

KING’S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 136**

Date: **2025 08 27**
File No.: KBG-RG-00972-2023
Judicial Centre: Regina

BETWEEN:

JOAN PROCYK and ROGER GLENN PROCYK

APPLICANTS

- and -

YOUNG’S EQUIPMENT INC.

RESPONDENT

Counsel:

Moira Keijer-Koops and Mark Wonka (student-at-law) for the applicants
Kevin Miller for the respondent

FIAT
August 27, 2025

ROBERTSON J.

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I. INTRODUCTION

[1] This decision addresses an originating application filed on April 19, 2023, challenging the 2020 seizure of a 2010 Case 1H Puma 140 tractor [Tractor]. The applicants, Joan Procyk and Roger Glenn Procyk [Procyk], seek orders: under s. 22 of the *Farm Debt Mediation Act*, SC 1997, c 21 [*FDMA*], and s. 20 of *The Commercial Liens Act*, SS 2001, c C-15.1 [*CLA*], declaring the possession and seizure of the Tractor null and void; and under ss. 55(c) of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1 [*SFSA*], directing the respondent, Young’s Equipment Inc. [Young’s], to pay one and one half times the estimated sale amount of the Tractor to the applicants.

[2] For the following reasons, I decline to make either order because there are material facts which I am unable to determine. At the same time, I do not dismiss the application. Instead, I answer questions in so far as the known facts allow in the

hope that this will help the parties to resolve their dispute. If they are unable to do so on their own, they may return to Court.

II. BACKGROUND

A. Affidavit Evidence

[3] The parties filed the following affidavits:

Procyk:

- (i) Roger Procyk, sworn April 20, 2023 [Roger Affidavit #1]
- (ii) Robert Procyk, sworn April 19, 2023 [Robert Affidavit]
- (iii) Roger Procyk, sworn June 12, 2025 [Roger Affidavit #2]

Young's:

- (i) Michael Hoffman sworn April 21, 2024 [Hoffman Affidavit]

B. Timeline of Events

[4] From the court file and affidavit evidence, the following timeline of events is established:

2019

- | | |
|---------|---|
| Spring | Roger Procyk buys Tractor (Roger Affidavit #1, para. 1) |
| October | Tractor damaged in fire (Roger Affidavit #1, para. 2) |
| October | Roger Procyk makes insurance claim to Saskatchewan Government Insurance [SGI] for damage to Tractor (Roger Affidavit #1, para. 2) |

2020

January 29 Tractor taken to Young's Weyburn, Saskatchewan workshop for repair (Hoffman Affidavit, para. 2; Roger Affidavit #2, para. 4)

March 26 Young's submits first invoice of \$21,979.58 to Procyk for repair of Tractor (Roger Affidavit #1, para. 5; Hoffman Affidavit, para. 2 and Exhibit "A")

April 15 Young's submits second invoice of \$5,372.09 to Procyk for repair of Tractor (Roger Affidavit #1, para. 5 and Exhibit "B")

April SGI pays \$18,560 to Young's for cost of repairs, leaving outstanding balance of \$8,791.24 owing (Roger Affidavit #1, para. 6; Hoffman Affidavit, para. 3)

Young's engages in collection efforts for the next year, but receives no payment (Hoffman Affidavit, para. 8; Roger Affidavit #2, para. 6). Roger Procyk says he was experiencing financial difficulties and could not make payment (Roger Affidavit #1, para. 7)

2021

March 5 *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 [PPSA] search by Young's shows other liens on Tractor (Hoffman Affidavit, para. 9 and Exhibit "C")

- April 5 Young's lawyer sends by registered mail notice under s. 21 of the *FDMA* to Procyk (Hoffman Affidavit, para. 12 and Exhibit "F")
- April 28 The mailed notice under the *FDMA* is returned undelivered to Young's lawyer (Hoffman Affidavit, para. 12; Roger Affidavit #2, para. 12)
- May 6 Procyk receive notice from Young's under s. 19 of the *CLA* and s. 61 of the *PPSA*, served by registered mail, stating that Young's proposes to retain the Tractor in satisfaction of the debt owing for repairs (Roger Affidavit #1, para. 8 and Exhibit "C"; Hoffman Affidavit, paras. 12-13 and Exhibits "G" and "H")
- May Young's takes possession of Tractor and thereafter uses it for its business (Hoffman Affidavit, paras. 5 and 14)
- 2022
- January Robert Procyk calls Young's to ask about Tractor (Robert Affidavit, para. 2)
- October Roger Procyk calls Young's to ask about Tractor (Roger Affidavit #1, paras. 14-15)
- 2023
- April 14 Lawyer Kevin Mellor of Nychuk & Company writes letter to Young's (Roger Affidavit #1, para. 16 and Exhibit "D"; Hoffman Affidavit, para. 15 and Exhibit "D")

April 19	Originating application filed with return date of May 2, 2023
April 28	<i>PPSA</i> search by Young's shows other liens on Tractor (Hoffman Affidavit, para. 10 and Exhibit "D")
May 2	Adjourned by consent
May 12	Adjourned by consent
May 23	Adjourned by consent
June 8	Adjourned by consent
October 12	Adjourned by consent
December 5	Adjourned <i>sine die</i>
<u>2024</u>	
<u>2025</u>	
April 21	<i>PPSA</i> search by Young's shows other liens on Tractor (Hoffman Affidavit, para. 11 and Exhibit "E")
April 22	Application returned to chambers and adjourned by consent
May 29	Adjourned by consent
June 24	Adjourned by consent
July 24	Robertson J. hears application in chambers with decision reserved

III. ISSUES

[5] The application and arguments gave rise to the following issues:

1. Is this an appropriate dispute for resolution by originating application?
2. Is the claim barred by *The Limitations Act*, SS 2004, c L-16.1?
3. Was notice served in compliance with the *CLA* so as to allow Young's to retain possession of the Tractor?
4. Was notice required to be served under the *FDMA* and, if so, was it properly served?
5. Was notice required to be served under *SFSA* and, if so, was it properly served?
6. If required notice was not served, what is the remedy?

IV. ANALYSIS

[6] I will address the issues in the order stated above.

1. Is This an Appropriate Dispute for Resolution by Originating Application?

[7] Young's questions whether the claim for damages is properly brought by originating application under Rule 3-49 of *The King's Bench Rules*. Young's says the remedy claimed under para. 1(b) of the application, seeking damages, should properly be brought by statement of claim.

