Canada Grain Act Review: In-Country Oversight Initiative

Restoring the Gold Standard: Addressing the post-2012 loss of Canadian Grain Commission oversight in primary elevators

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All recommendations and any errors in this submission are the authors' responsibility alone.

Abstract

For a century the Canada Grain Act embodied a comprehensive in-country oversight regime based on primary elevator weigh-overs, CGC inward inspection and terminal weighing, itinerant assistant commissioners and weigh-over timed audits of each elevator's aggregate weights, grades and dockage. Loss of this system and the effects of other Commission and federal government decisions, combined with industry change and decline of farmer organization, have created an unacceptable regulatory gap and increasing alienation of producers from the CGC. This paper explores options for addressing the regulatory vacuum farmers confront and increasing CGC visibility and relevance, and offers recommendations for improving oversight and farmer relations with an eye to the Canada Grain Act's place in both prairie agriculture and Canadian history.

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> *Grain producers continually express concerns about inconsistent treatment at delivery.*
>
> *Producers have expressed a general desire to see increased CGC oversight at licensed primary and process elevators.*
>
> *[Producers have expressed] concerns about quality determination in transactions between producers and licensed grain companies.*
>
> CGC Update and Outreach presentation, Winter 2023

Pre-2012 CGC in-country oversight: The Gold Standard

Farmers have been complaining about inconsistent treatment and quality determination at primary elevators for as long as there have been elevator driveways and Main Street coffee shops. These concerns were the basis of farmer agitation that led to passing of the Manitoba Grain Act in 1900 and the Canada Grain Act (CGA) in 1912, and have remained the substance of perennial producer grievances against grain companies ever since. What's changed, and is the subject of this submission, is the reduced level of protection – regulation and oversight in the producer interest – afforded farmers by the Canada Grain Act in recent decades, in particular since 2012.

How so? The CGA system that emerged in the early 20th century, with producer safeguards from country elevators to port, was for many years comprehensive. At primary elevators the Canadian Grain Commission (Board of Grain Commissioners until 1971) certified weigh scales[1], provided *Subject to Inspectors Grade and Dockage* (STIGAD) binding arbitration and appointed itinerant assistant commissioners to patrol each province. For decades primary inspection sampled each railcar in Winnipeg, Calgary and Edmonton to confirm elevator grade and dockage.[2] At terminal, Canadian Grain Commission (CGC) inward inspection assigned final grade and dockage, CGC weighmasters confirmed weights on Commission-certified scales and conducted Commission "weigh-overs" - regular audits to assure inventory integrity. Primary elevators were also required to conduct regular weigh-overs, with the results forwarded to the CGC. Throughout, the CGC's elevator receipt system assured the integrity of each farmer's receivable, and Commission blending prohibitions – comprehensive until at least the 1950s[3] - ensured farmers received full value for the weights and specifications paid for by export customers.

From today's standpoint, two things stand out about this system. First, more than comprehensive, it was *auditable.* Producer concerns could be easily addressed at the elevator through STIGAD

[1] Blanchard, A History of the Canadian Grain Commission 1912-1987 (Canadian Grain Commission, 1987), p. 47.
[2] *Ibid*., p. 20.
[3] *Ibid*., p. 33. See also Guy Cote, *Grain Handling in Canada* (National Film Board, 1953)

or the assistant commissioner; macro values could be traced through the entire system to confirm the integrity of each elevator's overall grading, dockage and weights.

How did this audit system work? Primary elevators assigned weights, grades and dockage and attached these values on a grain tag stapled to each railcar shipped. Farmers had the right to dispute elevator grade and dockage by requesting a STIGAD sample be referred to the CGC. But even when this was not the case, the values assigned at the country elevator were for many years reviewed through railyard primary inspection, and the results communicated to the carload owner before its arrival at terminal.[4] Official grade, dockage and weight were then assigned through CGC inward inspection and weighing at terminal.

Meanwhile, primary elevator employees undertook periodic weigh-overs (every 30 months, more frequently if the manager changed or there was a problem in the view of the CGC). These weigh-over results were forwarded to the CGC along with the elevator's grain purchase records since the last weigh-over. The Commission then reviewed the results to compare total elevator weights, grades and dockage with the official inward inspection and weighing data for that time period at terminal. Firms were entitled to a small portion of 1% "shrinkage' allowance to cover losses which occurred naturally during handling; anything more was deemed "overage". If the elevator had shipped more grain than it had purchased since the last weigh-over or there were substantial grade gains or dockage discrepancies, the assistant commissioner would visit and the elevator was answerable for the difference. This process has been confirmed in discussion with retired elevator managers. Moreover, discussion with retired CGC inspection staff confirms that the grades and dockage assigned at primary elevators and tacked to each rail car arriving at port (called "grain tags" in the country, "I-90 slips" by CGC inspectors), while generally correct, were frequently at odds with the official grade and dockage assigned through inward inspection.

The second noteworthy feature of this system from today's perspective, sadly, is that almost all of these safeguards are now abolished: only STIGAD, primary and terminal elevator scale oversight, outward inspection and registration still exist through the CGC, the latter two of value to the system as a whole, not just farmers. STIGAD, the key farmer-specific provision, is so little used – 150-250 referrals annually in recent years, reviewing perhaps one in every 5-6,000 deliveries – as to be of no regulatory value at all. Even the terms *overage*, *shrinkage* and *weigh-over* have been repealed from the Act. Meantime the Commission's historic role as the respected regulator of fair grades and dockage is rapidly being lost.

Today, aside from the rarely used STIGAD, there is effectively no primary elevator accountability at all. In the absence of country elevator weigh-overs and terminal inward inspection, both abolished in 2012, CGC oversight is no longer possible. Instead, grade and dockage assigned by private elevator staff are in effect final and binding. The assistant commissioners, CGC fixtures in all three prairie provinces from 1929[5], were also jettisoned in 2012. Weigh-scale certification remains overseen by Measurement Canada but there is no CGC scrutiny of screens and sieves, moisture meters, protein or any of the other myriad instruments

[4] Blanchard, *op. cit.*, p 40.
[5] Ibid., p. 37.

used to determine grain quality including DON and falling number devices and, by extension, farmer incomes.[6]

This now vanished system appears today as a veritable gold standard for CGC regulation and oversight in the producer interest – and for good reason. But it was never one-sided. Primary inspection, as it existed from 1912 to 1958, took place in the railyards, not country elevators, and was concerned with the integrity of carloads, not individual deliveries or any particular farmer's delivery history; producer car loaders benefited directly but other producers relied on STIGAD or the assistant commissioners to resolve disputes. Rather, the goal of the system was overall fairness and equity, achieved through assurance that the primary elevator served customers honestly as a whole, based on *aggregate*, not individual delivery, weights, grades and dockage. Even after the demise of primary inspection in 1958, the system functioned with admirable accuracy, accountability and integrity until it was eliminated in 2012.

Farmer influence and the CGC: Decline and alienation

How did this plummet in farmer stature under the Canada Grain Act and within the grain handling system come about? Scholarship on the question is deceptively sparse. While historians have contributed much to our understanding of the rise and long acme of farmer influence and organization in western Canada, through detailed accounts of the three Pools, Canadian Wheat Board (CWB), federal railroad and grain policy, farm organization and its leaders, and the CGC itself (which commissioned its own *History of the Canadian Grain Commission 1912-1987* published in 1987), comparatively little has been written about their decline since the early '80s. As a result the impact of watershed changes such as the loss of the Crow Benefit, passing of the Pools, repeal of the Canadian Wheat Board Act and the CGC changes discussed in this paper, while noted in the farm press, remain largely unexplored in book or scholarly form.

