

Attorney General of Canada, The Minister of Agriculture and Agrifood in his capacity as Minister responsible for the Canadian Wheat Board (appellants) v. 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) and Council of Canadians, ETC Group (Action Group on Erosion, Technology and Concentration), Public Service Alliance of Canada and Food Secure Canada (interveners)
(A-470-11)

Minister of Agriculture and Agri-Food in his capacity as Minister responsible for the Canadian Wheat Board (appellant) v. The Canadian Wheat Board, Allen Oberg, Rod Flaman, Cam Goff, Kyle Korneychuk, John Sandborn, Bill Toews, Stewart Wells and Bill Woods (respondents) and Council of Canadians, ETC Group (Action Group on Erosion, Technology and Concentration), Public Service Alliance of Canada and Food Secure Canada (interveners)
(A-471-11; 2012 FCA 183)

Indexed As: Friends of the Canadian Wheat Board et al. v. Canada (Attorney General) et al.

Federal Court of Appeal
Sharlow, Trudel and Mainville, JJ.A.
June 18, 2012.

Summary:

Section 47.1 of the Canadian Wheat Board Act required the Minister of Agriculture to consult with the Canadian Wheat Board and to gain the consent of Western Canadian wheat and barley producers respecting proposed changes to the well-established process of marketing the grains in Canada. Currently, the Minister was unilaterally proceeding to revolutionize the process by securing the imminent passage of legislation. The applicants each requested a declaration that the Minister's conduct was an affront to the rule of law.

The Federal Court, in a decision reported at 396 F.T.R. 308, granted the applications. The Crown appealed.

The Federal Court of Appeal allowed the appeals.

Civil Rights - Topic 2103

Freedom of association - General - Scope of right - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been

determined by the Minister." - The Minister introduced new legislation (Marketing Freedom for Grain Farmers Act) that fundamentally changed the CWB Act - The Federal Court of Appeal held that s. 2(d) of the Charter (freedom of association) did not extend any constitutional protection to a marketing monopoly or to a compulsory price pooling system as contemplated by the CWB Act - Nor did the new legislation restrict the ability of grain producers to associate for the purposes of marketing or pooling their products - Consequently, s. 2(d) of the Charter did not need to be considered as an interpretative tool for the purposes of ascertaining the scope of s. 47.1 of the CWB Act - See paragraphs 74 to 81.

Civil Rights - Topic 2204

Freedom of association - Denial of right of - What constitutes - [See **Civil Rights - Topic 2103**].

Constitutional Law - Topic 402

Powers of Parliament and the legislatures - General - Parliamentary supremacy - [See **Constitutional Law - Topic 409**].

Constitutional Law - Topic 409

Powers of parliament and the legislatures - General - Sovereign body's own restrictions re "manner and form" of subsequent legislation - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Minister introduced new legislation (Marketing Freedom for Grain Farmers Act) that fundamentally changed the CWB Act - The Federal Court of Appeal interpreted s. 47.1 and held that it did not extend to the new legislation - Thus, the court found it was unnecessary to finally decide the issue of whether s. 47.1 was a "manner and form" provision that might restrict the method by which legislation might be introduced into, and adopted by, Parliament - However, the court stated that "I have serious reservations concerning the enforceability of section 47.1 of the CWB Act considering the doctrine of parliamentary sovereignty, the Supreme Court of Canada's decision in Reference Re Canada Assistance Plan (B.C.), above, and the provisions of subsection 2(2) of the Federal Courts Act. A provision requiring that legislation be introduced into Parliament only insofar as an outside corporation or small outside group agrees does not appear to me to be merely a procedural requirement. The effect of such a provision is to relinquish Parliament's powers in the hands of a small group not forming part of Parliament. I seriously doubt such a provision could be used to impede the introduction of legislation in Parliament or could result in the invalidation of any subsequent legislation adopted by Parliament ..." - See paragraphs 82 to 87.

Statutes - Topic 502

Interpretation - General principles - Intention of Parliament or legislature - The Federal Court of Appeal stated that "In ascertaining legislative intent, a court must consider the total context of the provision to be interpreted, no matter how plain the provision may seem when it is initially read in isolation. However, it must be kept in mind that a line exists between judicial interpretation and legislative drafting, and that this line is not to be crossed ..." - See paragraph 40.

