

File No. CI-17-01-07668

**THE KING'S BENCH  
WINNIPEG CENTRE**

BETWEEN:

**EDWARD ANDREW DENNIS**

Plaintiff,

-and-

**THE ATTORNEY GENERAL OF CANADA and G3 CANADA LIMITED**

Defendants,

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

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**NOTICE OF MOTION OF THE PLAINTIFF  
(Motion for Summary Judgment)  
(Hearing Dates: April 7-8, 2026)**

**F I L E D**  
**-12- 12 2025**

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**Proceedings under the *Class Proceedings Act*, C.C.S.M. c. C.130****NOTICE OF MOTION OF THE PLAINTIFF**

The Plaintiff will make a Motion to the Honourable Justice C.W. Martin on April 7 and 8, 2026 at 9:30 a.m., or as soon after that time as the Motion can be heard, at the Law Courts, 408 York Avenue, Winnipeg, MB R3C 0P9.

**THE MOTION IS FOR:**

- (a) an Order granting the plaintiff summary judgment in favour of the Class,<sup>1</sup> as more particularly described below;
- (b) an Order declaring that the defendant, the Attorney General of Canada (“**Canada**”), is liable to the Class for the tort of misfeasance in public office;

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<sup>1</sup> Defined terms are as set out under a Certification Order dated June 22, 2022 (the “**Certification Order**”) unless otherwise stated.

- (c) an Order declaring that the defendant, G3 Canada Limited (“**G3**”), is liable to the Class for breach of contract;
- (d) an Order granting the plaintiff aggregate damages, or damages, on behalf of the Class in the amount of \$91,128,00 (the “**Damages**”), or such other amount as may be determined by the Court, to be paid by Canada;
- (e) pre-judgment interest on the Damages at the rate of 1.25%, and calculated since August 1, 2012 to the date of Judgment (the “**Interest**”);
- (f) an Order declaring that the Damages and the Interest shall be paid to the Class;
- (g) an Order declaring that the Court shall retain jurisdiction to approve or impose a plan of distribution in respect of any amounts to be paid to the Class; and
- (h) such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**The Canadian Wheat Board**

- (a) for over seventy years, farmers in Western Canada sold wheat for human consumption through the Canadian Wheat Board (“**CWB**”). The CWB was a statutorily incorporated entity, whose rights and capabilities came from its enacting statute, the *Canadian Wheat Board Act* (the “**Act**”);
- (b) in the Spring of 2011, Canada decided to privatize the CWB. This claim takes no issue with the legitimacy of Canada’s decision to privatize the CWB;

- (c) however, in the lead-up to the privatization of the CWB, Canada acted unlawfully and contrary to statutory requirements in place at the time. Canada also directed the CWB to act in a similarly unlawful manner;
- (d) the defendants' unlawful actions caused damages to the Class;

### **The Unlawful Use of the Contingency Fund**

- (e) from 1935 to 1997, farmers contracted with the CWB that the grain they sold would be pooled with other grain of similar region and type, with the farmers in a pool being paid as the grain was sold. Farmers bore the risk of fluctuations in grain sale price over a crop year;
- (f) in 1998, amendments to the Act added options for farmers to sell their grain to the CWB without using a pool account. Through non-pool programs, farmers could now sell their grain to the CWB for a fixed price and the CWB, not the farmer, would bear the risk or reap the benefit of fluctuations in the grain trading market;
- (g) the Act, both prior to and after the enactment of these non-pool programs, stipulated that all revenue from the sale of wheat went to the pool farmers, unless provisions in the Act directed otherwise;
- (h) the CWB's ability to take risk on trading grain led to the statutory enactment of a "contingency fund". The contingency fund was a budgeting process by which funds

could be sheltered from the pool farmers, retained by the CWB, and used to guard against future losses from grain trading price fluctuations;

