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Threatened Harvest

Protecting Canada's
world-class grain system

By Scott Sinclair and Jim Grieshaber-Otto

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Summary

The outstanding international reputation of Prairie grain is a source of pride across Canada. International buyers know that when they buy Canadian grain, the quality will be high and the product consistent. A great deal of credit must go to the thousands of farmers who grow grain that is highly acclaimed around the world. The other part of this success story is the uniquely Canadian grain regulatory and marketing system. Unfortunately, this critical component is under attack by Canada's own government.

Canada's grain handling and inspection system was designed to address the formidable challenges faced by Prairie farmers. Higher transportation costs put grain growers at a disadvantage compared to their overseas competitors located closer to coastal ports. Through decades of well-considered public-interest regulation, Canada has managed to overcome geographical and transportation cost disadvantages by developing a high-quality, consistent product. This excellence has enabled the Canadian industry to build and maintain strong customer loyalty and to command a higher price than its global competitors.

Shaped by a generation of grassroots activism, the Canadian grain system is also designed to redress some of the power imbalances between prairie farmers and the large grain companies. This is achieved in part through the operation of the Canadian Wheat Board, which markets western grain and returns the benefits each year directly to Canadian grain producers.

Piece by piece, the minority Conservative government under Stephen Harper is dismantling Canada's highly successful grain system. Both the Canadian Grain Commission and the Canadian Wheat Board are feeling the wrath of a federal government that seems more interested in creating opportunities for transnational corporations than in protecting Canadian farm and consumer interests.

Undermining the Canadian Grain Commission

The Canadian Grain Commission (CGC) plays a central role in maintaining and enhancing Canada's worldwide reputation for grain quality and consistency. As Canada's grain system regulator, it administers the unique grading and inspection system that allows Canadian grain to command higher prices internationally. The Commission

also makes sure that the rules of western Canada's grain handling system are applied evenhandedly and that individual grain producers receive fair treatment in their transactions with powerful international grain companies. This provides a more stable and predictable marketplace for all grain sector participants.

This is no easy task, considering that the CGC is starved for the funds necessary to fulfill its important regulatory mandate. The Commission is prohibited from obtaining greater revenues by raising user fees and direct funding for the CGC

› The Harper minority Conservative government is dismantling Canada's **world class wheat system**

continues to be inadequate and unpredictable. In addition, the Commission is under attack from the Harper government in three critical areas: the pursuit of fundamental changes to the CGC structure, the elimination of official inspection and weighing of domestic wheat shipments, and the destruction of Canada's system of visual identification of wheat classes.

Government has made fundamental changes to the CGC and plans more

The federal government has made damaging changes to the Canadian Grain Commission and has plans for more. Through Bill C-13, introduced on February 23, 2009, the Conservative government intends to fundamentally alter the CGC and western Canada's established grain system.

- Assistant Commissioners, senior officials within the CGC appointed largely to protect producers' rights, have already been eliminated.
- The federal Minister of Agriculture and Agri-Food appointed a highly partisan Chief Commissioner with whom he has close personal ties, undercutting the independence of the Commission.
- Government plans to downgrade the Commission's longstanding mandate to protect the interests of producers.
- Government plans to allow disputes about the grade assigned to parcels of grain to be decided by private contractors, rather than the established Grain Appeal Tribunals, made up of grain experts with no financial interests in the outcome.
- Government plans to remove the requirement for grain buyers to post security bonds that protect producers if dealers cannot pay, or refuse to pay, for delivered grain. This would expose producers to the risk of severe financial losses.

Eliminating official inspection and weighing of domestic wheat shipments

The Canadian Grain Commission has long provided mandatory inspection and weighing of grain delivered to transfer and terminal elevators within Canada. Such inward inspections are vital to protect the quality and safety of the grain supply and to ensure that the grades and weights of grain are accurate and fair. Primarily at the behest of the large grain companies, the Harper government plans to end the Commission's direct involvement in this vital aspect of western Canada's grain quality assurance system. The privatization of these services would have serious consequences, including the following:

- Inward weighing and inspection services that would still be required would be less trustworthy and more expensive.
- The grain system would lose an important early-detection system for contaminated

grain. Eliminating inward inspection by public officials would increase the likelihood of contaminated grain being co-mingled with larger quantities of clean grain.

- Shipments of grain to Canadian and U. S. markets would lose an important level of protection against contamination. Grain shipped to these markets could bypass official inspection altogether.
- Outward inspection of Canadian grain exports would be made more difficult and expensive. Inward inspection provides quality assurance information that makes outward inspection immediately prior to export more efficient and cost-effective.
- The job of the Canadian Wheat Board (CWB) would become more difficult, since it relies upon accurate information about the quality and inventories within various parts of the grain handling system. Replacing public sector inspectors with private contractors — many of whom would be reliant upon private grain companies for business — would undermine the perceived reliability of the vital information derived from inward inspection.

Eliminating Canada's system of visual identification of wheat classes

The Kernel Visual Distinguishability (KVD) system provided substantial benefits by facilitating exports of high-quality wheat for human consumption. It allowed varieties in one end-use class of wheat to be distinguished from varieties in other classes easily and cheaply based on visual characteristics. This allowed various classes of wheat to be segregated and sold separately, based on their distinct quality and processing characteristics. International buyers could be uniquely confident that their purchases of high-quality Canadian wheat were not contaminated by low-quality look-alikes.

The KVD system had the unintended side-effect of restricting breeders' flexibility in developing high-yielding wheat varieties to be used as animal feed and in the production of ethanol. The CGC had announced changes to address the concern without unduly threatening Canada's exports of the highest-value bread and pasta wheats. Ignoring warnings from industry observers, government officials and legislators, the Harper government rejected the Commission initiative to modify the KVD system. Instead, it adopted the approach favoured by U.S. wheat growers and the U.S. government by terminating Canada's KVD system outright.

The elimination of KVD harms the grain handling and regulatory system in several ways.

- Canada's established reputation for guaranteed high quality wheat is threatened by an increased likelihood of mix-ups between wheat classes.
- New risks and financial burdens have been placed on producers, who now face the financial liability of cross-contamination and find the power dynamics of the grain system tilted against them.
- Visual distinguishability has been eliminated as a criterion in Canada's system for registering wheat varieties and, under international trade treaty rules, as a requirement for wheat imported into western Canada. New wheat varieties can be registered even if they look like existing varieties of a different class.
- The elimination of KVD is part of a much broader government effort to relax Canada's regulatory system for seeds, which will likely increase the frequency with which western Canada's wheat handling system is contaminated with unsuitable wheat in the future.

Attacking the Canadian Wheat Board

Even though a solid majority of western grain producers support the current Canadian Wheat Board, the Harper government is implacably opposed to the internationally-renowned marketing agency. A Canadian icon, the CWB is the exclusive marketing agency for western farmers growing wheat, durum wheat and barley for human consumption. It seeks to obtain the best prices and transportation rates, and returns all the revenues it obtains (minus marketing costs) back to Canadian producers. Despite bringing clear benefits to farmers, the CWB is under fierce attack from the Conservative government.

These attacks by government on a body representing the interests of western Canadian grain growers have struck at all levels, including:

- **using unlawful intimidation and interference** — A "gag order" prevented the Board from communicating with producers during a critical period in determining its future. The highly regarded CWB president was fired after he resolutely defended the Board's Parliament-granted authority against inappropriate government interference.
- **attempting to abolish the CWB monopoly through illegitimate means** — Constrained by their minority status, the Conservatives sought to end the CWB monopoly over barley sales by conducting a deeply flawed plebiscite, manipulating the results in its favour and attempting to remove barley from the Board's "single desk" marketing authority by order-in-council.
- **changing the CWB rules** — Thwarted by federal and appeal court rulings, the government tabled amendments to allow cabinet — without Parliamentary approval — unilaterally to eliminate "single desk" selling by the CWB. These amendments did not come to a vote in Parliament before the October 2008 election but are expected to be re-introduced in 2009.
- **failing to defend the CWB at the World Trade Organization negotiations** — By striving to eliminate the CWB's monopoly authority, the Harper government is implementing one of the most important demands of its main international grain trade adversaries. If the agriculture proposals currently on the table in the WTO negotiations are adopted, the CWB as it currently exists would be eliminated within five years.

Protecting the successful Canadian grain system

Opposed by a solid majority of grain producers, overruled by the Canadian courts and constrained by their parliamentary minority status, the Conservative government has for the most part been blocked in its effort to destroy the Canadian Wheat Board and dismantle the regulatory framework of western Canada's grain system. However, this does not mean that our world-class grain system is secure.

The destruction of Canada's unique grain system can only be avoided if opposition parties in Parliament act together. Harmful regulatory changes that have already been made can be reversed and future reckless proposals can be defeated. The Canadian grain system should be protected through the following actions:

- Reinstitute Kernel Visual Distinguishability for the major export wheat classes as soon as possible, before the grain handling system becomes polluted with visually confusing low-quality varieties.
- Reinstate the positions of Assistant Commissioners within the CGC by

promptly appointing top calibre individuals to these positions.

- Reinstate the prohibition and protections against the importation into western Canada of unregistered wheat varieties and non-pedigreed wheat seed.
- Vigorously support the Canadian Wheat Board at home and defend it at the WTO, making it clear that the current agricultural negotiating text — which would eliminate the Board's single-desk selling authority by 2013 — is a deal-breaker.

In addition, the government's proposed amendments to the Canada Grain Act (Bill C-13) should be withdrawn or defeated in support of the following actions that protect Canadian grain farmers and our international reputation:

- Universal inward weighing and inspection by the CGC should be retained and strengthened. Early detection and prevention of safety threats, insect infestations and other problems in the grain supply are essential to safeguarding quality and consumer health.
- The chronic underfunding of the Commission must be addressed, preferably through predictable Parliamentary appropriations that cover shortfalls and variability in revenue from fees.
- Grain Appeal Tribunals and the Producer Payment Security Program should be retained to protect the ethos of trust underlying the grading system and to protect producers from inappropriate financial losses.

The recent spate of food safety concerns, together with the turmoil inflicted by the global financial crisis, graphically demonstrate the importance of intelligent public interest regulation, strong and effective regulatory institutions, and appropriate constraints on the enormous power wielded by huge global corporations. Canada's grain regulatory system has for decades supported producers, protected consumers, guaranteed quality and provided stability through the peaks and troughs of the commodity cycle. Discarding it, as proposed by the current government, would be folly. Instead, Canada should safeguard and enhance a unique policy and regulatory success — its world-class wheat system.

INTRODUCTION

A Canadian success story

Canada is renowned for the consistent, high-quality cereal grains it supplies to countries around the world. Bakeries everywhere seek out Canadian hard milling wheat to improve the quality and consistency of their loaves. Italian pasta makers favour Canadian durum, while Chinese noodle makers and Indian flatbread makers appreciate consistent supplies of other classes of Canadian wheat.[1]

Without question, Canadian wheat commands international respect. Yet Canada's reputation for excellence did not emerge from thin air. It was earned through decades of intelligent policy-making aimed at creating, maintaining and improving an effective quality control system for western Canadian wheat. There are three key elements to this system:[2]

First, Canada is unique in the world in maintaining tight control over the registration of wheat varieties and ensuring their consistent functional performance. Only varieties that have been carefully evaluated to meet strict performance criteria are licensed for use. Varieties in one quality class must also be visually distinguishable from varieties from other classes, and varieties are restricted to eight distinct classes based on their end use. This allows the different classes of wheat to be kept separate, so customers can be confident that they are receiving the specific type of grain they require.

Second, Canada has developed an independently-enforced grading system which ensures that buyers get exactly what they pay for. This grading system, backed by the Canadian government, sets a series of tolerance levels for a number of important quality and functional characteristics that are designed to meet customers' needs. In addition to guaranteeing the functional characteristics of grain shipments, the grading system facilitates strict procedures which ensure grain cleanliness and safety. All shipments are government-inspected: first, when the grain arrives at major terminals and again before it is sent overseas. Parcels of grain are sampled and tested for insect infestations, and rigorous standards for contamination by other cereal grains, or chaff, straw, weeds and other, more harmful foreign materials are also enforced. Export shipments are accompanied by an official assurance of quality from the Canadian government — the highly regarded "Certificate Final". This guarantee means customers receive the specific class, grade and

quality of grain that they have purchased and has led to Canadian wheat becoming recognized as the cleanest in the world.

Third, Canada's grain transportation and handling system allows wheat classes to be segregated according to functional class and grade, and for wheat from within a class that is grown in different geographic areas to be blended. This ensures uniformity and consistency from shipment to shipment and from year to year.

This quality control system is sustained by the various institutions and infrastructure specifically designed for the purpose and by the thousands of diverse participants throughout the grain commodity chain who coordinate their efforts for mutual benefit.

Overcoming inherent challenges

As a nation, Canada has always faced challenges to its very survival: a harsh climate, its sparse population, the vastness of its land mass and its close proximity to a much more powerful neighbour. Canada's grain system shares these same challenges. How western Canadians and their governments rose to these challenges — by creating a system expressly designed to serve the public good and the national interest — is an embodiment of Canadian values.

Historically, plant breeders working at federal government research establishments developed wheat varieties that were primarily grown by Canada's new immigrants. These varieties allowed grain growers to thrive. Communities were established and the nation's prairie agricultural sector expanded dramatically. Canada's railroads provided the means to transport the inputs necessary for rural development in the thinly populated land and to ship wheat from country elevators to distant markets. In response to the overwhelming power of the railway and private grain companies, individual grain farmers joined together to form producer-owned cooperatives. Working together, they helped bring about federal legislation that allowed the grain system's benefits to be shared more fairly.

Today, the Canadian Wheat Board (CWB) is an icon of Canada's unique cooperative agricultural policy. Established in 1935, it is one of the world's largest grain trading companies. Annual revenues average between $4–6 billion, with sales of 22–24 million tonnes of wheat and barley each year, within Canada and to over 70 other countries.[3] The Board is financially self-supporting[4] and is based on the cooperative model of sharing (or "pooling") both the risks and advantages of grain selling equitably among its 85,000[5] producer members. It is controlled by a 15-member board of directors, 10 of whom are elected by farmers, with five appointed by the federal government. As the exclusive marketing agency for western Canadian farmers growing wheat and barley for human consumption, it seeks to obtain the best prices and transportation rates for producers, and passes all of the revenues it obtains (minus marketing costs) back to Canadian producers. The Board is a great asset to Canadian producers, grain customers and the general public alike, providing guaranteed delivery and reliable supplies of high-quality product.

› The grain system **is an embodiment** of Canadian values

Much of credit for Canada's reputation for grain quality and consistency is due to the activities of the CWB's sister organization, the Canadian Grain Commission (CGC) — the federal regulatory body that oversees the Canadian grain industry and administers the grain grading system. The CGC is a federal government agency that operates independently of the CWB and other grain industry players. As an independent third party, it has built up an almost universal trust among grain industry participants. The Commission

establishes the grading guidelines used by primary elevators (those that receive grain directly from producers). This enables grain delivered to primary elevators to be graded quickly, cheaply and fairly, before it is mixed with grain of similar grades for cost-effective bulk shipment to market. The Commission also provides independent dispute resolution services when there are disagreements about assigned grades; provides standard samples for use as visual guides in grain grading and marketing; and provides independent information on the milling and baking quality, and moisture and protein content of Canadian grain. The Commission also licenses grain dealers, and primary elevators, process elevators (which process grain for human consumption), and terminal elevators (located at Thunder Bay, Vancouver, Prince Rupert, and Churchill). It is the Commission which issues the Certificate Final, the internationally respected guarantee certifying that foreign grain buyers are receiving the type and quality of grain that they have paid for.

› Canada's grain system is now **at a precipice**

The CWB, the CGC and the legislation and regulations that underpin their activities — including the *Canada Grain Act* and the *Seeds Act* have been pivotal in making Canada a leader in the world's grain trade. These organizations are known world-wide for their proven ability to overcome the difficulties inherent in producing, transporting and marketing grain in a vast country and in fairly accommodating the many participants' diverse interests. Canada's world-renowned quality grain sector is a prime example of a public policy and regulatory success story.

Having proved its worth over decades, Canada's grain system is now at a precipice. It faces an array of new developments that together could tip it over the edge and make it unable to protect either our grain producers or our reputation for growing a world-class agricultural product.

SECTION 1

Undermining Canada's grain system regulator

The key roles of the Canadian Grain Commission (CGC)

Canada's grain system is strictly regulated in the public interest by the Canadian Grain Commission. This federal agency performs two essential roles. Its first function is to be an independent referee, ensuring that the grain system's rules are applied fairly. This assures individual grain producers fairer treatment from the hugely powerful corporations with whom they trade and provides a more predictable marketplace for all grain sector participants. The Commission's second role is to maintain Canada's worldwide reputation for grain quality and consistency. These dual roles are encapsulated in the *Canada Grain Act*, which stipulates that 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." [6]

The Commission employs over 700 staff[7] and oversees the system of grain grading and inspection. It sets and applies the parameters for grain quality standards[8] and regulates the grain grading and inspection process.[9] It licenses all grain companies and grain dealers.[10] Significantly, by requiring elevator companies and grain dealers to be bonded or insured, the Commission protects producers from financial harm arising from fraudulent practices or business failures of these industry players.[11] The CGC also regulates grain handling procedures,[12] undertakes, sponsors and promotes research,[13] and acts as an arbitrator in grain-related disputes.[14] [15] It is authorized to hold public hearings, conduct inspections and investigations as required, and, through special tribunals, rule on grain-related appeals.[16] The Commission's duties are backed up with powers to suspend or revoke licenses, and to order violators to pay compensation, fines or even be imprisoned.[17] Work is coordinated by three Commissioners appointed by the federal cabinet and up to six Assistant Commissioners,[18] whose jobs include advocating for producers' interests and otherwise addressing their concerns.

The broad scope of the Commission's duties, powers and activities reflects the longstanding recognition within Canada that grain grading

and grain handling issues are vitally important not only to producers and all participants in the grain sector but to the nation generally. In the late 1890s, before such regulation was instituted, many western grain farmers complained bitterly that they were cheated on weights and grades when they delivered their grain to country elevators and when the grain reached the large terminal elevators.[19] There was little competition between elevators, and the railroads refused to permit direct loading of rail cars. According to two prominent economic historians,

> "[t]his left the farmer with no alternative but to accept the elevator's terms for price, weight, grade and dockage."[20]

Producers of the day also complained that Winnipeg grain companies were illegally fixing prices. Their claims were given credence by a royal commission, whose examination gave rise, in 1900, to the Manitoba Grain Act.[21] In 1912, this was followed by the passage of the *Canada Grain Act* — a statute sometimes called the Magna Carta of the grain grower[22] — which established the CGC.

Under the regulatory framework of the *Canada Grain Act*, the CGC has been helping to stabilize the nation's grain sector, securing predictability for its diverse participants, and providing the foundation for Canada's worldwide reputation for quality grain.

Regrettably, in recent years the federal government has undermined the role and independent authority of the CGC.

› Most observers agree that the Canadian Grain Commission **is underfunded**

Undermining the Grain Commission

Starving the Commission of funds

It is widely acknowledged that successive federal governments have under-funded the CGC for many years. Even the Harper-government commissioned review of the CGC and Canada Grain Act — the so-called Compas report[23] — emphasized the need for greater funding. Despite its deregulatory bent, the Compas report highlights the "enormous economic importance" of the grain economy, rightly asserting that "the people of Canada and…the federal government have a special reason to protect and sustain the regulatory system and infrastructure."[24] The report notes that there is widespread agreement, even among critics, that the federal government is failing to fund the CGC adequately. The report states:

> "Stakeholders who agree on little else among themselves seem agreed that the CGC is underfunded, even those who are deeply critical of it."[25]

According to the Compas Report, the CGC is so under-funded that "resource constraints have prevented [it] from maintaining adequate core infrastructure" which, in turn, has prevented the Commission from providing stakeholders with "optional cost-recovery services."[26]

The Commission has two primary sources of revenue. It charges user fees for the various services it provides[27] and it receives funding through direct appropriations from Parliament. Both sources are unpredictable and inadequate.

Funding derived from user fees is inherently unpredictable. Most CGC fees are based on the volume of grain shipped from terminals, and these volumes naturally depend on such variable external factors as weather, harvest conditions, and crop yields. As a result, user fee revenues have fluctuated from year to year by as much as 33%.[28]

TABLE 1 **Canadian Grain Commission revenues from user fees and parliamentary appropriations, 2001–2008** (million $Cdn)

Year	Service fees	Parliamentary appropriations	Total revenue	Annual change (%)	Share of revenues from Parliament (%)
2011	41.3**				
2010	41.3**				
2009	41.3**	26.5*,***	67.8*,**	-19.3	39.1*,**
2008	40.1	42.3	84.1	+7.2	50.3
2007	40.9	35.7	78.4	+18.6	45.5
2006	36.7	27.3	66.1	+14.5	41.3
2005	33.6	21.8	57.7	-19.3	37.8
2004	34.0	37.5	71.5	+20.6	52.4
2003	26.3	33.0	59.3	-6.9	55.6
2002	38.8	24.9	63.7	+1.0	39.1
2001	43.1	20.0	63.1	-7.2	31.7

***** Estimate ****** Planned (see text endnote) ******* Supplemented through utilization of $14.2 in accumulated surplus
SOURCES Canadian Grain Commission Revolving Fund, Financial Statements, various years, Canadian Grain Commission and Treasury Board Secretariat; CGC staff.

Parliamentary funding has also been highly variable. Since 2001, parliamentary appropriations to the CGC have ranged from a low of $20 million to a high of $42 million (See Figure 1). The erratic appearance of these federal payments arises from the fact that their aim is to supplement user fee revenues. However, the key point remains: parliamentary funding has not resulted in steady, predictable funding for the Grain Commission. The year-to-year variation in total CGC revenues (user fees plus parliamentary appropriations) presents its own challenge, making planning — including staffing decisions — quite difficult.

But Parliament has made CGC's funding situation even more difficult.

Not only has Parliament failed to provide the CGC with stable, predictable funding, it has long prevented the organization from augmenting its own revenues through higher user fees. While the fact may surprise many Canadians, Parliament has prohibited the CGC from increasing the fees it charges for its services for over a decade-and-a-half.[29] Previously, the structure and levels of these fees were reviewed annually and proposed changes were published in the Canada Gazette.[30] CGC fees were frozen in 1991, and to this day remain frozen at those levels. While benefiting grain producers by shielding them from CGC fee increases that grain companies would pass on to them, this freeze imposes a ceiling on the revenues the CGC can raise by itself — a policy the Harper Conservative government intends to extend at least through 2011.[31]

Successive governments have thus placed the CGC in a double financial bind. They have hobbled the CGC by providing inadequate and unpredictable direct funding while prohibiting the Commission from obtaining greater revenues on its own accord through increased user fees. In short, Parliament is starving the CGC of the revenues it needs to fulfill the vital mandate that Parliament itself assigned to it.

There is little doubt that the resulting financial pressures undermine the ability of the CGC to do its job. Any underfunded organization with little prospect of increasing revenues must look to reduce costs, even if this undermines the services it provides — in this case, regulating Canada's grain system in the public

interest. The imposition by the federal government of unsustainable financial constraints on the CGC unquestionably contributed to the ill-advised proposal to eliminate the CGC service of mandatory inward inspection and weighing. Independent inward inspection and weighing by the CGC is vital for the proper functioning of Canada's grain quality assurance system (see below). However, since it costs the CGC more to provide it than it derives in fees,[32] it is vulnerable to budget cuts.

The CGC has identified the task of developing a sustainable funding mechanism as a departmental priority, stating that:

> "[a] sustainable funding mechanism is imperative for the CGC to carry out its legislated responsibilities and maintain its capacity to create value for producers, the grain industry, and the Canadian public as an integral part of a successful Canadian [grain quality assurance system]."[33]

Regrettably, the current Conservative government is not actively pursuing a mechanism for more stable, predictable and adequate parliamentary funding for the CGC. Instead, it is focused on developing "alternative funding mechanisms"[34] — a phrase which in practice means contracting out government services to private service providers. If allowed to continue, this approach will erode the capacity of the CGC — an organization of national importance and international stature — to perform its responsibilities as the independent regulator of Canada's grain system.

› The government intends to **fundamentally alter the CGC** and the grain system

Bill C-13: Pursuing fundamental changes to the Canadian Grain Commission

Bill C-13,[35] proposed legislation to amend the Canada Grain Act, demonstrates how the federal Conservative government intends to fundamentally alter the CGC and the grain system. The controversial proposals, which Agriculture and Agri-Food Minister Gerry Ritz first introduced in December 2007 as Bill C-39, did not pass before the October 14, 2008 federal election was called and the 39th Parliament ended. Re-appointed as Agriculture and Agri-Food Minister after the federal election, Mr. Ritz re-introduced the same amendments, as Bill C-13, on February 23, 2009.