Statutes - Topic 1450

Interpretation - Aids or methods to determine meaning - Legislative history - Reference to prior versions or amendments - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Federal Court of Appeal rejected an expansive interpretation of s. 47.1 that would preclude the Minister from introducing in Parliament legislation which would fundamentally modify the CWB's mandate or which would lead to the repeal of the Act - The court considered and rejected arguments that an expansive meaning should be given to s. 47.1 in light of (a) its legislative history; (b) the comments of the previous Minister in Parliament when the 1998 Amendments were being considered; (c) the need to promote the democratic control of grain producers over the CWB; (d) the importance of the CWB's democratic structure to Canada's international trade obligations under NAFTA; and (e) the promotion of the ability of grain producers to act collectively in the marketing of grain taking into account their freedom of association guaranteed by s. 2(d) of the Charter - In making its decision, the court considered the legislative history and the context in which s. 47.1 was adopted and applied the modern approach to statutory interpretation.

Statutes - Topic 2407

Interpretation - Interpretation of words and phrases - By context - [See **Statutes - Topic 1450**].

Statutes - Topic 2601

Interpretation - Interpretation of words and phrases - Modern rule (incl. interpretation by context) - General principles - [See **Statutes - Topic 1450**].

Statutes - Topic 3005

Interpretation - Construction where intention is plain - General principles - Liberal construction - [See **Statutes - Topic 1450**].

Trade Regulation - Topic 3704

Marketing of agricultural products - Grain - Canadian Wheat Board - [See **Civil Rights - Topic 2103** and **Statutes - Topic 1450**].

Trade Regulation - Topic 3704

Marketing of agricultural products - Grain - Canadian Wheat Board - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Federal Court of Appeal rejected an expansive interpretation of s. 47.1 that would preclude the Minister from introducing in Parliament legislation which would fundamentally modify the CWB's mandate or lead to the repeal of the Act - The court considered and rejected arguments that an expansive meaning should be given to s. 47.1 in light of (a) its legislative history; (b) the comments of the previous Minister in Parliament when the 1998 Amendments were being considered; (c) the need to promote the democratic control of grain producers over the CWB; (d) the importance of the CWB's democratic structure to Canada's international trade obligations under NAFTA; and (e) the promotion of the ability of grain producers to act collectively in the marketing of grain taking into account their freedom of association guaranteed by s. 2(d) of the Charter - The court considered the legislative history and the context in which s. 47.1 was adopted and applied the modern approach to statutory interpretation.

Cases Noticed:

- Oberg et al. v. Canada (Attorney General) (2012), 276 Man.R.(2d) 189; 2012 MBQB 64, reld to. [para. 6].
- Canadian Wheat Board v. Canada (Attorney General) (2009), 392 N.R. 149; 2009 FCA 214, reld to. [para. 16].
- Reference Re Canada Assistance Plan (B.C.) - see Reference Re Constitutional Question Act (B.C.).
- Reference Re Constitutional Question Act (B.C.), [1991] 2 S.C.R. 525; 127 N.R. 161; 1 B.C.A.C. 241; 1 W.A.C. 241, reld to. [para. 30].
- Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re, [1998] 1 S.C.R. 27; 221 N.R. 241; 106 O.A.C. 1, reld to. [para. 36].
- Canada Trustco Mortgage Co. v. Canada - see Minister of National Revenue v. Canada Trustco Mortgage Co.
- Minister of National Revenue v. Canada Trustco Mortgage Co., [2005] 2 S.C.R. 601; 340 N.R. 1; 2005 SCC 54, reld to. [para. 37].
- Bell ExpressVu Limited Partnership v. Rex et al., [2002] 2 S.C.R. 559; 287 N.R. 248; 166 B.C.A.C. 1; 271 W.A.C. 1; 2002 SCC 42, reld to. [para. 38].
- R. v. Monney (I.), [1999] 1 S.C.R. 652; 237 N.R. 157; 119 O.A.C. 272, reld to. [para. 38].
- Felipa v. Canada (Minister of Citizenship and Immigration), [2012] 1 F.C.R. 3; 422 N.R. 288; 2011 FCA 272, reld to. [para. 39].
- R. v. Secretary of State for the Environment, Transport and the Regions, Ex parte Spath

