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**FOR IMMEDIATE RELEASE**

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## **NFU ASKS AUDITOR GENERAL TO INVESTIGATE BARLEY VOTE PROCESS**

**SASKATOON, Sask.**—The NFU today sent a letter to Auditor General Sheila Fraser asking her to investigate the government’s conduct and spending in the Canadian Wheat Board barley marketing plebiscite. The NFU letter detailed numerous flaws in the plebiscite process, everything from the government’s refusal to control third-party spending to its refusal to allow scrutiny of the lists of entities that received or returned ballots.

“Madam Auditor General, in its CWB barley marketing plebiscite, the Minister and his department conducted themselves in a manner that is unfair, undemocratic, and damaging to the public interest. Further, in so doing, the Minister and his department and government MPs improperly spent public money while simultaneously imposing draconian spending limits on those they disagreed with,” said the NFU letter.

The NFU’s letter noted irregularities in the balloting process. In one case, over the phone, one spouse okayed the destruction of the other spouse’s ballot—election officials never talked with the spouse who actually filled in the ballot. “The informality of the way accounting firm reps arrange the destruction of ballots, seemingly with no paper trail, is unprecedented in any credible voting process we know of. We are confident that an in-depth examination of the voting record and declarations will reveal many irregularities and a pattern of indefensible informality when dealing with farmers’ ballots,” said the NFU.

The letter also raised questions about the plebiscite question and quoted a portion of Prime Minister Stephen Harper’s 1996 Private Member’s Bill, C-341, that eventually became the prototype for our *Clarity Act*. In C-341, commenting on a future Quebec referendum, but in terms that have broader applicability, Harper said: “a referendum or plebiscite, if the question is ambiguous or unclear...., would be contrary to the interests of Canadians....” C-341 goes on to say that “The Government of Canada shall not recognize any referendum or plebiscite ... if the question is ambiguous or unclear....”

Harper’s C-341 recommended a remedy for an unclear referendum question: a new referendum *with* a clear question. That is what the NFU has asked the Auditor General to recommend. “If you find the misconduct and mis-spending we believe you will find, we ask that you declare the results of the plebiscite invalid. Further, we suggest that the proper remedy for this situation—an unclear question, no clear majority, a lack of democratic safeguards—is the one proposed by Stephen Harper: a parallel referendum conducted on a clear question utilizing proper procedures and safeguards.”

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For More Information:

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April 19, 2007

Sheila Fraser, FCA  
Auditor General of Canada  
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**VIA FAX: (613) 957-0474**

Dear Ms. Fraser:

I write today to ask you to examine the conduct and spending of the department of Agriculture and Agri-Food Canada (AAFC) and the Minister of Agriculture in the recent plebiscite on Canadian Wheat Board barley marketing.

As the following letter will show, the vote's processes were deeply flawed and unfair, thus the significant expenditures by the Minister and by his government department are improper and illegitimate. Worse, farmers, organizations, and experts repeatedly made the Minister aware of the shortcomings and unfairness of his barley marketing plebiscite process and he chose to ignore or dismiss those warnings. Repeatedly, the Minister and his department refused to conduct their vote and to expend public funds in accordance with generally accepted standards for a fair vote process—they refused to integrate the necessary safeguards modern democracies use to ensure fair votes: public voters' lists, clear ballot questions, transparent victory conditions, scrutinized vote counts, third-party spending controls, etc.

We ask that you immediately investigate the conduct and expenditures of AAFC and its Minister with regard to the barley plebiscite. Our concerns with the vote process and the public expenditures that underpinned that process include the following:

**1a: An illegitimate question: language**

The government of Canada's barley plebiscite gave farmers three options:

- The Canadian Wheat Board should retain the single desk for the marketing of barley into domestic human consumption and export markets.
- I would like the option to market my barley to the Canadian Wheat Board or any other domestic or foreign buyer.
- The Canadian Wheat Board should not have a role in the marketing of barley.

Note the structural differences. Options one and three are arranged as passive sentences. Option two, however—the option many believe the Minister of Agriculture prefers—is arranged very differently. Option 2 is an active sentence with positive language that puts the respondent at its center. It begins “I would like the option....” and talks about “my barley.”

