File No. C1-17-01-07668

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

EDWARD ANDREW DENNIS

Plaintiff

- and-

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA as represented by THE MINISTER OF AGRICULTURE AND AGRI-FOOD, G3 GLOBAL GRAIN GROUP and G3 CANADA LIMITED

Defendants

Proceedings under the *Class Proceedings Act,* C.C.S.M. c. C.130

STATEMENT OF CLAIM

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File No. __ __ __ __ __ __ __ __

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STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules,* serve it on the plaintiffs lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

L.CLIMACO
DEPUTY REGISTRAR
COURT OF 9UEEN'S BENCH
FOR MANITOBA

APR 24 217
Date

Issued _ _ _ _ _ _ _ _ _ _ _ _
Deputy Registrar

To:

Her Majesty the Queen in Right of Canada
as represented by the Attorney General of Canada
284 Wellington Street,
Ottawa, Ontario
KIA OH8

And to:

G3 Canada Limited
800-423 Main Street
Winnipeg, Manitoba
R3B 1B3

And to:

G3 Global Grain Group
800-423 Main Street
Winnipeg, Manitoba
R3B 1B3

CLAIM

1. The Plaintiff, Edward Andrew Dennis claims, on his own behalf, and on behalf of a class of certain other individuals (the "Class"), as against the Defendant, Her Majesty the Queen in Right of Canada ("HMQ") as represented by the Minister Of Agriculture and Agri-Food ("the Minister"):

   a) a declaration that the conduct and actions of the Minister in authorizing, directing and/or approving that certain revenues earned by the Canadian Wheat Board ("the Board"), be credited to a Contingency Fund (more fulsomely described below), constituted misfeasance in public office;

   b) a declaration that in consequence of this misfeasance, the Class was unlawfully deprived of $145,248,000.00 that would otherwise have paid to them on account of grain which they sold and delivered to the Board between August 1, 2010 and July 31, 2012;

   c) an order for an accounting of all funds credited to, or debited from the Contingency Fund in respect of the sale of said grain between August 1, 2010, and July 31, 2012;

   d) an order that any amounts wrongfully denied to the Plaintiff and/or the Class as a result of the misfeasance in public office be paid to them;

   e) damages for debits from the pool account to cover transition costs in the amount of $5,900,000.00;

f) punitive damages in the amount of $10 million;

g) pre and post-judgment interest on•any amounts found to be owing;

h) costs of this action on a full indemnity basis; and

i) such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff claims on his own behalf, and on behalf of the Class as against the defendants 03 Canada Limited., and 03 Global Grain Group, (collectively, "03"):

a) damages for breach of contract, breach of duty of good faith, and negligence in the amount of $145,248,000.00;

b) pre- and post judgment intere,st on any amounts found to be owing;

c) costs of this action on a full indemnity basis; and

d) such further and other relief as to this Honourable Court may seem just.

3. The Plaintiff claims on his own behalf, and on behalf of the Class, as against all defendants:

a) an order certifying the herein action as a class proceeding; and

b) an order appointing himself as representative plaintiff.

The Parties

4. The Plaintiff, Mr. Dennis, is a resident of the Municipality of North Cypress-Langford, Manitoba, and has been engaged in the commercial farming of grains for over thirty years.

5. Mr. Dennis brings this claim on behalf of producers of grain[1] or their estates, who sold grain through the Board on or after August 1, 2010, and before the end of day July 31, 2012 and were entitled to an equitable distribution of the surplus, if any, arising from the operations of the Board during that two year period (the "class period") in respect of that grain (the "Class").

6. The defendant, G3 is the successor to the Board which, starting in 1935 and during the class period, operated as the sole exclusive legal authority to sell wheat, durum wheat, and barley produced in the Provinces of Manitoba, Saskatchewan, Alberta and the Peace River District of British Columbia ("Western Canada") intended for export or human consumptioh in Canada.

7. The acquisition by G3 of the Board is more fulsomely set out below.

8. The Defendant HMQ is the party responsible at law for the actions of, among others, the Minister of Agriculture and Agri-Food, who was the Honourable Gerry Ritz during the class period.

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[1] as defined bys. 2. of the *Canadian Wheat Board Act* R.S.C. 1985.

The Board and the Act

9. Between 1943 and December 14, 2011, the Board, as provided for under the *Canadian Wheat Board Act,* R.S.C. 1985, c. C-24 (the "Act") was a corporation without share capital responsible for providing grain marketing for Western Canadian farmers. The words farmers and producers have the same meaning and are used interchangeably herein.

