

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 24**

Date: **2026 01 28**
File No.: QBG-RG-01619-2020
Judicial Centre: Regina

BETWEEN:

INPUT CAPITAL CORPORATION

PLAINTIFF

- and -

MCKERCHER LLP, GARRY BONKOWSKI, MARGARET ANNE BONKOWSKI, DANIEL BONKOWSKI, BONKOWSKI FARMS LTD.

DEFENDANTS

Counsel:

T. Joshua Morrison and Allison Graham for the plaintiff
Matthew Schmeling and McKinley Sim for the defendants Garry Bonkowski and Margaret Anne Bonkowski
Randall M. Sandbeck, K.C. and Tanner Titlandsvik for the defendant McKercher LLP
No one appearing for the defendant Calidon Financial Services Inc.
No one appearing for the defendants, Daniel Bonkowski and Bonkowski Farms Ltd.

FIAT
January 28, 2026

ROBERTSON J.

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INTRODUCTION

[1] This decision addresses an application under Rules 6-82 and 7-1 of *The King's Bench Rules* for determination of a question of law.

[2] The application asks what is the effect of a failure to complete an Acknowledgment of Guarantee, as required by s. 31 of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1 [*SFSA*]. The answer is that the guarantee is unenforceable as against the guarantors because s. 31(2) of the *SFSA* expressly states that such a guarantee has no effect. In the particular circumstances of this case, the mortgage agreement is also unenforceable as against the mortgagors because it is part and parcel of the guarantee.

BACKGROUND

[3] This decision should be read in light of my decision of July 24, 2025 reported at 2025 SKKB 111 [*First Decision*] in which I declined to answer the question on the basis of the filed materials. The history of this litigation is summarized in the *First Decision* at paras 2 – 10.

[4] On August 28, 2025, the parties filed a revised Agreed Statement of Facts and Documents [Agreed Facts], which is reproduced at the end of this decision. I then agreed to address the original application on the basis of the revised Agreed Facts and gave leave to the parties to file additional briefs of law. The last brief of law was filed October 29, 2025.

ISSUES

[5] The Order issued by Justice Dawson on January 28, 2025 stated the issue to be determined as follows: Are the 2015 Guarantee, the 2015 Collateral Mortgage and/or the 2017 Amending Agreement legally enforceable against Garry and Margaret

Anne Bonkowski?

[6] I will address the following issues:

1. Is the 2015 Guarantee [Guarantee] legally enforceable against Garry and Margaret Anne Bonkowski?
2. Is the 2015 Collateral Mortgage, as amended in 2017, [Mortgage] legally enforceable against Garry and Margaret Anne Bonkowski?
3. What, if any, award of costs should be made?

POSITION OF PARTIES

Input Capital Corp.

[7] Input Capital Corp. [ICC] argued that the Mortgage is not a guarantee because there is no personal covenant to pay. The Mortgage only pledges the land. Section 31 of the *SFSA* applies to guarantees only and is irrelevant to enforcement of the mortgage.

[8] ICC also argued that the Mortgage stands apart from and is independent of the Guarantee. The enforceability of the Mortgage is not dependent upon the Guarantee, so non-compliance with s. 31 of the *SFSA* is irrelevant. The two documents are distinct contracts. The Mortgage is no different from any other mortgage and is enforceable.

McKercher LLP

[9] McKercher LLP [McKercher] described the Mortgage as a limited recourse mortgage enforceable against the mortgaged land only. McKercher argued that s. 31 of the *SFSA* has no application to the Mortgage because s. 31 applies to guarantees only. There is no such requirement for mortgages. However, if s. 31 does apply in this

case, then there was substantial compliance with the requirements of s. 31 which is sufficient. Even if there was a legal defect which invalidated the Mortgage, money was loaned in good faith with the land pledged as security, so an equitable mortgage arose with right of foreclosure upon default of payment of the debt.

Garry and Margaret Anne Bonkowski

[10] Garry and Margaret Anne Bonkowski [Garry and Margaret] argued that the requirements of s. 31 of the *SFSA* are mandatory. The admitted lack of compliance makes the Guarantee void. The Mortgage and Guarantee are inseparable. The Mortgage secured the Bonkowski's obligations under the Guarantee. If the Guarantee is unenforceable, then the Mortgage is also unenforceable.

LAW

[11] The following law, both legislation and case law, may be relevant to deciding the issues.

The Legislation Act

[12] *The Legislation Act*, SS 2019, c L-10.2 at s 2-10 codifies basic principles of interpretation of enactments, including regard for its purpose:

Acts and regulations remedial

2-10(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

(2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

Contract interpretation

[13] In *Gustafson v Input Capital Corp.*, 2022 SKCA 22 at paras 44 – 45, Leurer J.A. (as he then was), writing for the Court, summarized principles of contract interpretation:

[44] While “[i]n every case, contract interpretation *begins* with the words of the contract” (*Mosten* [2021 SKCA 36] at para 72, emphasis added), the court’s task is not simply to look to the words of the contract. In almost all cases, the interpretation of a contract involves a consideration of its words in the context of the circumstances surrounding its making. As explained in *Sattva* [2014 SCC 53], the “nature of the evidence that can be relied upon under the rubric of ‘surrounding circumstances’ will necessarily vary from case to case” (at para 58). However, the need to read the words of a contract in the context in which those words were written or (in the case of an oral contract) spoken remains in all but a few categories of cases. As explained in *Mosten*, this is so even when there is a dispute regarding the interpretation of a standard form contract or contractual provision. It is just that, in such a case, a “factual matrix may still exist, but it must—given it is only where there is no meaningful factual matrix specific to the parties that such an issue arises—be the same for all who use the same standard form contract language to govern their contractual relationship” (at para 86).

