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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 Saskatchewan Court of Queen's Bench has held that a security agreement over an after-acquired chicken broiler quota is valid and enforceable. The debtor had a bare legal title (only) to the quota. The beneficial interest was held by a former producer who was no longer qualified to hold quota. The Court held that FCC's security prevailed over the undisclosed equitable interest of the former producer. The case raises important issues concerning the ability to take and enforce security over agricultural quota. (Farm Credit Canada v. K & R Poultry Ltd., [CALN/2011-034](#), [\[2011\] S.J. No. 531](#), Saskatchewan Court of Queen's Bench)

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

*Farm Credit Canada v. K & R Poultry Ltd.*; [CALN/2011-034](#), Full text: [\[2011\] S.J. No. 531](#); [2011 SKQB 316](#), Saskatchewan Court of Queen's Bench, A.R. Rothery J., August 30, 2011.

Secured Transactions -- Agricultural Quotas.

This case is the final of a number of applications pertaining to funds held in trust following the sale of Saskatchewan broiler chicken quota ("quota") formerly held by Dalmeny Road Poultry Ltd. ("Dalmeny") and others.

This report will only deal with the disposition of the priority issue between Farm Credit Canada ("FCC") and K & R Poultry Ltd. ("K & R").

In June of 2009, FCC loaned \$200,000.00 to Dalmeny, and a number of other parties. As security for the loan, Dalmeny granted FCC security over all present and after-acquired personal property including quota. As of August 11, 2011, Dalmeny owed FCC \$207,806.97. FCC claimed this amount from the sale proceeds held in trust.

On August 26, 2009, K & R transferred a legal interest in certain quota to Dalmeny pursuant to a trust agreement under which Dalmeny only acquired the legal interest with the beneficial interest remaining in K & R [para. 10].

Chicken Farmers of Saskatchewan ("CFS") is the regulatory body which administers quota. Quota holders do not own quota, they only have the right to use it. However, CFS allows quota to be granted as collateral security for loans, and does so by issuing Letters of Acknowledgement. CFS issued a Letter of Acknowledgement in this case, acknowledging that Dalmeny had granted a security interest to FCC, and that it would notify FCC of any application to transfer quota, and that it would not approve a transfer without FCC's consent.

K & R could not maintain its quota without transferring the quota to Dalmeny, because CFS required that all "producers" had to own production facilities, and K & R did not own a facility. The agreement between K & R and Dalmeny permitted this requirement to be met - and as far as CFS was aware, Dalmeny was both the legal and equitable owner of this quota [para. 25].

FCC argued that where there is a dispute between the holder of valid registered PPSA security and someone else claiming an interest in personal property, the PPSA interest, including an interest in after-acquired property prevails, relying on *Radius Credit Union Ltd. v. Royal Bank of Canada*, [2009] S.J. No. 148, 2009 SKCA 36, 2010 SCC 48 [para. 14 and 15].

K & R argued that FCC was careless in making the enquiries a prudent lender would have made concerning the ownership of the quota and that this failure constituted constructive notice (para. 19 to 22).

Decision: Rothery, J. dismissed K & R's application, and directed that the funds be paid to FCC [para. 26].

Rothery, J. accepted the proposition that FCC could, under its security agreement, be granted and hold a security interest in after-acquired quota [para. 12].

Rothery, J. also accepted the proposition that if FCC had not acquired this security interest "in good faith, for value and without notice" of K & R's equitable interest, FCC's priority could be lost [para. 18].

However, Rothery, J. held that K & R did not meet the onus of proving that FCC had constructive notice of K & R's equitable interest. Nothing established FCC had failed to make appropriate enquiries. FCC made no enquiries before it advanced the loan - any enquiries made thereafter with CFS would have disclosed that Dalmeny was the legal owner of the quota [para. 23 to 25].

[Editor's Note: This case raises a number of very good academic issues:

- (1) Whether one can take a security interest in quota - is it an intangible as

defined by the PPSA?

- (2) The extent to which principles of constructive notice applies in PPSA priority disputes;
- (3) Was K & R's agreement with Dalmeny a "security agreement"?

Unfortunately the case report does not deal in depth with any of these issues.]

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

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