[8] The following sections of *The King's Bench Rules* may be relevant to this issue:

Purpose and intention of these rules

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

...

Rules govern Court actions

3-1 A Court action for a claim may only be brought and carried on, applications may only be filed and proceedings may only be taken in accordance with these rules.

How to start an action

3-2(1) An action, other than a family law proceeding, may only be started by filing in the appropriate judicial centre described in rule 3-3 or 3-4:

- (a) a statement of claim by a plaintiff against a defendant;
- (b) an originating application by an originating applicant against a respondent; or
- (c) a notice of appeal, reference or other procedure or method specifically authorized or permitted by an enactment.

(2) A statement of claim must be used to start an action, unless an enactment or these rules provide otherwise.

(3) An action may be started by originating application if these rules authorize the commencement of an action by originating application.

...

Actions started by originating application

3-49(1) An action may be started by originating application if the remedy claimed is:

- (a) the opinion or direction of the Court on a question affecting the rights of a person with respect to the administration of the estate of a deceased person or the execution of a trust;

(b) an order directing executors, administrators or trustees to do or abstain from doing any particular act with respect to an estate or trust for which they are responsible;

(c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;

(d) the determination of rights that depend solely on the interpretation of:

(i) a deed, will, contract or other instrument; or

(ii) an enactment, order in council or municipal bylaw or resolution;

(e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

(f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;

(g) the judicial review of a decision, act or omission of a person or body;

(h) for a remedy pursuant to the *Canadian Charter of Rights and Freedoms*; or

(i) with respect to any matter where it is unlikely that there will be any material facts in dispute.

(2) An action may be started by originating application if an enactment or these rules authorize or require an application, an originating application, an originating notice, an originating summons, a notice of motion or a petition to be used.

(3) An action may be started by originating application if an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the Court without describing the procedure to obtain it.

(4) An originating application must:

- (a) be in Form 3-49;
- (b) state the claim and the basis for it;
- (c) state the remedy sought; and
- (d) identify the affidavit or other evidence to be used in support of the originating application.

[9] While concerning the *Alberta Rules of Court*, Alta Reg 124/2010, the commentary of Master Schlosser in *Dash Distributors Inc. v Powlik*, 2012 ABQB 770 at paras 6-9, applies equally to our *King's Bench Rules*:

[6] ... The Statement of Claim is the all terrain vehicle. An Originating Application may be used if the criteria set out in 3.2(2) are met. ...

[7] In appropriate circumstances, an Originating Application may be more conducive to expedient resolution of a matter. It gets you into court on a specific date to have the matter heard and, where the use of it is appropriate, it dispenses with many of the steps that would follow if a Statement of Claim were chosen as the commencing document.

[8] The emphasis of many of the new Rules is to keep matters moving and to shorten the horizon for the resolution of a matter brought by a Statement of Claim. However, with a Statement of Claim you only get a trial date when you are ready to complete a Form 37. That is a long way and many steps removed from the commencing document.

[9] The procedure for a matter commenced by Originating Application is not open ended. But, the price of being able to pick a court date from the outset is that the matter has to be capable of summary determination. It is an exception to the rule that a dispute will be resolved at trial if it is not settled along the way. In this case the Applicant was eager to have the matter resolved and that, in part, dictated the choice of procedure. It was a laudable choice but not the right one.

[10] In *Métis Nation – Saskatchewan v Saskatchewan (Environment)*, 2023 SKCA 35 at para 58, 479 DLR (4th) 345, aff'd 2025 SCC 4, Leurer J.A., as he then was, writing for the Court of Appeal commented that “the types of actions that may be

started by originating application are identified only by the *remedy* that the claimant is seeking” (emphasis in original).

[11] Here, the remedies identified in the application are listed in para. 1 as follows:

- a. An order declaring the possession and seizure under the *CLA* and the *PPSA* of the 2010 Case 1H Puma 140 Tractor null and void pursuant to section 22 of the *FDMA* and section 20 of the *CLA*;
- b. An order directing Young’s Equipment Inc. to pay to the Applicants 1.5 times the amount they sold the 2010 Case 1H Puma 140 Tractor for pursuant to section 55(c) of the *SFSA*;
- c. Such further and other relief as counsel may advise and this Honourable Court may accept; and
- d. The costs of the within application.

[12] *The King’s Bench Rules* limit the matters which can be brought by originating application. The applicant must show how the application falls within the scope of Rule 3-49. The application does not identify any provision of Rule 3-49 relied upon for this application. From my review of Rule 3-49, the possible provisions which might support the application are Rule 3-49(1)(d) and (i), and Rule 3-49(3).

[13] The application in para. 1(a) seeks a declaration of statutory rights. This could fall within the scope of Rule 3-49(1)(d), but only if “the determination of rights ... depend solely on the interpretation of ... an enactment”. The application requires determination of facts. As will be discussed below, some facts are disputed or uncertain.

[14] Rule 3-49(1)(i) provides general authority to proceed by originating application, “with respect to any matter where it is unlikely that there will be material facts in dispute.” This provision could support all aspects of relief sought in the application. However, some facts are in dispute.

[15] Most of the necessary facts are ascertainable. But some material facts are uncertain or disputed, including whether the notice required under the *FDMA* was served and what the value of the Tractor was at the time of seizure. The service of notice is relevant to the limitations defence. The value of the Tractor is relevant to the remedy claimed under ss. 55(c) of the *SFSA*.

[16] Young's Brief of Law at unnumbered page 3 has the title, "III DISPUTED FACTS". Young's Brief of Law goes on at paras. 16-19 to state there is dispute in the affidavits filed over whether the repair work was authorized and about the value of the Tractor. These are material facts. While I am satisfied on the evidence filed that the repair work was authorized, I am not satisfied that the value of the Tractor is established for the purpose of any award under ss. 55(c) of the *SFSA*.

[17] Rule 3-49(3) provides that "An action may be started by originating application if an enactment provides for a remedy ... to be obtained from the Court without describing the procedure to obtain it".

[18] The application in para. 1(a) seeks an order declaring the seizure of the Tractor null and void pursuant to s. 22 of the *FDMA* and s. 20 of the *CLA*. I find that this part of the Application could fall within Rule 3-49(3). The statutory provisions are reproduced below:

i. The CLA

Court may resolve dispute

20(1) The person who requested the services, or any other person claiming a proprietary interest or a contractual right to possession of the goods that are subject to a lien, may, after providing notice to all parties that the court considers appropriate, apply to the court to have a dispute resolved where the dispute concerns:

- (a) the existence of a lien or the amount secured by a lien;

or

(b) the right of the lien claimant to take or retain possession of the goods.

