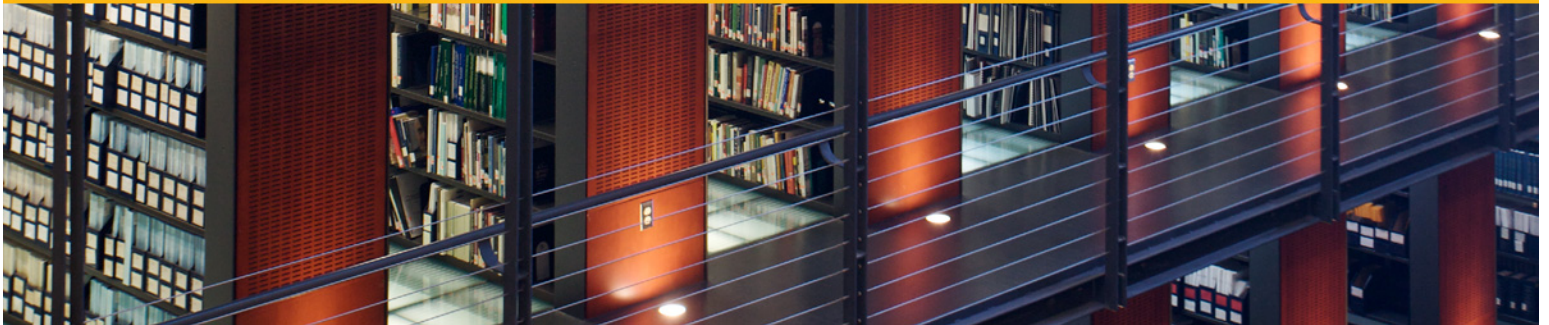




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## BACKGROUND PAPER



# Farmland Grabbing in Canada

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*Farmland Grabbing in Canada*  
(Background Paper)

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# FARMLAND GRABBING IN CANADA

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## 1 INTRODUCTION

For the past few years, a phenomenon has been on the rise worldwide, particularly in developing countries: the massive purchase of farmland by foreign and domestic investors. This phenomenon, often called “land grabbing,” occurs within the context of a financial, food and energy crisis. In Canada, certain experts fear harmful repercussions in the absence of an adequate legislative framework.

This paper describes the phenomenon as it occurs in general and more particularly in Canada. It goes on to cover the main issues related to land grabbing and concludes by describing the legislative measures in place in Canada to protect farmland.

## 2 DESCRIPTION OF THE PHENOMENON

### 2.1 LAND GRABBING

Land grabbing refers to large-scale land acquisition or lease by private investors (banks, corporations, investment funds) or public investors (state-owned enterprises, government institutions, sovereign wealth funds), a phenomenon that has been on the rise since 2008, when investors saw opportunities following the financial, food and energy crisis.<sup>1</sup> For some, farmland is a form of stable and profitable investment. For others, it is a way to ensure food security.<sup>2</sup>

Land grabbing itself is not a new phenomenon. Examples can be found dating back several centuries to the colonial period, in the time of Christopher Columbus.<sup>3</sup> The case of multinational fruit growers also shows that land grabbing has existed for a long time. The U.S. company, Chiquita, for example, has been in Latin America since the beginning of the 20<sup>th</sup> century.<sup>4</sup>

According to Land Matrix,<sup>5</sup> the international database of large-scale land transactions,<sup>6</sup> listed land transactions are primarily linked to agricultural production. The largest investments target agricultural production for human consumption, followed by biofuel-related production. Investments unrelated to agricultural production focus on the sectors of rubber, cotton and palm oil for the cosmetics industry. In addition to agricultural production, land purchased by foreign investors is used for forestry- and tourism-related activities.<sup>7</sup>

