Court File No. 25192

IN THE SUPREME COURT OF CANADA
On Appeal from the Court of Appeal of the Northwest Territories

Between:

CANADIAN EGG MARKETING AGENCY

Appellant (Plaintiff)

- and -

PINEVIEW POULTRY PRODUCTS LTD.

Respondent (Defendant)

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES, Represented by THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES; ATTORNEY GENERAL OF CANADA; ATTORNEY GENERAL OF ALBERTA; ATTORNEY GENERAL OF BRITISH COLUMBIA; ATTORNEY GENERAL OF QUEBEC; ATTORNEY GENERAL OF ONTARIO; SIERRA LEGAL DEFENCE FUND SOCIETY/COUNCIL OF CANADIANS; THE ALBERTA BARLEY COMMISSION

Interveners

And Between:

CANADIAN EGG MARKETING AGENCY

Appellant (Plaintiff)

- and -

FRANK RICHARDSON, Operating as NORTHERN POULTRY

Respondent (Defendant)

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES, Represented by THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES; ATTORNEY GENERAL OF CANADA; ATTORNEY GENERAL OF ALBERTA; ATTORNEY GENERAL OF BRITISH COLUMBIA; ATTORNEY GENERAL OF QUEBEC; ATTORNEY GENERAL OF ONTARIO; SIERRA LEGAL DEFENCE FUND SOCIETY/ COUNCIL OF CANADIANS; THE ALBERTA BARLEY COMMISSION

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INTRODUCTION

1. This factum sets out the Respondents' position with respect to the issues raised by this Honourable Court in a letter from the Registrar to the parties dated December 19, 1997 and responds to the submissions made by the Appellant in its Rehearing Factum filed February 20, 1998. The Respondents' position with respect to the other issues on the present appeal is set out in the Respondents' Factum dated April 21, 1997 (the "Respondents' Main Factum") and will not be repeated here.

10

FACTS

2. The Respondents do not take issue with the Appellant's description of the Memorandum of Understanding between Canada and the Northwest Territories dated October 27, 1997 (the "MOU") as contemplating "the entry of the Northwest Territories into the dovetailing cooperative federal-provincial regulatory scheme for eggs by March 31, 1998".

3. However, the Appellant goes on in paragraphs 4 through 6 of its Rehearing Factum to set out its interpretation of the MOU and in particular, the events it anticipates will occur in order to accomplish admission of the Northwest Territories into the national supply management system for eggs. The Respondents respectfully submit that these statements are speculation, not facts.

ARGUMENT

A. SECTION 121 OF THE *CONSTITUTION ACT, 1867*

4. In its letter of December 19, 1997, the Court asked the parties to address the relevance of s. 121 of the *Constitution Act, 1867* (the "1867 Act").

10

5. The Appellant argues:

a. the issue of whether the Regulatory Scheme offends s. 121 is not properly before this Court because it was not considered by the Northwest Territories Court of Appeal; and

b. in any event, the issue has already been determined by this Court in *Reference re Agricultural Products Marketing Act*, [1978] 2 S.C.R. 1198 (the "*Egg Reference*").

6. The Respondents respectfully submit that the Appellant's first argument is without merit, since this Court may consider points not raised in the court appealed from and, indeed, may
20 consider points not raised in any court below.

> For example, see:
> *Thibault v. Corp. Professionnelle des Medécins due Qué.*, [1988] 1 S.C.R. 1033 at 1039
> *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at 26-33

7. With respect to the Appellant's second argument, as noted by the courts below, the *Egg Reference* did not consider the position of the Territories vis-à-vis the national supply
30 management system for eggs. Rather, the case considered only the interaction between federal legislation and the legislation of one of the participating provinces.

> Reasons for Judgment of the Honourable Mr. Justice M.M. de Weerdt, Appeal Case, Vol. VI, Tab 38, 1345
> Reasons for Judgment of the Honourable Mme. Justice Hunt, Appeal Case, Vol. VI, Tab 40, 1400

8. The issue in the present appeal is fundamentally different. Here, one province (or territory) of Canada, and the egg producers therein, take issue with the Regulatory Scheme that excludes them. Thus, the *Egg Reference* sheds no light on whether this situation violates s. 121 (or, for that matter, ss. 2(d) or 6 of the Charter).

