

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 150

Date: 2026 08 18
Docket: QBG-RG-02590-2001
Judicial Centre: Regina

BETWEEN:

PEDIGREE POULTRY LTD. and RONALD DUBOIS

PLAINTIFFS

- and -

SASKATCHEWAN BROILER HATCHING EGG
PRODUCERS' MARKETING BOARD, MERVIN
SLATER and VICTOR LOEWEN

DEFENDANTS

Counsel:

Randall M. Sandbeck, K.C. and Ronald S. Jalmanzar	for the plaintiffs
Jeremy N. Ellergodt and Saleem Koube	for the defendant
	Saskatchewan Broiler Hatching Egg Producer's Marketing Board

FIAT
August 18, 2026

DANYLIUK J.

Introduction

[1] I begin this decision with an apology. It has taken me an inordinate amount of time to complete this matter. I apologize unreservedly to the parties and their

counsel. The reason – not an excuse, but a reason – was a trial schedule that was as unrelenting as it was complex. This delay does not generally characterize the way I operate.

[2] The application now before this Court is for an order declaring the plaintiffs have the right of set-off of amounts owed by them for levies to the defendant Saskatchewan Broiler Hatching Egg Producers' Marketing Board [Board], given that the Board owes the plaintiffs a substantial sum on a judgment. Alternatively the plaintiffs seek to enjoin the Board from seeking to recover those levies from third-party hatcheries. The plaintiffs seek costs on a solicitor-client basis.

[3] The defendant Board resists, arguing there is no basis in law to grant the set-off sought by the plaintiffs on these facts and that injunctive relief is inappropriate in these circumstances.

[4] For the reasons set out below I grant the plaintiffs' application and declare they are entitled to apply equitable set-off of levies assessed against them by the defendants on the outstanding judgments in their favour. I also grant fixed costs to the plaintiffs.

Facts

[5] The background to the present application is important.

[6] Events giving rise to this initial litigation are rooted in acts which occurred in the late 1990s. Two interlocked decisions were given by Justice Barrington-Foote (as he then was). The first is found at 2016 SKQB 366. This was a nonsuit application by all of the defendants, which was dismissed in its entirety by Justice Barrington-Foote. The second of his decisions was a judgment on the merits of the

plaintiffs' claim, dated April 3, 2020, found at 2020 SKQB 100 [*Trial Judgment*], Barrington-Foote J.A. (*ex officio*).

[7] The result of the *Trial Judgment* is best summarized in paragraph 290 thereof:

[290] In the result, I find each of the defendants liable for misfeasance in public office in relation to both plaintiffs. All of the defendants are liable in damages in the following amounts to the specified plaintiffs:

To Pedigree Poultry Ltd.

1. For the loss of the June placement, \$20,394 plus pre-judgment interest pursuant to *The Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2 from February 1, 1999 to the date of this judgment.
2. For the loss of income from the Saskatchewan Broiler Hatching Egg Producers' Marketing Board's failure to allocate expansion quota, \$1,574,518, together with pre-judgment interest calculated from the last day of each fiscal year commencing with the 2000 fiscal year and ending in the 2019-2020 fiscal year, in the amounts specified in Table 3, at p. 15 of the Serecon Report.
3. For the loss of the capital value of quota not allocated by the Board, \$540,000, together with pre-judgment interest from January 1, 1999 to the date of this judgment.

To Ronald Dubois

1. For the loss of income from the Saskatchewan Broiler Hatching Egg Producers' Marketing Board's failure to allocate expansion quota, \$70,538, together with pre-judgment interest calculated from the last day of each fiscal year commencing with the 2000 fiscal year and ending in the 2019-2020 fiscal year, in the amounts specified in Table 3, at p. 15 of the Serecon Report.
2. For the loss of the capital value of quota not allocated by the Board, \$900,000, together with pre-judgment

interest from January 1, 1999 to the date of this judgment.

In addition to these sums the plaintiffs received costs as well as pre-judgment interest calculated at \$677,649.18 to Pedigree Poultry Ltd. and \$417,015.47 to Ronald Dubois. These sums were the subject of an order made by Justice Barrington-Foote on October 18, 2023.

[8] The defendant Board is a regulatory board established pursuant to statute. The individual defendants were broiler hatcher egg producers and were also directors of the defendant Board at material times. The plaintiffs' allegations were that the Board and the two individuals had committed intentional misconduct, namely misfeasance in public office. At para. 5 of the *Trial Judgment*:

[5] In this action, the plaintiffs' claim is for damages arising from the misconduct of the defendants while carrying out their regulatory functions. The plaintiffs say that the defendants committed the intentional tort of misfeasance in public office, acting recklessly or knowingly in a fashion they knew to be unlawful, and which they knew would damage the plaintiffs. The actions at issue related primarily to the issuance and cancellation of licenses and quotas.

[9] The trial judge found all the defendants liable on this basis.

[10] The defendants all appealed from the *Trial Judgment* and the appeal decision is found at *Slater v Pedigree Poultry*, 2022 SKCA 113 [*Appeal Judgment*]. The appeals were dismissed. The defendant Board sought leave to appeal to the Supreme Court of Canada which dismissed the application for leave with costs to the plaintiffs in May of 2023, at 2023 CanLII 39569 (SCC).

