

1987 BILL 20

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Second Session, 21st Legislature, 36 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 20**

## **MARKETING OF AGRICULTURAL PRODUCTS ACT**

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THE MINISTER OF AGRICULTURE

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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Bill 20

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1987

### MARKETING OF AGRICULTURAL PRODUCTS ACT

(Assented to \_\_\_\_\_, 1987)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

**1** In this Act,

(a) "agricultural product"

(i) means a natural product of agriculture or a primary food product designated by the Lieutenant Governor in Council as an agricultural product, and

(ii) includes a product resulting from the processing of a product designated as an agricultural product while the product is owned or regulated by a producer, board or commission;

(b) "board" means a board established by regulation under section 17;

- (c) “Canada Act” means
- (i) the *Farm Products Marketing Agencies Act* (Canada),
  - (ii) the *Agricultural Products Marketing Act* (Canada), or
  - (iii) any other Act of the Parliament of Canada designated by the Lieutenant Governor in Council,
- or any one or more of them, as the case may be;
- (d) “Canada Board” means
- (i) the National Farm Products Marketing Council or an agency established pursuant to the *Farm Products Marketing Agencies Act* (Canada), or
  - (ii) the Governor General in Council,
- as the case may be;
- (e) “commission” means a commission established by regulation under section 18;
- (f) “Council” means the Alberta Agricultural Products Marketing Council;
- (g) “Court” means the Court of Queen’s Bench;
- (h) “designated agency” means an agency designated by a board as the agency by or through which a regulated product is to be marketed;
- (i) “marketing”
- (i) means buying, owning, selling, offering for sale, storing, grading, assembling, packing, transporting, advertising or financing, and
  - (ii) includes any other function or activity designated as marketing by the Lieutenant Governor in Council;
- (j) “Minister” means the Minister of Agriculture;
- (k) “plan” means a plan established under Part 2 and includes any amendments to it;
- (l) “processing” means changing the nature or form of an agricultural product, and includes,
- (i) in the case of eggs, the hatching of them, and
  - (ii) any function or activity designated as processing by the Lieutenant Governor in Council;
- (m) “producer” means a person who produces an agricultural product;
- (n) “record” includes
- (i) any document, agreement, account, book, return, statement, report or other memorandum of financial or non-financial information whether in writing or in electronic form or represented or reproduced by any other means, and

(ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate;

(o) “regulated product” means any agricultural product in respect of which a plan is established.

Administration of Act **2** The Minister of Agriculture is charged with the administration of this Act.

Application of Act **3** Nothing in this Act or the regulations or in any plan prohibits or restricts a person from producing a regulated product if it is produced solely for consumption by that person or his family.

## PART 1

### ALBERTA AGRICULTURAL PRODUCTS MARKETING COUNCIL

Council **4(1)** The Alberta Agricultural Products Marketing Council is continued and shall consist of not fewer than 3 persons appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate 1 member of the Council as the chairman and another member as the vice-chairman of the Council.

(3) The members and the chairman of the Council shall be paid remuneration and expenses prescribed by the Lieutenant Governor in Council.

(4) The Council is a corporation.

By-laws **5(1)** The Council may make by-laws governing  
(a) the conduct of the business and affairs of the Council in carrying out its responsibilities, and  
(b) the calling and conducting of and procedure at meetings of the Council.

(2) The *Regulations Act* does not apply to a by-law made under subsection (1).

Quorum **6** A quorum at meetings of the Council is a majority of the members of the Council then holding office.

Staff **7(1)** In accordance with the *Public Service Act* there may be appointed a General Manager of the Council and any other employees required to conduct the business of the Council.

(2) Any appointment of a person as the General Manager is subject to the approval of the Minister.

(3) The Council may give direction to the General Manager and other employees of the Council.

Appointment of experts **8** The Council may appoint experts or persons having special, technical or other knowledge to advise it on any matter relating to the production or marketing, or both, of an agricultural product, and may pay them remuneration and expenses as the Council prescribes.

Evidence

**9(1)** For the purposes of section 35 of the *Alberta Evidence Act* any record in the possession of the Council is deemed to be in the possession of the Minister.

**(2)** Section 35 of the *Alberta Evidence Act* applies to a member of the Council in the same manner as if he were an employee of the Government.

Responsibilities of Council

**10** The Council is responsible for the following:

- (a) advising the Minister on matters relating to the establishment, operation and control of boards and commissions;
- (b) reviewing each proposed plan submitted to it and deciding whether to hold public hearings or meetings in respect of a proposed plan;
- (c) making recommendations to the Minister respecting the establishment, amendment and termination of a plan;
- (d) conducting votes on plans for the establishment, amendment or termination of plans and of boards and commissions;
- (e) supervising the operation of boards and commissions;
- (f) administering the regulations made under this Act;
- (g) performing any other duties and functions necessary in exercising the authority given to it under this Act and the regulations;
- (h) carrying out any other duty assigned to it by the Minister or the Lieutenant Governor in Council.

Directions of Council

**11** The Council may do the following:

- (a) require a board, commission or producer or a person who markets or processes a regulated product to furnish to the Council any information or record relating to the production, marketing or processing of a regulated product that the Council considers necessary;
- (b) direct a board or commission to carry out any purposes of a plan that the Council considers necessary or advisable;
- (c) make any direction necessary to a board, commission or person for the purpose of administering this Act, the regulations or a plan.

