

2003

CHAPTER 5

An Act to amend *The Agricultural Implements Act*

(Assented to May 27, 2003)

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

Short title

1 This Act may be cited as *The Agricultural Implements Amendment Act, 2003*.

R.S.S. 1978, c.A-10 amended

2 *The Agricultural Implements Act* is amended in the manner set forth in this Act.

New sections 2 to 3.2

3 Sections 2 and 3 are repealed and the following substituted:

“Interpretation

2 In this Act:

- (a) **‘board’** means the Agricultural Implements Board continued pursuant to section 7;
- (b) **‘dealer’** means a person who:
 - (i) sells or offers for sale implements or parts in Saskatchewan on that person’s own account or on account of a distributor; or
 - (ii) leases or offers for lease, with or without the right to purchase, implements or parts in Saskatchewan on that person’s own account or on account of a distributor;

but does not include a person who operates a repair shop from which no new or used implements are sold and no new implements are leased or from which parts are sold as a part of repair services to implements;

- (c) **‘department’** means the department over which the minister presides;
- (d) **‘distributor’** means a person who:
 - (i) either:
 - (A) represents a manufacturer; or
 - (B) represents a person who sells, offers for sale, leases or offers for lease implements or parts in Saskatchewan; and
 - (ii) is responsible to the manufacturer or person mentioned in subclause (i) with respect to the distribution and marketing of those implements or parts in Saskatchewan;

(e) **‘financial institution’** means any of the following institutions if the legislation of the jurisdiction where the institution is incorporated or continued authorizes the institution to engage in financial leasing and the institution’s constating documents or bylaws do not prohibit it from engaging in financial leasing:

- (i) a bank to which the *Bank Act* (Canada) applies;
- (ii) an entity licensed pursuant to *The Trust and Loan Corporations Act, 1997*, including a financial leasing corporation as defined in that Act;
- (iii) a credit union incorporated, continued or registered pursuant to *The Credit Union Act, 1998*;
- (iv) Credit Union Central of Saskatchewan;
- (v) Farm Credit Canada;
- (vi) any other similar institution that is prescribed in the regulations;

(f) **‘financial lease’** means a lease or lease-purchase between a financial institution and a purchaser that, after allowing for the rate of return to the financial institution agreed to by the purchaser, is intended to recoup to the financial institution its entire investment in the implement, taking into consideration the value of any tax benefits accruing to the financial institution on account of the lease or lease-purchase, including:

- (i) tax credits; and
- (ii) capital cost allowance claims;

(g) **‘implement’** means any implement, equipment or machine that is used or intended for use on a farm and that is within the definition of implement prescribed in the regulations;

(h) **‘lease’** means a lease of an implement for more than 30 days under which the lessee is not given the right to purchase the implement;

(i) **‘lease-purchase’** means a lease of an implement for more than 30 days under which the lessee is given the right to purchase the implement;

(j) **‘minister’** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(k) **‘part’** means a part for an implement and includes a repair, but does not include any services for installing the part;

- (l) **‘purchaser’** means a person who:
 - (i) purchases or leases, with or without the right to purchase, an implement from a dealer in Saskatchewan; or
 - (ii) leases, with or without the right to purchase, an implement from a financial institution in Saskatchewan under a financial lease, if the financial institution obtains the implement from a dealer licensed pursuant to this Act at the request of the person;
- (m) **‘repair’** means a repair part for an implement, but does not include any services for installing the repair part;
- (n) **‘security interest’** means an interest in an implement that secures payment or performance of an obligation.

“Application of Act

- 3(1) Subject to the other provisions of this Act, this Act applies:
- (a) to all sales of new implements by dealers in Saskatchewan to purchasers; and
 - (b) to all leases and lease-purchases of new implements by purchasers from dealers in Saskatchewan.
- (2) If a provision of this Act does not expressly state that it applies to sales of new implements, that provision also applies to sales of used implements.

