

# **Making Orderly Marketing More Orderly – *The Farm Products Marketing and Consequential Amendments Act***

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M E L A N I E R . B U E C K E R T

## **I. INTRODUCTION**

**T**he importance of Canada's agricultural sector is evidenced by the scope of its regulation at both the federal and provincial levels of government. The Government of Manitoba recently revamped one of the many layers of this complex regime. During the 2000–2001 sitting of the Manitoba Legislative Assembly, *The Farm Products Marketing and Consequential Amendments Act*<sup>1</sup> was brought in as a matter of legislative housekeeping to replace *The Natural Products Marketing Act*.<sup>2</sup>

For those unfamiliar with the concept of orderly marketing, a brief introduction may be necessary to untangle this virtual web of regulation. In Manitoba, producers of certain agricultural products are governed by a complicated supply management system, which regulates intraprovincial trade in those products. Those producers generating foodstuffs for interprovincial or international trade are subject to regulation by the federal government.

To understand why this particular measure was necessary, a brief review of the constitutional development of farm products marketing legislation in Canada is beneficial. With that knowledge, one may turn to address the specific impetus for *The Farm Products Marketing Act* and the changes it introduced to the supply management system in Manitoba. The most radical amendments were made to the appeal procedures and enforcement mechanisms, including the level of fines

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<sup>1</sup> Bill 20, *The Farm Products Marketing and Consequential Amendments Act*, 2d Sess., 37<sup>th</sup> Leg., Manitoba, 2001 (assented to 6 July 2001, S.M. 2001, c. 16 [*The Farm Products Marketing Act*]).

<sup>2</sup> R.S.M. 1987, c. N20, as rep. by *The Farm Products Marketing and Consequential Amendments Act*, *supra* note 1.

that may be assessed under the *Act*. After undertaking a thorough comparative analysis, it becomes clear that these alterations are in line with other provincial statutes, as well as similar statutes in other jurisdictions.

## II. THE CONSTITUTIONAL BACKDROP

The history of farm products marketing legislation in Canada has been marked by frequent skirmishes before the courts involving fundamental constitutional principles. Section 95 of the *Constitution Act, 1867*<sup>3</sup> indicates that agriculture is an area of concurrent federal and provincial jurisdiction. Marketing legislation, however, has generally been attacked as either trampling on the federal government's power over interprovincial and international trade and commerce (under s. 91(2) of the *Constitution Act, 1867*) or stifling the provinces' jurisdiction over property and civil rights (pursuant to s. 92(13) of the *Constitution Act, 1867*).

Early attempts by the federal government to legislate in the area of farm products marketing under their trade and commerce power were struck down by the Judicial Committee of the Privy Council. This approach was premised on the belief that any interference with the right to contract was an encroachment on provincial jurisdiction, even though the market to be regulated was primarily interprovincial or international, which were accepted areas of federal jurisdiction.<sup>4</sup> An illustrative case is *A.G.B.C. v. A.G. Canada (Natural Products Marketing)*.<sup>5</sup> Prime Minister Bennett's government created a Dominion marketing board to regulate farm products as part of his 'New Deal'. The Privy Council characterized this law as an attempt to regulate intraprovincial commerce, which is part of the provincial power over property and civil rights, and, accordingly, struck the legislation down.

Fortunately, once appeals to the Privy Council ended, the Supreme Court of Canada could have the final say on these types of statutory marketing regimes. Theirs was a more common-sense approach, which, unlike that of the Privy Council, allowed for some measure of federal participation in agricultural products marketing. Their decisions represented a departure from Privy Council precedents and embodied a more liberal interpretation of federal power in this area.<sup>6</sup>

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<sup>3</sup> 30 & 31 Victoria, c. 3 (U.K.).

<sup>4</sup> See P. Hogg, *Constitutional Law of Canada*, 2001 Student Edition (Toronto: Carswell, 2001) at 518 [Hogg].

<sup>5</sup> [1937] 1 D.L.R. 691.

<sup>6</sup> Hogg, *supra* note 4 at 518.

