



## **PLEASE NOTE**

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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## CHAPTER N-3

### NATURAL PRODUCTS MARKETING ACT

- 1. In this Act,**
- |   | Definitions             |
|---|-------------------------|
| (a) “Council” means the Prince Edward Island Marketing Council;   | Council                 |
| (b) “federal Act” means the <i>Agricultural Products Marketing Act</i> (Canada) R.S.C. 1985, Chap. A-6;   | federal Act             |
| (c) “federal board” means the Governor in Council;  | federal board           |
| (d) “federal jurisdiction” means the legislative jurisdiction or competence of the Parliament of Canada;  | federal jurisdiction    |
| (e) “marketing” includes buying, selling, packing, grading, storing, processing, shipping for sale or storage, promoting, researching and offering for sale, in respect of a natural product, and includes its production and its transportation in any manner by any person; | marketing               |
| (f) “natural product” means any product of agriculture, or of the forest, sea, lake, or river, and any article of food or drink wholly or partly manufactured or derived from any such product;   | natural product         |
| (g) “provincial jurisdiction” means the legislative jurisdiction or competence of the Legislative Assembly of the province;   | provincial jurisdiction |
| (h) “regulated product” means any natural product the regulation of the marketing of which is provided for in any plan approved or established under this Act; and  | regulated product       |
| (i) “vehicle” includes any motor vehicle, wagon, railway car, ship, boat, aircraft, or other thing in which any natural product can be transported. R.S.P.E.I. 1974, Cap. N-2,s.2; 1997,c.32,s.1.   | vehicle                 |

#### PART I

##### PRINCE EDWARD ISLAND MARKETING COUNCIL

- 2. (1)** The board heretofore known as the “Prince Edward Island Marketing Board” is renamed the “Prince Edward Island Marketing Council” and confirmed as a corporation and those persons holding office on the day this section comes into force are continued and confirmed in office for the remaining period of their term of office.
- (2)** The Council shall consist of not less than three persons and not more than eight persons appointed by the Lieutenant Governor in

Council one of whom shall be designated by the Lieutenant Governor in Council to be chairman.

Quorum (3) A quorum at a meeting of the Council shall be a majority of the members of the Council then holding office.

Responsibilities (4) The Council is responsible for the general supervision of all commodity boards, marketing commissions and commodity groups established under this Act.

Council to exercise certain powers and duties (5) The Council may exercise such powers and perform such functions as are vested in it by the Lieutenant Governor in Council and shall recommend to the Lieutenant Governor in Council the establishment, amendment and revocation of plans for the marketing of natural products and the constitution and powers of commodity boards or of marketing commissions to administer such plans.

Powers of the Council (6) The Council may

- (a) investigate, arbitrate, adjudicate upon, adjust or otherwise settle any dispute between producers, processors, distributors or transporters of natural products, or between any two or more of such classes of persons, or between a producer and a commodity board, marketing commission or commodity group;
- (b) investigate the cost of producing, processing, distributing and transporting any natural product, prices, price spreads, trade practices, methods of financing, management, grading, policies and other matters relating to the marketing of a natural product;
- (c) recommend any plan to the Minister;
- (d) empower a commodity board or a marketing commission to borrow money for such purposes and in such amounts as the Council may determine and to give any person, as evidence thereof, a promissory note signed by the chairman and secretary of the commodity board or of the marketing commission;
- (e) inspect the books, records and premises of any person producing or otherwise dealing in or with a regulated product or any person suspected thereof;
- (f) stimulate, increase and improve the marketing of regulated products by such means as it may consider proper; and
- (g) do such acts, make such orders, and issue such directions as are necessary to enforce the due observance and carrying out of the Act and the regulations or any plan.

Additional powers re milk (7) Without prejudice to subsection (6), the Council may, for the purposes of regulation of the dairy industry, make orders establishing the producer price for Class I milk, minimum wholesale and home delivery prices and fixing bulk transportation rates for milk.

(8) Upon an investigation under this section the Council has the powers of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31. Application of Public Inquiries Act

(9) The Council may recommend to a commodity board or to a marketing commission that any order, direction or decision of the commodity board or the marketing commission be amended, varied or repealed and where the commodity board or the marketing commission rejects the recommendation of the Council, the Council may refer the recommendation to the Lieutenant Governor in Council; the Lieutenant Governor in Council may accept or reject the recommendation and where he accepts the recommendation he may take such action as may be necessary to effect the recommendation including amending, varying or repealing the order, direction, or decision of the commodity board or of the marketing commission. Review of orders, etc., of commodity boards or marketing commissions

(10) The members at large appointed under subsection (1) or (2) are to receive such remuneration as may be determined by the Lieutenant Governor in Council. Remuneration

(11) The Council shall, at the end of its financial year, make a report to the Minister of the Crown designated by the Lieutenant Governor in Council of its transactions during the preceding financial year and this report shall contain such particulars as the Lieutenant Governor in Council may prescribe; a copy of each annual report so made shall be transmitted to the Legislative Assembly when in session or within fifteen days of the commencement of the next regular session of the Legislative Assembly. Report

(12) The Council and all commodity boards and marketing commissions constituted pursuant to this Act are corporations. R.S.P.E.I. 1974, Cap. N-2,s.3; 1977,c.26,s.3; 1985,c.35,s.1; 1988,c.47,s.1; 1996,c.30,s.1. Corporations

3. The purpose and intent of this Act is to provide for the promotion, research, control and regulation of the marketing of natural products within the province, including the prohibition of any aspect of marketing. R.S.P.E.I. 1974, Cap. N-2,s.4; 1977,c.26,s.4; 1997,c.32,s.2. Scope of Act

## PART II COMMODITY BOARDS

4. (1) The Council may authorize a plebiscite to be held among the producers of a particular commodity in order to determine if a commodity board for that commodity should be established, continued, Plebiscite

amended or revoked; such a plebiscite shall be held in accordance with the regulations.

