

Agribusiness

Contributing editors

Carol VandenHoek and Wendy Baker QC



2018

GETTING THE
DEAL THROUGH

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Canada

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

In Canada, there are two primary jurisdictions with authority over agriculture and food supply: the federal government and the provincial governments. The federal government has jurisdiction over banks, trade and commerce, and bankruptcy and insolvency. The federal government has authority over all trade issues, both provincial and international. The provinces have jurisdiction over property, including lands within the province.

Primary agriculture is generally regulated at the provincial level. Restrictions on the ownership and use of agricultural land varies across the provinces. Each province also has environmental laws that govern agricultural land use. Where primary agriculture meets fish-bearing streams and rivers, there is a role for federal fisheries regulators.

Farmers of crops will have to be aware of pest management rules, worker health and safety rules, migrant worker regulations, food certification standards (such as organic), as well as local municipal zoning and land use restrictions.

Farmers of live animals will be subject to many of the same considerations applicable to crop farmers. The most significant differences arise in relation to the five supply managed industries in Canada and their commodities:

- milk (dairy);
- chicken;
- table eggs;
- hatching eggs; and
- turkey.

These five commodities are regulated under national marketing schemes that set strict quota requirements for their production. Farmers must adhere to these quotas before they can produce these products. The amount of the quota that can be used by the farmers each growing cycle is set at both the national and provincial levels. Processors of these supply managed commodities must also comply with the supply management regimes.

Once the crops or animals have been grown and processed, there is a bigger role for the federal regulators. The Canadian Food Inspection Agency (CFIA) has a role with all products intended for sale outside a province. Packaging of products is regulated nationally and includes requirements for language, contents and certification, among others. Packaging in Canada requires labelling in both French and English, with weights and measurements using the metric system.

Many major retailers purchase food products under national or regional contracts. Regional contracts tend to be set for the western region (British Columbia, Alberta, Saskatchewan, Manitoba), the central region (Ontario, Quebec) and the eastern region (Atlantic provinces).

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

The federal government has control over imports and production planning at the national level, pursuant to section 91 of the Constitution Act 1867. The provinces have jurisdiction over production and pricing within their respective provinces under section 92 of the Constitution Act 1867.

Canada's regulatory framework aims to ensure the humane treatment of animals, the safety of food products and the elimination of contamination. It also works to ensure the protection of the consumer through food safety and labelling standards.

Most provinces have land use planning legislation that establishes what the land may be used for and what infrastructure may be built upon the land. The landowner may face significant restrictions on their use of the land.

Producers of supply-managed products may not market their products for intraprovincial-interprovincial or export trade without first acquiring the production quota. Such quotas are restricted and can be expensive to obtain. Producers receive a regulated price established by provincial marketing boards for their products. Food processors must pay the producers the regulated price for their products. The national quota volumes are set by the:

- Canadian Dairy Commission;
- Canadian Hatching Egg Producers;
- Chicken Farmers of Canada;
- Egg Farmers of Canada; or
- Turkey Farmers of Canada.

Provincial marketing boards then allocate their assigned quotas among producers within their respective province. Each provincial marketing board has its own set of rules that must be followed by producers and processors.

Many field and greenhouse crops are also subject to provincial boards and commissions, which may set levies and standards for the production of specific crops. These vary between provinces.

Primary food processors must comply with health and safety laws in the province and, if they intend to sell their products outside the province, must comply with federal health and safety laws administered by the CFIA.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Farm Credit Canada, a federal Crown corporation, provides and guarantees loans to producers, agri-food operators and agribusiness. The Agricultural Credit Corporation, a not-for-profit corporation, provides low-cost loans to farmers across Canada. There are numerous organisations that are involved in agribusiness providing support, information and programmes for the sector. Finding the appropriate organisation among the myriad available can be challenging for farmers. AgPal is a web-based discovery tool to help Canadian farmers and agribusinesses find agriculture-related programmes and services administered by partners and organisations. The Ministry of Agriculture for each province also provides resources for identifying and accessing such organisations.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

There are numerous provincial and federal statutes and regulations applicable to agricultural property transactions dependent on the jurisdiction in which the property is located.

Ownership of farmland is usually undertaken by an agreement of purchase and sale. While there are many similarities to agreements relating to the acquisition of non-farmland, special consideration must be given to numerous statutes, specific searches undertaken and inquiries made prior to the closing of a transaction to address farmland specific issues.

These issues include, but are not limited to:

- accurate property description;
- zoning, easements;
- rights of way;
- environmental issues;
- drainage;
- fences; and
- conservation authorities.

Farmland may be owned or leased. Farmland and the business of farm operations may be undertaken using various methods such as sole proprietorships, partnerships, corporations and joint ventures (JVs) all of which should be carefully considered in relation to the business organisation methods most suited to the particular situation.

5 Outline any rules related to use of farmland for non-agricultural uses.

Land use planning is under provincial jurisdiction. Land use planning is coordinated between the province and its municipalities. In general, the province is responsible for identifying provincial policy interests and objectives. Municipalities then consider provincial objectives when undertaking planning decisions and developing official plans or development plans.

A central theme among provincial planning policies is the need to preserve and protect agricultural land by limiting its use to agriculture. A strong emphasis is placed upon stopping non-agricultural encroachment onto these lands.

In British Columbia and Quebec there are agricultural land reserves, which restrict the use of lands to agricultural purposes within the reserves. In most provinces there is legislation to protect farmers from nuisance complaints arising from the normal use of farmland.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In Canada, the federal government has jurisdiction over banks, trade and commerce, and bankruptcy and insolvency. The provinces have jurisdiction over property. Farm lending is governed by the federal Bank Act, provincial legislation concerning personal property security and provincial mortgage acts.

