

FEDERAL COURT

B E T W E E N :

THE CANADIAN WHEAT BOARD

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant, The Canadian Wheat Board, will make a motion to a judge via telephone conference call on Thursday, the 5th day of July, 2007 at 9:30 a.m. or as soon thereafter as the motion can be heard, at Thomas D’Arcy McGee Building, 90 Sparks Street, Ottawa, Ontario. The motion will be argued in under two hours.

THE MOTION IS FOR:

1. An Order pursuant to rule 105 of the *Federal Courts Rules*, SOR/98-106, as amended (the “Rules”) directing that the application for judicial review in court file T-1105-07 (the “Friends Application”) be heard together with this proceeding (collectively, the “Applications”) or one immediately after the other and granting such further and other ancillary relief necessary to give effect to such an order;
2. An Order pursuant to rule 8 of the Rules abridging the period for the hearing of the Applications and setting an expedited hearing date and timetable for the remaining steps in the Applications;

3. An Order pursuant to rules 383, 384 and 385 of the Rules appointing a case management judge to oversee the conduct of this application; and
4. Such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

An Order that the Applications be Heard Together

1. Rule 105 of the Rules authorizes the Court to order, in respect of two or more proceedings, that they be heard together or one immediately after the other;
2. In this application, the Canadian Wheat Board (the “CWB”) seeks relief in respect of order in council P.C. 2007-937 dated June 7, 2007 pursuant to which the Governor in Council (“GIC”) promulgated the *Regulations Amending the Canadian Wheat Board Regulations* (the “Impugned Regulations”) amending the *Canadian Wheat Board Regulations*, C.R.C., c. 397 (the “CWB Regulations”), ostensibly in accordance with the authority granted to the GIC pursuant to sections 46, 47 and 61 of the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24, as amended (the “Act”);
3. The Impugned Regulations purport to remove barley from the application of Part IV of the Act and from the “single desk” marketing authority of the CWB;
4. The CWB seeks an order that the Impugned Regulations are *ultra vires* the authority of the GIC pursuant to the Act;
5. In the Friends Application, the applicants seek the same relief in respect of the Impugned Regulations, together with a declaration that the GIC acted contrary to law by making the Impugned Regulations in a manner that is contrary to section 47.1 of the Act;
6. The applicants in the Friends Application consent to an order that the Applications be heard together or one immediately after the other;

7. The Respondent in this application and in the Friends Application is the same party and is represented by the same counsel;

8. This application and the Friends Application are at essentially the same stage in the respective proceedings;

9. An order that the Applications be heard together or one immediately after the other will eliminate the danger of inconsistent results and will save time and expense for both the parties and the Court;

10. The parties to the Applications will not be prejudiced if the Applications are heard together or one immediately after the other;

An Order for an Expedited Hearing

11. Subrule 8(1) of the Rules grants the Court the general power to abridge any time period set out in the Rules;

12. In its notice of application, the CWB specifically seeks an order for an expedited hearing of this application together with such further and other ancillary relief necessary to give effect to such an order;

13. The CWB served the Respondent with the notice of application on June 18, 2007 and supporting affidavit and exhibits on June 19, 2007;

14. Currently, western Canadian barley farmers are required to deliver their designated or “malting” barley to the CWB which markets that barley to domestic and international customers through the CWB’s single desk, in accordance with the provisions of the Act. The Impugned Regulations will eliminate the single desk for barley and implement an open market effective August 1, 2007;

15. In 1993, the federal government amended the regulations to create what was referred to as the “Continental Barley Market” which created an exception to the CWB’s single desk for the sale of barley grown in Canada to the United States. Following an application to the Trial

Division of the federal court, the regulations creating the Continental Barley Market were found to be *ultra vires* and of no force and effect. However, between the issuance of the regulations and the finding by the Court that they were *ultra vires*, many farmers and grain companies had entered into contracts for the delivery of barley to customers in the United States which they were subsequently unable to fulfil as a result of the unwinding of the Continental Barley Market;

16. Currently, there is a significant degree of uncertainty within the barley industry as to whether, beginning August 1, 2007, there will be an open barley market or whether the Impugned Regulations will be found to be invalid and the single desk system will remain for the marketing of western Canadian barley;

17. An expedited hearing held prior to August 1, 2007 will provide an opportunity to grant certainty to industry participants in the barley market and ensure that the problems associated with the implementation and subsequent unwinding of the Continental Barley Market are minimized in the context of the proposed implementation of an open barley market;

18. The Respondent will not suffer any prejudice if the hearing of this application is expedited;

An Order Appointing a Case Management Judge

19. Rules 383-385 permit the assignment of a case management judge to deal with a proceeding and grants that case management judge the authority to, *inter alia*, give any directions that are necessary for the just, most expeditious determination of the proceeding on its merits, including fixing the period for the completion of steps in the proceeding;

20. Should the Court grant an Order expediting this application, the appointment of a case management judge will facilitate the conduct of this proceeding and any related scheduling issues which may arise;

21. Rules 8, 105, 358-368 and 383-385 of the Rules; and

22. Such further grounds as counsel may advise and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Affidavit of Ward P. Weisensel, sworn June 19, 2007, previously filed;
2. The proposed timetable attached hereto as Schedule “A”;
3. The Written Representations of the Applicant; and
4. Such further and other documentary evidence or other material that counsel may advise and this Honourable Court may accept.

Dated: June 26, 2007

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Court File No. T-1105-07

Court File No. T-1124-07

FEDERAL COURT OF CANADA

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