

# Saving the Farm: A Comparative Analysis of the *Farmers' Creditors Arrangement Act* in Manitoba and Ontario

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## ABSTRACT

The Great Depression and Dust Bowl of the 1930s caused great hardship for many Canadian farmers, especially in the Prairie Provinces. In response to falling prices and crop yields, as well as increasing debt levels, Parliament enacted the *Farmers' Creditors Arrangement Act* (FCAA). The mandate of the bold, new statute was to keep farmers on the land by reducing and rescheduling debts to suit the productive value of the farmland and the capacity of the farmer to pay. There is little academic scholarship that examines the FCAA and how it functioned in practice. This article builds on an earlier pilot study of FCAA case files in two Manitoba counties and widens the empirical lens to consider applications from several more Manitoba counties as well as two Ontario counties. It offers the first analysis of how the FCAA operated in Ontario, employing both quantitative and qualitative data to provide a rich commentary, using examples of actual

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farmers. The analysis reveals that the application of the *FCAA* was strongly influenced by local, county-level factors. Rather surprisingly, there were few factors that can be attributed to differences between the two provinces more generally, notwithstanding the fact that there are notable variations in farming practices, operations, and conditions in Ontario, a non-prairie province, and Manitoba, a prairie province. A secondary finding is that, in general, the compromises formulated under the *FCAA* were highly tailored to the individual farmer's circumstances. However, there were nevertheless pockets of case files where a fairly uniform approach was used to resolve the financial hardship of farmers who were, seemingly, all in quite similar circumstances. Accordingly, the picture that emerges is complex. *FCAA* practice evinces stark contrasts – generating compromises which could be either bespoke or boilerplate – and limiting the extent to which one can generalize based on the empirical data from individual counties or regions.

Keywords: Great Depression, Insolvency, Farming, Prairie Provinces

## I. INTRODUCTION

The Great Depression and Dust Bowl of the 1930s caused great hardship for many Canadian farmers, especially in the Prairie Provinces. In response to falling prices and crop yields, as well as increasing farm debt levels, Parliament enacted the *Farmers' Creditors Arrangement Act (FCAA)*.<sup>1</sup> The mandate of the bold, new statute was to keep farmers on the land by reducing and rescheduling debts in light of the productive value of the farmland and the capacity of the farmer to pay. Other insolvency laws of the period, with one notable exception, contemplated liquidation of a debtor's assets and generally did not provide an adequate framework for effecting restructurings so as to keep businesses in operation.<sup>2</sup> In the FCAA, by contrast, Parliament set an ambitious mandate to carry out restructurings of Canadian farm businesses, which was bolstered by an administrative architecture that allowed for unilateral adjustment of debts in cases where the farmer and their creditors could not reach a compromise among themselves.<sup>3</sup> The FCAA was therefore a radical piece of legislation judged within its Great Depression-era context. It remains the most progressive piece of insolvency legislation in Canadian history in its muscular application to reduce farm debts to a level that was sustainable for farmer-debtors.<sup>4</sup>

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<sup>1</sup> *Farmers' Creditors Arrangement Act, 1934*, SC 1934, c 53 [FCAA], as amended by SC 1935, c 20, SC 1935, c 61.

<sup>2</sup> See Thomas GW Telfer & Virginia Torrie, *Debt and Federalism: Landmark Cases in Canadian Bankruptcy and Insolvency Law, 1894-1937* (Vancouver: UBC Press, 2022) at 7. See also *Bankruptcy Act*, RSC 1927, c 11; *Winding-up Act*, RSC 1927, c 213. The notable exception was the *Companies' Creditors Arrangement Act*, enacted in 1933. See *Companies' Creditors Arrangement Act*, SC 1932-33, c 36. See also Virginia Torrie, *Reinventing Bankruptcy Law: A History of the Companies' Creditors Arrangement Act* (Toronto: University of Toronto Press, 2020) [Torrie, *Reinventing*].

<sup>3</sup> See FCAA, *supra* note 1, s 12(6); Virginia Torrie, "Farm Debt Compromises during the Great Depression: An Empirical Study of Applications made under the Farmers' Creditors Arrangement Act in Morden and Brandon, Manitoba" (2018) 41:1 *Man LJ* 377 at 381, 393 [Torrie, "Farm Debt"]; Virginia Torrie, "Federalism and Farm Debt During the Great Depression: Political Impetuses for the *Farmers' Creditors Arrangement Act*" (2019) 82:2 *Sask L Rev* 203 at 237 [Torrie, "Federalism and Farm"]; Telfer & Torrie, *supra* note 2 at 106.

<sup>4</sup> See Torrie, "Federalism and Farm", *supra* note 3 at 238; Telfer & Torrie, *supra* note 2 at 106.

The FCAA was enacted in 1934 in the depths of the Great Depression and the Dust Bowl.<sup>5</sup> This was a turbulent moment in Canada's history, and the FCAA was enacted in response to calls from prairie farmers for sweeping changes in debtor-creditor relations.<sup>6</sup> The objective of the FCAA was to save owner-operated farm businesses by reducing debts to an amount that the farmer could afford to pay, thereby staving off bankruptcies and foreclosures. The large number of farmers who made application under the Act are a testament to the strong desire of many farmers to carry on in business.<sup>7</sup>

Although the FCAA was justified under the federal bankruptcy and insolvency power in the *Constitution Act, 1867*<sup>8</sup>, it might be more aptly characterized as farm protection legislation considering the lengths to which it went to keep farmers on their land.<sup>9</sup> Prime Minister Richard Bedford Bennett acknowledged the unprecedented reach of the FCAA in the first reading of the bill in the House of Commons. Bennett said that the FCAA bill presented a "grave constitutional doubt"<sup>10</sup> due to its interference with contracts, which could be seen as an intrusion on the provincial property and civil rights power.<sup>11</sup> However, the FCAA survived constitutional

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<sup>5</sup> On the origins of the FCAA, see generally Torrie, "Federalism and Farm", *supra* note 3; Torrie, "Farm Debt", *supra* note 3 at 378. Other measures to help farmers included the following: *Prairie Farm Rehabilitation Administration Act*, SC 1935, c 23; *Farm (Canadian) Loan Act Amendment Act*, SC 1934, c 46; *Canadian Farm Loan Act Amendment Act*, SC 1935, c 16.

<sup>6</sup> See Torrie, "Federalism and Farm", *supra* note 3 at 222-23.

<sup>7</sup> "From the inception of the Act, July 3, 1934, to the date of repeal, December 15, 1943: 56,306 farmers had their affairs considered under the Act. 47,509 farmers had their debts reduced and due date extended." Minister of Finance, *Final Report: Farmers' Creditors Arrangement Act, 1934* (1 August 1944), Ottawa, Library and Archives Canada (RG 19, vol 426) at 2. See also Stephanie Ben-Ishai & Virginia Torrie, "Farm Insolvency in Canada" (2013) 2 J Insolvency Institute Can 33 at 47-48.

<sup>8</sup> 30 & 31 Vict, c 3 (UK), s 91(21) [*Constitution Act*], reprinted in RSC 1985, Appendix II, No 5.

<sup>9</sup> See Torrie, "Federalism and Farm", *supra* note 3 at 206-07, 231-52; Virginia Torrie, "The Farmers' Creditors Arrangement Act Reference Case and Rehabilitating Debtors" in Telfer & Torrie, *supra* note 2, 101 at 101-37 [Torrie, "FCAA Reference"].

<sup>10</sup> *House of Commons Debates*, 17-5, vol 4 (11 June 1934) at 3640 (Right Hon RB Bennett).

<sup>11</sup> See *Constitution Act*, *supra* note 8, s 92(13). See generally Torrie, "FCAA Reference", *supra* note 9.

reference and became a seminal piece of federal insolvency legislation.<sup>12</sup> The Act forms the basis for Canada's current approach to farm insolvency under the *Farm Debt Mediation Act*.<sup>13</sup>

This article reports on the findings of an empirical study of applications made under the *FCAA* in the counties of Dauphin, Portage la Prairie, and St. Boniface, Manitoba, as well as Kent and Prince Edward, Ontario. This is the second such study, and the first empirical analysis of any kind, on the use of the *FCAA* by Ontario farmers. In addition to the quantitative data analysis, this article incorporates a qualitative assessment of farmers who filed under the Act in different counties, providing a rich commentary on the application of the *FCAA* in practice based on examples of actual individuals.

The applications considered were filed between the years 1934 and 1942. The present project is based on a pilot study that analyzed applications under the *FCAA* in two Manitoba counties: Morden and Brandon.<sup>14</sup> Like the earlier study, this project uses empirical methods to evaluate the success of the *FCAA* in achieving its policy objective of "keep[ing] the farmer on the farm."<sup>15</sup> In addition, it draws on empirical evidence to shed light on similarities and differences in the operation of the Act across regions. The variation observed from one county to another, even within the same province, underscores that localized approaches were used

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<sup>12</sup> See *British Columbia (AG) v Canada (AG)*, [1937] UKPC 10; Torrie, "FCAA Reference", *supra* note 9.

<sup>13</sup> SC 1997, c 21. On the influence of the *FCAA* on present approaches to farm insolvency, see Ben-Ishai & Torrie, *supra* note 7 at 48-51; Torrie, "FCAA Reference", *supra* note 9 at 192-93; Virginia Torrie, "Mechanisms of Debt Adjustment under the *Farmers' Creditors Arrangement Act, 1934*" (2021) UNBLJ 132 [Torrie, "Mechanisms"]. See also Virginia Torrie, "A Modern View of Bankruptcy and Insolvency" in Telfer & Torrie, *supra* note 2, 138 at 146-49. For further discussion of tailored insolvency regimes, see generally Laura Coordes, "Bespoke Bankruptcy" (2021) 73:2 Fla L Rev 359; Allen Wilford, *Farm Gate Defense: The Story of the Canadian Farmers Survival Association* (Toronto: New Canada Publications, 1985), ch 12 at 116-27.

<sup>14</sup> See Torrie, "Farm Debt", *supra* note 3.

<sup>15</sup> *House of Commons Debates*, 17-5, vol 4 (4 June 1934) at 3639 (Right Hon RB Bennett). See JEA MacLeod, "The Farmers' Creditors Arrangement Act" (1936-1938) 2 Alta L Q 167; D McLaws, "The Farmers' Creditors Arrangement Act" (1936-1938) 2 Alta L Q 239.

to deal with the issue of farm debt.<sup>16</sup> Therefore, despite being a federal law, the application of the FCAA was not uniform. Rather, the Act was deployed to assist insolvent farmers in varied ways that took account of local circumstances.

There is little academic scholarship that examines the FCAA and how it functioned.<sup>17</sup> This article accordingly makes an important contribution to understanding how this Act operated in practice. This study draws on significant archival collections of FCAA case files from the Archives of Manitoba in Winnipeg and the Archives of Ontario in Toronto. Building on the findings of the earlier pilot project,<sup>18</sup> the present study expands the scope of empirical inquiry to include several more counties in Manitoba and Southern Ontario. This article analyzes empirical data from the Manitoba counties of Portage la Prairie,<sup>19</sup> Dauphin,<sup>20</sup> and St. Boniface,<sup>21</sup> for which there was an abundance of FCAA-related materials held at the Archives of Manitoba. Similarly, the Ontario counties of Prince Edward<sup>22</sup>

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<sup>16</sup> See Torrie, “Farm Debt”, *supra* note 3 at 378. For instance, the Boards of Review in Alberta developed a practice of writing off roughly one-third of a farmer’s debt in most instances. See Morris C Shumiatcher, *A Study in Canadian Administrative Law: The Farmers’ Creditors Arrangement Acts* (DJur Thesis, University of Toronto Faculty of Law, 1943) at 723–24, 743–54 [unpublished], cited in Torrie, “Farm Debt”, *supra* note 3 at 409.

<sup>17</sup> See Ben-Ishai & Torrie, *supra* note 7; Torrie, “Farm Debt”, *supra* note 3; Torrie, “Federalism and Farm”, *supra* note 3; Torrie, “FCAA Reference”, *supra* note 9; Shumiatcher, *supra* note 16.

<sup>18</sup> See Torrie, “Farm Debt”, *supra* note 3.

<sup>19</sup> Portage la Prairie County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1942), (Schedule: A0130, Accession No: GR2470) [Portage la Prairie Filings].