10. During this time period, the Board had a 'single desk mandate' that required producers of certain grain in Western Canada specifically wheat, durum wheat and barley, who wished to sell that grain, specifically wheat, durum wheat and barley, for either export or human consumption in Canada to sell to the Board, which would then market and sell the grain for their benefit, returning all monies net of costs to the farmers each year (the"Grain").

11. As set out more fulsomely below, between August 1, 2010 and July 31, 2011 (hereinafter, the "2010/2011 Crop Year") and then again between August 1, 2011 to July 31, 2012 (the "2011/2012 Crop Year"), Mr. Dennis sold Canada Western Hard White wheat and Canada Western Red Spring wheat to the Board.

12. Hereinafter, the time period from August 1, 2010 to July 31, 2012 is referred to as the "Class Period".

13. During the Class Period, there were approximately 70,000 producers of grain in Western Canada who were, along with Mr. Dennis, engaged in the act of selling their grain to the Board.

14. Annually, farmers typically would sell between 18 and 24 million tonnes of grain through the Board to customers in more than 60 countries worldwide.

15. Farmers, such as Mr. Dennis, were not obliged to deal with the Board, *unless* they intended to have the grain sold for either export or human consumption in Canada. For instance, a producer could decide to turn his grain into livestock feed without any involvement of the Board. In addition, a farmer, such as Mr. Dennis, could choose from a number of different methods of transacting business with the Board.

Methods of Transacting Business

16. During the Class Period, the Act provided for three different mechanisms by which a farmer, such as Mr. Dennis, could sell his grain to the Board, and which are relevant to this claim: pool accounts, early (PPO) payments, and cash transactions. Each is considered below.

Pool Accounts

17. Pool accounts were authorized under s. 32 of the Act. There were four pool accounts; one of for each of wheat, durum wheat, feed barley and barley selected for human consumption.

18. Under the pooling regime, the Board would receive, and combine (pool), each of these types of grain from the area falling within the designated area as defined in section 5.2(a) of the Act, and then sell that grain on behalf of the producers. All farmers who sold into a specific pool would share in that pool's surplus, if any, proportionate to the

amount of grain they delivered to the Board. Pool periods for a particular crop year ran from August 1st of the year to July 31st of the following year.

19. Pool account transactions were evidenced by written agreements entered into between the Board, on the one hand, and the farmer on the other (each, a "Contract"). The Contact specifically provided that the producer was entitled to "sharein the distribution of the surplus, if any, arising from the operation of the [Board] with regard to the wheat or barley referred to herein produced in the designated area, sold and delivered to the [Board] during the pool period in which this Certificate was issued pursuant to the terms of the [Act]."

Producer Payment Options ("PPO")

20. PPO payments were provided for under s. 33.01 of the Act.

21. ere a producer had a Contract arising from a pool account transaction (i.e. s. 32 of the Act), and wished to do so, he or she could apply to the Board for early payment of the Contract, in exchange for a fixed payment.

22. Upon accepting a PPO payment, a producer surrendered their claim to any surplus that might accrue at the end of a crop year from that pool account in exchange for the fixed early payment for grain sold and delivered to the Board.

Cash Transaction

23. Cash transactions were provided for under s. 39.1 of the Act.

24. In a cash transaction, a producer was permitted to simply contract to sell grain to the Board at a fixed price, without any entitlement to participate in any surplus in the pools.

25. Regardless of *how* the Board acquired grain, the grain itself would be 'pooled' in the appropriate pool account for sale to the market along with all other grain of the same type; produced in the designated area, and delivered by producers to the Board.

The Contingency Fund and the Payment to the Pool Participants

Contingency Fund

26. In respect of both PPO payment and cash transaction contracts, a farmer relinquished any claim to a share in any surplus generated in respect of the sale of his or her grain over and above the fixed amount that he, she or it had contracted to accept.

27. Under the Act, all producers who sold under any of the Board's pooling accounts and held certificates issued during a pool period were entitled to a proportionate share of any surplus generated within each pool account in respect of the sale of their grain sold and delivered to the Board, together with the proceeds of certain credit sales made during that pool period.

28. However, because early (PPO) payment or cash transaction contracts carried a potential risk of loss to the Board (i.e., if the price it paid on an early payment to a producer exceeded the price which it sold the grain at market), the Act authorized the creation a Contingency Fund under s. 6(1)(c.3)(ii) of the Act to "to provide for potential losses

from operations under section 33.01 [early (PPO) payments] or 39.1 [cash transactions]".