(2) In addition to the powers conferred on the court pursuant to *The Personal Property Security Act, 1993*, on hearing an application pursuant to subsection (1), the court may make any order that it considers appropriate in the circumstances.

ii. *The FDMA*

Contravention by creditor

22(1) Subject to subsection (2), any act done by a creditor in contravention of section 12 or 21 is null and void, and a farmer affected by such an act may seek appropriate remedies against the creditor in a court of competent jurisdiction.

[19] The application in para. 1(b) seeks payment of monies as statutory damages under ss. 55(c) of the *SFSA*. Section 55 of the *SFSA* expressly refers to recovering “in an action for money”. Such an action would normally be brought by statement of claim.

[20] Despite the concerns raised over whether the application is properly brought as an originating application, rather than by statement of claim, I will continue to address all issues.

2. Is the Claim Barred by *The Limitations Act*?

[21] Young’s argued that the action is statute barred by *The Limitations Act*. The following provisions of *The Limitations Act* may be relevant to this issue:

Interpretation

2 In this Act:

(a) “**claim**” means a claim to remedy an injury, loss or damage that occurred as a result of an act or omission;

(b) “**claimant**” means a person who has a claim;

...

Application of Act

3(1) Subject to subsections (2) to (5), this Act applies to claims pursued in court proceedings that:

(a) are commenced by statement of claim; or

(b) are commenced by originating notice and are not proceedings in the nature of an application.

...

Basic limitation period

5 Unless otherwise provided in this Act, no proceedings shall be commenced with respect to a claim after two years from the day on which the claim is discovered.

[Emphasis in original]

[22] *The Limitations Act* applies to claims to remedy an injury, loss, or damage. While *The Limitations Act* would likely apply to the remedy sought under para. 1(b) of the application, as “an action for money” under ss. 55(c) of the *SFSA*, it would not likely apply to the remedy under para. 1(a) for a declaratory order.

[23] Assuming the limitation period in s. 3 of *The Limitations Act* applies to the relief sought in the application, then s. 5 provides that the limitation period would not begin to run until the claim was discovered. Given that there are statutory schemes intended to resolve disputes over seizure of property in a summary manner, it is open to question when the claim actually arose. It seems to me that the claim would not arise before the owner had notice of seizure and intent to retain possession or dispose of the property. If so, then the earliest date for commencement of the limitation period would be receipt of notice of seizure.

[24] The application challenges Young's seizure of the Tractor. The application was filed April 19, 2023.

[25] Young's says it took possession of the Tractor under the *CLA* and the *FDMA*. Those statutes, and the *SFSA*, require compliance with procedural requirements, including notice provisions, to effect seizure.

[26] On the evidence, Young's attempted to comply with the *FDMA* and the *CLA*. Notices were sent under both statutes.

[27] The first notice was under the *FDMA*. It was sent by registered mail to Procyk on April 5, 2021, and returned undelivered on April 28, 2021. Young's contends that this notice was deemed served seven days after mailing, by virtue of s. 17 of the *Farm Debt Mediation Regulations*, SOR/98-168 [*FDMR*]:

Notice by Secured Creditors

17(2) Notice given in the manner described in subparagraph (1)(a)(ii) or (iii), (b)(iii) or (c)(iv) is deemed to be given seven business days after the day on which the notice is sent.

[28] If so, then it would be served on April 12, 2021. Arguably, this would be outside the two-year limitation period and thus statute barred. As discussed below, however, I am left in doubt whether the limitation period began on the deemed service date.

[29] The second notice was under the *CLA* and the *PPSA*. Procyk admits it received this notice on May 6, 2021, so within the two-year basic limitation period.

[30] While the debt for repair of the Tractor was payable earlier, the notice served on May 6, 2021 was the first notice received by Procyk that Young's intended to retain possession of the Tractor in satisfaction of the debt for repair of the Tractor.

Even assuming it was effective, the right to take possession would not crystalize until the prescribed period to apply for a hearing expired.

[31] I decline, on this application, to dismiss the claim on the basis of the limitation period defence.

3. Was Notice Served in Compliance with the *CLA* so as to Allow Young's to Retain Possession of the Tractor?

[32] The *CLA* in s. 3 creates a statutory lien on goods for services provided in relation to those goods at the request of a person with an interest in those goods or in possession of the goods. Section 4 provides that the lien secures the amount that the person who requested the services agreed to pay for the services. Subsection 6(a) provides the lien is enforceable only where the goods are in possession of the lien claimant. Subsection 9(2) provides that possession of goods by a lien claimant perfects a lien on the goods.

[33] The *CLA* would apply here where Roger Procyk, as owner of the Tractor, asked Young's to repair the Tractor and Young's made the repairs and had possession of the Tractor.

[34] The *CLA* in s. 19 allows the lien claimant to realize on the goods in accordance with Part V of the *PPSA*, which provides rights and remedies on default.

[35] The *CLA* in s. 19 contemplates that, in certain circumstances, a lien claimant may be treated as a secured party. If the amount secured by the lien is not paid within 30 days of becoming payable, the lien claimant is entitled to enforce their interest in the goods under Part V of the *PPSA*. In doing so, the lien claimant is granted all the rights and obligations of a secured party for the purposes of that Part. In effect, this provision turns the lien claimant into a secured party under the *PPSA*.

[36] The *PPSA* in ss. 2(1)(nn) defines a “secured party” as a person who has a “security interest”, which is in turn defined as “an interest in personal property that secures payment or performance of an obligation”. This mirrors the definition of “security interest” in the *SFSA*.

[37] The *CLA* in s. 20 allows the person who requested the services to apply to court to resolve any dispute over the existence of a lien, the amount secured by the lien, or the right of the lien claimant to take or retain possession of the goods. Procyk did not make any such application.

[38] Section 61 of the *CLA* allows the secured party to give notice of its proposal to retain the collateral in satisfaction of the debt obligation. Any person entitled to notice may file a notice of objection within 15 days after receipt of the proposal notice. If no notice of objection is given, the secured party is deemed to have taken the collateral in satisfaction of the debt obligation and is entitled to hold or dispose of the collateral.

[39] In this case, Young’s, as the secured party, served notice under s. 19 of the *CLA* and s. 61 of the *PPSA*. Roger Procyk acknowledges receipt of that notice on May 6, 2021. Since there was no notice of objection, Young’s became entitled to retain or dispose of the Tractor after May 21, 2021. Young’s has since retained possession of the Tractor and used it for its business.