Section 247 of the Bank Act contains provisions on what property banks may secure when lending to a farming operation. It allows for banks to secure crops, seeds, livestock, implements and equipment.

Particularly with farm lending, familiarity with provincial personal property security acts is essential, given the significant use of personal property as security in farm financing. For example, the treatment of quotas as property varies from province to province. Once the lending agreement has been executed, it is the lender's responsibility to register the charge against the land and the security against personal property with the appropriate provincial administrative bodies.

In addition to Farm Credit Canada and the Agricultural Credit Corporation, several provinces have also established provincial Crown corporations that may extend loans to farmers. Alberta, Manitoba and Saskatchewan have established provincial Crown corporations that provide agriculture-related loans.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Bankruptcy and insolvency fall under the jurisdiction of the federal government. In general, the same procedures apply to agricultural and non-agricultural insolvency and bankruptcy proceedings, with some exceptions.

Pursuant to the Farm Debt Mediation Act, a farmer may apply to the Farm Debt Mediation Service when he or she is no longer able to make payment on time, or the value of the farm property would not be enough to cover his or her debts, if sold. Mediation services and an appeal process are offered to the debtor and creditors.

Certain provinces have also implemented protections for farmers and their property during insolvency and bankruptcy proceedings such as the Family Farm Protection Act (Manitoba), the Farm Financial Stability Act (Alberta) and the Saskatchewan Farm Security Act.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

Farmland in Canada can be subject to significant public control. Most provinces have land use planning legislation that establishes what use the land may be put towards and what infrastructure may be built upon the land. Depending on how the land is classified or zoned, the landowner may face significant restrictions on their use of the land.

Separation requirements between farm structures and other buildings generally exist. In Ontario, the Minimum Separation Formulae establishes minimum distances between livestock barns, manure storage and other buildings.

Land use planning also encompasses the preservation of natural heritage, which may impact upon the use of land that was intended by the owner. Most provinces have environmental protection legislation. Landowners may face restrictions regarding the use of their land when their intended use has an impact upon wetlands, waterways, floodplains, shorelines and other lands subject to conservation efforts. Certain provinces also allow for the creation of conservation easements on private lands that survive the sale of the property.

In general, approval is required from the appropriate provincial body before engaging in works that will alter the flow of water on a landowner's property. Most provinces have legislation aimed at protecting drinking water and water systems. Furthermore, landowners are prohibited from dispelling substances into water that may impair the water quality. Depending on how much water is to be used and for what purposes, licences may be required. Exceptions apply if the water is for livestock.

Drainage is also a key component of water management in rural areas. Most provinces allow landowners to petition the municipality for the creation of a public drain. Certain provinces also provide loans to landowners who wish to install tile in order to assist with the proper drainage of their land.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

Provinces have jurisdiction over farmland. Alberta, Saskatchewan, Manitoba and Quebec have imposed significant restrictions on foreign ownership of farmland. Alberta, Saskatchewan and Manitoba limit the amount of farmland that non-residents and non-Canadian owned entities may acquire. The restrictions in these three provinces range from 10 acres (Saskatchewan) to 40 acres (Manitoba) of farmland that may be owned by non-residents and non-Canadian controlled entities.

In Quebec, only residents of Quebec and Québécois-controlled entities may acquire more than 10 acres of farmland pursuant to the Act Respecting the Acquisition of Farm Land by Non-Residents.

Prince Edward Island does not restrict who may own farmland. However, the Land Protection Act limits individuals to acquiring up to 1,000 acres of farmland and corporations to 3,000 acres of farmland.

Ontario and British Columbia do not have any ownership restrictions on farmland.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

There are numerous agriculture-related programmes, services and supports available to help Canadian farmers and agribusinesses through various partners and organisations. As mentioned in question 3, the online tool AgPal (www.agpal.ca) may be used to assist in navigating the myriad of programmes. Further programme information is available through the agriculture ministry for each province and territory.

The federal government, through the Ministry of Agriculture and Agri-Food Canada (Agri-Food Canada) maintains a suite of programmes in order to support:

- innovation;
- sustainable farming;
- business development;

- risk management;
- trade; and
- market development.

Growing Forward 2 is a five-year framework (2013–2018) in which federal, provincial and territorial governments provide support to Canadian producers and processors.

Under Growing Forward 2, the federal government manages three broad programmes with C\$1 billion aimed at promoting growth in the agriculture sector: AgriInnovation, AgriCompetitiveness and AgriMarketing.

AgriInnovation

This scheme provides funding targeted to research and development activities and enabling the industry to adopt and commercialise the research. Applications can be made online through the Agri-Food Canada's website or by mail.

AgriCompetitiveness

This makes directed investments to assist the sector in adapting to opportunities and issues and enhancing business in the face of market trends. The programme promotes business development, provides forums for development of joint action between industry and government, and allows industry stakeholders to provide input into the regulatory regime.

AgriMarketing

This provides support to the industry's efforts to expand markets and seize opportunities. Promotional activities and the development of market strategies are supported by this programme.

The federal government also provides a suite of Business Risk Management programmes – AgriInvest, AgriStability, AgriInsurance, and AgriRecovery – to assist farmers to manage risk arising from market loss and natural disasters.

AgriInvest is a self-managed producer-government savings account that enables producers to save money. It provides support for investments to mitigate risks or improve market income. A participant can deposit up to 100 per cent of allowable net sales, with the first 1 per cent matched by governments. Deposits can be made at a participating financial institution.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Apart from the aforementioned programmes aimed to support farming and agribusiness development, Agri-Food Canada makes no specific provisions for foreign incentives.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

The federal government is responsible for regulating the processing of live animals where they are destined for interprovincial or export trade. Provinces regulate the processing of live animals destined for intraprovincial trade. Canada's regulatory framework aims to ensure the humane treatment of animals, the safety of food products, and the elimination of contamination. It also works to ensure the protection of the consumer through food safety and labelling standards.