According to data compiled by Land Matrix, as of May 2015, nearly 60 million hectares of land were the subject of global-scale transactions between 2000 and 2014, primarily in developing countries. During this period, the organization listed 1,322 transactions, of which 78% were successfully completed, 15% were anticipated, and 7% were not completed. The main countries that purchase land beyond their borders are the United States, Malaysia, Singapore, United Arab Emirates and the United Kingdom. Together, these five countries have accumulated a total of 20 million hectares beyond their borders to date. Canada concluded 44 transactions for over 2 million hectares between 2000 and 2014, primarily in Africa and Latin America (particularly in Brazil and Uruguay).<sup>8</sup>

**2.2 IN CANADA**

Some maintain that although farmland grabbing involves primarily the developing countries, Canada is not safe from the phenomenon.<sup>9</sup> In 2010, rumours that foreign interests, particularly Chinese, planned to acquire large tracts of farmland in Quebec aroused many reactions in the agricultural community.<sup>10</sup> Although the transactions never materialized, these rumours raised several questions regarding the possibility of a future massive purchase of farmland.

According to the 2011 Census data on tenure of agricultural land in Canada, farmers own 64.6% of the total area; the rest of the land is rented or leased from others. As shown in Table 1, Nova Scotia, Quebec and New Brunswick have the greatest proportion of land owned by the farmers who operate on it at 91.0%, 84.0% and 83.5% respectively. Newfoundland and Labrador ranks last, with 31.2%.

**Table 1 – Proportion of Land Owned by Farmers, by Province  
(% of Total Area)**

	2006	2011
Canada	66.1	64.6
Newfoundland and Labrador	33.4	31.2
Prince Edward Island	78.2	77.5
Nova Scotia	88.6	91.0
New Brunswick	84.1	83.5
Quebec	84.7	84.0
Ontario	72.2	70.7
Manitoba	67.3	66.0
Saskatchewan	65.7	64.3
Alberta	61.8	59.9
British Columbia	56.4	56.1

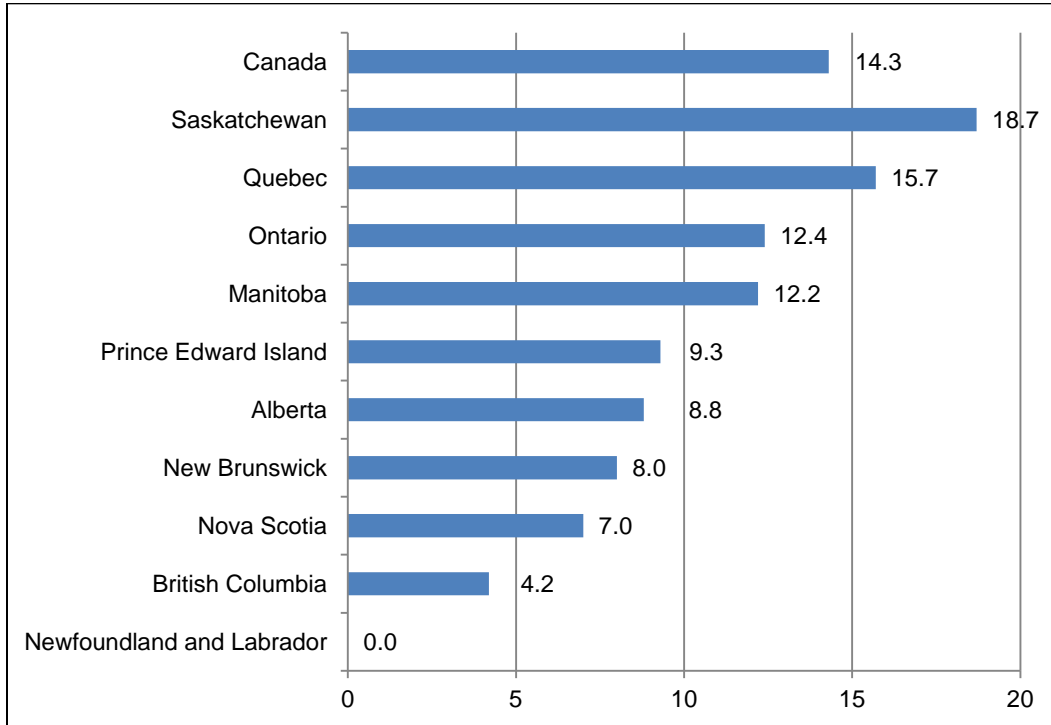
Source: Table prepared by the authors using data obtained from Statistics Canada, "[Table 004-0001, Census of Agriculture, number and area of farms and farmland area by tenure, Canada and provinces,](#)" CANSIM (database), consulted 6 August 2014.