[11] The *Trial Judgment* determined a number of acts and omissions on the part of the defendants that amounted to misfeasance in public office. These can be briefly summarized as:

- Mr. Slater used his position as a member and chair of the Board to discuss Pedigree's situation with a third party, which resulted in loss of a business opportunity and financial consequences for Pedigree.
- At para. 199 of the *Trial Judgment* the trial judge found Mr. Slater was guilty of misfeasance and said of him: "He knowingly or with the necessary subjective reckless disregard for his duties as chair and a member of the Board both acted and failed to act, in a manner that was unlawful and was likely to cause damage to Pedigree."
- Mr. Slater's wrongful acts were compounded by the Board and Mr. Loewen doing nothing instead of doing the right thing. This ultimately amounted to a form of complicity with Mr. Slater.
- The Board and the individual defendants had operated the Board in an unlawful manner and failed to give the plaintiffs due process or comply with the Board's own regulatory framework (paras. 209 to 211, *Trial Judgment*).
- The defendants dealt with the plaintiffs in an unfair manner, unlike the way in which other producers were dealt with and kept the plaintiffs "in the dark" throughout the process. This exacerbated the overall unfairness.

[12] This is but a concise summary of the facts giving rise to the underlying action, and the procedural history of this matter. For the full account the two decisions of Justice Barrington-Foote and the decision of the Saskatchewan Court of Appeal must be read.

[13] The appeal process concluded, the plaintiffs turned their attention to collection of their judgment. By the fall of 2023 the defendants owed the plaintiffs, collectively, some \$4.2 million plus costs.

[14] Collection efforts saw little in the way of dividends for the plaintiffs. Then, the matters giving rise to the current application occurred. To understand all that happened one first needs to have a basic working knowledge of this industry and the defendant Board's part in it. My understanding of these matters follows.

[15] Saskatchewan remains a province with deep roots in agriculture. There is a significant chicken production component to Saskatchewan agriculture. The production of all facets of the chicken industry is managed, primarily through management of the supply of the components of that industry. There are two main such components: the production and marketing of broiler hatching eggs by breeder producers and the production and marketing of broiler chickens by broiler producers.

[16] This case pertains to the breeder component; that is, egg producers and marketers [Egg Producers]. In this province Egg Producers buy very young chicks from a central hatchery. Each Egg Producer has a quota governing how many chicks they may have in inventory. Over the next approximately five months, Egg Producers raise and grow the young chicks until they are mature. Once mature, these chickens lay eggs and, logically enough, are then called layers. The layers are kept in barns where they lay eggs for about a year. Those eggs are returned to the original hatchery. Those eggs hatch and those chicks, known as [broilers], are sent to broiler producers who continue to feed and grow the broilers until ready for slaughter and entry into the food market.

[17] As noted, this is a regulated industry. The regulatory scheme flows from *The Natural Products Marketing Act*, RSC 1978, c N-3 (since rep) [NPMA]. This legislation, among other things, created the industry for and regulation of Egg

Producers. The *NPMA* authorized the provincial government to create a board, which ultimately was the defendant Board in 1985. The *NPMA* created a regime whereby the promotion, control and regulation of marketing of natural products (including poultry) was administered by this board.

[18] In 1985 regulations came into being which created a regulatory regime or framework to govern the hatching egg industry. These regulations were contained in *The Broiler Hatching Egg Marketing Plan Regulations*, RRS c N-3 Reg 1 (since rep) [*Regulations*]. These were the regulations creating the defendant Board. The Board was to administer the marketing plan for the purposes delineated in s. 6 of the *Regulations*. Section 6 reads as follows:

6(1) The general purpose and intent of the plan is to provide for orderly marketing in the Saskatchewan hatching egg industry.

(2) Without limiting the generality of subsection (1), the specific purposes of the plan are:

(a) to regulate the production and marketing of hatching eggs in an orderly manner in Saskatchewan;

(b) to maintain a stable price for hatching eggs that is relative to the cost of production;

(c) to ensure the availability of an adequate supply of hatching eggs to meet the market demand;

(d) to establish marketing quotas for producers;

(e) to initiate, or co-operate in, research and education relating to the production and marketing of hatching eggs; and

(f) to co-operate with federal and extra-provincial marketing bodies with similar purposes.

[19] To carry out this marketing plan, the defendant Board was given certain powers under s. 8 of the *Regulations*. Within this segment of Saskatchewan industry

the Board has something of a plenary jurisdiction. This wide range of powers includes: granting, suspending or cancelling of licences; collection of relevant information; inspection of records; and making any order deemed necessary or advisable to promote, control and regulate this part of the egg industry.

[20] The regulations and the Board itself have continued despite the repeal of the original legislation, given the passage of *The Agri-Food Act*, SS 1990-91, c A-15.2 (rep) in 1991 which was replaced by *The Agri-Food Act, 2004*, SS 2004, c A-15.21. Under this legislative regime the Board retained its power but was now obliged to provide due process, i.e. a hearing, to any licensee whose licence might be suspended or cancelled. There was also an appeal committee established to hear appeals from Board rulings.

[21] A significant portion of this statutory scheme is given to regulation of producers' quota. Quota is a vital concept. The Board has the power to fix and allot broiler egg production and marketing quota to various producers. Sometimes the overall provincial quota is increased, and the regulations provide for a scheme as to how that is distributed.

[22] To further the objects of this statutory scheme and for the purposes of the Board, the Board is empowered to collect levies from producers. It is not in dispute that the Board has this legal power to assess and collect levies.

[23] The plaintiffs have not been paid on their judgment, but the Board has continued to assess levies against them. The Board has attempted to collect them but the plaintiffs resisted and claimed set-off. For example, levies totalling \$37,699.36 were rendered to the plaintiffs by the Board in September and December of 2024. The plaintiffs' position is that it is entitled to set off these levies against the judgment. Plaintiffs' counsel advised Board counsel of this position in October 2024. Shortly

thereafter the Board's lawyer gave notice that set-off did not apply and this amounted to a refusal to pay lawful levies to the Board. The Board's lawyer also indicated the Board would contact the hatchery and have it pay the levies directly to the Board instead.

