2012 CAF 183, 2012 FCA 183
Federal Court of Appeal

Friends of the Canadian Wheat Board v. Canada (Attorney General)

2012 CarswellNat 1999, 2012 CarswellNat 2679, 2012 CAF 183, 2012 FCA 183, [2012] A.C.F. No. 706, [2012] F.C.J. No. 706, 16 T.T.R. (2d) 766, 262 C.R.R. (2d) 94, 352 D.L.R. (4th) 163, 433 N.R. 329

Attorney General of Canada, The Minister of Agriculture and Agrifood in His Capacity as Minister Responsible for the Canadian Wheat Board, Appellants and Friends of the Canadian Wheat Board, Harold Bell, Daniel Gauthier, Ken Eshpeter, Terry Boehm, Lyle Simonson, Lynn Jacobson, Robert Horne, Wilf Harder, Laurence Nicholson, Larry Bohdanovich, Keith Ryan, Andy Baker, Norbert Van Deynze, William Acheson, LUC Labossiere, William Nicholson, Rene Saquet, and the Canadian Wheat Board, Respondents and Council of Canadians, ETC Group (Action Group on Erosion, Technology and Concentration), Public Service Alliance of Canada and Food Secure Canada, Interveners

K. Sharlow, Johanne Trudel, Robert M. Mainville JJ.A.

Heard: May 23, 2012
Judgment: June 18, 2012
Docket: A-470-11, A-471-11

Proceedings: reversing *Friends of the Canadian Wheat Board v. Canada (Attorney General)* (2011), 345 D.L.R. (4th) 335, 2011 CF 1432, 2011 CarswellNat 5354, 2011 CarswellNat 4989, 2011 FC 1432 (F.C.)

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The modern approach to statutory interpretation

36 The modern approach to statutory interpretation has been expressed as follows by Iacobucci J. in *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 (S.C.C.) at paragraph 21:

> Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of*

Statutes (3rd ed. 1994) (hereinafter *"Construction of Statutes"*); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

37 McLachlin C.J. and Major J. reiterated this approach in *Canada Trustco Mortgage Co. v. R.*, [2005] 2 S.C.R. 601, 2005 SCC 54 (S.C.C.), at paragraph 10:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words plays a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
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> [Emphasis added.]

38 Thus, under the modern contextual approach to statutory interpretation, the grammatical and ordinary sense of a provision is not necessarily determinative of its meaning. Regard must be had not only to the ordinary and natural meaning of the words, but also to the context in which they are used and the purpose of the provision considered as a whole within the legislative scheme in which it is found: *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42 (S.C.C.) at para. 27. The most significant element of this analysis is the determination of legislative intent: *R. v. Monney*, [1999] 1 S.C.R. 652 (S.C.C.) at para. 26.

39 The concept of legislative intent was explained as follows by this Court in *Felipa v. Canada (Minister of Citizenship & Immigration)*, 2011 FCA 272, [2012] 1 F.C.R. 3 (F.C.A.) at para. 31, citing approvingly for this purpose Lord Nicholls in *R. v. Secretary of State for the Environment, Transport & the Regions* (2000), [2001] 2 A.C. 349 (Eng. H.L.) at page 396:

> Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-andsuch a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg A G* [1975] AC 591, 613: "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used."
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> [Emphasis added.]

40 In ascertaining legislative intent, a court must consider the total context of the provision to be interpreted, no matter how plain the provision may seem when it is initially read in isolation. However, it must be kept in mind that a line exists between judicial interpretation and legislative drafting, and that this line is not to be crossed: *Felipa v. Canada (Minister of Citizenship & Immigration)*, above at para. 32, referring to *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140, 2006 SCC 4 (S.C.C.) at para. 51.

