BILL C-25: AN ACT TO AMEND THE FARM CREDIT CORPORATION ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

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LEGISLATIVE HISTORY OF BILL C-25

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	5 April 2001	First Reading:	12 June 2001
Second Reading:	1 May 2001	Second Reading:	12 June 2001
Committee Report:	17 May 2001	Committee Report:	13 June 2001
Report Stage:	7 June 2001	Report Stage:	
Third Reading:	11 June 2001	Third Reading:	14 June 2001

Royal Assent: 14 June 2001

Statutes of Canada 2001, c.22

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

Legislative history by Peter Niemczak

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BACKGROUND

On 5 April 2001, the Honourable Lyle Vanclief, Minister of Agriculture and Agri-Food, tabled Bill C-25, An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts, for first reading in the House of Commons.

This legislative reform is the first to occur since the major changes made in 1993. To meet the new requirements of the market, the Farm Credit Corporation (the "Corporation")(1) underwent a rejuvenation process designed to equip it more fully for its role as an agricultural lender. In fact, market globalization had already begun to make its impact felt in the agri-food sector in Canada, primarily in the form of a tendency toward diversification and an increase in added value. As a result of its new mandate, the Corporation had been given an opportunity to provide specialized financial services to farmers and groups of farmers whose commercial activities extended beyond the primary sector.

Bill C-25 proposes to further broaden the Corporation's mandate by allowing it not merely to improve and increase the range of products and services it already offers to primary producers but also to offer financial services and advice to downstream and upstream farming businesses, whether or not they are owned by farmers. This is a major change to the existing *Farm Credit Corporation Act*; after increasing the range of the products and services it provided to farmers in 1993, the Corporation will now be able to broaden its clientele, again in

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* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) "Corporation" is used to refer to both the existing Corporation and the Corporation that will be continued under the name of "Farm Credit Canada" (see below).

order to meet more effectively the emerging needs for financing in Canada's agricultural sector. In fact, the Corporation is reacting to market conditions in which various farming sectors – primary production, processing, suppliers of inputs – have become more interdependent than ever and require a varied and integrated range of financial services.

For its new expanded clientele, the Corporation would like to provide a number of additional services, including:

- loans for different kinds of agri-businesses;
- the capacity to provide share capital;
- an expansion of the range of its lease-financing services;
- an extensive range of commercial management services such those relating to property and succession planning;
- the creation of subsidiaries to diversify its services; and
- a broader range of risk-management tools that might be offered in partnership with financial consortia.

The reason for this expansion and this diversification of its activities is the Corporation's wish to position itself better on the agricultural scene in Canada in order to provide support for rural communities in their economic development while attempting to ensure that its main focus "will continue to be primary production."(2)

To prepare for the proposed legislative changes in Bill C-25, the Corporation has held consultations with more than 100 regional and national stakeholders in the agricultural sector, which include organizations of farmers representing most types of farming as well as financial institutions such as the banks and the credit unions.

DESCRIPTION AND ANALYSIS

A. Change of the Corporation's Name and Definition of "Business Related to Farming" (clauses 1 to 4)

Clauses 1 to 3 change the title of the Act and the name of the Corporation, which now becomes "Farm Credit Canada" (FCC), while clause 4 continues the Corporation as a body corporate under its new name.

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(2) Corporation, Press Release, 5 April 2001.

Although this change of name is in accordance with the guidelines published by the Treasury Board in its "Federal Identity Program" (created primarily to provide Canadians with clearer and more standardized information, especially on the Internet), the choice of the French name (Financement agricole Canada) is nevertheless something of a surprise. In fact, when a federal government agency changes its name, the current trend – although this is not based on any directive that has been issued – is to harmonize the English and French names so that they can share the same logo, if not to contract them. This is what was done, for example, in the case of the "Business Development Bank of Canada / Banque de développement du Canada," the logo of which, BDC, is identical in both official languages.

Bill C-25 changes the English name from "Farm Credit Corporation" to "Farm Credit Canada" (FCC). It would appear that Parliament found it difficult to devise a French equivalent that could also be reflected in the FCC logo – or an English equivalent for FAC. The new French logo – FAC – may well also give rise to confusion because it is pronounced more or less in the same way as the logo for the Quebec farm credit agency, the Financière agricole du Québec (FAQ).

