

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120611**

**Docket: A-367-11**

**Citation: 2012 FCA 173**

**CORAM: NOËL J.A.  
DAWSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**CARGILL LIMITED, LOUIS DREYFUS CANADA LTD.,  
PARRISH & HEIMBECKER LIMITED,  
PATERSON GLOBALFOODS INC.,  
RICHARDSON INTERNATIONAL LIMITED,  
WEYBURN INLAND TERMINAL LTD., VITERRA INC.,  
and WESTERN GRAIN ELEVATOR ASSOCIATION**

**Appellants**

**and**

**THE ATTORNEY GENERAL OF CANADA  
and CANADIAN GRAIN COMMISSION**

**Respondents**

Heard at Winnipeg, Manitoba, on June 7, 2012.

Judgment delivered at Ottawa, Ontario, on June 11, 2012.

**REASONS FOR JUDGMENT BY:**

**NOËL J.A.**

**CONCURRED IN BY:**

**DAWSON J.A.  
STRATAS J.A.**

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**Respondents**

**REASONS FOR JUDGMENT**

**NOËL J.A.**

[1] This is an appeal by Cargill Limited et al., a group of grain elevator owners and the Western Grain Elevator Association (the appellants) from a decision of the Federal Court wherein Bédard J. (the Federal Court judge) confirmed an earlier decision by Prothonotary Lafrenière (the Prothonotary) refusing to grant the appellants' motion for an order that their judicial review

applications be heard together or in the alternative that they be heard consecutively, with a single book of authorities being filed.

[2] As background, I note that the parties in both judicial review applications are the same and are represented by the same counsel. The two files are at the same stage and involve some common factual and legal issues.

[3] Rule 105 of the *Federal Courts Rules*, SOR/98-106, allows the Court to consolidate proceedings or order that they be heard together or immediately after one another:

**105.** The Court may order, in respect of two or more proceedings,

(a) that they be consolidated, heard together or heard one immediately after the other;

**105.** La Cour peut ordonner, à l'égard de deux ou plusieurs instances :

a) qu'elles soient réunies, instruites conjointement ou instruites successivement;

[4] The exact wording of the remedy sought by the appellants in the underlying motion is as follows:

1. An order that the Application for judicial review in this proceeding be heard together with or immediately before or after the Application for judicial review in [the other proceeding] by the same judge;
2. An order for directions that the Applicants be permitted to file a joint book of authorities for use at the hearing of the Application herein and in [the other proceeding];

[My emphasis]

[5] The Prothonotary addressed in his speaking order at page 2 the question whether “consolidation” of the applications was in order – presumably in the sense of the applications being heard together in the course of a single hearing as this was the only remedy being sought aside from the alternative remedy that the applications be heard separately but one after the other – and concluded that this would not serve a useful purpose in this case. In particular, the Prothonotary was concerned that this would complicate matters and make the proceedings less efficient. The Federal Court judge noted the discretionary nature of the Prothonotary’s decision and declined to intervene with respect to this aspect of his decision. I can identify no error in this regard.

[6] However, the Prothonotary did not address the appellants’ alternative submission that the two proceedings be heard one after the other before the same judge. This was an error as a request that proceedings be heard one after the other gives rise to different considerations. Significantly, the issues of added complexity and reduced efficiency which were of concern to the Prothonotary in the context of a single hearing do not arise if the matters are heard separately, albeit one after the other.

[7] In the absence of reasons by the Prothonotary on this point, it was incumbent on the Federal Court judge to consider the matter and determine for herself whether the alternative remedy sought by the appellants should be granted. The Federal Court judge in her reasons indicated that the particularities of the two applications did not warrant disturbing the “*status quo* of separate proceedings” (reasons, para. 32) without considering whether having the proceedings heard separately, one after the other, would be appropriate.

[8] I can see no reason why the proceedings cannot be heard one after the other before the same judge. Indeed, given that the parties are represented by the same counsel and that the proceedings are at the same stage of readiness, this is what would happen in the normal course if the scheduling was left to the judicial administrator.

[9] No prejudice of any sort has been shown to result from separate but successive hearings, and the resulting convenience to the parties and the Court is obvious. In that context, the filing of a single book of authorities so as to avoid duplication is also appropriate.

[10] I would therefore allow the appeal with costs, set aside the decision under appeal and giving the order which the Federal Court judge ought to have given, I would allow the appeal from the decision of the Prothonotary with costs, and order that the application for judicial review in Court file T-1477-10 and T-239-11 be heard one after the other before the same judge at the time and place to be fixed by the judicial administrator, a single book of authorities being filed for both proceedings.

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“Marc Noël”

J.A.

“I agree  
Eleanor R. Dawson J.A.”

“I agree  
David Stratas J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-367-11

**APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE BÉDARD  
OF THE FEDERAL COURT DATED SEPTEMBER 19, 2011, DOCKET NUMBER  
T-1477-10.**

**STYLE OF CAUSE:** Cargill Limited, Louis Dreyfus  
Canada Ltd., Parrish &  
Heimbecker Limited, Paterson  
Globalfoods Inc., Richardson  
International Limited, Weyburn  
Inland Terminal Ltd., Viterra Inc.,  
and Western Grain Elevator  
Association AND The Attorney  
General of Canada and Canadian  
Grain Commission

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** June 7, 2012

**REASONS FOR JUDGMENT BY:** Noël J.A.

**CONCURRED IN BY:** Dawson J.A.  
Stratas J.A.

**DATED:** June 11, 2012

**APPEARANCES:**

E. Beth Eva

FOR THE APPELLANTS

John A. Faulhammer

FOR THE RESPONDENT  
(The Attorney General of Canada)

**SOLICITORS OF RECORD:**

FILLMORE RILEY LLP  
Winnipeg, Manitoba

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE APPELLANTS

FOR THE RESPONDENT  
(The Attorney General of Canada)