[24] In effect this operated like the old garnishment regime where the flow of money was intercepted by the Board. This was done pursuant to an order made by the Board under its general power to make any order deemed necessary or advisable to promote, control and regulate the industry.

[25] This resulted in the plaintiffs being unable to effectively apply set-off, which in turn drove them to bring this application.

[26] It is within this factual matrix that the current application has been brought. The matter was originally on the regular Regina chambers list on April 3, 2025. Counsel agreed the application was somewhat complex and would take longer than the "usual" chambers appearance. May 8, 2025 was a date available to counsel and to me, and the hearing was held that day. I reserved my decision.

Issues

[27] The issues in this action are:

1. Are the plaintiffs entitled to the declaration sought?
2. Alternatively, should the defendant Board be enjoined from seeking to recover levies from third parties?
3. What is the duty of the defendants, especially the Board, regarding payment of the outstanding judgment?
4. What order should be made as to costs?

Analysis

1. *Are the plaintiffs entitled to the declaration sought?*

[28] This issue is determined by deciding whether set-off applies to the situation before the Court.

[29] To reiterate, the plaintiffs seek an order declaring that they have the right to set off amounts owed by them to the defendant Board for levies, as against the substantial sum the Board owes the plaintiffs on the judgment.

[30] The plaintiffs filed the affidavit of James Glen, sworn January 17, 2025. He provided some background as to attempts to collect or resolve the debt. Plaintiffs' counsel emailed defendants' counsel in early October 2024, advising that the plaintiffs would be exercising what they saw as "their lawful remedy of setoff" as against any levies assessed by the defendant Board. About a month later defendants' counsel advised of the position that the plaintiffs could not refuse to pay the assessed levies, whether through the ostensible right of set-off or otherwise, regardless of any outstanding judgment. This back-and-forth correspondence went on through December 2024, with no resolution.

[31] Through all of this time the defendants made no payments to the plaintiffs on account of the outstanding judgment. Because the plaintiffs are Egg Producers and due to the statutory regulatory regime governing this industry, the plaintiffs and defendants are forced to continue a relationship with each other.

[32] The plaintiffs note s. 7 of the regulations of *The Broiler Hatching Egg Marketing Plan Regulations, 2015*, RRS c A-15.21 Reg 22, sets out the powers of the Board. Section 7(1)(d) includes the levy power. Section 7(1)(g) specifically speaks to enforcement, which is via court action.

[33] The plaintiffs say the Board has acted highly improperly throughout and have assiduously avoided paying anything on the judgment. The plaintiffs say they require, and are entitled to, some relief from this Court.

Jurisdiction

[34] I begin with a review of this Court's jurisdiction to make the set-off declaration sought by the plaintiffs. They rely upon ss. 3-3 and 10-15 of *The King's Bench Act*, SS 2023, c 28 [KBA].

[35] Section 3-3 of the *KBA* relates to the plaintiffs' request for a declaration it is entitled to exercise set-off. It states:

3-3 A judge may make binding declarations of right whether or not any consequential relief is or can be claimed, and no action or matter is open to objection on the ground that a mere declaratory judgment or order is sought.

Further, the plaintiffs cite and rely upon s. 114 of *The Enforcement of Money Judgments Act*, SS 2010, c E-9.22:

114 On an application of a sheriff, a receiver, a judgment creditor, a judgment debtor, a dependant of a judgment debtor or a person with an interest in property affected by an enforcement measure pursuant to this Act, the court may make one or more of the following orders:

- (a) any order that is necessary to ensure compliance with this Act or to facilitate enforcement of a judgment, including a binding declaration of a right and an order for injunctive relief;
- (b) an order giving directions to any person regarding the exercise of rights or the discharge of duties or functions pursuant to this Act;
- (c) an order temporarily staying the enforcement or exercise of rights provided in this Act;

- (d) an order directing a police authority with jurisdiction in the locality where an enforcement measure is or will be carried out to take appropriate steps to protect the sheriff, or a person executing functions delegated to that person by the sheriff, while taking the enforcement measure;
- (e) an order to ensure protection of the interest of any person in property;
- (f) an order extending the time for doing anything that, pursuant to this Act, is to be done within a specified period;
- (g) an order requiring a person to pay costs incurred in connection with actions performed or proceedings taken pursuant to this Act;
- (h) an order directing the reinstatement of a person or any other remedy as may be appropriate when the court finds that the principal reason for the person's dismissal, layoff or demotion or for the limitation of the person's opportunity to work was the seizure of the person's employment remuneration pursuant to this Act;
- (i) an order determining priorities between enforcement charges and security interests.

Section 10-15 of the *KBA* relates to the alternative relief, the injunction application. It reads:

- 10-15(1) A judge may, on an interlocutory application, grant a mandamus or an injunction or appoint a receiver if it appears to the judge to be appropriate or convenient that the order should be made.
- (2) An order pursuant to subsection (1) may be made unconditionally or on any terms and conditions that the judge considers appropriate.
- (3) If an injunction is sought, whether before, at or after the hearing of an action or matter, to prevent any threatened or apprehended waste or trespass, a judge may grant the injunction:
 - (a) whether the person against whom the injunction is sought:

(i) is or is not in possession under any claim of title or otherwise; or

(ii) if not in possession, does or does not claim a right to do the act sought to be restrained under any colour of title; and

(b) whether the estates claimed by any of the parties are legal or equitable.

[36] As well as these statutory provisions the plaintiffs rely on portions of *The King's Bench Rules* as follows:

3-47(1) A matter that might be claimed by set-off may be claimed by counterclaim or by pleading set-off as a defence or by both.