Holme Ltd., [2001] 2 A.C. 349 (H.L.), refd to. [para. 39].
ATCO Gas and Pipelines Ltd. v. Energy and Utilities Board (Alta.), [2006] 1 S.C.R. 140; 344 N.R. 293; 380 A.R. 1; 363 W.A.C. 1; 2006 SCC 4, refd to. [para. 40].
Saskatchewan Wheat Pool et al. v. Canada (Attorney General) (1993), 67 F.T.R. 98; 107 D.L.R.(4th) 190 (T.D.), refd to. [para. 45].
Canadian Wheat Board v. Canada (Attorney General), [2008] 2 F.C.R. 87; 315 F.T.R. 243; 2007 FC 807, affd. (2008), 373 N.R. 385; 2008 FCA 76, refd to. [para. 48].
R. v. Morgentaler, [1993] 3 S.C.R. 463; 157 N.R. 97; 125 N.S.R.(2d) 81; 349 A.P.R. 81, refd to. [para. 51].
Reference Re Firearms Act (Can.), [2000] 1 S.C.R. 783; 254 N.R. 201; 261 A.R. 201; 225 W.A.C. 201; 2000 SCC 31, refd to. [para. 51].
Placer Dome Canada Ltd. v. Ontario (Minister of Finance), [2006] 1 S.C.R. 715; 348 N.R. 148; 210 O.A.C. 342; 2006 SCC 20, refd to. [para. 51].
Conacher et al. v. Prime Minister (Can.) et al., [2011] 4 F.C.R. 22; 403 N.R. 326; 2010 FCA 131, refd to. [para. 51].
A.Y.S.A. Amateur Youth Soccer Association v. Canada Revenue Agency, [2007] 3 S.C.R. 217; 367 N.R. 264; 2007 SCC 42, refd to. [para. 51].
Qu v. Canada (Minister of Citizenship and Immigration), [2002] 1 F.C. 3; 2001 FCA 399, refd to. [para. 61].
Ontario English Catholic Teachers' Association et al. v. Ontario (Attorney General) et al., [2001] 1 S.C.R. 470; 267 N.R. 10; 144 O.A.C. 1; 2001 SCC 15, refd to. [para. 64].
Baier et al. v. Alberta, [2007] 2 S.C.R. 673; 365 N.R. 1; 412 A.R. 300; 404 W.A.C. 300; 2007 SCC 31, refd to. [para. 65].
Haig et al. v. Canada; Haig et al. v. Kingsley, [1993] 2 S.C.R. 995; 156 N.R. 81, refd to. [para. 66].
Dunmore et al. v. Ontario (Attorney General) et al., [2001] 3 S.C.R. 1016; 279 N.R. 201; 154 O.A.C. 201; 2001 SCC 94, consd. [para. 74].
Archibald et al. v. Canada, [2000] 4 F.C. 479; 257 N.R. 105 (F.C.A.), appld. [para. 76].
Canadian Egg Marketing Agency v. Pineview Poultry Products Ltd. et al., [1998] 3 S.C.R. 157; 231 N.R. 201; 223 A.R. 201; 183 W.A.C. 201, refd to. [para. 76].
Reference Re Public Service Employee Relations Act (Alta.) - see Reference Re Compulsory Arbitration.
Reference Re Compulsory Arbitration, [1987] 1 S.C.R. 313; 74 N.R. 99; 78 A.R. 1, refd to. [para. 79].
Public Service Alliance of Canada v. Canada, [1987] 1 S.C.R. 424; 75 N.R. 161, refd to. [para. 79].
West Lakes Ltd. v. South Australia (1980), 25 S.A.S.R. 389, refd to. [para. 86].
Canada (Attorney General) v. Canada (Canadian Wheat Board) - see Canadian Wheat Board v. Canada (Attorney General).
Canadian Wheat Board v. Canada (Attorney General) (2008), 373 N.R. 385; 2008 FCA 76, refd to. [para. 86].

