

## LexisNexis® Agricultural Law *NetLetter*

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditor rights, animals, grain, import/export and other matters in an agricultural context.

Thursday, July 21, 2016

Issue 352

Issues added on the 7th and 21st of every month.

### HIGHLIGHTS

- \* The Alberta Court of Appeal has rejected the argument that an agreement entered into between a son, which granted him an option to purchase and a right of refusal with respect to two quarter sections of farmland at 50% of fair market value, was invalid on public policy grounds as a restraint on alienation. The agreement had been entered into as part of an estate and tax planning process. The son had farmed the land, and had paid rent to his mother for 3 decades before she challenged the validity of the agreement. The Court did not comment on the law with respect to policy against restraint on alienation, except to the extent that it concluded the policy did not apply in this case. (Rowland v. Rowland, [CALN/2016-017](#), [\[2016\] A.J. No. 439](#), Alberta Court of Appeal)

### NEW CASE LAW

---

**Rowland v. Rowland;**

[CALN/2016-017](#),

Full text: [\[2016\] A.J. No. 439](#);

[2016 ABCA 134](#),

Alberta Court of Appeal,

**R.L. Berger, J. Watson and T.W. Wakeling JJ.A.,**

May 3, 2016.

*Policy Against Restraint on Alienation -- Farmland -- Estate and Tax Planning Arrangements.*

Marion Rowland ("Marion") appealed to the Alberta Court of Appeal from the decision of a chambers justice who concluded, among other things, that an agreement Marion had reached with her son, Deryl Rowland ("Deryl") with respect to her farmland was not void as an improper restraint against alienation.

Marion, her husband and their three children, including her son, Deryl had all lived on a family farm consisting of 4 quarter sections, until her husband died in 1980.

Deryl had been assisting on the farm before his father's death. When his father died, the farmland passed to Marion. Marion sold the farm equipment to Deryl and transferred two of the quarter sections to Deryl in 1980. Deryl leased the remaining two quarters from Marion.

In the fall of 1985, Marion and Deryl entered into an agreement prepared by a lawyer for estate and tax planning purposes. The agreement involved an option to purchase and a right of refusal to Deryl with respect to the two leased quarter sections.

Eventually a formal "Option to Purchase" agreement was concluded on January 15, 1986. The agreement consisted of:

1. The right to Deryl to acquire the lands after Marion's death at 50% of the then market value; and
2. A right of refusal at the same price should Marion choose to dispose of the lands while alive.

Pursuant to the agreement, Marion also agreed not to accept any purchase offer that was not bona fide, that was not in cash, or which involved a purchase price of less than a full interest in the lands.

The consideration was stated to be \$1.00 which was acknowledged as received.

On January 17, 1986, Deryl filed a Caveat against the lands to substantiate the agreement.

Deryl continued to lease the two quarter sections pursuant to the lease, paid tens of thousands of dollars to Marion, and made a number of improvements to the two quarter sections.

On June 20, 2014, Marion filed an Originating Application for an Order declaring the agreement null and void. At a hearing before a chambers justice she argued that:

1. The agreement was contrary to public policy as a restraint on alienation.
2. The agreement was a testamentary disposition that did not comply with the Wills and Succession Act (Alberta).

3. The right of first refusal was contrary to public policy as a penalty.
4. The agreement was frustrated by the doctrine of impossibility.
5. The agreement was void for a lack of sufficient consideration.

The chambers judge dismissed Marion's application on all of these grounds.

The chambers judge did not deal with Deryl's application for a declaration that the agreement and the Caveat were valid.

Marion appealed the decision to the Court of Appeal on the ground that the agreement was an improper restraint on alienation.

Decision: The Alberta Court of Appeal (Berger, Watson and Wakeling, JJA) dismissed the appeal. The Court observed that the agreement had been in place for 3 decades and that Marion was now in her mid-80's and Deryl was now over 60. The Court concluded that the policy against restraint on alienation did not apply in this case stating, at para. 10:

[10] ...We find it unnecessary to provide an extended disquisition on the subject of improper restraints on alienation, a concept that dates back to the 13th Century. The chambers judge found that the Agreement was not one where a vendor offended the principle against alienation restraint because the vendor did not impose improper conditions on the purchaser. Rather, the vendor simply agreed to encumber lands that she owned and occupied herself by providing certain rights to acquire the lands in future to her adult son who was then farming those lands under a lease. We agree with the chambers judge that the policy against restraint on alienation does not apply in this case. We do not have to determine whether observations by the chambers judge included in her discussion of this issue are correct.

## CREDITS

---

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



For more information about the LexisNexis® Quicklaw® service, call 1-800-387-0899 or email [service@lexisnexis.ca](mailto:service@lexisnexis.ca).

For more information about LexisNexis products or services, visit [www.lexisnexis.ca](http://www.lexisnexis.ca).

Design and compilation © 2016 LexisNexis Canada Inc. All rights reserved. Unless otherwise stated, copyright in the content rests with the author(s). LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under licence. Quicklaw is a registered trademark and NetLetter is a trademark of LexisNexis Canada Inc. Other products or services may be trademarks, registered trademarks or service marks of their respective companies. Use of this NetLetter is subject to the LexisNexis Canada Inc. Terms and Conditions of Data File Usage.