

1998 ABQB 887
Alberta Court of Queen's Bench

Alberta Turkey Producers v. Leth Farms Ltd.

1998 CarswellAlta 969, 1998 ABQB 887, [1999] 7 W.W.R. 12, 14 P.P.S.A.C.
(2d) 77, 229 A.R. 97, 68 Alta. L.R. (3d) 72, 83 A.C.W.S. (3d) 542

Alberta Turkey Producers, formerly known as Alberta Turkey Growers Marketing Board, Applicant and Leth Farms Ltd., Select Turkey Ltd. and Arnold Leth, Respondents and Canadian Imperial Bank of Commerce, Interested Party

Sulyma J.

Judgment: November 3, 1998
Docket: Edmonton 9803-06732

Counsel: *J.V. Miller* and *F.D. Cook*, for the Applicant.
D.H. Shell and *A.R. Gray*, for the C.I.B.C., Interested Party.

Subject: Insolvency; Contracts; Corporate and Commercial

Related Abridgment Classifications

Commercial law

VI Trade and commerce

VI.6 Marketing controls

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Contracts

VI Illegal contracts (substantive validity)

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Headnote

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Bank registered general security interest and Bank Act security in livestock of turkey grower — Grower produced and marketed turkeys in contravention of regulation under Marketing of Agricultural Products Act — Turkeys were ordered seized and sold pursuant to penalty provisions of Marketing of Agricultural Products Act — Bank applied for declaration that its security interest had priority to proceeds of disposal directed to be held for marketing board — Application granted — Not contrary to public policy to allow bank to realize on its security — Security agreements not expressly or impliedly prohibited by statute — No evidence that bank had to rely on its own illegal act in order to prove right to enforce contracts — No evidence that bank intended to commit illegal act by obtaining and registering agreements — Legislative consequences of illegal production did not include forfeiture of proprietary rights — Purpose of legislation and regulation would not be undermined by upholding security — Bank Act, S.C. 1991, c. 46 — Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1, s. 46 — Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1, Turkey Marketing Regulation, Alta. Reg. 397/88, ss. 5(1), 20 — Personal Property Security Act, S.A. 1988, c. P-4.05.

Personal property security --- Priority of security interest — Security interests versus other interests — Under provincial law — Lien, charge or other interest given by statute or rule of law — Miscellaneous interests

Bank registered general security interest and Bank Act security in livestock of turkey grower — Grower produced and marketed turkeys in contravention of regulation under Marketing of Agricultural Products Act — Turkeys were ordered seized and sold pursuant to penalty provisions of Marketing of Agricultural Products Act — Bank applied for declaration that its security interest had priority to proceeds of disposal directed to be held for marketing board — Application granted — Security contracts were valid and enforceable — Security agreements were not prohibited by law — No evidence that bank intended to commit illegal act by obtaining and registering agreements — Contracts were intended to and did provide bank with security over present and after-acquired personal property and livestock which included seized turkeys — Legislative consequences of illegal production did not include forfeiture of proprietary rights — Upholding security would not undermine supply management system of control over agricultural product — Bank Act, S.C. 1991, c. 46 — Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1, s. 46 — Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1, Turkey Marketing Regulation, Alta. Reg. 397/88, ss. 5(1), 20 — Personal Property Security Act, S.A. 1988, c. P-4.05.

Trade and commerce --- Marketing controls — Interpretation

Bank registered general security interest and Bank Act security in livestock of turkey grower — Grower produced and marketed turkeys in contravention of regulation under Marketing of Agricultural Products Act — Turkeys were ordered seized and sold pursuant to penalty provisions of Marketing of Agricultural Products Act — Bank applied for declaration that its security interest had priority to proceeds of disposal directed to be held for marketing board — Application granted — Security contracts were valid and enforceable — Board failed to establish that security agreements were prohibited by law — Board failed to establish that bank intended to commit illegal act by obtaining and registering agreements — Contracts were intended to and did provide bank with security over present and after-acquired personal property and livestock, which included seized turkeys — Consequences of illegal production as set out in Marketing of Agricultural Products Act did not include forfeiture of proprietary rights — Upholding security would not undermine supply management system of control over agricultural product — Bank Act, S.C. 1991, c. 46 — Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1, s. 46 — Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1, Turkey Marketing Regulation, Alta. Reg. 397/88, ss. 5(1), 20 — Personal Property Security Act, S.A. 1988, c. P-4.05.

