Federal Court  Cour fédérale

Date: 20140312

Docket: T-1477-10

Citation: 2014 FC 243

Toronto, Ontario, March 12, 2014

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

CARGILL LIMITED, LOUIS DREYFUS CANADA LTD., PARRISH & HEIMBECKER LIMITED, PATERSON GLOBALFOODS INC. RICHARDSON INTERNATIONAL LIMITED, WEYBURN INLAND TERMINAL LTD., VITERRA INC., AND WESTERN GRAIN ELEVATOR ASSOCIATION

Applicants

and

THE ATTORNEY GENERAL OF CANADA AND THE CANADIAN GRAIN COMMISSION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] Cargill Limited, Louis Dreyfus Canada Ltd., Parrish & Heimbecker Limited, Paterson Globalfoods Inc., Richardson International Limited, Weyburn Inland Terminal Ltd., Viterra Inc., and Western Grain Elevator Association (collectively the "Applicants") bring this application for judicial review to challenge an Order made by the Canada Grain Commission (the "Commission") on August 1st, 2010, that is, Order Number 2010-34 (the "Order"). The effect of that Order is to fix the maximum allowable moisture shrinkage allowance elevator operators can calculate when drying grain.

[2] The Commission is represented in this proceeding by the Attorney General of Canada (collectively the "Respondents") pursuant to Rule 303 of the *Federal Court Rules*, SOR 198-106 (the "Rules").

[3] The Applicants challenge the Order on the grounds that it is *ultra vires* the regulation-making authority granted to the Commission by the *Canada Grain Act*, R.S.C. 1985, c. G-10 (the "Act").

II. PROCEDURAL HISTORY AND PRELIMINARY PROCEDURAL ISSUES

[4] This proceeding was commenced by a notice of application filed on September 15, 2010. On February 11th, 2011, the Applicants commenced an application for judicial review challenging section 30 of the *Canada Grain Regulations*, C.R.C. c. 889 (the "Regulations"), in case number T-239-11. The Applicants filed a motion on May 25th, 2011, seeking to have the two applications for judicial review heard together or one immediately after the other.

[5] The order of Prothonotary Lafrenière, dated June 23rd, 2011, provided that there was an insufficient commonality of issues to consolidate the applications for judicial review and dismissed the motion. An appeal from that order was dismissed by Justice Bédard of the Federal Court on September 19th, 2011. By judgment dated June 11, 2012, Justice Noël of the Federal Court of Appeal allowed the appeal and ordered that the within matter be heard directly before the hearing of case number T-239-11.

[6] At the commencement of the hearing of the within matter on September 10, 2013, counsel for the Applicants brought an informal motion, without notice to the Respondents or to the Court, that the hearing in T-239-11 proceed first, contrary to the decision of the Federal Court of Appeal.

[7] Counsel for the Respondents objected to the motion and following submissions from both parties, an Order was made that this application would proceed first.

[8] The Applicants brought another informal motion at the commencement of the hearing, seeking to amend the notice of application and to introduce new grounds of attack and new arguments. This step by the Applicants was apparently in response to objections raised by the Respondents in their Memorandum of Fact and Law filed as part of their Application Record.

[9] In seeking to amend the notice of application, the Applicants wanted to challenge the *vires* of subsection 38.1(1) of the Regulations, as well as Commission Orders 2011-92 and 2012-97. These were not included in the notice of application that was filed on September 15, 2010.

[10] The Respondents argued that the Applicants were improperly trying to expand the ambit of their notice of application through their written arguments.

[11] The Applicants did not file a formal notice of motion nor did they seek leave to amend their notice of application prior to the hearing.

[12] The Respondents argued that the judicial review process established by the *Federal Courts Act*, R.S.C. 1985, c. F-7 and the Rules provides that only a single decision or enactment may be the subject of an application for judicial review; see section 18.1 of the *Federal Courts Act* and Rule 302 of the Rules.

[13] Further, the Respondents submitted that of the five issues raised in the memorandum of fact and law as to why Order 2010-34 is *ultra vires*, three issues were raised for the first time in that memorandum, that is arguments about unlawful sub-delegation pursuant to subsection 38.1 of the Regulations, the unauthorized exemption power found in the Order and the failure to comply with the *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

[14] These three grounds were not set out in the Notice of Application nor in the affidavits filed by the Applicants. Accordingly, the Respondents did not address these issues in their responding affidavits, and submitted that the arguments advanced by the Applicants are improperly before the Court and should not be considered.