[40] On its face, therefore, Young’s complied with the provisions of the *CLA* in serving notice and thereafter taking possession of the Tractor. This at least gave Young’s a colour of right. However, as discussed below, there are other statutory regimes at play.

4. Was Notice Required to be Served Under the *FDMA* and, if so, was it Properly Served?

[41] The *FDMA*, is a federal statute which provides protection to farmers. Where there is inconsistency or conflict with provincial law, the *FDMA* governs under the constitutional doctrine of paramountcy.

[42] In *M & D Farm Ltd. v Manitoba Agricultural Credit Corp.*, [1999] 2 SCR 961 at paras 25-26, the Supreme Court of Canada held that the purpose of the *Farm Debt Review Act*, RSC 1985, c 25 (2nd Supp) (since rep), which was replaced by the *FDMA*, was relevant to its interpretation and supported a broad reading of its provisions to achieve its objects.

[43] In *Chmil v National Leasing Group Inc.*, 2006 SKCA 140 at para 5, [2007] 6 WWR 25 [*Chmil*], Richards J.A. (as he then was) summarized the *FDMA*:

[5] *The Farm Debt Mediation Act* requires a secured creditor who intends to commence proceedings against a farmer for the recovery of a debt or the realization of any security to give the farmer 15 days written notice advising of the farmer's right to apply to an administrator for one of two orders. The first type of order involves a stay of proceedings against all of the farmer's creditors, a review of the farmer's financial affairs and debt mediation. The second type involves a financial review and mediation. An act done by a creditor in contravention of the requirement to give notice is null and void. ...

[44] In *HCI Ventures Ltd. v S.O.L. Acres*, 2017 SKQB 264 at paras 26-30, 13 CPC (8th) 164 [*HCI QB*], aff'd 2020 SKCA 24, 100 BLR (5th) 165 [*HCI CA*], Barrington-Foote J. (as he then was) dismissed an application for summary judgment against the farmer-defendant for unpaid rent. In doing so, he found that the plaintiff was a secured creditor as defined in the *FDMA* and therefore required to serve notice under s. 21. It was common ground that such notice was not given.

[26] The first issue to be determined is whether HCI is a

“secured creditor” within the meaning of the *FDMA*. As is noted above, the defendants say it is not, as the debt secured by the GSA [General Security Agreement] did not arise as a result of a loan or financing provided for farm purposes. In HCI’s view, secured creditors are limited to those which hold debts of that kind.

[27] “Secured creditor” is defined in s. 2 of the *FDMA*. That definition provides that a secured creditor includes any creditor holding a “security interest ... for a debt due or accruing due from a farmer”. This issue accordingly turns on the proper interpretation of those words.

[28] The grammatical and ordinary sense of these words, read in context and in light of the object of the *FDMA*, clearly includes a security interest of the type granted by the Lease and the GSA. It also includes security for any debt – or, at a minimum, any debt relating to the farming operation at issue – regardless of the source or nature of that debt. That is the fair and liberal interpretation that best ensures the attainment of the remedial “protective” purpose described in *Community Futures* [*Community Futures Dev. Corp. v Litzenberger*, 2006 BCSC 856], and by Binnie J. in *M & D Farm Ltd. v Manitoba Agricultural Credit Corp.*, [1999] 2 SCR 961 [*M & D Farm*]. It would not promote that purpose to interpret “security interest...for a debt accruing due” in a manner that would limit debt to debt resulting from a loan or financing, and exclude other debts incurred in the course of the farming operation.

[29] Accordingly, HCI is a secured creditor. That being so, s. 21 applies, provided that this is an action “for the recovery of a debt” within the meaning of s. 21(1)(b) of the *FDMA*.

[30] As noted above, HCI raised two issues in this respect. First, it says rent is not a debt. With respect, I do not agree. The term “debt” has been broadly defined by the case law, where required by the context. ...

[45] In *Input Capital Corp. v Gustafson*, 2018 SKQB 154 at paras 102-103, reversed on other grounds 2019 SKCA 78, 438 DLR (4th) 387, and 2021 SKCA 56, 458 DLR (4th) 474, Kalmakoff J. (as he then was) cited *HCI QB*, in similarly finding that notice was required under the *FDMA*:

[102] Justice Barrington-Foote’s analysis in *HCI Ventures* is

applicable to the circumstances of this case. A fair and liberal interpretation, keeping in mind the remedial purpose of the *FDMA*, is necessary. The context requires, as Justice Barrington-Foote set out at para. 30, a broad definition of “debt”. Bringing to bear that broad definition, the enforcement clauses of the Collateral Mortgage and Collateral Security Agreement determine the damages that would be payable, or the amount owing to ICC in the event of default by Mr. Gustafson or demand by ICC with enough precision to make them the functional equivalent of liquidated damages. Furthermore, even though ICC states that it is not a secured creditor, the agreements refer to Mr. Gustafson as a “debtor” throughout. As I pointed out earlier, Mr. Gustafson also falls into the definition of “debtor” in the *PPSA*, in the context of his relationship with ICC. Whatever obligation Mr. Gustafson has to ICC is secured by a mortgage on his property. It is payable on demand, with interest. When considering the language in the Streaming Contracts, and the associated Collateral Mortgage and Collateral Security Agreement in light of the remedial purpose of the *FDMA*, and the need for a broad and contextual interpretation of its provisions, I can come to no conclusion other than that ICC falls within the definition of “secured creditor” in s. 2.

[103] Accordingly, ICC was required to give notice under s. 21 of the *FDMA* before commencing the Regina Action. It failed to do so. Therefore, that action is a nullity.

[46] In *HCI CA* at paras 42-43, Ryan-Froslic J.A. for the Court of Appeal commented on the purpose of the *FDMA* as supporting a broad interpretation of s. 21:

[42] Second, s. 21 is an extremely broad provision and, on a plain reading, casts a wide net over the actions of a secured creditor that warrant notice being given to the farmer of their rights under the *FDMA*. In my view, a broad interpretation best accords with the objects of the *FDMA*, which are meant to afford farmers facing financial difficulties an opportunity to mediate with their creditors. It also accords with the overall legislative scheme, which gives only farmers the power to apply for a stay of proceedings and/or financial review and mediation (s. 5). Secured creditors are of particular concern to farmers facing financial difficulties because such creditors often hold as security key elements of their farming operations, such as land, equipment, cattle or inventory. Without those assets, a farmer would struggle to remain viable. It is thus not surprising that s.