The Corporation wishes to broaden its clientele base to include agri-businesses, whether or not they are owned by a majority of farmers, provided that they benefit farmers. According to subclause 3(2), a "business related to farming" is "a business that primarily produces, transports, stores, distributes, supplies, processes or adds value to inputs to or outputs from farming operations." In its explanatory notes on the Bill, the Corporation gives as an example the fact that a corner grocery store would not meet the above-mentioned criteria but a fruit and vegetable store that purchased its supplies directly from a producer would meet them.

Although this definition is relatively complete, the concept of "primarily" carrying on certain activities could, on the other hand, give rise to more than one interpretation because it is not specifically defined in the Bill. The problem as to what is meant by "primarily" in this context could arise in particular in the case of high value-added businesses. For example, is the primary activity of a small or medium-sized brewing business "the adding of value" to barley, which would mean that it was an agri-business subject to the Bill?

As will be seen in the next section, subclause 5(1) of the Bill sets out the Corporation's mission, and this could provide a better understanding of the kinds of customers targeted by the Corporation.

B. Expanded Financial and Management Services and Mission of the Corporation (clause 5)

Clause 5 of the Bill deals with the main amendments to the financial and management products and services that the Corporation wishes to offer in order to respond better to the new requirements of the agricultural market.

Subclause 5(1) of the Bill amends subsection 4(1) of the *Farm Credit Corporation Act* to allow the Corporation to offer not only its current services but also financial and commercial services that are personalized for farming operations and for small and medium-sized agri-businesses by indicating that these businesses must be related to farming. In addition, in order to dissipate any apparent doubt concerning the new customers of the Corporation, the provision indicates that "the primary focus of the activities of the Corporation shall be on farming operations, including family farms." Consequently, although the Bill is silent as to what a family farm might be, Parliament has given the Corporation a mission in which the activities may well go beyond the primary sector but must nevertheless provide benefits for farmers.

Subclauses 5(2) and 5(3) of the Bill extend the powers of the Corporation to include the making of loans for the payment of costs associated with carrying on a business related to farming and for the acquisition or improvement of property held by such a business.

Subclause 5(4) is the focal point of Bill C-25 because it makes the most substantial changes in, or additions to, the provision of financial products and services by the Corporation. The provision permits the Corporation to:

- provide services and products that complement those currently available from the public and private sectors (paragraph 5(4)(*f*.1));
- procure the incorporation, dissolution or amalgamation of subsidiaries (paragraph 5(4)(*f*.2)) in order to diversify the range of financial and management services it provides, including the creation of partnerships (see paragraph 5(4)(*f*.5));
- clarify the powers it holds with respect to lease-financing services for farming operations (paragraph 5(4)(*f*.3));
- **dispose of farmland acquired by the Corporation (paragraph 5(4)(*f*.4.1));**
- acquire equity interests in farming operations (paragraph 5(4)(*f*.4)); and
- clarify its ability to conclude arrangements with other financial organizations in order to offer full financial services in its provision of financial services (paragraph 5(4)(*f*.5)).

Offering business management services, whether or not this is done in association with other organizations, in addition to the whole range of services already provided and the power to create subsidiaries in order to extend these services appears to put the Corporation in a better position to serve farmers. However, the possibility of directly offering lease financing to, and attracting risk capital into, the farming sector also raises more questions.

It should be noted that the Corporation already provides lease-financing services in partnership with CULEASE Financial Services, and this makes it possible to combine the latter company's expertise in leasing with the Corporation's national network of agricultural equipment dealers. Although the Corporation is involved in a very specific market that requires particular expertise, this clarification of the Corporation's role with respect to lease financing could well annoy a number of financial institutions such as the banks. With the legislative amendments that also permit the Corporation to own and to lease various assets such as equipment and real estate, the possibility of providing lease-financing services could become a powerful marketing tool for the Corporation.