[15] The Applicants argued that the jurisprudence allows an amendment of pleadings at any time, relying on the decisions in *Minister of National Revenue v. Canderel Ltd.* (1993), 157 N.R. 380 and *Meyer v. Canada* (1985), 62 N.R. 70.

[16] The motion was dismissed, principally on the basis that it was untimely and without notice to the Court. The Respondents received notice about a proposed amendment only by letter on Friday September 6th, 2013. The Applicants were on notice, upon receipt of the Respondents' memorandum of fact and law, that the Respondents opposed any attempt to expand the grounds for judicial review and any arguments related to proposed new grounds. The Respondents' application record was filed on November 21st, 2012.

[17] If the Applicants had wanted to introduce new grounds, they had the option either to bring a timely motion or file one or more notices of application for judicial review, then seeking an order to have all applications heard together. The lateness of the motion was the determining factor for refusing the motion. In the exercise of my discretion, I dismissed the Applicants' motion to amend their notice of application.

[18] As well, the Respondents objected to parts of the affidavits of Ms. Carter and Mr. McKerchar, filed by the Applicants, that they offended Rule 81 of the Rules because they contain material that is outside the personal knowledge of the deponents and is hearsay and opinion evidence that they are not qualified to give. Relying on the decision in *P.S. Partsource Inc. v. Canadian Tire Corp.* (2001), 267 N.R. 135 at paragraphs 13 to 14, the Respondents submit that there is no common law exception to the prohibition against hearsay evidence that would allow

consideration of this evidence. In particular, the Respondents objected to the inclusion by Ms. Carter and Mr. McKerchar of certain articles that they did not write as exhibits to their affidavits. The Respondents argued that the articles and summaries in the affidavits are inadmissible hearsay evidence. Further, the opinions expressed in the articles are inadmissible because they have not been submitted by a Court - approved expert.

[19] For these reasons, the Respondents argue that paragraphs 17, 19, 25-29 and the last three sentences of paragraph 22, as well as exhibits E, H, and I to O of Ms. Carter's affidavit are inadmissible and should not be considered. As well, paragraphs 8 and 9 and exhibits A and B of Mr. McKerchar's affidavit are similarly inadmissible and should not be considered.

[20] In the result, I agree with the submissions of the Respondents about the impropriety of certain parts of the affidavits of Ms. Carter and Mr. McKerchar.

[21] Paragraphs 17, 19, 25-29, the last three sentences of paragraph 22, and exhibits E, H, and I to O of the Carter affidavit are impermissible hearsay evidence and will not be considered.

[22] Likewise paragraphs 8 and 9 of the McKerchar affidavit, together with exhibits A and B, are impermissible hearsay evidence and have not been considered.

III. BACKGROUND

[23] The Applicants, Cargill Limited, Louis Dreyfus Canada Ltd., Parrish & Heimbecker Limited, Paterson Globalfoods Inc., Richardson International Limited, Weyburn Inland Terminal Ltd., and Viterra Inc., operate grain elevators throughout western Canada. The Applicant Western Grain Elevator Association is an association whose members are the other Applicants.

[24] The evidence in this matter consists of affidavits filed on behalf of the Applicants and the Respondents, respectively, including the exhibits attached to those affidavits. The Applicants filed the affidavits of Mr. Wade Sobkowich, Ms. Brenda Carter and of Mr. James B. McKerchar. Ms. Carter and Mr. McKerchar were cross-examined on their affidavits and the transcripts of those cross-examinations are included as part of the Respondents' Application Record.

[25] The Respondents filed the affidavits of Ms. Catherine Jaworski and Mr. Blaine Timlick. These deponents were cross-examined and the transcripts of those cross-examinations form part of the Applicants' Application Record.

[26] Mr. Sobkowich is the Executive Director of the Western Grain Elevator Association. In his affidavit, he describes the constitution of the Western Grain Elevator Association and its mandate. He also describes the process, from the perspective of the Western Grain Elevator Association, leading to the issuance of the Order at issue in this proceeding. He refers to communications between the Western Grain Elevator Association and the Commission relating to changes in the percentage used to calculate moisture shrinkage and the Association's opposition to those changes.