9. The Respondents submit that s. 121 is relevant to the present appeal, and second, that the Regulatory Scheme violates s. 121.

10. For the reasons set out in the Respondents' factum filed in reply to the Alberta Barley Commission, the Respondents submit that s. 121 applies to the Northwest Territories. The Respondents also agree with the comments of the Alberta Barley Commission respecting the "direct" and "interpretive" relevance of s. 121.

11. In any event, the fundamental relevance of s. 121 is that, in the Respondents' respectful submission, the Regulatory Scheme violates s. 121.

12. Section 121 states:

> All Articles of the Growth, Produce or Manufacture of any of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.
>
> *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 121 (formerly the *British North America Act*)

13. Section 121 created a common market in Canada from the date of Confederation.

> *Martin v. British Columbia (Attorney-General)* (1988), 53 D.L.R. (4th) 198

14. The early cases interpreted s. 121 narrowly, holding that the section was aimed at prohibiting customs barriers between provinces.

> *Gold Seal Limited v. The Attorney General for the Province of Alberta* (1921), 62 S.C.R. 424

15. However, in this Court's decision in *Murphy v. C.P.R. Co.*, Rand J., in a concurring judgment, said, "Apart from matters of purely local and private concern, this country is one economic unit". The word "free" in s. 121 was held to mean "without impediment related to the traversing of a provincial boundary".

Murphy v. C.P.R. Co. (1958), 15 D.L.R. (2d) 145 at 153

16. This interpretation of s. 121 was accepted by Laskin C.J. in the *Egg Reference* and cited with approval by La Forest J. in *Black v. Law Society of Alberta* ("*Black*").

10

Reference re Agricultural Products Marketing Act, [1978] 2 S.C.R. 1198 at 1268
Black v. Law Society of Alberta, [1989] 1 S.C.R. 591 at 609

17. The Respondents submit that the Regulatory Scheme creates an absolute impediment to the free flow of eggs across one or more provincial boundaries.

18. Any participant in the national supply management system for eggs can sell eggs produced in one of the ten provinces anywhere in Canada, subject only to two requirements: first, he or
20 she must hold an interprovincial seller's licence from the Appellant and second, the eggs must have been produced pursuant to a federal quota.

19. However, the situation is very different for those who are excluded from the system, such as Northwest Territories egg producers. They cannot obtain a federal quota for their eggs and therefore cannot sell their eggs outside the Northwest Territories. The borders between the Northwest Territories and the provinces effectively present an impenetrable barrier to the free flow of Northwest Territories-produced eggs. In the Respondents' submission, this clearly violates s. 121.

30

B. APPLICATION OF SECTION 6(3)(A) OF THE CHARTER

20. The second question set out in the Court's letter of December 19, 1997 was:

> Whether s. 6(3)(a) of the *Canadian Charter of Rights and Freedoms* is restricted only to provincial laws or practice and does not include federal legislation.

21. The Appellant argues that s. 6(3)(a) applies to federal laws as well as to provincial laws because:

a. s. 32 of the Charter makes it clear that the Charter as a whole applies to federal laws;

b. s. 6(2) applies to federal laws, so s. 6(3)(a), which is a limitation on s. 6(2), should also apply to federal laws;

c. s. 6(3)(a) has been applied to federal laws on several occasions, including a 1985 decision of the Federal Court of Appeal in *Demaere v. Canada* ("*Demaere*"); and

d. the test for justification under s. 6(3)(a) set out in the *Demaere* case are met in the case at bar.

22. The Respondents submit that s. 32 of the Charter is of no assistance in answering the question set by this Court. Section 32 provides that the Charter applies to Parliament and to the legislatures of all provinces. The import of this provision is that Parliament and the Legislatures are both subject to the Charter; s. 32 says nothing about the content or scope of the rights and freedoms guaranteed by the Charter.

23. The Respondents further submit that the wording of s. 6(3)(a) contains an express limitation on the applicability of that section. The limitation is contained in the phrase "laws of general application in force in a province". In contrast, there is no limiting language in s. 6(2). Therefore, s. 6(2) clearly applies to all laws, whereas s. 6(3)(a) has a more limited scope. This point will be discussed in greater detail below.