<sup>20</sup> Dauphin County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1934-1944), (Schedule: A0130, Accession Nos: GR0508 and GR6713) [Dauphin Filings]. Note that no Dauphin filings were present beyond 1942 despite the title of the archival holding.

<sup>21</sup> St. Boniface County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178) [St. Boniface Filings].

<sup>22</sup> Prince Edward County Court Farmers’ Creditors Arrangement Act case files, Ontario Government Record Series RG 22-4555 (1935-1940) [Prince Edward Filings].

and Kent<sup>23</sup> were selected for the empirical study due to the large amount of FCAA material preserved at the Archives of Ontario.

Widening the empirical lens from the pilot study provided additional data that enhanced the intra-provincial analysis. In addition, this study compared and contrasted FCAA applications in two provinces – one on the prairies and the other in a more populous part of Eastern Canada. The rationale behind expanding this empirical study beyond the confines of the prairie region – the area the FCAA was originally enacted to address – was to compare and contrast how the FCAA functioned in practice across vastly different geographic and farming regions of Canada. The decentralized method through which the FCAA was administered makes the inter-provincial comparison particularly enlightening because it reveals differences in FCAA officials' approaches to debt compromise under the Act.

The rest of this article is arranged as follows. Section II outlines the structure and procedure of the FCAA. Section III describes the archival research and the study methodology. Section IV consists of data analysis. Various measures are compared and contrasted between counties, across provinces, and in relation to national and provincial averages. Individual case files are highlighted to illustrate idiosyncratic features as well as recurring patterns and themes in the data. This sheds light on significant regional differences in the application of the FCAA. Section V offers an evaluation of the efficacy of the Act to keep farmers on the land. It is argued that the Act was successful in realizing its mandate in the short-term, although the data provide no indication of what happened to the farms in the long-term. This section also analyzes the use of section 17 of the FCAA to cap mortgage interest rates at five percent.<sup>24</sup> Section VI summarizes the study's findings and points to areas for future research regarding the use of contemporary FCAA-style legislation to restructure small and medium-sized enterprises (SMEs).<sup>25</sup>

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<sup>23</sup> Kent County Court Farmers' Creditors Arrangement Case Files, Ontario Government Record Series RG 22-2676 (1934-1940) [Kent Filings].

<sup>24</sup> See FCAA, *supra* note 1, s 17.

<sup>25</sup> On restructuring SMEs, see Janis P Sarra, "Micro, Small and Medium Enterprises (MSME) Insolvency in Canada" (2016), online: [ubc.ca <commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1309&context=fac\\_pubs>](http://ubc.ca/commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1309&context=fac_pubs) [perma.cc/6S3F-3HJV]; Aurelio Gurrea-Martínez, "Implementing an Insolvency

## II. THE FCAA

The FCAA was passed in response to the farm debt crisis occurring in the Prairie Provinces in the 1930s. Initially, political pressure on this issue was focused on provincial legislatures, but the possibility of Saskatchewan enacting its own robust debt adjustment legislation spurred the federal government to respond.<sup>26</sup> The FCAA was intended to be more modest than Saskatchewan's proposed bill, and came into force in 1934.<sup>27</sup>

Although the Act was justified as bankruptcy and insolvency legislation, it differed from other legislation in the area. Most significantly, it brought farmers within the scope of bankruptcy and insolvency law, to whom the common view was that it should not apply.<sup>28</sup> In addition, the purpose of the FCAA was atypical, as it was guided by a mandate of farm protection.<sup>29</sup> Further, the FCAA process was less costly to a farmer than a typical bankruptcy, as the operational costs were paid by the federal government instead of debtors and creditors.<sup>30</sup> Unlike typical bankruptcy proceedings, a farmer's creditors could not force a farmer into bankruptcy and could not initiate proceedings under the FCAA.<sup>31</sup> No other bankruptcy and insolvency statute in Canada has so aggressively used creditor coercion and debt forgiveness in pursuit of rehabilitating debtors as the FCAA.<sup>32</sup>

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Framework for Micro and Small Firms" (2021) 30 Intl Insolvency Rev 46, online: [ssrn.com](http://ssrn.com) <[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3715654](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715654)> [perma.cc/CD58-DX8P]; World Bank Group, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency* (Washington: The World Bank Group, 2018), online: [Open Knowledge Repository](http://Open Knowledge Repository) <[openknowledge.worldbank.org/handle/10986/30474](http://openknowledge.worldbank.org/handle/10986/30474)> [perma.cc/XZX9-H4CZ]; Riz Mokal et al, *Micro, Small, and Medium Enterprise Insolvency: A Modular Approach* (Oxford: Oxford University Press, 2018). In the FCAA context, see also Torrie, "Mechanisms", *supra* note 13.

<sup>26</sup> See Telfer & Torrie, *supra* note 2 at 104.

<sup>27</sup> *Ibid.*

<sup>28</sup> See e.g. *Reference re legislative jurisdiction of Parliament of Canada to enact the Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935*, [1936] SCR 384 at 396, 1936 CanLII 35, Cannon J, dissenting.

<sup>29</sup> See Torrie, "Federalism and Farm", *supra* note 3 at 231.

<sup>30</sup> *Ibid* at 232.

<sup>31</sup> *Ibid* at 233.

<sup>32</sup> *Ibid* at 234.



## A. Administrative Procedure

The FCAA established an administrative structure overseen by the Boards of Review (BoR), a new tribunal. Under the FCAA, farmers could file an application with the local Official Receiver (OR), who would assist the farmer in developing a proposal for compromise. If a farmer's creditors agreed with the proposal, it would be submitted to the court for approval. If the creditors did not agree, the farmer could apply to the BoR for a compulsory arrangement. This section further outlines the administrative process.

### 1. Official Receiver Compromises

The OR played a critical role in the FCAA process from the initial application date until the time the final compromise was approved. ORs were tasked with carrying out most administrative matters associated with the FCAA process.<sup>33</sup> They were endowed with a wide variety of powers under the FCAA; chief among them, was acting as an intermediary between the farmers who sought relief, the creditors, the BoR, and the court.<sup>34</sup>

OR compromises involved the process in which a farmer, having initiated the FCAA application process through the OR, worked with their creditors to develop a debt compromise to ensure their ability to remain operational. The OR served as a mediator in this context, acting impartially to facilitate a solution. With the oversight of the OR, the farmer would typically formulate a proposal, delineating, in broad terms, the details of a revised debt contract that could enable them to maintain farming production while balancing all their financial obligations.

The initial application usually featured the farmer's composition of debts, a request for an extension of time for the payback or amortization period, or some other scheme of arrangement.<sup>35</sup> The farmer initiated the process by filling out a *Statement of Affairs* with the OR, which contained a

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<sup>33</sup> See Torrie, "Farm Debt", *supra* note 3 at 385-88.

<sup>34</sup> *Ibid* at 383. Potential ORs viewed these positions as patronage appointments and wrote to the Prime Minister and other ministers in Ottawa to request consideration for those with conservative leanings; however, it is unknown whether the positions were, in fact, patronage appointments. See Torrie, "Farm Debt", *supra* note 3 at 393.

<sup>35</sup> See Torrie, "Farm Debt", *supra* note 3 at 384-85.

full list of the farmer's outstanding debts with the corresponding creditor.<sup>36</sup> Additionally, the *Statement of Affairs* included sections that requested the applicant to provide a description and location of the farm. The form also featured sections for the applicant to provide a description and estimated value of any other farm assets to be assessed against their total liabilities. Finally, farmers were encouraged to state what kind of crop and how much yield was grown on their farm in each of the preceding growing seasons, along with the condition of the land, how much land was tillable, the condition of the buildings on the property, the reasons for their financial hardships, and their present and prospective capabilities of meeting their existing financial obligations.

Upon receipt of this application, it was the duty of the OR to review the materials to determine whether the farmer qualified for relief.<sup>37</sup> If the OR determined that the farmer was eligible for relief under the Act, then they were to complete an *Official Receiver's Certificate*, which provided certification of the farmer's intention to apply for relief under the FCAA, thus staying all proceedings against the debtor and halting all enforcement efforts.<sup>38</sup>

Once all of the prescribed forms were filed, certified, and sent back, a first meeting of the creditors was convened, usually at the office of the OR, who presided over the meeting.<sup>39</sup> Although the farmer or their solicitor was required to attend the meeting, only a majority of the creditors were required to be present in order to make a determination of the farmer's proposal.<sup>40</sup> If this required percentage of creditors were not present, then the farmer's proposal was cancelled, stripping them of the protection of the FCAA that they possessed up until that point.<sup>41</sup> If the proposed compromise had majority creditor support, including unanimous support from all secured creditors, it was approved and implemented.<sup>42</sup>

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<sup>36</sup> Labeled "Form A". The forms that were completed generally show that they were filled out by farmers with little formal education; however, farmers would sometimes receive assistance from a lawyer or the ORs. Note that a lawyer was not necessary for the FCAA process.

<sup>37</sup> See Torrie, "Farm Debt", *supra* note 3 at 383.

<sup>38</sup> *Ibid*; Labeled "Form K".

<sup>39</sup> See Torrie, "Farm Debt", *supra* note 3 at 387.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid* at 387-88, citing Shumiatcher, *supra* note 16 at 320-21.

<sup>42</sup> See Torrie, "Farm Debt", *supra* note 3 at 388-89.

## 2. *Board of Review Compromises*

The BoR was comprised of a three-member panel: a judge from the county or district court, a creditors' representative, and a farmers' representative.<sup>43</sup> The BoR conducted hearings for each application that came before it.<sup>44</sup> When efforts to reach a compromise through the OR were unsuccessful, the farmer or a creditor could apply to the BoR and request that it formulate a proposal.<sup>45</sup> Most applications to the BoR were made by farmers. Board hearings consisted of each party to the proposed compromise, offering further evidence and materials to support their positions. The BoR collectively decided whether or not to formulate or amend a debt compromise between the farmer and their creditors.<sup>46</sup>

A frequent characteristic of BoR compromises was for the Board to address the claims of secured creditors of the applicant in detail while failing to formulate debt repayment structures for individual unsecured creditors. The Board would often make a blanket order in their final notice that all unsecured creditors of the farmer were to be paid back in prescribed amounts over a specified period and their claims paid out in full by a prescribed date.<sup>47</sup> As a result, where individual BoR compromise files did not contain a *Statement of Affairs*, there was no telling to how many unsecured creditors the farmer was indebted, and to what amount they claimed against the debtor, unless the notice specifically addressed them individually. There were also many instances where the BoR acknowledged the debts of the unsecured creditors but deemed them unable to be affected by the proposal due to the fact that they were incurred after the farmer initially applied for relief under the FCAA.<sup>48</sup>

## 3. *Denied*

"Denied" applications represented a subset of those submitted to the BoR for a decision. Although the OR was required to make the determination whether the farmer was eligible to benefit from the FCAA

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<sup>43</sup> See FCAA, *supra* note 1, s 12(1).

<sup>44</sup> See Torrie, "Farm Debt", *supra* note 3 at 393.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> See compromise of Lee B Foster of Prince Edward County, Prince Edward Filings, *supra* note 22.

<sup>48</sup> See compromise of Peter Mysak, Portage la Prairie Filings, *supra* note 19.

early in the process, circumstances surrounding the file could change from the time the OR had initially approved its viability. There were also scenarios where the Board itself presented challenges in particular cases to develop a proper compromise, often stemming from a change in its members. In these cases, the Board had the option to decline to formulate a compromise between the parties, stating the Board could not “formulate a proposal in fairness and justice to the debtor and the creditors and therefore declines to formulate a proposal.”<sup>49</sup>

### III. RESEARCH METHODS AND METHODOLOGY

This study quantitatively analyzed *FCAA* applications filed in the Manitoba counties of Dauphin, Portage la Prairie, and St. Boniface, and the Ontario counties of Kent and Prince Edward. The primary objective of this research was to discover trends and themes in order to assess regional similarities and differences in the application of the *FCAA* across regions. The secondary objective was to empirically evaluate the success of the Act in keeping farmers on their land. A pilot study considered these objectives in two Manitoba counties: Morden and Brandon.<sup>50</sup> The present study builds upon the earlier research by refining the research methodology and expanding the empirical scope. Accordingly, this study focused on comparing and contrasting how the *FCAA* was applied in different geographic regions and enhanced the empirical basis for drawing conclusions regarding the effectiveness of the *FCAA*.

