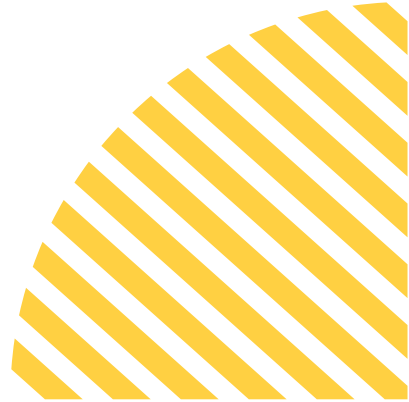


# Alberta Wheat and Barley Commissions Canada Grain Act Review Submission

April 28, 2021



Alberta  
Barley



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# Introduction

The Alberta Wheat and Barley Commissions are submitting these recommendations on behalf of levy-paying wheat and barley farmers in Alberta. Our not-for-profit organizations represent over 17,000 middle-class family farms who produce safe, high quality, nutritious grains for both Canadians and the global market. The wheat and barley producers of Alberta are innovative entrepreneurs who continually increase production through sustainable farming practices based on the results of significant investment into scientific research.

The commissions are tasked with administering the producer check-off collected from each tonne of wheat and barley delivered in Alberta. These funds are directed to support our mission to increase the long-term economic sustainability of Alberta wheat and barley farmers through innovative research, market development, policy advocacy, farm business management, agronomy and extension.

The recommendations in this submission are compiled from over seven years of feedback to the Canadian Grain Commission directly, submissions to various round tables, and previous Agriculture and Agri-Food Canada (AAFC) consultations. All of the positions submitted in this document have been reviewed and approved by the directors of the commissions; the elected representatives of Alberta's wheat and barley producers.





# Summary

The Canadian Grain Commission (CGC) is a unique government department with a specific focus on ensuring the dependability of Canadian grain and oilseed commodities for domestic and export markets. The CGC has largely been successful in its role, if measured against the global demand and reputation of Canada's grains and oilseeds. This is in part because the CGC continues to be directed by legislation that recognizes that the success of the entire Canadian grain value chain is based on the success of Canada's grain producers.

The long-term impact of the Canada Grain Act has been to empower the CGC to mitigate the many inherent risks in operating a grain farming operation, and to address the natural imbalances of market power that occur in any industry which naturally results in many sellers and only a few buyers. The CGC has also recognized that Canada can not be a competitor in providing the lowest cost grains, given the distance of our major production areas to tidewater, and has built classification frameworks for varieties to ensure that Canadian producers can easily identify the varieties with quality attributes that are demanded by export markets. This removes much of the risk that producers face when purchasing a new wheat variety.

Thanks in part to the Canada Grain Act, the Canadian grain sector has been a steady source of economic growth for both the rural and urban economies of Canada. The growing production of Canada's farmers supports hundreds of rural service providers and retailers, has allowed the grain export industry to continue to grow in value, provides significant work for Canada's logistics networks, borrows significant amounts annually from Canada's major financial institutions, and provides the general Canadian public with unrivaled food security through a surplus of safe, high quality, and nutritious grains.

This submission aims to address the concerns of today and to identify the upcoming challenges for producers that the CGC is positioned to address as we progress into the post-digital age. As the cost of information transfer has become negligible, there is now an expectation from both producers and the general public that information will be available in a timely manner. As new technology continues to decrease both the cost of grain analysis, consumer expectations are evolving to expect more information on grain quality, safety, and nutritional content. This growing demand has already led to a steady increase in demand for testing services beyond what is offered by state services in both Canada and the US. It is expected that this demand will continue to develop a market for testing services, which will continue to attract new entrants. Unfortunately, these technologies are not transparent in their methods. This shift will result in a growing need for monitoring and enforcement of grading practices to ensure public trust is maintained. This need is also required at delivery points which currently operate under exemptions on producer rights and protections. The CGC must ensure that producers are treated consistently no matter where they sell their grain.

This review of the Canada Grain Act is an opportunity for the Government of Canada to adjust the functions and responsibilities of the CGC. These recommendations recognize that the growing amount of technical testing throughout the grain value chain will require an expansion of the CGC's role in regulation and enforcement to ensure that farmers' production is evaluated consistently. This includes new minimums for transparency to producers, which will lead to increased communication between the CGC and producers. These recommendations also recognize that CGC mandatory export inspections are no longer the best method to provide export quality assurance for producers, and that associated resources should be redirected to new services which will be required by producers in the future.