The bill proposes a number of changes that would adversely affect producers' interests. The five key changes would shift the CGC focus away from protecting producer interests while eliminating Assistant Commissioners, the Grain Appeal Tribunals, the Producer Payment Security Program and mandatory inward inspection.

1. Shifting CGC's primary focus away from protecting producer interests

As noted above, one of the CGC's longstanding, primary purposes has been to serve as a counterweight for producers in the grain system, balancing the enormous influence wielded by large grain companies. This is reflected in the current Act, which stipulates that the CGC's activities be "in the interests of the grain producers." The amendments proposed in Bill C-13 would downgrade this producer focus, requiring the Commission to "protect the interests of grain producers" only with respect to three activities: "grain deliveries to elevators and grain dealers, the allocation of producer railway cars and the binding determination of grade and dockage of grain by the Commission."[36] While some observers view this wording change as a mere formality, many others are concerned that it downgrades the Commission's longstanding producer protection focus.

2. Eliminating Assistant Commissioners

For many years, Assistant Commissioners of the CGC played a central role in protecting producers' rights and ensuring that they received fair treatment within the grain handling system. Regrettably, the current federal government has, for practical purposes, dispensed with Assistant Commissioners.

Up to six Assistant Commissioners were appointed by the federal cabinet for renewable five-year terms. They responded to producer inquiries and complaints about late or non-payment for delivered grain, disputes over grade or dockage, producer cars, deductions for shrinkage, and elevator charges.[37] It was common for Assistant Commissioners to handle over 1,500 complaints about these matters in a single year.[38] Assistant Commissioners also represented the concerns of producers in their respective regions to the Commission[39], publicized Commission activities in their areas and dealt with inquiries from producers and other members of the grain industry.

As recently at 2007, the CGC, under Minister Ritz, recognized Assistant Commissioners for their efforts in achieving results to "[m]ediate and/or arbitrate producer complaints concerning transactions with grain companies to facilitate negotiated settlements acceptable to both parties"[40] These efforts were in support of protecting producers' rights — which the CGC considered a "[k]ey program" and a "strategic outcome" warranting special mention in its annual performance report.[41] Despite this acknowledgement of their importance, the current federal government effectively eliminated the position of assistant commissioners by failing to renew the terms of individuals when they expired.[42]

The government has not moved to establish any other body as a partial replacement for Assistant Commissioners, with for example, an independent arbitrator, ombudsperson, or "Office of Grain Farmer Advocacy", as recommended by the House of Common Standing Committee on Agriculture and Agri-Food.[43] Indeed, with the intimate knowledge that came with their membership on the CGC,[44] it is difficult to see how the unique producer advocacy role that trusted Assistant Commissioners often played could be replicated by an outside agency.

The loss of Assistant Commissioners eliminates a longstanding safeguard that has helped ensure fairer treatment of producers within the western Canadian grain handling system.

3. Eliminating Grain Appeal Tribunals

Under the current Act, producers dissatisfied with the grade assigned to their grain by an inspector may appeal the decision either to Canada's chief grain inspector or to a Grain Appeal Tribunal.[45] These tribunals consist of independent grain experts with no financial interest in the outcome,[46] make final rulings on the appeals. This process gives producers and other participants in the grain sector confidence that rulings about grain grading — which have enormous financial consequences — are fair.

› The Conservatives want to "contract out" grain inspection appeals

The proposed legislation would eliminate Grain Appeal Tribunals entirely.[47] It would authorize the chief grain inspector, acting alone, to make final rulings on these appeals. More disturbing, the bill would also authorize the chief grain inspector to delegate all of his or her grain appeal functions to another individual, and the decision of that individual would be final and not subject to review "by any court."[48] If approved, Bill C-13 would allow the vital job of issuing rulings on grain appeals to be "contracted out" to private individuals. Privatizing the grain appeal process in this way would result in a system that was, and was widely perceived to be, less objec-

tive and more subject to inappropriate manipulation and corruption[49]

Eliminating these panels of independent grain experts and allowing the possibility for substituting unaccountable and unappealable reviewers are clearly moves that would shift the CGC's role away from protecting producers.

4. Eliminating the Producer Payment Security Program

Bill C-13 would eliminate the requirement for grain buyers to post security bonds.[50] Under the current system, all grain dealers and terminal elevator operators are required to post bonds as a condition of their license. This bonding requirement protects producers against serious financial impacts that arise if a grain buyer refuses to pay for delivered grain or when grain companies go bankrupt and cannot pay. Perversely, the CGC's 2008–2009 Report on Plans and Priorities claims that the elimination of this valuable program will "benefit producers [sic] by reducing barriers for new entrants into the grain handling system and removing system costs."[51] What the CGC report overlooks is that eliminating the Producer Payment Security Program[52] would remove an important protection for producers — protection that cannot be achieved easily through any other means — and would almost certainly result in some producers facing catastrophic financial losses through no fault of their own.

› The appointment of partisan Elwin Hermanson as Chief Commissioner **sullies the CGC's reputation**

5. Eliminating mandatory inward inspection — a vital CGC role

Through Bill C-13, the Harper government also proposes to eliminate the mandatory inspection and weighing of grain delivered to transfer and terminal elevators.[53] This proposal has attracted considerable controversy, since the CGC's inward inspection service is a valuable, cost-effective program that benefits producers, the CWB and the Canadian public generally. This misguided proposal is examined in greater detail in section 2 of this paper (see below).

Undercutting the independence of the Canadian Grain Commission

The stature and world-renowned effectiveness of the CGC rests largely on the knowledge, integrity and impartiality its staff and the independence of its leadership. Unfortunately, the minority Conservative government tarnished the solid reputation of the federal agency by appointing a partisan individual, who has close ties to the Minister, to lead it. On December 21, 2007, Agriculture and Agri-Food Minister Ritz announced the appointment of Elwin Hermanson to a five-year term as Chief Commissioner of the CGC. Regrettably, given his close political ties with Ritz, Hermanson cannot reasonably be considered either impartial or independent (See Annex I) and the appointment sullies the CGC's reputation. As Chief Commissioner, Mr. Hermanson has already demonstrated his inability to protect the independence of the CGC: on February 7, 2008, he published an opinion article strongly promoting Bill C-39 (recently re-introduced as Bill C-13), the controversial bill that Mr. Ritz introduced but which Parliament has not passed.

SECTION 2

The move to eliminate inward inspection

One of the central responsibilities of the CGC is to inspect, weigh and grade grain as it enters and leaves major terminals. It has performed this key role for almost a century. *Inward* inspection and weighing occurs when grain arrives at the terminal. It provides accurate, impartial information regarding grades and weights that buyers, sellers and shippers can rely on to ensure each is treated fairly. Mandatory inward inspection also protects the consumer by ensuring that every shipment is checked by highly trained professionals for any quality concerns or safety problems. Bill C-13, the government's proposed amendments to the Canada Grain Act, would eliminate universal inward inspection by public officials, to be replaced by an optional system where buyers or sellers would contract for these services, as needed, in the private market. This section of the paper traces the flow of grain through the handling system, explains the role of inward inspection in the existing system, assesses the impacts of eliminating inward inspection as a government service and examines the interests behind the pressure to get rid of it.

The flow of grain

a) Primary elevators

The first stop for most prairie wheat after it leaves the farm is usually a nearby country, or primary, elevator. A small fraction of Canadian grain bypasses primary elevators and is shipped directly by individual farmers in "producer cars" to terminal elevators at ports.

When grain arrives at the country elevator it is weighed and graded by the elevator operator. If the farmer and operator disagree on the grade, either has the option to take samples which will be sent to the CGC for a binding determination. This option is known as "subject to inspectors' grade and dockage." The proposed amendments to the Grain Act would preserve this option and extend it to grain delivered to "grain dealers and process elevators."

While many producers have an excellent relationship with their local elevator operators, buyers have an inherent interest in grading for their own benefit. For example, dockage is foreign material in grain that can be removed by cleaning. If the amount of dockage estimated when the grain is purchased is higher than the

actual dockage, then the buyer will have more grain to sell after cleaning. Even a small percentage bias can add up over large volumes. The difference between estimated and actual dockage is a significant source of potential profit for elevator operators.

The option of a binding CGC determination and the knowledge that grain will ultimately be inspected by an impartial third party act as checks against the buyers' tendency to grade to the detriment of the producer.[54]

Another major source of profit for grain buyers is blending. Grains of somewhat lower grades or protein levels can be mixed with higher-quality grains prior to sale. As long as each order is blended to meet or exceed the buyers' specifications, all is well. In effect, grain purchased at a lower price can be sold, quite legitimately, at a higher price.

› Independent CGC **oversight is needed** to prevent fraud

When a private grain company blends its own grain, it pockets the extra profits. The producer is paid based on the grade and price transacted at the primary elevator, even though their grain might be blended up and sold at a higher price. One of the benefits of the CWB is that it returns the proceeds derived from blending to producers, who otherwise would not share in the extra returns. The CWB estimates that it returns a benefit of between $7 and $10 million annually to prairie farmers through terminal blending of wheat, barley and durum.[55]

Fraudulent practices can occur at any elevator, including primary ones. There are many different ways that samples or equipment can be tampered with to short-change the seller. CGC oversight — which can lead to fines, license suspensions or criminal prosecution — acts as a necessary check and balance to prevent fraud and to weed out dishonest buyers or dealers.

Before being eliminated by the current federal government, Assistant Grain Commissions played an important role in uncovering fraudulent practices in the industry. They acted as both advocates for producers who felt they had been dealt with unfairly or dishonestly, and provided an independent office where whistle-blowers could safely come forward to reveal bad practices.

b) Terminal and transfer elevators

(i) Weighing

The CGC's inspection system swings into high gear when the grain cars arrive at terminal and transfer elevators. It is here that mandatory "inward inspection" occurs.

The inward inspection process begins with the CGC weighers. Despite their title, the role and function of these employees is far broader than simply weighing the grain. The first step is to observe the arriving rail car, checking that it is intact and that no leaks have developed en route. The next step is to "sound" the car, to check that each compartment is full, noting any compartments that are empty or short.

A vital task is to ensure that the car is identified correctly. Without a proper match between the car identity and the parcel of grain, inventory, payment and inspection systems break down. The electronic tag system used by elevators (a chip on the car is read by a sensor) does not always work properly. The CGC weigher independently verifies the identity of the grain.

The weigher also creates a shunt order and unload schedule, which documents the identity and order of the cars as they arrive and are available for unloading, the status of the car and any issues identified. This documentation is provided by the weigher to the elevator operators.

It is the CGC weighers' job to ensure that the identity of each parcel of grain is preserved and the lot kept intact until it is officially weighed,

graded and inspected, as well as to prevent or note any discrepancies as the parcel works its way through the elevator's conveyance system.[56] The weigher must also ensure that the elevators' equipment is running properly — for example, that there are no spills as the parcel is conveyed to the scales. Each elevator's conveyance and handling systems are unique and an experienced weigher must be familiar with all those for which they are responsible.

The physical weighing itself is performed by the elevator operator using the elevator's equipment. The CGC monitoring equipment works off the elevators' scales, ensuring that the weighing is done accurately and recorded correctly. There is no unnecessary duplication of effort.

The CGC records are made available to all parties to the transaction: the elevator operator, the railway and the shippers. In the case of any disagreement, the CGC official records are the final authority regarding the identity and weight of every parcel of grain unloaded at terminal and transfer elevators. In fact, without independent CGC documentation regarding the identity of the car and information about how it was unloaded, it would be almost impossible to fairly adjudicate any dispute between the elevator and the seller. The seller and the railways would be at the mercy of the elevator operators' records, resulting in a clear conflict of interest.

Bill C-13 provides for the CGC to continue to adjudicate disputes between sellers and buyers. Unfortunately, without the records provided by impartial third-party inward weighing and inspection, such a role will be difficult — perhaps even impossible — to perform.

CGC officials provide a deeper level of scrutiny for "producer cars", which are rail cars loaded and shipped directly by farmers themselves rather than through a grain company . Such producers rely entirely on CGC records to determine payment or to resolve any dispute with the elevator operator.

At a typical Vancouver elevator, CGC weighers routinely process the unloading of 50–100 rail cars during a shift. Documentation on these cars, their parcels, weights, any anomalies and other relevant information is provided by the weigher to the elevator at the end of each day. Such information is important, not just in the event of disagreements, but also in the routine operation of the elevators. It is unclear how this data would be gathered, and by whom, if public inward inspection were eliminated.

› Independent CGC inward inspection records allow grain disputes **to be adjudicated fairly**

(ii) Inward inspection and grading

Canadian law currently requires that all grain be inspected by government officials when it arrives at a terminal or transfer elevator (See Table 2, Canadian Terminal And Transfer Elevators). As previously discussed, the current government intends to eliminate the existing requirement for inward inspection, while maintaining mandatory outward inspection of overseas grain shipments.

After first obtaining a representative sample for testing, CGC inspectors determine the class or type of grain. Kernel Visual Distinguishability, or KVD (which is discussed further in section 3 of this paper), is a crucial component of this process. Visual distinguishability allows experienced inspectors to tell at a glance the type of grain they are dealing with and to recognize at once if the grain has been mixed with a variety of a different class.

Inspectors next determine the cleanliness of the sample and the percentage of dockage.

Inspectors remove the dockage from the sample. They check both the dockage material and the

TABLE 2 **Canadian Terminal and Transfer Elevators (as of December 2007)**

Licensed Terminal Elevators	Tonnes
Ontario	
THUNDER BAY Cargill Limited	176,020
James Richardson International Limited	210,030
Mission Terminal Inc.	121,240
Parrish & Heimbecker, Limited	40,800
Viterra 7	362,650
Viterra S	167,000
Viterra A	231,030
Western Grain By-Products Storage Ltd.	30,000
Total	**1,338,770**
Manitoba	
CHURCHILL 3 Hudson Bay Port Company	140,020
Total	**140,020**
British Columbia	
PRINCE RUPERT Prince Rupert Grain Ltd.	209,510
VANCOUVER Alliance Grain Terminal Ltd.	102,070
Cargill Limited	237,240
Cascadia Terminal	282,830
James Richardson International Limited	108,000
Kinder Morgan Canada Terminals ULC	25,000
Pacific Elevators Limited	199,150
Total	**1,163,800**
Canadian Total	**2,642,590**

sample for insects. A portion of the sample is sent to the CGC entomology lab for more thorough inspection. The lab does its work quickly, usually within 24 hours, and if infestation is discovered the binned grain can then be treated *before* it is mixed with other grain. Discovery at this early stage also allows the source of the infestation to be identified. The CGC can then alert elevators and growers from that producer or region to take the steps needed to control the infestation. If this layer of inspection is eliminated as proposed, the ability to detect, isolate and control insect infestations in the Canadian grain supply will be seriously compromised.

Inspectors next analyze the sample for safety factors. In all, inspectors test for about fifty grading factors.[57] They detect kernels that are broken, shrunken or heated, as well as grain that is discoloured, mouldy, rotted or damaged by insects. They also check grain for contamination by other seeds and foreign material such as glass, dirt and stones. Donning gloves and masks, inspectors screen out any chemically treated grain or grain containing rodent excreta, insect infestations, fertilizer pellets and certain toxin-producing bacteria and fungi. Known food safety threats include fusarium blight, mercury, glass and ergot (see below). As with insect infes-

TABLE 2 (CONTINUED) **Canadian Terminal and Transfer Elevators (as of December 2007)**

Licensed Transfer Elevators	Tonnes
Nova Scotia	
HALIFAX Halifax Port Authority	144,290
Total	**144,290**
Quebec	
BAIE COMEAU Cargill Limited	441,780
MONTREAL Montreal Port Authority	262,000
PORT CARTIER Louis Dreyfus Canada Ltd.	292,950
QUEBEC Bunge of Canada Ltd.	224,030
SOREL James Richardson International (Quebec) Limited	146,460
TROIS-RIVIERES 3 Les Élévateurs des Trois-Rivières Ltée	109,000
Total	**1,476,220**
Ontario	
GODERICH Goderich Elevators Limited 2	140,020
HAMILTON James Richardson International Limited	29,300
OWEN SOUND The Great Lakes Elevator Company Limited	106,420
PRESCOTT The Corporation of the Township of Edwardsburgh/Cardinal	154,020
SARNIA Cargill Limited	151,000
WINDSOR Windsor Grain Terminal Ltd.	110,410
Total	**691,170**
Canadian Total	**2,311,680**

SOURCE Canadian Grain Commission

tations, if the grain were not inspected on arrival at ports, as proposed in Bill C-13, it would be far more difficult, perhaps impossible, to trace these problems back to specific parcels of grain, farms or regions.

Inspectors also assess the sample for moisture content, which indicates whether the parcel is within acceptable tolerances for safe storage or requires drying, and for protein level. Finally, the inspector evaluates a number of visual (subjective) and objective grading factors. All these results are then compared to the grade determinant table in the appropriate section of the Official Grain Grading Guide (OGGG).

The OGGG is vetted and adjusted each year by a committee of experts and industry stakeholders to reflect expected quality standards and current growing conditions. At this point, the inspector is able to assign a grade to the sample and the parcel. Inspectors may also recommend further cleaning or drying to allow for grade improvement.

Either the sellers or the buyers can appeal this grade determination. In such instances, the sample is re-inspected, at minimal cost, by CGC inspectors, who will either confirm the original grade or change it.

Impacts of eliminating inward inspection

a) Cost

The existing public system — including KVD — has justly been described as "the ultimate low-cost grading and inspection system." As previously discussed, the CGC fees for inward weighing and inspection have been frozen since 1991.

There is little doubt that the CGC currently provides inward inspection services at less than cost. This is a significant source of the annual shortfall in CGC revenues versus expenses. Ideally, if fees remain frozen to assist farmers, then Parliament should make the necessary appropriations to enable the CGC to provide the full range of services to producers.

> Without CGC participation, inward **inspection fees would increase,** costing producers more

CGC senior management, however, appears to regard inward inspections as a cost drain and have acquiesced in the federal governments' efforts to fundamentally change the inspection system. Management has also declared that once mandatory inspections have been ended, CGC inspectors will no longer be made available to perform optional inspections, even on a fee-for-service basis.

If the proposed changes were to become law, the fees charged for inward inspections would likely increase. Wages of front-line CGC inspectors are generally lower than, for example, the unionized longshoreman employed by grain elevator companies, who are not in any case trained to perform thorough inspections. Private contractors would need to charge significantly more for comparable inspections than the current CGC rates. As has been acknowledged in parliamentary testimony and reports, proponents of contracting out these services have not provided any cost-benefit analyses or factual evidence to support their claims of lower costs or increased efficiency.[58]

Public inward inspection services provide valuable support to agricultural producers. This falls squarely within the current mandate of the CGC to uphold producer interests. Moreover, unlike so many Canadian agricultural subsidies, publicly funded inward inspections have survived challenge under WTO rules.

Eliminating inward inspection would be a classic case of "penny wise and pound foolish." The immediate cost savings would be minor. By contrast, the risks and associated costs involved to producers, the CWB and ultimately the public purse are potentially significant.

b) Food safety and bio-security

Inward inspection provides an extra layer of assurance to domestic and international buyers that Canadian grain is free from harmful contaminants or other safety hazards. Under the proposed changes to the Grain Act, grain arriving at terminal or transfer elevators which is destined for domestic use or consumption would no longer be inspected by the CGC. At a moment when public concerns about food safety are near an all-time high, passage of Bill C-13 would create a new gap in the Canadian food inspection and safety system.

The example of ergot, a dangerous fungal disease which occurs in western Canada, demonstrates the importance of maintaining rigorous government oversight, including inward inspections, in our grain system. Ergot infects rye, wheat and other cereal grasses, forming hard fruiting bodies that resemble dark kernels of grain.[59] It contains powerful chemical alkaloids, from which LSD is made. When ingested even in small quantities in baked bread, ergot can cause violent muscle spasms, hallucinations

and crawling sensations on the skin. Ergot poisoning in rye is thought to have led to the Salem, Massachusetts witch trials of 1692[60] and, as recently as 1951, caused widespread bizarre behaviour in a small town in France.[61] In 2008, ergot was unusually prevalent along the Manitoba-Saskatchewan border after a damp growing season, with between 10–25% of grain samples from the region containing ergot damage.[62] Yet Canada's grain inspection system was able to ensure that dangerous levels of ergot were kept out of the food supply.

Several recent outbreaks of food-borne illnesses, all occurring in the summer and fall of 2008, underline the dangers to the public of cutting back on government oversight and inspections in the food system.

- In August, Canadians were shocked by the widespread distribution of over 200 brands of meat products contaminated by the disease-causing Listeria bacterium, which resulted in over 20 deaths and a class-action lawsuit involving 5,000 Canadians.[63]
- In China, over 300,000 children were left ill and at least six died, after consuming milk tainted with melamine — a chemical used to make plastic. Melamine was added to milk to increase profits by artificially boosting protein levels.[64] The scandal extended to more than 20 companies, with products including fresh milk, yoghurt and ice cream. The problem extended worldwide — causing the Canadian Food Inspection Agency to put in place new measures to protect animal and public health by testing imported dairy ingredients and soybean meal for the contaminant.[65]
- In Japan, a large rice miller was found to have boosted profits by selling 400 tons of inedible, contaminated rice — intended for use as fertilizer, animal feed and glue — as more expensive rice for human consumption. The tainted rice was sold to 380 companies, including suppliers of food to hospitals, nursing homes, schools and other public facilities.[66] The revelation prompted a sweeping recall of products that may have been made with the contaminated rice and shook public confidence in Japan's food safety system.

These examples highlight the importance of preventing both inadvertent and deliberate contamination of the food system before they occur.

› CGC inward inspection helps **keep dangerous ergot out** of the 2008 grain supply

This is best achieved by maintaining high-quality inspections performed by trained public inspectors who are independent of the companies they oversee. The federal government's proposal to eliminate inward grain inspection would leave grain companies free to arrange their own inspections of their own grain in their own facilities — an obvious conflict of interest that would increase the risk of food-borne illnesses both in Canada and abroad.

Another scarcely discussed feature of the proposed changes is that all grain exported to the U.S. would no longer be inspected. Currently, grain shipped to the U.S. by lake freighter and by rail from terminal elevators must be inspected by the CGC.[67] This change would downgrade the level of protection and could expose American consumers of Canadian grains to increased safety and quality risks.

Furthermore, given the current U.S. preoccupation with counterterrorism and bio-security, it would open a perceived bio-security weakness in the U.S. food import system. It is conceivable

that the U.S. homeland security apparatus would move to remedy this.

Given the long-standing tensions in the Canada-U.S. grain trade, the temptation to close this potential bio-security breach to the detriment of Canadian grain producers is ever-present. It is disconcerting that, with Canadian concerns about the thickening of the border on the rise, the federal government might hand U.S. legislators and industry lobbyists this new opportunity to harass Canadian grain exports.

› Ending CGC inward inspection would raise **bio-security concerns,** giving the U.S. a new reason to harass Canadian grain exports

c) Undermining outward inspection

Under the proposed regime, grain must still be weighed and graded by CGC officials before it can be exported overseas. These "outward inspections" follow similar procedures to those described above for inward weighing and grading. At the end of the outward inspection process the CGC inspector assigns the appropriate grade and issues a "Certificate Final."

Worldwide confidence in the CGC system is extremely high. Once a Certificate Final is issued, foreign buyers can be assured — without even examining the grain themselves prior to delivery — that the Canadian grain they have purchased will consistently meet designated quality standards. The certificate helps Canadian sellers to command a price premium for milling wheat and other grains in the international marketplace. This premium price will only be available as long as buyers have full confidence that our rigourous inspection and grading system has been faithfully followed.

It would be foolhardy to suppose that eliminating the inward inspection process will have no impact on the integrity of the outward inspection process or the quality and reputation of Canadian grain sent to international export markets. Eliminating the set of checks and balances followed in inward inspection, especially when combined with the immediate elimination of KVD, introduces new risks and potentially very significant costs into the system.

Inward inspections provide outward inspectors with detailed knowledge and confidence about the quality and characteristics of the grain that is about to be loaded for export. For example, during the loading of a ship, the outward inspector may observe that the grade quality or protein levels of grain being loaded are dipping below required specifications. The inward inspection report, however, provides reliable information about higher quality grain yet to be loaded. With this knowledge, the outward inspector can be confident that the final cargo will meets required standards. Without the trustworthy information about grain in the pipeline provided by inward inspection, the outward inspector may be obliged to halt loading, or, in extreme cases, require that the ship be unloaded. These actions would involve considerable delay and expense.

