

FEDERAL COURT OF CANADA

B E T W E E N :

THE CANADIAN WHEAT BOARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*,
R.S.C. 1985, c. F-7, as amended

AFFIDAVIT OF ADRIAN C. MEASNER
(Sworn December 4, 2006)

I, ADRIAN C. MEASNER of the City of Winnipeg in the province of Manitoba,
MAKE OATH AND SAY as follows:

Overview

1. I am the President, Chief Executive Officer and a member of the board of directors (the "Board") of the Canadian Wheat Board and as such have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of matters referred to herein, I have stated the source of my knowledge and in all such cases believe it to be true, or, where I refer to media reports and press releases, believe that I have accurately quoted or summarized those reports and releases.

2. I make this affidavit in support of an application for judicial review (the “Application”) of Order in Council P.C. 2006-1092 dated October 5, 2006 (the “Direction”) issued by the Governor in Council (“GIC”) to the Canadian Wheat Board (the “CWB”). The Direction purports to prohibit the CWB from:

- (a) expending funds “...directly or indirectly, on advocating the retention of its monopoly powers, including the expenditure of funds for advertising, publishing or market research”; and
- (b) providing funds “to any other person or entity to enable them to advocate the retention of the monopoly powers” of the CWB.

3. Controlled by western Canadian grain farmers, the CWB is the largest wheat and barley marketing organization in the world. As one of Canada’s largest exporters, the CWB sells grain to customers in more than 60 countries, returning all sales revenue, less marketing costs, to its farmer constituents. In accordance with the terms of its governing statute, the CWB’s “single desk” is the means through which western Canadian farmers market their wheat (including durum wheat) and barley within Canada and throughout the world. The current government (the “Government”) has committed itself to the abolition of the single desk. However, the Government’s minority status has prevented it from acting by way of legislation to accomplish that goal.

4. Instead, the Government has conducted a carefully orchestrated campaign designed to implement change contrary to the existing legislation. Central to the Government’s campaign is the Direction, which I believe has been issued for the purpose of preventing the CWB from communicating with western Canadian farmers regarding

the single desk and the CWB's current statutory mandate, in order to facilitate the implementation of the Government's policy.

5. Following management's recommendation, the decision to bring the Application was authorized by resolution of the Board on November 21, 2006.

The Canadian Wheat Board

6. The CWB is a corporation without share capital continued under the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24, as amended (the "Act"). Subsection 4(2) of the Act expressly provides that the CWB is not an agent of Her Majesty the Queen and is not a crown corporation.

7. As set out at section 5 of the Act, the CWB's statutory mandate is to "market in an orderly manner, in interprovincial and export trade, grain grown in Canada". Under Parts III and IV of the Act and the regulations enacted thereunder, the CWB has been granted the exclusive legal authority to sell wheat, durum wheat and barley produced in the "designated area" that is intended for export from Canada or for human consumption within Canada.

8. The "designated area" is defined in subsection 2(3) of the Act as that area comprised by the Provinces of Manitoba, Saskatchewan and Alberta, and that part of the Province of British Columbia known as the Peace River District.

9. A farmer who grows grain and delivers it to the CWB is commonly referred to as a "producer", which is also a defined term in the Act. Throughout this affidavit, I use the terms "producer" and "farmer" interchangeably.

The History of the CWB

10. On July 5, 1935, Parliament enacted into law the first version of the Act. The CWB of 1935 built on western Canadian grain farmers' strong history of pooling and joint selling, concepts which have historically had and continue to have, widespread support in the farming community. As established, the CWB of 1935 was a true successor to the first CWB established at the end of the First World War and the provincial wheat pools created in the 1920s. A detailed historical perspective of the CWB to 1987, prepared by Dr. John Herd Thompson of Duke University for the federal government, is attached hereto as **Exhibit "1"**.

11. Over the years, the CWB's authority over the marketing of types of grain has varied considerably. In 1949, Parliament amended the Act to extend the CWB's exclusive marketing responsibility to encompass oats and barley, but retained a clause that required the Act's renewal every five years. In 1966, the Act became permanent legislation. In 1974, inter-provincial sales of wheat, oats and barley for use in animal feeds within Canada were removed from the sole authority of the CWB. In 1989, the marketing of oats was also removed from the CWB's exclusive jurisdiction.

12. Until recently, the CWB was a federal government agency. From 1935 until the end of 1998, the CWB was managed by three to five federally appointed full-time Commissioners who acted collectively as chief executive officer. In addition, there was an advisory committee of western grain farmers which was tasked with bringing prairie grain farmers' views to their marketing agency. Initially, farmers were appointed to the advisory committee, but beginning in 1975, were elected by other farmers.

A Farmer Controlled CWB

13. The notion of farmer control is critical to understanding the current CWB. In 1998, following an extensive review of western grain marketing by the federal government, the Act was amended to create a new corporate governance structure. As part of this change, on December 31, 1998, the Board assumed overall responsibility to direct and manage the business and affairs of the CWB. Since that time, ten of the fifteen members of the Board have been elected by the producers, with each elected member of the Board representing one of ten districts within the “designated area” for a term of four years. Board elections are held every two years on a staggered basis. Current practice has the elections in all of the *even* numbered districts held at the same time, followed two years later by elections in the *odd* numbered districts. Four of the remaining directors are appointed by the federal government while the fifth, the president and chief executive officer, is appointed by the federal government in consultation with the Board, which must approve the salary of the nominee.

14. Since the amendments to the Act in 1998, the Board has been directly accountable to the farmers it serves. The farmer-elected directors join the Board as representatives of the farmers in the district that elected them but, like any member of a corporate board, owe their duty to the corporation as a whole.

15. On a day-to-day basis, the federal government has no involvement in the CWB’s activities and everything that the CWB does is directed towards adding value for farmers. Under the Act, the extent of the federal government’s involvement in the CWB’s ongoing operations is limited to its:

- (a) aforementioned right to appoint five directors, including, in consultation with the Board, the president;
- (b) guarantee of the CWB's initial payments, its borrowing and its export credit sales. Associated with the initial payment guarantee is a process whereby the federal government must approve the initial payments and any adjustments thereto;
- (c) annual approval of the CWB's borrowing plan for the coming year;
- (d) approval of certain payments out of the "special account" in accordance with subsection 39(2) of the Act;
- (e) approval of the transfer of unsold grain to the next crop year, if necessary; and
- (f) annual review of the CWB's corporate plan pursuant to section 19 of the Act.