- (i) the permitted statutory purpose of the contingency fund was to provide a mechanism for the CWB to guard against the risk of losses in grain trading arising from the non-pool programs. The contingency fund was not, and was never intended to be, a repository where *all* gains on trading were sheltered;
- (j) Parliament authorized the establishment of a contingency fund only for specific statutory purposes, and further specified that the size of the contingency would be capped by regulation;
- (k) in the five years prior to October 18, 2011, the contingency fund cap was \$60,000,000, and before that it was \$50,000,000. The existence of the cap, contemplated in the Act itself, was a clear instruction to the CWB that the contingency fund was not a repository for all gains on trading, and that any gains in excess of the cap would be paid to the pool;
- (l) the contingency fund and the pool accounts were not water-tight compartments. At times, when the contingency fund had a negative balance, the pool farmers covered trading losses. At times, when trading gains exceeded the contingency fund cap, the gains were paid out to farmers who had sold grain into the pools;
- (m) equally, the CWB, prior to privatization, had another refuge against risk: it could obtain from Canada a statutory guarantee in respect of amounts owing to the CWB from the sale of grain on credit;

- (n) yet with privatization on the horizon, Canada explicitly recognized that a purchaser of the CWB would be acquiring an asset without cash reserves, and without Canada's ability to guarantee grain sold on credit. The putative purchaser would acquire the operational assets of the CWB, but little else;
- (o) Canada identified the contingency fund as an answer to its future purchaser's problems: if the contingency fund could be used to shelter funds, it could become 'retained earnings' for the corporation, sold as part of the purchase price to the CWB's new owner;
- (p) Canada took steps, and instructed the CWB to take steps, to more than triple the size of the contingency fund on the eve of privatization, and line the contingency fund with cash that otherwise would have been paid to farmers in the pool accounts;
- (q) Canada did not amend the Act to modify or expand the permitted purposes of the contingency fund. It simply used the contingency fund as a *de facto* 'retained earnings' account for the corporation, ignoring the statutory purposes of the fund as stipulated in the Act, and directing the CWB to do the same;
- (r) most glaringly, Canada understood that the longstanding \$60,000,000 cap on the contingency fund was an impediment to creating cash reserves for the new owner of the CWB. Canada solved this problem by using orders-in-council and regulations to increase the cap on the contingency fund, and then directing the CWB to place all gains on trading into the contingency fund;

- (s) while the CWB had previously requested a more modest increase in the contingency fund—from \$60,000,000 to \$90,000,000—Canada, on its own volition and without request, on October 18, 2011, increased the cap on the contingency fund to \$100,000,000, and directed the CWB to place all gains from the trading program into the contingency fund. The Act, which prescribed the permitted uses of the contingency fund, was not amended;
- (t) then less than a month later, Canada did it again;
- (u) on November 14, 2011, still with no request from the CWB, Canada increased the cap on the contingency fund to \$200,000,000, more than tripling the size of the fund in less than a month on the eve of privatization, while directing the CWB to place all gains from trading into the newly enlarged contingency fund;
- (v) all parties agree that these decisions were Canada's alone;
- (w) the result was as intended: the CWB did no analysis in terms of the actual amount needed to guard against contingent trading risk (*i.e.* the permitted statutory purpose for the contingency fund), and simply deposited all trading gains into the contingency fund, to the benefit of the new purchaser;
- (x) Canada then required the pool farmers to pay \$5,880,000 in transition costs. These were costs the CWB properly categorized as arising from privatization, characterizing them as “restructuring expenses” in their annual reports, but Canada refused to pay the costs despite previous commitments to cover costs associated with the privatization. As a result of Canada's refusal to pay the transition costs,

these amounts were charged to pool farmers, in contravention of provisions in the Act that limit the charges that may be made to the pool;

