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Chair

Mr. Bev Shipley

Standing Committee on Agriculture and Agri-Food

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• (1830)

[English]

The Chair (Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC)): I'd like to call the committee to order, please. We're here pursuant to order of reference of Friday, March 28, 2014, Bill C-30, an act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures.

Tonight we have three different panels, from 6:30 to 7:30, 7:30 to 8:30, and 8:30 to 9:30. We're going to try to keep our times fairly tight so that we can get as much information out as we possibly can during our time scheduled.

Tonight on the first panel, we have Greg Cherewyk from Pulse Canada. Thank you very much for joining us.

By video conference we have from the Canadian Canola Growers Association, Brett Halstead and Rick White.

Also by video conference, from Calgary, Alberta, we welcome Matt Sawyer, the chair of the Alberta Barley Commission.

We will enter into opening remarks. You have a maximum of 10 minutes each, and then we'll move into rounds of questions by our committees.

Greg, I'll give you the opportunity to start with your opening statements.

Mr. Greg Cherewyk (Chief Operating Officer, Pulse Canada): Good evening, and thank you, Mr. Chair, and members of the committee, for the opportunity to be here tonight to discuss Bill C-30 and its implications for the ag industry. We don't have a lot of time, so I'm going to focus on the areas that are priorities for our members.

Pulse Canada represents the interests of over 30,000 farmers from Alberta through to Ontario, and over 130 processors and exporters of pulses and special crops that are members of the Canadian Special Crops Association.

In the quarter that ended yesterday, March 31, our members who are participants in our performance measurement program received 49% of the hopper cars they ordered and 43% of the boxcars they ordered. Week to week, the aggregate order fulfillment range was between 20% and 60%. This represents a further deterioration of service relative to the first half of the shipping season. What's even more staggering is that during the first 30 weeks of the shipping season, 50% of the shippers in our program experienced weeks when they received no hopper cars at all.

With the introduction of Bill C-30, the government sent a message to Canadian agribusinesses and their customers around the world that this type of performance simply isn't good enough. It's now clear that if service providers aren't prepared to meet the needs of the industry, there will be intervention.

With respect to some of the important and high-level components of the bill, I want to start by saying that we appreciate the commitment to advance the review of the Canada Transportation Act. With that we stress that, while we support the launching of the process more quickly, we still expect a comprehensive review that includes a thorough assessment of facts, broad consultation, and a commitment to act on the facts.

We also appreciate the strong statement made with respect to the importance of enhanced public performance reporting, and look forward to the expanded role of the grain monitor.

While I'm on the theme of having access to data on system performance and the importance of evidence-based action, I'd like to address an issue that is a top priority for our members right now. In an effort to prompt greater responsiveness from the railways to the needs of the grain industry, the government issued an order in council establishing targets of 5,500 cars per railway per week, and the requirement to move 500,000 tonnes of agriproduct per week. Bill C-30 will give the government the authority to continue to issue these orders through to August, and again into the fall peak shipping season.

Our members are being told by their railway partners that the order in council and subsequent measures will have a detrimental effect on their service, particularly through the eastern corridor to Montreal through to U.S. destinations and into Mexico.

With no additional rail freight capacity put into the system over this shipping season, and an OIC that establishes weekly car and tonnage targets, our members are being told that corridors that allow for tight cycle times and the greatest turn on assets will be prioritized.

Members are being told that they cannot service their customers in the U.S., Mexico, or through the eastern corridor and the port of Montreal.

While railways tell us this is the inevitable outcome of an order that has imposed ill-advised and unreasonable targets on the carriers, I'd like to direct your attention to some key facts that warrant your consideration.

On a Q3 earnings call in 2012, during a period of time when the government was considering the introduction of Bill C-52, CN reported:

On the asset side we're moving cars 8% faster than last year. [...] In fact in September we set a record for car velocity reaching an average of 217 miles per day. These velocity gains are being achieved while handling record volumes. This quarter was our busiest of any third quarter in CN's history averaging over C \$1.050 billion GTMs per day, up 8% from last year. So overall very solid performance on the operational side of the equation. [...] rest assured we've not lost any of our passion for...efficiency but at the same time we're making a meaningful difference for our customers and our supply chain partners pushing forward on our Service Excellence agenda.

In the third quarter we met 96% of unconstrained orders placed by our customers and provided the cars on the day requested 89% of the time.

Within this report CN also specifically highlighted their enhanced service to the grain industry, proudly stating:

The trust and dependability we've developed to establish in this robust pipeline has allowed CN to sustain a record of spotting...in excess of 5,000 cars per week for the last six weeks, which is a record for CN.

•(1835)

While the railways would have their customers in other sectors as well as customers within agriculture believe that the OIC that establishes targets of just over 5,000 cars per week will have a negative and unanticipated consequence on their service, I would point out that you have evidence that they are capable of hitting these targets while achieving efficiency objectives and delivering a reasonable level of service to customers across all sectors and throughout the agriculture community.

That being said, in order to ensure that the OIC achieves its objectives and meets the needs of the grain industry, we know that it must go beyond establishing a broad target. It must also establish clear expectations for movement of all commodities through all corridors to all destinations, to ensure that the implementation of the order results in fair and equitable treatment to all shippers, be they small, medium, or large.

We recommend that a discussion be held immediately with Quorum, the official monitor of the grain handling and transportation system, so that additional guidance and direction related to the order in council and follow-up measures can be structured in a meaningful way to ensure that performance can be measured and monitored over the coming days, weeks, and months.

This leads me to my final point. As we head into an expedited consultation on regulations related to service level agreement provisions, it is absolutely imperative that the regulations be established with clear guidance in the legislation. Building on the language found in section 5 of the Canada Transportation Act, under our national transportation policy, we must state clearly that the system is in place to meet the needs of its users. This simple but extremely important statement is widely regarded by the broadest range of stakeholders in the shipping community as key to ensuring that service levels are established in a manner that supports the competitiveness of Canadian companies and the overall growth of the Canadian economy.

With that direction, we begin to break away from capacity and performance levels that place the efficiency of the rail network ahead of the needs of its customers. With that direction, we can begin to ensure that economic growth is not governed or constrained by the

rail network. With that direction, we can get back to focusing on the top priority of every one of our members: to be and to be seen to be the most consistent and reliable supplier of the products that we produce and market to the world.

Thank you.

•(1840)

The Chair: Thank you very much, Greg.

It was my error; it is eight minutes each. You were under that, and I appreciate it very much.

We'll now move to the Canadian Canola Growers Association. Brett Halstead is president, and Rick White is chief executive officer.

If you would, just identify yourselves, so that those of us who don't know you personally can, when you're speaking, know who is doing the talking, please.

Mr. Brett Halstead (President, Canadian Canola Growers Association): Thank you, Mr. Chairman.

I'm Brett Halstead. Good evening to everybody there.

Members of the committee, thank you for inviting us to speak with you today about Bill C-30.

The Canadian Canola Growers Association is a national association that represents the voice of Canada's 43,000 canola farmers. With more than 90% of Canada's canola ultimately destined for export markets, canola farmers critically rely on the service of Canada's railways to help get our products to customers and keep those products competitive in world markets.

The competitiveness and reliability of our industry, which currently contributes \$19 billion to the Canadian economy, is highly dependent on the railways' providing predictable, timely, and efficient service. As we look forward 10 years, we see further rising demand for our products. In the future, supply chains and rail logistics will be even more important as our industry strives to meet new goals of 26 million tonnes of canola production per year.

This crop year, canola farmers harvested a record 18 million tonnes of canola. This, coupled with relatively good canola prices, meant that canola farmers were feeling optimistic about their prospects. However, producers were not fully able to realize the economic benefit of this bumper crop because of a breakdown of the transportation system, specifically of the movement of product by rail from country elevators to terminals.

Not only have we lost market opportunities, but in many cases, farmers who had well-established grain marketing plans now face severe cash flow challenges as their canola continues to sit in their grain bins because of lack of delivery opportunities.

CCGA appreciates the government's ongoing commitment to resolve both short- and long-term service problems with Canada's rail transportation system, and particularly its responding to this crisis in the grain and oilseed sector.

The government has announced several measures to improve grain logistics, including better monitoring. These measures are all steps towards making the logistical system commercially responsible. We would like to underline that through this process, we have been striving to ensure that the framework is fundamentally restructured to benefit all shippers, regardless of commodity or geography.

With Bill C-30, we have a tremendous opportunity before us to rebalance the commercial relationship that historically has been heavily, and I repeat heavily, tilted in favour of one party, the railways, which form only one component of the value chain.

CCGA fully supports solutions that modernize the relationship between shipper and railway under a framework of balanced accountability.

Rick.

Mr. Rick White (Chief Executive Officer, Canadian Canola Growers Association): Thank you.

My name is Rick White.

The imbalance in the commercial relationship between the railways and the other stakeholders in the grain supply chain has been fully exposed this crop year negatively affecting producers and to the ultimate detriment of our national economy and our reputation as a reliable supplier of food products.

We agree that the focus on market-driven solutions and longer term statutory frameworks are the preferred solution over temporary market intervention by government. Simply stated, a framework of balanced accountability to drive commercial behaviour in the supply chain will come from two primary sources. The first one is service obligations and the second is contractual relationships.

On the first point, a proper definition of adequate and suitable service in the common carrier obligations contained in the Canada Transportation Act is required. Railway service obligations must meet the transportation needs of the shipper.

Section 113 currently states that the railway will furnish "adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage...".

Defining adequate and suitable service as that which meets the shipper's needs inherently addresses the capacity issue in a way that is not specified by government edict, and would clarify that the rail service provider is statutorily compelled to do what they need to do in order to carry the traffic presented to them.

This needs to be added to Bill C-30. The current definition is too vague and it requires tightening to leave little room for misinterpretation or legal wrangling.

Now with the current proposed amendments to the Canada Transportation Act, the increased forecasting, supply chain coordination, and reporting are all very positive elements. Capacity planning needs to begin now for the 2014-15 crop year. Input from commodity groups is critical to receive predictive information regarding both near term and longer term production levels in marketing. If required, future shipping requirements made of the railways need to be corridor specific to ensure that product is moving to where it needs to go, as opposed to what is the most expedient to fulfill statutory or regulatory volume obligations.

The proposed extended interswitching limit is a positive action that has the potential to inject increased commercial competition across the west for both grain and other shippers. Expanding system capacity is critical. We need to assure capacity is expanded if we are to, first, meet the needs of all supply chain participants across all commodities, and second, to meet future obligations and capture Canada's export growth market opportunities.

On our second point, there must be explicit provision for the element of reciprocal penalties in service level agreements. CCGA and other shippers have been stating this since the rail freight service review process in 2009. The current contractual framework is extremely weak and practically ineffective. Service level agreements that include the mandatory element of reciprocal penalties for non-performance when service obligations are breached will increase the accountability between parties in the supply chain and hold them financially responsible to each other. Ideally, this will also allow for penalties to flow through to producers, who currently contract their grain with grain companies and receive no consideration when there is a service failure between the grain companies and railways.

The shipping community continues to support that the six amendments presented to government in 2010 by the Coalition of Rail Shippers remain central to effecting meaningful change in the service level agreement mechanism. Those amendments need to be incorporated in this act. The experience this year has clearly demonstrated that the railways operate in a privileged position where statutory common carrier obligations can be skirted as they please, punishing the Canadian agricultural producers, shippers, and ultimately the national economy.

Several implications of this for the grain and oilseed sector are going to be: unprecedented carry-out stocks that will impact the markets for several years to come; a sustained wide basis as grain companies signal producers to hold product; and our greatest fear, a shrinking or loss of international markets and relationships due to the perceived vulnerability and ineffectiveness of the Canadian supply chain.

It is time to re-balance the commercial relationships within the supply chain and increase accountability through meaningful and effective contracts on service and performance. Bill C-30 presents us an opportunity to do just that.

We are committed to working with the government to make sure we capture this opportunity for the benefit of our growers and supply chain participants in all commodities.

We appreciate being here to address the committee this evening and look forward to taking your questions. Thank you.

● (1845)

The Chair: Thank you very much for your presentation.

We'll move now to Calgary, and to Matt Sawyer, the chair of Alberta Barley Commission.

Mr. Matt Sawyer (Chair, Alberta Barley Commission): Good evening. On behalf of the Alberta Barley Commission and the Grain Growers of Canada, I'd like to thank you for inviting me here today to discuss Bill C-30, An Act to amend the Canada Grain Act and the Canada Transportation Act and to provide for other measures, the short title of which is the fair rail for grain farmers act.

I'm Matt Sawyer, chairman of the Alberta Barley Commission. I'm here on behalf of Alberta Barley's 1,000-plus barley farmers, as well as the 45,000 farmers represented under the banner of the Grain Growers of Canada, of which I'm also the vice-president.

The reason I am in Calgary today and not with you in Ottawa is I cancelled all of my appointments this week as I had the hopes of hauling grain. Last night at five o'clock I received the call that the train once again didn't show up, so I've been pushed back another week on a February contract for 20,000 bushels of canola and 60,000 bushels of wheat. So, once again these February-March contracts are being pushed back, and I'm pushed back once again.

But I certainly am honoured and thankful to be here today to speak with you, but I really wish that I were hauling some grain.

I certainly can't emphasize enough that this crisis is real with major consequences for my farm and for farms across the country. I know that I am not alone.

At Alberta Barley, our mandate is to grow our barley industry and its profitability. Profitability is key to doing business, and if you can't make a profit, there's no point in doing it.

What's troubling to me is that farmers are up against a transportation system in Canada that prevents competition and holds us back.

It's frustrating to me that our transportation system has left farmers to bear all of the costs of its failings. We are nearing \$3 billion in lost revenue this year due to the basis and other items that will only grow

as long as we go without a long-term solution to this pressing problem.

With the transportation system the way it is, my life will continue to be on hold. That, I guess, is what being a farmer in Canada was like in the past: your life is on hold in the hopes that you possibly get the call to deliver grain. And when you get the call, you just go. You drop everything. You don't argue; you just go because you'll miss your delivery opportunity.

Basically, to make an analogy, receiving a call this year to haul your grain is kind of like waiting for an MRI appointment that you've had booked for the last two years. If you miss that MRI appointment, you're going to miss your opportunity. That's basically what it is. This is what it's like for farmers in western Canada; when you get the call to deliver grain, you go.

This past year, due to the failures of our transportation system, grain deliveries have largely been put on hold. This is why the farmer members of Alberta Barley and the Grain Growers of Canada support the changes to the legislation to ensure grain deliveries are a priority over the next two years.

Canadian farmers grow exceptional crops. I believe they are the best in the world. We have a well-earned international reputation for growing a high-quality premium product.

Unfortunately, we have developed another reputation as a country that can't get our grain to market in a timely manner. Nine out of ten farms in this country are dependent on exports, and Canada is the fifth largest agrifood exporter in the world. Our economy depends on maintaining the trust and faith of our buyers around the world.

Our country was built on the railways. For nearly 150 years, the trains have been key to making Canada work. Our railways are posting significant profits while farmers are not able to get the grain to port in a reliable manner to our customers.

Don't get me wrong. I understand that the problems with the railways aren't limited to farmers. Everybody is affected.