16. Also in 1998, the Act was amended to add section 47.1. That section imposes an obligation on the Minister responsible for the Canadian Wheat Board to consult with the Board and to conduct a producer plebiscite prior to taking certain steps to amend the application of Parts III or IV of the Act. Section 47.1 of the Act reads as follows:

Minister's Obligation

47.1 The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that

would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless

(a) the Minister has consulted with the board about the exclusion or extension; and

(b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

17. Subsection 18(1) of the Act also gives the federal government the authority, through the auspices of the GIC, to give direction to the CWB as to the manner in which it operates. However, this provision has rarely been used. I have been employed by the CWB in various capacities for the past 32 years. It is my understanding, based on that experience and my review of the documents referred to in paragraph 18, that over the long history of the CWB this provision has never, prior to 2006, been used over the CWB's objections.

18. I have caused CWB staff to search out copies of directions previously issued to the CWB under section 18 and its predecessor provisions. Attached collectively hereto as **Exhibit "2"** are copies of 21 directions issued to the CWB, which I understand are all of the directions that my staff could locate in a search of the CWB's Order-in-Council database back to the 1935-36 crop year.

The World Grain Market

19. Together, Canada, Argentina, Australia, the European Union (the "EU"), and the U.S. account for approximately 75 percent of the total wheat traded worldwide, while producing less than 50 percent of the world supply. This represents a significant disparity, which has the potential to exert pressure on Canada's market share, particularly

as other exporting countries increase their presence as wheat exporters. This disparity, coupled with the emergence of additional competitors and their competitive advantage from a cost-of-production standpoint, continues to place downward pressure on world wheat prices.

20. A similar condition exists in the durum market. The EU, Canada and the U.S. control approximately 75 percent of the export market, led by Canada with 50 percent market share. However, together these countries produce less than 45 percent of the world's supply, with Canada producing only 12 percent.

21. In the feed and malt barley export market, the main suppliers are Australia, Canada, the EU and the U.S., who together control approximately 55 percent of exports. The EU dominates the barley market, capturing about 32 percent of exports. The disparity between production and export is less significant in barley, as share of production is roughly equal to export market share for the major countries in aggregate.

22. A handful of vertically and horizontally integrated multinational agri-businesses exert significant control over the global grain trade. A 2003 study by the Boston Consulting Group for the Australian Wheat Board reported that four companies – Cargill, Inc. (“Cargill”), Louis Dreyfus Corporation (“Louis Dreyfus”), Archer Daniels Midland Company (“ADM”) and Bunge Limited (“Bunge”) – effectively control 73 percent of the global market for grain.

23. Cargill's annual revenues exceed U.S. \$75 billion while ADM's revenues are approximately U.S. \$35 billion. Bunge and Louis Dreyfus are somewhat smaller but both have annual revenues greater than U.S. \$20 billion.

24. These companies own or have a stake in a number of segments of the food supply chain in Canada and worldwide. Through their integrated businesses, these companies are able to extract value for their shareholders from many segments of the supply chain, while significantly reducing the supply, demand and other risks associated with their businesses.

25. Western Canadian farmers are in a difficult position within the global grain market. The concentration of ownership among the multinational corporations and their increased integration within the food supply chain gives them a dominant market position. The profitability of western Canadian grain farming has steadily declined over time given continually depressed commodity prices and increased costs which cannot be passed up the supply chain.

The Operations of the CWB

26. The CWB has approximately 460 employees and represents approximately 75,000 producers. It is based in Winnipeg and is the last significant farmer run corporation in the western Canadian grain industry.

27. Annually, western Canadian farmers sell between 18 and 24 million tonnes of wheat, durum and barley through the CWB to customers in more than 60 countries worldwide. Revenue from those sales is typically in the range of \$4-\$6 billion with all sales revenues, less costs, being returned directly to farmers.

28. The CWB operates on a “crop year” which runs from August 1 to July 31. During the 2004-05 crop year the CWB generated revenue of \$3.739 billion from the sale

of grain. Total earnings distributed to farmers totalled \$3.47 billion, an amount equal to approximately 93% of sales revenue. Farmers pay all of the CWB's costs. The federal government only contributes to the CWB's operating costs in the event of a pool deficit requiring the government's initial payment guarantee to be called upon.

29. The Board sets the CWB's strategic vision, mission and goals. The CWB's mission is "creating a sustainable competitive advantage for farmers and customers through [its] unique business structure, innovative marketing, superior service, profitable investments and effective partnerships".

30. By working together through the CWB, western Canadian farmers possess increased bargaining power when dealing with other supply chain participants. Farmers benefit through reduced rates and improved service when negotiating with grain buyers and other key service providers, including railways and grain handlers.

31. The annual value of the premium realized by western Canadian farmers as a result of the single desk has been estimated in two independent studies and a third internal analysis to be between \$355,000,000 and \$405,000,000. Copies of these studies and the analysis are attached hereto as **Exhibits "3", "4" and "5"**, respectively.

32. The primary means by which farmers price the grain that they deliver to the CWB is through one of the four "pools" that the CWB operates; wheat, durum, designated (often described simply as "malt") barley and feed barley. All grain that the CWB receives is pooled into one of these pools and sold based on its kind and quality.

33. The pooling system:

- (a) ensures all farmers receive their share of single desk premiums;
- (b) is a pricing risk management tool for those farmers that choose to use it as grain in the pool is priced throughout the year;
- (c) ensures individual farmers are not disadvantaged due to the timing of sales of their grain; regardless of when grain is sold in the country to which it is sold, all pool participants delivering a particular product to a specific CWB pool will receive the same payment for it, after adjustment for transportation costs; and
- (d) spreads the cost of marketing, delivery and distribution over the entire volume of sales.

