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**** HIGHLIGHTS ****

- * A Justice of the Alberta Court of Queen's Bench has dismissed a farmer's application for judicial review from an Appeals Committee established by Agriculture Financial Services Corporation to consider appeals from farmers who suffer production losses insured under the federal-provincial AgriInsurance Program. The Court concluded, among other things, that the standard of review is reasonableness and that the Court could not re-weigh the evidence, but instead look at the record to decide if Appeal Committee's conclusions were within acceptable outcomes. The Court also upheld the Committee's finding that the farmer's failure to correct errors in "statement of reported production" prepared by AFSC in relation to a claim constituted a fraudulent, false or misleading statement which disentitled the farmer to recovery. (*F. Prins Potatoes Ltd. v. Agriculture Financial Services Corp.*, CALN/2015-014, [\[2015\] A.J. No. 578](#), Alberta Court of Queen's Bench)

**** NEW CASE LAW ****

F. Prins Potatoes Ltd. v. Agriculture Financial Services Corp.; CALN/2015-014, Full text: [\[2015\] A.J. No. 578](#); [2015 ABQB 335](#), Alberta Court of Queen's Bench, B.E. Mahoney J., May 22, 2015.

Crop Insurance -- Judicial Review of Appeal Committee Decisions -- Standard of Review -- Fraudulent, False and Misleading Statements.

F. Prins Potatoes Ltd. ("Prins") brought an application for judicial review of a decision of Agriculture Financial Services Corporation Appeal Committee (the "Appeal Committee") following a hearing which was held on November 2, 2012. Prins entered into AgriInsurance contracts with Agriculture Financial Services Corporation ("AFSC") for the 2009 and 2010 crop years. The AgriInsurance Program is a federal-provincial government initiative that provides production insurance to Alberta agricultural producers who have suffered production losses due to perils designated in the insurance policy. The AgriInsurance Program is administered in Alberta by AFSC.

Prins made claims for losses alleged to have occurred in relation to its canola crops, spring wheat crops and its potatoe crops in 2009 and 2010.

AFSC initially delinced to pay benefits to Prins in relation to its claim because Prins' "Post Harvest Assessments" were incomplete and inconsistent with actual crop production.

Following discussions between Prins and AFSC, AFSC accepted Prins' claim for production losses with respect to its 2009 seed potatoes and its 2010 canola and seed potatoes.

On June 5, 2012, Prins appealed AFSC's denial of claim production losses with respect to its 2009 wheat and canola, and its 2010 wheat. Prins also appealed AFSC's calculation of the 2009 and 2010 potatoe crop loss claim.

The Appeal Committee issued its reasons on December 3 to 5, 2012. Credibility appeared to be the primary issue related to under-reported grain sales.

Prins filed an application for judicial review on June 3, 2013 but did not serve its application on any of the respondents until February 3, 2014.

Section 10(1) of the Agriculture Financial Services Act, RSA 2000, c. A-12 (the "Act") enables AFSC to establish an appeal committee to hear appeals with respect to crop loss matters.

Section 7(1) of the Agriculture Financial Services Regulation, Alta. Reg 99/2002 (the "Regulation") states that a person who is a party to a contract with AFSC under the Act may appeal the decision of AFSC regarding issues of interpretation of insurance contracts and related documents as they relate to the rights and regulations of any parties to the contract.

Section 10(8) of the Act provides that decisions of the Appeal Committee are binding and final on the parties.

The issues before the Court were:

1. Whether Prins' appeal was barred by the provisions of the Alberta Rules of Court which require applications for judicial review to be served within 6 months of the date of a decision.
2. Whether Prins' Affidavit was admissible.
3. The standard of review.
4. Whether the Appeal Committee erred in dismissing Prins' appeal.

Decision: Mahoney, J. dismissed Prins' application [at para. 66].

Mahoney, J. considered the following issues:

1. Whether Prins' application for judicial review was barred because it was served outside the 6 month date of the Appeal Committee decision.

Mahoney, J. observed after reviewing the rules and the case law, that the 6 month limitation period could not be extended, that strict compliance was required, and that the application was out of time because it was served beyond the 6 month limitation period [at para. 16 to 22].