Over time, the Court moved from a 'watertight compartments' theory to a more rational 'pith and substance' test. One example of this shift was the case of *Reference Re Farm Products Marketing Act*.<sup>7</sup> In that case, the Supreme Court of Canada simply read the federal law down, limiting its application to interprovincial trade, instead of striking it down altogether. Another instance of this approach is the 'Canadian Wheat Board case' of *R. v. Klassen*.<sup>8</sup> Counsel for Mr. Klassen argued that the impugned transaction involved purely intraprovincial trade, so the federal law should not apply. However, the Manitoba Court of Appeal decided that the pith and substance of the law was the regulation of interprovincial and export trade in grain. Thus, it was validly enacted under the federal trade and commerce power, though incidentally it affected matters within provincial jurisdiction and transactions of a purely local nature.

A further example of this more realistic approach to agricultural products marketing is the case of *Carnation Co. Ltd. v. Quebec Agricultural Marketing Board*.<sup>9</sup> Carnation was attempting to avoid provincial milk marketing statutes by showing that its principal market was out-of-province. The Supreme Court was unconvinced and stood by its reasoning in the *Klassen* case. It determined that the provincial law was validly enacted, despite its incidental intrusion into federal jurisdiction.

Manitoba marketing boards were the impetus for two important Supreme Court decisions that interrupted this seemingly refined development of the law. Most memorable is the case of *A.G. Manitoba v. Manitoba Egg and Poultry Association*,<sup>10</sup> which arose out of a 'chicken and egg war' between Ontario (which produced a surplus of eggs) and Quebec (which produced a surplus of chickens). Those provinces established marketing boards that Manitoba (another producer of agricultural surpluses) claimed to be injured by, as these provincial regimes gave undue preference to locally produced products. Thus, Manitoba proceeded to create an egg marketing plan of its own, modeled on that of Quebec, and referred it to the courts for a judicial decision which effectively determined the validity of the Ontario and Quebec statutes.<sup>11</sup> The Supreme Court found that the primary purpose of the legislation was the regulation of interprovincial trade and struck it down as *ultra vires* the provincial legislature.

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<sup>7</sup> [1957] S.C.R. 198.

<sup>8</sup> (1959), 20 D.L.R. (2d) 406 (Man. C.A.) [*Klassen*].

<sup>9</sup> [1968] S.C.R. 238.

<sup>10</sup> [1971] S.C.R. 689 [*Manitoba Egg*].

<sup>11</sup> Hogg, *supra* note 4 at 520.

One last, though less extreme, example is the case of *Burns Foods v. A.G. Manitoba*.<sup>12</sup> The Supreme Court reached a similar conclusion as in the *Manitoba Egg* case, this time in relation to the regulation of hogs; however, the provincial statute was not struck down in its entirety. The Court felt that parts of the legislation were colourable, in that they purported to regulate the intraprovincial hog market, when really what the law attempted to do was limit the importation of other provinces' pigs into Manitoba. Even this more restrained result was criticized on the basis that the law's application to the imported product was necessary to the integrity of the plan and was merely incidental to its primary purpose, which was to control the marketing of hogs in the province.<sup>13</sup>

After this flurry of decisions by the Supreme Court of Canada, specifically that of the *Manitoba Egg* case, both levels of government realized that co-operation was necessary to effect any meaningful regulation of agricultural products marketing in Canada. An illustration of this new co-operative approach was the federal-provincial agreement involving all 11 governments that created a national marketing plan for eggs. The plan allocated production quotas to each province. Within each province, production quotas were to be imposed on producers so as to control supply and support prices. The surplus table product was to be sold to the industrial market by a marketing board. The plan was to be financed by a levy imposed on producers and was to be administered by a national marketing board and ten provincial marketing statutes.<sup>14</sup> This complex regime was upheld in principle by the Supreme Court in the case of *Reference Re Agricultural Products Marketing Act*.<sup>15</sup> The basis for this decision was that the federal statute regulated the interprovincial aspects of the plan and the provincial statutes regulated the intraprovincial elements of the plan. Though it was arguable whether each level of government had succeeded in staying within its appropriate sphere, the Court wanted to support this type of co-operative federalism and was willing to give both levels of government the benefit of the doubt.<sup>16</sup>

This brief constitutional overview provides a useful background to the genesis of modern-day marketing schemes like the recently enacted *Farm Products Marketing Act*.