“Financial lease of farm machinery or equipment

3.1 If a financial institution in Saskatchewan acquires a new implement from a dealer licensed pursuant to this Act at the request of a purchaser and leases the implement to the purchaser pursuant to a financial lease:

- (a) the purchaser is deemed to have leased the new implement from the dealer;
- (b) this Act applies with respect to that new implement to the same extent as if the purchaser had leased the new implement directly from the dealer pursuant to a lease or lease-purchase contract with the dealer; and
- (c) the dealer has the same obligation to the purchaser that the dealer would have pursuant to this Act if the purchaser leased the new implement directly from the dealer.

“Notice to dealer

3.2(1) At the time a financial institution obtains a new implement from the dealer, it must inform the dealer of the name and address of the purchaser who is leasing the new implement.

(2) A financial institution’s failure to inform as required pursuant to subsection (1) does not affect the purchaser’s rights or the dealer’s obligations pursuant to section 3.1”.

Section 7 amended**4 Subsection 7(2) is repealed and the following substituted:**

“(2) The Lieutenant Governor in Council may designate one of the members to be chairperson of the board and one other member to be vice-chairperson of the board.

“(2.1) The chairperson is responsible for the general supervision and direction of the affairs of the board.

“(2.2) The board may make rules governing:

- (a) the practice and procedure of the board;
- (b) the schedule of its hearings; and
- (c) subject to this Act and the regulations, the business of the board”.

New sections 8, 8.1 and 9**5 Sections 8 and 9 are repealed and the following substituted:****“Provision for supplies and departmental services**

8 The minister may provide the board with any supplies and the services of any employees under the minister’s administration that the minister considers necessary in order to assist the board in carrying out its powers and fulfilling its duties pursuant to this Act.

“Other services for board

8.1 In addition to the services mentioned in section 8, the minister may engage, on behalf of the board, the services of any legal counsel, consultants or technical advisers that the minister considers appropriate to assist the board in carrying out its powers and fulfilling its duties pursuant to this Act.

“Powers of board

9 The board may:

- (a) receive and investigate complaints made to it pursuant to this Act;
- (b) recommend to the minister appropriate action to reduce or correct unreasonable delays in the delivery of repairs and unreasonable charges for repairs;
- (c) for the purposes of a hearing pursuant to section 10, review and consider leases, financial leases and sales contracts with respect to an implement;
- (d) hold public meetings or hearings; and
- (e) carry out any further functions that the Lieutenant Governor in Council may direct in any manner that the Lieutenant Governor in Council may authorize”.

Section 10 amended**6(1) Subsection 10(1) is repealed and the following substituted:**

“(1) In this section, **‘implement’** means an implement purchased or leased by:

- (a) a farmer who is applying for compensation pursuant to this section; or
- (b) a person who transferred the implement to the farmer who is applying for compensation pursuant to this section.

“(1.1) A farmer may apply to the board for an award of compensation for any damages or loss the farmer has suffered if:

- (a) the farmer feels aggrieved, or believes that the farmer has incurred a loss, due to an unreasonable delay in the availability of a repair to an implement; or
- (b) the farmer considers that the farmer has incurred a loss due to the dealer or the distributor not fulfilling the conditions or warranties set out in this Act or pursuant to a lease or sales contract with respect to an implement.

“(1.2) A farmer is not entitled to apply to the board for an award pursuant to subsection (1.1) with respect to:

- (a) a deposit paid for an implement purchased by the farmer; or
- (b) the value of any implement traded in by the farmer to purchase another implement”.

(2) Subsection 10(2) is amended by striking out “subsection (1)” and substituting “ subsection (1.1)”.

(3) Subsection 10(4) is amended:

- (a) by striking out “subsection (1)” and substituting “ subsection (1.1)”;**
and
- (b) by striking out “he” and substituting “the farmer”.**

(4) Subsection 10(7) is amended by striking out “may” and substituting “must”.