Furthermore, if any amount of contaminated or insect-infested grain gets into the cargo hold, it is nearly impossible to remove it. The entire cargo may have to be unloaded and possibly discarded. Early detection through inward inspection saves time, effort and expense. Once sub-standard or contaminated grain from even a single car is mistakenly mixed with high-quality grain, it can degrade an entire cargo, reducing its value or in extreme cases rendering it unfit for sale. Inward inspection provides information and quality assurance that outward inspectors rely on to do their job effectively and efficient-

ly. It also provides a higher level of comfort and assurance to international buyers, thereby preserving the reputation of Canadian grain and allowing it to command a higher price.

d) "Optional" inward inspection

Another serious flaw in the proposed changes, is that even though inward inspections would no longer be legally required, they will still, in many cases, be necessary. In fact, it would be more accurate to say that Bill C-13 would privatize inward inspections, rather than eliminate them. For most stakeholders in the grain industry — whether dealing in producer cars, pooled shipments or CWB grains — inward inspections will still be essential. These services will then have to be contracted from private firms.

Producer cars must be weighed, inspected and graded by an independent third-party when they arrive at terminal or transfer elevators. CGC management has made clear that if the proposed changes were implemented, the CGC would no longer provide inward inspections, even on fee-for-service basis. This means that prairie producers would have to arrange for these services to be provided through a private contractor. The cost to independent producers of privately contracting these services would almost certainly be higher than current CGC rates.

Unlike private contractors, CGC officials are explicitly mandated to protect producer interests and routinely provide an extra level of scrutiny to producer cars. This is, in part, because the rate of infestations and safety factors is higher in producer cars, which are being inspected for the first time. But this extra scrutiny also occurs because these producers are totally dependent on the professionalism, accuracy and impartiality of pubic officials to ensure that they are treated fairly by buyers in distant ports.

Pooled shipments, where two or more companies combine to fill an order, will also need to be inspected by an independent third party. Pooled shipments have fallen out of favour in recent years as the larger firms compete among themselves. But they are still used and are, in fact, an efficient way to fill specialized orders.

Finally, the CWB relies on information provided by public inward weighing and inspection to compile its data on the supply and quality of the wheat it markets. Unlike private grain companies, the CWB does not own any terminal or transfer elevators. One of the board's great strengths is a comprehensive knowledge of the grain supply — how much grain it has to sell and of what end-use class and quality — and its ability to match this to overseas customers' demands. If public inward inspection is eliminated, then the CWB will need to procure these essential services elsewhere.

› Inward inspection allows early detection of problems, **saving time, effort and expense**

The CWB undoubtedly has the resources and the bargaining heft to procure replacement inspection and weighing services. But if its costs increase, this would cut into the revenues returned to prairie producers. Furthermore, the elimination of the CGC services, and their replacement, will cause the CWB to face disruption and uncertainty. Indeed, that may be one of the scheme's unstated purposes.

The move to end public inward inspection is part of the current federal government's broader attack on the wheat board. Both the CGC and the CWB are mandated to advance and protect producers' interests. Their respective operations and duties are complementary and mutually reinforcing. This relationship, built and refined over many decades, has functioned well. The enemies of the board want to kick out

a vital prop in the current regulatory system, thereby deliberately isolating and weakening the CWB. This, as we will see, is best understood as part of a plan to shift control of grain from Canadian producers to the multinational grain companies.

Who benefits from eliminating mandatory inward inspection?

There is little doubt that pressure from the large grain companies is behind the changes proposed in Bill C-13. These companies are vertically and horizontally integrated. Frequently, the grain arriving at their terminal elevators is grain they already own. These companies have long and loudly objected to the requirement to have their grain, weighed, inspected and graded by public inspectors when it arrives at their own elevators.[68]

› Ending public inward inspection would **undermine the CWB** and boost grain companies' power

While it may be true that the exchange of grain between two components of the same company does not require the same independent oversight to ensure that the seller is treated fairly, quality and safety concerns remain. Inspection and grading at arms-length, by impartial public officials, remains the best way to detect and correct safety and quality problems.

Moreover, even these companies' operations could experience reduced efficiency as a result of the proposed changes. As discussed above, CGC officials provide cost-efficient services relied on by the companies' own elevator operators. As the recent listeriosis outbreak demonstrates, even if weakening the inspection system results in short-term cost savings, it can contribute to preventable food safety problems. These have clearly been shown to be financially catastrophic for affected companies. Finally, if eliminating official inward inspection jeopardizes the reputation and price premium for Canadian wheat, it might well adversely affect the profitability of these global companies' Canadian operations.

Multinational companies, however, are not just looking at the short-term picture. Eliminating public inward inspection enhances their bargaining power in and control over the grain handling system. At the same time, it weakens the position of their arch-rival the CWB and the country's grain producers. The desire of multinational companies to weaken the CGC is part of a broader attack on the CWB and of a longer-term strategic effort to eliminate Canada's unique "brand" of grain and shift control of the industry from producers and public institutions to themselves. At the end of this process, Canada's grain sector will be more fully integrated with the U.S. system, with both our regulations and quality of Canadian grain harmonized to the inferior U.S. levels. While this would serve the interests of grain multinationals, Canadian consumers and producers would suffer.

SECTION 3

Eliminating Canada's visual system for differentiating wheat classes (KVD)

Canada has long used a simple, inexpensive and highly effective system to differentiate between classes of prairie wheat based upon the appearance of their kernels. Under this system, known as Kernel Visual Distinguishability (KVD), the colour, shape and size of kernels of one class of wheat are different from the kernels of other classes. This allows for easy segregation of the eight wheat classes, each of which has distinct quality and processing characteristics and is sold for a different purpose. For example, kernels of the class Canada Western Red Spring wheat, renowned for breadmaking, look different from kernels of Canada Western Amber Durum, used to make pasta, and from Canada Western Soft White Spring wheat, used to make pastry.[69] Under this system, all of the varieties of wheat within a class share common visual and functional characteristics that are distinct and varieties that do not conform to this system are not registered for use. As a result, knowledgeable individuals can ascertain the class of a particular wheat sample anywhere along the supply chain merely by examining a handful. Buyers of western Canadian grain can thus be uniquely confident of their purchases; if it *looks* like a top-quality red spring wheat for breadmaking, it *is* a red spring wheat suitable for that use.

KVD has been a vital aspect of western Canada's unique quality control system. Visual distinguishability allows the different wheat classes to be kept separate more easily as they travel from producer to processor, a confidence-building feature that benefits all participants in the supply chain. Producers can determine visually that any wheat seed they purchase is the class they intend to grow. Elevator operators can easily verify the various classes of the wheat delivered to their elevator and place them in their appropriate segregated bin, ready for shipment in different railcars. Grain inspectors can check that shipments of one class of wheat are not contaminated by another and confirm that railcars and shiploads of grain meet buyers' requirements. Ultimately, under Canada's KVD-based grain inspection system, international grain buyers can be confident, without performing any test of their own, that western Canadian wheat — whether purchased to make bread, flatbread, pasta, chapatis, cakes, couscous, cookies, or crackers — will perform exactly as expected year after year.

Eliminating KVD

It is widely accepted even among KVD critics that the benefits of the system — allowing the efficient segregation of different functional classes of wheat and preventing cross-contamination — have been instrumental in helping Canadian wheat to compete successfully against stiff international competition in export markets. However, the KVD system has the unintended side-effect of restricting the varieties of wheat, whether developed in Canada, the U.S. or elsewhere, that can be grown in western Canada. If the kernels of a new, higher-yielding or disease-resistant variety visually resemble wheat from an existing KVD class but do not share that class' quality and processing characteristics, that variety cannot be registered for commercial use in western Canada. While certain analysts have attempted to determine the economic impact of this KVD side-effect, it is not an easy task. It is even more difficult to compare the secondary negative impact with the primary benefit of KVD — preventing contamination of the export stream. The prevailing view appears to be that KVD has proven to be an enormous benefit by facilitating Canadian exports of high-quality wheat for human consumption. KVD restrictions mainly affect the development and production of higher-yielding, low-protein wheat — including many U.S. varieties — used as animal feed or to produce ethanol for use as a gasoline additive.

› The KVD system allows **easy segregation** of the different classes of wheat

In June 2006, after a number of years spent examining and consulting on the issue, the CGC announced KVD changes that were designed to better accommodate high-yielding wheat varieties for feed and ethanol without unduly threatening Canada's export market for the highest-value bread and pasta wheats. The Commission announced that KVD would be retained for Canada Western Red Spring and Canada Western Amber Durum, which constitute over 85% of the wheat acreage grown in Canada. It also announced that it would end Kernel Visual Distinguishability for minor classes of wheat by 2008. Under this proposal, winter wheat, Canadian Prairie Spring, White Spring and Extra Strong wheat classes would fall outside of KVD rules. It also announced the creation of a new class of wheat ("General Purpose"), for feed and ethanol wheats, to which KVD criteria also would not apply. Varieties within these five wheat classes could look alike but could not resemble varieties in the major classes. While the United States government and several Canadian wheat producer groups complained that the KVD changes did not go far enough[70], many observers saw the change for minor wheat classes as a compromise that successfully accommodated both opponents and defenders of the KVD system.

Disconcertingly, the federal government didn't stop there. In April 2007, the Conservative government released a document indicating it would eliminate the KVD system entirely — that is for *all* wheat classes — by 2010. Assistant Chief Commissioner Terry Harasym acknowledged at the time that the scheme "will be a fundamental change to how we handle wheat in this country."[71]

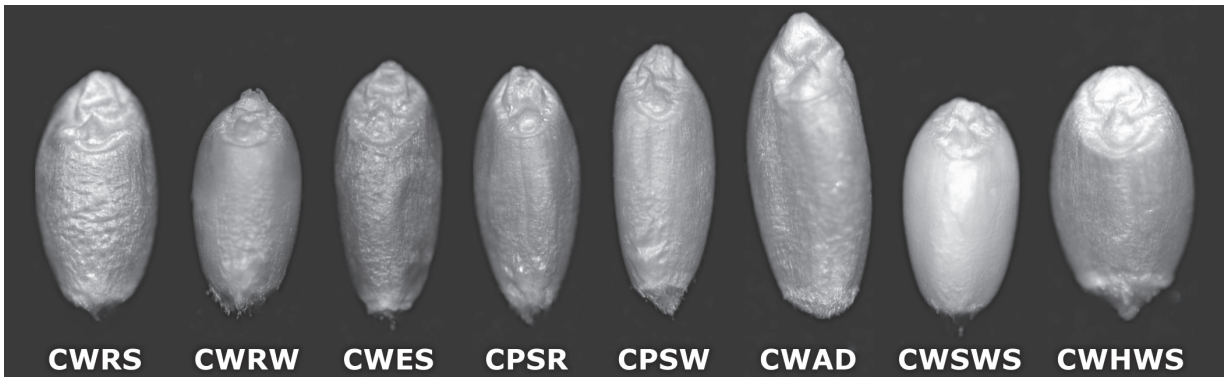
The announcement surprised even opponents of the existing system and some expressed concern that such a rapid change could pose undue risk to the industry. KVD proponents warned that eliminating the system would threaten Canada's reputation for high quality standards[72] since a replacement identification system does not exist. In February 2008, industry observers were shocked again. Instead of delaying the change until a replacement identification system was in place, as recommended by the House of Commons agriculture committee[73], Agriculture and Agri-food

TABLE 3 **The visual characteristics of western Canadian wheat classes under the KVD (Kernel Visual Distinguishability) system**

Under the KVD system, there are eight milling classes of western Canadian wheat. These are:

- Canada Western Red Spring (CWRS)
- Canada Western Extra Strong (CWES)
- Canada Prairie Spring White (CPSW)
- Canada Western Soft White Spring (CWSWS)
- Canada Western Red Winter (CWRW)
- Canada Prairie Spring Red (CPSR)
- Canada Western Amber Durum (CWAD)
- Canada Western Hard White Spring (CWHWS)

All wheat varieties within a particular class look the same and share particular quality and processing characteristics. Each wheat class can be distinguished visually from the other classes because the kernels of each class have a distinctive appearance, as shown in the photograph below:



The physical characteristics of each class are described as follows:

	Colour	Size	Shape	Germ	Brush	Cheeks
Red Spring	Translucent red	Small to midsize	Oval to ovate	Round, midsize to large	Varies	
Red Winter	Orange to opaque red	Small to midsize	Elliptical	Small, oval to round	Small	Round
Extra Strong	Dark to medium red	Large	Ovate, s-shaped base	Large, wide, typically round	Large, collared ventrally	Round
CPS Red	Opaque red to orange	Midsize to large	Ovate to elliptical, incurved base	Midsize to small, oval	Small to midsize	
CPS White	White	Midsize to large	Ovate to elliptical, incurved base	Midsize, oval	Small to midsize	
Amber Durum	Amber	Large to midsize	Elliptical	Large, wide oval to rectangular	Varies	Angular
Soft White Spring	White	Small to midsize	Ovate to oval	Small, oval	Varies	
Hard White Spring	White	Small to midsize	Oval to ovate	Round, midsize to large	Varies	

Adapted from the CGC website (http://www.grainscanada.gc.ca/Quality/Wheat/classes-e.htm)

In addition, the Canada Western General Purpose wheat class was created to meet the needs of the feed and industrial sectors. There are no quality requirements for this class, and the varieties within it may look similar to varieties within other classes of wheat.

Minister Ritz moved the deadline ahead, ending KVD two years earlier than expected. Just weeks earlier, senior government bureaucrats had warned the minister that Canada's reputation for quality wheat would be threatened in the absence of a KVD replacement system, that the risks of complete KVD elimination were much greater than for ending it just for minor wheat classes, and that the system was poorly prepared for such a rapid change.[74] The House of Commons agriculture committee echoed these concerns. It urged the minister to reconsider the change and argued that KVD cancellation should be delayed until the industry had a credible alternative identification process in place. Despite these and many other warnings, the Harper government instead adopted a position that had long been advocated by the United States government[75] and some KVD opponents[76] in Canada — it eliminated the KVD system *for all wheat classes* on August 1, 2008.

› The Conservatives ended KVD even though warned that no **replacement identification system yet exists**

The elimination of KVD harms the grain handling and regulatory system in several ways. Most importantly, it has increased the likelihood of mix-ups between wheat classes in western Canada. While the immediate risk of cross-contamination is low (since look-alike varieties have not been permitted and have not yet entered the system in large volumes), this risk could soon increase rapidly and exponentially. As previously unregistered varieties are allowed to proliferate, more frequent contamination of high-quality, high-priced wheats by low-quality varieties that closely resemble them seems inevitable. Without visual distinguishability, detecting contamination — and tracing back to determine its source — is made far more difficult. This problem would be compounded by the proposed elimination of inward grain inspection because delays in tracking sources of contamination always increase the cost of rectifying mistakes. A timely replacement for KVD seems unlikely, since the extensively-researched, long-anticipated commercial 'black box' replacement remains elusive.[77] Even if one were to be developed, it would likely be less efficient, transparent and dependable, as well as more technical and expensive to use. The uniquely valuable characteristic of western Canadian wheat classes — the trait of "what you see is what you get" — has been eliminated.

In the WTO wheat dispute brought by the United States, Canada successfully defended several of the most important aspects of its grain handling and distribution system. In doing so, Canadian officials explained to a skeptical international audience the importance of the KVD-based system for maintaining quality assurance. Their arguments in defense of KVD are still highly relevant and merit quoting at length:

- "Because foreign grain is not subject to the same quality assurance system as Canadian grain, if US wheat, for example, were mixed with Canadian wheat, the CGC would no longer be able to visually grade Canadian wheat. Unlike Canadian-origin wheat, US-origin wheat is not subject to the same requirement for visual distinguishability between varieties with different end-use characteristics. Thus, the Canadian visual grading system cannot function properly and maintain segregation in the system according to particular qualities desired by end-users if US-origin wheat is commingled with Canadian-origin wheat.
- In addition, most US wheat is grown from varieties not registered in Canada. If mixing occurred with no restrictions,

the specific end-use characteristics could no longer be ensured. In Canada, if a variety does not perform well (that is, meet the acceptable criteria and end-use characteristics for its class) it will not be registered. For example, at the end of two years of testing in Canada, the Alsen wheat variety was refused registration because of poor quality performance. This variety is grown extensively in the United States. Segregation requirements for foreign grain that is not subject to the Canadian quality assurance system is necessary to maintain the integrity of the Canadian grading system.

- In addition, the measures are necessary to secure compliance with Canada's unfair competition and consumer protection because, in order to determine the origin of the grain in the grain handling system, it is necessary to keep grain of different origins separate from one another and to identify them properly if they are mixed so as not to misrepresent them. This is particularly important where the grain is exported as the importing country often requires a certification that the grain is Canadian origin grain. If Canada were not able to determine the origin of the grain in its grain handling system, it would not be able to provide this assurance to countries purchasing its grain and to comply with section 32 of the CGA. No other measure is reasonably available that would ensure strict compliance with the prohibition against misrepresentation of origin.
- Finally, the measures are necessary to secure compliance with the provisions establishing the CWB as a single desk exporting S[tate] T[rading] E[nterprise], as contained in the CWB Act, because the relevant CWB privileges apply to the sale of Canadian wheat for export or for domestic human consumption; if foreign wheat were not distinguished from Canadian wheat, the monopoly authority of the CWB could not be enforced."[78]

In precipitously eliminating KVD, the Harper Conservatives have simply brushed aside these serious objections articulated so clearly by Canadian government officials.

The elimination of the KVD system also places significant new burdens on producers. Much of the legal responsibility for the potential damage

› Without KVD, "what you see is what you get" **no longer applies** to Canadian wheat

caused by mix-ups has been shifted to producers. Under the simple KVD system, many mistakes along the wheat supply chain could be detected fairly easily, and liability for them resided ultimately with the system's government regulator, the CGC. Without KVD, and without a suitable replacement, the Commission reverted to a fallback position to prevent cross-contamination. Producers are now required to sign legally-binding declarations specifying what class of wheat they are delivering.[79] Under this system, the liability is shifted away from the public- and producer-funded regulator — essentially all participants in the supply chain — to rest almost entirely with producers.[80] Producers must now shoulder liability for the costs of rectifying contamination caused by wheat they specify incorrectly, even if their declarations are made in good faith. For example, if a trucker mistakenly loads wheat from the wrong bin and delivers it to an elevator on behalf of a producer, the producer bears the legal responsibility if the delivery doesn't match the declared class. Similar liability prob-

lems could arise for a producer who plants seed saved from the previous year believing it to be one class, only to discover the honest mistake after harvesting and delivering the crop into the distribution system. The costs of such mistakes could be huge—and for individual producers, catastrophic — if the resulting contamination requires large amounts of wheat to be downgraded, diverted or unloaded.

John Morriss, editorial director of the Manitoba Co-operator, provided producers with this blunt warning about the significance of signing post-KVD declarations:

> "[Y]ou are authorizing them to sue your socks off for tens or even hundreds of thousands of dollars should a bin be contaminated. You bought some seed from a neighbour and found it was some unlicensed U.S. variety? Too bad, you're on the hook." [81]

› Ending KVD **shifted the legal liability** for expensive mix-ups entirely to producers

Post-KVD, producers will have to spend more to reduce their financial liability. Some will opt to incur the additional expense of having their saved or common seed tested at a private lab before planting, as the CGC advises,[82] in order to obtain concrete evidence in support of their declarations. More importantly, many producers will seek to further reduce their vulnerability by avoiding saved and common seed altogether. These producers will enhance the verifiability of their declarations by routinely purchasing expensive certified seed,[83] an option the Commission recommends[84] and the Canadian Seed Trade Association strongly advocates and welcomes.[85] This will entail a new cost for many producers. It will also tilt the power dynamics in favour of large integrated corporations that supply certified seed at the expense of producers, many of whom will feel increasingly pressured to buy it.[86]

KVD-related changes to wheat seed registration system and wheat import rules

The ending of KVD for wheat classes immediately eliminated the basis for visual distinguishability in the formal system for registering wheat varieties in Canada. According to the Canadian Food Inspection Agency (CFIA), the first change "necessitated" a corresponding change in variety registration.[87] As a result, wheat varieties can now be registered even if their seed is visually indistinguishable from varieties in other quality classes. This is a profound change to the Canadian wheat regulatory system.

The KVD change was also reflected in changes to Canada's rules for seed imports. Specifically, the visual distinguishability criterion was eliminated for imports of wheat seed into western Canada.[88] It is noteworthy that this change, which was introduced without prior consultation[89], was not a consequential amendment — that is, domestic law did not require it.[90] Instead, the change was aimed primarily to ensure conformity with previously-adopted international trade treaty rules. As the regulatory impact analysis statement accompanying the changes states:

> "The CFIA is proposing these regulatory amendments to align requirements for imported wheat seed with those for domestic wheat seed *in order to ensure Canada is consistent with its international trade obligations*." [91]

In other words, eliminating KVD domestically had the direct secondary effect, under international trade treaty rules, of eliminating KVD restrictions at the border as well.

CFIA regulations would no longer serve their longstanding function as KVD-based quality "gate-

keepers."[92] As a result, Canada's wheat quality assurance system would face one of the gravest threats that it had been designed to prevent — influxes of visually-confusing wheat varieties imported from the United States and elsewhere.[93,94]

Beyond KVD: Other proposed changes

The elimination of KVD poses a serious threat to the quality and reputation of Canadian grain. This identification system has worked to ensure that international buyers have confidence in our Canadian products. These buyers look to purchase Canadian grains in part because there are no surprises — if a pasta maker in Italy orders Canada Western Amber Durum, that's exactly what s/he will get. Unfortunately, the destruction of the KVD system is linked to other sweeping changes proposed for Canada's regulatory system for wheat and other agricultural seeds. These changes are considered in Annex IV.

SECTION 4

Conservative government efforts to dismantle the Canadian Wheat Board

Introduction

For over 50 years, the Canadian Wheat Board has been responsible for marketing Canadian grain at home and abroad. The board's primary mandate is to market grain grown in western Canada in the best interests of prairie producers.

The CWB is one of Canada's largest export companies, with annual sales of between $4 and $6 billion and buyers in over 70 countries. It has built a strong Canadian brand and international customer loyalty, enabling it to increase returns through price premiums. These extra revenues are returned each year to prairie producers, helping to increase and stabilize their income through the characteristic peaks and troughs of global grain markets.

The CWB operates in volatile global commodity markets dominated by a handful of transnational grain companies. Four companies — Cargill Inc., Louis Dreyfus Corporation, Archer Daniels Midland and Bunge Limited — effectively control nearly three-quarters of the global market for grain (see Annex II).[95]

The recent demise of the three prairie pools has also profoundly altered the industry (see Annex III). These farmer-owned co-operatives were for many years among the most respected and influential shapers of agriculture policy and rural development across the prairies. They gave producers economic clout. The transformation over time of these Canada's farmer-owned and controlled prairie cooperatives into an investor-driven, publicly-traded company has altered the dynamics of western Canadian agricultural politics.

The loss of the pools exacerbated the trend toward corporate concentration and vertical integration in Canada's western agricultural sector. In the absence of the co-operatives, the grain sector is now dominated by large, diversified, investor-driven corporations with a global focus. Producers now do business almost exclusively with companies over which they no longer have direct control. The CWB is the sole exception — the only farmer-controlled marketing organization left on the prairies.

The CWB is, by law, the "single desk" through which prairie wheat and barley is sold. Federal legislation grants the CWB the exclusive authority to sell wheat and barley produced within the designated area (the three prairie provinces and

the Peace River district of B.C.) that is intended for export from Canada or for human consumption within Canada.[96]

The Board administers a government-guaranteed initial price (representing a portion of the final expected return) which is paid to farmers when they deliver their grain. It keeps separate accounts, or pools, for each grade of grain it markets during each crop year. Throughout the crop year, the producer receives interim payments as the price is adjusted upwards to reflect sales. When the board receives full payment, all revenues — less operating expenses — are distributed to producers based on their deliveries to each pool.[97] Each producer gets the same price for grain of the same quality delivered at the same location. Each producer also receives the same price regardless of when they deliver their grain, ensuring that they are not disadvantaged by the timing of their sales into the pool.[98]

The Board also plays a key role in organizing the transportation and delivery of grain. It contracts for and allocates rail cars to producers. It issues grain delivery calls to meet its sales commitments. Although the board itself owns no grain elevators or handling facilities, it is the central player in planning and implementing the challenging logistics of transporting and delivering prairie grain to markets each crop year.

The board's monopoly, or "single-desk", over the sale of prairie wheat and barley is the main pillar of its success. It has also been a source of controversy. A small, but vocal, minority of farmers has agitated against the Wheat Board, decrying its monopoly and demanding "marketing choice" — in other words, the right to sell their grain to whomever they want.

The Board, however, continues to command the support of a solid majority of producers. This support was reflected, for example, in the results of a 1997 plebiscite on barley. Presented with a clear ballot choice between the single desk and the open market, 67% of farmers supported the continued marketing of barley through the CWB. More recently, producers have also consistently selected a strong majority of pro-CWB candidates to fill the ten farmer-elected seats on the board of directors, including in the 2008 CWB elections (see below).