Key legislation for processors of live animals under federal jurisdiction include the:

- Health of Animals Act;
- Meat Inspection Act;
- Consumer Packaging and Labelling Act;
- Food and Drugs Act; and
- Safe Food for Canadians Act.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Canada has a robust food safety regime and has recently introduced the new Safe Food for Canadians Act in 2012 that consolidates the

authorities of the Fish Inspection Act, the Canada Agricultural Products Act, the Meat Inspection Act, and the food provisions of the Consumer Packaging and Labelling Act.

The following federal legislation also relates to food safety:

- Agriculture and Agri-Food Administrative Monetary Penalties Act;
- Canada Agricultural Products Act;
- Consumer Packaging and Labelling Act (regarding the provisions concerning food);
- Feeds Act;
- Food and Drugs Act (regarding the provisions concerning food);
- Health of Animals Act;
- Meat Inspection Act; and
- Plant Protection Act.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

CFIA inspectors may investigate any alleged contraventions of the legislation listed in question 13. Penalties may include imprisonment or fines. The Agriculture and Agri-Food Penalties Act also establishes penalties for the violations of the following pieces of legislation:

- Canada Agricultural Products Act;
- Farm Debt Mediation Act;
- Feeds Act;
- Fertilizers Act;
- Health of Animals Act;
- Meat Inspection Act;
- Pest Control Products Act;
- Plant Protection Act; and
- Seeds Act.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

All claims on a food label must comply with Canada's General Principles for Labelling and Advertising. Claims must be accurate and cannot mislead the consumer. All claims must be made in accordance with the Food and Drugs Act (section 5.1) and the Consumer Packaging and Labelling Act (section 7). CFIA may conduct investigations into claims. The onus is on the person making the claims to substantiate them.

Canada has voluntary standards regarding labelling foods that do or do not contain genetically modified material.

The Organic Products Regulation establishes the certification requirements for organic products within Canada. Producers must apply to a certifying board approved by CFIA in order to have their products labelled as 'organic'. There are 19 CFIA-approved certifying bodies in Canada and there are 75 CFIA-approved certifying bodies located in different countries. All imported products into Canada must meet the standards under the Organic Products Regulation in order to claim the product is 'organic'.

Canada has equivalency agreements concerning organic labelling with the European Union. The standards for organic certification can be found within the Canadian General Principles, Organic Agriculture dated 30 October 2006.

Other differential products

Canada also regulates the use of the following claims:

- natural, nature;
- flavour descriptors;
- kosher;
- halal;
- homemade, artisan made; and
- claims regarding the method of production for meat, poultry and eggs.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

In general, federal legislation covers food that is marketed for interprovincial trade, processed in federally licensed facilities or imported. The provinces legislate on labelling requirements for food destined for intraprovincial trade. However, requirements contained in the Food and Drug Act and Consumer Packaging and Labelling Act do apply to intraprovincial trade.

Food labelling in Canada is governed by the following acts and their regulations:

- Food and Drug Act;
- Consumer Packaging and Labelling Regulation;
- Canada Agricultural Products Act; and
- Meat Inspection Act.

All labelling must be in French and English. The following information must be displayed on a product's packaging:

- common name of the product;
- country of origin;
- date of expiry;
- storage requirements;
- list of ingredients and allergens;
- sweeteners;
- net quantity of the product;
- nutritional information, in accordance with the Food and Drug Regulations;
- additives;
- food grade, if applicable;
- identity of the business and its location; and
- any added vitamins, mineral nutrients and amino acids.

Specific labelling requirements exist for fresh fruit and vegetables, dairy products, eggs, grain and baked goods, honey and meat.

Enforcement

Enforcement of these labelling requirements is undertaken by CFIA. Penalties vary depending on the nature, severity and frequency of the offence. They may include monetary penalties or imprisonment or both.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

Legislation concerning the health and well-being of animals is regulated by the Health of Animals Act. Most provinces have similar legislation in place. The operability of either the federal or provincial legislation depends on the nature of the producer's operation. Legislation addressing the health of animals generally encompasses the following topics:

- control of disease and toxic substances;
- eradication of disease;
- importation and exportation of livestock;
- transportation of animals;
- animal identification;
- housing of livestock; and
- feed for livestock.

Disease

Producers and processors are obligated to report contagious diseases that are suspected or confirmed among any of the animals within their care. Once reported, the appropriate governmental agency will then become involved in the testing, monitoring and eradication of the disease. Typically, this role is undertaken by CFIA, which has the power to order the farmer to undertake preventative and protective measures, up to and including the destruction of all animals within the premises. Farmers may be eligible for compensation.

Failure to report diseases is an offence. It may also bar the producer from claiming compensation if their herd, flock, litter or sounder is ordered to be destroyed.

Certain provincial marketing boards, such as the Chicken Farmers of Ontario, also have policies in place regarding how disease is to be handled by the producer. Failure to adhere to these policies could result in the marketing board refusing to increase, revoking or reducing a farmer's quota.

Prevention of animal cruelty

Most provinces have animal protection legislation in place in order to prevent cruelty and neglect of farm animals. Penalties vary depending on the nature of the violation. The Canadian Criminal Code applies to wilful acts of cruelty or neglect of animals. Penalties vary under the Criminal Code depending on the nature of the conviction.

