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Bi-weekly issues are added on Thursdays.

**\*\* HIGHLIGHTS \*\***

- \* The Prince Edward Island Court of Appeal has held that Canadian Agricultural Income Stabilization Program ("CAIS") payments are not "proceeds" of a potato crop and do not fall within the ordinary dictionary definition of "proceeds" or the definition of proceeds set out in the PEI Personal Property Security Act. As a consequence, a CAIS payment of \$680,000.00 was not divisible between secured creditors pursuant to the terms of a Subordination Agreement. (McCain Produce Inc. (c.o.b. McCain Fertilizers) v. P.E.I. Lending Agency, [CALN/2010-006](#), [\[2010\] P.E.I.J. No. 9](#), Prince Edward Island Court of Appeal)

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

*McCain Produce Inc. (c.o.b. McCain Fertilizers) v. P.E.I. Lending Agency*; [CALN/2010-006](#), Full text: [\[2010\] P.E.I.J. No. 9](#); [2010 PECA 4](#), Prince Edward Island Court of Appeal, D.H. Jenkins C.J.P.E.I., J.A. McQuaid and M.M. Murphy J.J.A., February 26, 2010.

Personal Property Security -- Proceeds -- CAIS Payments.

Farm Safety Net Legislation -- Canadian Agricultural Stabilization Program.

Summary of Facts: The PEI Lending Agency (the "Lending Agency") appealed to the Prince Edward Island Court of Appeal from the decision of a trial Justice who had held that a Canadian Agricultural Income Stabilization Program ("CAIS") payment of \$680,000.00 due to Rural Realty Co., Ltd. ("Rural Realty") constituted "receivables or proceeds" generated by Rural Realty's 2004 potato crop and that the CAIS payment must therefore be divided between McCain Produce Inc. ("McCain") and the Lending Agency pursuant to the terms of a subordination agreement.

Rural Realty had an 800 acre potato farm in western Prince County, PEI. The Lending Agency had provided Rural Realty with over \$2 million in loans which were secured by a number of general security agreements, which included security over crops, accounts and receivables.

McCain had provided crop inputs to Rural Realty. Rural Realty was also indebted to McCain. Prior to the 2004 crop year, Rural Realty, the Lending Agency and McCain entered into a three party agreement which obligated McCain to supply crop inputs of fertilizer and chemical for Rural Realty's 2004 potato crop. In exchange, the Lending Agency agreed to subordinate its security with respect to specified Rural Realty receivables. The agreement also included the following clause:

"The Lending Agency agrees that McCain shall rank in priority to the Lending Agency with respect to one-half (50%) of all receivables/proceeds generated by the 2004 potato crop of Rural Realty."

The Court of Appeal described the manner in which compensation is payable pursuant to the CAIS program as follows at para. 9:

"The formula for calculating compensation is not exactly straightforward. It is based on margins. Firstly, the income of a farmer in the year of application is measured by deducting production expenses from farm sales. This gives the "production margin". Secondly, the historic income or "reference margin" must be determined by looking at the farmer's production margins for each of the last five years and then takes an "Olympic average" -- that is, the highest and lowest margins are dropped, and the remaining three margins are averaged. If the production margin falls below the reference margin, a payment would be triggered."

The issue before the Court of Appeal was whether the subordination agreement could be interpreted to provide that the CAIS monies are proceeds generated by the 2004 potato crop which would therefore be subject to an equal division between McCain and the Lending Agency.

The trial Judge held that the CAIS payment represented compensation for loss of income which, in this case, was the proceeds of the potato crop, or lack of proceeds. The trial Judge rejected the contention that because the CAIS payment was paid in respect of total farm income, that the payment was not directly related to the potato crop [at para. 14].

Decision: Murphy, J.A. (Jenkins, C.J and McQuaid, J.A. concurring) allowed the Lending Agency's appeal [at para. 38].

Murphy, J.A. observed that the case involved settled principles of contractual interpretation [at para. 20 to 23].

Murphy, J.A. held that the word "proceeds" was not ambiguous and that it was not open to two different fully valid meanings [at para. 26].

Murphy, J.A. found no judicial authority to interpret the word "proceeds" and relied on dictionary definitions and the definition in the PEI Personal Property Security Act to conclude that "proceeds" must mean something which has been derived as a result of converting an article or item into something else, stating, [at para. 29 to 32]:

"[29] The Canadian Oxford dictionary, 2nd edition, defines the word "proceeds" as "money produced by a transaction or other undertaking".

[30] Black's Law Dictionary defines "proceeds" as:

1. The value of land, goods, or investments when converted into money; the amount of money received from a sale.
2. Something received upon selling, exchanging, collecting, or otherwise disposing of collateral.

[31] We can also look to the Personal Property Security Act (PPSA), R.S.P.E.I. Cap. P.-3-1, to assist in defining the word which is stated as follows:

`proceeds' means

- (i) identifiable or traceable personal property that is derived directly or indirectly from any dealing with collateral or proceeds of collateral and in which the debtor acquires an interest, ...

[32] When the plain meaning of the word is applied, the word "proceeds" appears to mean something which has been derived as a result of converting an article or item into something else. It is something which can be identifiable, traceable or linked to the original item."

Murphy, J.A. concluded [at para. 34 and 35]:

"While it may be that the planting of the crop for the 2004 crop year qualified the farmer for participation in the program, it does not follow that any income which the farmer derived from the CAIS program is proceeds or receivables generated from the crop.

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

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