

1987 BILL 273

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 273

FAMILY FARM PROTECTION ACT

MR. FOX

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 273
Mr. Fox

BILL 273

1987

FAMILY FARM PROTECTION ACT

(Assented to , 1987)

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

Part I **Definitions and Objects**

Definitions

1 In this Act,

- (a) “action or proceeding” means any act, proceeding or step, and includes any action or proceeding taken in the Court or in any other court;
- (b) “board” means the Alberta Mediation Board established pursuant to section 3;
- (c) “commercial crop” means agricultural produce grown on a commercial basis, and includes wheat, oats, barley, rye, corn and other cereal crops and feed crops, flax, canola, sunflower, mustard, millet, grass and other oil seed and seed crops, alfalfa and other forage crops, root crops, vegetables, legumes, pulses and fruit;
- (d) “committee” means the Alberta Farmers’ Peer Advisory Committee established pursuant to section 23;

(e) “Court” means the Court of Queen’s Bench of Alberta;

(f) “farm machinery and equipment” means

(i) any machinery, equipment or any other inanimate chattel that is or is intended to be used in a farming operation, including any replacement parts or materials, and tools, necessary to repair same, and

(ii) any implement of husbandry as defined in the *Highway Traffic Act*,

that is owned by a farmer or that is being purchased by a farmer under a conditional sales contract;

(g) “farmer” means a person engaged in farming in Alberta, and includes all individuals holding an interest in farmland in joint tenancy with an individual engaged in farming in Alberta;

(h) “farming” means commercial crop production, milk production, livestock raising, poultry raising, bee keeping, or any combination of the foregoing;

(i) “farmland” means land in Alberta that is used, or that primarily has been used during the immediately preceding 2 years, for farming and that is owned by a farmer or that is being purchased by a farmer under an agreement for sale, and includes all erections, buildings and improvements thereon, any commercial crops which are growing thereon, and any mines and minerals;

(j) “judge” means a judge of the Court;

(k) “mediation panel” means any mediation panel established pursuant to section 6(1);

(l) “Minister” means the Minister of Agriculture;

(m) “peer advisory panel” means any peer advisory panel constituted pursuant to section 26;

(n) “person” includes a partnership, limited partnership, syndicate, trustee, joint venture and any association of persons whatsoever.

Objects

2 The objects of this Act are:

(a) to afford protection to farmers against unwarranted loss of their farming operations during periods of difficult economic circumstances;

(b) to preserve the agricultural land base of Alberta and to ensure that farmland is farmed and managed during periods of difficult economic circumstances;

- (c) to preserve the management skills of farmers during periods of difficult economic circumstances; and
- (d) to preserve the existing lifestyles of rural communities in Alberta and the tradition of locally owned and managed family farms.

Part II

Alberta Mediation Board and Mediation Panels

Mediation Board

3(1) There is hereby established a board as a body corporate and politic to be called the Alberta Mediation Board, consisting of not fewer than 5 nor more than 9 members appointed by the Lieutenant Governor in Council.

(2) Unless a member sooner dies, resigns or is removed from office, each member shall serve for such period as is specified in the order by which the member is appointed and thereafter until the member's successor is appointed.

(3) The Lieutenant Governor in Council shall designate one of the members of the board to act as its chairperson, and another member to act as its vice-chairperson.

(4) The chairperson, the vice-chairperson and the other members of the board shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and reimbursed for such reasonable out-of-pocket expenses incurred by the member in the performance of the member's duties as a member of the board as the Minister may approve, providing that money has been appropriated by the Legislature to that purpose.

(5) A majority of the members of the board constitutes a quorum at any duly constituted meeting of the board for the transaction of any business and a decision of the majority of the members present at the meeting is a decision of the board.

(6) The fact that there are vacancies in the membership of the board does not affect the validity of any act or thing done by or in the name of the board.

(7) The chairperson shall preside at all meetings of the board and shall perform such other duties and functions as are assigned to the chairperson under this Act.

(8) When

- (a) the office of the chairperson is vacant;
- (b) the chairperson is ill or absent from the Province;

(c) the chairperson for any reason is incapacitated and unable to act; or

(d) the Minister or the chairperson so requests;

the vice-chairperson shall act as chairperson, and while so acting has all the powers and authority and shall discharge the duties of the chairperson.

(9) The executive director of the board and such other permanent officers and employees as may be necessary for carrying on the operations of the board shall be appointed as provided in the *Public Service Act* and every person so appointed shall

(a) as may be prescribed by the Lieutenant Governor in Council, discharge the duties of, and hold, any office authorized by law, and

(b) be paid a salary or other remuneration as provided by law, providing that money has been appropriated by the Legislature to that purpose.