This study deployed a number of statistical techniques and considered a wide variety of factors unique to each farm, such as farm size, condition of the farmland, and information about the creditors. Although the previous empirical studies on the *FCAA* have taken similar approaches in documenting quantitative data regarding farmer, creditor, and debt-load information for individual files juxtaposed to mean provincial and national statistics, this study expands its purview in an attempt to identify which elements of *FCAA* debt compromises were more local in nature, as opposed to those present in other judicial districts.

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<sup>49</sup> Compromise of Annie Presloski, Dauphin Filings, *supra* note 20 (language used by the BoR to determine whether an application was to be denied). See also *FCAA*, *supra* note 1, s 12(9).

<sup>50</sup> See Torrie, “Farm Debt”, *supra* note 3.

## A. Archival Research

Following the research process of an earlier pilot study,<sup>51</sup> the data collection took place at the Archives of Manitoba in Winnipeg and the Archives of Ontario in Toronto. The data-collection process was to document all salient details of each *FCAA* file that had been preserved in its original form. The information was then scanned and then analyzed using a variety of statistical techniques. These techniques, which measured various forms of descriptive statistics that each file yielded, included calculating quantitative data within the compromise pertaining to five broad categories: basic information, pre-compromise data, post-compromise data, net-prior and post-compromise data, and debt loads. Qualitative information found within the files was relied upon to supplement the findings and provide a more all-encompassing view of the individual results, accounting for the unique circumstances of each farmer. This information sheds light on why the farmer applied for debt relief and allows for more comprehensive inferences.

### 1. Basic Information

The basic information category catalogued a wide variety of information regarding the debtor as well as the outcome of the initial application. It included the county in which the application was filed, the name of the debtor, which party initiated the compromise, the date the application was filed, and the date that the process concluded. Additionally, this category featured information about the farm, such as the size of the farmland in cultivation and the quality of land. These subcategories captured more details, which allowed for a correlation analysis concerning the land size and quality with the amount of financial relief received. This, in turn, sheds further light on how the *FCAA* operated in practice.

The most critical component documented in the basic information category was the type of compromise reached: Official Receiver (OR) compromises, Board of Review (BoR) compromises, Denied, Unknown, and Court Formulated Compromises (CFC). A limitation that this empirical study faced during the archival research process was the frequency of incomplete files or files that were missing critical materials to determine the outcome of an individual case. It has been previously mentioned that many BoR files in Manitoba did not contain sufficient information to

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<sup>51</sup> *Ibid.*

comprehensively analyze the number of creditors per file, the amount of their claims, and the assets that the farmer possessed. However, in these cases, the date of initial application, the end date of the process, and the type of outcome were discernable. Where files did not contain enough information to identify whether a file could be classified as an OR compromise, a BoR compromise, or Denied, then said file was categorized as Unknown.

## 2. *Pre- and Post-Compromise Data*

This section of the empirical study was essential in calculating the debt write-down amounts from the liabilities the farmer possessed at the time they first submitted their application to the OR until the date that the FCAA process concluded. The analysis conducted to derive this critical information consisted of documenting every creditor, their status as “secured”, “unsecured”, or “unknown”, and the amount of debt each creditor was owed. The assets of the farmer were also catalogued in this section, which included any and all machinery, equipment and livestock the farmer had in their possession at the time of the initial application, as well as the estimated value of the farm itself. As previously mentioned, there proved to be a number of limitations to this section of the study, as many files did not possess complete information in the final post-compromise outcomes that corresponded with the information present in the pre-compromise *Statement of Affairs*. As a result, a number of files from each county failed to yield adequate, meaningful data that could be used in the analysis portion of this empirical study. However, Kent and Prince Edward County were strategically chosen for analysis due to the comprehensive nature of their files in relation to other Ontario districts.

## 3. *Debt Loads*

Debt loads refer to the aggregated amount of liabilities that the farmer carried and were measured before and after the FCAA compromise was formulated. A general observation made in this study and in others of its kind was that farmers’ assets and asset values were not chief considerations in formulating an FCAA compromise.<sup>52</sup> This was due, in part, to the assets being recorded as rough estimations rather than carefully determined values. The BoR seemingly placed little value on these estimates while

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<sup>52</sup> *Ibid* at 406.

formulating compromises, focusing instead on the rate of interest and productive value of the farm in determining the appropriate write-down rates.<sup>53</sup> The lack of asset estimate consideration was reflected in all of the counties studied, as there was little reference in both OR and BoR compromises regarding the prospect of the farmer relinquishing either machinery or livestock in partial satisfaction of the farmer's outstanding debts. The BoR was likely reluctant to deprive the farmer of their ability to maintain production.

To better depict the amount of debt each farmer carried in relation to the total value of their assets, a "debt-to-asset ratio" was utilized in quantifying the difference between these two figures. This metric relied on the ratios derived from each individual compromise to assign an average debt-to-asset ratio to each county. The mean ratios for each county enabled an inter-provincial comparison to potentially shed light on how both OR compromises and the BoR functioned across provincial boundaries. The ability to make such a comparison, coupled with the breadth of information contained in the files of each county, points to some of the overarching trends in terms of how the FCAA was implemented across Canada and the factors that tended to coincide with greater write-down percentages.

## IV. DATA ANALYSIS

### C. *Study Design*

The main focus of this research was to distill the information found in FCAA compromises into quantitative form in order to identify statistical trends that could better explain the methods behind the outcomes. To better highlight the variations and similarities between geographical regions, each file was first analyzed in relation to the larger trends of the county, followed by an intra-provincial analysis, and finally juxtaposed to the inter-provincial and national statistical outcomes. Drawing on the methods utilized in an earlier empirical study, the analytical techniques deployed in the present study sought to identify the notable successes and shortcomings of the operation of the FCAA in practice.<sup>54</sup> This section describes said

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid* at 395.

methods in detail in order to provide context to the data and ultimate conclusions of the research.

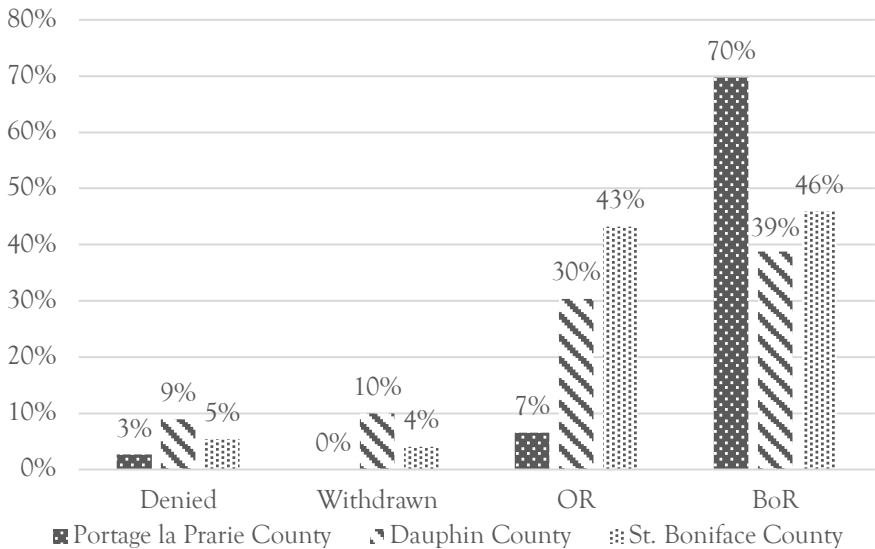
### *1. Application Outcomes*

Similar to the findings of the pilot study, the most frequent outcomes in the three Manitoba counties observed were OR and BoR compromises.<sup>55</sup> In Portage la Prairie, BoR compromises were the most frequently documented outcome by a significant margin, accounting for 70% (53) of the 74 files studied. OR compromises accounted for an additional 7% (5) of the files, whereas files that were categorized as Denied, Withdrawn, or Unknown collectively accounted for 23% of the total outcomes. BoR compromises were also the most frequently documented outcomes in Dauphin, although by a much narrower margin. Out of the 191 files analyzed, 39% (74) were BoR compromises, 30% (58) were OR compromises, and 31% (59) were Denied, Withdrawn or Unknown. St. Boniface yielded similar results to the trends found across the other Manitoba counties, whereas BoR compromises were marginally more frequent than OR compromises. Of the 74 compromises analyzed from St. Boniface, 46% (34) of the outcomes resulted in a BoR compromise, while 43% (32) fell under the OR category. Only 11% (8) fell within one of the other three categories (Figure 1).

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<sup>55</sup> *Ibid* at 396.



Figure 1 – Manitoba: Outcome Distribution (%)<sup>56</sup>

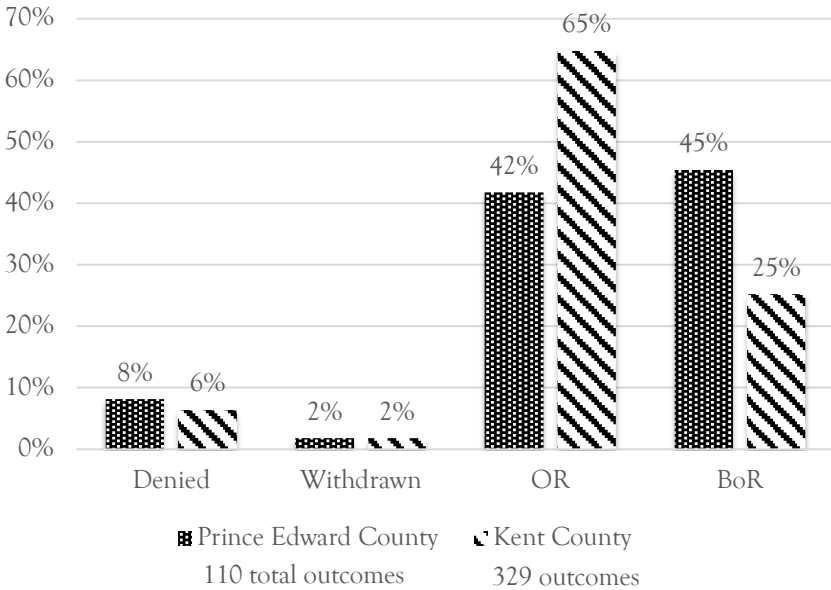
The data from Ontario paints a different picture in terms of outcome variability between regions. In Kent County, OR compromises were the most prevalent by a significant margin, representing 65% (213) of the 329 files surveyed. BoR compromises, on the other hand, represented only 25% (83) of the total outcomes, whereas the other three categories collectively represented slightly over 10% (33). It should be noted that Kent County was the only jurisdiction in this empirical study to contain a CFC – something that only came into existence after the BoR was dissolved in 1942 and the power to formulate compromises from the administrative arm of the FCAA was transferred to the district court.<sup>57</sup> Prince Edward County appeared to closely resemble the trend in Manitoba, and BoR compromises represented 45% (50) of the 110 outcomes analyzed, followed by OR compromises with 42% (46). The remaining three categories represented a

<sup>56</sup> Note that compromises categorized as Unknown have been excluded from this chart.

<sup>57</sup> See FCAA, *supra* note 1, s 2(3). Under the *Farmers' Creditors Arrangement Act*, SC 1943-1944, c 26, the clerk of the court functioned as the OR, although the Governor in Council could appoint an OR.

slightly higher percentage of total outcomes than that of Kent County (13%) (Figure 2).

Figure 2 – Ontario: Outcome Distribution (%)<sup>58</sup>



The national statistics depict a large deviation from most of the counties analyzed in this study, where 41% of all compromises concluded under the FCAA stemmed from the OR-supervised procedure.<sup>59</sup> Only St. Boniface County in Manitoba (OR: 43%) and Prince Edward County in Ontario (OR: 42%) closely resembled the national average. Although the statistics depict a slightly lower frequency of OR-supervised compromises for the Prairie Provinces on average, the figures from Manitoba fall directly in line with the national average of 41%.<sup>60</sup> Both Portage la Prairie (OR: 7%) and

<sup>58</sup> Note that compromises categorized as Unknown have been excluded from this chart.

<sup>59</sup> See Minister of Finance, *supra* note 7. These percentages were calculated using the numbers listed in the Table titled “Statistical Review of 47,509 cases in which Official Receivers effected Voluntary Settlements or Boards of Review formulated and confirmed Proposals” (*ibid.*, Schedule 8b).