Our own view, based on reading and research, extensive contact with farmers throughout the prairies and direct farm experience, is that shifting politics, industry change, new patterns of farm ownership and participation, and the loss of farmer owned/led institutions have all taken a toll. On the one hand, farmers have gotten bigger, grain pricing information is easier to obtain and farmers, typically now with at least some post-secondary ag education, have become ever more technologically sophisticated. On the other hand, prevailing politics have been deeply skewed against remaining regulation in prairie grain – witness the Harper government's efforts, not once but three times to degrade the CGA's hallmark mandate from regulation in the "producer" – to "industry" – interest. Also, competition has declined from some 5,000 country elevators in the early post-war to 363 (plus 48 process) facilities in 2021. But, however offset by larger, more efficient plant and fast internet communications, this decline has had a telling effect on farms and rural life, reducing the once pervasive reliance on collective activities and institutions to a skeletal network of local governments and co-ops wholly overshadowed by the giant private businesses that dominate farm inputs, grain handling and transportation. And while ownership remains concentrated among a few mostly privately-held titan grain handlers, much as

[6] Cited by the CGC in response to written questions from the authors.

it was at the close of the 19th century, grain farmers, especially post-CWB, comprise a deeply atomized industry base, little able to impact prices even at the advanced economies of scale associated with 10,000 acres+ production units, a classic instance of oligopsony – many sellers competing for sales to a handful of buyers.

But it is perhaps the loss of farmer owned/led institutions that has proven most influential in farmers' descent on the grain industry totem. Pool educational programs once insured that all delegates had a solid grounding in the Canada Grain Act, the Commission and its role. This information was relayed many times over through Pool conventions, local meetings and farm suppers, but these programs no longer exist. The CGC/CIGI's annual *Combine to Customer* course, though admirable, is little replacement, confined to a few score farmers every year, not all in leadership positions. The consequences are disheartening. Many farmers are unaware of their rights, including the STIGAD option for independent arbitration of grade and dockage disputes. Others fear the hostility of the local elevator if they speak up. Large producers may regard aggravation around grade and dockage as an acceptable trade-off for bulk discounts on inputs or other incentives. Most distressing, many farmers have become cynical, viewing the CGC as just another remote government agency no more amenable to agriculture than the Canada Revenue Agency or their provincial DOT. Collectively, producers have to come to expect too little of the Commission. And farm organizations, snared in the here-and-now tangle of farm politics, their staff and boards often unfamiliar with the Commission's history and earlier, more comprehensive role, sometimes do the same, proposing policy on behalf of their members that falls short of recovering or even protecting rights their predecessors won decades ago.

These changes comprise more than simple failure to inform or educate; cumulatively they amount to a distinct loss of culture. Even as recently as 15 years ago, many older farmers were still aware of their rights under the CGA and could quote from the Act the relevant sections governing grain handlers' and the Commission's duties and obligations. Sadly, these were the last generation of producers raised by their parents and organizations to respect the Canada Grain Act as their predecessors had – as the farmers' *Magna Carta* – and demand it be enforced accordingly. The Commission – then Board of Grain Commissioners – inherited by these farmers was the one Sask Pool had proudly extolled in a beautiful booklet that not only listed but took credit for 1929 revisions to the Act, a handsomely illustrated handout that farmers could tuck in the front pocket of their overalls for easy reference. And the same institution described by Herb Schulz, author of *Betrayal: Agricultural Politics in the Fifties,* that could fill a small town gymnasium several days running to adjudicate a local elevator dispute, not because farmers believed the aggrieved producer would necessarily win but because they trusted his grievance would be given full consideration under the Act.[7] This kind of farmer interest, even pride, in the Act seems almost otherworldly now, but it was once the norm. That it is now lost impacts not only the effectiveness of the Commission but its relevance as well, and there's a direct pathway from this decline to reduced farmer interest in the CGC and its programs at country elevators.

[7] Unpublished recollection, personal conversation with the author.

The result is a growing gulf between grain producers and the Commission. Farmers continue to complain about issues at the elevator but rarely turn to the CGC, spurning not just STIGAD, but CGC oriented discussion and resolutions within farm organizations, debate in the farm papers, even advice on elevator issues among farmers themselves. The exception to this trend is the CGC's *Safeguards for Grain Farmers Program* lifeline to farmers affected by licensee bankruptcies, an excellent program and producers' only option when this need arises.

To this list must be added the growing remoteness of the CGC itself. CGC satellite offices have closed. The CGC poster board, once mandatory in primary elevators for the display of Canada Grain Act licencing, notices and related information, has disappeared. In earlier decades the CGC created films, *Grain Handling in Canada* with the National Film Board in 1955 and *Canadian Wheat* with the CWB in 1969[8], to outline the Commission's role and responsibilities to producers. These and Board of Grain Commissioners travelling exhibits that circulated through the small-town prairies were seen by thousands and well received[9]. Their equivalent today, commissioner reports at farm conventions and CGC booths at farm shows, remain important but are incapable of achieving the same grassroots penetration within grain belt communities. Perhaps most important, the Commission's long-time ambassadors, the assistant commissioners, are no longer present in primary elevators, in stark contrast to their earlier favourable impact. As the CGC's official history noted approvingly in 1987:

> *the Assistant Commissioners use diplomacy and common sense to solve hundreds of small disputes that, without intervention, might fester and become major problems.*[10]

This growing alienation from farmers has not occurred in a neutral context. Rather, as former CWB executive Ward Weisensel pointed out in an appendix to the Saskatchewan Wheat Development Commission's recent brief to CGA Review:

> *It is a reality that grain companies have far more interactions with the CGC at the decision making level than do producers. As the regulator of the grain handling system in Canada, grain companies are consistently lobbying the CGC for changes that enhance their financial position, potentially at the expense of producers or perhaps even the Canadian brand.*[11]

Weisensel went on to cite changes in the CGC's ship loading protocol – from incremental to composite – that removed the specification limits on each 2,000 tonne increment as:

> a classic example of effective lobbying that created an advantage for terminal operations at the expense of the Canadian brand and therefore ultimately producers. Nothing was ever announced when this change was made but the customer complaints speak for themselves.[12]

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[8] Blanchard, *op.cit*., p. 77.
[9] *Ibid*.
[10] *Ibid*., p. 110.
[11] W. Weisensel, *Review of Potential Changes to the Canada Grain Act* (Saskatchewan Wheat Development Commission, October 2020), p. 15.
[12] *Ibid.*

Ill-considered commissioner appointments (by both governing parties) earlier this century haven't helped either. In the worst instance, CGC leadership consisted of the blatantly political – and unprecedented – appointment of a former party and ideological ally as chief commissioner, a long time grain company executive as commissioner, and a farmer assistant chief commissioner who no sooner left office than assumed a senior position at Cargill where he was found in breach of federal ethics rules for, "acting in a manner that clearly took improper advantage of his previous positions at the Commission."[13]

The CGC's decision to dump incremental in favour of less rigorous, US-style, composite loading in outward inspection is of a piece with its earlier move to exempt rail shipments to the US and Mexico from the outward inspection/certificate final process, and the 2012 elimination of CGC inward inspection/weighing and primary elevator weigh-overs that are the subject of this submission. Though favourable to grain handlers and implemented at their behest, none of these moves were in the interests of producers nor, for those farmers still paying attention, likely to increase feelings of producer confidence in their industry regulator.

Though not associated with the current commissioner panel, these kinds of industry-favourable decisions and one-sided appointments, superimposed on the Commission's already inevitable surfeit of day-to-day contact with the trade rather than farmers, go a long way to explaining how producers have allowed their interests to slide so precipitously in industry importance.

Fixing the problem: Considerations

Is it too late, from a producer perspective, to recreate the Gold Standard regulatory oversight system that governed primary elevators for the hundred years before 2012? Or is a new regulatory regime required? Is such a change even possible?

To begin let's look at two much touted non-regulatory fixes that won't work. The first, enhanced competition, may be pertinent to Manitoba's Red River valley and a handful of other highly atypical corridors where primary and process elevator density is significant. But given the power disparity between farmers and grain handlers, it's doubtful producers, even in these locations, are exempt from the impact of unfettered elevator power; producers through the bulk of western Canada, where elevators are fewer and delivery distances much greater, most certainly are not. As well, elevator numbers have been shrinking, not growing, for decades, and the juxtaposition of facilities to farmers is at an all-time unfavourable low. Increased competition, on its own and to the extent it's likely ever to emerge, is simply not an effective tool for mediating elevator prices/charges or balancing industry interests in the current setting.