# Key Recommendations

- The Canada Grain Act should no longer allow the provision of mandatory services by the CGC, including outward weighing and inspection of outgoing grain vessels, and should instruct the CGC to accredit third parties who provide testing and inspection of grain exports on a competitive basis in line with customer demand. The CGC would instead be tasked with undertaking all of the regulatory and enforcement responsibilities associated with an accreditation system.
- The current funding model of inflated mandatory export vessel inspection fees which indirectly transfer the CGC's operational costs onto grain producers is not transparent. Transparency to producers requires that the CGC acknowledge producers as the primary source of CGC funding. The Canada Grain Act should define that all CGC funding requirements related to the direct costs of regulation in the interests of producers must be shown as a fee on producers' sales of grains. This fee must be applied in a transparent manner by CGC licensees to all grain deliveries that fall under the CGC regulation, the fee must be reviewed annually, and the fee must be calculated in a manner that prioritizes funding current operations through the use of any surplus funds collected in previous years. This will ensure that farmers are aware of the costs they are paying for the regulatory system and prevent accumulation of annual surpluses.
- The CGC provides functions for the public good to all Canadians, such as the Grain Research Laboratory. Currently, these operations are being subsidized by grain producers as the federal appropriations provided to the CGC are inadequate. Any CGC functions determined to be in the public good must be completely funded by federal appropriation; i.e. Canadian taxpayers.
- The functions of the CGC must be further defined in order to facilitate greater and more timely collection and dissemination of information related to the export of grains under CGC regulation to ensure similar market transparency for all members of the value chain, and allow for a government certified dataset to address international concerns of Canada's grain exports.
- The CGC must recognize and expand their responsibility in regulating and enforcing the grading methods and procedures used for domestic transactions of grain wherever CGC standards are used for quality assessment in order to ensure consistency for producers.
- The producers' right to dispute grading results, subject to the CGC inspector's assessment must be expanded to include assessment of non-grade requirements (i.e. Falling Number and DON), and the right to dispute grading results must be available to producer for a window of five business days from the date of a grain delivery.
- Minimum standards must be set to ensure the digital provision of information to producers in a timely manner, to ensure that the producer is promptly informed of the value of each delivery, including identification of any potential variation from the contracted value due to any quality variations.
- Producers must be offered a sample of each grain delivery for their records, in sufficient quantity and packaged in such a manner that the sample would represent the grain delivery beyond a reasonable doubt, due to the financial and legal risks created by the implementation of mandatory declarations.





- The payment protection program must be altered to ensure full coverage of any funds owed to producers for grain deliveries, for a period of up to 90 days from the time of delivery irrespective of the date of issue of a cash purchase ticket, a bill of exchange, or any other documentation.
- All grain sales which use CGC grading factors should be subject to producer payment protection and provide producers the right to dispute a grade subject to CGC inspection.
- The CGC must conduct a review of Western Wheat Classification to ensure that all classes are targeted to specific market demands that are of value to western producers.
- The executive governance of the CGC must be transitioned to a board of directors with significant producer representation.
- The decision of appointment for voting members of the Western Standards Committee must be made by the organizations that hold a seat, in order to ensure that the best possible representative be present at the meetings, based on the topics of discussion.



# Refocus on Regulation and Information Provision

The Alberta Wheat and Barley Commissions note that the current hybrid role of the CGC as both a regulator of the grain export sector and as a service provider to that sector is no longer the best use of resources in the interest of the producers of grain, nor is the role of service provider the most efficient means of ensuring a dependable commodity.

As we enter the post-digital age, the market for testing services is mature and efficient, and it is no longer necessary for the government to provide these services. However, as testing services become more technical, it will be impossible for a producer of grain to determine if the service is being conducted in a proper manner. Producers' trust will depend on consistency of results from different testing locations, and this consistency in results will depend on adherence to a common set of standards for equipment and testing procedures.

As technology improves the efficiency of testing, market demand will continue to place greater demands on grains to ensure that domestic food supplies are safe and of adequate quality and nutritional value. These expectations are already creating issues for grain exports as sanitary concerns, phytosanitary concerns, and concerns with low level presence of genetically modified material are creating market access issues for Canada's grain exports. We recognize that the CGC is well positioned to gather information on Canadian grains, which would greatly assist the work of other government organizations in addressing these growing areas of concern.

As the core of funding for the CGC is currently derived from producers indirectly through mandatory service fees on grain exports, ending service provision will require a structural shift in the funding mechanism. This is an opportunity for the CGC to modernize its funding structure to increase transparency to producers, mitigate the surplus accumulation of revenues, and increase the frequency of communication with grain producers for the benefit of both the grain value chain and Canada as a whole.

It is from this perspective that the commissions' members are submitting the following recommendations:

- The Canada Grain Act should no longer allow the provision of mandatory services by the CGC, including outward weighing and inspection of outgoing grain vessels, and should instruct the CGC to accredit third parties who provide testing and inspection of grain exports on a competitive basis in line with customer demand. The CGC would instead be tasked with undertaking all of the regulatory and enforcement responsibilities associated with an accreditation system.
- The current funding model of inflated mandatory export vessel inspection fees which indirectly transfer the CGC's operational costs onto grain producers is not transparent. Transparency to producers requires that the CGC acknowledge producers as the primary source of CGC funding. The Canada Grain Act should define that all CGC funding requirements related to the direct costs of regulation in the interests of producers must be shown as a fee on producers' sales of grains. This fee must be applied in a transparent manner by CGC licensees to all grain deliveries that fall under the CGC regulation, the fee must be reviewed annually, and the fee must be calculated in a manner that prioritizes funding current operations through the use of any surplus funds collected in previous years. This will ensure that farmers are aware of the costs they are paying for the regulatory system and prevent accumulation of annual surpluses.