Until recently, the CWB and orderly marketing also enjoyed remarkable multi-party support in Parliament. Long advocated by western Progressives and the CCF, the board was created under a Conservative government and consolidated under a Liberal regime following World War II. When Parliament voted to make the board permanent in 1967, support was universal across all party lines (Liberal, Progressive Conservative, NDP and Creditiste).[99]

› The Harper Conservatives are **deeply hostile** to the CWB

However, the Reform-Alliance party and now Stephen Harper's Conservatives have broken with this tradition and are deeply hostile to the board. Shortly after being elected in January 2006, the minority Conservative government set about to dismantle Canada's orderly marketing of grain and replace it with a laissez-faire approach.

Task force on implementing marketing choice

The new government moved swiftly to advance its agenda of "marketing choice."[100] Soon after taking office, then Agriculture Minister Chuck Strahl convened a planning meeting with groups critical of the Wheat Board. Representatives of the Wheat Board were not invited.[101] In the fall of 2006, Minister Strahl appointed "A Task Force on Implementing Marketing Choice for Wheat and Barley". The CWB was invited to designate a representative, but declined to participate in a process stacked with board opponents.

This process was never intended to be a dispassionate examination of the challenges facing the Canadian grain industry and the future of the board. As the title of the task force suggests, the purpose of the exercise was to explore means to implement "marketing choice." In other words, the task force was clearly created to rubber-stamp and advance the government's previously decided policy direction.

The task force recommendations largely reflected its politicized mandate. Its recommendations would end single-desk selling for wheat and barley and reduce the CWB to a small trading company in a global market dominated by huge transnational corporations. The task force did, however, acknowledge — contrary to the government's messaging — that the single-desk and the open market could not co-exist and that "dual marketing" was not a viable option. It also recommended that the government proceed through legislation to end the single desk and restructure the CWB as a new corporate entity.

> The court struck down the government's "gag order" on the CWB as **an abuse of authority**

In its response to the task force report, the CWB tersely summed up the task force's recommendations:

> "In essence the task force has proposed that the CWB lose its single desk, which is the engine of its value proposition to farmers, and attempt to enter, with absurdly little in the way of assets, a concentrated, consolidated, mature grain handling and marketing industry with notoriously high barriers to entry, dominated by transnationals."[102]

Such unworkable proposals would, as intended, alter the board beyond recognition and lead to its quick demise.

The "gag order": Muzzling the CWB

The CWB's rebuttal of the Task Force's recommendations and continued defence of its statutory mandate clearly aggravated the federal minister. In October 2006, the federal cabinet struck back, employing a rarely used section of the CWB Act. By order-in-council, cabinet issued a directive prohibiting the CWB from expending funds, directly or indirectly, on advocating the retention of its monopoly powers.[103] Prior to 2006, the ministerial authority to issue directives had been used sparingly and never over the objections of the Board's directors and senior management.[104]

The "gag order" — as it became known — prevented the board from opposing government's policy of marketing choice and essentially banned it from communicating with farmers on these issues. The minister even specified that certain material, including the board's response to the task force report, be removed from the CWB web site.

The CWB went to court to challenge this draconian attempt to muzzle it. In June 2008, a federal court ruled in the Wheat Board's favour. Although the cabinet directive was construed in terms of financial accountability, the judge saw through the illusion: "It is entirely clear, therefore, that the directive is motivated principally to silencing the Wheat Board in respect of any promotion of a 'single desk' policy that it might do."[105] The court ruled that the directive overstepped government's legislative authority and violated the Canadian Charter of Rights and Freedoms. The court struck down the gag order directive, ruling it of no force and effect.

Evidence presented before the court reveals a disturbing pattern of intimidation and interference in the internal affairs of the wheat board. Affidavits indicate that Minister Strahl rejected

Harvesting Opportunity, an initiative outlining the CWB vision for maximizing value to farmers. He also refused to approve the board's annual corporate plan, demanding that the deletion of any reference to maintaining single desk selling. Just before the elections the ministry struck 16,000 producers (approximately 35%) from the voters' list for farmer-elected positions on the CWB board of directors. Minister Strahl also forced the CWB to remove its response to the Task Force from its web site and halt publication of a just-completed study of the continental barley market.[106]

The CWB is not a government-controlled entity or an agent of the Crown. It is a shared-governance entity. Ministerial roles and responsibilities in regard to the CWB are clearly defined in statute. As the courts have now confirmed, the minister and federal cabinet have abused their authority, overstepping these legal bounds. The friction created by this ministerial interference culminated in the December 2006 firing of CWB president Adrian Measner, a 32-year veteran of the organization widely known and respected for his integrity.

In June 2008, a federal court ruled that the minister's directive had been issued for an improper purpose and violated the Canadian Charter of Rights and Freedoms. In his judgment striking down the gag order, Justice Roger Hughes strongly censured the government's conduct, observing that:

> It is a fundamental tenet of a free and democratic society that the citizens of a country agree to be governed and obey the laws if proper and fairly imposed, and that the government conduct itself in accordance with those laws and the principles of natural justice and the jurisprudence. It is a bargain that must be kept by both sides.[107]

Pressure on the board, its directors and senior management to submit to the Conservative government's desire for "marketing choice" amounted to forcing the board to defy its own statutory mandate and raison d'être. It also, as the court emphasized, betrayed government's serious misunderstanding — or disregard — for certain fundamental democratic norms and the rule of law. Unfortunately, these bullying tactics were successful. The gag order remained in effect for over 18 months until the courts struck it down and along with the firing of the president, created uncertainty and fear among CWB staff and senior management. This impaired their ability to communicate with farmers during a critical period in determining the board's future.

› The Harper government manipulated the results of **a deeply flawed CWB plebescite** on barley

A deeply flawed plebiscite

While the Conservative government remains committed to abolishing the Wheat Board's single desk, its minority status has, so far, prevented it from passing the legislation that is required to do so. Under the 1998 amendments to the CWB Act, only Parliament can remove a product from the board's authority and single-desk selling. The Act also obliges the federal government to first consult with the CWB board of directors and to conduct a plebiscite in which a majority of farmers vote to exclude the product.[108]

On October 31, 2006, Minister Strahl agreed, under pressure from the farm community, to hold a non-binding plebiscite on barley. The minister did not consult with the CWB on the plebiscite, as required.[109] Moreover, the question put to farmers was neither clear nor straightforward. Cabinet documents entered as evidence in the gag order court case revealed that there was a deliberate decision by the government to skew

the ballot question.[110] The government was concerned that it would lose any vote with a clear-cut question that simply asked farmers to choose between single-desk selling through the CWB or an open market.

Previous plebiscites, where the ballots gave producers clear options, had resulted in strong support for maintaining the Wheat Board's single desk. A 1997 plebiscite on barley, for example, asked eligible farmers to decide between two options: 1) the open-market option which would remove barley from the CWB and 2) the single-seller option which would maintain the CWB as a single-seller for all barely, except feed barley. As noted previously, farmers voted 67 per cent in favour of the single-seller option. A provincial plebiscite organized by the Manitoba government in December 2006 offered a clear choice between the single desk and an open market for barley and wheat. Manitoba producers voted 61.8 per cent in favour of retaining the single desk for barley and 69.5 per cent for retaining the single desk for wheat.[111]

› The court struck down the Harper cabinet's **unlawful attempt** to remove barley from single-desk CWB marketing

The federal government deliberately avoided a straightforward ballot question. Instead, it conjured up a misleading scenario, suggesting that an open market for barley was compatible with a viable role for the Wheat Board. Ignoring the advice of major farm groups, it proceeded with a complicated and unclear ballot that asked producers to indicate their preference for one of three options:

> "1) The Canadian Wheat Board should retain the single desk for the marketing of barley into domestic human consumption and export markets.
>
> 2) I would like the option to market my barley to the Canadian Wheat Board or any other domestic or foreign buyer. and
>
> 3) The Canadian Wheat Board should not have a role in the marketing of barley."

The ballot did not conform to standard survey practice, since the exclusive use of the personal voice and pronoun "I" in the second option could skew the results by artificially increasing the likelihood of respondents selecting it. Moreover, as many observers pointed out, the ballot also suggested that there were three options when there were really only two: the open market or the continued Wheat Board monopoly. The ballot clearly implied, against all evidence, that the CWB could continue to be effective in the market without its key strategic asset, single-desk selling. As Bob Friesen, then president of the Canadian Federation of Agriculture, expressed it: "This ballot asks farmers to vote for something that may not be possible. The CWB cannot exist in its present form in an open market, and no one has yet presented a viable plan for how the CWB can transition and remain strong."[112]

It should also be recalled that the gag order eventually struck down by the courts was still in effect during the plebiscite period. As CWB president Adrian Measner testified "The Direction has had a chilling effect on the CWB and has created uncertainty and confusion during a period when producers are faced with critical decisions relating to the future of the single desk."[113] During the middle of the plebiscite period, the minister also sent a letter indicating his intention to fire the president of the Wheat Board. The strong desire of the government for a vote in favour of ending the single desk could not have been more clear, and the vote was held

in an atmosphere of intimidation of the Board and its supporters.

The results of the plebiscite were: 37.8 per cent voted for option 1 in favour of retaining the single desk, 48.4 per cent for the ambiguous, personalized option 2, and 13.8 per cent for option 3 which would end the role of the CWB. When, even after manipulating the questions, the government failed to get a clear majority, it brashly added together the results for options 2 and 3 and declared that 62 per cent of farmers had voted to remove barley from the CWB. Armed with this illegitimate 'mandate', the government announced in March 2007 that it would "begin work on the necessary amendments to remove barley from the CWB's single desk authority."[114]

Attempted unilateral removal of barley from the Wheat Board

In May 2006, MP Gerry Ritz, with the support of the agriculture minister, had introduced a private member's bill (Bill C-300) intended to "carve out an exception to the requirement in the [CWB] act that western Canadian producers sell their grain to the CWB, by permitting producers to sell their grain directly to 'processing' firms that were owned primarily by Canadian farmers."[115]

This bill would have represented an incremental step in eroding the single desk. In October 2006, however, it was defeated prior to second reading by the combined majority of the Liberals, NDP and Bloc Quebecois in the House of Commons.

Concluding that the parliamentary route to eliminating the single desk was blocked, the government then embarked on a legally dubious effort to dismantle it by through regulation. In June 2007, the federal Cabinet acted unilaterally to remove barley from the single desk marketing authority of the CWB by amending the regulations through order-in-council. It proceeded in this manner even though the plain meaning of the CWB Act stipulates that barley can only be removed through legislative amendment.

Under 1998 amendments to the CWB Act, only Parliament can exclude a product from the single-desk authority of the CWB. Furthermore, the act stipulates that the minister must not introduce a bill in Parliament that would exclude any product from the authority of the wheat board, unless they have first consulted with the board and secured a vote in favour of the exclusion by producers of that grain.[116]

Shortly afterwards, a group known as Friends of the CWB — "a coalition of farmers and other Canadians in support of a democratic, farmer-controlled CWB"[117] — went to court to challenge the ruling. They were soon joined in the court challenge by the CWB itself. The provincial governments of Manitoba and Saskatchewan also intervened on behalf of the applicants, while the government of Alberta intervened on the side of the federal government.

> "We'll continue to fight... Mark my words...anyone who stands in their way **is going to get walked over."**
>
> Prime Minister Stephen Harper, June 20, 2008

On July 31, 2007, one day before the regulations were scheduled to take effect, a federal court found in favour of the applicants, striking down the regulations removing barley from the single desk as *ultra vires* (beyond Cabinet's power) and of "no force and effect."[118] The minister expressed disappointment at the court's decision and announced that the government would appeal.

On February 26, 2008, in a tersely worded judgment, the federal court of appeal upheld the decision of the lower court, dismissing the fed-

eral government's legal arguments out of hand. As the appeal court emphasized, cabinet does not have the authority to repeal the regulations that include barley in the single desk.[119]

Only an act of Parliament can exclude a product from the authority of the CWB, and only if the pre-conditions of consulting the board and securing a producer vote in favour of its removal are fulfilled.

The court ruling did not alter the government's apparent determination to dismantle the CWB through any possible means. A defiant Prime Minister Harper declared that the government would not change course.

> "We'll continue to fight in Parliament. We'll continue to fight in the legislature. But the bottom line is this: mark my words, Western Canadian farmers want this freedom and they are going to get it. And anybody who stands in their way is going to get walked over."[120]

› Just prior to the CWB elections, Minister Ritz **unilaterally ordered changes** to the voter eligibility rules

Attempted changes to the CWB Act and voters' list

In March 2008, shortly after the federal courts had confirmed that the CWB Act prohibits cabinet from unilaterally removing barley from the Board's authority, the Conservatives introduced amendments specifically to allow it. The Government's Bill C-46[121] would have given cabinet the unilateral power — without consulting barley growers or Parliament — to remove barley from the CWB mandate. The Bill would also have established an open-ended arbitration process through which well-funded grain companies could pursue expensive legal proceedings against the CWB. As the CWB Chief Operating Officer Ward Weisensel observed, the legislation "would essentially take money from farmers and hand it over to the grain companies."[122] Lacking support in the House of Commons, the minority Conservatives did not call the Bill for second reading debate before the parliamentary session ended.

In June 2008, the Harper government also introduced amendments to revamp the voters list for CWB director elections. Bill C-57[123] would have disenfranchised small grain producers by requiring farmers to have grown at least 120 tonnes of the major grains in one of the two previous crop years to be eligible to vote. Again, the Conservatives were unable to garner enough support to pass the controversial Bill before Parliament ended.

Just weeks before the 2008 CWB elections, Agriculture and Agri-Foods Minister Ritz attempted to change the rules in order to alter voter eligibility. On July 23, he sent a letter to the CWB ordering a change in voting procedures to make it easier for certain types of producers to obtain ballots by placing them on the voting list, while requiring others to apply specially for ballots.

When the contents of Ritz' letter became public in September, the Friends of the Canadian Wheat Board filed suit in federal court, alleging that the government had violated the CWB Act. The Friends and other observers charged that the government order was deliberately designed to add single desk opponents and remove single desk supporters to favour the election of 'open market' candidates in the upcoming elections.[124] The case was not heard before the CWB director elections were held and remains before the federal court.[125]

Eliminating the spending cap for CWB director elections

In early September, the Conservatives continued their attack on the CWB, removing the $10,000 spending limit on third-party campaigning during Board elections. This allowed governments, grain companies and others to spend an unlimited amount on CWB campaigns, so long as they listed donors and amounts over $100 and provided an accounting of their advertising expenses.[126] The regulatory change did not affect the spending cap for farmer-candidates, which remained at $15,000.

No farm group had requested the change,[127] and several complained that it would skew CWB elections by tilting campaigns towards anti-single desk candidates who were more likely to attract large corporations as third-party promoters.[128] CWB Chair Larry Hill explained the purpose of the existing cap as follows:

> "The existence of a limit guards against the possibility of a third party having a disproportionate voice in an election. Removal of the limit would introduce potential for a well-financed third party to play a significant role in a particular vote and possibly influence a result. This could undermine the integrity of the election process and perception of fairness."[129]

Keystone Agricultural Producers president Ian Wishart, was quoted as stating that the proposal "reads like an open invitation for outsiders to interfere in a farmer election process."[130] National Farmers Union president Stewart Wells charged that the Harper government changed the rules expressly "to make it easy for corporations to influence the election outcome."[131]

Other observers of the move recalled that it echoed the position of the National Citizens' Coalition (NCC) when Stephen Harper was its president. As the Manitoba Co-operator pointed out, at that time,

> "Harper was vocal about his dislike of the CWB single-desk and the organization ran ads against the CWB during the CWB board of directors' election — a contravention [of] the third party election-spending ban [which] the group claimed…was 'unconstitutional and unenforceable.'"[132]

The termination of the CWB spending cap also reflected the challenge by Harper's NCC to third-party spending limits in Canadian federal elections. In that case, the NCC argued that spending caps violated the Charter's freedom of expression provision. The Supreme Court rejected that view, ruling in 2004 that spending limits helped protect democracy and the public good.[133]

› Allowing unlimited third party spending in the CWB election was "like an **open invitation for outsiders** to interfere"

The Friends of the CWB challenged the elimination of third-party election spending limits in federal court on September 10th, arguing that the move violated the CWB Act and, since it created uneven spending rules for candidates and third parties, the Charter of Rights and Freedoms.[134]

The 2008 CWB director elections went ahead with the challenge to the elimination of the third-party spending cap unresolved.

CWB supporters win 2008 director elections

The future of the Board remained precarious leading up to the November election of directors. Single-desk supporters held a slim 8–6 majority on the 15-member board,[135] and four of the five directorships up for election were held by single-desk supporters. A loss by supporters in just two of the five contested seats would have

resulted in an evenly split board, with the uncommitted CEO casting deciding votes. A loss of three seats would have enabled single desk opponents to control the board.

Even during the final week of the hotly contested election campaign, the Harper government continued to intervene in order to influence the outcome. Conservative MPs sent producers campaign-style letters — on government stationery and mailed at taxpayers' expense — urging them to support candidates who opposed single desk marketing and directing them how to fill out the ballots.[136] Despite the last-minute and clearly inappropriate intrusion, single-desk marketing supporters won four of the five contested seats, retaining the single-desk majority.[137]

› Despite the Conservatives' interference, supporters of CWB single-desk marketing won **4 of the 5** contested seats

CWB supporters were enormously relieved and encouraged by the result. Many felt that the strong demonstration of support would make it more difficult for government to dismantle the Board, especially since the Conservatives were re-elected to a minority government and theoretically had to focus on protecting Canada from a deepening global economic crisis. Indeed, in response to reporters' questions in December and early January 2009, Minister Ritz indicated that the government is "holding back" on legislation to end the CWB single desk on barley. "It's off the table for the short term", he said, adding later that getting the bill passed was not on his "radar screen in the next short time."[138] The strong support for single-desk marketing, together with parliamentary uncertainty and the economic crisis, may have won the CWB a much-needed, if temporary, reprieve.

Yet supporters of a single-desk marketing system need to remain intensely vigilant. Gerry Ritz, who spearheaded the Conservative's recent attacks and was re-appointed as the minister responsible for the CWB, announced his intention to re-introduce amendments to the CWB Act to allow cabinet to unilaterally remove barley from single desk marketing.[139] In a major speech after the federal election, Stephen Harper signaled his determination to end CWB single desk marketing[140] — a commitment also contained in the Throne Speech.[141] Given the extraordinary lengths the Harper Conservatives have gone to in pursuit of their ideological war against single-desk marketing, there seems little reason to believe they will end their efforts to dismantle the Canadian Wheat Board.

Trade treaty pressure on the CWB

The Canadian Wheat Board and Canada's grain regulatory system have been targets of more than a dozen challenges under the WTO, NAFTA, and U.S. trade remedy laws. While certain aspects of Canada's grain system have been eroded as a result of these trade treaty pressures,[142] the core operations of the CWB have, up until now, survived relatively unscathed. In other words, Canada's current grain system has been repeatedly tested and found consistent with *existing* international trade treaty rules.

The establishment of the World Trade Organization in 1994 did not in itself bring about major changes in the CWB.[143] The new WTO rules did, however, submit the Board and its operations to intense international scrutiny through the formal Trade Policy Review process. In 2003, the U.S. brought a challenge against the CWB and other Canadian grain policies under the new organization's binding dispute settlement system.[144] In 2004, when the WTO dispute panel rejected U.S. claims that CWB had violated existing WTO

rules, U.S. grain interests expressed their "great frustration".[145] The U.S. government appealed the ruling and vowed to pursue alterations to WTO rules that would force changes upon the CWB.

Robert Zoellick, then the United States Trade Representative, stated:

> "The [WTO] finding regarding the Canadian Wheat Board demonstrates the need to strengthen rules on state trading enterprises in the WTO. The United States will continue through the WTO negotiations to aggressively pursue reform of the WTO rules in an effort to create an effective regime to address the unfair monopolistic practices of state trading enterprises like the Canadian Wheat Board."[146]

The appeal of the WTO ruling failed, but the U.S. efforts to change WTO rules in order to scuttle the CWB have only intensified.

Over the last two decades, Canadian governments of all political stripes have stoutly defended the CWB at the WTO. Under Prime Minister Harper, however, Canada's position has shifted. The federal government has become a willing accomplice, tacitly aligned with the United States, in eliminating the Board's single-desk authority.

Until very recently, Canadian government negotiators worked hard to defend the principles of orderly marketing in general and the CWB in particular. For example, during the 2000 Trade Policy Review at the WTO, Canada made the following statement of support:

> "A key theme underlying Canada's approach [to the Doha Round of WTO negotiations on agriculture] is to achieve … reforms in a way that levels the playing field, while preserving the ability to operate 'orderly marketing systems', such as the supply management systems in poultry, dairy, and egg production, and the Canadian Wheat Board."[147]

Canada's long-standing position was expressed even more forcefully in 2003:

> "The CWB (Canadian Wheat Board) operated in an international market dominated by an oligopolistic set of traders, many of them family-owned and completely non-transparent. [The Canadian official] reminded Members that orderly marketing systems existed in Canada because Canadian producers wanted them. Recent elections to the Board of Directors of the CWB saw supporters of the CWB's current mandate win four out of the five seats that were contested, which was firm evidence of the continuing support of western grain producers for this form of market organization."[148]

› U.S. efforts to change WTO rules in order to **scuttle the CWB** have intensified

Most importantly, in 2003–2004, Canada mounted its successful defense of the CWB in the WTO case the United States brought against it.

Ironically, shortly after Canada had won the hard-fought WTO wheat case, confirming Canada's right to retain the CWB's crucial marketing authority, the Harper minority government set out to dismantle single-desk selling. It announced Canada's extraordinary policy shift to the WTO in 2007. In the review of Canada's trade policies[149], Canadian government officials reported on the formation of the task force to recommend options for "implementing marketing choice for western wheat and barley".[150] Canadian representatives emphasized at the WTO that the elimination of the CWB monopoly "was not a recommendation of the task force but rather was the policy objective which prompted the

creation of the task force by the Government."[151] It arose, they said, from "[a] commitment [that] was made during the 2006 federal election campaign to give western Canadian wheat and barley producers the option of participating voluntarily in the Canadian Wheat Board."[152]

Predictably, U.S. and EU officials welcomed this news,[153] and pressed for further information. By striving to eliminate the CWB's monopoly authority, the Harper government is knowingly implementing one of the key demands of Canada's main international grain trade adversaries — a demand that all previous Canadian governments have successfully turned aside.

› Adopting the latest WTO agriculture proposal would **eliminate the CWB** within five years

The international enemies of the CWB are on the verge of a major coup in the ongoing round of WTO negotiations. While the Doha round negotiations remain stalled, the draft wording of the latest agriculture text contains proposed amendments to the WTO Agreement on Agriculture that would effectively eliminate the Wheat Board as it exists today.[154]

The amendments would end initial price guarantees from government to producers; increase borrowing costs by ending the ability of the CWB to borrow at government rates; and, most alarmingly, require Canada to eliminate single-desk selling by 2013. If, as expected, this document forms the basis of an agreement when negotiations resume, the CWB would effectively be eliminated as a viable entity within five years.

The Conservative government's response to this astonishing intrusion into Canada's internal affairs has been muted, to say the least. The government's position is not, like previous governments, that Canada will defend the CWB at all costs, but that the decision to eliminate its monopoly authority should be made in Canada, not in Geneva. Sensing weakness, and fully aware of the Conservatives' hostility to the board, the U.S. government and its grain interests could finally achieve their long-standing goal of destroying the board through international trade treaty pressure.

Through its inexcusably weak defense of the CWB, the Conservatives may destroy single desk selling. This is clearly an attempt to attain through the back door of international trade talks what it could not through the front door of the democratic political process. If the CWB is to survive into the 21st century, it is vital that the Canadian government make clear, particularly to the U.S. interests behind the push, that this unjustifiable interference in Canadian affairs is a WTO deal-breaker. If Canada fails to defend the CWB, it will likely be only a matter of time before WTO negotiations also spell the demise of orderly marketing systems for eggs, poultry and dairy.

Conclusion

Most Canadians are aware of the outstanding international reputation of Canadian grain and take pride in it. Indeed, endless fields of golden prairie wheat are a national icon and an important symbol of Canadian identity. This civic pride is not misplaced. The quality and consistency of Canadian grain are, in large measure, products of good public policy and a highly successful regulatory system.

Few Canadians, however, understand how this exemplary regulatory system actually works. Like other essential regulatory systems, it is simply taken for granted. Well-functioning regulatory systems tend to be invisible, to recede into the background. It is only when they become dysfunctional that people take notice — when the drinking water makes people sick, consumers die of food-borne illnesses or a highway overpass collapses. Unfortunately, this remarkable and uniquely Canadian grain regulatory system is under serious and imminent threat.