[27] Ms. Carter is the Manager of the Grain Quality Department of the Applicant, Cargill Limited. In her affidavit she provides an overview of the grain industry in Canada and of the operations of Cargill Limited. Her evidence relates to the drying of grain and the calculation of moisture content. She addresses the negative effects the Order will have on Cargill, that is due to the inherent unpredictability of the drying process and margins of error in the accuracy of the necessary equipment and the timing of the measurement of the moisture content of the grain. She attached as exhibits to her affidavit a number of documents from the Commission and elsewhere supporting her views, as well as a number of articles from academic journals related to the study of moisture content rebound.

[28] Mr. McKerchar is the General Superintendent of the Applicant, Parrish and Heimbecker Limited. He is a professional agrologist. He provides an overview of the grain industry in Canada and of the operation of Parrish and Heimbecker. He largely endorses the evidence of Ms. Carter and Mr. Sobkowich. He too describes the process of grain drying and the difficulties that the Applicants will face in complying with the Order. He also describes the process leading up to the issuance of the Order and the Applicant's opposition to it. He attached, as exhibits, certain documents relating to moisture rebound in the drying process.

[29] Ms. Jaworski is the Manager, Policy, Planning and Produce Protection, with the Commission. In her affidavit she responds to the evidence of Ms. Carter concerning the equipment used to measure moisture content. Otherwise, she describes the regulatory regime governing the grain industry in Canada, including the Commission's role, particularly with respect to the drying of

grain and measurement of moisture content. She also described the process, from the Commission's perspective, leading up to the issuance of the Order.

[30] Mr. Timlick is the Program Manager, Infestation Control and Sanitation, with the Commission. His affidavit addresses the moisture content and drying of grain and shrinkage resulting from the drying process.

[31] The facts set out below are drawn from the affidavits filed by the parties.

[32] The moisture content of grain determines the grade and quality of the grain. The Commission has established the maximum allowable moisture content for each class of grain. The higher the moisture content of the grain, the less valuable it is.

[33] Pursuant to the Act, an elevator operator must weigh grain received from a grain producer when it is delivered to them; see subsection 61(a) of the Act. The grain producers may request, upon delivery, that the grain elevator dry the grain for them so that it may be assigned a higher grade by the Commission and therefore increase in value. When grain is dried, it loses moisture content and therefore loses weight. This decrease in the weight of the grain is referred to as "moisture shrinkage". This is not to be confused with "comprehensive shrinkage", which is the loss in weight of grain through the handling of the grain.

[34] Because the elevator operator is to forward the same grade and quantity of grain to the terminal that is received from the producer, when the grain producer requests the grain be dried, the

elevator operator must calculate the moisture shrinkage that will occur during drying. The elevator operator then deducts this from the amount received from the grain producer; this is known as a "moisture shrinkage allowance". The anticipated weight of the dried grain, and the grade that is to be achieved through drying, is recorded on the receipt. The grain producer is paid according to the weight recorded on the receipt.

[35] The Commission conducts an official inspection and weighing of the grain at the time it leaves the elevator for transfer to the terminal or transfer elevator. The Commission also measures the moisture content of the grain to determine its grade, and if it is above the maximum moisture content of the grain described on the receipt, the elevator operator is penalized and the grain is downgraded.

[36] The process of drying grain is very difficult and involves a variety of unpredictable variables. As such, it is difficult to dry the grain to a precise moisture content. The current technology for measuring moisture content is not absolutely precise. Further, when dried the grain is subject to "moisture rebound", which complicates the process of measuring its moisture content. Moisture rebound occurs because when dried, the moisture is removed from the outer layer of the grain kernels, but remains in the inner core of the kernel. It takes about 24 hours for the moisture content to spread throughout the kernel and reach what is known as equilibrium. As the equipment measuring the moisture content of grain bases its reading on the moisture level of the outside of the grain kernel, if measured too soon after drying, it will give an inaccurate reading. This can cause problems for the elevator operator down the road when the grain is sent to the terminal or transfer elevator and measured by the Commission.

[37] To allow for these variables, the Commission allows elevator operators a margin of error of a certain percent when measuring the moisture content of the grain and determining its grade. The Commission also fixes a maximum moisture shrinkage allowance that may be made by elevator operators when a grain producer requests that grain be dried. To do so, it has prescribed a formula to be used to calculate moisture shrinkage, part of which is the minimum moisture content, presented as a percentage that may be used. The Commission had fixed this percentage as 1.1% below the moisture content required for what is known as "tough grade" grain.

[38] On July 20th, 2009 the Commission issued a proposal to lower the percentage used to calculate the moisture shrinkage allowance to 0.1% lower than the moisture content required for tough grade grain. This would have the effect of lowering the maximum moisture shrinkage allowance.

