

COURT FILE NUMBER 2501-17633
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

*IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, C b-3*

*IN THE MATTER OF THE RECEIVERSHIP OF
INDEPENDENT RENEWABLE RESOURCES
CORP. and INDEPENDENT ENERGY
HOLDINGS INC.*

APPLICANT CORTLAND CREDIT LENDING
CORPORATION
RESPONDENTS INDEPENDENT RENEWABLE RESOURCES
CORP. and INDEPENDENT ENERGY
HOLDINGS INC.

DOCUMENT **BOOK OF AUTHORITIES OF INDEPENDENT
RENEWABLE RESOURCES CORP. and
INDEPENDENT ENERGY HOLDINGS INC**

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File:134136.1

Attention: Janine L. Lavoie / Taylor L. Wilcox

STATUTE

Tab	Authority
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- | | |
|---|---|
| 1 | <u>Bankruptcy and Insolvency Act, RSC 1985, c B-3</u> |
| 2 | <u>Farm Debt Mediation Act, SC 1997, c 21</u> |
| 3 | <u>The Saskatchewan Farm Security Act, SS 1988-89, c S-17.1</u> |

JURISPRUDENCE

Tab	Authority
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- | | |
|---|---|
| 4 | <u>Input Capital Corp. v Gustafson, 2018 SKQB 154</u> |
| 5 | <u>Procyk v Young's Equipment Inc., 2025 SKKB 136</u> |
| 6 | <u>Saskatchewan (Attorney General) v Lemare Lake Logging Ltd., 2015 SCC 53</u> |
| 7 | <i>Canadian Imperial Bank of Commerce v Custom Agriculture Intelligence Incorporated et. al.</i> , (04 October 2024), Saskatoon, KBG-SA-01031-2024 (SKKB) |

BOOKS

Tab	Authority
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- | | |
|---|---|
| 8 | Donald H. Layh, <i>A Legacy of Protection: The Saskatchewan Farm Security Act</i> , (Langenburg: Twin Valley Books, 2009) |
|---|---|

TAB 2

Farm Debt Mediation Act, SC 1997, c 21

Current version: in force since 2016-12-17

Link to the latest version ⓘ: <https://canlii.ca/t/7vtt>

Stable link to this version ⓘ: <https://canlii.ca/t/52vl5>

Citation to this version: Farm Debt Mediation Act, SC 1997, c 21, <<https://canlii.ca/t/52vl5>> retrieved on 2025-11-06

Currency: This statute is current to 2025-09-29 according to the [Justice Laws Web Site](#)

Farm Debt Mediation Act

S.C. 1997, c. 21

Assented to 1997-04-25

An Act to provide for mediation between insolvent farmers and their creditors, to amend the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) and to repeal the Farm Debt Review Act

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Farm Debt Mediation Act*.

Interpretation

Definitions

2 The definitions in this section apply in this Act.

farmer means any person, cooperative, partnership or other association of persons that is engaged in farming for commercial purposes and that meets any prescribed criteria.

(*agriculteur*)

farming means

(a) the production of field-grown crops, cultivated and uncultivated, and horticultural crops;

(b) the raising of livestock, poultry and fur-bearing animals;

(c) the production of eggs, milk, honey, maple syrup, tobacco, fibre, wood from woodlots and fodder crops; and

(d) the production or raising of any other prescribed thing or animal. (*exploitation d'une entreprise agricole*)

Minister means the Minister of Agriculture and Agri-Food. (*ministre*)

prescribed means prescribed by regulation.

secured creditor means

(a) any creditor holding a mortgage, hypothec, pledge, charge, lien, privilege, priority claim or other security interest on or against the property of a farmer or any part thereof as security for a debt due or accruing due from the farmer;

(b) any person, cooperative, partnership or other association of persons

(i) with which a farmer has entered into an agreement for sale, a lease with an option to purchase or a conditional sales contract relating to any property used or possessed by the farmer, or

(ii) to which such an agreement or contract has been assigned; and

(c) any bank, or authorized foreign bank within the meaning of [section 2](#) of the *Bank Act* to which security on the property of a farmer or any part of the property has been given under section 427 of that Act or under section 427 as incorporated by section 555 of that Act, as the case may be. (*créancier garanti*)

1997, c. 21, s. 2; 1999, c. 28, s. 161; [2015, c. 2, s. 141](#).

Her Majesty

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada or a province.

Administrators

under that paragraph in respect of substantially the same farming operation for a period of two years after

(a) the date on which the first application was made, where the farmer did not enter into an arrangement with the creditors during the stay of proceedings, or

(b) the date on which the arrangement was signed, where the farmer entered into an arrangement with the creditors,

unless, before making the new application, the person seeking to apply obtains the written consent of the administrator.

New applications under [paragraph 5\(1\)\(b\)](#)

(2) Notwithstanding any other provision of this Act, where a farmer makes an application under [paragraph 5\(1\)\(b\)](#), that farmer, or any person who is related to that farmer within the meaning of the regulations, is not entitled to make a new application under that paragraph in respect of substantially the same farming operation for a period of two years after

(a) the date on which the first application was made, where the farmer did not enter into an arrangement with the creditors within the period prescribed for the mediation, or

(b) the date on which the arrangement was signed, where the farmer entered into an arrangement with the creditors,

unless, before making the new application, the person seeking to apply obtains the written consent of the administrator.

Notice by Secured Creditors

Notice by secured creditors

21 (1) Every secured creditor who intends to

(a) enforce any remedy against the property of a farmer, or

(b) commence any proceedings or any action, execution or other proceedings, judicial or extra-judicial, for the recovery of a debt, the realization of any security or the taking of any property of a farmer

shall give the farmer written notice of the creditor's intention to do so, and in the notice shall advise the farmer of the right to make an application under [section 5](#).

Time of notice

(2) The notice must be given to the farmer and to an administrator, in the form established by the Minister and in accordance with the regulations, at least 15 business days before the doing of any act described in paragraph (1)(a) or (b).

1997, c. 21, s. 21; [2015, c. 2, s. 148](#).

General

Contravention by creditor

22 (1) Subject to subsection (2), any act done by a creditor in contravention of [section 12](#) or [21](#) is null and void, and a farmer affected by such an act may seek appropriate remedies against the creditor in a court of competent jurisdiction.

Innocent parties protected

(2) Subsection (1)

(a) does not affect the title to property of a person who purchased the property in good faith from the creditor and who was not then related to the creditor within the meaning of the regulations; and

(b) does not confer on the farmer any remedy against a person described in paragraph (a).

Disputes

23 Nothing in this Act prevents any party to an arrangement made under this Act from taking a dispute arising therefrom to a court of competent jurisdiction for disposition.

Communication of information

24 (1) Except as authorized by subsection (2), no person shall knowingly communicate or knowingly allow to be communicated to any person any information that is obtained under this Act from a farmer, from a farmer's creditor or from the Minister or knowingly allow any person to inspect or have access to that information.

Exception

(2) A person engaged in the administration of this Act, or a mediator or expert referred to in [subsection 4\(4\)](#), may communicate or allow to be communicated, or allow inspection of or access to, the information referred to in subsection (1) to or by any other person engaged in the administration of this Act or any person otherwise legally entitled to the information.

Protection of witness

(3) A person engaged in the administration of this Act, or a mediator or expert referred to in [subsection 4\(4\)](#), is not compellable to answer questions concerning the information, or to produce records or other documents containing the information, as evidence in any proceedings not directly concerned with the enforcement or interpretation of this Act or the regulations.

1997, c. 21, s. 24; [2015, c. 2, s. 149](#).

Personal liability

TAB 3

The Saskatchewan Farm Security Act

being

Chapter S-17.1 of the *Statutes of Saskatchewan, 1988-89* (consult Table of Saskatchewan Statutes for effective dates) as amended by the *Statutes of Saskatchewan, 1989-90, c.22; 1992, c.43 and c.74; 1993, c.P-6.2 and c.51; 1994, c.30; 1996, c.C-27.01 and c.9; 1997, c.T-22.2; 1998, c.C-45.2, c.14 and c.48; 2000, c.L-5.1; 2002, c.C-11.1 and c.55; 2004, c.L-16.1, c.T-18.1, c.26 and c.59; 2005, c.M-36.1; 2009, c.7; 2010, c.E-9.22 and c.N-5.2; 2013, c.27; 2014, c.E-13.1; 2015, c.21; 2015, c.32; 2018, c.L-3.001 and c.42; 2020, c.13; and 2024, c.4.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

CHAPTER S-17.1

An Act to provide for Security for Saskatchewan Family Farms

PART I Title and Interpretation

Short title

1 This Act may be cited as *The Saskatchewan Farm Security Act*.

Interpretation

2(1) In this Act:

- (a) **“agricultural corporation”** means a corporation:
 - (i) that is engaged in the business of farming; and
 - (ii) the majority of issued voting shares of which are legally or beneficially owned by producers who are resident persons;
- (b) **“board”** means, except in sections 27.1 to 27.9, the Farm Land Security Board continued pursuant to section 5;
- (c) **“child”** means, other than in Part VI:
 - (i) an unmarried person under 18 years of age; or
 - (ii) an unmarried person over 18 years of age who is in full time attendance at an educational institution;

and includes a stepchild, adopted child or child over whom a producer stands in *loco parentis*;

- (d) **“court”** means the Court of King’s Bench;
- (e) **“family”** means spouse and children;
- (f) **“farm land”** means other than in Part VI, real property in Saskatchewan that is situated outside a city, town, village, hamlet or resort village and that is used for the purposes of farming, but does not include:
 - (i) minerals contained in, on or under that real property; and
 - (ii) land used primarily for the purpose of extracting, processing, storing or transporting minerals;
- (g) **“farming”** includes livestock raising, poultry raising, dairying, tillage of the soil, bee-keeping, fur farming or any other activity undertaken to produce primary agricultural produce and animals;
- (h) **“homestead”** means:
 - (i) the house and buildings occupied by a farmer as his or her bona fide farm residence; and
 - (ii) the farm land on which the house and buildings mentioned in subclause (i) are situated, not exceeding 160 acres or one quarter section, whichever is greater;

Mediators

- 8(1) The minister may appoint persons as mediators for the purpose of this Act.
- (2) The minister may appoint a person as the manager of mediation services.

1988-89, c.S-17.1, s.8.

Actions prohibited, continued or discontinued

- 9(1) Notwithstanding any other Act or law or any agreement entered into before, on or after the coming into force of this Act:

- (a) *The Land Contracts (Actions), 2018 Act* does not apply to farm land and any existing actions with respect to farm land pursuant to that Act are deemed to be discontinued;
- (b) all applications made and all notices given pursuant to section 9 of *The Farm Land Security Act* are continued pursuant to section 11 of this Act;
- (c) all actions commenced following an order of the court pursuant to section 9 of *The Farm Land Security Act* are continued;
- (d) subject to sections 11 to 21, no person shall commence an action with respect to farm land;
- (e) where an order is made pursuant to section 9 of *The Farm Land Security Act*, declaring that any provision of sections 8 and 10 of *The Farm Land Security Act* does not apply, the order made pursuant to section 9 of *The Farm Land Security Act* is continued;
- (f) where an order has been made pursuant to section 9 of *The Farm Land Security Act* with respect to a homestead providing that section 7 or 8 of that Act do not apply and a final order of foreclosure has not been granted:
 - (i) the order made pursuant to section 9 and any order *nisi* are vacated with respect to the homestead; and
 - (ii) the mortgagee may make an application pursuant to section 11.