The second non-regulatory panacea promoted by grain market enthusiasts is improved market information. While country elevator prices are readily available and maximum elevator charges are posted on the CGC website, other costs, like rail transportation, remain opaque. Given there's nothing to stop the trade from sharing this information now, amidst widespread negative

[13] A. Dawson, *Former Assistant Commissioner Broke Conflict Rules*, (AGCanada.com, posted June 3, 2019)

comment by farmers on the rail transparency issue for example, it's difficult to see how any initiative short of regulatory requirement might bring further information to light.

These observations are not meant to dismiss improved competition and market information as means of ameliorating the prices farmers receive at country elevators or to oppose serious efforts toward progress; merely to acknowledge that current shortcomings in these areas are endemic and unlikely to improve without interest from the CGC. Interestingly, the Commission could move usefully in these areas, even without regulatory action, by initiating study of these issues. Promoting academic interest in defining what constitutes a competitive local market or adequate market information in western Canada and establishing thresholds for acceptable market standards in each would be a real service to producers and assist the Commission in determining when regulation or increased oversight is required.

Some may argue today's consolidation of the grain handling system under uniformly joint-stock ownership has rendered the CGC's producer interest mandate enshrined in the Act[14] outdated, even irrelevant. Certainly the facts are stark. A mere twenty years ago half of all grain handlings and almost three quarters of export sales passed through the farmer-owned Pools and United Grain Growers (UGG). Moreover, producers retained control of statutory grains through the CWB from country elevator right through to foreign customers, asserting a financial interest in the grain handling system that trumped private elevator ownership. That's all gone now – the Pools and UGG are history, along with the CWB. In today's system the trade enjoys almost total ownership and control of grain from the moment it drops in the country elevator pit. Why should farmers have a say in a grain system in which they have neither a financial nor, increasingly, acknowledged statutory
interest?

This is not the forum to argue the importance of producers' stake in the quality of Canadian grain, an interest still enshrined in the Act, though constantly under threat as the changes outlined by Weisensel – reduced loading standards, loss of outward inspection altogether on rail shipments to the US and Mexico – alongside repeal of inward inspection and the trade's ongoing campaign to privatize outward inspection at port, will attest. But it's easy to argue that producers' post-Pools/UGG/CWB interest in downstream regulation of the system is actually greater than under the old regime because they're now so vulnerable – in ways directly attributable to the loss of producer-owned/led organizations – and which directly impact farmers' relations with the country elevator.

Producers' first vulnerability is at the contract level. Farmers can access only a limited number of delivery points, with little room for negotiation. Grain handlers employ specialist legal departments to assure every nuance of company self-interest in the contracts offered to farmers, who have fewer, less sophisticated legal resources and geographically constrained alternatives. Loss of farmer-owned/led institutions is a factor as Pool/UGG contracts reflected basic membership priorities, and the CWB engaged grain handlers – farmer-owned or otherwise – on a flat rate, fee-for-service basis for the handling of statutory grains, offering neither incentive nor

[14] Canada Grain Act section 13, *Objects*.

the opportunity to shortchange farmers because they weren't in play. Though not confirmed through study, it's reasonable to assume that the Board's rigidly anti-profiteering, fee-for-service protocols had a moderating influence on contracts for non-Board grains offered by Richardson Pioneer, Cargill, P&H, etc.

So, too, farmers' second gaping vulnerability, the simmering post-2102 problem of excess basis. This issue assumed dramatic proportions during the two year grain backlog 2013-14 and 2014-15, when record crops, winter conditions and systemic service failures by CN and CP conspired to cost producers between $3.5[15] and $6.5[16] billion in excess basis, money almost certainly retained by grain companies as post-CWB basis levels rose from an average of $70 MT to over $130 MT.[17] Though little noted at the time, these losses were not only unprecedented but completely unnecessary – weather and rail service emergencies are a fact of prairie life, but the CWB's commercial protocols limiting grain company charges to a flat rate would have prevented *any* excess basis losses at all on statutory grain. And as with grain contracts, these fee-for-service protocols once exerted a restraining impact on the charges made by grain handlers on canola and other non-Board grains. As well, CWB-era statutory delivery grain tickets were transparent, offering information, especially around rail charges, that today's contracts no longer reveal.

Few will argue that the grain backlog/excess basis calamity was the greatest market failure in the Canadian grain industry since the Great Depression collapse of 1929. But it was also its greatest regulatory failure. That the money lost by farmers accrued not to railroads, regulated under the Canadian Transportation Act and governed by the *Maximum Revenue Entitlement,* but to grain companies newly emancipated from the Canadian Wheat Board's basis restrictions speaks volumes about gaps in the current oversight system that producers confront at point of sale – the primary elevator. These gaps still exist, and will continue to threaten farm income until some form of re-regulation to police contracts and limit basis losses is restored.

This is not a call for restoration of the CWB, nor would restoration be required for meaningful contract/basis oversight to occur. Instead, given CWB polling showed most farmers opposed loss of the Board and no vote to disband it (as required under the CWB Act) was ever held, it is indisputable that farmers as a whole were blameless in the disaster that ensued in 2013-15 and that government, which neither predicted nor shared the risks, has a responsibility, if not to reimburse producer losses, to make sure this problem never happens again. In the absence of the CWB, the only logical vehicle for such regulation is the Canada Grain Act. .

Finally, we offer five principles that we believe should govern the CGA Review's *In-Country Oversight Initiative*:

1. the CGC has a statutory responsibility to ensure grain handlers are accountable for the weights, grades and dockage they assign producers at primary elevators

[15] A. Dawson, *Wide Basis Costs Farmers Billions*, (Manitoba Co-operator, October 27, 2016)
[16] R. Gray, *The Economic Impacts of Elevated Basis Levels on Western Canadian Grain Producers 2013/13, 2013/14 and 2014/15* (University of Saskatchewan, August 2015), p. iii.
[17] Dawson, *op. cit*. Economist Derek Brewin noted that his evidence, though overwhelming, was circumstantial because Canada's privately-held grain handlers never have to open their books.

2. no system can be effectively regulated if it can't be audited
3. the CGC's mandate to regulate grain handling and assure grain quality in the producer interest is an "honest cop" role requiring impartial administration and enforcement of the CGA
4. it's in the interests of both farmers and the CGC that the Commission assert its relevance through increased visibility and more regular contact with producers, including at the primary elevator
5. any new oversight regime implemented to correct the imbalance resulting from 2012 loss of primary elevator weigh-overs, inward inspection, terminal weighing, the assistant commissioners and weigh-over timed CGC audits must meet the CGA section 13, *Objects* test to regulate Canada's grain industry "in the interests of the producers"

Though in our view self-evident – indeed, three of these principles are formally enshrined in the Act – all of these points have taken second place at various times in recent years and must be reaffirmed.

Restoring the Gold Standard: Options

In our view, there are four potential regulatory postures to be considered for restoring meaningful CGC oversight in primary elevators:

- a spot check system based on visiting CGC staff or assistant commissioners
- replacement of private elevator personnel with on-site CGC staff for determination of weighs/grades/dockage
- forwarding of official samples from each elevator delivery to the CGC for final determination of grade and dockage
- restoration of pre-2012 system through re-establishment of primary elevator weigh-overs, inward inspection and weighing, the assistant commissioner roles and weigh-over timed audits of each elevator's aggregate weights/grades/dockage

Option #1's spot checks, though they would increase CGC visibility, are an inadequate tool for ensuring the producer interest in primary elevators because they fail the auditability test. Spot checks are, by nature, random and so incapable of establishing aggregate data to confirm that overall weights, grades and dockage are accurate. Also, there would be nothing to stop elevator managers from adjusting grade and dockage, should they wish, to accommodate CGC scrutiny when the Commission was present. Anyone suggesting cheating of this kind is inconceivable must explain why the same elevator personnel probe every hopper of grain delivered by farmers to their facility.