[45] One important aspect of the surrounding circumstances relevant to the interpretation of a contract is the purpose of the agreement. In *Eli Lilly & Co. v Novopharm Ltd.*, [1998] 2 SCR 129 at para 56, Iacobucci J. emphasized that it “would be absurd to adopt an interpretation which is clearly inconsistent with the commercial interests of the parties, if the goal is to ascertain their true contractual intent”.

(Emphasis in original)

The Saskatchewan Farm Security Act

[14] The *SFSA* was enacted in 1988. It consolidated previous statutes which provide protection to Saskatchewan farmers against creditors.

[15] The *SFSA* in s 31(2) provides that no guarantee has any effect unless the person entering into the obligation signs the certificate in the prescribed form and acknowledges its execution before a lawyer or notary public. Section 31 is reproduced below:

Limits and acknowledgment of guarantees

31(1) In this section:

(a) “**creditor**” includes a mortgagee and a secured party;

(b) “**guarantee**” means a deed or written agreement whereby an individual enters into an obligation to answer for an act, default, omission or indebtedness of a farmer in relation to farm land or other assets used in farming, but does not include guarantees entered into prior to the coming into force of this Act;

(c) “**lawyer**” means a lawyer who has not prepared any documents on behalf of the creditor relating to the transaction and who is not otherwise interested in the transaction;

(d) “**notary public**” means:

(i) with respect to an acknowledgment made in Saskatchewan, a notary public in and for Saskatchewan;

(ii) with respect to an acknowledgment made in a jurisdiction outside Saskatchewan, a notary public in and for that jurisdiction;

who has not prepared any documents on behalf of the creditor relating to the transaction and who is not otherwise interested in the transaction.

(2) No guarantee has any effect unless the person entering into the obligation:

(a) appears before a lawyer or notary public;

(b) acknowledges to the lawyer or notary public that he or she executed the guarantee; and

(c) in the presence of the lawyer or notary public signs the certificate in the prescribed form.

(3) The lawyer or notary public, after being satisfied by examination of the person entering into the obligation that he or she is aware of the contents of the guarantee and understands it, shall issue a certificate in the form prescribed in the regulations.

(4) If a notary public issues a certificate pursuant to subsection (3), the notary public shall do so under his or her hand and seal.

(5) Every certificate issued pursuant to this section by a lawyer or notary public shall be:

(a) attached to; or

(b) noted on;

the instrument containing the guarantee to which the certificate relates.

(6) A certificate issued pursuant to this section that is:

(a) substantially complete and regular on the face of it; and

(b) accepted in good faith by the creditor;

is admissible in evidence as conclusive proof that this section has been complied with.

(7) Every guarantee shall specify the maximum financial obligation in sum certain plus interest from the date of the demand on the guarantor to which the guarantor is liable.

(8) A guarantee that does not comply with subsection (7) is null and void and of no effect.

[16] In his second reading speech introducing Bill No. 37, *An Act to Provide for Security for Saskatchewan Family Farms* (later enacted as *SFSA*), the Hon. Mr. Andrew, then Minister of Justice, spoke to the provisions of Bill No. 37 regulating guarantees (Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)* 21st Leg, 2nd Sess (6 June 1988) at 1875 (Hon. Robert L. Andrew):

There has been considerable concern expressed in the farm community over the implications of guarantees. To address the issue, two significant changes have been introduced to the law of guarantees as it relates to farming. First, before signing a guarantee, a farmer or family member will have to be advised of the nature and the effect of the guarantee by an independent lawyer or notary. If this has been done . . . has not been done, a guarantee entered into after this Act is passed will not be enforceable.

Second, from now on, guarantees will have to be specific as to the total indebtedness to which the guarantor could be exposed. Unlimited guarantees entered into after this Act coming into force will be of no force and will not be enforceable.

What that is designed to do, Mr. Speaker, is to cover the following situation. You had the case where a young farmer went to the bank, perhaps had a half section, borrowed money to pay for the other half section, and now he has a section. The banker would say, well I think that's probably enough security, but perhaps you would get your father to come in and we'd just get him to sign sort of a further protection for us, but it'll never have to be exercised on because obviously the value of your land is there. That was at a time when land values were quite high, Mr. Speaker. Now some have sought not to worry about the hassle of simply going after the farmer, but simply to take the father perhaps who has no debt, and in some cases, Mr. Speaker, take his farm away.