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<sup>12</sup> [1975] 1 S.C.R. 494.

<sup>13</sup> Hogg, *supra* note 4 at 520, footnote 93.

<sup>14</sup> *Ibid.* at 521.

<sup>15</sup> [1978] 2 S.C.R. 1198.

<sup>16</sup> Hogg, *supra* note 4 at 521–22.

### **III. THE ORIGINS OF *THE FARM PRODUCTS MARKETING ACT***

The predecessor of *The Farm Products Marketing Act*, *The Natural Products Marketing Act*, was enacted in 1964 and since that time has been the subject of numerous piecemeal amendments. *The Farm Products Marketing Act* was simply a matter of legislative housekeeping that had been in the works for a number of years.

“They told me it could never be done,” commented Mr. Rick Mantey, former member of the Legislative and Regulatory Review Committee under the Filmon government.<sup>17</sup> Mr. Gordon MacKenzie, an employee of the Department of Agriculture for over 25 years, echoed Mr. Mantey’s sentiments. He stated that the bill had been in the works since 1988, but had never been a priority.<sup>18</sup> It was around that time that other provinces had turned their minds to amending their farm products marketing legislation. Mr. Jack Penner, MLA for Emerson and Opposition Agriculture Critic, remembered amendments to this statute being discussed as far back as 15 to 20 years ago.<sup>19</sup>

#### **A. First Reading**

At first reading, the Minister of Agriculture and Food, Rosann Wowchuk, discussed the dilapidated state of this legislation and the need for its amendment. She stated that the new bill reflected the wording of statutes in other provinces, namely Alberta, Saskatchewan and Ontario. It was also meant to “correct several inconsistencies relating to the appeal procedures, improve the enforcement provisions and clarify the authority of boards and commissions.”<sup>20</sup>

#### **B. Second Reading**

At second reading, eight members rose to speak on the bill during its lengthy debate. The Minister of Agriculture and Food introduced the bill and discussed its benefits and purpose, along with some of its specific provisions.<sup>21</sup> She noted that there are currently eight sectors regulated by this legislation, including the turkey, chicken, egg, milk, vegetable crop and pork industries. She also identified four benefits of *The Farm*

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<sup>17</sup> Lecture of R. Mantey, Legislative Process Class, Faculty of Law, University of Manitoba, 15 November 2001).

<sup>18</sup> Interview of Gord MacKenzie (2 November 2001) [MacKenzie].

<sup>19</sup> Interview of Jack Penner (14 November 2001) [Penner].

<sup>20</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LI No. 27 (9 May 2001) at 1507.

<sup>21</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LI No. 36 (28 May 2001) at 2347–2348.

*Products Marketing Act*: it stabilizes producers' income; it ensures a reliable supply; it strengthens the family farm; and it improves life in rural communities. In terms of the bill's purpose, the Minister stated that it was meant "to provide for the promotion, regulation and management of the production and marketing of farm products in Manitoba."<sup>22</sup> This was to be achieved through the establishment by each board of a plan for each product, while the overarching Manitoba Farm Products Marketing Council maintained its supervisory and appellate role. Federal agencies would retain their authority in the area of exporting and interprovincial trade. In terms of the enforcement procedures, the Minister observed that they were in-line with provisions in similar statutes in this and other provinces.

The government's Official Opposition generated the remainder of the debate. The opposition members generally supported the bill, but raised questions about various aspects of the legislation. Mr. Jack Penner had a number of concerns.<sup>23</sup> He was troubled by the fact that powers formerly held by Cabinet would now be exercised at the sole discretion of the Minister, and was worried by the new powers granted to inspectors under the *Act*. He was also concerned about the vague wording and language of the bill, as well as the broad enforcement and regulation writing powers which were being delegated to the boards.

