

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120217

Dockets: A-470-11
A-471-11

Citation: 2012 FCA 56

Present: BLAIS C.J.

BETWEEN:

A-470-11

**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

BETWEEN:

A-471-11

**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 Ottawa, Ontario, on February 17, 2012

REASONS FOR ORDER BY:

CHIEF JUSTICE BLAIS

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Respondents

REASONS FOR ORDER

BLAIS C.J.

[1] This is a motion by the appellants seeking an order expediting the consolidated appeals.

[2] The appeals in court file A-470-11 and in court file A-471-11 have been consolidated by an order of this Court dated February 14, 2012.

RELEVANT FACTS

[3] Following an application for judicial review, the Federal Court declared by an order dated December 7, 2011, that the Minister had breached his statutory duty under section 47(1) of the Act.

[4] Two days later, on December 9, 2011, the appellants filed two notices of appeal (court files A-470-11 and A-471-11).

[5] On December 14, 2011, five days after the filing of the notices of appeal, the Canadian Wheat Board and eight individuals who are the current directors of the Canadian Wheat Board filed a statement of claim in the Manitoba Court of Queen's Bench against the defendant Attorney General of Canada.

[6] This action filed on December 14, 2011, is based on the declaration issued by the Federal Court in its December 7, 2011, order.

[7] There is also a motion for an interlocutory injunction seeking to suspend the impugned Act filed in the Manitoba proceedings.

[8] In his decision of December 7, 2011, the Federal Court judge recognized that any delay would be prejudicial to the public interest. Accordingly, he decided to issue his reasons for orders and orders the day following the hearing and stated that making both orders “available simultaneously in both official languages would occasion a delay prejudicial to the public interest”.
[my emphasis]

ANALYSIS

[9] First of all, even if the usual rules applying in this case would be that a motion to expedite be brought before the Court at the same time as the requisition for hearing, some particular circumstances as the one we have in this case could justify expediting as soon as we can to clarify the situation.

[10] The respondents have decided to initiate litigation with an application for judicial review in the Federal Court. They succeeded, as evidenced by the decision rendered by the Federal Court on December 7, 2011, which declared that the Minister had breached his statutory duty under subsection 47(1) of the Act.

[11] The Minister immediately responded that he will not withdraw or amend the bill until the case is fully litigated in appeal.

[12] In fact, two notices of appeal were filed on December 9, 2011, and five days later, Bill C-18 received Royal Assent on December 15, 2011.

[13] It is not surprising that the Minister disagrees with the respondents' position and appeals from the Federal Court's decision.

[14] The respondents decided to open a new front in filing a statement of claim on December 14, 2011, with the Court of Queen's Bench of Manitoba.

[15] It is in the interest of justice to have a certain level of certainty in the area of national and international trade of grains.

[16] In this particular case, we are facing a very unusual situation: Bill C-18 was passed by Parliament and received Royal Assent. A few days before, a Federal Court order found that the Minister had breached his statutory duty under subsection 47(1) of the Act by introducing Bill C-18 in the House of Commons without proper consultation. At paragraph 8, the Federal Court judge assumed that the validity of Bill C-18 was not the issue. Rather, he wrote, the issue was whether the Minister acted pursuant to subsection 47(1) of the Act.

[17] Without commenting on the merits of the decision, I am of the opinion that the Parliament and the Canadians are entitled to know what the law of the land is at this time.

[18] Therefore, it appears to me that the interest of justice favours the expedition of the hearing.

[19] A decision of this Court, notwithstanding the outcome, would bring more certainty, clarity and stability for all stakeholders; in short, the sooner the better.

[20] I have no hesitation to conclude that the appellants successfully convinced this Court that the expedition of the consolidated appeal will promote the interest of justice and, particularly, the interest of the parties involved in this case.

[21] This will not prejudice the respondents in any way.

[22] Therefore, this Court orders that the hearing of these appeals be expedited. The parties shall serve and file their documents pursuant to the *Federal Court Rules*, and the requisition for hearing shall be filed as soon as the file is ready to be heard. The appeals will be heard as soon as possible after the filing of the requisition for hearing; Costs in favour of the appellants.

“Pierre Blais”
Chief Justice

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

DOCKET: A-471-11

STYLE OF CAUSE: Minister of Agriculture and Agri-
Food v. The Canadian Wheat Board
et al.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: CHIEF JUSTICE BLAIS

DATED: February 17, 2012

WRITTEN REPRESENTATIONS BY:

Robert MacKinnon
Agnieszka Zagorska

FOR THE APPELLANTS

John Lorn McDougall, Q.C.
Matthew Fleming

FOR THE INDIVIDUAL
RESPONDENTS IN A-471-11

Anders Brunn

FOR THE RESPONDENTS IN
A-470-11

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