21 refers to “secured creditors” as opposed to all creditors.

[43] Requiring a secured creditor to provide notice of its intention in accordance with s. 21 is not cumbersome, nor does it unduly prejudice such creditors. The notice period is short – 15 days – and the secured creditor has the ability to control when it provides such notice.

[47] I pause here to note that there is no evidence in the affidavits filed to establish that the applicants are farmers. Each party has the obligation to put their best foot forward on summary applications, such as this one. The status of the applicants as farmers is a required premise for claiming rights under the *FDMA* and the *SFSA*. However, Young’s in its Brief of Law at para. 24 states, “The Applicants meet the definition of “farmer” pursuant to s. 2 of the *FDMA*.” But for this admission, I would have dismissed the application.

[48] Section 21 of the *FDMA* requires secured creditors to serve notice on the farmer prior to enforcing any remedy against the property of the farmer or commencing any proceedings to recover a debt or taking any property of the farmer. The notice must be given at least 15 business days before taking further proceedings. Section 5 of the *FDMA* allows the farmer to apply to an administrator under the *FDMA* for a stay of proceedings or for mediation between the farmer and the farmer’s secured creditors. Section 21 is reproduced below:

Notice by secured creditors

21(1) Every secured creditor who intends to

(a) enforce any remedy against the property of a farmer,
or

(b) commence any proceedings or any action, execution
or other proceedings, judicial or extra-judicial, for the
recovery of a debt, the realization of any security or the
taking of any property of a farmer

shall give the farmer written notice of the creditor’s intention to do so, and in the notice shall advise the farmer of the right to

make an application under section 5.

Time of notice

(2) The notice must be given to the farmer and to an administrator, in the form established by the Minister and in accordance with the regulations, at least 15 business days before the doing of any act described in paragraph (1)(a) or (b).

[49] The Court of Appeal in *Chmil* at para 2, ruled that the s. 21 notice under the *FDMA* must be served separately and before notice under s. 48 of the *SFSA*. In Donald H. Layh, *A Legacy of Protection, the Saskatchewan Farm Security Act: History, Commentary & Case Law* (Langenburg: Twin Valley Books, 2009) [*Legacy of Protection*] at 411, Donald Layh (as he then was) stated:

Post *Chmil*, any arguments respecting the permissibility of contemporaneous service of the section 48 *SFSA* notice and section 21 *Farm Debt Mediation Act* have been finally and completely laid to rest. The federal notice must pre-date section 48 under the *SFSA* by 15 business days.

[50] Section 22 provides that any act done by a creditor in contravention of s. 21 is null and void and a farmer affected by such an action may seek appropriate remedies against the creditor in a court of competent jurisdiction.

[51] The *FDMR* in s. 17 provides direction on giving notice under s. 21. Subsection 17(1)(a)(iii) of the *FDMR* authorizes service by registered mail. Subsection 17(2) provides that notice given in the manner prescribed “is deemed to be given seven business days after the day on which the notice is sent”.

[52] In this case, Young’s attempted to serve notice under s. 21 of the *FDMA*. The notice was mailed by registered mail on April 5, 2021, but was returned undelivered on April 28, 2021. Young’s takes the position that there was compliance with the notice requirement under the *FDMA* and the deeming provision makes the non-receipt of the notice irrelevant.

[53] I disagree. The purpose of service is to bring actual notice to the person to be served, so they can respond and participate. This kind of deeming provision creates a rebuttable presumption of receipt and notice. Once proof of service is established, the onus shifts to the person denying receipt.

[54] The person claiming non-receipt and lack of notice has the onus of showing that, through no fault of their own, they did not receive the notice and had no knowledge of the content of the notice. The onus is on the person deemed served because they are the ones who know what happened. It is not enough to claim non-receipt. Otherwise, persons could avoid service by simply failing or refusing to accept receipt or to open delivered mail.

[55] In this case, there is some dispute about what happened with the delivery of the notice. The Hoffman Affidavit at para. 12 suggests the envelope was “either rejected or unclaimed by the Applicants.” The Roger Affidavit #2 at para. 7 says he “never received or refused to receive any mail from Gerrand Rath Johnson.” This leaves open the questions of whether the registered mail was delivered to the postal box but unclaimed and therefore returned. If delivered but unclaimed, then Procyk must explain why.

[56] Given the limited evidence before me, I decline to make a finding of fact on the question of whether service was effective.

[57] Young’s also relied upon *Steen v Levesque*, 2023 SKKB 92 [*Steen*], in which Layh J. held at paras. 23-24 that a failure to provide proof of service constituted a jurisdictional error and deprived the hearing officer of jurisdiction to hold a hearing. *Steen* involved notice of a hearing under *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001. That statute and its regulations provides a comprehensive code, including a distinct deeming provision under ss. 82(5) of *The Residential Tenancies Act, 2006*. I acknowledge *Steen* as expressing the Court’s concern with actual notice.

[58] It is perplexing that Young’s made no further attempts at service of the s. 21 notice. Young’s knew where Procyk could be found. It successfully served notice under the *CLA* and the *PPSA* 11 days after the return of the s. 21 notice.

[59] Even if there was proper service of the s. 21 notice required under the *FDMA*, that would only be the first step in fulfilling the notice requirements for seizure under the *SFSA*. I therefore turn to that question.

5. Was Notice Required to be Served Under the *SFSA* and, if so, was it Properly Served?

[60] It is not disputed that Young’s did not serve or attempt to serve any notice on Procyk under the *SFSA*. The questions to be answered then are:

- i. Whether notice was required under the *SFSA*; and
- ii. If so, what is the consequence of that omission?

[61] Before turning to those questions, I will review the statutory scheme as it applies to seizure of farm implements by a secured party.

i. Statutory Scheme

[62] The *SFSA* was enacted to “assure Saskatchewan farm families security of tenure of farmland and protection from seizure of farm assets”: see *Legacy of Protection* at 1. This protective objective is reflected in the notice requirements and the generous procedural safeguards afforded to farmers, including opportunities to apply for hearings before any enforcement takes place, and in the significant remedies available to farmers under s. 55 of the *SFSA* when those requirements are not fulfilled.

[63] In *Chmil* at para 4, Richards J.A., summarized the *SFSA* as it applies to seizure of farm implements:

[4] *The Saskatchewan Farm Security Act* prevents a secured creditor from taking possession of an implement from a farmer without first serving the farmer with a prescribed notice. The notice advises the farmer of his or her right to apply for a hearing before the Court of Queen’s Bench. If such an application is made, the secured creditor is barred from taking further proceedings without leave of the court. At the Queen’s Bench hearing, the Court may make such orders as it considers just and equitable. ...

