LAW360® Canada

Law360 Canada | 2 Sheppard Avenue East, Suite 1900 | North York, ON M2N 5Y7 | www.law360.ca
Phone: (800) 668-6481 | customerservice@lexisnexis.ca

Manitoba court dismisses $90M last-of-its-kind wheat pooling class action

By **Anosha Khan**

Law360 Canada (November 6, 2026, 4:51 PM EST) -- The Manitoba Court of King's Bench has dismissed what it described as the final class action relating to Bill C-18, the *Marketing Freedom for Grain Farmers Act*, which also encompassed the *Canadian Wheat Board (Interim Operations) Act*.

In doing so, the court rejected grain producers' challenge to how the wheat board used non-pool marketing gains and pool funds before its privatization.

The claims were for misfeasance in public office and breach of contract. In 2011, the federal government eliminated the Canadian Wheat Board's monopoly, or "single desk," and transformed it into a private grain entity. The change "spurred a host of litigation," Justice Chris Martin wrote in *Dennis v. Canada (Attorney General)*, 2026 MBKB 140.

The plaintiff filed the action on behalf of grain producers who sold grain through the board's marketing pool during the last two years it operated as a monopoly. The class claimed damages of "up to $85.3 million of funds generated by non-pool marketing during the Class Period that the [board] allocated to a non-pool marketing contingency fund, and $5.88 million for a distinct claim in contract."

Grain delivered by producers was pooled for sale by grain type. They would receive an initial payment for the portion of the value the grain was expected to be marketed at, along with interim payments of any increases. Producers would receive surplus financial gain, but if the pool suffered a loss, the government paid it.

Non-pool would receive a fixed price upon grain delivery, higher than the initial price for pool marketing. They did not receive additional payment and were not entitled to surplus. The government did not pay any program losses; the board itself did.

A contingency fund was established to cover losses for non-pool and other extraneous matters. Gains from non-pool programs were credited to the contingency for potential current or future losses tied to marketing risks.

In 2011, the board requested the minister increase the contingency fund limit from $60 million to $90 million based on increased participation in non-pool programs. Later the same year, the minister recommended to cabinet that the fund cap be increased to $100 million, and then $200 million. The class alleged that there was no such risk to justify the increase.

It was also alleged that the minister committed misfeasance by doing this, and for directing the board to credit the contingency fund. They claimed that the board breached contractual obligations by crediting the fund and by paying from pool accounts some costs notionally related to its transition to a private grain entity, as non-pool accounts should not benefit over pool accounts, nor should they be used to capitalize the privatization of the board.

In its decision, issued Oct. 7, the court noted that previously, "the contingency fund was funded entirely with gains from the non-pool marketing programs." Further, the rationale showed that the previous limit was inadequate.

It found that the minister's actions were to carry the board financially unimpaired and future-oriented to lay the new non-monopoly. This was within his proper authority.

The Attorney General of Canada was the defendant for the then-agricultural minister and the board. G3 Canada Ltd. was defendant because it became the successor corporation to the board before this claim was filed in 2017.



Lawrence Thacker, Lenczner Slaght LLP

Counsel for G3, Lawrence Thacker of Lenczner Slaght LLP, had been involved in the cases since litigation started 15 years ago. He said this case arose after a federal class action that was abandoned in the middle of a certification motion. Many of the claims previously brought in other cases were dismissed.

"What is significant about this decision is that it makes it very clear that when you plead a contract, you have to prove that there is a contract," he said.

He stated that what the class tried to do was take the grain receipt typically given to farmers when they delivered their grain and attempted to convert it or convince the court that it was a contract, in which case, there would be a contract made every time a farmer deposited some grain.

The defence argued that it was not a contract, but rather a farmer electing to participate in a grain marketing scheme under the regime. If farmers were marketing grain for human consumption, it was mandatory that they sell it through the board. The conduct by the board was not only permitted, but also mandatory under the governing legislation, so there was no liability.