Table of Authorities

Cases considered by *Sulyma J.*:

- Bank of Montreal v. Wilder* (1983), 47 B.C.L.R. 9, 149 D.L.R. (3d) 193 (B.C. C.A.) — distinguished
- Bank of Montreal v. Wilder*, [1986] 2 S.C.R. 551, 32 D.L.R. (4th) 9, 70 N.R. 341, [1987] 1 W.W.R. 289, 8 B.C.L.R. (2d) 282, 37 B.L.R. 290 (S.C.C.) — distinguished
- Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, 5 C.B.R. (3d) 312, 113 A.R. 371, [1991] 4 W.W.R. 418, 79 Alta. L.R. (2d) 294 (Alta. C.A.) — considered
- Genovese v. York Lambton Corp.* (1969), (sub nom. *Bank of Western Canada, Re*) [1970] 1 O.R. 427, 8 D.L.R. (3d) 593 (Ont. C.A.) — considered
- Love's Realty & Financial Services Ltd. v. Coronet Trust*, 65 Alta. L.R. (2d) 362, [1989] 3 W.W.R. 623, 57 D.L.R. (4th) 606, 94 A.R. 341 (Alta. C.A.) — applied
- Maschinenfabrik Seydelmann K-G v. Presswood Brothers Ltd.* (1965), [1966] 1 O.R. 316, 53 D.L.R. (2d) 224 (Ont. C.A.) — distinguished
- St. John Shipping Corp. v. Joseph Rank Ltd.* (1956), [1957] 1 Q.B. 267, [1956] 3 All E.R. 683, [1956] 2 Lloyd's Rep. 413 (Eng. Q.B.) — applied

Statutes considered:

Bank Act, S.C. 1991, c. 46

Generally — considered

s. 427(4) — referred to

Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1

Generally — referred to

s. 45 — referred to

s. 46 — considered

Personal Property Security Act, S.A. 1988, c. P-4.05

Generally — referred to

Regulations considered:

Marketing of Agricultural Products Act, S.A. 1987, c. M-5.1

Turkey Marketing Regulation, Alta. Reg. 397/88

s. 5(1)

s. 7

s. 8

s. 20 [am. Alta. Reg. 427/91]

APPLICATION by bank for declaration that bank's security interests in form of general security agreement and *Bank Act* security had priority to proceeds of disposal of turkeys ordered sold pursuant to *Marketing of Agricultural Products Act*.

Sulyma J.:

1 This is an application by the Canadian Imperial Bank of Commerce ("C.I.B.C.") for a declaration that C.I.B.C., pursuant to security granted in its favour by Leth Farms and Arnold Leth, takes priority to the proceeds of the disposal of turkeys owned by Arnold Leth and Leth Farms Ltd., which I previously ordered seized, detained and disposed of pursuant to the provisions of the *Marketing of Agricultural Products Act*, S.A. 1987 c. M-5.1 ("the Act") and the Regulations thereunder. It is undisputed that my order ("the realization order") was made as a result of my finding the Respondents, Arnold Leth and Leth Farms Ltd. had produced and marketed turkeys in contravention of Regulations of the Board. My order was made pursuant to ss. 45 and 46 of the Act. The proceeds of the sale of the seized product were directed to be held by the solicitors for the Alberta Turkey Growers Marketing Board ("the Board").

2 C.I.B.C. was granted a security interest by Arnold Leth and Leth Farms pursuant to two Security Agreements ("the G.S.A.'s) and a *Bank Act* Security executed by Leth Farms Ltd. The interests granted by Arnold Leth and Leth Farms Ltd. pursuant to these documents have been duly registered in favour of C.I.B.C. under the *Alberta Personal Property Security Act*, S.A. 1988, c. P-4.05 and in compliance with s. 427(4) of the *Bank Act of Canada*, C.I.B.C. registered a notice of intention to grant bank security with the Bank of Canada. C.I.B.C. submits that the seized turkeys were owned by Leth and Leth Farms and to that extent the product and proceeds of sale are subject to the registered charges. The debt at the time of this application totalled \$1,274,016.97 plus interest.

3 The issues raised in this application are:

(a) Does the Bank security cover the seized turkeys given they were produced in contravention of the Regulations? and

(b) If it does, is it contrary to public policy to allow the Bank to realize on its security against such production?

