

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Mac Berry Farms Limited v. Nova Scotia (Minister of Agriculture)*,  
2025 NSSC 181

**Date:** 20250604

**Docket:** *Ken*, No. 534959

**Registry:** Kentville

**Between:**

Mac Berry Farms Limited

*Applicant*

v.

Nova Scotia Minister of Agriculture and the Attorney General of Nova Scotia

*Respondents*

**Decision on Motion to Dismiss Application for Judicial Review based on  
Mootness**

**Judge:** The Honourable Justice Gail L. Gatchalian

**Heard:** January 28, 2025, in Kentville, Nova Scotia

**Further Written Submissions:** Attorney General of Nova Scotia, February 10, 2025  
Mac Berry Farms, February 21, 2025

**Oral Decision:** June 4, 2025

**Counsel:** Jonathan Cuming, for the Applicant  
Adam Norton, for the Respondents

**By the Court:**

[1] The Applicant, Mac Berry Farms Limited, suffered economic losses as a result of weather conditions during the 2023 production season. Mac Berry Farms applied for financial assistance under the Nova Scotia Department of Agriculture’s “2023 Season Response Program.” The Department launched the Program in February of 2024, and the deadline to apply was March 13, 2024. The Program objective was “to assist Nova Scotia Farmers to recover from crop production and financial losses due to the extreme weather conditions experienced in the 2023 production season”: 2023 Season Response Guidelines. Program funding was to be based on loss from flood, excessive precipitation or wildfires; availability of crop insurance or other emergency funding; enrollment level of crop insurance and “agri-stability”; and farm income level: 2023 Season Response Guidelines.

[2] In its application for funding, Mac Berry Farms sought the maximum amount of \$150,000. In a letter dated June 4, 2024, Mac Berry Farms was informed that it would only be receiving \$21,263.00. Mac Berry Farms was later told that it was not eligible for the full amount because it did not have crop insurance. Mac Berry Farms acknowledges that it did not apply for crop insurance, but says that insurance would not have covered its loss.

[3] Mac Berry Farms applied for judicial review of the Department's decision on July 12, 2024. Mac Berry Farms asserts that the Department's decision was unreasonable in that it reduced the benefit payable to account for insurance coverage that it says Mac Berry Farms should have obtained, despite the fact that the insurance would not have paid a cent to Mac Berry Farms. Mac Berry Farms seeks as a remedy "that the loss calculation be completed anew with a direction that the failure to obtain crop insurance is not a factor that should be considered in calculating Mac Berry's entitlements under the Program."

[4] The Respondents, the Nova Scotia Minister of Agriculture and the Attorney General of Nova Scotia ("the Province"), say that the Application for Judicial Review is moot because: (1) the 2023 Season Response Program no longer exists and (2) the funding for the program has been exhausted. On this basis, the Province asks me to find that the Application for Judicial Review will not have the effect of resolving a present live controversy that affects or may affect the rights of the parties: see *Borowski v. Canada*, [1989] 1 S.C.R. 342 at para.15.

[5] The Province relied on an Affidavit from Heather Hughes, Executive Director, Policy and Corporate Services of the Department of Agriculture. Mac Berry Farms did not cross-examine Ms. Hughes. Mac Berry Farms did not rely on any affidavit evidence. The parties agreed that they could rely on the documents

included in the Record and in the Supplementary Record, as well as on the documents appended to the Notice of Application, as evidence.

[6] The 2023 Season Response Program was funded initially with 9.2 million dollars provided by the Province. The Program received approximately 12.7 million dollars of claims deemed eligible for support. The Program's funding was exhausted after the initial 9.2 million dollars was allocated. The Department negotiated with the Nova Scotia Federation of Agriculture (an independent body corporate established pursuant to the *Federation of Agriculture Act*, S.N.S. 1992, c.5) to address the additional 3.5 million dollars of eligible claims. The Federation agreed to provide additional funds in early May 2024. The additional funds were made up of previous disaster relief program funds provided by the Department to the Federation. There are no more available funds associated with the 2023 Season Response Program.

[7] I do not accept the Province's argument that "[a]ny redetermination would be impossible for the original decision maker..." because the Program no longer exists. The employee or employees who assessed eligibility for Program funding was or were employed by the Department, and they assessed eligibility on behalf of the Department. The Department still exists. Redetermination of eligibility is still possible.

[8] However, I find that the matter is moot because there are no remaining funds allocated to the 2023 Season Response Program. Ms. Hughes' evidence on this point was not challenged, and I accept it. Therefore, any redetermination of Mac Berry Farms' eligibility would not result in additional funds being provided to Mac Berry Farms: see *Right to Life Association of Toronto v. Canada (Attorney General)*, 2022 FCA 220 at para.14 and *Access Mortgage Investment Corporation (2004) Limited v. Arres Capital Inc*, 2021 ABCA 325 at paras.28-30, application for leave to appeal dismissed, 2022 CanLII 26229 (SCC). The dispute has become academic: see *Borowski* at para.16. The decision of the court will have no practical effect on the rights of the parties: see *Borowski* at para.15.

[9] Mac Berry Farms suggested that the Province might have clawed back funds granted under the Program pursuant to the Guidelines, and that those monies might be sitting in another fund or account and be available for the Province to pay additional monies should Mac Berry Farms be successful in a redetermination. There is no evidence to support the suggestion that such funds exist or that they would be available to fund the award sought by Mac Berry Farms.

[10] I reject Mac Berry Farms' suggestion, made in oral argument, that the Province would have a fiduciary duty to pay it additional funds should it be successful as a result of a redetermination of its eligibility. Mac Berry Farms did

apply the test for finding a fiduciary relationship, not did it cite any authority for the proposition: see *Gladstone v. Canada (Attorney General)*, 2005 SCC 21 at paras.24-26.

[11] Mac Berry Farms conceded that, should the court find the matter to be moot, the circumstances of this case do not justify the court exercising its discretion to hear the matter. In light of this, I decline to exercise my discretion to hear this moot application: see *Borowski* at paras. 29-42.

[12] The Province's motion is granted. The judicial review application filed by Mac Berry Farms is dismissed because it is moot.

[13] The Province did not seek costs. As such, the parties will bear their own costs.

Gatchalian, J.