General regulations by Lieutenant Governor in Council

**12** The Lieutenant Governor in Council may make regulations

- (a) designating agricultural products for the purpose of this Act and the regulations;
- (b) designating any function or activity as marketing for the purpose of this Act and the regulations;
- (c) designating any function or activity as processing for the purpose of this Act and the regulations;
- (d) requiring that a regulation or class of regulation made by a board or commission under section 26 or 27, as the case may be,

not be filed in accordance with the *Regulations Act* unless it is approved by the Lieutenant Governor in Council;

(e) providing for boards or commissions to co-operate with or act as agents of the Canada Board;

(f) subject to Part 3, governing the winding-up and disposition of the assets of a board or commission whose establishment is terminated;

(g) notwithstanding this or any other Act, providing for

(i) the carrying out by the Council or a trustee of any or all of the duties of a board or commission;

(ii) the vesting of the assets of a board or commission in the Council or a trustee;

(iii) the disposition of any or all of the assets of a board or commission in a prescribed manner.

Council  
regulations

**13** The Council may make regulations

(a) subject to Parts 2 and 3, governing plebiscites held under this Act;

(b) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.

Annual report

**14(1)** The Council shall, as soon as practicable after the end of the fiscal year of the Crown, prepare a report summarizing the affairs of the Council for that fiscal year and forward the report to the Minister.

(2) When the Minister receives the report, the Minister shall lay a copy of it before the Assembly if it is then sitting, and if it is not then sitting, within 15 days from the day of commencement of the next ensuing sitting of the Assembly.

**PART 2**

**ESTABLISHMENT OF PLANS, BOARDS AND COMMISSIONS  
AND GOVERNING OF BOARDS AND COMMISSIONS**

Submission of a  
proposed plan

**15(1)** A group of producers may submit to the Council a proposed plan for the establishment

(a) of a plan that will be administered by a board

(i) for the control and regulation of the production or marketing, or both, of an agricultural product, and

(ii) to initiate and carry out projects or programs to commence, stimulate, increase or improve the production or marketing, or both, of an agricultural product,

(b) of a plan that will be administered by a commission

(i) to initiate and carry out projects or programs to commence, stimulate, increase or improve the production or marketing, or both, of an agricultural product but that will not

permit the control or regulation of the production or marketing of that agricultural product, and

(ii) under which any service charge collected will not be refundable on the request of a producer,

or

(c) of a plan that will be administered by a commission

(i) to initiate and carry out projects or programs to commence, stimulate, increase or improve the production or marketing, or both, of an agricultural product but that will not permit the control or regulation of the production or marketing of that agricultural product, and

(ii) under which any service charge collected will be refundable on the request of a producer.

(2) A proposed plan shall set out the following terms under which the proposed plan is intended to operate:

(a) the agricultural product that is to be the subject of the plan;

(b) in the case of a plan that is to be administered by a board,

(i) the methods, if any, by which the production or marketing, or both, of the agricultural product is to be controlled or regulated;

(ii) the projects or programs, if any, that are to be carried out for the purpose of commencing, stimulating, increasing or improving the production or marketing, or both, of the agricultural product;

(iii) whether the plan is to apply to all of Alberta or only certain parts of Alberta;

(iv) if the plan is to apply only to parts of Alberta, those parts of Alberta to which the plan will apply;

(v) any class, variety, size, grade or kind of the agricultural product that is to be exempted from the plan;

(vi) the persons, if any, that are to be exempted from the plan;

(vii) the regulation-making powers that the board wishes to be authorized to exercise under sections 26 and 27;

(viii) the methods by which the operation of the plan is to be financed;

(ix) whether the board intends to establish a fund under section 33 or 34;

(x) if a fund is to be established under section 33 or 34, the methods by which the fund is to be financed;

(xi) the composition of the board;

(xii) the method of electing members to the board;



- (xiii) the method for reviewing the conduct of elections of members to the board;
- (c) in the case of a plan that is to be administered by a commission,
  - (i) the projects or programs, if any, that are to be carried out for the purpose of commencing, stimulating, increasing or improving the production or marketing, or both, of the agricultural product;
  - (ii) whether the plan is to apply to all of Alberta or only certain parts of Alberta;
  - (iii) if the plan is to apply only to parts of Alberta, those parts of Alberta to which the plan will apply;
  - (iv) any class, variety, size, grade or kind of the agricultural product that is to be exempted from the plan;
  - (v) the persons, if any, that are to be exempted from the plan;
  - (vi) the regulation-making powers that the commission wishes to be authorized to exercise under section 26;
  - (vii) the methods by which the operation of the plan is to be financed;
  - (viii) whether the service charge will be refundable on the request of a producer;
  - (ix) whether the commission intends to establish a fund under section 33 or 34;
  - (x) if a fund is to be established under section 33 or 34, the methods by which the fund is to be financed;
  - (xi) the composition of the commission;
  - (xii) the method of electing members to the commission;
  - (xiii) the method for reviewing the conduct of elections of members to the commission.

Plebiscite on a proposed plan

**16(1)** A plan shall not be established until

- (a) the proposed plan is submitted to a plebiscite of the producers to determine whether the plan should be established, and
- (b) the vote conducted under the plebiscite is in favour of the plan.

(2) Notwithstanding subsection (1), the Lieutenant Governor in Council may exempt a proposed plan referred to in section 15(1)(c) from the requirement of being submitted to a plebiscite.

