

Court File No.

T-2138-06

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 KENNETH R. RITTER
(Sworn December 4, 2006)

I, KENNETH R. RITTER of the Town of Kindersley in the Province of Saskatchewan,

MAKE OATH AND SAY as follows:

Overview

1. I am the Chair and a member of the Board of Directors (the "Board") of the Canadian Wheat Board (the "CWB") 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. I have reviewed the final draft of the affidavit of Adrian C. Measner (Mr. Measner's Affidavit"), which I understand is to be sworn today and to the extent I have knowledge of the matters described therein, I agree with Mr. Measner's evidence.

2. By resolution dated November 21, 2006, the Board authorized the bringing of this application (the "Application") to seek judicial review of Order in Council P.C. 2006-1092 dated October 5, 2006 (the "Direction") issued by the Governor in Council ("GIC") to the CWB.

3. The purpose of this affidavit is to describe the Board's perspective on two issues of critical importance to the CWB raised by the Application. These are:

- (a) the responsibility of the Board to manage the business and affairs of the CWB in accordance with its vision of the best interests of producers and in accordance with the legislation currently in place; and
- (b) the extent to which the Conservative minority government (the "Government") can order or direct the manner in which the CWB conducts its operations.

4. My concern, based on the manner in which events have unfolded over the last year as described in this affidavit and Mr. Measner's Affidavit, is that the Government is pursuing a pattern of conduct that demonstrates a serious misunderstanding of the manner in which the CWB is required by law to operate. It is attempting to effect changes which are not consistent with the current law and with which the Board fundamentally disagrees.

The Canadian Wheat Board

5. 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").

6. 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.

7. In 1998 the Act was amended to create a new corporate governance structure for the CWB. As part of that change, which is described in Mr. Measner’s affidavit, the Board assumed overall responsibility to direct and manage the business and affairs of the CWB as set out in section 3.01 of the Act. Prior to that time, the CWB was managed by federal government appointees.

8. As described in Mr. Measner’s Affidavit, ten of the fifteen members of the Board are elected by the producers, four 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 first fix the remuneration of the nominee. However, pursuant to section 3.02(4) of the Act, *all* directors -- whether appointed or elected -- have the same powers, duties and functions. They are, in short, all equal.

9. I am a farmer operating a family farm in Kindersley, Saskatchewan and have been one of the elected directors of the Board since 1998. Since that time I, and to the best of my knowledge, the majority of producers, have believed that control of the CWB rests with the Board. 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.

The Strategic Direction of the CWB

10. Earlier this year the Board released a comprehensive strategic study entitled *Harvesting Opportunity*. A copy of *Harvesting Opportunity* is attached as an exhibit to Mr. Measner's Affidavit. The purpose of *Harvesting Opportunity*, which was the culmination of an initiative that had been ongoing for several years, was to set out the Board's vision for the CWB going forward. *Harvesting Opportunity* is premised on the continuation of the single desk as mandated by the current Act. 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.

11. In that regard *Harvesting Opportunity* differs from the Government's stated policy which is to eliminate the single desk and replace it with a "dual market" or "marketing choice". Although at one time I had thought that a "dual market" would be viable, my years as a director of the CWB and, in particular, the opportunity that has given me to examine CWB sales activities and operations in detail, have convinced me that a "dual market" is simply impossible. The only choices are the single desk or the open market.

12. The CWB presented *Harvesting Opportunity* to the Honourable Chuck Strahl, the Minister of Agriculture and Agri-Food and Minister for the Canadian Wheat Board (the "Minister") during the spring of this year. An earlier draft had been presented to the previous federal government. The Minister rejected the report on the basis that it does

not accord with the Government's stated policy.

13. The CWB was sufficiently concerned with the Government's apparent misunderstanding of the nature of the relationship between it and the CWB, that Mr. Measner and I sent the Minister a letter dated July 31, 2006 expressing our concern and seeking a meeting of the Minister and his staff and representatives of both the single desk and "dual market" supporters on the Board. A copy of that letter is attached hereto as **Exhibit A**. The Minister did not take up the CWB's invitation to meet.

The CWB Requests the Repeal of the Direction

14. The circumstances leading up to the issuance of the Direction and the Government's public comments relating to its purpose and scope are fully and accurately described in Mr. Measner's Affidavit.

15. I am advised by Mr. Measner and other members of CWB management that the Direction is impeding the ability of CWB staff to carry out their jobs in an efficient and timely manner. As I understand the situation, staff are having difficulty in applying the Direction and must frequently seek legal advice before issuing external communications or publishing reports.