Transport

At the federal level, requirements concerning the transport of animals are contained within the Health of Animals Act and its associated regulations. Federal law applies where the animals are destined for interprovincial or export trade. All provinces have similar legislation in place. In general, transportation requirements touch upon the following aspects of transportation:

- prohibitions against the transportation of sick, unfit and pregnant animals;
- loading and unloading of animals;
- prohibitions against overcrowding;
- mandated segregation of certain animals depending on weight, age and species;
- container specifications;
- use of protective facilities;
- ventilation of transportation units;
- feeding and watering of animals during transit;
- reporting of injured animals during transport;
- records keeping;
- special provisions for transporting animals via sea carrier; and
- permits and licensing.

18 What are the restrictions on the movement of animals within your country?

The federal government has jurisdiction over the movement of animals across provincial borders. At the federal level, the transport of animals is regulated via the Health of Animals Act and its associated regulations. Provinces have similar legislation in place for the movement of animals within provincial borders. In general, animals must not be transported when they are sick, injured or otherwise unfit to be transported.

19 Describe any restrictions on import of food animals.

The Health of Animals Act and its associated regulations govern the importation of live animals into Canada. Import requirements and restrictions depend on the animal's country of origin and the presence of contagious disease within this country.

20 What are the regulations related to livestock slaughtering?

All meat that is sold in Canada must be processed in a licensed facility. It is an offence to sell meat that has not been appropriately labelled and inspected. Meat that is imported into Canada must have been processed in a facility that meets Canada's standards for meat processing. Meat that is to be exported out of Canada must also be prepared in accordance with Canada's regulations and in a licensed federal processing facility.

Processing facilities in Canada must be licensed either by the federal or provincial government. In Canada, animals that are being marketed intraprovincially may be slaughtered in a provincially regulated facility. Each province has its own legislative framework and inspection system for provincially regulated abattoirs.

Animals that are destined for interprovincial or export trade must be processed in a federally inspected facility. The Meat Inspection Act, Safe Food for Canadians Act and CFIA Act govern the processing of meat products within federally regulated facilities.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The regulation of pesticides is shared among the federal government and provinces. The federal government is responsible for approving pesticides for use within Canada.

The goal with pest control is to manage the threats that pests pose to health, safety and food production while ensuring environmentally sustainable methods of pest control are promoted, where possible.

Applicable federal legislation includes the Pest Control Products Act and the Pesticide Residue Compensation Act.

The main federal agency involved in pest control is the Pest Management Centre (PMC). PMC works alongside Health Canada and its Pest Management Regulatory Agency to regulate the use of pesticides for commercial purposes.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?
Sole proprietorship

A sole proprietorship is the most basic form of business organisation. There are few legal formalities and low setup costs. Simply put, a sole proprietorship exists whenever a person carries on business for his or her own benefit without any other person's involvement besides employees. All benefits and risks of the business fall directly onto the sole proprietor.

Partnership

Partnerships refers to a relationship where two (or more) people carry on a business with a view to make a profit. While this common view to make a profit is all that is required to identify an organisation as a partnership, it is still highly recommended that parties enter into a written partnership agreement outlining the basic responsibilities and structure of the partnership.

Some benefits to structuring a farm business as a partnership are income splitting and tax reduction for spouses, the possibilities for inter-generational business transfers as a child eases into the family farming business and the parent eases out, the ease of dissolving a partnership and the ability to reduce the costs associated with the acquisition of capital assets between unrelated parties.

Corporations

A corporation is a 'separate legal entity' with the power to do anything that a person can do such as buy and sell assets, hold a mortgage, enter into contracts and carry on a business. The potential benefits of incorporating must be weighed against the potential disadvantages.

Three main areas require thought before deciding to incorporate: share structure, shareholder agreements and personal or corporate ownership of assets. Share structure will determine control of the business.

Joint venture (JV)

A JV is more informal and flexible than partnerships or corporations. It can be a helpful initial step for testing out how individuals work together or how a child will do managing a family business before a more formal arrangement, such as a partnership or corporation, is set up.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

In Canada, provinces are responsible for the legislation of farmland ownership. Under the Investment Canada Act, a significant foreign investment in farmland, or an agricultural operation or business (including farming operations), would be subject to federal review if it were deemed to be injurious to Canada's national interests.

Private lending is under the jurisdiction of provinces. Some provinces, such as Ontario, require the lender to hold the appropriate licences in order to carry on in the business of private lending on the security of real property.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The rights of workers or employees working in agriculture may be regulated federally or provincially, depending on the sector. Agricultural workers employed in the grain, feed and seed milling industry are included in the small percentage of Canadian employees working in federally regulated sectors. The labour rights and responsibilities of federally regulated industries and their employees are defined by the Canada Labour Code, which sets labour standards for employment conditions, such as minimum wage, statutory leaves, payment of wages and notice of termination.

The majority of agricultural operations, and the rights of such employees, are regulated by the provinces.

Each province has enacted legislation that provides employment standards governing matters such as hours of work, minimum wage, leaves and notice on termination. These statutes are the:

- Employment Standards Act in British Columbia, New Brunswick, Ontario and Prince Edward Island;
- Employment Standards Code in Alberta and Manitoba;

- Labour Standards Code in Nova Scotia;
- Labour Standards Act in Newfoundland and Labrador and Quebec; and
- Saskatchewan Employment Act.

As each province has its own legislation careful attention must be paid to the standards of each province when employing workers to appreciate the application and exceptions applicable to different categories of employees who may be employed in farming and agribusiness ventures.

For example, in Ontario, the Employment Standards Act addresses farm employees, harvesters, near farmers and landscape gardeners and application of provisions of the Act for each category of employee. A farm employee is a person employed on a farm whose work is directly related to primary production of agricultural products, which includes planting or feeding and caring for livestock. A farm employee is entitled to regular wage payments and wage statements and also has a right to leaves of absence, such as pregnancy leave or family medical leave, and is entitled to termination notice and pay, as well as severance pay.