(3) For the purpose of conducting a plebiscite of producers to determine whether a plan shall be established, the Council shall by regulation determine what constitutes

- (a) an eligible producer,
- (b) a sufficient number of eligible producers, and

(c) a sufficient portion of the total agricultural product that is marketed or is capable of being produced by the eligible producers.

(4) When

(a) a sufficient number of eligible producers have voluntarily registered with the Council in order for a plebiscite to be held, and

(b) the eligible producers so registered market or are capable of producing a sufficient portion of the agricultural product,

the Council shall cause a plebiscite to be held.

(5) A plebiscite shall be considered to be in favour of a plan being established if the proposed plan is approved by a majority vote of the eligible producers who have registered with the Council for the purpose of voting in the plebiscite.

Establishment of  
board plans

**17(1)** Where a vote is in favour of the establishment of a plan referred to in section 15(1)(a), the Lieutenant Governor in Council may make regulations

(a) establishing a plan setting forth provisions providing for

(i) the control and regulation of the production or marketing, or both, of an agricultural product,

(ii) the carrying out of projects or programs to commence, stimulate, increase or improve the production or marketing, or both, of an agricultural product,

(iii) the number of persons to be elected as members of the board and the name of office by which those persons shall be known,

(iv) the method or methods by which the members of the board shall be elected,

(v) the method by which vacancies on the board are to be filled, and

(vi) the other terms referred to in section 15 under which the plan shall operate,

and

(b) establishing a board to administer and operate a plan referred to in clause (a).

(2) A board established under a plan is a corporation.

(3) Every member of a board shall be a producer or a representative of a producer if the producer is a corporation.

Establishment  
of commission  
plans

**18(1)** Where

(a) a vote is in favour of the establishment of a plan referred to in section 15(1)(b) or (c), or

(b) a plan referred to in section 15(1)(c) is exempted from the requirement of being submitted to a plebiscite,

the Lieutenant Governor in Council may make regulations

- (c) establishing a plan setting forth provisions providing for
  - (i) initiating and carrying out projects or programs to commence, stimulate, increase or improve the production or marketing, or both, of an agricultural product,
  - (ii) the number of persons to be elected as members of the commission and the name of office by which those persons shall be known,
  - (iii) the method or methods by which the members of the commission shall be elected,
  - (iv) the method by which vacancies on the commission are to be filled, and
  - (v) the other terms referred to in section 15 under which the plan shall operate,

and

- (d) establishing a commission to administer and operate a plan referred to in clause (a).

- (2) A commission established under a plan is a corporation.
- (3) Every member of a commission shall be a producer or a representative of a producer if the producer is a corporation.

Interim members  
of boards and  
commissions

**19** After a board or commission is established under section 17 or 18 and prior to the election of the initial members to the board or commission, the Council may appoint interim members to that board or commission to carry out its functions until the initial members are elected and assume their duties on the board or commission.

Regulations  
governing boards  
and commissions

**20** The Council may make regulations

- (a) prescribing by-laws governing
  - (i) the conduct of the business and affairs of boards and commissions in carrying out their responsibilities, and
  - (ii) the calling and conducting of and procedure at meetings of boards and commissions;
- (b) authorizing a board or commission to pay remuneration and expenses to its members;
- (c) governing the employment of officers and employees of a board or commission.

### PART 3

#### AMENDMENT AND TERMINATION OF PLANS

Petitions  
to amend or  
terminate plans

**21(1)** The producers under a plan may submit a petition to the Council requesting that the plan be amended or terminated.

(2) The Council shall not accept a petition under subsection (1) unless the petition

- (a) clearly states the intent of the petition,
- (b) is signed by at least 10% of the producers under the plan who represent at least 10% of the total production of the regulated product,

- (c) sets forth
  - (i) in a legible manner the name and address, and
  - (ii) the signature,
 of each petitioner, and
- (d) is submitted to the Council within 12 months from the date that the first petitioner signed the petition.

Request to amend or terminate plan

- 22** The Council may, pursuant to
- (a) a petition submitted under section 21,
  - (b) a resolution of Council whether or not it has received a petition under section 21, or
  - (c) a request of a board or commission,
- apply to the Lieutenant Governor in Council to amend or terminate a plan.

Amendment or termination of plans

- 23** The Lieutenant Governor in Council,
- (a) on receiving an application from the Council to do so, where a plebiscite is not required to be conducted under this Part, or
  - (b) pursuant to a plebiscite conducted under this Part,
- may make regulations amending or terminating a plan.

Plebiscite required

- 24(1)** A plan shall not be
- (a) amended
    - (i) if the amendment relates directly to the control or regulation of the production or marketing, or both, of a regulated product under the plan, or
    - (ii) in the case of a plan under which the service charges are refundable, if the amendment is to the effect that the service charges will no longer be refundable,
- or
- (b) terminated if the plan was established pursuant to a plebiscite of the producers conducted under Part 2,

unless a plebiscite of the producers is conducted to determine whether the plan should be amended or terminated, as the case may be, and the vote conducted under the plebiscite is in favour of the amendment or termination.

(2) The Lieutenant Governor in Council may, whether or not an application is made under section 22 to amend or terminate a plan, direct the Council to conduct a plebiscite of the producers under a plan for the purpose of determining whether the plan should be amended or terminated.