34. On delivery of their grain to an elevator, producers receive an “initial payment”. The “initial payment” represents a portion (around 65%) of the final anticipated return for that particular product. That payment is adjusted upwards during the crop year as sales are made out of the pool. The undistributed balance remaining at the end of the crop year is distributed to farmers by interim and final payments. By the time the final payment is made (5 – 6 months after the end of the crop year) usually less than 5% of the total remains to be distributed. All payments to producers fairly reflect the market value of the quantity and quality of the particular product that they deliver.

35. In considering the value that emanates from the single desk, it is necessary to understand the difference between: (i) the CWB’s relationship with producers; and (ii) the relationship between farmers delivering grain that is not covered by the Act (“Non-

Board Grain”) and the large grain handling companies. Where a farmer delivers Non-Board Grain to a grain handling company, the farmer is selling his or her grain directly to the grain handling company. In those transactions, the grain handling companies are motivated by their own self interest to pay as little as possible for the farmers’ grain and the farmer is competing with all other farmers to sell the same product to those companies.

36. Where producers market their grain under the Act, that grain is still delivered to the grain handling company. However, the grain company is required to accept delivery of the grain on behalf of the CWB and pay producers the initial payment referred to at paragraph 34 above. Also in accordance with the procedure described at paragraph 34, the producer receives the balance owing for his grain over the course of the crop year with each producer receiving the same total payment for grain of the same quality at the same location.

37. The critical differences in the two relationships are that the producer who delivers through the CWB is not competing with other producers and, because the CWB returns all sales proceeds net of operating costs to the producer, the CWB is not motivated to pay the producers less than full value for their grain. Inevitably, this maximizes the return to the producer.

Communications Between the CWB and Producers

38. One of the identified goals of the CWB set out in the Corporate Plan is to be “responsive and accountable” to its farmer constituents. In meeting that goal the CWB seeks to:

- (a) actively represent the interest of farmers;
- (b) provide farmers with relevant, accurate and timely information; and
- (c) actively communicate to farmers the services it provides.

39. In furtherance of that goal, the CWB has a farmer relations group and also has 24 farm business representatives who work in the communities that comprise the designated area. The single most important function of these CWB employees is to engage with western Canadian wheat and barley farmers, through public meetings, community events and private visits, in order to learn their views and concerns. In turn, the information they provide as to the farmer's views, together with the individual knowledge and information gleaned by the elected members of the Board, is a critical element in decision making by the CWB. In one way or another, the single desk expressly or implicitly forms part of most, if not all, of these communications.

40. The CWB's ongoing interaction with its farmer constituency is an indispensable element of its corporate persona. The CWB cannot function effectively if it cannot communicate openly with farmers.

41. The CWB also provides information to producers through CWB publications, direct mail activities, the CWB's website, and advertising in various media. Publications include "Grain Matters" which is published six times a year as well as special publications on particular issues of topical interest to farmers such as transportation, trade or pricing options, which generally comes out three times a year. Direct mail includes inserts with producer-payment cheques, which are generally sent out five times a year. In

each case, these communications are sent to between 60,000 and 70,000 producers each time. Again, each of these means of communication often includes direct or indirect references to the single desk.

42. In addition, the CWB operates a call-centre which allows producers to contact the CWB for information and to ask questions. The CWB provides the same services to producers through email communications and an electronic newsletter with approximately 4,500 subscribers, most of whom are farmers. Annually, the call-centre receives some 190,000 calls and the website receives approximately 1.2 million site visits.

43. The CWB has a history of advocating on behalf of western Canadian grain farmers. It has long represented farmers in such matters as international trade disputes before the WTO and NAFTA panels, on grain transportation matters before the Canadian Transportation Agency and before the Competition Bureau and the Competition Tribunal. Examples of significant successes include the successful defence of more than a dozen bilateral and international trade challenges and investigations. In addition, the CWB pursued compensation from CN Rail and CP Railway, on behalf of western Canadian grain farmers, where a “level of service” complaint was launched by the CWB before the Canadian Transportation Agency. That complaint ultimately led to a favourable settlement with one railway and a compensation order of approximately \$15 million against the second. The CWB also successfully spearheaded an advocacy campaign on behalf of its farmer constituents to delay the introduction of genetically modified wheat into Canada.

44. The CWB is ideally situated to advocate for farmers because of its proven expertise, wide knowledge base, organizational structure and resources. Farmers recognize the importance of the CWB's advocacy role, as reflected by the results of the CWB's most recent annual producer survey, where 62% of producers polled strongly agreed and 27% somewhat agreed that the CWB should continue to "speak up for farmers".

The Conservative Party's Stated Policy With Respect to the CWB

45. On January 23, 2006 sufficient Conservative Party candidates were elected to the House of Commons to enable them to form a minority government.

46. Prior to the election, the Conservative Party adopted an agricultural policy which it variously described as a "dual market", "marketing choice", or "voluntary participation" in the CWB. This policy was subsequently promoted by Conservative Party candidates during the federal election campaign. Relevant portions of the Conservative Party's Policy Declaration dated March 19, 2005 and Federal Election Platform dated 2006 are attached collectively hereto as **Exhibit "6"**.

47. In my view, regardless of the term used by the Government, be it "voluntary participation" in the CWB or "marketing choice", the implementation of the Government's policy will mean the elimination of the single desk marketing system currently provided for in the Act. Further, the term "dual market" is misleading because it implies that the CWB's current method of carrying on business, an integral part of which involves the pooling of grain and the initial payment to producers, could continue in the absence of the requirement that producers deliver their grain to the CWB. An

independent study of the CWB and the history of grain pooling in western Canada supports the view that a “dual market” would inevitably result in the end of the CWB as it is currently constituted. A copy of that study is attached hereto as **Exhibit “7”**. The problems inherent in a dual market are recognized even by opponents of the single desk, as I explain further below in paragraph 86.

48. Beginning with its election in January 2006 and continuing until the date of this affidavit, the Government has pursued a number of initiatives which have caused me to conclude that the Government is determined to implement its agricultural policy irrespective of the provisions of the Act, the intention of Parliament, the collective view of the Board and, most importantly, the wishes of the majority of western Canadian producers.

