

**Date: 20080226**

**Docket: A-384-07 and A-385-07**

**Citation: 2008 FCA 76**

**CORAM: DÉCARY J.A.  
LÉTOURNEAU J.A.  
SHARLOW J.A.**

**A-384-07**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**THE CANADIAN WHEAT BOARD**

**Respondent**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE AND FOOD,  
HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA,  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE,  
FOOD AND RURAL INITIATIVES,  
HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN,  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE AND FOOD,  
WESTERN BARLEY GROWERS ASSOCIATION,  
JEFF NIELSON, DOUGLAS MCBAIN, STEPHEN VANDERVALK  
BOB COPELAND, LEROY NEWMAN, CONRAD JOHNSON, TOM HEWSON,  
CHRIS CARRUTHERS, IAN DONOVAN, ART WALDE and  
THE ATTORNEY GENERAL OF MANITOBA**

**Interveners**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**FRIENDS OF THE CANADIAN WHEAT BOARD,  
HAROLD BELL, ART HADLAND, ART MACKLIN, LYNN JACOBSON,  
KEN ESHPETER, TERRY BOEHM, LYLE SIMONSON, STEWART WELLS, BILL  
WOODS, WILF HARDER, KEN SIGURDSON AND KEITH RYAN**

**Respondents**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED  
BY THE MINISTER OF AGRICULTURE AND FOOD;  
HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA,  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE,  
FOOD AND RURAL INITIATIVES;  
HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE AND FOOD;  
WESTERN BARLEY GROWERS ASSOCIATION,  
JEFF NIELSEN, DOUGLAS MCBAIN, STEPHEN VANDERVALK,  
BOB COPELAND, LEROY NEWMAN, CONRAD JOHNSON, TOM HEWSON,  
CHRIS CARRUTHERS, IAN DONOVAN AND ART WALDE**

**Interveners**

Heard at Winnipeg, Manitoba, on February 26, 2008.

Judgment delivered from the Bench at Winnipeg, Manitoba, on February 26, 2008.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

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**BETWEEN:**

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AS REPRESENTED BY THE MINISTER OF AGRICULTURE AND FOOD,  
HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA,  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE,  
FOOD AND RURAL INITIATIVES,  
HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN,  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE AND FOOD,  
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CHRIS CARRUTHERS, IAN DONOVAN, ART WALDE and  
THE ATTORNEY GENERAL OF MANITOBA**

**Interveners**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**FRIENDS OF THE CANADIAN WHEAT BOARD,  
HAROLD BELL, ART HADLAND, ART MACKLIN, LYNN JACOBSON,  
KEN ESHPETER, TERRY BOEHM, LYLE SIMONSON, STEWART WELLS, BILL  
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BY THE MINISTER OF AGRICULTURE AND FOOD;  
HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA,  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE,  
FOOD AND RURAL INITIATIVES;  
HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN  
AS REPRESENTED BY THE MINISTER OF AGRICULTURE AND FOOD;  
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BOB COPELAND, LEROY NEWMAN, CONRAD JOHNSON, TOM HEWSON,  
CHRIS CARRUTHERS, IAN DONOVAN AND ART WALDE**

**Interveners**

**REASONS FOR JUDGMENT**

**SHARLOW J.A.**

[1] Despite the able submissions of counsel for the appellant and the interveners supporting the appellant, we have concluded that these appeals cannot succeed.

[2] The principal issue in the appeals is whether the presumption in subsection 31(4) of the *Interpretation Act*, R.S.C. 1985, c. I-21, applies to give the Governor in Council the authority to

repeal a regulation including barley in the mandate of the Canadian Wheat Board under Part IV of the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24. That presumption cannot prevail against the contrary intention of Parliament.

[3] Justice Hansen concluded that such a contrary intention can be found in the amendments to the *Canadian Wheat Board Act* that were made in 1998 (S.C. 1998, c. 17), including the enactment of section 47.1, the amendment to section 47 (not yet in force) and the repeal of paragraph 46(b), read in their entire statutory and historical context. We agree with Justice Hansen on that point, substantially for the reasons she gave (2007 FC 807).

[4] The intervener Western Barley Growers Association raised a constitutional issue in this Court that was not raised in the Federal Court. The argument is that section 47.1 of the *Canadian Wheat Board Act* is invalid because it fetters the sovereignty of Parliament. We are not persuaded that it is technically necessary to determine this constitutional point because section 47.1 is before this Court only to establish of Parliament's intention in enacting the 1998 amendments. We would note, however, that we do not read subsection 47.1 as fettering the sovereignty of Parliament. It does not stop Parliament from enacting any legislation it sees fit to enact, including legislation that amends or repeals section 47.1 itself.

[5] These appeals will be dismissed with costs.

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“K. Sharlow”

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-384-07 / A-385-07

**(APPEALS FROM JUDGMENTS OF THE FEDERAL COURT DATED JULY 31, 2007,  
DOCKET NOS. T-1124-07 AND T-1105-07)**

**STYLES OF CAUSE:** (A-384-07) ATTORNEY GENERAL  
OF CANADA v.  
THE CANADIAN WHEAT BOARD  
ET AL  
(A-385-07) ATTORNEY GENERAL  
OF CANADA v.  
FRIENDS OF THE CANADIAN  
WHEAT BOARD ET AL

**PLACE OF HEARING:** Winnipeg, MB

**DATE OF HEARING:** February 26, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** Décary, Létourneau, Sharlow JJ.A.

**DELIVERED FROM THE BENCH BY:** Sharlow, J.A.

**APPEARANCES:**

Mr. Stephen F. Vincent and Mr. Dave Hill	FOR THE APPELLANT
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Mr. Alan Ladyka	FOR THE INTERVENOR (HMTQ IN RIGHT OF MANITOBA)
Mr. Michael Conner	FOR THE INTERVENOR (ATTORNEY GENERAL OF MANITOBA)
Mr. Blair R. Carbert and Bryan Gallant	FOR THE INTERVENOR (WESTERN BARLEY GROWERS and INDIVIDUALLY-NAMED)

Mr David William Kinloch

INTERVENORS)

FOR THE INTERVENOR  
(HMTQ IN RIGHT OF ALBERTA)

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