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LEGISLATIVE SUMMARY



Bill C-48: An Act to amend the Canada Grain Act and to make consequential amendments to other Acts

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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Legislative Summary of Bill C-48
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-48: AN ACT TO AMEND THE CANADA GRAIN ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-48: An Act to amend the Canada Grain Act and to make consequential amendments to other Acts (short title: Modernization of Canada's Grain Industry Act) was introduced in the House of Commons by the Minister of State (Finance) on behalf of the Minister of Agriculture and Agri-Food and received first reading on 9 December 2014.

The amendments to the *Canada Grain Act*¹ (CGA) are aimed at modernizing the legislation that supports the Canadian grain sector. The sector has undergone fundamental changes over the years, as noted by the Chief Commissioner of the Canadian Grain Commission (CGC) – the federal agency responsible for setting standards of quality and regulating Canada's grain handling system – when appearing before the House of Commons Standing Committee on Agriculture and Agri-Food:

Over the past 20 years we've seen the rise of high throughput, concrete inland elevators, the removal of transportation subsidies, altered transportation patterns and conveyance options, grain company mergers, increasing demands for grain quality and grain safety assurances, [and] evolving end-user needs and preferences.²

According to the CGC, changes to the Act will:

Enhance producer protection

- a. Extend producer access to Canadian Grain Commission binding determination of grade and dockage (this right is known as "Subject to inspector's grade and dockage") on deliveries to licensed process elevators, grain dealers, and container loading facilities. ...
- b. Allow the Canadian Grain Commission to establish and administer a producer compensation fund to compensate producers when a licensee fails to pay for a grain delivery. ...

Enhance grain quality and safety assurance

- a. Create a new class of licence for container loading facilities. ...
- b. Permit the Canadian Grain Commission to monitor, test and enforce grain safety issues in grain elevators in Eastern Canada as required where provincial authorities do not exist. ...

Modernize the *Canada Grain Act*

- a. Clarify that the Canadian Grain Commission acts in the interest of all Canadians, including the entire grain sector and grain producers. ...
- b. Establish a non-binding process for reviewing certain Canadian Grain Commission decisions, such as exemptions, licence suspensions, and refusals to grant permissions. ...

- c. Provide authority for the Minister of Agriculture and Agri-Food to appoint and re-appoint members to the grain standards committees, upon recommendation of the Commission. ...
- d. Make certain offences under the *Canada Grain Act* subject to administrative monetary penalties under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. ...
- e. Permit licensees to refuse varieties of grain that are not registered under the *Seeds Act* for sale or import into Canada.³

1.1 LEGISLATIVE REFORMS

While it has been amended a few times, the CGA itself has not had a major review since 1971. Other significant legislative reforms have sought to address the changes in the grain sector.

The first were made under Bill C-18, An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts, which received Royal Assent on 15 December 2011. Under this Act, the single-desk marketing system of the Canadian Wheat Board for Western Canadian wheat and barley ended on 1 August 2012.

Bill C-45, one of the bills aimed at implementing the March 2012 Budget, contained amendments to the CGA; it received Royal Assent on 14 December 2012.⁴ The intent of the measures related to the CGA was to streamline the operations and services of the CGC and reduce costs to the grain sector.

Bill C-48 builds on these reforms, and it aims to respond to input from industry stakeholders. During discussions on Bill C-45, on 1 November 2012, the CGC launched a 30-day consultation process with various stakeholders in the grain industry on the proposed new user fees, service standards and performance measures.⁵ During these consultations, many said that a revised CGA was needed for the Canadian grain sector to remain modern, competitive and profitable.⁶ Following passage of Bill C-45, industry stakeholders emphasized the need for further changes to the CGA to continue modernizing the Canadian grain industry.⁷

2 DESCRIPTION AND ANALYSIS

Bill C-48 contains 92 clauses, most of which deal with amendments to the CGA. In this Legislative Summary, the amendments are for the most part presented based on the order of the sections amended in the CGA.

