

MECHANISMS OF DEBT ADJUSTMENT UNDER THE *FARMERS' CREDITORS ARRANGEMENT ACT, 1934*

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The Great Depression and the Dust Bowl of the 1930s presented unprecedented problems for Canadians in general, and farmers specifically. The severe financial hardship faced by prairie farmers ultimately led to the enactment of a novel farm insolvency statute – the most progressive statute of its kind in Canadian history – which was squarely aimed at saving farm businesses and keeping farmers on farms. With the Farmers' Creditors Arrangement Act, 1934 (FCAA), Parliament provided an administrative apparatus through which farmers negotiated and effected debt compromises with their creditors. The Act itself represented a significant break with existing ideas about what bankruptcy and insolvency law was or should do. Extraordinarily, this empirical study reveals that the operation of the FCAA in practice was far bolder than even the Act's muscular policy of debt compromise indicated. The administrative officials – Official Receivers and Boards of Review – charged with implementing the Act interpreted the text liberally in pursuit of debt compromises, downplaying or ignoring the restrictive elements. Additionally, the terms and conditions of the debt compromises evince a significant degree of adaptation to each farmer's unique circumstances. This article, therefore, argues that practices under the FCAA substantially enhanced protection for insolvent farmers in many cases. Furthermore, by bringing this empirical data to light, this paper demonstrates the value of a socio-legal perspective for assessing the efficacy of a small business insolvency regime.

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I. Introduction

This article identifies and analyzes specific mechanisms of debt adjustment employed under the *Farmers' Creditors Arrangement Act, 1934 (FCAA)*.¹ The goals of this study are twofold. The first is to shed light on how this unique insolvency statute was implemented by the Official Receivers (the "ORs") and Boards of Review (the "BoRs") charged with doing so. To date, there has been little published scholarship on the *FCAA* and none which qualitatively analyzes the terms and conditions of debt compromises reached under the Act.² Thus, this empirical analysis of archival documents makes an original contribution to legal scholarship about Canada's first federal farm insolvency regime.

The second goal of this study is to evaluate the mechanisms of debt adjustment identified in light of the Act's stated policy purpose of "keep[ing] the farmer on the farm."³ In this connection, the analysis is concerned with the extent to which the empirical data bears out the strong policy of debt adjustment that the *FCAA* purportedly advanced.⁴ The Act facilitated the adjustment of secured debt, for instance, which was out of keeping with bankruptcy and insolvency legislation at that time, and strengthened the protection that the Act afforded to farmers.⁵ As discussed below, the individuals and institutions charged with implementing the *FCAA* appear to have acted boldly in this regard. Rather remarkably, the mechanisms of debt adjustment provided even more protection for insolvent farmers than the text of the *FCAA* suggested was possible. Most notably, although the Act provided that a farmer could only make use of the Act one time and that default on an *FCAA* debt compromise was considered an act of bankruptcy under section 2(3) – meaning that the debtor would be vulnerable to being petitioned into bankruptcy by a creditor⁶ – BoRs routinely included terms that greatly limited the possibility of finding a farmer in

¹ *Farmers' Creditors Arrangement Act*, SC 1934, c 53 [*FCAA*]. Hereinafter, *FCAA* shall refer to the 1934 statute. The Act was repealed and replaced by the *Farmers' Creditors Arrangement Act*, SC 1943, c 26 [*FCAA 1943*]. See discussion in Stephanie Ben-Ishai & Virginia Torrie, "Farm Insolvency in Canada" (2013) 2 *J Insolvency Institute Can* 33 at 46–47.

² Virginia Torrie, "Federalism and Farm Debt during the Great Depression: Political Impetuses for *The Farmers' Creditors Arrangement Act, 1934*" (2019) 82:2 *Sask L Rev* 203 [Torrie, "Federalism and Farm Debt"]; 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 [Torrie, "Farm Debt Compromises"]; Ben-Ishai & Torrie, *supra* note 1 at 38–48. See also Morris C Shumiatcher, *A Study in Canadian Administrative Law: The Farmers' Creditors Arrangement Acts* (DJur Thesis, University of Toronto Faculty of law, 1943) [unpublished].

³ The Right Honorable RB Bennett (Prime Minister) in *House of Commons Debates*, 17-5, vol 4 (4 June 1934) at 3639 [Bennett], cited in Ben-Ishai & Torrie, *supra* note 1 at 42–43 and Torrie, "Federalism and Farm Debt", *supra* note 2 at 231. *FCAA*, *supra* note 1, Preamble, "to retain the farmers on the land".

