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## Agricultural Law NetLetter™

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.

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Bi-weekly issues are added on Thursdays.

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

- \* The Ontario Superior Court has granted an Order which allows Quebec cattle farmers to become part of a single national class of farmers in an Ontario class action commenced on behalf of Alberta, Saskatchewan, and Ontario farmers against the Federal Government for damages sustained by Canadian cattle farmers as a result of the closure of international borders following the May 20, 2003 BSE crisis. The Court held that it would be advantageous to all parties for cattle farmers to be represented by a single national class, and that doing so would ensure both judicial efficiency and prevent potential inconsistent judicial results. (Sauer v. Canada (Attorney General), [CALN/2010-022](#), [\[2010\] O.J. 3381](#), Ontario Superior Court of Justice)
- \* A Justice of the British Columbia Supreme Court has upheld the decision of a tax assessor and an Assessment Appeal Board which ruled that an acreage used for raising horses could not be classified as a "farm" for property tax assessment purposes. British Columbia Regulations require farmers to satisfy tax assessors that their land should be classified as farm property. It was held that Courts should not interfere with evidentiary decisions made by assessors and appeal tribunals based on information collected (including hearsay) during the course of the assessment process. (Falkenberg v. British Columbia (Assessor of Area No. 26 - Prince George), [CALN/ 2010-023](#), [\[2010\] B.C.J. No. 1653](#), British Columbia Supreme Court)

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

*Sauer v. Canada (Attorney General)*; [CALN/2010-022](#), Full text: [\[2010\] O.J. 3381](#); 2010 ONSC 4399, Ontario Superior Court of Justice, G.R. Strathy J., August 10, 2010.

Class Actions -- Actions Against the Federal Government for Alleged Negligence and Alleged Misfeasance in Public Office.

An application was made on behalf of Bill Sauer, the Plaintiff in an Ontario class action brought on behalf of all Canadian cattle farmers (other than cattle producers in the Province of Quebec), to make Quebec farmers members of the class of plaintiffs in the Ontario action. One issue was whether or not an opt-out right should be given to Quebec farmers if the application was granted.

In April of 2005, four class actions were brought against the Government of Canada and a feed producer - Ridley, arising from the closure of international borders to Canadian cattle following the May 20, 2003 diagnosis of a single case of bovine spongiform encephalopathy ("BSE") or "mad cow disease" in an Alberta cow. BSE is a fatal neurological disease of cattle that is transmitted when healthy cattle eat feed containing the rendered remains of infected cattle. Rendered remains of cattle were routinely added to cattle feed until the Canadian Government prohibited the practice in October of 1997.

The Crown is alleged to have been negligent as a regulator of the cattle industry and the Amended Statement of Claim includes allegations of misfeasance in public office.

Four actions were commenced in April of 2005 in Quebec, Alberta, Saskatchewan and Ontario. In February of 2008, the Statement of Claim in the Ontario action was amended by consent to include cattle farmers in Alberta and Saskatchewan, and the actions in those provinces were stayed in favour of the Ontario action. The action against Ridley was subsequently settled. In June of 2006, the Crown sought to stay the Quebec action pending the outcome of the national Ontario action, however this application was dismissed. As a result of a series of case management conferences jointly presided over by Justices of the Ontario and Quebec Courts, it was agreed that a motion would be brought to amend the class action in Ontario to include the Quebec class as members.

Decision: G.R. Strathy, J. granted an Order adding Quebec farmers as members of the class of all farmers represented in the Ontario action [at para. 10]. Strathy, J. held that the advantages of doing so were obvious - the Order would promote judicial efficiency, save costs for the parties and ensure a consistent result for cattle farmers across Canada [at para. 10].

While there are some differences between the Quebec legal regime, the Court was satisfied that Quebec class members would not suffer a disadvantage by being included in the class action, and may very well obtain an advantage [at para. 11]. Strathy, J. held that an opt-out provision should be added for Quebec class members even though an opt-out provision had not been part of the Quebec class action. Opt-out provisions are an important procedural protection afforded to unnamed class Plaintiffs and are integral to the Court's duty to ensure the fair conduct of the proceedings [at para. 17 to 21].

The Order was granted subject to the Quebec Court's staying the Quebec class action [at para. 24].

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*Falkenberg v. British Columbia (Assessor of Area No. 26 - Prince George)*; [CALN/2010-023](#), Full text: [\[2010\] B.C.J. No. 1653](#); [2010 BCSC 1189](#), *British Columbia Supreme Court, T.M. McEwan, J., August 23, 2010*.

Property Tax -- Classification of Land as "Farm" Property -- British Columbia Land Classification Procedure.

An acreage owner appealed to the Supreme Court of British Columbia from the decision of an assessment authority, which was upheld by the Property Assessment Appeal Board, that her rural acreage could not be classified as a "farm".

The property consisted of 11.93 hectares north of McBride, British Columbia. The appellant had purchased the property in 2006 and took possession in February of 2007. It had facilities for raising horses on the property, including stables and a riding arena. The previous owner had used the property to board horses. Under the Prescribed Classes of Property Regulation, B.C. Reg. 438/81, a property owner must apply for the classification of "farm" to have the property assessed on this basis. The appellant did so after being advised that her property would be classified as "residential".

The Standards for the Classification of Land as a Farm Regulation, B.C. Reg. 441/95 (the "Regulation") provides that in order to qualify for classification as a farm, an owner or lessee must show the production of primary agricultural products in the "12 month period ending October 31" is of a value scaled for the size of a property. In this case, the appellant would have had to show primary agricultural production of \$2,700.00. Section 5(4) of the Regulations provides that:

- 5(4) In determining the gross annual value, the assessor must,
- (a) consider only the value of the primary agricultural product which takes place on the farm, and
  - (b) include any unrealized value of primary agricultural production grown or raised on the farm in the 12 month period ending October 31.

In applying for farm classification, the Appellant provided evidence of the sale of a horse named "Misty" which had been bred on a previous farm property owned by the Appellant, and had been boarded at the acreage for a few months while she had the property in 2007. Misty was sold in October of 2007 for \$4,000.00. The assessor, through a number of interviews, obtained hearsay evidence from a number of parties which appeared to contradict the Appellant's position, and refused the application. The Appeal Board upheld the assessor's decision.

Decision: McEwan, J. dismissed the appeal [at para. 37]. McEwan, J. held [at para. 30] that the decision was a "evidentiary call" that the assessor and the Appeal Board were entitled to make. Its decision was not a "question of law", and was not made in the absence of evidence.

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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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