- (2) Subject to subsection (3), where a notice pursuant to section 9 of *The Farm Land Security Act* is continued pursuant to clause (1)(b), this Act shall apply.

- (3) Where a notice pursuant to section 9 of *The Farm Land Security Act* is continued pursuant to clause (1)(b), no application has been made and the board has already commenced mediation between the farmer and the mortgagee:

- (a) the board shall continue to mediate between the farmer and the mortgagee up to 150 days from the date the notice was served on the board; and
- (b) subsections 12(2), (5), (7) to (10) and clause 12(4)(c) do not apply.

1988-89, c.S-17.1, s.9; 2018, cL-3.001, s.23.

Extension of time for redemption

10 Subject to section 11, notwithstanding the terms of any order *nisi* in an action made prior to December 4, 1984, the time for redemption under the order is extended *sine die*.

1988-89, c.S-17.1, s.10.

No action without court order

11(1) Where a mortgagee makes an application with respect to a mortgage on farm land, the court may, on any terms and conditions that it considers just and equitable:

- (a) order that clause 9(1)(d) or section 10 does not apply; or
- (b) make an order for the purposes of clause 9(1)(f).

(2) Where an order is made pursuant to subsection (1), the mortgagee may commence or continue an action with respect to that mortgage.

(3) Any action that is commenced without an order pursuant to this section is a nullity, and any order made with respect to an action or a proposed action without an order pursuant to this section is void.

1988-89, c.S-17.1, s.11; 1989-90, c.22, s.3.

Notice to board and farmer

12(1) Subject to subsection (14), a mortgagee may apply to the court for an order pursuant to section 11 but only after the expiry of 150 days from the date of service of a notice of intention on:

- (a) the board; and
- (b) the farmer.

(2) On receiving a notice of intention pursuant to subsection (1), the board shall provide a copy of the notice to the manager of mediation services appointed pursuant to section 8 who:

- (a) shall designate a mediator for the purposes of this section; and
- (b) forward to the mediator designated pursuant to clause (a) the copy of the notice.

(3) Within 60 days following service of a notice of intention on the board pursuant to subsection (1), the board shall complete a review of the financial affairs of the farmer.

(4) Prior to the commencement of mediation, the board shall provide a copy of the report of the review conducted pursuant to subsection (3) to:

- (a) the farmer;
- (b) the mortgagee; and
- (c) the mediator.

(3) A notice or document sent by ordinary mail or registered mail is deemed to have been served on the seventh day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of his or her own, the person did not receive the notice or document or received it at a later date.

(4) **Repealed.** 2015, c.32, s.39.

(5) Where the address of the person to be served is unknown or the person who is required to serve the document is for any reason unable to effect prompt service, the court may, on application which may be made without notice, grant an order for substituted service or for the substitution for service by advertisement or other means that, from the information available, is most likely to bring notice of the document to the person to be served.

1988-89, c.S-17.1, s.103; 2015, c.32, s.39; 2018, c.42, s.65.

Crown bound

104(1) Subject to subsection (2), the Crown is bound by Parts I to V and VII of this Act.

(2) The Agricultural Credit Corporation of Saskatchewan, continued pursuant to *The Agricultural Credit Corporation of Saskatchewan Act*, is bound by this Act.

(3) Farm Credit Canada continued pursuant to the *Farm Credit Canada Act* is bound by this Act.

1988-89, c.S-17.1, s.104; 2015, c.32, s.40.

No waiver

105(1) Every agreement or bargain, verbal or written, express or implied, entered into before this Act comes into force, that:

(a) limits, modifies or abrogates or, in effect, limits, modifies or abrogates any benefit or remedy pursuant to *The Limitation of Civil Rights Act* or *The Exemptions Act*; and

(b) was expressly permitted pursuant to subsection 40(2) of *The Limitation of Civil Rights Act* or subsection 3(2) of *The Exemptions Act*;

continues in full force and effect for the purposes of this Act.

(2) Except as otherwise provided in this Act, every agreement or bargain, verbal or written, express or implied, entered into after May 24, 1988, that:

(a) either:

(i) this Act; or

(ii) any provision of this Act;

shall not apply or that any benefit or remedy provided by this Act shall not be available; or

(b) in any way limits, modifies or abrogates or in effect limits, modifies or abrogates any benefit or remedy described in clause (a);

is null and void and of no effect.

(3) Any money paid under or by reason of any agreement or bargain mentioned in subsection (2) is recoverable in the court.

(4) Notwithstanding subsection (2), an agricultural corporation may in writing agree that all or any provision of Part IV, other than section 46, shall not apply to the agricultural corporation, but only where the agricultural corporation has received independent legal advice prior to entering into the agreement.

1988-89, c.S-17.1, s.105; 1992, c.74, s.17.

Appeal to Court of Appeal

106 An appeal lies to the Court of Appeal on a question of law from an order of the court.

1988-89, c.S-17.1, s.106.

Fiscal year

107 The fiscal year of the board and the Farm Tenure Arbitration Board is the period commencing on April 1 in one year and ending on March 31 in the following year.

1993, c.51, s.14.

Tabling of annual reports

108(1) In each year, the Farm Land Security Board, in accordance with section 13 of *The Executive Government Administration Act*, shall prepare and submit to the minister an annual report respecting the work performed by the Farm Land Security Board.

(2) **Repealed.** 1993, c.51, s.15.

(3) In each year, the Farm Tenure Arbitration Board, in accordance with section 13 of *The Executive Government Administration Act*, shall prepare and submit to the minister an annual report respecting the work performed by the Farm Tenure Arbitration Board.

(4) In accordance with section 13 of *The Executive Government Administration Act*, the minister shall lay before the Assembly each annual report received by the minister pursuant to subsections (1) to (3).

1992, c.74, s.19; 1993, c.51, s.15; 2014, c.E-13.1, s.62.

Regulations

109 The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word used in this Act but not defined in this Act;

(a.1) for the purposes of clause 2(1)(o), prescribing mortgages or agreements;

TAB 4



Input Capital Corp. v Gustafson, 2018 SKQB 154 (CanLII)

Date:	2018-05-17
File number:	QBG 2120 of 2015
Citation:	Input Capital Corp. v Gustafson, 2018 SKQB 154 (CanLII), < https://canlii.ca/t/hsd8v >, retrieved on 2025-11-04
Most recent unfavourable mention	Mountain Investment Corp. v Quewezance , 2022 SKKB 266 (CanLII) [...] unconscionability in decisions applying the court's equitable jurisdiction to set aside unconscionable agreements: R v Vleeming, 2019 SKQB 213 ; Primewest Mortgage Investment Corporation v Azimi, 2019 SKQB 37 ; and Input Capital Corp. v Gustafson, 2019 SKCA 78 , [2020] 2 WWR 599 , [Gustafson CA #1] reversing 2018 SKQB 154 . [...]

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2018 SKQB 154**

Date: **2018 05 17**
Docket: QBG 2120 of 2015
Judicial Centre: Regina

BETWEEN:

INPUT CAPITAL CORP.

PLAINTIFF

- and -

TERRY BLAINE GUSTAFSON

DEFENDANT

Date: **2018 05 17**

Docket: QBG 89 of 2017
Judicial Centre: Estevan

BETWEEN:

INPUT CAPITAL CORP.

PLAINTIFF

- and -

TERRY BLAINE GUSTAFSON AND TRISHA
DUCKARMIE

DEFENDANTS

CORRECTED JUDGMENT: The text of the original judgment has been changed *per* the corrigendum released August 7, 2018. (A copy of the corrigendum is appended to this corrected judgment.)

Counsel:

R. Van Beselaere, Q.C., B. Lunde, and
W. Dasylyva, student-at-law
G. Kuski, Q.C., W. Lane, and M. Schmeling

for the plaintiff
for the defendants

JUDGMENT
May 17, 2018

KALMAKOFF J.

INTRODUCTION

[1] This case involves two actions brought against Terry Gustafson by Input Capital Corporation [ICC].

[2] Mr. Gustafson is a grain farmer, who lives near Macoun, Saskatchewan. He runs a large farming operation, even by contemporary standards. He owns 15 quarter sections of land, rents approximately 85 quarters, and custom farms another 16 quarters owned by a corporation controlled by his son, Chad. All totalled, Mr. Gustafson farms nearly 20,000 acres.

buying or selling mortgages. Nor, in my view, does such action amount to “dealing in” mortgages, given the analysis adopted in *Goldin* and *Armcorp*.

[86] Accordingly, there was no requirement that ICC be licensed under the *TLCA* in order to enter into the type of agreements contained in the Streaming Contracts.

Issue 5: Does the *Farm Debt Mediation Act* apply, and if so what are the consequences for non-compliance?

[87] The *Farm Debt Mediation Act*, SC 1997, c 21 [*FDMA*] is designed to provide for mediation between insolvent farmers and their creditors. It requires secured creditors who wish to; (i) bring an action to enforce any remedy against the property of a farmer; or (ii) commence any action for the recovery of a debt or the realization of any security or for taking the property of a farmer, to give the farmer written notice of their intention to do so, and to advise the farmer of the right to apply under the *FDMA* for a stay of proceedings until mediation can take place. Where the *FDMA* applies, any action brought without giving the requisite notice is a nullity.

[88] Mr. Gustafson argues that the *FDMA* applies in the circumstances of this case, because ICC was a secured creditor. ICC failed to give Mr. Gustafson the notice required by the *FDMA* before commencing the Regina Action and, as such, he argues that the action is a nullity.

[89] Mr. Gustafson acknowledges that he was served with the requisite notice under the *FDMA* in respect of the Estevan Action. However, he argues that, in the circumstances, the Estevan Action is an abuse of process because it defeats the purpose of the *FDMA*. That argument will be addressed later in these reasons.

[90] ICC argues that the *FDMA* has no application to the Regina Action for two reasons. First, ICC says that the remedies it requests against Mr. Gustafson are injunctive and declaratory, and not for the recovery of a debt, the realization of any security, or the taking of property. Second, the Collateral Mortgage and Collateral Security Agreement were taken to secure Mr. Gustafson’s delivery obligation, and as such do not constitute security for a debt due or accruing due.

The Legislation and Legal Principles Involved

[91] Section 21 of the *FDMA* sets out the requirement for notice before a secured creditor brings an action against a farmer. It reads as follows:

21(1) Every secured creditor who intends to

- (a) enforce any remedy against the property of a farmer, or
- (b) commence any proceedings or any action, execution or other proceedings, judicial or extra-judicial, for the recovery of a debt, the realization of any security or the taking of any property of a farmer

shall give the farmer written notice of the creditor's intention to do so, and in the notice shall advise the farmer of the right to make an application under section 5.

- (2) The notice must be given to the farmer and to an administrator, in the form established by the Minister and in accordance with the regulations, at least 15 business days before the doing of any act described in paragraph (1)(a) or (b).

[92] The phrase “application under section 5” in s. 21(1) refers to an application the farmer may bring for a stay of proceedings pending mediation. That section reads, in part, as follows:

5(1) Subject to section 6, a farmer may apply to an administrator for either

- (a) a stay of proceedings against the farmer by all the farmer's creditors, a review of the farmer's financial affairs, and mediation between the farmer and all the farmer's creditors for the purpose of assisting them to reach a mutually acceptable arrangement; or
- (b) a review of the farmer's financial affairs, and mediation between the farmer and all the farmer's secured creditors for the purpose of assisting them to reach a mutually acceptable arrangement.