Canada's grain handling and inspection system was designed to address the inherent challenges faced by prairie farmers. Higher transportation costs put prairie wheat growers at a disadvantage compared to competitors from Australia or Argentina, where producers are located closer to coastal ports.[155] By developing a quality edge, the regulatory system has managed to compensate for these geographical and transportation cost disadvantages, enabling Canadian grain to compete successfully in international markets. Moreover, public interest regulation has attained this quality advantage very efficiently and cost-effectively.

Canadian grain has achieved an unparalleled international reputation for quality and consistency. This excellence has enabled the industry to maintain strong customer loyalty and to command a better price than competitors in global markets. Through the operations of the CWB, this price premium — along with the proceeds leveraged by single-desk selling — is returned each year to Canadian grain producers.[156]

Shaped by decades of grassroots activism, the Canadian grain system was purposefully created to redress the power imbalances between prairie grain farmers and the large grain companies. The international grain companies, backed by the political clout of the U.S. government, have always been antagonistic to the Canadian system. The difference today is that the

multinationals now have a sympathetic ally in the Conservative regime in Ottawa, which is viscerally and, it appears, implacably hostile to the CWB and the broader grain regulatory system.

Opponents of the CWB have, to date, been frustrated in their attempts to eliminate single-desk selling. They have been constrained by a parliamentary minority, overruled by the Canadian courts and opposed by a majority of grain producers. Yet they are still proceeding, through administrative fiat and pending legislation, to dismantle the regulatory supports provided by the CGC that enable the CWB to function.

› Canada's remarkable grain regulatory system is under **serious and immediate** threat

In doing so, they are endangering the quality of Canadian wheat, risking the safety of consumers at home and abroad, and abandoning the interests of Canadian producers in order to appease U.S.-based multinational grain corporations. If opponents of regulation succeed in their efforts, the Canadian grain regulatory system will be virtually indistinguishable from the decidedly inferior U.S. system. A singularly Canadian regulatory achievement will have been deliberately and needlessly destroyed.

Such a tragedy is completely avoidable, but will take a strong effort from a government that is convinced of the value of both the CWB and the CGC. The harmful regulatory changes that have already occurred can still be reversed. The federal government must take immediate action to protect our grain-handling system; these actions must include:

- Kernel visual distinguishability, especially for the major varieties, must be reinstated. KVD, "the ultimate low-cost grading system", is a cornerstone of our current system and should never have been discarded.
- Unlicensed U.S. varieties of wheat must continue to be kept out of western Canada's grain system. Chaos was narrowly averted when the government retreated this summer from its reckless proposal to allow western producers to import and seed unlicensed, visually indistinguishable wheat varieties that could have contaminated the western grain handling system. The plan should now be permanently shelved.
- The Canadian government must defend the CWB far more vigorously at the WTO. The current agricultural negotiating text would be a disaster for Canadian producers and lead to the elimination of single-desk selling by 2013. Ottawa must find its backbone and make clear that this unjustifiable interference in Canadian affairs is a deal-breaker.

In addition, Bill C-13, the proposed amendments to the Canada Grain Act, should be withdrawn or defeated.

- Universal inward inspection is a vital component of the existing grain regulatory system. Its elimination would undermine quality and consumer safety, while shifting the financial liability for these increased risks to individual producers. More quality and safety problems would occur and, when they did, farmers would be on the hook to cover the damages.
- Inward inspection should, if anything, be strengthened. Without universal inward inspection, safety threats, insect infestations and other problems in the grain supply will be far more difficult and expensive to isolate, trace back to their source, and remedy. Early detection and

prevention are essential to safeguarding quality and consumer health, both at home and in export markets. They should be enshrined as fundamental tenets of the grain regulatory system.

- The chronic underfunding of the CGC must also be addressed. The commission and its activities should be supported by adequate and predictable funding, preferably through annual parliamentary appropriations sufficient to cover any shortfall or variability in fees which, in the interests of producers, should remain low.
- Last, but certainly not least, the mandate of the CGC to protect producer interests should be reaffirmed. The vital role of the assistant grain commissioners as producer advocates should be reaffirmed and adequate budgetary support provided.

The CGC's mandate to protect and uphold producer interests is not merely symbolism. It is as relevant today as it was when the commission was created at the beginning of the last century. Indeed, farmers today confront uncannily similar power dynamics.

Given increasing industry concentration and the disappearance of farmer-controlled prairie wheat pools, the need for countervailing public institutions to safeguard producers has never been greater. The CWB and the CGC — the most important institutions in the current grain marketing and regulatory system — are also the last remaining entities in the grain sector expressly charged to uphold producer interests.

The recent spate of food safety concerns, together with the turmoil inflicted by the current global financial crisis, graphically demonstrate the importance of intelligent public interest regulation, strong and effective regulatory institutions, and appropriate constraints on the enormous power wielded by huge global corporations. Canada's grain regulatory system has for decades supported producers, protected consumers, guaranteed quality and provided stability through the peaks and troughs of the commodity cycle. Discarding it, as proposed by the current minority government, would be folly. Instead, at this critical juncture, Canada should safeguard and enhance a unique policy and regulatory success—its world class wheat system.

ANNEX 1

Undermining the CGC's independence

Chief Commissioner Hermanson's involvement with partisan politics and his ties to Agriculture Minister Ritz, who appointed him

Elwin Hermanson has a long history of active involvement in partisan politics and close political ties to Agriculture Minister Ritz.

In 1988, Hermanson ran for a seat in Parliament as one of the first Reform Party candidates in Canada.[157] Defeated in the election, Hermanson served three terms on the Reform Party national executive council[158] before being elected Member of Parliament for the Saskatchewan riding of Kindersley-Lloydminster in 1993.[159] During that election campaign, current Minister of Agriculture and Agri-Food Gerry Ritz was Hermanson's campaign manager.[160] Ritz also served as Hermanson's constituency assistant during part of Hermanson's tenure as an MP[161] and was his constituency president.[162] The riding ceased to exist after a federal riding redistribution[163] and Hermanson and Ritz both ran as Reform Party candidates in 1997 in adjacent ridings. Hermanson was defeated in Saskatoon-Rosetown-Biggar, while Ritz won in Battlefords-Lloydminster.[164] Ritz has since been re-elected in the constituency in each of the 2000, 2004, 2006 and 2008 elections.[165]

After his 1997 election defeat, Hermanson shifted to provincial politics, where he served on a steering committee to form the Saskatchewan Party.[166] He became that party's first leader in 1998,[167] and was elected MLA for the Rosetown-Biggar constituency in 1999[168] — one of 25 seats won by the new party.[169] In the November 2003 election, the Saskatchewan Party won 28 seats under Hermanson's leadership,[170] but failed to form government, as was widely expected. He stepped down as party leader in February 2004, and Brad Wall took his place.[171] Hermanson did not run in the November 2007 election,[172] in which the Saskatchewan Party under Brad Wall captured 38 seats to form government.[173]

Conservative Prime Minister Steven Harper appointed Gerry Ritz Minister of Agriculture and Agri-Food on August 14, 2007.[174] In late December,[175] Minister Ritz announced that he had appointed Elwin Hermanson — his former employer and political ally — Chief Commissioner of the CGC.

Just two and a half weeks after his appointment took effect, Mr. Hermanson undermined the CGC's tradition of neutrality and breached the government's own code of conduct for the public service.[176] On February 7th, he published a partisan opinion column[177] in strong support of

Bill C-39 — the controversial Grain Act amendments (recently re-introduced as Bill C-13) that Minister Ritz had introduced but which Parliament has not passed.[178] Opposition MPs accused the new Chief Commissioner of inappropriate political intervention. Liberal MP Wayne Easter noted that the "legislation is before Parliament, it is contentious legislation and Mr. Hermanson has no business advocating for it…"[179] He…"needs to be neutral."[180] In March 2008, the House of Commons parliamentary committee on agriculture expressed its disapproval of Mr. Hermanson's appointment, rejecting it in a non-binding vote.[181]

Mr. Hermanson's high-profile public intervention in *support* of the government's proposals stands in stark contrast to a memo from CGC management, warning Commission staff not to publicly *oppose* the proposals because doing so "could create a perception that [their] views of government policy are not impartial." The memo, which was issued the day Mr. Hermanson's appointment was announced,[182] cites the aforementioned public service code of conduct, warning CGC staff that criticizing the government policy "could result in…disciplinary action."[183]

Rather than "maintaining the tradition of political neutrality of the Public Service" as the government's own code of conduct requires,[184] Minister Ritz stood by his partisan appointee, charging that the committee's vote in favour of public service nonpartisanship was itself "a disgraceful, partisan stunt."[185] Hermanson's controversial appointment, and inappropriate partisan conduct, has deprived the CGC of urgently needed professional leadership during a critical period in the organization's history.

ANNEX 2

Loss of the Prairie Pools

The recent demise of the three prairie pools is profoundly significant. The Saskatchewan Wheat Pool, Alberta Wheat Pool and Manitoba Pool Elevators were among the largest, most visible and most successful agriculture businesses in the West. These farmer-owned co-operatives were for many years among the most respected and influential shapers of agriculture policy and rural development across the prairies. They gave producers economic 'clout', enabling them to exert considerable democratic control over the industry and their livelihoods.

Formed in the 1920s as grain-pooling co-operatives to win fairer prices, the three pools were precursors to, and served as models for, the CWB. Successfully bypassing the Winnipeg Grain Exchange, they marketed their grain together and pooled revenues so that members received the same price for a grade of grain, regardless of when it was delivered. The Pools achieved higher prices through their central selling agency, which they jointly owned and controlled, and the Pools expanded rapidly until the stock market crash of 1929. The central agency collapsed, unable to cover the financial liability of that year's initial payment. By 1935, the federal government transferred the market-pooling function to the newly-established CWB. Transformed into grain elevator companies, the Pools survived the Depression and severe drought, began a period of renewal and dramatic growth and expansion into diverse business interests. They enjoyed a period of prosperity and influence until the 1970s, after which they confronted numerous difficulties, including low commodity prices, an aging member population and a pervasive trend towards neo-liberal economic policies both inside and outside the co-operative movement. In 1996, after attempts to merge the three Pools failed, members of the Saskatchewan Wheat Pool broke with tradition to turn the cooperative into a publicly-traded corporation. Initially profitable, the company embarked on an ill-fated acquisition program, incurring large losses at a time of low commodity prices. It was also forced to compete with its former partners — the Alberta Wheat Pool and Manitoba Pool Elevators — which merged to form Agricore in 1998, and then merged with United Grain Growers in 2001 to become Agricore United. After restructuring its debt in 2003, the Pool launched a take-over bid for Agricore United in 2006, and the companies were amal-

gamated into a new company, Viterra, which continues to operate today.[186]

The transformation of Canada's farmer-owned and controlled prairie cooperatives into an investor-driven publicly-traded company has altered the dynamics of western Canadian agricultural politics. Producers now do business with companies over which they no longer have direct control. They have also lost a vital mechanism for advancing their collective political interests. In the absence of the Prairie Pools, the CWB and the CGC now stand as producers' most important allied institutions in the current grain marketing and regulatory system. The destruction of these two sister organizations would leave producers more vulnerable than ever to political attack.

ANNEX 3

Intensified corporate integration, concentration and control in western Canadian agriculture

The conversion of the three prairie pool cooperatives into one business corporation also exacerbated a trend toward corporate concentration and vertical integration in Canada's western agricultural sector.

In the absence of the co-operatives, the sector is now dominated by large, diversified, investor-driven corporations with a global focus. For example: Cargill, one of the world's preeminent food and agriculture companies with annual revenues of over $120 billion, operates in 67 countries. It trades in products ranging from soybean byproducts, ethanol and plastics made from corn, to risk management, futures and other financial instruments.[187] Louis Dreyfus has annual gross sales of over $20 billion, operates in 53 countries, and is involved in processing, trading and selling agricultural and energy commodities. It also owns and manages ocean vessels, develops and operates telecommunications infrastructure and trades in real estate.[188] James Richardson International, or JRI, is the largest privately-owned Canadian agribusiness, handling grains, oilseeds and special crops, and crop inputs. It is a subsidiary of James Richardson & Sons, which is involved in the grain trade, oil and gas exploration, financial services, real estate and property management.[189] U.S.-based Archer Daniels Midland (ADM), which sold its interest in Agricore United to what is now Viterra,[190] is one of the largest agricultural processers in the world and is the largest producer of the ethanol in the U.S. It had sales revenues in 2007 of over $44 billion, and operates in 60 countries.[191] For its part, Viterra — the successor of the three Pools — has expected annual sales of about $4 billion and claims to be "Canada's leading agribusiness and the country's largest grain-handling company and agri-products retailer." It advertises that its goal is to extend its reach, seeking "ways to advance [its] interests internationally."[192]

These global corporations act to maximize the economic returns of their international shareholders — an aim that can bring them in conflict with the needs of Canadian producers. These mega-corporations are involved in virtually all steps in the grain commodity chain: breeding new varieties, selling crop seed, selling fertilizer, fuel, herbicides and other farm chemicals, transporting and marketing raw product, processing grains into food, energy and other

products, and providing loans, insurance and other financial services. Producers once purchased essential crop inputs and expertise from their Pool, which aimed to obtain the necessary inputs at the best price possible. This made good business sense, as producers helped control the Pools in which they had an economic stake. Today, individual producers purchase inputs from former competitor corporations that have a legal obligation to maximize profits. In doing so, producers have become increasingly dependent on vertically-integrated global companies. These transnational giants have very different economic interests from producers and their economic power dwarfs that of Canadian growers. This power disparity resembles that which existed prior to the creation of the Pools in the 1920s and is counterbalanced today mainly by the marketing and regulatory authority of the CWB and the CGC.

ANNEX 4

Beyond KVD

Sweeping changes proposed for Canada's seed registration and importation system

Beyond KVD — deregulating seed imports into western Canada

The proposed changes to the existing Canadian seed import regulations extend beyond those related to the elimination of KVD, removing important regulatory elements of Canada's wheat seed import system.

Contrary to the impression left by the government's announcement of the changes[193], only one of the amendments was KVD-related.

Canada's *Seeds Act*, adopted in 1985, provided a broad prohibition against the importation- into any part of Canada — of unregistered crop varieties, with limited exceptions to be specified by regulation.[194] Under the Act, all wheat seed imported into Canada had to be seed of a variety that had undergone a rigorous testing program resulting in the variety being formally registered in Canada. The Act's *Seeds Regulations* placed additional, more stringent requirements on wheat seed within western Canada (the so-called CWB area), requiring seed imported into that area be:

- pedigreed seed of a registered variety
- visually distinguishable, or
- for plant breeding or research purposes.[195]

These more stringent requirements for the CWB area supported the region's unique grain handling system, which does not exist in eastern Canada or elsewhere.

The August 2008 amendments eliminated not only the KVD requirement for imports into western Canada; it also removed the other obligations that seed has to be pedigreed and of a registered variety (see below). In both instances, as with the elimination of the KVD requirement, the federal government cites conformity with international trade rules as its primary rationale for the import changes.[196]

The Canadian Food Inspection Agency originally proposed to permit the importation of unlicensed wheat varieties into the CWB area *for seeding by the importer*, as is currently allowed in eastern Canada.[197] This proposal, which would have allowed CWB area producers to import, grow and sell unlicensed varieties, was the most extreme of four options the CFIA had considered. It could have resulted in a rapid proliferation of unlicensed, indistinguishable wheat varieties throughout western Canada.

The plan sparked widespread concern about the potential for cross-contamination, even though producers would have had to sell grain produced from unregistered varieties for consumptive uses such as animal feed or ethanol production and not as seed.[198] The Western Grain Elevator Association's Wade Sobkowich warned that "[t]hat grain is bound to eventually get into the export system and contaminate shipments to export customers."[199] CWB quality control manager Lawrence Klusa expressed similar concerns, stating that the change "could have disastrous consequences, depending on how many of these varieties get mixed up into the milling grades."[200] The CFIA revealed its own concerns about the regime it was proposing. It noted that increased imports of unregistered wheat varieties for seeding by the importer "could result in increases in the illegal sale of seed of unregistered varieties within Canada" — the prevention of which would require increased monitoring and enforcement efforts.[201]

In the lead-up to a closely contested federal election, the government backed away from this extreme proposal. For the time being, it retained the longstanding prohibition against the importation into Western Canada of seed from unlicensed wheat varieties *for seeding by the importer*. The CWB's senior manager of technical services, Graham Worden, was quoted as stating "[i]t looks like we dodged a bullet."[202]

The government did, however, weaken two other safeguards that have long protected the integrity of the western Canadian wheat system.

Removing the requirement for seed to be registered

Under the established system, only wheat seed "of pedigreed status of a registered variety" was allowed into western Canada. The sole exception for this blanket prohibition was for the import of unregistered varieties for plant breeding or plant research, and this was strictly controlled and monitored. Only individuals "actively engaged" in wheat or barley research could import these seeds;[203] plant researchers were prohibited from selling the seed to anyone else in Canada;[204] the seed could be grown only for plant breeding or plant research;[205] and scientists had to provide written records of the materials' use and ultimate disposition.[206]

The new regime is much less stringent, allowing more and broader exemptions for imports of unregistered varieties into western Canada.[207] Seed from unregistered wheat varieties can now be imported into the CWB area if the imports are used for conditioning of the seed lot.[208] for so-called closed-loop sales,[209] or for "research"[210] — an exemption that is now broader and more permissive than the narrow, tightly-crafted provision it replaced.[211] This new research exemption allows imports of unregistered wheat seed imports for seed production.[212] Gone are the strict requirements that had facilitated the tracking of the importation, distribution, use and disposition of unlicensed wheat seed and its progeny in western Canada.[213]

Removing the requirement for seed to be pedigreed

The new regime also permits the importation into western Canada[214] of non-pedigreed wheat seed — that is, seed that does not meet accepted standards of variety purity and whose performance and characteristics cannot be assured.[215]

These two amendments allow the importation into the CWB area of the following:

- registered wheat varieties
  - common (unpedigreed) seed of registered wheat varieties
- unregistered wheat varieties
  - unpedigreed and pedigreed seed for conditioning[216]
  - pedigreed seed for so-called closed loop production of pedigreed seed for export

- pedigreed seed for so-called closed loop production in anticipation that the variety will be registered in Canada.

Together, these deregulatory changes permit increased flows into western Canada of unregistered and unpedigreed seed, thereby increasing the risk that western Canada's established wheat handling and export system will become contaminated. Moreover, through the use of an interim registration procedure, the Canadian Food Inspection Agency indicates that a number of these unregistered foreign and Canadian-bred varieties could be tested, registered and available to producers in western Canada "possibly as early as spring 2009"[217] with a greater number available the following year.[218]

Further deregulation could expand the proliferation of previously-unregistered varieties in western Canada. First, the newly-elected minority Conservative government could revert to the original May 2008 recommendation by the CFIA that would allow imports of unlicensed wheat varieties into western Canada *for seeding by the importer*. At that time, the CFIA was clearly intent on pursuing this option, arguing against other available options, including the option it implemented just nine weeks later. It criticized the option of deferring the allowing of imports for seeding by the importer because doing so would "maintain a discrepancy between requirements for domestic and imported products…which could be inconsistent with Canada's international trade obligations."[219] The CFIA also argued against the option it later implemented on the basis that it "would be inconsistent to maintain this import restriction"[220] and would delay producers' access to currently-unregistered wheat varieties."[221]

The CFIA also publicly stated that it would continue to pursue options for a post-KVD system "that extends beyond [the] regulatory amendments" that were adopted in August 2008[222]. It plans to "hold supplementary consultations to address the issue of importation of unregistered varieties for 'seeding by the importer'" which would form the basis for "a subsequent proposal for regulatory change."[223]

The government's own public statements strongly suggest that it fully intends to implement its original extreme proposal — to allow wheat *producers* in the CWB area to import and grow unregistered wheat varieties — despite widespread concerns about cross-contamination of Canadian wheat.[224] Indeed, a scant two weeks after the October 14 federal election, the federal government began public consultations on this issue.[225]

Deregulating Canada's seed registration system

Even as the federal government allows increased flows of unregistered wheat seed into western Canada, it is deregulating the registration system itself to make it easier for seed varieties to be registered.

The main impetus behind Canada's original regulatory system for seeds was to protect Canadian producers from fraud. In the early 1920s, unscrupulous U.S. seed sellers were successfully marketing a variety of wheat in Canada on the fraudulent basis of its exceptionally high yield. To halt the problem, Parliament passed the *Seed Act*, requiring all new varieties to be tested at a federal or other approved experimental facility and to be accepted for registration by a committee of recognized plant breeders.[226]

Canada's regulatory system for seeds has evolved over the years to accommodate new priorities, while retaining its original purpose of preventing fraud. According to the Canadian Food Inspection Agency,

> "[t]he purpose of variety registration is to provide government oversight to ensure that health and safety requirements are met and that information related to the identity of the variety is available to regulators

> to prevent fraud. It also facilitates seed certification, the international trade of seed and the tracking and tracing of varieties in commercial channels."[227]

> "Variety registration also currently requires that varieties perform at least as well as standard reference varieties in Canada."[228]

Currently, variety registration gives the CFIA "oversight of the varieties available in the marketplace"[229] and is "intricately woven into…the structure of the seed regulatory system."[230]

Under the Canadian system, each variety of wheat or other crop undergoes performance testing prior to registration to determine its agronomic attributes (e.g. how long the variety takes to mature; how much it yields), its quality (e.g. the variety's protein content) and its tolerance to crop diseases. In addition, registration requires a merit assessment, to determine if the tested variety is equal or superior to established reference varieties in terms of yield, quality, disease resistance and other criteria deemed important for the crop in question.

In June 2008, the CFIA announced its intention to deregulate the variety registration system by eliminating the requirement for pre-registration performance testing and/or the requirement for merit assessments for certain crops. It is proposing a "flexible" regulatory system with three tiers, each with a different level of strictness[231]:

- Part I (most stringent; similar to status quo[232])
  - pre-registration testing
  - merit assessment
- Part II (relaxed)
  - pre-registration testing only
  - no merit assessment
- Part III (minimal)
  - no pre-registration testing
  - no merit assessment

In an apparent effort to deflect or defer controversy,[233] the CFIA is proposing initially to set up only the framework for deregulation, by automatically assigning wheat and the vast majority of Canada's crops to the first, most stringently regulated tier. Once the framework is in place, the CFIA plans to re-assign individual crops to the other two tiers, effectively relaxing the requirements for their registration.[234] The CFIA notes that "any of the 52 kinds of crop requiring registration could be placed in Part II or III at some point in the future…"[235] This would result in new varieties being registered and marketed without their merit having been independently assessed. Producers would have to decide for themselves which varieties have merit for their individual farms. This would be very controversial. While some producers may relish this difficult task, the lack of independent merit information would increase most producers' risk of choosing unsuitable varieties more often, potentially causing substantial economic losses.[236]

If the new framework is established, government can soon be expected to re-assign wheat — or certain types or classes of wheat — to one of the less stringent tiers. This would allow easier Canadian approvals of new varieties and unregistered varieties from the United States and elsewhere.

Ironically, where once the Canadian government successfully protected its producers by creating a national registration system that was more rigorous than that in the U.S., it is now harmonizing the Canadian system downward toward the lax U.S. "buyer-beware" approach. Grant L. Watson, Senior Advisor in the CFIA Plant Production Division, reflected upon the pending transformation of the Canadian system in a paper that was recently removed from the CFIA website. He wrote:

> "As one looks back over the 80 years history and adjustments that have been made to Canada's variety registration system, if the proposals under discussion[237] come into

effect, the system will have almost come full circle.

Canada appears to be headed to a buyer/seller relationship much like what exists in the United States."[238]

Other related government initiatives

Deregulating Canada's seed registration system is but one part of a broad government initiative to revamp Canada's seed program. Under what is called the Seed Program Modernization Initiative (SPMI), the federal government is actively pursuing a number of deregulatory changes that are highly relevant to the Canadian grain system but are beyond the scope of this paper. These include the following:[239]

- ending government involvement in Canada's seed certification system,[240]
- modifying the variety verification testing program,
- harmonizing seed testing rules,
- simplifying Canada's seed grading system,
- reviewing exemptions from variety registration,[241]
- determining when plant varieties with novel genetic traits require environmental release authorization[242]

These proposals could have important long-term effects on western Canada's grain system and warrant close scrutiny.

Notes

1 Such as Canada Prairie Spring Wheat and Canada Western Hard White Wheat.

2 This description is adapted from the Canadian Wheat Board website: "The wheat quality control system in Canada" at: http://www.cwb.ca/public/en/customers/buying/quality/ ; viewed 7 August 2008.

3 Canadian Wheat Board website, http://www.cwb.ca/public/en/library/publications/popups/farmers_general_brochure.jsp ; viewed August 24, 2008.