We're not asking for grain to be shipped at the expense of other commodities. However, due to the size of the crop last fall, farmers are in a cash crunch. We need to move this grain. Chemical, fertilizer, loads of machinery payments are due, and we're sitting on mountains of grain that we can't deliver because once again we didn't see that train coming and it's not coming down the tracks.

The reason legislation is needed to fix this problem is that there isn't just one factor at play. We can't simply fix the weather and ensure that grain deliveries will increase. We need legislation because we can't simply implement stronger contracts between the grain companies and railways today and hope that they will be enforceable tomorrow.

In order to get the grain moving, and keep it moving while farmers are already planting their next crop, the legislation is key. Otherwise farmers have to hope for the best out of a system that we know is broken.

● (1850)

That is why we welcome the government's efforts to review the Canada Transportation Act. We support the work being done throughout the industry to identify gaps. For example, the north-south corridors are just as important as the east-west corridors.

As you'll hear from my colleagues throughout the industry, we have some specific ideas on how to improve the grain transportation system in Canada, and these include the following. The definition of adequate and suitable accommodation and service obligations within the legislation needs to be made clear. To be frank with you, we need a bill that has teeth. While we appreciate the drive for more accountability, we also need real and tangible measures. Currently, there is no statutory guidance on how a railway is to fill its service obligations and the words "adequate and suitable" are ineffective in providing that.

The current level of service complaint remedy and particularly the definition of "adequate and suitable" have been ineffective for shippers. Regarding service level agreements, we believe that the mandatory reciprocal commercial penalties should be incorporated into service level agreements during the regulatory process. If you have two parties willing to commit to a deal, it will mean the producers can finally get their grain to port. Reciprocal penalties simply mean that everyone is accountable, which is the key to having a reliable transportation system.

We are all in this together, and from my perspective, asking a farmer how to solve the railway issue is kind of like asking an accountant how to fix a combine. My message is this. Farmers have always been willing to step in and fix the problem. This past winter, we had many meetings where we sat around and discussed with politicians and chemical representatives and industry participants about how we're going to fix this. How are we going to air up a train? How are we going to get it to the coast? It's too cold. Well, bottom line, we've all had to make improvements in our system to get the wheels rolling, and I certainly know that if it were up to me, I'd make sure it happened.

But it shouldn't be up to farmers to fix this problem, and it's not up to us to figure out how to make the rail system more efficient. We just want to ship our commodities, and through processes like this we can ensure that we can create efficiencies in the system so that this can happen.

I am thoroughly disappointed that the rail transportation crisis has cost us around \$2.5 billion as well as our reputation as a reliable shipper of our products. The Grain Growers of Canada and the Alberta Barley Commission support the proposed changes, and

certainly look forward to a more secure future for farmers. We see this as a good first step to ensure the railways remain responsive to Canadian business and we look forward to participating in future discussions.

Thank you very much.

● (1855)

The Chair: Thank you very much, Matt. I appreciate your comments and your time.

Before I start the round of questioning, I want to welcome Mr. Goodale to the committee tonight as we talk about Bill C-30.

The first round, Madam Brousseau, for five minutes.

Ms. Ruth Ellen Brousseau (Berthier—Maskinongé, NDP): I would like to thank all the witnesses for being with us on short notice. We all are aware of the importance to work as hard as we can to make this the best bill possible, and I appreciate all the information and all the suggestions for amendments that we've received thus far.

Regarding some of the comments that you made, Mr. Sawyer, about the bill, does this bill have enough teeth as it stands right now?

Mr. Matt Sawyer: What we're really excited about are the service level agreements. We believe that within the service level agreements to have the teeth, if you will, to create a reliable and efficient system...so does it have enough teeth? I think it's certainly a good first step but we're looking forward to long-term solutions that we can continue to work on to make sure that we continue to keep the grain moving. We have an opportunity here, all of us, to correct this problem that has been ongoing for years.

Does it have enough teeth? It has enough teeth to get things rolling for now, but we certainly think there's more opportunity to create competition in the future.

Thanks.

Ms. Ruth Ellen Brousseau: There are some things that we've called for, for a while now, as the opposition.

We've raised questions in the House but we've also asked for increased fines, from about \$100,000 to \$250,000. Where it is right now, it's up to \$100,000. Also we would like to see a mechanism for compensating farmers.

I was wondering if some of our witnesses could talk about the importance of compensating our farmers because of the losses they're incurring with this grain crisis. It's completely out of their hands. We could have the best grain, which you guys have. We have world-class grain but it doesn't really mean anything when we can't move it.

I was just wondering if you could comment on compensation for the losses that have been incurred because of this grain crisis.

The Chair: Okay.

Mr. Rick White: I'll answer the question.

The Chair: We're having a little—

Ms. Ruth Ellen Brosseau: If we could do a round I guess.

The Chair: Was that question for Matt?

Ms. Ruth Ellen Brosseau: Yes, and then perhaps they could all comment.

The Chair: Matt could you answer, and then we'll go to Brett and Greg.

• (1900)

Mr. Matt Sawyer: As far as compensation to farmers is concerned, there's certainly an opportunity once we have the service level agreements in place, then that will be, as far as us, compensation to the farmers to have that transparent system in there.

The widening of the basis has cost us so much. If we can have that system that if you know that you are seeing your grain and whether you want to deliver in October, November, December or you're going to hold it to the spring months or into the future, you will see that. If it's transparent.... I think it's too late to be retroactive and go back.

What we're all looking forward to is having some reliable and transparent system that you can bank on. You know that you are going to deliver in these months and you'll see the basis levels to reflect that. I think that would be compensation enough to farmers, in my opinion, if we had an opportunity to fix this problem once and for all.

The Chair: Brett, do you have a quick comment? Then I'll go to Greg.

Mr. Rick White: I can respond to that.

Regarding the penalties for the order in council, we don't see that as long term. We see that as a very short term measure. What we would rather see that replaced with is contractual relationships between the shipper and the railways with reciprocal penalties. Once those reciprocal penalties are in place, then the market can work and when there's a failure by the railways, the penalty can flow from the railways to the shipper and then to the shipper to the farmer to compensate the farmers. That's how we see that working going forward.

The million dollar a day penalty that you're talking about is for not fulfilling the order in council, which is a very temporary measure for setting a minimum standard. We see that as very short term but that's not the long-term solution.

The Chair: Greg.

Mr. Greg Cherewyk: I think we're going to end up saying pretty much the same thing here. Whether we talk about the level of the fine or whether we talk about compensation to farmers, we are all talking about the same thing and that's the need for accountability in the system.

What I want to stress here in my response to you is that accountability starts with the relationship between the shipper and

the carrier. Rail freight movement is central to everything. Whether you move stuff in containers, intermodal vans, hopper cars, or boxcars, our product is moving to port positions and to customers around North America by rail. If we can start by ensuring that movement is predictable and that there's balanced accountability there, then we can look for opportunities to extend that accountability to the rest of the supply chain, including back down to the farmer.

The Chair: Thank you very much. Thank you, Madam Brosseau. For those that are on video Madam Brosseau is with the New Democratic Party.

I'd like to now go to Mr. Lemieux from the Conservative Party, for five minutes please.

Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC): Thank you to our witnesses for being here on such short notice to discuss important legislation.

We've been talking in terms of macro problems with respect to the harvest. I'll quickly ask each of you if you have the numbers to inform the committee, for example, on canola. What was the harvest this year? How much would you say is still left to be shipped? You may not have those numbers, but I'm not sure.

Mr. Rick White: For the canola industry we are very far behind. I don't have the most recent statistics regarding canola, but what we are showing right now is that by the end of the crop year, canola will still have a 3.3 million tonne carry-out even at the current rate of movement. So we are going to be behind, no question about it. We should not be carrying out 3.3 million tonnes of canola.

Last year it was 600,000 tonnes. We have at least three to four times higher carry out projections just for canola alone.

Mr. Pierre Lemieux: Thank you. What is it for pulse?

Mr. Greg Cherewyk: We produced about 3.8 million tonnes of peas, 1.8 million tonnes of lentils, just over 200,000 tonnes of beans, nearly 200,000 tonnes of chickpeas. Into the special crops you have 165,000 tonnes of mustard, 130,000 tonnes of canary seed, and 52,000 tonnes of sunflower.

I can't tell you exactly today how much of that has moved and how much is still yet to move, but I can tell you projections for carry-outs extend anywhere between 800,000 tonnes and beyond a million tonnes. Any one of those projections would put us in the range of a record level carry-out, certainly more than we carried out last year.

• (1905)

Mr. Pierre Lemieux: All right, thank you.

What is it on the barley side?

Mr. Matt Sawyer: I don't have those figures in front of me either, but certainly what I can say is there will be lots of carry-out on barley, I'm sure. I don't have the number in front of me. I certainly did hear from a couple customers I deal with on the way in today, and they wanted to voice their concerns as well. They're having problems getting their product and even having the possibility of looking at importing barley to satisfy their needs. There is lots of barley out there and hopefully the cows will eat up as much of it as they can.

Mr. Pierre Lemieux: I just wanted to get a snapshot on that because, as I said, we've been usually talking in terms of the overall gross tonnage that came in with the harvest. It leads me to the question, then, just about the one million tonnes a week. Certainly we feel that after consultation with stakeholders in the industry, including rail, that this was considered to be an ambitious target, but an achievable target, and one which does not compromise the ability of other commodities to move by rail. So, in other words, we feel it is pushing on the grain side, but not to the point that it would adversely and detrimentally affect in some large, quantitative way other commodities. I would like to ask your opinion on the one million tonnes per week as a goal.

I may as well start with canola. What are your thoughts on that?

Mr. Rick White: Well, even if we get the one million tonnes a week, when you look at the aggregate numbers, if we can maintain a one million tonne a week movement, we're still going to have a 23 million tonne carry-out overall. We'll still have a 3.3 million tonne carry-out of canola. And on the barley number you're asking for, they're looking at 2.4 million tonnes, alone, for barley on carry-out. Again, that's under the assumption that rail capacity increases to the million tonnes a week.

Mr. Pierre Lemieux: Okay.

What is it on the barley side?

Mr. Matt Sawyer: Thanks, Rick, for coming out with that. That's exactly where we are, too. We certainly do welcome this as shedding light on the subject, but we're looking forward to the long term and moving this forward. We realize there is going to be a carry-out with the current shipping if it does move ahead, but basically this is what we have, and we're looking forward, and at least we're going to get some movement going.

Mr. Pierre Lemieux: Let me just ask on the pulse crop side. Greg.

Mr. Greg Cherewyk: I think later today you're going to hear from Wade Sobkowich from the Western Grain Elevator Association, who has put together some very comprehensive figures for you with respect to what still needs to move and what would be required over the course of the next few months. From a pulse and special crops perspective, one of the things we'll want to stress is as we aim to hit these targets, as we aim to put 5,500 cars per railway per week out into the Prairies and start moving product, that this product is allocated, or the allocation and distribution of those cars ensures that there is fair and equitable treatment for all shippers of all sizes moving all commodities through all corridors. That will be the most critical measure.

The Chair: Thank you very much for your time.

I'll go now to Mr. Goodale of the Liberal Party, for five minutes, please.

Hon. Ralph Goodale (Wascana, Lib.): Thank you, Mr. Chairman, and thank you for your welcome.

I'm glad to be here tonight with Mark Eyking and other colleagues, and certainly with these witnesses who are providing us with some very helpful and important information.

I have three basic areas that I'd like to question on. Perhaps I'll ask all three questions at once and then leave the maximum time for the witnesses to answer.

First of all, would it be helpful as we're dealing with Bill C-30 to actually see what the draft regulations might look like? For the most part the act creates the authority to create regulations, but the regulations are not yet in the public domain. I wonder if that would be useful to actually see at an early stage what the government has in mind for the drafting of those regulations.

Second, with respect to the contracts between grain companies and farmers, which are referred to in the legislation, and the possibility of regulations being promulgated under the Canada Grain Act, should those regulations spell out damages or penalties to be paid to farmers if and when specified delivery opportunities are not provided by the grain companies as had been contracted for? Should there be consequences if you can't deliver when your contract says you ought to be able to deliver, and what would those consequences be? As well, should there be regulations that would impose some kind of transparency and potential limits on the calculation of the so-called basis, the deductions that appear, anecdotally at least, to be consuming about 50% of the international price of grain? That's being absorbed before it even gets to the farmer, so how can you bring transparency and some kind of limit on this calculation called basis.

Third, with respect to the other type of contract that's referred to in the legislation, the service level agreements between shippers and railways under the Canada Transportation Act, do regulations there need to be very clear in specifying the service levels that the railways are expected to provide? Do the regulations also need to be clear in specifying the way in which performance is to be measured, have the railways in fact provided it or not, and about the payment of damages to farmers if the service isn't what was specified in the service level agreement?

Should those three things, first, definition of service, second, how do you measure it, and third, what is the consequence if service fails, be in regulations or should they in the act itself?

Finally, with respect to the Canada Transportation Act, beyond this vague phrase that's been there for a hundred years, "adequate and suitable accommodation", are our witnesses telling us here—and I think this is what I heard—that railway service obligations need to be defined as performing in such a way that the railways actually meet the needs of their customers? In other words, the rules are designed to service customers, not service railways. That would certainly change the paradigm in Canada of the last 143 years.

I wonder if I could just leave those questions, Mr. Chairman, and see what our witnesses have to comment.

● (1910)

The Chair: They might have to answer them really quickly because most of the time was eaten up in the questions, so I'll leave that to whoever wants to speak first.

Greg.

Mr. Greg Cherewyk: I'll tackle that and I'll bounce around a bit. Perhaps I'll start with the last question and connect it to the first one.

The last question was whether “adequate and suitable” adequate and suitable in the definition of service. Our view has been and the view of the Coalition of Rail Shippers has been, for the last three years as we've been discussing these issues, that it is not. We need to modernize the language of the act. We need to bring it into the 21st century. There needs to be more clarity and definition with respect to what the service obligations of the railways are.

We'd begin with a clear statement, as I said in my opening remarks, that the system is in place to meet the needs of its users, full stop. That's where we'd start.

With respect to the first question, would it be helpful to see draft regulations, as we get into the process of drafting regulations, I think there is a whole shipping community within agriculture and beyond agriculture that's prepared to participate in that expedited and focused review of the regulations. We would certainly want to be part of that discussion so that we could ensure that the things you've mentioned there with respect to characterizing and defining the service obligations of the railway are addressed through regulation. We would want to ensure that it picks up on things like performance measurement, so that when we establish a service obligation, when we establish a standard for performance against that service obligation, we're then measuring service effectiveness against that standard, and then ultimately and very importantly for the agriculture community, that we establish a financial consequence for failing to adhere to those commitments.

The Chair: Thank you very much.

We will now move back to the Conservatives.

Mr. Payne, for five minutes, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you to the witnesses for appearing tonight. As said by my colleagues, it's a very important bill that we're looking at to try to move the grain.

What you said in your opening remarks was interesting, Mr. Cherewyk. You talked about CN's third-quarter report and that they managed to deliver 5,000 railcars a week. To me, that's not outside already of what the order in council...and the request, so to me, that seems quite interesting.