In British Columbia, the Employment Standards Act is enacted to ensure that employees in the province receive at least basic standards of compensation and conditions of employment. The legislation defines a farmworker as a person employed in farming, ranching, orchard or agricultural operations. It does not include a person employed in the processing of products. The majority of the protections offered by the legislation apply to farmworkers, with some exceptions.

In some other provinces, such as Saskatchewan, much of the labour standards legislation does not apply to primary farming operations.

In addition to these statutes the common law (civil law in Quebec) applies to contracts of employment.

25 How is farmworker immigration regulated in your jurisdiction?

Farmworkers are able to immigrate to Canada through the Self-Employed Persons Program. Eligible farmers must have two one-year periods of experience managing a farm, with the intention and ability to purchase and manage a farm upon arrival in Canada. To apply as a farmer, an applicant must provide documentary evidence of experience managing a farm and the ability to purchase a farm in Canada. Each applicant is assessed using a predetermined selection criteria, which includes experience, education, age, language abilities and adaptability.

Temporary foreign workers can work in Canadian agriculture through the Seasonal Agricultural Worker Program. Workers must be from Mexico or certain Caribbean countries, and must work in on-farm primary agriculture while in Canada. Workers come to Canada on eight-month contracts and are able to return to Canada annually. Farm workers can also come to Canada through the agricultural stream of the Temporary Foreign Worker program. Workers are able to work in Canada for up to 24 months.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

Occupational health and safety legislation in Canada outlines the general rights and responsibilities of the employer and the worker. Each of the provinces and the federal government has its own occupational health and safety legislation. Careful attention must be paid to the standards of each province when employing workers to appreciate the application and exceptions applicable to different categories of employees who may be employed in farming and agribusiness ventures. Part II of the Canada Labour Code addresses occupational health and safety of federally regulated employees.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

The federal government has jurisdiction over the import and export of agricultural products.

All imported and exported products in Canada must have an HS code under the Harmonized Commodity Description and Coding System (HS).

Imported agricultural products are subject to tariff rate quotas. Import requirements for food products, plants and animals are established by the Canadian Border Services Agency and CFIA. Certain

agricultural products are controlled products for import into Canada. Therefore, a permit to import these agricultural products into Canada is required under the Exports and Imports Permit Act and the Import Control List. Certain provinces also have regulations in place concerning the import of goods into their province.

Plants, commercial food products, animals, animal products and by-products, feed and tobacco all have special import requirements.

Exporters need to be familiar with the requirements for import of the products to their final destination. Export certificates are required for most agricultural products.

There are certain restrictions on the export of agricultural products, including that animals must not be removed from Canada if they have been exposed to, or are infected with, a contagious disease. Prior to exporting live animals, customs officers must be informed and a certificate of a veterinary inspection must have been received by Canada's Border Service Agency. Animals may not leave Canada until these requirements are met.

Certain products for export, such as meat products, must be inspected before export. All meat products for export must adhere to the regulations for processing meat in Canada. Non-edible animal products require a permit from the CFIA in order to be exported out of Canada. Exporters must generally also keep records concerning the origin of the products they wish to export, any payment for these products, the use of the products within Canada and the exportation of the good.

28 May tariffs, quotas or similar measures be put in place?

Canada has a system of tariff rate quotas. The federal government is responsible for imports and exports.

Domestic legislation that governs the use of tariffs is the Custom Tariffs Act. Agricultural products are subject to tariff rate quotas. Some examples of agricultural products for which tariffs and quotas may apply, include dairy, wheat, barley and poultry. The import of items into Canada is overseen by Canada's Border Services Agency and its officers.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

Canada is a member of the World Trade Organization (WTO) and is a signatory to the WTO Agreement on Agriculture. The North American Free Trade Agreement (Nafta) is one of Canada's most influential trade agreements. In addition to Nafta, other notable free trade agreements (FTAs) that have an impact on agricultural imports and exports include the:

- Canada-Korea FTA;
- Canada-Honduras FTA;
- Canada-Panama FTA;
- Canada-Jordan FTA;
- Canada-Colombia FTA;
- Canada-Peru FTA;
- Canada-European Free Trade Association FTA;
- Canada-Costa Rica FTA;
- Canada-Chile FTA;
- Canada-Israel FTA; and
- Canada-Ukraine FTA.

Canada has concluded negotiations for the Canada-European Union: Comprehensive Economic and Trade Agreement.

An Act to Implement the Comprehensive Economic and Trade Agreement Between Canada and the European Union and its Member States and to Provide for Certain Other Measures (Bill C-30), received Royal Assent on 16 May 2017. The provisions of the Act are currently not in force, except for sections 133-137.

Canada also signed the Trans-Pacific Partnership (TPP) on 4 February 2016. But TPP has not yet been ratified and is not in force.

Canada is currently in negotiations for the following FTAs:

- Canada-Caribbean Community Trade Agreement;
- Canada-Dominican Republic FTA;
- Canada-Guatemala, Nicaragua and El Salvador FTA;
- Canada-India FTA;
- Canada-Japan Economic Partnership Agreement;
- Canada-Morocco FTA; and
- Canada-Singapore FTA.

Canada is also conducting exploratory discussions with China regarding a possible Canada-China FTA.

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

The rights of plant breeders are protected in Canada principally under the federal Plant Breeders' Rights Act (PBRA). The PBRA was recently amended to bring Canada into compliance with the most recent Act of the International Union for the Protection of New Varieties of Plants (UPOV), which was enacted in 1991 and is commonly known as UPOV 91. Other jurisdictions that have adopted UPOV 91 include the US, the EU, Japan and Australia.

All species of plants are eligible for protection in Canada, other than algae, fungi and bacteria. Thus, mushrooms are not eligible for protection. However, all of Canada's grain and oilseed species, along with fruits, vegetables, potatoes, ornamental plants and others, are eligible.