[17] Donald H. Layh, in *A Legacy of Protection: The Saskatchewan Farm Security Act: History, Commentary & Case Law* (Twin Valley Books, 2009) at pp 255 – 272 devoted a full chapter to Guarantees (Chapter 8: Guarantees). The author at p. 255 commented upon the unusual nature of guarantees:

Guarantees are rather unusual contractual obligations – that is why custom or legislation in many Canadian provinces has made commonplace a guarantor's attendance upon a lawyer or notary public to ensure guarantors understand their obligations. Guarantors receive little consideration, only the credit granter's willingness to confer a benefit upon the principal obligant. In turn, though, a guarantor promises much – to answer for the

principal obligant's default. Commonly, a guarantor has a strong relationship with the principal obligant, like the parent of a child or the principal of a corporation.

[18] *A Legacy of Protection* at pp 263-271 discusses certificates of acknowledgment under the *SFSA*. Seven conditions the lawyer or notary public must satisfy are summarized at pp. 263-264. This summary concludes with the following comment:

Any prudent notary or lawyer should ensure that he has satisfied these conditions before signing the certificate. To do otherwise may ground an action by the guarantor. ...

[19] In *Procyk v Young's Equipment Inc.*, 2025 SKKB 136 at para 36, I wrote:

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.

The Saskatchewan Farm Security Regulations

[20] *The Saskatchewan Farm Security Regulations*, RRS c S-17.1 Reg 1 at s 8 prescribes forms, including in s. 8(b) an Acknowledgment of Guarantee pursuant to s. 31 of the *SFSA* as Form B. Form B is reproduced below:

FORM B
ACKNOWLEDGMENT OF GUARANTEE
[Section 31]
CERTIFICATE OF LAWYER OR NOTARY PUBLIC
I HEREBY CERTIFY THAT:

I _____ of _____ in the province of _____, the guarantor in the guarantee dated _____ made between _____ and _____, which this certificate is attached to or noted upon, appeared in person before me and acknowledged that he/she had executed the guarantee;

2 I satisfied myself by examination of the guarantor that he/she is aware of the contents of the guarantee and understands it;

3 I have not prepared any documents on behalf of the creditor, _____, relating to the transaction and I am not otherwise interested in the transaction;

4 I acknowledge that the guarantor signed the following "Statement of Guarantor" in my presence.

Given at _____ this _____ day of _____, 20____,

under my hand and seal of office.

(SEAL REQUIRED WHERE NOTARY PUBLIC SIGNS CERTIFICATE)

A LAWYER OR A NOTARY PUBLIC IN AND FOR

STATEMENT OF GUARANTOR

I am the person named in the certificate.

Signature of Guarantor

[21] In *Prairie Centre Credit Union Ltd. v River Ridge Cattle Corp.*, 2010 SKQB 135 [*Prairie Credit*], Keene J. directly addressed the question of whether the absence of an executed Acknowledgement of Guarantor and Certificate of Lawyer or Notary Public resulted in the guarantee being unenforceable pursuant to s. 31(2) of the *SFSA*. His conclusion at paras. 38 and 40(iii) was that such omission resulted in the guarantee having no legal effect. In doing so, he also found at para. 18 that "s. 31[of the *SFSA*] although found under Part II is really a stand alone section."

ANALYSIS

[22] In this part, I will address the issues, with regard for the background and law reviewed above.

Is the Guarantee legally enforceable against Garry and Margaret Anne Bonkowski?

[23] The short answer to the question is “No”. The Guarantee did not comply with the mandatory requirements of s. 31(2) and is therefore of no effect. It is not enforceable.

[24] The key fact in the Agreed Facts is paragraph 17:

17. When the 2015 Guarantee was signed, no lawyer or notary public issued a certificate in the form prescribed in the *Regulations* as required by s. 31(3) and 31(4) of the *Act*. ...

[25] This omission was not remedied when the 2017 amendment to the 2015 Mortgage was done.

[26] As set out above, s. 31(2) of the *SFSA* provides that “No guarantee has any effect unless the person entering into the obligation ... in the presence of the lawyer or notary public signs the certificate in the prescribed form.” This provides a complete answer to the question of whether the Guarantee is enforceable when there is no Acknowledgment of Guarantee. It has no effect and is not enforceable. This result accords with both the plain meaning of the words and the purpose of the legislation.

[27] Further, this question was decided in *Prairie Credit*. If the Legislature disagreed with that interpretation, it could have amended the *SFSA*. It has not done so. This indicates this interpretation accords with both the letter and intent of the legislation.

Substantial Compliance argument

[28] ICC argued that the Guarantee remained enforceable, notwithstanding the absence of any Acknowledgement of Guarantor and Certificate of Lawyer or Notary Public. I reject that argument. The express wording of the legislation leaves no room for substantial compliance.