Public opinion research professionals consider it a truism that you can get any poll result you want if you carefully shape the question. Commenting on the federal government's three-part barley question and its asymmetrical wording, Scott MacKay, President of Probe Research, called it "bizarre." Going further, MacKay said that the wording was so bad that he assumed that the question must have been an error. (Martin Cash and Paul Samyn, "Strahl Defends Barley Plebiscite", *Winnipeg Free Press*, January 24, 2007)

### **1b. An illegitimate question: confusion over the options**

Many people are now coming forward to say that they voted for option two by mistake, thinking that option two was the current "status quo" wherein farmers have the option to market malting and feed barley through the CWB or to sell feed barley through the CWB or to any other buyer they choose.

### **1c. An illegitimate question: lack of clarity**

By their conduct and expenditures surrounding the barley plebiscite, the federal government ignored its own clear commitment to clear questions on matters that affect public policy. This is complex legal terrain, and we look forward to your findings on this issue, but some initial comments may help focus the inquiry.

Canada's *Clarity Act* legislates the requirement for a clear question in any Quebec referendum on separation. The essence of the *Act's* sections 1(3) and 1(4) is this: "a clear expression... could not result from... a referendum question that envisages other possibilities in addition to secession ..., such as economic or political arrangements ..., that obscure a direct expression of the will of the population of that province on whether the province should cease to be part of Canada." The federal *Clarity Act* seeks to prohibit questions that give the impression that sovereignty half-measures are possible. On the issue of separation, the *Clarity Act* makes illegal questions that imply that Quebecers can have their cake and eat it too.

But in the barley plebiscite, Minister Strahl and his department specifically crafted a have-your-cake-and-eat-it option—option two. They implied that farmers could retain the a strong CWB in barley marketing while simultaneously stripping it of its single-desk barley marketing powers. Perhaps I can show briefly why this is impossible: The CWB is not a grain company; it does not own elevators or terminals; it has virtually no assets; its core and its essence are its single-desk marketing authority. The government's option two would terminate that single-desk authority over barley, tearing out the core and extinguishing the essence of the CWB with regard to barley marketing. Yet option two implies the continued existence of the CWB as a strong marketer for barley. That cannot be. The lack of clarity in the barley plebiscite's option two reflects exactly the lack of clarity that the *Clarity Act* seeks to ban from Quebec referenda. AAFC and the Minister did to farmers exactly what they prohibited Quebec politicians from doing to Canada. Their actions and expenditures were improper.

*Clarity Act* references become even more relevant to this government's barley plebiscite when we learn that the leading figures of this current government pioneered the concepts behind the *Act*. While in opposition, now Prime Minister Stephen Harper introduced a Private Members' Bill that became the prototype for the *Clarity Act*. (See [http://www2.parl.gc.ca/content/hoc/Bills/352/Private/C-341/C-341\\_1/C-341\\_1.pdf](http://www2.parl.gc.ca/content/hoc/Bills/352/Private/C-341/C-341_1/C-341_1.pdf) )

Though it refers specifically to Quebec separation, the Preamble to Prime Minister Harper's Bill C-341 has more general applicability: "a referendum or plebiscite, if the question is

ambiguous or unclear...., would be contrary to the interests of Canadians....” Prime Minister Harper’s C-341 goes on to say that “The Government of Canada shall not recognize any referendum or plebiscite ... if the question is ambiguous or unclear....”

Bill C-341, Section 5(1), proposes a remedy for the situation where the Quebec government proceeds with a referendum utilizing an unclear question: a parallel referendum utilizing a clear question. Below, we will suggest that, should you agree that the process in the recent barley plebiscite was fraught with errors, you should require a new vote based on a clear question and utilizing safeguards appropriate to ensure a fair vote.

### **1d. An illegitimate question: ignoring Parliament and farmers**

Finally, on the issue of the plebiscite question, the Minister’s question is at odds with the will of the Parliament of Canada and the will of most farmers. On October 17, 2006, farm organizations representing the vast majority of western farmers united to endorse clear and appropriate wording for any vote on CWB marketing. On December 12, 2006, the Parliament of Canada passed a motion calling on the Minister, in any vote on CWB marketing, to utilize the clear question outlined by farm organizations.

