

## LexisNexis® Agricultural Law *NetLetter*

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### HIGHLIGHTS

- \* The Alberta Court of Appeal has dismissed the appeal of a number of Lethbridge feedlots who argued that a bylaw passed by the County of Lethbridge which imposed a business tax based on the number of cattle which were permitted to be fed in their feedlots was invalid. The Court of Appeal upheld the decision of a Chambers Judge, who concluded that the County's authority to assess a business tax "based on storage capacity of the premises occupied for the purpose of the business" was broad enough to authorize the imposition of the business tax. (Van Raay Paskal Farms Ltd. v Lethbridge (County), [CALN/2019-004](#), [\[2019\] A.J. No. 46](#), Alberta Court of Appeal)

### NEW CASE LAW

#### Van Raay Paskal Farms Ltd. v Lethbridge (County);

Alberta Court of Appeal,

P.W.L. Martin, B.K. O'Ferrall and M.G. Crighton J.J.A.,

January 18, 2019.

[CALN/2019-004](#)

Full Text: [\[2019\] A.J. No. 46](#) | [2019 ABCA 19](#)

#### **Alberta Business Tax — Taxation of Feedlots Based on Feedlot Capacity.**

Van Raay Paskal Farms Ltd. and a number of other feedlots near Lethbridge, Alberta (the "Feedlots") challenged the validity of a business tax bylaw enacted by the County of Lethbridge (the "County") which assessed the tax based on the capacity of their feedlots. The Feedlots argued that the County exceeded its delegated authority under the Municipal Government Act, RSA 2000, c M-26 (the "MGA") in passing the tax.

A Chambers Justice upheld the validity of the County's business tax. The Feedlots appealed to

the Alberta Court of Appeal.

The County passed the bylaw pursuant to sections 371 and 372 of the MGA. Section 374 of the MGA sets out the requirements of business tax bylaw, including the requirement that it specify one or more of the permitted methods of assessment that will be used in preparing the assessment. Section 374(b) reads:

"374(1) The business tax bylaw must

(b) specify one or more of the following methods of assessment as the method or methods to be used to prepare the assessments:

(i) assessment based on a percentage of the gross annual rental value of the premises;

(i.1) assessment based on a percentage of the net annual rental value of the premises;

(ii) assessment based on storage capacity of the premises occupied for the purposes of the business;

(iii) assessment based on floor space, being the area of all of the floors in a building and the area outside the building that are occupied for the purposes of that business;

(iv) assessment based on a percentage of the assessment prepared under Part 9 for the premises occupied for the purposes of the business."

The County opted for the "storage capacity" method of taxation in s. 374(1)(b)(ii) for all confined feeding operations.

The bylaw deemed "storage capacity" to be the number of animals approved in a development permit or by the NRCB with respect to the feedlot.

The Feedlots argued that storage is by its nature a passive activity that cannot include the business activities in a confined feedlot where cattle are fed and fattened subsequent to sale, and that "storage capacity" should be construed narrowly in accordance with the interpretation given to taxation legislation.

The Chambers Judge (Jerke, J), referred to the following dictionary definitions for the words "storage" and "capacity" at para. 24 of his decision:

"Reference was made to definitions of the words "storage" and "capacity". The meaning of "storage" includes: "space or place for storing"; Merriam-Webster Dictionary, on-line, December 20, 2016. "Capacity" or space for storing; a place where something is stored": Shorter Oxford English Dictionary, 6th Ed. The meaning of "capacity" includes: ability to receive, contain, hold, produce or carry; cubic content, volume; the maximum amount or number that can be contained, produced, etc.": Shorter Oxford English Dictionary, 6th Ed. The meaning of "store" when used as a noun, includes "a quantity of something kept available for future use; a reserve, a deposit; a stock": Shorter Oxford English Dictionary, 6th Ed. A more historical definition is "[a] sheep, steer, cow or pig acquired or kept for fattening. Also an animal kept for breeding or as part of the ordinary stock of a farm": Shorter Oxford English Dictionary, 6th Ed. The meaning of "store", when used as a verb,

includes: "to place or leave in a location (such as a warehouse, library or computer memory) for preservation or later use or disposal": Merriam-Webster Dictionary, on-line, December 30, 2016, and "keep in store for future use; collect and keep in reserve; form a store, stock, or supply of; accumulate, hoard": Shorter Oxford English Dictionary, 6th Ed. these definitions are varied and broad, which enable the words to be applied to a wide variety of situations."

Jerke, J concluded that the definitions of "storage" and "capacity" are varied and broad and accordingly applied to a wide variety of situations.

Decision: The majority of the Court of Appeal (Crighton, JA; Martin, JA concurring) dismissed the appeal [at para. 14]. O' Ferrall, JA dissented.

Crighton, JA concluded that the Chambers Justice correctly concluded that the definitions of both "storage" and "capacity" are varied and broad.

Crighton, JA also agreed with the Chambers Justice that the Legislature had used "clear, express and unambiguous language to delegate to delegate to municipalities the power to impose a business tax using a methodology that best captures the business that is carried on within the municipality's boundaries", and that applying the ordinary dictionary definitions for "storage capacity", the County ".opted to impose a tax on the capacity of the premises within the municipal boundary to receive, collect, keep, accumulate, produce, or carry a quantity of something for preservation, accumulation, later use or disposal" [at para. 12].

Crighton, JA rejected the Feedlots' argument that storage is by its nature very passive and cannot include the act or process that involved the operation of a confined feedlot, stating [at para. 11]:

"[11] .Feed lots by their nature employ holding pens where cattle are held for a period during which they are finished so that they might attain the maximum value when they are disposed of. Moreover, on a plain language of the bylaw, it is concerned not with actual use, but with the premises' capacity for storage."

## CREDITS

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