You also talked about the railway and suggested that maybe you're not going to get the service because they now have to move all of these cars. Having said that, I've talked to one of my constituents who has a fertilizer company, who said the very same thing, that CP had said that they were not going to be able to move as much product because of this.

I'd just like to hear any further comments you might have on that. Then I'd open that up also to the canola growers and the barley growers, if they have actually heard that information as well.

•(1915)

Mr. Greg Cherewyk: Yes, I'll reiterate what I said in my opening comments, and that is, our members—pulse and special crop shippers—are being told that their service will suffer. They will

suffer because of the nature of the move, the corridor that they want to move it through. They're feeling very threatened right now by the actions and the words of the railways, and it is both. There's a threat out there, and then there is actual evidence that this has already started to take hold.

I would also add, though, that we are very close with many other shippers in other sectors and we are hearing the exact same thing, from mining, forestry, and others. The very same concern is being expressed that the orders are going to result in a deterioration of service to other sectors and movement through various corridors, which is why I keep coming back to the fact that we need to go a step beyond establishing the target and start defining what our expectations are with respect to movement through corridors, movement of all commodities, to ensure that all shippers, small, medium, and large, moving product through to all destinations are treated fairly and equitably through this process.

Mr. LaVar Payne: Canola growers, have you any comment on that?

Mr. Rick White: Yes, the unintended consequence of the order in council is to create a demand push by the railways to move as much product in as short a time as they possibly can, and they're starting to bung up certain corridors, particularly the west coast ones. Even though they are pushing hard to move the grain, which is very much appreciated, it is not a demand pull system, and we have to get away from that as soon as we possibly can. That's where “suitable and adequate” comes in. If we can get that redefined so that the railways understand that they need to accommodate what the demands are of the shippers and where those shippers need their product, we'll have taken a very large step forward in the industry.

Mr. LaVar Payne: Thank you.

Mr. Sawyer, do you have any comment?

Mr. Matt Sawyer: Yes, the losses we've been experiencing in the last year alone certainly makes it almost look plausible that you're grasping for ideas for how to put your own train on the tracks. This certainly is where we need to look at building the capacity, competition, and service. As an exporting country, we all rely so heavily on the rails, and if we want to continue to feed the world, by the year 2050 we're going to have to rely on the rails even more than we have this year. They say, as you've all heard before, in the year 2050 we will have to produce as much food as we have in the last 10,000 years to meet global demand, and Canada will be in the position to do that.

The bottom line is we need to work with the rails and make sure that they are expanding for competition and service, but also we need to have these agreements in place. There have to be the teeth in the agreements so that they're encouraged to do it; otherwise we need more competition on the rails.

Mr. LaVar Payne: Okay, it's interesting because I come from a background in the private sector. I worked for an international petrochemical company in Medicine Hat. I've heard from grain farmers. When I worked for that company, the railway was the problem all the time. This is not new. Certainly, I think what they need to do is fairly straightforward in terms of being able to figure out...all of these products that they're supposed to be supplying and shipping for our producers.

I think Mr. Sawyer mentioned in his comments what he could do to tell the railway to help in that process.

How much time do I have left, Chair?

The Chair: You are about done.

Mr. LaVar Payne: Thank you, Mr. Chair.

The Chair: Now Mr. Allen, please, for five minutes.

Mr. Malcolm Allen (Welland, NDP): I want to thank the witnesses for coming on short notice, as everyone has said.

Let me address the first question to Brett.

I'm interested in talking about the importance of short-line railroad vis-à-vis whether there is a way for them at the moment, albeit it's not in this legislation, to help with this particular situation where we have this huge backlog in grain. Is there something that we perhaps haven't thought about or haven't discussed yet?

● (1920)

Mr. Brett Halstead: Well, any capacity that could help is needed and that's where we get into where we don't want geography to be just the easiest pull. Short-line rails could definitely play a part in this but it needs to be market driven. They can definitely help if it's market driven.

Mr. Malcolm Allen: I understand it as something longer term. This legislation has to do two things in my view. One is a short-term fix of extending the order in council and the other fix is to start looking at how we head into the medium and longer term with service agreements and regulations and all those sorts of things.

Really my sense of the short liners is whether there's a way for them to help in the immediate term. I agree with you that the market forces have to do something with short liners, but is there any role they can play in this very short to medium term that would help expedite any of this, or is that just not something we should consider at this point?

Mr. Brett Halstead: Well, like Matt had said earlier, I don't pretend to be an expert on how a rail company should manage its business. But I think what the role of a short line is they can gather those 100 car trains and deliver them to the main line. Then the main line can do the efficient job of what they're there to do and that's to get 100 cars from one major location to another major location.

If there are holes in the act, I guess reviewing the act may help grow short lines to an even more prominent part of this solution. I don't understand everything in the act to know whether there are solutions there.

Mr. Malcolm Allen: I'm certainly not a railroader either; model railroads don't count, I don't think. Most of us had model railroads.

Greg, I don't know if you have any thought on what role the short liners might be able to play. Is there a role for them to play in this immediate crisis we have?

Mr. Greg Cherewyk: I think in the short term the role they play is precisely what we just heard. They're gathering product and servicing the main line. They're working as partners with the mainline railroads, CN and CP. In an environment where we have both of those carriers focused on tight cycle times and quick turnaround of their assets, their role isn't as prominent as it could be. If we can get back to the point where the system is delivering in such a way that it meets the needs of all of its users, I think that role will be elevated for sure.

Mr. Malcolm Allen: I think, Greg, you mentioned it more than the others, but I think the others have alluded to it as well, the idea that the two major railroads are looking at tight cycle times. They're basically looking to the closest point, the easiest point of moving it back and forth quickly. You're suggesting that it's already happening. Obviously we need to look for evidence of that. I'm sure it could be provided if you have it, and others will as well, I'm sure, if they know it and can testify to it.

Is there something that needs to be in the bill to make sure that they don't do that? This bill basically has a sunset clause of two years. At least until we get to where you folks all want to get to, which is a service level agreement that has teeth in it, that takes out the so-called what's fair and reasonable, which is that huge definition....

Is there a piece to play to ensure that we just don't get the closest point circling around, over and over again to show that the railroads are doing what they say, "Well, we're moving 11,000 cars"?

Mr. Greg Cherewyk: I think I'd go back to the comments I made in my opening remarks and that is that we have to go beyond simply the established car target and total tonnage target and we have to get into a little bit more level of specificity with respect to the movement along various corridors, movement of various commodities, and movement through to various destinations.

What has to happen in my mind immediately is that we need to sit down with Quorum, the grain monitor for the grain handling and transportation system, and determine what the best way forward is with respect to ensuring that level of guidance is in the order and in the measures that follow, and then have the tool in place that would help us measure whether or not the right things are happening along the right timelines.

Mr. Malcolm Allen: If I hear you correctly, you're talking about now.

The Chair: Excuse me. We're out of time.

Thank you, though, Mr. Allen.

Mr. Malcolm Allen: Thank you, Mr. Chair.

I just needed to be sure it was now.

The Chair: This will be our last questioner for this round.

I'm going to Mr. Dreeshen, please, for five minutes.

Mr. Earl Dreeshen (Red Deer, CPC): Thanks to all of the witnesses for being here.

Mr. Cherewyk, the numbers you put forth were really eye-opening, as far as the third quarter of 2012 and the type of capacity that CN had are concerned. I'm sure they are listening. We'll get a chance, if people want to tune in from 8:30 to 9:30, to ask them about some of those points and see what actions had been taken that have caused this deterioration in their companies. I'm sure that is something that is going to be addressed.

One of the other things you just mentioned had to do with Quorum. Could you talk somewhat about that? What types of things do you think they need to look at in order to get the proper metrics to assist all parts of the system that we're dealing with now?

• (1925)

Mr. Greg Cherewyk: First of all, I won't pretend to speak for Quorum. These are the guys you want at the table with government, deciding hand in hand how we'll go about understanding whether order fulfillment is adequate for movement across all corridors of all commodities to all shippers, small, medium, and large.

As a first point, let's ensure that the conversation happens immediately, so that we can understand first, whether or not the ability to gather the data exists today, and then second, how quickly we can get going in measuring. We need that measurement happening immediately. We need guidance with respect to what our expectations are for those movements and we need to be measuring the railways' performance against that guidance immediately.

Mr. Earl Dreeshen: Pulse Canada also works with the crop logistics working group. I'm wondering whether you've had discussions with them. They're looking at the performance and the supply chain for all crops, and at innovation and capacity. Are there things that you have discussed or that there have been discussions on which we should hear about as we formulate some thinking along the lines of our legislation and subsequent regulations?

Mr. Greg Cherewyk: First and foremost, we've heard about the intention to expand and enhance the public performance reporting that's available under the grain monitoring program, and we're wholly supportive of that move. Again it's a matter of how quickly we can ramp up, how quickly we can ensure that those measures are in place and that the reporting is taking place. The expansion of the program and the measures they're looking at are consistent with the recommendations that came out of the crop logistics working group. We have strong support from the crop logistics working group for the expansion of that program, and now we have heard that there's a commitment to go ahead and do it.

Also, there is the work of the group that focused on service level agreements, for example. It's really the outcome and efforts of that working group that we should look to when we start getting into the expedited focus on the development of regulations related to service level provisions, to ensure that the provisions in the regulations match what it is that industry has said is needed by way of necessary elements, components, and details of service level agreements.

Mr. Earl Dreeshen: Thank you.

Mr. White, perhaps you could give us your thoughts about service level agreements with the canola industry and where you think we should be going in that regard.

Mr. Rick White: On the service level agreements, I'll repeat that we need reciprocal penalties built into them, because these will drive accountability between the two contracting parties. That measure will help a lot. It's accountability that is missing today. Today it is based on best efforts, and we're in this mess because best efforts doesn't work. We need better accountability to drive that accountability's reciprocal penalties within the SLAs.

If I may, I'll just touch on the information component of Quorum. Another piece of information lacking that seems to be causing some problems this year in particular is the lack of capacity planning going forward and a lack of acknowledgement by the railways, which seemed not to know that there was a massive crop out here to move until harvest was almost done. As farmers, we saw it coming off in June, July and August. We all knew it was coming, but for some reason the railways didn't understand; therefore, they didn't size to the new reality of the demand facing them.

Quorum might be able to facilitate some information gathering and capacity planning for the industry as a whole so that the railways can understand what kind of demand they're facing.

Mr. Earl Dreeshen: Do I have enough time to ask Matt that same question?

The Chair: We're just about out of time. We're right on the five minutes.

Mr. Earl Dreeshen: Okay.

The Chair: We also need a little time to switch.

I want to thank the witnesses for taking the time to come out and be on our panel on this important subject. Thank you and good night.

• (1925)

(Pause)

• (1930)

The Chair: We're back.

We'll start off with the Prairie Oat Growers Association, with Mr. Enns, the president.

I appreciate your being here. We have eight minutes for your opening statement. By that time, we hope technology kicks in. We're having a little trouble in terms of the video, but we don't want to lose time.

Mr. Enns, you have eight minutes, please.

Mr. Art Enns (President, Prairie Oat Growers Association): Mr. Chairman, I'd like to thank the committee for inviting me here today in my roles as president of Prairie Oat Growers as well as an executive member of Grain Growers of Canada and also as a farmer.

The transportation crisis has affected all commodities and is damaging Canada's international reputation as a reliable exporter. We in the agriculture sector want to be clear that Bill C-30 is an important interim step, but must be part of long-term measures that address the needs of all shippers.

I'd also like to express appreciation for the measures proposed to get grain moving again. The order in council set minimum levels of grain movement. It has been a step in the right direction, and we welcome this legislation.

We do see some areas for improvement. We join with many organizations in seeking: a proper definition of adequate and suitable service, to clarify that it must meet shippers' needs; increased accountability by providing reciprocal penalties within service level agreements; dispute resolutions for liquidated damages as part of service level agreements; consideration of increased penalties if movement does not improve and directing that revenue to programs that support infrastructure, such as the building Canada fund; implementation of interswitching provisions at 160 kilometres and consider extending further in areas with unique needs of border points; setting minimum volumes for movement by corridor; and the input of commodity groups when setting corridor minimums...seems we are well placed to understand long-term demand and immediate production realities.

Let me illustrate the importance of corridor-specific targets with a particular situation from oats. The Canadian oat industry is heavily dependent on trade, in particular with the United States, to which 90% of our exports go. While a few have worried that grain traffic will come at the cost of other commodities, the volume targets allow grain to return to some level of normalcy.

Like other producers reliant on rail, oat farmers are suffering from the transportation crisis, but oats are in a dire situation. The first six weeks of this year saw just half of the exports that the prior year saw. So far this crop year, as of the week ending March 23, oat exports are down 101,000 tonnes from last year and 196,000 tonnes from two years ago.

In using these numbers, I'm not talking about moving the additional crop we grew this year. Oat production was up by 38%; however, this increase in production has been met with a decrease in the volume of oats moved. There has been demand by oat millers, and prices for oats have been high, so it is doubly difficult for Canadian farmers to see part of that demand filled by other countries because we can't get the oats to them.

The failures of the transportation system represent real loss for Canadian farmers. The remedies have focused on west coast ports, often to the exclusion of other corridors. This is why we need long-term forward thinking by corridor, including southern corridors, and support for alternatives to the existing system.

The impact on oat growers is enormous and is likely to echo for many years to come. It is an example of losses experienced across the grain sector.

For these reasons, we see this legislation as an important step forward and we thank all parties for their willingness to expedite this legislation. The regulatory package to follow also needs rapid

attention, and we stand ready to be a constructive part of that discussion.

We also want to emphasize the need to gain certainty past 2016, when the provisions under Bill C-30 may sunset. The planning horizon for producers, shippers, and railways must be at least one year ahead.

As a result, we emphasize the need for the Canadian Transportation Agency to immediately begin the capacity planning exercise for the 2014-15 shipping season. In addition, it is very important to begin the review of the Canadian Transportation Act as soon as possible.

Long-term change is needed in this system, change that encourages an increase in capacity for all corridors. Improved agriculture production is a long-term trend.

•(1935)

For Canada's economy to keep growing, we need a transportation system that works for all commodities, including addressing the rural economy of the country and the historic contributions of the agriculture sector in building it. Canada's reputation as an exporter relies on this.

Thank you.

The Chair: Thank you very much for your presentation.

From Winnipeg, we have the Western Grain Elevator Association, Wade Sobkowich, executive director, and from Cereals Canada, we have Cam Dahl, president.

We'll start off with you, Mr. Sobkowich. You have eight minutes, please.

•(1940)

Mr. Wade Sobkowich (Executive Director, Western Grain Elevator Association): Good afternoon. Thank you for inviting the Western Grain Elevator Association to appear. We appreciate the support of the federal government in attempting to address the serious rail capacity issues the grain industry has faced this year.

Bill C-30 sets out a framework for railway volume thresholds to be set by the Governor in Council. The WGEA believes this to be a workable structure. However, it is critical that the details be worked out properly before we can tell whether or not the measure will have the intended effect. For example, if the volume thresholds are set too low or if they don't include enough specificity, the benefits of the legislation will be diminished.