[39] The Western Grain Elevator Association responded to this proposal, objecting that the variance in moisture rebound and unpredictability of the drying process made this proposal risky for their members in that it could result in an increased chance of their grain being downgraded when it leaves the elevator.

[40] On February 8th, 2010 the Commission advised the Western Grain Elevator Association that it would proceed with the change in the percentage. It changed the percentage through the Order, which was in effect from August 1st, 2010 until July 31st, 2011.

[41] Identical orders continuing the lower percentage were issued in the form of Order No. 2011-92, which was in effect from August 1st, 2011 until July 31st, 2012, and Order No. 2012-97, which was in effect from August 1st, 2012 until July 31st, 2013. As noted above, those orders are beyond the scope of this application and will not be considered.

[42] On September 15th, 2010 the Applicant commenced this application challenging the *vires* of the Order and seeking a stay of the Order pending determination of this judicial review, declaratory relief, an order of *certiorari* quashing or setting aside the order, and costs on a solicitor-client basis pursuant to the Rules. I note that there is nothing in the record to show that the Applicants sought an interim stay of the Order.

IV. ISSUES

[43] The within application raises two substantive issues, as follow:

i) Was the Order issued by the Commission without statutory authority and consequently, *ultra vires* subsection 118(h) of the Act?

ii) If the Commission had the authority to make the Order, did it act outside that authority such that the Order is *ultra vires*?

V. SUBMISSIONS

A. The Applicants

[44] The Applicants argue that the Commission purported to make the Order pursuant to the general authority conferred by subsection 118(h) of the Act that allows the Commission to make orders constituting directives to the trade.

[45] They argue that subsection 118(h) does not authorize the Commission to make the Order and the specific provisions of the Act, requiring a regulation, apply over any general authority to make orders constituting directives to the trade, relying in this regard on the decision in *North Coast Air Services Ltd.. et al. v. Canadian Transport Commission*, [1968] S.C.R. 940 at paragraphs 11-16 and 21-26.

[46] Next the Applicants submit that if the Commission was authorized to make the Order, in any event, the Order is *ultra vires* because the Commission acted beyond its authority by failing to ask itself the right question, failing to consider matters that it should have taken into account and by imposing a requirement with which the elevator operators cannot comply.

[47] They submit that the Commission, as a statutory body, must consider the correct issue and exercise due diligence to identify relevant information for the proper discharge of its statutory duties. It cannot rely on inaccurate, subjective or arbitrary considerations, relying on the decision in *Montreal (City) v. Montreal Port Authority*, [2010], 1 S.C.R. 427 at paragraph 32-33 and 38.

[48] The Applicants argue that when the Commission issued the Order, it stated that there was no statistical or technical data to support the requirements or the Order. According to the Applicants, this is contrary to the Commission's stated commitment to science-based grain quality and quantity assurance systems.

[49] Further, the Applicants submit that the Commission failed to consider that the equipment it used to measure compliance with the Order's requirements cannot measure to within the percentage required by the Order.

[50] The Applicants argue that the Commission has no authority under the Act to make an Order with which the elevator operators cannot comply and which will cause significant economic consequences to primary elevator operators who dry grain at the request of a producer. On these grounds, the Applicants argue that the Order is *ultra vires*.

B. The Respondents

[51] The Respondents argue that the Order sets out the formula to be used in calculating moisture shrinkage, how it is calculated and the maximum shrinkage allowance to be used. They submit that the Order is clearly a "directive", directed to the grain trade, and is authorized by subsection 118(h) of the Act.

[52] The Respondents further argue that subsection 116(1) of the Act is permissive and does not specifically deal with the artificial drying of grain or moisture shrinkage as found in the Order. Section 30 of the Regulations was enacted pursuant to paragraph 116(1)(f) of the Act. Section 30 of

the Regulations relates to comprehensive shrinkage which is different from moisture shrinkage, the subject of the Order.

[53] The Respondents submit, relative to the second issue raised, that the *vires* of subordinate legislation is not assessed on the merits of the challenged legislation but upon the of scope of the regulation-making authority found in the Act; see the decision in *Mercier v. Canada (Correctional Service)*, [2012] 1 F.C.R. 72 at paragraphs 75-76. The Applicants are essentially challenging the merits of the Order and this is not properly the subject of judicial review.

[54] The Respondents submit that it is within the realm of reasonable regulation to require, as the Order does, that the costs of over-drying grain be borne by elevator operators, not grain producers. This is the consistent with the Commission's mandate to regulate grain handling in the interests of producers.