[93] The notice requirement in s. 21 applies only to the types of actions mentioned in that section, and only when they are brought by secured creditors. “Secured creditor” is defined in s. 2 of the *FDMA*. That definition reads as follows:

2. Definitions

...

secured creditor means:

- (a) any creditor holding a mortgage, hypothec, pledge, charge, lien, privilege, priority claim or other security interest on or against the property of a farmer or any part thereof as security for a debt due or accruing due from the farmer;
- (b) any person, cooperative, partnership or other association of persons

(i) with which a farmer has entered into an agreement for sale, a lease with an option to purchase or a conditional sales contract relating to any property used or possessed by the farmer, or

(ii) to which such an agreement or contract has been assigned; and

(c) any bank, or authorized foreign bank within the meaning of section 2 of the *Bank Act* to which security on the property of a farmer or any part of the property has been given under section 427 of that Act or under section 427 as incorporated by section 555 of that Act, as the case may be.

[94] It is important to look at the substance of the claim in determining whether the *FDMA* notice requirements apply to ICC in relation to the Regina Action. That action alleged that Mr. Gustafson had committed the tort of conversion, by selling all or part of his 2015 crop to other parties and keeping the proceeds, contrary to the provisions of the Amending Agreement, and without ICC's consent. It also alleged that Mr. Gustafson had denied ICC access to the Gustafson farm. In its claim, ICC requested the following relief:

9-10. **INPUT CAPITAL CORP.**, therefore claims the following relief against **TERRY BLAINE GUSTAFSON**:

(a) an interim and permanent injunction restraining Mr. Gustafson from selling, assigning, transferring, disposing or concealing of any of the Entire 2015 Crop pursuant to *The Queen's Bench Act, 1998*, S.S. 2010, c. E-9.22, *The Enforcement of Money Judgments Act*, S.S. 2010, c. E-9.22, and the inherent jurisdiction of this Honourable Court;

~~(a)~~(b) a mandatory injunction directing Mr. Gustafson to forthwith allow and/or facilitate Input Capital, and/or any of its agents, representatives or personnel, to complete all matters necessary for the transportation and marketing (the "Facilitated Access") of the Entire 2015 Crop (whether harvested or not harvested) located on the Gustafson Farm that Input Capital purchased from Mr. Gustafson pursuant to the Amending Agreement, with such Facilitated Access to include, but is not limited to, allowing and/or facilitating Input Capital to access, inspect, load, haul, transport, market and/or deliver the Entire 2015 Crop on such terms as it directs;

~~(b)~~(c) a declaration that the Entire 2015 Crop, and any proceeds derived therefrom, are held by Mr. Gustafson in trust and/or has a trust imposed on him in favour of Input Capital;

~~(c)~~(d) a declaration that Input Capital is entitled to trace the proceeds of the Entire 2015 Crop into and claims equitable title to any assets acquired, purchased or accumulated by Mr. Gustafson through the sale of the Entire 2015 Crop, or the proceeds derived therefrom; ~~and~~

~~(d)~~(e) costs on a solicitor-client basis; and

~~(e)~~(f) such further and other relief as this Honourable Court may allow.

[Emphasis in Original]

[95] Determining whether the *FDMA* provisions apply to ICC's claim in the Regina Action is, in large part, an exercise in statutory interpretation. The first question is whether the action is one intended to "enforce a remedy against the property of a farmer" or taken for the "recovery of a debt, the realization of any security or the taking of any property of a farmer".

[96] In this case, I have no hesitation in concluding that the Regina Action commenced by ICC was an action taken to enforce a remedy against Mr. Gustafson's property. The relief requested by ICC would prevent Mr. Gustafson from selling, assigning, transferring or disposing of any of his 2015 crop. While ICC may take the position that, by virtue of the Amending Agreement, Mr. Gustafson's entire 2015 crop was actually ICC's property, that was still an issue in dispute. The injunctive relief sought in the claim would also require Mr. Gustafson to permit ICC to access his land and grain storage, place restrictions on Mr. Gustafson's use of any sale proceeds, and trace any proceeds through Mr. Gustafson's bank accounts. As I see it, this is unquestionably the enforcement of a remedy against Mr. Gustafson's property.

[97] The question, then, is whether ICC is a "secured creditor" within the meaning of s. 2. In my view, ICC is a secured creditor. I will explain why.

[98] The modern principle of statutory interpretation is that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislative body: *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 23, [2017] 2 SCR 289; and *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 [*Rizzo*]. The *FDMA* is remedial legislation. Its purpose is to provide insolvent farmers with some breathing room for the purpose of reorganizing their financial affairs. The legislation recognizes that volatile markets and prices can affect the financial stability of farmers.

[99] ICC argues that it is not a secured creditor, because it does not hold a mortgage or security interest in relation to a "debt due or accruing due". ICC says that the mortgage it holds does not secure a debt, but rather damages which, since they have not been determined, are not a debt due or accruing due.

[100] In *Polyco Window Manufacturing Ltd. v Prudential Assurance Co.* (1994), [1994 CanLII 5009 \(SK KB\)](#), 119 Sask R 131 (WL) (Sask QB), Justice Halvorson said, albeit in a different context related to the priority of creditors, that unliquidated damages were not a “debt due or accruing due”. In that regard, he wrote:

36 ...Present debts may be attached even though the precise amount owing is not yet ascertained. The remedy of attachment is allowed because the amount owing can be measured accurately by use of objective standards. For example, an architect does a calculation. Damages are quite different. They are the result of a subjective analysis and are, for that reason, imprecise. The law does not permit attachment of unliquidated damages because the garnishee does not know the exact amount of his obligation. Of course, once the damages are fixed, they are attachable because they take on the complexion of a debt.

[101] However, in *HCI Ventures Ltd. v S.O.L. Acres*, [2017 SKQB 264](#) [*HCI Ventures*], Justice Barrington-Foote had the opportunity to consider the interpretation of the notice provisions in the *FDMA*, including the definition of “secured creditor”, and what amounts to a “debt” within the meaning of s. 21. After citing the modern approach to statutory interpretation set out in *Rizzo*, he wrote:

23 Further, I must apply s. 12 of the *Interpretation Act*, RSC 1985, c I-21, which provides as follows:

12 Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

24 In *Community Futures Development Corp. of South Fraser v Litzenberger*, [2006 BCSC 856](#) at paras 7-9, (2006), 23 CBR (5th) 182 [*Community Futures*], Joyce J. offered the following comments as to the purpose of the *FDMA*, with which I agree:

[7] The *FDMA*, which came into force April 1, 1998 is the successor to the *Farm Debt Mediation Review Act*, RSC 1985, c 25 (2nd supp.). The legislation is remedial in nature. Its purpose is to provide insolvent farmers with some breathing room by providing them an opportunity to apply for a stay of proceedings and mediation so that they may attempt to reorganize their financial affairs. In *M & D Farm Ltd. v Manitoba Agricultural Credit Corp.*, [1999 CanLII 648 \(SCC\)](#), [1999] 2 SCR 961, Mr. Justice Binnie described the purpose of the predecessor legislation to the *FDMA* in the following terms at 973-974:

Farmers without the protection of a marketing board or other price stabilization schemes face volatile markets and volatile prices. The legislation recognizes that temporary financial embarrassment is part of a farmer’s lot, and does not necessarily signal lack of long-term financial viability. The Act provides a short standstill period within which the

farmer has an opportunity to demonstrate long-term viability to creditors.

...

27 “Secured creditor” is defined in [s. 2](#) of the *FDMA*. That definition provides that a secured creditor includes any creditor holding a “security interest...for a debt due or accruing due from a farmer”. This issue accordingly turns on the proper interpretation of those words.

28 The grammatical and ordinary sense of these words, read in context and in light of the object of the *FDMA*, clearly includes a security interest of the type granted by the Lease and the GSA. It also includes security for any debt - or, at a minimum, any debt relating to the farming operation at issue - regardless of the source or nature of that debt. That is the fair and liberal interpretation that best ensures the attainment of the remedial “protective” purpose described in *Community Futures*, and by Binnie J. in *M & D Farm Ltd. v Manitoba Agricultural Credit Corp.*, [1999 CanLII 648 \(SCC\)](#), [1999] 2 SCR 961 [*M & D Farm*]. It would not promote that purpose to interpret “security interest...for a debt accruing due” in a manner that would limit debt to debt resulting from a loan or financing, and exclude other debts incurred in the course of the farming operation.

29 Accordingly, HCI is a secured creditor. That being so, [s. 21](#) applies, provided that this is an action “for the recovery of a debt” within the meaning of [s. 21\(1\)\(b\)](#) of the *FDMA*.

30 As noted above, HCI raised two issues in this respect. First, it says rent is not a debt. With respect, I do not agree. The term “debt” has been broadly defined by the case law, where required by the context. In *Rocovitis v Argerys Estate*, 1988 CarswellOnt 380 (Ont Div Ct) (WL), for example, the issue was whether a claim for damages was a debt of the estate. Bowlby J. commented as follows:

12 The cases advanced by counsel for the bank appear to me to establish conclusively that “debt” is a term which has a well-established judicial meaning in Canada that does not include an unliquidated claim for damages. For example, in the case of *Diewold v Diewold*, [1940 CanLII 52 \(SCC\)](#), [1941] SCR 35, 22 CBR 329, [1941] 1 DLR 561 cited in Master Peppiatt’s decision, Hudson J. adopts the definition of “debt” found in Stroud’s Judicial Dictionary as “a sum payable in respect of a liquidated money demand, recoverable by action.” (p. 564). In *Pizzolati & Chittaro Manufacturing Co. v May*, [1972 CanLII 355 \(ON CA\)](#), [1972] 2 OR 606, reversing [1971 CanLII 534 \(ON SC\)](#), [1971] 3 OR 768 (Ont CA), Houlden J. states that “[t]he word ‘debt’ has a well-defined judicial meaning as a sum payable in respect of a liquidated money demand. It does not include an unliquidated claim for damages ...” (p. 770).

...

32 *Toronto Dominion Bank v Pawluk*, 1976 CarswellSask 175 (Sask QB) (WL) also reflects a generous approach. Bence C.J.Q.B. there held that an action for the return of money paid under a mistake of fact was debt for purposes of *The Attachment of Debts Act*, [RSS 1965, Cap 101](#), despite the fact that liability in such a case is imposed by law, rather than contract. In

Graham v Warwick Gold Mining Co., 1905 CarswellNS 8 (NSCA) (WL), the court held that a claim *quantum meruit* for labour and *quantum valebat* for goods delivered, at prices specified in the claim, was a claim for a liquidated demand. Similarly, I note the following comment by Simmons J. in *Connors v Egli* (No. 2), 1923 CanLII 663 (AB KB), [1923] 3 WWR 999 (Alta TD):

12 There is no doubt that the old form of actions of debt, at common law cover a very wide field, perhaps more so than any other form of action, since it was an appropriate remedy whenever a plaintiff sought to recover a sum certain or a sum which could readily be reduced to a certainty, irrespective of the manner in which the obligation arose or by what it was evidenced. (See *Corpus Juris*, vol. 18, p. 9). See also *Words and Phrases Judicially Defined*, vol. 2, p. 1866, where a debt is defined as including a claim and demand upon which a judgment for a sum of money could be recovered in an action.