The PBRA sets out specific criteria that must be met for a variety to receive plant breeders' rights protection. The breeder must demonstrate that the variety is:

- new – the variety must not have been sold in Canada prior to filing the application under the PBRA, but may have been sold outside Canada for up to four or six years, depending on the plant type;
- distinct – the variety must be clearly distinguishable from all other varieties that are commonly known to exist when the application is filed;
- stable – the essential characteristics of the variety must remain stable through repeated reproduction, so that subsequent generations of the variety remain true to its description; and
- uniform – variations in plants of the variety must be predictable, capable of being described by the breeder, and commercially acceptable.

A registration under the PBRA provides the registrant with the exclusive rights to:

- produce and reproduce propagating material of the variety;
- condition propagating material of the variety for the purposes of propagating the variety;
- sell propagating material of the variety;
- export or import propagating material of the variety;
- make repeated use of seed of the variety as part of commercial production of another variety;
- use part of the variety as propagating material in the production of ornamental plants or cut flowers;
- stock propagating material of the variety for the purpose of doing any of the foregoing; and
- license others, conditionally or unconditionally, to do any of the foregoing.

The exclusive rights do not apply to harvested materials of registered varieties (including harvested seeds) unless:

- the harvested material is obtained through the unauthorised use of propagating material; and
- the rights holder did not previously have a reasonable opportunity to exercise his or her rights against the propagating material or, if he or she did have such an opportunity, did not fail to do so.

This means that, unless a plant breeder specifically controls (by contract prior to the sale of registered seed) the uses to which a farmer may put materials or seeds harvested from a registered variety, the plant breeder will be unable to enforce exclusive rights against the farmer to prevent him or her from, for example, selling the seeds that represent the harvest of the first crop that the farmer grows from the seeds of the registered variety.

Plant breeders' rights do not prevent activities done privately for non-commercial purposes, for experimental purposes, or for the purpose of breeding other plant varieties.

With respect to the last of those limitations, the use of a variety for breeding other varieties, the breeder holding the registration relies, in part, on the passage of time: by the time another breeder gets free use of its own protected variety (which must be sufficiently distinct from the first breeder's registered variety owner), the registrant should already have improvements in its development pipeline. Thus, the variety owner

hopes to stay ahead of competitors by being the first to market with better varieties that are derived from the protected variety.

Under the PBRA, a registration will endure for 25 years (for trees and vines) or 20 years (for other plant types), provided that an annual fee is paid to maintain the registration.

In addition, breeders can potentially protect their intellectual property in plant varieties in Canada through patents. While the plant variety itself is not patentable under Canadian law, it is possible to obtain a patent for the use of a plant variety, or for a plant cell or gene forming part of the variety.

A breeder could further control commercial sale of a variety through use of a trademark. This could enable a breeder to create a protection that would outlast plant breeders' rights and patent registrations, which would be most valuable in the contexts of perennial plant types (such as trees and fruits) that have long commercial lifespans. The variety name itself cannot be trademarked, so a person must be careful to select a variety name that differs from the name the breeder would wish to trademark.

Finally, plant breeders can control their varieties through contract. With respect to annual crops, seed companies often use agreements with farmers, referred to as 'closed-loop contracts' to prevent farmers from saving seed and growing additional crops in subsequent years. In essence, closed-loop contracts require the farmer to account for all seed purchased and crop grown, and to deliver the entire crop to a specified delivery point. Generally, no saving of seed is permitted under the contracts.

31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The PBRA provides for compulsory licensing of varieties. A registrant can be ordered to provide licences to third parties to carry out any of the activities that a plant breeders' right registration gives to the registrant exclusive rights to carry out, such as to produce and sell propagating material of the variety. Such orders could be made, if necessary, to ensure that the variety is made available to the public at reasonable prices, with wide distribution and maintenance of quality, while also providing for reasonable remuneration to the registrant.

Compulsory licensing can be expected to occur only if a registrant is unwilling to permit reasonably wide distribution of a registered variety at reasonable prices or royalties.

Under the PBRA, farmers have access to crop varieties through what is commonly referred to as the 'farmer's privilege'. Essentially, the farmer's privilege allows farmers who have purchased propagating material of a registered variety to harvest from the first generation grown, condition that propagating material and grow a second generation, and store for that purpose. However, the farmer's privilege does not permit the sale of second-generation harvested material without payment to the registrant, so plant breeders have the right to demand a royalty on the sale of such harvested material.

There are restrictions on the availability of the farmer's privilege. The privilege applies only to harvested material from crops grown by a farmer on his or her holdings, and any subsequent crop grown under the privilege must be grown on the farmer's own holdings. The privilege cannot be acquired from nor transferred to another person through gift or sale.

The farmer's privilege can be restricted through contract. Plant breeders can and do require farmers to enter into contracts when buying initially propagating material, such as seed. In some instances, seed companies will sell only under contractual provisions that prohibit a farmer from saving seed, or, in the case of closed-loop contracts, require the farmer to sell all of the harvested material back to the seed company. This is most common where the varieties are used to make specialised products, such as oilseeds designed for specific purposes.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

In addition to plant breeders' rights (see question 31) agribusiness-related intellectual property can be protected in Canada by other forms of intellectual property protection, notably patents, which can be used to protect agribusiness-derived innovation, and trademarks, which can be used to protect an agribusiness' brand.

Patent

A Canadian patent provides a 20-year exclusive right, from the date of filing the patent application, to the production, use or sale of a newly developed technology or invention. As in other jurisdictions, to be eligible for patent protection an invention must not have been previously disclosed anywhere in the world, it must be functional and operative, and must show inventive ingenuity.