49. On February 6, 2006 the Honourable Chuck Strahl was appointed as the Minister of Agriculture and Agri-Food and the Minister responsible for the Canadian Wheat Board (the “Minister”). In addition, David Anderson, M.P. was appointed the Parliamentary Secretary (for the CWB) to the Minister, and Gerry Ritz, M.P. was appointed the Chair of the Standing Committee on Agriculture and Agri-Food. The Minister represents the riding of Chilliwack – Fraser Canyon, located in British Columbia, while Messrs. Anderson and Ritz are respectively the Members of Parliament for the Saskatchewan ridings of Cypress Hills – Grasslands and Battlefords-Lloydminster.

50. Following his appointment, the Minister was reported as referring to the need to eliminate the single desk and to replace it with a dual market or marketing choice. Copies of publications referring to the Minister’s comments are attached hereto as

Exhibit “8”. The Minister’s comments reflected those of Prime Minister Stephen Harper who indicated in the House of Commons that producers should be given “dual marketing options”. A copy of the relevant portion of Hansard is attached hereto as **Exhibit “9”**.

51. In April 2006, the Minister wrote to the CWB advising that the Government intended to implement its stated policy of “voluntary participation” in the CWB and further that, all communication and promotional material issued on behalf of the CWB “should clearly reflect Government policy”. Copies of the Minister’s letter and the CWB’s response of April 24, 2006 are attached hereto as **Exhibits “10”** and **“11”**, respectively.

52. Messrs. Ritz and Anderson have been long-time critics of single desk marketing and during the election campaign each indicated their support for the elimination of the single desk and the implementation of “marketing choice” or a “dual market” for western Canadian grain. Copies of media reports referencing the public comments of Messrs. Ritz and Anderson are attached collectively hereto as **Exhibit “12”**.

53. In May 2006, Mr. Ritz, with the support of the Minister, introduced a private member’s bill entitled *An Act to amend the Canadian Wheat Board Act (direct sale of grain)* (“Bill C-300”). No member of the Government, including the Minister, consulted with the CWB with respect to the Bill. The expressed intent of Bill C-300 was to carve out an exception to the requirement in the Act that western Canadian producers sell their grain to the CWB, by permitting producers to sell their grain directly to “processing” firms that were owned primarily by Canadian farmers. The bill represented an

incremental step toward limiting the scope of the single desk. A copy of Bill C-300 is attached hereto as **Exhibit “13”**.

54. Bill C-300 was ultimately defeated in the House of Commons on October 25, 2006 prior to its second reading by the combined majority of Liberal, New Democratic and Bloc Québécois members of Parliament. As of the date of this affidavit, Bill C-300 represents the only direct attempt by the Government to effect change to the CWB’s statutory mandate through legislative action.

55. Instead, given its minority status, the Government has relied upon indirect action to impede the CWB’s ability to carry out its operations, in furtherance of its policy to eliminate the single desk. The position that the single desk can be eliminated without legislation and without consulting farmers, has been espoused by the Minister and other members of the Government. The Minister, for example, has been reported as stating that changes could be made to the CWB’s mandate by “a new executive, cabinet decree and by government regulation”. A copy of the article reporting the Minister’s comments is attached hereto as **Exhibit “14”**.

56. The Government’s position regarding the future of the CWB has also manifested itself through the activities of the Conservative Party members of the Standing Committee on Agriculture and Agri-Food (the “Agriculture Committee”), which is chaired by Mr. Ritz. On June 13, 2006, following a presentation to it by the CWB, the Agriculture Committee released a report, including a dissent, a copy of which is attached hereto as **Exhibit “15”**. The majority report, concurred in by the Liberal, N.D.P. and

Bloc Québécois members of the Agriculture Committee, made the following recommendation:

That the government prior to any legislative or regulatory action affecting the mandate of the Canadian Wheat Board as it is currently constituted under the Canada Wheat Board Act, submit through plebiscite to all those eligible to vote in Canadian Wheat Board elections, a clear and direct question asking whether those eligible to vote support or oppose the single desk selling provisions of the *Canadian Wheat Board Act*.

57. In contrast, the minority opinion of the Conservative members of the Committee states:

Our dissent to the recommendation – There is, in fact, no “mandate of the Canadian Wheat Board as it is currently constituted under the *Canadian Wheat Board Act*”. There is no mention of mandate in the *Canadian Wheat Board Act*. This recommendation is inaccurately and improperly worded and because of that it will lead to unknown, undesirable and unintended consequences. As a result, this may be calling for the precedent of conducting plebiscites to any and all future regulatory changes affecting all aspects of the CWB. The process of conducting plebiscites will thus lead to undue delays in effecting any changes to the general day to day operations of the CWB. We are not willing to penalize Western Canada wheat and barley producers because of a poorly written recommendation. As legislators any process that slows down the implementation of regulations (or which makes regulatory changes more complicated) is unacceptable. For these reasons, the Government members of the Standing Committee on Agriculture and Agri-Food do not support the recommendation.

Harvesting Opportunity

58. Through 2005 and early 2006, the CWB completed an internal study entitled *Harvesting Opportunity*, a copy of which is attached hereto as **Exhibit “16”**. The purpose of *Harvesting Opportunity*, which includes the CWB’s ongoing analysis of the

current Canadian and global marketing issues facing western Canadian farmers and the proposed role of the CWB in such an environment, is to set out the Board's vision for the CWB going forward. In the view of the Board, the proposals included in *Harvesting Opportunity* are directed at maximizing the value farmers receive for their grain in a challenging grain marketing environment, and are in the best interests of western Canadian farmers. *Harvesting Opportunity* was the culmination of more than a year of research and deliberation by CWB management, financial, legal, accounting, tax and governance experts and the Board regarding the issues currently facing western Canadian farmers.

59. The CWB presented *Harvesting Opportunity* to the Minister during a meeting on April 27, 2006. However, the Minister has rejected that analysis as it does not accord with the Government's policy and in particular, seeks to maximize the benefits of the single desk for western Canadian grain producers. A copy of a letter from the Minister dated May 18, 2006 setting out his position is attached hereto as **Exhibit "17"**. *Harvesting Opportunity* was subsequently publicly released by the CWB on August 1, 2006.