(2) A defendant may plead that a claim be set-off against the claim of the plaintiff if:

(a) there are mutual debts between the plaintiff and the defendant;

(b) in the case where either party sues or is sued in a representative capacity, there are mutual debts between the person represented and the other party; or

(c) a claim, whether of an ascertained amount or not, by the defendant arises out of the same dealings, transactions or occurrence giving rise to the claim of the plaintiff.

(3) The defendant's claim pursuant to subrule (2) must be pleaded in accordance with the principles that would govern the pleading of the defendant's claim if the defendant were a plaintiff.

(4) If, on a plea of set-off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to the defendant.

...

10-18(1) Subject to subrules (2) and (3), every person to whom any sum of money or any costs are payable under a judgment or

order is entitled, as soon as the money or costs are payable, to enforce that judgment or order in any manner authorized by law.

(2) If the judgment or order mentioned in subrule (1) is for payment within a period mentioned in the order, a person may take any enforcement measure only after the expiration of that period.

(3) At or after the time of giving judgment or making an order, the Court may stay any enforcement measure until the time the Court considers fit.

...

10-21(1) If there are judgments between the same parties in separate actions or in the same action, the Court may order that one judgment be set off against another and direct that execution may issue with respect to the balance only.

(2) An order for set-off against a judgment for maintenance must not be made if hardship would be caused by that order.

[37] The plaintiffs assert these statutory provisions and these Rules allow them to set off the debt owed to them against the levies imposed by the Board. With respect to set-off broadly, the Board argues the levies do not constitute a debt much less a mutual debt, so the plaintiffs' application must be dismissed.

The Law of Set-Off

[38] A leading case on the law of set-off is *Scott v Golden Oaks Enterprises Inc.*, 2024 SCC 32. In that case the dichotomy of legal and equitable set-off is explained at paras. 90 to 92:

[90] Under legal set-off, which generally arises by statute, both obligations must be liquidated debts and there must be mutuality, meaning that the debts must be between the same parties and in the same capacity (*Holt v. Telford*, [1987] 2 S.C.R. 193, at p. 204; *Palmer [The Law of Set-Off in Canada]*, Aurora, Ont: Canada Law Book, 1993], at pp. 4-5 and 21; J. A. M. Judge and M. E. Grottenthaler, "Legal and Equitable Set-Offs" (1991), 70 *Can. Bar Rev.* 91, at pp. 94-97; Honsberger and DaRe [*Honsberger's Bankruptcy in Canada* (5th ed. 2017)] at pp. 332

and 451-52; Wood [*Bankruptcy and Insolvency Law*, 2nd ed. Toronto: Irwin Law, 2015] at pp. 100-101).

[91] Equitable set-off is available on a broader basis than legal set-off. Equitable set-off applies to both liquidated and unliquidated claims and regardless of whether there is mutuality (*Holt*, at p. 212; Palmer, at p. 5; Judge and Grottenthaler, at p. 99; Honsberger and DaRe, at p. 332; Wood, at pp. 101-2). In considering whether to grant equitable set-off, courts “look at the connection between debts that are sought to be set off against each other. If the connection between the debts is such that it would be unfair or inequitable to stand without set-off, then the courts will permit it” (Honsberger and DaRe, at p. 332 (footnote omitted); see also McElcheran [*Commercial Insolvency in Canada*, 4th ed. Toronto: LexisNexis, 2019], at p. 44; Judge and Grottenthaler, at pp. 113-14; Palmer, at p. 5; Wood, at pp. 101-2). “Equitable set-off is available if the transactions or dealings are so inseparably connected that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim” (Wood, at p. 102).

[92] The leading case on equitable set-off in Canada is this Court’s decision in *Holt*, in which Wilson J. affirmed the following summary of the principles governing equitable set-off:

1. The party relying on a set-off must show some equitable ground for being protected against his adversary’s demands
2. The equitable ground must go to the very root of the plaintiff’s claim before a set-off will be allowed
3. A cross-claim must be so clearly connected with the demand of the plaintiff that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim
4. The plaintiff’s claim and the cross-claim need not arise out of the same contract
5. Unliquidated claims are on the same footing as liquidated claims [Citations omitted.]

(*Holt*, at p. 212, citing *Coba Industries Ltd. v. Millie's Holdings (Canada) Ltd.*, 1985 CanLII 144 (BC CA), [1985] 6 W.W.R. 14 (B.C.C.A.), at p. 22, per Macfarlane J.A.).

[39] *Golden Oaks* was recently considered by the British Columbia Court of Appeal in *Glencore Canada Corporation v FTI Consulting Canada Inc.*, 2026 BCCA 167 at paras 68 -69, and the principles were concisely explained:

[68] As the judge recognized, **the mutuality requirement for legal set-off applies to debts due “from either party to the other”, i.e. from the same parties in the same capacity:** *Holt* at 204–205; *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32 at para. 90. This requirement is not met where a debt has been assigned to a third party or where it is owed to the other party acting as trustee for another: *Holt* at 205; *McMahon* [(1979), 108 DLR (ed) 71, [1980] 2 WWR 438] at para. 9; *Colonial Furniture Co.* [(2001), 196 DLR (4th) 1, 52 OR (3d) 539 (CA)] at para. 16.

[69] **Equitable set-off is available on a broader basis than legal set-off. It applies to both liquidated and unliquidated claims and regardless of whether there is mutuality. In *Holt*, the Court stated there was no requirement for mutuality in equitable set-off but other cases have described this requirement as “relaxed” or not strictly applicable: *Sugarman* at para. 18. What is important is the connection between the debts. It may be available against an assignee or third party where the transactions are “so inseparably connected that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim”:** *Scott* at para. 91; *Holt* at 206, 211–212.