The members for Russell and Gimli, Messrs. Len Derkach and Ed Helwer, were the only members to disapprove of supply marketing in theory. Mr. Derkach commented that marketing boards were likely to fall by the wayside in light of various trade agreements and commitments. Both members believed that this legislation ran contrary to the government's goals of supporting the family farm and the farming industry generally.<sup>24</sup>

Dr. Jon Gerrard, leader of the Liberal Party, spoke for the Manitoba Chamber of Commerce, and said that the bill did not go far enough. He supported broader, wider-reaching changes, instead of 'tinkering' with the current system.<sup>25</sup>

The remaining speakers, the members for Portage la Prairie, Morris and Lakeside, Messrs. David Fauschou, Frank Pitura and Harry Enns, delved into the history of marketing boards in this province, supply

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<sup>22</sup> *Ibid.* at 2347.

<sup>23</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LI No. 49 (19 June 2001) [*Debates* (19 June 2001)] at 3062–3068.

<sup>24</sup> *Ibid.* at 3068–3073.

<sup>25</sup> *Ibid.* at 3077.

management in Canada and this type of legislation in Manitoba, respectively.<sup>26</sup>

### **C. Committee**

At the committee stage, six speakers represented the producers of Manitoba and voiced their opinions on this legislation. All supported the new statute, though a few amendments were proposed.

Mr. Larry McIntosh spoke first,<sup>27</sup> as president and CEO of Peak of the Market, Manitoba's vegetable marketing board. He noted that there are currently 65 producers regulated by his organization. He expressed specific approval of higher fines for contravening the *Act*, saying that they would act as a deterrent for breaking the rules. He also gave a concrete example of Manitoba vegetable producers working together for the betterment of their industry, citing the statistic that Manitoba produces more red potatoes than any other province. He believed that this success was due to a high level of commitment on behalf of the producers as well as a superior orderly marketing system, one that would be reinforced by the new legislation.

Mr. Bill Uruski, former Minister of Agriculture and current Vice-Chairperson of the Manitoba Turkey Producers, was the next to speak to the bill.<sup>28</sup> His organization represents approximately 70 producers across Manitoba. He felt that their industry had been stabilized due to supply management, and provided a history of supply management in the context of Manitoba's turkey industry. He spoke briefly about national quota allocation and the rarely used appeal process (which allows appeals from the various boards' decisions to the Farm Products Marketing Council). In his eight years on the board, he was not aware of any appeals from their decisions. In sum, he and the turkey producers were in support of this bill.

The next speaker was Mr. Waldie Klassen, Chairman of the Manitoba Chicken Producers, who was also in favour of this bill.<sup>29</sup> There are 124 chicken producers in Manitoba and over 1 000 people employed by that industry. Mr. Klassen described the benefits of orderly marketing as providing "stability, consistent quality, continuous supply at acceptable prices, a fair return to producers and a rational way for farmers to exit the industry with dignity."<sup>30</sup> The major changes he highlighted were the

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<sup>26</sup> *Ibid.* at 3077–3086.

<sup>27</sup> Manitoba, Legislative Assembly, *Standing Committee on Municipal Affairs*, Vol. LI No. 1 (21 June 2001) [*Committee* (21 June 2001)] at 9–11.

<sup>28</sup> *Ibid.* at 12–14.

<sup>29</sup> *Ibid.* at 16–17.

<sup>30</sup> *Ibid.*

strengthened enforcement provisions and an allowance for the boards to monitor production, and not simply marketing, of their particular farm product.

Mr. Bill Swan of the Manitoba Milk Producers was responsible for introducing the bulk of the proposed amendments to the bill.<sup>31</sup> By way of introduction, he explained that there are 621 milk producers in Manitoba, producing 800 000 litres of milk every day. These producers were in favour of the bill and were most pleased with the changes to the appeal process and the enforcement provisions. Mr. Swan recommended five amendments to the bill, four of which were accepted by the Minister.