Conduct of plebiscite

**25(1)** The Council shall arrange to conduct a plebiscite of the producers under a plan if

- (a) the Council considers it appropriate to determine the opinion of the producers under the plan as to whether the plan should be amended or terminated,
  - (b) a proposed amendment to a plan relates directly to the control or regulation of the production or marketing, or both, of a regulated product under the plan,
  - (c) in the case of a plan under which the service charges are refundable, the amendment is to the effect that the service charges will no longer be refundable,
  - (d) it is proposed to terminate a plan that was made operative pursuant to a plebiscite of the producers conducted under Part 2, or
  - (e) the Council is directed by the Lieutenant Governor in Council under section 24 to conduct a plebiscite.
- (2) For the purposes of conducting a plebiscite of the producers under a plan with respect to the amendment or termination of the plan, the Council shall by regulation determine what constitutes
- (a) an eligible producer,
  - (b) a sufficient number of eligible producers, and
  - (c) a sufficient portion of the total agricultural product that is marketed or is capable of being produced by the eligible producers.
- (3) When
- (a) a sufficient number of eligible producers have voluntarily registered with the Council in order for a plebiscite to be held, and
  - (b) the eligible producers so registered market or are capable of producing a sufficient portion of the agricultural product,
- the Council shall cause a plebiscite to be held.
- (4) A plebiscite shall be considered to be in favour of the question voted on if the majority of eligible producers who have registered with the Council for the purpose of voting in the plebiscite vote to amend or terminate the plan.

**PART 4**  
**OPERATION OF PLANS**

Regulations by  
boards and  
commissions

- 26** For the purposes of enabling a board or commission to operate a plan, the Council may by regulation authorize a board or commission to make regulations
- (a) requiring producers engaged in the production or marketing, or both, of a regulated product to register their names and addresses with the board or commission;
  - (b) requiring any person who produces, markets or processes a regulated product to furnish to the board or commission any information or record relating to the production, marketing or

processing of the regulated product that the board or commission considers necessary;

(c) providing for

(i) the assessment, charging and collection of service charges from producers from time to time for the purposes of the plan, and

(ii) the taking of legal action to enforce payment of the service charges;

(d) in the case of a commission, providing for the refund of service charges;

(e) requiring any person who receives a regulated product from a producer

(i) to deduct from the money payable to the producer any service charges or levies, or both, payable by the producer to the board or commission, and

(ii) to forward the amount deducted to the board or commission;

(f) providing for the use of any class of service charges, levies or other money payable to or received by the board or commission for the purpose of paying its expenses and administering the plan and the regulations made by the board or commission;

(g) requiring persons who produce, market or process a regulated product to mark the containers of their products to show the place of origin or place of production to the satisfaction of the board or commission;

(h) providing for the payment to a Canada Board of money that is payable under a Canada Act;

(i) permitting the board or commission to exercise any one or more of the powers that are vested in a co-operative association under the *Co-operative Associations Act*.

regulations  
by boards

**27** For the purpose of enabling a board to operate a plan, the Council, in addition to an authorization made under section 26, may by regulation authorize a board to make regulations

(a) requiring that the production or marketing, or both, of a regulated product be conducted pursuant to a quota;

(b) governing

(i) the fixing and allotting of quotas,

(ii) the increase or reduction of quotas,

(iii) the cancelling of quotas, and

(iv) the refusal to fix and allot quotas,

to producers for the production or marketing, or both, of a regulated product on any basis that the board considers appropriate;

(c) governing the transferability or non-transferability of quotas and prescribing the conditions and procedures applicable to the transfer of quotas, if any, that the board considers appropriate;

(d) establishing

(i) a formula for determining the amount or number of a regulated product deemed to have been marketed by a producer, and

(ii) the period of time in respect of which the formula is to be applied,

for the purposes of determining the amount of a regulated product marketed by a producer during a period of time;

(e) providing for

(i) the assessment, charging and collection of a levy from any producer whose production or marketing, or both, of the regulated product is in excess of the quota that has been fixed and allotted to that producer, and

(ii) the taking of legal action to enforce payment of the levy;

(f) determining the quantity of each class, variety, size, grade and kind of the regulated product that shall be produced or marketed, or both, by each producer;

(g) requiring a producer who produces a regulated product to market the regulated product through the board or through a designated agency;

(h) directing, controlling or prohibiting, as the case may be, the production or marketing, or both, of the regulated product or any class, variety, size, grade or kind of the regulated product in such manner as the board considers appropriate;

(i) regulating and controlling the production or marketing, or both, of the regulated product, including the times and places at which the regulated product may be produced or marketed;

(j) providing for the purchase or acquisition of any of the regulated product that the board considers advisable and the sale or disposition of it;

(k) providing for the establishment and operation of one or more programs for the disposition of any agricultural product considered to be surplus to market requirements;

(l) determining from time to time the minimum price or price that shall be paid to producers for the regulated product or any class, variety, grade, size or kind of the regulated product and determining different prices for different parts of Alberta;

(m) requiring that the money payable or owing to a producer for the regulated product be paid to or through the board;

(n) providing for the payment to a producer of the money payable or owing for the regulated product, less any service charge and levies owing to the board by the producer, and fixing th

time or times at which or within which the payments shall be made;

(o) providing

(i) for the operation of one or more pools for the distribution of all money payable to the producers from the sale of the regulated product, and

(ii) for the deduction of reasonable and proper disbursements and expenses with respect to the operation of the pool;

(p) providing for the collection from any person by legal action of money owing to a producer for the regulated product;

(q) governing

(i) the furnishing of security or proof of financial responsibility by any person engaged in the production, marketing or processing of a regulated product, and

(ii) the administration and disposition of any money or securities so furnished;

(r) prohibiting a person to whom a quota has not been fixed and allotted for the production or marketing, or both, of a regulated product from producing or marketing, as the case may be, any of the regulated product;

(s) prohibiting a producer to whom a quota has been fixed and allotted for the production or marketing, or both, of a regulated product from producing or marketing, as the case may be, any of the regulated product in excess of that quota;

(t) prohibiting any person from purchasing or otherwise acquiring any regulated product from a producer that is in excess of the quota that has been fixed and allotted to the producer for the production or marketing, or both, of the regulated product;

(u) prohibiting any person from purchasing or otherwise acquiring any regulated product from a person to whom a quota has not been fixed and allotted for the production or marketing, or both, of the regulated product;

(v) prohibiting any person from marketing or processing any of the regulated product that has not been sold by or through the board or a designated agency.