(10) In addition to such duties as may be prescribed by the Lieutenant Governor in Council, the executive director of the board shall

(a) have the custody and care of all records and documents of the board,

(b) keep a record of all meetings of the board or any proceedings conducted before the board,

(c) have every board report signed by the chairperson or the vice-chairperson, sealed with the seal of the board and properly filed in its office, and

(d) perform such other duties and functions as are assigned to the executive director under this Act or any other Act of the Legislature or by the Minister.

(11) Any report or other document purporting to be signed by the chairperson or the vice-chairperson shall be admitted as prima facie proof of the contents thereof without any proof of the signature of the chairperson or of the vice-chairperson or of the authority of the chairperson or of the vice-chairperson to sign it.

(12) The board may

(a) engage the service of such professional or technical advisors, specialists or consultants that it considers necessary to assist the board in performing its duties and exercising its powers, and

(b) with the consent of the minister in charge of a department of the Government of Alberta, utilize the services of any officer or other employee of that department.

(13) No member of the board shall hear or participate in the making of a decision by the board in any matter in which the member

(a) is related by blood or marriage to any of the parties to the matter before the board;

(b) has a pecuniary interest; or

(c) has, within a period of 6 months immediately preceding the date on which the matter was submitted to the board, acted as a solicitor, counsellor or agent for any of the parties to the matter before the board.

(14) The executive director shall, when requested to do so, provide a copy of any board report to the Minister.

(15) The board shall, on or before the last day of July in each year, transmit to the Minister a report for the fiscal year ending the 31st day of March of that year showing:

(a) summaries of the operations of the board;

(b) the number and nature of inquiries or investigations made by it; and

(c) such other matters as the Minister may direct.

(16) Each report provided to the Minister pursuant to subsection (15) shall be laid before the Legislative Assembly within 15 days after receipt by the Minister if the Legislative Assembly is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

Powers

4 Except as otherwise provided in this Act or in the regulations, the board may determine its own procedures in performing its duties and functions and exercising its powers.

Duties

5(1) The board shall perform the duties and functions, and may exercise the rights imposed upon or granted to it under this or any other Act and it shall discharge, perform and carry out such other duties and functions as may from time to time be assigned to it by the Lieutenant Governor in Council or by the Minister.

(2) The board shall prepare a report in respect of each application for leave or each application for an exemption order which is served upon the board pursuant to this Act and, in preparing each report, the board shall make such inquiries and conduct such investigations and hearings as it deems appropriate or necessary in order to address the issues giving rise to the application and, for those purposes, the board shall attempt to confer with the farmer named in the application and with the creditors of the farmer who either filed such application with the Court or are or could be affected by such filing.

(3) Notice of any hearing conducted by the board to address the issues giving rise to an application for leave or to an application for an exemption order shall be served upon the farmer named in the application and upon the person who filed the application with the Court by the board not less than 7 days before the date of the hearing.

(4) Nothing in this section shall be construed as requiring the board to conduct a hearing to address the issues giving rise to an application for leave or an application for an exemption order, the decision whether or not to hold such a hearing to be made in the sole discretion of the board.

(5) In carrying out its duties and functions, the board has the same protection and powers, and is subject to the same requirements, as are conferred on or required of commissioners appointed under the provisions of the *Public Inquiries Act*.

Chairperson

6(1) The chairperson of the board may

- (a) establish mediation panels of the board consisting of at least 3 members to determine any matters of the board;
- (b) terminate an appointment to a mediation panel;
- (c) fill any vacancy on a mediation panel; and
- (d) refer any matter which is before the board to a mediation panel or any matter which is before a mediation panel to another mediation panel.

(2) A mediation panel has the power and authority of the board, and any report prepared by a mediation panel shall be deemed to be a board report for the purposes of this Act.

Part III
Farmland Actions or Proceedings

Definitions

7 In this Part,

- (a) “affected farmer” means the farmer who is the registered owner of the farmland which is described in an application or, where the applicant is the registered owner, the farmer who is purchasing that farmland under an agreement for sale;
- (b) “applicant” means any person who makes an application;
- (c) “application” means an application made to the Court under this Part for leave to commence or continue any action or proceeding.

Leave for proceedings

8(1) No person shall commence or continue any action or proceeding to realize upon or otherwise enforce

- (a) a mortgage, an encumbrance, a security agreement or an agreement for sale of farmland, or any provision contained therein; or
- (b) a judgment or an attachment obtained on the basis of a mortgage, an encumbrance, a security agreement or an agreement for sale of farmland, or any provision contained therein;

whereby a farmer could be deprived of the ownership or the possession of farmland of which the farmer is the registered owner or of which the farmer is the purchaser under an agreement for sale, without first obtaining leave of the Court under this Part.