The question adopted by farm organizations and Parliament is worded as follows:

- A) *I wish to maintain the ability to market all barley, with the continuing exception of feed barely sold domestically, through the CWB single desk system.*
- B) *I wish to remove the single desk marketing system from the CWB and sell all barley through an open market system.*

### **2. No publicly available or scrutinized voters’ list**

Because the Minister and his department were in a rush to conduct their vote, they chose to proceed without a voters’ list. Rather than produce such a list, they instead mailed out 86,000+ ballots and asked citizens, farm partnerships, and corporations to mark and return those ballots if those entities believed they qualified to vote. On March 1, the NFU requested the opportunity to scrutinize the list of entities to which ballots were sent. The Minister never responded.

The Minister and his department did eventually create a list of those who actually returned ballots. On March 1, the NFU requested the opportunity to scrutinize that list. The Minister never responded.

During the last federal vote on barley, in 1996/97, representatives of the NFU and other organizations accepted invitations to scrutinize the voters’ list.

The Minister and AAFC conducted a vote without allowing independent parties to scrutinize the voters’ list. Such conduct is not acceptable in a modern democracy.

### **3. No one can know the voter turnout**

Because the Minister and his department chose to hurry forward without taking the time to create a voters’ list, we do not know how many voters were eligible to cast ballots. Thus, we cannot know the voter turnout. Evaluating voter turnout is a key way to gauge the accuracy and representativeness of a plebiscite. By unnecessarily proceeding without a voters’ list, the Minister and his department have made it impossible to make a key evaluation of the barley plebiscite.

Further, voter turnout *is* a key question in this plebiscite. The Minister and his department mailed out 86,000+ ballots. The Minister and AAFC counted 29,000. The question is: What was the status of the other 57,000 ballots—the vast majority of ballots mailed? Are we looking at a very low voter turnout? Or are we looking at a ballot distribution scheme that was so haphazard that most of the ballots were sent to entities unqualified to vote?

#### **4. Massive voting irregularities: voters summarily deprived of voting rights**

As the voting period progressed, more and more people came forward with stories of dramatic voting irregularities. Here is an example.

A couple in the Pennant-area of Saskatchewan farm together. (The NFU would be pleased to put you in contact with this couple on a confidential basis.) Both spouses returned barley plebiscite ballots. Days later, the accounting firm conducting the vote phoned the couple and talked to the husband. The accounting firm representative told the husband that the couple was not entitled to two ballots. The farm husband disagreed and stated so. The accounting firm representative persisted in saying that one of the ballots would have to be destroyed and asked the farm husband which to destroy. Finally, the husband capitulated and said that the accounting firm should destroy his wife's ballot. As far as anyone knows, the accounting firm, acting on a verbal conversation, destroyed a ballot of an individual it never talked with.

Here's another example. Two separate farmers got phone calls saying that they'd sent in too many ballots. One farmer agreed. As far as anyone knows, that farmer's ballot was destroyed. But, the other farmer would not agree. It is completely unclear what happened to that second farmer's allegedly ineligible ballot. (Again, the NFU would be pleased to put you in contact with these people and several others.)

It is shocking that a voting process can be this haphazard. The informality of the way accounting firm reps arrange the destruction of ballots, seemingly with no paper trail, is unprecedented in any credible voting process we know of. We are confident that an in-depth examination of the voting record and declarations will reveal many irregularities and a pattern of indefensible informality when dealing with farmers' ballots.

#### **5. The vote count was not properly scrutinized.**

On March 1, the NFU requested the opportunity to scrutinize ballot counting. The Minister never responded.

We have seen media reports that “senior municipal elections officials from the provinces of Alberta, Saskatchewan, and Manitoba” scrutinized the vote count. We feel that the exclusion of scrutineers from farm organizations and other interested parties was unwarranted. Such exclusion calls into question the results of the election. In Canadian federal and provincial elections, vote counts are scrutinized by representatives of the political parties involved. This procedure is designed to give the parties confidence that the counting process was conducted properly. Because of the controversial nature of this plebiscite, and because of the many abnormalities with the plebiscite process itself, it was especially important to have present representatives from farm organizations from all sides of the issue. There is no valid reason why the Minister could not have accommodated that request.

During the last federal vote on barley, in 1996/97, representatives of the NFU and other organizations scrutinized the vote count.