- The CGC provides functions for the public good to all Canadians, such as the Grain Research Laboratory. Currently, these operations are being subsidized by grain producers as the federal appropriations provided to the CGC are inadequate. Any CGC functions determined to be in the public good must be completely funded by federal appropriation; i.e. Canadian taxpayers.
- The functions of the CGC must be further defined in order to facilitate greater and more timely collection and dissemination of information related to the export of grains under CGC regulation to ensure similar market transparency for all members of the value chain, and allow for a government certified dataset to address international concerns of Canada's grain exports.

## End Mandatory Inspection and Accredit Third-Party Inspection

It is our view that a continued CGC focus on providing mandatory testing services will yield fewer benefits to producers into the future. The mandatory provision ensures the CGC services will be insufficient due to being insulated from market signals. Further, we are concerned that a regulator who is also a service provider may be incentivized to increase standards beyond that demanded by the market. The membership of the Alberta Wheat and Barley Commissions recommend that the CGC cease mandatory provision of services, as the open market is able to provide the same benefits for producers with greater efficiency and at a lower cost.

There is a consistent growth of the private sector for laboratory services and grain testing, which has resulted in the emergence of a robust, global market for grain testing services. The Canadian market for testing services is increasingly competitive, driven by the growing sophistication of an international market that is requesting more information when purchasing food. It is self-evident that the inspection services provided by the CGC are insufficient to meet market demands. Despite CGC inspections of grain exports at port currently being mandatory, there is continual growth in demand for third-party inspection of grain exports. According to the Western Grain Elevator Association (WGEA), up to 80 per cent of outgoing grain vessels are inspected by both the CGC and a third party. It is our understanding that the demand for third-party inspections are driven from requests of international buyers who either prefer a third party, or are requesting testing services that the CGC is unable to provide. In addition, third-party inspections are done at roughly one-third of the cost of mandatory CGC inspections.

It should be noted that this situation is not unique to Canada. According to a review by Ward Weisensel which was recently released by the Saskatchewan Wheat Development Commission<sup>1</sup>, the use of third-party inspections are prominent in the U.S. as well, with the report estimating that 80 per cent of U.S. exports of wheat and durum require a third-party test due to international markets requesting quality assurance for non-grade specifications.

As there is a clear trend of growing demand for testing services from international markets, the growth in the marketplace for testing is clear evidence that state-run inspections will not be agile enough to meet the changing market demand. Due to this reality, the open market for inspection will continue to grow.

The growth of the third-party inspection sector is providing an opportunity to safely allow the CGC to cease their role in mandatory service provision without impacting the international trust in Canada's quality assurance standards. The marketplace is robust enough to allow the CGC to transition their focus onto their regulatory and oversight roles, and to accredit organizations within the inspection services sector to provide testing services equivalent to those conducted in the provision of certificate final. Through accreditation, the CGC will efficiently continue to meet the objective of ensuring a dependable commodity for export by ensuring international trust in the safety and quality of Canada's grain exports. Accreditation would also be in the best interest of producers by encouraging a competitive and cost-efficient domestic market for grain inspections.

<sup>1</sup> Weisensel, Ward. October 2020. *Saskatchewan Wheat Development Commission Review of Potential Changes to the Canada Grain Act*. Accessed April 16, 2020. Available at: <https://static1.squarespace.com/static/5c40f31a620b85cf0d073e7b/t/6026c2de25b2481827961a52/1613152990644/SWDC++Review+of+Potential+Changes+to+the+Canada+Grain+Act++Final+Oct+2020+%281%29.pdf>





As highlighted by the Weisensel review, in an environment where accreditation was in place the CGC would have significant responsibilities to ensure international trust in Canada's open market for quality assurance services. We would like to endorse Weisensel's following recommendations of regulatory responsibilities that the CGC would need to shoulder:

- Establishing and maintaining official Canadian grade standards for grains and oilseeds.
- Promoting uniform application of official grade standards by official inspection personnel.
- Establishing methods and procedures and approvals of equipment for the official inspection and weighing of grain.
- Leading grain quality assurance research to ensure that Canada remains a world leader in grain quality assessment and measurement.
- Accrediting and designating and overseeing/auditing qualified third-parties to inspect and weigh grain at export locations.
- Investigating alleged violations of the Canada Grain Act, or deviation from established inspection methods and procedures.
- Investigating complaints or discrepancies reported by importers.

It should be noted that we do not endorse Weisensel's recommendation that the CGC provide official inspection and weighing services if there are gaps in accredited services. The growth of the open market for testing services is based on the private market's agility in fulfilling gaps in testing requirements, and we do not see this concern as credible. We would encourage a regulatory focused CGC to prioritize their communications on regulatory changes to ensure that any gaps in accredited services are identified before they become a barrier to international trade.