(2) Without limiting the generality of subsection (1)

- (a) no person shall commence or continue any action or proceeding on the basis of a mortgage, an encumbrance or a security agreement, or any provision contained therein
 - (i) for the sale or other disposition of farmland,
 - (ii) for foreclosure of an estate, interest or claim in or to farmland,
 - (iii) for the appointment of a receiver or a receiver and manager of farmland,
 - (iv) for possession of farmland, or

(v) for any other relief as may be available to such person and permitted by law in respect of farmland,

without first obtaining leave of the Court under this Part;

(b) no person shall appoint any person as a receiver or a receiver and manager of farmland without first obtaining leave of the Court under this Part;

(c) no person shall accept an appointment as a receiver or a receiver and manager of farmland until leave of the Court has been obtained under this Part;

(d) no receiver or receiver and manager shall take possession of, enter upon or occupy farmland for the purposes of carrying on a farming operation on the farmland or otherwise interfere with a farming operation being carried on by a farmer until the leave of the Court has been obtained under this Part;

(e) no person shall commence or continue any action or proceeding for cancellation of an agreement for sale of farmland, or possession of the farmland which is the subject of an agreement for sale of farmland, or for any other relief as may be available to such person and permitted by law in respect of farmland on the basis of an agreement for sale, without first obtaining leave of the Court under this Part; and

(f) no person shall commence or continue any action or proceeding for the sale or other disposition of farmland on the basis of a judgment or an attachment obtained on the basis of a mortgage, an encumbrance, a security agreement or an agreement for sale, or any provision contained therein, without first obtaining leave of the Court under this Part.

(3) This Part applies to all actions or proceedings commenced but not completed prior to the coming into force of this Act.

(4) Any action or proceeding which is commenced or continued after the coming into force of this Act without first obtaining leave of the Court as required by this Part is a nullity.

Leave of Court

9(1) Any application under this Part shall be made to a judge in the form prescribed in the regulations, shall set forth the name of the affected farmer, the relief sought and the legal description of the farmland in respect of which such relief is sought, and, unless otherwise ordered by the Court, shall be filed in the judicial district where the affected farmer resides or carries on a farming operation.

(2) The applicant shall, within 30 days following the filing of an application with the Court, serve a copy of the application upon the affected farmer and the board.

(3) The board shall, within 90 days following the service of an application upon the board, file with the Court a copy of the board's report in respect of the application and concurrently serve a copy of its report upon the applicant and upon the affected farmer.

(4) In preparing its report in respect of an application, the board may consider any factor, condition or circumstance that the board deems relevant to the application including, without limitation,

(a) whether any agreement might be reached between the applicant and the affected farmer with respect to the issues giving rise to the application without the necessity of further proceedings;

(b) whether the affected farmer is likely to receive financial assistance or concessions from any creditor or from any other source in an effort to satisfy the issues giving rise to the application;

(c) the effect of factors beyond the control of the affected farmer which may account for the issues giving rise to the application, including any general or local adverse agricultural, economic and climatic conditions such as inability to market agricultural products, depressed prices for agricultural products, high costs of production, hail, flood, drought, frost or agricultural pests;

(d) the financial capacity of the affected farmer and the affected farmer's farming operation to meet existing anticipated cash flow requirements;

(e) the value and condition of the farmland which is described in the application, including its state of cultivation;

(f) the impact of the loss of the farmland which is described in the application on the ongoing viability of the affected farmer's farming operation;

(g) the impact of the loss of the farmland which is described in the application on the affected farmer, the affected farmer's family and the community of which the affected farmer is a part;

(h) the farming and financial management skills of the affected farmer; and

(i) whether the affected farmer is making a sincere and reasonable effort to meet the obligations incurred by the affected farmer in respect of the affected farmer's farming operation.

(5) Upon receipt of the board report, the applicant may apply to the Court for an appointment to hear the application, and notice of the hearing of the application shall be served upon the affected farmer by the applicant not less than 15 days before the date of the hearing unless

(a) the affected farmer cannot be found or is evading service; or

(b) the Court for any other reason sees fit to dispense with the notice;

in which event the hearing may proceed without notice.

(6) The judge hearing the application

(a) shall consider the board report and any oral submissions in respect of the report made at the hearing;

(b) may make such inquiries with respect to the application as the judge considers necessary; and

(c) may require any part to the application or the board to provide further particulars with respect to any matter that the judge considers relevant.

(7) Any hearing under this section shall be heard and determined in a summary manner.

(8) At the discretion of the judge hearing the application, the Court may by order

(a) adjourn the hearing from time to time for such period or periods as the judge considers appropriate, if the judge is not satisfied that it is just and equitable to grant the relief sought at that time;

(b) grant the relief sought, if the judge is satisfied that it is just and equitable to do so; or

(c) grant such other procedural relief as the judge considers appropriate.

(9) At the discretion of the judge hearing the application, the Court may order any part to the application to pay the whole or any portion of the costs of such application.

(10) An appeal lies to the Court of Appeal on a question of law from an order of the Court made pursuant to this section.