Rail service must flow to where the customer needs the grain and not to where it best suits the desires of the railway. To this end, it is very important that the volume thresholds recommended by the Canadian Transportation Agency and ultimately passed by the Governor in Council include corridor-specific numbers for the west coast, Thunder Bay, eastern Canada, the United States, and domestic movements.

It's important to reiterate that these corridor numbers must be market driven. Grain shippers and exporters will sell into the highest-value markets first, and we have customers in each of these corridors. If we don't have corridor capacity to allow access to all markets, producers will fail to achieve full value for their crop.

It's recognized that it may not be practical to establish hard numbers for each corridor and that such numbers should be treated as a practical minimum.

Legislation ultimately needs to better define the goal lines for service to influence railway behaviour and to provide adequate capacity on an ongoing basis without a connection to the political process.

To address the ongoing capacity issues, the WGEA has recommended a more specific definition of adequate and suitable accommodation and service obligations than that found within section 113 of the Canada Transportation Act, with a view to depoliticizing the establishment of capacity thresholds and taking away much of the ambiguity involved with what actually is proper service. This is something the WGEA will be looking for through the upcoming expedited CTA review process.

While volume thresholds can work in addressing capacity issues from a macro perspective, they do not provide clarity in the relationship between an individual shipper and an individual rail carrier. We presume this issue will be addressed by the new regulatory authority charged with establishing more specificity with respect to operational terms in a service level agreement.

Grain shippers are subject to unilaterally imposed railway tariffs as well as other forms of regulation, which already include shipper penalties paid to the railways for performance the railway deems to be poor.

We continue to seek the commensurate ability to negotiate and, if need be, arbitrate penalties for poor performance by the railway companies in the same way.

Provided the regulatory process included with the announcement on Bill C-30 results in clarification that operational terms include railway penalties, reflecting the way railways penalize shippers through unilateral railway tariffs, and a fair process by which to recover liquidated damages, then this would be a positive measure and would address an overarching issue that the WGEA has been trying to have addressed for a very long time.

Regarding the amendments to the Canada Grain Act, the WGEA does not necessarily object to the changes authorizing the Canadian Grain Commission to create regulations if necessary to promote fair and equitable contract agreements between shippers and farmers. However, this item is inextricably linked with the previous item: railway penalties and recovery of liquidated damages. If grain

shippers can recover these amounts from the railway for lack of rail service, competition would dictate that these funds would be used the following ways: to pay vessel demurrage costs, to pay contract extension penalties to the customer overseas or wherever they may be, and to compensate producers for their inability to deliver due to lack of rail service.

Should the CGC see fit to require these elements in producer contracts without providing grain companies the ability to recover damages from the railways, grain companies would have no choice but to respond with some combination of the following: they would probably include a risk premium in their prices to farmers; they might contract with wider delivery windows or nearer-term delivery windows; or they would do more street pricing and less contracting in general.

That's what I mean when I say it's inextricably linked with the railway penalties. We need that in order to be able to properly compensate farmers.

The extended interswitching to 160 kilometres is a positive change. Every grain elevator in western Canada should have practical access to an interchange. I'm advised that interswitching can be a cumbersome process for both the railways and the grain shippers. However, this in and of itself could serve as a motivating factor for a railway to provide better service just to avoid the interswitch.

● (1945)

The government must keep in mind that measuring success on interswitching goes beyond monitoring the increase in occurrence of interswitching. It includes measuring the increase in service levels or added capacity at a particular location due to the elevator's now having some degree of access to an alternative.

We wish to point out that under the current railway tariffs, interswitch traffic from one Canadian carrier to another does not qualify for multiple car rates, so this could make the economics of an interchange very challenging.

The legislation has a sunset of August 2016, and it will be the decision of the government at that time to determine whether to renew the legislation or allow it to expire. Grain companies begin booking business almost one year in advance, so in August 2015 we will be in the position of not knowing what shipping volumes will be while still selling forward past August 2016. To the extent possible, we require certainty on capacity volumes well in advance.

Similarly, the bill provides for the Canadian Transportation Agency to set volume requirements starting in the peak fall period. Given the nature of our business, grain companies are currently selling grain six months and into the future. If the agency is to make recommendations to establish volume thresholds, this must be undertaken immediately.

In conclusion, we still ultimately require a permanent piece of legislation that drives correct railway behaviour without a connection to the political process. We look forward to fully participating in the CTA review process to help establish legislation that will provide balanced accountability between a shipper and a railway that withstands the test of time.

Thank you.

The Chair: Thank you very much, Mr. Sobkowich, for your presentation.

Now we'll go to Mr. Dahl, president of Cereals Canada, for eight minutes, please.

Mr. Cam Dahl (President, Cereals Canada): Mr. Chairman, on behalf of Cereals Canada, I want to thank the standing committee for the invitation to appear before you today.

The crisis in grain transportation is something that impacts the entire value chain and is a threat to Canada's brand and reputation. Cereals Canada appreciates the actions taken by the Government of Canada, including both the recent order in council and the fair rail for grain farmers act.

My name is Cam Dahl, and I am the president of Cereals Canada. While I have had the privilege of meeting many of you, I have not had the opportunity to do so while leading Cereals Canada, so I would like to take a few moments to introduce the organization.

Cereals Canada brings together a broad and diverse collaboration of partners from all sectors of the cereals value chain with the intent of enhancing domestic and international competitiveness. Our members include farm organizations from coast to coast and grain handling firms, along with seed and crop development companies. Cereals Canada is guided by a board of directors composed of 12 individuals equally representing each of the three major stakeholder groups.

Cereals Canada going forward will focus on applying a coordinated effort to supporting market development, innovation in the cereals sector, and policy initiatives that will ensure the profitability and long-term sustainability of all elements of the cereals value chain. Bill C-30 amends both the Canada Transportation Act and the Canada Grain Act. I don't think there is much in the way of clarity required on the Canada Grain Act, so in the time I have I will concentrate my remarks on the changes to the Canada Transportation Act.

Like many involved in the cereals value chain, Cereals Canada supports legislative solutions that will help ensure that the logistics failures that we have seen this past fall and winter do not recur. Legislative action is required to reassure our customers, both here in North America as well as offshore, that Canada will continue to be a reliable supplier of high-quality grains. Maintaining our reputation as a reliable supplier is critical to our economic growth and

development as an industry, as well as for the economic health of the nation.

Legislative action is also required to help create and maintain an economic environment that encourages private investment in the system by all participants, including farmers, grain handlers, and rail companies. Cereals Canada supports Bill C-30, and we encourage all parties in the House of Commons to come together to pass this bill quickly.

However, we note that passing this legislation in and of itself will not provide a complete solution to the logistics backlog that we are experiencing today. There are some key elements that must be included in the regulatory package that will bring Bill C-30 into force, if we are going to accomplish our goal of preventing the next grain transportation crisis.

I'm not going to go into great depth on the key points that we would raise; rather I would like to share with you, as an executive summary, some of the key measures that must be part of the final legislative and regulatory package. I would be happy to expand on any of these points during our discussions today.

I will raise three key points.

First, Cereals Canada believes that at a minimum the Bill C-30 legislative and regulatory package must provide for a better and more specific definition of "adequate and suitable" whereby railway service obligations must meet the transportation needs of the shippers within the context of the Canada Transportation Act. The purpose of this adjustment to the regulations is to ensure that adequate capacity is available to shippers, and that is all shippers, not just those in the grain industry. The current definition of "adequate and suitable" is too vague and open to subjective interpretation when determining the common carrier obligations of the railways.

The second key point is that the regulatory and legislative package must ensure that financial consequences for railway non-performance and dispute resolution for liquidated damages are part of service level agreements. My members support financial accountability within the grain logistics network. But to be an effective tool to prevent service failures like the failures we have seen in this crop year, financial accountability must apply to all players.

Currently, grain shippers are accountable for their performance through penalties built into railway tariffs. For example, if a terminal in Vancouver fails to unload a grain car within the specified timeframe, they face a penalty of \$150 per day per car. There is no similar financial accountability for railway performance or non-performance.

Clause 8 of this bill amends section 169.31 of the Canada Transportation Act to allow the agency to determine the operational terms that will be included in a service level agreement between shippers and carriers. Regulations relating to this amendment must make very clear that operational terms include financial accountability for railway performance.

•(1950)

The third key point that I would like to raise is to ensure that shipping requirements for the railways, should these be necessary, include corridor-specific requirements to reflect the needs of all grains, oilseeds, pulses, and special crops shippers.

Cereals Canada appreciates the unprecedented order in council that requires the railways to move at least a million tonnes of prairie grain per week. The potential for directions of this nature, again should they become necessary in the future, would be enshrined in law through Bill C-30. We support these amendments.

The regulations that will bring these measures into effect must be more specific than just a broad direction for total movement: direction must also include specific guidelines by traffic corridor, including the west coast, Thunder Bay, eastern Canada, domestic movements, and shipments to the United States. This specificity is required to prevent one or two traffic corridors from being shut down while the railways attempt to meet their legal obligation for total shipments.

I believe that all of these provisions can be enabled by Bill C-30, but success will require the right regulatory package.

Bill C-30 will provide for an extension of the interswitching distance limits. Cereals Canada supports these measures and believes that they may provide for additional competition for some movements. However, we note that transportation oversight will be required to ensure that carriers do not attempt to frustrate all efforts to obtain an interswitching agreement. Some members of Cereals Canada have faced this frustration even with the current distance limits.

Bill C-30 would require the Canadian Transportation Agency to become directly involved in grain logistics planning. A key element of this role will be the dissemination of information on the supply of and demand for transportation services. Cereals Canada supports this new role for the agency.

We emphasize the need for the Canadian Transportation Agency to immediately begin the capacity planning exercise for the 2014-15 crop year. This planning process must include shippers, carriers, and the commodity groups. We note that sales are already being made into this time period, and it is critical that shippers have an understanding of the capacity that might be available.

Cereals Canada also wants to emphasize the need to gain certainty past 2016, when the provisions under Bill C-30 may sunset. The planning horizon for producers and shippers extends beyond a few months, and all participants in the value chain need to know the regulatory environment they will be functioning in at least a year in advance, if not more.

It's important to pause for a moment to emphasize the strong unanimity that is coming forward from Canada's grains, oilseeds, special crops, and pulse industries. It has been sometimes said that if you get two of our groups together in the room, you will come out with four different opinions. That can happen sometimes, but not in this case and not on this issue. The points that are presented to you today have strong support from almost all sectors and across the value chains. I know that you will find this reflected in the testimony

from others who have come before you. I ask that it is upon this unity you focus during your hopefully short deliberations on Bill C-30, and not the minor differences that may surface.

Grain handling and transportation is a complex file. This is not a complete list of the issues that need to be resolved, nor is it a complete explanation of the details on the key points that must be ironed out if this legislative and regulatory package is to successfully meet our shared objectives.

Cereals Canada will continue to work with you, with ministers, and officials as the legislation moves forward through Parliament, as the regulatory package is drafted, and as we move through the review of the Canada Transportation Act.

Again, thank you.

•(1955)

The Chair: Thank you very much for your presentation, Mr. Dahl.

We'll go to the NDP for five minutes.

Madame Raynault.

[*Translation*]

Ms. Francine Raynault (Joliette, NDP): Thank you, Mr. Chair.

I thank the witnesses for being here with us tonight.

We heard several witnesses tell us about the transport-related issue. Harvests were very good and I congratulate the producers for that. This means that the sowing and temperatures allowed them to have bigger harvests. However, they don't have any more money in their pockets or in the bank since the grain has not been delivered. In the meantime, it is probably losing some quality. We run the risk of seeing the price go down, and so the producers will obtain less money for it.

My question is addressed to all of the witnesses.

All of this grain is transported by train. Do you think that fines of \$100,000 for rail companies are sufficient? If not, what amount would you like to see per day? That amount could be given to the producers who have lost income, rather than being returned to government coffers.

What do you think about that? Any of you may answer me.

[*English*]

The Chair: Mr. Enns, would you like to start?

Mr. Art Enns: I think it's important when we deal with contracts that we don't worry about the fines as much as making commitments. Most of us have contracts in our daily walk, and very few are exercised. I think it's important that we get a relationship built up and a system in place whereby we all play by the same rules. Right now, the system is pretty dysfunctional, and we have different sets of rules for different people.

I think it's important that we get together and then work out the rest of it. I think the details of it are getting a system in place in which all the players know what the rules are, so that I as a farmer know when I make a contract that I will be able to deliver it to the grain terminal, because he knows the railway cars are coming. Right now, I can have an agreement—we always have agreements with it—but it doesn't necessarily mean that the grain terminal is going to get the cars, so why should I take my grain terminal to court when he's not getting the cars? It needs to be a continuous flow.

The Chair: Thank you.

Mr. Sobkowich.

Mr. Wade Sobkowich: To get to the heart of the question, I think the \$100,000 penalty is probably light in the grand scheme of things, but the railways have shown that they're starting to comply with the order since it was passed on March 7, so I think that's a positive move. Again, we're after the service, primarily, more so than we're after the compensation.

However, there are two elements to the penalties. One is penalties on a macro level for volume thresholds in the different corridors, and then there are the penalties that would get paid to an individual shipper for failure to meet the terms of a service level agreement.

That's why the regulatory process to arrive at the specific definition of what is an operational term in a service level agreement is so important. If we can identify that the penalties payable to the shipper in service level agreements are on the table for the government arbitrator to rule into a service level agreement, and that the dispute resolution process for liquidated damages could also be arbitrated into a service level agreement, then the grain shippers would have the ability to recover damages, within the terms of that service level agreement, from a rail carrier that doesn't provide good service. Then those damages and penalties could be passed through to the producer who doesn't get to deliver to the elevator because of inadequate rail service.

I see it as two elements: the \$100,000 fine paid to the government on a macro national sense for being able to provide adequate capacity into the various corridors, and then penalties payable to specific shippers through the service level agreement process.

● (2000)

Mr. Cam Dahl: I'll quickly add a couple of points. I think Art and Wade have made most of the points, but our goal as an industry is not to continually be in a situation where these special orders are in place and these fines are on the table. Our goal is to get to a place where the level of service is sufficient to meet our demand as an industry to move Canada's crop offshore.

For some of the other elements you've heard about that would help establish mutual accountability across the system, if we can move forward on those points, then we won't be in a situation where those fines will be in play, simply because the service level hopefully will be sufficient to meet the demand of the industry.

The Chair: Thank you very much.

I'll now go to the Conservatives.

Mr. Zimmer, please, for five minutes.

Mr. Bob Zimmer (Prince George—Peace River, CPC): Thank you for appearing before committee at this late hour. Maybe it's not a late hour in Winnipeg, but it's getting there. I guess there's no Jets game on tonight anyway.

I will preface my comments with a preamble.

CN and CP appeared before the committee, and we asked them to explain themselves because they blamed the weather.

Now all of us who are Canadians and have ever worn a toque—I've worn one probably since I was one year old—we know weather is going to be a factor in Canada every year. To us, that's not a good enough excuse. Further, CN made comments to the effect that before the weather had hit us this particular winter, weather was not the factor. They blamed other things, such as a lack of infrastructure and that no matter how many cars they wanted to put on the rails, they could only get so many of them on the rails.