4 I must note that at the time I made the Realization Order and at the time this matter was argued before me, Mr. Justice Moshansky had not determined the constitutionality of the Act and Regulations. Mr. Justice Moshansky has now rendered his judgment and has ruled in favour of Leth and Leth Farms that the Act is *ultra vires* the constitutional authority of the Province of Alberta in that it purports to regulate and authorize the regulation of production for marketing and the marketing of turkeys extra-provincially as well as intra-provincially. Further, that the Act, the

Regulations, and Board Orders made against Leth and Leth Farms have no application to the Plaintiff's operations. His decision, however, does not affect my initial decision that Leth and Leth Farms did not have the privilege of not complying with the Act and Regulations while they challenged them and, the further issue before me of the effect of that non-compliance on C.I.B.C.'s ability to realize on its security.

5 C.I.B.C. submits that before the realization order was made, Leth and Leth Farms acquired all of the rights of ownership in the subject turkeys. As Leth acquired rights of ownership in the subject turkeys, the C.I.B.C. acquired a security interest in them by virtue of his G.S.A. and, as Leth Farms acquired rights of ownership, the C.I.B.C. acquired security interest in them by virtue of the other G.S.A. and the *Bank Act* Security executed by Leth Farms. Further, that the provisions of the Act and its Regulations do not expressly or by necessary implication affect the rights of ownership in the subject turkeys that were acquired and exercised by Leth and Leth Farms and thereafter the security interest acquired by the C.I.B.C.

6 The Board's argument on this issue is that the security documentation should be interpreted to charge only "lawful production". The Board submits that accepted cannons of construction ought to be used in construing the security contracts and, by such cannons, the object of interpretation is to attempt to determine the intent of the parties when they entered into the contracts. The Board submits there was no intention on behalf of the Bank at that time to take security on illegal production and cites the case of *Bank of Montreal v. Wilder* (1983), 149 D.L.R. (3d) 193 (B.C. C.A.); (1986), [1987] 1 W.W.R. 289 (S.C.C.) in support of an interpretation that the contracts be construed as extending security only over lawful production.

7 I find that the principles cited in the passages from *Bank of Montreal v. Wilder* (*supra*) have no application in this case. In that case a clause in a Guarantee executed between a bank and its customer permitted the bank to deal with the customer in certain ways and to deal with it "otherwise as it sees fit". The Courts held that the clause did not permit the bank to breach its contract with the customer in such a way as to increase the risk to the guarantors and to impair their security. They held that the type of dealings contemplated by the clause were those dealings legally permissible as between the bank and customer, not illegal dealings in breach of the contract. C.I.B.C. does not seek to have the security agreements construed in a manner that would permit it to breach its contract with Leth and Leth Farms and the case does not further establish a general principle that I can apply here.

8 The other authority cited by the Board was that of *Maschinenfabrik Seydelmann K-G v. Presswood Brothers Ltd.* (1965), 53 D.L.R. (2d) 224 (Ont. C.A.). That case was quoted in support of a proposition that when an act which is the subject of a contract may, according to circumstances be lawful or unlawful, it will not be presumed that the contract authorized the unlawful act. The contrary is the proper inference. Therefore, in this case it should be presumed the security contracts only provide C.I.B.C. with security over legally produced turkeys.

9 However, as argued by C.I.B.C., the Court in that case distinguishes between a contract inherently illegal because it cannot be performed without violating the law and one which can be legally performed but is void on the ground that there was an intention to perform it in an illegal manner. It is necessary for he who alleges illegality in the contract to show that there was an intention to break the law. In this case, C.I.B.C. submits that the security agreements have not been proved to be contracts prohibited by law and it has not been proved that the C.I.B.C. obtained and registered them with the intent of committing an illegal act.

10 Finally, C.I.B.C. submits that the contractual intent of the C.I.B.C. and Leth and Leth Farms can only be ascertained by construction of the words used in the security agreements. It submits that the following statement of Mr. Justice Stratton in *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, [1991] 4 W.W.R. 418 (Alta. C.A.) is applicable:

This is surely a classic case of the court being asked to interpret a contract. I am faced with the simple question -- what does the contract mean? The significance of this question is succinctly explained in Odgers' Construction of Deeds and Statutes, 5th ed. (1967), in the following passage:

...the court is faced with the question -- what does the deed mean? It must be noticed that this is not necessarily the same as "what did the parties intend when they executed the document?". They are presumed to have intended to say that which they have in fact said, so their words as they stand must be construed. The question is, not what did the parties intend to say? -- that is precluded by the presumption that they have said what they intended to say. The question to be solved is, what have they said what they intended to say. The question to be solved is, what have they said? What meaning is to be attached to the expressions they have used?