24. The Appellant relies on *Demaere v. Canada*, a decision of the Federal Court of Appeal which pre-dated the leading decisions of this Court with respect to s. 6. In *Demaere*, the Court held that a federal law, the *Public Service Employment Act*, was a law of general application in force in a province which did not discriminate on the basis of province of residence, and was therefore saved under s. 6(3)(a).

Demaere v. Canada (1984), 52 N.R. 288

25. The argument in *Demaere* was that inclusion of the words "in a province" limited the scope of s. 6(3)(a) to provincial laws. The argument was made by analogy to s. 87 of the *Indian Act*, which provided as follows:

> 87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to [Indians].

Several decisions of this Court, including *Kruger and Manuel v. R.*, [1978] 1 S.C.R. 104 ("*Kruger*"), held that s. 87 of the *Indian Act* did not apply to federal statutes. Therefore, s. 6(3)(a) of the Charter, which also contained the phrase "laws of general application in force in a province", should not apply to federal laws either.

26. In the opinion of Hugessen J.A., *Kruger* was distinguishable because, unlike s. 6 of the Charter, s. 87 of the *Indian Act* was made subject to "any Act of Parliament". Inclusion in s. 87 of the *Indian Act* of this express provision dealing with federal laws was the reason why this Court held that the phrase "laws of general application ... in force in any province" did not include federal laws. No such wording was found in s. 6(3)(a) of the Charter, and therefore s. 6(3)(a) was not restricted to provincial laws.

27. With respect, this reasoning is not persuasive and should not be adopted by this Court. To the contrary, inclusion of the phrase "subject to any Act of Parliament" or similar language in s. 6(3)(a) would be required to make the section applicable to federal laws, and the absence of any such wording demonstrates that s. 6(3)(a) applies only to provincial laws.

28. The Appellant also relies on three other cases: *Koch v. Koch* (1985), 23 D.L.R. (4th) 609; *Re Groupe des Eleveurs and Canadian Chicken Marketing Agency* (1984), 14 D.L.R. (4th) 15 (the "*GEVEO*" case), and *MacKinnon v. Canada (Fisheries and Oceans)*, [1987] 1 F.C. 490.

29. In *Koch v. Koch*, the Saskatchewan Court of Queen's Bench did not consider s. 6(3)(a) and the case is therefore of no assistance to the Appellant.

30. In both the *GEVEO* and *MacKinnon* cases, the respective Courts stated that 6(3)(a) was broad enough to apply to federal laws, but provided no reasoning in support of that statement. Therefore, in the Respondents' submission, these cases are of no assistance to this Court.

31. However, in the Respondents' submission, it is not necessary to consider whether the requirements of s. 6(3)(a) are met in the present appeal, since s. 6(3)(a) applies only to provincial laws and practices. The Respondents further submit that the intention of Parliament in enacting s. 6(3)(a) was to permit the provinces to legislate within the authority given them by the 1867 Act, so long as the legislation did not discriminate on the basis of residence.

32. Parliament's intention can be determined from the plain wording of s. 6(3)(a) in both its French and English versions and from the legislative history of this provision.

33. First, the Respondents submit that the plain wording of the English version of s. 6(3)(a) demonstrates that the provision applies only to provincial laws.

34. The English version says that the rights guaranteed by s. 6(2) are subject to laws and practices "of general application in force in a province".

35. The Respondents submit that the interpretation contended for by the Appellant would render the above phrase redundant. If s. 6(3)(a) was intended to apply to both federal and

provincial laws, it need only have said that the rights guaranteed by s. 6(2) are subject to "laws and practices which do not discriminate on the basis of past or previous residence".

36. Since Parliament included the extra words "of general application in force in a province", the words must have some meaning or purpose. The Respondents submit that the purpose was to restrict the application of s. 6(3)(a) to provincial laws, that is "laws and practices of general application in force in a particular province".

37. The plain wording of the French version of s. 6(3)(a) provides further evidence that the section is intended to apply only to provincial laws. The French version, which is somewhat different from the English version, says that the rights guaranteed by s. 6(2) are subject to laws ... "en vigueur dans une province donée", that is, "in a given province". This clearly refers to laws in force in one province, that is, provincial laws.