[29] ICC, in support of its substantial compliance argument, referred to *Senstad v Makus*, 1977 CanLII 201, [1978] 2 SCR 44 (SCC) [*Senstad*] and *Toronto-Dominion Bank v Gordon*, 1981 CanLII 2066, [1981] 5 WWR 235 (SKCA) [*Gordon*]. Those decisions are distinguishable. Both involved incomplete homestead forms: in *Senstad* under *The Dower Act*, RSA 1970, c 114 (since rep) (Alberta); and in *Gordon* under *The Homesteads Act*, RSS 1965, c 118 (since rep) (Saskatchewan). In both cases, the Court found, on the facts, that the elements to apply the law of substantial compliance were satisfied. In this case, however, the statute expressly states the consequence of failure to complete the required form. In *Gordon*, Bayda J.A., (as he then was) for the majority quoted from the majority judgment of Lamont J.A. in *Nielsen v Jenewein*, 1924 CanLII 77 at para 7, [1924] 3 DLR 508 (SKCA):

[7] Here, however, the wife was perfectly willing that the sale should be made and consented thereto but her consent was not expressed in the manner called for by the Act. She was at all times ready to give her consent in the prescribed manner had she been asked to do so. In *Scott and Sheppard v. Miller* [1922 CanLII 194, 15 Sask LR 266 (SKCA)] I expressed the opinion that no lease or transfer of a homestead was valid until it had been signed by the homesteader's wife. In that case the wife was non-consenting. The moment she heard of the agreement she refused her consent and protested against the contract being carried out and the Court held that, as the parties had failed to obtain her consent, the agreement was unenforceable. Does the same rule apply where the wife consents to the sale being made but has omitted to execute the agreement because it was not presented to her for that purpose? In other words: Is the validity of the agreement made to depend upon the wife's consent being obtained or upon her expressing her consent in the particular

manner set out in the statute? Of course no registration of any conveyance can be affected without a compliance with the statutory requirements. But that is not the question. The question here is: Was it the intention of the Legislature to prevent an agreement for the sale of a homestead from having any validity although the wife consented to the sale until she executed the agreement and appeared before the proper official and acknowledged that she understood her rights and had signed the agreement of her own free will and consent? **The statute does not in express terms say so.** What it says is that the agreement shall be signed by her. Suppose a homesteader entered into an agreement for the sale of the homestead while his wife was absent from home but had consented to the sale being made and suppose the purchaser had entered into possession and made his payment and the homesteader's wife died before she returned home, would the agreement be a total nullity for the want of her signature? Considering that the object of the statute is to protect the non-consenting wife and considering that legislative enactments are not to be construed as interfering with a right to contract to any greater extent than is necessary to give effect to what is set out in the statute either in expressed language or by necessary implication I am of opinion, not without some doubt however, that the legislative intention was to make the validity of an agreement depend upon the wife's consent and if she does consent to the sale at the time the agreement is entered into she can evidence that consent later on by executing the agreement and making the necessary acknowledgment when called upon to do so; that is to say, the agreement was not intended to be a nullity without the signature of a consenting wife, but it was intended that it should not be enforceable by the husband unless she had consented to the sale and her consent was evidenced in the prescribed manner. This I think is shown by sec. 8, where it is declared that knowledge on the part of a purchaser that the land described in the instrument is a homestead of the vendor and that he has a wife who is not a party thereto shall be fraud and that such instrument may be set aside by the wife. **This provision was unnecessary if the intention of the Legislature in sec. 3 had been that the transfer, agreement, etc., should be a nullity unless executed by the wife.**

(Emphasis added)

[30] In this case, s. 31(2) of the *SFSA* is clear as to the intention of the Legislature. Unlike the homestead cases relied upon by ICC, s. 31(2) expressly states

that a non-compliant guarantee has no effect. The Court must respect that express legislative choice.

Is the Mortgage legally enforceable against Garry and Margaret Anne Bonkowski?

[31] The answer to this issue turns on the question of whether the Mortgage can be separated from the Guarantee. Put another way, does the Guarantee, as it is defined in s. 31(1)(b) of the *SFSA*, apply only to the Guarantee document or does it extend to the Mortgage?

[32] Stepping back for a moment, everyone agreed on the reason for and purpose of the Guarantee and Mortgage. This background is summarized in the preamble to the Guarantee:

WHEREAS Bonkowski Farms Ltd. (the “Farm Operator”) entered into a Collateral Mortgage agreement dated April 22, 2013 (the “Collateral Mortgage”) pursuant to which the Farm Operator has granted to and in favour of Input a mortgage on the Mortgaged Lands (as defined therein);

WHEREAS the Farm Operator intends to sell some of the Mortgaged Lands (the “Sale Lands”) and requires Input to discharge its security interest in the Sale Lands; and

WHEREAS Input agrees to discharge its mortgage registered against the Sale Lands subject to the Guarantors agreeing to enter into this Guarantee.

(Agreed Facts, tab P)

[33] Daniel Bonkowski and his company, Bonkowski Farms Ltd. [Daniel], wanted to sell farmland which was pledged as security under a mortgage agreement with ICC. Daniel and ICC agreed to a “mortgage swap” under which ICC would discharge its mortgage against the farmland owned by Daniel and replace it with a mortgage on farmland owned by his parents, Garry and Margaret Anne Bonkowski.

Garry and Margaret agreed to facilitate this through the Guarantee and Mortgage.

[34] ICC's lawyers, McKercher, prepared the documents and sent them to Garry's and Margaret's lawyer. These documents consisted of the Mortgage and Guarantee. Garry and Margaret signed the documents before their lawyer, who returned the executed documents to McKercher. There is no suggestion that any changes were made to the documents or that any parts were removed or not returned to McKercher. The omission of the Acknowledgment of Guarantee was simply an oversight. (Joint Book of Documents, Vol. II, p. 559 – Transcript of questioning of Patricia Warsaba, K.C. at p. 56)

[35] It was only much later that the parties realized that the required Acknowledgment of Guarantee was not part of the documents.

