

Agriculture and Agri-Food Canada
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Re: Canada Grain Act Review

To whom it may concern,

The Grain Growers of Canada (GGC) is pleased to provide input into the consultation that was launched in January of this year by Agriculture and Agri-Food Canada (AAFC) regarding the Review of the Canada Grain Act (CGA).

Modernization of the CGA and the Canadian Grain Commission (CGC) is a priority of GGC membership – 14 provincial, regional and national producer associations whose commodities fall under the *Act* and whose 65,000 producers are dependent on the grain quality assurance legislative and regulatory framework for their competitiveness. It has been over 35 years since a major overhaul of the *Act* and wholesale review of CGC operations. The grains sector has substantially evolved in this time including the elimination of the single desk for wheat and barley, the growth of canola and the oil-processing sector, and the size and sophistication of today's farms. The *Act* has not kept pace with these changes while also imposing higher costs to farms. This is coupled with the fact that CGC has become increasingly out of touch with the needs of our sector.

This Review of the *Act* provides the opportunity to define the “gold standard” for grain quality in Canada and uphold our global reputation as a trusted supplier of grain. The CGC plays a central role in assuring Canadian grain quality while providing a series of important safeguards for consumers and producers alike. A modernized legislative and regulatory framework is needed to create an agile and responsive Commission that drives agriculture's competitiveness, reduces regulatory red tape, and ensures high-quality grain for domestic and export markets.

To prepare for the review, GGC formed an ad-hoc Working Group of members to collaborate and establish consensus on issues of shared importance. Many of GGC's individual members will also be making their own submissions as part of this consultation process. You may note that while some of their submissions will go into greater detail, we are pleased to see high-level consensus on all of the issues outlined in this submission.

GGC members have identified the following priority areas for the review.

- The mandate of the Canadian Grain Commission
- Canadian Grain Commission Governance
- Funding the Commission and the services that it provides
- Outward weighing and inspection
- Producer protection provisions
- Producer Payment Security
- The Western and Eastern Standards Committee

- Embedding more transparency and accountability into the system
- The accumulated surplus

The Act's Object and Mandate of the Canadian Grain Commission

“The CGC works in the interest of grain producers. Guided by the Canada Grain Act, the CGC works to establish and maintain standards of quality for Canadian grain, regulate grain handling in Canada, and ensure a dependable commodity for domestic and export markets”.

Recommendation: GGC supports the current mandate of the Canadian Grain Commission. GGC is not comfortable with expanding this mandate without a clear understanding of the business case or the resulting role of the Commission. GGC is specifically concerned with scope creep (i.e. non-regulatory functions) and the dilution of producer protections.

Canadian Grain Commission Governance

GGC members have concerns about the current governance structure at the CGC. GGC members strongly support a new, modern governance structure for the Commission, one which drives accountability, provides strong leadership and direction to stakeholders and staff, and ensures regional and value chain perspectives. The new structure should also incorporate the producer voice and ensure that perspectives from both eastern and western Canada are built into the structure.

Beyond this, GGC is not currently in a position to recommend a particular structure but would like to examine the options with government, through the Review process.

Funding the Commission and the services that it provides

GGC is recommending increased government funding for the public good functions of the Commission with a request for greater alignment with that provided to the US CGC equivalent (~33% of total budget). GGC supports an alternative funding structure for the CGC. The new model must ensure full transparency in terms of where revenue is being allocated, avoid cross-subsidization and set fees at the cost of service.

The CGC has a history of collecting and accumulating consecutive surpluses. The CGC must have the flexibility to return any accumulated surpluses to producers through an annual adjustment in fees. GGC continues to advocate for the current surplus revenue (minus contingency) to be returned to producers through a reduction in service fees.

Outward Weighing and Inspection

While GGC is recommending that any surplus collected by the CGC through outward weighing and inspection service fees be returned to producers, we are of the view that ultimately, these services need to be transitioned to third party providers under the oversight of the CGC. Currently, approximately 70%¹⁺ of all grain exported overseas from Canada is double inspected (using a third party in addition to the CGC). While there are several reasons why importers and exporters currently use third party service providers, cost is the one that has the greatest impact on our producer members. Third-party service providers have indicated they can perform

¹ Western Grain Elevator Association, 2020

weighing and inspection and provide relevant quality documentation for approximately \$0.50 per tonne versus \$1.41 per tonne currently being charged by the CGC (\$1.48 if weighing is included). Eliminating this duplication of services has the potential of reducing the cost of the CGC for industry and Canadian producers alike. Third parties also provide additional efficiencies and convenience for the grain trade in terms of consistency (same company used at unload) and flexibility in operations (i.e. additional analysis, more flexible work schedules).