The invention can take a variety of forms including:

- a product (eg, a genetically modified plant cell);
- a composition (eg, a fertiliser composition);
- a machine (eg, farming equipment);
- a process (eg, a process for producing a transgenic plant); or
- an improvement on any of the preceding forms.

Although similar to most patent systems in the world, there are certain features of the Canadian patent regime that should be considered when engaging the Canadian patent system.

Proposed amendments to Canadian Patent Rules are open to public consultation as of September 2017.

Grace period

Two of the requirements for obtaining a patent is that the invention must be novel and must not have been previously publicly disclosed anywhere in the world. Public disclosures that can constitute a patent bar include:

- written or electronic publications;
- public oral disclosures;
- public demonstrations;
- public use;
- offers for sale; and
- actual sales.

Canada, however, operates a 'relative novelty' requirement that provides a 12-month grace period within which to file a patent application after an applicant-derived public disclosure. The grace period allows a patent application to be filed without the applicant-derived disclosure being considered a novelty-destroying bar against the patent application. The grace period only protects against public disclosures made by the patent applicant or through the patent applicant and does not protect against independent disclosures made by third parties prior to the filing date.

Protection for plants and self-replicating crops

A distinction is made in Canada between lower life forms (unicellular), which constitute patentable subject matter, and higher life forms (multicellular), which are not patentable in Canada.

Lower life forms include, but are not limited to:

- microscopic algae;
- unicellular fungi, including moulds and yeasts;
- bacteria;
- protozoa;
- viruses;
- transformed cell lines;
- hybridomas; and
- embryonic, pluripotent and multipotent stem cells.

Higher life forms include:

- animals;
- plants;
- mushrooms;
- fertilised eggs;
- totipotent stem cells; and
- plant parts – such as a cutting, callus, rhizome, tuber, fruit or seed.

Although animals and plants and their parts are ineligible for patent protection, modified gene sequences, animal cells, plant cells and uses of novel plants and animals, are considered patent-eligible subject matter in Canada. The patent protection directed to the modified genes and modified cells that make up a plant has been extended to protecting the plants regenerated from the patented cells by the Supreme Court of Canada. Thus, the patent protection afforded to modified genes and modified cells in Canada may, in certain circumstances, offer relatively comprehensive patent protection for self-replicating crops.

Update and trends

Food safety

The Liberal federal government has committed to the creation of Canada's first-ever national food policy. In May 2017, the government launched formal consultations to inform Food Policy for Canada. There is an unprecedented level of public interest in food origins, safety and related issues. The various regulatory requirements around origin, labelling and other requirements have significant impact on agribusinesses. The development of a national food policy is indeed a challenging undertaking. Of course, Canada is by no means the first country to commit to the development of a national food policy and the ultimate goal of longer-term policy development. The course of the discussions will be closely watched over the coming years.

Patents

Proposed amendments to the Canadian Patent Rules have been made open to public consultation until 8 September 2017. The proposed changes relate to Canada's efforts to comply with the Patent Law Treaty, which aims to harmonise and streamline patent administrative procedures among national intellectual property offices. The expected schedule for enactment of these changes is early 2019. The

proposed amendments, in their present form, include the following notable changes.

The proposed amendments reduce the requirements to obtain a filing date by allowing payment of the filing fee and the translation of the patent specification, into English or French, to be deferred instead of submitted at the time of filing a Canadian patent application, as is presently the case.

The proposed amendments also remove the option for late entry of an international PCT application into the Canadian National Phase. Currently, a PCT application may enter the Canadian National Phase within 42 months from the priority date with payment of a late fee. Under the proposed amendments, late entry will only be granted at the discretion of the Commissioner of Patents upon determination that the failure to timely enter the National Phase was unintentional.

The proposed amendments also revise the current reinstatement procedures that allow an application, that has become abandoned for failing to meet a deadline, to be reinstated as of right within 12 months of the abandonment date. Under the proposed changes, reinstatement will require the applicant to establish that the failure to meet the deadline 'occurred in spite of the due care required by the circumstances'.

Protection for computer-related inventions

Similar to other jurisdictions, mere scientific principle or abstract theorem – which includes mathematical formulae, natural phenomena and laws of nature – are not considered subject matter that are protectable by patent in Canada. Thus, a computer program, per se, cannot be patented in Canada. Agribusiness-related software innovations, however, may be protected by patent in the form of a computer-related invention, eg, a computer-related method or device that requires the use of a computer.

While there is no bright-line test, the Canadian Intellectual Property Office has developed examination guidelines that clarify the requirements for determining the patent-eligibility of a software-related invention. Following the release of these guidelines, issuance of patents directed to computer-related inventions has become relatively routine.

Co-ownership

Patents may be jointly owned by multiple parties, which can have a significant impact on the ability of an owner to exercise their patent rights. In Canada, in the absence of contractual agreement, co-owners of a patent cannot dilute the other owners' interests in the patent. Consequently, licensing patent rights of a co-owned patent will require the consent of all of the co-owners to be valid.

Trademark

Trademark protection in Canada is available under common law as well as by statute. Common law protection does not require registration of a trademark. However, protection is limited to the geographic area in which reputation and goodwill in the trademark can be established in association with the goods and services at issue. In contrast, registration of a trademark broadens the geographic scope of the owner's right to the entire country and provides prima facie evidence of the validity of the trademark and the registrant's exclusive right to use the registered mark. Thus, registration offers several advantages in providing protection for enforcement of a trademark.

Prohibited marks – plant variety denominations

Certain marks are prohibited from registration under the Canadian Trademarks Act. Most pertinent to agribusiness may be the prohibition of plant variety denominations. The use of a variety denomination granted under the PBRA cannot be restricted by any other designation, such as a trademark, even after the rights for the variety have expired. Therefore, no denomination approved for plant breeders' rights nor any mark so nearly resembling that denomination as to be likely to be mistaken for it can be trademarked in Canada.