Conditions  
of Council

**28** The Council may, in respect of any authorization made under section 26 or 27,

(a) prescribe conditions or restrictions, or

(b) limit the authority of the board or commission,

with respect to the making of regulations by a board or commission under that authorization.

Regulations to  
be Submitted  
to Council

**29(1)** A regulation made by a board or a commission under section 26 or 27, as the case may be, shall not be filed in accordance with the *Regulations Act* unless it is submitted to and approved by the Council.



(2) Within 90 days from the day the Council receives a copy of a regulation from a board or commission, it shall

- (a) approve the regulation,
- (b) request the board or commission to vary the regulation and to re-submit the regulation to the Council under this section, or
- (c) disapprove the regulation,

and notify the board or commission of its action.

(3) Notwithstanding subsection (2), if the Council does not within the 90-day period take any action under subsection (2),

- (a) the board or commission, as the case may be, may file the regulation in accordance with the *Regulations Act*, and
- (b) the regulation shall be deemed to have been approved by the Council.

(4) This section does not apply if the regulation referred to in subsection (1) is, pursuant to a regulation made under section 12(d), required to be approved by the Lieutenant Governor in Council before it is filed in accordance with the *Regulations Act*.

Council's  
direction  
to amend  
regulations

**30(1)** At any time after a regulation made by a board or commission under section 26 or 27, including a regulation approved by the Lieutenant Governor in Council pursuant to a regulation made under section 12(d), is filed in accordance with the *Regulations Act*, the Council may request in writing the board or commission, as the case may be,

- (a) to amend the regulation as directed by the Council, or
- (b) to repeal the regulation.

(2) If a board or commission does not comply with a request of the Council made under subsection (1) within 45 days from the day the board or commission is served with the request, the Council may, with the approval of the Minister, amend or repeal the regulation in accordance with the request it made to the board or commission.

Advisory  
committees

**31(1)** The Council or a board or commission may by order establish advisory committees to advise and make recommendations with respect to the production or marketing, or both, of a regulated product.

(2) The order establishing an advisory committee may

- (a) prescribe the terms of reference of the advisory committee,
- (b) provide for the membership of the advisory committee,
- (c) provide for the conduct of the affairs of the advisory committee, and
- (d) provide for the payment of remuneration and expenses to the members of the advisory committee.

(3) A board or commission shall establish an advisory committee when directed to do so by the Council, subject to those terms and conditions, if any, prescribed by the Council.

negotiations re  
marketing or  
production

**32(1)** The Council may in respect of a plan administered by a board make regulations

(a) providing for the establishment, in connection with any plan established under Part 2, of negotiating agencies that may be empowered to adopt or settle by agreement any or all of the following matters:

(i) minimum prices for the regulated product or for any class, variety, size, grade or kind of the regulated product;

(ii) terms, conditions and forms of agreements relating to the production or marketing of the regulated product;

(iii) any charges, costs or expenses relating to the production or marketing of the regulated product;

(b) providing for the arbitration by an arbitrator or arbitration board of any matter not adopted or settled by agreement under clause (a);

(c) providing for the arbitration by an arbitrator or by an arbitration board of any dispute arising out of

(i) any agreement adopted or settled under clause (a), or

(ii) any award made under clause (b);

(d) determining

(i) the composition of negotiating agencies, and

(ii) the appointment of arbitrators or arbitration boards,

and regulating the practice and procedure of those agencies and arbitration boards;

(e) authorizing a board, subject to any terms or conditions prescribed in the authorization,

(i) to make regulations regulating and controlling agreements entered into by producers of a regulated product with persons engaged in marketing or processing of the regulated product, and

(ii) to prohibit any provision in the agreement.

(2) Every agreement and award made under the regulations referred to in subsection (1)

(a) shall be filed with the Council forthwith after it is made;

(b) subject to clause (c), remains in force for 1 year or for the period provided in the agreement or award or re-negotiated agreement or award;

(c) may at any time, on the direction of the Council, be re-negotiated in whole or in part in a manner that the Council determines.

(3) The *Arbitration Act* applies to arbitrations conducted under this Act or the regulations under this Act except where there is a conflict

between the *Arbitration Act* and this Act or the regulations, in which case this Act and the regulations prevail.

Funds to indemnify against loss

**33(1)** A board or commission may, if the plan under which it operates so provides, establish, maintain and operate 1 or more funds that may be used to indemnify or protect producers under the plan against financial loss suffered by them or on their behalf in the production or marketing, or both, of a regulated product.

(2) When a fund is established under subsection (1), the board or commission may, subject to this Act and the regulations, assess, charge and collect amounts required for the maintenance and operation of the fund from the producers under the plan.

(3) Payments made into a fund established under this section shall not form part of a licence fee, service charge or levy charged under the plan.