New section 10.1

7 The following section is added after section 10:

“Penalty fee

10.1(1) The board may impose a penalty fee on a dealer or distributor if:

- (a) the dealer or distributor was given notice of a hearing pursuant to section 10; and

- (b) as a result of the hearing mentioned in clause (a):
 - (i) the board awarded compensation to a farmer; and
 - (ii) the board determined that the dealer or distributor was, in the board's opinion, responsible for all or part of the loss incurred by the farmer and:
 - (A) the dealer or distributor failed to attend the hearing without providing to the board an excuse that is, in the board's opinion, reasonable;
 - (B) the dealer or distributor has repeatedly been in breach of warranty or repair obligations to an extent that the board considers to be detrimental to farmers; or
 - (C) the dealer or distributor, in the board's opinion, intentionally disregarded its warranty or repair obligations to the farmer when the farmer sought to have the dealer or distributor fulfil those obligations.
- (2) The maximum amount of a penalty fee that may be imposed pursuant to subsection (1) is the amount of compensation awarded to the farmer at the hearing.
- (3) The board shall give notice to the dealer or distributor of:
 - (a) any penalty fee imposed on the dealer or distributor; and
 - (b) the period within which the penalty fee must be paid.
- (4) The notice mentioned in subsection (3) may be served by personal service or by registered mail.
- (5) No dealer or distributor against whom a penalty fee has been imposed pursuant to this section shall fail to pay the penalty fee within the period set out in the notice mentioned in subsection (3).
- (6) Any penalty fee paid pursuant to this section is to be paid into the Agricultural Implements Compensation Fund".

Section 11 amended

8(1) Subsection 11(2) is amended by striking out "claims" and substituting "applications".

(2) Subsection 11(3) is amended by striking out "\$5,000" and substituting "\$10,000".

New section 14

9 Section 14 is repealed and the following substituted:

"Power of board to enforce payments due

14(1) In this section, 'amount owing' means:

- (a) the amount of a penalty fee imposed pursuant to section 10.1 on a dealer or distributor; or
- (b) the amount levied pursuant to section 12 on a distributor.

(2) A dealer or distributor shall pay as a penalty for default any percentage of the amount owing that remains unpaid that is prescribed in the regulations if:

(a) the dealer or distributor fails to pay a penalty fee imposed on the dealer or distributor pursuant to section 10.1 within the period set out in a notice given pursuant to that section; or

(b) the distributor fails to pay any amount levied pursuant to section 12 on the distributor within the time required by that section.

(3) If a dealer or distributor fails to pay an amount owing within the required period, the board may file with a local registrar of the Court of Queen's Bench at any judicial centre a certificate that sets out:

(a) the amount owing that remains unpaid at the date of the certificate;

(b) the amount of any penalty imposed pursuant to subsection (2); and

(c) the person from whom the amount owing and penalty are recoverable.

(4) A certificate filed pursuant to this section has the same effect as if it were a judgment obtained in the Court of Queen's Bench for the recovery of a debt in the amount specified in the certificate, together with any reasonable costs and charges with respect to its filing".

Section 16 amended

10(1) Subsection 16(1) is amended:

(a) in clause (b) by striking out "consolidated fund pursuant to *The Financial Administration Act*" and substituting "general revenue fund pursuant to *The Financial Administration Act, 1993*"; and

(b) in clause (c) by striking out "*The Crown Corporations Act*" and substituting "*The Crown Corporations Act, 1993*".

(2) The following subsection is added after subsection 16(3):

"(4) In this section, '**the fund**' means the Agricultural Implements Compensation Fund continued pursuant to section 12".

New section 19

11 Section 19 is repealed and the following substituted:

"Immunity from liability

19 No action lies or shall be instituted against:

(a) the Crown in right of Saskatchewan;

(b) the minister;

(c) the board or any member of the board;

(d) an officer of, or consultant or technical adviser to, the board; or

(e) any employee or officer of the department;

for any loss or damage suffered by any person by reason of anything in good faith done, attempted to be done or omitted to be done, pursuant to or in the exercise or supposed exercise of any power, function or duty conferred by this Act or the regulations".

Section 21 amended

12 Subsection 21(3) is repealed.

Section 22 amended

13 Subsection 22(1) is amended by striking out “consolidated fund” and substituting “general revenue fund”.

Section 24 amended

14(1) Subsections 24(4) to (6) are repealed and the following substituted:

“(4) Within seven days after being appointed as a distributor pursuant to subsection (1), the distributor shall file with the board a statement showing the distributor’s name and the location of the distributor’s place of business in Saskatchewan.