### **Summary Judgment against the CWB**

- (y) the Class' claim against the CWB is for breach of contract;
- (z) each class member entered into an agreement with the CWB pursuant to which they would be paid for the delivery of grain. The relationship was contractual, in that the farmers could decide whether to transact with the CWB, or not. When farmers did not deliver the grain they promised to sell to the CWB, they were sued for breach of contract;
- (aa) for years, and until this proceeding, farmers and the CWB referred to their relationship as contractual. This is because it was;
- (bb) the provisions of the Act were understood to form the terms of the contractual relationship between the parties. In contracting with Class Members for the purchase of their grain, the CWB committed itself to comply with the provisions of the Act for the distribution of grain proceeds. The provisions of the Act were incorporated as implied terms, and in some instances express terms, of the contract between the CWB and the Class;
- (cc) when the CWB followed Canada's direction to divert all trading gains to the newly enlarged contingency fund, rather than paying them out to the pool as the Act required, it breached its contract with Class Members. It used the contingency fund for purposes contrary to its statutory purpose, and in so doing, the money that would

otherwise have been paid to the Class went to the next owner of the CWB. The CWB's failure to distribute grain proceeds in accordance with the Act, as a result of Canada's unlawful directions, breached the contract the CWB made with Class Members;

- (dd) equally, the Class suffered damage, being the amounts that were wrongfully transferred to the contingency fund, and would have been paid to the Class but for the wrongful transfers to the contingency fund;

### **Summary Judgment against Canada**

- (ee) the claim against Canada is for misfeasance in public office, arising from the regulations and orders in council that increased the contingency fund from \$60,000,000 to \$200,000,000 on the eve of privatization, while at the same time directing all gains to be transferred to the newly enlarged fund;
- (ff) at all material times, Canada was aware that:
  - (i) the purpose of the contingency fund was defined by statute and was limited to guarding against risk of losses from trading;<sup>2</sup>
  - (ii) the contingency fund cap had for many years been set at \$60,000,000 which was an amount sufficient to permit the CWB to manage its risk;

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<sup>2</sup> While the Act also permitted the contingency fund to be used to guarantee adjustments to initial payments to pool producers, the parties agree that the contingency fund was never used for that purpose.

- (iii) the CWB never requested an increase to the contingency fund cap beyond \$90,000,000;
- (iv) the structure of the Act was such that the CWB had no retained earnings account and that, unless the Act dictated otherwise, all gains had to be paid to the pool farmers; and
- (v) all gains in excess of the prior contingency fund cap of \$60,000,000 would, in fact, have been paid to the pool farmers;
- (gg) in unilaterally increasing the contingency fund cap to \$200,000,000, and directing the CWB to divert all gains to the contingency fund, Canada knowingly circumvented the disposition of funds mandated by the Act;
- (hh) in its use of the contingency fund as a means to shelter proceeds from pool farmers, Canada ignored the permitted statutory purposes of the contingency fund;
- (ii) the CWB did not ask Canada to increase the contingency fund to \$100,000,000. Yet it did;
- (jj) the CWB did not ask Canada to increase the contingency fund to \$200,000,000. Yet it did;
- (kk) when Canada unilaterally increased the contingency fund to \$200,000,000, less than a month after the initial increase to \$100,000,000, it offered no new or separate rationale, because there was none. The stated reason for the increase, like the first

increase, was to shelter from Class Members proceeds that the Act otherwise required be paid to them;

- (ll) Canada acted unlawfully. Canada acted with knowledge that it had no power to direct the CWB to use the contingency fund for purposes contrary to the Act, and yet it did precisely that. Canada did so with knowledge that its direction to the CWB was likely to injure the Class, who otherwise would have received the funds later placed into the contingency fund;
- (mm) equally, Canada's decision to more than triple the size of the contingency fund was unlawful in that it was for an ulterior purpose, inconsistent with the scheme and objects of the Act and the legislated purpose of the contingency fund;
- (nn) these decisions were taken for reasons inconsistent with the scheme and objects of the Act, and with knowledge that these actions would harm the Class, and benefit the future purchaser of the CWB at the Class' expense;
- (oo) Canada is liable for the tort of misfeasance in public office;