Part IV
Farm Machinery and Equipment Actions or Proceedings

Definitions

10 In this Part,

- (a) “affected farmer” means the farmer who is the owner of the farm machinery and equipment which is described in an application or, where the applicant is the owner, the farmer who is purchasing the farm machinery and equipment under a conditional sales contract;
- (b) “applicant” means any person who makes an application;
- (c) “application” means an application made to the Court under this Part for leave to commence or continue any action or proceeding.

Actions
requiring leave

11(1) No person shall commence or continue any action or proceeding to realize upon or otherwise enforce

- (a) a security agreement or any provision contained therein;
- (b) a writ of execution obtained on the basis of a judgment obtained on the basis of a security agreement or any provision contained therein;

whereby a farmer could be deprived of the ownership, the possession or the use of farm machinery and equipment which is owned by the farmer or which the farmer is purchasing or is entitled to purchase, without first obtaining leave of the Court under this Part.

(2) Without limiting the generality of subsection (1),

- (a) no person shall commence or continue any action or proceeding on the basis of a security agreement or any provision contained therein
 - (i) for sale or other disposition of farm machinery and equipment,
 - (ii) for the appointment of a receiver or receiver and manager of farm machinery and equipment,
 - (iii) for the seizure or other possession of farm machinery and equipment,
 - (iv) for rendering farm machinery and equipment unusable or which would otherwise result in the farmer being unable to use farm machinery and equipment in the farmer’s farming operation,

(v) for cancellation of a security agreement in respect of farm machinery and equipment, or

(vi) for any other relief as may be available to such person and permitted by law in respect of farm machinery and equipment, whereby a farmer could be deprived of the ownership, the possession or the use of farm machinery and equipment which is owned by the farmer of which the farmer is purchasing or is entitled to purchase,

without first obtaining leave of the Court under this Part;

(b) no person shall appoint any person as a receiver or a receiver and manager of farm machinery and equipment without first obtaining leave of the Court under this Part;

(c) no person shall accept an appointment as a receiver or a receiver and manager of farm machinery and equipment until leave of the Court has been obtained under this Part;

(d) no receiver or receiver and manager shall take possession of farm machinery and equipment until leave of the Court has been obtained under this Part; and

(e) no person shall commence or continue any action or proceeding for seizure of farm machinery and equipment on the basis of a writ of execution obtained on the basis of a judgment obtained on the basis of a security agreement or any provision contained therein, without first obtaining leave of the Court under this Part.

(3) This Part applies to all actions or proceedings commenced prior to the coming into force of this Part.

(4) Any action or proceeding which is commenced or continued after the coming into force of this Part without first obtaining leave of the Court as required by this Part is a nullity.

Applicants for
leave

12(1) Any application under this Part shall be made to a judge in the form prescribed by the regulations, shall set forth the name of the affected farmer, the relief sought and a description of the farm machinery and equipment in respect of which such relief is sought, and, unless otherwise ordered by the Court, shall be filed in the judicial district where the affected farmer resides or carries on a farming operation.

(2) The applicant shall, within 30 days following the filing of an application with the Court, serve a copy of the application upon the affected farmer and the board.

(3) The board shall, within 90 days following the service of an application upon the board, file with the Court a copy of the board's report in respect of the application and concurrently serve a copy of its report upon the applicant and upon the affected farmer.

(4) In preparing its report in respect of an application, the board may consider any factor, condition or circumstance that the board deems relevant to the application, including, without limitation,

(a) whether any agreement might be reached between the applicant and the affected farmer with respect to the issues giving rise to the application without the necessity of further proceedings;

(b) whether the affected farmer is likely to receive financial assistance or concessions from any creditor or from any other source in an effort to satisfy the issues giving rise to the application;

(c) the effect of factors beyond the control of the affected farmer which may account for the issues giving rise to the application, including any general or local adverse agricultural, economic and climatic conditions such as inability to market agricultural products, depressed prices for agricultural products, high costs of production, hail, drought, flood, frost or agricultural pests;

(d) the financial capacity of the affected and the affected farmer's farming operation to meet existing and anticipated cash flow requirements;

(e) the value and condition of the farm machinery and equipment which is described in the application, including its state of repair;

(f) the impact of the loss of the farm machinery and equipment which is described in the application on the ongoing viability of the affected farmer's farming operation;

(g) the impact of the loss of the farm machinery and equipment which is described in the application on the affected farmer, the affected farmer's family and the community of which the affected farmer is a part;

(h) the farming and financial management skills of the affected farmer;

(i) whether the affected farmer is making a sincere and reasonable effort to meet the obligations incurred by the affected farmer in respect of the affected farmer's farming operation.