[36] The close relationship between the Guarantee and Mortgage is evident, including from the following:

1. The Guarantee and Mortgage were prepared by McKercher to realize ICC's objective and on its instructions.
2. The Guarantee and Mortgage were sent together to Garry's and Margaret's lawyer for execution.
3. The Guarantee and Mortgage were executed at the same time by Garry and Margaret and their lawyer. Their lawyer returned the executed documents to McKercher.
4. The Guarantee is attached as Schedule "B" to the Mortgage.
5. There are numerous cross-references between the Mortgage and Guarantee to each other, which are described below;

6. The Mortgage is the enforcement mechanism for the Guarantee.

[37] There is a clear and close relationship between the Guarantee and the Mortgage.

[38] The Mortgage has 38 clauses over 23 pages of text, much of it standard boilerplate which might be found in any mortgage agreement. But there are significant references in the Mortgage to the Guarantee, which appear to have been inserted for this transaction. The first clause of the Mortgage is titled “GRANT OF GUARANTEE” in which “The Mortgagor does hereby agree to grant to the Mortgagee the Guarantee, a copy of which is attached hereto as Schedule “B” to the Mortgage (the “Guarantee”). Clause 2, titled “REPAYMENT OF OBLIGATIONS SECURED AND INTEREST”, states “The Mortgagor will pay to the Mortgagee ON DEMAND, ... in accordance with the terms of the Guarantee” \$2,500,0000 with interest. (Amended in 2017 to substitute \$3,918,020.) Clause 12, titled “DEFAULT” refers to the Guarantee in subclauses (b), (c) and (d). Subclauses 12(c) states in part “If a default on the part of the Mortgagor occurs under the Guarantee ...”. Subclause 12(d) states in part “for performance of the covenants of the Mortgagor under the Guarantee or this Mortgage.” Clause 30, titled “ADDITIONAL REPRESENTATIONS OF THE MORTGAGOR”, in subclause 30(c) refers to “obligations hereunder or under the Guarantee”. Clause 31, titled “ADDITIONAL COVENANTS OF THE MORTGAGOR” in subclause 31(a) states “the Mortgagor will use the Mortgaged Lands for the purposes as contemplated by the Guarantee”. (Agreed Facts, tab P)

[39] The Guarantee is a much shorter document with three pages of text. There are at least 17 references to the “Collateral Mortgage”. Clause 5, titled “LIMITED RECOURSE” in subclause 5.1 states “Notwithstanding that the obligations of the Guarantors under this Guarantee, Input is limited in recourse to the collateral mortgage granted by the Guarantors in favour of Input and registered against the following land:”

(Agreed Facts, tab P).

[40] It is clear that the Guarantee cannot be understood or applied without the accompanying Mortgage.

[41] My finding that the Mortgage is the enforcement mechanism for the Guarantee is evident both from the wording of the documents and from extrinsic evidence of the framers' intent.

[42] Joel Hesje, K.C. of McKercher, in an email to Ron Luba of ICC sent on March 1, 2019, wrote "The mortgage is collateral to a guarantee."

In reviewing the documents on Bonkowski I have identified a potentially significant issue. The quarter section held as security is owned by the parents, Gary [*sic*] and Margaret. The mortgage is collateral to a guarantee. However we have located any certificate of legal advice. The absence of such security may effect the validity of the guarantee and thus the mortgage. I am travelling on Monday but should be available to discuss on Tuesday.

(Joint Book of Documents, Vol. III, p. 01275 - email)

[43] Ron Luba of ICC, in a letter dated April 3, 2019 to Margaret Bonkowski giving notice of enforcement proceedings, wrote "Input Capital holds a Collateral Mortgage effective May 9, 2015, as amended March 31, 2017, as security for the Guarantee." (Agreed Facts, tab P, p. 00175 - letter)

[44] In questioning on August 17, 2023, Patricia Warsaba, K.C. of McKercher gave the following answers to questions from Input's lawyer:

Q. Okay. And in your view, what's the difference between the guarantee and the collateral mortgage? Why were both needed?

A. The guarantee would be to create the obligation.

Q. And then the collateral mortgage secures the obligation?

A. Yes

(Joint Book of Documents, Vol. II, p. 559- Transcript page 56,
lines 1 – 8)

[45] Because the Mortgage is so long and filled with standard mortgage terms, there is certainly room to make an argument that those standard terms would allow it to stand alone and be enforced. But that position would ignore the surrounding circumstances and relationship between the two documents, as described above. I am satisfied that the two documents were intended to be read and applied together.

[46] In as much as the relationship between the Mortgage and Guarantee might be construed as ambiguous, or open to different, reasonable interpretations, I would rely upon the *contra proferentem* rule. Under that rule, ambiguity in a contract may be resolved against the drafter on the basis that they had the opportunity to craft the agreement.

[47] The Mortgage is not a standalone agreement. If the Guarantee is of no effect and therefore unenforceable, as I have found, then so is the Mortgage. This result is consistent with and respects the intent of the *SFSA*, as discussed above.