(4) If

(a) a fund is established under this section, and

(b) a producer under a plan does not wish to receive any indemnity or protection from the fund,

the producer shall, on application to the board or commission for an exemption, be exempted from making any payment under subsection (2).

(5) A producer shall not, with respect to any period of time that he did not participate in a fund established under this section, be charged any amount for or in relation to that fund.

(6) The *Insurance Act* does not apply to a fund established or operated under this section.

Funds to equalize, adjust or stabilize financial returns

**34(1)** A board or commission may, if the plan under which it operates so provides, establish, maintain and operate 1 or more funds that may be used for the purpose of equalizing, adjusting or stabilizing the financial returns to producers under the plan from the marketing of a regulated product.

(2) When a fund is established under subsection (1), the board or commission may, subject to this Act and the regulations, assess, charge and collect amounts required for the maintenance and operation of the fund from those producers under the plan

(a) who have voluntarily applied to the board or commission to participate in the fund, and

(b) whose applications to participate in the fund have been accepted.

(3) Payments made into a fund established under this section shall not form part of a licence fee, service charge or levy charged under the plan.

(4) A producer shall not, with respect to any period of time that he did not participate in a fund established under this section, be charged any amount for or in relation to that fund.

(5) The *Insurance Act* does not apply to a fund established or operated under this section.

**PART 5**  
**REVIEWS AND APPEALS**

review by  
board or  
commission

**35(1)** A person affected by an order, direction or decision of a board or commission may, within 60 days from the day that he is served with it, apply to the board or commission, as the case may be, to have the board or commission review its order, direction or decision.

(2) A review under this section shall be commenced by serving an application for the review on the board or commission.

review by  
Council

**36(1)** A person, board or commission affected by an order, direction or decision of the Council may, within 60 days from the day that the person, board or commission is served with it, apply to the Council to have the Council review its order, direction or decision.

(2) A review under this section shall be commenced by serving an application for the review on the Council.

(3) Notwithstanding subsection (1), if a board or commission is applying to the Council for a review of a request made under section 30, the application for the review shall be served on the Council within 15 days from the day that the board or commission was served with the request.

(4) An application for a review referred to in subsection (3) suspends the period of time referred to in section 30(2) from running until the Council gives its decision in respect of the matter being reviewed.

tribunal

**37(1)** A decision made by a board or commission pursuant to a review under section 35 may be appealed to an appeal tribunal within 60 days from the day that the party requesting the review is served with the decision made pursuant to the review.

(2) An appeal under this section shall be commenced by serving a written notice of appeal on the Council.

(3) On receiving the notice of appeal the Council shall forthwith send a copy of the notice of appeal

(a) to the Minister, and

(b) to the board or commission that conducted the review.

appointment of  
tribunal

**38(1)** For the purposes of hearing an appeal under this Part, the Minister shall appoint not more than 5 and not fewer than 3 persons as an appeal tribunal and designate 1 of them as the chairman of the appeal tribunal.

(2) The Minister may prescribe

(a) the remuneration and expenses payable to the chairman and the other members of an appeal tribunal, and

(b) if an appeal tribunal is appointed to hear more than 1 specific appeal, the term of office of the members of the appeal tribunal which shall not exceed 2 years.

(3) A term of office of a member of an appeal tribunal may be renewed.

(4) Notwithstanding subsection (3), a person shall not serve as member of an appeal tribunal for more than 6 consecutive years.

(5) In accordance with the *Public Service Act* there may be appointed employees to provide administrative services in respect of appeals heard under this Part.

Rules governing  
reviews and  
appeals

**39** For the purposes of an appeal or a review under this Part the following rules apply:

(a) an application for a review or a notice of appeal, as the case may be, shall set forth

(i) the matter being reviewed or appealed, and

(ii) the name and address of the party applying to have review or an appeal;

(b) in the case of a review, written notice of the time and place of the review shall be sent by the Council or the board or commission conducting the review to the party applying for the review;

(c) in the case of an appeal, written notice of the time and place of the appeal shall be sent by or on behalf of the appeal tribunal

(i) to the parties to the appeal, and

(ii) to the board or commission that conducted the review;

(d) a review shall be heard and a decision made within 60 days from the day that the Council or the board or commission, as the case may be, received the application for the review;

(e) an appeal shall be heard and a decision made within 90 days from the day that the Council received the notice of appeal;

(f) the granting and duration of an adjournment is in the sole discretion of the Council or the board, commission or appeal tribunal conducting the review or appeal, as the case may be;

(g) the time limit prescribed in clause (d) or (e) does not run during a period of adjournment;

(h) in the case of an appeal, the chairman and members of an appeal tribunal have the same power as is vested in the Court for the trial of civil actions

(i) to summon and enforce the attendance of witnesses, other than members of the Council or employees under the Council's administration,

(ii) to compel witnesses, other than members of the Council or employees under the Council's administration, to give evidence on oath or otherwise, and

(iii) to compel witnesses, other than members of the Council or employees under the Council's administration, to produce any record or thing that relates to the matter being appealed