Option #2, replacement of private elevator personnel with on-site CGC staff for determination of weights, grades and dockage, also fails, but for different reasons. Primary inspection, which took place in railyards, never the primary elevators, was mothballed in the '50s, and grain handlers would be sure to oppose its re-imposition, now in their elevators, as an unprecedented intrusion

into their private businesses (though CGC staff undertook the same responsibilities in the terminals until 2012). The same goes for Option #3, a system built around forwarding of official samples from every delivery to the CGC for final determination of grade and dockage. This option has the merit of ensuring CGC quality determinations, and we understand a similar system has been used in Argentina to assure independent evaluations. However, like Option #2, this option fails because it would incur untenable grain handler resistance.

Options #2 and #3 are also incompatible with the bulk grain purchase practices of many grain handlers, now increasingly oriented to pricing most or all of a farmer's harvest based on an average grade and price following sampling of the farmer's entire bin yard. The resulting trade-offs, blending lower with higher grades and higher moisture with dry grain (or *vice-versa* in the view of critics), are supported by many farmers, and would be irreconcilable with a grade and payment regime based on a strict load-by-load assessment.

In contrast, Option #4, restoration of the pre-2012 system through reestablishment of primary elevator weigh-overs, inward inspection/weighing, the assistant commissioner role and weigh-over timed audits of each elevator's aggregate weights/grades/dockage, not only meets the tests for auditability and accountability, but also increases CGC visibility by re-establishing the assistant commissioners. Moreover, these goals are achieved by reasserting time honoured Commission roles in both terminals and the country rather than pushing the trade to accept new prerogatives for Commission oversight.

Restoring the Gold Standard: Recommendations

CGC Oversight

The best way to rectify the almost total loss of CGC regulatory oversight of weights, grades and dockage in primary elevators is to re-establish the system that governed them for most of the hundred years between 1912 and 2012: regular primary elevator weigh-overs, CGC inward inspection and weighing, a renewed assistant commissioner role and weigh-over timed audits of each elevator's aggregate weights, grades and dockage: This system has only been absent for a decade and most components continue in practice despite repeal because grain companies can't get by without them. Primary elevator weigh-overs for example, always privately conducted, persist because detailed inventory knowledge is essential. Similarly, at port, inward inspection also continues, despite longstanding industry insistence on its termination. As Weisensel has noted, having demanded and received an end to CGC inward inspection in 2012, grain companies were immediately obliged to recreate it, this time through private third-party inspection, to mitigate the risk of failing to meet both contract specifications and certificate final requirements, in the absence of critical inventory and quality information that only inward inspection can provide:

> *On contracts where grain companies do not have the option of third-party inspection, the grain companies are still using their third-party companies to manage the risk of knowing what is coming at them as it relates to inward determination at the terminals but*

> *they are relying on CGC outward determination… This reduces the company's risk that the CGC may find that they have not met the contract specs on the outward inspection.*[18]

Weisensel also cites the quality gap between private and CGC inspection, acknowledged, even manipulated, by some grain companies:

> *One would expect, on average that the grain loaded on contracts that have exclusively CGC inspection would have better quality than grain loaded on contracts where third-party inspection is an option to be used… Interestingly, some large transnational grain traders hold out for exclusive CGC inspection, where they have the leverage to demand it, because they expect this will get slightly better quality even though they themselves use third party inspection in their operations regularly.*[19]

Inward inspection thus remains indispensable and ubiquitous even following repeal. All that's changed is its post-2012 delivery by third-party contractors. On this evidence, Option #4 restoration of CGC inward inspection is merited, not only in the interests of producers' primary elevator oriented concerns, but for quality reasons as well, and could be re-established with little institutional disruption because its essential role and delivery in terminals has never gone away.

Only the assistant commissioner role – i.e. CGC policing – is absent from this now private inspection milieu. Ironically, it was concern very similar to today's unease over increasing Commission alienation from producers that first spurred discussion, then creation, of the assistant commissioner role almost a hundred years ago. The story is worth quoting at length. As the CGC's official history notes, its predecessor, the Board of Grain Commissioners, came under sharp criticism in testimony to the two grain industry Royal Commissions of the 1920s, the federal government's Turgeon Commission of 1925 and Saskatchewan's Brown Commission of 1928. The Commissions' two reports reflected this criticism:

> *The [Turgeon Commission] report concluded that the Board was not doing enough to keep in touch with conditions in the grain producing area. Many small disputes that might have been settled by the Board were not referred to it and as a result festered and caused resentments. [Turgeon also found that farmers] had an inadequate knowledge of the duties and powers of the Board and the means of appealing to it.*

Turgeon believed the answer was to appoint more staff to relieve some of the administrative burden from Board members:

> *Then they would be free to travel more and hear grievances in the country. The recommendation was that the Board should be an itinerant body, holding sessions at various points on the prairies and keeping in touch with concerns of the producers.*

These criticisms were repeated even more forcefully in the Brown Commission's report which:

[18] Weisensel, *op. cit.*, p.6.
[19] *Ibid.*, p.7.

> *found throughout Saskatchewan a general feeling of dissatisfaction with the administration of the Canada Grain Act by the Board of Grain Commissioners as presently constituted… The average farmer saw the Commissioners as remote.*

Board members themselves saw some justice in these criticisms and offered their own ideas as to possible solutions:

> *In their testimony before the Agriculture Committee in 1929 they held that assistant commissioners were needed to travel around in the country doing some inspection and mediation work. From 1912 to the early 1920s the Board had employed travelling inspectors in varying numbers from one or two to five or six. These men were stationed in various prairie cities and travelled around the country. They were issued with a standard report which they filled out for each station they visited. The form… had spaces for comments on the condition of the scales, number of cars in the car order book, the conditions of the loading platform, whether only legal forms are used by the agent and a number of other subjects. By 1925 the Board no longer employed such inspectors and from the Royal Commission Report it can be concluded that they were missed.*[20]

> *What [Chief Commissioner] Boyd and his commissioners were suggesting was not a return to this travelling inspector position but full-fledged assistant commissioners who would do the inspections but also have powers designated by the Board to mediate disputes. When pressed by members of the Agricultural Committee for not keeping in close enough touch with producers, Boyd suggested the appointment of assistant commissioners to hear cases at country points would take care of the problem.*[21]

The Board proposed these positions be created apart from the civil service to ensure sufficient remuneration to attract and retain qualified personnel. This advice was accepted and assistant commissioner appointments were made by the minister, like those of the three commissioners, and their salaries established accordingly. This mode of appointment continued right up until 2012 and had the additional virtue of giving assistant commissioners the independence to disagree with the three commissioners, if required by their duties, as semi-autonomous advocates under the Act.

Re-established assistant commissioner positions should be filled outside of the political patronage system that dominated these appointments in the past: This is not to deny the good to excellent quality of many appointments made by both governing parties under the old system, but such political favouritism is both outdated and wrong, and the CGC has itself replaced patronage with a merit-based system for selection of its most recently appointed assistant chief commissioner. Competence, public and – above all – producer confidence will be best served if the CGC continues this practice.

[20] Blanchard, *op cit.*, p.36.
[21] *Ibid*., p.37.

Establish regular CGC-mandated inspection and reporting for all instruments used to establish grade and dockage in country elevators: This new oversight[22] would include sieves and screens, moisture testers, devices used to determine protein, DON, falling number and all other criteria employed to assign grain quality. Grain handlers have as strong an interest in the accuracy of these instruments as do producers but there are currently no rules governing periodic inspections and certification, much less CGC scrutiny. CGC oversight would bring new discipline to maintenance of these devices and increase producer confidence in the system.

Hands on in the primary elevators! Reduce CGC subcontracting of measuring device inspections to assure high standards, enhanced accountability and increase Commission visibility: This should include CGC appointment as Measurement Canada's designated service provider for the inspection and certification of primary elevator weigh scales, also inspection of devices used to assign grade and dockage should the Commission be convinced to expand oversight to this area. Weighmaster transition should be readily achievable as the Commission is already the Measurement Canada designated service provider for terminal weigh scales.

Restore mandatory CGC notice boards and postings in primary elevators: These boards and postings were a standard feature in country elevators for many years. Given many farmers' lack of knowledge about CGC programs, restoration of CGC notice boards would help promote both these services and understanding of the CGA generally. Posted notices should include elevator licensing information, maximum elevator charges registered with the CGC under sections 50.1 and 50.2 of the Act, *Safeguards for Grain Farmers Program* details, information about the Grain Standards Committee and how it works, as well as STIGAD, *Harvest Sample Program* and other CGC materials.