(5) Upon receipt of the board report, the applicant may apply to the Court for an appointment to hear the application, and notice of the hearing of the application shall be served upon the affected farmer by the applicant not less than 15 days before the date of the hearing unless

- (a) the affected farmer cannot be found or is evading service;
- (b) there is reasonable cause to believe that the affected farmer might hide the farm machinery and equipment or otherwise attempt to evade seizure thereof if the affected farmer had notice of the hearing; or
- (c) the Court for any other reasons sees fit to dispense with the notice;

in which event the hearing may proceed without notice.

(6) The judge hearing the application

- (a) shall consider the board report and any oral submissions in respect of the report made at the hearing;
- (b) may make such inquiries with respect to the application as the judge considers necessary; and
- (c) may require any party to the application or the board to provide further particulars with respect to any matter that the judge considers relevant.

(7) Any hearing under this section shall be heard and determined in a summary manner.

(8) If the judge is satisfied that the farm machinery and equipment which is described in the application is not reasonably required by the affected farmer in the affected farmer's farming operation, the Court shall grant the relief sought.

(9) If the judge is satisfied that the farm machinery and equipment which is described in the application is reasonably required by the affected farmer for use in the affected farmer's farming operation, at the discretion of the judge hearing the application, the Court may

- (a) adjourn the hearing from time to time for such period or periods as the judge considers appropriate, if the judge is not satisfied that it is just and equitable to grant the relief sought at that time;
- (b) grant the relief sought, if the judge is satisfied that it is just and equitable to do so; or
- (c) issue such other procedural relief as the judge considers appropriate.

(10) At the discretion of the judge hearing the application, the Court may order any party to the application to pay the whole or any portion of the costs of such application.

- (11) An appeal lies to the Court of Appeal on a question of law from an order of the Court made pursuant to this section.

Part V Moratorium

Definitions

14(1) In this Part,

(a) “affected farmer” means the farmer who is the owner of the property which is described in an application or, where the property is farmland or farm machinery and equipment and the applicant is the owner of the farmland or the farm machinery and equipment, as the case may be, the farmer who is purchasing the farmland under an agreement for sale or the farm machinery and equipment under a conditional sales contract;

(b) “applicant” means any person who makes an application;

(c) “application” means an application made to the Court under this Part for an exemption order;

(d) “livestock” means cattle, swine or poultry; and

(e) “realization proceeding” means

(i) for the purposes of sections 16 and 17, any action or proceeding to realize upon or otherwise enforce

(A) a mortgage, an encumbrance, a security agreement or an agreement for sale of farmland, or any provision contained therein, or

(B) a judgment or an attachment obtained on the basis of a mortgage, an encumbrance, a security agreement or an agreement for sale of farmland, or any provision contained therein,

whereby a farmer could be deprived of the ownership or the possession of farmland of which the farmer is the purchaser under an agreement for sale including, without limiting the generality of the foregoing, the specific actions or proceedings set for in section 8(2),

(ii) for the purposes of sections 18, 19 and 20, any action or proceeding to realize upon or otherwise enforce

(A) a security agreement or any provision contained therein, or

(B) a writ of execution obtained on the basis of a judgment obtained on the basis of a security agreement or any provision contained therein,

whereby a farmer could be deprived of the ownership, the possession or the use of farm machinery and equipment which is owned by the farmer or which the farmer is purchasing or is entitled to purchase including, without limiting the generality of the foregoing, the specific actions or proceedings set forth in section 11(2),

(iii) for the purposes of sections 21, 22 and 23, any action or proceeding to realize upon or otherwise enforce

(A) a security agreement or any provision contained therein, or

(B) a writ of execution obtained on the basis of a judgment obtained on the basis of a security agreement or any provision contained therein,

whereby a farmer could be deprived of the ownership, the possession or the use of livestock which is owned by the farmer.

(2) This Part does not apply to any action or proceeding that is based solely on an Act of the Parliament of Canada.

Declaration of moratorium

15 Any declaration of a moratorium pursuant to this Part shall take into consideration any temporary conditions which are directly or indirectly adversely impacting upon or influencing farming in Alberta.

Moratorium on farmland

16(1) The Lieutenant Governor in Council may at any time and from time to time declare a moratorium pursuant to this section, prohibiting the commencement or continuation of any realization proceeding, and any such moratorium shall apply to all realization proceedings commenced prior to the declaration of such moratorium and have effect to such extent and be subject to such terms and conditions as may be specified in such declaration.

(2) The Lieutenant Governor in Council may at any time declare the end of any moratorium declared pursuant to this section.

Application for leave and realization proceeding

17 While a moratorium declared pursuant to section 16 is in effect

(a) all applications for leave made under Part III prior to the declaration of the moratorium are adjourned sine die until the date which is one day after the date the moratorium is declared to be at an end pursuant to section 16;

(b) no person shall make an application for leave under Part III; and

- (c) no person shall commence or continue any realization proceeding;

except pursuant to an exemption order obtained under this Part or pursuant to any exemption which may be set forth in the declaration of the moratorium or in the regulations, and any realization proceeding which is commenced or continued after the declaration of the moratorium without being so exempted is a nullity.