29. The Contingency Fund was not a segregated account maintained by the Board. Instead, it was effectively a line-item determined by the Board for the purposes of its annual financial statement.

30. The Act did not provide that profits from the sale of grain sold to the Board pursuant to under (PPO) or cash transaction contracts were required to be placed into the Contingency Fund, but did stipulate that gains on the early (PPO) payments *could* be c edited to the Contingency Fund, and losses on the early (PPO) payments were to be paid out of the Contingency Fund.

31. The Act did not stipulate that gains from the cash transactions were to be placed into the Contingency Fund.

32. The maximum amount that could be credited to the Contingency Fund was set by regulation.

33. In its recent history (i.e, since 2000), the Board would, on occasion, (i) pay amounts from the Contingency Fund back into a pooling account where further amounts being paid into the Contingency Fund would have exceeded the maximum allowed by regulation; and (ii) use money from the pool account to cover losses from the early (PPO) payments or cash transactions where there were insufficient funds in the Contingency Fund.

34. What was not permitted by the Act, and what lies at the heart of this claim, are the decisions and conduct of the Defendants that authorized, directed, carried out, or approved the allocation of proceeds or gains arising from the sale of grain sold and delivered to the Board to the Contingency Fund in amounts far in excess of those required for purposes authorized under Act, and for the improper purpose of providing seed money for the successor corporation to be established, all of which were contrary to s. 6 (l)(c.3)(ii) of the Act

Payment to Producers under the Pool Accounts

35. S ction 33(2) of the Act provided the mechanism for payment to producers with a Contract, i.e., those who were participants in the pool accounts.

36. Section 33(1) of the Act specifically contemplated that in calculating the amount due to the Contract holders, the Board was to start its calculation "as soon as the [Board] receives payment in full for <u>all wheat sold and delivered to it during a pool period</u> and all credit sales of" the wheat in respect of which payment is guaranteed" (emphasis added).

37. In other words, the starting point for the Board's calculation of the producers' entitlement was to consider *all* sales by farmers to the Board, not simply those under the pool accounts.

38. Further, the Act permitted that only certain specified costs or expenditures be deducted from the proceeds from sales made by the Board due to the farmers in the pool

accounts. Those permitted deductions did not include, for instance, all gains made on either the early (PPO) payments or cash transactions.

The Transformation of the Board

39. By the Fall of 2011, the Minister had made public his intention to seek a private purchaser for the Board.

40. In order to fund the transformation of the Board to a privately held entity, the Defendants' engaged in a· course of conduct intended to reduce payments to farmers who had sold and delivered grain to the Board during the Class Period and to increase tne monies in the Contingency Fund. Under subsection 18(1) of the Canadian Wheat Board (Interim Operations) Act, monies remaining in the Contingency Fund on August 1, 2012 could be used with far greater latitude for purposes not permitted at the time of the sale of grain by farmers to the Board than was the case during the class period and for any purpose authorized by the Minister of Agriculture and Food with the concurrence of the Minister of Finance. Money improperly withheld from farmers during the class period in this manner could thereafter be used to fund the transition of the Board to private ownership.

41. To accomplish this plan the Minister, together with his cabinet colleagues, passed Orders in Council in October and December 2011: i) increasing the maximum amount of money that, pursuant to regulation, could be credited to the Contingency Fund by more than 200 per cent, from $60 million to $200 million; and ii) directing the Board to: "credit profits or gains referred to in sections 8, 33.01 and 39.1 of the Canadian

Wheat Board Act to the Contingency Fund established under paragraph 6(1)(c.3) of that Act, unless a different disposition of those profits or gains is required under that Act."

42. In response to this direction from the Minister and without undertaking any analysis to determine whether the increased allocations of such profits or gains were warranted by market factors or permitted by the Act or the regulations, the Board credited money to the Contingency Fund that would otherwise have been paid to producers. The Board also charged transition costs of $5,900,000.00 to the pool accounts without having any authority under the Act or regulations to do so.

Wrongful Allocation to Contingency Fund

43. The Plaintiff pleads that the grain markets in the Crop Years 2010/2011 and 2011/2012 posed no greater risk of potential losses than had been the case in previous years , risk which had adequately been provided for with an amount in the Contingency Fund which was significantly below its $60 million regulatory cap in effect up until October 17, 2011. In fact, no Contingency Fund monies at all were required for permitted purposes during the Class Period.