Although most of the farmland in Canada belongs to owner-operators, the proportion of land that they own has been decreasing from year to year since the 1976 Census. The proportion of leased land increased during the same period. Leasing is actually an increasingly preferred form of tenure for various reasons, including the aging farming population and rising price of farmland.<sup>11</sup>

A 22.1% jump in farmland value in 2013 – which exceeded the record-breaking increase of 19.5% seen the previous year – was the highest annual increase in farmland value in Canada since 1985, when Farm Credit Canada began to publish such data. However, in 2014, the average nationwide rate of increase in farmland values declined to 14.3%.

As shown in Figure 1, the highest increases in farmland value in 2014 were in Saskatchewan, Quebec and Ontario, at 18.7%, 15.7% and 12.4% respectively. Land value also increased in 2014 in the other Canadian provinces, except in Newfoundland and Labrador, where it has remained stable for four consecutive years.<sup>12</sup>

**Figure 1 – Variation in Farmland Value in Canada  
1 January–31 December 2014 (%)**



Source: Figure prepared by the authors using data obtained from Farm Credit Canada, [2014 Farmland Values Report](#), 13 April 2015.

Several factors explain the variation in land value in Canada. Principal among the factors are the prices for grain, oilseeds and cattle. Competition over land purchases and current low interest rates have also placed upward pressure on land values.<sup>13</sup>

It is reasonable to think that this relatively rapid increase in Canadian farmland prices could attract foreign investors, as well as Canadian investors, in search of profitable investment opportunities. Major financial institutions and certain investment funds have recently acquired large tracts of land throughout Canada. Among them are major Canadian players such as Agcapita LP, Assiniboia Capital Corp., National Bank of Canada, Bonfield Canadian Farmland LP, Pangea and Walton International. Foreign companies include the U.S. firm Hancock Agricultural Investment Group, an American subsidiary of Manulife, which in 2009 acquired Canneberges Bécancour, a Quebec agricultural firm with 450 hectares.<sup>14</sup>

It is difficult to provide an accurate picture of current farmland ownership in Canada.<sup>15</sup> The Center for Interuniversity Research and Analysis of Organizations (CIRANO) conducted a study on the acquisition of farmland by non-farmers in Quebec. In its report, it concluded that land grabbing remains marginal in the province. It notes that, in 2012, only 0.2% of the farmland area belonged to landowners that resided outside the province.<sup>16</sup> Prior to the CIRANO report, in 2010 University of Guelph researchers carried out a study that found that foreigners living outside Canada represented only 3% of rental-land owners in Ontario.<sup>17</sup> Thus, it seems that the extent of farmland grabbing in Canada cannot be compared with that in African or Asian countries.

On the other hand, it is interesting to note that land ownership by corporate investors may be on the rise. For example, a 2015 National Farmers Union document reported that Walton International, a multi-national real-estate investment firm based in Calgary whose funding may come from foreign investors, owns 13,000 acres (about 5,260 hectares) in Ontario.<sup>18</sup> In Saskatchewan, Assiniboia Capital Corp., the largest farmland investment corporation in Canada, owns 115,000 acres, controlling the equivalent of 150 agricultural businesses.<sup>19</sup>

### 3 ISSUES RELATED TO LAND GRABBING

#### 3.1 OVERVIEW

The governments of several developing countries advocate an open-door policy toward foreign investors, on the condition that they promise to participate in infrastructure development in the country. This situation raises questions, however, when the objective of land acquisition is to produce agricultural commodities and export them to the investors' country of origin for the purpose of ensuring its food security.<sup>20</sup> The land grabbing phenomenon is all the more problematic because it affects a number of developing countries where food security is a major issue. In certain countries, such as China, food security is even synonymous with national security.<sup>21</sup>