Require primary elevator grain tickets to provide an itemized list of all deductions subtracted from payment for farmers' grain: Under the CWB, every deduction was a separate item – rail freight, company handling, for example. These costs are now all lumped together as "basis" and farmers have no way of ascertaining what's what. Co-mingling these deductions under "basis" is analogous to an employer issuing paycheques with only a single line for all money withheld and no detailing of rate of pay, hours worked, taxes, CPP, EI or pension withholds. In neither case does the recipient have a means of discerning errors or cheating.

The CGC should explore creation of a standard grain contract: The grain backlog calamity that robbed farmers of $3.5-6.5 billion in excess basis charges in the years 2013-15 is Canada's greatest grain market regulatory failure since the Great Depression – and there's nothing in place to stop it from happening again. Cabinet intervention at the time focussed on the cause – poor rail service – but completely ignored who benefited – grain companies - in the newly unregulated prairie grain market. This regulatory failure must be addressed and, given the disaster occurred in the yawning and unpoliced gap between CWB and post-CWB grain contracts, the CGC is best positioned to address it through study, consultation (including public hearings) and recommended changes to the CGA. Meantime, some grain companies have begun specifying

[22] Routine instrument inspection may have occurred in the more distant past as a duty of the assistant commissioners. See Guy Cote, *Grain Handling in Canada* (National Film Board, 1953).

private companies, rather than CGC-mandated STIGAD, a producer right dating back to 1899[23] and enshrined in the current Act, as binding arbitrator in disputes with farmers over grade and dockage. Needless to say, industry agreements with producers should never be permitted to contract out of the Canada Grain Act through the introduction of inferior standards.

There is also wild inconsistency in grain company treatment of farmers unable to deliver contracted grain for weather or other unforeseen reasons. A 2022 report commissioned by Sask Crops and the Agricultural Producers Association of Saskatchewan (APAS) concluded these contracts are "heavily tilted" in favour of grain firms.[24] APAS' own 2021 survey of 200 producers found some 75% of respondents unable to fulfill contracts because of drought, and reported penalties and administrative fees ranging from $20,000 to $300,000 and interest rates as high as 19%.[25] Not surprisingly, APAS has been calling for standardized contracts for a number of years. Elsewhere, citing the *force majeure* clause in CWB delivery contracts, the National Farmers Union has urged the federal government to create regulations under the Canada Grain Act that would require all grain contracts to include a similar *Act of God* clause. Until then, companies would be required to carry over shortfalls in the event of crop failure, allowing farmers to deliver grain owing at the contract price the following year.[26] The CGC is well positioned to initiate discussion and break ground on these important issues.

Commission visibility and outreach

Open more CGC satellite offices across the prairies: the Commission currently operates two regional offices and nine service centres across Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia, in addition to its headquarters in Winnipeg. Of these twelve offices, only four – Winnipeg, Weyburn, Saskatoon and Calgary – are located in the CGC's Western Division grain belt and only one is rurally situated. That these regional offices and service centres are primarily oriented to terminal functions is apparent from their locations, from Baie Comeau and Quebec City to Vancouver to Prince Rupert, and no doubt essential. What's also readily apparent, however, is the dearth of such offices in prairie grain growing areas where they we were once numerous and might today function as contact and outreach centres with producers. Additional satellite service centres, perhaps one in each province, would allow farmers to collect information in person rather than scouring the internet (no small thing given the woeful internet service in many areas and the average age of producers is pushing sixty) and offer a base for further outreach oriented to regional farm organization meetings, rural municipalities and commodity marketing clubs. It would also send a strong message that the CGC is accessible and comfortable in the boots-and-coveralls world farmers inhabit.

Revive CGC farm meetings in the country: it's not possible to be accountable, or even knowledgeable, about a constituency without meeting with it from time to time. The

[23] Ibid., p 14.
[24] Saskatchewan Wheat Development Commission. (July 11, 2021) *Grain contract "heavily tilted" in favour of buyers, according to new report.* [News release].
[25] Agricultural Producers Association of Saskatchewan. (November 30, 2021. *APAS releases first results of producer survey on grain contracts.* [News release].
[26] National Farmers Union. (November 3, 2021). *NFU calls for universal Act of God clause in forward contracts*. [News release].

Commission used to hold periodic meetings in the countryside but has allowed the practice to lapse. The authors are deeply aware of the challenges such meetings present – to organize, publicize and achieve good attendance: between us we've organized scores and spoken at hundreds of events of this kind over the last fifteen years. But the post-1998 elected-director CWB was perhaps a beacon in this regard. Every year the Board organized a series of late winter farm meetings, generally three or four in each of the ten CWB districts, through the regional CWB Farm Business Reps. The directors, who chaired, were well prepared with informative power point presentations that covered every element of the CWB's mandate. And these meetings were well attended, with full house events – especially CWB breakfast, lunches or suppers – not uncommon. The Commission must also be aware that grain companies and input suppliers hold these kinds of catered events all the time, grain handlers, in particular, promoting their facilities, programs and contracts in a setting where delivery and contract issues and the Canada Grain Act are both absent and unwelcome. Revived CGC farm meetings would be a welcome offset to this otherwise unmediated litany of one-sided industry information in the countryside.

Create/employ a CGC electronic/postal contact list for Commission information bulletins: In an age in which most of us struggle to get *off* e-mail subscription lists, the CGC does not appear to have such a list farmers can actually subscribe to. This as some farm leaders are resorting to Twitter and other social media to expand the reach of their policy and other organizational objectives. Social media is probably a bit much for a 113 year-old agency and true *grande dame* of the federal government, but judicious use of e-mail and Canada Post list serve/contact lists would be smart move for the CGC, allowing it to extend its communications to any farmer wanting to subscribe. Profiled information could include CGC news releases and CGC-pertinent releases from Agriculture and Agri-Foods Canada (AAFC), CGC media stories, plus program, public meeting and other announcements of interest to producers.

Producers' relationship with the primary elevator

Develop a CGC polling program to survey farmer opinion on an ongoing basis: Prairie grain producers are a diverse group with opinions divided by farm practice, geography, demographics (age, gender, income), national origin, even religion. Farmers can also be parsed, as we have seen, by their level of interest and familiarity with farm policy issues. The CGC's ability to respond to farmer concerns is limited by what it knows about them, and this, in turn, is limited by the paucity of producer-related data coming back to the Commission. Only 66 responses were received, for example, by Agriculture and Agri-Food Canada's 2021 Canada Grain Act Review request for submissions. AAFC chose not to post these briefs so it's impossible to know how many were received from producers, but given the numbers of grain handlers and other industry stakeholders, as well as farm organizations, that participate as a matter of course, it's a safe bet that figure was no more than 30 from among the tens of thousands farms in western Canada.

The Commission's input is further affected by the minority nature of much farm organization participation across the prairies. The Alberta Federation of Agriculture, APAS and the NFU are all minority organizations in that they represent fewer than 50% present of producers in their respective jurisdictions (this is not a criticism: the authors have held elected office in or worked

for two of these organizations, none of whom are funded through government-mandated producer check offs). Those organizations that do enjoy majority membership (because they are funded through compulsory producer check-offs – primarily commodity groups), have generally low levels of member participation, including return of ballots in leadership elections.[27] Submissions from all these organizations remain vital but they're often a poor guide to attitudes of the unheard majority and what shapes those producers' views.

Here, again, the late CWB blazed a useful trail. Perpetually at risk in the last decades of its life, the Board commissioned detailed[28] annual polling to probe producer views to better know and serve its constituency. These surveys sampled everything from farm size and rotations to views on the CWB and its different marketing programs, including demographic breakdown of responses by age and province, and the results were posted on the CWB's website so producers could see them whether they were supportive of CWB policy or not. For the CGC, this kind of polling would be useful not only for discerning farmers' views, needs and experience with grain companies, but also in allowing the Commission to gauge producer knowledge and support for the CGC and CGA. Moreover, the simple act of commissioning CGC polls and presenting the results on its website would help farmers better understand themselves as a group and collective policy interest. Farm organization across the prairies would be universally enhanced by this contribution to policy literacy and agricultural small "p" political understanding.