[Emphasis added]

[40] In *Holt v Telford*, 1987 CanLII 18 at para 27, [1987] 2 SCR 193 (SCC), the mutuality requirement was essentially eliminated as the Supreme Court noted that equitable set-off “can apply where mutuality is lost or never existed. It can apply where the cross obligations are not debts.” It is worth quoting the remainder of para. 27:

27 ...

Equitable set-off is available where there is a claim for a money sum whether liquidated or unliquidated: see *Aboussafy v. Abacus Cities Ltd.*, 1981 ABCA 136 (CanLII), [1981] 4 W.W.R. 660 (Alta. C.A.), at p. 666. More importantly in the context of this case, it is available where there has been an assignment. **There is no requirement of mutuality.** The authorities to be reviewed indicate that courts of equity had two rules regarding the effect of a notice of assignment on the right to set-off. First, an individual may set-off against the assignee a money sum which accrued and became due prior to the notice of assignment. And second, an individual may set-off against the assignee a money sum which arose out of the same contract or series of events which gave rise to the assigned money sum or was closely connected with that contract or series of events.

[Emphasis added]

[41] This distinction between equitable and legal set-off is not merely nominal. It bears a substantive difference. As far as mutuality is concerned the requirements are eliminated or at least relaxed in equitable set-off.

[42] The reason for this is clear from the authorities: fairness. Equitable set-off is rooted in fairness. *Holt* amply demonstrates this concept, as does *Algoma Steel Inc. v Union Gas Ltd.*, 2003 CanLII 30833, 63 OR (3d) 78 (ONCA):

[26] Equitable set-off is available where there is a claim for a sum whether liquidated or unliquidated. In *Telford v. Holt*, 1987 CanLII 18 (SCC), [1987] 2 S.C.R. 193, 41 D.L.R. (4th) 385, at pp. 211-12 S.C.R., pp. 398-99 D.L.R., Wilson J., speaking for the court, approved a statement of the applicable principles for equitable set-off found in *Coba Industries Ltd. v. Millie's Holdings (Canada) Ltd. and Tsang* (1985), 1985 CanLII 144 (BC CA), 20 D.L.R. (4th) 689, 36 R.P.R. 259 (B.C.C.A.) at pp. 696-97 D.L.R. Those principles can be summarized as follows:

1. The party relying on a set-off must show some equitable ground for being protected against the adversary's demands.

2. The equitable ground must go to the very root of the plaintiff's claim.
3. A cross-claim must be so clearly connected with the demand of the plaintiff that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim.
4. The plaintiff's claim and the cross-claim need not arise out of the same contract. [page89]
5. Unliquidated claims are on the same footing as liquidated claims.

...

[28] Kelly R. Palmer in *The Law of Set-Off in Canada* (Aurora, Ont.: Canada Law Book, 1993) traces the evolution of the doctrine of equitable set-off from a very strict test in which the "claim raised in set-off had to impeach the title of the plaintiff's claim" [at p. 89] to a somewhat more flexible approach based upon fairness. The cases describing, in some fashion, the more modern test are *Coba Industries; Telford and Federal Commerce & Navigation Ltd. v. Molena Alpha Inc.*, [1978] 3 All E.R. 1066 (C.A.) (affirmed on other grounds at [1979] 1 All E.R. 307, [1979] A.C. 757 (H.L.)).

[29] It seems to me that a very helpful test is set out in a passage from the reasons of Lord Denning in *Federal Commerce* [[1979] 1 All ER 307] at p. 1078 All E.R. and which was quoted with apparent approval by Wilson J. in *Telford* at pp. 213-14 S.C.R., p. 400 D.L.R.:

We have to ask ourselves: what should we do now so as to ensure fair dealing between the parties? . . . This question must be asked in each case as it arises for decision; and then, from case to case, we shall build up a series of precedents to guide those who come after us. But one thing is quite clear: it is not every cross-claim which can be deducted. It is only cross-claims that arise out of the same transaction or are closely connected with it. And it is only cross-claims which go directly to impeach the plaintiff's demands, that is, so closely connected with his demands that it would be manifestly unjust to allow him to enforce payment without taking into account the cross-claim.

[Emphasis added]

[43] *Algoma* was applied very recently in *Kohl & Frisch Limited v Wal-Mart Canada Corp.*, 2026 ONSC 3869 where the court asked itself this question (para. 215): “Put shortly, are the amounts claimed for the Telxons and totes so clearly connected with the amounts owing under the prepayment agreement that it would be manifestly unjust to enforce repayment without taking into account any amounts which may be owing in relation? See *Algoma Steel Inc. v. Union Gas Ltd.* (2003), 63 OR (3d) 78 (Ont. C.A.), at para. 27.”

[44] Numerous cases illustrate the nature of Lord Denning’s question, above. That question, which invokes fundamental fairness, is the lodestone regarding the application of equitable set-off. See, for example, *Southside Construction v City of Windsor*, 2026 ONSC 1462.

[45] This principle has been applied in Saskatchewan. Plaintiffs’ counsel cited *Saskatchewan Wheat Pool v Feduk*, 2003 SKCA 46. There, the Court of Appeal concentrated on fundamental fairness and adopted the flexible approach to equitable set-off, as discussed in cases such as *Holt* and *Algoma*. At paras. 80 to 82 fairness emerges as the central guiding principle to the application of equitable set-off. Whether there is a sufficient connection between the two payment streams is to be determined fairly and in a way that does real justice between the parties.