<sup>60</sup> *Ibid.*

Dauphin (OR: 30%) fall well below the provincial and national averages. A likely reason for the difference between the prairie province average and the national statistics regarding OR-supervised compromises can be attributed to the higher average debt loads of prairie farmers.<sup>61</sup> Nationally, farmers who applied for relief under the FCAA carried approximately \$6,900 in debt, whereas farmers in the Prairie Provinces of Alberta, Saskatchewan, and Manitoba owed between \$7,200 and \$9,350.<sup>62</sup> This may be due to a proximity issue. Prairie farms were located further away from the large cities where they purchased their agricultural supplies in relation to Ontario, Quebec, and coastal provinces.<sup>63</sup> As a result, these farmers paid more in freight costs associated with production maintenance on their farms. Located directly adjacent to Winnipeg, farmers in St. Boniface County would have benefited from their close proximity to an urban agricultural hub in ways that those located in Dauphin and Portage la Prairie could not. This fact provides a possible explanation for the higher frequency of OR compromises that resemble the figures of the eastern and coastal provinces.

According to statistics compiled by the Department of Finance, BoR compromises were approximately 1.4 times as frequent as OR compromises, both nationally and in Manitoba.<sup>64</sup> Based on the Department of Finance statistics, the Manitoba counties in this study reflect the higher frequency of BoR compromises relative to OR compromises, however the ratios fall at both ends of the extreme. Portage la Prairie, for instance, had nearly 11 times as many files conclude in BoR compromises, whereas Dauphin and St. Boniface produced 1.3 and 1.1 times as many BoR compromises than OR compromises, respectively. The data suggests that despite maintaining consistency with the type of compromise most frequently concluded, the regional variability in intra-provincial BoR-to-OR ratios are significant in Manitoba.

The Ontario counties in this study also demonstrated a great deal of variability regarding outcome frequency and the ratios of BoR and OR compromises concluded between counties. In addition, Ontario compromises deviated from the national trend, according to government statistics: OR compromises were 1.2 times more common than BoR

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<sup>61</sup> *Ibid*, cited in Torrie, "Farm Debt", *supra* note 3 at 398.

<sup>62</sup> See Minister of Finance, *supra* note 7, Schedule 8b.

<sup>63</sup> See Torrie, "Farm Debt", *supra* note 3 at 398.

<sup>64</sup> *Ibid*.

compromises.<sup>65</sup> Prince Edward County reflected the national statistics in that BoR compromises were more frequent than OR compromises. However, BoR compromises were only concluded 1.1 times more frequently than OR ones.

Kent County demonstrated a significant deviation from national and provincial averages, as well as the frequency of these outcomes in nearby Prince Edward County, but reflects the Ontario trend of more OR compromises than BoR compromises. In Kent, OR compromises occurred 2.6 times more frequently than BoR compromises. The regional variability in outcome ratios between Kent and Prince Edward County is interesting, as both counties are located on Ontario's southeastern peninsula only 500 kilometers apart. This comparison demonstrates that there was variation in how the federal FCAA was implemented from one county to another, even when the counties were geographically proximate and located in the same province.

## 2. *Duration of Process*

The duration of each compromise was documented in the files of every farmer who applied for debt relief under the FCAA. The process start date was marked by the filing of the *Statement of Affairs* form with the OR, which indicated the farmer's desire to engage in an FCAA compromise.<sup>66</sup> The end date of the process was typically denoted by either a signed decree from a district judge, in the case of OR compromises, indicating that the compromise was legally valid and had met all of the criteria required under the FCAA, or by a signed written decision by the BoR.<sup>67</sup> Measuring the duration of the FCAA process provided useful information for each individual compromise when available; however, the incomplete nature of many files served as a limitation for gauging this metric. Furthermore, the timeframes depicted within the files are limited to the period between the farmer's initial application and the final outcome; there was no information regarding the actual repayment of the debt pursuant to the terms of the compromise.

To analyze the duration of each eligible compromise, the files in each county were grouped together based on the type of outcome reached. From

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<sup>65</sup> See Minister of Finance, *supra* note 7, Schedule 8b.

<sup>66</sup> Labeled "Form A".

<sup>67</sup> See FCAA, *supra* note 1.

there, the number of days between the initial date of application and the final date of the process of each specific outcome category was identified and statistically analyzed in order to assign an average value to the group overall. Once the mean value for each outcome category was determined for an individual county, the provincial average was derived (Figure 3).

The data from Manitoba included the findings from a previous study, which examined the counties of Brandon and Morden, to provide a wider scope for intra-provincial comparisons. The results suggest that for the five Manitoba counties analyzed, applications that were ultimately denied had the longest timeframe between the initial process start date and the final decision, taking an average of 442 days to complete. Compromises that were concluded by the BoR had a slightly lower average timeframe of 431 days, followed by OR compromises at 193 days. For the purposes of this study, only BoR, OR, and Denied outcomes were considered appropriate to analyze due to their ascertainable completion dates.

The data indicates that compromises from Dauphin took significantly longer than those from Portage la Prairie and St. Boniface (Figure 3). BoR compromises in Dauphin took an average of 505 days to complete, OR compromises took 190, and files that were denied took 555 days. In comparison, compromises in Portage la Prairie (BoR: 337; OR: 112; Denied: 231) and St. Boniface (BoR: 182; OR: 126; Denied: 115) were notably shorter.

In the two Ontario counties, compromises took very similar amounts of time, with OR compromises being much faster than BoR compromises. In Prince Edward County, OR compromises took an average of 73 days compared to 85 days in Kent County. BoR compromises in Prince Edward County took 404 days compared to 408 in Kent County (Figure 4).

Figure 3 – Manitoba: Mean Time to Reach Compromise (Days)

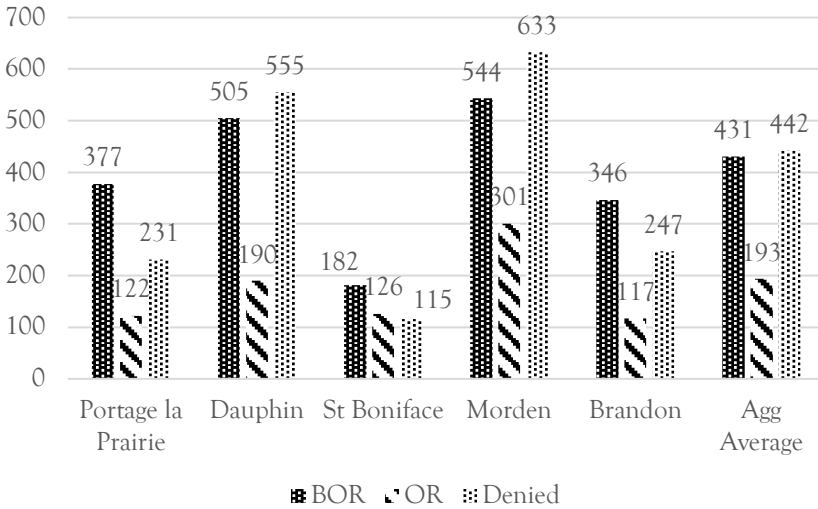
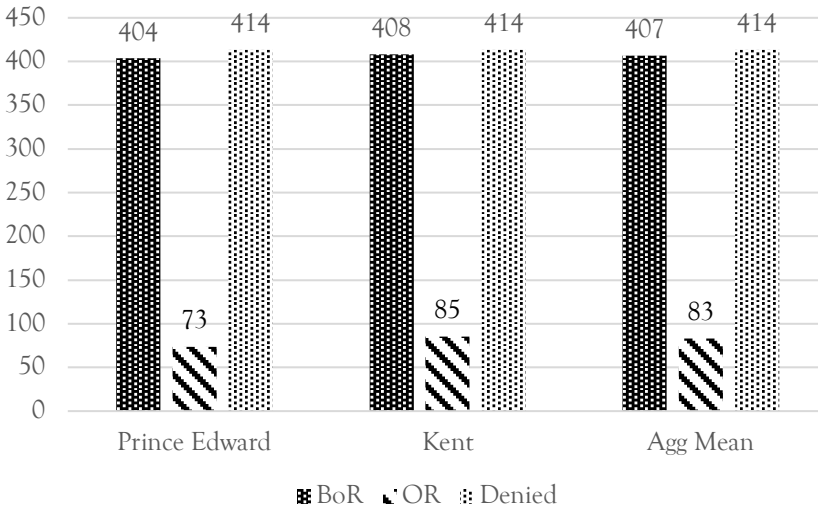


Figure 4 – Ontario: Mean Time to Reach Compromise (Days)



Similar to the findings of a previous study of Brandon and Morden, it is likely that the large variations in timeframes between Manitoba counties

was due to slower administrative operations in some regions.<sup>68</sup> This explanation is supported by the volume of *FCAA* applications each jurisdiction received and processed. The number of applications processed in Dauphin (248) was noticeably greater than Portage la Prairie (153) and St. Boniface (85) combined.<sup>69</sup> However, in a previous study, it was observed that the timeframes in Morden were significantly longer than that of Brandon, despite Morden having almost half of the *FCAA* application volume of Brandon.<sup>70</sup> This analysis, therefore, points to a potentially more arbitrary explanation for variations in *FCAA* compromise timeframes potentially due to the unique circumstances of each applicant or idiosyncratic, administrative bottlenecks.

#### ***D. County Comparison***

A novel feature of this study, compared to previous academic analysis of the *FCAA*, was the qualitative aspect of investigating each individual file for potential indications for the broader statistical trends observed. This was made possible by identifying features in files that were unique to their jurisdiction. Along with documenting reoccurring themes that were present across both county and provincial boundaries, these indicators provided insight into how the *FCAA* was carried out in practice. The following subsections outline the unique aspects and common characteristics that the *FCAA* compromises displayed and how they proved to be distinct from their provincial and extra-provincial counterparts in this study.<sup>71</sup>

##### ***1. Dauphin County, MB***

Many files analyzed from Dauphin County proved unique in a variety of ways. One of the key features that appeared local to Dauphin in the majority of *FCAA* outcomes was the county's unwillingness to forgive or reduce the principal taxes owing on the land for a given year. Although

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<sup>68</sup> See Torrie, "Farm Debt", *supra* note 3 at 402.

<sup>69</sup> The number of applications processed in each county is greater than the "application outcomes" referred to in the previous section, as not all applications proceeded to a given outcome. Some applications were withdrawn or resulted to private resolutions, for instance.

<sup>70</sup> See Torrie, "Farm Debt", *supra* note 3 at 402.

<sup>71</sup> The St Boniface files are not included here as access to these files was limited during the investigation period due to COVID-19 closures.

there were numerous instances where the interest that accrued on outstanding payments to the municipality were reduced or forgiven if the principal was paid back in full by a certain time, the principal itself was deemed unaffected by the proposal when referred to the BoR and seldom negotiated in OR compromises. Accurate debt loads were easily ascertainable from the Dauphin files in relation to the other Manitoba counties in this study due to the abundance of information found in most *Statement of Affairs* forms.<sup>72</sup> Upon analyzing the mean debt loads carried by FCAA applicants in Dauphin, it became evident that the farmers in this jurisdiction possessed more favourable debt-to-asset ratios than those in both Portage la Prairie and St. Boniface County. The fact that farmers in Dauphin were, relatively speaking, in better financial shape than other Manitoba farmers, provides a potential explanation for the municipality's unwillingness to forgive principal tax debts. However, even today, it is very uncommon for the principal owed on taxes to be reduced or forgiven by a taxing authority.<sup>73</sup> Further potential reasons include the fact that municipalities were in precarious financial shape during the Great Depression<sup>74</sup> and property taxes were an important source of revenue. Furthermore, there was constitutional uncertainty about whether the FCAA did, or could, apply to Crown claims such as tax debts.<sup>75</sup> The uncertainty produced conflicting views and approaches on the issue of adjusting tax debts from one Board and party to another, and it is possible Dauphin took the view that tax debts could not be adjusted by the FCAA.

Another interesting feature that was unique to the Dauphin County files was the abundance of information the farmers provided regarding the reasons for their financial hardships. Many of the files from other Manitoba counties in this study lacked supplemental information to decipher the

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<sup>72</sup> Labeled "Form A".