2. Whether Prins' Affidavit was admissible in an application for judicial review?

Mahoney, J. concluded that Prins Affidavit evidence was not admissible and that the material to be considered by the Court on judicial review is confined to the record of the proceedings before the tribunal in question, relying on *Alberta Liquor Store Association v Alberta (Gaming and Liquor Commission)*, [2006 ABQB 904](#) (CanLII) at paras 40-42 [at para. 23 to 27].

3. What was the appropriate standard of review?

After referring to *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011 SCC 61](#) (CanLII); *Dunsmuir v New Brunswick*, [2008 SCC 9](#) (CanLII), *Smith v Alliance Pipeline Ltd.*, [2001 SCC 7](#) (CanLII) at para. 26; *Nor-Man Regional Health Authority v Manitoba Association of Health Care Professionals*, [2011 SCC 59](#) (CanLII) at para. 35 and *Sattva Capital Corp. v Creston Moly Corp.*, [2014 SCC 53](#) (CanLII), Mahoney, J. concluded [at para. 34] that the reasonableness standard applied, stating:

[34] The standard of reasonableness applies in this case. Interpreting the provisions of the AgriInsurance contract, the methods of paying or denying claims and the application of the law to the particular facts raises a question of mixed fact and law. Furthermore, the Committee was adjudicating within its home statute and within its own area of expertise."

Mahoney, J. added that:

- A Court should not disturb the findings of fact made by the Tribunal "if there was credible evidence upon which the trier could reasonably base his or her conclusion [at para. 35] citing: *Joseph Brant Memorial Hospital v Koziol*, 1977 CanLII 6 (SCC), [\[1978\] 1 SCR 491](#) at 503-504.
- In assessing whether the decision is unreasonable in light of the outcome and reasons, the Court should not substitute its own reasons but look instead at the record to decide if the conclusions are within acceptable outcomes [at para. 37] relying on *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011 SCC 62](#) (CanLII).
- The Court should not reweigh the evidence but instead look on whether the weighing done by the Tribunal was reasonable and whether all relevant

evidence was considered in the fact finding process [at para. 38] relying on *Baker v Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699](#), [199] 2 SCR 817.

4. Whether the Appeal Committee erred in dismissing Prins' appeal?

Prins had claimed indemnity with respect to 2009 and 2010 wheat claims. AFSC was of the view that Prins had breached both its contractual and common law duties by selling an insured crop and not reporting those sales to AFSC.

AFSC relied on the clause in the insurance contract regarding fraudulent, false or misleading statements, which states:

[40] Section FF of the Contract of Insurance refers to fraudulent, false or misleading statements. It states:

FF. Misrepresentation or Misconduct

I. If the Insured or the Insured's agent has made any fraudulent, false or misleading statement to AFSC, the Insured will not be entitled to any Indemnity for the Crop Year in which the fraudulent, false or misleading statement is made.

AFSC took the position that it did not have to prove fraud to deny an indemnity claim - only that Prins was not honest or forthcoming when interacting with AFSC.

Mahoney, J., after reviewing the evidence, commented at para. 49:

[49] To summarize, if you are an insured farmer participating in the ArgiInsurance program, every year you must to fill out an [Harvest Product Report]. When filling out the [Harvest Product Report], the insured farmer must state that he or she has accurately recorded all the production that was sold. The farmer then gets a [Statement of Reported Production] from the AFSC, which he or she then has an opportunity to review. Farmers must inform the AFSC of any inaccuracies in the [Statement of Reported Production].

Prins had given no indication that the information in the statements of reported production were incomplete or inaccurate in any way. A subsequent discrepancy lead to an audit which revealed a number of inaccuracies and the conclusion that a significant amount of production was not reported which should have been reported.

Mahoney, J. concluded [at para. 58] that there was sufficient evidence to support the finding of false or misleading reporting.

5. Prins contested AFSC's measurement of the acreages seeded to potatoes with respect to its 2009 and 2010 seed potato claims.

Mahoney, J. observed [at para. 60] that the AgriInsurance Contract sets out procedures to measure insured acres and that the Appeal Committee's finding that Prins had failed to establish that the field measurements were not unreasonable, or unreliable. To the contrary, the Appeal Committee concluded that the evidence showed that AFSC's measurements were reasonable and reliable.

Mahoney, J. also concluded [at para. 62] that AFSC was not required to pay insurance claims based on sales but, rather, based on post-harvest assessments.

**** CREDITS ****

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