

Date: 20090209

Docket: T-612-06

Citation: 2009 FC 129

Ottawa, Ontario, February 9, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**RENOVA HOLDINGS LTD., JOHN JACKSON,
AND DAVE BOUCHARD EACH ON THEIR
OWN BEHALF AND ON BEHALF OF
ALL PERSONS WHO HAVE BEEN
PRODUCERS OR ARE PRODUCERS AND
DO RESIDE OR HAVE RESIDED IN
THE DESIGNATED AREA BETWEEN
JULY 5, 1935 AND THE PRESENT DAY**

Applicants

and

**THE CANADIAN WHEAT BOARD AND
THE ATTORNEY GENERAL OF CANADA**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants allege that the Canadian Wheat Board has wrongly been paying some of its expenses out of funds that are meant to be distributed to wheat producers. They say that the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24 makes clear that the Board can deduct from revenues arising from wheat sales only those expenses that the Board incurred in relation to particular wheat products. Expenses that the Board incurred in respect of other activities, however beneficial, should be paid by Parliament, not by wheat farmers. They ask me to declare that the

Board has made improper expenditures and to order an accounting to determine the amounts wrongly deducted.

[2] The respondents maintain that the Board's actions are authorized by the Act, respect proper accounting practices, benefit wheat producers in Canada, and are consistent with its statutory mandate.

[3] The applicants have not persuaded me that the Board's conduct is unauthorized by law or otherwise improper. Accordingly, I must dismiss this application for judicial review.

[4] The parties agree that the sole issue to be decided is whether the Board had authority to deduct certain expenses from so-called "pool accounts". They have focussed on the situation in 2002 as a representative year.

I. Statutory Framework

[5] The Board has an exclusive mandate to market grain grown in a "designated area" of Canada if the grain is intended for export or for human consumption within Canada (s. 5; relevant provisions of the Act are set out in an Annex). The "designated area" consists of Manitoba, Saskatchewan, Alberta and the Peace River area of British Columbia (s. 2(1)). The Board sells millions of tonnes of grain nationally and internationally on behalf of about 75,000 farmers.

[6] The philosophy underlying the Act is that farmers are best served by a system in which a major corporation, the Board, bargains on their behalf for the best return on their grain and spreads the costs of doing business across the Canadian breadbasket. The respondents estimate that this system creates a net premium for Canadian grain producers of between \$355 million and \$405 million a year.

[7] Total revenues are in the range of \$4 billion annually. Once expenses are deducted, the remainder (about 90%) is returned to farmers. In effect, then, the Board's expenses are borne by Canadian grain farmers.

[8] Under the Act, grain is divided into separate "pools" – wheat, durum, feed barley and designated (*i.e.*, malt or selected) barley. The Act requires the Board to keep separate accounts for each pool (s. 36). Also, the Act instructs the Board that, as soon as it receives payment in full for the wheat sold or delivered to it, it must then deduct from revenues "expenses incurred in connection with the operations of the Corporation attributable to that wheat" (s. 33(1)(a)). Those expenses include remuneration and expenses for directors, officers and employees (s. 33(1)(a)(i), (i.1), (ii)). Any losses sustained by the Board are to be paid by Parliament (s. 7(3)).

II. The Expenses of Concern to the Applicants

[9] The applicants have identified a number of expenses paid by the Board that are, in their view, unauthorized by the Act:

- The costs associated with issuing “export licenses” in respect of grain that does not come from within the designated area.
- Research and development spending (*e.g.*, grants to universities and other organizations to research, for example, new varieties of wheat and other grains).
- Costs associated with legal proceedings, particularly those associated with gaining (and maintaining) access to the United States market under NAFTA.
- Bonuses paid to Board employees.
- Pursuing some marketing-related issues (*e.g.*, education on genetically modified wheat, or advocating for cheaper grain transportation for farmers).

[10] These expenses, according to the applicants, ought not to be charged against the pool accounts because they are not “attributable to that wheat” (*i.e.*, any particular pool). Therefore, they are unauthorized by s. 33(1)(a) of the Act. If they are to be paid at all, they should be regarded as “losses” and paid by Parliament under s. 7(3).

III. Did the Board have Authority to Deduct the Expenses in Issue from the Pool Accounts?

[11] The applicants do not suggest that the expenses described above are wholly without benefits. Rather, they contest the legal authority for incurring them. The Board maintains that the Act permits it to deduct expenses relating to each pool, as well as expenses incurred across pools. In the latter case, the Board determines what proportion of the particular expense is attributable to each of the respective pools. It submits that this is what is meant by the Act’s requirement that expenses be tied to the Board’s operations that are “attributable to that wheat” (s. 33(1)(a)).

[12] In my view, the Board's interpretation of the Act is correct. The Act requires the Board to allocate expenses to particular pool accounts. This is true whether the expense is incurred only in relation to a particular wheat product, or the expense is one which is common to more than one, or all, of the pools.

