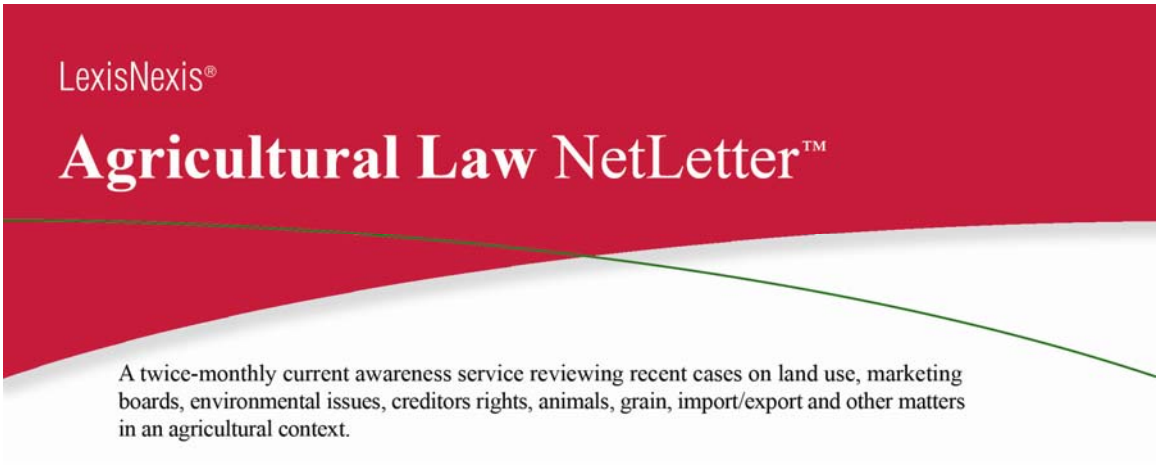

Thursday, August 12, 2010 - Issue 207

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

Bi-weekly issues are added on Thursdays.

**** HIGHLIGHTS ****

* A Justice of the British Columbia Supreme Court has considered whether a family farm which was in the joint names of a husband and his father for 2 years of an 18 year marriage could be considered a "family asset" for purposes of the British Columbia Family Relations Act. The Court distinguished between the farm property in which the farm house was located, and other farm property. The Court treated the transfer as part of a long term estate plan by the husband's father to recognize the contributions made by the entire family to the family and the farm over the years. (Van Eeuwen v. Van Eeuwen, CALN/2010-021, [2010] B.C.J. No. 1489, British Columbia Supreme Court)

**** NEW CASE LAW ****

Van Eeuwen v. Van Eeuwen; CALN/2010-021, Full text: [2010] B.C.J. No. 1489; British Columbia Supreme Court, R. Crawford, J., July 26, 2010.

Matrimonial Property -- Farm Properties -- Parental Interests.

Shona Van Eeuwen ("Shona") brought an application for a declaration that a half interest held by her husband, Peter Van Eeuwen ("Peter") in a farm was a "family asset" within the meaning of the British Columbia Family Relations Act, R.S.B.C. 1996, c. 128, s. 60 (the "Family Relations Act"). Peter's father, Hendrick Van Eeuwen ("Hendrick") was a co-owner of the farm with Peter. Peter and Hendrick both opposed the application. Shona also claimed an interest in farm equipment, including a tractor, and trucks.

The farm consisted of two adjoining parcels. One parcel - Parcel A - consisted of 46 acres and included a farm house, farm buildings, fields and a mobile home. Lot 1 consisted of 51 acres and was primarily grazing land. The farm was located near Duncan, Vancouver Island. The Court concluded that both properties had an overall value of $1.5 million. The value of Parcel A, including the home and a mobile home, was $980,000.00 [at para. 6].

Hendrick's father had purchased the farm in the 1950's. The land was transferred to Hendrick in the late 1960's.

Peter and Shona met in 1982 and married in 1984. In 1987, they purchased a mobile home and placed it on the farm. The mobile home was in their names. Peter and Shona raised their children on the farm. Both Peter and Hendrick worked off the farm. They also both worked on the farm's cattle operation. Shona upgraded her education and obtained a nursing degree. She worked at a health care facility while Peter worked at a pulp mill. She did not do much farm work.

In the late 1990's, Hendrick suffered a number of heart attacks and Peter took over the heavy work on the farm.

The title for the farm was vested in Hendrick's name after his wife Ester died in 1999. In 2000, Hendrick transferred an undivided half interest in both farm properties to Peter for $1.00 and "natural love and affection". They were registered as joint tenants. A trust declaration indicating that Peter held his beneficial interest in the property for his father was prepared but not signed. Hendrick's intention was that Peter would eventually inherit the whole of the property on his death.