Establishment,  
amendment,  
revocation of plans

(2) Notwithstanding subsection (1), upon the recommendation of the Council, the Lieutenant Governor in Council may by Order in Council

- (a) establish, amend and revoke plans and constitute commodity boards for the promotion, control and regulation within the province of the marketing of any natural products;
- (b) vest in those boards any powers necessary to enable them effectively to promote, control and regulate the marketing of any natural products within the province; and
- (c) prohibit any aspect of the marketing of any natural products within the province.

Vesting specific  
powers in  
commodity board

(3) Without limiting the generality of subsection (2) or any of the other provisions of this Act, and upon the recommendation of the Council, the Lieutenant Governor in Council may by Order in Council vest in any commodity board any or all of the following additional powers, or any limited aspect thereof

- (a) to regulate the time and place at which, and to designate the agency or sub-agency, or the agencies or sub-agencies through which any regulated product is to be marketed;
- (b) to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that is to be marketed;
- (c) to prohibit any aspect of the marketing of any grade, quality or class of any regulated product;
- (d) to determine the charges that may be made for its services by any designated agency;
- (e) to exempt from any determination or order any person or class of persons engaged in the production of, or any aspect of marketing of any regulated product or any class, variety, or grade thereof;
- (f) to require any or all persons engaged in the production of, or any aspect of marketing of any regulated product, to register with and obtain licenses from the commodity board and to establish requirements for the issue of licenses;
- (g) to fix and collect yearly, half yearly, quarterly, or monthly license fees from any or all persons engaged in the production of, or any aspect of the marketing of the regulated product, and for this purpose to classify such persons into groups and fix the license fees payable by the members of the different groups;
- (h) to fix and collect from such persons fees and levies for services rendered or to be rendered by the commodity board;
- (i) to recover such license, levies or other fees by suit in any court of competent jurisdiction;

- (j) to suspend or revoke at any time any license granted under this Act and to establish appeal procedures;
- (k) to impose penalties as provided by regulation for violation of any determination or order under this Act or the regulations thereunder;
- (l) to require full information relating to the production and any aspect of marketing of the regulated product from all persons engaged therein;
- (m) to require periodic returns to be made by those persons;
- (n) to inspect the books and premises of those persons;
- (o) to fix price or prices, minimum price or prices, at which the regulated product, or any grade or class thereof, may be bought or sold in the province, or that shall be paid for the regulated product by a designated agency;
- (p) to conduct, or to authorize any marketing agency or sub-agency appointed under the plan to conduct an intraprovincial or interprovincial pool or pools for the distribution of all proceeds received from the sale of the regulated product and requiring any such marketing agency to distribute the proceeds of sale, after deducting all necessary and proper disbursements, expenses, and charges, in a manner that each person receives a share of the total proceeds in relation to the amount, variety, size, grade and class of the regulated product delivered by him and to make payments in respect thereof until the total net proceeds are distributed;
- (q) to acquire, possess, purchase and sell the regulated product;
- (r) to purchase, take on lease or in exchange, or otherwise acquire real property for the purposes of its business and to sell or otherwise dispose of or mortgage real property acquired by a commodity board;
- (s) to borrow, raise or secure the payment of money in such manner as the commodity board may think fit for the purpose of carrying out the objects of the plan;
- (t) to draw, make, accept, endorse, execute, issue, hypothecate, or assign promissory notes, bills of exchange and other negotiable or transferable instruments;
- (u) to take, or otherwise acquire and hold, shares, debentures or other securities of any company having objects altogether or in part similar to those of the commodity board, or carrying on any business capable of being conducted so as, directly or indirectly, to benefit producers, and to sell or otherwise deal with the same;
- (v) to detain or seize, and dispose of any of the regulated product marketed in violation of any order of the commodity board;
- (w) to require the person in charge of any vehicle to permit any agent or employee authorized by the commodity board to search the vehicle;

(x) to use in carrying out the purposes of the plan and paying the expenses of the commodity board any money received by the board;

(y) to delegate its powers to any agent or employee authorized by the board for the proper operation of the plan under which the commodity board is constituted, provided that this clause shall not permit the delegation by such board of the powers contained in clauses (f), (g) and (j);

(z) to make orders, rules and regulations affecting the production or marketing of the regulated product;

(z.1) to establish and operate a quota system with respect to the production and marketing of the regulated product providing for

(i) the marketing of the regulated product on a quota basis,

(ii) the fixing and allotting to persons of quotas for the marketing of the regulated product on such basis as the commodity board considers proper,

(iii) the refusing to fix and allot to any person a quota for the marketing of the regulated product for any reason that the commodity board considers proper,

(iv) the cancelling or reducing of, or the refusing to increase, a quota fixed and allotted to any person for the marketing of the regulated product for any reason that the commodity board considers proper,

(v) the compensation to be allotted to any person whose quota has been cancelled, reduced, or withheld for any reason, and

(vi) the terms and conditions upon which a person may market a quantity of the regulated product in excess of the quota fixed and allotted to him;

(z.2) to investigate and arbitrate any dispute arising from the sale of any natural product between producers, shippers, transporters and distributors;

(z.3) to require proof of financial responsibility by any person engaged in marketing; and

(z.4) to establish price stabilization programs and to fix and collect from producers fees and levies to be used for services rendered or to be rendered to establish a price stabilization program and for the general purposes of orderly marketing.

