

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120416

Docket: A-470-11
A-471-11

Citation: 2012 FCA 114

Present: MAINVILLE J.A.

A-470-11

BETWEEN:

**ATTORNEY GENERAL OF CANADA,
THE MINISTER OF AGRICULTURE AND
AGRI-FOOD IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD**

Appellants

and

**FRIENDS OF THE CANADIAN WHEAT BOARD,
HAROLD BELL, DANIEL GAUTHIER, KEN ESHPETER,
TERRY BOEHM, LYLE SIMONSON, LYNN JACOBSON,
ROBERT HORNE, WILF HARDER, LAURENCE NICHOLSON,
LARRY BOHDANOVICH, KEITH RYAN, ANDY BAKER,
NORBERT VAN DEYNZE, WILLIAM ACHESON,
LUC LABOSSIERE, WILLIAM NICHOLSON, RENE SAQUET, and
THE CANADIAN WHEAT BOARD**

Respondents

A-471-11

BETWEEN:

**MINISTER OF AGRICULTURE AND AGRI-FOOD
IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD**

Appellant

and

**THE CANADIAN WHEAT BOARD,
ALLEN OBERG, ROD FLAMAN, CAM GOFF,
KYLE KORNEYCHUK, JOHN SANDBORN,
BILL TOEWS, STEWART WELLS and BILL WOODS**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Montreal, Quebec, on April 16, 2012.

REASONS FOR ORDER BY:

MAINVILLE J.A.

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120416

Docket: A-470-11
A-471-11

Citation: 2012 FCA 114

Present: MAINVILLE J.A.

A-470-11

BETWEEN:

**ATTORNEY GENERAL OF CANADA,
THE MINISTER OF AGRICULTURE AND
AGRI-FOOD IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD**

Appellants

and

**FRIENDS OF THE CANADIAN WHEAT BOARD,
HAROLD BELL, DANIEL GAUTHIER, KEN ESHPETER,
TERRY BOEHM, LYLE SIMONSON, LYNN JACOBSON,
ROBERT HORNE, WILF HARDER, LAURENCE NICHOLSON,
LARRY BOHDANOVICH, KEITH RYAN, ANDY BAKER,
NORBERT VAN DEYNZE, WILLIAM ACHESON,
LUC LABOSSIÈRE, WILLIAM NICHOLSON, RENE SAQUET, and
THE CANADIAN WHEAT BOARD**

Respondents

A-471-11

BETWEEN:

**MINISTER OF AGRICULTURE AND AGRI-FOOD
IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD**

Appellant

and

**THE CANADIAN WHEAT BOARD,
ALLEN OBERG, ROD FLAMAN, CAM GOFF,
KYLE KORNEYCHUK, JOHN SANDBORN,
BILL TOEWS, STEWART WELLS and BILL WOODS**

Respondents

REASONS FOR ORDER

MAINVILLE J.A.

[1] I have before me a motion by the Council of Canadians, ETC Group (Action Group on Erosion, Technology and Concentration), the Public Service Alliance of Canada, and Food Secure Canada (the “moving parties”) seeking the Court’s leave to intervene in this consolidated appeal. The appellants oppose the motion.

[2] This consolidated appeal concerns the orders of Campbell J. of the Federal Court declaring that the Minister of Agriculture and Agri-Food breached his statutory duties under section 47.1 of the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24 by failing to consult with the Canadian Wheat Board and to conduct a vote of wheat and barley producers as to whether they agree with the elimination of the Canadian Wheat Board’s exclusive statutory marketing mandate resulting from Bill C-18, now the *Marketing Freedom for Grain Farmers Act*, S.C. 2012, c. 25.

[3] The moving parties actively participated as interveners in the Federal Court proceedings before Campbell J. pursuant to an order of the Federal Court dated November 21, 2011. In that order, Prothonotary Lafrenière found that the moving parties had a genuine interest in the effect of

Bill C-18. He also found that none of the other parties to the Federal Court proceedings intended to address two issues of interest to the interveners, namely (a) how section 47.1 of the *Canadian Wheat Board Act* is to be interpreted in a manner that accords with the North American Free Trade Agreement (“NAFTA”), and (b) the need to, and effect of, interpreting that section in a manner that is consistent with fundamental constitutional values such as the rule of law and the *Canadian Charter of Rights and Freedoms*.

[4] No party appealed the order of Prothonotary Lafrenière allowing the intervention.

