250 members simply cannot reflect a farm organization that speaks on behalf of a valid cross section of farming businesses in Ontario.

Furthermore, all of the eligibility criteria must be clearly stated without the need for the applicant and/or a panel of the Tribunal to rely on a line of reasoning as to how to interpret the wording of the criteria. Therefore we suggest the following wording changes in Ontario Regulation 723/93:

- Replace “an executive body” in subsection 5(1)7 and 8(1)6 with “a Board of Directors”, given that any farm organization applying must be incorporated.
- Replace “executive body” in subsection 5(1)8 with “farm organization” given that considering and responding to submissions to members should be a major function of the farm organization and not limited to the duty of just the “executive body”. In addition, such a duty of the Board of Directors may be inconsistent with a typical corporate governance model.
- Replace the entire phrase in subsections 5(3)(b) and 11(2)(b) with: “the independent auditor’s report states that the audit of the financial statements has been conducted in accordance with the Canadian Generally Accepted Auditing Standards; and”. The existing phrase is not contained in such an audit report and therefore requires the Tribunal Panel to have knowledge of “the standards set forth in the Handbook of the Canadian Institute of Chartered Accountants”.
- Replace “branches” in subsection 5(3)(c) with “the local affiliates” as a consistent expression should be used throughout the regulation. As noted above however, our preferred approach would be to delete this reference to altogether.
- Replace “membership fee” with “membership fee referred to in paragraph 3 of subsection 5.(1)” in subsection 5(4)(a) to clarify that the membership fee is paid to the provincial body not the local affiliate which receives a contribution as noted in subsection 5(1)12.
- Replace “affiliate’s members” with “members in the local affiliate’s area” in



subsection 5(4)(b) to clarify that the members in question are in fact members of the provincial organization.

### **3. Farm Registration Process**

Until recently the Farm Business Registration process has been viewed as a process for registering with OMAF and for joining the farm organization of choice. The newly created two-step process to explicitly demonstrate offer and acceptance of membership is confusing to some and deemed unnecessary by many registrants. Simplification of the registration and membership processes, preferably combining the two, is important.

OFA recommends that farm business registrants be permitted to apply for membership in the organization of choice at the time of registration without having to complete a second step. This could be accomplished by registrants signing a request, on the registration form, to become a member and have the registration fee transferred to the general farm organization of choice as a membership fee. Per the Tribunal's previous decisions, the organization would be receiving a bona fide application for membership and would, in turn, decide on acceptance or denial of the request.

At renewal of a farming business registration, the farm registrants must submit the required registration fee. The OFA believes that registrants, renewing their farm business registrations, should not also be required to complete and submit a new farming business registration form unless they are requesting changes to the information currently on file.

The OFA recommends the ministry should cease collection of the following information from farming business registrants:

- the approximate age ranges and educational background of individuals/partners/shareholders/officers;
- the approximate number of individuals employed on a part time, regular full time and seasonal full time basis with reference to the specified ranges;
- the type of crops, livestock or poultry raised or the type of animal or other agricultural products produced in the farming business;
- the three agricultural products, listed in descending order, that make the greatest contribution to gross farm income; and
- the area of the land used in the farming business, the amount, if any, of that area that is cultivated, the amount if any, that is owned and the amount, if any, that is rented.

The OFA also recommends that beginning farmers and farmers who have experienced a low production year should be permitted to register their farming businesses, if those farmers would have qualified for the current farm income requirement exemptions that exist under the Farm Property Class Tax Rate Program.



The OFA does not support raising the minimum \$7,000 gross farm income requirement at this time. Small scale and beginning farmers would be disadvantaged by raising the minimum. Possession of a valid registration number is an eligibility requirement for accessing some government programs and exemptions, including the Farm Property Class Tax Rate Program, which is particularly important for beginning farmers.

The OFA supports the recovery of administrative costs associated with processing refunds. Registrants who seek refunds still reap the benefits of registration via eligibility for the available farm programs and, in fact, also continue to benefit from the work of the farm organizations who are presently required to pay the cost of the registration process. Currently those supporting the farm organization are subsidizing those who seek a FBR payment refund from the farm organization.

In closing, The OFA is grateful for the opportunity to provide our comments as part of this program review. We believe the review is timely and necessary and we look forward to the needed changes in our Farm Business Registration processes.

Should you wish to discuss our comments further, please contact Mr. Neil Currie, OFA General Manager at 519-821-8883 or by email at [neil.currie@ofa.on.ca](mailto:neil.currie@ofa.on.ca).

Sincerely,

A handwritten signature in black ink that reads 'Mark Wales'. The signature is written in a cursive, flowing style.

Mark Wales  
President

c: OFA Board of Directors  
County Federation Presidents and Secretaries