

February 28, 2022

Canadian Grain Commission
600-303 Main Street
Winnipeg, Manitoba
R3C 3G8

Via email: discussions@grainscanada.gc.ca

Re. "Subject to" proposal comments

On behalf of the Canadian Canola Growers Association (CCGA), please accept our comments in response to the consultation looking at *Updating grain grading dispute resolution*. We are encouraged by the Canadian Grain Commission's (CGC) willingness to pursue different modernization pathways and its responsiveness to recommendations outlined in the *Canada Grain Act (CGA) Review Consultation*. CCGA's submission to the Review recommended increasing the relevancy of *Subject to Inspectors Grade and Dockage* ("Subject to") and the consultation's proposed changes are positive first steps.

CCGA represents Canada's 43,000 canola farmers. Our members include Ontario Canola Growers Association, Manitoba Canola Growers Association, Sask Canola, Alberta Canola, and the B.C. Grain Producers Association. Canola is Canada's most widely seeded crop generating the largest farm cash receipts of any agricultural commodity and earning Canadian farmers over \$10.2 billion in 2020. Our industry contributes over 200,000 direct jobs and upwards of \$30 billion to Canada's economy every year.

Half of canola is not eligible for "Subject to" and producer rights at delivery

Not addressed in the consultation is the extension of "Subject to" and of a producer's rights to have a representative sample drawn in their presence and be present for the dockage assessment at licensed process elevators. Restricting disputes to primary elevators is the principal deterrent for canola farmers and, while the proposed changes are positive, the process ultimately remains out-of-date for canola farmers. In 2020-2021, 55% of canola production was delivered to process elevators, which by law, don't qualify for dispute resolution or even the same producer rights as deliveries to primary elevators. With an additional 6.8 million tonnes of crush capacity planned in Western Canada, this discrepancy will only increase in the next few years.

While we accept a legislative change is required to extend "Subject to" to process elevators, **we ask that the CGC look at Sections 34, 35 and 36 of the Regulations and consider changes to align producer rights between primary and process elevators.**

Specifically,

- Broaden Section 34 - Sampling at Delivery to extend "*considered by the elevator operator and the person delivering the grain to be representative of the grain*" to process elevators. This would extend canola farmers' rights at delivery to agree on the sample and an outlet for farmers to ensure it is

representative. Additionally, language should be considered to allow farmers to request a portion of the representative sample for their own records.

- Include similar language to Section 36 (2) to allow canola farmers the right to ask to observe the assessment of dockage at process elevators. This would introduce an element of accountability and empower farmers when disputes over dockage occur (i.e., harvest sample or submitted sample are different than the process elevator assessment) or to negotiate the right to a second opinion in their grain contracts.
- Introduce language¹, replicating the *Canada Grain Act* requirement for primary elevators, that allows farmers to verify the weight of their canola at process elevators. Canola farmers are paid based on weight no matter if delivering to a primary or process elevator and should have full transparency regarding the weighing process.

Additional time to access “Subject to” more reflective of delivery practices

Extending the time to access “Subject To” increases the relevancy of CGC’s grain grading dispute resolution process. Allowing seven days from the elevator receipt being issued or an agreement on grade and dockage/cash purchase ticket secured better accounts for today’s delivery practices and allows time for a farmer to receive elevator receipts; review the grade and dockage assessment; compare with their farm samples, especially with multiple deliveries from the same bin; and request a second opinion. Today many farmers rely on family members, staff, or custom delivery and are not physically involved in the delivery of their grain. Furthermore, physical barriers, in the name of security and safety, at many licensees unfortunately persist and prevent farmers from being part of the process. The extension could also eliminate some of the pressure farmers feel around exercising the right at delivery and provide additional time to directly problem solve with the buyer.

The integrity of representative sampling core to the “Subject to” process

As a representative sample is integral to “Subject to”, elevators should be required to maintain a 1 Kg sample or an amount the CGC deems acceptable to assess grade and dockage, *on-site*, to support the additional time extension. Elevators are already holding samples for market access purposes, have processes in place and have the infrastructure to maintain their quality and integrity. This also ensures both parties are involved should a farmer seek a second opinion.

Additionally, the CGC should establish clear guidelines for what constitutes a representative sample for the purpose of “Subject to” to ensure consistency between licensees and generate farmer trust in the process. Questions to consider include: What sampling methods should be used? How are multiple loads sampled? How will farmers or the person delivering grain be involved in the sampling process? And, how will the sample be considered representative?

This said, we appreciate some farmers want flexibility outside the “Subject to” process. Farmers should have the option to request a portion of the representative sample for their records. The sample would provide assurances should a disagreement arise in accessing a second opinion outside the CGC or for larger market access purposes. While ownership of the grain transfers at delivery, contracts and delivery declarations contain provisions for unofficial grading factors, crop protection products, and biotech seed varieties which

¹ *Canada Grains Act*, Article 64 – Verification of Weight

extend farmer-risk past delivery. The ability to retain a sample provides additional assurances if an issue arises.

Prepare for the future by broadening “Subject to” to a range of quality factors

As customer and market requirements evolve and become more precise, the CGC should remain open to offering “Subject to” for non-grain grade quality issues such as seed oxidization experienced with over-wintered canola and/or new quality demands from the emerging protein market (oil vs. protein). Our farmers produce a variety of crops, and we often hear non-canola concerns relating to falling number, vomitoxin, and feed grain qualities.

More consistency and predictability still needed to create trust in the system

While “Subject to” provides an important element of accountability, it is not a replacement to licensees adhering to the *Official Grain Grading Guide* (the Guide) and processes. Farmers regularly reach out to CCGA and their provincial canola associations to express concerns with inconsistency between licensees, probes and sampling at delivery, visibility of the weight, access to the grading room, the wrong sieves being used for dockage, the subjectivity of green seeds and confusion over what rights they have at a primary versus process elevator. Furthermore, if a process licensee doesn't follow the Guide, farmers have none to little recourse.

The CGC should work with licensees to ensure its guidance is followed and the prescribed equipment is in place and maintained to be proactive and prevent grading disputes. Potential solutions could include: a random audit process for representative sampling and grading to ensure grade/processes are followed; a formal process to respond directly to farmer issues; training requirements for grain graders; or a grain grader code of ethics. Strengthening the grain quality system in-country would augment farmers' trust and confidence and help ensure farmers receive the right grade and dockage assessment in the first place. If a farmer resorts to “Subject to” and the CGC finds the primary licensee incorrectly assessed the grade, the licensee only has to pay the farmer what they should have fairly done in the first place. More accountability and transparency is needed; it should not only be farmers fighting for fair compensation.

In conclusion, CCGA supports the changes outlined in the consultation document. Extending the time to ask for a second opinion and clarifying sampling parameters are important steps to increasing the relevancy of “Subject to” for canola farmers. We look forward to addressing the discrepancy in producer rights at delivery between primary and process elevators, and to future legislative reforms extending dispute resolution to process elevators.

Thank-you again for the opportunity to share our views.

Sincerely,

Original signed by

Dave Carey
Vice President, Government and Industry Relations
Canadian Canola Growers Association

CC. Janelle Whitley, Manager, Policy Development, CCGA