[64] Subsection 2(1) of the *SFSA* defines words used internally, including “court”, “implement”, “secured party”, “security agreement”, and “security interest”:

Interpretation

2(1) In this Act:

...

(d) “**court**” means the Court of King’s Bench;

...

(i) “**implement**” means:

(i) any implement, equipment or machine that is used or intended for use by a producer on a farm for the purpose of farming;

(ii) a motor vehicle classified in regulations made pursuant to *The Traffic Safety Act* [SS 2004, c T-18.1] as a farm vehicle;

...

(y) “**secured party**” means a person who has a security interest and includes a recognized financial institution that has a security interest;

(z) “**security agreement**” means an agreement that creates or provides for a security interest;

(aa) “**security interest**” means an interest in personal property that secures payment or performance of an obligation;

...

[Emphasis in original]

[65] A “Farmer” is defined in ss. 45(a) of the *SFSA*:

Interpretation of Part

45 In this Part:

(a) “**farmer**” means a producer who or agricultural corporation that owes payment or other performance of a secured obligation, whether or not he, she or it owns or has rights in the article, and includes a person appointed pursuant to subsection 49(1);

...

[Emphasis in original]

[66] Part IV of the *SFSA* is titled “Possession of Equipment”. Section 47 provides that a secured party shall not take possession of an implement except in accordance with Part IV. It is important to note that s. 47 applies “Notwithstanding any other” statute or agreement. Any conflict or inconsistency with another statute or with any agreement is of no matter:

Right to possession restricted

47 Notwithstanding any other provision in this Act, any other Act or any contract or agreement between a secured party and a farmer, where:

(a) a farmer has failed to make a payment on an agreement or contract; and

(b) an implement is, in whole or in part, the security under the agreement or contract;

the secured party shall not take possession of the implement except in accordance with this Part.

[67] Section 55 provides consequences where a secured party takes possession of an implement or disposes of an implement in contravention of Part IV, including in clause 55(c) a right to recover statutory damages in an action for money.

[68] Part IV of the *SFSA*, in ss. 48 and 57, require two separate notices to obtain possession of an implement:

Notice of intention to take possession

48 A secured party intending to take possession of an implement shall serve the notice prescribed in the regulations on the farmer.

...

Notice of possession of implement

57 Where a secured party takes possession of an implement, he or she shall serve on the farmer:

(a) if the possession has been taken pursuant to an order of a court, a notice of possession after order as prescribed in the regulations and a copy of the order of the court;

(b) in any other case, a notice of possession as prescribed in the regulations.

[69] The notices for both ss. 48 and 57 are prescribed in *The Saskatchewan Farm Security Regulations*, RRS c S-17.1 Reg 1: Form C Notice of Intention to Take Possession; Form D Notice of Possession of Implement, After Court Order; and Form E Notice of Possession of Implement, in Any Other Case. Service of each notice triggers a right to apply to the Court for a hearing.

[70] Section 50 provides that within 30 days after the date a s. 48 (Form C) notice of intention is served on a farmer, the farmer may apply for a Court hearing with notice to the secured party. Section 53 gives the Court hearing the farmer's application broad powers of relief. Section 56 gives the Court authority to also grant interim relief to the secured party.

[71] Section 52 provides that if the farmer does not apply for a hearing under s. 50 within 40 days after the s. 48 notice was served on the farmer, then the secured party may take possession of the implement.

[72] The *SFSA* distinguishes between possession and seizure. To complete seizure, the secured party must serve a further notice.

[73] Section 57 requires a secured party who takes possession, either from the farmer's failure to apply for a hearing or from an order made at a hearing, to then serve a notice of possession in Form D (where there was a hearing and the Court granted an order to take possession) or E (where there was no court hearing).

[74] The *SFSA* provides the farmer with a second chance for a hearing. A farmer who is served with a s. 57 notice of possession and did not make application for a hearing under s. 50 may, under s. 58 of the *SFSA*, apply for a hearing by the Court within 30 days after the date on which the notice of possession was served. Subsection 58(3) and s. 64 again give the Court broad authority.

[75] In *Legacy of Protection* at 407, the author summarized the procedure:

7.3 Serving Notice of Sale

Section 57 mandates the second prescribed notice that a secured party must serve on a farmer when, 40 days after serving the first notice, it wishes to take possession of an implement. Subsection 57(a) details the prescribed notice when possession follows a court order subsection 57(b) details the prescribed notice in other cases. The latter notice advises the farmer that since he has not applied for a hearing pursuant to the first notice, the secured party is about to take possession of the implements. The farmer is told that if he objects to the secured party taking possession of the implements he may apply to the court within 30 days after the date on which the notice of possession has been served upon him. If he does not apply, the secured party is entitled to sell the implements 40 days after the notice has been served.

[76] Section 61 provides that the Court shall not make any award of costs to either party except where the Court is of the opinion that the application was an abuse of the applicant's right to make application.

[77] Section 110 states that the *SFSA* prevails over any conflicting provisions in other statutes, contracts, or agreements. Section 69 of the *PPSA* also states that the *SFSA* prevails where there is conflict between provisions of the *PPSA* and the *SFSA*.

[78] The above review of the legislation supports a conclusion that the Legislature intended to provide broad and generous protection for farmers against seizure of farming implements.

ii. Was Young's required to serve notice under Part IV of the SFSA?

[79] Young's, in its Brief of Law at para. 42, disputes that it is a "secured party" under the *SFSA*.

[80] As mentioned earlier, Young's accepts that Procyk are farmers. I also took Young's to acknowledge that the Tractor was a farm implement.

[81] While Procyk disputed a portion of the debt owed for repair of the Tractor, I find that the debt existed. This debt arose from an agreement between Procyk and Young's. Young's agreed to transport the Tractor to its repair shop and to repair the damage to the Tractor. Procyk agreed to pay Young's for the cost of that transport and repair. SGI, as insurer, made partial payment. Procyk – despite repeated requests from Young's – failed to make payment of its share of the debt.

[82] Young's had a statutory lien on the Tractor under the *CLA* for the value of the repair work it did. The lien arises as soon as the work or materials are provided. This form of lien was once called a mechanics' lien under *The Mechanics' Lien Act*, RSS 1978, c M-7 (since rep).

