



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

FARM MACHINERY DEALERS AND VENDORS ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to January 1, 2009. It is intended for information and reference purposes only.

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* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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FARM MACHINERY DEALERS AND VENDORS ACT

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FARM MACHINERY DEALERS AND VENDORS ACT

CHAPTER F-4.01

1. Definitions

In this Act

- (a) “**Court**” means the Supreme Court;
- (b) “**dealer**” means a person, corporation, or partnership carrying on a retail business in which the person, corporation, or partnership
 - (i) leases, with or without the right to purchase, or sells new farm machinery having a retail value of \$20,000 or more to farmers,
 - (ii) sells repair parts for the farm machinery, and
 - (iii) operates a maintenance and repair service shop for farm machinery;
- (c) “**dealership agreement**” means a written or oral agreement between a dealer and a vendor;
- (d) “**farm machinery**” means any equipment, implement, or machinery that is used or intended for use in farming operations, including any combine, tractor, implement, or attachment, but not including a motor vehicle within the meaning of the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5;
- (e) “**Minister**” means the Minister of the Crown designated by the Lieutenant Governor in Council to administer this Act;
- (f) “**terminate**”, in relation to a dealership agreement, means to terminate, cancel, fail to renew, fail to extend or substantially change the competitive circumstances of a dealership agreement;
- (g) “**vendor**” means
 - (i) a manufacturer of farm machinery or repair parts who
 - (A) sells, consigns, or delivers farm machinery or repair parts to a dealer for resale by the dealer, or to a distributor or supplier for resale by a dealer, or
 - (B) leases or delivers farm machinery to a dealer for the purposes of being relet by the dealer, or
 - (ii) a distributor or supplier of farm machinery or repair parts who
 - (A) sells, consigns, or delivers farm machinery or repair parts to a dealer for resale by the dealer, or
 - (B) leases or delivers farm machinery to a dealer for the purpose of being relet by the dealer. *2000, c.3, s.1; 2008, c.20, s.72(32).*

2. Application

This Act applies to every dealership agreement

- (a) whether entered into before or after this Act comes into force; and
- (b) despite any provision to the contrary in the agreement. *2000,c.3,s.2.*

3. Prohibition

No vendor shall terminate a dealership agreement

- (a) without cause;
- (b) without an order of the Court made pursuant to section 5; and
- (c) without complying with all conditions of an order made pursuant to section 5. *2000,c.3,s.3.*

4. Prohibition - discrimination

(1) No vendor shall

- (a) directly or indirectly discriminate in the prices charged for farm machinery of like grade and quality to similarly situated dealers;
- (b) impose substantially different contractual requirements on similarly situated dealers; or
- (c) discriminate against or penalize a dealer for carrying on business as a dealer or agent for another vendor, or selling or servicing the product of another vendor.

Offences

(2) Every vendor who contravenes subsection (1) is guilty of an offence and is liable on summary conviction

- (a) to a fine of not more than \$150,000; and
- (b) in the case of a continuing offence, to a further fine of not more than \$10,000 for each day or part of a day during which the offence continues.

Terms in addition to penalty

(3) In addition to any penalty imposed with respect to a contravention mentioned in subsection (2), the convicting court may order the vendor convicted of the offence to comply with any terms of a dealership agreement that the vendor has contravened. *2000,c.3,s.4.*

5. Application to Court

(1) A vendor who wishes to terminate a dealership agreement shall apply to the Court for a determination of whether the vendor has cause to terminate the agreement.

Interim order

(2) At the request of either the dealer or vendor at any time after the application is made pursuant to subsection (1) the Court may make an interim order imposing any conditions on either the vendor or dealer, or both, that the Court considers necessary to protect their respective business interests until a determination is made pursuant to subsection (3).

Order

(3) If the Court determines that the vendor has cause to terminate the agreement, the Court

- (a) shall make an order to that effect; and



- (b) may impose conditions on the termination, including allowing the dealer an opportunity to correct the default. *2000, c.3, s.5.*

6. Circumstances constituting cause

For the purposes of a determination pursuant to section 5, any of the following circumstances constitute cause to terminate a dealership agreement:

- (a) the dealer has made an assignment in bankruptcy or has been petitioned into bankruptcy, and has not been discharged from bankruptcy;
- (b) the dealer's farm machinery, or a substantial part of it, is being liquidated, and the liquidation materially affects the contractual relationship between the dealer and vendor;
- (c) the dealer has defaulted under a security agreement between the dealer and vendor, or a guarantee of the dealer's financial obligations to the vendor has been revoked or discontinued;
- (d) the dealer has failed to operate in the normal course of business for 14 consecutive days, or otherwise abandoned the dealership;
- (e) the dealer has pleaded or been found guilty of an offence affecting the contractual relationship between the dealer and vendor; or
- (f) the dealer has failed to substantially comply with the essential and reasonable requirements of the dealership agreement, if the requirements are not different from the requirements imposed on other similarly situated dealers. *2000, c.3, s.6.*