Environmental issues

33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

Environmental laws are enacted in Canada by the federal, provincial and territorial governments. Municipal governments, under authority delegated by provincial legislatures, also legislate locally in specific environmental areas, as well as indirectly regulating environmental impact through land use controls. Each province has enacted laws of general application to protect the environment and the primary regulator of the environmental impact of agricultural production is found at the provincial level. As a result, the regulatory agencies that have the primary role in managing the environmental impact of agricultural production across Canada are the:

- British Columbia Ministry of the Environment;
- Alberta Environment and Sustainable Resource Development;
- Saskatchewan Ministry of Environment;
- Manitoba Department of Conservation and Water Stewardship;
- Ontario Ministry of the Environment and Climate Change;
- Quebec Ministry of Sustainable Development, Environment and the Fight Against Climate Change;
- New Brunswick Department of Environment and Local Government;
- Nova Scotia Department of Environment;
- Prince Edward Island Department of Environment, Labour and Justice; and
- Newfoundland and Labrador Department of Environment and Conservation.

In addition, each province also maintains a department or ministry with responsibilities for the agricultural sector. The corresponding agricultural regulators across Canada are the:

- British Columbia Ministry of Agriculture;
- Alberta Ministry of Agriculture and Forestry;
- Saskatchewan Ministry of Agriculture;
- Manitoba Ministry of Agriculture, Food and Rural Initiatives;
- Ontario Ministry of Agriculture, Food and Rural Affairs;
- Quebec Ministry of Agriculture, Fisheries and Food;
- New Brunswick Department of Agriculture, Aquaculture and Fisheries;
- Nova Scotia Department of Agriculture;
- Prince Edward Island Department of Agriculture and Fisheries; and
- Newfoundland and Labrador Department of Fisheries, Forestry and Agrifoods.

The provincial environmental and agricultural regulators cooperate in various ways and to different degrees in order to manage the unique environmental issues in primary agriculture. For example, each district office of the Ministry of the Environment and Climate Change in rural Ontario employs one or more agricultural environmental officers, whose job it is

to work closely with the local office of the Ministry of Agriculture, Food and Rural Affairs on environmental issues related to primary agriculture.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Canadian environmental laws prohibit, at every level, activities that may contaminate the water and air. At the federal level, the Fisheries Act prohibits the deposit of harmful substances in water frequented by fish. This prohibition may be used as a regulatory tool in the agricultural sector.

At the provincial level, most environmental laws include broad prohibitions against discharges into water and air that may impair the quality of the water or air or cause an adverse effect. Officers and directors are commonly required by law to take reasonable steps to ensure compliance with environmental laws and regulations. Penalties for noncompliance with environmental laws are similar across Canada, although they range in size. Maximum penalties may be as high as C\$10 million for corporate polluters and five years' imprisonment for individuals. Penalties actually imposed by the courts tend to be considerably lower, except for blatant or deliberate acts, and imprisonment is uncommon.

Provincial environmental laws also contain administrative order powers that can be used by environmental regulators to compel actions to deal with water or air pollution in any sector, including primary agriculture. In most cases, an environmental order may be appealed to an independent administrative tribunal.

Most provincial environmental laws, and the Fisheries Act, contain regulatory licensing authority over certain discharges to the water and air, which can be applicable to primary agriculture activities. An authorisation under the Fisheries Act may be required for a discharge to water that may have a harmful effect on fish. A discharge to surface water or to air in Ontario may be allowed under the terms and conditions of an approval, although there are long-standing exemptions for anything used in agriculture.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Regulation of waste management generally falls under provincial jurisdiction. The term 'waste' is defined quite broadly and activities involving the collection, transportation, processing or disposal of waste may only be undertaken with a permit, licence or approval issued by the environmental regulator, although agricultural waste is commonly exempted from the permitting regimes.

Liquid waste management from agricultural operations is regulated by a combination of provincial environmental and agricultural regulators across Canada. Provincial approaches vary widely, but all try to balance the competing regulatory objectives of supplying nutrients to soil at appropriate rates, timing and methods, while at the same time minimising the risk of pollution through loss of nutrients through runoff into surface water, leaching into groundwater and emissions into the air.

Some provinces regulate nutrient management entirely through the ministry with responsibility for agriculture (eg, Saskatchewan and Alberta), while others also regulate through the ministry responsible for environmental protection (eg, Ontario, Quebec and British Columbia). In Ontario, nutrient management is regulated under the Nutrient Management Act 2002, which is administered jointly by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment and Climate Change but enforced by the latter.

The Act regulates the management of all materials that are applied to the land by the agricultural industry, municipalities and other generators of materials containing nutrients. Farmers may be required to prepare (and seek approval under some circumstances) for a nutrient management strategy, which deals with the generation and storage of nutrients, as well as to prepare a nutrient management plan, which deals with the application of nutrients to the land.

The requirement to prepare nutrient management plans is reasonably common across Canada, although the scope of the requirement varies widely. For example:

- a nutrient management plan is only mandatory in Alberta if the operator exceeds prescribed limits for soil nitrogen or salinity;
- in Saskatchewan and Ontario, the equivalents of a nutrient management strategy and a nutrient management plan are only required for intensive livestock operations;
- in Manitoba, a nutrient management plan is only required for storage facilities on environmentally sensitive lands, golf courses or where regulated nitrogen or phosphorus limits cannot be met; and
- in Quebec, an annual agro-environmental fertilisation plan, signed by an agronomist, is required for any spreading.

Provincial nutrient management legislation also typically contains a broad range of prescriptive requirements for land application (eg, setbacks, minimum depth to groundwater, rates, methods and restricted periods) and other activities.

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