2.1 DEFINITIONS AND INTERPRETATION (CLAUSES 2 AND 3 AND 66 TO 70)

Clause 3 amends or adds a number of definitions in section 2 of the CGA.

One of the significantly amended definitions is that for “grain dealer,” where reference to “grain delivered in the Western Division” (defined in the CGA as all of Canada lying west of the eastern boundary of Thunder Bay, Ontario) has been added:

“grain dealer” means a person who, for reward, on his or her own behalf or on behalf of another person, deals in or handles western grain or grain delivered in the Western Division.

A new term – “violation” – is added to several provisions of the CGA. The term is defined as follows:

“violation” means any contravention of this Act or the regulations or any order that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

The addition of this term is significant, because it allows for certain contraventions of the Act to be dealt with by imposing an administrative monetary penalty.

Clause 3(7) also defines the term “eastern elevator,” which is added to some provisions of the CGA. It means any elevator in the Eastern Division – that part of Canada east of Thunder Bay, Ontario – other than those situated along Lake Superior, Lake Huron, Lake St. Clair, Lake Erie, Lake Ontario or the canals or other navigable waters connecting those lakes or the St. Lawrence River or any tidal waters, or if they are used for the purpose of handling and storing only western grain.

The following definition of “container-loading elevator” has been added to the CGA, reflecting changes in the grain sector: “an elevator whose principal use is the receiving of grain for the purpose of forwarding it by container.”

Clause 3(1) repeals the definitions of “elevator receipt” and “grain receipt,” and section 3(8) replaces them with a definition for “receipt.” This change affects several clauses of the bill (each occurrence is not described in this Legislative Summary).

2.2 MINISTER AND HER MAJESTY (CLAUSES 4 AND 64)

New sections 2.1 and 2.2 are added to the CGA.

Section 2.1 states that the Governor in Council may designate any federal minister to be the minister referred to in the Act.

Section 2.2 stipulates that the Act is binding on Her Majesty in right of Canada or on a province. In a related measure, clause 64 repeals section 119, which states that the Act is binding on Her Majesty in right of Canada or a province.

2.3 AMENDMENTS TO PART I OF THE CGA: CANADIAN GRAIN COMMISSION (CLAUSES 5 TO 9)

Clause 5 amends section 10, regarding the appointment of officers and employees of the CGC.

Clause 6(1) amends section 12(c), regarding the authority of the CGC to make by-laws specifying the duties of CGC officers and employees. Clause 6(2) adds section 12(h), giving the CGC the authority to make by-laws fixing the allowance to be paid to members of review panels that are established under new section 113 of the CGA (see section 2.10 of this Legislative Summary for discussion of the new provision).

Clause 7 expands the mission of the CGC articulated in section 13, clarifying that the CGC shall act in the interests of all Canadians, as well as in the interests of grain producers.

Clause 8 amends section 14(1) of the CGA to specify that the CGC may undertake, sponsor and promote research in order to monitor and assess grain quality and safety. To do so, it can now require (rather than request) that samples be provided. The clause adds that operators of eastern elevators are subject to these requirements.

Clause 9 eliminates current section 15 of the CGA, which requires the CGC to present a report on its activities before Parliament, replacing it with a section that states, “The Commission may enter into contracts, agreements or other arrangements in the name of Her Majesty in right of Canada.”

2.4 AMENDMENTS TO PART II OF THE CGA: GRAIN GRADES, GRADING AND INSPECTION (CLAUSES 10 TO 20)

Clauses 10 and 11 amend sections 20 and 21(2) of the CGA to specify that the recommendation of the CGC is needed for the minister designated by the Governor in Council to be able to appoint, suspend, remove or reinstate members of the grain standards committees and establish their terms of office.

Clause 12 amends section 22(a) of the CGA to specify that a commissioner does not have the right to be paid for services on a standards committee.

Clauses 13 to 20 amend sections 23, 24, 26, 27, 31, 32 and 41, which relate to the establishment of grain grades. The terms “primary standard samples” and “export standard samples” are replaced by the term “standard samples” in sections 23, 26 and 27, and clause 20 authorizes the CGC, for the purpose of research related to grain quality and safety, to require grain samples from a person who applies to register a variety of grain under the *Seeds Act*.