16. The Direction has also made it difficult for me and other elected board members to carry out our duties as we too must now review all of our external communications and activities through the same new and extremely murky lens. As directors always mindful of our governance obligations, it forces us to be far more cautious than I believe is appropriate under the circumstances with the result that farmers are not receiving the

information and input that they are entitled to expect or in as prompt and efficient a manner as they are entitled to expect it.

17. The Direction has been extremely divisive to relations between the Board members. It has also created an anomaly in the treatment of the individual members, 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.

18. For example, every fall and winter farmer-elected directors hold a series of public meetings with farmers in their district. These meetings, some of which are called at the behest of farmers, are one of the important ways in which the CWB and its directors make themselves accountable to farmers. Yet, a director who was elected by farmers to support the single desk, because of the Direction will necessarily be more cautious in what he says than a director who opposes the single desk. Speaking from personal experience, in regard to meetings that I have attended this Fall since the Direction was issued, it has reached the point where I was unsure until after the meeting whether it would be appropriate to submit an account for reimbursement of expenses. I am aware that other directors are having the same difficulty and that at least one has decided not to seek reimbursement.

The purported Termination of Mr. Measner

19. On November 30, 2006, Mr. Measner received a letter from the Minister, a copy of which is attached to Mr. Measner's Affidavit. In that letter the Minister indicated that he was considering recommending Mr. Measner's termination as President of the CWB.

20. The Minister's letter was sent to Mr. Measner without any prior consultation with me or the Board. The Board has been very pleased with the job Mr. Measner has done since becoming President and CEO in early 2003 and he was unanimously supported by the Board for reappointment to a three year term just last year.

21. On December 1, 2006, the Board passed a resolution supporting Mr. Measner, asking the Minister to reconsider his actions aimed at terminating Mr. Measner's appointment and seeking to consult with the Minister about those actions. The Board asked for the consultation with the Minister because it believes that Mr. Measner's termination "would put the CWB at risk during this critical time in its history" and would potentially jeopardize the Board's ability to act in the best interests of the producers. Copies of the draft resolution, statement of the Board and a letter I sent to the Minister on behalf of the Board are attached hereto as **Exhibit "2"**.

22. Until recently, it was my intention and that of the Board that the CWB comply with the Direction. At the time it was issued, the Board decided in good faith to seek to conduct the CWB's business in a manner consistent with the restrictions set out in the Direction, notwithstanding what was seen as unwarranted interference in the Board's discharge of its responsibilities.

23. However, since that initial decision in October 2006, circumstances have changed significantly. Specifically, the following has occurred:

- (a) the Task Force Report described in Mr. Measner's Affidavit was released proposing a "CWB II" that in my opinion will not serve the needs of producers and will not survive;
- (b) without consultation with the Board, 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 current intention of having a plebiscite for wheat producers; and
- (c) the Minister has taken the aforementioned steps to terminate Mr. Measner's appointment.

24. The issuance of the Direction, in conjunction with other recent conduct on the part of the Government described here and in Mr. Measner's Affidavit is the strongest evidence of a fundamental misunderstanding on the Government's part regarding its relationship with the CWB. The CWB is a "shared governance entity" and therefore, the federal government does not control the CWB. Rather, since 1998, the Board has had overall responsibility for the management of the CWB. It is my belief that the CWB must act in the best interests of farmers, in accordance with its statutory mandate and under the direction of the Board.

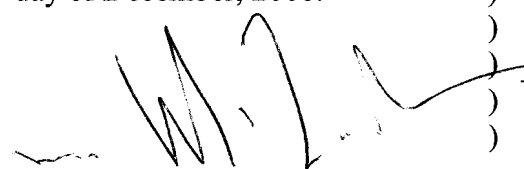
25. I believe the CWB is, first and foremost, accountable to farmers. We must and do have the greatest respect for their views. If they collectively determine to reject the single desk model then the Board must respect that view and operate accordingly, once

the legislation has changed. The Act necessitates a collaborative approach with the government of Canada in some areas. I believe that since the Government took office earlier this year, the Board and the CWB have made extensive efforts to engage it in a constructive dialogue that respects both its stated policy position and the views of the majority of farmers. However, our efforts have been consistently rebuffed. The Government has expressed no willingness to engage on anything but its own policy position of moving to "marketing choice". It is unfortunate that matters have come to this point but I feel that the CWB has no choice but to proceed with this application.

26. I am strongly of the view that the CWB, the Board and individual directors must be free to communicate with the producers during this critical time. 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 during the period of the barley plebiscite. 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.

27. I am also strongly of the view that the uncertainty created by the government's misunderstanding of its relationship with the CWB and by the Direction itself must be resolved as soon as possible.

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




KENNETH R. RITTER

A Notary Public in and for the Province
of Manitoba