Peter and Shona separated in 2002. These proceedings were commenced in 2004.

Decision: R. Crawford, J. held that Parcel A, but not Lot 1, was a family asset [para. 34 and 35], and that a payment of $200,000.00 fairly reflected Shona's interest in the farm, the farm buildings and the farm equipment [at para. 39].

Crawford, J. considered the following issues:

(a) Whether the farm was a family asset?

Crawford, J. observed [at para. 31] that the onus of proof was on the spouse opposing a claim to establish that "the property is not ordinarily used for a family purpose". With regard, Crawford, J. stated at para. 30 to 35 as follows:

> 30 Had the parties not separated, eventually Peter would have become the sole owner of the family farm, and the plaintiff would have been entitled to a half interest. Wills would have been made to ensure the boys inherited the farm.
>
> 31 But that is not the reality. The reality is that two and a half years after Peter became the joint owner of the farm, the parties separated. The question for the court is whether Peter's half interest is a family asset. The

onus of proof is on a spouse opposing such a claim to establish that the property is not ordinarily used for a family purchase: Family Relations Act, R.S.B.C. 1996, c. 128, s. 60 [Family Relations Act].

32 Hendrick waited to see which of his children and step children earned the right to inherit the farm. He rightly chose Peter, who had over the years put long hours in the operation and maintenance of the farm, clearly enjoyed the farm work and would continue to operate the farm, and in time hand it on to his children.

33 But Peter's ability to work on the farm throughout the decades was based on his home where his wife was taking care of the children and tending his household needs. His hours at the mill and the parties' accumulation of assets reflected the fact that they were able to rent or obtain temporary accommodation in the long term expectation that they would inherit the family farm. He and his parents also made it possible for Shona to obtain her nursing qualifications. Although the parties had separate banking from some time in 1995, I am satisfied that there were joint financial contributions to some of the farm equipment that was used on the farm, albeit Shona's contribution would not have been large.

34 Equally, Hendrick made his son earn his right to inherit the farm by his decades of contribution in work and labour on the farm...Thus once the family moved back onto the farm on the death of Ester in 1999, one can plainly see the taking of residence in the farmhouse, and the transfer of the half interest in the farm to Peter in 2000 as simply the completion of a long expected transfer in title. The actual occupation and use of the farm over the following two and a half years crystallised what had been worked for over the years. I find by the time the parties separated in the fall of 2002, Peter's interest in the farm was a family asset.

35 The other issue that then arises is precisely what interest does Shona have in the property? The use of the farm as a family asset is but two and a half years...The defendants' argue that in terms of family asset, the farm title is in the joint names of Peter and Hendrick. And that Shona's interest should be confined to Parcel A, and then just the area adjacent to the farmhouse. The appraisals did not so confine themselves. I do accept the argument that the finding of a family asset is limited to Peter's interest in Parcel A.

(b) The value of Shona's interest in the property.

Crawford, J. concluded that Parcel A was valued at $980,000.00 [at para. 36] and that the issue was "judicial reapportionment of Shona's interest pursuant to s. 65 of the Family Relations Act on the basis of fairness, considering the duration of the marriage, when the property was acquired, the extent to which it was acquired by one spouse through inheritance or gift, and other circumstances. Crawford, J. concluded at para. 37 to 39 as follows:

37 ...Particular facts that apply here in my view are when the property was acquired i.e. in 2000, and the fact the property was acquired by one spouse by way of grant. It was fairly described as part of Hendrick's estate planning on an early inheritance. But it was earned. There is no question of the parties' independent economic abilities. As well it is a long marriage. As to the other circumstances it is apparent that the grandfather and son have been primarily involved in the acquisition, preservation, maintenance and improvement of the property, but equally those abilities have in part rested on grandmother and mother's ability to run their respective households.

38 It is not a matter which lends itself to actuarial calculation. But the brevity of the time when the property was acqually in the name of Peter, and the fact that the half interest has been acquired by grant, albeit, one might say an expected and reasonable one given the lifetime of work that Peter has contributed to the farm, are substantial factors in the assessment of such a claim. Here the transfer occurred two and a half years before the end of the 18 year marriage. On the other hand, it is not easy, nor can there be an accounting of the parties' contributions to the acquisition of the property...

39 In the circumstances I award the sum of $200,000 as fairly reflecting the interest that Shona has in Peter's one-half interest in Parcel A of the farm, including the buildings and farm equipment...

** CREDITS **

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