2.5 AMENDMENTS TO PART III OF THE CGA: LICENCES AND LICENSEES (CLAUSES 21 TO 29 AND 83, 84, 87 AND 88)

Clauses 21 and 22 create a new class of licence for container-loading elevators, which must meet the same requirements as primary and process elevators, and grain dealers.

Clause 23 adds new sections 45.1(1) and 45.1(2) to the CGA. They state that a licensee – defined in the CGA as “a person who holds a licence to operate an elevator or to carry on business as a grain dealer” – must obtain and maintain security to cover his or her potential financial obligations to producers who are holders of receipts or cash purchase tickets and that the licensee must give the

Commission proof of that security, if asked. Licensees are given 90 days to obtain or give this security. The 90-day period starts when the requirement comes into force (clause 87). Security given before clause 23 comes into force may be retained and used while it is valid or for up to 180 days, whichever is shorter (French version⁸ of clause 88).⁹

Under clause 24, which amends sections 46(1) to 46(3) of the CGA, the licensee must also provide, on request of the CGC, proof of security, and the CGC may refuse to issue an elevator licence if the applicant has not obtained or given security. The CGC may also refuse to issue a licence to anyone convicted of an offence or found to have committed a violation within the 12 months before the application.

The English version of clause 25(2) substitutes the more specific “cash purchase ticket” for “ticket” in section 49(3)(a) of the Act. The clause also replaces the phrase “after the day on which” to “beginning on the day on which” in section 49(3).

Clause 25(4) amends section 49(1), which states that the CGC may, by order, require additional security if it considers that the security is not sufficient. It adds that the security in question may be “obtained,” in addition to the original stipulation that it be “given.”

Clause 26 deals with the liability of Her Majesty in right of Canada. It amends section 49.1 of the CGA by replacing “Commission” with “Her Majesty in right of Canada.” The bill provides that Her Majesty in right of Canada is not liable:

- to a producer who does business with an operator who is not a licensee; or
- to a producer who has not obtained a receipt or cash purchase ticket from the licensee.

Her Majesty in right of Canada is also not liable if a licensee fails or refuses to meet any payment or delivery obligation to a holder of a receipt or a cash purchase ticket.

Clause 27 repeals sections 51(3) to 51(5) of the CGA regarding temporary maximum charges and the period of validity of an order, as these sections ceased to be in force on 31 July 1996.

Clauses 28 and 29 replace some terms in sections 52(1) and 53(1). For example, in the English version, the term “a railway car or other conveyance” is replaced with the term “a conveyance.”

2.6 PRODUCER COMPENSATION FUND (CLAUSE 30)

Clause 30 adds new Part III.1 containing new sections 54.11 to 54.16 to the CGA. These sections establish in the accounts of Canada an account to be known as the “Producer Compensation Fund,” and they provide a framework for its operation. This fund protects producers by compensating them should a licensee fail to make payment.

2.7 AMENDMENTS TO PART IV OF THE CGA: ELEVATORS AND GRAIN DEALERS AND THE HANDLING OF GRAIN BY LICENSEES AND OTHER PERSONS (CLAUSES 31 TO 41)

Clause 31 repeals sections 55(2) and 55(3) of the CGA, amends section 55(1) to reflect this and renumbers this section as section 55. It also modernizes the language in the English version by replacing the expressions “heretofore or hereafter constructed” and “are and each of them is” with the following: “All *existing and future* elevators in Canada are *collectively and individually* works for the general advantage of Canada.”

Clause 32 adds to section 58 the possibility for an operator of a licensed elevator to refuse grain varieties that are not registered under the *Seeds Act* for sale in or importation into Canada.

Clauses 33 to 38 deal with the procedure to be followed upon receipt of grain and limitations on receipt and discharge. Clause 33, which amends section 61 of the CGA, specifies that a person delivering grain on a producer’s behalf may agree or disagree on the grain’s grade or dockage. It also states that the holder of the receipt is entitled:

- to delivery of grain of the same kind, grade and quantity as the grain referred to in the receipt; or
- to identical grain in the case of a receipt issued for specifically binned grain.