Eligibility for membership on commodity board

(4) The members of any commodity board are to be producers elected by a majority vote in a manner prescribed by regulation.

Geographical application of plans

(5) Any plan established or amended under subsection (2) relates to the whole of the province unless otherwise provided therein and may relate to one or more natural products or to any grade or class thereof.

(6) The establishment of a commodity plan, the constituting of a commodity board and the appointment of the first members of the commodity board can be effected by one Order in Council of the Lieutenant Governor in Council. 1975,c.55,s.1; 1976,c.21,s.1 & 2; 1977,c.26,s.6; 1985,c.35,s.2; 1988,c.47,s.2; 1996,c.30,s.2.

Administrative  
procedure

5. Every person shall keep adequate records of all matters relating to the production of, or any aspect of the marketing of the regulated product. R.S.P.E.I. 1974, Cap. N-2,s.5.

Records relating to  
marketing

6. Every commodity board may

Commodity board  
co-operate with  
federal board

(a) co-operate with the federal board or any marketing agency or marketing board established by or under an Act of the Parliament of Canada to regulate the marketing of any natural product of the province;

(b) act conjointly with the federal board, or with any marketing agency or marketing board established by or under an Act of the Parliament of Canada;

(c) subject to the approval of the Lieutenant Governor in Council, enter into an agreement with the federal board or any marketing commission or marketing board established by or under an Act of the Parliament of Canada. R.S.P.E.I. 1974, Cap. N-2,s.6; 1974(2nd),c.36,s.4; 1996,c.30,s.3.

### PART III COMMODITY GROUPS

7. (1) A body of producers of a specific natural product organized on a provincial basis may, upon the recommendation of the Council, be designated by order of the Minister of Agriculture, Fisheries, Aquaculture and Forestry as a commodity group.

Commodity groups

(2) The special objects of a commodity group shall be to

Objects

(a) facilitate the interchange of information among commodity producers;

(b) promote better means of commodity production and marketing;

(c) encourage and promote the use of a commodity.

(3) Subject to the approval of the Council, a commodity group may

Powers

(a) make bylaws for the regulation and conduct of its affairs and for the carrying out of its objects;

(b) require any person engaged in the marketing of the commodity to pay to it an amount fixed by way of levy or charge, to collect such levy or charge through a check-off system obliging processors of the commodity to remit to the commodity group the amount of the levy



or charge and to recover such levy or charge in a court of competent jurisdiction;

(c) require any person engaged in the marketing of the commodity to deduct from any amount payable by him to any person engaged in the marketing of the commodity, including producers, any amount payable by the latter person to the commodity group by way of levy or charge fixed pursuant to clause (b), and to remit all amounts so deducted to the commodity group;

(d) cooperate with the federal board or any marketing agency or marketing board established by or under an Act of the Parliament of Canada to regulate the marketing of any natural product;

(e) act conjointly with the federal board or with any marketing agency or marketing board established by or under an Act of the Parliament of Canada.

Use of funds	(4) Any sum paid pursuant to subsection (3) shall be used to further the objects of the commodity group.
Notice to be excluded from levy	(5) A person engaged in the production of a commodity who gives notice to the commodity group organized in respect of that commodity by registered mail prior to December 15 in any year that he does not wish to be subject to the levy or charge fixed pursuant to clause (3)(b) shall not be subject to such levy or charge fixed by that commodity group in the year following that notice.
Refunds	(6) An amount deducted in any year and remitted to a commodity group pursuant to subsection (3) shall be refunded by the commodity group to the commodity producer within sixty days of the date the levy or charge was made upon receipt by registered mail of the invoice and a notice given by a commodity producer that he does not wish to be subject to the levy or charge fixed pursuant to clause (3)(b).
Application of subsections (5) and (6)	(7) For the purposes of this section, the commodity group shall determine that subsection (5) or subsection (6), or both, shall apply to that group's commodity but in no circumstances shall payment of the levy or charge be made mandatory.
Financial statement	(8) A commodity group shall submit to the Council not later than January 31 in each year an audited statement of the receipts and disbursements of the commodity group during the preceding year.
Powers of Council	(9) The Council has the same powers in respect of a commodity group formed under this section as it has in respect of commodity boards and marketing commissions established under this Act. 1982,c.20,s.1; 1983,c.1,s.6; 1985,c.35,s.3; 1988,c.47,s.3; 1990,c.37,s.1; 1993,c.29,s.4; 1996,c.30,s.4 1997,c.20,s.3; 2004,c.36,s.3.