11 The words used in the G.S.A.'s to describe the property over which the security was granted are as follows:

All Personal Property: all of the Customer's present and after-acquired undertaking and Personal Property (including any property that may be described in Schedule A) but excluding Consumer Goods.

"Personal Property" means personal property and includes among other things Inventory, Equipment, Receivables, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles (including intellectual property), Money, and Securities, and includes all Accessions to such property.

12 The words used in the *Bank Act Security* to describe the property over which the security was granted include:

All the livestock owned or to be owned, whether branded or unbranded and the natural increase thereof.

13 I cannot find that the cases quoted by the Board are authority for a general proposition that these contracts should not be construed as providing security over illegal turkey production. Rather, they are authority for the proposition that the Board was required to meet the onus on it to establish that any or all of the contracts are contracts prohibited by law or that C.I.B.C. obtained and registered them with the intent of committing an illegal act. The Board has failed to meet that onus. I adopt Justice Stratton's test of interpretation and I find that the contracts intended to and did provide C.I.B.C. security over present and after-acquired personal property and livestock, which included the seized turkeys in question.

14 I also agree with C.I.B.C.'s submission that this exercise in construing the contracts presumes an illegality and, that illegality in this case can only be found in the legislation. C.I.B.C. points out that although it is clear that Leth and Leth Farms produced the turkeys in contravention of the Regulations, (which had to be presumed to be valid at the time), the consequences of such production are set out and, most importantly, do not include a forfeiture provision. This argument also applies to the second issue.

15 The public policy illegality argument raised by the Board has been described as "the traditional rule relating to illegal contracts" and is set out in *St. John Shipping Corp. v. Joseph Rank Ltd.*, [1956] 3 All E.R. 683 (Eng. Q.B.). Devlin, L.J. stated at p. 388 that:

The effect of illegality upon a contract may be threefold. If at the time of making the contract there is an intent to perform it in an unlawful way, the contract, although it remains alive, is unenforceable at the suit of the party having that intent; if the intent is held in common, it is not enforceable at all. Another effect of illegality is to prevent a plaintiff from recovering under a contract if in order to prove his rights under it he has to rely upon his own illegal act; he may not do that even though he can show that at the time of making the contract he had no intent to break the law and at the time of performance he did not know that what he was doing was illegal. The third effect of illegality is to avoid the contract *ab initio* and that arises if the making of the contract is expressly or impliedly prohibited by statute or is otherwise contrary to public policy.

16 I have already found that there is no basis for a submission that the C.I.B.C. obtained and registered the contracts with the intent of committing an illegal act. It is also clear that there is no evidence that C.I.B.C. itself must rely on its own illegal act in order to prove its right to enforce the contracts. That leaves me to consider the third effect of illegality

as described by Lord Justice Devlin. Can it be said that these security contracts are expressly or impliedly prohibited by statute or otherwise contrary to public policy?

17 The authorities cited to me by C.I.B.C. indicate the Courts are extremely cautious in this area. In *St. John Shipping Corp. v. Joseph Rank Ltd.* (*supra*) Devlin, L.J. stated at p. 690:

A court should not hold that any contract or class of contracts is prohibited by statute unless there is a clear implication, or "necessary inference", as Parke, B., put it, that the statute so intended. If a contract has as its whole object the doing of the very act which the statute prohibits, it can be argued that you can hardly make sense of a statute which forbids an act and yet permits to be made a contract to do it; that is a clear implication. But unless you get a clear implication of that sort, I think that a court ought to be very slow to hold that a statute intends to interfere with the rights and remedies given by the ordinary law of contract. Caution in this respect is, I think, especially necessary in these times when so much of commercial life is governed by regulations of one sort or another which may easily be broken without wicked intent...