<sup>73</sup> A "remission order" is generally the only way to forgive the principal owed for a tax debt, and such orders are very rare. See Samuel Singer, "Evaluating Canadian Tax Remission Orders: A Debt Relief Vehicle for Taxpayers" (2019) 42:2 Dal LJ 397 at 398-99, 402, n 14, citing Colin Jackson, *Settlement, Compromise, and Forgiveness in Canadian Tax Law* (LLM Thesis, Dalhousie University Faculty of Law, 2013) [unpublished] (discussing the range of instruments available for tax debt forgiveness in Canada and within bankruptcy law).

<sup>74</sup> See Torrie, *Reinventing*, *supra* note 2 at 58.

<sup>75</sup> For a discussion on the constitutional question, see Torrie, "FCAA Reference" *supra* note 9 at 108-10; Torrie, "Farm Debt", *supra* note 3 at 386.



rationale behind specific outcomes. This proved to be an impediment to understanding why the BoR rendered decisions that cancelled or significantly reduced a certain debt or why debtor proposals were either accepted or denied by the majority of their creditors under an OR compromise. The presence of this information in FCAA applications in Dauphin shed light on the unique circumstances of the debtor and gave an indication as to their relative ability to pay back certain accounts if their payback period was extended or another similar arrangement was made.

For example, the file of Leonard Berkvens stated that the reason for his FCAA application was due, in part, to the economic depression, which devalued the price of his yield, and his inability to keep up with his payments to the Director of Soldier Settlement of Canada (DSSC), to whom he owed \$2,818.43.<sup>76</sup> The file contained information about the farmer's crop yields for the three years preceding his FCAA application. All of these favourable factors conceivably contributed to the DSSC agreeing to the ten years at an interest rate of seven percent, lowered from the original eight percent. A number of farmers who filed under the FCAA owed money to the DSSC. By way of background, Parliament passed the *Soldier Settlement Act*<sup>77</sup> after World War I with the purpose of helping returning soldiers who wished to establish themselves on farms.<sup>78</sup> More than 25,000 returning soldiers received assistance through the program.<sup>79</sup> Government assistance for soldiers who qualified included land grants, loans for lands to be purchased, and loans on land already owned by the applicant.<sup>80</sup> The DSSC appeared as a creditor fairly often among files consulted in this study.

A number of files from Dauphin also featured quit claim deeds. A quit claim deed refers to the release of a "claim or interest that a person may have in land registered under [a] [r]egistry system."<sup>81</sup> In the context of the empirical study, these instruments were used by the mortgagor (farmer) to

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<sup>76</sup> See file of Leonard Berkvens of Dauphin County, Dauphin Filings, *supra* note 20.

<sup>77</sup> RSC 1927, c 188.

<sup>78</sup> See EJ Ashton, "Soldier Land Settlement in Canada" (1925) 39:3 QJ Economics 488.

<sup>79</sup> Glenn T Wright, "Veterans' Land Act" (7 February 2006, last modified 25 May 2018), online: *Canadian Encyclopedia* <[www.thecanadianencyclopedia.ca/en/article/veterans-land-act](http://www.thecanadianencyclopedia.ca/en/article/veterans-land-act)> [perma.cc/26H8-4LBX].

<sup>80</sup> See *Soldier Settlement Act*, *supra* note 77, ss 15, 19.

<sup>81</sup> Marguerite E Moore, *Title Searching and Conveyancing in Ontario*, 7th ed (Markham, ON: LexisNexis Canada, 2017), ch 5.

quit claim to the mortgagee (creditor) all interest in the property related to<sup>82</sup> This released the mortgagor<sup>83</sup> If the farmer was deemed to be incapable of paying back their primary mortgage lender, the farmer would often issue a quit claim deed to the mortgagee and thereafter rent the land from the lender while maintaining production on the farm. This involved the farmer relinquishing all legal rights to their land to the mortgage lender in return for a release of all liability and outstanding financial obligations associated while retaining the right to rent all or a portion of the land.

The file of Joseph Ryz serves as a prime example. In this case, the farmer owed \$2,742.75 to Canada Life Assurance Company for the first mortgage on the farm property. The farmer was also indebted to seven other secured creditors and was unable to meet his financial obligations given his estimated potential output. The BoR's decision, in this case, required the farmer to issue a quit claim deed to the primary mortgage lender, releasing him of all liability, including taxes, in satisfaction of the debt. The Board included a number of stipulations stemming from this element of their decision, namely, that upon executing the quit claim deed to the primary mortgage lender, the lender was required to give the farmer a lease for a parcel of his previously owned land. The agreement also stipulated that the farmer was to "summer fallow"<sup>84</sup> 40 acres of the land in a husbandlike manner each year so as to maintain its integrity. This example highlights the specific nature of many BoR decisions in Dauphin County, where the BoR demonstrated a meticulous attention to detail in crafting each compromise.

There are little to no documents from the FCAA compromises that provide details on the success of the agreements or even whether they were actually complied with in practice. However, the lengthy, descriptive BoR compromises in Dauphin County, in relation to other Manitoba counties, provide a potential explanation for the significantly longer average timeframe it took for the Board in Dauphin to render its decisions.

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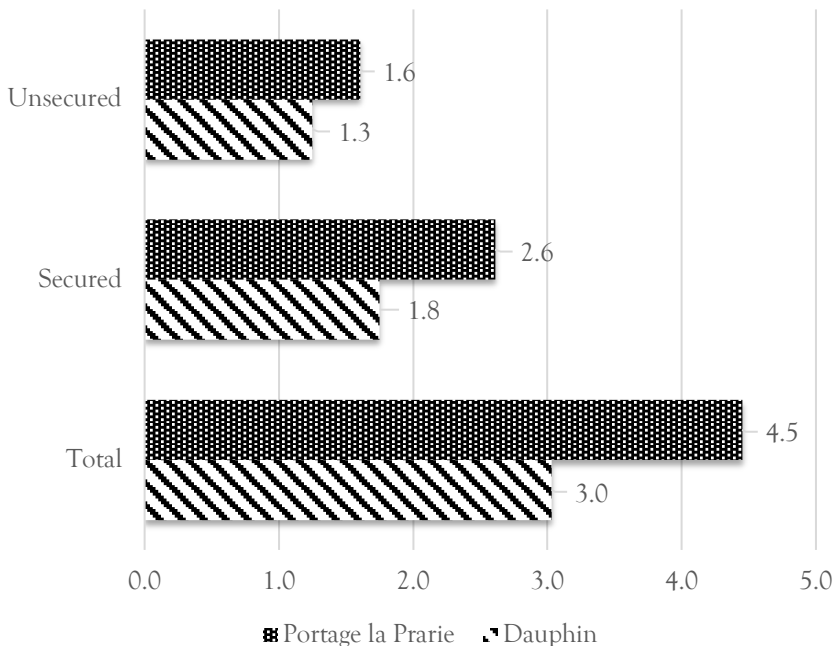
<sup>82</sup> See file of Annie Standryk of Dauphin County, Dauphin Filings, *supra* note 20 (in this case, a quit claim deed was issued in favour of the RM of Dauphin for the sole parcel of land subject to the proposal).

<sup>83</sup> *Ibid.*

<sup>84</sup> "Summer fallow" refers to keeping cropland out of production during the growing season. This practice is used to restore moisture and nutrients to the ground. See Blair McClinton, "Summerfallow", online: *The Encyclopedia of Saskatchewan* <esask.uregina.ca/entry/summerfallow.jsp> [perma.cc/JB4Z-RSX8].

Conversely, Dauphin County files included fewer creditors per file on average than Portage La Prairie by a sizable margin (Figure 4). Based on the ascertainable information from 191 compromises, Dauphin farmers had, on average, 3 creditors per file: 1.8 being secured and 1.3 being unsecured. Farmers from Portage la Prairie County had an average of 4.5 creditors per file: 2.6 secured and 1.6 unsecured. A very small portion of creditors from both Dauphin and Portage la Prairie counties were not identified as secured or unsecured and were deemed Unknown. It is reasonable to assume that a higher volume of creditors per file would increase the amount of time it would take to analyze each application in determining the most equitable course of action. Just why some counties took significantly longer, on average, to render decisions remains a mystery as do other aspects of the FCAA process, especially in relation to BoR decisions.

**Figure 5 – Manitoba: Number of Creditors Per File**



The analysis of the Dauphin case files, which are more detailed than other counties, improves our understanding of how the FCAA operated in

practice by shedding light on the reasons why the Board reached the compromises that it did. The high level of tailoring evident in these compromises, including requirements placed on the farmer with respect to farming the land, provide a potential explanation for why the process tended to take longer in Dauphin than in other counties. The Dauphin files illustrate that FCAA proposals were sometimes used in tandem with quit claim deeds, which technically kept the farmer on the farm, in line with the statute's overarching policy objective, but as a renter rather than as an owner. The practice of FCAA proposals not affecting the principal of tax debts, apparent in the Dauphin case files, evinces the conflicting approaches taken to the treatment of tax debts as a type of Crown claim under the FCAA more generally.

## 2. *Portage la Prairie County, MB*

The FCAA files for Portage la Prairie were difficult to analyze due to the incompleteness of many files. For this reason, Portage la Prairie exhibits a disproportionate frequency of Unknown outcomes at 21%, higher than any other county in this study. Portage la Prairie is also noteworthy for the high proportion of outcomes that were concluded by the BoR at 70% and the extremely low percentage of OR compromises at 7%. The BoR decisions in Portage la Prairie accounted for over two-thirds of all outcomes and demonstrated very uniform rulings.

The primary mortgage lender for a large number of FCAA applicants in Portage la Prairie was the DSSC. The vast majority of applications decided by the BoR benefited from having the principal amount owing on this debt reduced, the arrears cancelled, the interest rate capitalized as of the day the application was filed and reduced to between 5-6%, and the mortgage re-amortized for a period of between 20-30 years.

The file of Arie Vermeulen serves as an example of this trend.<sup>85</sup> This farmer was indebted to the DSSC for the sum of \$5,902.65, as of the day the application was filed, and had the total amount owing reduced to \$850. Although the interest rate remained unchanged at 5%, the mortgage was re-amortized for a period of twenty years, and the farmer was ordered to pay twenty equal installments for 20 consecutive years. This particular file is representative of the vast majority of files in Portage la Prairie in that it contained only an *Official Receiver's Certificate* commencement of

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<sup>85</sup> See file of Ari Vermeulen of Portage la Prairie County, Portage la Prairie Filings, *supra* note 19.

application document and the decision of the BoR. Although it was possible to ascertain from these two documents much of the required information to analyze the compromise, the omission of the *Statement of Affairs* means there is little qualitative context with which to interpret the Board's decision. Information that is missing includes the farmer's reasons for applying for relief under the FCAA, the state of the land, assets, and information pertaining to previous crop yields. It is, therefore, difficult to determine the reasoning behind the BoR's decision to significantly reduce the debts that the farmer had incurred with all of their secured creditors. Without this information, many of the Portage la Prairie BoR files read as boiler-plate compromises, yielding little useful information as to why individual debtors were affected differently.

An interesting feature that arose in multiple OR compromise files in Portage la Prairie was the seeming reluctance of certain creditors to have their claims sent to the BoR for a decision. There appears to have been an incentive for secured creditors to formulate a compromise with the debtor at the OR stage of the FCAA process rather than let the case go before the BoR. It is noteworthy that a secured creditor's consent was required to adjust their claim at the OR stage, but at the BoR stage, secured claims could be adjusted unilaterally by the Board.<sup>86</sup> The vast majority of files did end up being resolved by the BoR, and these compromises are notable for frequently favouring the farmer by writing down a large portion of their debts.

Portage la Prairie exhibited the largest reduction in debt loads from pre-compromise to post-compromise values of any Manitoba county in this study. The average pre-compromise debt-to-asset ratio was 2.18:1, whereas the average post-compromise debt-to-asset ratio was nearly even at 1.06:1 (Figure 5). As previously noted, the BoR paid very little attention to the self-declared assets of the farmer, which may help explain why the asset value of most farmers remained unchanged by the Board's decision.<sup>87</sup> The more substantial debt-reduction statistics from the BoR in Portage la Prairie lends credence to the view that creditors felt it was in their best interest to accept a farmer's original proposal so as to avoid a potentially less favourable final decision by the BoR.