## Improve Funding Transparency and Mitigate Surplus Accumulation

Our producer membership recognize that they are currently indirectly bearing the costs of CGC operations for both service provision and regulatory operations through reduced grain prices. They also recognize that the current CGC funding model obscures producer awareness of rising CGC costs, which creates the potential for expanded operations which may not directly benefit producers (i.e. Moral Hazard). Based on this recognition, we recommend that the CGC end the opaque and indirect funding of regulatory operations through mandatory inspection fees on grain exports, and implement a transparent funding method of directly applying regulatory fees to producers' grain deliveries. This recommendation provides an opportunity for the CGC to increase their transparency with producers by formally recognizing that producers are the primary source of funding for the CGC. This funding model will also create additional opportunities for the CGC to improve their transparency beyond what is possible using the current funding model.

Currently the CGC charges a fee<sup>2</sup> for mandatory inspection services of export grains in excess of the cost of the inspection service itself, with the excess amount intended to cover direct and indirect regulatory expenses incurred by the CGC. While this fee is directly paid by grain exporters, the cost of this fee is passed to grain producers through lower grain prices. This results in an opaque funding method in which producers bear the costs of CGC operations, but are largely unaware of their ongoing support of CGC operations. This is further complicated as the publicly available online fee descriptions are not clear on the proportion of the fee directly tied to inspection services or tied to regulatory costs. In addition, this funding method also restricts the ability of the CGC to implement fee reductions when surplus funds are collected, out of concern that the benefits of these reductions would not reach grain producers.<sup>3</sup>

<sup>2</sup> <https://grainscanada.gc.ca/en/grain-quality/services-fees/information-regarding-fee.html>

<sup>3</sup> <https://www.grainscanada.gc.ca/en/about-us/org/initiatives/2021/canada-grain-act/funding/faq.html?wbdisable=true>



Our members have also raised concerns that the CGC's primary interest should be to work to produce a dependable commodity for both domestic and export, but the current funding model places the majority of regulatory expenses on export cargos. This is a concern for our members as the commodities of wheat and barley are primarily export focused, and they see a risk that the costs associated with a required expansion of CGC regulatory oversight into the domestic processing sector will disproportionately fall on export cargos.

In order to ensure maximum transparency a mandatory regulatory fee on producer deliveries should include the following information, to be displayed on each payment provided to producers for a grain delivery:

- A line item clearly labeled as "Canadian Grain Commission Regulatory Fee".
- The fee amount listed as a per tonne amount.
- The total amount removed from that cheque.
- A contact phone number for producers to contact the CGC with any comments or concerns.

This funding structure will raise producers' awareness of the CGC's role in Canada's domestic agriculture industry, allow for a simple and direct recognition by producers of their role in funding of the CGC's regulatory activities, and facilitate an increase in the frequency of producer contact with the CGC. In addition, this funding structure would address the CGC's concerns that the annual adjustment of fees based on the accumulation of surplus revenues would flow directly to grain exporters. Under this system, the CGC could ensure that any benefits from a lower annual per tonne fee will flow directly to grain producers.

This call for increased transparency of regulatory funding is not and should not be taken as an acceptance by producers to bear any amount of the costs associated with the CGC's work for the public good. Work which is of benefit to all Canadians, such as research by the Grain Research Laboratory, should be funded entirely through government appropriations. We are concerned that in recent releases the Canadian Grain Commission indicates that revenues from fees are being used to cover 50 per cent of the funding of the GRL, indicating that the current public funding amount is inadequate.

We would also suggest that the CGC conduct a review of the funding requirements for the GRL and for the expected infrastructure costs facing the CGC in the next 10 years, to ensure that the public funding appropriation is adequate to cover the total expected costs.

## Improved Information Provision

As the regulator of the Canadian grain sector, the CGC is uniquely positioned to collect and distribute a significant volume of information that could both protect and improve the general function of Canada's domestic grain markets. We expect that this task falls under the CGC's objective to ensure a dependable commodity and requires only additional functions to be defined, but are providing additional feedback should a change in the CGC's objects be required. Our members expect there are multiple benefits a CGC focus on information would improve the dependability of Canada's grain and oilseed commodities.

The CGC already collects valuable information on grain exports, and was able to use this data recently when a GMO wheat discovery in Alberta resulted in market access issues for wheat into Japan. However, there is a growing trend of non-tariff trade barriers for Canadian grain exports which use sanitary, phytosanitary, and Maximum Residue Limits as justification. Currently, concerns for wheat are recognized in the markets of Turkey, Vietnam, Indonesia, and Morocco. The CGC is well positioned to be a frontline responder to these growing concerns if they are empowered to collect the necessary data and grain samples from other organizations. As the trend for increased testing continues, a wealth





of information and material will be readily available to the CGC from both accredited third-party inspectors and licensed grain exporters. By collecting this information from the broader value chain, the CGC will ensure that they are well positioned to benefit both grain producers and all Canadians by enhancing the support they already provide.

In addition, export grain data is important for organizations with an interest in the international promotion of Canadian wheat for export abroad. Analysing international demand trends from current data is an increasingly difficult task as grain sales are moving toward contract specifications based on testing results, rather than the historical use of state defined grading standards. In order to assist long term market development efforts, information collected on exported grains must be robust. If the CGC is empowered to centrally collect the general specification requirements of different export regions, this would assist those who are attempting to promote desirable wheat attributes from Canadian wheat varieties, and assist in informing researchers on changes in market preferences.