[46] In *RIP Beverages Co. Ltd. v Dunn*, 2026 SKCA 10, Chief Justice Leurer traced the origin of equitable set-off and its distinction from legal set-off at para. 72:

[72] **Legal set-off is to be distinguished from equitable set-off. Equitable set-off** did not originate in statute. Instead, as its name suggests, **it is a doctrine that was developed by the courts of equity. The strictures of equitable set-off are less onerous than those attached to legal set-off, and the courts have ascribed a different legal character to it. Most materially, equitable set-off can apply where mutuality is lost or never existed. It can also apply where the cross**

obligations are not debts (see *Holt* at para 27, referring to *Canadian Imperial Bank of Commerce v Tuckerr Industries Inc.*, 1983 CanLII 302, [1983] 5 WWR 602 at p 605 (BCCA)). Thus, equitable set-off is available where there is a claim for a money sum whether liquidated or unliquidated, or where there has been an assignment (see *Holt* at para 27).

[Emphasis added]

[47] Plaintiffs' counsel also cites *Alberta v Canadian Copyright Licensing Agency (Access Copyright)*, 2024 FC 292. In that decision, after adopting the *Holt* requirements for equitable set-off at para. 264 the Federal Court noted the following at paras. 265 and 266:

[265] The Ontario Court of Appeal expressed the legal assessment of the relative equities between the parties as follows in *PIA Investments Inc v Deerhurst Limited Partnership*, 2000 CanLII 16819 (ONCA) at paragraph 31:

[31] In determining whether equitable setoff should be allowed it is necessary to first look at the connection between the claims involved and to then consider the effect the setoff would have on the equities between the parties. Equitable setoff arises when there are cross obligations which are so closely connected or related that it would be unjust to permit one party to enforce its obligation without permitting a setoff to the other: *Telford v. Holt*, 1987 CanLII 18 (SCC), [1987] 2 S.C.R. 193; *Canada Trustco Mortgage Co. v. Sugarman* (1999), 1999 CanLII 9288 (ON CA), 179 D.L.R. (4th) 548 (Ont. C.A.).

[Emphasis in original quote]

[266] In *Canada Trustco Mortgage Co v Sugarman*, 1999 CanLII 9288 (ONCA), 179 DLR (4th) 548, the Ontario Court of Appeal stated:

[18] One of the main differences between legal set-off and equitable set-off is that, in the latter case, the claims between the parties do not need to be liquidated. Hence, claims for damages are available for equitable set-off. This difference does not matter in this case. Another important difference, and one that is of relevance here, lies in the fact that the requirement for mutuality is relaxed. Hence, equitable set-off may be available even though the situation is not strictly one where A seeks to set off his debt to B against the debt B

owes to A. However, for equitable set-off to be available, the cross-claims must be closely connected. It is logical to conclude that this latter requirement arises because mutuality is not strictly insisted upon. After all, it is difficult to imagine why, in the interests of fairness, the courts would allow A to reduce his debt to B by the amount A owes to C, unless it was because of the close connection between the claims. Finally, it is important to note that, just because cross-claims are closely connected to one another, it does not mean that set-off will necessarily follow. Not only must the connection be sufficiently close to warrant an exercise of the equitable jurisdiction of the court, the remedy must not result in any form of inequity.

[19] In order to determine whether equitable set-off should be allowed in this case, it is therefore necessary to look at the connection between the claims and also to consider the effect the remedy would have on the equities between the parties.

[Emphasis in original quote.]

[48] This authority suggests a reviewing judge first look at the connection (if any) between the claims and then consider how applying set-off would affect those claims. Further, the claims do not have to line up with precision for equitable set-off. The situation need not be that the plaintiffs owe the defendants money for one thing and the converse is true for another thing. It is the **effect** of an application of set-off that is of primary importance.

[49] The defendants suggest the law is otherwise and cite several cases in support. Respectfully, I note some of those cases are older authorities and others are inapplicable here. For example *Cam-Net Communications v Vancouver Telephone Company Limited*, 1999 BCCA 751, predates many of these other authorities and contains a somewhat dated view of the law. As an *ex juris* authority it is not binding upon me and I find it has little persuasive value in these circumstances. Further, *Cam-Net* cites *Ontario Development Corp. v F.P. Bourgault Industries Cultivator Division Ltd.*, 1995 CanLII 5931, 133 Sask R 311 (SKQB), regarding the requirement for a close connection. That case is also dated and the defendants did not point out in their brief

nor in argument that in that case the judge found there was no manifest injustice that would trigger equitable set-off.

[50] The defendants also cited *Jamieson v Loureiro*, 2010 BCCA 52, which in turn cited *Place Concorde East Ltd. v Shelter Corp. of Canada Ltd.*, 2003 CanLII 49373, 16 RPR (4th) 63 (ONSC). The defendants suggest (para. 28 of their brief) *Jamieson* holds that equitable rests on two propositions: a close connection between debts to be offset, and the issue of injustice. However, that case is somewhat out of step with more modern decisions which emphasize the injustice component and water down the requirement for any type of connection.

[51] In furtherance of this argument the defendants cite 663073 *Alberta Ltd. v Big Mountain Development Corp. Ltd.*, 2010 SKQB 274 at para 9, where this Court said: “The question is whether the cross-claim is so closely connected to the plaintiff’s demands that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into account the cross-claim.” From this the defendants argue at para. 30 of their brief of law:

Therefore, to establish equitable set-off, the Applicants must prove that the claims are closely connected, such that failing to permit set-off would result in manifest injustice. Further, since this is an equitable principle, the Applicants must also show that there is some equitable basis for their claim.

Analysis

[52] Respectfully, the defendants rely primarily on older case authorities regarding set-off. The doctrine has evolved. The emphasis now is on doing justice between the parties, not to see if a matter fits into a jurisdictional shoebox based primarily on the degree of connections on the two sources of funds which are to be the subject of set-off.

