

## LexisNexis® Agricultural Law *NetLetter*

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### **\*\* HIGHLIGHTS \*\***

- \* A Justice of the Alberta Court of Appeal has held that a secured creditor (Farm Credit Canada) was entitled to recover its contractual solicitor and client costs, as well as the principal and interest owed on its secured debt, from the sale proceeds of secured hogs, in priority to the claim of another secured creditor. (*Champion Feed Services Ltd. v Hospers*, [CALN/2015-011](#), [\[2015\] A.J. No. 422](#), Alberta Court of Queen's Bench)
- \* A majority decision of the Federal Court of Appeal has allowed a number of Canadian beekeepers to proceed with a class action against the Federal Government for \$200 million. The beekeepers alleged that a blanket policy implemented by the Minister of Agriculture to prohibit the importation of "packages" of bees from the United States was illegal and that the Minister of Agriculture and the CFIA owed a duty of care to consider import permits on an individual basis, as required by the Regulations under the Health of Animals Act, rather than relying on the Minister's blanket policy. (*Paradis Honey Ltd. v. Canada (Attorney General)*, [CALN/2015-012](#), [\[2015\] F.C.J. No. 399](#), Federal Court of Appeal)

### **\*\* NEW CASE LAW \*\***

*Champion Feed Services Ltd. v Hospers*; [CALN/2015-011](#), Full text: [\[2015\] A.J. No. 422](#); [2015 ABQB 259](#), Alberta Court of Queen's Bench, T.D. Clackson J., April 17, 2015.

Secured Creditors -- Security for Contractual Solicitor and Client Costs.

A Justice of the Alberta Court of Queen's Bench had previously found that Farm Credit Canada ("FCC") had priority over a feed supplier, Champion Feed Services Ltd. ("Champion") to the proceeds from the sale of the hogs from their debtor, David Hospers (2014, ABQB 410) [CALN/2014-030](#), [\[2014\] A.J. No. 914](#).

FCC applied for an Order allowing it to recover its contractual solicitor and client costs from the sale proceeds.

Decision: Clackson, J. held [at para. 3 and 6] that FCC was entitled to be paid its contractual solicitor and client costs out of the sale proceeds by virtue of its Security Agreement with Hospers. FCC's claim to priority for the costs followed from its priority for the rest of its claim [at para. 4].

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*Paradis Honey Ltd. v. Canada (Attorney General)*; [CALN/2015-012](#), Full text: [\[2015\] F.C.J. No. 399](#); [2015 FCA 89](#), Federal Court of Appeal, Nadon, Pelletier and Stratas JJ.A., April 8, 2015.

Health of Animals Act -- Importation of Animals into Canada -- Liability of the Minister of Agriculture and the CFIA.

A group of commercial beekeepers (the "Beekeepers") sought leave to bring a class action against Her Majesty the Queen, the Minister of Agriculture and Agri-Food (the "Minister") and the Canadian Food Inspection Agency (the "CFIA").

Canadian Beekeepers make up their winter losses by importing new bees. New bees are either imported as a "package", which is a cereal box size container holding a small colony, including a Queen, or as a Queen in a matchbox size container holding a Queen bee and a few attendant bees. It is more efficient to replace an existing colony with a package rather than importing a Queen bee, as importing a Queen bee requires more inputs and carries more risk.

Section 14 of the Health of Animals Act, [S.C. 1990, c. 21](#) (the "Act") authorizes the Minister of Agriculture to make regulations prohibiting the importation of animals and things into Canada. It provides:

14. The Minister may make regulations prohibiting the importation of any animal or other thing into Canada, any part of Canada or any Canadian port, either generally or from any place named in the regulations, for such period as the Minister considers necessary for the purpose of preventing a disease or toxic substance from being introduced into or spread within Canada.

In the absence of a specific regulation, s. 160 of the Health of Animals Regulations (the "Regulations") allows applicants to seek permits or licenses to import animals and things. Section 160 of the Regulations provides:

- 160(1) Any application for a permit or licence required under these Regulations shall be in a form approved by the Minister.
  - (1.1) The Minister may, subject to paragraph 37(1)(b) of the Canadian Environmental Assessment Act, issue a permit or licence required under these Regulations where the Minister is satisfied that, to the best of the Minister's knowledge and belief, the activity for which the permit or licence is issued would not, or would not be likely to, result in the introduction into Canada, or spread within Canada, of a vector,

disease or toxic substance.

Between the late 1990's and December 31, 2006, the Minister of Agriculture made a series of Regulations prohibiting the importation of honey bees into Canada for various periods of time. These prohibitions were designed to prevent the spread in Canada of the tracheal mite bee pest. These Regulations prohibited the importation of "packages" but not the importation of "Queens". This Regulation expired at the end of 2006 and was not replaced.

The CFIA continued to allow "Queens" to be issued pursuant to permits issued under s. 160 of the Regulations. Instead of making a new regulation dealing with the importation of "packages" the Minister adopted a policy that no permits would be issued for the importation of "packages".

The Beekeepers commenced an action alleging that the Minister's policy with respect to packages constituted "a defacto Ministerial Order or directive for which there was no lawful authority".

The Beekeepers also alleged that the Minister and the CFIA owed them a duty of care with respect to the importation of bees from the United States which arose, among other things, from the statutory scheme; that this duty of care was breached, and that the Beekeepers had sustained damages as a result in the sum of \$200 million.

A Federal Court Judge granted the application of the Minister and the CFIA to strike the claim on the grounds that they owed no duty of care to the Beekeepers.

The Beekeepers appealed to the Federal Court of Appeal.

Decision: Stratas, J.A., Nadon, J.A. concurring and Pelletier, J.A. dissenting, allowed the Beekeepers' appeal at para. 154.

Stratas, J.A. concluded that the allegations as alleged in the Beekeepers' Statement of Claim, together with proposed amendments, must be accepted as being true, and if true, supported both a claim in negligence and bad faith [at para. 77].

Stratas, J.A. concluded [at para. 88 to 90] that the pleadings disclosed conduct and interactions supporting the relationship of proximity and that the legislation did not foreclose a finding of proximity.

Stratas, J.A. considered whether there was a policy bar to the duty of care, having regard to the fact that the Minister and the CFIA maintained it had a public duty to protect beekeepers from disease [at para. 92].

Stratas, J.A. rejected the notion that there is a public policy bar [at para. 94], observing, among other things:

- Section 160 of the Health of Animals Regulations provide that permits "shall" be granted on a case by case basis. This provision favours a public

duty to consider importation applications in certain cases [at para. 95].

- The Minister could have exercised his jurisdiction to consider permits on a case by case basis rather than setting a blanket policy [at para. 99].

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**\*\* CREDITS \*\***

This NetLetter is prepared by Brian P. Kaliel, Q.C. of Miller Thomson LLP, Edmonton, Alberta.



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