They also argued that the result would be a windfall for the class in part because they sought to "gain from grain they did not sell, through programs they did not participate in, while bearing none of the potential downside financial risks."

The court found that the farmers were not making a contract but were participating in a statutory regime that was mandatory at the time. It was the only way, back then, to sell grain for human consumption. It also found that the board did not wrongly credit the fund.

The class were not bargaining or negotiating the price (this was already set by the board, as were terms of grain deposit) or time of delivery, or entering into a contract to sell their grain. There could not be a breach of contract claim without a contract.

Thacker said this is significant as the court will not allow contract law to be used to recharacterize a statutory relationship as one of contract or superimpose it as such. The elements of contract are offer, acceptance, consideration and flowing benefit, which did not occur in the case at hand; the class were unable to specify terms.

The only choice the class had was whether to sell their grain for consumption and which grain facility to drop it at. He also said that the contract argument was the only cause of action remaining out of 20, 19 of which were previously dismissed in the Federal Court.

Further, he noted that generally in agriculture, the relationship between the farmers and their relevant framework or regime is specific to each statute and varies accordingly. There would be no contract under those statutes unless it explicitly states so.

"What the plaintiffs tried to do is effectively sue the [board] for what they said was a breach of a statute, but there's no cause of action known to law for that," Thacker said. "So they tried to make it a contract, tried to recast it as a contract, and the court rejected that."

"There are some statutes that say if somebody breaches the statute, whether it's the government or someone else, there is a right of action," he added. "But the right of action exists because the statute says it, not under the common law."

The court additionally found that there was no misfeasance in public offence, noting its fairly high threshold to meet. Based on the evidence, there was none that indicated that the minister believed they were engaging in unlawful conduct.

It stated that crediting the contingency fund because of gains in the non-pool programs was consistent with how the board's governing legislation had been administered by the board. The minister was entitled to increase the fund for market risk (evidence also supported the increase) and to bring policy changes via C-18.

The fund was to be used to backstop the non-pool producer payment options offered by the board. The court found that was the exact statutory purpose outlined in law. It was not intended by the government or the board's management that producers in pool marketing would receive financial gains from non-pool marketing.

Thacker said there's not a lot of case law where private citizens sue the government for misfeasance in public office. For future litigants, they may refer to this case for more clarity on what they would have to prove to be successful on this cause of action and add certainty and predictability into their claims.

The class also posited that the board asked the government to pay transition costs, but Canada refused to pay the $5.88 million. This was not incurred due to normal pool operation but was necessitated by the privatization transition. Upon refusal, the board paid the charges from the pool funds.

The court found the board conducted itself as required by legislation, so it could not conclude that these funds were wrongly debited from the pool accounts.

Alternatively, if there was a contract, the board did not breach it because it had not been proven that crediting the contingency fund was wrong, that the board failed to act in good faith or that transition costs were wrongly debited. The board did not cause a loss to the class.

The claim was dismissed and the defendants were granted summary judgment.

Thacker noted that the class still have their right to appeal but would not be able to start a new claim because the limitation period has expired. He noted that this case was brought in Manitoba, after other provincial actions and the federal action, because its six-year limitation period had not expired at the time.

Class counsel were Jordan Goldblatt of Adair Goldblatt Bieber LLP and Louis Century and Jamie Shilton of Goldblatt Partners LLP.

Goldblatt said they are reviewing the decision with their client and were not otherwise prepared to comment at this point.

Counsel for G3 were also Brendan Morrison (lead), Jim Lepore and Madeleine Andrew-Gee.

Counsel for Canada were John Faulhammer and Keith McCullough.

If you have information, story ideas or news tips for Law360 Canada on business-related law and litigation, including class actions, please contact Anosha Khan at anosha.khan@lexisnexis.ca or 905-415-5838.

All Content © 2003-2026, Law360 Canada