The CGC should lead in addressing the current dearth of study of grain policy issues: During the CWB era, the academic literature was rich in study of prairie grain marketing and transportation issues as the '90s and '00s saw numerous reports from respected scholars like Fulton, Furtan, Gray, Kraft, Schmitz and Tyrchniewicz, to name just a few, reports that were widely reported in farm press and discussed knowledgeably by at least segments of the farm population. Their greatest impact, however, was in the organizations where farm policy was made, the CWB and others, as elected leaders and policy specialists were able, if they chose, to craft recommendations that reflected detailed and authoritative knowledge of every element of the western grain economy. Though much enhanced by the statistics provided by the CGC itself and the federal government grain monitor, Quorum Corporation, larger study of the grain market and transportation, especially from the producer perspective, appears to have fallen somewhat to the wayside in recent years (2013-15 grain backlog post mortems being the exception). Whether this decline reflects changes in academic interest or simply a scarcity of study patrons is not clear, but the lack of it is a blank spot in farmers' ability to understand, formulate and articulate policy recommendations in their own interests.

The CGC could play an important role here by encouraging and commissioning study in areas that have been insufficiently investigated in recent years. For example, the need for academic interest in defining what constitutes a competitive local market and adequate market information in western Canada and establishing thresholds for acceptable market standards in each, referred

[27] Compulsory check offs have sometimes been granted or denied for political reasons, especially in Alberta, further muddying representation and participation comparisons between organizations.
[28] CWB polls were based on approximately 1,000 respondents, an unusually large sample for the CWB's limited permit book holding base. Provincial election polls, for comparison, are often no larger.

to earlier, would be a real service to producers and assist the Commission in determining when regulation or increased oversight is required. So too, commissioning of work to review the post-grain backlog assessments of Brewin and Gray, with their devastating valuations of farmer losses, and recommend policy options so this disaster never happens again. This work could occur as part of a larger CGC-sponsored study program to investigate options for a standard (or more uniform) industry grain contract, including comparative analysis of contracts used in other countries and by Canadian farmers over time.

Audit the pre-2012 primary elevator vs. inward inspection/terminal weighing data to definitively quantify the value to producers of CGC independent oversight of weight/grade/dockage: Another crucial study contribution would be to compare the primary elevator grain tags/I-90 strips attached to rail cars received at port pre-2012, recording elevator assigned weight, grade and dockage, with the final inward inspection and terminal weighing values determined by the CGC. This comparison is crucial because it's the only definitive way to quantify *post facto* the accuracy of private elevator vs. Commission inward inspection/weighing values to determine whether the post-2012 unregulated weight/grade/dockage regime now in place at primary elevators is a gain, wash or loss for producers. Though eleven years have passed, this information may have been computerized or otherwise archived; if so it could be used as a first step to shed light on this important question.

Consider holding public hearings under section 98 (1) (b) of the CGA on issues of concern to producers: Section 98 (1) (b) of the Canada Grain Act, *Public Hearings*, states:

> *A public hearing may be held by the Commission if the Commission is satisfied that it would be in the public interest to hold such a hearing in connection with*
>
> *(a) an investigation commenced under section 91; and*
> *(b) any other matter in respect of which the Commission deems a hearing to be desirable*

Section 91, meantime, grants the CGC broad power to investigate grading, weighing, grain ticket deductions, discrimination and other concerns, including

> *(h) any complaint by a person with respect to any matter within the jurisdiction of the Commission; and*
>
> *(b) any other matter arising out of the performance of duties of the Commission.*

While the powers given the Commission under section 91 appear to pertain to investigation of specific difficulties at a specific primary elevator, the wording of section 98 is much broader, and suggests the CGC could consider convening public meetings on CGC pertinent issues of concern to producers generally. These could include the study suggestions outlined above: competitive balance, market information, grain contract concerns including grain ticket deduction information, binding arbitration outside STIGAD, disaster-related failure-to-deliver concerns, excess basis, and producer relations with primary elevator system generally. These, in turn, could be coordinated with a CGC-led study program focused on the same issues. The authors are not lawyers and certainly less knowledgeable than the Commissioners and their legal staff about the

CGA, but request the CGC consider this suggestion as a means of increasing direct farmer input and supplementing information learned in other forums.

Moral stature: The CGA's impact on Canada and its government

The Canadian Grain Commission isn't just another agency of Canada's federal government; it's an important part of how democracy has been constructed and is understood in this country. How so? The 19th century legislative environment that 1912's Canada Grain Act emerged from was defined by an almost total absence of any popular justice or welfare responsibilities; like the UK, US and all other industrializing western countries, the state consisted almost entirely of repressive functions: the police, the courts and jails, the army and the customs house (at that time most countries' primary source of revenue). Exceptions at that time consisted largely of state sponsored economic development initiatives like canal, and later, railway construction, undertaken as much for defence of the realm or narrow personal gain as any concern for the larger public welfare; of the scores of private railway charters granted by Canadian governments before 1914 one would be hard pressed to identify any in which the major shareholders did not include their legislative champions. Farmers, small merchants, tradesmen and other workers laboured unassisted by state programs of any kind to mitigate cyclical economic and natural disasters and the personal calamities they delivered: business failure, unemployment, poverty and undischargable debt. Sickness, infirmity and the travails of widows and orphans were assigned, even in Canada, to the poor house or the parish.

Much of that began to change in the late 19th century. Though often focussed on the expansion of individual rights – extending the franchise, narrow recognition of collective bargaining – a new focus emerged in which legislatures sought for the first time to enshrine collective rights to basic social justice and welfare into law. These efforts as a whole are referred today as the Progressive Era, a popular reform movement that swept North America from the 1880s to early 1920s, seeking improvements in everything from education, public services and utilities to workplace standards, pensions and the banning of child labour. A key focus of Progressive Era reformers was the fight against monopoly, beginning with railroads and the oil industry, but also agriculture where farmers' efforts to curb excessive market power led directly to the Crow's Nest Pass Agreement, producer car loading rights, creation of the great prairie grain cooperatives, pursuit of a permanent single-desk wheat board and, in 1900 and 1912, establishment of the Manitoba and Canada Grain Acts.

These gains were made possible by the growing political influence of western farmers "which reached unimagined levels in this period. In the election of 1921, 38 of 44 prairie seats went to the Progressive Party, which could be said to be the political wing of the organized farm movement."[29] But they were achieved through a variety of institutional forms. Some like the Crow, CGA and Board of Railway Commissioners (which mediated freight rates and service concerns) and later Prairie Farm Rehabilitation Administration (PFRA), were realized through direct government legislation and agencies. Others like the popular campaigns that built the firms

[29] Blanchard, *op. cit.*, p.25.

that became UGG, and later organized the Pools, swept the prairies like wildfire but not without government help in the form of enabling legislation, even direct intervention to discipline obstruction from the private trade. A third, distinctly Canadian, set of institutions were created as hybrid structures combining both state and private interests, beginning with the original single-desk Canadian Wheat Board. Though established solely as a means of controlling Canada's wheat crop during the First World War, it gained immediate traction with farmers who spent the next quarter century seeking to recreate it as a distinct producer program, a goal achieved only under similar wartime circumstances in 1943. By that time the landmark 1934 Natural Farm Products Marketing Act had paved the way for commodity groups in all the provinces to adopt its indelibly Canadian compromise of elected producer leadership combined with state limitations on coercive use of market power.