“(5) On or before April 1 in each year, every distributor shall file with the board a statement showing the name and location of every dealer in the province who obtains or is likely to obtain implements from or through the distributor.

“(6) If, after a statement is filed pursuant to subsection (5), any dealer mentioned in that statement proposes to change its location or the distributor proposes to appoint any additional dealer to represent the distributor, the distributor shall file with the board a written notice of the intended change or appointment.

“(6.1) The written notice mentioned in subsection (6) must be filed at least five days before the change is made or the additional dealer is appointed.

“(6.2) If the contract between the distributor and a dealer mentioned in a statement filed pursuant to subsection (5) is terminated, the distributor must file a written notice of that termination with the board not later than 30 days after the date of termination”.

(2) Subsection 24(7) is amended by striking out “or (6)” and substituting “, (6), (6.1) or (6.2)”.

New sections 26 to 26.2

15 Section 26 is repealed and the following substituted:

“Dealers’ licences

26(1) No dealer shall sell, offer for sale, lease or offer for lease, or enter any lease-purchase contract respecting, an implement or part in Saskatchewan unless that dealer holds a licence to do so issued pursuant to subsection (3).

(2) A dealer who wishes to obtain a licence mentioned in subsection (1) shall:

- (a) apply to the minister in the form prescribed in the regulations; and
- (b) pay any fee that may be prescribed in the regulations.

(3) The minister may issue to the dealer the licence applied for if the minister is satisfied that the dealer meets all the requirements of this Act and the regulations.

(4) The minister may impose any terms and conditions on a licence that the minister considers appropriate.

- (5) No dealer shall fail to comply with the terms and conditions imposed on the dealer's licence.
- (6) Every dealer who contravenes subsection (1) or (5) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.
- (7) If a dealer who is required by this section to hold a licence issued pursuant to this section does not hold a valid licence, the minister may give written notice of that contravention to any persons that the minister considers necessary.
- (8) A written notice mentioned in subsection (7) must be given in the manner prescribed in the regulations.
- (9) No person to whom a written notice has been given pursuant to subsection (7) shall, while the dealer remains unlicensed, deliver or cause to be delivered an implement or part to:
- (a) the dealer;
 - (b) a person designated by the dealer; or
 - (c) a person seeking to acquire an implement or part through the dealer.
- (10) Every person to whom a written notice has been given pursuant to subsection (7) and who contravenes subsection (9) is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.

“Cancellation, alteration or suspension of dealers' licences

26.1(1) The minister may cancel, alter or suspend a licence issued pursuant to section 26 if:

- (a) the person to whom the licence was issued fails to observe, perform or comply with this Act, the regulations or any term or condition of the licence;
- (b) the person to whom the licence was issued makes any false or misleading statement in any application, information, materials or plans supplied pursuant to this Act or the regulations in support of an application for a licence;
- (c) the licence was issued as a result of a clerical or administrative error or mistake;
- (d) in the opinion of the minister, the licence holder or, in the case of a corporate licence holder, the licence holder's officers or directors cannot reasonably be expected to be financially responsible in the conduct of his, her or its business;
- (e) the licence holder fails to pay any penalty imposed on the licence holder pursuant to section 10.1 within the period set out in a notice given pursuant to that section; or
- (f) the minister is satisfied that it is in the public interest to do so.

(2) Before the minister takes any action pursuant to subsection (1), the minister shall give the person to whom the licence is issued:

(a) written notice of the minister's intention to cancel, alter or suspend the licence, and the reasons for doing so; and

(b) an opportunity to make written representations to the minister, within 30 days after the written notice mentioned in clause (a) is given, as to why the licence should not be cancelled, altered or suspended.

(3) The minister is not required to give an oral hearing to any person to whom a notice has been given pursuant to subsection (2).

(4) After receiving the representations mentioned in subsection (2), the minister shall provide a written decision and forward that written decision to the person to whom the licence was issued.