PART IV  
MARKETING COMMISSIONS

- 8.** (1) Upon the recommendation of the Council, the Lieutenant Governor in Council may by Order in Council
- Establishment of marketing plans and commissions
- (a) establish, amend and revoke plans and constitute marketing commissions for the promotion, control and regulation within the province of the marketing of any natural products;
  - (b) vest in the marketing commissions any powers necessary to enable them effectively to promote, control, and regulate the marketing of any natural products within the province; and
  - (c) prohibit any aspect of the marketing of any natural products within the province.
- (2) Marketing commissions constituted by the Lieutenant Governor in Council under subsection (1) shall be composed of three persons appointed by the Lieutenant Governor in Council who are knowledgeable and experienced in the marketing of the natural products to be regulated by the marketing commission.
- Composition
- (3) The term of office of members of the marketing commission shall be three years, but in the event of the death or resignation of a member or the removal from office of a member by the Lieutenant Governor in Council for cause, a substitute member may be appointed by the Lieutenant Governor in Council to serve the unexpired portion of the term of office of the member.
- Term of office
- (4) Notwithstanding the term of office of members of the marketing commission prescribed in subsection (3), the Lieutenant Governor in Council may revoke the appointment of members of the marketing commission at any time where the purpose of the revocation is to replace a marketing commission with a commodity board.
- Revocation of appointment
- (5) A member of a marketing commission on the expiration of his term of office is eligible for re-appointment.
- Re-appointment
- (6) Members of a marketing commission shall be paid such salary and given such remuneration for expenses as the Lieutenant Governor in Council may establish by the Order in Council. 1977,c.26,s.7; 1988,c.47,s.4.
- Remuneration and reimbursement
- 9.** Without limiting the generality of subsection 8(1) or any of the other provisions of this Act, and upon the recommendation of the Council, the Lieutenant Governor in Council, may by Order in Council, vest in any marketing commission any or all of the following specific powers, or any limited aspect thereof,
- Specific powers

- (a) any or all of those additional powers itemized in subsection 4(3), or any limited aspect thereof;
- (b) to act as an agent in the sale, marketing, distribution or processing of a natural product or to do so directly and independently;
- (c) to formulate, develop, institute, operate and conduct marketing pools, and without limiting the generality thereof, to conduct a pool or pools for the distribution of all moneys received from the sale of a regulated product, and requiring the marketing commission after deducting all necessary and proper disbursements and expenses, and after making such allowances for reserves as may be approved by the Council, to distribute the remainder of the moneys received from the sale in such manner that each producer entitled to share in the pool receives a share in the remainder of the moneys received from the sale as determined by the marketing commission with the approval of the Council, relative to the quantity, quality, variety, grade, class or size of the regulated product delivered by him, and authorizing the marketing commission to make an initial payment on delivery of the regulated product and subsequent payments until all the remainder of the moneys received from the sale is distributed to the producer;
- (d) to acquire, possess, purchase and sell the regulated product;
- (e) to collect from any person by suit in the Supreme Court the price or prices or any part thereof of the regulated product;
- (f) to purchase, take on lease or in exchange, or otherwise acquire real property for the purposes of its business and to sell or otherwise dispose of, or mortgage real property acquired by a marketing commission;
- (g) to borrow, raise or secure the payment of money in such manner as the marketing commission may think fit for the purpose of carrying out the objects of the plan;
- (h) to draw, make, accept, endorse, execute, issue, hypothecate, or assign promissory notes, bills of exchange and other negotiable or transferable instruments;
- (i) to establish and operate a quota system with respect to the production and marketing of the regulated product providing for
  - (i) the marketing of the regulated product on a quota basis,
  - (ii) the fixing and allotting to persons of quotas for the marketing of the regulated product on such basis as the marketing commission considers proper,
  - (iii) the refusing to fix and allot to any person a quota for the marketing of the regulated product for any reason that the marketing commission considers proper,

- (iv) the cancelling or reducing of, or the refusing to increase, a quota fixed and allotted to any person for the marketing of the regulated product for any reason that the marketing commission considers proper, and
- (v) the terms and conditions upon which a person may market the regulated product in excess of the quota fixed and allotted to him;
- (j) to prohibit
  - (i) any person to whom a quota has not been fixed and allotted for the marketing of the regulated product or whose quota has been cancelled from marketing any of the regulated product, and
  - (ii) any person to whom a quota has been fixed and allotted for the marketing of the regulated product from marketing any of the regulated product in excess of such quota;
- (k) to pay to the producers of a regulated product the price or prices for the regulated product less service charges calculated and imposed by the marketing commission, and to fix the times at which and within which such payments shall be made;
- (l) to provide for advance payments;
- (m) to require the price or prices payable or owing to the producer for the regulated product to be paid to or through the marketing commission;
- (n) to require any person who produces a regulated product to offer to sell and to sell the regulated product to or through the marketing commission constituted to administer the plan under which the regulated product is regulated, and to grant exemptions to such requirement. 1977,c.26,s.7.

**10.** (1) A marketing commission may, with the approval of the Lieutenant Governor in Council, hire and remove from office such persons as it considers necessary to enable it to carry out its duties under the Act, and without limiting the generality thereof may hire such administrative, accounting, legal and secretarial personnel, including inspectors, as the commission may consider necessary. Staff

(2) Marketing commissions and persons employed by them are not subject to the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8 but persons employed by a marketing commission may contribute to and receive benefits from the Civil Service Superannuation Fund under the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9 as if they were civil servants. Status of employees  
as civil servants

(3) Each marketing commission may establish job classifications and terms and conditions of employment for its employees, and may consult and negotiate with any bargaining agent certified as such under the Job classification  
and consultation  
and negotiation

*Labour Act* R.S.P.E.I. 1988, Cap. L-1, representing some or all of its employees. 1977,c.26,s.7.

Operation of indemnity funds

**11.** (1) A marketing commission may establish and maintain one or more funds that may be used

(a) to indemnify producers against damage to or loss of a regulated product or of an agricultural product used in the production of a regulated product; or

(b) to indemnify producers or protect producers against financial loss suffered by them or on their behalf in respect of the marketing of a regulated product.

Levy and collecting moneys

(2) Where a fund is established under subsection (1), the marketing commission may levy and collect such amounts from the producers coming under the plan administered by that marketing commission as are required for the operation of the fund and the payments made into the fund shall not form part of a license fee or service charge levied under that plan.