Statutes Noticed:

Canadian Wheat Board Act, R.S.C. 1985, c. C-24, sect. 47.1 [para. 27].

Authors and Works Noticed:

- Fowke, Vernon C., Canadian Agricultural Policy, The Historical Pattern (1946) (1978 Reprint), generally [para. 9].
- Fowke, Vernon C., The National Policy and the Wheat Economy (1957), generally [para. 9].
- Goldsworthy, J., Parliamentary Sovereignty, Contemporary Debates (2010), p. 174 [para. 87].
- Hogg, Peter W., Constitutional Law of Canada (5th Ed. Supp.) (Looseleaf), vol. 1, p. 12.3(a) [para. 82].
- Wilson, F., A Century of Canadian Grain, Government Policy to 1951 (1978), generally [para. 9].

Counsel:

Robert MacKinnon and Zoe Oxaal, for the appellants;
John Lorn McDougall and Brian Leonard, for the respondents;
Steven Shrybman, for the interveners.

Solicitors of Record:

Myles J. Kirvan, Deputy Attorney General of Canada, Ottawa, Ontario, for the appellants;
Fraser Milner Casgrain LLP, Toronto, Ontario, for the respondents;
Sack Goldblatt Mitchell LLP, Ottawa, Ontario, for the interveners.

These appeals were heard at Ottawa, Ontario, on May 23, 2012, by Sharlow, Trudel and Mainville, J.J.A., of the Federal Court of Appeal. Mainville, J.A., delivered the following reasons for judgment for the court on June 18, 2012.

Appeals allowed.

Editor: Jana A. Andersen

Civil Rights - Topic 2204

Freedom of association - Denial of right of - What constitutes - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Minister introduced new legislation (Marketing Freedom for Grain Farmers Act) that fundamentally changed the CWB Act - The Federal Court of Appeal held that s. 2(d) of the Charter (freedom of association) did not extend any constitutional protection to a marketing monopoly or to a compulsory price pooling system as contemplated by the CWB Act - Nor did the new

legislation restrict the ability of grain producers to associate for the purposes of marketing or pooling their products - Consequently, s. 2(d) of the Charter did not need to be considered as an interpretative tool for the purposes of ascertaining the scope of s. 47.1 of the CWB Act - See paragraphs 74 to 81.

Constitutional Law - Topic 402

Powers of Parliament and the legislatures - General - Parliamentary supremacy - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Minister introduced new legislation (Marketing Freedom for Grain Farmers Act) that fundamentally changed the CWB Act - The Federal Court of Appeal interpreted s. 47.1 and held that it did not extend to the new legislation - Thus, the court found it was unnecessary to finally decide the issue of whether s. 47.1 was a "manner and form" provision that might restrict the method by which legislation might be introduced into, and adopted by, Parliament - However, the court stated that "I have serious reservations concerning the enforceability of section 47.1 of the CWB Act considering the doctrine of parliamentary sovereignty, the Supreme Court of Canada's decision in Reference Re Canada Assistance Plan (B.C.), above, and the provisions of subsection 2(2) of the Federal Courts Act. A provision requiring that legislation be introduced into Parliament only insofar as an outside corporation or small outside group agrees does not appear to me to be merely a procedural requirement. The effect of such a provision is to relinquish Parliament's powers in the hands of a small group not forming part of Parliament. I seriously doubt such a provision could be used to impede the introduction of legislation in Parliament or could result in the invalidation of any subsequent legislation adopted by Parliament ..." - See paragraphs 82 to 87.