In addition to ensuring the food supply of their country of origin, foreign investors are also motivated by the prospect of profits resulting from the acquisition of this land. These profits are often realized at the expense of local populations. In fact, local communities participate rarely in the consultations leading to the acquisition of land by foreign investors.<sup>22</sup> In addition, negotiations between foreign investors and local landowners often lack transparency and may be unbalanced. In many instances, the arrival of foreign investors forces nearby populations to move, which leads to other social problems. Finally, compensation for displaced populations is often inadequate.<sup>23</sup>

#### 3.2 IN CANADA

In Canada, concerns about farmland grabbing relate to actions by domestic, as well as foreign, investors. For example, the Fédération de la relève agricole du Québec emphasizes that the threat of farmland acquisition comes not only from abroad, but also from within Canada via such instruments as investment funds.<sup>24</sup>

The main preoccupation is the impact on the country's farmland prices. In a context of inflation of farmland prices, it is conceivable that transfer of these lands to the next generation of farmers, within the family or not, could be compromised. Financing the purchase of farmland is in fact a major issue for new farmers as well as for the future generation of farmers in Canada.<sup>25</sup>

## 4 PROTECTION OF FARMLAND IN CANADA

### 4.1 CONSTITUTIONAL JURISDICTION

Under the Canadian Constitution, the provinces are responsible for legislating matters of farmland ownership in Canada,<sup>26</sup> which includes all aspects of property law and its ramifications, particularly leasing and estates, as well as urban planning regulations and farmland use.<sup>27</sup> The provinces may also regulate the acquisition of parcels of land by non-residents of the province or non-Canadian citizens.

The power of the provinces to prohibit or limit the acquisition of parcels of land by non-residents of the province was upheld by the Supreme Court of Canada in 1975. In *Morgan v. Attorney General of Prince Edward Island*,<sup>28</sup> the Court recognized a provincial law prohibiting non-residents of the province from becoming the owners of a parcel of land exceeding 10 acres (about 4 hectares) without the agreement of the Lieutenant-Governor in Council (the provincial Cabinet).

Regarding legal residents of Canada who have not obtained citizenship, it is not clear whether it is the provinces that have the necessary *constitutional* jurisdiction to limit their right to acquire land within provincial borders. According to the Canadian Constitution, the Parliament of Canada actually has exclusive jurisdiction over legislation relating to citizenship and foreigners. In a comment in *Morgan*, the Supreme Court implied, without actually deciding, that the provinces could possibly restrict land ownership by non-citizens.<sup>29</sup>

In any case, the federal government settled the matter in 1977 by delegating this power to the provinces. Thus, section 35 of the *Citizenship Act*<sup>30</sup> allows the provinces to pass regulations to prohibit or restrict “the taking or acquisition directly or indirectly of ... any interest in real property located in the province by persons who are not citizens or by corporations or associations that are effectively controlled by persons who are not citizens.”<sup>31</sup>

The *Citizenship Act* does not, however, allow the provinces to prohibit or restrict the acquisition of land by persons who are permanent residents under the *Immigration and Refugee Protection Act*, or to impose a restriction that would:<sup>32</sup>

- contravene Canada’s international obligations;
- discriminate based on nationality;
- prevent a State from acquiring real property for diplomatic use;
- apply to investments that have been declared to be of net benefit to Canada under the *Investment Canada Act*.<sup>33</sup>

### 4.2 INVESTMENT CANADA ACT

The *Investment Canada Act* is the primary mechanism governing the review of foreign investment in Canada. However, foreign investments in a Canadian farm business, regardless of their value, are not subject to the review process, unless they could be injurious to national security.<sup>34</sup> Thus, the federal government could deny a foreign



investment involving the acquisition of farmland in Canada if it is established that this investment is injurious to the country's national security.