[55] The Respondents argue that the Applicants' submissions, that the equipment used to measure the moisture content of grain cannot provide a reading within the percentage required by the Order, show a misunderstanding of the calibration of the equipment. The Respondents submit that the margin referred to by the Applicants is not a margin of error, but a calibration standard. Pursuant to the *Weights and Measures Act*, R.S.C. 1985, c. W-6 and the regulations enacted pursuant to that statute, any measurement device used in trade and commerce is subject to a calibration standard and if it meets the standard, the measurement provided is definitive. The measurement is not adjusted for the calibration of the scales involved and the calibration standard

does not reflect a margin of error. In the result, the Respondents submit that the Order is valid and reasonable**.**

VI. DISCUSSION AND DISPOSITION

[56] The first matter to be addressed is the standard of review. Since the application properly raises only a question of *vires*, the applicable standard of review is that of correctness. In this regard I refer to the decision in *Canada (Wheat Board) v. Canada (Attorney General) (F.C.A.)*, [2010] 3 F.C.R. 374 at paragraph 36 where the Federal Court of Appeal said the following:

> Turning first to the *vires* issue, the Court must determine on a standard of correctness whether the Direction Order was authorized by the power delegated to the Governor in Council pursuant to subsection 18(1) of the Act.

[57] The question is whether the Order is authorized by subsection 118(h) of the Act. The Order provides as follows:

> August 1, 2010
>
> Pursuant to paragraph 118(h) of the *Canada Grain Act*, the Canadian Grain Commission (the Commission) hereby makes the following order that provides instructions related to section 38.1 of the Canada Grain Regulations.
>
> 1. The moisture shrinkage allowed for tough, damp, moist or wet grain artificially dried at the producer's request at primary elevators is calculated as follows:
>
> The difference between the percentage of moisture content before drying and after drying is multiplied by one hundred and the resulting figure is divided by the difference between one hundred and the resulting figure is divided by the difference

between one hundred and the percentage of moisture content after drying.

i.e (% moisture before drying – % moisture after drying) / (100% - % moisture after drying) x 100 = % moisture shrinkage

2. Moisture shrinkage arrived at in accordance with section 1 of this order shall be calculated on the weight of the grain delivered (scale weight) and shall be recorded by the elevator manager for review by the Commission.

3. In the case of all grains artificially dried except as many be authorized by the Commission, the minimum percentage of moisture content after drying that may be used to calculate moisture shrinkage pursuant to section 1 of this order is zero and one-tenth (0.1%) less than the minimum moisture content specified as tough for that grain in Schedules I and II of the Off Grades of Grain and Grades of Screenings Order.

This order shall expire on July 31, 2011, unless previously revoked by the Commission.

[58] Subsection 118(h) of the Act provides as follows:

Orders of the Commission	Arrêtés de la Commission
118. The Commission may make orders	118. La Commission peut, par arrêté :
…	…
(*h*) constituting directives to the trade	*h*) formuler des instructions relatives au commerce des grains

[59] As outlined above the Applicants argue that "maximum shrinkage allowance" can only be set by regulation pursuant to paragraph 116(1)(f) of the Act which provides as follows:

Regulations	Règlements
116. (1) The Commission may, with the approval of the Governor in Council, make regulations	116. (1) Avec l'approbation du gouverneur en conseil, la Commission peut, par règlement :
…	…
(*f*) fixing the maximum shrinkage allowance that may be made on the delivery of grain to an elevator	*f*) fixer la marge maximale de perte de poids qui peut être calculée lors de la livraison de grain à une installation

[60] The analytical framework for considering the *vires* of subordinate legislation is set out in *Canada (Wheat Board), supra* at paragraph 46, as follows:

> The first step in a *vires* analysis is to identify the scope and purpose of the statutory authority pursuant to which the impugned order was made. This requires that subsection 18(1) be considered in the context of the Act read as a whole. The second step is to ask whether the grant of statutory authority permits this particular delegated legislation.

[61] Following this analytical approach, in my opinion subsection 118(h) is the grant of statutory authority that allows the Commission to issue orders constituting directives to the trade. The Order was issued pursuant to that subsection.

[62] The Act does not have a purpose section. However, pursuant to section 13 of the Act, the objects of the Commission are to "establish and maintain standards of quality for Canadian grain and regulate grain handling in Canada". Section 13 requires the objects of the Commission be carried out in the interests of grain producers, not elevator operators.

