Court File No. T-1124-07

FEDERAL COURT

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

MEMORANDUM OF FACT AND LAW OF THE CANADIAN WHEAT BOARD

PART I – FACTS

1. On June 7, 2007 the Governor in Council ("GIC") issued Order in Council P.C. 2007-937 promulgating the *Regulations Amending the Canadian Wheat Board Regulations* (the "Impugned Regulations") which purport to remove barley from the application of Part IV of the *Canadian Wheat Board Act* (the "Act"), which establishes the "single desk" marketing authority of the Canadian Wheat Board (the "CWB"). The Impugned Regulations were made pursuant to sections 46, 47 and 61 of the Act. The CWB brings this application seeking a declaration that the Impugned Regulations are *ultra vires* the authority of the GIC and in particular, contravene the Act which prohibits the removal of wheat or barley from the CWB's marketing authority by regulatory action without Parliamentary approval preceded by a producer plebiscite and consultations with the CWB's board of directors.

Notice of Application, Application Record ("A.R."), Vol. 1, tab A.

The Canadian Wheat Board

2. The CWB is a corporation without share capital continued under the Act. The CWB is not an agent of Her Majesty the Queen, nor is it a crown corporation.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, subsection 4(2).

3. The CWB's statutory mandate, set out in section 5 of the Act, is to "market in an orderly manner, in interprovincial and export trade, grain grown in Canada". The CWB has the exclusive legal authority, under Parts III and IV of the Act, to sell wheat produced in the "designated area" that is intended for export from Canada or for human consumption within Canada. 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. Farmers in the designated area who produce grain that is delivered to the CWB or who are entitled to a share therein are defined in the Act as "producers".

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, Parts III & IV, sections 2 & 5.

4. Part V of the Act, which consists solely of two sections (47 and 47.1), provides for the application of Parts III and IV of the Act to grains other than wheat. Currently, barley is the only grain subject to the application of these Parts of the Act. It is the interpretation of sections 47 and 47.1 that is principally at issue on this application.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, sections 47 & 47.1.

Overview of the Operations of the CWB

5. The CWB operates on a "crop year" which runs from August 1 to July 31. Revenue from the CWB's sales during the 2005-2006 crop year was $3.498 billion, approximately 11% of which was attributable to the sale of barley. All of the CWB's revenues, less costs (which are paid by producers), are returned to producers. During the

2005-2006 crop year, distributions to producers totalled $3.15 billion, an amount equal to approximately 91% of the CWB's sales revenue.

> *Affidavit of Ward P. Weisensel, sworn June 19, 2007 ("Weisensel Affidavit")*, A.R., Vol. 1, Tab C, para. 11.

6. The operations of the CWB are based on three fundamental elements which are established by the Act: (i) single desk selling; (ii) price pooling; and (iii) the guarantees by the federal government of initial payments to producers and of the CWB's borrowings.

> *Weisensel Affidavit*, A.R., Vol. 1, Tab C, para. 12.

7. The single desk is the key mechanism by which the CWB fulfils its statutory mandate. Part IV of the Act prohibits any person other than the CWB from engaging in the sale of wheat, durum, or barley that is destined for export or for human consumption within Canada.

> *Weisensel Affidavit,* A.R., Vol. 1, Tab C, para. 13.

8. The primary means by which producers price the grain that they deliver to the CWB is through one of the four "pools" that the CWB operates pursuant to Part III of the Act: wheat, durum, designated (often described simply as "malt") barley and feed barley. Price pooling ensures that each producer receives the same payment for the same grain delivered at the same location, regardless of when during the crop year that grain is delivered.

> *Weisensel Affidavit,* A.R., Vol. 1, Tab C, paras. 14-16.

The CWB's History in Relation to Barley

9. Prior to 1948, the Act applied only to the marketing of wheat. However, in 1948, Parliament amended the Act to add section 29A (the predecessor to section 47), which authorized the GIC to extend the application of either or both of Parts III and IV of the

Act to oats or barley. At the time of its enactment section 29A read, in relevant part, as set out below. For ease of comparison, section 47 of the Act is also set out below:

29A. (1) The Governor in Council may by regulation extend the application of Part III or of Part IV or of both Parts III and IV to oats or to barley or to both oats and barley.	47.(1) The Governor in Council may, by regulation, extend the application of Part III or of Part IV or of both Parts III and IV to oats or to barley or to both oats and barley.
(2) Where the Governor in Council has extended the application of any Part of this Act under subsection one, the provisions of the said Part shall be deemed to be re-enacted in this Part, subject to the following:	(2) Where the Governor in Council has extended the application of any Part under subsection (1), the provisions of that Part shall be deemed to be re-enacted in this Part, subject to the following:
(a) the words “oats” or “barley”, as the case may be, shall be substituted for the word “wheat”;	(a) the word "oats" or "barley", as the case may be, shall be substituted for the word "wheat";
(b) the expression “oat products” or “barley products”, as the case may be, shall be substituted for the expression “wheat products”; (emphasis added)	(b) the expression "oat products" or "barley products", as the case may be, shall be substituted for the expression "wheat products" (emphasis added);

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, section 47.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 21.

An Act to amend The Canadian Wheat Board Act, 1935, S.C. 1948, c. 4, section 5.

10. At the time the federal government was considering proposing the enactment of section 29A, it was concerned that the extension of Parts III and IV to either oats or barley would infringe provincial jurisdiction and be *ultra vires* the constitutional authority of Parliament. Thus, rather than amending the Act to apply to oats and barley, Parliament authorized the GIC to act by way of regulation to extend Parts III and IV to oats and barley, following the enactment of complementary provincial coarse grains legislation. Upon the extension of Parts III and IV to oats and barley, section 29A (now

section 47) provided that the provisions of Parts III and IV would be "deemed to be re-enacted" in Part V of the Act with the words oats and barley replacing the word wheat.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 21.