- (i) the person on whose behalf a review or an appeal is commenced has a right to attend all hearings held in respect of the review or appeal;
- (j) in the case of a review, the Council or the board or commission conducting the review shall receive the evidence that it considers relevant to the matter being reviewed;
- (k) in the case of an appeal, the appeal tribunal may, in addition to receiving the evidence presented at the review, receive new evidence that was not presented at the review that it considers relevant to the matter being appealed;
- (l) a person appearing at a review or appeal, as the case may be, may be represented by legal counsel;
- (m) the parties to a review or an appeal shall be given adequate opportunity to make representations, present evidence and cross-examine witnesses, if any;
- (n) an appeal tribunal may take evidence under oath;
- (o) any member of an appeal tribunal may administer oaths for the purpose of taking evidence;
- (p) the rules of evidence applicable to judicial proceedings do not apply;
- (q) in the case of an appeal, all oral evidence received shall be taken down in writing or recorded by electronic means;
- (r) in the case of an appeal, all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at an appeal form the record of the proceeding;
- (s) if a person on whose behalf a review or appeal is commenced fails to appear for the review or appeal within 1 hour from the time set forth in the notice given under clause (b) or (c) for the review or appeal, the review or appeal, as the case may be, may be dismissed, or conducted and determined in that person's absence;
- (t) in making a decision an appeal tribunal may
  - (i) confirm or rescind the order, direction or decision of the board or commission, or
  - (ii) rescind the order, direction or decision of the board or commission and refer the matter back to the board or commission that conducted the review for a re-hearing with those recommendations, if any, that the appeal tribunal considers appropriate;
- (u) notice of the decision made pursuant to a review and any written reasons respecting the decision shall be sent promptly to the parties to the review;

(v) notice of the decision made pursuant to an appeal and any written reasons respecting the decision shall be sent promptly to

(i) the parties to the appeal,

(ii) the Council, and

(iii) the board or commission that conducted the review;

(w) in the case of an appeal tribunal, a decision of the majority of the members of the appeal tribunal is the decision of the appeal tribunal and if there is not a majority, the decision of the chairman of the appeal tribunal is the decision of the appeal tribunal;

(x) the Council may publish in any manner it considers appropriate any decision of an appeal tribunal;

(y) notwithstanding clauses (b), (i) and (m), with the consent of the person on whose behalf a review is commenced,

(i) a review may be conducted without a hearing being held and

(ii) all matters concerning the matter being reviewed may be submitted in writing or otherwise to the board or commission;

(z) notwithstanding clause (d), if a review is conducted under clause (y), the decision of the board or commission shall be made within 30 days from the day that the person on whose behalf the review is commenced consented to the review being conducted under clause (y);

(aa) the provisions of the Alberta Rules of Court relating to the payment of conduct money or witness fees apply to matters heard under this Act.

Confidential  
evidence

**40(1)** Notwithstanding section 39, if a person is of the opinion that certain evidence to be received by the appeal tribunal should not be disclosed to the other parties to the appeal because

(a) the evidence is of a confidential nature,

(b) the information would provide an unfair advantage to other persons, or

(c) the information required includes information that is not associated with the appeal,

that person may, on prior notice to the other parties to the appeal, apply to the appeal tribunal to have the evidence received confidentially and without being disclosed to the other parties.

(2) On considering an application under subsection (1), the appeal tribunal may

(a) receive the evidence confidentially and without disclosing to other parties to the appeal,

- (b) receive the evidence confidentially or in a restricted manner subject to the conditions that it considers appropriate, or
- (c) refuse to receive the evidence confidentially.

etermination  
ourt

**41(1)** If a party to an appeal before an appeal tribunal considers a decision of the appeal tribunal under section 40 to be unfair or prejudicial to his interests, he may apply by originating notice to the Court for a determination of the matter.

(2) In hearing an application under this section, the Court shall receive the evidence that is the subject of the application in private and in the absence of the parties not presenting that evidence.

(3) In determining an application under this section, the Court may

(a) confirm, vary or rescind the decision made under section 40(2) by the appeal tribunal, or

(b) in substitution for the decision of the appeal tribunal, make any decision that the appeal tribunal could have made under section 40(2).

stions of law

**42** At any stage of any proceedings before an appeal tribunal it may, and if so directed by the Court it shall, state in the form of a special case for the opinion of the Court any question of law arising in the course of the proceedings.

## **PART 6 ENFORCEMENT**

ection

**43(1)** For the purpose of ensuring that this Act, a plan or the regulations are being complied with, a member of the Council or of a board or a commission, or a person authorized by any 1 or more of them, may during ordinary business hours enter the business premises of any person engaged in the production, marketing or processing of an agricultural product, and do 1 or more of the following:

(a) inspect

(i) those premises, and

(ii) any record, object or thing that relates to the production, marketing or processing of that agricultural product;

(b) make copies or take photographs of any record, object or thing referred to in clause (a)(ii);

(c) make inquiries of any person with respect to the production, marketing or processing of that agricultural product;

(d) receive information under oath or by affidavit with respect to the production, marketing or processing of that agricultural product;

(e) administer oaths for the purposes of clause (d).

(2) The Council or the board or commission, as the case may be, shall furnish to a person acting under this section a certificate of that person's designation or appointment, signed by the chairman of the



designating or appointing entity, and the person shall, on request, show the certificate to any person having a proprietary interest in the custody of any premises to be entered or documents to be inspected.

(3) No person shall obstruct or hinder a person in the exercise of power conferred by this section, and every person shall, when required to do so by the Council or a board or commission, or any person designated or appointed to act for it, produce any documents required for inspection.

(4) Notwithstanding anything in subsection (1), no person is required to produce for inspection to a board or commission, or a person acting on its behalf, a record relating to an agricultural product if the record relates to a period of time subsequent to the time at which the agricultural product was owned or regulated by the producer, a board or commission, except when payment is still owing to the producer for the agricultural product.