Statutes - Topic 2407

Interpretation - Interpretation of words and phrases - By context - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Federal Court of Appeal rejected an expansive interpretation of s. 47.1 that would preclude the Minister from introducing in Parliament legislation which would fundamentally modify the CWB's mandate or lead to the repeal of the Act - The court considered and rejected arguments that an expansive meaning should be given to s. 47.1 in light of (a) its legislative history; (b) the comments

of the previous Minister in Parliament when the 1998 Amendments were being considered; (c) the need to promote the democratic control of grain producers over the CWB; (d) the importance of the CWB's democratic structure to Canada's international trade obligations under NAFTA; and (e) the promotion of the ability of grain producers to act collectively in the marketing of grain taking into account their freedom of association guaranteed by s. 2(d) of the Charter - In making its decision, the court considered the legislative history and the context in which s. 47.1 was adopted and applied the modern approach to statutory interpretation.

Statutes - Topic 2601

Interpretation - Interpretation of words and phrases - Modern rule (incl. interpretation by context) - General principles - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Federal Court of Appeal rejected an expansive interpretation of s. 47.1 that would preclude the Minister from introducing in Parliament legislation which would fundamentally modify the CWB's mandate or lead to the repeal of the Act - The court considered and rejected arguments that an expansive meaning should be given to s. 47.1 in light of (a) its legislative history; (b) the comments of the previous Minister in Parliament when the 1998 Amendments were being considered; (c) the need to promote the democratic control of grain producers over the CWB; (d) the importance of the CWB's democratic structure to Canada's international trade obligations under NAFTA; and (e) the promotion of the ability of grain producers to act collectively in the marketing of grain taking into account their freedom of association guaranteed by s. 2(d) of the Charter - In making its decision, the court considered the legislative history and the context in which s. 47.1 was adopted and applied the modern approach to statutory interpretation.

Statutes - Topic 3005

Interpretation - Construction where intention is plain - General principles - Liberal construction - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Federal Court of Appeal rejected an expansive interpretation of s. 47.1 that would preclude the Minister from introducing in Parliament legislation which would fundamentally modify the CWB's mandate or lead to the repeal of the Act - The court

considered and rejected arguments that an expansive meaning should be given to s. 47.1 in light of (a) its legislative history; (b) the comments of the previous Minister in Parliament when the 1998 Amendments were being considered; (c) the need to promote the democratic control of grain producers over the CWB; (d) the importance of the CWB's democratic structure to Canada's international trade obligations under NAFTA; and (e) the promotion of the ability of grain producers to act collectively in the marketing of grain taking into account their freedom of association guaranteed by s. 2(d) of the Charter - In making its decision, the court considered the legislative history and the context in which s. 47.1 was adopted and applied the modern approach to statutory interpretation.

Trade Regulation - Topic 3704

Marketing of agricultural products - Grain - Canadian Wheat Board - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Minister introduced new legislation (Marketing Freedom for Grain Farmers Act) that fundamentally changed the CWB Act - The Federal Court of Appeal held that s. 2(d) of the Charter (freedom of association) did not extend any constitutional protection to a marketing monopoly or to a compulsory price pooling system as contemplated by the CWB Act - Nor did the new legislation restrict the ability of grain producers to associate for the purposes of marketing or pooling their products - Consequently, s. 2(d) of the Charter did not need to be considered as an interpretative tool for the purposes of ascertaining the scope of s. 47.1 of the CWB Act - See paragraphs 74 to 81.

Trade Regulation - Topic 3704

Marketing of agricultural products - Grain - Canadian Wheat Board - Section 47.1 of the Canadian Wheat Board (CWB) Act provided that "The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless (a) the Minister has consulted with the board about the exclusion or extension; and (b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister." - The Federal Court of Appeal rejected an expansive interpretation of s. 47.1 that would preclude the Minister from introducing in Parliament legislation which would fundamentally modify the CWB's mandate or lead to the repeal of the Act - The court considered and rejected arguments that an expansive meaning should be given to s. 47.1 in light of (a) its legislative history; (b) the comments of the previous Minister in Parliament when the 1998 Amendments were being considered; (c) the need to promote the democratic control of grain producers over the

CWB; (d) the importance of the CWB's democratic structure to Canada's international trade obligations under NAFTA; and (e) the promotion of the ability of grain producers to act collectively in the marketing of grain taking into account their freedom of association guaranteed by s. 2(d) of the Charter - In making its decision, the court considered the legislative history and the context in which s. 47.1 was adopted and applied the modern approach to statutory interpretation.