[5] Campbell J. relied on the submissions of the moving parties in his reasons cited as 2011 FC 1432, particularly at paragraphs 23, 24, 27 and 28. He extensively and approvingly quoted from the moving parties’ submissions concerning the impact of the rule of law on the interpretation of section 47.1 of the *Canadian Wheat Board Act* (at para. 27 of his reasons), and gave weight to their argument that this section is important to Canada’s international trade obligations under NAFTA (at para. 28 of his reasons).

[6] The appellants submit that the moving parties ought not to be granted leave to intervene in this Court simply because they were permitted to intervene in the Federal Court. They add that the moving parties should be required to demonstrate anew in this Court why they satisfy the test for intervention.

[7] The moving parties do not assert that they should have been made parties to this appeal as of right. They do however submit that the decision of Prothonotary Lafrenière authorizing their intervention before the Federal Court and the reliance placed on their submissions by Campbell J. are both relevant factors to consider in deciding whether to grant leave to intervene in this appeal.

[8] The factors that are to be considered in deciding to grant leave to intervene have been discussed in numerous decisions and need not be repeated here. Reference may notably be made to the decisions of this Court in *Canadian Airlines International Ltd. v. Canada (Human Rights Commission)*, [2010] 1 F.C.R. 226 at paras. 8-9, *Canadian Pacific Railway Company v. Boutique Jacob Inc.*, 2006 FCA 426 at paras. 19 to 21; and *Canadian Taxpayers Federation v. Benoit*, 2001 FCA 71 at para. 18.

[9] These factors have already been analysed by Prothonotary Lafrenière, and his findings have not been appealed. Where leave to intervene has already been granted in the Federal Court, barring a fundamental error in the decision granting leave, some material change in the issues on appeal, or important new facts bearing on the intervention, I do not see why this Court should not rely on the findings of the Federal Court with respect to the intervention or exercise its discretion to grant leave differently from the Federal Court. I rely for this proposition on the considered opinion of my colleague Stratas J. A. in *Global Wireless Management Corp. v. Public Mobile Inc.*, 2011 FCA 119.

[10] In this case, I see no fundamental error in the decision of Prothonotary Lafrenière, the issues in this appeal appear to be similar to those raised before the Federal Court, and no important new

facts bearing on the intervention have been identified. In such circumstances, leave to intervene in this Court shall be granted.

[11] Both the moving parties and the appellants have proposed terms to the order granting leave to intervene, and, pursuant to subsections 53(1) and 109(3) of the *Federal Court Rules*, the following conditions will apply to the intervention:

- a. The interveners' written and oral submissions shall be limited to the following two issues: (i) whether, and if so how, section 47.1 of the *Canadian Wheat Board Act* is to be interpreted in a manner that accords with the North American Free Trade Agreement, and (i) whether, and if so how, that section is to be interpreted in a manner that is consistent with fundamental constitutional values such as the rule of law and the *Canadian Charter of Rights and Freedoms*.
- b. The interveners shall not duplicate any issues or arguments contained in the memorandum of fact and law filed by the respondents.
- c. The interveners shall not add to the factual record in any way.
- d. The appellants shall serve the interveners with a copy of the appeal book within 3 business days of the order.
- e. The appellants and respondents shall serve the interveners with a copy of their respective memorandum of fact and law at the same time they serve any other party.
- f. The interveners shall serve on the appellants and the respondents and file a memorandum of fact and law of a maximum length of 10 pages within 3 business days of service of the respondents' memorandum of fact and law.

- g. The appellants may serve and file, within 10 days of the service of the interveners' memorandum of fact and law, a supplementary memorandum of fact and law of a maximum length of 10 pages to respond to the arguments raised by the interveners.
- h. Unless otherwise directed by the panel hearing the merits of the appeal, the interveners shall be permitted to make oral submissions of no more than 15 minutes in length.
- i. No costs shall be awarded either to or against the interveners in respect of this motion and in respect of the consolidated appeal.
- j. The style of cause shall be amended to reflect that the moving parties are now interveners.

"Robert M. Mainville"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-470-11

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA ET AL. v. FRIENDS OF
THE CANADIAN WHEAT BOARD
ET AL.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: MAINVILLE J.A.

DATED: April 16, 2012

WRITTEN REPRESENTATIONS BY:

Robert MacKinnon
Zoe Oxaal

FOR THE APPELLANTS

Anders Bruun

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE APPELLANTS

Brunn, Anders
Winnipeg, Manitoba

FOR THE RESPONDENT