To me, I see a direct move by the rail companies to avoid responsibility in what they're putting back in infrastructure. We all understand. We all want rail companies in Canada to service people well and to make money. We're not opposed to that, but when they're not held to a standard, that becomes a problem such as we are talking about tonight.

There is another topic I want to address before I ask a question. My brother used to work at a mill in B.C. We're in northeastern B.C. where we sell grain and many other things. About four years ago, he told me that they had to stop production in their mill because of a shortage of railcars. So this problem has been going on for many years.

Somebody mentioned teeth and whether there were sufficient teeth. I want to ask you and Mr. Enns too, whether you think \$100,000 a day is adequate. The desire that we have on this side, and both sides really, is to cause enough pressure to cause the rail companies to act, because they haven't prior to this. They simply haven't.

I can't remember your name, the person in Winnipeg, but you've said you've already seen some changes on the Prairies in getting the cars to your producers.

I want to ask the other witnesses who haven't answered, Mr. Dahl from Cereals Canada, and also Mr. Enns. I've been hearing positive things. That \$100,000 does seem to have an effect and it is working.

Have you seen a positive change because of that?

● (2005)

Mr. Wade Sobkowich: Are you asking me to comment?

The Chair: Why don't you go first.

Mr. Wade Sobkowich: I think, if I understand the question, you're asking if the \$100,000 is effective and if we have seen changes. As to whether the \$100,000 is effective, it's hard to say. What we are seeing is a railway striving to meet the commitments that have been set before them. I don't want to speak for them, but I think they would strive for that, just because of the order, and so, \$100,000—

The Chair: You just froze up. Oh, there we go. You're back again. You froze up on us so you'll have to turn your microphone back on. Try it now.

You're back on. Sorry, it was a technical problem.

Mr. Wade Sobkowich: Okay.

We have seen improvements in service in the recent past. We have seen warmer weather, but I believe CN in the most recent week has moved around 5,000 railcars. They're on their way to hitting 5,500 and that's good. What's important is that we get the railcars to the corridors we need and the markets we need. It's as if you had a package you wanted to ship through a courier company and you needed it shipped to the United States and the courier company said it would be better for them if they shipped it to Vancouver. It doesn't work that way. You need to ship the product to where the markets are.

Although the railways are starting to, and we are seeing increased shipping volumes, which is good, we need that shipping in the corridors where we have sales.

The Chair: Mr. Enns, go ahead.

Mr. Art Enns: I want to say the same thing, as far as where it's going. Some of the corridors are being serviced very well, but Pulse Canada was saying it was having troubles. We're having massive troubles with oats going into the south. I was talking to a producer in the Peace River area who hasn't delivered any wheat since October, and he says the first new contract he would be able to sign today would be in January 2015.

It gives you an indication that it's not quite there yet.

The Chair: Thank you very much.

We'll now go to Mr. Goodale, for five minutes, please.

Hon. Ralph Goodale: Once again, thank you to this bank of witnesses for their helpful testimony tonight.

What strikes me, having sat through most of the deliberations of the transport committee a year ago in dealing with Bill C-52, is that most of these same proposals were made a year ago in relation to Bill C-52, but they were not accepted at that time, and the legislation was put through Parliament without the various considerations that are being put on the table once again.

I wonder if the witnesses tonight can give us some sense of what went so wrong. Obviously, a year ago the government didn't think these things were necessary, and then along came 2013-14 and this obvious disaster in terms of grain movement.

As this problem developed from the summer through the fall—the big crop, the weather, all of that—who was doing the system planning last year to try to anticipate these things and make sure that the system was ready to cope? Who was doing the coordination of

the various elements in what is a very complicated logistics chain here in order to get the right grain, at the right place, at the right time? Who was looking at capacity?

It seems that the capacity remains now what it was a year ago. It may be in the last little while being used a bit more efficiently, but is there any significant improvement in capacity?

Who was doing the planning? Who was doing the coordinating? What's happened to capacity? Why has it been so inadequate this year? Why is that basis calculation in terms of the deductions coming off the farmer's price? Why is basis now gobbling up effectively 50% of the world price before it gets into the farmer's hands?

Can we shed some light on just what has gone so wrong from about a year ago now, when it was the considered judgment of the government that these sorts of amendments were not necessary?

• (2010)

The Chair: Who do you want to answer?

Hon. Ralph Goodale: Mr. Enns, would you like to start, and then maybe Mr. Sobkowich.

Mr. Art Enns: I think one of the things you had was the perfect makings of a perfect storm. You had huge demands for our crops offshore, so farmers responded by growing. We had a tremendous crop come in, much higher than anybody anticipated. Nobody anticipated the huge demand, and we also had huge demand on railway services for other commodities besides grain, where some of the cars were being moved to.

So I don't think anybody could have anticipated what happened a year ago. Unfortunately, the wheels have come off in a big way and we need to address it now and go back and revisit some of the changes that maybe weren't made at that time.

The Chair: Mr. Sobkowich.

Mr. Wade Sobkowich: Yes, I agree with Mr. Enns.

I'll start with the planning in the fall and explain how that transpired, and then maybe bring that back to a discussion on the basis levels. What happened is that the grain companies started noticing that the crop was going to be very large, and they communicated this with the railway companies through meetings and presentations. It started in the month of September. They notified them that the crop was going to be over 70 million tonnes. The railways responded by saying that they would supply between 5,000 and 5,500 railcars per week each.

The grain companies were selling to a number in that neighbourhood, between 5,000 and 5,500 railcars per week. We need to sell basis rail capacity in a situation like that, so they did. Unfortunately, we didn't get those railcars in the numbers that were promised by the railways. They provided something more in the neighbourhood of between 3,000 and 4,000 railcars per week, actual spots per week. That resulted in contracts with farmers that we couldn't execute on because we were full to the rafters with grain in the country elevator system. It resulted in vessels waiting for product that we couldn't get there, and it resulted ultimately in contract extension penalties and defaults, which is very costly items for the grain industry.

Bringing this back to the basis, the basis has been set these days by grain companies at a level that sends the signal that we don't have room to bring that grain in so please don't sell it to us. The prices are horrible. We still need to bring in grain from months ago that we've contracted with the farmer on for previous sales.

It's not as simple as being able to do a straight subtraction between the export price and current basis levels because companies are barely buying any grain at the existing basis levels. They're bringing in grain at previously contracted prices, and they're trying to hold out street price grain and current deliveries so they can make good on past deliveries. Those are variables that need to get factored in.

In addition to that, as I mentioned, there are the contract—

The Chair: Keep it very short. We're well over our time.

Mr. Wade Sobkowich: Okay. I think I answered his question.

The Chair: Thank you very much, and thank you, Mr. Goodale.

We'll now go to the Conservatives, Mr. Lemieux, for five minutes, please.

Mr. Pierre Lemieux: To answer what Mr. Goodale was asking and echo some of the comments I've heard tonight from you and previous witnesses, basically, direct government intervention is always a last resort. Even when direct government intervention is used, it has to be used carefully and used prudently.

Minister Raitt was here just yesterday. I think she put it well when she spoke about ideally wanting stakeholders working together with industry solutions focused on service, on corporate responsibility and credibility, those types of positive factors, I'll call them, that lead to positive solutions. You don't necessarily want key stakeholders looking over their shoulders and making decisions based on penalties, on liquidated damages, the sort of circle-the-wagon approach, not based on positive service delivery, but on minimizing damage. I think that answers some of the testimony I've heard from you and from others, and certainly from Minister Raitt the other day.

I certainly do appreciate the comments that all of you have made. Cam, as you were making your comments in front of committee, what I heard you saying, and what I heard our earlier witnesses saying, is that you support this legislation, particularly the key elements of it and what it sets out to achieve. I think you appreciate that we're moving quickly, which is why we're here tonight and we'll be here twice tomorrow, in the afternoon and at night. I think you appreciate that consultation and the regulations to follow could be very productive. I think what I hear you saying, too, is that you

appreciate the fact that the review of the CTA being accelerated is also beneficial. That's certainly what I've been hearing.

I will ask a specific question.

Art, you were saying that for your commodity, sale to the U.S. is important. I want to ask about the interswitching being opened up to 160 kilometres. When I look at the map that I have in front of me, I see that a number of the intersect points overlap with the U.S. border. To me, with the new interswitching requirements laid out in the legislation with the intersect on the United States, my thinking would be that if CN and CP aren't able to move your product south, certainly resources in the south could move north to pick up your product.

I wonder whether you could comment on that.

● (2015)

Mr. Art Enns: It will be a huge benefit to our crop oats, especially given that because a lot of the stuff is grown along that border corridor we will need some time to clear up the backlog, so that everybody catches up before we see the competition out there. But give it some time. We will.

To us, it's a huge win, especially for our oat industry, because right now we're not seeing the present railways showing any interest at all in running stuff across the lines. Our only answer is having a railway coming in from the U.S. to help us out with our oat industry, because 90% of our product goes out there. The mills are crying for it. They're going to Europe to get their oats, and we're 600 miles from the mills and we can't get it there. It just seems like a totally dysfunctional system. It doesn't make sense to an ordinary farmer.

Mr. Pierre Lemieux: Right.

Let me just ask witnesses on the other side or who are coming in by video conference, would you have any comments on the interswitching and how it might be particularly useful to your commodities?

Mr. Cam Dahl: I think it is a very useful or potentially useful tool, but again, it does get down to some of things that need to be in that regulatory package. I would agree with you that we want to create a regulatory environment where penalties and special orders from the government are not necessary, but there are some elements in that regulatory package that need to be there, including the reciprocal penalties. Those are necessary in order to create that regulatory environment that will allow the needs of shippers and producers to be met.

Specifically to your question on interswitching, there may need to be some agency oversight of that to ensure that the efforts just simply aren't frustrated.

Mr. Pierre Lemieux: Do you mean in terms of providing locomotives?

Mr. Cam Dahl: Well, and just making the process and getting an agreement so difficult to go through that it doesn't happen....

Before we leave interswitching, I think Wade made a very important point, and I want to emphasize it. Years down the road or in six months down the road when we're evaluating the value of this measure, the fact that it is there may prompt changes in railway behaviour. Think of it as a speed limit. The effectiveness of a speed limit is not measured by how many tickets you hand out, but by how many people are abiding by the goals of the legislation.

• (2020)

Mr. Pierre Lemieux: Good point.

The Chair: That's a very good point.

With that, we'll move to Mr. Allen, please, for five minutes.

Mr. Malcolm Allen: The dilemma with changing behaviour is that people need to know there's a consequence, so that they actually want to change their behaviours initially, not that I disagree with you, Cam, on the issue of how you can't write a ticket for every single car that goes by. It doesn't work that way.

Let me draw back into what Wade has been quoted as saying, related to some of this today, and ask you the question if it's about tying it to this piece of legislation minus.... You had six suggestions. Let me go through these. They talk about how, on this element, the questions are how to ensure grain shippers receive railcars, one, at the right level, two, at a consistent rate, three, apportioned appropriately among the corridors, four, spotted at the inland terminals where shippers require service, and five, at increased volumes when required to account for peak shipping periods. Suggestion number six is about beyond 2016, in talking about this as a sunset provision.

Let me leave the last one out, because if the CTA gets done and the rail service review gets done prior to that, that takes care of beyond 2016, if that becomes a piece that gets worked out and that folks are happy with. That remains to be seen, of course.

Not knowing what the regulations will be either, in the sense that we're still waiting for those as well, is there anything in those first five suggestions, Wade, that you want to see in Bill C-30 now?

There are two timelines here; well, maybe there are even three, if you want. There's the immediate of this crop year, which is sort of the end of July; it's kind of over, and that's why that provision, even with this legislation, ends July 31. Then, of course, there's the medium term until we get into the review process, even though we want to see it expedited. You've lived through that once before. It takes a bit of time to do that. Even if we rush it, it'll still take some time. Then, of course, the long term is what's on the other side of that.

Can I get your comment on those pieces?

Mr. Wade Sobkowich: Sure. At a high level, there are two elements that we need to make, that we're striving to achieve. One is to get as large a service pie as possible apportioned appropriately among the corridors. The second element is to hold the railways accountable to providing that larger pie.

If there were one amendment that we would ask for in Bill C-30, it would be to provide clarity, that when the volume thresholds are set, they are to be set on a corridor-specific basis. That is extremely important to us so that we can serve all the markets we sell to and get the highest value for that grain.

Mr. Malcolm Allen: I actually thought you were referring to the corridors, so I appreciate that clarification and the help in that direction.

I actually want to see some of that stuff come through the St. Lawrence Seaway, since I live on the Welland Canal. I'd like to see you get to Thunder Bay and get some out through the.... Well, when we get the ice out; we have to get the ice out first, I always think.

Let me pull back a bit. When you talk about those particular issues of the corridors, the overall picture of part of the railway's contention—we will be meeting with them in another few minutes—is that regardless of what they do, and they're talking about the west coast specifically, it gets jammed up; that as shippers, you actually aren't coordinated enough among yourselves, if I can use that loose term, that you'll just jam up the end result, which just means they'll bring back empty cars but there's nothing that can be done because we're jammed up at the other side.

From your perspective, how do you respond to that allegation?

Mr. Wade Sobkowich: Yes, that's a very good question. Thanks for asking it.

We do not have any concern with our ability to unload railcars in each of the corridors. There's no issue as long as the railways provide the cars, the 5,500 cars or whatever amount is set. As long as they provide them in each of the corridors, then there's no issue with handling it. It's only if they decide not to ship to the United States and not to ship to eastern Canada, and providing all of those cars through one port or two ports, that it stands to reason we're going to struggle in unloading. But as long as they're apportioned appropriately, we have no issue handling that volume at our terminals. In fact our terminals are at about half capacity right now on the west coast, and they're unloading railcars just fine.

Mr. Cam Dahl: Perhaps I could add a quick point to that.

I've heard the comment that while the unloading needs to occur 24 hours a day, seven days a week, I have heard it expressed by my shipper members, the one-third that are the shipper members, that if that is necessary to do, that commitment will be made. The concern is that if a tranche of hopper cars shows up at the terminal on Friday and they work 24 hours a day all the weekend, then they don't want to be out of cars Monday, Tuesday, and Wednesday. That needs to be a smooth flow. If that smooth flow is there, then that commitment to staff to have that capacity there is also there on the terminal's part.

• (2025)

The Chair: Thank you very much.

We'll go to our last member, Mr. Watson from the Conservative Party, for five minutes, please.

Mr. Jeff Watson (Essex, CPC): I want to focus my time on clarifying a few items.

I know that Mr. Goodale on the other side of the table raised the question of whether you'd like the draft regulations to be tabled in advance of the bill passing. First of all, that would render the prospect of consultation with stakeholders meaningless, but apart from that, regulations usually flow once a bill is actually adopted. So I don't see how that's possible.

To our witnesses who are here today, I'm hearing some conflicting messages. At times I'm hearing some support for a regulatory approach. At other times I'm hearing support of, for example, the Coalition of Rail Shippers' approach, which is a legislative approach. I just need to be clear here, because the two are not fully compatible, if you will.

Are you looking for prescriptive legislative response in changes to Bill C-30, or are you content that some of these issues will be done under the regulatory approach after that?

