

COURT FILE NUMBER

2501-17633

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

*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.*

Clerk's Stamp

APPLICANT

CORTLAND CREDIT LENDING
CORPORATION

RESPONDENTS

INDEPENDENT RENEWABLE RESOURCES
CORP. and INDEPENDENT ENERGY
HOLDINGS INC.

DOCUMENT

**BENCH BRIEF OF INDEPENDENT
RENEWABLE RESOURCES CORP. and
INDEPENDENT ENERGY HOLDINGS INC**

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I. INTRODUCTION

1. This Bench Brief is submitted on behalf of the Respondents, Independent Energy Holdings Inc. (“**Energy Holdings**”) and Independent Renewable Resources Corp. (“**IRRC**”, and together with Energy Holdings, the “**Debtors**”) in opposition to the receivership order sought by Courtland Credit Lending Corporation (“**Cortland**”) seeking:

- (a) an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”), as receiver and manager (in such capacity, the “**Receiver**”) over all of the current and future assets, undertakings and properties (collectively, the “**Property**”) of Independent Renewables Resources Corp. and Independent Energy Holdings Inc, pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-31¹ (the “**BIA**”) and section 13(2) of the *Judicature Act*, RSA 2000, c J-2; and,
- (b) such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

(the “**Application**”)

2. More specifically, the Debtors oppose the Application on the following grounds:

- (a) Cortland has failed to serve the required statutory notice pursuant to the *Farm Debt Mediation Act*, SC 1997, c 21² (the “**FDMA**”), and as such, the Statement of Claim issued by Cortland should be struck; and,
- (b) Cortland has failed to serve the required statutory notice pursuant to *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1³ (the “**SFSA**”) which renders any enforcement proceedings commenced against farm land in Saskatchewan a nullity and void.

¹ [Bankruptcy and Insolvency Act, RSC 1985, c B-31](#) [“**BIA**”]

² [Farm Debt Mediation Act, SC 1997, c 21](#) [“**FDMA**”]

³ [The Saskatchewan Farm Security Act, SS 1988-89, c S-17.1](#) [“**SFSA**”]

3. On the basis of the above opposition, the Application should be dismissed, and the Statement of Claim should be struck for failing to comply with the provisions of the *FDMA* and *SFSA*.

4. The Debtors rely on the Affidavit of Bryce Karl sworn November 5, 2025⁴ filed in opposition to this Application.

II. FACTS

5. IRRC is the legal owner of lands located in the RM of Bone Creek No. 108, Saskatchewan, and legally described as:

Surface parcel #149547055
Reference Land Description: NW Sec 08 Twp 09 Rge 17 W3 Extension 30
As described on certificate of title 86SC12902, description 30.

(the “**Lands**”)⁵

6. IRRC granted a mortgage to Cortland with respect to the Lands on February 16, 2022 in the amount of \$280,000,000.00. In order to enforce its security against the Lands, Cortland is required to commence a foreclosure action as the Lands cannot and should not be included within the receivership in first instance unless the provisions of the *FDMA* and *SFSA* have been first complied with.

7. To date, IRRC has not been served with the required statutory notices under the *FDMA* and *SFSA*. The Debtors and Cortland have not attended the mandatory mediation, as required. Finally, no application for leave to commence has been served on IRRC.⁶

III. ISSUES

8. The Debtors respectfully submit that this Application raises the following issues for determination by this Honourable Court, namely:

⁴ Affidavit of Bryce Karl, sworn November 5, 2025 [the “**Karl Affidavit**”]

⁵ Karl Affidavit at para 3

⁶ Karl Affidavit at paras 7-8.

- (a) Whether Cortland has failed to serve the required statutory notice under the *FDMA* and if so, whether the Statement of Claim issued by Cortland ought to be struck; and,
- (b) Whether Cortland has failed to serve the required statutory notice under the *SFSA* and if so, whether enforcement proceedings commenced against farm land in Saskatchewan ought to be considered a nullity and void.