The Minister's refusal to allow adequate scrutiny of the lists of voters and of the vote count represent fundamental lapses. The government has expended public funds to conduct a flawed and unfair plebiscite process. It conducted a process that omitted nearly every one of the safeguards essential to a fair and transparent process. Further, it did so despite numerous warnings and requests to act in a fair and transparent manner.

#### **6a. Third Party spending limits: no limits or reporting**

The Minister and his department chose to move forward with a vote without first placing limits on third-party spending. Nor did the Minister or his department require reporting of spending. Numerous parties did expend money during the vote process—the Alberta Government and the Brewers Association of Canada, for instance. But because there are no controls on spending, we will never know who spent what.

In each of the past elections for Canadian Wheat Board Directors, the NFU complied with the *CWB Act* and its regulations: we registered as a Third Party Intervener before the elections and we reported our spending and funding sources after the election. The government enforces these safeguards for Directors' elections; it is unreasonable that the government did not impose similar spending controls on its barley plebiscite process.

#### **6b. Third Party spending limits: unfair and uneven treatment**

Spending is important, so important that the Minister saw fit to take the extraordinary step of using the Order in Council process to limit the CWB's spending during the barley plebiscite to zero.

This asymmetry—prohibiting the CWB from spending a dollar while completely ignoring spending by other parties—is a double-standard, a breach of fairness, and a flaw in the barley plebiscite process so significant as to invalidate that process.

#### **6c. Third Party spending limits: MP and Minister spending**

One particularly disturbing area of election spending is spending by Conservative Party Members of Parliament. MPs Yellich, Benoit, Breitzkreuz, and others purchased ads in local newspapers during the voting period. Partisan information urging removal of the CWB's single desk came out under headings of "A message from your Member of Parliament." Further, these Members used their Parliamentary mailing privileges to distribute their partisan views on one side of the plebiscite question.

Further, the Minister himself criss-crossed the country delivering the message that the CWB should lose its single desk.

All of this occurred while the CWB was barred from spending any money and while the Minister was claiming that "the federal government...[is] not spending money" to influence the vote (John Gormley open-line radio program, Saskatoon).

Madam Auditor General, the federal government of Canada has used its power to improperly prevent the CWB from spending money during the vote period, it has used taxpayers' money to advance the Conservative Party's position on this issue, and it has neglected to implement proper safeguards to ensure that third-party spending is controlled and reported. The government spent improperly during the vote, and it failed to properly regulate the spending of others.

## **7. Ballot secrecy and trust**

Because ballot envelopes and declarations carried identifier numbers many farmers raised concerns about ballot secrecy. Concerns were heightened by the government's refusal to allow farm organization scrutineers to be present when ballots were opened and counted.

The Minister, his department, and the accounting firm they hired to conduct the plebiscite repeatedly asked for farmers' trust that ballot secrecy would be safeguarded. As we said to the Minister in our March 1 letter, in matters of ballot secrecy, forcing farmers to rely on trust is unacceptable. The issue is not whether farmers can trust unknown employees at a far-away accounting firm (they have no idea whether they can or cannot): the issue is that in properly run elections, ballot secrecy does not come down to trust—in properly run elections secrecy is built into the structure and process of the election. Because the Minister and his department so mis-handled and mis-designed the process, they had to fall back on trust. And they did so after taking numerous steps that dramatically undermined trust in their process.

## **8. One farmer, one vote?**

A fundamental principle of a fair voting process is that people be treated similarly and equitably or, failing that, that the government take all possible steps to come as close to that objective as possible. In the barley plebiscite, the government did the opposite: pushing forward with a ballot allocation process that it knew would result in wildly disparate and inequitable treatment of potential voters.

The number of ballots accorded each person was almost arbitrary. To take two examples, a three-generation family that has chosen to do all its farming within a single corporation was eligible for one ballot. However, a single individual who farms and who has set up two farming corporations was eligible for three ballots. It is literally true that at extreme ends of these possible scenarios, some people were eligible to cast the equivalent of ten (or more) times the number of votes of people at the other end. Further, the very high number of ballots that were mailed out—over 86,000 in total—raises serious concerns that the Minister and his department did not make sufficient attempts to reduce the number of entities receiving multiple ballots. This haphazard allocation of ballots is shoddy, unnecessary, indefensible, and alien to any proper notion of democracy.