Exemptions

(3) Where a fund is established under subsection (1) and a producer does not wish to receive any indemnity from that fund, that producer shall upon application to the marketing commission for an exemption, be exempted from making any payment under subsection (2).

*Insurance Act*, application of

(4) The *Insurance Act* R.S.P.E.I. 1988, Cap. I-4 does not apply to a fund operated under this section. 1977,c.26,s.7.

Scope of funds

**12.** Any plan established or amended under this Part relates to the whole of the province, unless otherwise provided therein and may relate to one or more natural products or to any grade or class thereof. 1977,c.26,s.7.

Procedure *re* Orders in Council

**13.** The establishment of a marketing plan, the constituting of a marketing commission and the appointment of the first members of the marketing commission can be effected by one Order in Council of the Lieutenant Governor in Council. 1977,c.26,s.7.

Records

**14.** Every person shall keep adequate records of all matters relating to the production of, or any aspect of the marketing of, the regulated product. 1977,c.26,s.7.

Federal boards, powers of marketing commissions *re*

**15.** Every marketing commission may

(a) co-operate with the federal board or any marketing agency, marketing commission or commodity board established by or under an Act of the Parliament of Canada to regulate the marketing of any natural product of the province;

(b) act conjointly with the federal board, or with any marketing agency, marketing commission or commodity board established by or under an Act of the Parliament of Canada. 1977,c.26,s.7.

**16.** The Lieutenant Governor in Council may authorize the Provincial Treasurer, on behalf of Her Majesty the Queen in right of the Province of Prince Edward Island, to guarantee on such terms and conditions as the Lieutenant Governor in Council may approve repayment of advances made to a marketing commission, and interest thereon on the security of the regulated product held by the marketing commission or otherwise, by any bank, trust company, credit union or other financial institution for the purpose of carrying on its operations under this Act or to make loans or advances to the marketing commission on such terms and conditions as may be agreed upon. 1977,c.26,s.7; 1983,c.1,s.6; 1986,c.5,s.2; 1993,c.29,s.4.

Guarantee by  
Province of  
advances made by  
marketing  
commissions

**17.** The Council may authorize a plebiscite to be held among the registered producers of a particular commodity for which a marketing commission is established under this Part in order to determine if the marketing commission for that commodity should be continued, amended or revoked and such plebiscite shall be held in accordance with the regulations referred to in subsection 4(1). 1977,c.26,s.7.

Plebiscite

#### PART V NATURAL PRODUCTS APPEALS TRIBUNAL

**18.** (1) For the purposes of this Act there shall be a Natural Products Appeals Tribunal (in this Act referred to as the “Appeals Tribunal”) appointed by the Lieutenant Governor in Council comprising of two persons who are knowledgeable in organized agricultural marketing and one public accountant.

Composition of  
Appeals Tribunal

(2) The term of office of a member of the Appeals Tribunal is three years and a member is eligible for reappointment.

Term of office

(3) Where a member dies, resigns or is removed from office for cause, the Lieutenant Governor in Council may appoint a substitute member to serve the unexpired portion of the term of office of the member.

Substitute members

(4) Members of the Appeals Tribunal shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

Remuneration

(5) The Minister of Agriculture, Fisheries, Aquaculture and Forestry shall assign from the department such staff as are necessary for the Appeals Tribunal to carry out its functions.

Staff

Procedure	(6) Subject to adherence to the rules of natural justice, in hearing an appeal the Appeals Tribunal shall determine all matters of procedure. 1985,c.35,s.4; 1993,c.29,s.4; 1997,c.20,s.3; 2004,c.36,s.3.
Appeal to commodity board or marketing commission	<b>19.</b> (1) Where any person considers himself aggrieved by any order or decision of a commodity board or a marketing commission, he may within thirty days of the making thereof appeal to the commodity board or to the marketing commission by serving upon the commodity board or the marketing commission written notice of the appeal.
Appeal to the Appeals Tribunal	(2) Where any person considers himself aggrieved by (a) any decision of a commodity board or a marketing commission on an appeal under subsection (1); or (b) any order or direction made by the Council, he may, within thirty days of the making thereof, appeal to the Appeals Tribunal by serving upon the Appeals Tribunal written notice of the appeal.
Notice of appeal	(3) Every notice under subsection (1) or (2) shall contain a statement of the matter being appealed and the name and address of the person making the appeal.
Notice	(3.1) The service of a written notice of appeal under subsection (1) or (2) does not operate as a stay of, and shall not in any way affect the application of, the decision, order or direction that is the subject matter of the appeal.
Provision of material relevant to appeal	(4) Upon receipt of a notice under clause (2)(a), the Appeals Tribunal shall forthwith notify the commodity board or the marketing commission and the commodity board or the marketing commission, as the case may be, shall thereupon forthwith provide the Appeals Tribunal with all relevant bylaws, orders, directions, regulations, documents, and other material of any kind whatsoever in its possession.
Notice of hearing	(5) In any appeal under subsection (1) or (2) the Appeals Tribunal or the commodity board or the marketing commission, as the case may be, shall, within seven days after the notice referred to in subsection (1) or (2) is received, serve notice upon the person making the appeal of the date, time and place at which the appeal will be heard.
Hearing	(6) The Appeals Tribunal or the commodity board or the marketing commission, as the case may be, shall hear and decide any appeal under subsection (1) or (2) within thirty days after the notice of appeal is received, but the Appeals Tribunal or the commodity board or the marketing commission may, at the request of the person making the appeal, adjourn the hearing from time to time for such period or periods

of time as the Appeals Tribunal or the commodity board or the marketing commission considers just.