4 The CWB's borrowings are guaranteed by the federal government allowing it to access capital markets at better rates.

5 Ibid.

6 *Canada Grain Act*, Sec. 13. The Commission's main functions are specified in Section 14. The text of the Act is available online at: http://laws.justice.gc.ca/en/showtdm/cs/G-10. A useful summary of the Canadian Grain Commission's organization and operations, published by the Commission, is available online at: http://www.grainscanada.gc.ca/Pubs/OrgOps/orgops-e.pdf .

7 Canadian Grain Commission website, http://www.grainscanada.gc.ca/Whoare/who-e.htm .

8 This is achieved through the Grain Standards Committees, see Sect. 20–22.

9 *Canada Grain Act.* Part II.

10 *Canada Grain Act*, Part III. The Canadian Grain Commission publishes a list of licensed grain elevators and grain dealers; see: Grain Elevators in Canada, Crop Year 2007–2007, available online at: http://www.grainscanada.gc.ca/Pubs/GrainElevators/alltables/2006AUG.PDF .

11 *Canada Grain Act*, Sect. 45.

12 *Canada Grain Act*, Part IV.

13 *Canada Grain Act*, Section 14(e).

14 *Canada Grain Act*, Part VI.

15 The CGC used to set maximum charges for storing grain and for other services, but this role was eliminated in 1994. The only requirement now is for elevator companies to file their tariffs with the CGC. There is no maximum and the companies can charge whatever they like. This was a move that hurt farmers, but helped grain companies. *Canada Grain Act*, Secs. 50–54. The Canadian Grain Commission publishes these charges; see: Current and historical elevator tariff summaries, CGC website, http://www.

grainscanada.gc.ca/statistics-statistiques/tariff-tarif/letm-mtsa-eng.htm .

16 *Canada Grain Act*, Secs 35–41; Part VI.

17 *Canada Grain Act*, Part VI.

18 *Canada Grain Act*, Part I.

19 Blanchard, James, Canadian Grain Commission, University of Regina and Canadians Plains Research Centre, 2007, available online at: http://esask.uregina.ca/entry/canadian_grain_commission.html .

20 See: Canadian Economic History, William Thomas Easterbrook and Hugh G.J. Aitken, University of Toronto Press, 1988, p. 499.

21 In addition to the preceding reference, other sources provide useful information on the background Manitoba Grain Act, including:

- Sherman, Patricia, Manitoba Grain Act, available online at: http://www.westmanitoba.com/things/grainact.htm , and
- Siamandas, George, Manitoba Grain Growers Assoc.; Fighting for Farmers' Rights, http://siamandas.com/time_machine/pages/institutions/united_grain_growers.htm .

22 Canadian Economic History, op. cit., p. 499.

23 Review of the Canada Grain Act and the Canadian Grain Commission, Report to Agriculture and Agri-Food Canada, Number 01C15–05AJ01/A, Compas Inc., August 15, 2006, p. 42. In describing its mandate, the report notes that Compas was selected by Public Works and Government Services Canada on behalf of Agriculture and Agri-Food Canada "as mandated by Bill C-40 from the 28th Parliament." (p. 3, footnote 1).

24 Ibid., p. 44.

25 Ibid., p. 42.

26 Ibid., p. 42.

27 A list of these fees is available on the CGC website at: http://www.grainscanada.gc.ca/services-services/sfm-msf-eng.htm .

28 For example, user fee revenues dropped 32% between 2002 and 2003, and increased 29% between 2003 and 2004.

The 2003 Canadian Grain Commission Performance Report describes how drought-reduced grain volumes can shrink CGC revenues derived from user fees:

"Last year marked the second year of a drought in Canada's grain growing regions. Grain production and volumes through Canadian ports were reduced significantly. This had a negative financial impact on the CGC because most of the CGC's revenues are generated from fees charged for the inspection and weighing of grain exported through terminals. The CGC's revenue dropped nearly 35% from the previous fiscal year. Although limited in its ability to reduce expenditures, the CGC did respond to the reduced volumes by adjusting its staffing levels at the ports of Vancouver and Thunder Bay and reducing expenditures by $5.0 million."

(Canadian Grain Commission, Performance Report for the Period ending March 31, 2003, Challenges, Drought-reduced Grain Volumes, available online at: http://www.tbs-sct.gc.ca/rma/dpr/02–03/CGC-CCG/CGC-CCG03D01_e.asp#Challenges .)

29 The Canadian Grain Commission Performance Report for 2003 notes that:

"The bulk of the CGC's fees have not increased above their 1991 levels. In 2000, Cabinet froze the CGC's fees until 2003."

"The CGC has…struck various external committees to review the structure and level of fees. These reviews have taken place in 1986, 1990, 1992, and 1999."

Canadian Grain Commission, Performance Report for the Period ending March 31, 2003, External Charging Information, available online at: http://www.tbs-sct.gc.ca/rma/dpr/02–03/CGC-CCG/CGC-CCG03D-PR_e.asp?printable=True .

30 "Prior to 1991, the level and structure of fees were reviewed annually in-house and proposed changes were published in the Canada Gazette." (Ibid.)

31 The Canadian Grain Commission plans to keep revenues derived from fees constant at $41.3 million for each budgetary year between 2007–2008 and 2010–2011 inclusive. (See Canadian Grain Commission, Report on Plans and Priorities, 2008–2009,

Table 6: Revolving Fund — Statement of Operations, Line 1 ("Respendable Revenue"), available online at: http://www.tbs-sct.gc.ca/rpp/2008–2009/inst/cgc/cgc09-eng.asp .)

32 According to the Compas Report, the Canadian Grain Commission "estimates" that inward inspection and weighing are "cost centre[s]", that is, the cost of providing the services is substantially greater than the amount the CGC obtains from its relevant user fees, and the losses are covered by Parliamentary appropriations. (See Compas Report, op. cit., pp. 43–44, and footnote 37 on p. 55 .)

33 Canadian Grain Commission, Report on Plans and Priorities, 2008–2009, Priority #4, p. 22, available online at: http://www.grainscanada.gc.ca/cgc-ccg/cr-rm/rpp/2008/08_09rpp-e.pdf .

34 Ibid. The Harper government-commissioned Compas Report also strongly promotes contracting public services to private service suppliers.

35 Minister of Agriculture and Agri-Food Gerry Ritz introduced Bill C-39 on December 13, 2007. The formal title of the bill is: "An Act to amend the Canada Grain Act, chapter 22 of the Statutes of Canada, 1998 and chapter 25 of the Statutes of Canada, 2004. The 31-page bill is available online at: http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3211066&file=4 . A 11-page Legislative Summary of Bill C-39, prepared by the Parliamentary Information and Research Service, is available online at: http://www.parl.gc.ca/LEGISINFO/index.asp?List=ls&Query=5361&Session=15&Language=e.

Bill C-13, which is identical to C-39, was introduced on February 23, 2009. The text of the bill can be found online at: http://www2.parl.gc.ca/content/hoc/Bills/402/Government/C-13/C-13_1/C-13_1.PDF

36 Cf. Bill C-13, p. 3, clause (9)3 and Explanatory Notes, pp. 2a-3a.

37 According to a CGC departmental report (see below), "Assistant Commissioners in western Canada responded to many producer inquiries regarding failure to pay or late payment, grade or dockage disputes, producer cars, shrinkage deductions and elevator charges." (Canadian Grain Commission, Departmental Performance Report, March 31, 2007, p. 46, available online at: http://www.grainscanada.gc.ca/cgc-ccg/cr-rm/dpr-rmr/2007/dpr-rmr-2007-eng.pdf).

38 The 2004 Canadian Grain Commission Performance Report indicates "The Assistant Commissioners in western Canada handled nearly 1,800 producer concerns in 2003–04 regarding failure to pay or late payment, grade and dockage disputes, producer cars, shrinkage deductions and elevator charges. (http://www.tbs-sct.gc.ca/rma/dpr/03–04/CGC-CCG/CGC-CCGd3401_e.asp).

39 This formulation is derived from the CGC; in explaining the role of a newly-appointed assistant commissioner in 2005, a CGC news release states: "[Assistant commissioners] also present the concerns of producers in their regions to the CGC." (CGC assistant commissioner for Alberta appointed, CGC news release, June 21, 2005, para. 5.)

40 Ibid., p. 46.

41 See: Canadian Grain Commission, Departmental Performance Report, March 31, 2007, pp. 42–47, available online at: http://www.grainscanada.gc.ca/cgc-ccg/cr-rm/dpr-rmr/2007/dpr-rmr-2007-eng.pdf .

This report identifies "protecting producers rights" as a strategic outcome:

"Strategic Outcome 4: Producers' rights are supported to ensure fair treatment within the grain handling system.

[…]

Key Program or Service

[…]

3. Fair treatment of producers by grain companies and dealers"

42 Under the Canada Grain Act, the appointment of assistant commissioners is optional and their function is undefined. Section 9(1) of the Act reads:

"The Governor in Council may appoint six persons as officers of the Commission, to be known as assistant commissioners, to hold office, during good behaviour, for a renewable term of up to five years."

43 Fréchette, Jean-Denis, Bill C-39 Legislative Summary, LS-601-E, 8 April 2008. op. cit., p. 10, available online at http://www.parl.gc.ca/LEGISINFO/index.asp?List=ls&Query=5361&Session=15&Language=e. As previously noted, Bill C-39 was re-introduced as Bill C-13 on February 23, 2009.

44 The 2007 CGC Departmental Performance Report confirms that Assistant Commissioners received data and reports that could uniquely inform their efforts to reduce fraudulent activities on behalf of producers and the grain system generally. The report notes that the CGC "[c]ontinued to provide the Assistant Commissioners with detailed weigh-over reports identifying reporting delinquencies and anomalies for monitoring and investigative purposes." (Canadian Grain Commission, Departmental Performance Report, March 31, 2007, p. 47, available online at: http://www.grainscanada.gc.ca/cgc-ccg/cr-rm/dpr-rmr/2007/dpr-rmr-2007-eng.pdf .)

45 Cf. Canada Grain Act, Section 39.

46 Cf. Canada Grain Act, Section 36(4).

47 Cf. Bill C-13 Clauses 14, 15, 16, which together would eliminate Sections 35–38, and replace Section 39 and 41, of the existing Act. (Clause 2 of the bill would also eliminate authorization for the payment of Grain Appeal Tribunals.)

48 Cf. Bill C-13, p. 6–7, Clause 16, (which would replace the current Section 41). See the last two sub-clauses.

49 Note that unlike the current statute, which requires that individual Grain Appeal Tribunal members must not have pecuniary interest in the case at hand (Cf. Section 36(4)), Bill C-13 makes no such stipulation for individual contractors sitting in judgment of grain appeals.

50 Cf. Bill C-13, pp. 7–8, Clauses 19–21, affecting portions of Sections 45, 46 and 49 of the current Act.

51 Canadian Grain Commission, Report on Plans and Priorities, 2008–2009, available online at: http://www.tbs-sct.gc.ca/rpp/2008–2009/inst/cgc/cgc-eng.pdf .

52 Even though Bill C-39 was not passed, the Canadian Grain Commission's 2008–2009 Report on Plans and Priorities indicates that government plans to reduce funding for its Licensing and Security Program from $2.0 million in 2008–09 to $660 thousand in each of the next two years, and the Producer Protection Program from $4. 8 million in 2008–2009 to $1.6 million in each of the following two years. (CGC Report on Plans and Priorities, 2008–2009, available online at: http://www.tbs-sct.gc.ca/rpp/2008–2009/inst/cgc/cgc-eng.pdf). As previously noted, this bill was re-introduced as Bill C-13 on February 23, 2009.

53 See clauses 24 and 25 of the bill, which affect weighing at primary elevators, and clause 31 which eliminates mandatory weighing and inspection at terminal elevators. (See especially the proposed section 70(1)-(3), on pages 11–12 of Bill C-13.)

54 In certain countries, such as Argentina, inspection at the point of delivery is mandatory, not optional as in Canada. A sample is taken from every shipment when it first arrives at a primary elevator and sent to government labs for a binding determination about grade and dockage.

55 Canadian Wheat Board, "Benefits and Services of the CWB," available at http://www.cwb.ca/public/en/hot/legal/judicial.

56 The tasks of weighing and tracking were once performed by two public officials. In the early 1990s one of these positions was eliminated. When the second official was eliminated, elevator operators pledged to take over certain functions to lighten the workload of the remaining official, but these commitments were not honoured. Consequently, both tasks, weighing and tracking, are now performed by a single CGC official.

57 Canada's official reference on the grading of grains, oilseeds and pulses contains descriptions of each of the grading factors for the crops under the prevue of the Canadian Grain Commission. The grading factors for wheat appear in: Official Grain Grading Guide, Chapter 4, Wheat, Canadian Grain Commission, 1 August 2008, available online at: http://www.grainscanada.gc.ca/oggg-gocg/04/oggg-gocg-4e-eng.htm .

58 House of Commons, Standing Committee on Agriculture and Agri-food, "Report on the Review of the

Canada Grain Act and the Canadian Grain Commission Conducted by Compas Inc, November 2006, p. 8.

59 Ergot of Cereals and Grasses, Fact Sheet, Government of Saskatchewan, January 2009, available online at: http://www.agriculture.gov.sk.ca/adx/aspx/adxGetMedia.aspx?DocID=952,340,185,81,1,Documents&MediaID=6546&Filename=Ergot+of+Cereals+and+Grasses+-+Printer+Friendly.pdf .

60 Caporael, Linnda R., Ergotism: The Satan Loosed in Salem?, Science 192:21–26, 1976. A popular description of the mystery can be found online at: Ergot Poisoning — the cause of the Salem Witch Trials: PBS "Secrets of the Dead II"—Witches Curse, http://www.hbci.com/~wenonah/history/ergot.htm .

61 See: Tom Volk's Fungus of the Month for October 1999, online at: http://botit.botany.wisc.edu/toms_fungi/oct99.html .

62 Raine, Michael, Ergot problem prevalent in 2008 cereals, The Western Producer, 22 January 2009, p. 63.

63 Crawford, Tiffany, Maple Leaf Foods listeria lawsuits settled, National Post, 18 December 2008, http://www.nationalpost.com/news/story.html?id=1091025 . See also: Maple Leaf Foods Class Action Settled, Falconer Charney LLP and Sutts, Strosberg LLP, at http://www.mapleleaffoodsclassaction.com .

64 Branigan, Tania, Milk sickens thousands of babies in China, The Guardian Weekly, 26 September 2008, p. 7. See also, "China Milk Scandal 'Guilty' Plea," BBC World News, 31 December 2008, http://news.bbc.co.uk/2/hi/asia-pacific/7805560.stm.

65 Imported Dairy Ingredients and Soybean Meal for Livestock Feed, Canadian Food Inspection Agency, news release, 17 October 2008, available online at: http://www.inspection.gc.ca/english/anima/feebet/ind/chinmele.shtml .

66 McCurry, Justin, Japan shaken by contaminated rice scandal, The Guardian Weekly, 26 September 2008, p. 7.

67 The CGC, on its web site, describes the proposed changes as follows:

"The CGC proposes to eliminate all requirements for official inspection and weighing of all grain exported to the US. This would apply to all types of facilities and conveyances. The CGC would continue to provide inspection and/or weighing services for US exports on an optional basis. Such services would be provided at the request of the shipper, and would be subject to CGC operational capacity."

(Canadian Grain Commission, "Inspection and weighing requirements for grain exported to the United States," Available at: http://www.grainscanada.gc.ca/industry-industrie/consultation-consultation/geusegeu-eng.htm.)

68 On its web site the Canadian Grain Commission describes the reasons for the proposed change as follows:

"The original purpose of inward inspection and inward weighing was to ensure that grades and weights were recorded accurately and fairly. The service was established when primary elevators in Western Canada and terminal and transfer elevators were owned by different companies. Shippers wanted a system of checks and balances and the CGC to act as a third party. There have been many changes in the grain handling system which call into question the need for the CGC to inspect and weigh every shipment of grain that is unloaded at terminal or transfer elevators. For example, many companies have consolidated and consequently, many primary, terminal and transfer elevators are owned by the same company. Therefore, there is less demand for a third party to be involved."

This description was removed from the web site (http://www.grainscanada.gc.ca) before the October, 2008 federal election but has recently been reposted.

69 There are currently eight milling classes of western Canadian wheat. They are:

- Canada Prairie Spring Red (CPSR)
- Canada Prairie Spring White (CPSW)
- Canada Western Amber Durum (CWAD)
- Canada Western Extra Strong (CWES)
- Canada Western hard White Spring (CWHWS)
- Canada Western Red Spring (CWRS)

- Canada Western Red Winter (CWRW)
- Canada Western Soft White Spring (CWSWS).

Each of these classes has particular quality and processing characteristics, which are described on the Canada Grain Commission website at: http://www.grainscanada.gc.ca/Quality/Wheat/classes-e.htm . Until August 2008, every variety of wheat grown in western Canada was required to conform to the visual characteristics of the class to which it belonged.

70 The United States Trade Representative, intent on gaining greater access for U.S. grain in the Canadian market, stated that the KVD changes were "a step in the right direction." The U.S.T.R. complained, however, that the move "only opens the door to varietal registration in Canada of lower priced, non-milling U.S. wheat varieties typically used for feed and industrial end-uses (biofuels,etc.)." (United States Trade Representative, 2007 National Trade Estimate Report on Foreign Trade Barriers, p. 62. available online at: http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_NTE_Report/asset_upload_file312_10933.pdf).

The head of the Western Canadian Wheat Growers Association complained that eliminating KVD for the minor wheat classes was "not enough", arguing that the KVD constraint would still restrict new winter wheat varieties, since these were commonly confused visually with Canada Western Red Spring, where KVD would still apply. (Jolly-Nagel, Cherilyn, Moving forward on KVD, editorial, Wheat, Oats & Barley, January 2008.)

71 Rampton, Roberta, Canada seeks new way to sort wheat by 2010, Reuters, April 27, 2007.

72 The National Farmers Union stated that "[t]he elimination of Kernal Visual Distinguishability (KVD) as the primary method for grain variety identification will severely undermine Canada's reputation for high quality standards for grain." (National Farmers Union, Elimination of Kernal Visual Distinguishability Poses Risk, news release, April 20, 2007.)

73 Wilson, Barry, Minister urged to postpone KVD plans, Western Producer, May 8, 2008.

74 Wilson, Barry, Ritz warned on timing of KVD changes, Western Producer, March 20, 2008.

75 The U.S. had long complained about the KVD system because since U.S. varieties are not visually distinct, they are not registered in Canada they can only be sold as low-priced "feed" wheat. The United States Trade Representative conducted what he called "extensive consultations" on the issue in 2003, and followed the issue ever since. In 2007 the USTR complained that while the U.S. government considered the elimination of KVD for higher priced wheats was a "step in the right direction" it didn't go far enough. "[I]t only opens the door to varietal registration in Canada of lower priced, non-milling U.S. wheat varieties typically used for feed and industrial end-uses (biofuels, etc.).

(United States Trade Representative, 2007 National Trade Estimate Report on Foreign Trade Barriers, Canada, Restrictions on U.S. Grain Exports, p. 62., available online at: http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_NTE_Report/asset_upload_file312_10933.pdf)

76 In an opinion piece that appeared in the January 2008 edition of Wheat Oats & Barley, Cherilyn Jolly-Nagel, president of the Western Canadian Wheat Growers Association, wrote:

"The kernel visual distinguishability registration requirement will be a thing of the past as of this August, but only for some wheat classes. The WCWGA says that's not enough."

77 Black-box technology is intended to provide a quick and reliable technical means to identify grain varieties, for example by using wave-length measurements from molecular signals. The CWB and others have invested in developing black-box technology, but it remains unproven.

78 (Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain, Reports of the Panel, World Trade Organization, WT/DS276/R, 6 April 2004, paragraphs 108–111, page A-38.).

79 A sample declaration form can be viewed online at http://www.grainscanada.gc.ca/wheat-ble/ds-sd/declaration-eng.htm .

80 The seriousness of this liability is made clear in the wording of the aforementioned sample declaration. It states:

"If an ineligible variety of wheat is delivered by or on behalf of the Producer to the Grain Handling Company and it is represented to be eligible for the class of wheat for which payment is being requested in accordance with the Acts, I acknowledge and agree that the Grain Handling Company and/or the Canadian Wheat Board may consider the representation I made in paragraph 1 and 2 above, to have been made fraudulently and/or negligently. I acknowledge the Producer will be held accountable in accordance with authority granted within the Acts. I further acknowledge and agree that the Canadian Wheat Board may consider the Producer to be in default of his/her delivery contracts and, in addition to any other remedies available to it, it may cancel any contracts of the Producer. In addition, the Grain Handling Company may jointly with the Canadian Wheat Board or severally, claim against the Producer for all claims, damages, losses and costs (including legal fees) that may result."

Sample of the declaration of eligibility for the class form, paragraph 3, available online at: http://www.grainscanada.gc.ca/wheat-ble/ds-sd/declaration-eng.htm .

81 Morris, John, More than meets the eye, Manitoba Co-operator, July 17, 2008, p. 4 and Alberta Farm Express, July 28, 2008.

82 The Canadian Grain Commission tacitly acknowledges this problem, warning producers to "[m]aintain careful records" and to have "old or common seed tested at a private lab before seeding" or to "purchase certified seed" or "both". (Canadian Grain Commission website, Grain producers: an important change for your wheat deliveries, http://www.grainscanada.c.ca/wheat-ble/ds-sd/gpwd-pglb-eng.htm).

83 Laura Rance, editor of the Manitoba Co-operator, points out that increased concerns about liability "means farmers must know — for sure — what they are delivering. The only way to be sure is to plant certified seed, which fewer than 20 per cent of cereal farmers do. There are lots of good reasons for farmers to use certified seed. But it is decidedly more expensive than saving seed from a previous crop." (Rance, Laura, Loss of KVD system will plant seeds of discontent in farmers", Winnipeg Free Press, May 10, 2008.)

84 Canadian Grain Commission website, Grain producers: an important change for your wheat deliveries, http://www.grainscanada.c.ca/wheat-ble/ds-sd/gpwd-pglb-eng.htm), op. cit.

85 In December 2007 the CSTA promoted Canada's seed certification system as a "tried and true" KVD replacement. The Association expressed its confidence that "producer affidavits provided at time of delivery of grain, based on the use of certified seed would be a very reliable system to replace current KVD requirements." (Fostering Innovation and Sharing the Costs; A Certified Seed Tax Incentive, Canadian Seed Trade Association, December, 2007, p. 3.

86 In effect, by eliminating the KVD system, the federal government is driving producers towards greater use of certified seeds. At the same time, the federal government is withdrawing from the delivery of the seed certification program, transferring this responsibility and authority to the Canadian Seed Growers Association (see below).

87 The May 24, 2008 Regulatory Impact Analysis Statement (p. 1, para. 1) states that "[t]he change in domestic wheat policy necessitated the removal of the policy requirement for seed of wheat varieties to be visually distinguishable for each quality class in order to be registered in Canada." (underlining added; http://gazetteducanada.c.ca/part1/2008/20080524/html/regle1-e.html).

88 The changes eliminated Section 42 of the Seeds Regulations, which, in subsection (b) "required that wheat seed imports into the CWB area be [...] visually distinguishable from all registered varieties suitable for milling, baking or making alimentary pastes" (See Regulations Amending the Seeds Regulations, SOR/2008–228, July 28, 2008. Canada Gazette, Vol. 142, No. 16, August 6, 2008, description and rationale, wheat import requirements, available online

at http://canadagazette.c.ca/partII/2008/20080806/html/sor228-e.html)

89 The CFIA states in the regulatory impact analysis that "the CFIA has not held consultations specifically on the changes to seed import regulations proposed above."

(Regulations Amending the Seeds Regulations, Regulatory Impact Analysis Statement, Proposed regulatory amendments to seed import requirements, Canada Gazette, Vol. 142, No. 21, May 24, 2008, available online at: http://canadagazette.gc.ca/partI/2008/20080524/html/regle1-e.html)

90 The Regulatory Impact Analysis Statement is misleading in its use of the term "consequential". The Statement fails to distinguish between what is required to conform with other changes under domestic law, and what is not required under domestic law but is required to conform with the provisions of an international trade treaty that Canada has ratified. The conflation of these two uses of the term is illustrated in the following excerpt from the Statement:

"In light of the broad domestic policy decision to eliminate KVD requirements for domestic wheat, consequential amendments to the Regulations are required to ensure consistency between import and domestic wheat policy."

(Regulations Amending the Seeds Regulations, SOR/2008-228, July 28, 2008. Canada Gazette, Vol. 142, No. 16, August 6, 2008, Regulatory Impact Analysis Statement, description and rationale, Regulatory amendments to seed import requirements, available online at http://canadagazette.c.ca/partII/2008/20080806/html/sor228-e.html)

The May 24 Regulatory Impact Analysis Statement is even more misleading, stating:

"As the proposed regulatory amendments are consequential to the Minister's announcement of the Government of Canada policy decision to eliminate KVD, the CFIA has not held consultations specifically on the changes to seed import regulations proposed above."