Clauses 39 to 41 add provisions allowing a producer who is dissatisfied with the grade or dockage assigned to the grain that the producer delivers to have a sample examined by an inspector. A producer or operator who is dissatisfied with the inspector’s report is entitled to ask the chief grain inspector for Canada to re-examine the sample. This right is extended to deliveries to licensed process elevators, licensed container-loading elevators and grain dealers’ premises. The chief grain inspector’s determination is final and conclusive and is not subject to appeal or review by any court.

2.8 AMENDMENTS TO PART V OF THE CGA: CARRIAGE OF GRAIN (CLAUSES 42 TO 44)

Clauses 42 to 44, which amend sections 84, 85 and 86 of the CGA, clarify provisions addressing the transport of grain into Canada, the transport of grain out of Canada and inspection of any conveyance, as well as a provision prohibiting the discharge of grain into an unfit conveyance.

2.9 AMENDMENTS TO PART VI OF THE CGA: ENFORCEMENT AND ENFORCEMENT PROCEDURES (CLAUSES 45 TO 59)

Section 88(1) of the CGA provides that a CGC inspector may enter any elevator and any premises of the licensee of an elevator or of a licensed grain dealer to examine the premises and any equipment, grain, grain products, screenings, records or documents.

Clause 45 amends section 88(1) to specify that such actions must be taken for a purpose related to verifying compliance with the CGA. This provision allows a CGC inspector to enter any elevator that the inspector has reasonable grounds to believe is being operated without a licence or any business where the inspector has reasonable grounds to believe that the person is operating as a grain dealer without a licence. Clause 45 also adds section 88(1.01), which stipulates that, when entering the elevator or premises for the purposes described above, the inspector may take samples of the grain, grain products or screenings. The inspector may examine any records or documents and make copies of them or take extracts from them.

Clause 46 adds new sections 88.1(1) and 88.1(2) to the CGA, authorizing the CGC to request that a grain dealer or an operator of an elevator or of an eastern elevator provide a sample of grain, grain products or screenings and stipulating that the grain dealer or operator must provide the sample.

Clause 47 repeals section 89(2) of the CGA concerning false statements.

Section 90(1) of the CGA allows an inspector to seize any records or documents if he or she has reasonable grounds to believe that they contain or are evidence that an offence was committed. It also compels the inspector to report all findings to the CGC. Clause 48(1) is one of the provisions in the bill where reference to a violation is added; it stipulates that the power of seizure and reporting also applies if a violation is committed. Clause 48(2) adds grounds for seizure for inaccurate weighing. Under clause 48(3), the maximum detention time for records or documents is increased from 30 days to 180 days from the seizure. Clause 48(4) specifies that the maximum detention time also applies to proceedings for a violation.

Clauses 49 to 56 make changes to provisions concerning restriction of operations and the suspension of a licence, making of false statements, commission of an offence, and punishment.

Clause 56 amends the punishments for contravention of the CGA set out in section 107.

- On summary conviction, an individual is liable to a maximum fine of \$50,000 or imprisonment for up to one year, or both, compared with the existing punishments of a maximum fine of \$9,000 or imprisonment for up to two years, or both.
- On conviction on indictment, an individual is liable to a maximum fine of \$200,000 or imprisonment for up to two years, or both, compared with the existing punishments of a maximum fine of \$18,000 or imprisonment for up to four years, or both.
- On summary conviction, a corporation is liable to a maximum fine of \$250,000, compared with the existing punishment of a maximum fine of \$30,000.
- On conviction on indictment, a corporation is liable to a maximum fine of \$500,000, compared with the existing punishment of a maximum fine of \$60,000.

Clause 57 amends section 108 of the Act concerning offences by a manager, employee, agent or mandatary, adding mention of “violation.”