[48] In coming to this conclusion on the Mortgage, I would emphasize that it is confined to these particular documents and circumstances.

Equitable mortgage argument

[49] McKercher argued in the alternative that, even if the Guarantee and Mortgage were unenforceable, the circumstances of the mortgage swap justified the Court's recognition of an equitable mortgage which could be enforced by foreclosure proceedings. McKercher referred to the Court's equitable jurisdiction under s. 10-3 of *The King's Bench Act*, SS 2023, c 28 and to the Legislature's recognition of equitable mortgages in s. 25(1)(a) of the *SFSA*.

[50] While I accept that an equitable mortgage can exist in Saskatchewan, I disagree that it would be appropriate to find one in this case. To substitute an equitable mortgage would amount to judicial override of the *SFSA*. The Legislature, in enacting the *SFSA*, in particular s. 31, established firm rules to achieve a public policy. The Court should respect that democratic choice.

[51] Further, in terms of equities, ICC is not likely without recourse, since the default was the failure of Daniel to pay his debt. ICC presumably can pursue that debt against him.

What award of costs, if any should be made?

[52] Garry and Margaret were successful on the application and are entitled to an award of costs. This was a complex case involving a novel issue. I award Garry and Margaret a single set of costs award against ICC and McKercher, calculated on Column 3 of the Tariff of Costs, payable forthwith.

[53] I thank counsel for their submissions and assistance.

J.
D.N. ROBERTSON

AGREED STATEMENT OF FACTS AND DOCUMENTS

The Parties

1. Daniel Bonkowski (“**Daniel**”) is an individual residing near Wapella, Saskatchewan. Daniel carries on a farming operation through Bonkowski Farms Ltd. (“**Bonkowski Farms**”).
2. Garry Bonkowski (“**Garry**”) and Margaret Bonkowski (“**Margaret**”) reside near Wapella, Saskatchewan. Garry and Margaret are Daniel’s parents.
3. Input Capital Corporation (“**Input**”) is a publicly traded corporation with its head office in Regina, Saskatchewan. Input’s primary business consists of purchasing canola directly from farmers through the use of “Streaming Canola Purchase Contracts”. Generally speaking, these Contracts require farmers to sell and deliver a number of tonnes of canola to Input for a fixed number of years while in return, Input provides an up-front cash advance and additional crop payments each year. Input also takes security interests in the farmer’s personal property and a mortgage on the farmer’s real property.
4. McKercher LLP (“**McKercher**”) is a limited liability partnership with an office in Regina, Saskatchewan. It operates as a full-service law firm providing legal services in Saskatoon and Regina. Input has retained and continues to retain McKercher to provide it with advice and services in relation to its streaming business (the “**Retainer**”).

Input Retainer with McKercher

5. McKercher acted for Input in relation to the preparation and execution of the following documents:
 - a. the 2013 Streaming Contract;
 - b. the 2013 Collateral Mortgage;
 - c. the 2014 Streaming Contract;

- d. the 2015 Collateral Mortgage;
 - e. the 2015 Guarantee; and
 - f. the Account Receivable Agreement,
- all as hereinafter defined.
6. McKercher acted for Input in relation to the preparation of template agreements for the following documents:
- a. the March 2016 Contract;
 - b. the October 2016 Contract;
 - c. the Capital Stream Contract;
 - d. the Marketing Stream Contract; and
 - e. the 2017 Amending Agreement,
- all as hereinafter defined.

The 2013 Contracts

7. Bonkowski Farms and Daniel entered into the Streaming Canola Purchase Contract with Input dated April 22, 2013 (the “**2013 Streaming Contract**”). The 2013 Streaming Contract required Bonkowski Farms and Daniel to deliver 2,075 tonnes of canola to Input each year for six (6) years, commencing with the 2013 crop year. The 2013 Streaming Contract required Input to pay Bonkowski Farms and Daniel \$2,500,000.00, with a series of crop payments thereafter. A copy of the 2013 Streaming Contract is at Tab A.
8. Daniel Bonkowski, on behalf of Bonkowski Farms Ltd., signed a collateral mortgage dated April 22, 2013 in favour of Input (the “**2013 Collateral Mortgage**”). The 2013 Collateral Mortgage, payable on demand, was for \$2,500,000.00. The 2013 Collateral

Mortgage required interest to be paid at the rate of 5% per annum, compounded monthly, on all amounts owing under the 2013 Streaming Contract and under any contracts related or ancillary to the 2013 Streaming Contract. A copy of the 2013 Collateral Mortgage is at Tab B.

9. Daniel Bonkowski, on behalf of Bonkowski Farms Ltd., signed a collateral security agreement dated April 22, 2013 in favour of Input (the “**2013 Security Contract**”). The 2013 Collateral Contract granted Input a security interest in each of Bonkowski Farms and Daniel Bonkowski’s present and after-acquired property. A copy of the 2013 Security Contract is attached to the Agreed Statement of Facts as Tab C.