[13] I note that the Board's methodology for deducting expenses and distributing revenues to farmers had been approved by its own auditors, as well as by the Auditor General. After a review of the Board's accounts, the Auditor General concluded that the Board "calculates the total net pooled returns in accordance with the requirements of the CWB Act" and that "all revenues from the sale of grain, less operating costs, were properly distributed to farmers".

[14] Further, the expenses that are of primary concern to the applicants clearly further the interests of grain farmers as a whole. For example, the Board's administration of export licenses to producers outside the designated area is a means of monitoring and controlling grain sales as a whole. This allows the Board to ensure that there is no "leakage" of grain from the designated area and to protect the integrity of the pools. In any case, the Board estimates that the annual administrative cost associated with export licenses relating to grain produced outside the designated is only about \$5,000. To take another example, with respect to legal costs, these were incurred as a result of efforts the Board made in opposing trade barriers and defending grain farmers' interests in the courts. In sum, the Board's expenditures appear to be consistent with its statutory purpose.

IV Conclusion

[15] The disputed expenses are authorized by the Act and are properly allocated by the Board to the respective pool accounts. Accordingly, there is no basis for overturning the Board's treatment of those expenses. I must, therefore, dismiss this application for judicial review, with costs.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is dismissed, with costs.

“James W. O’Reilly”

Judge

Annex "A"

Canadian Wheat Board Act, R.S.C. 1985, c. C-24

Loi sur la commission canadienne du blé, L.R.C. 1985, ch. C-24

Binding on Her Majesty

Obligation de Sa Majesté

2.1 This Act is binding on Her Majesty in right of Canada or a province.

2.1 La présente loi lie Sa Majesté du chef du Canada ou d'une province.

Object

Mission

5. The Corporation is incorporated with the object of marketing in an orderly manner, in interprovincial and export trade, grain grown in Canada.

5. La Commission a pour mission d'organiser, dans le cadre du marché interprovincial et de l'exportation, la commercialisation du grain cultivé au Canada.

Losses

Pertes

7.(3) Losses sustained by the Corporation

7.(3) Sont imputées aux crédits affectés par le Parlement, sauf disposition contraire d'une autre partie, les pertes subies par la Commission :

(a) from its operations under Part III in relation to any pool period fixed thereunder, during that pool period, or

a) dans le cas des opérations visées à la partie III et se rapportant à une période de mise en commun fixée aux termes de cette partie, au cours de la période de mise en commun en question;

(b) from its other operations under this Act during any crop year,

b) dans le cas des autres opérations prévues par la présente loi, au cours d'une campagne agricole.

for which no provision is made in any other Part, shall be paid out of moneys provided by Parliament.

Deductions from receipts

Montants à prélever

33. (1) As soon as the Corporation receives payment in full for all wheat sold and delivered to it during a pool period and all credit sales of the wheat in respect of which payment is

33. (1) Dès que, d'une part, elle est payée intégralement pour le blé qui lui a été vendu et livré au cours de la période de mise en commun et, d'autre part, les ventes de blé à

guaranteed under section 19 have been concluded, there shall be deducted, from the aggregate of the total amount so received, the principal so guaranteed and any interest that accrues during that pool period in respect of sales of wheat on credit concluded during any pool period, all moneys disbursed by or on behalf of the Corporation

(a) by way of payment in respect of that wheat and by way of expenses incurred in connection with the operations of the Corporation attributable to that wheat, including

(i) the remuneration and allowances of the officers, clerks and employees of the Corporation,

(i.1) the remuneration and expenses of the directors of the Corporation,

(i.2) the costs of an election of directors of the Corporation in accordance with sections 3.06 to 3.08,

(ii) the necessary travel, living and other expenses incurred in the discharge of duties under this Act by the persons referred to in subparagraph (i),

Separate accounts

36. The Corporation shall maintain separate accounts with regard to its operations in respect of wheat produced in the designated area sold and delivered to it during each pool period by producers.

crédit auxquelles s'applique la garantie visée à l'article 19 ont été conclues pour cette période, la Commission prélève sur le total des sommes ainsi payées, du principal garanti et de l'intérêt échu dans cette période — y compris celui afférent à une vente à crédit conclue dans une période antérieure — les sommes suivantes au titre des dépenses qu'elle a engagées ou qui l'ont été en son nom :

a) le prix d'achat du blé et les frais afférents aux opérations qu'elle a effectuées sur celui-ci, y compris :

(i) la rémunération et les indemnités des membres du personnel,

(i.1) la rémunération et les indemnités des administrateurs,

(i.2) les frais afférents aux élections tenues sous le régime des articles 3.06 à 3.08,

(ii) les frais normaux de déplacement, de séjour et autres, engagés par ces personnes dans l'accomplissement des fonctions que leur confère la présente loi,

Comptes distincts

36. La Commission tient des comptes distincts de ses opérations sur le blé produit dans la région désignée et qui lui est vendu et livré par des producteurs pour chaque période de mise en commun.

FEDERAL COURT
SOLICITORS OF RECORD

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