

December 7, 2011

**Re: Canadian Wheat Board**

An important victory for democratic rights and the rule of law.

On December 7, 2011, Justice Campbell of the Federal Court issued a declaration that the Minister of Health, Gerry Ritz, had acted in breach of his statutory obligation to hold a plebiscite of farmers before abolishing the Canadian Wheat Board's 'single desk' mandate for marketing wheat and barley.

Justice Campbell expressed no hesitation in granting a request by the Friends of the Canadian Wheat Board and the Canadian Wheat Board for a declaration that "the Minister's conduct is an affront to the rule of law."

The Public Service Alliance of Canada, the Council of Canadians, Food Secure Canada, and the Etc. Group (the "Interveners") were given intervener standing in the case for the purpose of addressing important international trade and constitutional questions raised by the Minister's actions. The Court's decision repeats and adopts their submissions on these two key points.

S. 47.1 of the *Canadian Wheat Board Act* forbids the Minister from introducing legislation that would exclude wheat or barley from the Wheat Board's exclusive marketing mandate without first consulting the Directors of the Board, and allowing the producers of the grain to vote on any proposed exclusion. Nevertheless, without doing either, the Minister tabled Bill C-18 to abolish the Board's single desk mandate. The Bill also removes another fundamental democratic right farmers enjoyed under the Act, which was to elect directors to represent them on the Board.

In coming to his conclusion, Justice Campbell placed primary emphasis on the rule of law as the guiding constitutional principle in the case, and quoted extensively from the written argument made by the Interveners, including the following passage:

Adhering to the rule of law ensures that the public can understand the rules they are bound by, and the rights they have in participating in the law-making process. As the Applicants note, western farmers relied on the fact that the government would have to conduct a plebiscite under s. 47.1 before introducing legislation to change the marketing mandate of the CWB. Disregarding the requirements of s. 47.1 deprives farmers of the most important vehicle they have for expressing their views on the fundamental question of the single desk. Furthermore the opportunity to vote in a federal election is no answer

to the loss of this particular democratic franchise. Until the sudden introduction of Bill C-18, Canadian farmers would have expected the requirements of s. 47.1 to be respected.

Justice Campbell went on to state:

The [Intervenors argue] that, when in doubt, statutory interpretation must have regard to democratic and constitutional values. In the present case this is especially important because s. 47.1 speaks to the unique situation in which these democratic values are already implemented in the structure of the CWB. This fact requires that, in proposing that a fundamental change be made to the structure, the Minister must act democratically. This is what s. 47.1 says. Not adhering to these values is not only disrespectful, it is contrary to law.

The Court also gave credit to another key point made by the Intervenors concerning the importance of maintaining the democratic franchise accorded farmers under the *Canadian Wheat Board Act* that the Harper government is now trying to repudiate. As various trade cases reveal, Canada's compliance with international rules for exporting and importing grain depends upon the Wheat Board being controlled by farmers, not the government. It is that control that Bill C-18 would abolish. On this crucial point Justice Campbell stated:

I give weight to the Council's argument that s. 47.1 applies to changing the structure of the CWB because the democratic structure is important to Canada's international trade obligations under NAFTA. I find that this is an important consideration which supports the argument that Parliament's intention in s. 47.1 is not to alter this structure without consultation and consent.

In granting declaratory relief the Court could not have made more clear its views of the disregard this government exhibited for the most fundamental constitutional principles of our nation. The impacts of Bill C-18, if it proceeds, will be a disaster for Canadian food security and sovereignty, as US based transnationals are certain to take even greater control of Canada's food system.

When asked by the government's lawyers why he would issue a declaration given the passage of Bill C-18, Justice Campbell replied that its most important effect would be to hold the Minister "accountable for his disregard for the law."

While the Court was not asked, and arguably would not have the authority to enjoin the government from proceeding any further with Bill C-18, in light of the Court's ruling and the profoundly serious criticism it offers, the Government should withdraw the Bill and conduct the

consultation and plebiscite required by the current Act to allow farmers, not politicians, to decide whether the Canadian Wheat Board has a future or not.

Sincerely,



Steven Shrybman  
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