Moratorium on
machinery and
equipment

18(1) The Lieutenant Governor in Council may at any time and from time to time declare a moratorium pursuant to this section, prohibiting the commencement or continuation of any realization proceeding, and any such moratorium shall apply to all realization proceedings commenced prior to the declaration of such moratorium and have effect to such extent and be subject to such terms and conditions as may be specified in such declaration.

(2) The Lieutenant Governor in Council may at any time declare the end of any moratorium declared pursuant to this section.

Application for
leave and
realization
proceeding

19 While a moratorium declared pursuant to section 18 is in effect

(a) all applications for leave made under Part IV of this Act prior to the declaration of the moratorium are adjourned sine die until the date which is one day after the date the moratorium is declared to be at an end pursuant to section 18;

(b) no person shall make an application for leave under Part IV; and

(c) no person shall commence or continue any realization proceeding;

except pursuant to an exemption order obtained under this Part or pursuant to any exemption which may be set forth in the declaration of the moratorium or in the regulations, and any realization proceeding which is commenced or continued after the declaration of the moratorium without being so exempted is a nullity.

Moratorium on
livestock

20(1) The Lieutenant Governor in Council may at any time and from time to time declare a moratorium pursuant to this section, prohibiting the commencement or continuation of any realization proceeding, and any such moratorium shall apply to all realization proceedings commenced prior to the declaration of such moratorium and have effect to such extent and be subject to such terms and conditions as may be specified in such moratorium.

(2) The Lieutenant Governor in Council may at any time declare the end of any moratorium declared pursuant to this section.

Application for
leave and
realization
proceeding

21 While a moratorium declared pursuant to section 20 is in effect, no person shall commence or continue any realization proceeding except pursuant to an exemption order obtained under this Part or pursuant to any exemption which may be set forth in the declaration of the moratorium or in the regulations, and any realization proceeding which is commenced or continued after the declaration of the moratorium without being so exempted is a nullity.

Exemption

22(1) Any application under this part shall be made to a judge in the form prescribed by the regulations, shall set forth the name of the affected farmer, the relief sought, and a description of the property in respect of which such relief is sought, and, unless otherwise ordered by the Court, shall be filed in the judicial district where the affected farmer resides or carries on a farming operation.

(2) The applicant shall, within 30 days following the filing of an application with the Court, serve a copy of the application upon the affected farmer and the board.

(3) The board shall, within 90 days following the service of an application upon the board, file with the Court the board's report in respect of the application and concurrently serve a copy of its report upon the applicant and upon the affected farmer.

(4) In preparing its report in respect of an application, the board may consider any factor, condition or circumstance that the board deems relevant to the application, including without limitation, any factor, condition or circumstance which the board believes might be of assistance to a judge in determining

(a) whether the affected farmer is making a sincere and reasonable effort to meet the obligations incurred by the affected farmer in respect of the affected farmer's farming operation; or

(b) whether the affected farmer is carrying on a farming operation in a manner which is reasonable in the circumstances.

(5) Upon receipt of the board report, the applicant may apply to the Court for an appointment to hear the application, and notice of the hearing of the application shall be served upon the affected farmer by the applicant not less than 15 days before the date of the hearing unless

(a) the affected farmer cannot be found, or is evading service;

(b) there is reason to believe the affected farmer might hide the property which is described in the application or otherwise attempt to evade seizure thereof if the affected farmer had notice of the hearing; or

(c) the Court for any reason sees fit to dispense with the notice;

in which event the hearing may proceed without notice.

(6) The judge hearing the application

(a) shall consider the board report and any oral submissions in respect of the report made at the hearing;

(b) may make such inquiries with respect to the application as the judge considers necessary; and

(c) may require any party to the application or the board to provide further particulars with respect to any matter that the judge considers relevant.

(7) Any hearing under this section shall be heard and determined in a summary manner.

(8) At the discretion of the judge hearing the application, the Court may adjourn the hearing from time to time for such period as the judge considers appropriate.

(9) If the judge is satisfied that the affected farmer

(a) is making a sincere and reasonable effort to meet the obligations incurred by the affected farmer in respect of the affected farmer's farming operation; and

(b) is carrying on a farming operation in a manner which is reasonable in the circumstances;

the judge shall dismiss the application, and if the judge is not so satisfied the judge may by order grant the relief sought or may grant such other procedural relief as the judge considers appropriate.

(10) Dismissal of an application shall not be a bar to the making of any further application, provided that no further application shall be made by the applicant in respect of the property described in any previous application for a period of 90 days following the dismissal of the previous application.