Under the current system, the grain industry incurs the costs for both the third-party inspection company and the CGC inspection. Assuming more than 34 million metric tonnes of grains and oilseeds are exported overseas from Canada and assuming that third parties are currently used on at least 70% of those tonnes², forcing the industry to also be inspected by the CGC adds significant costs to exporters and their farmer customers to whom this cost is passed onto.

It is important to note that currently, not all grains are subject to mandatory weighing and inspection by the CGC. Grains, pulses and oilseeds that are shipped by container or by rail or truck to the United States and Mexico are inspected by third-party service providers and are not subject to CGC inspection.

Recommendation: To reduce duplication of service and to ensure cost-effectiveness and better alignment, while maintaining international quality assurance standards. GGC supports third party inspection companies to perform *all* outward weighing, sampling and inspection services. CGC would accredit third party inspection companies and maintain oversight over the Canada's grain quality (i.e. third parties need to be accredited by the CGC). Further discussion is required to determine what this new role would entail and what farmers require in an oversight model.

With this, it should be noted that the CGC would no longer provide inspection and weighing at time of loading. We recognize that some customers still prefer government certification and appreciate concerns related to Canada's brand. However, we believe that this is a shrinking constituency as more robust testing and additional quality parameters are required. An accreditation model should instead provide these assurances, as larger government oversight over grain quality testing will uphold Canada's high-quality reputation.

As the new oversight role is explored, the following elements should invite more discussion:

- Accreditation system to ensure integrity and consistency in Canadian grain quality of which is not onerous or overly complex.
- Data requirements to enhance CGC's existing statistical functions and to support new requirements related to an effective oversight role and market transparency.
- The integrity of larger CGC quality control and market access function. The Grains Research Lab and the CGC play an important market access role. (Third party submit samples to the CGC and GRL to maintain records of all grain leaving Canada).

Producer Protection Provisions

Producer protections should not be diluted in anyway during the Review process and subsequent Act changes. Producer protections are in place to ensure that producers are treated fairly and respected in the sale of their grain and prevents undue risk being transferred to

² Ibid.

producers. Protections also maintain effective oversight of the grain quality system - drive accountability to producers, strengthening their position in the marketplace while instilling trust in the producer/elevator relationship. However, the rights afforded to producers currently assume they will be present at the elevator. Modern grain farming has changed and increasingly producers rely on employees or third parties to deliver their grain.

The following recommendations are intended to recognize the change in farming practices and to modernize and strengthen producer rights:

Right to observe

The right to observe weighing, grade, and dockage of grain is important as it allows producers to remain confident that grain grading is occurring in line with standardized procedures. This access also provides producers with an avenue in which they can educate themselves by asking questions about the grading process. Finally, this process helps to facilitate professional relationships between producers and elevator staff, which is essential for effective business negotiations.

Licensing system

Licensing provides the supporting framework for upholding the quality assurance system, ensuring producer protections, and collecting data requirements. It also provides a risk management function, as it provides producers confidence in buyers financial sustainability. CGC has previously consulted on whether to include grain agents, feed mills and producer car loading sites with mixed results.

Grain standards, standardized equipment and processes (existence of)

Grain standards, standardized equipment (Boerner dividers, sieves for dockage) and processes (i.e. representative sampling) play an important function in maintaining consistency throughout the grain system and ensuring common expectations among its stakeholders. The grains research lab plays an important role in researching quality and end-use impact, accuracy of equipment and assessing harvest quality.

In-country grading

While the CGA provides for and the CGC develops the grain grading guide and related processes, it is unclear to producers what authority the CGC has (if any) for ensuring compliance and upholding the grain quality assurance framework in-country (producers primary interaction with the CGA). Producers are increasingly frustrated by process variability, grading subjectivity between licensed facilities and barriers to their producer rights. These concerns threaten to undermine CGC standard-setting and guidance function and, more largely, erode producers trust in the grain quality system.