Finally, the modern grain market runs off the deferred delivery contract, in which a grain producer sells their grain up to 18 months before delivery. The information on Canadian export sales commitments available to Canadian producers is insufficient to estimate the quantity of grain production that is already committed abroad. This is important market information in agricultural markets especially in Canada where limited rail resources can significantly impact grain prices, especially during winter delivery dates. The U.S. has recognized that export sales information is important for a well functioning market and had addressed this through the USDA reporting of export commitments. Having the CGC provide a similar function would help to improve the transparency of both the availability of grain supply in Canada, and improve the visibility of when there will be peak demand for grain movement.

While the CGC is the ideal department for the collection of data, for the aggregation, publishing, and dissemination of data the CGC should seek efficiencies through coordination with other government bodies who are already equipped for processing significant data. We expect that coordination with AAFC and Statistics Canada would provide the technical knowledge and skills to ensure that data was processed and released in a timely manner.

In order for the CGC to take on the important role of information collection, we expect that our recommendations could be captured as additions to the CGC's functions through Section 14 of the Canada Grain Act. However, if a change is required to the objects then we would suggest the following adjustment in Section 13:

***13 Subject to this Act and any directions to the Commission issued from time to time under this Act by the Governor in Council or the Minister, the Commission shall, in the interests of the grain producers, establish and maintain standards of quality for Canadian grain, set requirements regarding provision or publication of information and materials to improve transparency and efficiency of Canadian grain markets, and regulate grain handling and grain inspection in Canada, to ensure a dependable commodity for domestic and export markets.***



# Modernization of Supports for Producers

The Canada Grain Act recognizes the many inherent risks of farming and attempts to address them by providing supports and rights to grain producers. By recognizing the natural imbalances of market power that occur in any industry which has many sellers and only a few buyers, the Canada Grain Act attempts to ensure that there will be competition for producers' grain and that grain quality will be consistently evaluated through standardized grading factors. To ensure transparency and trust in this process, producers are provided additional rights to observe the grading process and to dispute the results.

While a modern grain producer faces the same risks as recognized in the Canada Grain Act, the way in which the modern grain producer conducts their business has changed. The rights as currently implemented have an underlying assumption that a producer will be present at the time of grain delivery. This assumption is no longer correct in the modern era, as grain deliveries increasingly occur while the producer is physically absent.

In order for the Canada Grain Act to remain relevant into the modern post-digital era, the protections provided to producers need to be updated under the assumption that the producer will be absent at time of delivery, and recognize the increased use of technology in quality assessment. The CGC must revisit their in-country role to ensure that the department is meeting the regulatory responsibilities required to prevent an erosion of trust in a grading system no longer being observed directly by producers. This process must also address the variation in requirements of licensees.

Other systems and protections are also in need of review to ensure they are still functioning as intended in the modern era. Current timelines providing protection to producers' payments may be insufficient as farms grow larger and delivery arrangements between buyers and sellers are increasingly complex. Producers also hold greater risk past the point of sale due to expanding contractual obligations to both buyers and government. There is also a need to review the relevance of the western wheat classification system to ensure each class is aligning wheat quality specifications to a market demand that will be profitable for Canadian producers.

The following recommendations are provided in order to modernize the act to recognize the growing trends in grain delivery:

- The CGC must recognize their responsibility and expand their role in regulating and enforcing the grading methods and procedures used for domestic transactions of grain wherever CGC standards are used for quality assessment in order to ensure consistency for producers.
- The producers' right to dispute grading results, subject to the CGC inspector's assessment must be expanded to include assessment of non-grade requirements [i.e.: Falling Number and DON], and the right to dispute grading results must be available to producer for a window of five business days from the date of a grain delivery.
- Minimum standards must be set to insure the digital provision of information to producers in a timely manner, to ensure that the producer is promptly informed of the value of each delivery, including identification of any potential variation in value from the contracted value due to any quality variations.





- Producers must be offered a sample of each grain delivery for their records, in sufficient quantity and packaged in such a manner that the sample would represent the grain delivery beyond a reasonable doubt, due to the financial and legal risks created by the implementation of mandatory declarations.
- The payment protection program must be altered to ensure full coverage of any funds owed to producers for grain deliveries, for a period of up to 90 days from the time of delivery irrespective of the date of issue of a cash purchase ticket, a bill of exchange, or any other documentation.
- All grain sales which use CGC grading factors should be subject to producer payment protection and provide producers the right to dispute a grade subject to CGC inspection.
- The CGC must conduct a review of Western Wheat Classification to ensure that all classes are targeted to specific market demands that are of value to Western producers.

## Recognize CGC Role In-Country

The 2012 Jobs and Growth Act and the move to an open market had the consequence of lessening the CGC's influence in-country. This has become a concern as this is where producers interact with the grading system and ownership of grain is transferred. There is limited producer knowledge of how the CGC regulatory role extends into these transactions. There is concern that the CGC no longer sees their authority extending to in-country grain grading other than to establish and recommend grain standards and guidance and to request samples for research (as outlined in Section 14 of the Act).