Under current section 109 of the CGA, a document that has apparently been signed by a commissioner or any officer or employee of the Commission in the course of his or her duties is evidence of the facts stated in the document without the need to prove the authenticity of the signature or the official character of the person who signed the document. Clause 58(1) of the bill amends section 109 to add that these provisions apply in a proceeding for a violation, as well.

Clause 58(2) adds section 109.1 to the Act stipulating that, when an offender has been found guilty of an offence, the court may make an order:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to comply with any other conditions that the court considers appropriate.

Clause 59 amends section 110(1) of the CGA, which sets out the time for commencing proceedings in respect of an offence under the Act. The time is extended by one year, from two years to three after the occurrence of the event that is the subject of the case.

2.10 AMENDMENTS TO PART VII OF THE CGA: GENERAL (CLAUSES 60 TO 65)

Clause 61 adds to the CGA section 113, which establishes a non-binding review process for certain CGC decisions. Any person who is dissatisfied with a decision of the CGC concerning, for example, exemptions, suspension of a licence or refusal of a licence, may ask for a review. The CGC must attempt to resolve the issue within a prescribed period of time. If the issue is not resolved, a review panel is established to review the decision. The review panel is composed of three members, including one representative chosen by the person who requested the review, one representative chosen by the CGC, and one representative chosen by the two parties. After considering the review panel's recommendations, the CGC makes its decision.

Clause 62(1) amends section 116(1) of the CGA, giving the CGC, with the approval of the Governor in Council, the power to make regulations allowing the CGC to require that a grain dealer, an operator of an elevator or an operator of an eastern elevator provide it with grain samples. New section 116(1)(p.1) gives the CGC the power to make regulations regarding the making of declarations by licensees or by persons who sell or deliver grain to a licensee.

Clause 63 amends section 117 of the CGA to clarify exemptions from licensing requirements for part of an elevator or grain handling operation if the elevator or grain handling operation is considered not essential for maintaining the quality, safekeeping and orderly and efficient handling of grain in Canada.

Clause 65 repeals sections 120.1 and 121. Section 120.1 requires the Minister to commission an independent review of the CGC and the operation of the CGA within a year of the original date of its coming into force.

2.11 CONSEQUENTIAL AND TRANSITIONAL AMENDMENTS (CLAUSES 71 TO 82 AND 85 AND 86)

As mentioned in section 2.1 of this Legislative Summary, the addition of the term “violation” to the CGA allows for certain contraventions of the Act to be dealt with by imposing an administrative monetary penalty. In clauses 72 to 74, the bill makes consequential amendments to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.¹⁰

Also in consequence of the new definition of “violation,” Bill C-48, in clauses 75 to 80, repeals unproclaimed provisions of an Act adopted in 1998 that would have linked the CGA to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.¹¹ for enforcement purposes.

The repeal of the unproclaimed provisions of the 1998 Act necessitates the repeal, in clause 82, of section 109 of the *Safe Food for Canadians Act*.¹² This section would have coordinated the coming into force of a section of the *Safe Food for Canadians Act* with a section of the 1998 Act that is being repealed.

Similarly, clause 85 repeals section 14 of the *Fair Rail for Grain Farmers Act*.¹³ This section would have coordinated the coming into force of a provision of the *Fair Rail for Grain Farmers Act* with section 21 of the 1998 Act, which is repealed by Bill C-48.

As discussed in section 2.1 of this Legislative Summary, Bill C-48 replaces the term “elevator receipt” with “receipt.” Under clause 86, existing elevator receipts and grain receipts continue to have effect after the definition of “receipt” comes into force; they are known simply as receipts. A consequential amendment is made to the *Bank Act*.¹⁴ (clause 71).

2.12 COORDINATING AMENDMENTS (CLAUSES 89 TO 91)

Both Bill C-48 and Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food,¹⁵ seek to replace the definition of “Minister” in section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. Bill C-48 contains an amendment to coordinate the coming into force of the pertinent sections – section 73 of Bill C-48 and section 113 of Bill C-18. Clause 89 of Bill C-48 ensures that the definition in Bill C-48 prevails, if both new definitions come into force.