(11) At the discretion of the judge hearing the application, the Court may order any party to the application to pay the whole or any portion of the costs of the application.

(12) An appeal lies to the Court of Appeal on a question of law from an order of the Court made pursuant to this section.

(13) Where an exemption order is made pursuant to this section, the applicant may commence or continue the realization proceeding which is exempted from the moratorium pursuant to such order, and

(a) where the realization proceeding relates to farmland, Part III does not apply to the realization proceeding;

(b) where the realization proceeding relates to farm machinery and equipment, Part IV does not apply to the realization proceeding.

Part VI

Peer Advisory Committee and Peer Advisory Panels

Committee

23(1) There is hereby established a committee named “The Alberta Farmers Peer Advisory Committee”, consisting of any number of active or recently retired farmers as the Minister may appoint from time to time.

(2) Unless a member sooner dies, resigns or is removed from office, each member of the committee shall serve for such term as may be fixed by the Minister at the time the member is appointed and thereafter until the appointment of the member is rescinded.

(3) Each member of the committee may be paid such remuneration and reasonable out-of-pocket expenses incurred by the member in the performance of the member’s duties as a member of the committee as the Minister may approve, out of money appropriated to that purpose by the Legislature.

Functions

24 The committee shall perform the functions assigned to it under this Act, or any other Act of the Legislature, or as may from time to time be assigned to it by the Minister, and the primary function of the committee shall be to respond to requests for assistance received by it pursuant to this Act.

Assistance to
farmer

25 The board, any farmer or any creditor of a farmer or any farmer together with any creditor of the farm may at any time, by notice in writing to the committee, request the assistance of the committee in reviewing the financial arrangements between the farmer and any or all of the creditors of the farmer with a view to endeavouring to bring about an arrangement for payment or other settlement of the farmer’s indebtedness to such creditors without recourse being had to legal proceedings, or to provide such other assistance to the farmer as may be set forth in such notice.

Panel

26(1) Upon receipt of any request for assistance of the committee, the executive director shall, taking into account the nature of the assistance requested including, where relevant, the farmer's farming operation and its location, designate any 3 or more members of the committee to form a peer advisory panel.

(2) Each peer advisory panel shall make such inquiries and conduct such investigations as it deems appropriate or necessary in order to endeavour to provide the assistance requested, and may also offer management advice to a farmer, advise the farmer of the availability of any government assistance programs and render any other service, advice and assistance to a farmer as may be appropriate or necessary in the circumstances.

(3) Each peer advisory panel shall report to the executive director of the board in respect of its activities.

Part VII Agreement Registry

Registry

27(1) Any agreement between a farmer and any other person which alters, modifies or rescinds in whole or in part the terms of any agreement theretofore subsisting between such parties, or by the terms of which the rights of any of such parties may be affected, may be submitted by the parties in writing to the board for registration.

(2) Upon receipt of any agreement under subsection (1), the executive director of the board shall register such agreement in a registry maintained for such purpose, and shall return a copy of such agreement with registration particulars endorsed thereon to each such party.

(3) Unless the parties to any agreement registered with the board otherwise agree, the agreement shall not be made available by the board to the public for inspection.

(4) Any agreement which is registered with the board under subsection (1) shall be valid and enforceable at law upon such registration, notwithstanding the agreement may be without consideration.

Part VIII General Provisions

Exclusion void

28 Every agreement or bargain, verbal or written, expressed or implied, whether entered into before or after the coming into force of this Act, that this Act or any Part or provision of this Act or any provision of any Act similar to this Act shall not apply, or that any benefit or remedy provided by this Act or any similar Act is not available, or which in any way limits, modifies or abrogates or in effect limits, modifies or abrogates the benefit or remedy, is void.

- Liability** **29** No member, officer, employee or representative of the board or the committee, or the executive director, is personally liable for anything done or omitted to be done by such person in good faith and without negligence in the exercise of any power or in the performance of any duty under the authority or supposed authority of this Act or of any regulation, order or directive made under this Act or the regulations.
- Confidentiality** **30** Information obtained by or furnished to any member of the board or of the committee, the executive director or any officer or employee or advisor of any of them or any other person acting under the instructions of any of them or under the authority of this Act or the regulations shall not be communicated by any member or person other than for the purposes of or in connection with this Act or the regulations or as required by law.
- Service** **31(1)** A document required or permitted to be served upon a person under any provision of this Act may be served
- (a) by delivering it to the person required to be served; or
 - (b) by mailing it by prepared registered mail enclosed in a package addressed to the person required to be served at the person's last known or usual place of abode and accompanied by an official "acknowledgement of receipt" form.
- (2) Where a person is unable to effect service of a document upon a person under subsection (1), substitutional service thereof may be made in such a manner as a judge may direct.
- (3) Where service of a document is made by registered mail, the document shall, unless the contrary is proved, be presumed to have been served and received on the date of receipt thereof as shown on the "acknowledgement of receipt" form signed by the person acknowledging receipt thereof.
- (4) Service of a document on a corporation may be validly made by serving an officer or director of the corporation in the manner described in this section, at the place where the corporation carries on its business.
- (5) Service of a document on a partnership may be validly made upon the partnership if the document indicates that it relates to the partnership by using the name under which the partnership carries on business, and it is served on any member of the partnership in the manner described in this section, and thereupon it shall be deemed to have been served upon all the members of the partnership.
- (6) Proof of service of any process under this Act may be given

- (a) by oral evidence given under oath; or
- (b) by means of an affidavit by a person having personal knowledge of the facts deposed to.