The Minister's Refusal to Approve the CWB's Corporate Plan

60. As I noted earlier, section 19 of the Act requires the CWB to annually submit to the Minister a corporate plan (the "Corporate Plan"), which is to "encompass all the business and activities" of the CWB and to contain any information considered appropriate by the Minister. The Corporate Plan, a copy of which is attached as **Exhibit**

“18”, was submitted to the Minister by letters dated June 2, 2006. Copies of those letters are attached collectively hereto as **Exhibit “19”**.

61. By letter dated June 30, 2006, the Minister advised the CWB that he was not prepared to approve the Corporate Plan as submitted to him because it is “based on a strategic direction that envisages the maintenance of the single desk” and fails to “address how the Corporation will deal with the reality that government policy is to provide producers with the choice of whether they market their wheat and barley through the CWB”. The latter is the converse of the CWB’s statutory mandate. A copy of the Minister’s letter dated June 30, 2006 is attached hereto as **Exhibit “20”**.

62. The Minister further stated that before he would consider approving the Corporate Plan, it would have to be revised to:

- (a) incorporate certain specified information relating to the aforementioned “government policy”;
- (b) delete any reference to:
 - (i) the “Harvesting Opportunity” initiative proposed by the CWB;
 - (ii) the maintenance of the single desk; and
 - (iii) any activities in 2006-2007 that would be part of the Harvesting Opportunity initiative or are geared to the maintenance of the single desk.

63. On July 31, 2006, the CWB submitted a revised Corporate Plan that included the information the Minister had requested be included but which did not make the requested

deletions. The CWB's letter setting out its explanation of the decision is attached hereto as **Exhibit "21"**.

The CWB Director Elections

64. As I noted earlier, ten of the fifteen members of the Board are elected by producers. The rules and procedures governing CWB director elections are determined by the provisions of the Act, the *Regulations respecting the Election of Directors of the Canadian Wheat Board*, SOR/98-414 (the "Election Regulations"), and by the Election Coordinator who is appointed by the CWB pursuant to the Election Regulations.

65. The CWB director elections consist of two periods; a nomination period and an election period. During the nomination period, candidates are nominated and a confirmation of voter eligibility is mailed to each producer. During the election period, voter packages are sent to producers who are eligible to vote, candidates may solicit votes and producers submit their ballots. Votes are then tallied and the directors assume office on the last day of the calendar year. On September 5, 2006 the CWB director elections commenced for districts 1, 3, 5, 7 and 9. By early October, various communications regarding the voter eligibility were issued by the election coordinator. These included a direct mail piece to all actual producers (asking them to confirm their permit information and that of all interested parties), which advised that eligible voters would automatically receive ballots. Approximately 32,000 actual producers received this direct mailing. As well, a news release on voter eligibility was issued on September 11, 2006. The nomination period ended on October 23, 2006 and the election period ended on December 1, 2006.

66. Throughout the nomination and election periods, the CWB adheres to its Election Code of Conduct which the CWB adopted in order to ensure that it and its employees remained neutral during director elections. While the candidates in the election are free to express their views on issues which they consider important to farmers, the Election Code of Conduct prevents officers or employees of the CWB from supporting particular candidates or addressing certain policy issues during the election period. A copy of the Election Code of Conduct is attached hereto as **Exhibit "22"**.

67. On October 17, 2006 the Government issued a press release, a copy of which is attached hereto as **Exhibit "23"**, announcing that in order to be eligible to vote in the director elections, producers must have sold and delivered grain to the CWB in the 2006-07 or 2005-06 crop years. The press release indicated that those producers who had not delivered grain during that period might be eligible to vote if they submitted a statutory declaration confirming that during the 2006-07 and 2005-06 crop years, they were producers of ~~crops which fall within the CWB's jurisdiction.~~
specified crops. Am

68. The Government's decision to change voter eligibility was purportedly made pursuant to section 3.07 of the Act, which provides that the Minister may "take any measures that the Minister may determine for the proper conduct and supervision of an election of directors...". This decision, which resulted in the removal of approximately 16,000 of the 44,578 names from the existing voters list was made without consulting the CWB and without prior notice to it, some six weeks after the commencement of the CWB director's election period.

The Roundtable

69. Prior to the current CWB director elections, on July 13, 2006, the Minister announced a roundtable meeting (the “Roundtable”) to be chaired by Mr. Anderson. As stated in the Minister’s press release, a copy of which is attached hereto as **Exhibit “24”**, the “ideas presented and discussed at this meeting will contribute to delivering on the new government’s campaign promise to implement dual-marketing for western grain producers.”

70. The Roundtable met on July 27, 2006. A list of participants is attached hereto as **Exhibit “25”**. The CWB was not invited to participate as the invitees included only those who supported the Government’s position.

71. On September 8, 2006, the Minister released a report of the recommendations from the Roundtable entitled “Charting the Path to Marketing Choice”, a copy of which is attached hereto as **Exhibit “26”**. The report concluded, among other things, that a “revamped [CWB] must be voluntary”, that “clarity, resolve and timeliness” were essential in implementing marketing choice and that a task force should be appointed to identify the steps necessary to implement a new regime. There was apparently no discussion at the Roundtable of the benefits of the current system as compared to the perceived benefits of the alternative regime favoured by the Government and its supporters.

The Minister's Task Force

72. Prior to the release of the Roundtable report, the Chair of the CWB, Ken Ritter, and I were advised by the Minister on August 25, 2006 that a task force (the "Task Force") was being formed to examine the options for marketing choice. The Minister indicated at that time that the CWB would be invited to participate in the Task Force.

73. On September 5, 2006 the Minister sent a letter to the CWB, a copy of which is attached hereto as **Exhibit "27"**, inviting it to participate in the Task Force. The CWB responded to the invitation by verbal inquiries followed by letter dated September 8, 2006, requesting additional information including, among other things, a list of the intended Task Force participants and specific details regarding the Task Force's terms of reference. Neither the Minister nor his staff responded to the CWB's verbal inquiries or its letter, a copy of which is attached hereto as **Exhibit "28"**.