IV. ARGUMENT

(a) Cortland has failed to serve the statutory notice under the *FDMA*

9. Pursuant to section 21 of the *FDMA*, secured creditors who intend to enforce against the property of a farmer are required to serve a notice of their intention to do so:

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.

(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).⁷

10. A "farmer" is defined under the *FDMA* as:

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.⁸

⁷ *FDMA*, at section 21.

⁸ *FDMA*, at section 2.

11. And “farming” is defined under the *FDMA* as:

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.⁹

12. The provisions of the *FDMA* have been reviewed and discussed in many decisions of the Saskatchewan Court of King’s Bench. For example, in *Input Capital Corp. v Gustafson*¹⁰, the Court discussed the purpose of the *FDMA* as follows:

[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.¹¹

13. In *Input Capital*, the creditor failed to give the required *FDMA* notices, and its claim was declared a nullity by the Court.¹²

14. As noted more recently in *Procyk v Young’s Equipment Inc.*¹³:

⁹ *Ibid.*

¹⁰ [Input Capital Corp. v Gustafson](#), 2018 SKQB 154 (CanLII) [*Input Capital*]

¹¹ [Input Capital](#), at para 87.

¹² [Input Capital](#), at para 103.

¹³ [Procyk v Young’s Equipment Inc.](#), 2025 SKKB 136 (CanLII) [*Procyk*]

[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.¹⁴

15. In the matter at hand, it is clear that:

- (a) Cortland is a secured creditor pursuant to the provisions of the *FDMA*;
- (b) As deposed in the *Karl Affidavit*, IRRC is a farmer and the Lands are being used for farming, meeting the definitions required by the *FDMA* for its applicability; and,
- (c) No statutory notice has been served by Cortland on IRRC pursuant to the provisions of the *FDMA*.

16. On this basis, IRRC submits that the provisions of the *FDMA* apply and the claim by Cortland is null and void pursuant to section 22 of the *FDMA*.¹⁵

(b) Cortland has failed to serve the statutory notice under the *SFSA*

17. In Saskatchewan, the net effect of sections 9 and 11 of the *SFSA* is that no person shall commence an action for sale or possession of mortgaged farm land without first obtaining leave of the court under section 11 of the *SFSA*. In order to obtain such leave, section 12 of the *SFSA* stipulates that a mortgagee must first serve a statutory notice of intention, await the expiry of the 150-day notice period, and participate in a mandatory mediation process. Failing to obtain the required leave under section 11 renders any action commenced against the land a nullity and any order made with respect to an action or proposed action void.¹⁶ More particularly, section 11 of the *SFSA* states as follows:

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:

¹⁴ [Procyk](#), at para 50.

¹⁵ [FDMA](#), at section 22.

¹⁶ [SFSA](#), at section 11(3).

(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.

[emphasis mine]

18. It was confirmed by the Supreme Court of Canada in *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.* (SCC)¹⁷ that the provisions of the *SFSA* continue to apply and do not frustrate the purpose of the *BIA*.¹⁸

19. To determine the applicability of the *SFSA* to lands located in Saskatchewan, examination of whether the land is “farm land” is required. As noted by learned author Justice D.H. Layh, the easiest determination of “farm land” is whether the land is outside of town or village limits.¹⁹ In addition to this, the *SFSA* defines “farm land” as:

(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;²⁰

20. Further, “farming” as required by the definition of “farm land” is described by the *SFSA* as:

¹⁷ [Saskatchewan \(Attorney General\) v Lemare Lake Logging Ltd.](#), 2015 SCC 53, [Lemare Lake].

¹⁸ *Ibid.*, at para 73.

¹⁹ Donald H. Layh, *A Legacy of Protection: The Saskatchewan Farm Security Act*, (Langenburg: Twin Valley Books, 2009) [A Legacy of Protection] at 18.

²⁰ [SFSA](#), at section 2(f).

(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.²¹

21. Further, a debtor cannot contract out of the provisions of the *SFSA* pursuant to section 105:

No waiver

105(1)

...

