

SASKATCHEWAN FARMLAND OWNERSHIP
Submission to the Minister of Agriculture
on behalf of the
CANADIAN BAR ASSOCIATION

It has become common knowledge that Saskatchewan farmland is likely the cheapest, high quality farmland in the world. There has been a dramatic rise in its value in the last few years which has signaled to farmers, investors, lenders and developers that Saskatchewan farmland is becoming a pricey but finite commodity worthy of consideration as an investment. There has recently been interest shown by pension funds and other institutional investors in the acquisition of farmland in this province which has led to the question of farmland ownership. At present there are some restrictions on foreign ownership and the question now being voiced is whether or not there should be an increase in restrictions on such ownership, should it be relaxed or should there be any concern about it at all.

Many interests come into play when these issues are considered and some of them are competing. For example, traditionally farmers have seen landownership as a form of long term investment in a retirement fund; the land is purchased and developed, used to produce a livelihood, and all the while it appreciates in value so that it can be passed on to future generations or sold in such a way as to provide the owner retirement income or a retirement fund. Traditionally there has been a tendency to protect farmland from foreign ownership or large takeovers for fear it would upset the long-standing interest and lifestyle of homegrown farmers and their families as well as their abilities to foster transfer of land to family members and to maintain the family farm lifestyle. At the same time, revenues generated by farming enterprises have provided farmers with significant levels of income and has provided many of them a cherished lifestyle. Other interests include the demand for commercial or residential properties to meet the needs of an ever-growing provincial population. Involved in the mix are the institutional lenders who are required for the most part to enable newcomers to the farming industry to become established in it or to assist those already in it to expand their land base and operations. The sometimes volatility of farm-generated revenues requires that lenders have available sufficient forms of security to allow them their role as much-needed financiers of growing farming enterprises.

There are two identifiable aspects of consideration as to the issue of farmland ownership. The first is a tendency on the part of residents to protect their own, to protect that finite commodity, the available farmland, for the benefit principally of residents, their families, and secondarily, others who wish to become involved in that industry whether as farmers or landowners ready to lease lands to farming enterprises. There are two principal precedents that must be maintained when considering this question. The first is ensuring that the province and its people benefit in some way from the use of the land within its borders, and the second is the need for established farmers to have access to the capital appreciation of farmland to fund retirements and related needs. Institutional investments in large tracts of farmland may allow yearly revenues to those leasing the land but may not adequately allow for an interest in the capital appreciation of the land for their future benefit. In fact, given the resources available to institutional investors, their farmland purchases seems to accelerate increases in farmland values in that they are able to fund purchases at top dollar which would be hard for local farmers to match.

Although there have been some institutional land purchases in the recent past, there is no indication that it has become or will become runaway problem. It is seen as a potential threat in the event excessively large tracts of land are purchased thereby limiting local farmers the opportunity to buy and to grow their operations as land owners. As far as controlling the size of institutional investors goes, it is difficult to control that or to enforce limitations ownership by corporate, institutional or other forms of foreign investors. That is not to say steps cannot be attempted to do that however there is no clear-cut or easy answer.

It would be practically and legally difficult to attempt to control who can purchase farmland in Saskatchewan, however controlling the size of such purchases would be more practical and enforceable. If it is determined that corporate or institutional land purchases are to be regulated on the basis of ownership, one possibility would be to require proof that a majority of the common and preferred shareholders of any such corporate investor be Canadian. That could apply to non-corporate commercial or investment entities. Again, that might be difficult to control or to police however it would not necessarily be impossible. It appears that the control which would be the easiest to enforce would be the size of landholdings by any one individual landowner, be it a pension fund, a corporate investor or some other legal entity. One enforcement procedure would be to require any entity purchasing land to verify corporate ownership, share

ownership or interest ownership by Statutory Declaration or other sworn document which would state clearly that guidelines established by the Province as to farmland ownership are met. Any such requirement would have to include strict, significant and easily enforceable penalties for breaches of the ownership guidelines with added penalties for completing misleading, fraudulent or untruthful Declarations such that their deterrent value would be maximized.

There is some concern about that approach in that not all land purchasers consider themselves bound by sworn declarations. In addition, most can be administered by persons other than lawyers whose regulatory body can discipline them for inadequate inquiries into such issues. That type of inquiry may have a detrimental effect on purchases by local residents in that, if added inquiries are to be made by lawyers in determining a purchaser's qualifications, it would increase the costs of legal services required to process land purchases which would be the responsibility of the purchaser to bear.

In summary, there should not be a limit on foreign ownership of Saskatchewan farmland but it is the size of holdings purchased by any one individual purchaser that could more successfully be limited. There should be some investigation into the way in which some of the revenue generated by foreign ownership benefit the residence of the Province of Saskatchewan and steps should be taken to protect as much as possible the rights of resident farmers to use the appreciation of land value to enhance their lifestyle, financial planning and retirement planning. Efforts should be made to determine the best way to ensure that ownership of farmland follows market trends as evidenced in the purchase and ownership of commercial properties in the province's cities and towns as well as communities across Canada. One of the best ways that all interested parties could fend off potential farmland takeovers of a significant amount would be to develop a new approach to farmland purchase financing which would tie repayment of borrowed funds to revenues generated by the farmland, all the while protecting lenders in as secure a fashion as is presently available to them.

Michel L. Riou, B.A., B.Ed., J.D.