Finally, because the agricultural sector is capitalistic and Canada's strategy of increasing the level of added value in agriculture will require the start-up of businesses and encouragement for the growth of existing small business, access to risk capital may in fact appear as a need. However, investors wishing to offer venture capital are generally also looking for quick and high rates of return. In farming, it would appear that there are very few sectors with the exception of biotechnology that would meet these criteria. It is generally recognized that venture capital is not as widely available in Canada as in the United States, but the banks, the BDC and private investors already provide this kind of financing. The Corporation would like to be able to play a role as catalyst in order to encourage investors to offer more venture capital in the agricultural sector, but it may be asked why it wishes to intervene in this way. If there is currently an imperfection in the market, this imperfection may explain the Corporation's desire to correct the situation. However, it can also be assumed that venture capital is not particularly present in the agri-food sector quite simply because this sector is not conducive to this kind of financing.

C. Corporate Governance: Clarification of the Position of Chief Executive Officer (clause 6)

The Governor in Council is responsible for appointing the Chairperson of the Board and the President of the Corporation. However, subsection 7(2) of the existing Act, which provides that "the chief executive officer is responsible for the supervision of the business of the

Corporation", does not define which of these two officers is the Chief Executive Officer who would, in that capacity, be responsible for the general management of the Corporation. Subclause 6(1) of the Bill provides that the President of the Corporation is responsible for supervising the business of the Corporation.

However, subclause 6(2) gives the Board the power to authorize a director to act as Chairperson as long as the office is vacant. In the existing Act, an acting appointment – if the Chairperson is absent or unable to act or if the office of the Chairperson is vacant – is given *de facto* to the President of the Corporation.

The Bill also gives the board the power to appoint an acting chief executive officer if this office becomes vacant or if the President of the Corporation is absent or unable to act (subclause 6(3)). Such an acting status may be held for not more than 90 days, following which the approval of the Governor in Council is required.

D. Risk Management (clause 7)

Because the Corporation wishes to extend its financial services, clause 7 of the Bill makes it possible for it to enter agreements relating to its financial management in order to better manage the financial risks, including the use of options or agreements on the subject of interest rates and currency exchange transactions.

E. Transitional Provisions and Consequential Amendments (clauses 8 to 22)

The transitional measures in clauses 8 and 9 continue the Farm Credit Corporation under the name of Farm Credit Canada to enable:

- the new body to continue to be responsible for the contracts, agreements, liabilities, obligations, etc., of the existing Corporation;
- the property of the existing Corporation to continue to belong to it under its new name; and
- the new entity to continue any legal proceedings that are currently under way in the courts.

As a result of the change in the Corporation's name, clauses 10 to 22 make consequential amendments to six acts, including the *Financial Administration Act* and the *Public Service Pension Act* as well as to a number of regulations in which "Farm Credit Corporation" must now be replaced by "Farm Credit Canada."

COMMENTS

The Farm Credit Corporation, which has approximately 45,000 clients, is the only national financial institution whose activities are exclusively focused on the agricultural sector in Canada. This sector, like many other sectors of the economy, is increasingly competitive and requires substantial investment of capital at every stage of the agri-food chain from farming operations to value-added industries including research.

Bill C-25 permits the Corporation – which already has a very pronounced presence in Canada's agricultural landscape with its network of 100 offices – to broaden the range of its financial and management services in order to respond more effectively to the emerging needs of the agricultural industry.

During the consultations concerning the initial drafts of the Bill, many stakeholders in agriculture recognized the Corporation's specific expertise and the importance of the role it plays for farmers. The Bill also indicates that the Corporation will remain focused primarily on the financial and commercial needs of farming operations but it may also serve clients that have eluded it to date, namely agri-businesses owned by people who are not farmers.

Was the reason for this broadening of its client base the need to supplement the existing financial services that are offered by other financial institutions in a way that would not suit the situation of these agri-businesses? Should the Corporation not instead quite simply become another player in the market for financing agri-businesses? Because the BDC is already actively involved in this area, it may legitimately be asked whether the presence of two Crown corporations in the same market is really necessary.

Moreover, the Bill gives the Corporation the power to provide lease-financing services either directly or indirectly; this is a market that the banks defend strongly and tenaciously. The banks have already asserted that they do not wish to see the Corporation providing this kind of service.

Finally, even though some studies seem to show that the agricultural sector needs venture capital and this type of funding in its current form does not really reflect the situation in the agricultural sector, there is nothing that would clearly indicate that a Crown corporation such as the Corporation has the role of a catalyst to play in order to attract venture capital to farming. The other methods of financing that the Corporation already provides and the expertise it has built up during the 40 years of its existence seem to better reflect the real needs of Canadian farmers at the present time.