### 4.3 LEGISLATIVE FRAMEWORK IN CANADA'S PROVINCES AND TERRITORIES

Six provinces and one territory, namely Prince Edward Island, Quebec, Manitoba, Alberta, Saskatchewan, British Columbia and Yukon, have adopted legislative measures aimed at prohibiting or limiting land acquisition by foreigners, non-residents or corporations. A table summarizing the restrictions in effect in these provinces and the territory is presented in the appendix to this paper.

#### 4.3.1 PRINCE EDWARD ISLAND

In Prince Edward Island, acquisition of land is subject to the provisions of the *Lands Protection Act*.<sup>35</sup>

No individual can own more than 1,000 acres (about 404 hectares) of land in the province, and a corporation cannot own more than 3,000 acres (about 1,214 hectares).<sup>36</sup>

In addition, the Act stipulates that persons who do not reside in the province for 183 days or more a year and corporations, including cooperative and not-for-profit associations, may not acquire more than 5 acres (about 2 hectares) of land without provincial government authorization.<sup>37</sup> Land acquisitions resulting from a gift, bequest, or succession of a spouse, brother or sister, or direct descendant or ancestor are exempt from this rule.<sup>38</sup>

#### 4.3.2 QUEBEC

In Quebec, farmland acquisition is subject to the provisions of the *Act Respecting the Acquisition of Farm Land by Non-residents*.<sup>39</sup>

This Act provides that only Quebec residents, as defined by the legislation,<sup>40</sup> and corporations controlled by Quebec residents may acquire a farm exceeding 4 hectares (about 10 acres).

Non-residents of the province, as well as corporations that are not controlled by Quebec residents,<sup>41</sup> may acquire a farm exceeding 4 hectares, but only with the authorization of the Commission de protection du territoire agricole du Québec.<sup>42</sup> Such authorization is automatically issued when the land in question is not suitable for cultivation of the soil or the raising of livestock or when a non-resident demonstrates the intention to settle in Quebec and become a Canadian citizen or permanent Canadian resident.<sup>43</sup>

The Commission may also grant a non-resident or a corporation that is not controlled by Quebec residents permission to acquire farmland after considering the following:

- the intended use, in particular the applicant's intention to cultivate the soil or raise livestock on the farmland that is the subject of the application;
- the impact of the acquisition on the price of farmland in the region;

- the effects of the acquisition or projected use on the economic development of the region;
- the development of agricultural products and the development of underutilized farmland; and
- the impact on land occupancy.

However, the *Act Respecting the Acquisition of Farm Land by Non-residents* does not allow the Commission to authorize the acquisition of more than 1,000 hectares (about 2,470 acres) annually of farm lands by non-residents or corporations not controlled by Quebec residents, with the exception of cases where the non-residents intend to settle in Quebec.<sup>44</sup>

#### 4.3.3 MANITOBA

In Manitoba, farmland acquisition is subject to the *Farm Lands Ownership Act*<sup>45</sup> and *Farm Lands Ownership Regulation*.<sup>46</sup>

Under the *Farm Lands Ownership Act*, Canadian citizens and permanent residents of Canada, as well as corporations controlled by Canadian citizens and permanent residents, may acquire farmland of any size. Non-Canadian citizens or non-permanent residents of Canada, as well as corporations that are not controlled by Canadian citizens and permanent residents of Canada, cannot generally acquire farmland with a total area of more than 40 acres (about 16 hectares).<sup>47</sup> However, the Manitoba Farm Industry Board may allow a person or entity that cannot normally do so, to acquire an interest in farmland with a total area of more than 40 acres in the following circumstances:

- The applicant is a non-resident but intends to take up residence in Manitoba within a reasonable period.
- The applicant is a resident who plans to leave the province temporarily and to return within a reasonable period.
- The applicant is a religious, charitable or non-profit organization.
- The applicant is a non-resident of Manitoba who resides and farms within 10 miles (about 16 kilometres) of the Manitoba border.
- The acquisition of farmland by the applicant is likely to confer a significant benefit on the province.
- The acquisition of farmland by the applicant is in the public interest.<sup>48</sup>

#### 4.3.4 SASKATCHEWAN

In Saskatchewan, farmland acquisition is subject to the provisions of the *Saskatchewan Farm Security Act*.<sup>49</sup>

Under this Act, Canadian citizens or persons who have resided in Canada at least 183 days in any year, as well as unlisted corporations controlled by Canadian citizens or persons who have resided in Canada at least 183 days in any year, may own farmland of any size.