38. The French and English versions are equally authoritative. Therefore, a meaning should be selected for a particular provision which is compatible with both versions.

Hogg, Peter W., *Constitutional Law of Canada,* looseleaf edition, Vol. 2, (Scarborough, Ontario: Carswell) at 53-5 to 53-6

39. The Respondents submit that it is consistent with the wording of both versions of s. 6(3)(a) to interpret it as applying only to provincial laws.

40. In *Black*, this Court considered the legislative history of s. 6, that is, the discussions and debates which led up to its enactment, in order to determine its legislative purpose. The Respondents submit that a similar exercise is of assistance in arriving at the proper interpretation of s. 6(3)(a).

Black v. Law Society of Alberta, [1989] 1 S.C.R. 591 at 609-612

41. The importance of the mobility rights guaranteed by s. 6 is reflected in the debates in the House of Commons respecting the Charter. On October 6, 1980, Mr. Jean Chrétien (then Minister of Justice) said the following:

> I would like to turn now to two very important parts of the Canadian charter of rights and freedoms. First, I want to speak about mobility rights. We believe that certain rights are fundamental to the concept of Canadian citizenship; these rights must be guaranteed by the constitution and be applicable everywhere in Canada. I have spoken already of fundamental freedoms, democratic rights and legal rights.
>
> Our conception of Canada is one where citizens as a matter of right should be free to take up residence and to pursue a livelihood anywhere in Canada without discrimination based on the previous province of residence. In other words, no Canadian should be prevented from seeking a job anywhere in Canada merely on the grounds that he or she comes from another province. This right which is inherent in all Canadian citizenship will be enshrined in the charter and will be binding on all governments.
>
> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session, at 3286 (October 6, 1980)

42. On October 15, 1989, the Honourable Yvon Pinard, President of the Privy Council, said:

> ...The other category of rights to be included in the constitution concerns the freedom to move to and settle in any area. It is quite essential that every Canadian, in whatever province, have the right and the freedom to enter and leave any province when he wishes and that every Canadian from whatever area and whatever province be entitled to earn his living in any province without being penalized and without being the victim of discrimination.
>
> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session, at 3704 (October 15, 1980)

43. These speeches demonstrate the fundamental importance of the mobility rights guaranteed by the Charter. The Respondents submit that any limitations on those rights should be construed narrowly.

44. Interprovincial barriers to mobility have been a concern since pre-Confederation days. As La Forest J. held in *Black*, the concept of Canada as an economic union was basic to Confederation, and the drafters of the *British North America Act* attempted to pull down the

existing internal barriers that restricted movement within the country. However, s. 121 proved to be only partly effective in achieving economic union, and concerns about barriers to interprovincial economic activity surfaced again during the discussions and debates leading up to enactment of the Charter.

Black v. Law Society of Alberta, [1989] 1 S.C.R. 591 at 609, 611-612

45. The overwhelming majority of these barriers were created by the provinces. The situation was described by Mr. Roy MacLaren (Parliamentary Secretary to Minister of Energy, Mines and Resources) on October 6, 1980 as follows:

> Today, of course, section 121 may be read as being intended to include service, capital and labour, as well as the free movement of goods, but in the face of increasing interprovincial barriers it is now seen by many as insufficiently explicit. With notable ingenuity, provinces have discovered other regulatory devices which have the same effect as customs duties, those duties which were eliminated at the time of confederation, and thereby, in effect, they can circumvent section 121.
>
> It has been the recent experience in Canada that provinces have focused increasingly on the means to improve their own narrow economic performance, especially high value added activities. As a result, many provincial policies now weaken the common market, reducing gains that could otherwise be generated by industrial specialization, and labour and capital are not being used as efficiently as possible.

Mr. MacLaren cited numerous specific examples of barriers and obstructions to the free movement of goods, capital and labour, including: limitations and prices established by marketing boards; provincial legislation containing local hiring restrictions such as was found in Newfoundland, Nova Scotia and Quebec; Saskatchewan lease agreements with resource development companies seeking licences to operate; residency requirements for pharmacists seeking licences to practice in Alberta and Ontario; and residency restrictions placed on the movement of lawyers.

> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session, at 3598 (October 6, 1980)

46. Indeed, the House of Commons Debates are replete with references to creation of interprovincial barriers **by the provinces**, and the importance of entrenching a constitutional guarantee of mobility in order to dismantle those barriers.

> See, for example:
> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session (1980-81), at 3597-99, 3609, 3704, 3762, 3800, 3851, 3859, 3885, 4002, 5409, 8278, 8287, 8415, 8426, 13043, 13213

47. The provinces were concerned that enactment of s. 6 would restrict their ability to legislate within the jurisdiction given to them under the 1867 Act.

> See, for example:
> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session, at 4017, 4026 (October 6, 1980)

48. On March 16, 1981, Mr. Chrétien responded to that concern as follows:

> We do not want to restrict the ability of the provincial governments to deal with social, cultural and economic issues within their jurisdiction; but we want to ensure that the required laws, regulations and practices do not discriminate against Canadians from other provinces. Such discrimination goes against the principle of economic union and creates internal barriers which go against a fundamental principle of nationhood.
>
> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session, at p. 8287 (March 16, 1981)

49. The purpose of s. 6(3)(a) was described by Mr. Chrétien on a previous occasion as follows:

> [Section 6] does not mean that provinces cannot impose their normal laws on people who come or move to their province. It simply means that they cannot single out certain Canadians for harsher treatment just because they come from other parts of the country. In other words, there will be one Canadian citizenship not ten provincial citizenships.
>
> Canada, *House of Commons Debates*, 32nd Parliament, 1st Session, at p. 3286 (October 6, 1980)

50. Thus, in the Respondents' submission, it is clear from the plain wording of s. 6(3)(a) and from the Parliamentary debates respecting the Charter that s. 6(3)(a) was intended to permit the provinces from enacting legislation within their jurisdiction, so long as that legislation was not specifically aimed at protecting a provincial border. As Deschênes C.J.S.C. of the Québec Superior Court said in *Malarctic Hygrade Gold Mines Ltd. v. Quebec*:

> In principle the Charter thus intends to ensure interprovincial mobility.
>
> It does, however, recognize the existence of regional characteristics which might require that specific conditions be imposed upon one province or another. The charter adapts to this situation and accepts that interprovincial mobility is thus limited. To this extent, provincial legislation will prevail over s. 6 of the Charter.
>
> But there is a limit on this provincial power to restrict, and this limit is obvious in the context of s. 6: restrictions on mobility should not be based on the very fact of "extra-provinciality". One province cannot legislate against s. 6 of the Charter by basing its restrictive policy on the multiplicity of provinces and making residence in another province a criteria of exclusion. By definition, such a criteria is incompatible with the policy underlying s. 6 of the Charter and, if it were accepted, it would destroy the essence of the Charter.
>
> *Malarctic Hygrade Gold Mines Ltd. v. Quebec* (1982), 142 D.L.R. (3d) 512 at 521

51. In conclusion, the Respondents submit that the plain wording of s. 6(3)(a) in both its English and French versions as well as the legislative history of this provision conclusively demonstrate that s. 6(3)(a) applies only to provincial laws and practices, and not to federal laws. Thus, s. 6(3)(a) does not apply to the Regulatory Scheme which is impugned on the present appeal.

52. The Appellant argues not only that s. 6(3)(a) applies to federal laws, but also that the Regulatory Scheme is a law of general application which does not discriminate primarily on the basis of province of previous or present residence.

53. The Respondents submit that the Regulatory Scheme clearly discriminates on the basis of residence, since the effect of the Regulatory Scheme is to prevent an egg producer who resides

or works in the Northwest Territories from pursuing his livelihood there. This point is discussed in greater detail in the Respondents' Main Factum.

54. The Respondents agree with the Alberta Barley Commission that the Regulatory Scheme does not meet the test for a law of general application set out by this Court in *Kruger, supra.* In particular, the Regulatory Scheme singles out egg producers in the Northwest Territories from the general group of egg producers in Canada, and therefore fails the second branch of the test in *Kruger*.