11. Following the promulgation of coarse grains legislation by Manitoba, Saskatchewan and Alberta, the GIC issued Order in Council P.C. 3713 on July 20, 1949 enacting regulations extending the application of both Parts III and IV of the Act to oats and barley for the 1949-50 crop year. After 1949, the GIC issued orders in council enacting regulations extending Parts III and IV to barley for the relevant crop year on an annual basis until 1971, when the GIC amended section 9 of the regulations to read "Parts III and IV of the Act are hereby extended to oats and barley", thereby obviating the need to enact regulations on an annual basis.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 22-23, Exhibit 4.

12. Oats were subsequently excluded from the application of Parts III and IV of the Act in 1989 when the regulations were amended to read "Parts III and IV of the Act are hereby extended to barley."

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 23.

The 1998 Amendments to the Act

13. Between 1935 and the end of 1998 the CWB was a federal government agency managed by three to five federally appointed full-time Commissioners. In 1998, following an extensive review of western grain marketing by the federal government, the Act was amended (the "1998 Amendments") to create a new corporate governance structure for the CWB and to ensure that farmers and Parliament would determine whether particular grains would be removed from or added to the CWB's single desk marketing authority.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 27, 28 and 33.

14. On December 31, 1998, as a result of the 1998 Amendments, a board of directors (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 producers, with each elected member representing one of ten districts within the "designated area" for a term of four years. 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.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 28 & 29.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, sections 3.01-3.13.

15. Also as a result of the 1998 Amendments, the CWB ceased to be an agency of the Crown and the Board is now directly accountable to the farmers it serves. Although the Act confers upon the federal government certain powers, duties and responsibilities in connection with the CWB, the federal government has no involvement in the CWB's day-to-day operations.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 5-6.

Section 47.1 and Its Purpose

16. The 1998 Amendments included the addition of section 47.1 which provides 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.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, section 47.1.

17. The 1998 Amendments stemmed from two bills introduced in Parliament, the first of which, Bill C-72, *An Act to amend the Canadian Wheat Board Act and to make consequential amendments to other Acts*, died on the order paper when the 1997 federal election was called.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 34; Vol. 2, Exhibit 5.

18. The second bill, Bill C-4, *An Act to amend the Canadian Wheat Board Act and to make consequential amendments to other Acts* ("Bill C-4"), was based to a significant extent on Bill C-72 and received first reading in the House of Commons on September 25, 1997. Subsequently, in opening debate on Bill C-4 on October 7, 1997, the then Minister Responsible for the CWB (the "Former Minister") stated, among other things, the following:

> Throughout its history the Canadian Wheat Board has been governed by a small group of up to five commissioners, all appointed by the Government of Canada without any requirement that anybody be consulted and legally responsible only to the Government of Canada. But in today's dynamic and changing marketplace, producers have made it clear that they want the Canadian Wheat Board to be more accountable to them. They want more control, and that is what Bill C-4 will provide. […]
>
> Virtually every marketing innovation which farmers have debated over the past several years will be possible under this new law. In a nutshell, that is what Bill C-4 is all about, empowering producers, enshrining democratic authority which has never existed before, providing new accountability, new flexibility and responsiveness, and positioning farmers to shape the kind of wheat board they want for the future.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 35; Vol. 2, Exhibits 6 & 7.

19. The Government has admitted that the purpose of the 1998 Amendments was to empower farmers and to ensure that "a consultation and voting process applies to any proposed changes to the scope of the CWB regime".

Affidavit of Paul Martin, sworn July 4, 2007 ("Martin Affidavit"), para. 24.

Cross-Examination of Paul Martin, July 16, 2007 ("Martin Examination"), A.R., Vol. 3, Tab D, pp. 714-715, questions 52-54.

20. Bill C-72 (at clause 22) and initially, Bill C-4 (at clause 24) contemplated amendments to the Act that would authorize the GIC to exclude grains by way of regulatory action. Clause 24 of Bill C-4 is set out below:

> **24. Section 45 of the Act is renumbered as subsection 45(1) and is amended by adding the following:**
>
> (2) On the recommendation of the Minister, the Governor in Council may, by regulation, exclude any kind, type, class or grade of wheat, or wheat produced in any area in Canada, from the provisions of this Part, either in whole or in part, or generally, or for any period.
>
> (3) The Minister shall not make the recommendation referred to in subsection (2) unless
>
> (a) the exclusion is recommended by the board; and
>
> (b) a procedure approved by the Canadian Grain Commission as acceptable for preserving the identity of excluded grain, so as to prevent co-mingling with other grain, is in place.
>
> (4) If, in the opinion of the board, the kind, type, class or grade of wheat is significant, the Minister shall not make a recommendation referred to in paragraph 3(a) unless a vote in favour of exclusion by producers has been held in a manner determined by the Minister after consultation with the Board (emphasis added).

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 36, Exhibits 5 (pp. 284-285) & 6 (pp. 308-309).

21. Unlike Bill C-72, Bill C-4 also included, at clause 26, what was referred to as an "inclusion clause" which provided, in relevant part, as follows:

26. The Act is amended by adding the following after section 47:

PART V.1

OTHER GRAINS

Extension of Parts III and IV

47.1 (1) The Governor in Council may, by regulation, extend the application of Part III or IV, or both, to any other grain.

(2) A regulation may not be made under this section unless

(a) a written request is sent to the Minister by a producer association that represents the producers of the grain throughout the designated area;

(b) the extension is recommended by the board; and

(c) a vote in favour of the extension by producers of the grain has been held in a manner determined by the Minister after consultation with the Board.