(7) At any hearing under this section, the person making the appeal has the right to attend and make representations and to adduce evidence respecting the appeal either by himself or through counsel.

Right to be heard

(8) At any hearing of an appeal under clause (2)(a), the commodity board or the marketing commission has the right to attend and make representations and to adduce evidence respecting the appeal either by its officers, or any of them, or through counsel.

*Idem*

(8.1) After hearing an appeal commenced under subsection (1), the commodity board or the marketing commission, as the case may be, shall confirm, vary or rescind the decision, order or direction that is the subject of the appeal.

Decision

(8.2) After hearing an appeal commenced under subsection (2), or referred back for reconsideration under subsection (9.1), the Appeals Tribunal shall confirm, vary or rescind the decision, order or direction that is the subject of the appeal.

*Idem*

(8.3) The commodity board or the marketing commission, as the case may be, shall, within ten days after it completes the hearing of an appeal, serve written notice of its decision and reasons on the person making the appeal.

Notice of decision of commodity board or marketing commission

(8.4) The Appeals Tribunal shall, within ten days after it completes the hearing of an appeal, serve written notice of its decision and reasons, if any, on

Notice of decision of Appeals Tribunal

- (a) the person making the appeal;
- (b) the commodity board or marketing commission, or the Council, whose decision, order or direction is the subject of the appeal; and
- (c) the Minister.

(9) A decision of the Appeals Tribunal, or a decision of the Minister on an appeal under this section does not operate as a stay of, and shall not in any way affect the application of, the decision, order or direction that is the subject matter of the appeal until the decision of the Appeals Tribunal, or the Minister, as the case may be, is final and binding on all parties, as determined under subsections (9.4) to (9.6).

Effect of decision of Appeals Tribunal

(9.1) Within ninety days after the Appeals Tribunal makes its decision in respect of an appeal, or within such longer period as the Minister may determine, by written notice served on the Appeals Tribunal within such ninety-day period, the Minister may, on the Minister's own initiative,

Powers of Minister



review the decision of the Appeals Tribunal and, where the Minister considers it necessary to do so,

- (a) confirm, vary or rescind the whole or any part of the decision of the Appeals Tribunal;
- (b) substitute for the decision of the Appeals Tribunal such decision as the Minister considers appropriate; or
- (c) by written notice served on the Appeals Tribunal, refer back to the Appeals Tribunal for reconsideration all or any part of the decision, order or direction that is the subject of the appeal.

Provision of materials relevant to appeal

(9.2) The Minister may, for the purposes of conducting a review under subsection (9.1) and by written notice served on the Appeals Tribunal, require the Appeals Tribunal to provide the Minister with copies of all bylaws, orders, directions, documents and other materials of any kind whatsoever that are relevant to the appeal and that are in the possession of the Appeals Tribunal, and on receipt of such notice the Appeals Tribunal shall forthwith provide the material requested to the Minister.

Reconsideration

(9.3) Where the Appeals Tribunal receives a notice of referral for reconsideration issued by the Minister under clause (9.1)(c), the notice shall be deemed for the purposes of this section to be a notice of appeal received under subsection (2), and the Appeals tribunal shall, in respect of the decision, order or direction, or part thereof, that is referred back for reconsideration,

- (a) hold, and give notice of, a new hearing in accordance with this section; and
- (b) after the new hearing,
  - (i) reconsider its earlier decision, and
  - (ii) issue a further decision under this section.

Decision is final

(9.4) Subject to subsections (9.5) and (9.6), a decision of the Appeals Tribunal is final and binding on all parties, and no appeal lies therefrom, after the expiration of

- (a) the ninety-day period mentioned in subsection (9.1), if the Minister does not substitute a longer period under that subsection; or
- (b) such longer period, if any, that is substituted by the Minister under subsection (9.1),

unless, under that subsection,

- (c) the decision is varied or rescinded;
- (d) a decision is substituted for the decision of the Appeals Tribunal; or
- (e) the decision is referred back to the Appeals Tribunal for reconsideration and a new hearing.

*Idem*

(9.5) A decision of the Appeals Tribunal that is confirmed or varied by the Minister under clause (9.1)(a) is final and binding on all parties, as

and when confirmed or varied by the Minister, and no appeal lies therefrom.

(9.6) A decision of the Minister under subsection (9.1) that  
 (a) rescinds the decision of the Appeals Tribunal; or  
 (b) is substituted for the decision of the Appeals Tribunal,  
 is final and binding on all parties, and no appeal lies therefrom. *Idem*

(9.7) The Minister shall serve a written notice, together with reasons therefore, of any confirmation, variation, substitution or referral under subsection (9.1) on  
 (a) the Appeals Tribunal;  
 (b) the person making the appeal; and  
 (c) the commodity board or marketing commission, or the Council, whose decision, order or direction is the subject of the appeal. *Notice*

(9.8) For greater certainty, subsections (9) to (9.7) apply in respect of any decision of the Appeals Tribunal made under this section on or after March 1, 2006, and no such decision is final and binding on all parties to an appeal except as determined under subsections (9.4) to (9.6). *Application of subsections (9) to (9.7)*

(10) Repealed by 2006,c.25,s.1. *Notice of decision*

(11) A proceeding that is in substantial compliance with this section is not open to objection on the ground that it is not in strict compliance therewith. *Substantial compliance*

(12) Where a notice is served under this section, it may be served personally, or  
 (a) where the notice is served on the Appeals Tribunal or a commodity board or marketing commission, by mailing the notice to the address of the Appeals Tribunal or of the commodity board or the marketing commission, as the case may be, at its usual business address;  
 (a.1) where the notice is served on the Minister, by mailing the notice to the business address of the Minister; or  
 (b) where the notice is served on a person making an appeal, by mailing the notice to the address shown in his notice of appeal. *Service of notice*  
 R.S.P.E.I. 1974, Cap. N-2,s.12; 1985,c.35,s.4; 2006,c.25,s.1.

