

Section 7 of the Canadian Wheat Board Act provides as follows:—

The board shall undertake the marketing of wheat in inter-provincial and export trade and for such purposes shall have all the powers of a corporation and without limitation upon such powers the following:—

- (a) to receive and take delivery of wheat for marketing as offered by the producers thereof;
- (b) to buy and sell wheat: provided that no wheat shall be purchased by the board except from the producers thereof;
- (j) generally to do all such other acts and things as may be necessary for the purpose of giving effect to the intent and meaning of this Act.

Upon the legal interpretation of these clauses in the Canadian Wheat Board Act depended the whole method of operation under the said Act, and depended the feasibility of the Canadian Wheat Board when it came into operation in 1935.

Consequently, within a few days of the appointment of the first Canadian Wheat Board in 1935, the interpretation of the above clauses in the Canadian Wheat Board Act became a matter of vital importance. The issue was whether the Canadian Wheat Board in disposing of wheat could take full advantage of the futures market and conduct its selling operations in line with the established practice in the grain business and carry out its duties under Section 8 (i) and (j) of the Act, which read as follows:—

(i) in selling and disposing of wheat as by this Act provided, to utilize and employ without discrimination such marketing agencies, including commission merchants, brokers, elevator men, exporters and other persons engaged in or operating facilities for the selling and handling of wheat, as the board in its discretion may determine;

(j) to offer wheat for sale in the markets of the world through the established channels; provided that the board may, if in its opinion any existing agencies are not operating satisfactorily, take such steps as it deems expedient to establish, utilize and employ its own or other marketing agencies or channels.

At this point it is well to outline the established practice in selling wheat on the Winnipeg market. Simply stated, cash wheat is mainly sold by exchanging the cash wheat for a futures contract which is then sold at the discretion of the seller of the cash wheat.

This matter received the immediate consideration of the first Canadian Wheat Board headed by Mr. John I. McFarland, and legal interpretations were immediately secured by that board. Mr. F. M. Burbidge, K.C., then solicitor for the Canadian Wheat Board, on August 26th, 1935, rendered the following legal opinion:—

Summing up the views which I have expressed to you at our various conferences (this is Mr. Burbidge's opinion) as to the interpretation to be placed upon the Canadian Wheat Board Act, 1935, I am of opinion,

1. That the board has, subject to the approval of the Governor in Council, the power and duty to fix from year to year the price to be paid to the "producers" for wheat purchased by the board during each crop year.

2. That the price fixed by the board and approved by the Governor in Council to be paid for wheat purchased during a crop year cannot be changed either up or down; in other words, while the price to be paid may vary from year to year, there can be but one price fixed during any crop year.