(3) When the Governor in Council has extended the application of any Part under subsection (1), the provisions of that Part are deemed to be re-enacted in this Part, subject to the following:

(a) the name of the grain included in the regulation is substituted for the word "wheat";

(b) an expression that consists of the name of the grain plus the word "products" is substituted for the expression "wheat products" (emphasis added)

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 36; Vol. 2, Exhibit 6, pp. 309-310.

22. Initially, therefore, Bill C-4 contemplated that section 45 of the Act would be amended to provide that the GIC could act by way of regulation to "exclude" wheat or barley (by virtue of section 45 being re-enacted in Part V) from the application of Part IV of the Act, subject to certain conditions. Bill C-4 also provided that the GIC could act by way of regulation to "extend" the applications of either or both of Parts III and IV to "any other grain", also subject to certain conditions.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 35-36; Vol. 2, Exhibits 5 & 6.

23. However, proposals were made to alter these exclusion and inclusion clauses during the review of Bill C-4 by the Standing Senate Committee on Agriculture and Forestry (the "Senate Committee"). Appearing before the Senate Committee, the Former Minister explained that he had previously proposed in the House of Commons that the inclusion and exclusion clauses be replaced with a new provision similar to the current section 47.1 of the Act. However, the Former Minister's proposal failed to obtain the requisite unanimous consent of the House of Commons prior to third reading.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 38; Vol. 2, Exhibit 9.

24. The Former Minister also emphasized in his evidence before the Senate Committee that the purpose of his proposal was to ensure that legislation, preceded by a producer vote, was required prior to a grain being added to or removed from the CWB's single desk marketing authority:

> Mr. Goodale […] I cite those four examples: the rapeseed vote; the argument about domestic feed grain; the case of oats; and the case of barley; to demonstrate that there is a bit of a dog's breakfast out there in terms of how you go about adjusting the jurisdiction of the Canadian Wheat Board. Part of the thinking behind the inclusion and exclusion clauses was to clarify the situation, not to say that it should happen this or that way, but to say that, if this is what farmers wish to happen, these are the steps to achieving the ultimate objective. […]
>
> Senator Sparrow: It is not clear in that proposal as to whether or not parliamentary approval will be sought. The question I have, is that, if you take both inclusion and exclusion of the proposed legislation, it would then effectively change the Wheat Board Bill. If you tried to put other products in or take products out; it would require parliamentary approval in any event. I need to clarify that. If inclusion-exclusion is removed from the bill, it will then require parliamentary approval to take a product out or put it in. Second, the minister responsible will consult the board of directors and vote among the affected persons. What will happen then?
>
> Mr. Goodale: That is where the amendment stops, Senator Sparrow. It would be up to the government of the day to avoid

> this argument about what is the right policy decision. This amendment says that if minister is to make a proposal to parliament to either increase or decrease the Canadian Wheat Board, the first hurdle is to have your vote among farmers.
>
> Senator Sparrow: It is not clear that you are referring to parliament.
>
> Mr. Goodale: I believe it is. We could make it clearer in the language of the actual amendment that it would specifically refer to parliament.
>
> Senator Sparrow: The question was whether it could be done without an Order in Council. It must be clear to the agricultural community that it would still have to come back to Parliament.
>
> Mr. Goodale: Yes. In the language of the appropriate amendment, along the lines of what I proposed in the House a few months ago, it would be very clear that we are talking about the introduction of a bill in Parliament, and that a vote would need to be held before that.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 39; Vol. 2, Exhibit 10, pp. 375-376.

25. On May 14, 1998, following the Former Minister's appearance before it, the Senate Committee issued a report in which it proposed that the exclusion and inclusion clauses in Bill C-4 be replaced, in relevant part, as follows:

> **26. Section 47 of the Act and the headings before it are replaced by the following:**
>
> PART V
>
> OTHER GRAINS
>
> Application of Parts III and IV
>
> **47.** (1) The Governor In Council may, by regulation, on the recommendation of the Minister, extend the application of Part III or of Part IV or of both Parts III and IV to barley.
>
> (2) Where the Governor in Council has extended the application of any Part under subsection (1), the provisions of that Part shall be deemed to be re-enacted in this Part, subject to the following:
>
> (a) the word "barley" shall be substituted for the word "wheat";

> (b) the expression "barley products" shall be substituted for the expression "wheat products"; and […]
>
> (5) The Minister shall not make the recommendation referred to in subsection (1) unless
>
> (a) the Minister has consulted with the board about the extension; and
>
> (b) the producers of barley have voted in favour of the extension, the voting process having been determined by the Minister.
>
> **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 (emphasis added).
>
> *Weisensel Affidavit,* A.R., Vol. 1, Tab C, para. 40; Vol. 2, Exhibit 11, pp. 397-398.

26. The foregoing amendment, in addition to streamlining and consolidating the exclusion and inclusion clauses, contemplated the replacement of section 47 with a new section 47 ("Unproclaimed Section 47") which removed oats from the GIC's regulatory power and further limited the ability of the GIC to extend the application of either or both of Parts III and IV to barley by ensuring that the power to do so was subject to a producer vote and consultations with the Board.

27. The Senate Committee report also set out the rationale for its proposed amendments respecting the inclusion and exclusion clauses, explaining that section 47.1 would ensure that legislative change would be required where a grain was to be included or excluded from the CWB's "jurisdiction":

> On 16 February 1998, the Minister responsible for the CWB proposed to the House of Commons that both the inclusion and exclusion clauses be deleted from Bill C-4, provided that agreement was reached on a motion "that no minister responsible for the CWB could attempt to change the wheat board's existing mandate either to enlarge it or to reduce it without first having conducted a democratic vote among the relevant producers and also having consulted with the wheat board's new board of directors." Because this proposal took place at third reading, it required unanimous consent; as this was denied, the proposal was never tabled.
>
> Should the inclusion and exclusion clauses be deleted from Bill C-4, legislative change would be required in the future to exclude or include grains from the CWB's jurisdiction. Parliament would be required to draft the appropriate legislation but an amendment to Bill C-4 should also ensure that the input of the proposed board of directors and the affected grain producers would be considered (emphasis added).