⁴ Torrie, "Federalism and Farm Debt", *supra* note 2 at 238.

⁵ *FCAA*, *supra* note 1, s 7. With the then recent exception of the *Companies' Creditors Arrangement Act*, SC 1932-33, c 36. See further Virginia Torrie, "The *Companies' Creditors Arrangement Act* Reference Case, 1934" (2020) 64:1 *Can Bus LJ* 46.

⁶ *Bankruptcy Act*, RSC 1927, c 11, s 3–8 [*Bankruptcy Act*].

default; in effect, providing farmers with more than the statutorily mandated “one chance” to avail themselves of relief under the statute.⁷ Accordingly, this article contributes to a socio-legal understanding of *FCAA* law by showing that practices under the Act substantially enhanced protection for insolvent farmers in a number of cases. This analysis sheds light on how “law in practice” advanced the *FCAA*’s policy objective of keep[ing] the farmer on the farm.”⁸

The files selected for this study consist of 12 debt compromises reached under the *FCAA* for farmers in Manitoba.⁹ Although over 47,000 debt compromises were reached under the Act nationally, this research discovered that only a small proportion of case files were preserved in some provinces.¹⁰ Due to the idiosyncratic record keeping of *FCAA* debt compromises, it was not possible to select files for further study based on representativeness or even to make an assessment of whether a given group of files were representative. Manitoba case files were selected because the *FCAA* was intended to address the prairie farm crisis in particular, and Manitoba appears to be the only prairie province which saved these case files relatively systematically. The 12 debt compromises identified for this study were chosen to gain a sense of the broadest possible range of terms and conditions that appeared in the debt compromises.

The rest of this paper is arranged as follows. Subsection (a) briefly describes the *FCAA* and debt adjustments carried out by ORs and BoRs under the Act. Section II outlines the protections afforded to insolvent farmers by virtue of making an application for relief under the *FCAA*. Section III reviews the specific mechanisms of debt adjustment contained in the debt compromises reached under the Act, categorizing these as follows: (a) Farm Maintenance, (b) Taxes, (c) Principal, (d) Interest, (e) Security, (f) Payment Plan, and (g) Protections for Creditors. Section IV concludes.

⁷ *FCAA*, *supra* note 1, s 2(3). See discussion in Shumiatcher, *supra* note 2 at 638–651; Ben-Ishai & Torrie, *supra* note 1 at 36–41.

⁸ Virginia Torrie, *Reinventing Bankruptcy Law: A History of the Companies’ Creditors Arrangement Act* (Toronto: University of Toronto, 2020) at 13–16; Terence C Halliday & Bruce G Caruthers “The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes” (2007) 112:4 *Am J of Sociology* 1135 [Halliday & Carruthers, “The Recursivity”]; Bennett, *supra* note 3; *FCAA*, *supra* note 1, Preamble.

⁹ 11 of the 12 plans were formed under the 1934 iteration of the Act, while one, from 1945, was formed under the Act after it was repealed and replaced in 1943.

¹⁰ Minister of Finance, *Final Report: Farmers’ Creditors Arrangement Act, 1934* (1 August 1944), Ottawa, Library and Archives Canada (RG 19, vol 426), Schedule 8b, [Minister of Finance, “Final Report”].

As far as has been ascertained, case files were preserved relatively systematically in only Ontario and Manitoba, through the Archives of Ontario and Provincial Archives of Manitoba.

(a) The Farmers' Creditors Arrangement Act

In 1934, Parliament introduced the *FCAA* in response to the severe economic privation suffered by Canadian farmers and political pressure from Saskatchewan farmers in particular.¹¹ In the 1930s, prairie farmers experienced severe drought conditions, and all farmers experienced a drop in commodity prices, creating a widespread depression in the agricultural sector.¹² The *FCAA* was intended to prevent insolvent farmers from entering bankruptcy proceedings and keep them on their farms in the long-term.¹³ The *FCAA* defined a “farmer” as “a person whose principal occupation consists of farming or the tillage of soil”.¹⁴ Remedies under the *FCAA* were varied and responded to farmers’ and creditors’ specific circumstances. Although the *FCAA* was a federal statute, its administration was decentralized, with ORs and BoRs established in each province.¹⁵ Using insolvency law as a remedy for addressing over-indebtedness was limited to Canada’ farming population. Non-farming debtors did not receive similar relief in the *Bankruptcy Act*.¹⁶ In several provinces, however, debt adjustment legislation was used in an effort to postpone debt collection efforts during the 1930s.¹⁷

The *FCAA* was based on a recognition that two crises – one economic, the other environmental – left farmers temporarily unable to repay their debts and that it was in the national interest to keep farmers on their land. To that end, the focus of the Act was on facilitating arrangements and compromises between farmers and their creditors to make debt service affordable until conditions improved.¹⁸ The documents consulted in the course of this study routinely acknowledged the purpose of the Act as

¹¹ Torrie, “Federalism and Farm Debt”, *supra* note 2.