Persons who are not Canadian citizens or who have not resided in Canada at least 183 days in any year cannot own more than 10 acres (about 4 hectares) of farmland.<sup>50</sup> The same requirements apply to corporations whose shares are listed on an exchange and corporations that are not controlled by Canadian citizens or persons who have resided in Canada at least 183 days in any year.<sup>51</sup>

However, the Act includes exemptions allowing non-residents and corporations to acquire farmland in excess of these limits in certain circumstances. For example, a non-resident may acquire farmland belonging to members of his family or own, for a maximum period of five years, farmland assigned by succession.<sup>52</sup> Also, a non-resident or a corporation not allowed to own more than 10 acres of farmland may apply to the Farm Land Security Board to be authorized to acquire more than 10 acres.<sup>53</sup>

#### 4.3.5 ALBERTA

In Alberta, farmland acquisition by foreigners is subject to the *Foreign Ownership of Land Regulations*.<sup>54</sup>

The regulations prohibit non-Canadian citizens and non-permanent residents of Canada, as well as corporations that are not controlled by Canadian citizens or permanent residents, from acquiring more than two parcels of land with a total area of 20 acres (about 8 hectares). The regulations do not limit the amount of land Canadian citizens, permanent residents of Canada and corporations that are controlled by Canadian citizens or permanent residents of Canada can acquire in the province.

#### 4.3.6 BRITISH COLUMBIA

In British Columbia, ownership of farmland by foreigners or corporations is not strictly prohibited or limited. However, the *Land Act*<sup>55</sup> stipulates that the sale of Crown land by the provincial government is reserved for Canadian citizens or permanent residents of Canada<sup>56</sup> and for corporations or associations incorporated or registered in the province.<sup>57</sup>

#### 4.3.7 YUKON

In Yukon, ownership of farmland by foreigners or corporations is not strictly prohibited or limited. However, the *Lands Regulations*<sup>58</sup> stipulate that the sale of new farmlands (new lots) by the territorial government is reserved for:

- Canadian citizens or permanent residents of Canada who have resided continuously in Yukon for at least one year at the time of acquisition; or
- corporations which are incorporated under the laws of the Yukon Territory or of Canada, where the majority of shareholders are Canadian citizens or permanent residents of Canada who have resided continuously in Yukon for at least one year at the time of acquisition.<sup>59</sup>

## 5 CONCLUSION

Various agricultural stakeholders are concerned about foreign and domestic land acquisition in Canada. They fear that this acquisition by land speculators is detrimental to Canadian farmers because, for example, it prevents the next generation of farmers from owning land.

Some provinces restrict the acquisition of farmland by foreigners. It remains difficult to evaluate the effectiveness of these restrictions – and the significance of foreign ownership of Canadian farmland in general – given the lack of data on this subject. That said, and unlike the situation in certain other regions of the world, farmland grabbing by foreigners seems relatively marginal in Canada.

On the other hand, it appears that farmland acquisitions by Canadian investors are becoming more widespread. Several of the recent acquisitions of farmland in Canada that have given rise to controversy have been made by Canadian entities, not by foreigners.