Mr. Ted Muir of the Manitoba Pork Council was also largely in favour of the new legislation.<sup>32</sup> He spoke about the importance of the hog industry to Manitoba, commenting that “an expanding hog industry offers farmers more production options, reduces chemical fertilizer costs, provides new markets for grains and provides career opportunities and choices for rural families.”<sup>33</sup> The two major highlights of the bill that he emphasized were (i) bringing the legislation up-to-date, harmonizing it with language and terminology found in similar statutes in other provinces, correcting several inconsistencies and making it easier for lay people to understand; and (ii) giving the council the ability to obtain a court order to ensure compliance. Overall, the hog industry was pleased with the enhanced enforcement provisions. Given the importance of levy collection to finance programs for all hog producers, the industry was in favour of strong legislation that allows them to enforce full compliance with levy remittance. The only amendment Mr. Muir proposed was a slight change to the wording of s. 6(1)(b), to include production as well as marketing authority. This change was adopted by the Minister.

The final presenter representing producers was Mr. Tom Dooley of Aikins, MacAulay & Thorvaldson, speaking on behalf of the Manitoba Egg Producers.<sup>34</sup> As the lawyer for all the producer boards, he was able to make reference to a number of the cases outlined above, specifically the Supreme Court decision relating to egg production in Manitoba. He noted that there are approximately 120 egg producers in Manitoba, but in the main his comments centred around the shift of powers from Cabinet to the Minister, a particular concern of Agriculture Critic, Mr. Jack Penner, who was also a member of the committee. Mr. Dooley commented on the limited nature of these powers and gave examples of what the Minister cannot do. He also discussed the ability of the council

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<sup>31</sup> *Ibid.* at 18–19.

<sup>32</sup> *Ibid.* at 20–22.

<sup>33</sup> *Ibid.* at 21.

<sup>34</sup> *Ibid.* at 22–24.



to pass regulations, another area of concern for Mr. Penner, but was not aware of any changes from the old law to the new bill in this regard.

Following all these presentations and a few brief comments by the Minister of Agriculture and Food and Mr. Jack Penner, four of the amendments proposed by the Milk Producers and the amendment recommended by the Manitoba Pork Council were adopted.<sup>35</sup>

#### **D. Third Reading and Royal Assent**

The bill's third reading occurred on 28 June 2001. Royal Assent was given on 5 July 2001, making the bill into law.

### **IV. FEEDBACK ON *THE FARM PRODUCTS MARKETING ACT***

In-depth research on the subject revealed no media commentary on the passage of this bill. What is notable was the general lack of opposition to this bill by non-government members and the overall support of producer boards across Manitoba. This may be attributable to the housekeeping nature of the bill and the extensive consultations that were conducted with the producer boards.<sup>36</sup>

### **V. A COMPARATIVE ANALYSIS**

The most important changes to this area of the law centred on appeal procedures and enforcement mechanisms.<sup>37</sup> Comparing the new and old Acts on these points, as well as looking farther afield to similar legislation in other provinces, reveals the origins and extent of the changes to these particular provisions.

#### **A. Appeals**

Appeals may now be made to the Manitoba Farm Products Marketing Council on regulations, orders or decisions of producer boards or commissions. The former *Act* did not allow for appeals on regulations, but was limited to decisions, directives and orders.<sup>38</sup> This wording change was taken from similar legislation in Alberta and

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<sup>35</sup> *Ibid.* at 31–35.

<sup>36</sup> MacKenzie, *supra* note 18. Mr. MacKenzie remarked that the government consulted with the producer boards after Second Reading and went through the proposed legislation line-by-line. He reported that they had a very positive reaction to the bill.

<sup>37</sup> Penner, *supra* note 19.

<sup>38</sup> See *The Farm Products Marketing Act*, *supra* note 1 at s. 19(1); compare with *The Natural Products Marketing Act*, *supra* note 2 at s. 10(1).