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 41; Vol. 2, Exhibit 11, pp. 396-398.

28. On June 11, 1998 the House of Commons adopted the Senate Committee's proposed amendments relating to the replacement of the exclusion and inclusion clauses and passed Bill C-4. Section 47.1 of the Act was ultimately proclaimed into force by way of Order in Council P.C. 1999-1649, dated September 29, 1999.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 42; Vol. 2, Exhibits 12-14.

29. Significantly, the 1998 Amendments also repealed paragraph 46(b) of the Act which was the only provision of the Act which expressly referred to the power to "exclude" a grain from the application of Part IV of the Act. Paragraph 46(b) formerly read as follows:

> 46. The Governor in Council may make regulations
>
> (b) to exclude any kind of wheat, or any grade thereof, or wheat produced in any area in Canada, from the provisions of this Part either in whole or in part, or generally, or for any period;

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, para. 46(b).

An Act to amend the Canadian Wheat Board Act and to make consequential amendments to other Acts, S.C. 1998, c. 17, section 24, A.R., Vol. 2, Exhibit 13, p. 465.

The Policy of the Current Government

30. On January 23, 2006 sufficient Conservative Party candidates were elected to the House of Commons to enable them to form a minority government (the "Government"). 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").

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 44.

Martin Affidavit, para. 4.

31. Prior to and during the last election campaign, the Conservative Party adopted and promoted an agricultural policy which it variously described as a "dual market", "marketing choice", or "voluntary participation" in the CWB.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 45.

32. Regardless of the term used, the implementation of the Government's policy will mean the elimination of the single desk. Further, the term "dual market" is misleading because it incorrectly 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 single desk.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 13 & 45, Exhibit 2.

33. Beginning with its election in January 2006, the Government has taken a number of steps 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, without considering the wishes of the majority of western Canadian grain farmers. These steps include the following:

(a) in April 2006, the Minister advised the CWB 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";

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 46(a); Vol. 2, Exhibit 16.

(b) in May 2006, a Conservative Party Member of Parliament, acting with the support of the Government and Minister, introduced a private member's bill that would have limited the scope of the single desk; that bill was ultimately defeated in Parliament in October 2006;

Weisensel Affidavit, A.R., Vol. 1, Tab C, paragraph 46(b); Vol. 2, Exhibit 17.

Martin Examination, A.R., Vol. 3, Tab D, pp. 728-730, questions 105-114.

(c) in June 2006, the Minister refused to approve the CWB's annual corporate plan on the grounds that the plan referred to the single desk and a proposal by the CWB to leverage the single desk for the benefit of producers and failed to address how the CWB intended to "deal with the reality" of Government policy;

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 46(d); Vol. 2, Exhibit 19.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, section 19.

(d) in July 2006 the Minister organized and attended a roundtable meeting, to which representatives of the CWB were not invited and which was attended only by individuals and organizations supportive of the Government's policy, convened for the purpose of contributing to the implementation of "dual-marketing" for western Canadian grain producers;

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 46(e); Vol. 2, Exhibit 20.

(e) in September 2006 the Minister announced the appointment of a task force (the "Task Force") that was to submit a report regarding the transition of the CWB from its current incarnation to a new regime where the CWB would operate without the statutory powers it currently exercises;

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 46(f); Vol. 2, Exhibits 21 & 22.

(f) in October 2006, the GIC issued a direction to the CWB pursuant to section 18 of the Act prohibiting the CWB from expending funds to advocate in support of the retention of the single desk;

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 47-49; Vol. 2, Exhibit 24.

(g) in the fall of 2006, the Minister filled vacancies on the Board with individuals who had previously expressed support for the Government's policy, after advising the CWB on at least one prior occasion that

government-appointed directors should "understand and support the directions of government policy in areas affecting the CWB"; and

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 46(f); Vol. 2, Exhibit 23.

(h) in December 2006, the Government terminated Adrian Measner as the president and CEO of the CWB when he declined to publicly support the Government's policies respecting the CWB.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 51-52; Vol. 3, Exhibits 26-29.

34. On October 25, 2006 the Task Force issued its report (the "Task Force Report") entitled "Marketing Choice – The Way Forward". The Task Force concluded, among other things, that the term "dual market" is misleading because it implies that a CWB with its existing single desk powers could continue to operate in an open market. As the Task Force noted, this is "not possible". In addition, the Task Force's first recommendation was "that the Government put a bill before Parliament to repeal the [Act] and create a new Act providing authority for a new commercial entity, CWB II", which would no longer possess the CWB's single desk powers in respect of wheat or barley. The Government admitted that this recommendation was not followed, nor has it implemented any of the other transitional recommendations made by the Task Force.

Weisensel Affidavit, A.R., Vol. 2, Exhibit 22, pp. 527 and 533.

Martin Examination, A.R., Vol. 3, Tab D, pp. 735-738, questions 128-140.

35. On October 31, 2006 the Minister publicly announced that the Government would hold a plebiscite on the marketing of western Canadian barley. However, the Minister's public comments indicated that the results of the vote would not be considered to be binding on the Minister or the Government.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 55 & 57; Vol. 3, Exhibits 32 & 35.

36. The conduct of the Barley Plebiscite was seriously flawed and even if the Minister had introduced legislation in Parliament amending the Act to remove barley

from the CWB's single desk, rather than attempting to remove barley by regulation, the Minister would have failed to comply with the provisions of section 47.1 of the Act.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 59.