...

34 In the result, rent, interest and taxes payable pursuant to the Lease are debt within the meaning of s. 21 of the *FDMA*. It is of interest in this context that the Lease was not terminated by HCI. The demand letters state that HCI chose to continue the Lease, and seek a new tenant on the account of S.O.L. That option was open to HCI: see *Highway Properties Ltd. v Kelly, Douglas & Co.*, 1971 CanLII 123 (SCC), [1971] SCR 562 at 570. The obligations under the Lease accordingly continued. The fact HCI proceeded in that fashion is also confirmed by the amended statement of claim, and the calculation of damages in para. 21 of Mr. Wasylyniuk's affidavit. HCI claims damages "representing the Defendants' rental arrears and the interest accrued", including interest until August 1, 2016, long after HCI re-entered the land.

35 I reach the same conclusion in relation to the claim to recover the \$45,800.00 paid to the defendants to remove the straw. That claim is, in substance, a claim for rent that was payable unless S.O.L. dealt with the straw. That characterization accords with Mr. Wasylyniuk's statement that the payment "was made to fulfil the terms and conditions agreed upon in ... Clause 3.2.1 of the Lease". Further, it is a claim for a sum certain, being the rent reduction agreed in the Lease and confirmed at the time the money was paid. It too is caught by the broad definition of "debt".

36 Given that HCI's claim is for debt, the only remaining question is whether this is an action "for the recovery of a debt", despite the fact that it is cast as a claim for damages. In my view, it is. That is the grammatical and ordinary sense of these words, considered in context. It is, again, the fair and liberal interpretation that best ensures the attainment of the remedial purpose of the *FDMA*. As the defendants noted, it would be inconsistent with that purpose to adopt an interpretation which enables secured creditors to avoid the scheme of the *FDMA* by casting their claim in damages, rather than debt.

[102] Justice Barrington-Foote's analysis in *HCI Ventures* is applicable to the circumstances of this case. A fair and liberal interpretation, keeping in mind the remedial purpose of the *FDMA*, is necessary. The context requires, as Justice

Barrington-Foote set out at para. 30, a broad definition of “debt”. Bringing to bear that broad definition, the enforcement clauses of the Collateral Mortgage and Collateral Security Agreement determine the damages that would be payable, or the amount owing to ICC in the event of default by Mr. Gustafson or demand by ICC with enough precision to make them the functional equivalent of liquidated damages. Furthermore, even though ICC states that it is not a secured creditor, the agreements refer to Mr. Gustafson as a “debtor” throughout. As I pointed out earlier, Mr. Gustafson also falls into the definition of “debtor” in the *PPSA*, in the context of his relationship with ICC. Whatever obligation Mr. Gustafson has to ICC is secured by a mortgage on his property. It is payable on demand, with interest. When considering the language in the Streaming Contracts, and the associated Collateral Mortgage and Collateral Security Agreement in light of the remedial purpose of the *FDMA*, and the need for a broad and contextual interpretation of its provisions, I can come to no conclusion other than that ICC falls within the definition of “secured creditor” in s. 2.

[103] Accordingly, ICC was required to give notice under s. 21 of the *FDMA* before commencing the Regina Action. It failed to do so. Therefore, that action is a nullity.

Issue 6: Does *The Unconscionable Transactions Relief Act* apply, and if so, what are the consequences for non-compliance?

[104] *The Unconscionable Transactions Relief Act*, RSS 1978, c U-1 [*UTRA*] provides a statutory vehicle by which the court can intervene in situations where the cost of a loan is excessive, or the transaction is harsh or unconscionable. Section 3 of the *UTRA* reads as follows:

3. Notwithstanding the provisions of any other Act, where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances at the time the loan was made, the cost of the loan is excessive or that the transaction is harsh or unconscionable the court may:

- (a) re-open the transaction and take an account between the creditor and the debtor and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

TAB 5



Procyk v Young's Equipment Inc., 2025 SKKB 136 (CanLII)

Date: 2025-08-27
File number: KBG-RG-00972-2023
Citation: Procyk v Young's Equipment Inc., 2025 SKKB 136 (CanLII),
<<https://canlii.ca/t/kf89h>>, retrieved on 2025-11-04

KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 136**

Date: **2025 08 27**
File No.: KBG-RG-00972-2023
Judicial Centre: Regina

BETWEEN:

JOAN PROCYK and ROGER GLENN PROCYK

APPLICANTS

- and -

YOUNG'S EQUIPMENT INC.

RESPONDENT

Counsel:

Moira Keijer-Koops and Mark Wonka (student-at-law) for the applicants
Kevin Miller for the respondent

FIAT
August 27, 2025

ROBERTSON J.

Table of Contents

Paras.

I. INTRODUCTION

II. BACKGROUND

A. Affidavit Evidence

B. Timeline of Events

III. ISSUES

IV. ANALYSIS

1. Is This an Appropriate Dispute for Resolution by Originating Application?

i. The *CLA*

ii. The *FDMA*

2. Is the Claim Barred by *The Limitations Act*?

3. Was Notice Served in Compliance with the *CLA* so as to Allow Young's to Retain Possession of the Tractor?

4. Was Notice Required to be Served Under the *FDMA* and, if so, was it Properly Served?

5. Was Notice Required to be Served Under the *SFSA* and, if so, was it Properly Served?

i. Statutory Scheme

ii. Was Young's required to serve notice under Part IV of the *SFSA*?

6. If Required Notice Was Not Served, what is the Remedy?

i. The *FDMA*

ii. The *SFSA*

V. CONCLUSION

I. INTRODUCTION

[1] This decision addresses an originating application filed on April 19, 2023, challenging the 2020 seizure of a 2010 Case 1H Puma 140 tractor [Tractor]. The applicants, Joan Procyk and Roger Glenn Procyk [Procyk], seek orders: under s. 22 of the Farm Debt Mediation Act, SC 1997, c 21 [*FDMA*], and s. 20 of *The Commercial Liens Act*, SS 2001, c C-15.1 [*CLA*], declaring the possession and seizure of the Tractor null and void; and under ss. 55(c) of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1 [*SFSA*], directing the respondent, Young's Equipment Inc. [Young's], to pay one and one half times the estimated sale amount of the Tractor to the applicants.

[2] For the following reasons, I decline to make either order because there are material facts which I am unable to determine. At the same time, I do not dismiss the application. Instead, I answer questions in so far as the known facts allow in the hope that this will help the parties to resolve their dispute. If they are unable to do so on their own, they may return to Court.

II. BACKGROUND

A. Affidavit Evidence

[3] The parties filed the following affidavits:

Procyk:

- (i) Roger Procyk, sworn April 20, 2023 [Roger Affidavit #1]
- (ii) Robert Procyk, sworn April 19, 2023 [Robert Affidavit]
- (iii) Roger Procyk, sworn June 12, 2025 [Roger Affidavit #2]

Young's:

- (i) Michael Hoffman sworn April 21, 2024 [Hoffman Affidavit]

B. Timeline of Events

[4] From the court file and affidavit evidence, the following timeline of events is established:

2019

- | | |
|---------|---|
| Spring | Roger Procyk buys Tractor (Roger Affidavit #1, para. 1) |
| October | Tractor damaged in fire (Roger Affidavit #1, para. 2) |
| October | Roger Procyk makes insurance claim to Saskatchewan Government Insurance [SGI] for damage to Tractor (Roger Affidavit #1, para. 2) |

2020

- | | |
|------------|--|
| January 29 | Tractor taken to Young's Weyburn, Saskatchewan workshop for repair (Hoffman Affidavit, para. 2; Roger Affidavit #2, para. 4) |
|------------|--|

and obligations of a secured party for the purposes of that Part. In effect, this provision turns the lien claimant into a secured party under the *PPSA*.

[36] The *PPSA* in ss. 2(1)(nn) defines a “secured party” as a person who has a “security interest”, which is in turn defined as “an interest in personal property that secures payment or performance of an obligation”. This mirrors the definition of “security interest” in the *SFSA*.

[37] The *CLA* in s. 20 allows the person who requested the services to apply to court to resolve any dispute over the existence of a lien, the amount secured by the lien, or the right of the lien claimant to take or retain possession of the goods. Procyk did not make any such application.

[38] Section 61 of the *CLA* allows the secured party to give notice of its proposal to retain the collateral in satisfaction of the debt obligation. Any person entitled to notice may file a notice of objection within 15 days after receipt of the proposal notice. If no notice of objection is given, the secured party is deemed to have taken the collateral in satisfaction of the debt obligation and is entitled to hold or dispose of the collateral.

[39] In this case, Young’s, as the secured party, served notice under s. 19 of the *CLA* and s. 61 of the *PPSA*. Roger Procyk acknowledges receipt of that notice on May 6, 2021. Since there was no notice of objection, Young’s became entitled to retain or dispose of the Tractor after May 21, 2021. Young’s has since retained possession of the Tractor and used it for its business.

[40] On its face, therefore, Young’s complied with the provisions of the *CLA* in serving notice and thereafter taking possession of the Tractor. This at least gave Young’s a colour of right. However, as discussed below, there are other statutory regimes at play.

4. Was Notice Required to be Served Under the *FDMA* and, if so, was it Properly Served?

[41] The *FDMA*, is a federal statute which provides protection to farmers. Where there is inconsistency or conflict with provincial law, the *FDMA* governs under the constitutional doctrine of paramountcy.

[42] In *M & D Farm Ltd. v Manitoba Agricultural Credit Corp.*, 1999 CanLII 648 (SCC), [1999] 2 SCR 961 at paras 25-26, the Supreme Court of Canada held that the purpose of the *Farm Debt Review Act*, RSC 1985, c 25 (2nd Supp) (since rep), which was

replaced by the [FDMA](#), was relevant to its interpretation and supported a broad reading of its provisions to achieve its objects.

[43] In *Chmil v National Leasing Group Inc.*, [2006 SKCA 140](#) at para 5, [2007] 6 WWR 25 [*Chmil*], Richards J.A. (as he then was) summarized the [FDMA](#):

[5] The [Farm Debt Mediation Act](#) requires a secured creditor who intends to commence proceedings against a farmer for the recovery of a debt or the realization of any security to give the farmer 15 days written notice advising of the farmer's right to apply to an administrator for one of two orders. The first type of order involves a stay of proceedings against all of the farmer's creditors, a review of the farmer's financial affairs and debt mediation. The second type involves a financial review and mediation. An act done by a creditor in contravention of the requirement to give notice is null and void. ...

[44] In *HCI Ventures Ltd. v S.O.L. Acres*, [2017 SKQB 264](#) at paras 26-30, 13 CPC (8th) 164 [*HCI QB*], aff'd [2020 SKCA 24](#), 100 BLR (5th) 165 [*HCI CA*], Barrington-Foote J. (as he then was) dismissed an application for summary judgment against the farmer-defendant for unpaid rent. In doing so, he found that the plaintiff was a secured creditor as defined in the [FDMA](#) and therefore required to serve notice under s. 21. It was common ground that such notice was not given.

[26] The first issue to be determined is whether HCI is a "secured creditor" within the meaning of the [FDMA](#). As is noted above, the defendants say it is not, as the debt secured by the GSA [General Security Agreement] did not arise as a result of a loan or financing provided for farm purposes. In HCI's view, secured creditors are limited to those which hold debts of that kind.