## **9. Websites**

The media widely reported the opportunistic behaviour of a group calling itself the Marketing Choice Alliance. The Alliance set up a website with a URL almost identical to the official KPMG barley vote site. In fact, the official Barley Vote site set up by KPMG (2007barleyvote.ca) became completely encircled by other sites with almost identical URLs, set up by groups hostile to the CWB. Most damning, however, is that at least one of these URLs (2007barleyvote.com) was registered on January 22—more than a week before the official KPMG site was publicly placed on the internet. This action by the Marketing Choice Alliance indicates a leak of information from KPMG or from the government.

## **10a. Vote counting: no clear victory conditions**

In virtually every election and plebiscite, the “winning conditions” are clear, objective, generally accepted, and understood well before the vote count. In the CWB barley marketing plebiscite, this was not the case. It is anathema to a fair and democratic process to leave the

subjective determination of victory to the Minister to decide after he sees the vote count, especially when that Minister has so aggressively campaigned on one side of this issue.

We can gain some further insight into the issue of proper victory conditions by examining Canada's *Clarity Act*, legislation that lays out the need for a clear question and a "clear majority" in any future referendum on Quebec sovereignty. The *Clarity Act* requires, before moving forward with any negotiations on sovereignty, that the House of Commons take into account "the size of the majority of valid votes cast in favour of the secessionist option [and] the percentage of eligible voters voting in the referendum." Further, the *Act* stipulates four times the need for a "clear majority" in any such question. Almost unanimously, commentators interpret this "clear majority" requirement as ruling out separation on a close result.

Minister Strahl and his department designed a plebiscite process in which we cannot know "the percentage of eligible voters voting." Further, they designed a process that was almost certain to return an unclear result: certainly not a "clear majority."

The results were

- 37.5%:** The Canadian Wheat Board should retain the single desk for the marketing of barley into domestic human consumption and export markets.
- 48.4%:** I would like the option to market my barley to the Canadian Wheat Board or any other domestic or foreign buyer.
- 13.8%:** The Canadian Wheat Board should not have a role in the marketing of barley.

No one would call this a majority, let alone a clear majority.

### **10b. Vote counting: adding options one and two**

Before the barley marketing plebiscite results were in, many groups predicted that the Minister and his department would take advantage of their three-option question to add the results for options two and three in order to try to manufacture a majority where none exists. That's exactly what the Minister did.

"Over 60 percent of producers want to decide how to market their own product. We will now begin work on the appropriate amendments to Canadian Wheat Board regulations to remove barley from the Canadian Wheat Board's monopoly," said Minister Strahl in a March 28 news release.

Clearly, the entire barley plebiscite process was managed to achieve the desired result. Nowhere is this more evident than in the Minister's use of a three-part question, his refusal to state victory conditions until after he saw the vote count, and his self-serving and widely predicted decision to add two options together to create the appearance of a majority where none exists. The multiple manipulations of Minister Strahl and his department must not be left unchallenged.

### **Conclusions**

In our March 1 letter to Minister Strahl, the NFU said that "our organization has never encountered a voting process so riddled with errors, so handicapped by misdesign, so disdainful of accepted democratic safeguards, so unlikely to yield a meaningful result." That assessment has been further vindicated by events.

Madam Auditor General, in its CWB barley marketing plebiscite, the Minister and his department conducted themselves in a manner that is unfair, undemocratic, and damaging to

the public interest. Further, in so doing, the Minister and his department and government MPs improperly spent public money while simultaneously imposing draconian spending limits on those they disagreed with.

We ask that you investigate, immediately and in detail, and that you report your findings as soon as possible. If you find the misconduct and mis-spending we believe you will find, we ask that you declare clearly that the results of the recent CWB barley marketing plebiscite are invalid. Further, we suggest that the proper remedy for this situation—an unclear question, no clear majority, a lack of democratic safeguards—is the one proposed by Stephen Harper in his 1996 precursor to the *Clarity Act*: a parallel referendum conducted with a clear question utilizing proper procedures and safeguards.

Please inform us immediately how you plan to proceed on this issue. For farmers, billions of dollars are at stake. Your swift intervention is needed in order to prevent this abuse of government power and money from turning into a huge financial loss for farmers. We look forward to your swift and thorough investigation.

Sincerely,

Stewart Wells  
President  
National Farmers Union