37. Rejecting the recommendations of the Task Force both as to the process for implementing an open barley market (through the introduction of legislation) and the proposed start date for that market, on March 28, 2007, the Minister indicated that he planned "to recommend that barley be removed from the application of Part IV of the *Canadian Wheat Board Act* through amendments to the *Canadian Wheat Board Regulations*" effective August 1, 2007. The Minister also indicated that Part III of the Act would continue to apply to barley notwithstanding the absence of the single desk. The Government admits that it has not performed any analysis of either the effect of the enactment of the Impugned Regulations on the barley market or the transition to an open barley market.

Weisensel Affidavit, A.R., Vol. 1, Tab C, paras. 61-62; Vol. 3, Exhibits 38-40.

Martin Examination, A.R., Vol. 3, Tab D, pp. 726-727 & 730-732, questions 98-100 & 116-121.

38. On April 21, 2007, the proposed regulations amending the CWB Regulations (the "Proposed Regulations"), together with a regulatory impact analysis statement ("RIAS"), were published in the *Canada Gazette* for a 30 day comment period.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 69; Vol. 3, Exhibit 44.

39. On May 18, 2007, the CWB submitted its response to the Impugned Regulations and RIAS. In addition to emphasizing the serious financial, reputational and other industry-related problems caused by the August 1st implementation date, the CWB expressed its concerns regarding the adequacy of the Barley Plebiscite and reiterated its previously expressed view that legislative change was needed to remove barley from the

application of Part IV of the Act. The CWB also proposed a number of measures designed to mitigate the costs and inherent uncertainty caused by the Minister's determination to implement an open market for barley effective August 1, 2007.

Weisensel Affidavit, A.R., Vols. 1, Tab C, para. 72; Vol. 3, Exhibit 47.

40. On June 11, 2007 the Minister publicly announced that the New Regulations had been made and that an open barley market would be implemented August 1, 2007. None of the CWB's concerns have been addressed by the Minister.

Weisensel Affidavit, A.R., Vol. 1, Tab C, para. 90; Vol. 3, Exhibit 53.

PART II – POINTS IN ISSUE

41. The issue for determination in this application is whether the Impugned Regulations, by purporting to remove barley from the application of Part IV of the Act, are *ultra vires* the authority granted to the GIC pursuant to sections 46, 47 and 61 of the Act.

PART III – SUBMISSIONS OF THE CWB

Overview

42. Parliament's intention underlying the 1998 Amendments to the Act was to effect a significant devolution of control of the CWB from the federal government to Western Canadian wheat and barley farmers. This was accomplished firstly through the transfer of management of the CWB to the Board and through the granting to producers of the power to elect a majority of the members of the Board as described above. Secondly, as part of this devolution, Parliament amended the Act to provide that the removal of wheat or barley from the single desk was to be reserved to Parliament, following consultations with the Board and a producer vote in favour of the removal.

43. The Impugned Regulations are not within the power of the GIC to make. An interpretation of sections 47 and 47.1 of the Act that is faithful to Parliament's intention and that gives meaning to section 47.1 inexorably leads to the conclusion that Parliament has not delegated to the GIC the authority to exclude barley from the provisions of Part IV of the Act. In particular:

(a) as a result of the 1998 Amendments, any power that the GIC previously may have had to exclude barley from the application of Part IV by way of regulation was removed following Parliament's adoption of section 47.1;

(b) sections 46 and 61 of the Act are not sources of authority for the Impugned Regulations; and

(c) section 31(4) of the *Interpretation Act* has no application to the Impugned Regulations in the circumstances, as discussed below.

Fundamental Principles of Statutory Interpretation

44. The Supreme Court of Canada has repeatedly held that the fundamental principle of statutory interpretation is as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.
>
> *NAV Canada v. Wilmington Trust Co.*, [2006] 1 S.C.R. 865 at para. 36.
>
> *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at para. 21.

45. The proper construction of sections 47 and 47.1 of the Act results from a purposive and contextual analysis of the Act and its provisions. Such an analysis entails: (a) an examination of Parliament's intent as expressed in the words of the relevant provisions; (b) a review of the legislative history of the Act and the provisions in question, as well as the circumstances underlying the drafting of the provisions in

question; and (c) an assessment of other relevant sections of the Act, as well as the objective of the Act and the relevant provisions.

NAV Canada, supra at paras. 36-37, 41, 50-51, 57-60.

Bell ExpressVu. v. Rex, [2002] 2 S.C.R. 559 at para. 26.

Quebec v. Boisbriand (City), [2000] 1 S.C.R. 665 at para. 32.

46. The rule of law "is a fundamental postulate of our constitutional structure." Subordinate legislation, such as regulations, and the discretion to make them, are constrained by the authority granted to the delegatee by the enabling provision of the statute. As stated by the Supreme Court of Canada in the seminal case *Roncarelli v. Duplessis*: "there is no such thing as absolute and untrammelled 'discretion'".

Roncarelli v. Duplessis, [1959] S.C.R. 121 at pp. 140 & 142.

David Jones, Q.C. and Anne S. de Villars, Q.C., *Principles of Administrative Law, 3rd Ed.* (Toronto, Carswell, 1999) at pp. 90 & 119-120.

(a) The "Ordinary Sense" of Sections of 47 and 47.1

47. The "ordinary sense" or meaning of legislation, referred to above, is the natural meaning which appears when the provisions being interpreted are simply read through as a whole and the meaning which commends itself when the structure and nature of the provisions are examined.

Canadian Pacific Air Lines Ltd. v. C.A.L.P.A., [1993] 3 S.C.R. 724 at p. 735.