“Financial institutions exempt from requirement to hold dealer's licence

26.2 Notwithstanding section 26, a financial institution is not required to hold a dealer's licence in order to lease an implement, or offer an implement for lease, pursuant to a financial lease if the implement is acquired from a dealer licensed pursuant to this Act at the request of a purchaser”.

Section 27 amended

16 The following subsection is added after subsection 27(1):

“(1.1) Subsection (1) does not apply if the manufacturer and distributor of the implement cease to carry on business”.

New section 28

17 Section 28 is repealed and the following substituted:

“Tampering with serial number prohibited

28(1) No person shall obliterate, deface, alter, render illegible or remove the manufacturer's serial number of an implement.

(2) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000”.

Section 31 repealed

18 Section 31 is repealed.

Section 33 amended

19(1) Subsection 33(1) is amended by adding “as a new implement” after “date of its sale”.

(2) Subsection 33(4) is amended by striking out “Saturdays,”.

(3) Subsection 33(5) is repealed.

(4) Subsection 33(9) is repealed and the following substituted:

“(9) In lieu of making payments as set out in subsections (7) and (8), the dealer and distributor may:

(a) supply the purchaser with another implement that is suitable and capable of functioning properly; and

(b) if the dealer and distributor supply the purchaser with another implement pursuant to clause (a), charge the purchaser rental for that implement, to a maximum of one-half of the normal rental rate for that implement.

“(9.1) The dealer and distributor are jointly responsible for supplying the replacement equipment and are to bear equally the cost imposed on them pursuant to subsection (9) of supplying the replacement equipment.

“(9.2) Replacement equipment may be supplied:

- (a) by the dealer or distributor; or
- (b) if the dealer or distributor chooses not to supply the replacement equipment, by another supplier at the expense of the dealer and distributor.

“(9.3) In subsections (9.1) and (9.2), ‘**replacement equipment**’ means an implement supplied pursuant to subsection (9)”.

Section 34 amended

20 Subsection 34(1) is amended by striking out “shall inspect” and substituting “may inspect”.

Section 35 amended

21 Clause 35(3)(a) is amended by striking out “clause (a) of paragraph 3 of section 36” and substituting “clause 36(5)(a)”.

New sections 36 and 36.1

22 Section 36 is repealed and the following substituted:

“Warranties re sale of new implement

36(1) Every contract for the sale of a new implement is deemed to include the express joint and several warranties on the part of the dealer and the distributor that are mentioned in this section.

(2) The warranties mentioned in this section are to apply for the longer of:

- (a) one year from the date of first use of the new implement; and
- (b) any longer period that is provided by this Act or is set out in the sales contract.

(3) Every contract for the sale of a new implement is deemed to include a warranty that the new implement is well-made and of good materials.

(4) Every contract for the sale of a new implement is deemed to include a warranty that, if the new implement is properly used and operated, it will perform well the work for which it is intended.

(5) Every contract for the sale of a new implement is deemed to include a warranty that the purchaser may do the things mentioned in subsection (6) if:

- (a) the new implement does not perform well the work for which it is intended within a period that is the earlier of:
 - (i) the first 10 days of use by the purchaser during the season of use; and
 - (ii) the first 50 hours of use by the purchaser during the season of use;

(b) within the period mentioned in clause (a), the purchaser gives written notice to the dealer at the address given for the dealer in the sales contract, or to the distributor, that the implement does not work well; and

(c) within a period of seven days following receipt of the written notice mentioned in clause (b), the dealer or the distributor does not make the implement perform well the work for which it is intended.

(6) In the circumstances mentioned in subsection (5):

(a) the purchaser may, by giving written notice to the dealer or the distributor within the three days immediately following the seven-day period mentioned in clause (5)(c), reject the implement; and

(b) if the purchaser rejects the implement in accordance with clause (a):

(i) the sales contract is ended;

(ii) the purchaser is entitled to a return of any moneys paid or notes given by the purchaser for the purchase of the implement and of the freight charges paid by the purchaser; and

(iii) if any goods have been taken in trade by the dealer, the dealer shall:

(A) return those goods to the purchaser; or

(B) if the goods cannot be returned in the same condition or have been sold to a third party, pay to the purchaser the amount of the fair market value of those goods.