There is a need for the CGC to take a more active role in the regulation and enforcement of grading standards to ensure that producers trust that their grain is treated consistently at delivery. This need will continue to grow as the producer themselves are increasingly not present at the time of grading. The language in Section 14 of the Act must be revisited to reflect this expanded role.

Potential solutions to restore trust in the system could include a random audit process for representative sampling and grading to ensure grade/processes are followed and a formal process to manage, respond, and record producer complaints.

Empowering the CGC in this role is no way a return to mandatory in-country inspections and is aimed at ensuring consistency, with larger goals of increasing producers' trust and decreasing animosity among the value chain.

## Modernize Dispute Resolution

The producers' right to request that a grain delivery be subject to the CGC inspector's assessment of grade and dockage is an important dispute resolution tool that has historically been effective. However, this right as written expects that a producer will be present at the time of grading. As a modern producers' deliveries now often occur while the producer is physically absent, the language of the act needs to be modernized to recognize that a minimum amount of time must be allowed after delivery in which a grade remains subject to CGC's determination. This time period must be of adequate length in order to allow for quality information on the delivery to be transferred from the buyer to the seller, and to also allow for the possibility of negotiation.

It is our recommendation that producers have the right to request the CGC provide a determination on the grade and dockage of all deliveries for up to five business days after the delivery has been made. It is recommended that the regulations also be modified to indicate the minimum and maximum amount of time that a delivery sample shall be held at the elevator in order to accommodate this change.

In addition, the CGC should recognize that the buying of grain on specification of non-grade factors is increasing and review how to modernize the right for grading to be subject to the CGC inspector's assessment to empower producers to dispute non-grade factor grain quality requirements. Examples of such concerns include Falling Number, for which a minimum value is specified in the contract of most wheat sales, and maximum limits on mycotoxins such as Deoxynivalenol (DON).



## Modernize Reporting of Grading Information

As producers are often not present at delivery, and in order to ensure that the Canadian agricultural business is able to operate efficiently, producers must receive detailed information on grain grading results for each delivery of grain as soon as possible. Currently, producers report that receiving information on the grade of a delivery is dependent on the individual communications policy of the grain buyer, and reports on some deliveries can be significantly delayed.

Given that verbal communication to the producer at the elevator is no longer a reasonable expectation, a paper record of all relevant information with respect to the grading of the grain delivery must be provided for each grain delivery at the time of the delivery. In addition, the same information must be made available in a digital format to the producer within 24 hours of delivery.

In order to ensure consistency in information transfer, we would suggest that the Canada Grain Act enable the CGC to set through regulations what information needs to be transferred to producers. We would suggest that relevant quality information on grain deliveries should include determinations of weight, dockage, moisture, protein content, grade determination, notice of any downgrading factors, and the financial discounts associated with the relevant downgrading factors.

By following this recommendation, the CGC would set a minimum standard for all current and future licensees that would increase the efficiency and transparency of the domestic marketplace for grains. The addition of this standard is a reasonable expectation given the minimal costs currently associated with digital information transfer and the importance of this information to producers for determination of revenues.

We want to specify that this recommendation is meant to supplement the right to observe weighing, grade, and dockage of grain. The right to observe weighing, grade, and dockage of grain is important as it provides an additional option for producers who are concerned about the grading process, and could be important for producers to remain confident that grain grading is occurring properly. This right 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.

## Provision of Samples for Risk Mitigation

The rollout of mandatory producer declarations from both private businesses and government has resulted in producers retaining an increasing amount of risk after transferring ownership of their grain. Producers are required to bear the risks from domestic and international government requirements related to varietal declarations, MRLs, and international sanitary and phytosanitary requirements, yet there appears to be no concern or thought given to a producer's ability to mitigate this risk. These agreements also create the associated risk of a producer being incorrectly accused of a violation due to a false positive on a test result, or an administrative error in the sampling process.

The recent deployment in 2020 of a government required varietal declaration form which allowed for the incorporation of additional contractual language by grain buyers has transformed the retention of risk by producers from a business agreement into a federal requirement, significantly increasing the potential for producers to face liability due to events that occur outside their control. It is because the Government of Canada and the CGC have been instrumental in facilitating this risk transfer to producers that we identify an obligation to include language in the Canadian Grain Act to provide producers with an option to mitigate this risk.

It is our recommendation that, for every grain delivery, a producer shall be offered a portion of the driveway sample of adequate size to test for the concerns detailed in a declaration. This sample must be in sufficient quantity and packaged in such a manner that the sample would represent the grain delivery beyond a reasonable doubt. This sample is required as it is potentially the only defense a producer will have should the producer be accused of knowingly misrepresenting themselves.





## Expansion of Producer Payment Protection

The Alberta Wheat and Barley Commissions support the continued provision of mandatory producer payment protection. While we encourage the CGC to continue to require the program to be mandatory and to provide this service in its current form, in the interest of modernizing the act we recommend altering the language of the act to allow for the implementation of any producer payment program to be defined through regulation.