74. On September 19, 2006 the Minister announced the members of the Task Force. A copy of the press release dated September 19, 2006 is attached hereto as **Exhibit "29"**.

75. The Task Force's terms of reference ("Terms of Reference") included the following:

- (a) the Task Force was required to identify and evaluate any technical or transitional aspects that could change with the CWB being a voluntary entity and any technical or transitional aspect of a voluntary CWB including, but not limited to, how the CWB would acquire a capital base, how to deal with export credit

receivables, and how to separate and fund market development and research activities through an industry council;

(b) meet affected industry and producer groups as deemed necessary by the Task Force to understand and address the technical issues; and

(c) produce a report with recommendations on technical and transition issues for the Minister to be completed approximately four weeks after the first meeting.

76. The Board carefully considered whether to participate in the Task Force but ultimately concluded that its participation would effectively be meaningless for the following reasons:

(a) the CWB had concerns about the membership of the Task Force;

(b) the Terms of Reference precluded any analysis or review of the various alternatives to marketing choice, including the CWB's current mandate, the proposals outlined by the Board in *Harvesting Opportunity*, or other potential proposals;

(c) the Task Force Report was intended to be released during the CWB director election period; and

(d) the issues to be addressed by the Task Force were ones that should be decided by farmers.

77. The CWB's decision not to participate in the Task Force and its explanation of that decision was set out in a letter to the Minister from Mr. Ritter dated September 28, 2006. A copy of that letter is attached hereto as **Exhibit "30"**.

78. Notwithstanding the foregoing, the CWB agreed to meet with the Task Force on October 11, 2006 and further, to provide technical information in response to its questions. Following the meeting, the CWB delivered its responses to the Task Force's questions by way of letter dated October 13, 2006. The Task Force's questions and the CWB's responses were subsequently posted on the CWB's website for public review. A copy of the CWB's letter enclosing its answers to the questions posed by the Task Force is attached hereto as **Exhibit "31"**.

The Issuance of the Direction

79. On October 5, 2006, Laurie Throness, Chief of Staff to the Minister, sent Ken Ritter a copy of the Direction. A copy of Mr. Throness' letter is attached hereto as **Exhibit "32"**.

80. The Direction, and the accompanying Regulatory Impact Analysis Statement (the "RIAS"), were published on October 18, 2006 in the *Canada Gazette Part II, Vol. 140, No. 21* (the "Canada Gazette"), attached hereto as **Exhibit "33"**.

81. In a press release issued on October 11, 2006, the Minister explained that the Direction was intended, at least in part, to prevent the CWB from "undermin[ing] this government's policy objectives". A copy of the press release dated October 11, 2006 is attached hereto as **Exhibit "34"**.

82. The RIAS highlights one of the CWB's main concerns with the Direction as it states that the Direction "will ensure that the CWB carries out its operations and duties in a manner which is not inconsistent with the federal government's policy objectives". The fact that the Government's policy objectives are inconsistent with the Act is not addressed in the RIAS.

83. I believe that these statements demonstrate a fundamental misunderstanding on the Government's part regarding its relationship with the CWB. While links exist between the federal government and the CWB, the CWB is a "shared governance entity" and therefore, the federal government does not control the CWB. As the Act specifically provides that the CWB is neither an agent of the Crown nor a Crown corporation, the CWB must act in the best interests of farmers and in a manner consistent with its vision and mission (as determined by the Board), and its statutory mandate. The CWB is not simply the vehicle through which federal government policy, as it might be defined from time to time, is implemented, unless such policy is consistent with the Act or the Act itself is amended by Parliament to conform with government policy.

84. On the same day the Minister publicly announced the Direction, I circulated a memorandum to staff in all CWB offices advising them of it. The memorandum provided CWB employees with preliminary guidelines regarding its scope, to the extent it was possible to do so given the wording of the Direction. A copy of the memorandum to staff, together with a copy of a subsequent memorandum I circulated, are attached collectively hereto as **Exhibit "35"**.

85. The Minister subsequently attempted to “clarify the purpose” of the Direction in a letter to the Regina Leader-Post dated October 21, 2006, a copy of which is attached hereto as **Exhibit “36”**. In the letter, the Minister stated that, “[n]othing in the [Direction] prevents a director, including directors who do or do not support the [CWB’s] monopoly, from speaking their mind publicly.” Conrad Bellehumeur, an official in the Minister’s office was also reported as stating on October 18, 2006 that the Direction did not apply to require changes to the CWB’s website. A copy of the publication reporting Mr. Bellehumeur’s comments is attached hereto as **Exhibit “37”**.

The Task Force’s Report

86. On October 25, 2006 the Task Force issued its report entitled “Marketing Choice – The Way Forward” (the “Task Force Report”). A copy of the Task Force Report is attached hereto as **Exhibit “38”**. Among the most significant findings and conclusions set out in the Task Force Report are the following:

- (a) the single desk cannot co-exist with an open market and the proposed “dual market” is not a valid option; and
- (b) there is a “significant risk” of failure in the changes proposed.

87. The Task Force’s first recommendation is that “the Government put a bill before Parliament to repeal the *Canadian Wheat Board Act* and create a new Act providing authority for a new commercial entity – CWB II – and for the proposed transition measures.”

88. The Task Force Report also recommends that the Government direct the CWB to prepare for its proposed transformation and exercise “oversight” over the Board if it opposes an open market. Yet, despite acknowledging the need for legislative change to implement these recommendations, the Task Force Report does not address the fact that the Act makes the single desk a part of the law of Canada unless and until it is repealed.

89. Following the release of the Task Force Report, the Minister was quoted as reiterating his support for a “voluntary wheat board” and indicated that the Government was “very determined” to implement this new regime. At the same time, the Minister also emphasized that he was not bound by the recommendations in the Task Force Report. A copy of the publication quoting the Minister is attached hereto as **Exhibit “39”**.