¹² *Ibid* at 208–209, citing *inter alia* WT Easterbook & Hugh GJ Aitken, *Canadian Economic History* (Toronto: Gage Publishing Ltd, 1980) at 498; Graham D Taylor & Peter A Baskerville, *A Concise History of Business in Canada* (Toronto: Oxford University Press, 1994) at 373; Michael Bliss, *Northern Enterprise: Five Centuries of Canadian Business* (Toronto: McClelland and Stewart, 1987) at 414–415; Gregory P Marchildon, “The Prairie Farm Rehabilitation Administration: Climate Crisis and Federal-Provincial Relations during the Great Depression” (2009) 90:2 *Can Historical Rev* 275 at 283; H Blair Neatby, *The Politics of Chaos: Canada in the Thirties* (Toronto: Macmillan, 1972) at 28–30; John Herd Thompson & Allen Seager, *Canada 1922-1939: Decades of Discord* (Toronto: McClelland and Stewart, 1985) at 195, 213.

¹³ *FCAA*, *supra* note 1, Preamble. Ben-Ishai & Torrie, *supra* note 1 at 39, 42–43.

¹⁴ *FCAA*, *supra* note 1, s 2(1)(f) “farmer”.

¹⁵ Torrie, “Federalism and Farm Debt”, *supra* note 2 at 231–232.

¹⁶ Thomas GW Telfer, “The New Bankruptcy ‘Detective Agency’? The Origins of the Superintendent of Bankruptcy in Great Depression Canada” (2020) 64.1 *Can Bus LJ* 22.

¹⁷ *The Debt Adjustment Act*, SA 1923, c 4; *The Debt Adjustment Act*, SS 1928-29, c 53; *The Debt Adjustment Act*, SM 1931, c 7. See discussion in Torrie, “Federalism and Farm Debt”, *supra* note 2 at 210–14.

¹⁸ Bennett, *supra* note 3; *FCAA 1943*, *supra* note 1, Preamble. On the political impetuses for the *FCAA*, see Torrie, “Federalism and Farm Debt”, *supra* note 2 at 222–231.

well as farmers' capacity to pay their debts before launching into the formulae and machinery by which these debts would be paid down.¹⁹

A farmer's failure to comply with a formulated proposal constituted an act of bankruptcy, unless the court took the view that the failure was for reasons beyond the farmer's control.²⁰ The BoR compromise frequently included additional protections for the farmer that would lessen the likelihood that the farmer would default; most notably, by including a clause that prevented a farmer from being found in default in a variety of circumstances. Close examination of specific farm debt compromises under the *FCAA* shows *how* the terms and conditions themselves furthered these objectives.

Most of the arrangements examined in this study were formulated by BoRs, but for one compromise overseen by an OR and another overseen by the court.²¹ The following is a list of the farmers and the type of arrangement each received, along with the year:

Table 1: Proposals Examined

Farmer Name	Type of Proposal	Year
Dan Kruchak	BoR	1936
Mike Stec	BoR	1936
Heinrich Steingart	BoR	1936
John Bredin	BoR	1936
Johann Neufeld	BoR	1936
John Tychonkyj	BoR	1937
Georges Laurencelle	BoR	1937
Jean Marie Bohémier	BoR	1937
Anton Konowalchuk	BoR	1938

¹⁹ See e.g. James Bredin, Brandon County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1929-1954), (Schedule: A0130, Accession No: GR3091).

²⁰ *FCAA*, *supra* note 1, s 2(3). See further Torrie, "Farm Debt Compromises", *supra* note 2 at n 87.

²¹ Throughout the paper, various descriptors are used interchangeably for restructuring arrangements including "proposal", "arrangement", and "compromise".