I'd like each of our stakeholders to answer that briefly, and then I'd like to move on to another question.

The Chair: We'll start with Mr. Enns, please.

Mr. Art Enns: This is a topic that I'd like to defer to Wade and Cam. They're the experts on this. We feel we need to take a closer look to see what the regulations will be to be able to comment on it.

I know they have some input on this, so I'll pass it on to them.

Mr. Cam Dahl: I would just like to reiterate the comment about the extraordinary level of unity within the shipping community on this issue. I think it would be good to focus on that level of unity. Most of my shipper members are actually members of the railcar coalition.

Specifically to your question, I think Bill C-30 may enable the changes we need if that regulatory package meets the criteria that have been outlined today. I think the legislation you have before you now can be successful, but it does require the right regulatory package.

Mr. Wade Sobkowich: I want to make the point that we're talking about providing a more specific definition in the regulatory process to the word "operational". If the committee believes that you can define "operational" in a way that includes penalties and potentially liquidated damages, then great. We can address it through the regulatory process. If not, then we have to go to those legislative amendments the Coalition of Rail Shippers was asking for with Bill C-52, which was to allow, first of all, to amend the legislation to be clear. We're not only dealing with operational terms, we're also dealing with other things to make sure penalties and liquidated damages are included.

Mr. Jeff Watson: Of course, as a member of the transport committee, I remember your interventions there. I'm now the parliamentary secretary for transport, so I'm able to sit in on this one.

I want to go to the question of liquidated damages. I have to tell you, I'm conflicted. I'm sympathetic when I hear the plight of producers in western Canada—believe me—of the difficulties of facing regional monopolies or duopolies in terms of your carriage, and the problems that may pose to you. But on the other hand, I

come from the auto industry. If I'm a small tier-three supplier producing tooling for somebody who does auto parts for a major OEM and a truck fails to deliver my product and I lose a contract, I believe I'm in need or deserving of compensation. I don't get to go to an arbitrator. I don't get to go to some government agency, and I certainly don't have a statute to point to that gives me liquidated damages in the event of a breach of contract.

Why should we be doing this for you and not for others? If it is for you, how do we say no to everyone else who would obviously want a very similar regime? Hey, why go to court, right?

● (2030)

Mr. Wade Sobkowich: First of all, as you said, we're talking about a monopoly situation, or a duopoly situation, depending on how you want to identify it. Contracts that have dispute resolutions for liquidated damages between commercial parties in a normal functioning marketplace are not unusual, but you don't need legislation to support it because competitive factors are at play. In other words, if you don't like the contract you have with one supplier

Mr. Jeff Watson: Fair enough, breach of contract is still breach of contract. Why would I not want the same access if I'm in a different mode of transport, or if a failure of another mode of transport lets me down?

Mr. Wade Sobkowich: I'm not sure how to answer that question, other than to say that either we have effective competition or we don't. If we don't have competition, we need to look at propping up the system to simulate what you would otherwise find in a competitive environment, and liquidated damages are a normal part of a normal functioning marketplace.

Mr. Jeff Watson: Of course, yes.

Mr. Art Enns: I want to re-emphasize what Wade said because in your example, if the truck didn't come on time, you have lots of competitors you could go to. I don't have those competitors in the rail system. I have one or two choices at best. There are no options. I still call it a little bit of a monopoly that the railways have on our system over here.

The Chair: Thank you very much, and thank you, Mr. Watson. Our time is up.

I want to thank the witnesses for coming and being on teleconference. Thank you very much for your input.

We'll take a break of three or four minutes.

• (2030) _____ (Pause) _____

• (2035)

The Chair: I'll call the meeting back to order, please, and we'll get started.

With us, from Canadian National Railway, we have Mr. Claude Mongeau, president and chief executive officer. From the Canadian Pacific Railway, we have Mr. Keith Creel, president and chief operating officer.

Thank you very much for attending tonight. We will ask that you give an opening statement. You have up to eight minutes.

We'll start with Mr. Mongeau, please.

Mr. Claude Mongeau (President and Chief Executive Officer, Canadian National Railway Company): We're providing you with a short presentation, in both languages. I don't intend to go through all of it, but I thought it would help to frame the issue. It's been a very difficult winter, and I think it's important that we follow the facts if we want to make the right policy. There's been a lot of advocacy, and at the end of the day following the facts is the only way to make sure we make wise decisions.

I'll refer to page 2, and let me just say very briefly what this line situation is not about.

It is not about a conflict between crude and grain. We move less than 1.8% of our carloads in crude at CN. We have been planning every one of the loads for months. The loading facilities are being built. It takes months. We have the crews, the locomotives, and we move the traffic when it's handed to us. It's a very, very small portion of our overall traffic.

It is not about flatlining. Sometimes you may hear Wade Sobkowich saying that we only want to move so many per week, that we don't care about demand and we move grain the way that fits our interests or our shareholders. Those are not the facts. The chart you see shows that in reality we surge very significantly in the fall, and then in most years, following the winter, we have very little demand for our services. The so-called "peak to trough" is about 80% from the surge that we do in the fall to the trough in the summer.

It's not about flatlining; our interests are aligned. And it's not about crude. What is it about, then?

Page 3 shows you what it's about. First and foremost, it's a hundred year crop. It's a shattering of prior records. We've never moved anything close to that in Canada. Production has never been anywhere near that overall. The portion that's the extra tonnage all has to be exported. We don't eat more Quaker Oats or more Cheerios in the morning because there's more grain being grown. The excess has to move, and the actual excess is close to 55% more grain than in an average year.

In tonnes, it's about 10 million tonnes. To give you a sense of things, if we plan our assets perfectly and have exactly the right amount of locomotives and crews.... Of course, we always have more to be able to surge and meet volatility. But if we were doing it perfectly, the only way we can move all this extra tonnage of grain would be by stopping the movement of all the lumber that we move.

It's twice as much as all the potash that we export at CN. In order of magnitude, 10 million tonnes is that much grain. To find resources to be able to move that on short notice, no supply chain in the world can be expected to be able to do that.

The Minister of Agriculture, at the end of September, was calling for a crop of 62 million tonnes. It was only in late November that it was made official at 76 million tonnes. Now, all of us in the grain transportation business or grain trade knew that we had more to move, but it was very late in recognizing that we had that extra tonnage to move.

Turning to page 4, it's not the big factor, but it was also about a very difficult winter. I'll let my colleague Keith tell you a bit more about that, but a picture tells the whole story. We've not had a winter like this for at least 50 years, if not 60 years. Winter plays havoc with our capacity, not just for grain, but for all the commodities we move, every one of them. From intermodal to crude to potash, every one of the commodities we move was impacted by this winter. Every one of you who used an airline was impacted by this winter too. It was a winter that impacted all transportation modes, not just railroads.

Turning to page 9, you have the details in your presentation, blow by blow. I would encourage the committee to study it carefully because it's important. However, I will give you a summary on page 9.

That's our performance at CN since the beginning of the crop year. You will note that for the first five weeks we had a very slow start.

• (2040)

We moved far less than what the capacity of the railroad is. About 10,000 to 12,000 cars could have been moved in the first five weeks of the crop year while this huge crop was being grown in the backyard of Mr. Sobkowich. After that, when orders started to ramp up, we were able to move a record amount of grain. In fact, we moved 22% more than in an average year, and we established our record best performance in our history, moving more than 5,000 cars straight all the way until winter hit, unfortunately, very early in the year.

For those of you who are from Winnipeg, in December, at the very beginning, winter hit hard, and we had impacts all the way until the beginning of March. During that period, it's important for you to know, versus an average year, we moved about 10,000 fewer carloads than what a normal winter would have allowed us to move. So 10,000 to 12,000 carloads were not moved because they were not ordering in August, and 10,000 to 12,000 carloads did not move because of the winter of decades. I call it a wash.

Right after the winter stopped, we started to move a lot of grain again, and last week we moved more than 5,000 carloads. In the last four we were moving 22% more than in a normal month of March. That's what we performed. On balance, given the winter, we performed reasonably well. The root cause had to do with winter to a small degree, but it was mostly about a very large crop and a few other factors, which I will take a minute to describe.

What you see on page 10 is a red line that shows the orders we received from the grain elevator companies. In the first five weeks they were not ordering, unfortunately. When they realized we had a big crop, in week six, they started to order more. In week seven and beyond they started to order far more than we were ever able to move in the history of the rail supply chain of Canadian grain. In fact, they were ordering close to 7,000 orders every week from CN. For the whole industry, that would be 14,000 cars. Of course, we never did anything close to that. In fact, we saw a continued pattern of very high orders by the grain companies that were all looking for market share and all looking to place orders, to order ships, to take contracts with farmers, and to promise deliveries, but the deliveries they were promising were well in excess of even the best performance ever.

You referred earlier to an automotive company. In any business, when you're trying to plan a supply chain, normally if you look at average performance, and maybe if it's a great year, then look at best performance, or performance somewhere in the range of average to best, that's where you should place your bets. To place 28,000 more orders over the period than the absolute best performance of CN over the last 10 years is a lack of coordination. It's too many orders for a system in which not only railroads would not be able to deliver, but railroads and grain elevators themselves would not be able to deliver.

I hear a lot of people saying that there are some 35,000 orders on the waitlist at CN and some 30,000 orders on the waitlist at CP, which is a total of 65,000 orders. At CN, of the 35,000 orders we have on our waitlist, 28,000 are orders that have been placed in excess of our best performance ever. Some of the responsibility for those promises, the boats that are waiting at anchor, and the delivery contracts for farmers that are not being fulfilled is the railroad's. An awful lot of it belongs to the grain elevator companies that are lacking coordination and that are having growing pains in lining up their aspirations with the supply chain capability.

I'm finishing, Mr. Chairman. Give me eight and a half minutes. It's my industry you're about to target.

The next page is the actual story in a nutshell. The best ever for the entire industry is 9,500 cars in a week. That's the best performance ever in the last 10 years. The government grain order is asking us for 11,000 cars per week or thereabouts, which is a stretch but a stretch we're prepared to sign up for.

• (2045)

Some in the industry, like Mr. Sobkowich a minute ago, at some point were calling for 20,000 carloads. He was told that it's a little too much, because we wouldn't be able to unload them. Now they're calling for 14,000 carloads. It's not possible to move 14,000 carloads. We will be lucky if we move 11,000.

In order to move 11,000, the grain elevator companies will have to start selling hard at Thunder Bay, because we are at capacity in Rupert as we speak. We are a whisker away from being in excess of what they can unload in Vancouver. The sum total of those two corridors is about 6,200 cars. If we want to get anywhere close to 11,000 cars, they had better start selling at Thunder Bay hard, soon, even though it costs a little bit more to go through Thunder Bay, and even though there might not be as much shipping capacity as one would like, because they did not ship enough last year going to Thunder Bay, and because they make more money going to the west coast using their elevators in shipping lanes that are less costly.

A lot of this is about grain elevator companies. There are only three controlling the market, so when they say there's a duopoly in railroads, there's an oligopoly in grain elevator companies. They're taking advantage of the situation at the moment in many ways, and it's not just railroads, it's a team sport, and the supply chain capacity we will prove very soon is close to 11,000, no more.

Last, in my view, the regulation you're considering will set the grain handling industry backwards. You're encouraging adversarial relationships, as we are demonstrating right now. You're undermining collaboration. You're going to be driving rigidities, and in many ways, setting ourselves backwards.

The physics are clear. The capabilities depend on assets in the ground. Assets get in the ground if investment is possible. There's no amount of regulation that can move grain.

One piece of the puzzle that I believe is misguided and is bad policy is this notion of extending interswitching to 160 kilometres, without any due process, and to do so not just for grain but also for other commodities. I think this has been done in haste, without any due process. It's not just the rail industry that you're going to be damaging. You're going to be damaging the Canadian economy.

If you do anything, Mr. Chairman, you should start by being a little bit more prudent. Limit the extension to grain—it's a grain bill, after all—and let's find out how it works. If everybody loves it and we all agree that it's the best thing for Canada, you then can extend it to all commodities everywhere. But don't do it without due process, and don't do it under the guise of a 100-year crop with a difficult winter and grain elevator companies that are lacking coordination and are as big a part of the problem as we are in the rail industry.

Thank you.

• (2050)

The Chair: Thank you very much, Mr. Mongeau.

I'll now go to Mr. Creel, please, for eight minutes.

Mr. Keith E. Creel (President and Chief Operating Officer, Canadian Pacific Railway): Good evening, Mr. Chairman. Thank you for the invitation to appear before you to discuss the grain supply chain in bill C-30. This is obviously an important conversation, not only for farmers and Canadian Pacific but for all Canadians, which is why I'm personally here to talk about this matter tonight.

For more than the past two decades, I've obtained considerable experience as an operating officer in both Canada and the United States. For the last 12 years, I've served in a number of increasingly senior operating positions at both Canadian National and Canadian Pacific, which has provided me experience in this grain supply chain in western, central, and eastern Canada.

My comments today will focus on the supply chain capacity, how CP, despite exceptional weather challenges, has performed this crop year, and why interswitching is not a compelling solution to this matter.

Specific to the supply chain capacity, I am not here to debate the new normal in crop sizes, but I'd be remiss not to emphasize the absolute fact that this crop is 37% above the five-year average of 58 million tonnes and an all-time high. In a normal grain year, Canadian railroads export approximately 33 million to 34 million tonnes. This year's exceptional crop requires the supply chain to move an additional 20 million tonnes, which equates to an over 50% increase. The reality is that the supply chain cannot move these types of volume over a short period of time. To put it in perspective, the surplus alone exceeds the total volume of potash that Canada typically exports every year.

This is clearly a total supply chain capacity problem. We need to be searching for a total supply chain capacity solution.

From a capacity perspective, the challenge is to create a grain supply chain that can meet today's and the future's demands. It is important to understand that this is not a single-component supply chain. This total grain supply chain is made up of essentially five components: first, the grain originates in a truck; second, it gets elevated in country; third, it moves to port by rail; fourth, it is then offloaded by a port terminal elevator; and fifth, it is finally loaded on a ship by the port terminal elevator again. To suggest any component, let alone a single component, could ramp up capacity with little to no warning to handle this exceptionally large grain crop is simply unrealistic.

I'll shift my comments to share the facts about CP's performance this crop year. In August, with an approximately nine million tonne carry-over from the previous crop year, we practically had no grain to move. At CP, we started storing grain cars in May and June. In fact, we had 4,000 railcars stored due to a lack of demand to move grain at the beginning of August when a normal crop was expected at that time, according to Statistics Canada.

From September through November with the harvest in full force, CP responded by moving more grain than we've ever moved during this comparable time period. We moved 20% more grain in Canada than the five-year average, and 14% more than the previous year. This demonstrated the surge capacity CP has to move more grain in response to strong demand.

In December and January, our double-digit growth was impacted by the extraordinary cold weather. To quote Environment Canada, "If we take the two months and combine them, we find it is the coldest December-January since 1949-50". The facts are that December, January and February were extremely cold, with 49 days below -25°C from Kamloops, B.C., across the Prairies, and through to the east versus 25 days on average in a typical Canadian winter. I can tell you that I have never experienced anything this extreme in over two decades as a railroader.