48. Section 47 of the Act provides the GIC with the power to "extend" the application of either or both of Parts III and IV to barley. The section does not refer in any manner to the "exclusion" of barley or any other grain. In contrast, section 47.1 of the Act expressly refers to the power to "exclude" barley, reserving that power to Parliament.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, sections 47 & 47.1.

49. The words “extend” and “exclude” must be read in their ordinary sense. The two sections, read together, delegate nothing more to the GIC than the authority to “extend” the application of the single desk to barley. They do not delegate any authority to the GIC to “exclude” barley by way of regulation.

(b) The Legislative History

50. The legislative history of the Act and the evolution of section 47.1 and its predecessor provisions in Bill C-4, confirm this construction of sections 47 and 47.1, as previously set out in paragraphs 17 to 29 and as summarized below:

(a) the exclusion clauses in Bill C-72 (clause 22) and Bill C-4 (clause 24) initially would have authorized the GIC to make regulations excluding wheat (and barley by virtue of re-enactment in Part V) from the application of Part IV of the Act, provided that certain preconditions (such as a positive producer vote, among others) had been met;

(b) the inclusion clause in Bill C-4 (clause 26) similarly would have authorized the GIC to make regulations including any other grain within the application of either or both of Parts III and IV of the Act provided that similar preconditions had been met;

(c) both the inclusion and exclusion clauses in Bill C-4, which would have authorized the GIC to act by way of regulation were replaced by section 47.1 following the review of Bill C-4 by the Senate Committee;

(d) both the statements of the Former Minister (the sponsor of the amendments) before the Senate Committee and the Senate Committee’s subsequent report explicitly indicate that the purpose of replacing the inclusion and exclusion clauses of Bill C-4 with section 47.1 was to ensure that any decision by farmers to exclude wheat or barley from the application of Part IV of the Act would be a precondition to and subject to implementation by Parliament; and

(e) the House of Commons adopted the Senate Committee’s proposals to replace the inclusion and exclusion clauses with section 47.1.

51. In addition, the 1998 Amendments also included the repeal of paragraph 46(b) of the Act which, as noted above in paragraph 29 was the only provision in the Act at the time which specifically referred to a power to “exclude” a grain from Part IV of the Act.

52. Paragraph 46(b) of the Act formerly authorized the GIC to act by way of regulation to exclude various types of wheat (and barley by virtue of its re-enactment in Part V) from the application of Part IV of the Act. Its repeal is evidence of Parliament's intent to revoke the GIC's power to act by way of regulation to exclude wheat or barley (or any kinds or grades thereof) from the application of Part IV of the Act.

(c) The Nature and Objective of Sections 47 and 47.1 and of the Act

53. Section 47 of the Act authorizes the GIC to exercise a discretionary delegated power. This discretionary authority must not be exercised in a manner which negates or contravenes other provisions of the Act, including section 47.1. In addition, the exercise of a delegated authority must be strictly in accordance with the enabling provision of the statute and must promote the purpose and intent of the enabling legislation. Section 47 must be construed in a manner that ensures that no power is delegated that Parliament intended to reserve for itself and accordingly, any authority that has been delegated to the GIC cannot include the power to exclude wheat or barley from the CWB's single desk.

> *Re Heppner and Minister of the Environment for Alberta* (1977), 80 D.L.R. (3d) 112 (Alta. C.A.) at pp. 117-119.
>
> *Kubel v. Alberta (Minister of Justice)*, [2006] 8 W.W.R. 570 (Alta. Q.B.) at para. 23.

54. As discussed at paragraphs 23 to 28 and more specifically, as stated by the Former Minister and as set out in the Senate Committee Report, one of the express purposes of the 1998 Amendments was to reserve to Parliament the authority to act to exclude wheat or barley from the CWB's single desk, following consultation with the Board and a producer vote.

55. A review of the ordinary meaning of sections 47 and 47.1 of the Act, together with an analysis of the purpose and intent of these sections and the 1998 Amendments,

inevitably leads to the conclusion that barley cannot be excluded from the application of the single desk by regulation. Accordingly, the Impugned Regulations are *ultra vires.*

The Government's Position

56. The Government attempts to avoid giving effect to Parliament's intention and the express purpose of the 1998 Amendments by arguing: (i) that Parliament's intention has not been fully realized because new section 47 has not been proclaimed in force; and (ii) that the Act currently contemplates "two distinct regimes for changing the scope of the application of the Act". These alleged parallel regimes are described in the affidavit of Paul Martin as follows:

> (a) The GIC has, pursuant to section 47 of the Act, the absolute discretion to extend the application of Part III or Part IV to oats or barley by regulation or, through the application of subsection 31(4) of the *Interpretation Act*, to revoke the application of Parts III and IV to oats and barley; and
>
> (b) Parliament has the power to extend or revoke the application of the Act to any grain, including wheat and barley, subject, however, to conditions precedent.
>
> *Martin Affidavit*, at paras. 21 & 24.

(a) The Federal Court's Decision in *Saskatchewan Wheat Pool*

57. In advancing these arguments, the Government relies upon the 1993 decision of this Honourable Court in *Saskatchewan Wheat Pool v. Canada (Attorney General)* and in particular, certain comments of Justice Rothstein therein regarding the potential scope of subsection 31(4) of the *Interpretation Act.*

> *Saskatchewan Wheat Pool v. Canada (Attorney General)*, [1993] F.C.J. No. 902 (F.C.T.D.) at paras. 36 & 66.

58. The issue in *Saskatchewan Wheat Pool* concerned the validity of earlier amendments to the regulations made under the Act by the GIC which permitted producers and others to sell barley produced in Canada directly to customers in the

United States, rather than being required to deliver their barley to the CWB. Justice Rothstein ultimately found that the amendments to the regulations contravened or nullified the provisions of the Act and were therefore *ultra vires.*

Saskatchewan Wheat Pool, supra, at paras. 53-58 & 67-69.