Russell Sharp	OR	1939
David Allison	BoR	1940
James Schuddemat	Court	1945

Arrangements could be reached at two different points in the administrative process under the *FCAA*. OR compromises occurred at the earliest step in the process at which a compromise could be reached after the farmer filed an application for relief with the *FCAA*'s OR.²² At this stage, creditors would be called to a meeting by the OR to negotiate a compromise for debt relief.²³ Accepted compromises would be confirmed, while compromises that failed at this stage could be moved to the BoR to formulate a proposal.²⁴ The BoR would hear submissions from the parties involved and could formulate a compromise that was binding on all parties. When the stream of *FCAA* applications diminished in the 1940s, the BoRs were dissolved, and courts of competent jurisdiction in each province took over the duties of the Board.²⁵

II. Protections that flowed from an *FCAA* application

A farmer initiated the *FCAA* process by making an application to the OR.²⁶ Upon making an application, several protections flowed to farmers either automatically or as a fairly standard practice under the Act. Section 11 of the Act protected farmers who had filed under the *FCAA* with an automatic stay of proceedings which prevented both secured and unsecured creditors from pursuing “any remedy against the property or person of the debtor” without leave of the court.²⁷ Pursuant to section 11, creditors were precluded from commencing or continuing “any proceedings under the *Bankruptcy Act*, or any action, execution of other proceeding for the recovery of a debt provable in bankruptcy, or the realization of any security.”²⁸ The applicability of this stay of proceedings to secured creditors and the debtor’s property subject to security interests made the *FCAA* stay broader – affording farmer-debtors more protection –

²² Torrie, “Farm Debt Compromises”, *supra* note 2 at 382.

²³ *FCAA*, *supra* note 1, s 6. See also discussion in *ibid* at 383–392.

²⁴ On application by a farmer or a creditor. *FCAA*, *supra* note 1, s 12(4). The Board of Review consisted of a chief commissioner who was a judge and two further commissioners — one representing the interests of farmers and one representing the interests of creditors. See discussion in Torrie, “Farm Debt Compromises”, *supra* note 2 at 392–393.

²⁵ *FCAA 1943*, *supra* note 1, ss 15–19; Torrie, “Farm Debt Compromises”, *supra* note 2 at 394.

²⁶ *FCAA*, *supra* note 1, s 6(2); Torrie, “Farm Debt Compromises”, *supra* note 2 at 385.

²⁷ *FCAA*, *supra* note 1, s 11; Torrie, “Farm Debt Compromises”, *supra* note 2 at 384–385.

²⁸ *FCAA*, *supra* note 1, s 11.

than the stay of proceedings under the *Bankruptcy Act*.²⁹ The original version of this section provided for a stay of 60 days, but subsequent amendments extended this time period to 90 days,³⁰ and then “until the date of the final disposition of the [FCAA] proposal.”³¹ Parliament’s iterative adaptations of the FCAA stay of proceedings illustrates how the Act itself, and its amendments, represented adaptations of Canadian law and legal traditions in response to the unprecedented and ongoing challenges in the agricultural sector in the 1930s. Notably, the adaptations *extended* protection afforded to farmers under the statute, underscoring a Parliamentary commitment to the FCAA’s policy purpose of keeping farmers on farms.

Section 11(2) further protected the farmer’s property during FCAA proceedings.³² This was necessary since, without their land and equipment, it would be impossible for a farmer to continue farming.³³ Under section 11(2), the farmer’s property was “deemed to be under the authority of the court” until the final disposition of the farmer’s case under the Act, and the court was authorized to make any order necessary for its preservation.³⁴

The Steingart and Neufeld files included the OR affidavits and the county judge orders, which provided for the preservation of the farmers’ property – from both creditors and the farmer himself – in the interim between an application under the FCAA and the final proposal.³⁵ The county court judge provided orders for the distribution of the pending harvest, acknowledging that the harvest would take place after the application to the BoR, but before a proposal could be formulated. In order to preserve the farmer’s property in the interim, the order in both farmers’ files described the distribution scheme as follows:

²⁹ *Bankruptcy Act*, *supra* note 6, s 24; Torrie, “Federalism and Farm Debt”, *supra* note 2 at 236–237.

³⁰ *An Act to amend The Farmers' Creditors Arrangement Act, 1934*, SC 1935, c 20, s 3, amending SC 1934, c 53.

³¹ *An Act to amend The Farmers' Creditors Arrangement Act, 1934*, SC 1938, c 47, s 6, amending SC 1934, c 53. The 1943 version of the Act provided that all proceedings under the *Bankruptcy Act* would be stayed while the property was under the court’s jurisdiction, unless given leave by the court and on the court’s terms: *FCAA 1943*, *supra* note 1, s 11.

³² *FCAA*, *supra* note 1, s 11(2).