This trio of institutions – state, cooperative, and the marketing board hybrid - have left an indelible imprint on this country in three key ways. First, there are the concrete achievements noted above that stabilized income, infrastructure and services, and secured an unprecedented measure of community control across the rural prairies. Second, they assured a significant level of popular representation in areas that affected economic life; beyond participation in government, they offered meaningful regulation of, or effective competition against, previously unchecked private power. But thirdly, these institutions provided a model for regulation, service at cost and public participation – a semblance of economic democracy – elsewhere in the Canadian economy. How? The CGC/CWB/triumvirate commissioner model is duplicated in the tribunals that adjudicate labour-management issues across the country. United Grain Growers and the Pools are gone but their ethic lives on in Federated Coops, United Farmers of Alberta and our credit union system. So too the CWB, but its central tenet, the single desk, continues to guide Canada's national health program and is the template for a future national pharmacare program. And the CGA's section 13 mandate to regulate Canadian grain handling and quality "in the interests of the producers" remains a regulatory beacon because it aligns government power with defence of the little guy precisely because the big players have always been strong enough to look after themselves. It is in this last area that the enduring significance of the western farm movement and the Canada Grain Act are most clearly felt today: a permanent expectation – not always fulfilled – that government has a responsibility to address and mitigate excessive market power and economic inequity.

Times change. The Crow Benefit and PFRA have disappeared, western Canada's grain cooperatives too; orderly marketing is confined to supply managed dairy and feathers. Producer electoral power has also waned: farm families now comprise less than 2% of Canada's population and the three prairie provinces have a combined population smaller than greater Toronto's. Popular farm policy that was electorally enforceable a century ago has for decades been vulnerable. But the expectation that government has an obligation to balance the scales between the weak and the strong – largely unthinkable before the Progressive Era western farm movement – remains with us still in the form of the Canada Grain Act. Good thing too, because in 2023 the Canada Grain Act is about all that's left of farmers' heroic 20th century efforts to

build and codify grain producers' rights in Canadian law. What remains of the CGA is not only important, it's the only statutory protection farmers have outside the courts.[30]

Conclusion: Time to address the CGC's failing ethical proposition

The CGC's mandate and role as historic mediator in the struggle between grain handlers and producers have important implications for the CGA Review's In-Country Oversight Initiative. The first of these is that the decision to jettison the Act's pre-2012 Gold Standard regulatory milieu, without public hearings or written justification of how reduced oversight conforms to the interests of producers, is untenable because its ethical proposition – that producers are at least as well off in the absence of measureable oversight as they were when they had it – is completely unproven.

Secondly, even cursory examination of the inspection protocols routinely undertaken on behalf of primary elevators and Canada's export customers reveals the bankruptcy of current CGC policy in support of producers: outside vanishingly rare use of STIGAD, farmers are completely exposed. Meantime, grain companies probe every hopper of every truckload of producer deliveries because they don't trust farmer samples and CGC outward inspection continuously samples every spout at ship loading because Canada's customers don't trust the trade. Can anyone honestly argue western farmers – alone – should trust grain companies to be the final arbiter of the grades, dockage and weights that determine their bottom lines? Or that this absence of oversight is in keeping with the intent of the Act?

Finally, we believe the Commission may be vulnerable to a lawsuit for failing to fulfill its obligations under section 13 for imposition of this blatant double standard, in which the Commission maintains meticulous checks on exports and the trade has the power to impose rigorous sampling at the driveway, but producers have no comprehensive statutory safeguard at all. Anecdotal reports from retired CGC inward inspection staff indicate the grades and dockage assigned by primary elevators in the pre-2012 period were frequently incorrect. However, a successful lawsuit would have to quantify these errors in a rigorous way in order to prove farmers have been damaged financially by loss of the previously auditable oversight regime. As indicated earlier, one way to obtain this information would be to compare the primary elevator grain tags/I-90 strips attached to rail cars received at port pre-2012, recording elevator assigned weight, grade and dockage, with the final inward inspection and terminal weighing values determined by the CGC. Though eleven years have passed, this information may have been computerized or otherwise preserved; if so it could provide an important first step in establishing

[30] The role of the Canadian Transportation Agency, lineal successor to the Board of Railway Commissioners, is also significant in this regard, through oversight of the Canadian Transportation Act's *Maximum Revenue Entitlement* provision limiting Class One railways' average annual per tonne/mile charges for export grain movement.

whether farmers are better off under the post-2012 unregulated weight/grade/dockage regime now installed at primary elevators.[31]

This comparison is important because by verifying the accuracy of private elevator weights, grades and dockage against those assigned by the CGC, the Commission could determine the exact rate of primary elevator error over the last period for which it possessed comparative data. Establishing this error rate is crucial in assessing what is after all, for the CGC, a pivotal quality control issue. If such a study did reveal errors, what level of error is acceptable to the Commission? If such errors occurred to the aggregate disadvantage of farmers, what level of error would the Commission consider statistically inimical to the interests of producers? And if such a threshold pertained, what level of error would be required for the Commission to consider increased oversight, of the kind that previously existed and is recommended in this paper, to become once again advisable?

These are important questions and the answers would be of great value to both producers and the Canada Grain Act. Moreover, farmers shouldn't have to litigate to verify the assumptions that presumably underlay abolition of the old Gold Standard regulatory regime. Much better for the CGC, of its own volition, to commission either an internal or independent audit of the surviving data as outlined above, to definitively quantify the accuracy of private elevator vs. CGC inward inspection/weighing values and whether the post-2012 unregulated weight/grade/dockage system is a gain, wash or loss for producers.

The Commission undertook a comprehensive multi-month audit of its Weighing Services unit in 2016 to confirm CGC vessel loading weights met expected standards (including a year-long test of data and transactions), in the interests of Canada's grain customers. And the CGC routinely reviews grain handler assets and liabilities as part of its extensive licensee and auditing program, to protect farmers from licensee failure. An audit to determine the accuracy of primary elevator assigned grade/weight/dockage compared to its own values is no different and would be an immense contribution to the producer interest – one which can only be undertaken by the CGC.

[31] Conversely, if this information no longer exists, the CGC could review its primary elevator audit data for the years leading up to 2012 to establish aggregate numbers, though this approach would be unable to discern the error rate for individual carloads and therefore inferior. In either case, a key second step would be to combine whatever residual data the Commission may possess from the years since 2012 with a CGC-commissioned study to evaluate the accuracy of current primary elevator assigned weights/grades/dockage for comparison with data from the pre-2012 period.

Summary of Recommendations

CGC Oversight

1. **The best way to rectify the current almost total loss of CGC regulatory oversight of weights, grades and dockage in primary elevators is to re-establish the system that governed them for most of the hundred years between 1912 and 2012:**
    - **regular primary elevator weigh-overs**
    - **CGC inward inspection and weighing**
    - **a renewed assistant commissioner role**
    - **weigh-over timed audits of each elevator's aggregate weights/grades/dockage.**
2. **Re-established assistant commissioner positions should be filled outside of the political patronage system that dominated these appointments in the past.**
3. **Establish regular CGC-mandated inspection and reporting for all instruments used to establish grade and dockage in country elevators.**
4. **Hands on in the primary elevators! Reduce CGC subcontracting of measuring device inspections to assure high standards, enhanced accountability and increased Commission visibility.**
5. **Restore mandatory CGC notice boards and postings in primary elevators.**
6. **Require primary elevator grain tickets to provide an itemized list of all deductions subtracted from payment for farmers' grain.**
7. **The CGC should explore creation of a standard grain contract.**

CGC outreach and visibility

8. **Open more CGC satellite offices across the prairies.**
9. **Revive CGC farm meetings in the country.**
10. **Create/employ a CGC electronic/postal contact list for Commission information bulletins.**

Producers' relationship with the primary elevator

11. **Develop a CGC polling program to survey farmer opinion on an ongoing basis.**
12. **The CGC should lead in addressing the current dearth of study of grain policy issues.**
13. **Audit the pre-2012 primary elevator vs. inward inspection/terminal weighing data to definitively quantify the value to producers of CGC independent oversight of weight/grade/dockage.**
14. **Consider holding public hearings under section 98 (1) (b) of the CGA on issues of concern to producers.**

Postscript to producers: What is to be done?