Time calculation

32(1) Where an application for leave is made to the Court under Part III or Part IV, the period between the date of the making of such application and the date on which such application is ultimately disposed of by the Court, the Court of Appeal or the Supreme Court of Canada, as the case may be, shall not be included in calculating the time, pursuant to the *Limitation of Actions Act* or pursuant to any other applicable statute or law or rule of the Court or any other court, for commencing any action or proceeding for which relief is sought in such application.

(2) Where a moratorium is declared pursuant to Part V, the period of time commencing on the date of declaration of the moratorium and ending on the date of the declaration of the end of the moratorium shall not be included in calculating the time, pursuant to the *Limitation of Actions Act* or pursuant to any other applicable statute or law or rule of the Court or any other court, for commencing any action or proceeding which cannot be commenced while the moratorium is in effect.

Regulations

33 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations as are ancillary thereto and are not inconsistent therewith, every such regulation made under and in accordance with the authority granted by this section has the force of law, and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations

- (a) exempting
 - (i) any farmland or any action or proceeding or class of actions or proceedings in respect of farmland,
 - (ii) any farm machinery and equipment or any type of farm machinery and equipment or any action or proceeding or any class of actions or proceedings in respect of farm machinery and equipment,
 - (iii) any livestock or any type of livestock or any action or proceeding or class of actions or proceedings in respect of livestock,
 - (iv) any farmer or any class of farmers,
 - (v) any creditor of a farmer or farmers or any class of creditors of a farmer or farmers,

(vi) any mortgage, encumbrance, security agreement, agreement for sale, judgment or attachment, or any other agreement affecting farmland or any class of mortgages, encumbrances, security agreements, agreements for sale, judgments or attachments, or any other agreements affecting farmland,

(vii) any security agreement, conditional sales contract, writ of execution, or any other agreement affecting farm machinery and equipment or any class of security agreements, conditional sales contracts, writs of execution, or any other agreements affecting farm machinery and equipment, or

(viii) any security agreement, writ of execution, or any other agreement affecting livestock or any class of security agreements, writs of execution, or any other agreement affecting livestock,

from the application of this Act or any provision of this Act on such terms and conditions that the Lieutenant Governor in Council considers appropriate;

(b) prescribing the information that is to be contained in any document that is required to be given, filed or served under this Act, as well as the form of any such document;

(c) prescribing rules of procedure to be followed by the board in performing its duties and functions and exercising its powers.

Offences and
penalties

34(1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$50 000 and to such costs as may be awarded by the Court, or to imprisonment for a term not exceeding 2 years, or to both such a fine and costs, and imprisonment.

(2) Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized or participated in the commission of the offence is also guilty of the offence and is liable, on summary conviction, to the penalties set out under subsection (1).

(3) Notwithstanding the provisions of any other Act of the Legislature, a prosecution of an offence under this Act may be commenced at any time within 2 years after the date of the alleged offence and a prosecution of an offence under this Act which relates to or arises out of any misrepresentation or fraud on the part of the accused may be commenced at any time within 2 years after the date on which the misrepresentation or the fraud became known to the Minister or to the board.

Jurisdiction

35(1) The purpose and intent of the Legislature is to confine the provisions of this Act within the competence of the Legislature, and all provisions thereof shall be construed so as to give effect to that purpose and intent.

(2) Where any provision of this Act is held beyond the powers of the Legislature, that provision shall be construed distributively and, so far as it deals with matters within the competence of the Legislature, stands and is valid and operative, and has the same effect as if the provision had dealt with those matters exclusively, and the remaining provisions of this Act shall not be deemed or held to be inoperative or ultra vires, but stand and are valid and operative, and have the same effect as if they had been originally enacted as separate and independent enactments and as the only provisions of this Act.

(3) All provisions of this Act that are within the powers of the Legislature remain in full force and effect notwithstanding that some provisions are held to be ultra vires, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision of this Act.

Crown

36 This Act binds the Crown.

Commencement

37 This Act comes into force on Proclamation.

Expiry

38 This Act or any part of it that is brought into force by separate Proclamation ceases to be in effect 5 years from the date it is proclaimed in force.