59. In his decision, Justice Rothstein stated, in *obiter*, that he could "see no reason why subsection 31(4) of the *Interpretation Act* would not enable the Governor in Council, if he chose to do so, to repeal the extension of Parts III and IV to barley." Subsection 31(4) provides that:

> Where a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the same manner and subject to the same consent and conditions, if any, to repeal, amend or vary the regulations and make others.

Interpretation Act, R.S.C. 1985, c. I-21, as amended, subsection 31(4).

Saskatchewan Wheat Pool, supra at paras. 34-35 & 66.

60. Subsection 31(4) of the *Interpretation Act* creates a presumption for statutory interpretation. It does not confer additional powers to the Government. Nor can subsection 31(4) of the *Interpretation Act* be employed by the Government to make ineffective a statutory scheme designed by Parliament. Rather, subsection 31(4) must be read in conjunction with subsection 3(1) of the *Interpretation Act* which provides as follows:

> 3.(1) Every provision of this Act applies, <u>unless a contrary intention appears</u>, to every enactment whether enacted before or after the commencement of this Act. (emphasis added)

Interpretation Act, supra, section 3.

61. Such a contrary intention is clearly reflected in section 47.1 which speaks to the power to "exclude" barley, whereas section 47 refers only to the power to "extend" the single desk to barley. It is further supported by the legislative history of the Act and the

evidence of Parliament's purpose in enacting the 1998 Amendments as discussed above. In effect, the application of subsection 31(4) of the *Interpretation Act* to confer on the GIC a power pursuant to section 47 of the Act to exclude barley from the operation of the single desk would render section 47.1 meaningless, would negate the consequences of the repeal of paragraph 46(b) of the Act as it existed prior to the 1998 and would thwart the purpose of the Act and the intention of Parliament.

62. Justice Rothstein's decision was rendered prior to the 1998 Amendments. As the Former Minister stated before the Senate Committee in proposing the 1998 Amendments, the government of the time was fully aware of the existing uncertainty as to how grains might be removed from the single desk. That uncertainty arose in part from the decision in *Saskatchewan Wheat Pool.* The 1998 Amendments must be construed in a purposive fashion as responding to this uncertainty. Parliament enacted section 47.1 so as to remove any power of the GIC to exclude barley from the single desk.

> *Weisensel Affidavit,* A.R. Vol. 1, Tab C, para. 39; Vol. 2, Exhibit 10, p. 375.
>
> Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes, 4th Ed.* (Toronto: Butterworths, 2002) at pp. 472-473 and 477.
>
> *Quebec v. Boisbriand (City), supra* at paras. 60 & 63.

63. The inapplicability of subsection 31(4) of the *Interpretation Act* is further demonstrated by the nature of section 47 of the Act and its use of the expression "deemed to be re-enacted". Section 47 is an example of a rare type of legislative device known as a "Henry VIII clause". Such provisions go beyond authorizing an entity which exercises delegated authority to enact ancillary regulations for the implementation of a statutory policy objective. Instead, Henry VIII clauses empower the entity which exercises delegated authority to enact regulations that have the effect of altering either the enabling

statute or other statutes. Section 47 confers this type of power on the GIC by authorizing it to enact regulations which effectively amend the Act to bring oats or barley under the umbrella of the statutory provisions found in either or both of Parts III and IV.

> Denys C. Holland and John P. McGowan, *Delegated Legislation in Canada* (Toronto: Carswell, 1989) at p. 178.
>
> *Greater Essex County v. I.B.E.W., Local 773* (2007), 83 O.R. (3d) 601 (Div. Ct.) at pp. 625-630.
>
> *Waddell v. Schreyer* (1983), 5 D.L.R. 4th) 254 (B.C.S.C.) at pp. 269 – 270.

64. However, in order to keep such "constitutionally suspect" clauses within the proper bounds of a Parliamentary democracy, they must be construed narrowly:

> This power is constitutionally suspect because it confers upon the government the unprotected authority to pull itself up by its own legal bootstraps and override arbitrarily, with no further advice from the Legislative Assembly, and no right to be heard by those who may be adversely affected by the change, the very legislative instrument from which the government derives its original authority.
>
> *Ontario Public School Boards' Assn. v. Ontario* (1997), 151 D.L.R. (4th) 346 (Ont. Gen. Div.) at p. 363.
>
> *DKS & VW Venturers Corp. v. Abbotsford School District No. 34* 2006 CarswellBC 932 (S.C.) at para. 10.

65. Applying the appropriate construction to section 47 of the Act, the section must be read as only authorizing the GIC to "extend" the single desk to barley. Such a construction is consistent with Parliament's adoption of section 47.1, which expressly refers to the exclusion of barley and its repeal of paragraph 46(b), which was the only provision of the Act (prior to the 1998 Amendments) which explicitly empowered the GIC to act by way of regulation to exclude types of wheat or barley. Thus, a proper interpretation of section 47 precludes any reliance on subsection 31(4) of the *Interpretation Act*.

(b) Unproclaimed Section 47

66. The Government also asserts that Unproclaimed Section 47 is an indication of Parliament's intent to create two separate regimes for the addition to or removal of grains from the application of the CWB's single desk marketing powers because it authorizes the GIC to "extend" the single desk to barley, subject to a producer vote and consultations with the Board.

Martin Affidavit, paras. 23-24.

67. To the contrary, Unproclaimed Section 47, when viewed in the context of the 1998 Amendments, demonstrates that Parliament intended to reduce to a minimum any power the GIC previously had to include a grain within the single desk by way of regulation. In particular, Unproclaimed Section 47 removes the GIC's power to extend the application of either or both of Parts III and IV of the Act to oats. This would have been unnecessary if Parliament had intended to establish two separate regimes for the addition to or removal of grains from the CWB's single desk, as the Government contends.