90. The Task Force Report was publicly criticized by opposition members of the Agricultural Committee during the appearance before it of members of the Task Force. A copy of the transcript of the proceedings before the Agriculture Committee attended by the members of the Task Force is attached hereto as **Exhibit “40”**, while media reports containing criticism of the Task Force Report are attached collectively hereto as **Exhibit “41”**.

91. On November 6, 2006 the CWB posted a document on its website entitled “CWB Response to Minister Strahl’s Task Force Examining Implementation of Marketing Choice” (the “Response to the Task Force Report”). A copy of the Response to the Task Force Report is attached hereto as **Exhibit “42”**. The Response to the Task Force Report is a critique of the proposals set out in the Task Force Report. It was not intended to be,

and in my view is not, advocacy on behalf of the CWB's retention or its monopoly powers. Rather, it is intended to inform readers as to the CWB's significant concerns about the Task Force's proposals and the likelihood that the business model proposed by the Task Force is doomed to failure.

The Barley Plebiscite

92. On October 31, 2006 the Minister publicly announced that the Government would hold a plebiscite on whether to eliminate the single desk for the marketing of western Canadian barley. At the same time, he announced that there were no plans to hold a vote of farmers on the CWB's role on the marketing of wheat. The Minister did not consult with the Board regarding the plebiscite as required by the Act and his public comments regarding the plebiscite on barley suggest that the results of the vote will not be viewed as binding on the Government. A copy of the press release dated October 31, 2006 announcing the plebiscite is attached hereto as **Exhibit "43"**, while a copy of the article quoting the Minister's comments regarding the plebiscite is attached hereto as **Exhibit "44"**.

93. As set out in paragraph 17, section 47.1 of the Act provides that where a plebiscite regarding the exclusion or extension of Parts III or IV of the Act to a particular grain is to be held, the voting process will be determined by the Minister. As of the date of this Affidavit, however, the Minister has publicly stated that he has yet to decide which producers will be entitled to vote, whether votes will be weighted depending on the size of a producer's farm and the form of the question. And, he has yet to confirm whether a plebiscite regarding wheat will be held. The Minister's publicly reported

comments regarding the barley plebiscite are found in the article attached hereto as **Exhibit “44”**.

The CWB Requests the Repeal of the Direction

94. In light of Board concerns surrounding the scope of the Direction, Mr. Ritter wrote to the Minister on October 26, 2006 inquiring as to the meaning and purpose of the Direction and requesting that the Minister seek its repeal by the GIC. Mr. Ritter also advised the Minister that the Board had caused the Direction to be implemented by the CWB, in accordance with their obligations under the Act. A copy of Mr. Ritter’s letter is attached hereto as **Exhibit “45”**.

95. On November 3, 2006 representatives of the CWB, including Mr. Ritter and I, met with the Minister. Among the items tabled at that meeting was a request that the Minister seek to have the Direction rescinded by the GIC. That request was denied.

96. On November 17, 2006, the Minister wrote to Mr. Ritter reiterating his refusal to request rescission of the Direction and providing further elaboration on his views as to its meaning. A copy of that letter is attached hereto as **Exhibit “46”**. In his letter, the Minister broadened his earlier interpretation of the Direction and also advised Mr. Ritter that the publication of a previously completed study on the continental barley market conducted by the CWB would, in the Minister’s view, contravene the Direction. In addition, the Minister instructed the CWB to remove from its website the Response to the Task Force Report, which the Minister alleged also contravened the Direction. The study regarding the continental barley market to which I presume the Minister is referring is attached hereto as **Exhibit “47”**.

97. On November 27, 2006, Mr. Ritter wrote to the Minister in response to the Minister's demand that the CWB remove the Response to the Task Force Report from the CWB's website. In his letter, Mr. Ritter rejected the Minister's demand and indicated that the CWB had instructed its counsel to file the within application. A copy of Mr. Ritter's letter is attached hereto as **Exhibit "48"**.

98. On November 28, 2006 the Minister issued a press release announcing the appointment of Glen Findlay to the Board. The Minister previously appointed Ken Motiuk and Bruce Johnson to the Board who, together with Mr. Findlay, support the Government policy. Copies of the press releases announcing their appointments are attached collectively hereto as **Exhibit "49"**.

99. The Minister's Board appointments followed a prior exchange of letters between Mr. Ritter and the Minister, in which Mr. Ritter set out the skills and attributes of individuals who were to be considered for appointment to the Board. In response to Mr. Ritter's letters, the Minister advised that "it is also important that directors appointed by the Government understand and support the directions of government policy in areas affecting the CWB" and that it would be "beneficial to have directors who understand the Government's policy direction in this area and are philosophically attuned with it". Copies of Mr. Ritter's letters dated April 21 and June 15, 2006 are attached collectively hereto as **Exhibit "50"**, while copies of the Minister's letters dated June 1 and August 4, 2006 are attached collectively hereto as **Exhibit "51"**.

100. On November 29, 2006, I received a faxed letter from the Minister, a copy of which is attached hereto as **Exhibit “52”**, in which he indicated that he was considering recommending my termination as President of the CWB.

101. On November 30, 2006, the Winnipeg Free Press published an article in which a “government official” was reported as indicating that I could save my job if I were to change my position that the CWB should maintain the single desk and support the Government’s policy of “marketing choice”. A copy of the article is attached hereto as **Exhibit “53”**.

102. On December 1, 2006, Mr. Ritter received a response from the Minister to his letter of November 27, 2006 regarding the Direction. In that letter the Minister reiterated the position expressed in his letter of November 17, 2006 and advised that he refused to seek the suspension of the Direction during the barley plebiscite. A copy of the Minister’s letter is attached hereto as **Exhibit “54”**.

The Direction Impedes the CWB’s Ability to Carry Out its Operations

103. It is clear that the Direction has made CWB staff fearful of communicating in an open manner with producers and the public. That fear relates not only to direct communication about the single desk but, rather, extends to all aspects of the staff’s interaction with those seeking the information and assistance that the CWB has typically provided. Staff do not know what they can or cannot say and are afraid that even the communication of factual information will be seen as a violation of the Direction. As a consequence, information is not getting out to the producers or the public. I say this based on my personal experience and observation and as reported to me by Deanna

Allen, the CWB's Vice-President Farmer Relations and Public Affairs, together with my review of the weekly reports of the farm business representatives.