The 2014 Contract

10. Bonkowski Farms and Daniel entered into another Streaming Canola Purchase Contract with Input dated March 31, 2014 (the “**2014 Streaming Canola Contract**”). The 2014 Streaming Canola Contract required Bonkowski Farms and Daniel to deliver 230 tonnes of canola to Input each year for five (5) years, commencing with the 2014 crop year. A copy of the 2014 Streaming Canola Contract is at Tab D.

The 2015 Documents

11. In 2015, Daniel and Bonkowski Farms wanted to sell some of the land that was subject to the 2013 Collateral Mortgage.
12. In exchange for Input discharging its security under the 2013 Collateral Mortgage, Garry and Margaret signed a collateral mortgage dated March 9, 2015 in favour of Input with a principal amount of \$2,500,000.00 (the “**2015 Collateral Mortgage**”). The land subject to the 2015 Collateral Mortgage is:

Surface Parcel #109119056
Reference Land Description: SE Sec 04 Twp 15 Rge 33 W1 Extension 0
As described on Certificate of Title 00SE05733

13. The 2015 Collateral Mortgage was registered in the land titles registry on June 3, 2015, as interest register no. 120872112. A copy of the 2015 Collateral Mortgage is at Tab E.

- Input also discharged its mortgage security in relation to land owned by Bonkowski Farms secured by the 2013 Collateral Mortgage.
14. Garry and Margaret signed a guarantee dated March 9, 2015 in favour of Input (the “**2015 Guarantee**”), a copy of which is included at Tab E as Schedule “B” to the 2015 Collateral Mortgage.
 15. McKercher prepared all documents relating to the 2015 Collateral Mortgage and the 2015 Guarantee. Garry and Margaret signed the 2015 Collateral Mortgage and 2015 Guarantee in front of their solicitor, Garry Moore.
 16. When Garry and Margaret executed the 2015 Guarantee, Garry and Margaret did appear before Garry Moore and:
 - a. did not, in the presence of a lawyer or notary public, sign the certificate in the form prescribed in *The Saskatchewan Farm Security Regulations*, RRS c S-17.1 Reg 1 (the “*Regulations*”), as required by s. 31(2) of the *Saskatchewan Farm Security Act*, c S-17.1 (the “*Act*”); and
 - b. did each execute the homestead affidavits included in the 2015 Collateral Mortgage document, which were commissioned by Garry Moore.
 17. When the 2015 Guarantee was signed, no lawyer or notary public issued a certificate in the form prescribed in the *Regulations* as required by s. 31(3) and s. 31(4) of the *Act*. However the lawyer did execute an affidavit of execution included in the 2015 Collateral Mortgage document.

The 2016 Contracts

18. Bonkowski Farms and Daniel signed an amending agreement dated March 1, 2016 respecting the 2013 Streaming Canola Contract (the “**March 2016 Contract**”). The March 2016 Contract required Input to pay Bonkowski Farms and Daniel an additional upfront payment of \$1,500,000 for the 2016 crop year. The March 2016 Contract required Bonkowski Farms and Daniel to produce, sell and deliver an additional 3,750

tonnes of canola from the 2016 crop and to execute and deliver an assignment of all crop insurance obtained through Saskatchewan Crop Insurance for the 2016 crop. A copy of the March 2016 Contract is at Tab F.

19. Bonkowski Farms and Daniel entered into an additional amending agreement dated October 4, 2016 (the “**October 2016 Contract**”). The October 2016 Contract required Input to pay Bonkowski Farms and Daniel an additional upfront payment of \$1,500,000.00 for the 2017 crop year. The October 2016 Contract required Bonkowski Farms and Daniel to deliver 3,750 tonnes of canola for the 2017 crop year. A copy of the October 2016 Contract is attached hereto to the Agreed Statement of Facts as Tab G.

The 2017 Documents

A. Bonkowski Farms and Daniel

20. Bonkowski Farms and Daniel signed the following three contracts all dated March 31, 2017:
 - a. an Account Receivable Agreement (the “**Account Receivable Agreement**”): The Account Receivable Agreement states that Bonkowski Farms and Daniel were past due on certain obligations to Input, including delivery of 2,106.888 tonnes from the 2016 crop. The Account Receivable Agreement required Bonkowski Farms and Daniel to convert the values of those 2,106.888 tonnes to a \$975,196.01 receivable due to Input (the “**Receivable**”) and to pay interest at the rate of 1.5% per month (18% per annum) on the Receivable beginning April 1, 2017. A copy of this Agreement is at Tab H;
 - b. a Capital Stream Canola Purchase Contract (the “**Capital Stream Contract**”).: The Capital Stream Contract required Bonkowski Farms and Daniel to provide 1,500 base tonnes of canola to Input each year for six (6) years, commencing with the 2017 crop season. The Capital Stream Contract required Input to pay Bonkowski Farms and Daniel \$2,053,350.00 up-front, with a series of crop

payments thereafter. An executed copy of this Contract is at Tab I and an unexecuted copy is at Tab J; and

- c. a Marketing Stream Canola Purchase Contract (the “Marketing Stream Contract”): The Marketing Stream Contract required Bonkowski Farms and Daniel to provide 9,000 tonnes of canola to Input each year for six (6) years, commencing with the 2017 crop year. The Marketing Stream Contract required Input to pay Bonkowski Farms and Daniel \$900,000.00 up-front, with a series of crop payments thereafter. A copy of the Marketing Stream Contract is at Tab K.
21. On April 6, 2017 Bonkowski Farms and Daniel each also signed collateral security agreements dated March 31, 2017 (the “**2017 Collateral Security Agreements**”). Copies of the Collateral Security Agreements are at Tabs L and M.