[53] Rather than relying on these older authorities I prefer cases such as *Golden Oaks*, a 2024 Supreme Court decision. There can be no clearer statement than that which begins para. 91:

[91] Equitable set-off is available on a broader basis than legal set-off. Equitable set-off applies to both liquidated and unliquidated claims and regardless of whether there is mutuality ...

[54] As well, I have already cited *Glencore*, notably para. 69. In my respectful view, that case properly interprets the law regarding equitable set-off, which can be distilled to the following principles:

- (a) Equitable set-off is available on a broader basis than legal set-off.
- (b) Equitable set-off applies to both liquidated and unliquidated claims.
- (c) Equitable set-off applies regardless of whether there is mutuality.

[55] There is further discussion of additional requirements but those pertain to availability against a third party or assignee. What is set out above is what the current authorities call for regarding the application of equitable set-off.

[56] Further, in *Glencore* the set-off claim arose through the operation of a contract which contained a specific clause pertaining to set-off of liabilities. Such is not at all the case here. Indisputably the defendants owe money to the plaintiffs based on a valid and subsisting judgment. On the other hand – and despite this being something of a self-fulfilling prophecy since levies arise from orders made by the defendant Board thus are wholly in the control of that entity – the levies against the plaintiffs are owed to the defendant Board. Even if mutuality was a requirement, how can anyone say that is not established?

[57] The “guts” of this analysis are comprised of an analysis of the equities, the fairness, of the situation. Indisputably this favours the plaintiffs. As discussed below it is very difficult to imagine a situation that is less fair to the plaintiffs. The two individual defendants are former directors of the defendant Board. As summarized above, those directors used their powers to intentionally harm the plaintiffs. Every court in the country has, expressly or tacitly, agreed that is the case and has upheld the judgment favouring the plaintiffs.

[58] In his judgment the trial judge referred to the acts of the defendants in various terms:

- Para. 21: Mr. Slater “sometimes avoided giving honest and responsive answers in favour of answers calculated to justify his and the Board’s actions or avoid the potentially negative impact of a line of questioning”.
- Para. 25: “Mr. Slater’s evidence was shaped by anger at” the plaintiffs.
- Para. 27: “In the result, I did not find Mr. Slater to be either reliable or credible”.
- Para. 47: Mr. Slater wrote false correspondence. On one occasion he advised all producers that a certain Board order had been rescinded when, to his knowledge, it had not even been approved.
- Para. 210: “the Board’s actions would – assuming damages could be shown – constitute misfeasance even if Mr. Dubois had ultimately been found to have been in breach of Board orders. A public officer cannot escape its lawful obligation to conduct its business lawfully – including in accordance with the duty of fairness and based on proper considerations – by asserting the result would have been the same had

it acted lawfully. As *O'Dwyer* [2008 ONCA 446] demonstrates, a breach of the duty of fairness or the principles of natural justice can be sufficient to underpin a finding of misfeasance. The fact a public officer believes their cause is righteous does not mean they can ignore the law which governs the exercise of their public functions.”

- Para. 226: “In the result, the individual defendants either knew, or were reckless as to whether, they and the Board were acting unlawfully” when they made a decision to exclude two of the plaintiffs from participating in an expansion of quota.
- Para. 259: “Here, material facts of that sort were not only pled, but have been proven. Here, the facts crossed the line between a licensing dispute between a marketing board and producer to a dispute about the intentional abuse of power by public officers who knew their misconduct would likely harm persons who happened to be licensees.”

[59] In no way am I attempting to relitigate issues that are now settled in fact and law. Rather, I raise these matters of the defendants’ misconduct (which are examples only and in no fashion anywhere near exhaustive) because they feed directly into the equitable analysis I have undertaken. These acts, these abuses of power and of public authority, have created a significant injustice.

[60] What has the defendant Board done to remedy this grave injustice? **Nothing.** Absolutely nothing.

[61] The defendants have not paid the plaintiffs’ judgment. They have not, apparently, altered their method of operating. Instead, they crafted a Board Order

forcing levies against the plaintiffs while they stood prepared to abuse those plaintiffs further by refusing to pay the lawful judgment owed to those plaintiffs.

[62] Taking this matter in its proper factual context, I have determined and do hereby declare that the plaintiffs are entitled to apply the doctrine of equitable set-off to the Board levies affecting them, setting such sums off as against the outstanding balances of the judgments in their favour.

2. *Alternatively, should the defendant Board be enjoined from seeking to recover levies from third parties?*

[63] Given my finding above, that equitable set-off applies, there is no need for any injunction to be granted.

3. *What is the duty of the defendants, especially the Board, regarding payment of the outstanding judgment?*

[64] I have dealt with this issue to some extent when dealing with the issue of equitable set-off. See paras. 58 to 62 above.

[65] At this point, however, I will be direct. During oral argument Mr. Sandbeck, K.C. expressed this situation in simple yet correct terms: it is not the plaintiffs wearing the black hats. No; that sartorial choice, and what it represents in popular culture, lies entirely with the defendants.

[66] A lawyer takes instructions from his or her clients. Still, at one point defendants' counsel asserted this Board had absolutely no duty to make any payment of the judgments to the plaintiffs. This sort of "catch me if you can" attitude is remarkable when one considers this is a government, statutory board.

[67] The defendant Board and the marketing plan it operates were established under *The Broiler Hatching Egg Marketing Plan Regulations*, RRS c N-3 Reg 1 (since rep), in 1985, which *Regulations* were passed under the *NMPA*, and the Board and

Regulations were continued under *The Agri-Food Act*. The Board was again continued by *The Agri-Food Act, 2004*.