18 In *Genovese v. York Lambton Corp.* (1969), 8 D.L.R. (3d) 593 (Ont. C.A.), the judgment of the Court includes the following statement at p. 612:

Also very apposite are the principles, taken from the cases cited by the author, as stated in *Pollock on Contracts*, 11th ed., p. 273:

But it must also be an intention collected from what the legislature has said, not arrived at by conjectures of what the legislature might or ought to have meant. A transaction not in itself immoral is not to be held unlawful on a conjectural view of the policy of a statute. The true policy of a statute is for a court of justice neither more nor less than its true construction. The Courts no longer undertake either to cut short or to widen the effect of legislation according to their views of what ought to be the law. "Before we can make out that a contract is illegal under a statute, we must make out distinctly that the statute has provided that it shall be so."

19 Our Court of Appeal in *Love's Realty & Financial Services Ltd. v. Coronet Trust* (1989), 65 Alta. L.R. (2d) 362 (Alta. C.A.) re-stated the traditional rule along the lines, according to Mr. Justice Kerans, hinted at by Devlin, L.J. in *St. John's Shipping* (*supra*). At p. 367, Mr. Justice Kerans stated:

Shall I say that this claim equally is unenforceable as founded upon an illegal contract? I think not if justice is the rule. I accept this comment by Suzanne Smith in "Contracts in Violation of Statutes - Necessary Illegal?", [1976] 5 U.C.L.A. - Alaska L. Rev. 381 at 405, as quoted in Report on Illegal Transactions, Law Reform Commission of British Columbia (1983), p. 15:

By way of a summary, a contract which violates or appears inconsistent with a statute should not be immediately classified as illegal *per se*. Rather, a court required to analyze a defence relying on such a statute should determine whether relief will contravene legislative intent. In two situations it may be conclusively presumed that any relief will do so; when the contract itself has been expressly prohibited and when the *act* prohibited is a crime *malum in se*. Otherwise, consideration of such factors as statutory imposition of penalty, requirement of license, legislative history, and most importantly, statutory purpose, should indicate whether relief will undermine the violated statute. If relief will not render the statute ineffective, it should be granted without declaring the contract illegal.

In sum, the doctrine of "illegality" massively interferes with the command of justice that a person must account to those to whom promises were made for consideration. That intervention rests on the ground that public policy permits the legislative will to override private arrangements. In their anxiety to justify this intervention, however, the courts should not, but perhaps have, overstated its rationale, and made it difficult to say that, sometimes, public policy does not require intervention. This is a plea for restraint.

This approach has found favour in recent cases. I agree with Krever J., as he then was, in *Royal Bank v. Grobman* (1977), 18 O.R. (2d) 636, 25 C.B.R. (N.S.) 132, 2 B.L.R. 145, 2 R.P.R. 101, 83 D.L.R. (3d) 415 at 432 (H.C.), when he described what he called the "modern judicial view":

The serious consequences of invalidating the contract, the social utility of those consequences and a determination of the class of persons for whom the prohibition was enacted, are all factors which the Court will weigh.

In similar vein, Lord Justice Devlin, as he then was, said in *Archbolds (Freightage) Ltd. v. S. Spanglett Ltd.*, [1961] 1 Q.B. 374 at 390, [1961] 2 W.L.R. 170, [1961] 1 All E.R. 417 (C.A.):

...one must have regard to the language used and to the scope and purpose of the statute. I think that the purpose of this statute is sufficiently served by the penalties prescribed for the offender; the avoidance of the contract would cause grave inconvenience and injury to innocent members of the public without furthering the object of the statute.

20 With these clear and consistent directions on this issue, I turn to consider the issue of whether the security contracts of C.I.B.C. can be said to be contracts prohibited by statute. Sections 5(1) and 20 of the Regulation are as follows:

5(1) Subject to subsection (2), no person may engage in the hatching, producing, processing or marketing of turkeys unless he is the holder of a licence authorizing that activity.

20(1) No person shall market turkeys or purchase poulters pursuant to this Regulation unless, in addition to holding a licence authorizing him to market turkeys or purchase poulters, he has been allocated a base quota or holds a permit, or both.

(2) No producer shall market turkeys in excess of

- (a) the quota allocated to him, and
- (b) the permit issued to him, if any.