An Act to amend the Canadian Wheat Board Act and to make consequential amendments to other Acts, S.C. 1998, c. 17, section 25, A.R. Vol. 2, Exhibit 13, pp. 465-466.

68. The effect of the GIC's failure to proclaim Unproclaimed Section 47 into force is not to authorize the making of the Impugned Regulations. Rather, the section also provides the statutory basis for the ongoing extension of the single desk to barley. In addition, the present section 47 arguably permits the GIC to act by way of regulation to extend the application of the single desk to oats without a producer vote or consultations. That said, nothing in section 47 or Unproclaimed Section 47 authorizes the GIC to "exclude" any grain from the single desk.

(c) Sections 46 and 61 of the Act

69. Reliance by the GIC on section 61 of the Act as a source of regulatory authority in this instance is also misplaced. As Justice Rothstein found in *Saskatchewan Wheat Pool* section 61 must be read together with other provisions which allow for the making of regulations. It does not create "a regulation–making authority on its own", otherwise section 61 would allow the GIC to make regulations regardless of the provisions of the Act. This would be contrary to the fundamental principle that regulations and the power to make regulations are subordinate to and circumscribed by the Act.

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, section 61.

Saskatchewan Wheat Pool, *supra* at para. 64.

70. Similarly, read in the ordinary sense, the words of section 46 do not confer upon the GIC the authority to make the Impugned Regulations because they do not (as would be required by section 46):

(a) involve "documents that may be required under [Part IV]" (paragraph 46(a)) for the importation into Canada of barley or barley products that are entitled to the United States or Mexico Tariffs (paragraphs 46(b.1) and (b.2)); or

(b) relate to the granting of licenses and the terms and conditions pursuant to which those licenses should be granted (paragraphs 46(c), (d) and (e)) or concern the granting of permission to transport wheat or barley that is not classified under the *Canada Grain Act* or granting permission to transport, sell or buy feed grain (paragraphs 46(c.1) and (c.2)); or

(c) "empower the [CWB] to do such acts and things as may be necessary for the administration of this Part" (paragraph 46(f)) or "to provide for any other matter necessary to give effect to this Part" (paragraph 46(g)); on the contrary, the New Regulations directly contradict the type of regulations contemplated by paragraphs 46(f) and (g).

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, as amended, section 46.

Saskatchewan Wheat Pool, *supra* at paras. 49, 54 and 59.

Conclusion

71. The Act as presently constituted establishes a CWB that is directly accountable to the producers and that provides value to them through the operation of the single desk. The Act defines the manner in which the GIC must conduct itself when exercising the powers and duties delegated to it by Parliament pursuant to the Act.

72. It is clear that the 1998 Amendments and more specifically, the enactment of section 47.1, as well as the adoption of other amendments, gave effect to Parliament's intent in this regard in a manner consistent with the purpose of the Act. The 1998 Amendments did so by ensuring that wheat or barley could only be excluded from the application of the single desk following consultations with the Board, a majority vote of producers in favour of the exclusion of the grain in question and legislative action by Parliament.

73. To accept the Government's interpretation of section 47 would contravene or nullify the 1998 Amendments, and in particular, section 47.1 of the Act. In the result, by seeking to remove barley from the single desk through the enactment of the Impugned Regulations, the Government is unlawfully attempting to circumvent the requirements of the Act and thwart the clear intention of Parliament.

Saskatchewan Wheat Pool, *supra* at paras. 53-58.

PART IV – ORDER SOUGHT

74. Accordingly, the CWB seeks an order:

(a) declaring that the Impugned Regulations are *ultra vires* and of no force and effect; and

(b) awarding costs of the application to the Canadian Wheat Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

J.L. McDougall, Q.C.

Brian R. Leonard

Matthew Fleming

Counsel for the Canadian Wheat Board

PART V – AUTHORITIES

1. *NAV Canada v. Wilmington Trust Co.,* [2006] 1 S.C.R. 865

2. *Re Rizzo & Rizzo Shoes Ltd.,* [1998] 1 S.C.R. 27

3. *Bell ExpressVu. v. Rex,* [2002] 2 S.C.R. 559

4. *Quebec v. Boisbriand (City),* [2000] 1 S.C.R. 665

5. *Roncarelli v. Duplessis,* [1959] S.C.R. 121

6. David Jones, Q.C. and Anne S. de Villars, Q.C., *Principles of Administrative Law, 3rd Ed.* (Toronto, Carswell, 1999)

7. *Canadian Pacific Air Lines Ltd. v. C.A.L.P.A.,* [1993] 3 S.C.R. 724

8. *Re Heppner and Minister of the Environment for Alberta* (1977), 80 D.L.R. (3d) 112 (Alta. C.A.)

9. *Kubel v. Alberta (Minister of Justice),* [2006] 8 W.W.R. 570 (Alta. Q.B.)

10. *Saskatchewan Wheat Pool v. Canada (Attorney General),* [1993] F.C.J. No. 902 (F.C.T.D.)

11. Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes, 4th Ed*. (Toronto: Butterworths, 2002)

12. Denys C. Holland and John P. McGowan, *Delegated Legislation in Canada* (Toronto: Carswell, 1989)

13. *Greater Essex County v. I.B.E.W., Local 773* (2007), 83 O.R. (3d) 601 (Div. Ct.)

14. *Waddell v. Schreyer* (1983), 5 D.L.R. (4th) 254 (B.C.S.C.)

15. *Ontario Public School Boards' Assn. v. Ontario* (1997), 151 D.L.R. (4th) 346 (Ont. Gen. Div.)

16. *DKS & VW Venturers Corp. v. Abbotsford School District No. 34* 2006 CarswellBC 932 (S.C.)