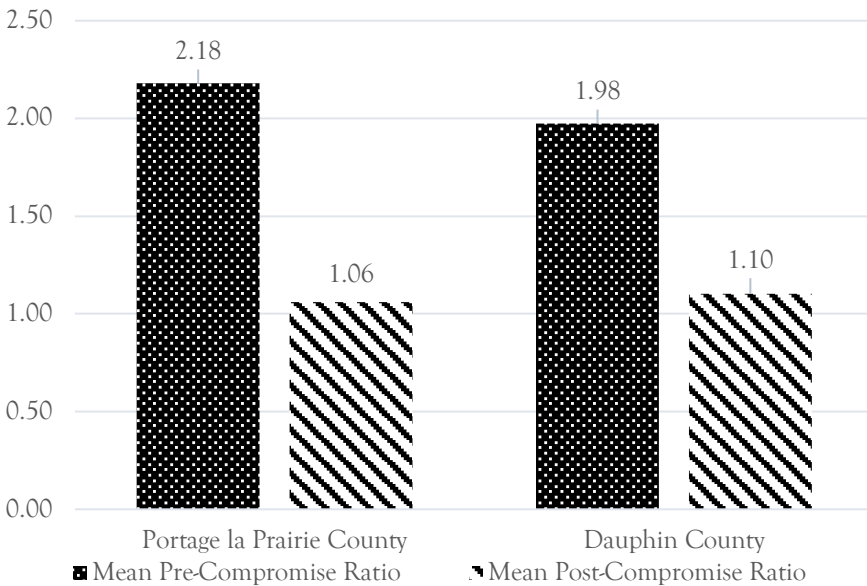
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<sup>86</sup> See FCAA, *supra* note 1, ss 7, 12(6); Torrie, "Farm Debt", *supra* note 3 at 387-88, 409.

<sup>87</sup> See Torrie, "Farm Debt", *supra* note 3 at 406.

An example is found in the compromise of George S. Thompson. The farmer’s original proposal to his secondary mortgage lender included a restructured repayment plan in which the farmer would pay \$200 the first year and \$500 each subsequent year until the debt of \$1,892.45 was paid in full.<sup>88</sup> The file contained a great deal of correspondence between the OR and the creditor, with the OR indicating that failing to accept the proposal would mean that the file would be referred to the BoR. In indicating his reluctance to have his claim decided by the Board, the creditor accepted the proposal. This is one of only six concluded OR compromises in Portage la Prairie. This file exemplifies the OR process and highlights how BoR decisions could help shape the early workings of the OR process.

Figure 6 – Manitoba: Pre- and Post-Compromise Debt-to-Asset Ratios



Legend

\*Values represent net farmer debt relative to net assets

<sup>88</sup> See file of George S Thompson of Portage la Prairie County, Portage la Prairie Filings, *supra* note 19.

The Portage la Prairie files highlight an instance where the Board took a fairly uniform approach to resolving the applications of many soldier-settler farmers who seem to have been facing similar circumstances in which their debt loads were quite high relative to their assets. Administrative efficiency may have been a further rationale for adopting a standardized approach. This shows that although there could be significant tailoring under the FCAA, such tailoring did not occur all of the time or in all places. The Portage la Prairie cases also exemplify how, at the OR stage, creditors and the farmer bargained in the shadow of what the Board might do if the file progressed to that stage. Although secured creditor consent was required to adjust their claim at the OR stage, it seems that the prospect of having their claim unilaterally adjusted – potentially in a way that was quite favourable to the farmer – provided significant incentive for secured creditors to accept reasonable proposals from farmers during the OR process.

### *3. Kent County, ON*

The FCAA documents of Kent County contained the highest volume of completed compromises (329) out of any county studied. These files were also significantly more comprehensive than any other county, providing much information pertaining to the financial and personal circumstances of the farmer. Rarely was a file incomplete or missing vital information in contrast to the other Ontario county of Prince Edward, and most notably, Portage la Prairie and Dauphin in Manitoba. It is unclear why the Kent files were so comprehensively preserved. It is possible that the significantly higher volume of files from Kent necessitated a more robust administrative infrastructure to process and preserve FCAA applications.

The data derived from Kent County is also unique in that the BoR/OR distribution is skewed from the provincial and national average. Unlike the other counties studied, Kent produced a high percentage of OR compromises (65%) in relation to BoR compromises (25%), while the remaining categories combined constituted less than 10% of outcomes. This phenomenon runs counter to the established provincial<sup>89</sup> and

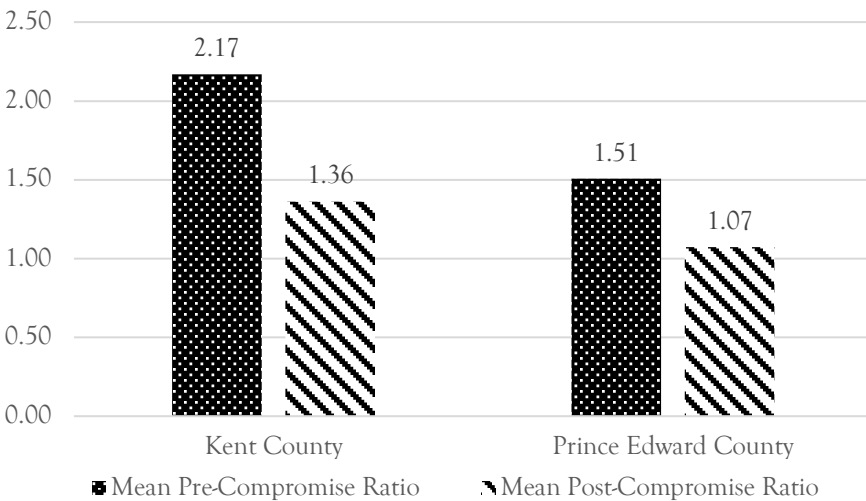
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<sup>89</sup> Ontario provincial FCAA outcome data: Out of 11,272 outcomes, 6,801 (60.34%) were BoR concluded compromises and 4,471 (39.66%) were OR compromises. See Minister of Finance, *supra* note 7, Schedule 7A.

national<sup>90</sup> trend that BoR compromises would be more frequent than OR compromises.

The debt load data from Kent County provides an interesting glimpse into the compromise formulation process. Similar to Portage la Prairie’s elevated debt-to-asset ratio (2.18:1) in relation to the other Manitoba counties in this study, Kent’s mean pre-compromise debt-to-asset ratio (2.17:1) was higher than Prince Edward County (1.51:1) (Figure 6). The post-compromise debt-to-asset ratio yielded interesting results when juxtaposed to the rate of reduction in Manitoba. The mean post-compromise ratio in Kent County was 1.36:1, representing a reduction of approximately 81% from the mean pre-compromise data.

Figure 7 – Ontario: Pre- and Post-Compromise Debt-to-Asset Ratios



Legend

\*Values represent net farmer debt relative to net assets

An explanation for this disparity may lie in the original intention of the FCAA to address the financial hardships of prairie farmers who were also

<sup>90</sup> Dominion national FCAA outcome data: out of 47,257 outcomes, 32,837 (69.49%) were BoR concluded compromises and 14,420 (30.51%) were OR compromises. See Minister of Finance, *supra* note 7, Schedule 7A.



battling the harsh climatic conditions of the Dust Bowl.<sup>91</sup> The compromises formulated in Manitoba, thus, may have considered the particularly poor growing conditions that prairie farmers faced. This explanation would fit with the tendency of the parties and the BoR to meticulously analyze individual farmers' situations, including their ability to pay back accrued debts over time and projections of future crop yields in the farmers' geographic regions. The mean debt owed across the Manitoba counties in this study was also slightly higher, on average, than that of their Ontario counterparts, which may have played a role in the decisions to provide these farmers with larger debt reductions. Finally, the disparity in mean debt reduction across the provinces may be related to the heightened percentage of BoR compromises in Manitoba compared to the Ontario counties, specifically Kent. In both provinces, BoR decisions often favoured farmers by reducing a large portion of debt owed to secured creditors, and OR compromises often yielded more marginal reductions. Therefore, the higher proportion of decisions rendered by the BoR in Manitoba likely contributed to the larger write-down rates in that province.

The FCAA files from Kent illustrate that individual counties – including fairly large ones – can run counter to wider provincial and national trends in terms of the proportion of OR and BoR compromises formulated. This underscores the localized manner in which the FCAA was deployed. The lower debt write-downs in the Ontario counties studied accord with the fact that prairies farmers, including Manitoba farmers, tended to carry higher debt loads and face poorer growing conditions. It seems that at both the OR and BoR stages, these practical considerations informed negotiations and deliberations and were manifested in the compromises.

#### ***4. Prince Edward County, ON***

Prince Edward County represented a significantly smaller sample size of FCAA materials than Kent, producing under one third of the volume of files (110). Although Price Edward and Kent counties were geographically proximate, they yielded vastly differing results in the data analysis portion of this study. The outcome distribution from Prince Edward resembled that of the national and provincial averages, with BoR compromises being most

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<sup>91</sup> See Torrie, "Farm Debt", *supra* note 3 at 410, 417; Torrie, "Federalism and Farm", *supra* note 3 at 204, 253.

frequent (45%) followed closely by OR compromises (42%). The remaining three categories totaled 13% with an elevated number of Denied outcomes making up 8% of all files. Along with producing a much lower volume of total FCAA applications than Kent County, the files of Prince Edward County were far less comprehensive in nature. A large number of the files were incomplete or lacked descriptive materials, providing little qualitative information to give context to a quantitative analysis. As a result, this study relied more heavily on the quantitative data trends derived from statistical analysis to define the overarching characteristics of the county.

In the OR and BoR compromises from Prince Edward County, the principal amount owing on debt to secured lenders tended not to be reduced. Rather, the terms of the compromises usually fixed and capitalized the principal owing from a specified date and reduced the interest rate from between six and eight percent to four percent. These types of compromises predominantly involved primary mortgage lenders, and the amortization period with the revised interest rate was generally set at 10 years. This practice, although nearly ubiquitous in the files of Prince Edward County, was not unique to that county. In other files studied, the practice of fixing the principal sum owing at a certain date and adjusting the interest rates and amortization period was often reserved for those farmers who were deemed to be in relatively good standing and likely to meet their debt obligations over time.<sup>92</sup> This type of arrangement was intended to relieve future financial burdens if current interest rates were considered too high in light of estimated crop yields. The restructured amortization periods enabled farmers with a large number of creditors, including those with unsecured debt, to better allocate payment distributions while retaining enough of their farming income to sustain living expenses and stave off insolvency.

Despite the frequent focus on reducing interest rates as part of formulating a fair proposal, there were also instances where a contrary approach was taken. The file of Cora McDonald provides an example.<sup>93</sup> In the *Statement of Affairs*, the farmer indicated that their liabilities were too great to be consolidated and simply reducing the interest over a longer period of time would not provide enough relief to remain solvent. They

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<sup>92</sup> See compromise of Archie D Campbell of Prince Edward County, Prince Edward Filings, *supra* note 22.

<sup>93</sup> See file of Cora McDonald of Prince Edward County, Prince Edward Filings, *supra* note 22.

suggested that if their mortgage was “substantially reduced” and their unsecured debts were “reduced accordingly”, along with extending the period for repayment, they would be able to meet their existing and future obligations. Although this file indicates the need for a substantial reduction of the principal first and foremost, it also underscores the farmer’s desire for an extended payback period to ensure their future financial sustainability. The farmer did not indicate any issues with the interest rates, which stood in contrast to most other applications in Prince Edward County. The McDonald file is also noteworthy as one of the few instances where a female farmer applied under the FCAA.<sup>94</sup> While the vast majority of FCAA applications were made by male farmers, female applicants occasionally appear in the case files, usually in situations where they were (recently) widowed or their husband was too ill to make the application.<sup>95</sup>

The creditors from Prince Edward County differed from the other counties in this study in one very distinct way: there appeared to be far fewer small-scale creditors and a higher volume of institutional creditors as the primary mortgage lender. While the Commissioner of Agricultural Loans, the DSSC, and the Agricultural Development Board were often listed as the primary mortgage lender – similar to Kent and the Manitoba counties – institutional lenders such as CIBC, RBC, and BMO often provided more significant loans as well. Companies such as Massey-Harris Co., International Harvesters Co., and the Waterloo Manufacturing Co. frequently held security interests on machinery and farming implements along with chattel liens for sums ranging between \$200 and \$1,500. These creditors often negotiated restructured debt repayment plans at the OR stage of the FCAA process, since the claims of these creditors would have been stayed from enforcing their security once the FCAA was invoked. If the file was submitted to the BoR, then the decision of the Board was often structured to provide the farmer with the ability to retain the implements or machinery that were essential to their farming practices with the stipulation that they not default on any of the restructured payments. In the event they failed to adhere to the revised debt repayment plan, the creditors were often free to realize their security, repossessing the item in question, and demand repayment of the arrears and interest.