7. Circumstances not constituting cause

For the purposes of a determination pursuant to section 5, none of the following circumstances constitute cause to terminate a dealership agreement:

- (a) the executive management or ownership of the dealer has changed, unless the change is detrimental to the representation or reputation of the vendor's products;
- (b) the dealer has refused to purchase or accept delivery of farm machinery or a service from the vendor unless the farm machinery or service would normally be purchased by similarly situated dealers as an essential part of the operation of the dealer or for the repair of farm machinery commonly sold by the dealer;
- (c) the vendor desires further market penetration, while recognizing that the vendor may require the dealer to achieve, in comparison with other similarly situated dealers, a reasonable sales performance level of the vendor's product; or
- (d) the dealer is carrying on business as a dealer or agent for another vendor, or selling or servicing the product of another vendor. *2000, c.3, s.7.*

8. Mediation

- (1) At the request of a dealer or vendor, the Court shall, by order, appoint a mediator who shall endeavour to facilitate the settlement of a dispute.

Time

- (2) The Court
 - (a) shall fix the length of a mediation period; and
 - (b) may shorten or lengthen the mediation period at the request of the dealer or vendor.

Variance of time

- (3) The dealer and vendor may agree, with the Court's approval, to shorten or lengthen the mediation period.

Stay of proceedings

- (4) No further proceedings may be taken in an application made pursuant to subsection 5(1) during the mediation period without leave of the Court.

Choice of mediator

- (5) Where the dealer and vendor agree on the person to be appointed as mediator, the Court shall appoint that person.

Court appointment of mediator

- (6) Where the dealer and vendor do not agree on the person to be appointed as mediator, the Court shall appoint a mediator from the list of persons maintained pursuant to subsection (7).

List of mediators

- (7) The Minister
- (a) shall establish and maintain; and
 - (b) may share with dealers and vendors,

a list of persons who have indicated to the Minister their willingness to act as mediators and have, in the opinion of the Minister, qualities and experience that make them suitable persons to act as mediators.

Mediator to meet with parties

- (8) The mediator shall meet and confer with the dealer and vendor as often as the mediator considers necessary.

Good faith

- (9) The dealer and vendor shall participate in the mediation in good faith.

Mediator's report

- (10) On or before the last day of the mediation, the mediator
- (a) shall file a report with the Court that either
 - (i) sets out the agreement reached by the dealer and vendor, or
 - (ii) states only that the dealer and vendor did not reach an agreement; and
 - (b) shall give copies of the report to the dealer and vendor promptly after filing the report.

Admissions in course of mediation

- (11) No evidence of anything said or communication made in the course of the mediation is admissible in any proceeding.

Mediator's fees and expenses

- (12) The Court shall
- (a) require the parties to pay the fees and expenses of the mediator; and
 - (b) specify the proportions or amounts of the fees and expenses that each party shall pay.



No liability

- (13) No mediator is liable for any loss or damage suffered by any person by reason of any action or omission of the mediator in the discharge of the mediator's duties pursuant to this Act. *2000, c.3, s.8.*

9. Void provisions

The following provisions in a dealership agreement are void:

- (a) a provision allowing for termination of the agreement without cause;
- (b) a provision requiring the dealer to carry on exclusive dealings with the vendor, so as to prevent the dealer from, or penalize the dealer for, carrying on business as a dealer or agent of another vendor, or selling or servicing the product of another vendor;
- (c) a provision that limits, modifies or makes inapplicable a benefit or remedy available to a dealer pursuant to this Act. *2000, c.3, s.9.*

10. Application to Court for relief from termination

- (1) A dealer who considers that the dealer's dealership agreement with a vendor has been terminated in contravention of section 3 may apply to the Court for relief.

Court order

- (2) On an application pursuant to subsection (1), the Court may make any order that it considers appropriate, including one or more of the following:
- (a) an order directing the vendor to reinstate a dealership agreement or restore any rights under a dealership agreement that have been terminated
 - (b) an order enjoining the vendor from doing or continuing to do anything that contravenes this Act;
 - (c) an order awarding damages to the dealer for any loss resulting from the vendor's contravention of this Act; or
 - (d) an interim order of the kind referred to in clause (a) or (b).

Application

- (3) Subsections (1) and (2) apply despite any other penalty that may be imposed on the vendor pursuant to this Act with respect to the vendor's contravention of section 3. *2000, c.3, s.10.*

11. Termination by mutual agreement

Nothing in this Act precludes a vendor and a dealer from terminating a dealership agreement by mutual agreement. *2000, c.3, s.11.*

12. No entitlement to compensation

No person is entitled to any compensation from the Government of Prince Edward Island as the result of the application, enforcement, or operation of this Act and the regulations. *2000, c.3, s.12.*

13. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing circumstances in addition to those listed in section 6 that constitute cause for termination of a dealership agreement;
- (b) prescribing circumstances in addition to those listed in section 7 that do not constitute cause for termination of a dealership agreement;
- (c) establishing a list of mediators pursuant to subsection 8(7);
- (d) as necessary for carrying out the purposes of this Act. *2000,c.3,s.13.*