[27] "Secured creditor" is defined in s. 2 of the [FDMA](#). That definition provides that a secured creditor includes any creditor holding a "security interest ... for a debt due or accruing due from a farmer". This issue accordingly turns on the proper interpretation of those words.

[28] The grammatical and ordinary sense of these words, read in context and in light of the object of the [FDMA](#), clearly includes a security interest of the type granted by the Lease and the GSA. It also includes security for any debt – or, at a minimum, any debt relating to the farming operation at issue – regardless of the source or nature of that debt. That is the fair and liberal interpretation that best ensures the attainment of the remedial "protective" purpose described in *Community Futures* [*Community Futures Dev. Corp. v Litzenberger*, [2006 BCSC 856](#)], and by Binnie J. in *M & D Farm Ltd. v Manitoba Agricultural Credit Corp.*, [1999 CanLII 648](#)

(SCC), [1999] 2 SCR 961 [*M & D Farm*]. It would not promote that purpose to interpret “security interest...for a debt accruing due” in a manner that would limit debt to debt resulting from a loan or financing, and exclude other debts incurred in the course of the farming operation.

[29] Accordingly, HCI is a secured creditor. That being so, s. 21 applies, provided that this is an action “for the recovery of a debt” within the meaning of s. 21(1)(b) of the *FDMA*.

[30] As noted above, HCI raised two issues in this respect. First, it says rent is not a debt. With respect, I do not agree. The term “debt” has been broadly defined by the case law, where required by the context. ...

[45] In *Input Capital Corp. v Gustafson*, 2018 SKQB 154 at paras 102-103, reversed on other grounds 2019 SKCA 78, 438 DLR (4th) 387, and 2021 SKCA 56, 458 DLR (4th) 474, Kalmakoff J. (as he then was) cited *HCI QB*, in similarly finding that notice was required under the *FDMA*:

[102] Justice Barrington-Foote’s analysis in *HCI Ventures* is applicable to the circumstances of this case. A fair and liberal interpretation, keeping in mind the remedial purpose of the *FDMA*, is necessary. The context requires, as Justice Barrington-Foote set out at para. 30, a broad definition of “debt”. Bringing to bear that broad definition, the enforcement clauses of the Collateral Mortgage and Collateral Security Agreement determine the damages that would be payable, or the amount owing to ICC in the event of default by Mr. Gustafson or demand by ICC with enough precision to make them the functional equivalent of liquidated damages. Furthermore, even though ICC states that it is not a secured creditor, the agreements refer to Mr. Gustafson as a “debtor” throughout. As I pointed out earlier, Mr. Gustafson also falls into the definition of “debtor” in the *PPSA*, in the context of his relationship with ICC. Whatever obligation Mr. Gustafson has to ICC is secured by a mortgage on his property. It is payable on demand, with interest. When considering the language in the Streaming Contracts, and the associated Collateral Mortgage and Collateral Security Agreement in light of the remedial purpose of the *FDMA*, and the need for a broad and contextual interpretation of its provisions, I can come to no conclusion other than that ICC falls within the definition of “secured creditor” in s. 2.

[103] Accordingly, ICC was required to give notice under s. 21 of the *FDMA* before commencing the Regina Action. It failed to do so. Therefore, that action is a nullity.

[46] In *HCI CA* at paras 42-43, Ryan-Froslic J.A. for the Court of Appeal commented on the purpose of the *FDMA* as supporting a broad interpretation of s. 21:

[42] Second, s. 21 is an extremely broad provision and, on a plain reading, casts a wide net over the actions of a secured creditor that warrant notice being given to the farmer of their rights under the *FDMA*. In my view, a broad interpretation best accords with the objects of the *FDMA*, which are meant to afford farmers facing financial difficulties an opportunity to mediate with their creditors. It also accords with the overall legislative scheme, which gives only farmers the power to apply for a stay of proceedings and/or financial review and mediation (s. 5). Secured creditors are of particular concern to farmers facing financial difficulties because such creditors often hold as security key elements of their farming operations, such as land, equipment, cattle or inventory. Without those assets, a farmer would struggle to remain viable. It is thus not surprising that s. 21 refers to “secured creditors” as opposed to all creditors.

[43] Requiring a secured creditor to provide notice of its intention in accordance with s. 21 is not cumbersome, nor does it unduly prejudice such creditors. The notice period is short – 15 days – and the secured creditor has the ability to control when it provides such notice.

[47] I pause here to note that there is no evidence in the affidavits filed to establish that the applicants are farmers. Each party has the obligation to put their best foot forward on summary applications, such as this one. The status of the applicants as farmers is a required premise for claiming rights under the *FDMA* and the *SFSA*. However, Young’s in its Brief of Law at para. 24 states, “The Applicants meet the definition of “farmer” pursuant to s. 2 of the *FDMA*.” But for this admission, I would have dismissed the application.

[48] Section 21 of the *FDMA* requires secured creditors to serve notice on the farmer prior to enforcing any remedy against the property of the farmer or commencing any proceedings to recover a debt or taking any property of the farmer. The notice must be given at least 15 business days before taking further proceedings. Section 5 of the *FDMA* allows the farmer to apply to an administrator under the *FDMA* for a stay of proceedings or for mediation between the farmer and the farmer’s secured creditors. Section 21 is reproduced below:

Notice by secured creditors

21(1) Every secured creditor who intends to

(a) enforce any remedy against the property of a farmer, or

(b) commence any proceedings or any action, execution or other proceedings, judicial or extra-judicial, for the recovery of a debt, the realization of any security or the taking of any property of a farmer

shall give the farmer written notice of the creditor's intention to do so, and in the notice shall advise the farmer of the right to make an application under section 5.

Time of notice

(2) The notice must be given to the farmer and to an administrator, in the form established by the Minister and in accordance with the regulations, at least 15 business days before the doing of any act described in paragraph (1)(a) or (b).

[49] The Court of Appeal in *Chmil* at para 2, ruled that the s. 21 notice under the *FDMA* must be served separately and before notice under s. 48 of the *SFSA*. In Donald H. Layh, *A Legacy of Protection, the Saskatchewan Farm Security Act: History, Commentary & Case Law* (Langenburg: Twin Valley Books, 2009) [*Legacy of Protection*] at 411, Donald Layh (as he then was) stated:

Post *Chmil*, any arguments respecting the permissibility of contemporaneous service of the section 48 *SFSA* notice and section 21 *Farm Debt Mediation Act* have been finally and completely laid to rest. The federal notice must pre-date section 48 under the *SFSA* by 15 business days.

[50] Section 22 provides that any act done by a creditor in contravention of s. 21 is null and void and a farmer affected by such an action may seek appropriate remedies against the creditor in a court of competent jurisdiction.

[51] The *FDMR* in s. 17 provides direction on giving notice under s. 21. Subsection 17(1)(a)(iii) of the *FDMR* authorizes service by registered mail. Subsection 17(2) provides that notice given in the manner prescribed “is deemed to be given seven business days after the day on which the notice is sent”.

[52] In this case, Young's attempted to serve notice under s. 21 of the *FDMA*. The notice was mailed by registered mail on April 5, 2021, but was returned undelivered on April 28, 2021. Young's takes the position that there was compliance with the notice requirement under the *FDMA* and the deeming provision makes the non-receipt of the notice irrelevant.

[53] I disagree. The purpose of service is to bring actual notice to the person to be served, so they can respond and participate. This kind of deeming provision creates a rebuttable presumption of receipt and notice. Once proof of service is established, the onus shifts to the person denying receipt.

[54] The person claiming non-receipt and lack of notice has the onus of showing that, through no fault of their own, they did not receive the notice and had no knowledge of the content of the notice. The onus is on the person deemed served because they are the ones who know what happened. It is not enough to claim non-receipt. Otherwise, persons could avoid service by simply failing or refusing to accept receipt or to open delivered mail.

[55] In this case, there is some dispute about what happened with the delivery of the notice. The Hoffman Affidavit at para. 12 suggests the envelope was “either rejected or unclaimed by the Applicants.” The Roger Affidavit #2 at para. 7 says he “never received or refused to receive any mail from Gerrand Rath Johnson.” This leaves open the questions of whether the registered mail was delivered to the postal box but unclaimed and therefore returned. If delivered but unclaimed, then Procyk must explain why.

[56] Given the limited evidence before me, I decline to make a finding of fact on the question of whether service was effective.

[57] Young’s also relied upon *Steen v Levesque*, 2023 SKKB 92 [*Steen*], in which Layh J. held at paras. 23-24 that a failure to provide proof of service constituted a jurisdictional error and deprived the hearing officer of jurisdiction to hold a hearing. *Steen* involved notice of a hearing under *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001. That statute and its regulations provides a comprehensive code, including a distinct deeming provision under ss. 82(5) of *The Residential Tenancies Act, 2006*. I acknowledge *Steen* as expressing the Court’s concern with actual notice.

[58] It is perplexing that Young’s made no further attempts at service of the s. 21 notice. Young’s knew where Procyk could be found. It successfully served notice under the *CLA* and the *PPSA* 11 days after the return of the s. 21 notice.

[59] Even if there was proper service of the s. 21 notice required under the *FDMA*, that would only be the first step in fulfilling the notice requirements for seizure under the *SFSA*. I therefore turn to that question.

5. Was Notice Required to be Served Under the *SFSA* and, if so, was it Properly Served?

[60] It is not disputed that Young's did not serve or attempt to serve any notice on Procyk under the *SFSA*. The questions to be answered then are:

- i. Whether notice was required under the *SFSA*; and
- ii. If so, what is the consequence of that omission?

[61] Before turning to those questions, I will review the statutory scheme as it applies to seizure of farm implements by a secured party.

i. Statutory Scheme

[62] The *SFSA* was enacted to “assure Saskatchewan farm families security of tenure of farmland and protection from seizure of farm assets”: see *Legacy of Protection* at 1. This protective objective is reflected in the notice requirements and the generous procedural safeguards afforded to farmers, including opportunities to apply for hearings before any enforcement takes place, and in the significant remedies available to farmers under s. 55 of the *SFSA* when those requirements are not fulfilled.

[63] In *Chmil* at para 4, Richards J.A., summarized the *SFSA* as it applies to seizure of farm implements:

[4] *The Saskatchewan Farm Security Act* prevents a secured creditor from taking possession of an implement from a farmer without first serving the farmer with a prescribed notice. The notice advises the farmer of his or her right to apply for a hearing before the Court of Queen's Bench. If such an application is made, the secured creditor is barred from taking further proceedings without leave of the court. At the Queen's Bench hearing, the Court may make such orders as it considers just and equitable. ...

[64] Subsection 2(1) of the *SFSA* defines words used internally, including “court”, “implement”, “secured party”, “security agreement”, and “security interest”:

Interpretation

2(1) In this Act:

...

(d) “**court**” means the Court of King's Bench;

...