I say -25°C because it's a critical tipping point in railroad operations. Sustained temperatures like this across a network or a country cause significant capacity reductions and safety concerns to operations. Train sizes decrease. The technology of railcar airbrakes does not allow maintaining brakes on a normal length grain train, let alone any train, in these temperatures. A 50% reduction in train size is not uncommon. Safety concerns increase. Trains must be slowed to safely operate to avoid derailments. As a result of these two key factors, the velocity slows, congestion increases, and therefore our effective capacity goes down. No one in the supply chain is immune to this capacity-reducing weather, from the country elevators to the ships on the Great Lakes and the trucks on the highways.

Moving to February, even in the face of record cold, CP was up 15% for grain. So far in March, we're up 20% over last year in Canada.

Mr. Chairman, in face of these extreme weather conditions, I am proud to say that our railroaders as well as CN's—who worked tirelessly 24-7, 365 days a year, even with crews operating grain trains Christmas Day to move this record crop—did this despite the fact that our efforts are absolutely not being matched by other partners in the supply chain, despite what some of the naysayers are saying, despite what some of the elevators and the grain companies are saying. In times like we've faced and are facing trying to move a record crop, it's critical that all components of the grain supply chain step up with the same efforts. This simply has not happened.

While some report to the contrary, CP has shipped and continues to ship record volumes to the betterment of farm communities, grain companies, and the Canadian economy.

• (2055)

As I have stated a number of times in the past two months, weather permitting, we would get back to a performance level like last fall. This is not because we've been ordered to do it; it's because the extreme weather has lifted, and we have the capacity and operating conditions to perform to this level.

Given the last two weeks of performance by CN and CP, operating at levels consistent with the government order, we are in fact bumping up against supply chain capacity limits. This is slowing velocity and reducing capacity at Vancouver and Thunder Bay. The railway is not the bottleneck, nor can it solve this capacity problem alone.

That said, rather than finger pointing, we need to have a constructive dialogue about how we can create additional total supply chain capacity. In the near and long term, additional capacity can be brought online if railcars are unloaded, when available for unloading, seven days a week, 24 hours a day.

For instance—this is fact, not rhetoric—yesterday morning, consistent with what we have experienced over the last three weeks, we had over 1,500 cars to unload in Vancouver between both railroads versus a run rate of 600 unloaded per day by the shipper terminals over those same past three weeks. This is because some terminals operate three shifts per day, five days a week, while others operate two shifts per day, seven days a week.

There is only one terminal of five in Vancouver that operates consistently three shifts per day, seven days a week. Unloads, using

the last three weeks as an example, are 34% higher on weekdays versus the weekend. We need the entire supply chain to be thinking velocity to create additional available capacity. Instead of cars sitting, waiting to be loaded or unloaded, these cars should be cycling back to the prairie elevators and to the ports.

I'll now turn my comments to extended interswitching. I'm not here today to talk about the commercial implications of extended interswitching. I will, however, talk to the capacity concerns and implications of it. It will not allow the supply chain to move more grain, and has the potential for unintended consequences to a system that is world class. This could include competitive impacts for the Canadian economy. More specifically on capacity concerns, extended interswitching will lead to multiple handlings of grain shipments that will slow down the grain supply chain, negatively impacting transit times. It can also create circuitous routings, further complicating the supply chain and reducing capacity. That is the exact wrong thing to do.

In summary, if the supply chain is to do better, we need to find a collaborative approach in the near term and create capacity in the total grain supply chain in the longer term. This is how we will ultimately benefit the farming community and the Canadian economy.

Thank you, Mr. Chairman.

The Chair: Thank you very much, Mr. Creel, for your presentation.

I have to say that both of you have put a lot of effort and thought into this, and I appreciate that very much. All of us do.

We'll start off our questions with the New Democratic Party.

Mr. Allen, you have five minutes, please.

Mr. Malcolm Allen: Thank you, both of you, for coming in.

As you can tell by the comments you've alluded to from others as well as some of your own, this is a contentious issue between the parties, quite frankly.

To be perfectly candid with both of you, the tenor and tone of your comments is such that it doesn't bode well for trying to work out the problems. I would agree with Mr. Mongeau that the idea of finger pointing is not always helpful. If one wants to actually do something here, I would suggest that we all need to take half a step backwards and take a deep breath. I would say that to all players, not just the railroads, so that folks can get to a place where there's a conversation happening.

Without a conversation, there will be no solutions, unless of course we impose them, which we have the absolute right to do. As the governors of this country, all of us in this Parliament get that right through the Canadian public. We don't suggest that everyone always loves what we do or agrees with what we do, but we have the absolute right to do it. I would suggest that folks need to think about that as we head forward.

There needs to be a solution to this issue in the short term, and indeed over the longer term, where all players are a part of the solution and not simply standing idly by saying, "It's not my fault. It's their fault."

I think you've raised some interesting points about the grain handling system. I believe they are part of the problem, quite frankly. I would agree with you, sir.

I heard what Mr. Creel just said. He floated around some numbers.

The first question would be on whether you have those numbers. If you could table them with the committee, on the port of Vancouver, I'd appreciate it. The information I have, which was just given last Wednesday, by the way, in Saskatchewan, by the head of the union at the port of Vancouver, is that it's not true that it's backed up, and it's not true that they're not available to go to work. There may be an issue about the grain companies asking them to come to work, but he's saying that's not his members' situation. They're saying that they're ready to work the weekend as well in those ports in Vancouver.

If you have the numbers, sir, that you just quoted, and you can get them to committee, we'd appreciate it.

The minister said the other day that their expectation is that commodity movement across the country will go up. The question for both of you would be what the long-term plan is for the railroads as far as this excess is concerned. I'm not suggesting a surge here. I understand surges are hard to play with; they are hard to figure out, hard to anticipate.

What is your long-term strategy? I'm not asking you to divulge to each other; you may have different things. Do you have a long-term plan? Let's be truthful: you're an integral part of the economy. There's not anybody in this room who doesn't know that. There's no Canadian who doesn't know that. The railroaders are iconic, in a way.

We see surge and we see excess capacity. Do you have plans for this? Is this simply going to be, "Well, we did our best, and that's

about as good as we're going to do. We made money for our shareholders and we don't have to make it any better"?

• (2100)

Mr. Claude Mongeau: We do have plans and we meet the demand every year in grain, except in exceptional circumstances like this year. It's not perfect. People would like us to surge even more in the fall and park cars in the summer. We have to find the right balance. In terms of moving grain, the average crop is 58 million tonnes and the normal range of crops is anywhere from 52 to 65 million tonnes. We have the assets and the capability to move that.

Now, that bar will move up. Next year, Agriculture Canada is calling for 62 million to 63 million tonnes as a crop. That's the trend line. We will be reserving assets and be in a position to handle that. We will build our capability, as the trade grows, with a capability to move up or down.

What we are unable to promise, unless we were all sitting down and deciding the economic cost of being prepared to do that, is to be able to move a 100-year crop on short notice. That is unrealistic as an expectation, and the cost to do that is prohibitive. No one would build a business to be able to handle that. When you have such a situation with huge excess tonnage to move, that's when collaboration is absolutely essential. That's when getting the right facts, sitting down around the table, making sure we sweat the assets from end to end, is the only strategy that I know of.

I've been calling for that since the fall. Unfortunately, through the winter, when things got a bit out of sync, there was an awful lot of piling on the railroads, and there have been no conversations that I've been able to attend to provide the facts that I'm presenting today. It's unfortunate that I am having a chance to do that when you've already decided that heavy-handed regulation is the solution.

The Chair: Thank you very much.

I'll move on now to Mr. Payne, please, for five minutes.

Mr. LaVar Payne: Thanks to the witnesses for coming.

I'm from Medicine Hat. The CP goes right through my riding.

Quite frankly, Mr. Creel, I used to work in the private sector. I worked for a company called Methanex—before that, it was Novacor Chemicals, and before that, it was Alberta Gas Chemicals—and I can tell you that when I worked for that organization, we always had trouble with CP, trouble to get them to get their cars and trouble to get them to move their cars.

After I left that organization, I worked with a number of different organizations, with some of the petrochemicals, fertilizers, carbon black, green growers, and so on, and they wanted to get together and talk about what the problems were. I did that, and we identified that they all had the same problems. CP was not servicing their organizations. They weren't getting their cars. They weren't delivering their cars.

This is not new for me. This goes back a long way. Every year I hear from organizations, particularly from the grain farmers over the last couple of years since I have been a member of Parliament, that they're not getting their cars. That's one of the things I'd like to get out on the table.

As I understand it, CP actually dropped something like 400 engines and some 2,000 cars out of their system in this last year. If you had kept those engines and kept those cars, I'm wondering.... I don't know what kinds of cars they were; obviously, there are all kinds of different products. However, that could have meant putting more trains on the rails, even with shorter trains—because I understand the issue in terms of cold weather—to potentially get to market some of the grain that hasn't reached there.

I'm wondering if you have any comments on that.

• (2105)

Mr. Keith E. Creel: Yes, sir, if may, I have a couple of comments.

I'll step back to the comments about the history of CP. Unfortunately, I've only been at CP for about 13 or 14 months, so I can't speak to the history, but I can speak to the mandate. That's exactly what our mandate is, what my mandate is, and what the new management team's mandate is: to improve those service levels so that our customers don't continue to experience shortages and poor service. That's exactly what we're focused on doing, and I would suggest that we've had quite a bit of success over the past 13 months in doing that.

Turning to your point about reducing locomotives and cars, you've caught the essence of part of that. For cars that were reduced, the preponderance of those cars were beyond their service life. They have a certain amount of years, according to regulations, that they can stay in service, so they were retired. They were turned back to the people we leased them from. They were scrapped.

On locomotives, we have locomotives stored today. To suggest adding locomotives or adding cars, that I would do that, the answer would be no, because you need three things to run trains. You need cars, you need locomotives, and you need crews. To Claude's point, if we go to the timeline, we understand something as simple as how long it takes to hire employees, how long it takes to hire a conductor, and how long it takes to train a conductor to become a locomotive engineer so they can move those additional trains, if we had the locomotives and cars to do it. There's at least a six-month lead time

to go out to the market to identify a need for conductors and to hire someone to test them, to train them, and to qualify them.

You can't respond and turn on a dime when you're told in November that you have an 80 million tonne crop to move. It's just simply impossible. As much as I'd like to do it, and economically and financially it's to our betterment to do it, it's just impossible to do it. That's the challenge we face.

Mr. LaVar Payne: I can understand that, because I have a human resources background, so I dealt with those kinds of issues. My understanding was also that CP laid off a number of individuals.

One of the things that I wanted to also touch on is that there's been a lot of talk by the various groups about having service level agreements, but I understand that neither CP nor CN has actually done that. I'm just wondering if potentially both of you could make a comment on why you haven't gotten around to doing any service level agreements.

Mr. Claude Mongeau: I would say the following. Keith used to be my COO, and we did that, so we can take credit for that while he was at CN, and I know they're doing it at CP. We've actually expanded the concept of service level agreements across Canada. It's caught on like wildfire in the intermodal space. We have a number of them in a number of other commodity groups, in merchandise, in bulk.... The concept is prevalent and we welcome it.

In grain, we have service level agreements. They tend to be more operational, for a very simple reason. We operate under the revenue cap. The notion of having a normal commercial relationship where there are commitments and reciprocity is not the way the system is built at the moment. I'm not here to start a debate on the revenue cap, but the reality is that in any commercial business, you take revenues, you take commitments, you make a contract, and you have service level components to it. When the price is set and when the assets have to be there no matter what in a regime where it's pay as you go, the notion of service level agreements falls on its own head.

Mr. LaVar Payne: I'd also like to get Mr. Creel's comment on that.

The Chair: Make it very short. We're out of time.

Mr. Keith E. Creel: At CP the preponderance of our business is covered by contracts and service level agreements. For any that are not effective, we've made a call to the grain companies and we are more than willing to sit down with them as long as there's reciprocity. That's a key word. It's not a one-way relationship. No relationships work effectively or productively if it's all one way.

The Chair: Thank you very much Mr. Payne.

We'll move on to Mr. Goodale from the Liberal Party, for five minutes, please.

• (2110)

Hon. Ralph Goodale: Thank you to the witnesses for appearing this evening. Time is always the enemy here, so I'll try to be as brief as I can.

Mr. Mongeau, tonight you've made reference to other parties in the value chain who aren't performing up to the standard that would be necessary to move this crop. I wonder if you could be a little more specific about exactly where the failures are. Is it in the country? Is it only at port? Is it a failure of planning? Is it a failure of coordination? Is there not enough data available? Is the system not being properly monitored so you can get the hard facts and make decisions based on the things you've actually measured?

I think it would be helpful to us if you could—if not tonight in two or three minutes, in a more detailed form—lay out where you think the others in the system are not pulling their weight. That would be useful for us to know.

Mr. Creel, for your part, I was struck by a speech that your CEO gave in New York about a month ago in which he indicated that CP was particularly sensitive—that was his word, sensitive—to some kinds of movements, intermodal in particular, where if you miss a delivery date, you miss and you lose the business because somebody else picks it up. But that same kind of sensitivity, to use Mr. Harrison's words, did not apply to coal and grain, because essentially they had no alternatives, and sooner or later the railways would move that grain anyway. Yes, it would be inconvenient to farmers, but not inconvenient to railways because they would get all the revenue and be paid in any event.

I think you would appreciate what a negative message that delivered on the Prairies, where farmers were being told that CP was not “sensitive” to their issue, and their issue was described as a “modest” problem. Farmers would think that a multi-billion dollar grain shipping failure is something more than modest.

I just wonder if you can indicate how CP can get past this rather negative messaging to farmers, and find a way forward here that really doesn't say to them, “Look. Don't you ever dare grow another bumper crop, because we can't handle it.”

Farmers want to be thinking in terms of growth and expansion, and meeting world markets, and they'd rather not be told that this is really beyond the capacity of the Canadian system to cope with. Just be average, just be an average crop. The system can handle that, but anything more than an average, forget about it, because the system can't cope with it.

Mr. Claude Mongeau: I can tell you one thing: at CN we moved the equivalent of 63 million tonnes last year. We can move next year

on last year's assets. So we are able to surge, and we surge from year to year because grain moves up and down. It has always been like that. We've never had any crop that shattered all records the way we did this year.

I want to let Keith answer your other question, but I'll just say briefly that I'm not blaming the other sector of grain elevators. I am resisting the advocacy and the fantasies they've been using in setting expectations out there so that the railroads are being piled on. I have that in my throat, big time.

I believe that we should do better every step of the way, and I believe that is happening as we speak. What is not happening is an honest assessment of what can be done. To say they can move 14,000 carloads a week and to write that to Minister Ritz and yell everywhere that the railroads are failing and setting the expectations somewhere between 9,000 and 14,000 tonnes is irresponsible. The minute we started to ramp up—and we are just at 10,000 now—they started to say, “Oh, they're trying to flood us.” Now the speech is different. You have to send it in the right corridor at the right time. Why? Because in reality—and you will find this out, Mr. Goodale, in the next two to three weeks—with the supply chain, the grain elevators, and the railroad together, probably at the moment, with the investments we have, we'd be lucky to do 10,500 cars or thereabouts on a regular basis.