## PART VI GENERAL

**20.** Every commodity board, every marketing commission and every commodity group may perform any function or duty and exercise any power imposed or conferred upon it by or pursuant to an Act of the Parliament of Canada. 1977,c.26,s.9; 1985,c.35,s.6 and 7. *Exercise of power under federal Act*

- Federal board exercise powers of **21.** The federal board or any marketing agency or marketing board established by or under an Act of the Parliament of Canada may, with the approval of the Lieutenant Governor in Council, exercise any of its powers with reference to the marketing of a natural product in any manner and under any circumstances within provincial jurisdiction, to the like extent and with the like effect as those powers are exercisable by it pursuant to an Act of the Parliament of Canada. R.S.P.E.I. 1974, Cap. N-2,s.8; 1974(2nd),c.36,s.4; 1985,c.35,s.6.
- Arrangements with Canada and other provinces **22.** Subject to the approval of the Lieutenant Governor in Council, the Council may make arrangements and enter into contracts with Canada, with any province, with any agency of Canada or a province or with any person respecting the operation of this Act. R.S.P.E.I. 1974, Cap. N-2,s.9; 1985,c.35,s.6.
- Approval by regulations **23.** Any approval which the Lieutenant Governor in Council is authorized or required to give for any purpose of this Act may be given by general regulations applicable to all cases or any class or classes of cases, or by special order in any particular case. R.S.P.E.I. 1974, Cap. N-2,s.10; 1985,c.35,s.6.
- Exercise of powers under Act **24.** All powers vested in the Lieutenant Governor in Council, or in any board, commission, commodity group, agency or person by or under this Act may be exercised to their fullest extent, notwithstanding the fact that the federal Act may or may not be existing or operative. R.S.P.E.I. 1974, Cap. N-2,s.11; 1977,c.26,s.10; 1985,c.35,s.6 & 8.
- Offences and penalties **25.** (1) Every person who fails to comply with any determination or order of a commodity board or a marketing commission, this Act, or any regulation thereunder, is liable on summary conviction, for the first offence, to a fine of not less than \$500 and not more than \$1,000, or to a term of imprisonment of six months, and for the second or subsequent offence, to a fine of not less than \$1,000 and not more than \$5,000, or to a term of imprisonment of twelve months, or for the first or second offence to both the fine and the term of imprisonment; the court may in addition to imposing a fine hereunder award specific or general damages against the person who has failed to comply and where damages are awarded they shall be made payable to the Council or to the commodity board or the marketing commission.
- Proof *re* place of production (2) In any prosecution for an offence under this Act or the regulations, it is not necessary for the informant or person prosecuting to prove that the natural product in respect of which the prosecution is instituted was produced in the area to which any plan for the regulation of the natural product relates; and if the accused person pleads or alleges that the

natural product was not produced in the area to which the plan relates, the burden of proof thereof is upon the accused person.

(3) Evidence of any order, rule, regulation, or determination of the Council, or of the Appeals Tribunal or of a marketing commission, or of a commodity board, may be given in any court of the province by production of a copy thereof purporting to be certified as a true copy by any member of the board or commission or the Council or the Appeals Tribunal or by any person authorized thereby without proof of the signature or official position of the person appearing to have certified the same.

Evidence or orders, rules, regulations, etc.

(4) In any prosecution for an offence under this Act or the regulations, the act or omission complained of, in respect of which the prosecution was instituted, shall, unless the accused proves to the contrary, be deemed to relate to the marketing of the natural product in other than interprovincial or export trade. R.S.P.E.I. 1974, Cap. N-2,s.13; 1977,c.26,s.10; 1985,c.35,s.10 & 11.

Presumption *re* inter-provincial or export trade

**26.** No action shall be brought against any person who at any time acts, purports to act, or who hereafter acts or purports to act, under or pursuant to the Federal Act or under this Act for anything done by him in good faith in the performance or intended performance of his duties under either of the Acts. R.S.P.E.I. 1974, Cap. N-2,s.14; 1985,c.35,s.10.

Limitation of liability

**27.** All money necessary to pay the salaries of the members of the Council and the Appeals Tribunal and their staff and to meet the expenses necessarily incurred in the carrying out of this Act, but not the expenses of administering any plan under this Act, shall, in the absence of a special vote of the Legislative Assembly for that purpose, be paid from the Operating Fund. R.S.P.E.I. 1974, Cap. N-2,s.15; 1985,c.35,s.10 & 12 1997,c.20,s.3.

Salaries and expenses

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

Interpretation of Act

(2) If any provision or section is held or found to be beyond the powers of the province, the provision or section shall be read distributively, and the provision or section so far as it deals with matters within the competence of the Legislative Assembly shall stand and be valid and operative, and shall have the same effect as if the provision or section had dealt with those matters exclusively and the remaining provisions and sections of this Act shall not be deemed or held to be inoperative or beyond its powers but shall stand and be valid and

Where some provisions found beyond its powers

operative, and shall have the same effect as if they had been originally enacted as separate and independent enactments and as the only provisions of the Act and all the provisions of the Act that are within the powers of the province shall remain in full force and effect notwithstanding that some provisions are held to be beyond its powers, the intention of the Legislative Assembly being to give separate and independent effect to the extent of its powers to every enactment and provision in this Act contained. R.S.P.E.I. 1974, Cap. N-2,s.16; 1985,c.35,s.10.