[83] Subsection 2(1)(y) of the *SFSA* defines “secured party” as “a person who has a security interest and includes a recognized financial institution that has a security interest”. The definition, by expressly including “a recognized financial interest that has a security interest” and omitting any reference to “security agreement”, implies that the definition is not intended to be restricted to a lender or to require a security agreement.

[84] A plain reading of the definition supports the conclusion that a lien claimant falls within the definition of a secured party, since the claimant has an interest in property (lien on the Tractor) securing payment of an obligation (the unpaid portion of the repair bill).

[85] Given the purpose of the legislation to protect farmers from creditors, especially by preserving their possession of farmland and the implements necessary to farm the land, I prefer a reasonable interpretation which achieves the purpose of the legislation.

[86] I find that Young’s was a “secured party” as defined by the *SFSA*. The commercial lien that arose in this case did constitute a “security interest” as defined in ss. 2(1)(aa) of the *SFSA*. The lien is “an interest in personal property [(Tractor)] that secures payment or performance of an obligation” (payment of the contractual debt for repair of the Tractor). Young’s was therefore obliged to serve notice under Part IV of the *SFSA* before seizing the Tractor.

[87] In *Humble v Blais International Inc.* (1996), 139 Sask R 206 (WL) (QB) [*Humble*], Laing J. gave judgment to the plaintiffs in an action commenced by statement of claim. The plaintiffs were farmers whose tractor was seized by the defendant in a dispute over repair bills. The Court ordered return of the tractor, discharge of any lien, and payment of damages.

[88] Laing J. at para. 39 dismissed the plaintiff's argument that the repairs had not been properly authorized.

(1) Authorization for repairs

[39] The plaintiffs made a half-hearted attempt to suggest that the repairs which were effected to the tractor in the year 1991 had not been authorized by them. ... I find that Clarence Humble did authorize Blais to perform the repairs.

[89] *Humble* was decided on the basis that there was no lien supporting seizure because of a failure to comply with notice provisions of *The Garage Keepers Act*, RSS 1978, c G-2 (since rep), in particular the requirement to post notice of seizure at the garage:

[48] The result of the foregoing finding on the matter of notices is that Blais did not meet the requirements of s. 17 of *The Garage Keepers Act*, and was therefore not entitled to a non-possessory lien under that Act. It follows that without a lawful lien, the seizure of the tractor from the plaintiffs was unlawful and the tractor should be returned to the plaintiffs.

[90] Laing J. went on at paras. 49-60 to consider whether there was compliance with the notice provisions under the former *Farm Debt Review Act* (replaced by the *FDMA*), and the *SFSA*. He concluded at para. 66 that there was compliance with the notice requirements under both statutes. Laing J. at para. 53 recognized that this part of the judgment was *obiter dicta*.

[53] In view of the finding I have made that the lien claimed by Blais did not exist for non-compliance with *The Garage Keepers Act*, arguably it is not necessary for me to deal with the seizure procedure adopted by Blais because the previous finding makes the seizure unlawful. However, because the parties spent considerable time addressing these issues, and in the event I am in error with respect to my findings pursuant to *The Garage Keepers Act*, I will briefly address the points raised. ...

[91] Laing J., at para. 62 stated that, while assuming it did, he was not deciding whether the *SFSA* applied in these circumstances:

[62] I should state that the parties assumed that *The SFSA* applied with respect to a contemplated seizure of an implement pursuant to a garage keepers lien. I will assume the same, without deciding that it does.

[92] Laing J. at para. 64 held that the notice requirement under s. 47 of the *SFSA* applies to a farmer who failed to make payment on a contract and the implement sought to be seized is security under that contract. He further found that was the case here where the farmer had authorized repairs on the tractor:

[64] Section 47 of *The SFSA* is open to the same interpretation. Section 47 applies to a farmer who has failed to make a payment on a contract (in this case Clarence Humble), and the implement sought to be seized is security under that contract.

[65] The foregoing interpretation not only accords with the wording of the statutes, but also satisfies the purposes of the legislation as set out above. There is no reason to read into the legislation an assumption that the contracting party will not keep informed those persons who authorized him or her to enter into the contract in the first place.

[93] The Court of Appeal in *Chmil* at para 27 stated that, “*Humble* must be taken to have been wrongly decided” on the issue of whether notice under the *FDMA* could be served together with notice under the *SFSA*.

[94] Although *Humble* is not authoritative and must be read with caution, I still find some of its reasoning persuasive.

[95] *Legacy of Protection* at 386 posed the question, “Who is a secured party?”. At page 390, the author wrote:

Farm implements may be subject to other types of encumbrances, for example, a lien or charge given by statute or rule of law, like a commercial lien under *The Commercial Liens Act*. Must a lienholder serve the required notices under Part IV before exercising powers of seizure and sale when seizing an implement?

[96] After referring to *Humble*, the author went on to conclude that the answer remains uncertain:

The correct answer to this inquiry is made elusive because of the awkward and imprecise language of section 47. Why does section 47 use the term “agreement or contract” and not the defined term “security agreement” to describe the nature of the relationship that triggers application of section 47? Does a “contract” include a work order for repair that give rise to a commercial lien? Given the imprecise phrasing of section 47 and the punitive consequences for non-compliance, only a foolhardy lienholder would purposely ignore serving the obligatory notices under Part IV before a firm judicial determination is offered to this issue.

[97] As also stated in *Legacy of Protection*, this question has been in controversy for many years. It was open to the Legislature to clarify the intent by narrowing the application of the notice requirement. The fact that it has not done so indicates successive governments were content with the legislation as it was.

[98] Kevin Lang, now Provincial Court Judge, emphasized the breadth of the *SFSA*'s reach in *Seizure of Farm Implements: A Minefield of Legislation*, 2008 CanLIIDocs 700, noting at page 7 that the *SFSA* provides expansive definitions for terms such as “farming”, “farmer”, and “implement” to support a wide application:

The only conclusion that can be drawn from the wide definitions given to these terms is that the legislators intended that the *SFSA* would have a very wide application and it is therefore recommended that if there is any doubt as to whether or not the person is a farmer or that an item being seized is an implement, the provisions of the *SFSA* should be applied.

[99] Given my conclusion, Procyk was entitled to the protections offered by the *SFSA*, including notice of intent to take possession under s. 48 and notice of possession under s. 57. Neither notice was served.

[100] I turn then to the consequence of failing to serve notice.