Now, the conversation would be totally different if we had the honest truth on the table. And that's the honest truth. They haven't been able to come up to the table and say so. We will have to prove it over the next couple of months. And you just watch. I gave you the facts in my presentation, and we'll keep tabs on them. That's what this supply chain is able to do, and that's where we have to grow from. We're executing every step of the way, and we're growing that to 11,000 or 11,500, but it's not a railroad problem. It's a supply chain problem.

• (2115)

The Chair: Thank you very much, Mr. Goodale.

We'll now go to Mr. Watson of the Conservative Party, for five minutes, please.

Mr. Pierre Lemieux: Mr. Creel, I think, wanted to make a quick comment.

The Chair: We're well over, but keep it very short, please.

Hon. Ralph Goodale: That's fair, Mr. Chairman. Thank you.

Mr. Keith E. Creel: Let me start by saying it's unfortunate that perception exists among the farmers in Canada. I was not in New York. I did not hear Mr. Harrison's comments. It would be inappropriate for me to comment. But I can tell you the reality of what happens day to day at our railway.

In our company there's only one larger advocate than me for grain and moving grain, and that's Mr. Harrison. The fact is that at CP, even during this winter, we're moving more grain than we've ever moved. It is the only commodity. If you look at our numbers for February and March, we've experienced double-digit growth year over year. It's the only commodity. The balance of our customers in this marketplace would love to have enjoyed the kind of growth and the kind of capacity that's been created for grain. The facts are and the reality is that from the top of the house to the bottom of the house, grain is getting the priority that it needs to the best of our ability given supply chain constraints that we have in moving it.

Thank you, sir.

The Chair: Thank you very much, Mr. Creel.

Now I'll go to Mr. Watson, for five minutes.

Mr. Jeff Watson: Thank you, Mr. Chair. I hope that answer being added to Mr. Goodale's monologue doesn't cut into my time.

I want to start with the presentation by Mr. Mongeau at CN. I'm looking at page 5, which refers to "Plenty of Railway Capacity Initially Left Unused". I understand how a railway company would plan based on what it would move in an average year. But based on a late planting season, which you and others would have known about, was it realistic to expect that capacity to have been used up on August 1, as your presentation shows? You're showing quite a gap on August 1. Was it realistic, knowing that there was a late planting season and that you probably weren't going to have average capacity in August?

Mr. Claude Mongeau: I would say it's as realistic as wishing winter away. It takes hindsight, and it was growing in the backyard of all the grain players who are today accusing us of failing the country. All I'm saying is if we're so bad, what were you doing in August? There was nine million tonnes of carry-over stock. When it became obvious that we had the potential for a huge crop, we should have started to move traffic to create storage capacity. In normal years, it doesn't happen that way. In an exceptional year, it would have been very, very helpful. I wouldn't be pointing that out if they weren't trying to say that we failed the country because of a very difficult winter.

Mr. Jeff Watson: Are you saying to the committee today that neither the order in council nor Bill C-30 are necessary measures? Is that your position?

Mr. Claude Mongeau: I think the order in council is helpful to rally all the players, and we are going to meet that order in council and then some. It's a "blunt instrument", but I can understand the crisis out there, and we're prepared to live with it and move the traffic according to it.

I do have grave concerns about the interswitching provisions, which I thought were brought into the equation without much due process, and I have—let's put it this way—a lot of concerns about the

undermining of supply chain collaboration, which comes with the piling on, as if railroads were the only key player. You're asking the grain elevator company to comment on railroad performance. Who's asking grain elevator companies why they were placing so many orders? How are they managing their business, and in which corridors? It's only the railroads that are on trial.

• (2120)

Mr. Jeff Watson: Without the order in council, without Bill C-30 with the two-year time limitation on it, if you will, the estimated carry-out could be in the range of either 17 to 27 million tonnes, the lower end with the requirements in place. If we weren't to proceed with Bill C-30, then how can you convince this committee? What would your plan be to deal with the carry-out, considering that next year it could be 63 million? You've got a carry-out that's quite large. What is your plan? If it wasn't a mandatory requirement, what's your plan of convincing us?

I'd like Mr. Creel to answer the same question, by the way.

Mr. Claude Mongeau: Our plan is to move 5,500 cars as soon as possible. We've been saying that for two months, well before the order in council came in. We believe that with 5,500 cars at CN, which means something like 10,500 or 11,000 for the industry, we would most likely exceed the capability of the grain elevator company to unload and load those cars.

Mr. Jeff Watson: How long are you prepared to do it at that level? Until the carry-out is gone, or what?

Mr. Claude Mongeau: We are, for sure. Until winter takes a little bite of our performance next year, we've provided our plans. As soon as the weather breaks, 5,500. We're well on our way to doing that, and we'll keep it that way as long as they can load and unload them.

I think that what we're going to find—this committee should watch this—in the next couple of weeks is that the maximum this supply chain is able to do, rail and grain elevators, is something in the range of 10,500 cars. That would be my bet.

Mr. Jeff Watson: I heard you say that earlier. I'd like Mr. Creel to answer the question.

Mr. Keith E. Creel: I would say this: From my view at CP, it was not necessary. We're effectively moving under the order in council the same amount of grain that we were moving without it back in September, October and November, until this weather started. With that said, if it is necessary, and it's deemed that it was obviously and it was issued, I'd say that it's incomplete.

If we really want to optimize how much grain is moved in this country and deal with record crops, record levels, we need to complete the supply chain. We need to be compelled to bring all the players to the table so that we can collaboratively work together to identify all the gaps in capacity, with the same commitment, with the same skin in the game—for a lack of a better term—so that we can optimize the growing supply chain, not minimize it by going after just the railways.

The Chair: Thank you very much, Mr. Watson. Now we'll go to Madam Brosseau of the NDP, for five minutes, please.

Ms. Ruth Ellen Brosseau: I would like to thank our witnesses for their testimony today.

I would like to touch on something that Monsieur Mongeau said in a comment to my colleague Mr. Allen. I think you said that there had not been enough talks, I guess, between the government and the rail companies before this heavy-handed legislation came down. Did I get that right? Is there enough communication between the federal government and the rail companies?

Mr. Claude Mongeau: I would say that we're finding out about the government's intentions in the news. Like most other stakeholders, we've been asked for our position, but there's not been an opportunity to sit down and discuss, for instance, with the grain elevators and the rail industry, whether it should be 10,000, 11,000, or 12,000. Those conversations have never taken place, and we will have to prove the hard way where throughout the supply chain capability is.

Ms. Ruth Ellen Brosseau: For any relationship to work properly, there has to be communication. Without that it just doesn't work; there's a complete breakdown. I think that's why we're here. We're trying to flesh out how we got here, establish what the problems are, and fix them.

In a statement by CN on March 31, you were quoted as saying, "One of the biggest root causes of the challenge we face is a lack of coordination across the supply chain and growing pains from new grain marketing strategies following the change in role of the Canadian Wheat Board." I'm wondering if you could comment on the role of the Canadian Wheat Board when it did deal with logistics issues, where we are today, and on how we could flesh out a better working relationship.

As you said, Mr. Creel, it's important. With this order in council you basically are doing what you're supposed to be doing, but it's incomplete because not all the players in the supply chain are at the table.

I think it was also mentioned that this is a team sport in terms of the supply chain. I'm wondering if I could have your comments on how we all need to work together, and even if there are amendments to make this piece of legislation better, on how the government should maybe be a little bit more of a team player.

●(2125)

Mr. Keith E. Creel: The only way to effectively make this work and make it complete is to compel all those players—the elevators in the country, the port terminal operators, the grain companies—to come to the table so that we can sit down together and identify capacity opportunities.

That has not been done. We have not been able to get the grain companies to the table to collaborate and to make the same kind of commitments. We get the rhetoric that if the grain is there, they'll work 24 hours a day, seven days a week. Well, the grain has been there in spades for the past three weeks, and as I've said, only one of the five terminals has worked 24 hours a day, seven days a week. They are just not matching the rhetoric with fact and with the same commitment that the railways are.

We're prepared to do that. We just need all the players to come to the table, and the legislation does not compel all the players to come to the table.

Ms. Ruth Ellen Brosseau: Most of it is done through the regulations.

Mr. Keith E. Creel: It should not have to be done through regulation. We've made a call and we've made ourselves available to do this many times. There just has not been the commitment or the desire to make it happen.

Mr. Claude Mongeau: Let me give you one example.

You heard Mr. Sobkowich, for instance, say that we should have liquidated damage to pay for the ship demurrage. Well, if the grain elevator company ordered too many ships, more ships than they are able to unload, who should pay the liquidated damage?

Finding out the true capacity is not an exact science. It requires a lot of collaboration. When you have rhetoric, finger pointing, piling on the railroads, you get quotas and you get regulation.

At the moment, only one party is being subjected to this trial, and the reality is that it's a team sport. The railroads are not very far from the capacity that the grain elevators are able to handle. We were far from it in the winter; make no mistake. As I've said, for CN it's been about 10,000 cars, or one million tonnes, less than what a normal winter would be. But we were close to the maximum capacity of the grain elevators in the fall, and we are close to it now; you watch.

Ms. Ruth Ellen Brosseau: We could all agree that this has not been a good year, but moving forward, how will we regain our reputation? I think we have a black eye domestically and also internationally. How are we going to ensure that this does not happen again, that we're actually talking and making the system work together?

The Chair: A short answer, please.

Mr. Keith E. Creel: I'll simply reiterate my point: bring all the players to the table. Compel all the players to come with the same commitment and the same expectation and we can solve this problem.

Mr. Claude Mongeau: And set proper expectations.

The Chair: Thank you very much, Madam Brosseau.

Now we'll go to Mr. Zimmer for the last questions, please, for five minutes.

Mr. Bob Zimmer: Mr. Chair, I'd like to share my time with Mr. Dreeshen as much as I can.

We've talked before, Mr. Mongeau, about capacity issues. I have articles here that say the capacity issues existed well before the weather hit us in the fall. Further, since I've been a member of Parliament, since 2011, I've been hearing about shortages. Whether it's at mills or whether it's at grain terminals or wherever, it's been a shortage that has been ongoing.

The grain companies are not here right now. The terminal people are not here right now. You are. What are you prepared to do, if this situation happens again next fall, that this is not going to happen again? We live in Canada. Bad weather is a factor of life.

Not what the other guys are doing, not finger pointing; what are you guys going to do to assure Canadian grain farmers that this won't happen again?

Mr. Claude Mongeau: I can tell you one thing. We are about 3,000 carloads from moving the record amount of grain in our historical crop to date.

Mr. Bob Zimmer: That's an answer—

Mr. Claude Mongeau: No, I'm getting there. By the time the year is over, we will have shattered all records ever in moving grain this year. I can tell you that, because we're almost there as we speak, despite a very difficult winter.

As for winter, every year we go back to the well and try to find ways to improve our resiliency. It's essential to our business agenda. That's the only way we can satisfy and maximize returns for our shareholders, and that's what we do every year. We run a very good railroad. CN this year performed the best on a relative basis even though we're the most northern railroad. BNSF experienced a far more consequential impact on its railroad. The eastern carriers, NS and CSX, with only snow to deal with, had more velocity reduction than CN did.

How we're doing is not perfect, and we can do a lot more year after year, but we actually performed, in the scheme of things, reasonably well in an extremely difficult winter.

• (2130)

Mr. Bob Zimmer: I'll pass it on to Mr. Dreeshen.

Mr. Earl Dreeshen: Thank you, gentlemen, for being here today.

I have a couple of questions. When you're talking about 11,000 cars per week, I believe those are the numbers you said you could justify and be able to move without affecting any other commodities, yet we continue to hear stories about how you might not be able to move this, so we have to be worried because you're being pressured by the government to make sure you fill that mandate. Of course, if it

is true, what you said, that this is what you could manage, why then are other suppliers suggesting you're not going to be able to move their products? Is this true that they are getting those kinds of messages?

Mr. Keith E. Creel: From CP's perspective, I think what people don't clearly understand is that this winter affected many other commodities than just grain. You have tremendous amounts of pent-up demand to move. You have more potash to move, you have more coal to move, and you have more merchandise business to move. With that pent-up demand, if I'm mandated to move at a normal run rate of 5,500 cars a week, there are not enough resources.

Mr. Earl Dreeshen: This is the situation, though. I mean these numbers did not just come out of the air. It was a situation where we were told, and we have been told, that you are able to manage the commitments you have for these other suppliers as well. They're getting these stories that, because of the grain and because you're being mandated through the government here, you cannot fulfill—maybe not the surge capacity that they might expect, or whatever—but it seems as though there's a bit of a disconnect and they were getting these kinds of messages that are suggesting that, hey, whatever you're doing is because this part is being regulated and therefore we're having troubles there.

Mr. Claude Mongeau: Let me explain it to you this way. As long as things are in sync and we're now in the spring and summer months, the 11,000 is something we can do. What happens if you're in the winter and everything goes down by 10% to 20% for a week or two weeks? What do you do during that week? What happens if you have a derailment that takes away your railroad for two days? What do you do in the next five days?

I think other customers have a legitimate concern that a weekly quota could impact other commodities.

Mr. Earl Dreeshen: Understood, but right now we're not in the situation where we have to deal with the winter, so I think these kinds of issues and things that are being mentioned are a concern.

I also heard you, Mr. Creel, say that if there's an 80 million tonne crop, you are ready to roll with that. With the marketing freedom, with our free trade agreements that we're looking at, we're looking at the next five to ten years as constantly requiring improvements. I'm just wondering whether you're looking at that, because you're going to be making money for your shareholders if you are. I'm just wondering how we can kind of fit this so we can get to see some certainty in here.

If I have time for the last question, which I'm sure I don't, you said one of the five terminals is working 24-7. I'd just like to know which it is.

Mr. Keith E. Creel: We'll share that with the minister's office. I think that would be appropriate in fairness to the grain companies.

Turning quickly to a couple of your points, for the record, I didn't say that this grain supply chain could handle 80 million tonnes. It's going to take tremendous collaboration. It's going to take all parties at the table to even get close to moving 80 million tonnes.

The second point is that what we all need to remember, and what our customers have to remember, a lot of these same customers, is that this is a North American rail industry. Other than exporting off the west coast or through Thunder Bay, Canadian customers are shipping to a place called Chicago. Chicago and the North American rail industry is in the worst shape it's been in my two decades of railroading. It's in complete gridlock.

We've been criticized by grain companies, by customers, for not driving more cars into that black hole. If we were to do that, we'd be shipping fewer cars overall for the Canadian grain. It would be the irresponsible thing to do. That's the significant difference that's

dragging these networks down and keeping all customers from being able to move at the level we've been mandated to, which is a normal, non-winter, in sync rhythm for the operation, to Claude's point.

Mr. Earl Dreeshen: Thank you.

The Chair: Thank you very much.

I want to thank the witnesses for coming out and being part of the chain in terms of the moving along of Bill C-30.

With that, I want to thank the witnesses again. Committee members, before you leave, I like to tell you that tomorrow I would like to have about 10 minutes at the end of our meeting for some in camera discussion about where we're going next week. Thank you very much.

The committee is adjourned.

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