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  - have been initiated since the year 2000;
  - cover an area of 200 hectares or more;
  - imply the potential conversion of land from smallholder production, local community use or important ecosystem service provision to commercial use (Land Matrix, [About](#)).
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30. [Citizenship Act](#), R.S.C. 1985, c. C-29.
31. *Ibid.*, para. 35(1).
32. *Ibid.*, para. 35(3).
33. [Investment Canada Act](#), R.S.C. 1985, c. 28 (1<sup>st</sup> Supp.).
34. *Ibid.*, ss. 10 and 25.3.
35. Prince Edward Island, [Lands Protection Act](#), R.S.P.E.I. 1988, c. L-5.
36. *Ibid.*, s. 2(1).
37. *Ibid.*, ss. 4 and 5.
38. Prince Edward Island, [Exemption Regulations](#), P.E.I. Reg. EC368/88.

39. Quebec, [An Act Respecting the Acquisition of Farm Land by Non-residents](#) [AAFLNR], C.Q.L.R. c. A-4.1.
40. Under the AAFLNR, a person is a Quebec resident if he or she is a Canadian citizen or a permanent resident of Canada and has lived in Quebec for no less than 1,095 days during the 48 months immediately preceding the date of acquisition of farmland (Quebec, AAFLNR, s. 2).
41. The person must agree to live in Quebec for no less than 1,095 days during the 48 months following the date of acquisition, and on the expiry of such a period, the person shall be a Canadian citizen or a permanent resident (Quebec, AAFLNR, s. 15.2).
42. Quebec, AAFLNR, s. 8. (To be read with s. 1 [definition of “farm land”] and s. 4.)
43. Quebec, AAFLNR, s. 15.2.
44. Quebec, AAFLNR, s. 15.3.
45. Manitoba, [Farm Lands Ownership Act](#), C.C.S.M. c. F35.
46. Manitoba, [Farm Lands Ownership Regulation](#), Regulation 204/87 R.
47. Manitoba, *Farm Lands Ownership Act*, ss. 2 and 4.
48. Manitoba, *Farm Lands Ownership Regulation*, s. 2.
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## APPENDIX A – RESTRICTIONS ON THE ACQUISITION OF FARMLAND IN CANADA

**Table A.1 – Restrictions on the Acquisition of Farmland in Canada**

	Prince Edward Island	Quebec	Manitoba	Saskatchewan	Alberta	British Columbia (Acquisition of Crown Land Only)	Yukon (New Subdivisions Only)
Persons or entities to whom the restrictions apply	All individuals  Non-residents of the province (less than 183 days a year)  All corporations	Non-residents of the province (36 months during the last 48 months)  Corporations controlled by non-residents of the province	Non-Canadian citizens and non-permanent residents of Canada  Corporations controlled by non-Canadian citizens or non-permanent residents of Canada	Non-Canadian citizens and persons who have resided in Canada for less than 183 days  Corporations controlled by non-Canadian citizens or persons who have resided in Canada for less than 183 days  Corporations listed on the stock exchange	Non-Canadian citizens and non-permanent residents of Canada  Corporations controlled by non-Canadian citizens or non-permanent residents of Canada	Non-Canadian citizens and non-permanent residents of Canada	Non-Canadian citizens and non-residents of the territory (1 year)  Corporations controlled by non-residents of the territory (1 year) or not incorporated under Yukon Territory or Canadian laws
Acreage limit	All individuals: 1,000 acres (about 404 hectares)  Non-residents: 5 acres (about 2 hectares)  Corporations: 5 acres (about 2 hectares)	4 hectares (about 10 acres)	40 acres (about 16 hectares)	10 acres (about 4 hectares)	Two parcels of land with a total area of 20 acres (about 8 hectares)	No Crown land acquisition permitted	No farmland acquisition permitted (new subdivisions)
Authorization to exceed the limits	Yes, from the Lieutenant-Governor in Council  For a non-resident to acquire more than 5 acres and for a corporation to acquire more than 5 acres up to 3,000 acres	Yes, from the Commission de protection du territoire agricole du Québec  To acquire more than 4 hectares  Maximum of 1,000 hectares per year in total	Yes, from the Manitoba Farm Industry Board  To acquire more than 40 acres (only certain persons or entities)	Yes, from the Farm Land Security Board  To acquire more than 10 acres	No	No	No