B. Garry and Margaret

22. Garry and Margaret signed a mortgage amending agreement with Input dated March 31, 2017 (the “**2017 Amending Agreement**”), a copy of which is at Tab N. The 2017 Amending Agreement increased the amount owing under the 2015 Collateral Mortgage from \$2,500,000.00 to \$3,918,020.00.
23. Input wrote a letter to Bonkowski Farms and Daniel dated November 8, 2018 advising that they had defaulted on the Capital Stream Contract, the Marketing Stream Contract and the Account Receivable Contract as follows:
- a. Pursuant to the Capital Stream Contract, Input stated that Bonkowski Farms and Daniel were required to deliver 1,500 tonnes of Canada 1 Canola following harvest of their 2018 crop and that the canola had not been received.
 - b. Pursuant to the Marketing Stream Contract, Input stated that Bonkowski Farms and Daniel were required to deliver 1,500 tonnes of Canada 1 Canola following harvest of their 2018 crop and that the canola had not been received.

- c. Pursuant to the Account Receivable Contract and as of October 31, 2018, Input stated that Bonkowski Farms and Daniel had an outstanding balance of \$442,617.71 past due as of December 31, 2017 and that payment had not been received by Input.

Input demanded that Bonkowski Farms and Daniel bring their accounts current within ten (10) days. A copy of this letter is at Tab O.

24. Input wrote a letter to Garry and Margaret dated April 3, 2019 demanding payment in the amount of \$3,472,971.01. A copy of this correspondence is at Tab P.
25. McKercher identified that the form prescribed in the *Regulations* as required by s. 31(3) and s. 31(4) of the *Act* was not executed by Garry, Margaret or Garry Moore at the time that the 2015 Collateral Mortgage and 2015 Guarantee were executed and notified their insurers and further notified Input of the potential issue.
26. On February 9, 2023, Input demanded that Garry and Margaret attend before a lawyer or notary and execute a certificate in the prescribed form pursuant to clause 31(d) of the 2015 Collateral Mortgage.
27. At no time have Bonkowski Farms, Daniel, Garry or Margaret complied with Input's demands.

Legal Proceedings to Date

A. QBG No 5 of 2020, Judicial Centre of Yorkton

28. On April 2, 2020, Input issued a Statement of Claim in QB No 5 of 2020, Judicial Centre of Yorkton, against Garry and Margaret (“**QB No 5 of 2020 (Yorkton)**”). This Statement of Claim alleged that Garry and Margaret had failed to pay the obligations secured by the 2015 Collateral Mortgage on demand and sought judgment against Garry and Margaret for \$3,528,878.15, among other relief.

B. QBG No 1594 of 2020, Judicial Centre of Regina

29. On October 7, 2020, Input issued a Statement of Claim in QBG No 1594 of 2020, Judicial Centre of Regina, against Bonkowski Farms and Daniel (“**QBG No 1594 of 2020 (Regina)**”). Input alleged Daniel and Bonkowski Farms had breached a number of agreements they had entered into with Input by failing to deliver outstanding canola and failing to pay the outstanding balances owing. It sought judgment for the amounts of \$3,029,820.00 and \$546,586.94 as well as pre-judgment interest.

C. QBG 1619 of 2020, Judicial Centre of Regina

30. On October 9, 2020, Input issued a Statement of Claim in QBG No 1619 of 2020, Judicial Centre of Regina against McKercher (“**QBG No 1619 of 2020 (Regina)**”). Input alleged it had retained McKercher to prepare all documents relating to Garry and Margaret under a retainer, and McKercher had failed to comply with or ensure compliance with ss. 31(2), (3), (4) or (7) of *The Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1. Input alleged McKercher had been negligent and/or breached the retainer and sought damages in the amount of \$3,918,020.00, among other relief.

D. Consolidation of Actions

31. By Order issued September 29, 2021, QB No 5 of 2020 (Yorkton), QBG No 1594 of 2020 (Regina) and QBG No 1619 of 2020 (Regina) were consolidated into one action in the Judicial Centre of Regina.

32. The parties agree that the filed transcripts of Questioning provide additional context to the above facts and may be relied upon and considered by the Court.

DATED at Regina, Saskatchewan, this _____ day of August, 2025.

MLT Aikins LLP

Per: _____
T. Joshua Morrison, Counsel for Input Capital Corporation

DATED at Regina, Saskatchewan, this _____ day of August, 2025.

McDougall Gauley LLP

Per: _____
Gord Kuski, K.C., and Matthew Schmeling,
Counsel for Garry Bonkowski, Margaret Anne Bonkowski, Daniel Bonkowski and Bonkowski Farms Ltd.

DATED at Regina, Saskatchewan, this _____ day of August, 2025.

OWZW Lawyers LLP

Per: _____
Randall Sandbeck, K.C., Counsel for McKercher LLP

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