(italics added for emphasis; http://gazetteducanada.c.ca/part1/2008/20080524/html/regle1-e.html).

91 Ibid., see Consultation, para. 2.

According to the May 24, 2008 Regulatory Impact Analysis Statement, the trade treaty provision to which the Canadian government is seeking to comply is part of the World Trade Organization's Agreement on Technical Barriers to Trade, which states:

Technical Regulations and Standards

"With respect to their central government bodies:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country."

(See para. 1 of the Statement.

The text of the so-called TBT agreement can be found online at http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf .)

92 The May 24, 2008 Regulatory Impact Analysis Statement correctly points out that:

"Historically, CFIA policies and regulations have acted as 'gate-keepers' for the KVD-based grain quality assurance system by only allowing seed of wheat varieties that are visually distinguishable for each quality class to be sold or imported into the CWB Area. Specifically, the CFIA has supported the grain quality assurance system through its variety registration system and import requirements." (Ibid.)

93 The previous federal government raised a concern about the potential for KVD elimination to directly undermine the authority of the Canadian Wheat Board. Deep within an appendix of the Canada-U.S. WTO wheat dispute panel report, the Canadian government responded to a question about the need for grain segregation as follows:

"[Grain segregation] measures are necessary to secure compliance with the provisions establishing the CWB as a single desk exporting S[tate] T[rading] E[nterprise], as contained in the CWB Act, because the relevant CWB privileges apply to the sale of Canadian wheat for export or for domestic human consump-

tion; if foreign wheat were not distinguished from Canadian wheat, the monopoly authority of the CWB could not be enforced."

(Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain, Reports of the Panel, World Trade Organization, WT/DS276/R, 6 April 2004, page A-38.).

According to this interpretation, the authority of the CWB could be threatened by indistinguishable wheat, grown outside the Canadian Wheat Board Area (and hence outside the CWB's purview), being imported into western Canada. Section 32 of the Canadian Wheat Board Act grants the CWB authority to market only "wheat produced in the designated area" (which is defined as Manitoba, Saskatchewan, Alberta, and the Peace River District District of B.C.) (The CWB Act is available online at: http://laws.justice.gc.ca/en/ShowTdm/cs/C-24///en)

94 In the WTO dispute with the United States, Canada emphasized the vital importance of preventing contamination of Canadian grain, raising the specter of contamination by trace amounts of unapproved genetically modified grain. Preventing contamination is crucial, Canadian government officials argued at the time, because:

"…once the grain enters an elevator, it is very difficult, if not impossible, to deal with the consequences. Such an occurrence would have a serious negative impact on both the level of consumer confidence in the Canadian quality assurance system, and indeed the ability of Canada to ensure and guarantee the quality of grain it is exporting.

[...] The importance of this was highlighted recently by the discovery in Canada of a single cow with BSE, with significant and continuing negative consequences. As a result, many countries around the world banned the importation of beef from Canada. In the case of grain, if certain products (for example, even trace amounts of GMO grain) not approved in Canada or other countries were found in shipments of Canadian grain, it would have a deleterious effect on Canadian exports…"

(Canada—Measures Relating to Exports of Wheat and Treatment of Imported Grain, Reports of the Panel, World Trade Organization, WT/DS276/R, 6 April 2004, page B-7.)

95 "A 2003 study by the Boston Consulting Group for the Australian Wheat Board reported that four companies — Cargill Inc., Louis Dreyfus Corporation, Archer Daniels Midland and Bunge Limited — effectively control 73% of the global market for grain." Affidavit of Adrian Measner, in Canadian Wheat Board and Attorney General of Canada, Federal Court of Canada, file # T-2138–06, paragraph 22.

96 A full copy of the Canadian Wheat Board Act is available at: http://laws.justice.gc.ca/en/C-24/index.html.

97 The Canadian system differs markedly from the highly subsidized U.S. system, where the government guarantees a minimum price for grain, and makes so-called "deficiency payments" whenever the market price drops below the minimum price. This has been described as "a system designed to keep production high and prices low." (Michael Pollan, *The Omnivores Dilemma: A Natural History of Four Meals* (New York, 2006), p. 62.) Most significantly, the U.S. system permits huge grain trading companies, such as Cargill and Archer Daniels Midland, to dominate the production and marketing of U.S. grain... Pollan observes that "these companies are the true beneficiaries of the 'farm' subsidies…." (Ibid., p. 63.)

98 The U.S. government, private grain companies and many U.S. growers have long objected to this system, including the government-guaranteed initial price. The draft agricultural text that was on the table when the WTO negotiations collapsed in the summer of 2008 would have required Canada to eliminate these government guarantees.

99 John Herd Thompson, Farmers, Governments and the Canadian Wheat Board: An Historical Perspective, 1919–1987, p. 21.

100 The 2005 Conservative party policy platform on the Canadian Wheat Board stated: "A Conservative Government will give farmers the freedom to make

their own marketing and transportation decision and to direct, structure, and to voluntarily participate in producer organisations." Conservative Party of Canada. "Policy Declaration", March 19, 2005, paragraph 97.

101 The participants in the July 27, 2006 Marketing Choice roundtable are listed on the Agriculture and Agri-food Canada Web site at; http://www.agr.gc.ca/cb/index_e.php?s1=b&s2=2006&page=n60912

102 Canadian Wheat Board, CWB Response to Minister Strahl's Task Force Examining Implementation of Marketing Choice," November 6, 2006.

103 The directive read: "Her Excellency the Governor General in Council, on the recommendation of the Minister of Agriculture and Agri-Food, pursuant to subsection 18(1) of the Canadian Wheat Board Act, hereby directs The Canadian Wheat Board to conduct its operation under the Act in the following manner: (a) it shall not expend funds, directly or indirectly, on advocating the retention of its monopoly powers, including the expenditure of funds for advertising, publishing or market research; and (b) it shall not provide funds to any other person or entity to enable them to advocate the retention of the monopoly powers of The Canadian Wheat Board."

104 " No previous direction has dealt with how the board is to conduct itself with respect to advocacy, distribution of information, or entering into policy debates." "Attorney General of Canada and the Canadian Wheat Board," Affidavit of Adrian C Measner, December 4, 2006, available at http://www.cwb.ca/public/en/hot/legal/judicial/pdf/affidavit_ameasner.pdf.

105 "Attorney General of Canada and the Canadian Wheat Board," Ruling of the Honourable Mr. Justice Robert Hughes, June 19, 2008, paragraph 46. available at http://www.cwb.ca/public/en/hot/legal/judicial/pdf/decision_061908.pdf.

106 "Attorney General of Canada and the Canadian Wheat Board," Affidavit of Adrian C Measner, December 4, 2006, available at http://www.cwb.ca/public/en/hot/legal/judicial/pdf/affidavit_ameasner.pdf.

107 "Attorney General of Canada and the Canadian Wheat Board," Ruling of the Honourable Mr. Justice Robert Hughes, June 19, 2008, paragraph 39, available at: http://www.cwb.ca/public/en/hot/legal/judicial/pdf/decision_061908.pdf.

108 Canadian Wheat Board Act, Section 47.1, available at: http://laws.justice.gc.ca/en/C-24/index.html.

109 Moreover, the gag order eventually struck down by the courts was still in effect in effect during the plebiscite period. As CWB president Adrian Measner testified "The Direction has had a chilling effect on the CWB and has created uncertainty and confusion during a period when producers are faced with critical decisions relating to the future of the single desk." Measner affidavit, paragraph 105.

110 The heavily redacted Cabinet memorandum is available at: http://www.cwb.ca/public/en/hot/legal/judicial/pdf/cabinetmemoB.PDF.

111 Province of Manitoba, News Release, "Manitoba Farmers Send Strong Message On Canadian Wheat Board Single Desk," January 16, 2007, available at: http://news.gov.mb.ca/news/index.html?archive=2007–1-01&item=883. The mail-in ballot administered by the province, employed the question recommended by farm organizations, which offered a straightforward choice between the single desk and the open market.

112 Bob Friesen's quotation, and other statements critical of the ballot wording, are available at the web site of Save My Canadian Wheat Board, http://www.savemycwb.ca/archive/home/20070314barleyvote.php.

113 Affidavit of Adrian C Measner, December 4, 2006, paragraph 105., available at http://www.cwb.ca/public/en/hot/legal/judicial/pdf/affidavit_ameasner.pdf

114 Agriculture and Agri-food Canada, Backgrounder, "Plebiscite Results," March 2007, available at: http://www.agr.gc.ca/cb/index_e.php?s1=ip&page=ip60908a_bg1.

115 Measner affidavit, Op. cit., para. 53.

116 Canadian Wheat Board Act, section 47.1.

117 See Friends of the CWB web site at: http://www.friendsofcwb.ca/.

118 "The Canadian Wheat Board and the Attorney General of Canada," Ruling of Madame Justice Do-

lores Hansen, July 31, 2007 available at: http://www.cwb.ca/public/en/hot/legal/barley/pdf/T-1124–07.pdf.

119 "The Attorney General of Canada and Canadian Wheat Board," Judgement of the Federal Court of Appeal, February 26, 2008. available at: http://www.cwb.ca/public/en/hot/legal/barley/pdf/022608_fac-judgement.pdf.

120 Canadian Wheat Board gag order unconstitutional, court rules, CBC News, June 20, 2008.

121 The text of Bill C-46 can be viewed online at: http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3318470&file=4 .

122 "Arbitration could cost farmers 'tens of millions': CWB", Alberta Farmer Express, March 4, 2008, available online at: http://www.albertafarmexpress.ca/issues/1SArticle.asp?id=81033&issue=03042008&story_id=&PC=FBC .

123 The text of Bill C-57 can be viewed online at: http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3516430&file=4 .

124 Ewins, Adrian, Lawsuit targets CWB voters list changes, Western Producer, September 25, 2008;

Friends of CWB sue again over elections, Manitoba Co-operator, September 20, 2008.

125 Ewins, Adrian, CWB vote ends but controversy continues, Western Producer, December 4, 2008.

126 Federal government calling for unlimited third party spending in CWB elections, Manitoba Co-operator, August 5, 2008.

127 Ewins, Adrian, Spending limit plan for CWB baffles farmers, Western Producer, August 14, 2008.

128 Ewins, Adrian, Spending limit plan for CWB baffles farmers, Western Producer, August 14, 2008.

129 Federal government calling for unlimited third party spending in CWB elections, Manitoba Co-operator, August 5, 2008.

130 Ewins, Adrian, Spending limit plan for CWB baffles farmers, Western Producer, August 14, 2008.

131 Ewins, Adrian, Spending limit plan for CWB baffles farmers, Western Producer, August 14, 2008.

132 Federal government calling for unlimited third party spending in CWB elections, Manitoba Co-operator, August 5, 2008.

Note that the NCC currently maintains an anti-CWB campaign on its website, where its ads can be viewed. See: http://nationalcitizens.ca/cgi-bin/oms.cgi?rm=show_product&pid=35 .

133 Ewins, Adrian, Spending limit plan for CWB baffles farmers, Western Producer, August 14, 2008;

Group sues Ottawa over CWB Act violation, Western Producer, September 18, 2008.

134 Group sues Ottawa over CWB Act violation, Western Producer, September 18, 2008.

135 Single desk supporters held 8 of the 10 elected positions. All four government appointees are opposed to single-desk marketing, and the CEO is uncommitted.

136 Ewins, Adrian, CWB vote ends but controversy continues, Western Producer, December 4, 2008. Some of the letters were reportedly addressed in ways that suggest the MPs had gained access to the official CWB voters list, which is prohibited under the CWB Act. (Ibid.)

137 The CWB announced the results of the election in a December 7th news release. See: Farmers make their voices heard in CWB director elections, CWB news release, December 7, 2008, available online at: http://www.cwb.ca/public/en/newsroom/releases/2008/120708.jsp?pf=1 .

138 See: Ewins, Adrian, CWB 'off the table' for now: ag minister, Western Producer, January 8, 2009, http://www.producer.com/free/editorial/news.php?iss=2009–01–08&sec=news&sto=001 , and

Franz-Warkentin, Phil, CWB deregulation off government's radar, for now, Manitoba Co-operator, January 19, 2009, http://www.manitobacooperator.ca/issues/isarticle.asp?id=94756&issue=01192009&PC=FBC&story_id=&link_targ=DailyNews&link_source=aypr_MBCO .

139 Wilon, Barry, Harper says rural issues to get Ottawa's ear, Western Producer, November 27, 2008.

140 Wilson, Barry, Harper says rural issues to get Ottawa's ear, Western Producer, November 27, 2008.

141 Throne Speech promises more CWB battles, Manitoba Co-operator, November 20, 2008.

142 For example, negotiations culminating in the establishment of the World Trade Organization and the adoption of the NAFTA in 1994 played a key role in the elimination of Canada's historic "Crow" payments to the railways for transporting grain to Canada's ports, ready for export. These longstanding payments, which helped make up for the nation's geographical disadvantage of having to transport grain long distances to tidewater, were classified as an export subsidy under these treaties. The federal government eliminated them in 1995, a move that created considerable controversy in Canada but was welcomed by Canada's international grain export competitors.

The WTO's Secretariat blandly noted this change in its review of Canada's 1996 Trade Policy Review, stating: "With the abolition of the Western Grain Transportation Act on 1 August 1995 and the attendant termination of transport assistance, Canada has currently over-achieved the reduction commitment for export subsidies under the WTO Agreement, according to the authorities." (Trade Policy Review, Canada, 1996, WT/TPR/S/22, Part 5, IV Sectoral Policy Patterns and Trends, (iii) Cereals and related products, para. 2.)

143 The WTO Secretariat noted in 1996 that "[t]he Uruguay Round has brought no major changes in the operations of the Canadian Wheat Board (CWB). The Board is to remain the sole marketing agent for wheat and barley grown in western Canada for domestic human consumption, interprovincial and international sales." Also, while noting that "[s]ome WTO members have raised questions about these operations [of the CWB]…the Government sees no need to change the current system." (Ibid., WT/TPR/S/22, Part 5, IV, (iii), para. 3.)

144 In 2002, dissatisfied with the results of its bilateral interventions with Canada, and following a 16-month formal investigation of the CWB, United States officials announced their intention to "aggressively pursue reform" of the CWB at the World Trade Organization. "USTR Chief Ag Negotiator Tells Senate the Administration Will Aggressively Pursue Reform of Canadian Wheat Board", News release, Office of the United States Trade Representative, April 19, 2002. The news release states: "In testimony before the U.S. Senate Committee on Commerce, Science and Transportation, [USTR Chief Agriculture Negotiator Ambassador Allen Johnson] stated: 'USTR shares the goal of the North Dakota Wheat Commission and U.S. wheat farms in seeking meaningful and permanent reform of the Canadian Wheat Board. USTR is pursuing multiple actions which mutually reinforce this goal as well as the objective to improve U.S. wheat access to the Canadian marketing system."

The news release also states that Ambassador Johnson's report to the Senate committee included a report "on the U.S. success in getting export competition as the first negotiating agenda item to be discussed in June [2002] at WTO agriculture negotiations."

145 North Dakota Wheat Commission, August 30, 2004, "Appellate body fails to see how Canada's government monopoly operates outside of commercial considerations", News Archive, available online on the ND Wheat Commission website: www.ndwheat.com .

146 North Dakota Wheat Commission, April 7, 2004, "U.S. Trade Rep should appeal ruling in WTO wheat dispute", News Archive, available online on the ND Wheat Commission website: www.ndwheat.com .

147 Trade Policy Review—Canada, 2000, WT/TPR/S/78, Trade policy priorities, Agri-food trade, p. 8.

148 Trade Policy Review—Canada, 2003, WT/TPR/M/112, Replies by the representative of Canada and additional comments, p. 28.

149 Trade Policy Review—Canada, 2007, WT/TPR/179.

150 Trade Policy Review—Canada, 2007, WT/TPR/S/179/Rev.1, p. 97, para. 49.

151 Trade Policy Review—Canada, 2007, Minutes of Meeting, WT/TPR/M/179/Add.1, 22 June 2007, p. 254.

152 Trade Policy Review—Canada, 2007, Minutes of Meeting, WT/TPR/M/179/Add.1, 22 June 2007, p. 210.

The 2006 Conservative platform stated:

"A Conservative government will:

[…]

-Give western grain farmers the freedom to make their own marketing and transportation decisions. Western grain farmers should be able to participate voluntarily in the Canadian Wheat Board."

(Conservative Party of Canada, "Stand Up for Canada", 2006 Federal Election Platform, p. 19, available online at: http://www.conservative.ca/media/20060113-Platform.pdf).

153 The Chairperson of the meeting report states:

"The United States was concerned about the practices of the Canadian Wheat Board (CWB). It was encouraged that a staged elimination of the CWB's monopoly had been recommended, and asked to hear more about plans and timetables to implement the recommendation." (Trade Policy Review—Canada, 2007, Minutes of Meeting, 29 June 2007, WT/TPR/M/179/Rev.1, pp. 12–13, para. 39.)

"The EC welcomed the Government's preparations to remove the monopoly powers of the Canadian Wheat Board, and asked about Canada's plans for opening the market for newcomers, and on the issue of transparency." (Trade Policy Review—Canada, 2007, Minutes of Meeting, 29 June 2007, WT/TPR/M/179/Rev.1, p. 11, para. 33.

154 The revised "draft modalities" for the WTO Agriculture negotiations were released on December 6, 2008. The document is available on the WTO web site at: http://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm.

The provisions restricting agricultural state trade enterprises are found in Annex K.

155 Historically, transportation subsidies (such as the Crow rate) addressed this geographical disadvantage. The Crow rate and other transportation subsidies have now been eliminated.

156 A recent internal analysis by the CWB estimates these benefits to producers at approximately $530 to $655 million annually. "The CWB's marketing approach, including among other things single-desk selling, sourcing grain by means of a contract call system, and providing negotiating leverage for farmers results in farmers earning between approximately $530 million and $655 million more for their grain each year than they would in an open market." The Canadian Wheat Board, "Annual Benefits and Services of the CWB," available at http://www.cwb.ca/public/en/hot/legal/judicial/pdf/measner/Tab_5.pdf.

157 ZoomInfo Business People Information, Elwin Hermanson biography, available online at: http://www.zoominfo.com/people/Hermanson_Elwin_437362127.aspx .

158 Ibid.

159 Ibid.; also

Susan Munroe, Elwin Hermanson, Canada Online; http://canadaonline.about.com/od/partyleaderssk/p/elwinhermanson.htm .

160 Gerry Ritz, Candidate Profile, CBC, 2008 election, available online at:

http://www.cbc.ca/news/canadavotes/riding/228/candidate.html ; also

Wilson, Barry, Ex-Reformer to lead CGC, Western Producer, January 3, 2008, available online at: http://www.producer.com/free/editorial/news.php?iss=2008–01–03&sec=news&sto=003 ;

Grain commission chief fails to win approval from committee, CBC News, March 19, 2008, http://www.cbc.ca/canada/saskatchewan/story/2008/03/19/hermanson-committee.html .

161 Grain commission chief fails to win approval from committee, CBC News, March 19, 2008, http://www.cbc.ca/canada/saskatchewan/story/2008/03/19/hermanson-committee.html ; also

Prime Minister Harper announces appointment of Gerry Ritz as Secretary of State (Small Business and Tourism), News Release, Prime Minister Stephen Harper, January 4, 2007, available online at http://pm.gc.ca/eng/media.asp?id=1485 ;

Gerry Ritz, biographical information, CTV, available online at: http://www.ctv.ca/mini/election2006/candidates/47001_CON.html ;

Gerry Ritz, Candidate Profile, CBC, 2008 election, available online at:

http://www.cbc.ca/news/canadavotes/riding/228/candidate.html ;

Wilson, Barry, Ex-Reformer to lead CGC, Western Producer, January 3, 2008, available online at: http://www.producer.com/free/editorial/news.php?iss=2008–01–03&sec=news&sto=003 .

162 Wilson, Barry, MPs have issues with CGC commissioner, Western Producer, February 21, 2008.

163 See the CBC's description of the riding of Battlefords-Lloydminster at: http://www.cbc.ca/canadavotes2004/riding/228/ and http://www.cbc.ca/news/canadavotes/riding/228/index.html .

164 Maps of these ridings are available online at:

http://www.cbc.ca/news/canadavotes/content/ridings_pdf/237.pdf and

http://www.elections.ca/scripts/fedrep/searchengine/PDF2/47/47001.pdf , respectively.

165 Battlefords-Lloydminster Riding Profile, 2008 election, Canadian Broadcasting Corporation, available online at: http://www.cbc.ca/news/canadavotes/riding/228/index.html .

166 ZoomInfo Business People Information, Elwin Hermanson biography, available online at: http://www.zoominfo.com/people/Hermanson_Elwin_437362127.aspx ; also

Susan Munroe, Elwin Hermanson, Canada Online; http://canadaonline.about.com/od/partyleaderssk/p/elwinhermanson.htm .

167 Saskatchewan Party Website, The Party, at: http://www.saskparty.com/theparty.html .

168 ZoomInfo Business People Information, Elwin Hermanson biography, available online at: http://www.zoominfo.com/people/Hermanson_Elwin_437362127.aspx .

169 Saskatchewan Party Website, The Party, at: http://www.saskparty.com/theparty.html .

170 Saskatchewan Party Website, The Party, at: http://www.saskparty.com/theparty.html .

171 Saskatchewan Party Website, The Party, at: http://www.saskparty.com/theparty.html .

172 Susan Munroe, Elwin Hermanson, Canada Online; http://canadaonline.about.com/od/partyleaderssk/p/elwinhermanson.htm .

173 Saskatchewan Party Website, The Party, at: http://www.saskparty.com/theparty.html .

174 Gerry Ritz online biography, Silobreaker, at: http://silobreaker.com/FactSheetReader.aspx?Item=5_779133952;

See also: Gerry Ritz' Member of Parliament and Ministerial websites at: www.gerryritzmp.com/about.php and http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1203439690684&lang=eng , respectively, and the biographical sketch that appears on Prime Minister Harper's website at: http://pm.gc.ca/includes/send_friend_eMail_print.asp?URL=/eng/bio.asp&id=78&page=ministry&langFlg=e .

175 The appointment was announced December 21, 2007 and took effect January 21, 2008. (Appointment to Canadian Grain Commission, Agriculture and Agri-Food Canada news release, December 21, 2007, available online at: http://www.agr.gc.ca/cb/index_e.php?s1=n&s2=2007&page=n71221)

176 The code of conduct for Canada's public service states that "Public servants must work within the laws of Canada and maintain the tradition of the political neutrality of the Public Service." (Values and Ethics Code for the Public Service, Canada Public Service Agency, available online at: http://www.psagency-agencefp.gc.ca/pol/vec-cveo1-eng.asp .)

177 Hermanson published the opinion piece in the February 7th edition of the prominent Western Producer. (New chief outlines CGC changes — Opinion, Western Producer, February 7, 2008, available online at: http://www.producer.com/free/editorial/opinion.php?iss=2008–02–07&sec=opinion&sto=00111 .)

178 Mr. Hermanson's letter concludes: "As chief commissioner of the CGC, I strongly support this legislation…" (New chief outlines CGC changes — Opinion, Western Producer, February 7, 2008, op. cit..)

179 Wilson, Barry, MPs have issues with CGC commissioner, Western Producer, February 21, 2008.

180 Grain commission chief fails to win approval from committee, CBC News, March 19, 2008, available online at: http://www.cbc.ca/canada/saskatchewan/story/2008/03/19/hermanson-committee.html .

181 Grain commission chief fails to win approval from committee, CBC News, March 19, 2008, available online at: http://www.cbc.ca/canada/saskatchewan/story/2008/03/19/hermanson-committee.html .

182 December 21, 2007

183 The Agriculture Union for the Public Service Alliance of Canada released the full text of the memo, which cites the aforementioned code of conduct, formally known as "The Values and Ethics Code for the Public Service". See: Retract Grain commission Gag Order, Agriculture Union news release, February 6, 2008, http://www.agrunion.com/en/2008newsreleases.html .

184 The code states: "Ministers are responsible for… maintaining the tradition of political neutrality of the Public Service…" (Values and Ethics Code for the Public Service, Canada Public Service Agency, available online at: http://www.psagency-agencefp.gc.ca/pol/vec-cve01-eng.asp .)

185 Rabson, Mia, Opposition rejects new grain commission head, Former Reform MP Hermanson called too partisan, Winnipeg Free Press, March 16, 2008.

186 This brief summary of the history of the Pools is drawn from the following sources:

• Lang, Kathy, Saskatchwan Wheat Pool, The Encyclopedia of Saskatchewan, available online at: http://esask.uregina.ca/entry/saskatchewan_wheat_pool.html .