(7) Notwithstanding subsections (5) and (6), the purchaser is deemed to forfeit the purchaser's right to reject an implement if the purchaser fails to give either of the written notices within the time limit mentioned in those subsections, unless the dealer or distributor either before or after the expiration of the time limit does any act or engages in any conduct that leads the purchaser to believe that the written notices are not required to be given or had been given.

(8) If the dealer is required pursuant to subsection (6) to return any goods given in trade by the purchaser but has, before the termination of the sale contract, incurred costs or performed work in repairing or reconditioning those goods, the dealer may refuse to return those goods until:

(a) the purchaser has paid for the reasonable costs of the repairs or reconditioning, including labour costs that must be determined using:

(i) the usual rate charged by that dealer at the time; and

(ii) a reasonable time charged for doing the work; or

(b) arrangements satisfactory to the dealer have been made for the payment of those costs.

(9) Every contract for the sale of a new implement is deemed to include a provision that if, within the seven-day period mentioned in clause (5)(c), the dealer or distributor makes the new implement perform well the work for which it is intended and if the purchaser's failure to make the implement perform well was due to the purchaser's own improper management or want of skill in operating the implement, the purchaser shall pay the expenses incurred by the dealer or distributor in making the implement work well.

(10) Every contract for the sale of a new implement is deemed to include a warranty that:

- (a) the new implement will be durable if used under fit and suitable conditions and kept with proper care;
- (b) parts proving defective will be replaced free of charge on return of the defective parts to the dealer's place of business or to the distributor;
- (c) if the purchaser returns the new implement to the dealer's place of business, the dealer will install the new parts without charge; and
- (d) all parts replaced within the warranty period are durable for the duration of the original warranty period prescribed in subsection (2) or for 90 days from the date of installation, whichever is longer.

(11) Every contract for the sale of a new implement is deemed to include a warranty that, for a period of 10 years from the date of sale indicated on the sales contract:

- (a) all necessary parts for the implement will be kept by the distributor in Saskatchewan; and
- (b) the purchaser will be able to obtain all necessary parts within a reasonable time at the distributor's place of business.

“Certain warranties enforceable by purchaser under lease

36.1 Without limiting the generality of section 3.1 or 37.1, a purchaser who leases a new implement pursuant to a financial lease is entitled to enforce the warranty mentioned in section 36 against the dealer and distributor who provided the new implement and, for that purpose:

- (a) the purchaser is deemed to have leased the new implement directly from the dealer and distributor; and
- (b) section 36 applies, with any necessary modification, to the purchaser and the dealer and distributor”.

New sections 37.1 and 37.2

23 The following sections are added after section 37:

“Application of certain sections to leases, etc.

37.1 Sections 9, 10.1, 15, 24, 25, 27, 33, 34, 35, 36, 37, 39, 40, 41, 44, 45, 46 and 47 apply, with any necessary modification, to leases and lease-purchases of new implements as if they were sales agreements.

“Lease, etc., may be assigned

37.2 A lease, lease-purchase or financial lease may be assigned by the lessor, his or her assignee and any sub-assignee”.

Section 38 repealed

24 Section 38 is repealed.

New section 39

25 Section 39 is repealed and the following substituted:

“Contract not binding until signed by dealer

39 The signing of a contract by a purchaser does not bind the purchaser to purchase the implement described in the contract until:

- (a) the contract is signed by the dealer or an agent of the dealer authorized to bind the dealer; and
- (b) a legible copy of the contract signed by the dealer or the dealer’s agent is:
 - (i) sent by registered mail to the purchaser; or
 - (ii) personally delivered to the purchaser”.

New section 50

26 Section 50 is repealed and the following substituted:

“Supplier to purchaser dealer’s unused stock if agreement ends

50(1) In this section and in section 51:

- (a) **‘agreement’** means a written or oral agreement between a dealer and a supplier that is in force on or after December 1, 1969;
- (b) **‘invoice price’**, with respect to an implement, includes:
 - (i) costs associated with any preparation work that a supplier requires the dealer to undertake with respect to the implement before the implement is delivered to a purchaser; and
 - (ii) the costs paid by the dealer to transport the implement from the point of manufacture of the implement to the dealer’s place of business;
- (c) **‘notice to purchase’** means the written notice to purchase mentioned in subsection (2);
- (d) **‘supplier’** means a distributor or a manufacturer.