We recommend the below enhancements to maintain the relevancy of producer protection and to ensure they are aligned with the marketing and delivery practices of today's farms:

Recommendation(s) – Specific to the Act:

1. CGC should look at how to modernize and expand Subject to, to account for increases in spec buying. CGC should be empowered to weigh in on grain quality requirements specified in grain contracts that fall outside the official grading factors (falling number, end-use).

2. Extend the right of subject to inspector's grade and dockage to all licensees including processors. This would enable producers to access the right at existing process elevators or new value-added facilities that may be licensed under the CGC.
3. Within 24 hours of delivery, a producer must receive a record of relevant information in a digital format with respect to a grain delivery, as specified in regulation. A paper copy of the specified information shall be provided at the time of delivery in addition to a digital record.
4. For each delivery, a producer shall be offered a portion of the driveway sample of adequate size for a "subject to" determination. This sample must be sealed and labeled by the elevator with information linking it to the provided record of information on the grain delivery.
5. Producers shall have five business days to exercise their right to access the inspector's grade and dockage.
6. The review should clarify the role of the CGC in-country and look at how to increase producers trust in the grading system (and by extension the Canadian Grain Commission) and reduce animosity among system actors. The CGC must recognize its responsibility to ensure procedures and methods are being properly followed wherever grain is graded to CGC standards. Potential solutions include a random audit process for representative sampling and grading and/or a targeted process for managing/responding to producer complaints. It should be noted that this in no way suggesting a return to in-country inspectors.

Recommendations – Specific to *Regulatory Changes*:

7. Increase producers' flexibility to exercise their right to dispute grade by specifying the length of time a sample shall be held at an elevator in regulations. Suggest adding language to section 34 indicating the minimum and maximum amount of time a sample shall be held at the elevator.
8. Relevant information provided to producers on grain deliveries should include elevator determinations of weight, dockage, moisture, protein, notice of any downgrading factors and the associated discounts for each factor, and the grade determinant.

Producer Payment Security

The Producer Payment Security Program is a core producer protection provided for in the Canada Grain Act and managed by the Canadian Grain Commission. The program ensures producers are covered for non-payment for grain delivered in the event of a licensee default.

GGC supports changes to the current producer payment security program to increase efficiency and to reduce program costs for licensees and producers, as long as producers continue to be protected from the bankruptcy or non-payment of a licensee. GGC would like CGC modernization to include discussion about potential alternatives (including fund-based model), and the appropriateness of the CGC in providing this role.

Recommendation: The Act should maintain a producer payment security requirement as part of licensing but provide the legislative flexibility in terms of its delivery. Any change in program delivery should be made only after consultation with producers and a solid business case has been presented.

Cash Purchase Tickets

The ability to defer cash purchase tickets into the next fiscal year is an important revenue and financial management tool for grain producers. Grain producers face considerable production variability each year. Taken together with price volatility, the value of crop production revenue can vary significantly from year to year. The costs of producing crops are largely fixed once the crop is planted, so revenue variability translates into income variability quite closely. Cash purchase ticket deferrals can help to smooth income levels, while not impacting the timing of producers' optimal marketing decisions.

Canada's Income Tax Act (ITA) currently defines "cash purchase ticket" to have meaning as assigned by the CGA, however the definition for "grains" in the ITA is defined as "wheat, oats, barley, rye, flaxseed, rapeseed and canola produced in Canada". GGC supports the alignment of the ITA definition for "grains" with all grains regulated under the CGA. This would ensure the availability of the cash purchase ticket deferral mechanism to all producers.

The Western and Eastern Standards Committee

It is important to note the Committee exists for the purpose of grading (and research regarding grading) and is not a forum for larger CGC governance. While larger governance is an identified GGC theme, the Committees are not intended to discuss larger governance issues or producers concerns with producer protection or alternative service delivery.

Operations – Transparency. The function of the Standards Committees is to serve as an important forum for producer involvement in determining grading factors (and changes), as well as for bringing grading issues forward to the Commission and larger industry. We hear regularly from producers regarding concerns with grading and confusion over how they are applied at delivery. The Committee could provide a forum to further exchange information on grading issues – either what the Commission sees at harvest and delivery (as opposed to solely CY Quality reports) or to address producer concerns.