Saskatchewan.<sup>39</sup> The *Alberta Act's* s. 40 also inspired changes to the notice provisions, specifically ss. 19(2), (3), 20(2), (4), (5) and 21. New sections also permit the Council to refuse to hear an appeal. These were modeled after *The Farm Practices Protection Act*<sup>40</sup>, which was also amended during the 2000–2001 sitting of the House. This attests to the goal of the drafters to achieve some consistency in the wording of these pieces of legislation. The Council, pursuant to s. 20(4), was also given powers under the *Evidence Act*<sup>41</sup> of Manitoba. This grant of power was based on s. 40 of the *Alberta Act* and s. 22(3)(a) of the *Saskatchewan Act* allowing, for example, for the subpoenaing of witnesses and inspections of the land and buildings. Section 20(7) is also new to the *Act*, placing the onus on the boards and commissions to provide all relevant documentation on appeals of their decisions. Subsection (8) allows for additional information relevant to the appeal to be adduced after the hearing, provided that all parties are adequately notified and given the opportunity to comment.

Overall, the appeal procedures were streamlined and simplified by these amendments. The new legislation clarifies what may be appealed to the Council and allows for the Council to dispense with a hearing under certain circumstances. Most of these changes were borrowed from the *Alberta Act* and the *Saskatchewan Act*, or were meant to parallel similar provisions in the *Farm Practices Protection Act*.

## B. Enforcement

The enforcement provisions in the *Act* were clearly modeled after existing provincial legislation, such as *The Animal Care Act*,<sup>42</sup> *The Dairy Act*,<sup>43</sup> and *The Livestock Industry Diversification Act*.<sup>44</sup> All of these statutes embodied a shift in power away from Cabinet (the Governor-in-Council) to the Minister. One of the major changes in respect of enforcement between *The Natural Products Marketing Act* and *The Farm Products Marketing Act* is a simplification of terminology, especially in s. 23 (former s. 34). New sections were added in relation to the removal and inspection of records, the authority to issue warrants, the use of force by and the additional seizure powers of inspectors, the

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<sup>39</sup> See *Marketing of Agricultural Products Act*, S.A. 1987, c. M-5.1 at s. 36 [*Alberta Act*] and *The Agri-Food Act*, S.S. 1990-91, c. A-15.2 at s. 22(1)(a) [*Saskatchewan Act*].

<sup>40</sup> S.M. 1992, c. 41-Cap. F45, as am. by Bill 16, *The Farm Practices Protection Amendment Act*, 2d Sess., 37<sup>th</sup> Leg., Manitoba, 2001 (assented to 6 July 2001).

<sup>41</sup> R.S.M. 1987, c. E150.

<sup>42</sup> S.M. 1996 c. 69-Cap. A84.

<sup>43</sup> S.M. 1996, c. 36-Cap. D10.

<sup>44</sup> S.M. 1996, c. 37-Cap. L175 [LIDA].

storage of seized products, and applications for court orders.<sup>45</sup> The ability to inspect records parallels the provisions in LIDA and *The Dairy Act*.<sup>46</sup> The authority to issue warrants is also contained in those statutes, as well as in the *Saskatchewan Act*.<sup>47</sup> These were also the sources for provisions surrounding additional powers of inspectors, though the only parallel for the new provisions relating to the storage of seized products is s. 12(1) of *The Dairy Act*.

These additional powers of seizure created an amusing discussion about the wording “or other thing” in s. 25(3) of the *Act*.<sup>48</sup> This vague terminology led to comments by Mr. Jack Penner expressing his concern that an over-eager inspector might seize his John Deere combine. In committee, the Minister explained that the vagueness was necessary so that inspectors could seize things like containers and crates, instead of having to remove the chickens or eggs individually. Though on first blush its imprecision is baffling, this seems like an eminently sensible provision, as it closes a possible ‘loophole’ in the law. One further provision that will improve compliance is s. 27, which allows for the Farm Products Marketing Council to seek a court order to direct a person to comply.<sup>49</sup> Boards and commissions may also seek these types of orders, but only with the approval of Council. This continues the Council’s supervisory role, which is affirmed in s. 14 of the *Act*.