(2) Within 90 days after the day an agreement expires or is terminated by the dealer or the supplier for any reason, a dealer may give to the supplier a written notice to purchase containing a request by the dealer that the supplier purchase:

- (a) all unused implements, unused parts, signs, computer hardware and computer software obtained from or required by the supplier; and
- (b) any special tools and service manuals obtained from or required by the supplier.

(3) If a notice to purchase is given to the supplier in accordance with subsection (2), the supplier shall, subject to this Act and the regulations, purchase from the dealer:

- (a) all unused implements obtained by the dealer from the supplier;
- (b) all unused parts purchased as parts by the dealer from the supplier;
- (c) all signs carrying the supplier's current logo obtained from or required by the supplier within five years before the expiration or termination of the agreement;
- (d) all computer hardware that:
 - (i) was purchased from the supplier or required by the supplier within two years before the expiration or termination of the agreement; and
 - (ii) was used exclusively to do business with the supplier;
- (e) all computer software that:
 - (i) was created and owned by the supplier;
 - (ii) was sold directly to the dealer within two years before the expiration or termination of the agreement; and
 - (iii) was used exclusively to do business with the supplier;
- (f) all service manuals that the dealer was required to purchase from the supplier within the two years before the expiration or termination of the agreement; and
- (g) all special tools that the supplier required the dealer to purchase within the two years before the expiration or termination of the agreement and that are used exclusively for servicing the supplier's products.

(4) No dealer shall fail to offer for sale to the supplier all the service manuals and special tools that the supplier is required to purchase pursuant to subsection (3).

(5) If the supplier is required to purchase unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools pursuant to subsection (3), the supplier shall pay to the dealer:

- (a) for each unused implement as listed in the original invoice of that implement, an amount equal to 100% of the invoice price less any discounts allowed by the supplier;
- (b) for each unused part, an amount equal to:
 - (i) 90% of the current net price, if the agreement expired or was terminated by the dealer; or
 - (ii) 100% of the current net price, if the agreement was terminated by the supplier;

(c) for signs, computer hardware and computer software, an amount equal to 50% of the original cost to the dealer; and

(d) for special tools and service manuals, an amount equal to:

(i) subject to subclause (ii), 50% of the original cost to the dealer for those tools and manuals;

(ii) in the case of new, unused tools and manuals, 100% of the original cost to the dealer.

(6) In addition to the amounts mentioned in subsection (5), the supplier shall pay interest on any amount payable pursuant to clauses (5)(a) to (d) at the rate specified by the minister from time to time for the purposes of this section in relation to amounts payable by the supplier to the dealer, whether or not the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools are being financed by a third party finance company.

(7) For the purposes of subsection (6), the minister may, by order, specify a rate of interest and, if the minister does so, shall:

(a) cause a copy of the order to be published in the Gazette; and

(b) cause notice of the order to be brought to the attention of the dealers, suppliers and the public in any manner that the minister considers to be appropriate.

(8) Interest payable pursuant to subsection (6) is to be calculated commencing the 61st day following the day the amount becomes due and owing.

(9) Subject to subsection (10), the amount payable by a supplier for unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools becomes due and owing on the earlier of:

(a) the 91st day after the supplier received the notice to purchase from the dealer; and

(b) the 30th day after the supplier removes all the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools from the possession of the dealer.

(10) The due date for payment pursuant to subsection (9) and the 91-day period pursuant to clause (9)(a) or (16)(b) may be amended:

(a) by agreement between supplier and dealer; or

(b) by an order of the Court of Queen's Bench.

(11) For the purposes of clause (10)(b), a supplier may apply for an order by notice of motion returnable not later than 120 days after the day on which the supplier received the notice to purchase.