(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.²²

22. In the case at bar, the Lands are used for farming purposes. As deposed in the *Karl Affidavit*:

- (a) Between May 2016 and November 2018 while the refinery was being built, there were approximately 12 to 16 horses which were allowed to graze on the Lands;
- (b) While working on building the refinery, horses were trained on the Lands for use in farming activities;

²¹ [SFSA](#), at section 2(g).

²² [SFSA](#), at section 105(2).

- (c) On June 21, 2023, a grazing agreement was entered into between IRRC and Al Hansen, who is a rancher with several hundred head cattle and who owns the land directly east of the Lands, for the purpose of grazing rights for his cattle on the Lands. The purpose of this agreement was to allow the cattle to assist in controlling the grass on the Lands. This agreement continues as of the current date; and,
- (d) From a review a satellite image of the Lands located at Exhibit “C” of the Karl Affidavit, which is a publicly available document, it is clear there is grazing land located on more than half of the parcel.²³

23. Furthermore, the learned author Justice D.H. Layh in *A Legacy of Protection* said this on the definition of “farming” under the *SFSA*:

...

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. Boarding horses on 80 acres of land raising and selling a small number of beef animals and poultry satisfies the definition of farming.²⁴

24. On the basis of the statutory definitions above, IRRC submits that the Lands meet the requirement of “farm land” under the *SFSA* and therefore are subject to its provisions.

25. Given the finding by the Supreme Court of Canada in *Lemare Lake* that the provisions of the *SFSA* did not frustrate the purpose of the *BIA*, secured creditors are required to fulfil the requirements of the *SFSA*, including seeking leave to commence against the farm land prior to it being included in a receivership. This was confirmed by Justice Rothery in the unreported decision on *Canadian Imperial Bank of Commerce v Custom Agriculture Intelligence Incorporated et. al.*²⁵ In this case, counsel for Canadian Imperial Bank of Commerce (“**CIBC**”)

²³ Karl Affidavit at para. 4 and Exhibit “C”.

²⁴ *Supra* Note 18, at page 19.

²⁵ *Canadian Imperial Bank of Commerce v Custom Agriculture Intelligence Incorporated et. al.*, (04 October 2024), Saskatoon, KBG-SA-01031-2024 (SKKB). [*Custom Ag*].

was required to apply for and receive an amended and restated receivership order to include farm lands owned by the debtors once CIBC had obtained leave under the *SFSA*.

26. Unlike the case at bar, CIBC in *Custom Ag*, as secured creditor who held a mortgage on the farm lands, complied with section 12 of the *SFSA* by first serving a statutory notice of intention, awaiting the expiry of the 150-day notice period, and participating in a mandatory mediation process. The Farm Land Security Board authored its report, which was provided to the Court, and an application for leave to commence an action was made pursuant to section 11 of the *SFSA*. The outcome of the said application was the Saskatchewan Court of King's Bench granting an order pursuant to section 11 of the *SFSA* that the *SFSA* not apply to the lands. Upon receiving this order, counsel for CIBC applied for the amended and restated receivership order to include the debtors' lands, which was granted by the Court to allow the lands to be included in the ongoing receivership.

27. IRRC submits that given Cortland's failure to comply with the *SFSA* and given that the Supreme Court of Canada in *Lemare Lake* has indicated that the *SFSA* does not infringe on the *BIA*, the Application must be dismissed and the Statement of Claim issued by Cortland to enforce against the lands be rendered null and void pursuant to section 11(3) of the *SFSA*.

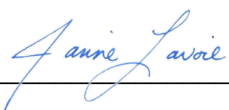
V. **CONCLUSION**

28. For all or the foregoing reasons, IRRC respectfully requests that this Honourable Court dismiss the Application of Cortland and strike the entirety of the Statement of Claim for non compliance with the *SFSA* and *FDMA*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 6th day of November, 2025.

McKERCHER LLP

Per: _____

Solicitors for the Respondents,
Independent Renewable Resources Corp.
and Independent Energy Holdings Inc.

VI. LIST OF AUTHORITIES

STATUTE

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

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