In 2011, Parliament enacted the *Marketing Freedom for Grain Farmers Act*,¹⁶ which included an amendment – that has not come into force – to section 55 of the CGA. Since Bill C-48 also amends section 55 of the CGA, a coordinating amendment ensures that neither amendment to section 55 negates the other if both amendments come into force (clause 90).

Clause 91 of Bill C-48 coordinates the coming into force of provisions in Bill C-48 and in the *Safe Food for Canadians Act*. The provisions in each Act amend the long title of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and the definition of “agri-food Act” in section 2 of that Act. The coordinating amendment ensures that neither amendment negates the other.

2.13 COMING INTO FORCE (CLAUSE 92)

Most of Bill C-48's provisions come into force on a day or days to be fixed by order of the Governor in Council.

Provisions that come into force on Royal Assent are:

- the short title of the Act;
- the new definition of “Minister”;
- a new power for the Commission to enter into arrangements in the name of the federal government;
- certain non-substantial amendments;
- consequential amendments that repeal provisions of other Acts that are not in force; and
- transitional and coordinating amendments.

Clause 92(4) provides flexibility for two distinct changes to section 90(2) of the CGA to come into force at different times, if desired, while ensuring that one does not repeal the other:

- Clause 48(3) extends the length of time stipulated in section 90(2) – from 30 days to 180 days – for which a seized document or record may be detained.
- Clause 48(4) makes an amendment that is one of a number of related amendments linking the CGA to the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for enforcement purposes. This latter amendment incorporates the earlier amendment extending the detention time for a seized document or record.

Clause 92(4) ensures that the amendment that incorporates both changes (clause 48(4)) – along with all other related amendments – can come into force only after the coming into force of the amendment that makes one change alone (clause 48(3)).

Similarly, clause 92(3) staggers the coming into force of two distinct changes to sections 45 and 49 of the CGA, relating to the addition of new terms “receipt” and “container-loading elevator” and to security requirements, to provide flexibility for them to come into force at different times without the second change repealing the first change.

NOTES

1. [*Canada Grain Act*](#), R.S.C., 1985, c. G-10.
2. House of Commons, Standing Committee on Agriculture and Agri-Food, [Evidence](#), 1st Session, 41st Parliament, 6 November 2012, 1850 (Elwin Hermanson, Chief Commissioner, Canadian Grain Commission).

3. Canadian Grain Commission, [*Key changes proposed for the Canada Grain Act*](#).
4. [*A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*](#), S.C. 2012, c. 31 [short title: *Jobs and Growth Act, 2012*].
5. Canadian Grain Commission, [*2013–14 Report on Plans and Priorities*](#).
6. House of Commons (November 2012).
7. House of Commons, Standing Committee on Agriculture and Agri-Food, [*Evidence*](#), 1st Session, 41st Parliament, 6 December 2012, 0850 (Kevin Hursh, Executive Director, Inland Terminal Association of Canada).
8. The French version of clause 88 states that the security may be retained for no longer than 180 days, which appears to be the intended language of the provision. In the English version, there is an apparently unintended double negative (“in no case for no more than 180 days”).
9. As consequential amendments, Bill C-48 repeals sections 361 to 364 of the *Jobs and Growth Act, 2012*, which were never brought into force (clause 83). These sections would have amended sections 45, 46 and 49 and added section 45.1 to the *Canada Grain Act*. Bill C-48 also repeals related translational provisions of the *Jobs and Growth Act, 2012* (clause 84).
10. [*Agriculture and Agri-Food Administrative Monetary Penalties Act*](#), S.C. 1995, c. 40.
11. [*An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act*](#), S.C. 1998, c. 22.
12. [*Safe Food for Canadians Act*](#), S.C. 2012, c. 24.
13. [*Fair Rail for Grain Farmers Act*](#), S.C. 2014, c. 8.
14. [*Bank Act*](#), S.C. 1991, c. 46.
15. [*Bill C-18: An Act to amend certain Acts relating to agriculture and agri-food*](#), 2nd Session, 41st Parliament.
16. [*Marketing Freedom for Grain Farmers Act*](#), S.C. 2011, c. 25.