(12) On an application for the purposes of subsection (11), the Court of Queen's Bench may grant the order requested if it is satisfied that the supplier's failure to remove all unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools from the possession of the dealer was caused by circumstances beyond the supplier's control or by the fault of the dealer.

(13) In addition to any other remedy available:

(a) a dealer may recover an amount owing to the dealer pursuant to this section by a supplier by deducting that amount from any other amount the dealer owes the supplier; and

(b) a supplier may recover an amount owing to the supplier by a dealer by deducting that amount from any other amount owed to the dealer pursuant to this section.

(14) A supplier is not required to purchase any of the following:

(a) an unused part that is not clearly identified by its part number;

(b) an unused part that:

(i) is not listed in the supplier's current price list; and

(ii) is for use in an implement that was manufactured more than 10 years before the expiry or termination of the agreement;

(c) an unused part specially ordered by the dealer from the supplier on the understanding that the part was not returnable by the dealer;

(d) unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools that are subject to a lien, charge, encumbrance or mortgage in favour of a third party in an amount in excess of the amount that the supplier would be required to pay to the dealer pursuant to this section;

(e) unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools that have not been adequately prepared for shipment in accordance with clause (18)(b) within the 91-day period mentioned in subclause (16)(b)(i) or in any extension of that period granted pursuant to subsection (10).

(15) A supplier may deduct from the amount the supplier is required to pay to the dealer pursuant to this section:

(a) an amount equal to the cost to the supplier of supplying and installing a replacement for any missing or damaged part at the current net price, including a reasonable charge for necessary labour for the installation of the part; and

(b) the amount of any liens, charges, encumbrances or mortgages in favour of third parties to which the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools are subject.

(16) The dealer is responsible for the care and custody of the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools that the supplier is required to purchase until the earlier of:

- (a) the day the supplier removes them from the dealer's possession at the dealer's place of business; and
- (b) the later of:
 - (i) the 91st day after the day the supplier receives the notice to purchase from the dealer; and
 - (ii) if the period in subclause (i) has been extended pursuant to subsection (10), the day the extension expires.

(17) After the expiry of the period mentioned in subsection (16), the supplier is responsible for the care and custody of the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools mentioned in that subsection.

(18) A dealer is responsible for doing the acts necessary:

- (a) to adequately prepare each unused implement so that it is acceptable by a carrier for shipment from the dealer's place of business; and
- (b) to adequately package, crate or otherwise prepare all unused parts, signs, computer hardware, computer software, service manuals and special tools so that they are acceptable by a carrier for shipment from the dealer's place of business.

(19) A supplier shall pay for transportation costs for the removal of the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools from the possession of a dealer.

(20) If the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools are not removed within the 91-day period mentioned in subclause (16)(b)(i), the supplier shall pay to the dealer reasonable storage costs until the unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools are removed.

(21) Notwithstanding subsection (20), if the 91-day period mentioned in subclause (16)(b)(i) has been extended, the date for removal of unused implements, unused parts, signs, computer hardware, computer software, service manuals and special tools is extended to the date the extension expires.

(22) This section applies to a supplier and a dealer notwithstanding any provision to the contrary in an agreement or any other contract or arrangement between the supplier and the dealer, and, if a provision of the agreement is more advantageous to the dealer than the provision of this section pertaining to the same subject-matter, the more advantageous provision of the agreement applies.

(23) Any waiver or release given by a dealer of the dealer's rights pursuant to this section is void".

Section 53 amended**27 Section 53 is amended:****(a) by repealing clauses (c) and (d) and substituting the following:**

“(c) exempting any implement or class of implement from all or any provisions of this Act or the regulations;

“(c.1) prescribing institutions as financial institutions for the purposes of clause 2(e);

“(c.2) prescribing the percentage of amount owing, as defined in section 14, as a penalty for the purposes of subsection 14(2);

“(d) prescribing the manner of giving notice and the persons to whom notice shall be given with respect to unlicensed dealers pursuant to subsection 26(8)”; **and**

(b) by adding the following clause after clause (i):

“(i.1) prescribing further functions that the board may carry out and the manner in which those functions are to be carried out”.

Coming into force

28 This Act comes into force on proclamation.