6. If Required Notice Was Not Served, what is the Remedy?

i. *The FDMA*

[101] The Application in para. 1(a) asks for “an order declaring the possession and seizure ... of the 2010 Case 1 H Puma 140 Tractor null and void pursuant to section 22 of the *FDMA* ...”. Subsection 22(1) of the *FDMA* supports granting this relief:

Contravention by creditor

22(1) Subject to subsection (2), any act done by a creditor in contravention of section 12 or 21 is null and void, and a farmer affected by such an act may seek appropriate remedies against the creditor in a court of competent jurisdiction.

[102] In *Vista Mortgage Capital Corporation v MacSweeney*, 2025 ONSC 2322 at paras 59-60, Woodley J. commented on the application of ss. 22(1) of the *FDMA* where notice was not properly given:

[59] In the present case, notice was not properly given within the timeframe provided by section 21 of the *FDMA*. The *Act* provides that notice must be given and the 15 business-day-time period must elapse, before proceedings can be commenced.

[60] There are numerous decisions across our country that have considered the application of sections 21 and 22, and the law with respect to this issue is settled - where a secured creditor fails to provide notice as required by the *FDMA*, the underlying proceeding is a nullity and is *void ab initio*.

[103] I decline to make this order because the question of service of notice under the *FDMA* remains unresolved.

ii. *The SFSA*

[104] The application in para. 1(b) asks for “An order directing Young’s Equipment to pay to the Applicants 1.5 times the amount they sold the 2010 Case 1H Puma Tractor for pursuant to section 55(c) of the *SFSA*”.

[105] Subsection 55(c) of the *SFSA* supports a form of the requested relief:

Rights of farmer if secured party contravenes certain provisions

55 If a secured party takes possession of an implement or disposes of an implement in contravention of this Part or of an order of the court:

- (a) the agreement is deemed to be cancelled with respect to the implement;
- (b) the farmer is released from all liability with respect to the implement under the agreement; and
- (c) the farmer is entitled to recover from the secured party in an action for money had and received an amount equal to one and a half times the fair market value of the implement at the time of the seizure.

[106] The Tractor was not sold but remains in the possession of Young's. The calculation of damages under ss. 55(c) is based on "the fair market value of the implement at the time of the seizure."

[107] While I find that Procyk is entitled to relief under s. 55 of the *SFSA*, I am unable on the evidence to determine the fair market value of the Tractor at the time of its seizure in May 2021. As noted above, Young's disputes Procyk's estimate of value.

[108] Young's, in the Hoffman Affidavit at para. 3, suggests that SGI's decision to pay less than the full repair bill was based upon SGI's valuation of the Tractor:

3. ...My understanding at the time was that the Applicant's insurer paid only \$18,560.41 towards the repairs due to depreciation applied by the insurer. ...

[109] Young's, in the Hoffman Affidavit at para. 7 and Exhibit "B" offer an *IronGuide* (a product of Iron Solutions) valuation on April 4, 2021, which states a range of possible values from \$34,020 to \$51,350. There is insufficient evidence for the Court to reliably select a value from this range.

[110] The only evidence of value put forward by Procyk is para. 9 of the Roger Affidavit #1, which estimates the value at \$75,000.

9. At the end of May 2021 my tractor was worth approximately \$75,000.

[111] No support is provided for this estimate. I would not rely upon this estimate without credible support. That might exist in an independent valuation, in the record of purchase in the Spring of 2019, or in SGI's insured value. All of those sources for support should be readily obtainable.

[112] For these reasons, I decline to grant the relief sought. It is open to the parties to agree upon a value or to return to Court with better evidence.

V. CONCLUSION

[113] The seizure of farm implements owned by farmers is governed by both federal and provincial statutes. The Courts have interpreted these statutes to work together.

[114] Young's seized the Tractor under the *CLA* after Procyk failed to make full payment for the repair of the Tractor. Notice required under the *CLA* was properly served. Procyk did not apply for a hearing. After expiry of the time to apply for a hearing, Young's would have been entitled to seize and retain the Tractor, as it did.

[115] However, because the Tractor was a farm implement owned by a farmer, a different statutory scheme applied. Young's was required to serve notice under the *FDMA* and the *SFSA*. Those notice requirements are more stringent and were not fulfilled.

[116] There are three separate notice requirements before a secured creditor (as defined by the *FDMA*) and secured party (as defined by the *SFSA*) may seize a farm implement owned by a farmer in Saskatchewan.

[117] First, the secured creditor must serve notice under s. 21 of the *FDMA*, giving the farmer at least 15 business days' notice of the secured creditor's intention to initiate proceedings under the *SFSA*. The farmer may apply to the Administrator under s. 5 of the *FDMA* for a stay of proceedings and review and mediation between the farmer and the farmer's creditors. On receipt of such application, the Administrator notifies the creditors.

[118] Second, if the farmer does not apply or after a determination by the Administrator (and no earlier than 15 business days after serving the s. 21 notice), the secured party may serve notice under s. 48 of the *SFSA* (in Form C) on the farmer. The farmer then has 30 days from the date of service to apply for a Court hearing under s. 50 of the *SFSA*. If the farmer applies, the Local Registrar informs the secured party.

[119] Third, if no hearing application is received within 40 days of the s. 48 notice being served, the secured party may take possession of the farm implement and must serve a notice in Form E under s. 57 of the *SFSA* (seizure need not be contemporaneous with service of s. 57 notice). If there was a hearing and the court made an order, then the secured party must serve notice in Form D. In either case, the farmer then has 30 days from service of the s. 57 notice to apply for a Court hearing: s. 58 of the *SFSA*. If the farmer does not apply, the secured party may sell the implement 40 days after serving the s. 57 notice: ss. 59(a) of the *SFSA*.

[120] Young's attempted service under s. 21 of the *FDMA*, but the notice was returned unclaimed. Young's made no further attempt at service, relying upon the deemed service provision of the *FDMA*. Procyk has not provided evidence to rebut the presumption of service. However, the issue of notice under the *FDMA* becomes moot because there was no notice under the *SFSA*.

[121] Young's was also required to serve notice under the *SFSA*, but failed to do so. Procyk is therefore entitled to relief under s. 55 of the *SFSA*. However, Procyk

has failed to provide sufficient evidence to make a reliable calculation of an award under ss. 55(c) of the *SFSA*. I therefore decline to grant relief at this time.

[122] I will remain seized of this file. If the parties are unable to resolve the matter between themselves, the dispute may be returned to Court on a date scheduled by the Local Registrar.

J.
D.N. ROBERTSON