The current program structure is favored by our members. Our members were unanimous in appreciating the existence of a security-backed payment protection system. Those members who had experience with the current system shared that they were satisfied with the level of protection the bonding system offered and with the payments received from their claims.

Other benefits of the security-backed system shared by members included a feeling that the current system adds additional security to the greater domestic market by preventing smaller and riskier buyers from obtaining licenses. Asking a grain buyer if they are CGC bonded allows for producers to quickly gauge the level of counterparty risk a transaction could hold. The current system is also viewed as beneficial as the CGC security requirement forces grain buyers to be aware of their current financial risks due to their outstanding payment levels, which could modify future behaviour and help in limiting the potential for default.

It is our members recommendation that the CGC focus on modernizing the current mandatory security-backed system. It is expected that the adoption of minimum standards for information transfer will help reduce the administration costs associated with the auditing requirements intrinsic to the bonding system.

In preparing this recommendation, our members reviewed the existing material available on other proposed models for payment protection, but found the available information insufficient to evaluate either a change in risk profile or economic impact to producers. Any proposed changes to payment protection in the future should require a formal review in order to ensure sufficient information is available to producers, detailing the benefits a new model would provide.

With respect to modernizing the producer payment security program, members have identified that the current program does not ensure an adequate time period for securing the payment of funds given the growing risks faced by modern farms. To recognize the growing risks to producers, we are recommending that the act be updated to allow the protection of producer payments for up to 90 days from delivery.

This request is motivated by the increasing size of Canadian grain farms combined with the consolidation of elevator space into fewer, larger elevators, which is requiring producers to deliver more grain in a shorter timeframe. Meeting delivery demand time frames becomes increasingly difficult as grain farms continue to grow in size, as the overall amount of time required to manage these operations increases proportionally.

Fulfillment of a modern delivery contract is also becoming more complex and requires a significant number of trips by truck, normally organized over a multiple week period. However, several scenarios regularly occur which result in a portion of producers' deliveries occurring outside the contracted delivery month, effectively increasing the time between the first and last delivery on a contract. Grain elevators may request for delivery of a portion of a contract prior to the contracted delivery month if the other grain available is not of sufficient quality. Alternatively, if a grain elevator is requesting additional co-ordination with the farmer, such as a request to draw deliveries from specific bins to accommodate mixing for quality purposes, the delivery process may take longer than the specified delivery month. In addition, total daily grain deliveries to a grain elevator may exceed expectations and result in a delivery window being cut short before a producer is able to fully deliver on a contract, resulting in a portion of a contract being undelivered until a later month than the contract specifies. Further, untimely logistical issues in rail service have resulted in delivery contracts taking significantly longer to fulfill than anticipated by either the farmer or the grain elevator.



In the modern era of significantly larger delivery contracts, it is not reasonable to expect that all deliveries required to fulfill the contract will take place within a 30-day time span. However, it is our members opinion that fulfilling a contract rarely exceeds a 90-day time span. In order to modernize the act, the value of the deferral of payment for the ongoing of Canada's grain farms needs to be recognized through changes to the Canada Grain Act and relevant regulation.

As the recommendation for expanded coverage is aimed to extend the amount of time a payment can be covered from 30 to 90 days, we expect that the associated costs will increase proportionally. Based on Ward Weisensel's report which provided a recent cost estimate of \$0.10 per tonne, we expect that this proposal would increase the cost of the program to approximately \$0.30 per tonne.

As it is recognized that the fees charged to grain exports to cover the costs of service provision and regulatory costs of the CGC are indirectly born by farmers, our members recognize that both the administrative costs of the producer payment protection program and the associated security costs incurred by grain exporters are passed onto producers through lower grain prices. Therefore, we suggest that the producers already bear the costs of these programs and it is appropriate that producers determine the appropriate amount of coverage required.

## Expansion of Licensing Requirements

In line with our recommendation that the CGC have an increased role in-country to ensure consistency in grain grading for producers, we recommend that the right of subject to inspector's grade and dockage should be extended to all CGC licensees who use CGC grading factors as a determination of quality. This would standardize producers' rights at existing process elevators or new value-added facilities that may be licensed under the CGC. It is unclear why producers currently only have a right to dispute resolution when the grain is purchased for export. We recommend that this right be standardized across the industry for consistency and to improve transparency and confidence in the grading process. Producers should have the right to dispute resolution for grading standards at all CGC licensed facilities.

We also recommend that licensing exemptions be removed for any businesses that buy grain directly from producers, such as feed mills. As our members report that grain mills are testing incoming wheat for falling number, it is clear that growing demand for grains is resulting in increased interconnectivity of markets. This is resulting in some exempted buyers, such as feed mills, reselling grain to other buyers, such as exporters. This is resulting in increased grain quality assessment without CGC oversight and increased risk of non-payment from these exempted buyers. Reducing licensing exemptions will standardize the requirements for all grain buying operations to ensure that farmers' grain sales are consistently graded and protected across Canada.