44. There was therefore no lawful justification for the Minister to increase the maximum amount that could be credited to the Contingency Fund nor to direct profits and gains to be allocated to increase the amount in the Contingency Fund.

45. Similarly, the Plaintiff pleads that no Order in Council or regulation could vary the clear language of s. 6(1)(c.3)(ii) of the Act: at all times, it was unlawful for the Board to

credit momes to the Contingency Fund that were not permissible under the Act, specifically, unless they were required to provide for certain identified and contingent risks.

46. It was not until the Board delivered its annual reports for the 2010/11 and 2011/12 crop years (published in early 2012 and 2013, respectively) that the Class learned that the Board had credited monies to the Contingency Fund to an extent that increased the amount in the Contingency Fund from $21.9 million at the beginning of 2010/11 crop year to $145.2 million at the end of the 2011/12 crop year.

47. T?e result of the Board's wrongful conduct was to re-direct money that was owing to the producers and that they were entitled to under s. 33(1) of the Act, and allocate that money to the Contingency Fund without any lawful authority.

48. In allocating money to the Contingency Fund, the Board did not carry out any analysis as to whether the amount being allocated to the Contingency Fund was required as a hedge against risk.·Rather the Board decided to credit funds to Contingency Fund, not for purposes authorized under the Act, but for the purpose of facilitating the sale of the Board and its transition to a private for profit entreprise..

49. Indeed, on or about October 12, 2011, the Board's Chief Financial Officer, Ms. Brita Chell, stated that monies in the Contingency Fund would be used as "seed money for the new company".

Wrongful Payment of Transition Costs

50. The Board recognized that it would incut costs that arose because of its transformation from a non-share capital corporation under the Act to an entity that would eventually be sold to private interests ("transition costs")

51. Because the Act did not authorize the deduction of transition costs from the pool accounts, the Board understood that it could not lawfully require producers to pay the transition costs. The Board therefore sought, and received, the assurance of the Minister that the HMQ would pay the transition costs.

52. Nevertheless the Board improperly charged $5.9 million in transition costs to the pool accounts, which reduced the amount that was available to producers upon payment of their Contracts during the 2011/2012 Crop Year.

Transition from the Board to G3

53. In April, 2015, HMQ and the Minister completed a transaction by which 50.1% of the Board was sold to G3 Global Grain Group (a joint venture between American and Saudi-Arabian agrifood companies) in exchange for a promise of future investment. The balance of the equity in the Board was held in trust for producers,[2] although G3 Global Grain Group was given the option to repurchase any of the producers interests after seven years.

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[2] On July 31, 2015, Farmers Equity Trust was issued Class B shares in G3 Canada Limited, described as "formerly CWB".

54. While all of terms of the initial sale of the Board to G3 Global Grain Group are not known to the Plaintiff, it is known that the monies in the Contingency Fund as of August 1, 2012, were conveyed as an asset of the Board to G3 Global Grain Group in that transaction.

55. On July 31, 2015, G3 Global Grain Group announced that the Board's assets would be combined with certain other assets to form G3 Canada Limited.

56. The Plaintiff pleads that G3 Canada Limited is in all respects the successor to the Board, and that G3 Canada Limited. publicly describes itself as "formerly CWB". F1:1rther, a press release announcing the creation of G3 Canada Limited . specifically referenced that the transition from to G3 Canada Limited. was simply a "decision to rename CWB and Bunge Canada grain assets".

57. The Plaintiff pleads that G3 Canada Limited. is responsible at law for the acts of the Board as pled in the herein claim.

58. In the alternative, the Plaintiff pleads that G3 Global Grain Group, in acquiring the Board, is responsible for the acts of the Board as pled in the herein claim.

Claim As Against HMQ

59. The Plaintiff pleads that HMQ in enacting the Orders in Council referred to in paragraph 41, and the Minister, in exercising his authority in respect of the Board, including by specifying and directing the amount and sources of monies to be credited to the Contingency Fund, was required to act in accordance with the statutory mandate.

He also had a duty to act in good faith and in a manner consistent with the purposes and objects of the statute and in accordance with the obligations of his public office.

60. The Minister unlawfully authorized, directed or approved that certain monies, including profits and gains resulting from the PPO and cash payment sales, be credited to the Contingency Fund for the impermissible purposes of (1) preventing the return of these funds to the Plaintiff and the Class who were lawfully entitled to them, (2) making the Board a more attractive asset, thereby facilitating the sale of the Board to a third party and (3) to provide seed money for the Boards successor entity or entities: and not for any lawful purpose authorized under the Act.

