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# The New CWB Legislation: A Summary Of Where We Are In the Courts

By Art Stacey



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Since our previous Client Alert: New Marketing Freedom For Grain Farmers, a judge of the Federal Court ruled on December 6, 2011, that the Minister of Agriculture had acted in breach of the Canadian Wheat Board Act. Specifically, Justice Campbell granted a declaration that the conduct of the Minister of Agriculture violated the rule of law by failing to comply with section 47.1 which requires consultation with the board of the CWB and a vote of the producers of grain for certain matters.

Some might have thought that the declaration made by Justice Campbell would have caused the federal government to pause and reconsider its approach to the inevitable abolition of the single desk. However, apparently unfazed by Justice Campbell's decision, the federal government gave third reading to Bill C-18, An Act to Reorganize the Canadian Wheat Board and to Make Consequential Amendments to Certain Acts (the "New CWB Act"), pushed it through the senate and obtained Royal Assent on December 15, 2011. Grain companies began buying wheat for the 2012 harvest on December 16, 2011.

The federal government has appealed Justice Campbell's decision to the Federal Court of appeal. No date has yet been set for that hearing.

In addition, an application will be heard on January 17 and 18 in the Manitoba Court of Queen's Bench in which the former elected directors of the CWB will ask the Manitoba Court to "stay" the implementation of the New CWB Act pending the outcome of the appeal of Justice Campbell's decision. If successful, the recently proclaimed legislation will be stayed pending the disposition of the appeal of Justice Campbell's decision, at least in the Federal Court, if not ultimately in the Supreme Court of Canada.

Other developments also include a class action lawsuit filed last week in the Saskatchewan Court of Queen's Bench and which has been brought against the federal government and the Canadian Wheat Board on behalf of western Canadian farmers seeking to recover the alleged value of the assets of the Canadian Wheat Board.

The course of action by the former directors to stay the implementation of the New CWB Act has the potential to create significant and further uncertainty in the marketplace as to the timing of the elimination of the single desk, and the ability of farmers to enter into contracts now for future delivery of wheat and barley. Given the action of the federal government to date, there is little reason to doubt that the single desk will be relegated to history at some point in the future but the precise timing of its demise may now be very much in question. These developments will be of interest to anyone with an economic interest in the future of grain marketing, food processing or those involved in the importing of "board grains" from Western Canada. We will update by way of further Client Alerts as developments warrant.

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Art Stacey's practice is focused on a wide range of commercial and property matters, with an emphasis on agri-business ventures across western Canada. Art often acts for entrepreneurs and business people in start-up situations. His practice is centered on the structuring of transactions, their financing, and providing ongoing legal support to commercial clients. He has been instrumental in the start-up and organization of six short line railroads in western Canada, a cross border durum growing cooperative, and various other new business ventures.