104. It is not only the CWB and its staff that are prejudiced by the Direction. Major farmer organizations, including Keystone Agricultural Producers, Wild Rose Agricultural Producers, and the National Farmers Union, have expressed their concerns to me regarding the Government's recent actions and their opposition to the Direction.

105. Simply put, the Direction has had a chilling effect on the CWB and has created uncertainty and confusion during a period when producers are faced with critical decisions relating to the future of the single desk.

106. In addition, the Direction is impeding the ability of CWB staff to carry out their jobs in an efficient and timely manner. Notwithstanding the guidelines I issued in October, staff are having difficulty in applying the Direction and must frequently seek legal advice before issuing external communications or publishing reports. The smallest decisions involving communications with the public and producers are being agonized over, delayed or delegated upwards because staff do not understand what information is potentially prohibited.

107. I am also concerned that the Direction prevents the CWB from clarifying misleading or incorrect public statements by individuals and groups opposed to the CWB. By way of example, on November 8, 2006 the Minister released an op-ed article for publication in which he directly questioned the benefits to farmers of the single desk. A copy of the Minister's op-ed article is attached hereto as **Exhibit "55"**. In that article the Minister incorrectly stated that independent studies of the benefits producers obtain from

the CWB, such as those previously attached hereto as **Exhibits** ◇, ◇ and ◇, exaggerate those benefits. The CWB's letter to the Minister of November 17, 2006 setting out its concerns is attached hereto as **Exhibit "56"**. However, the CWB did not publicly respond to the Minister's partisan advocacy because of a concern about the possibility of contravening the Direction.

108. In early October, at the time I circulated the guidelines regarding the scope of the Direction to CWB staff, the CWB immediately began considering whether to initiate a legal challenge to the validity of the Direction. However, following the public comments of the Minister, Mr. Bellehumeur and other members of the Government, the CWB was initially of the view that the CWB could continue to operate in accordance with its statutory mandate under the Direction. The CWB was also deeply concerned about commencing legal proceedings with the Government, particularly during the election period. It was therefore the intention of the Board that the CWB comply with the Direction. In the circumstances prevailing at that time, while we believed the Direction to be unprecedented and completely inconsistent with the spirit and intent of the changes to the CWB governance structure made in 1998, the Board and I decided in good faith to seek to conduct the CWB's business in a manner consistent with the restrictions set out in the Direction.

109. However, since that initial decision was made, circumstances have changed significantly. Specifically, the following has occurred:

- (a) the Task Force Report was released, proposing a "CWB II" that is inevitably doomed to fail;

(b) the Minister announced the barley plebiscite, at the same time indicating that the Government would not be bound by its results and that it had no intention at this time of having a plebiscite for wheat producers; and

(c) the Minister and other Government allies, acting in concert have engaged in a public campaign of misinformation aimed at misleading farmers as to, among other things, the merits of the existing CWB, the prospects for “CWB II” and the value to farmers of the single desk.

110. Furthermore, as evidenced by the Minister’s letter of November 17, 2006, it has become abundantly clear to the Board that the Direction is truly intended to “gag” the CWB and that the Government will seek to employ the Direction to muzzle any communication emanating from the CWB aimed at responding to the misinformation coming from the Government and its allies.

111. The Direction has also created an anomaly in the treatment of the individual members of the Board, who under section 3.03 of the Act are entitled to be reimbursed expenses incurred by them in the course of their duties. As matters currently stand, because of the Direction, a director who supports the single desk would not be entitled to reimbursement for attending at a farmers’ meeting to express his views while a director who expresses the opposite view at the same meeting would have his expenses paid in full.

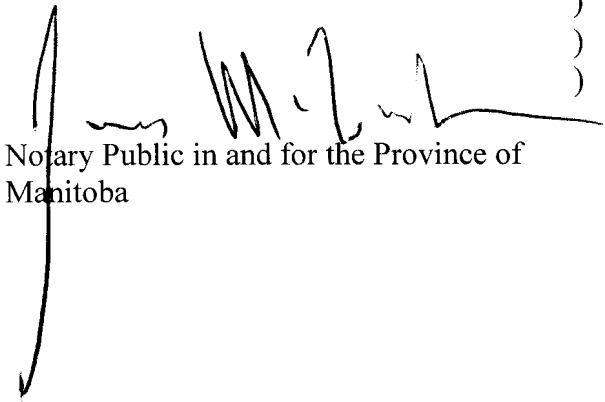
112. I strongly believe that the CWB and its Board has an important ongoing role to play in communicating with its constituents during this critical time. As the Minister acknowledged to reporters in Winnipeg on November 3, 2006, shortly after announcing

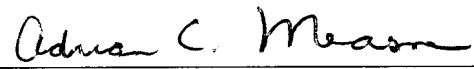
the barley plebiscite, the CWB has the best understanding of the business issues and has access to detailed marketing and operational information not available to others. A copy of a report on the Minister's comments as included in *The Western Producer* on November 9, 2006, is attached hereto as **Exhibit "57"**.

113. In light of the fact that barley producers will shortly be given the opportunity to vote on whether the CWB retains the single desk in respect of barley or whether an open market is implemented, I believe that it is in the best interests of farmers that they have access to all of the relevant information regarding the CWB and its operations. The logical source for that information is the CWB. The Direction significantly impairs the ability of the CWB to ensure the dissemination of that information.

114. In my view, it is unfortunate that the CWB has been compelled to initiate legal proceedings against the Government. Notwithstanding the fact that the Board has made every effort to work cooperatively with the Government within the existing legal framework established by the Act, the Government appears determined to eliminate the single desk without legislative change. The Direction is apparently aimed at limiting the Government's opposition while it carries out its goals. It may be the case that in the future, the single desk will be abolished. But western Canadian farmers should make that choice, and in doing so, they are entitled to have all of the relevant information available to them.

SWORN before me at the City of)
Winnipeg in the Province of Manitoba)
this 4th day of December, 2006)


Notary Public in and for the Province of
Manitoba



ADRIAN C. MEASNER