Court order

**44(1)** If the Council is of the opinion that a board or commission or a person is not complying with

- (a) this Act,
- (b) a plan,
- (c) a regulation made by the Lieutenant Governor in Council or the Council under this Act, or
- (d) an order or direction made by the Council under this Act or the regulations,

the Council may apply to the Court for an order directing that board or commission or person to comply with this Act or the plan, regulation, order or direction.

(2) If in the opinion of a board or commission a person is not complying with

- (a) a plan administered by the board or commission,
- (b) a regulation made by the board or commission, or
- (c) an order or direction made by the board or commission,

the board or commission may apply to the Court for an order directing that person to comply with the plan, regulation, order or direction.

(3) An application under this section shall be by way of an originating notice.

(4) On an originating notice being filed with the clerk of the Court the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending determination of the application.

(5) An interim order under subsection (4) may be made ex parte if the Court considers it appropriate to do so in the circumstances.

(6) On hearing an application the Court may do one or more of the following:

- (a) direct a board, commission or person, as the case may be, to comply with this Act or the plan, regulation, order or direction;
- (b) direct a board, commission or person, as the case may be, to cease carrying out any action that in the opinion of the Court does not comply with this Act or the plan, regulation, order or direction;
- (c) give those directions that it considers necessary in order to ensure that this Act or the plan, regulation, order or direction will be complied with;
- (d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

(7) An application under subsection (2) shall not be brought against the Council, its members or the employees under its administration.

of  
ural

**45(1)** If a board is of the opinion that a person is producing or marketing an agricultural product, or both, in contravention of a regulation made by the board, the board may apply to the Court for an order directing a sheriff to seize, detain or dispose of the agricultural product in accordance with the order.

(2) An application under this section shall be by way of an originating notice.

(3) On an originating notice being filed with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate to do so in the circumstances.

(5) On hearing an application the Court may do 1 or more of the following:

- (a) direct a sheriff to seize and detain the regulated product;
- (b) direct a sheriff to dispose of the regulated product;
- (c) give directions respecting the seizure, detention or disposal of the regulated product;
- (d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;
- (e) award costs in respect of the matter.

**PART 7**  
**GENERAL**

- Liability      **46** A member of the Council or of a board or a commission is not personally liable for anything done by him in good faith in carrying out his duties under this Act or a plan or any regulation, order or direction made under this Act.
- Conflicts      **47** In the case of a conflict between
- (a) regulations made or a plan established by the Lieutenant Governor in Council or regulations made by the Council, and
  - (b) regulations made by a board or commission,
- the regulations referred to in clause (a) prevail.
- Producers and processors      **48(1)** Any person who is a producer and a processor is, in his respective capacities as producer and processor entitled to all the rights and privileges, and subject to all the duties and obligations, of a producer and of a processor.
- (2) A person who is a producer and a processor shall be deemed
- (a) to have received in his capacity as a processor from himself in his capacity as a producer any regulated product produced by him that he processes, and
  - (b) to have contracted, in his capacity as a processor, with himself in his capacity as a producer, for the marketing of the regulated product on the condition that the regulations, orders, directions and agreements under this Act apply.
- Delegation      **49** With the approval of the Lieutenant Governor in Council,
- (a) the Council may authorize a board or commission, with respect to the production or marketing, or both, of a regulated product, to perform any function or duty and exercise any power imposed or conferred on it by or under a Canada Act;
  - (b) the Council may, with respect to the production or marketing, or both, of a regulated product, delegate to the Canada Board any function or duty that the Council may delegate to a board or commission under this Act;
  - (c) the Council may, with respect to any function or duty it has delegated to a board or commission under this Act, authorize or direct that board or commission to further delegate that function or duty to a Canada Board.
- Agreements      **50(1)** The Minister may enter into agreements with another government, a corporation or a person with respect to the production or marketing, or both, of an agricultural product.
- (2) The Council, with the approval of the Minister, may enter into agreements with another government, a corporation or a person with respect to the production or marketing, or both, of an agricultural product.

- Service of documents**      **51(1)** Any document that is to be served under this Act may be served
- (a) by personal service, or
  - (b) by certified or registered mail.
- (2) For the purposes of this Act, a document that is served under this Act is deemed to have been served
- (a) in a case where the document is personally served, at the time of service, and
  - (b) in a case where it is served by certified or registered mail, 10 days from the day that the document is mailed.
- Copies of documents**      **52** A copy of any rule, order, resolution, determination, minute or direction of the Council or a board or commission certified by a member or officer of the Council or the board or commission as a true copy shall, without proof of the signature of the person signing the certificate, be accepted in evidence in place of the original.

**PART 8**  
**TRANSITIONAL AND REPEAL**

- Continuation**      **53(1)** *In this section, "former Act" means the Marketing of Agricultural Products Act, chapter M-5 of the Revised Statutes of Alberta 1980.*
- (2) *The persons who were members of the Alberta Agricultural Products Marketing Council under the former Act immediately before the coming into force of this Act continue as members of the Council under this Act.*
- (3) *The person who was the chairman of the Alberta Agricultural Products Marketing Council under the former Act immediately before the coming into force of this Act continues as the chairman of the Council under this Act.*
- (4) *Every plan, board and commission operating under the former Act immediately before the coming into force of this Act continues under this Act.*
- Repeal**      **54** *The Marketing of Agricultural Products Act, chapter M-5 of the Revised Statutes of Alberta 1980 is repealed.*