[63] Subsection 14(1) of the Act sets out a number of functions of the Commission, including the establishment of grades of grain, standards and procedures to regulate the handling, transportation and storage of grain, together with the promotion of research relative to grain and grain products, and otherwise oversee the grain trade in Canada.

[64] Having regard to the power to issue orders under subsection 118(h), as well as the objects and functions of the Commission pursuant to sections 13 and 14 of the Act, it follows, in my view, that subsection 118(h) allows the Commission to issue orders that are directives to the trade, for the purpose of maintaining standards of quality for Canadian grain and regulating grain handling, storage and transportation. These powers are to be exercised with regard to the interests of grain producers.

[65] In my opinion, the challenged Order falls squarely within the statutory authority outlined above. The Order is directive, providing instructions as to how moisture shrinkage is to be calculated. It is directed at the grain trade since it applies to grain producers and primary elevators. The Order regulates the storage and handling of grain in the interests of grain producers, in compliance with section 13 and subsection 14(1) of the Act, as noted above. The Order falls within the statutory authority granted by subsection 118(h) and is not *ultra vires*.

[66] The Applicants' arguments that the Order impermissibly does something that can only be done by regulation cannot succeed. As the Respondents note, subsection 116(1) is permissive, not mandatory. Paragraph 116(1)(f) provides that the Commission may make regulations with the approval of the Governor in Council setting a maximum shrinkage allowance. At the same time,

there are no provisions in the Act prohibiting the Commission from issuing an order pursuant to subsection 118(h) that has the same effect**,** that is setting a maximum shrinkage allowance. Subsection 118(h) is the statutory authority for the challenged Order, and contrary to the submissions of the Applicants, there is nothing in the Act preventing an order from being issued that addresses the same subjects as those listed under subsection 116(1).

[67] As Justice Nadon for the Federal Court of Appeal noted in *Mercier, supra* at paragraphs 63-70, a permissive power to make regulations in relation to a particular subject does not necessarily preclude a general power to issue orders or directives from being used to regulate similar subjects. Overlap is permissible and in some cases, desirable.

[68] Having regard to a large and liberal interpretation of subsection 118(h) mandated by section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, Parliament granted the Commission broad powers to issue orders constituting directives to the trade. In my opinion, the Order was validly enacted pursuant to that statutory authority. There may be some overlap between the subject matters addressed by subsection 116(1) and section 118. The power to regulate maximum shrinkage allowances under paragraph 116(1)(f) does not preclude the Commission from issuing a directive to the trade having the same effect when it is issued pursuant to valid statutory authority. Any conflict between paragraph 116(1)(f) and subsection 118(h) is a matter for Parliament to address and does not affect the *vires* of the challenged Order.

[69] I turn now to the second issue raised by the Applicants, that is whether the Commission acted outside of its authority to issue the Order. In this regard, the Applicants appear to question the

science and the policy behind the Order. In my opinion, this is a challenge to the substantive merits of the Order. This argument must fail.

[70] There is little scope for a reviewing Court to comment on the choice of science relied upon by a regulatory authority; see *Inverhuron & District Ratepayers' Association v. Canada (Minister of the Environment) et al.* (2001), 273 N.R. 62 at paragraph 48.

[71] The jurisprudence is clear that it is not for the Court to assess the merits of challenged subordinate legislation on judicial review; see the decision in *Jafari v. Canada (Minister of Employment and Immigration)* (1995), 180 N.R. 330 at paragraph 14. A challenge to the *vires* of subordinate legislation involves only an assessment of whether the challenged provisions fall within the authority provided in the enabling statute. The wisdom of the Order is properly a matter for the legislature and is not a question for this Court to decide.

VII. CONCLUSION

[72] In the result, the application for judicial review is dismissed with costs to the Respondents.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs to the Respondents.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1477-10
STYLE OF CAUSE:	CARGILL LIMITED, LOUIS DREYFUS CANADA LTD., PARRISH & HEIMBECKER LIMITED, PATERSON GLOBALFOODS INC. RICHARDSON INTERNATIONAL LIMITED, WEYBURN INLAND TERMINAL LTD., VITERRA INC., AND WESTERN GRAIN ELEVATOR ASSOCIATION v THE ATTORNEY GENERAL OF CANADA AND THECANADIAN GRAIN COMMISSION
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	SEPTEMBER 10 AND 11, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	HENEGHAN J.
DATED:	MARCH 12, 2014

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