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<sup>94</sup> For an interesting study of women bankrupts, see Karen Pearlston, “Married Women Bankrupts in the Age of Coverture” (2009) 34:2 Law & Soc Inquiry 265.

<sup>95</sup> See e.g. Torrie, “Farm Debt”, *supra* note 3 at 399.

Prince Edward County also displayed a significantly lower volume of creditors per file than that of Kent County; however, the distribution of secured to unsecured creditors followed a similar trend. The average number of creditors for Prince Edward County farmers was 2.2, with unsecured creditors making up the majority (1.1) in relation to secured creditors (0.8) (Figure 7). Farmers who applied for relief under the FCAA in Kent County averaged 5.8 creditors per file, with the majority also being unsecured (3.9) as opposed to secured (1.9). This data is a marked departure from similar data from the Manitoba counties in this study. The majority of creditors were secured in both Dauphin and Portage la Prairie.

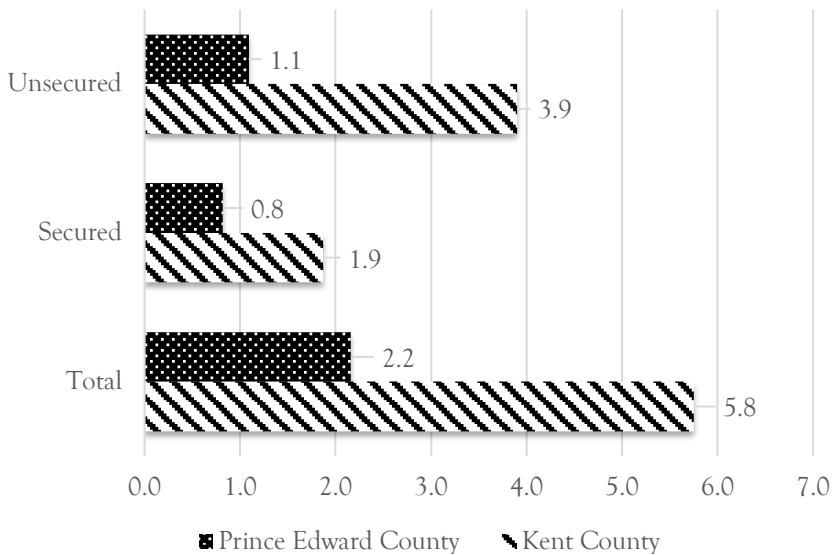
The Prince Edward files show how important reducing interest rates was to ensuring that the FCAA compromise would be affordable in light of the productive value of the farm in addition to other factors, such as the size of the debt and time period for repayment. This provides insight into how the FCAA mandate of affordability of debt service was carried out in practice.<sup>96</sup> The Prince Edward files also demonstrate that lending patterns were different from one county to the next, even when the two counties were located in the same province and relatively close to one another.<sup>97</sup>

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<sup>96</sup> See FCAA, *supra* note 1, Preamble, s 12(8); Torrie, “Federalism and Farm”, *supra* note 3 at 234–35.

<sup>97</sup> This phenomenon was also observed in the Manitoba counties of Morden and Brandon. See Torrie, “Farm Debt”, *supra* note 3 at 418–28.

Figure 8 – Ontario: Number of Creditors Per File



## V. ANALYSIS AND RESULTS

The data generated from this empirical study bears out vital information regarding the functionality of the *FCAA* in practice. Many files analyzed from each of the five counties yielded both semi-conclusive answers and nuanced inferences regarding the ultimate research question of this study: was the *FCAA* process successful in fulfilling its legislative mandate of keeping the farmer on the land? Although the lack of post-compromise documentation challenges the ability to gauge the lasting success of the *FCAA*, cues in the BoR decisions and OR proposals provide glimpses into how each individual farmer's circumstances were weighed in restructuring the debt of the applicant. The overarching trends identified in the quantitative analysis portion of this study demonstrate a propensity for the BoR to formulate compromises that afforded the farmer specific benefits to ensure they remained solvent, based on the amount of debt they owed. For example, there was a correlation between the BoR extending amortization periods for mortgage-related debt, as well as reducing the interest rate for

those farmers who owed substantial sums to multiple secured creditors, and who attributed their increasing financial hardship to a temporary, climatic, or economic-related downturn in production.

### E. *Successes of the FCAA*

In order to assess the overall success of an individual FCAA compromise, a multitude of factors must be weighed that speak to the farmer's financial circumstances prior to their application and their projected ability to meet their debt obligations while maintaining farming output after the conclusion of the FCAA process. Due to the subjective nature of this analysis, the answer to whether the Act was successful in practice must be judged by an equally subjective metric. The following indicators were used in this study to assess the success of FCAA compromises: was the farmer able to remain on the farm and continue production; and, did the compromise reflect the individual hardships of the farmer which prompted their application under the FCAA. Although the statutory language of the FCAA does not enumerate these indicators as measures of success, the notion of "keeping the farmer on the farm" was the impetus for formulating a federal farm-debt restructuring statute.<sup>98</sup> Additionally, determining whether a farmer could meet his financial obligations post-compromise and if a compromise addressed the unique hardships of the individual farmer were factors that could be implicitly derived from both the statutory language and the material contained in the files themselves.

#### 1. *Keeping the Farmer on the Farm*

The mandate of the FCAA was ultimately to address the economic and climatic calamity that had befallen farmers in the Prairie Provinces. Prime Minister Bennett stated that the Act's intention was to "keep the farmers on the farm", setting a clear objective for the FCAA and serving as a guideline for the administration of the Act in practice. The vast majority of files analyzed in this study appear to have succeeded in this regard. Nevertheless, there are a few examples where this did not happen. These examples all involved quit claim deeds. In these cases, the farmer was not provided with the option to rent the property, and instead, they simply gave up the land in satisfaction of their debts.

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<sup>98</sup> See Ben-Ishai & Torrie, *supra* note 7 at 42-43.

An example of this phenomenon is present in the file of John Francis Jamison of Dauphin County. In this OR compromise, the farmer accepted a revised proposal that compelled him to offer his primary mortgage lender a quit claim deed for the farm in consideration for \$412 and a release from all outstanding financial obligations and liabilities associated with the property.<sup>99</sup> The proposal stipulated that the farmer was able to remain on the land for a further period of 3 months, after which time there was no obligation for the mortgage lender to extend the arrangement or offer a rental agreement to keep the farmer on the land. What sets this compromise apart from others like it is the lack of BoR interference. The compromise was formulated at the OR stage between the farmer and the representatives of the creditor. Numerous examples in this study would suggest that if the matter was referred to the BoR, the circumstances of the farmer would have been substantially improved, likely giving the farmer the option to remain on the land and continue production through a rental or lease arrangement.

There are countless examples from every county in this study where the BoR made a concerted effort to ensure farmers were provided with the option to remain on the farm, if not as a landowner, then as a tenant. The compromise of Joseph Ryz of Dauphin County, noted above, exemplifies the lengths to which the BoR went to ensure the farmer was able to continue farming by formulating a very detailed proposal with stringent guidelines.<sup>100</sup> Due to the lack of documentation that tracked the actual implementation of the FCAA compromises, we can only speculate as to the feasibility of meeting these guidelines based on the financial state of the farmer at the time of filing along with the accompanying debt information found in the *Statement of Affairs* and future agricultural conditions and prices. Nevertheless, the BoR demonstrably made efforts to implement the mandate of the Act by considering the unique circumstances of the farmer and formulating a proposal that provided the farmer with the ability to continue farming and remain solvent. Whether the farmer was able to sustain these objectives over time was beyond the purview of the BoR and OR; the main focus was to formulate, and facilitate in formulating, the most equitable compromise for the parties with the information available at the time. Since the Act itself was farmer-centric, the vast majority of

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<sup>99</sup> See compromise of John Francis Jamison of Dauphin County, Dauphin Filings, *supra* note 20.

<sup>100</sup> See compromise of Joseph Ryz of Dauphin County, Dauphin Filings, *supra* note 20.

compromises gave weight to the farmer's difficult financial situation rather than attempting to provide the creditors with immediate or significant repayments on debts owed.

## *2. Individualized Compromises and Lasting Security*

As discussed throughout this article, measuring the lasting financial security that FCAA compromises provided farmers who applied for relief under the Act was rendered difficult due to the lack of follow-up information for each file. For the sake of this analysis, factors such as the favourability of both short and long-term debt restructuring plans were identified as key indications of whether the farmer would be able to meet their financial obligations and remain operational through the crisis and beyond.

A key feature of the FCAA was the curated nature of each compromise, where the individual circumstances of the applicant were carefully analyzed by the BoR and OR in formulating a plan that would satisfy that mandate of the legislation. The needs of each farmer who applied for relief under the Act followed a common theme: they feared that they would not be able to meet their debt obligations, given the state of their finances and productivity during a period where farmers all across Canada were living in destitute conditions. However, despite the common plight that many farmers experienced in the 1930s, each farmer required varying degrees of relief that were best addressed on an individual basis.

The data derived from this empirical study illustrated distinct trends that were local to each county, yielding some reoccurring themes and patterns. For example, many BoR compromises from Kent County used payback bonuses to unsecured creditors as a mechanism of debt relief, as previously referred to in this article.<sup>101</sup> BoR compromises in other counties, such as Dauphin and Portage la Prairie, often used extended amortization periods on mortgages as a primary mechanism to aid in staving off insolvency so that farmers had more cushion with regard to looming payment deadlines. Local culture and creditors appear to have influenced the approaches adopted by individual counties, as suggested in the pilot

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<sup>101</sup> Payback bonuses were used by the BoR to incentivize the farmer to payback a portion of their debts to unsecured creditors. They were structured in a way that for every dollar the farmer paid on the debt by a certain date, they would be granted relief from an additional percentage of relief on that debt. See Torrie, "Mechanisms", *supra* note 13 at 152-55.



study.<sup>102</sup> Despite the seemingly uniform manner in which BoR decisions were rendered with respect to jurisdiction, *FCAA* compromises frequently took a tailored approach to debt restructuring, accounting for past and projected farming outputs as well as the living conditions of the farmer and their family. Thus, it is not possible to draw general conclusions about differences in the application of the *FCAA* in Ontario as opposed to Manitoba.

Regional differences in the application of the *FCAA* find a loose parallel in Canada's province-by-province approach to exemptions in bankruptcy.<sup>103</sup> While individuals who find themselves in bankruptcy come under a federal process, the type and quantum of property that they are allowed to keep is determined by provincial law.<sup>104</sup> One of the rationales offered for a non-uniform approach to exempt property in bankruptcy is regional differences between provinces, and historically, the Prairie Provinces have had generous homesteads exemptions not found in other parts of Canada.<sup>105</sup> More recently, the tension between provincial interests and federal uniformity has been in evidence in the applicability of receivership proceedings to prairie farms.<sup>106</sup> The presence of national appointments for receivers has brought federal bankruptcy and insolvency law into conflict with Saskatchewan and Manitoba legislation, which provides for statutory debt mediation prior to

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<sup>102</sup> See Torrie, "Farm Debt", *supra* note 3 at 433.

<sup>103</sup> For the historical development of provincial exemptions law, see Thomas GW Telfer, "The Evolution of Bankruptcy Exemption Law in Canada 1867-1919: The Triumph of the Provincial Model" (2007) Annual Rev Insolvency L 593 [Telfer, "Evolution"]. Interestingly, while the US Constitution refers to "uniform Laws on the subject of Bankruptcies" there is no reference to uniformity in the Canadian Division of Legislative Powers. See US Const art I, § 8, cl 4; *Constitution Act*, *supra* note 8, s 91(21). Fraudulent preferences are another area of provincial variation and one where federal law or provincial law can be relied upon. See *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 95 [BIA]; *Assignment and Preferences Act*, RSO 1990, c A33, s 4. Manitoba does not have a preferences statute.