10

C. ROLE OF SECTION 1 OF THE CHARTER IN A MOBILITY RIGHTS CASE

55. The third question this Court asked the parties to address is as follows:

> If s. 6(3) applies only to provincial laws or practice, whether an argument under s. 1 of the *Charter* should be made.

56. The Appellant appears to argue that there is no need to address this question because s.
20 6(3)(a) applies to federal laws as well as provincial laws. Since the Respondents take the contrary view as to the applicability of s. 6(3)(a), it is necessary for them to address the above question.

57. In order to answer the question fully, the Respondents will consider the interaction between ss. 6(2), 6(3)(a) and 1, where a federal law is challenged and also where a provincial law is challenged.

58. Section 1 provides:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms
30 set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Canadian Charter of Rights and Freedoms, s. 1, Part I of the *Constitution Act,* 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11

59. There is no limitation on the phrase "the rights and freedoms set out in [this Charter]" in s. 1. Thus, all of the rights and freedoms guaranteed by the Charter are subject to s. 1. However, the Respondents submit that in a mobility rights case, the role of s. 1 will be somewhat different, depending on whether the impugned legislation is federal or provincial.

60. The mobility rights guaranteed by s. 6(2) are "subject to" s. 6(3)(a). For the reasons set out above, s. 6(3)(a) applies only to provincial laws, and s. 6(3)(a) cannot be used to justify a federal law which violates s. 6(2). Therefore, once a court has found that a federal law infringes s. 6(2), the analysis moves directly to whether the law is justified under s. 1.

10

61. In the case of a provincial law, the law is justified under s. 6(3)(a) if it is of general application and does not discriminate primarily on the basis of current or previous province of residence. If these criteria are met, recourse to s. 1 is not necessary.

62. Where a provincial law does not meet the requirements of s. 6(3)(a), however, the law may still be justified under s. 1. This approach is consistent with the statement of La Forest J. in *Black*, when he said:

> Some commentators, it is true, have suggested that s. 6(3) and 6(4) amount to a comprehensive legislative determination of the justifiable limits to s. 6(2) and thus
20 render s. 1 superfluous [citations omitted]. I disagree with this proposition. Section 6(2) is subject to both s. 6(3) and s. 1. The two provisions are significantly different and s. 6(3) is by no means a legislative transaction of how s. 1 is to be interpreted in the context of s. 6(2).

Black v. Law Society of Alberta, [1989] 1 S.C.R. 591 at p. 624

63. In the present appeal, the impugned legislation is federal law, and cannot be justified under s. 6(3)(a). Therefore, once an infringement of s. 6(2)(b) has been found, the analysis moves to whether the Regulatory Scheme is justified under s. 1.

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64. In the alternative, if s. 6(3)(a) applies to federal law, then it is necessary to consider whether the Regulatory Scheme is justified under s. 6(3)(a). For the reasons set out in the

Respondents' Main factum and in the factum of the Alberta Barley Commission, the Respondents submit that the Regulatory Scheme is not a law of general application and does discriminate on the basis of residence.

65. Further, the Appellant has provided no evidence to justify the permanent exclusion of the Respondents from the national supply management system for eggs. Thus, the Respondents submit that the Regulatory Scheme cannot be justified under s. 1, no matter what level of scrutiny is applied.

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D. NEGOTIATIONS

66. The Appellant's Rehearing Factum comments extensively on recent developments in the government-to-government negotiations respecting entry of the Northwest Territories into the national supply management system for eggs.

67. The Respondents submit that the negotiations are irrelevant to the present appeal. The
20 Regulatory Scheme is the same today as it was when the Appellant commenced these proceedings in September, 1992, and will remain the same until the necessary amendments are made to the *Canadian Egg Marketing Agency Proclamation* and related regulations. Even then, the changes will likely not be retroactive. Therefore, the Respondents remain in jeopardy in these proceedings until the present appeal determined by this Honourable Court or discontinued by the Appellant.

ORDER SOUGHT

69. The relief sought by the Respondents is set out in their Main Factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of March, 1998.

Graham McLennan

Katharine L. Hurlburt

Counsel to the Respondents

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TABLE OF AUTHORITIES