## Review of Western Wheat Classification

The CGC must conduct a review of Western Wheat Classification to ensure that all classes are targeted to specific market demands that are of value to western producers. It is our members' opinion that a significant, unnecessary administrative burden is placed on the CGC in updating and maintaining minor western wheat classes which are targeted toward low value markets that are economically unfeasible for Canadian producers to participate in.

The last reform of the western wheat classes was done in 2015/2016 where quality parameters for CWRS were tightened and there was the creation of the CNHR class. The past five to six years since these changes were made, both the growers, exporters and customers have had varying degrees of experience with them and can provide further recommendations on how to improve the system going forward.

The CGC must prioritize the review of the western Canadian wheat classification system in order to match the classification system with current market realities. While there are currently 10 classes of western wheat, over 95 per cent of western Canadian wheat production is composed of only four classes [Canadian Western Red Spring, Canadian Western Amber Durum, Canadian Prairie Spring Red, and Canadian Western Red Winter]. This review provides an opportunity for our members to ask the CGC to streamline the system to ensure the classes are designed to deliver consistent, high quality wheat, are differentiated from each other, and are designed to meet an existing market that is provides economically feasible returns for Canadian producers.



# Governance Improvements

The regulatory decisions of the CGC can have profound impacts on the success of Canada's grain producers, and the long-term success of grain producers relies on the stability derived from regulatory consistency. Our members have noted variation in the actions and outreach of the CGC to producers depending on who is serving in the role of Commissioner.

Our members would like this review to explore additional opportunities for producer input into the CGC's decision making process. We expect that regulatory consistency could be improved by altering the existing governance processes currently in place. We are providing the following recommendations:

- 1) The executive governance of the CGC must be transitioned to a board of directors with significant producer representation.
- 2) The decision of appointment for voting members of the Western Standards Committee must be made by the organizations that hold a seat, in order to ensure that the best possible representative be present at the meetings, based on the topics of discussion.

## Executive Governance by Appointed Board

The current executive governance model of three appointed commissioners has been noted to cause significant variance on the approach of the CGC's activities and outreach with producers. Primarily, producers note that the level of engagement by the CGC changes depending on who holds the executive governance roles.

Regular consultation and engagement between the CGC and producers are important to our members as they seek to ensure regulatory consistency and predictability. Our members look for this predictability to minimize the many operational risks inherent in farming and to facilitate the significant capital expenditures in long term investments that modern grain farming requires.

Our members also believe that the commissioner system has not consistently provided the level of insight or leadership required to ensure that the CGC remains relevant to producers. If the CGC does not have leadership willing to address the growing concerns from a lack of in-country regulatory presence and the growing trend of quality assessment through objective testing, then the CGC will become increasingly irrelevant to producers.

It is our members' recommendation that the CGC leadership model should transition to a board model, which includes appointments of Canadian producers. The board model will ensure that producer voices, self-motivated individuals who's farm enterprises are dependent on the continued relevance of the CGC as an effective regulatory body, are present in providing guidance to the decisions that are being made for both the organization and the grain sector.





## Western Standards Committee Appointment and Transparency Improvements

The Canada Grain Act currently requires the approval of the Minister for a producer appointment to the Western Standards Committee. This is evident as currently producer organizations are asked to provide several nominees, and the final representation decision is made by the Minister on the producer's behalf. Producers continue to express frustration that the current appointment process is excessively rigid and is not designed to ensure that producers have the best possible representation at a committee where important decisions are being made.

It is also concerning that nominees for the Western Standards Committee are restricted to "actual producers of western grain", a restriction not placed on the producer representatives for the Eastern Standards Committee which allows "persons representative of producers of eastern grain". The current system limits western producers' ability to select the best representation available to them for engaging on the topics of discussion. This has the effect of limiting the potential for engagement on topics that are often technical in nature.

Further, the current nomination process does not recognize the reality of the demands on a producer's time. Currently a producer representative is unable to transfer their vote if they are unavoidably absent from the meeting. Modern producers are entrepreneurs and their business commitments will create scenarios where they are unable to attend the meeting. The inability to transfer a vote creates a risk of producers being under represented due to mere circumstance.

The process must be amended to allow greater flexibility for producer representation. We recommend the representation process be altered to have the Minister approve the appointed producer organizations that receive a voting privilege at the Western Standards Committee to fulfill the required 12 votes for producer representation. These appointed farm organizations then must inform the CGC prior to each meeting of the representative nominated to attend with voting privileges. If required, a representative may transfer the voting privilege to a substitute representative upon notice to the CGC, in order to accommodate an unavoidable absence.

There is also a need for greater recognition by producers that the function of the Western Standards Committees is to serve as an important forum for producer involvement in determine grading factors (and changes), as well as for bringing grading issues forward to the Commission and larger industry. Any attempt to raise awareness of the Western Standards Committee will need to address the lack of publicly available information on committee discussions and decisions.

We recommend that the Western Standards Committee increase transparency of the decision-making processes by making the Western Standards Committee meeting minutes available publicly online. This important change will help ensure that producers understand the scientific work and discussion that occurs behind each individual change of the grading factors.