<sup>104</sup> See BIA, *supra* note 103, s 67(1)(b). See e.g. *Execution Act*, RSO 1990, c E24, s 2; *The Executions Act*, CCSM c E160, s 23.

<sup>105</sup> See Telfer, "Evolution", *supra* note 103; Industry Canada, *Corporate, Insolvency and Competition Policy: Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (Ottawa: Industry Canada, 2014) (which called for submissions for a federal exemptions list; however, there have been no further federal reform efforts).

<sup>106</sup> See *Saskatchewan Attorney General v Lemare Lake Logging Ltd*, 2015 SCC 53.

receivership proceedings against family farms.<sup>107</sup> National uniformity, in this respect, would come at a cost to provincial policy-making to support regional economies and constitutions as well as an emphasis on restructuring and rehabilitation as responses to financial distress.<sup>108</sup>

The administration of the FCAA appeared to adequately account for most – if not all – of the factors that placed farmers in such dire financial circumstances. Although not explored at length in this research, it can be reasonably adduced that one of the most successful aspects of the FCAA was its administration at such local levels. The ability of the OR and BoR to become so closely acquainted with each file enabled the decisions they rendered to accurately address the idiosyncrasies of the region as well as the individual farms themselves.

### F. Section 17 of the FCAA

Building on previous empirical research, it is worth considering section 17 within the overall scheme and purpose of the FCAA. This section focuses on the rate of interest repayments on mortgages:<sup>109</sup>

17. (1) Notwithstanding the provisions of any other statute or law, whenever any rate of interest exceeding seven per centum is stipulated for in any mortgage of farm real estate, if any person liable to pay the mortgage tenders or pays to the person entitled to receive the money, the amount owing on such mortgage and interest to the time of payment, together with three months' further interest in lieu of notice, no interest shall after the expiry of three months period aforesaid be chargeable, payable or recoverable in respect of the said mortgage at any rate in excess of five per centum per annum.

(2) The provisions of this section shall apply in the case of any mortgage heretofore or hereafter made and whether or not the principal sum is due and owing at the time such tender or payment is made.

This provision effectively provided farmers with a safety valve to relieve the strain of high-interest mortgages on farmland. The issue of high-interest rates was a widespread issue for farmers in the 1930s, and the inability of

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<sup>107</sup> See BIA, *supra* note 103, Part XI; *Saskatchewan Farm Security Act*, SS 1988-89, c S-17.1; *Family Farm Protection Act*, SM 1986-87, c 6, CCSM c F15. See also Virginia Torrie, “Should Paramountcy Protect Secured Creditor Rights? *Saskatchewan v Lemare Lake Logging* in Historical Context” (2017) 22:3 *Rev Const Stud* 405 at 417–20.

<sup>108</sup> For another example, see Virginia Torrie, “Interest, Insolvency and Prairie Farm Debt: An Historical Analysis of Reference as to the Validity of Section 6 of the *Farm Security Act, 1944 (Saskatchewan)*” (2022) 55:3 *UBC L Rev* 803 [Torrie, “Interest”].

<sup>109</sup> FCAA, *supra* note 1, s 17.

making mortgage payments jeopardized their ability to continue farming.<sup>110</sup> Many farmers' files indicated an inability to meet interest payments and a fear that they would become insolvent if their interest rates on mortgages remained at, or in excess of, seven percent per annum.<sup>111</sup> The ability to regulate interest – a federal head of power – was seen as an essential part of the FCAA as well as provincial attempts to provide financial relief to farmer-debtors.<sup>112</sup>

The function of section 17 in practice is difficult to ascertain and the successes impossible to measure, due to the lack of follow-up information from beneficiaries of the Act. However, the empirical research of this study can descriptively demonstrate how the BoR considered this section in rendering their final decisions, based on the financial state of the farmer and the self-identified inability for the individual farmer to meet their debt obligations with respect to large mortgage interest payments. By providing the farmer with the ability to pay a consolidated fixed sum of both outstanding principal and interest, along with the pre-determined interest amounts for the subsequent three months, the farmer would theoretically be much better off in the long run. As delineated in section 17, the Act enabled the adjustment of interest rates on mortgages that exceeded seven percent per annum to a rate no higher than five percent per annum.<sup>113</sup> Since many of the farmers in this study were subject to interest rates on mortgages in excess of seven percent at the time of their applications, the BoR often adjusted these rates of interest as the primary mechanism for providing sustained financial relief in their final decisions. Although seldom invoked within the files that were analyzed in this empirical study, this section highlights notable examples when elements of section 17 were utilized by

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<sup>110</sup> See Torrie, "Federalism and Farm", *supra* note 3 at 211–12; Telfer & Torrie, *supra* note 2 at 103–04; Torrie, "Mechanisms", *supra* note 13 at 155–58; Torrie, "Farm Debt", *supra* note 3 at 428.

<sup>111</sup> See e.g. John Tychonkyj, St. Boniface Filings, *supra* note 21; James Schuddemat, Brandon County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1929-1954), (Schedule: A0130, Accession No: GR3091); Johann Neufeld, St. Boniface Filings, *supra* note 21, cited in Torrie, "Mechanisms", *supra* note 13 at 156–57.

<sup>112</sup> See Torrie, "Federalism and Farm", *supra* note 3 at 211–13; Torrie, "Interest", *supra* note 108.

<sup>113</sup> See FCAA, *supra* note 1, s 17.

the BoR in providing debt relief in their decision, as well as examples that demonstrate the limitations and restrictions of the section.

One of the rare examples of the BoR implementing section 17 into their final decision was found in the compromise of Charles H. R. Cunningham of Portage la Prairie County.<sup>114</sup> This farmer had a mortgage on their land with an outstanding amount of \$5,623.18, at an interest rate of eight percent per annum. In their decision, the BoR reduced the total amount owing on the mortgage to \$1,400 and adjusted the interest rate from eight percent to four percent per annum. The board further stipulated the specific repayment schedule for the subsequent five years after the new arrangement was to go into force and indicated that any breach of these terms would nullify the compromise put into place. Although section 17 of the Act was not specifically mentioned in their decision, the terms of the arrangement and the rate of interest reduction conform to the requirements of this provision and suggest that it was invoked.

The file of John Geisel of Dauphin County provides an example of how the BoR invoked elements of section 17 of the FCAA in practice, with regard to a chattel mortgage rather than farm real estate.<sup>115</sup> The farmer in this case was subject to a chattel mortgage in favour of the Canadian Bank of Commerce for the sum of \$1,491 with an interest rate of seven percent per annum. In their final decision, the BoR reduced the principal amount owing on the mortgage to \$1,000, whereas the interest on the mortgage would also be reduced to five percent per annum. The rate of interest-rate reduction in this case appears to follow a similar model to section 17 of the Act. Reducing the rate of interest from seven percent to five percent appeared to a common tactic of the BoR, regardless of whether the mortgage in question was for farm real estate – to which section 17 was confined – or whether the mortgage was assigned to personal property and farm implements.

A notable example of where section 17 was not invoked by the BoR is found in the compromise of Antoni Pawlicki from Dauphin County.<sup>116</sup> Mr. Pawlicki was indebted in the sum of \$459.36 to The Ontario Loan & Debenture Company for the first parcel of land with an additional mortgage

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<sup>114</sup> See compromise of Charles H R Cunningham of Portage la Prairie County, Portage la Prairie Filings, *supra* note 19.

<sup>115</sup> See file of John Geisel of Dauphin County, Dauphin Filings, *supra* note 20.

<sup>116</sup> See Compromise of Antoni Pawlicki of Dauphin County, Dauphin Filings, *supra* note 20.

on the second parcel of land in favour of The Toronto General Trust Corporation for the sum of \$2,164.47. Since the interest rates on both of these mortgages was fixed at six percent, the BoR did not adjust them for any portion of the repayment period. In lieu of a reduction on the percentage of the interest rate for repayment, the BoR in this case decided to marginally reduce the total amount owing on the first mortgage to \$450 while altering the repayment structure to mitigate the amount owed on the mortgage over the subsequent five years. A similar approach was followed for the mortgage on the second plot of land, whereas the much larger debt of \$2,164.47 was reduced to \$2,100 free of any reduction of interest as the primary recourse for the said farmer.

The file of Wellington Carl Capeling of Kent County exemplified how the farmer and their primary mortgage lenders could mutually formulate an OR compromise that would act as a work around for section 17 if they failed to meet the seven percent interest rate threshold for benefit. In this file, Mr. Capeling was indebted to Mr. William Best, his primary mortgage lender, for the sum of \$1,648 for both principal and interest, with the interest rate fixed at six percent per annum. The forms within the file listed a number of proposals sent on behalf of the farmer to the primary mortgagee featuring requests for relief and revisions of the agreement, chief among them, that the interest rate be reduced to three percent per annum. The *Report of the Official Receiver* indicated that "...the mortgagee, Mr. Best volunteered to reduce the interest rate on his mortgage to 3% for the next five years."<sup>117</sup> Initially opposed by the mortgagee, the last form in the file was an official letter by the BoR delineating the terms of the binding agreement, as formulated upon request of the farmer.

Thus, while section 17 was not often used by the BoR, it was an important tool for debt adjustment that was applied in the FCAA compromises. The files suggest that the BoR and OR used the section as a justification to reduce interest rates even in cases where the rate did not meet the prescribed threshold of seven percent.

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<sup>117</sup> File of Wellington Carl Capeling of Kent County, Kent Filings, *supra* note 23; Labeled "Form C".

## VI. CONCLUSION

This study represents the first empirical analysis of how the *FCAA* operated in Ontario and expands on a previous study based on Manitoba data by considering additional Manitoba counties. In addition to the quantitative data available, the applications submitted under the *FCAA* provide a wealth of information regarding how *FCAA* compromises functioned in practice. The inclusion of Ontario data enables a comparison of non-prairie farmers to prairie farmers, the area the *FCAA* was originally enacted to address.

The primary objective in this research was to analyze the data for trends and themes to assess the similarities and differences between various regions to which the *FCAA* applied. The data revealed the prevalence of localized approaches within counties in spite of a federal statute, which accords with previous empirical scholarship on the *FCAA*. These variations accord with regional differences in debt loads and financial stability. For example, the files in Dauphin demonstrate an unwillingness in that county to forgive or reduce principal taxes owing on land. This may be related to the fact that farmers in Dauphin tended to have more favourable debt-to-asset ratios than Manitoban farmers overall. A feature that arose in Portage la Prairie was the apparent hesitancy of some creditors to send their claims to the BoR. Kent had the unique feature of containing twice as many OR files as BoR files, which was the reverse of the national trend. Prince Edward differed from the other counties in that the dominant creditors were institutional rather than small-scale creditors. Thus, the files in each of the counties had unique features, which underscore the importance of using a localized administrative approach.

Given the relatively small number of counties included in this study, it is difficult to generalize differences at the provincial level. However, one trend that emerges from the data analyzed is that the files in Ontario counties involved lower debt write-downs than the counties in Manitoba. This is consistent with the fact that prairie farmers tended to have higher debt loads and faced poorer conditions than those in Ontario. One similarity between counties that emerges from the data is that asset values did not play a large role in developing compromises. Instead, interest rates and the productive potential of the farm were more important factors in determining the extent of reasonable debt write-downs. This is likely

because ORs and BoRs were reticent to deprive the farmer of any assets that would impact the farmer's ability to produce.

The focus on allowing farmers to remain productive leads to the secondary objective of this study, which was to empirically evaluate the success of the Act in keeping farmers on their land. The files analyzed in this study suggest that overall, the FCAA was successful in this respect. There were many files where the BoR made a concerted effort to ensure that farmers had the ability to remain productive on the farm. The mandate of the Act was implemented by considering the unique circumstances of each farmer and formulating a proposal under which the farmer could remain solvent. However, due to the lack of documentation regarding the implementation of these compromises, it is difficult to determine to what extent they were effective in the long term. As an attempt to address farm over-indebtedness, the individualized approach under the FCAA may have contemporary relevance in the effective and efficient restructuring of SMEs.<sup>118</sup>

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<sup>118</sup> See Sarra, *supra* note 25; Gurrea-Martínez, *supra* note 25; World Bank Group, *supra* note 25; Mokal et al, *supra* note 25; Torrie, "Mechanisms", *supra* note 13.