## Regulations

**29.** The Lieutenant Governor in Council upon the recommendation of the Council may make regulations respecting

- (a) the holding of a plebiscite for the establishment of commodity boards;
- (b) the election of members of commodity boards;
- (c) the appointment of marketing boards or agencies within the province to cooperate with and act as agents of the federal board;
- (d) the appointment of marketing boards or agencies to exercise within the province any authority or function which may be conferred on a commodity board under the federal Act, and otherwise to cooperate and act in the administration and carrying out of any plan for the regulation of the marketing of any natural product authorized under the federal Act or this Act;
- (e) the approval of any plan for the regulation of the marketing of any natural product in respect of which the approval of the Lieutenant Governor in Council is necessary for any purpose of the federal Act;
- (f) the authorizing and giving effect to any plan for the regulation of the marketing within the province of any natural product;
- (g) the providing for the submission of any plan for the regulation of the marketing of any natural product to a plebiscite;
- (h) the termination and annulment of any approval given or plan authorized by the Lieutenant Governor in Council under this Act, and the disposition of the assets of any commodity board where appointment or authority is annulled;
- (i) the imposition of penalties as provided in section 4;
- (j) the inspection by the Council of the books, accounts and records of persons producing or otherwise dealing in or with a regulated product, or suspected thereof;
- (k) the vesting of property rights in quotas in a commodity board, and respecting the transfer, sale, assignment, leasing or encumbering of the property rights in quotas, and respecting the control or prohibition thereof;
- (l) the promotion, supervision, control of and restrictions on production of regulated products;

- (m) appeals by any person aggrieved by an order, direction, determination, or decision made under this Act;
- (n) the vesting of additional powers in the Council;
- (o) the procedures for constituting a marketing board and establishing a marketing plan;
- (p) the calling, holding and conducting of annual meetings by commodity boards and the preparation, publication and distribution of an annual report by commodity boards;
- (q) the borrowing of money by commodity boards and the providing of security by commodity boards for money borrowed;
- (r) the defining of words and expressions for which no definition or inadequate definition is given in the Act;
- (s) the prescribing of bylaws for one or more commodity boards, or empowering the making of bylaws by commodity boards governing their own procedures, without limiting the generality thereof, respecting
  - (i) the location of the head office of commodity boards,
  - (ii) the corporate seals of the commodity boards,
  - (iii) the fiscal year of commodity boards,
  - (iv) providing the Council with audited statements and financial records by commodity boards,
  - (v) the keeping of records by commodity boards,
  - (vi) filing information with the Council upon request,
  - (vii) membership on the commodity boards and without limiting the generality thereof including nomination to the board of a commodity board and election thereto,
  - (viii) prescribing and identifying the offices that shall be filled on commodity boards,
  - (ix) the appointment or election of persons to the offices prescribed or identified under subclause (viii),
  - (x) meetings of commodity boards,
  - (xi) meetings of producers of the regulated product,
  - (xii) advisory committees for commodity boards,
  - (xiii) the expenses of commodity boards,
  - (xiv) transaction of business by commodity boards other than at a meeting of a commodity board;
- (t) any matter relating to marketing commissions constituted under Part IV or their regulated products and producers for which a regulatory empowerment is granted relating to commodity boards, their regulated products and producers; and
- (u) generally for the better administration of this Act. R.S.P.E.I. 1974, Cap. N-2,s.17; 1974(2nd),c.36,s.7; 1977,c.26,s.11; 1985,c.35,s.10.

Transfer from  
commodity board to  
marketing  
commission

**30.** (1) Where the producers of a natural product, regulated under this Act vote at a plebiscite to discontinue the operation of a commodity board and to have the natural product regulated by a marketing commission or where the Lieutenant Governor in Council upon the recommendation of the Council decides that a regulated product could more efficiently and effectively be regulated by a marketing commission under Part IV of this Act, the Lieutenant Governor in Council may revoke any orders in council or regulations relating to the establishment of the commodity or marketing plan, the constituting of a commodity or marketing plan, and the appointment of members of the commodity board and may transfer all assets and liabilities of such commodity board to a marketing commission established as successor thereto under Part IV of this Act.

Transfer from  
marketing  
commission to  
commodity board

(2) Where the producers of a natural product regulated under this Act vote at a plebiscite to discontinue the operation of a marketing commission, or where the Lieutenant Governor in Council upon the recommendation of the Council decides that a regulated product could more efficiently and effectively be regulated by a commodity board under Part II of this Act, the Lieutenant Governor in Council may revoke any orders in council or regulations relating to the establishment of the commodity or marketing plan, the constituting of a commodity plan, and the appointment of members to the marketing commission and may transfer all assets and liabilities of such marketing commission to a commodity board established as successor thereto under Part II of this Act.

Scope of  
jurisdiction

(3) The powers vested in the Lieutenant Governor in Council under subsection (1) or subsection (2) may be exercised by him in relation to any commodity boards established under this Act or under the *Agricultural Products Marketing Act*, R.S.P.E.I. 1974, Cap. A-6 or any marketing boards, commissions or agencies under the *Marketing Act*, R.S.P.E.I. 1974, Cap. M-4. 1977,c.26,s.12; 1985,c.35,s.10; 1988,c.47,s.5.