[68] All of this is to say that this Board is clearly an emanation of the provincial Crown. Its authority flows from that source. The provincial Crown, through various governments, decided to delegate these powers to this Board. I cannot imagine but that the intention of the Legislature was that the Board and its directors and employees would be trustworthy, and would operate the Board in good faith, honestly, and according to law.

[69] Here, the net effect of the acts and omissions of the two individual defendants and the defendant Board was this: they set out to screw over the plaintiffs, and they were successful in doing so. That is the gravamen of the *Trial Judgment* and the *Appeal Judgment*. That has already been proven.

[70] The defendants got caught. They got sued. They lost. They appealed and lost again. They tried to go to the Supreme Court and lost again. They owe a big sum of money to the plaintiffs, who are agricultural producers and citizens of this province. Despite lying, and cheating, and losing at every single legal step, these defendants simply thumb their noses at the legal system and at the law itself. These defendants continue to screw over the plaintiffs. This is repugnant.

[71] I would like to believe that any right-thinking responsible Minister, or member of Cabinet, or government official, would see this as wrong. Nothing fancy here. The defendants are wrong.

[72] And they fight to continue to be wrong. To be unaccountable. To not pay this judgment debt, which is based on malfeasance in public office – a breach of the trust of the public. Misuse of power. Targeted and highly improper use of power against individuals who were industry participants. As the trial judge noted at para. 225:

[225] Both of these very experienced producers and directors named as individual defendants had more than enough sophistication and experience to understand that they could not apply one set of rules to all producers except the plaintiffs. I have no difficulty concluding that both knew their discretion to issue quota was not “unfettered” in this sense. They had played the game actively and for many years. If they had not known that much, they would have been guilty of recklessness or wilful disregard as to their obligations as public officers.

[73] I find the actions of all the defendants reprehensible.

[74] I am directing that a copy of this decision be sent to the Minister of Agriculture and the Minister of Justice and Attorney General for Saskatchewan. Surely there ought to be some oversight of this Board, some changes made. Perhaps a restructuring is in order. Perhaps it is not salvageable. That is beyond my jurisdiction, but not beyond the scope of power of the Saskatchewan government. I cannot direct the government, but I suspect the Saskatchewan public wants better from its public servants and public boards.

[75] I cannot force the defendants to act properly or legally, much less with honour. I would have hoped that this obligation would be self-evident to a government regulatory agency and those who direct it. Apparently not.

[76] Judgments are more than mere paper. In our society they bring order to chaos. They stop individuals from trying to take the law into their own hands, from getting their own brand of justice. I am drawn to the comments in *Canadian Imperial Bank of Commerce v Sayani*, 1996 CanLII 311 at paras 14 and 16 (BCSC):

14 Chief Justice Lemuel Shaw once observed that the proper object of jurisprudence is for a court to take a set of facts, proven or admitted, and to declare what rights or obligations flow therefrom. Judges do that every day. That is the chief aim and purpose of the judicial branch and without that, civil society could scarcely go on. Concomitant with that, if adjudications of

courts could be ignored and set at naught by citizens, then society would cease to be orderly.

...

16 ... Apropos of the comments of Chief Justice Shaw adverted to above, it would be an exceedingly idle enterprise for courts to proceed to adjudicate questions of property rights between citizens if actions as transparently artificial as those disclosed here could be used to frustrate the normal course of justice.

[77] This is exactly the situation here. An offshoot of the government, a marketing board designed to protect and promote a particular industry, went off the rails. It, and two of its former directors, committed numerous serious breaches of the law. It, and apparently its current directors, seem to see nothing wrong with their utter failure to make amends for their wrongdoing.

[78] This Board and its current directors can make this right. So can the Government of Saskatchewan. I hope someone will listen.

4. What order should be made as to costs?

[79] Rule 11-1 is applicable to the situation before me; in particular subrules (1) and (4):

11-1(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate.

...

(4) In exercising its discretion as to costs, the Court may consider:

- (a) the result of the proceeding;
- (b) the amounts claimed and the amounts recovered;
- (c) the importance of the issues;
- (d) the complexity of the proceedings;

- (e) the apportionment of liability;
- (f) any written offer to settle or any written offer to contribute;
- (g) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding;
- (h) a party's denial of or refusal to admit anything that should have been admitted;
- (i) whether any step in the proceeding was improper, vexatious or unnecessary;
- (j) whether any step in the proceeding was taken through negligence, mistake or excessive caution;
- (k) whether a party commenced separate proceedings for claims that should have been made in one proceeding or whether a party unnecessarily separated his or her defence from that of another party; and
- (l) any other matter it considers relevant.

[80] I am also empowered to fix the amount of costs of this application and set the terms of payment. I have decided to do that. I have no wish for the plaintiffs to spend more resources on a cost assessment.

[81] Taking into account all the relevant factors I award one set of costs to the plaintiffs, fixed in the sum of \$10,000.00. Those costs are to be paid in full within 60 days of this date.

Conclusion

[82] For the reasons set out above, the following order may issue:

1. This Court has determined and does hereby declare that the plaintiffs are entitled to apply the doctrine of equitable set-off to the Board levies affecting them, setting such sums off as against the

outstanding balances of the outstanding money judgments in their favour.

2. A copy of this decision be sent to the Minister of Agriculture and the Minister of Justice and Attorney General for Saskatchewan.
3. The defendants, jointly and severally, are hereby ordered to pay one set of costs to the plaintiffs, said costs fixed in the sum of \$10,000.00. Those costs are to be paid in full within 60 days of this date.

J.
R.W. DANYLIUK