(i) “**implement**” means:

TAB 6

Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd., 2015 SCC 53 (CanLII), [2015] 3 SCR 419

Date: 2015-11-13

File number: 35923

Other citations: 391 DLR (4th) 383 — 477 NR 26 — 259 ACWS (3d) 215 —
[2016] 1 WWR 423 — [2015] EXP 3203 — 467 Sask R 1 —
31 CBR (6th) 1 — EYB 2015-258560 — JE 2015-1778 —
[2015] SCJ No 53 (QL)

Citation: Saskatchewan (Attorney General) v. Lemare Lake Logging
Ltd., 2015 SCC 53 (CanLII), [2015] 3 SCR 419,
<<https://canlii.ca/t/gm22q>>, retrieved on 2025-11-06



SUPREME COURT OF CANADA

CITATION: Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd., 2015 SCC 53, [2015] 3 S.C.R. 419

DATE: 20151113
DOCKET: 35923

BETWEEN:

Attorney General for Saskatchewan
Appellant
and
Lemare Lake Logging Ltd.
Respondent
- and -

**Attorney General of Ontario and
Attorney General of British Columbia**
Interveners

CORAM: Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

JOINT REASONS FOR JUDGMENT: Abella and Gascon JJ. (Cromwell, Moldaver, Karakatsanis and Wagner JJ. concurring)
(paras. 1 to 74)

DISSENTING REASONS: Côté J.
(paras. 75 to 129)

Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd., 2015 SCC 53, [2015] 3 S.C.R. 419

Attorney General for Saskatchewan

Appellant

v.

Lemare Lake Logging Ltd.

Respondent

and

**Attorney General of Ontario and
Attorney General of British Columbia**

Interveners

Indexed as: Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.

2015 SCC 53

File No.: 35923.

2015: May 21; 2015: November 13.

Present: Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Constitutional law — Cooperative federalism — Division of powers — Bankruptcy and insolvency — Property and Civil Rights — Receiver — Federal paramountcy — Federal legislation authorizes court, upon application of secured creditor, to appoint receiver with power to act nationally — Provincial legislation imposes other procedural and substantive requirements before commencing an action with respect to farm land — Whether provincial legislation constitutionally inoperative when application made to appoint national receiver under federal legislation, by reason of doctrine of federal paramountcy — [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 243](#) — [The Saskatchewan Farm Security Act, S.S. 1988-89, c. S-17.1, ss. 9 to 22](#).

A secured creditor brought an application pursuant to [s. 243\(1\)](#) of the [Bankruptcy and Insolvency Act](#) for the appointment of a receiver over substantially all of the assets of its debtor, a “farmer” within the meaning of [The Saskatchewan Farm Security Act](#). The debtor contested the appointment and argued that the creditor had to comply with Part II of [The Saskatchewan Farm Security Act](#), which requires that before commencing an action with respect to farm land, a person must submit a notice of intention, await the expiry of a 150-day notice period, and engage in a mandatory review and mediation process. The chambers judge found that the provisions in Part II of [The Saskatchewan Farm Security Act](#) did not conflict with [s. 243\(1\)](#) of the [Bankruptcy and Insolvency Act](#). The Court of Appeal found that Part II of [The Saskatchewan Farm Security Act](#) frustrated the purpose of [s. 243\(1\)](#) of the [Bankruptcy and Insolvency Act](#) and was therefore inoperative in circumstances where an application is made to appoint a receiver.

Held (Côté J. dissenting): The Court of Appeal’s conclusion that Part II of [The Saskatchewan Farm Security Act](#) is constitutionally inoperative where an application is made to appoint a receiver pursuant to [s. 243\(1\)](#) of the [Bankruptcy and Insolvency Act](#), is set aside.

Per Abella, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.: The paramountcy analysis requires consideration of whether any overlap between the federal and provincial laws constitutes a conflict sufficient to render the provincial law inoperative. Two kinds

of conflict are at play: (1) an operational conflict, where compliance with both the federal and provincial law is impossible; and (2) frustration of purpose, where the provincial law thwarts the purpose of the federal law. The operational conflict branch of the paramountcy doctrine requires that there be “actual conflict” between the federal and provincial legislation. Here, there is no operational conflict because it is possible to comply with both statutes. The issue therefore centres on whether the provincial legislation frustrates the purpose of the federal legislation.

Given the guiding principle of cooperative federalism, which allows for some interplay and overlap between both federal and provincial legislation, paramountcy must be narrowly construed. Courts must take a restrained approach, and harmonious interpretations of federal and provincial legislation should be favoured. If a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to a construction which would bring about a conflict between the two statutes. Absent clear evidence that Parliament intended a broader statutory purpose, courts should avoid an expansive interpretation of the purpose of federal legislation which will bring it into conflict with provincial legislation. Clear proof of purpose is required. The burden a party faces in successfully invoking paramountcy is accordingly a high one; provincial legislation restricting the scope of permissive federal legislation is insufficient on its own.

In this case, what the evidence shows is a simple and narrow purpose for [s. 243](#) of the *Bankruptcy and Insolvency Act*: the establishment of a regime allowing for the appointment of a national receiver, thereby eliminating the need to apply for the appointment of a receiver in multiple jurisdictions.

[Section 243\(1\)](#) of the *Bankruptcy and Insolvency Act* authorizes a court, upon the application of a secured creditor, to appoint a receiver where such appointment is “just or convenient”. Under [s. 244\(1\)](#), a secured creditor who intends to enforce a security on all or substantially all of the inventory, accounts receivable or other property of an insolvent debtor that was acquired for, or used in relation to, a business carried on by the insolvent person, is generally required to send a notice of that intention to the insolvent person. [Section 243\(1.1\)](#) states that,

where notice is to be sent under s. 244(1), the appointment of a national receiver cannot be made before the expiry of 10 days after the day on which the secured creditor sends the notice. The national receivership regime under s. 243(1) does not oust a secured creditor's power to have a receiver appointed privately, or by court order under provincial law or any other federal law.

Part II of *The Saskatchewan Farm Security Act* is aimed at affording protection to farmers against loss of their farm land. Subject to ss. 11 to 21, s. 9(1)(d) of *The Saskatchewan Farm Security Act* prohibits commencement of any "action" with respect to farm land. This includes an application for the appointment of a receiver under s. 243(1) of the *Bankruptcy and Insolvency Act*. Section 11(1)(a), however, states that, where a mortgagee makes an application with respect to a mortgage on farm land, the court may, on any terms and conditions that it considers just and equitable, order that s. 9(1)(d) does not apply. Before a mortgagee can bring an application under s. 11, a number of preconditions must be fulfilled, including a compulsory and non-waivable 150-day waiting period during which a mandatory review and mediation process occurs. Once the 150-day waiting period is over, the mortgagee may then make an application for an order granting leave to commence the action. On hearing the application, the court must presume that the farmer has a reasonable possibility of meeting his or her obligations under the mortgage, and that he or she is making a sincere and reasonable effort to meet those obligations.

As a result of the concurrent operation of s. 243(1) of the *Bankruptcy and Insolvency Act* and Part II of *The Saskatchewan Farm Security Act*, a secured creditor wishing to enforce its security interest against farm land must wait 150 days, rather than the 10 days imposed under federal law. The creditor must also comply with the various additional requirements of *The Saskatchewan Farm Security Act*, such as the statutory presumptions described above. That interference with s. 243(1), however, does not, in and of itself, constitute a conflict. A conflict will only arise if such interference frustrates the purpose of the federal regime.

Section 243's purpose is simply the establishment of a regime allowing for the appointment of a national receiver, thereby eliminating the need to apply for the appointment of a

receiver in multiple jurisdictions. There is insufficient evidence for casting s. 243's purpose more widely.

There is nothing in the words of s. 243 suggesting that the 10-day waiting period imposed by the provision should be treated as a ceiling rather than a floor. The discretionary nature of the s. 243 remedy — as evidenced by the fact that the provision provides that a court “may” appoint a receiver if it is “just or convenient” to do so — lends further support to a narrower reading of the provision's purpose. A secured creditor is not entitled to appointment of a receiver. Rather, s. 243 is permissive, allowing a court to appoint a receiver where it is just or convenient. Interference with a discretion granted under federal law is not, by itself, sufficient to establish frustration of federal purpose. Nothing in the text of the provision or the *Bankruptcy and Insolvency Act* more generally suggests that s. 243 is meant to be a comprehensive remedy exclusive of provincial law.

Any uncertainty about whether s. 243 was meant to displace provincial legislation like *The Saskatchewan Farm Security Act* is further mitigated by s. 72(1) of the *Bankruptcy and Insolvency Act*, which explicitly recognizes the continued operation of provincial law in the bankruptcy and insolvency context, except to the extent that it is inconsistent with the *Bankruptcy and Insolvency Act*. Moreover, other provisions of the *Bankruptcy and Insolvency Act* further support a more narrow reading of s. 243's purpose. Notably, s. 47 provides a mechanism for the appointment of an interim receiver where there is an urgent need for the appointment of a receiver.

The legislative history of s. 243 of the *Bankruptcy and Insolvency Act* further supports a narrow construction of the provision's purpose — i.e., to avoid a multiplicity of proceedings and the inefficiency resulting from them. Vague and imprecise notions like timeliness or effectiveness cannot amount to an overarching federal purpose that would prevent coexistence with provincial laws.

It is notable that Parliament has recognized that the receivership provision under s. 243 can be subordinated to potentially longer delays in other federal legislation (including the [federal](#)

Farm Debt Mediation Act). Given the presumption that Parliament does not enact related statutes that are inconsistent with one another, courts should avoid an interpretation of a federal statute which does not accommodate similar limitations imposed under a provincial statute. It follows that Parliament intended neither to preclude all notice periods longer than the 10-day notice period in the *Bankruptcy and Insolvency Act* nor to oust legislation which is intended to favour mediation between creditors and farmers.

Furthermore, on this record, there is simply no evidence to support the argument that the 150-day delay or the other conditions in *The Saskatchewan Farm Security Act* frustrate any effectiveness or timeliness concerns. It is the burden of the party invoking paramountcy to not only establish that these are, in fact, the purposes of s. 243, but also that the evidence supports a finding that the provincial law frustrates them in some way. The record is silent in that regard. Parliament's purpose of providing bankruptcy courts with the power to appoint a national receiver is not frustrated by the procedural and substantive conditions set out in the provincial legislation.

There is, as a result, no evidentiary basis for concluding that s. 243 was meant to circumvent the procedural and substantive requirements of the provincial laws where the appointment is sought. The general goals of bankruptcy or receivership cannot be used to trump the specific purpose of s. 243 and to artificially extend the provision's purpose to create a conflict with provincial legislation. Construing s. 243's purpose more broadly in the absence of clear evidence, is inconsistent with the requisite restrained approach to paramountcy.

The conclusion that Part II of *The Saskatchewan Farm Security Act* is constitutionally inoperative where an application is made to appoint a receiver pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, is accordingly set aside.

Per Côté J. (dissenting): A yearning for a harmonious interpretation of both federal and provincial legislation cannot lead courts to disregard obvious purposes that are pursued in federal legislation. In the case of s. 243 of the *Bankruptcy and Insolvency Act* (“BIA”), Parliament intended to establish a process for appointing national receivers, and intended that process to be timely,

sensitive to the totality of circumstances and capable of responding to emergencies. These federal purposes are plainly evident in s. 243 *BIA*, understood in light of the realities and demands of real-time insolvency practice, s. 243's statutory context and its legislative history. To the extent that *The Saskatchewan Farm Security Act* (“*SFSA*”) is incompatible with these purposes, there is a frustration of purpose.