### **Transition Costs**

- (pp) in light of the policy decision to privatize the CWB, additional expenditures relating to the privatization were required, which otherwise would not have existed;
- (qq) together with KPMG auditors, the CWB identified the expected costs associated with the transition. It then wrote to Canada requesting Canada's commitment to

cover those costs, as they were not part of the normal operations of the pool for the 2011-2012 crop year;

- (rr) Canada provided the requested assurance;
- (ss) in the 2011-2012 crop year, based on assurances from Canada, the CWB incurred \$183.2 million in costs relating to the transition. Canada reimbursed the CWB for \$177.3 million of those costs, but refused to reimburse the CWB for \$5.9 million in retention payments paid to key employees to assist with the transition. These retention payments were properly classified as “restructuring expenses” in the CWB’s annual reports, as they were expenses necessitated by the transition, and were part of the projected transition costs the CWB communicated to Canada prior to receiving its commitment;
- (tt) because of Canada’s refusal to reimburse the CWB for \$5.9 million in restructuring expenses, reneging on its earlier commitment, the CWB charged this amount – unrelated to the normal operation of the pools – to pool farmers. This was a breach of the contract between the CWB and the Class;
- (uu) upon purchasing Class Members’ grain, the CWB contractually committed to distribute proceeds in accordance with the provisions of the Act, which required distribution of all gains less statutorily permitted expenses. Given that the “restructuring expenses” were not statutorily permitted expenses pursuant to the Act, the charging of the \$5.9 million to the pool accounts breached the CWB’s contractual obligations to Class Members;

- (vv) that Canada breached its own commitment to the CWB did not permit the CWB to, in turn, breach its contract with the Class;
- (ww) Canada also refused to reimburse the CWB knowing that these expenses were not authorized to be charged to pool participants under the Act, and that their refusal to reimburse would result in the expenses being unlawfully charged to pool participants in violation of the Act. In this way, Canada is liable for misfeasance in public office in relation to the transition costs: it committed a knowing unlawful act with knowledge that its actions would harm to the Class;

### **Damages**

- (xx) the parties have agreed upon the measure of damage based on the following potential liability findings:
  - (i) if either Canada or G3 is liable as a result of the combined increase in the contingency fund cap from \$60,000,000 to \$200,000,000, and/or the placement of monies in the contingency fund above the prior cap of \$60,000,000, then damages shall be: (a) \$43,551,000 for pool participants in 2010/2011; and (b) \$41,697,000 for pool participants in 2011/2012;
  - (ii) if either Canada or G3 is liable as a result only of the second increase in the contingency fund cap from \$100,000,000 to \$200,000,000, and/or the placement of monies in the contingency fund above the prior cap of \$100,000,000, then damages shall be: (a) \$3,551,000 for pool participants in 2010/2011; and (b) \$41,697,000 for pool participants in 2011/2012;

- (iii) if either Canada or G3 is liable as a result of the increase in the contingency fund cap above \$90,000,000, being the cap requested by the CWB, and/or the placement of monies in the contingency fund above \$90,000,000, then damages shall be: (a) \$13,551,000 for pool participants in 2010/2011; and (b) \$41,697,000 for pool participants in 2011/2012;
- (yy) if either Canada or G3 is liable to the Class as a result of unpaid transition costs, then agreed damages to the Class are \$5,880,000;

**Other**

- (zz) in light of the foregoing, and the agreed statement of facts and agreed book of documents, there is no genuine issue requiring a trial with respect to the claims against the Canada and G3;
- (aaa) *Court of King's Bench Rules*, Man Reg 553/88, rr 1.04 (1), 1.04(1.1), 20, and 50.04; and
- (bbb) such further and other grounds as the lawyers may advise, and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) the Agreed Statement of Facts, filed November 14, 2025;
- (b) the Agreed Book of Documents, filed November 14, 2025; and
- (c) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 11, 2025

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