• Saskatchewan Wheat Pool: From Farmer's [sic] Fields to Bay Street, Canadian Broadcasting Corporation, Available online at: http://www.cbc.ca/sask/features/saskpool/ , accessed August 28, 2008.

• Saskatchewan Wheat Pool, Wikipedia, http://en.wikipedia.org/wiki/Saskatchewan_Wheat_Pool ; accessed Aug. 24, 2008.

For a more detailed, academic examination of the recent history and transformation of the Saskatchewan Wheat Pool, see: Lang, Katherine (2006) Cognition, Agency Theory and Organizational Failure: A Saskatchewan Wheat Pool Study, M.Sc. Thesis, Department of Economic, University of Saskatchewan. Available online at:

http://library2.usask.ca/theses/available/etd-01032007–132828/unrestricted/Lang_MScThesis_Dec2006.pdf .

187 Cargill website; 2008 Summary Annual Report, available online at: http://www.cargill.com/2008-annual/index.html , and Summary of Cargill's History, available at http://www.cargill.com/files/historysummary.pdf .

188 Louis Dreyfus website; Worldwide Businesses of Louis Dreyfus, available online at: http://www.louisdreyfus.com/content.cfm?page=index.cfm&gbus=8 .

189 James Richarson & Sons, Limited website; http://www.jrsl.ca ; accessed August 28, 2008.

190 ADM Tenders Shares of Agricore United to Revised Bid by Saskatchewan Wheat Pool, Inc., Archer Daniels Midland Company news release, June 24, 2007. Available online at: http://www.admworld.com/naen/pressroom/newspopup.asp?id=466&name=ADM_Tenders_Shares. See also, ADM 2007 Annual Report, pp. 4, 21 and 24, available online at: http://www.admworld.com/pdf/adm_2007_annual_report.pdf .

191 ADM 2007 Annual Report, available online at: http://www.admworld.com/pdf/adm_2007_annual_report.pdf .

192 Viterra website, Extending Our Reach, corporate profile, available online at: http://www.viterra.ca/portal/wps/wcm/resources/file/ebc63d0503c083a/VT_ProfileFINAL.pdf ; Viterra 2007 Annual Report, available online at: http://www.viterra.ca/portal/wps/wcm/resources/file/eb4e0900a8186c0/VT_07_AR.pdf ; accessed August 28, 2008.

193 The May 24, 2008 news release by the Canadian Food Inspection Agency is misleading in that it implies that all of the proposed amendments to the Seeds Regulations were related only to KVD elimination, when in fact the changes were broader. The release states in part:

"The proposed amendments would revoke section 42 of the Seeds Regulations thus removing the import requirements related to KVD and distinguishability for seed of wheat and spring barley imported into the Canadian Wheat Board Area of western Canada."

It also states:

"The proposed amendments will align import requirements with the Government of Canada policy decision, announced by Minister Ritz on February 11, 2008, to eliminate KVD from all classes of western Canadian wheat as of August 1, 2008."

(Proposed Amendments to Seeds Regulations Published, Canadian Food Inspection Agency news release, May 24, 2008, available online at: http://www.inspection.gc.ca/english/corpaffr/newcom/2008/20080524e.shtml)

This misleading announcement has not been corrected, and the correct information was provided only when the changes were adopted and published — five days after the elimination of KVD. The formal registration of the new regulations, published in the Canada Gazette on August 6, 2008 states:

"While paragraphs 42(a) and (c) are not specifically related to the removal of KVD import requirements, they were also repealed in these amendments."

(Regulations Amending the Seeds Regulations, SOR/2008–228, July 28, 2008. Canada Gazette, Vol. 142, No. 16, August 6, 2008, Regulatory Impact Analysis Statement, description and rationale, wheat import requirements, available online at http://canadagazette.c.ca/partII/2008/20080806/html/sor228-e.html)

194 Section 3 of the *Seeds Act* states:

"(1)Except as provided by the regulations, no person shall

[…]

(b)"sell, advertise for sale in Canada or import into Canada seed of a variety that is not registered in the prescribed manner"

(The Act can be found online at" http://laws.justice,c.ca/en/showdoc/cs/S-8/bo-ga:s_3//en#anchorbo-ga:s_3)

195 The text of Section 42, which was eliminated, is not readily available online. It is reproduced here in its entirety:

"42. Seed of spring wheat, winter wheat, durum wheat or spring barley may be imported into the Canadian Wheat Board Area only where

(a) the seed is of pedigreed status of a variety registered under Part III and there are no restrictions with respect to its sale in the Canadian Wheat Board Area;

(b) the seed

(i) in the case of wheat, is visually distinguishable from all varieties of spring wheat, winter wheat and durum wheat that are suitable for milling and baking or for making alimentary pastes, and that are registered under Part III for the Canadian Wheat Board area, and

(ii) in the case of barley, is distinguishable from all varieties of spring barley that are suitable for malting or pearling and that are registered under Part III for the Canadian Wheat Board Area; or

(c) in the case of seed that is of a variety not registered under Part III for the Canadian Wheat Board Area, is imported into the Canadian Wheat Board Area for plant breeding or plant research purposes, and the importer

(i) is actively engaged in plant breeding or plant research with spring wheat, winter wheat, durum wheat or spring barley,

(ii) agrees in writing that the seed imported and any progeny thereof

(A) will not be sold to any person in Canada

(B) will not be distributed to any person in Canada who is not qualified under this paragraph to import such seed, and

(C) will not be sown or otherwise used for any purpose other than plant breeding or plant research, and

(iii) undertakes in writing, on request, for the purpose of verifying compliance with the agreement referred to in subparagraph (ii), to provide the Minister with information relating to the importation, distribution, use and disposition of the seed and of any progeny thereof. SOR/85–903, s. 2; SOR/88–297, s. 1; SOR/96–252, s. 2."

196 With respect to the elimination of paragraph 42(a), the July 28 Regulatory Impact Analysis Statement states:

"The World Trade Organization trade rules require that imported products are not treated any less favourably than domestically produced products. It has therefore been decided to eliminate the requirement that all wheat seed imported into the CWB Area be of pedigreed status when domestic seed sold in Canada may be of either common or pedigreed status."

With respect to the elimination of paragraph 42(c) of the regulations, the Analysis Statement states:

"These amendments ensure Canada is consistent with its international trade obligations by aligning import with domestic wheat seed requirements."

(Regulations Amending the Seeds Regulations, SOR/2008–228, July 28, 2008. Canada Gazette, Vol. 142, No. 16, August 6, 2008, Regulatory Impact Analysis Statement, description and rationale, wheat import requirements, available online at http://canadagazette.c.ca/partII/2008/20080806/html/sor228-e.html)

197 In its May 24, 2008 Regulatory Impact Analysis Statement, the CFIA proposed option two, the removal of restrictions on importation of wheat seed into western Canada, but ultimately adopted option four, the removal of the restrictions on importation of wheat seed into western Canada, while retaining existing restrictions on import of seed of unregistered varieties for seeding by the importer. (See the July 28, 2008 Regulatory Impact Analysis Statement.)

198 Section 3(1)(b) of the Seeds Act prohibits the sale of seed of unregistered varieties. It states:

"Except as provided by the regulations, no person shall…

(b) sell or advertise for sale in Canada or import into Canada seed of a variety that is not registered in the prescribed manner."

(Seeds Act, R.S., 1985, c. S-8, available online at http://laws.justice.gc.ca/en/ShowTdm/cs/S-8///en).

199 Ibid.

200 Ewins, Adrian, Seed rule changes pose threat, Western Producer, July 17, 2008, p. 1.

201 The CFIA proposal noted in turn that "[T]his would result in an increase in the administration and enforcement of the Regulations by the CFIA. It would also result in increased monitoring and enforcement for the Canadian Grain Commission." (May 24, 2008 Regulatory Impact Analysis Statement, op. cit.)

202 Dawson, Allan, Unregistered wheat still restricted, Alberta Farmer Express, available online at: http://digital.albertafarmerexpress.ca/xta-asp/storyview.asp?pc=AE&viewtype=browse&tpl=showart_body&vpath=/xta-doc/ae/2008/08/25/007/ae-20080825–007-unregisteredwhe-16155.html .

203 Paragraph 42(c)(i).

204 Paragraph 42(c)(ii)(A).

205 Paragraph 42(c)(ii)(C).

206 Paragraph 42(c)(iii).

207 Imports of these unregistered wheat varieties *for seeding by the importer* remain prohibited.

The amendments eliminate paragraph 42 (c) of the regulations and add provisions, which are less stringent, to Section 41 of the regulations. The revised section 41 is reproduced in its entirety as follows:

"41. (1) Subject to subsection (2), seed of any variety is exempt from the operation of paragraph 3(1)(b) of the Act if it is imported into Canada for the purpose of

(a) conditioning;

(b) research;

(c) seeding by the importer; or

(d) sale pursuant to subsection 5(4).

(2) Seed of any variety of spring wheat, winter wheat or durum wheat that is imported into the Canadian Wheat Board Area is exempt from the operation of paragraph 3(1)(b) of the Act only if it is imported for the purpose of

(a) conditioning;

(b) research; or

(c) sale pursuant to subsection 5(4).

SOR/96–252, s. 2; SOR/2008–228, s. 1. "

This provision can be viewed online at: http://laws.justice.gc.ca/en/ShowTdm/cr/C.R.C.-c.1400///en.

208 The Seeds Regulations define "condition" as follows:

"'condition', with respect to seed, means to prepare by cleaning, processing, packing, treating or changing in any other manner the nature of a seed lot…"

(Seeds Regulations, C.R.C., c. 1400, available online at:

http://laws.justice.gc.ca/en/ShowTdm/cr/C.R.C.-c.1400///en)

209 Section 41(1)(d) of the Seeds Regulations provides an exemption from the import prohibition for so-called "closed loop sales" — seed that is imported "for the purpose of sale pursuant to subsection 5(4)" of the Regulations. All of this seed must be pedigreed seed and its ultimate destination of all of the seed is strictly controlled.

Subsection 5(4) states:

(4) Seed of any variety is exempt from the operation of paragraph 3(1)(b) of the Act [--the prohibition against imports of unlicensed varieties--] in so far as it may be sold or advertised for sale without being registered if

(a) the seed is of pedigreed status;

(b) the seed is labelled in accordance with section 35;

(c) the seed is to be sold

(i) for the production of pedigreed seed, or

(ii) where the variety is entered in variety registration trials, for the production of material for evaluation of its suitability for processing;

(d) the seed is sold pursuant to a contract that specifies that in the case of

(i) seed sold for the production of pedigreed seed, all of the progeny will be delivered to a destination specified in the contract, or

(ii) varieties that are entered into variety registration trials, all of the progeny will be delivered to an industrial mill or plant for the sole purpose of evaluating the variety for its suitability for processing; and

(e) all of the progeny of the seed is delivered to the destination specified in the contract referred to in paragraph (d).

210 In other words, the change eliminates the distinctive western Canadian wheat (and barley) research allowance for unregistered variety imports, and replaces it with the broader research allowance that applies for other crops throughout Canada.

211 The change eliminates the tightly-circumscribed exemption for the Canadian Wheat Board area that had allowed imports of unregistered wheat for "plant breeding or plant research". Under the previous system, only individuals who were "actively engaged in plant breeding or plant research with spring wheat, winter wheat, durum wheat or spring barley" could import unregistered varieties into western Canada, and only if they met a series of stringent requirements.

212 The CFIA acknowledges this loophole, but plays it down. The July 28, 2008 Regulatory Impact Analysis Statement of the changes states:

"There may be a slight increase in the importation of seed of unregistered varieties for … production of pedigreed seed (for export or in anticipation of registration of the variety in Canada)."

(Regulations Amending the Seeds Regulations, SOR/2008–228, July 28, 2008. Canada Gazette, Vol. 142, No. 16, August 6, 2008, Regulatory Impact Analysis Statement, Implementation, enforcement and service standards, second to last paragraph, available online at http://canadagazette.c.ca/partII/2008/20080806/html/sor228-e.html).

213 The relevant portion of Section 42, which was eliminated, read as follows:

"42. Seed of spring wheat, winter wheat, durum wheat or spring barley may be imported into the Canadian Wheat Board Area only where

[…]

(c) in the case of seed that is of a variety not registered under Part III for the Canadian Wheat Board Area, is imported into the Canadian Wheat Board Area for plant breeding or plant research purposes, and the importer

(i) is actively engaged in plant breeding or plant research with spring wheat, winter wheat, durum wheat or spring barley,

(ii) agrees in writing that the seed imported and any progeny thereof

(A) will not be sold to any person in Canada

(B) will not be distributed to any person in Canada who is not qualified under this paragraph to import such seed, and

(C) will not be sown or otherwise used for any purpose other than plant breeding or plant research, and

(iii) undertakes in writing, on request, for the purpose of verifying compliance with the agreement referred to in subparagraph (ii), to provide the Minister with information relating to the importation, distribution, use and disposition of the seed and of any progeny thereof. SOR/85–903, s. 2; SOR/88–297, s. 1; SOR/96–252, s. 2."

214 This change was effected through the elimination of paragraph 42(a) of the regulations.

215 "Pedigreed status" is defined in the Seeds Regulations as being seed that is either

- of foundation status,
- of registered status,
- of certified status,
- each of which entail meeting specific standards for varietal purity—or
- is approved as breeder seed or select seed.

The first three of these categories are defined in the Seeds Regulations, available online at: http://laws.justice.gc.ca/en/showdoc/cr/C.R.C.-c.1400/bo-ga:s_2//en#anchorbo-ga:s_2 .

216 As noted in a previous endnote, the Seeds Regulations define "condition" as follows:

"'condition', with respect to seed, means to prepare by cleaning, processing, packing, treating or changing in any other manner the nature of a seed lot…"

(Seeds Regulations, C.R.C., c. 1400, available online at: http://laws.justice.gc.ca/en/ShowTdm/cr/C.R.C.-c.1400///en)

217 The Regulatory Impact Analysis Statement emphasizes the rapidity with which previously unregistered wheat varieties could become available in western Canada:

"While this regulatory amendment does not provide immediate access to foreign varieties of wheat that have not been registered in Canada, foreign and Canadian-bred varieties will be available to producers after variety testing and registration in Canada. After two years of agronomic trials and disease testing, Canadian or foreign-bred ethanol and feed varieties are eligible for registration. Further increasing the timeliness of access to new varieties, only a single year of testing is required for interim (time-limited) registration of varieties. These varieties may then be eligible for permanent registration after further testing. In summary, foreign varieties may be eligible for variety registration in Canada after registration requirements have been met and then available to producers after testing and registration in Canada, possibly as early as spring 2009."

(Regulatory Impact Analysis Statement, SOR/2008–228 July 28, 2008, p. 5, bolding added for emphasis)

218 The CFIA website states:

"There are a number of Canadian varieties currently going through variety registration trials for the feed and ethanol markets. It is anticipated that a number of varieties will be supported for registration at the February 2009 Recommending Committee meeting and a larger number at the Recommending Committee meeting in 2010."

(Canadian Food Inspection Agency, Regulations amending the Seeds Regulations to remove the kernel visual distinguishability (KVD)-related and distinguishability restrictions for seed of wheat and spring barley varieties, respectively, imported into the Canadian Wheat Board Area, Information Bulletin, Questions and answers, available online at: http://www.inspection.gc.ca/english/plaveg/seesem/visqueste.shtml .)

219 Regulatory Impact Analysis Statement, May 24, 2008, p. 5.

220 Regulatory Impact Analysis Statement, May 24, 2008, p. 6. It is not clear whether the CFIA believed the inconsistency to be with "the Minister's announcement" or with international treaty obligations.

221 In May, the CFIA criticized the option it later implemented in August:

"Implementation of this option is not recommended as it would not provide producers with timely access to new varieties."

Regulatory Impact Analysis Statement, May 24, 2008, p. 6.

222 Regulatory Impact Analysis Statement, SOR/2008–228 July 28, 2008, p. 7.

223 Regulatory Impact Analysis Statement, SOR/2008–228 July 28, 2008, p. 5.

224 In backing away from the CFIA outlined the reasons for the opposition for its recommendation. As the Regulatory Impact Analysis Statement notes:

"The major concern raised with the recommended option was that allowing the import of unregistered varieties for seeding by the importer would increase the risk of the delivery of unregistered varieties into the grain handling system, thus impacting the quality of grain shipments. In particular, allowing import of unregistered varieties would inhibit tracking and tracing of seed and, subsequently, the tracking and tracing of the resulting crop entering the grain handling system."

Regulatory Impact Analysis Statement, SOR/2008–228 July 28, 2008, p. 6.

225 On October 28, 2008, the CFIA sponsored a National Workshop on Seed Program Modernization, which included at presentation by the CFIA's Wendy Jahn on "Importation of Unregistered Varieties for Seeding by the Importer" This presentation, which is available from the CFIA, indicates that the government "is committed to holding stakeholder consultations on whether or not to maintain the prohibition on the importation of seed for seeding by the importer of unregistered varieties of wheat into the CWB area." (p. 4).

226 Watson, Grant L., 80 Years of Variety Registration, un-dated paper that was posted on the CFIA website but has since been removed. Upon request, CFIA officials provided a copy to the authors.

227 Regulations Amending the Seeds Regulations (Part III and Schedule III), Regulatory Impact Analysis Statement, Description, Canada Gazette, Vol. 142, No. 26, June 28, 2008, available online at: http://gazetteducanada.gc.ca/partI/2008/20080628/html/regle1-e.html .

228 Phase II of the Modernization of the Variety Registration System: Discussion Document on Crop Specific Registration Requirements in a Two-Tiered Registration System, Section 1.1 What is variety registration?, November 29, 2007, provided to the authors by CFIA officials.

229 Amendments to the Seeds Regulations to Increase the Flexibility of the Variety Registration System, Questions and Answers, p. 1 of 5, CFIA website, http://www.inspection.gc.ca/english/plaveg/variet/varqueste.shtml .

230 Regulations Amending the Seeds Regulations (Part III and Schedule III), Regulatory Impact Analysis Statement, Description, Canada Gazette, Vol. 142, No. 26, June 28, 2008, p. 9 of 22, available online at: http://gazetteducanada.gc.ca/partI/2008/20080628/html/regle1-e.html .

231 These tiers are referred to as "Part I", "Part II" and "Part III" referring to the three parts of the schedule that lists crops subject to variety registration under the regulations. See: Regulations Amending the Seeds

Regulations (Part III and Schedule III), Regulatory Impact Analysis Statement, Description, Canada Gazette, Vol. 142, No. 26, June 28, 2008, pp. 20,21 of 22, available online at: http://gazetteducanada.gc.ca/partI/2008/20080628/html/regle1-e.html .

232 Note that the CFIA misleadingly refers to the first tier as the "status quo" even though it is proposing deregulatory changes to it. For example, the assessment of merit is to be made on the basis of fewer criteria than is currently the case, and in future could be made on the basis of only one criterion. The CFIA states:

"[T]he CFIA would continue to revise its policies to increase the flexibility and effectiveness of the variety registration system. This would include a revision of policies that require assessment of the agronomic, quality, and disease merit criteria to allow for merit to be specifically defined as one type of characteristic (e.g. quality only) if there is rationale and consensus for this change."

Significantly, according to the CFIA, "no regulatory change is required" for the merit criteria for crops within the first tier to be loosened in this way. (See: Flexible Variety Registration System: Proposed Process for Crop Specific Changes, CFIA Draft, p. 3, October 2008, supplied by CFIA officials.)

The amendments would also make recommending committees subject to approval by the Minister. the committees' role in assessing testing would be limited to determining "whether the variety has been tested in accordance with the relevant testing protocols." (See Section 2 of the proposed amendments)

(Regulations Amending the Seeds Regulations (Part III and Schedule III), Regulatory Impact Analysis Statement, Description, Canada Gazette, Vol. 142, No. 26, June 28, 2008, pp. 6, 10, 17, and 18, available online at: http://gazetteducanada.gc.ca/partI/2008/20080628/html/regle1-e.html .)

233 The CFIA has contemplated relaxing aspects of the Seeds Regulations for many years, and has conducted workshops and consultative meetings on the topic since 1998. In early 2000 it proposed what it called a "flexible (tiered) registration system" which would have eliminated pre-registration performance testing and merit assessments for certain crops. The CFIA reports that '[t]here was … a lack of consensus on the proposed changes to the variety registration system, particularly with respect to crop placement in the proposed flexible (tiered) registration system." This failure to reach consensus provided the impetus for subsequent consultation processes.

(Phase II of the Modernization of the Variety Registration System: Discussion Document on Crop Specific Registration Requirements in a Two-Tiered Registration System, Section 1.2, Consultation History, November 29, 2007, provided to the authors by CFIA officials.)

For a critical analysis of the 2006 proposals, see:

An Analysis of the Canadian Food Inspection Agency's 'Proposal to Facilitate the Modernization of the Seed Regulatory Framework', National Farmers Union, December 2, 2006, available online at:

http://thenfu.sasktelwebhosting.com/briefs_policy/briefs/2006/Seed_changes_brief_FINAL.pdf .

234 The CFIA states:

[In addition to the four crops that are placed in Part II or III, "All other crop kinds [subject to registration] would … be listed in Part I … as per the status quo. It is expected that there would be future changes in the placement of crop kinds, effected through regulatory amendments, as the rationale and consensus for change are established through crop specific consultation."

Regulations Amending the Seeds Regulations (Part III and Schedule III), Regulatory Impact Analysis Statement, Description, Canada Gazette, Vol. 142, No. 26, June 28, 2008, p. 2 of 22, available online at: http://gazetteducanada.gc.ca/partI/2008/20080628/html/regle1-e.html .

The CFIA has commenced consultation on assigning crops to tiers. This process will be controversial, and the CFIA emphasizes that while it plans to consider the views of all stakeholder groups, it will not require consensus before making changes. (See: Flexible Variety Registration System: Crop Placement Process, Pres-

entation by Cindy Pearson at National Workshop on Seed Program Modernization, October 28, 2008, p. 5.)

235 Regulations Amending the Seeds Regulations (Part III and Schedule III), Regulatory Impact Analysis Statement, Description, Canada Gazette, Vol. 142, No. 26, June 28, 2008, p. 10 of 22, available online at: http://gazetteducanada.gc.ca/partI/2008/20080628/html/regle1-e.html .

236 The CFIA acknowledges this risk, but plays it down, noting that "[A]s in the current system, producers would have to carefully research varieties prior to making purchasing decisions."

Ibid., p. 11 of 22.

237 Watson was referring specifically to the "general trend to move away from the merit principle" in variety registration.

238 Watson, Grant L., (undated) 80 Years of Variety Registration. This paper was posted at: Http://www.inspection.gc.ca/english/plaveg/variet/vrhiste.shtml but no longer appears there. CFIA officials report that it was withdrawn from the website. The Watson paper was recently cited in:

Berwald, Derek, Carter, Colin A., & Gruere, Guillaume P. (2006) Rejecting New Technology: the Case of Genetically Modified Wheat, American Journal of Agricultural Economics, May 1, 2006., available free online at: http://www.allbusiness.com/north-america/united-states/1173779–1.html .

239 See:

• Update from CFIA, CSTA Annual Meeting, St. John's, Newfoundland, July 5–8, 2008 (available online at http://www.cdnseed.org/convention-summer/S2008/CFIAUpdate.pdf).

• Chancey, Glyn, Welcoming Address, National Workshop on Seed Program Modernization, October 28, 2008

• CFIA seed program Strategic Action Plan—2008, provided by CFIA officials.

240 At the October 28, 2008 Seed Program Modernization Meeting held in Ottawa, the CFIA released a presentation entitled "Reviewing Canada's Seed Certification System". In it, the CFIA indicated that it would form an industry-government working group to "develop options for change" with respect to many aspects of the seed certification system and that these proposals would be the subject of "further consultation" in 2009.

While consultation on some aspects of the program are still relevant, one of the key issues — the future extent of CFIA involvement in delivering the seed certification system — is moot. The issue has apparently already been decided; CFIA's direct involvement in seed certification will end.

Last November, the federal Treasury Board approved the CFIA 2007–2008 Strategic Review proposal for the CFIA to withdraw from the current seed certification program. The CFIA currently delivers it jointly with the Canadian Seed Growers' Association (CSGA). Treasury Board approved "shifting the program delivery of seed certification (including inspection) to an industry-led third party" resulting in the creation of "an industry based single administrative process and unit for seed certification in Canada." The confidential Treasury Board document revealing this and other deregulatory changes was leaked to the public and is posted online at: http://www.theglobeandmail.com/v5/content/pdf/cfiamemo.pdf .

241 This is listed as item 10.5 in the 2008 Strategic Action Plan.

242 See part V of the Seeds Regulations, sections 107–112, available online at:

http://laws.justice.gc.ca/en/showdoc/cr/C.R.C.-c.1400/bo-ga:l_III//en#anchorbo-ga:l_III .

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