Given the often frenzied rush of insolvency proceedings, secured creditors will frequently have an acute need to have a receiver appointed promptly. Implicit in the 10-day notice period of s. 243 *BIA* is the very notion of urgency.

In addition, Parliament permits secured creditors to apply for receivership before the expiry of the 10-day notice period in certain circumstances. This is evidence of Parliament's intention to provide secured creditors with a remedy capable of adapting to the often dramatic circumstances of insolvency. The significant discretion vested in the courts suggests that Parliament wished courts to respond to each application on a case-by-case basis in light of the full factual matrix before them. Moreover, the *BIA*'s interim receivership regime confirms the vital importance of timeliness for the national full receivership.

This federal purpose of timeliness can also be discerned from the legislative history of the statutory notice provision. A full purposive analysis must account for the federal objectives that were originally given effect in the statutory scheme. While s. 243 *BIA*'s introduction was prompted by a need for a national full receiver, s. 243 is the product of an incremental evolution. The foundational purposes that have animated federal receivership law since 1992 must form part of any credible account of the federal purpose underlying today's s. 243. If this Court disregards these foundational purposes in its frustration of purpose analysis, the provinces will be left free to mangle the receivership scheme.

On the argument that the special treatment afforded to farmers by the *BIA* must be included in any purposive analysis of s. 243 *BIA*, given that Parliament expressly excluded farmers from involuntary bankruptcy proceedings, one would expect that Parliament would have enacted a

similar provision with regard to the appointment of a national receiver under Part XI of the *BIA*. However, there is no such provision in Part XI. In addition, there are stark differences between the [federal Farm Debt Mediation Act](#) (“*FDMA*”) and the [SFSA](#), both in their operation and the policy preferences they embody. As a result, the existence of the former cannot be taken as evidence that Parliament intended the *BIA* to coexist with the latter. The scheme of the *FDMA* is quite compatible with the balance struck in s. 243 *BIA*; if the provincial legislation had mirrored the *FDMA*, the conclusion as to frustration of federal purpose would have been different.

Although Part XI of the [BIA](#) contemplates some degree of interaction and overlap with provincial legislation, the essential question remains whether the operation of Part II of the [SFSA](#) undermines to a sufficient extent the federal purpose underlying s. 243 *BIA*. Here, if understood in more general terms, the federal purpose is clearly drawn in broad strokes, namely to establish a process for applying for a national receiver that is timely, adaptable in case of emergency and sensitive to the totality of circumstances. If a province wishes to legislate in a way that will affect the federal receivership regime, then it must do so in a manner consistent with that purpose.

In the instant case, the federal purpose has been frustrated by the important obstacles the province has deliberately placed in the way. The notice period in the [SFSA](#) is far longer, and is absolute. The *SFSA* also establishes a series of evidentiary hurdles that are incompatible with Parliament’s purpose. It is clear that the provincial legislation cannot operate in real time, and is in fact intended to hinder the timely appointment of a receiver, thereby triggering the application of the doctrine of federal paramountcy.

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[CanLII 219 \(SCC\)](#), [1982] 2 S.C.R. 793; *R. v. Laba*, [1994 CanLII 41 \(SCC\)](#), [1994] 3 S.C.R. 965; *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005 SCC 13](#), [2005] 1 S.C.R. 188; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997 CanLII 317 \(SCC\)](#), [1997] 3 S.C.R. 3; *Tsilhqot'in Nation v. British Columbia*, [2014 SCC 44](#), [2014] 2 S.C.R. 257; *Canadian Western Bank v. Alberta*, [2007 SCC 22](#), [2007] 2 S.C.R. 3; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, [2010 SCC 39](#), [2010] 2 S.C.R. 536; *Quebec (Attorney General) v. Canada (Human Resources and Social Development)*, [2011 SCC 60](#), [2011] 3 S.C.R. 635; *Marine Services International Ltd. v. Ryan Estate*, [2013 SCC 44](#), [2013] 3 S.C.R. 53; *Bank of Montreal v. Marcotte*, [2014 SCC 55](#), [2014] 2 S.C.R. 725; *Multiple Access Ltd. v. McCutcheon*, [1982 CanLII 55 \(SCC\)](#), [1982] 2 S.C.R. 161; *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999 CanLII 648 \(SCC\)](#), [1999] 2 S.C.R. 961; *Law Society of British Columbia v. Mangat*, [2001 SCC 67](#), [2001] 3 S.C.R. 113; *Attorney General of Canada v. Law Society of British Columbia*, [1982 CanLII 29 \(SCC\)](#), [1982] 2 S.C.R. 307; *Reference re Securities Act*, [2011 SCC 66](#), [2011] 3 S.C.R. 837; *OPSEU v. Ontario (Attorney General)*, [1987 CanLII 71 \(SCC\)](#), [1987] 2 S.C.R. 2; *General Motors of Canada Ltd. v. City National Leasing*, [1989 CanLII 133 \(SCC\)](#), [1989] 1 S.C.R. 641; *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999 CanLII 655 \(SCC\)](#), [1999] 3 S.C.R. 134; *Quebec (Attorney General) v. Lacombe*, [2010 SCC 38](#), [2010] 2 S.C.R. 453; *Quebec (Attorney General) v. Canada (Attorney General)*, [2015 SCC 14](#), [2015] 1 S.C.R. 693; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001 SCC 40](#), [2001] 2 S.C.R. 241; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989 CanLII 87 \(SCC\)](#), [1989] 1 S.C.R. 927; *British Columbia (Attorney General) v. Lafarge Canada Inc.*, [2007 SCC 23](#), [2007] 2 S.C.R. 86; *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#), [2010] 3 S.C.R. 379; *Cadillac Fairview Inc., Re* (1995), [1995 CanLII 7362 \(ON SC\)](#), 30 C.B.R. (3d) 17; *Edgewater Casino Inc., Re*, [2009 BCCA 40](#), 265 B.C.A.C. 274; *Transglobal Communications Group Inc., Re*, [2009 ABQB 195](#), 4 Alta. L.R. (5th) 157; *GMAC Commercial Credit Corp. — Canada v. T.C.T. Logistics Inc.*, [2006 SCC 35](#), [2006] 2 S.C.R. 123; *Gentra Canada Investments Inc. v. Lehndorff United Properties (Canada)* (1995), [1995 CanLII 18044 \(AB CA\)](#), 169 A.R. 138.

By Côté J. (dissenting)

Century Services Inc. v. Canada (Attorney General), [2010 SCC 60](#), [2010] 3 S.C.R. 379; *Canadian Western Bank v. Alberta*, [2007 SCC 22](#), [2007] 2 S.C.R. 3; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, [2010 SCC 39](#), [2010] 2 S.C.R. 536; *Law Society of British Columbia v. Mangat*, [2001 SCC 67](#), [2001] 3 S.C.R. 113; *Reference re Securities Act*, [2011 SCC 66](#), [2011] 3 S.C.R. 837; *Quebec (Attorney General) v. Canada (Attorney General)*, [2015 SCC 14](#), [2015] 1 S.C.R. 693; *Railside Developments Ltd., Re*, [2010 NSSC 13](#), 62 C.B.R. (5th) 193; *GMAC Commercial Credit Corp. — Canada v. T.C.T. Logistics Inc.*, [2006 SCC 35](#), [2006] 2 S.C.R. 123; *Jacob's Hold Inc. v. Canadian Imperial Bank of Commerce* (2000), [2000 CanLII 22730 \(ON SC\)](#), 52 O.R. (3d) 776; *Bank of Montreal v. Hall*, [1990 CanLII 157 \(SCC\)](#), [1990] 1 S.C.R. 121; *Marine Services International Ltd. v. Ryan Estate*, [2013 SCC 44](#), [2013] 3 S.C.R. 53; *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005 SCC 13](#), [2005] 1 S.C.R. 188.

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Thomson Irvine and Katherine Roy, for the appellant.

No one appeared for the respondent.

Michael S. Dunn and Daniel Huffaker, for the intervener the Attorney General of Ontario.

Written submissions only by *R. Richard M. Butler and Jean M. Walters*, for the intervener the Attorney General of British Columbia.

Jeffrey M. Lee, Q.C., and *Kristen MacDonald*, for the *amicus curiae*.

The judgment of Abella, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ. was delivered by

[1] ABELLA AND GASCON JJ. — Prior to 2005, receivership proceedings involving assets in more than one province were complicated by the simultaneous appointment of different receivers in different jurisdictions. Because of the inefficiency resulting from this multiplicity of proceedings, the federal government amended its bankruptcy legislation to permit their consolidation through the appointment of a national receiver. This appeal involves a constitutional challenge to provincial farm legislation on the grounds that it conflicts with this national receivership regime. For the reasons that follow, we see no such conflict.

Background

[2] Lemare Lake Logging Ltd., a secured creditor, brought an application pursuant to [s. 243\(1\)](#) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (*BIA*), for the appointment of a receiver over substantially all of the assets except livestock of its debtor, 3L Cattle Company Ltd., a “farmer” within the meaning of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1 (*SFSA*). 3L Cattle contested the appointment and argued that Lemare Lake had to comply with Part II of the *SFSA* before seeking the appointment of a receiver under [s. 243\(1\)](#).

[3] Part II of the *SFSA* provides that, before starting an action with respect to farm land, a creditor must serve a “notice of intention”, engage in mandatory mediation, and prove that the

2007 amendments to the [BIA](#) made clear that interim receivers were to be temporary in nature and have more limited powers, as originally intended, but gave courts the power to appoint a receiver with authority to act nationally, thereby increasing efficiency and removing the need to seek the appointment of a receiver in each jurisdiction where the debtor has assets. Sarra, Morawetz and Houlden have explained:

Section 243 grants authority to the court, defined in s. 2 to include a judge exercising jurisdiction under the [BIA](#), to appoint a receiver with the power to act nationally, thereby eliminating the need to apply to the courts in multiple jurisdictions for the appointment of a receiver. The national receiver under the [BIA](#) is entitled to act across the country, increasing efficiency by removing the need to have a receiver appointed in each jurisdiction in which the debtor's assets are located. [Emphasis added; p. 1037.]

[68] Section 243 was thus aimed at the establishment of a national receivership regime. Its purpose was to avoid a multiplicity of proceedings and the inefficiency resulting from them. There is no evidentiary basis for concluding that it was meant to circumvent the procedural and substantive requirements of the provincial laws where the appointment is sought. General considerations of promptness and timeliness, no doubt a valid concern in any bankruptcy or receivership process, cannot be used to trump the specific purpose of s. 243 and to artificially extend the provision's purpose to create a conflict with provincial legislation. Construing s. 243's purpose more broadly in the absence of clear evidence that Parliament intended a broader statutory purpose, is inconsistent with the requisite restrained approach to paramountcy and with the fundamental rule of constitutional interpretation referred to earlier in our reasons: paras. 20-21. Vague and imprecise notions like timeliness or effectiveness cannot amount to an overarching federal purpose that would prevent coexistence with provincial laws like the [SFSA](#).