Recommendation(s):

1. GGC supports the role Standard Committees play in setting Canadian grades and believes that producer representation is integral to ensure the Act's objective "*to work in the interest of producers*" and larger accountability to producers. The Canadian grading system needs to reflect both end-use requirements while ensuring producers receive a fair grade for their grain.
2. Grain producers (and their producer-focused associations) should be empowered to determine who their best representative is (and not the Minister and/or CGC Commissioners) depending on the content of the meeting agenda and who can best meet/contribute to the producer and Committee objectives. GGC supports amending the Act to transfer this authority to producers and to allow them to self-organize and appoint

a voting representative for each meeting of the Standard Committees that best fit their requirements.

3. The Act's rigidity allows for one representative member, which creates an opaque decision-making environment and impeding the flow of information. Whether in the Act or in corresponding regulations or bylaws, the GGC asks that an alternate representative be allowed to attend meetings with all of the same rights that would be afforded the primary representative. This would include access to Committee documents and outcomes and the ability to vote at committee meetings. This would strengthen the link back to producers and ensure that the member is supported and prepared for the discussion. As the terms expire allowing alternatives and empowering producer -focused associations would better ensure continuity of discussion.
4. GGC asks that the bylaws and position terms be made available upon request.
5. Increase transparency by making meeting minutes (or a record of discussion) available online. This is important for ensuring that producers understand potential changes and the outcome of key grading decisions (i.e. Falling number, green seed).

Embedding Transparency and Accountability into the System

Operational Transparency

The move to cost-recovery left producers asking more questions of the Commission's role in the grain handling system and wanting more information on CGC operations and producer protections. Increasing transparency around CGC services and costs and better accountability to producers (and the larger value chain) should be considered in the review process. The lack of information impedes the ability of producers to fully understand and assess CGC's role in quality assurance and the protections it provides to producers.

Cost Transparency

The cost-recovery funding model should be transparent and accountable to those responsible for the Commission's cost. It is widely accepted (recognized by the CGC in its latest User Fee review) that the majority of CGC user fees are passed back to producers though the price they receive. Additionally, the model is responsible for a \$130+ million (and growing) surplus from excess fees and money belonging to producers. Financial reports require additional detail per CGC service or program area, and accumulation of surplus dollars needs to be more transparent to producers.

Market Transparency

A well-functioning open market relies on quality information. Weekly CGC's grain handling and monthly export reports provide invaluable information to the health of the grain handling system and assist in producer understanding of market (price) demand. The licensee structure and existing CGC statistical expertise should be leveraged and its data functions enhanced.

- 1) **Exports sales and vessel line-ups.** As in the United States, weekly export sales by commodity and volume should be published to accompany any change to outward inspection and weighing. Sales could be aggregated to address commercial concerns while still providing an additional market indicator. More timely insight into exports and

vessels line-up would improve transparency and empower producers to make better marketing decisions.

- 2) **Container exports.** To respond to market and end-use diversity, increasing volumes of grain are now shipped by containers. CGC data functions focus on bulk export data creating a growing information gap. A complete picture by commodity, volume, and market would deepen understanding of containerized shipments and export demand.

Better coordination between AAFC and Statistics Canada. More coordination would enhance the quality and the representativeness of export data and supply and demand tables. The time lag in export data by destination, discrepancies with U.S/Mexico export data and the lack in granularity of commodity exports (i.e. malting or feed barley vs barley) limits analysis and the ability to assess real-time demand. The CGC is uniquely positioned in its ability to collect data and should pursue alignment and improvements with AAFC and Statistics Canada.

In closing, GGC would also like to recommend that a review of the Canada Grain Act, and associated operations of the CGC be conducted every seven years, to ensure that it remains relevant and responsive to the needs of farmers and the grain sector.

Government leadership is needed to move the process forward in a timely manner, to ensure producers are central to the process and to work with the grain sector to achieve the desired outcomes. The review must ultimately lead to a roadmap for change and a comprehensive path forward to legislative reform. Grain producers need more than a What We Heard Report.

Please feel free to contact GGC's Executive Director, Erin Gowriluk, should you have any questions about what we have outlined in our submission. She can be reached via email at egowriluk@ggc-pgc.ca or by telephone at 343.549.4767.

Sincerely,



Andre Harpe
Chair of the Board of Directors

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