(3) If a producer markets turkeys in contravention of subsection (2), the following applies:

- (a) the Board may reduce the weight of turkeys that the producer may subsequently market pursuant to that producer's quota or permit by an amount equal to the weight of the excess marketed, without permanently reducing the base quota allocated to the producer;
- (b) the producer shall pay to the Board a penalty of \$.22 per kilogram of live weight of turkeys marketed in excess of the producer's quota and permit, if any;
- (c) the penalty paid to the Board shall be increased to \$.75 a kilogram for production exceeding 10% of the quota allocated to the producer;
- (d) in addition to the requirements of clauses (b) and (c), if a producer markets turkeys in excess of the producer's periodic quota or permit in any given period during the quota year, the producer shall pay to the Board a penalty of \$.05 per kilogram of live weight of turkey marketed in excess of the producer's periodic quota or permits;
- (e) the Board shall establish a sleeve whereby a percentage of the periodic over-marketing monetary penalty would be exempted from the \$.05/kg penalty that is provided for under clause (d).

(4) For the purposes of this section, a producer is deemed

(a) to have produced the same number of turkeys as there were turkey poults delivered to him and the weight of the turkeys deemed to have been produced is deemed to equal the average weight of the category of turkey marketed in the calendar year in which the turkey poults were delivered to the producer, and

(b) to have marketed all the turkey poults delivered to him within 6 months of the delivery.

(4.1) In determining for the purposes of subsection (4) the deemed weight of turkeys marketed, the Board may adjust the deemed weight of those turkeys to reflect the age of the turkeys marketed.

(5) A producer shall forward a penalty levied in accordance with subsection (3)(b) to the Board office not later than 30 days after the receipt of a penalty notice from the Board, unless the Board agrees to an alternate payment arrangement.

(6) A penalty levied under this section is a debt due to the Board and may be recovered by the Board by civil action for debt.

(7) The collection from a producer of a penalty under this section or a service charge under section 11 shall not be considered as an acceptance, acquiescence or acknowledgement by the Board of that producer's production.

21 Sections 7 and 8 of the Regulation allow the Board to refuse to renew, suspend or cancel a license to market turkeys where a license holder has contravened provisions of the Act or Regulations.

22 Section 46 of the Act gave me the authority to make the realization order and provides as follows:

46(1) If a board is of the opinion that a person is producing or marketing an agricultural product, or both, in contravention of a regulation made by the board, the board may apply to the Court for an order directing a civil enforcement agency to seize, detain or dispose of the agricultural product in accordance with the order.

(2) An application under this section shall be by way of an originating notice.

(3) On an originating notice being filed with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, hear an interim application on 2 days' notice and make an interim order granting such relief as the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate to do so in the circumstances.

(5) On hearing an application the Court may do 1 or more of the following:

(a) direct a civil enforcement agency to seize and detain the regulated product;

(b) direct a civil enforcement agency to dispose of the regulated product;

(c) give directions respecting the seizure, detention or disposal of the regulated product;

(d) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(e) award costs in respect of the matter.

23 It is clear, as was submitted to me by the Board, that the intent of s.s. (5)(1) and s. 20 of the Regulation is to uphold a provincial and federal system of control over this agricultural product. This was described to me as a supply management system that is extremely important to this Board and other agricultural boards. The Regulations are drafted to deter producers from marketing turkeys in excess of their quotas or permits by granting the Board the power to impose

penalties on producers and to reduce the weight of turkeys that may subsequently be marketed pursuant to their quotas or permits as a consequence of their excess production and to cancel or refuse to renew a marketing license. A further penalty or relief for violating the Regulations and the marketing schemes established by them, is seizure, as I ordered pursuant to s. 46 of the Act. These penalties are precise and effective, and serve the purpose of the legislation and the supply management system.

24 It is also clear that there is absolutely no provision by statute for forfeiture of the producer's proprietary rights in the seized product or that of a security holder. The Regulations allow the Board to recover penalties as a civil debt. Again, this is all that is granted by the legislation and is far short of providing for forfeiture of any person's present proprietary rights. Indeed, my jurisdiction must be found in s. 46 of the Act and it grants me no jurisdiction to deal with the rights of the Board or any party to the seized product or proceeds of its sale.

25 I find the sections of the provincial Act and Regulation upon which the Board relies do not expressly or by necessary inference prohibit a contract that grants security over turkeys marketed in excess of the producer's quota. I also find that the purpose of the legislation and Regulations is sufficiently served by the penalties prescribed for the offender and upholding the security will in no way undermine the legislation and its purpose. In fact, the avoidance of these contracts would cause grave inconvenience and injury to innocent members of the public without furthering the object of the statute. The security contracts are valid and enforceable and give the C.I.B.C. priority to the proceeds from the disposal of the turkeys seized pursuant to my realization order.

26 Costs can be spoken to.

Application granted.