Finally, one must consider the increase in fines that was undertaken by these amendments. Formerly, under *The Natural Products Marketing Act*, an individual who committed their first offence under the *Act* was subject to a minimum fine of \$25 and a maximum fine of \$500 or to a term of imprisonment of not more than three months, or both. For a second or successive infraction, individuals were subject to a fine of not less than \$100 and not more than \$750.<sup>50</sup> Under the new legislation, an individual is liable for a fine of not more than \$5,000 for a first offence and \$10,000 for a subsequent offence. Corporations face even steeper fines—not more than \$10 000 for a first offence, and \$25 000 for

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<sup>45</sup> See *The Farm Products Marketing Act*, *supra* note 1 at ss. 23(5), 24(2), 25(2) & (3), 26(1) & 27.

<sup>46</sup> See LIDA, *supra* note 44 at s. 20(4), and *The Dairy Act*, *supra* note 43 at s. 9(4).

<sup>47</sup> See LIDA, *supra* note 44 at s. 12(3), *The Dairy Act*, *supra* note 43 at s. 10(2), and *Saskatchewan Act*, *supra* note 39 at s. 29(4).

<sup>48</sup> See *Debates* (19 June 2001), *supra* note 23 at 3067–3068, and *Committee* (21 June 2001), *supra* note 27 at 31.

<sup>49</sup> This provision was borrowed from the *Alberta Act*, *supra* note 94 at s. 45, and Ontario’s *Farm Products Marketing Act*, R.S.O. 1990, c. F.9, s. 13 [*Ontario Act*].

<sup>50</sup> See *The Natural Products Marketing Act*, *supra* note 2 at s. 37. For a corporation’s first offence, it was liable for a fine of not less than \$250 and not more than \$1,000. For subsequent offences, corporations were liable for a fine of not less than \$1,000 and not more than \$5,000.

subsequent offences.<sup>51</sup> Note, however, that the possibility of jail time has been removed.

These fines are in-line with those contained in s. 31 of the *Saskatchewan Act*, though that statute makes no distinction between first and subsequent offences. Section 45 of the *Alberta Act* does not list any actual numbers, though its council does have similar powers to seek court orders. In Ontario, every person who commits an infraction is liable, for a first offence, to a fine of not more than \$2,000 for each day that the offence continues and, for a subsequent offence, to a fine of not more than \$10,000 for each day that the offence continues. The *Ontario Act* does not distinguish between individual and corporate actors.<sup>52</sup>

It is unclear what is contemplated by the words “subsequent offence” in s. 28 of the *Act*. Would this include a continuing offence, and thus make a person liable to these exorbitant fines for every day the offence persists? Section 37(2) of *The Natural Products Marketing Act* made reference to “second or successive offence.” Perhaps this change in statutory language was meant to indicate fines are to be levied only for separate and discrete offences. If this is not the case, farmers could bankrupt themselves by persisting in a particular manner of conduct contrary to the Council’s wishes for the short span of one growing season! Clearly one of the biggest changes in the *Act*’s enforcement provisions is embodied in these higher fines that, depending on the interpretation of the statutory language, could spell trouble for dissident farmers.

## VI. CONCLUSION

As stated at the outset, the importance of Canada’s agricultural sector is evidenced by the scope of its regulation at both the federal and provincial levels of government. *The Farm Products Marketing Act* recently amended one layer of that complex scheme. Though the courts have addressed the constitutional issues underlying this type of orderly marketing on a number of occasions, the case law merely provides a glimpse into the complicated world of agricultural supply management.

*The Farm Products Marketing Act* introduced significant changes to the appeal procedures from board decisions and the enforcement provisions of the *Act*, especially in the area of fine assessment. A comparative analysis leads to the conclusion that these changes were in-line with those prompted in other jurisdictions and were also meant to achieve consistency by paralleling provisions in other provincial statutes.

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<sup>51</sup> See *The Farm Products Marketing Act*, *supra* note 1 at s. 28(1)(a) and (b).

<sup>52</sup> See *Ontario Act*, *supra* note 49 at s. 15.

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Though it did not change the fundamental framework of supply management in Manitoba, *The Farm Products Marketing Act* will serve to streamline the appeal process and ensure greater compliance with the statute, along with rulings of the Council and various producer boards. In essence, this legislation will serve to make orderly marketing in Manitoba more orderly.