[69] Our conclusion is further bolstered by the operation of the [federal Farm Debt Mediation Act](#), S.C. 1997, c. 21 (*FDMA*), legislation which allows an insolvent farmer to bring an application to stay proceedings by the farmer's creditors in order to engage in mediation and a review of the farmer's financial affairs: ss. 5 to 14. Under the *FDMA*, a security holder must give a farmer at least 15 business days' notice before seeking either to enforce any remedy against the property of a farmer or to commence any proceedings or any action, execution or other proceedings for the recovery of a debt, the realization of any security or the taking of any property of a farmer:

s. 21. Before or after receiving such notice, the farmer may apply for a 30-day stay of proceedings against all creditors, a review of the farmer's financial affairs, and mediation between the farmer and all the farmer's creditors for the purpose of assisting them to reach a mutually acceptable arrangement: ss. 5(1)(a) and 7(1)(b); see also Bennett, at p. 135. Where extension of the 30-day period is essential to the formulation of an arrangement between the farmer and the farmer's creditors, the stay can be extended for up to an additional 90 days: s. 13(1). When the stay is in effect, no creditor can enforce any remedy against the property of a farmer or commence or continue any proceedings or any action, execution or other proceedings for the recovery of a debt, the realization of any security or the taking of any property of a farmer, notwithstanding any other law: s. 12.

[70] In describing the *FDMA*'s predecessor legislation in *M & D Farm*, this Court explained that the legislation was "intended to create a standstill period or moratorium of short duration" to give a farmer "a breathing space in which to attempt to reorganize his or her financial affairs" with "the assistance of a neutral panel to mediate with creditors": para. 18.

[71] While the federal *FDMA* and the provincial *SFSA* have different substantive and procedural requirements, they have similar purposes, and are aimed at the protection of farmer debtors. It is notable that Parliament has recognized that the receivership provision under s. 243 can be subordinated to similar delays in other legislation (including a 120-day stay under the *FDMA*, in comparison with 150 days under the *SFSA*), to allow for mediation and review of a farmer's financial situation. Given the presumption that Parliament does not enact related statutes that are inconsistent with one another, courts should avoid an interpretation of a federal statute which does not accommodate similar limitations imposed under a provincial statute: *Ryan Estate*, at paras. 80-81. In light of the *FDMA*, it follows that Parliament intended neither to preclude all notice periods longer than the 10-day notice period provided in the *BIA* nor to oust legislation which is intended to favour mediation between creditors and farmers regarding the enforcement of a security.

[72] Given these considerations and this analysis, we do not agree with the Court of Appeal's finding that the purpose of s. 243 was to afford a timely remedy to secured creditors.

What seemed “self-evident” to the Court of Appeal (paras. 51-52), and led to its conclusion that the 10-day waiting period under s. 243(1.1) was a ceiling, is, with respect, neither supported by the evidence, nor compatible with a restrained approach to paramountcy. Furthermore, on this record, there is simply no evidence to support *amicus*’s argument that the 150-day delay or the other conditions in the *SFSA* frustrate any effectiveness or timeliness concerns. It is the burden of *amicus* to not only establish that these are, in fact, the purposes of s. 243, but also that the evidence supports a finding that the provincial law frustrates them in some way. The record is silent in that regard. That a recourse may take longer, or may have additional requirements, does not render it automatically ineffective or untimely, particularly when the assets at stake are farm lands.

Conclusion

[73] *Amicus* has, with respect, been unable to satisfy his burden to prove that ss. 9 to 22 of the *SFSA* conflict with the purpose of s. 243 of the *BIA*. Parliament’s purpose of providing bankruptcy courts with the power to appoint a national receiver is not frustrated by the procedural and substantive conditions set out in the provincial legislation. While these conditions require a secured creditor to seek leave before bringing an application for the appointment of a receiver under s. 243 — a process which takes at least 150 days and imposes other procedural and substantive requirements — they do not hinder the purpose of allowing for the appointment of a national receiver. The purpose of permissive federal legislation is not frustrated simply because provincial legislation restricts the scope of that permission: *COPA*, at para. 66; *Ryan Estate*, at para. 69; see also *Rothmans, Benson & Hedges Inc.* The “high standard” for applying the paramountcy doctrine on the basis of frustration of federal purpose has accordingly not been met: *Ryan Estate*, at para. 84.

[74] The Court of Appeal’s conclusion that Part II of the *SFSA* is constitutionally inoperative where an application is made to appoint a receiver pursuant to s. 243(1) of the *BIA*, is

accordingly set aside. In view of the agreement of the parties, there will be no further order with respect to costs.

The following are the reasons delivered by

[75] CÔTÉ J. (dissenting) — It may be an old cliché, but in Canadian bankruptcy and insolvency law, its wisdom is unavoidable: time is of the essence. In the past, this Court has acknowledged that restructuring proceedings are a “hothouse of real-time litigation”: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 58, quoting R. B. Jones, “The Evolution of Canadian Restructuring: Challenges for the Rule of Law”, in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 484. Timeliness is no less important for the appointment of a receiver — whether interim or full — as the receiver at once preserves and manages property while enforcing a secured creditor’s rights.

[76] In light of this, I am of the view that a balance has been struck by Parliament in s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”), between the competing interests of secured creditors and insolvent debtors in the often dramatic circumstances surrounding a debtor’s insolvency. While I agree with the majority’s conclusion that Parliament’s intention in enacting s. 243 BIA was to enable a secured creditor to apply for the appointment of an effective *national* receiver, I must dissent, because I do not believe that a full purposive account of s. 243 can end there. I am of the mind that Parliament also intended to establish a process for appointing national receivers that is timely, sensitive to the totality of circumstances and capable of responding to the emergencies that are known to occur in practice. In my view, these purposes are clearly on display in s. 243 BIA. To the extent that the operation of Part II of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1 (“SFSA”), is incompatible with these purposes and with the federally calibrated balance that s. 243 represents, I see a frustration of purpose.

I. Doctrine of Federal Paramountcy

TAB 8

A Legacy of Protection

*The Saskatchewan Farm Security Act:
History, Commentary & Case Law*

Donald H. Layh Q.C.

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Table of Contents: Summary

CHAPTER ONE: What Does This Mean?	1
CHAPTER TWO: Farm Land Proceedings	43
CHAPTER THREE: Purchase Price Mortgages.....	110
CHAPTER FOUR: Effect of Final Order of Foreclosure.....	142
CHAPTER FIVE: Right of First Refusal.....	175
CHAPTER SIX: Six-year Lease-back	203
CHAPTER SEVEN: Mortgage Terms Controlled	225
CHAPTER EIGHT: Guarantees	254
CHAPTER NINE: Homestead Protection: Exclusionary Orders	273
CHAPTER TEN: Sold Articles – One Remedy	326
CHAPTER ELEVEN: Seizing Implements	377
CHAPTER TWELVE: Exemptions.....	433
CHAPTER THIRTEEN: Farm Ownership.....	533
CHAPTER FOURTEEN: General Provisions	551
TABLE OF CASES	561
INDEX	576
APPENDICES	583
ACKNOWLEDGMENTS	
ABOUT THE AUTHOR	

certain property of a "farmer and his family" is declared free from seizure, a phrase that has been used since the first *Exemption Ordinance* was enacted in 1888. The phrase reflects a paternalistic notion that a man owned the farm assets and his wife and children were protected under the mantle of his ownership.

4 FARM LAND

4.1 What is Farm Land?

"Farm land" may be the most pivotal definition offered by the SFSA. The easiest determination of "farm land" is whether the land is outside of town or village limits. If land is inside town limits, even if used, for example, as an apiary or in market garden production, it cannot be farm land.

Land used *primarily* for the purpose of extracting, processing, storing or transporting minerals is not farm land. Nor is a mineral title an interest in farm land. Consequentially, if a farmer has mortgaged his mineral titles and his surface titles, he will hold all the benefits under Part II of the SFSA respecting the surface titles but none of the benefits respecting the mineral titles.

To be farm land, the land must be used for the purposes of "farming," a term inclusively defined in subsection 2(1)(g) as "livestock raising, poultry raising, dairying, tillage of the soil, beekeeping, fur farming or any other activity undertaken to produce primary agricultural produce and animals." Only if the land is used for the purpose of "farming" does the SFSA offer its benefits. Refer to the discussion of "farming" below.

4.2 Farm Land – A Significant Threshold under the SFSA

Whether or not land is "farm land" as defined in subsection 2(1)(f) invites or excludes a great deal of the SFSA's protection. The term is also instrumental in the definition of "homestead." All homesteads must include a house and buildings located on "farm land." The definition of "farm land" will, therefore, often determine whether one or more of the three major homestead protections offered by the Act is available to a farmer. Saskatchewan homeowners successfully arguing that their rural residences are located on "farm land" will gain significant protection.

The term "farm land" is also used in the definitions of "mortgage," "mortgagor," and "mortgagee" so that all ensuing sections of the Act that provide wide protection to "mortgages" apply only if the land subject to the mortgage is "farm land." For example, whether land is "farm land" will either invoke or preclude the pro-farmer protection afforded by Part II of the SFSA. So, if the land subject to a foreclosure or cancellation proceedings is not "farm land," the SFSA fails to apply and the mortgagor is only offered

the much diminished intervention of *The Land Contracts (Actions) Act* during the pre-foreclosure proceedings. As well, the mortgagor will not enjoy a right of first refusal to purchase non-farm land, as otherwise offered by section 27 of the SFSA. And, if the land is not farm land and is corporately owned, the mortgagor will not have immunity from an action on the covenant to pay contained in a mortgage securing the purchase price of the mortgaged land because section 2 of *The Limitation of Civil Rights Act* will govern and most mortgages contain a clause compelling corporations to waive the benefits of *The Limitation of Civil Rights Act*.¹⁵

5 FARMING

"Farming" is an activity that garners much favour under the SFSA. The definition of "farming" in subsection 2(1)(g) invites extrapolation since "farming" is defined to "include" the activities enumerated, that is "livestock raising, poultry raising, dairying, tillage of the soil, beekeeping, fur farming or any other activity undertaken to produce primary agricultural produce and animals." Does the definition of "farming" also include, for example, a commercial seed cleaning plant that distributes (but does not raise) seed grain to other farmers, the managing of naturally growing woodlots for fiber or pulpwood, or the tending of horses kept for recreational uses?

The extent of activity necessary to qualify as "farming" has been the subject of judicial comment. Where several horses were kept on 10.6 acres of land the court concluded that the horses were "presumably not destined for the food chain" and "insufficient for breeding stock" and such activity was not considered farming and, consequently, the land not farm land.¹⁶ A small number of poultry raised on a 10 acre parcel of land will not establish a farming operation.¹⁷ Non traditional farming activities such as raising llamas, miniature donkeys, and horses for show and stud fees, and keeping angora goats, guinea pigs and hamsters may constitute farming.¹⁸ Boarding horses on 80 acres of land and raising and selling a small number of beef animals and poultry satisfies the definition of farming.¹⁹

The activity of "farming" is the gatekeeper of many protections under the SFSA. Whether a particular enterprise or activity constitutes "farming" will determine whether many provisions of the SFSA are triggered: whether a corporation qualifies as an "agricultural corporation" (subsection 2(1)(1)); whether land is "farm land" (subsection 2(1)(f)); whether land is a

¹⁵ See the detailed discussion in Chapter Two.

¹⁶ *First Nations Bank of Canada v. Ledoux*, 2005 SKQB 262.

¹⁷ *Bank of Nova Scotia v. Anderson*, 2001 SKQB 132.

¹⁸ *Gancarczyk v. Neubuhr* (1990), 84 Sask. R. 99 (Q.B.).

¹⁹ *Royal Bank of Canada v. Lockhart*, (23 November 1993), Saskatoon (Sask. Q.B.).