61. The Minister knew, because of market conditions at that time, that the profits and gains resulting from PPO and cash payment regimes would greatly exceed the cap on the Contingency Fund and would therefore have to be paid to producers who had sold and delivered grain to the Board during the Class Period and elected to share in the pool accounts. Therefore to ensure that such gains would improperly accrue to the benefit of the Board for the purposes set out in the preceding paragraph the Minister unlawfully increased the Contingency Fund cap and directed the Board allocate those profits and gains and other monies to the Fund.

62. By exercising his authority in this manner, the Minister acted in bad faith, for an ulterior and improper purpose, and contrary to the duties of his public office. The Minister knew, or was recklessly indifferent, or wilfully blind to the fact that the following decisions and conduct were improper and unlawful:

a) promulgating regulations that increased the upper limit of funds that could be credited to the Contingency Fund from $60 to $200 million, an increase that was entirely unwarranted and patently unnecessary to cover the risk of potential losses that might be claimed from the Contingency Fund, and that was inconsistent with and contrary to s. 6(1)(c.3)(ii) of the Act;

b) authorizing, directing and/or approving that certain monies, including all profits and gains resulting from operation of the PPO and cash payment regimes, be credited to the Contingency Fund without any consideration of whether such gains were actually required to provide for any reasonable estimate of potential losses from sales under these schemes as required bys. 6(1)(c.3) (ii) of the Act; and

c) entering into an arrangement with private investors which entitled these investors to acquire the Board and its assets, including the entirety of the monies credited to ontingency Fund in consequence of its unlawful actions.

63. In conducting himself in this manner, the Minister had knowledge of, intended or was recklessly indifferent or wilfully blind to the harm his actions would cause to the Plaintiff and the Class by depriving them of monies to which they were lawfully entitled.

64. The decisions and conduct of the Minister in respect of the monies credited to the Contingency Fund were made and taken in bad faith and constituted an outrageous and wanton disregard for both the obligations of his public office and the harm its actions

would cause the Plaintiffs. These actions, as set out above, were so egregious as to warrant an award of punitive damages.

Claims as Against the Board

Breach of Contract

65. The Plaintiff pleads that the certificates provided to him upon his delivery of Grain to the Board were binding contracts at law.

66. The Plaintiff pleads that it was an express term of the Contracts that the Board would comply with the Act, and would pay him his proportionate share of any surplus arising from sales of Grain subject only to lawful deductions permissible under the Act.

67. The Plaintiff pleads the Board breached the Contracts by making deductions from the pool account that were impermissible under the Act, and in particular (i) it allocated amounts from the pool accounts to the Contingency Fund that were excessive and not permitted by statute; and (ii) (as concerns members of the 2011/2012 Crop Year Class only) it charged transition costs to the pool accounts when it had previously indicated that it would not do so, and in breach of the Act and the Contracts.

68. The Plaintiff pleads that the Class' damages , in the aggregate, are equal to the amount that would have been properly paid into the pool accounts during both the 2010/2011 Crop Year and the 2011/2012 Crop Year had there been no unlawful deductions.

Breach of Duty of Good Faith in Contractual Performance

69. It was an implied term of the plaintiffs tontracts with the Board that it would execute its obligations with the Plaintiff, and the Class, in good faith, and without undermining the very obligation that had been contracted for, that is, to return to the producers any surplus recovered in respect of Grain sales in the Crop Year in question.

70. The Plaintiff pleads that the Board breached its duty of good faith to the Class by ignoring its obligations to the producers, and by allocating money to the Contingency Fund that otherwise would have been paid to the pool account Contract holders.

71. The Plaintiff pleads that the Board failed to have appropriate regard to the interests of the Class, preferring instead the interests of a then un-known hypothetical purchaser over the interests of those producers who were reliant on the Board to act in a fair manner in respect of determining the proper accounting of the surplus available under the pool accounts.

Negligence

72. The Plaintiff pleads that the Board owed him and the Class a duty of care at law.

73. The Plaintiff pleads that the terms of the Act established the standard of care which the Board was required to have regard to in dealing with him.

74. The Plaintiff pleads that the Board breached its duty of care to him and the Class by failing to make proper payment under s. 33(1) of the Act, by making impermissible

payments to the Contingency Fund, and by charging transition costs to the pool accounts.

The plaintiff proposes that this action be tried at Winnipeg.

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April • , 2017

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