Acknowledging farmer responsibility

If you've read this far you know this submission to the Canada Grain Act Review's In-Country Oversight Initiative is necessarily focused on the difficulties grain producers' confront at primary elevators. There are, however, lots of other CGA-pertinent concerns producers should be worried about, including adverse changes in the CGC's role in quality assurance referred to in this paper: loss of CGC outward inspection on US/Mexico rail exports, jettisoning of the Commission's historic incremental loading protocol, and persistent industry demands to replace independent CGC outward inspection with private inspectors paid by the grain companies. But, sadly, that's not all. Though little publicized, there are also ongoing industry efforts to eliminate the CGC's longstanding differentiation between primary and export grading standards in favour of a single port standard that would oblige producers to meet higher – unremunerated – grading requirements at delivery.[32] These are in addition to the crucial weigh-over, inward inspection/weighing and assistant commissioner roles already lost at primary elevators and terminals in recent years.

We've also been highly critical of the failings of both grain companies and the CGC that have contributed to increasing alienation of farmers from the Commission and its decisions. But in truth, our most heartfelt criticism – unstated because it was outside the terms of reference of our submission to AAFC and the CGC – is actually reserved for the farmers themselves, and to a lesser extent farm organizations, for letting this happen.

Farm organizations perhaps deserve a little slack. After all, they're only as strong as their members and western Canadian farm organizations do not, for the most part, enjoy animated or even very attentive membership bases. They're also at a permanent disadvantage in two other ways: money and access. Cargill is the biggest privately-owned company in the world; CN and CP alone are reputed to have over a hundred registered lobbyists in Ottawa: producer groups are hard pressed to compete with that kind of heavy hitting. Then there are the issues of focus and resources. Democratic farm organizations yield policy primacy to their members, but the Canada Grain Act, though addressed as required when the Act is under review, is neither a priority nor even well understood by most producers. Meanwhile, farm organizations scurry to keep up with the torrent of policy and legislative initiatives advanced by bigger industry players – governments, railways, grain handlers, input suppliers – and the regulatory, bureaucratic, scientific and technological agendas that drive them, none of which can be ignored.

That leaves the producers themselves. Scattered across four provinces and different, sometimes competing, farm organizations, farmer unity has rarely been in the forefront in recent years. This as farmers appear less and less aware of their rights and even less inclined to assert them under the Act. Moreover, as Weisensel has noted, the CGC has far more daily contact with grain handlers than it does with producers; if the squeaky wheel really does get the grease, farmers

[32] Terminal grading has always been more exacting because it's based on grain company blending of the grain farmers have delivered.

exist in a netherworld that's grown increasingly silent.[33] And there's another problem – widespread belief that because farmers no longer own or control grain after it goes in the delivery pit they're somehow no longer entitled to systematic safeguards at the elevator or a voice in quality assurance as grain advances through the system. This belief, expressed by some knowledgeable farmers and other industry players, is often tied to the end of the Pools and CWB.

We couldn't disagree more. The Canada Grain Act was created to regulate grain handling and grain quality "in the interests of the grain producers" some five years before Ottawa's Board of Grain Supervisors and first Canadian Wheat Board briefly took control of Canada's grain during and after the First World War, and thirty-one years before establishment of the permanent single-desk CWB in 1943. Farmers controlled only a small part of total grain handlings when the CGA emerged in 1912 and still a minority, albeit growing, portion after the Pools emerged in the mid-1920s. But that's the point: it was farmers' very powerlessness and lack of influence over the grain handling system – because they neither owned nor controlled product beyond the country elevators – that spurred original passage of the Act.[34] This onset of producer rights conferred through the Act, from STIGAD to CGC scrutiny of elevator and terminal inventories, to the work of the assistant commissioners, was completely unrelated to co-op grain handling or the CWB. To suggest otherwise – that the Canada Grain Act is somehow dependant on these other institutions and illegitimate without them – is inaccurate historically; to promote this view in 2023 is to be blind to the one-sided power relations of 21st century grain handling.

So if farmers bear significant responsibility for their reduced status in industry relations, and farm organizations are limited in their ability to address the problem – producer relations with the CGC is particular – what is to be done? What can individual farmers do to educate themselves about the CGA and promote increased powers for the Commission at a time when these powers are urgently required?

We don't want to suggest current remedies should be abandoned. Producers must continue to use their general farm and commodity organizations to make their concerns known. The *Combine to Customer* program is also useful, though we note its sponsors, for many years the CGC and independent Canadian International Grain Institute, now include numerous grain and seed firms. But these approaches have largely failed to increase producer knowledge or prevent ongoing erosion of farmer rights under the Act.

Something more is needed.

A modest proposal: The Canada Grain Act Discussion Group

The first responsibility of the organizer when times are tough is to bring together those people who can actually see a way out of the problem. For prairie grain farmers this means reaching out

[33] Weisensel, op. cit., p.15.

[34] Farmers seeking to better understand the history of the Canada Grain Act and CGC are well advised to seek out a copy of Jim Blanchard's *A History of the Canadian Grain Commission 1912-1987,* published by the CGC in 1987. Only 124 pages in length, the book is nicely organized around separate chapters on grain politics, Commission decisions, and inspection and weighing practices for each period of CGC/Board of Grain Commissioners history. It's generally available at good used book stores as well as amazon.ca and abe.com.

to producers most concerned about the future of the CGA and Commission and doing so across the lines that often divide the Canadian Federation of Agriculture and National Farmers Union, commodity organizations and different producer political affiliations. The best vehicle for undertaking this (to avoid disagreements over other issues) is a single-issue caucus devoted solely to dialogue and debate, education and critical support for the CGA. We propose a semi-formal body called the Canada Grain Act Discussion Group. We believe such a group could have a significant impact based on participation by even 50-100 knowledgeable and/or concerned farmers across the prairies from Steinbach to Fort St. John.

The functions of the Canada Grain Act Discussion Group could be as follows:

- exchange producer views and concerns and foster discussion
- promote better knowledge of the Canada Grain Act and Canadian Grain Commission
- circulate CGA-pertinent briefs and submissions, op-eds and letters-to-the-editor
- promote academic interest in and study of CGA-related issues
- convey informed farmer views to the CGC commissioners and producer organizations
- offer critical support to the CGC and commissioners for the things they get right and knowledgeable opposition to ongoing campaigns to further weaken the Act
- host an annual meeting in person and/or electronically, featuring the CGC commissioners, interested academics and other invited speakers, to discuss and advance CGA issues and resolutions

To this end the authors have created a website for the Canada Grain Act Discussion Group at https://talkcga.ca/ and posted this paper and our recent opinion pieces from the Manitoba Co-operator and Western Producer. We invite other producers and CGA supporters to submit their own material to this website as well. In particular, disappointed that Agriculture and Agri-Food Canada chose not to post any of the 66 submissions to the current CGA Review on its website, we encourage producers and other supporters of the Act who did provide briefs to the Review to send these along for posting on the new site.

The website also hosts a Discussion Forum section for the exchange of CGA-related news, views and concerns. We invite you to join us at https://talkcga.ca/producer-forum/.

The only requirement we request for participation in the Canada Grain Act Discussion Group is support for the CGC mandate enshrined in section 13, *Objects* of the Act:

> *Subject to this Act and any directions to the Commission issued from time to time under this Act by the Government in Council or the Minister, the Commission shall, in the interests of the grain producers, establish and maintain standards of quality for Canadian grain and regulate grain handling in Canada, to ensure a dependable commodity for domestic and export markets.*

The authors have no desire to monopolize this website or discussion of the CGA: our aim is to build, share and donate. Here's our offer: we'll fund and maintain the website until April 2024; if prairie grain producers find it useful and want to take it over and/or found the Canada Grain Act

Discussion Group (or a similar organization) as a permanent caucus by that time we'll be very pleased to assist in any way we can.

The Canada Grain Act has been grievously weakened in recent years and is in danger of being undermined even further. Prairie farm organizations have an important role to play but none is exclusively involved with this issue or uniquely suited to uniting farmers around the CGA. Only a single-issue caucus laser focussed on the CGA and Commission alone has the capability to bring concerned farmers together to both protect the Act and restore much need powers that have been lost in recent years.

That's our view. Please let us know what you think.

> *Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has.*
>
> Margaret Mead

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Electronic copes of this paper are available on-line

from the Canada Grain Act Discussion Group website:

https://talkcga.ca

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