³³ For further discussion of the importance of preserving property to the success of restructuring efforts and the novelty of this to bankruptcy and insolvency law in the 1930s, see Torrie, “Federalism and Farm Debt”, *supra* note 2 at 236–237; Thomas GW Telfer & Virginia Torrie, *Debt and Federalism: Landmark Cases in Canadian Bankruptcy and Insolvency Law, 1894-1937* (Vancouver: UBC Press, forthcoming 2021) at 77, 95–98; Virginia Torrie, *Reinventing Bankruptcy Law: A History of the Companies’ Creditors Arrangement Act* (Toronto: University of Toronto, 2020) at 55–56 [Torrie, *Reinventing*]; Virginia Torrie, “The Companies’ Creditors Arrangement Act Reference Case, 1934” (2020) 64.1 Can Bus LJ 46 [Torrie, “CCAA Reference”] at 70–71.

³⁴ *FCAA*, *supra* note 1, s 11(2).

³⁵ See e.g. Heinrich Steingart, *St. Boniface County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1940)*, (Schedule: A0130, Accession No: GR10178); Johann Neufeld, *St. Boniface County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1940)*, (Schedule: A0130, Accession No: GR10178).

- 1) The Municipality of Hanover would pay the full proceeds of all grain sold by the farmer to the OR in the judicial district in which he made application under the FCAA.
- 2) The district OR would pay the farmer his necessary harvesting costs, at the OR's discretion.
- 3) The OR would disburse any remainder to creditors, in an amount agreed upon by the creditors and approved by the Court, or according to a proposal formed by the BoR.
- 4) Upon request, the farmer must provide the full details of the annual crop to the OR, any creditor, or any of the authorized creditor's representatives.

The OR was given authority under section 6(2) to perform the functions of a trustee, as required by the *Bankruptcy Act*, including convening a meeting with creditors and the vesting of property in the trustee.³⁶ This role differed from the role of the trustee in bankruptcy, however, because it was filled by the OR, who was appointed by the Governor in Council under the Act.³⁷ Whereas creditors appointed the trustee in a bankruptcy proceeding.³⁸ Trustees in bankruptcy were appointed by creditors to serve their interests and maximize their return on the debt. In contrast, the OR — being a civil servant — was a neutral actor. The overarching policy of the *FCAA* was geared toward helping debtors, and this was reinforced through various provisions of the Act and the Rules and Regulations. For example, Rule and Regulation 7 under the *FCAA* provided that the OR would assist the farmer in completing the forms required by the Act if the farmer needed help.³⁹

Lastly, all 12 *FCAA* proposals in this study included a clause stating that the farmer would have a right to pay, in part or in whole, the obligations described in the proposal, without notice or bonus. This action is not mentioned in the *FCAA*, its Rules and Regulations or subsequent amendments, nor does it appear in the *FCAA 1943*. While these official sources of law provided parameters within which to craft proposals, they were not prescriptive as to the substance. This left room for the parties, and those charged with implementing the Act, to develop compromises that addressed each farmer's circumstances, as well as boilerplate clauses that might provide relief in many cases. The right to pay without notice or bonus provided a small incentive for the debtor to expediently pay off his debt in the event that he was able to afford more than the payments scheduled in the proposal. Payment in full would allow the debtor to bypass any future interest payments, thereby reducing his overall debt. He would

³⁶ *Bankruptcy Act*, *supra* note 6, s 6.

³⁷ *FCAA*, *supra* note 1, s 2(3). See discussion in Torrie, "Farm Debt Compromises", *supra* note 2 at n 9.

³⁸ *Bankruptcy Act*, *supra* note 6, s 36.

³⁹ "Rules and Regulations and Forms under the *Farmers' Creditors Arrangement Act as Amended and Consolidated*" (1937) 18 CBR 196 at 197 (Rule and Regulation 7) ["Rules and Regulations"].

also have been entitled to pay without notice to the creditor, thereby expediting the payment process. This clause, however, tempered any expectations that payment in full would give rise to bonuses,⁴⁰ exclusive of any already outlined in the proposal. This clause demonstrates that those charged with implementing the Act developed novel methods of giving effect to its policy objects. Thus, an empirical analysis of “law in practice” is important for understanding the impact and historical significance of the *FCAA* as a restructuring regime for farm businesses.⁴¹

III. Repayment Plan Features

FCAA proposals generally offered no explanation for why the debt compromise was structured as it was. Occasionally, letters from creditors or other material were preserved, which provided a sense of the context in a given and usually contentious case. More frequently, however, it is just the proposal itself that was archived. BoR proposals followed a fairly standard format in terms of their *pro forma* elements, such as the place of the hearing, the names of those in attendance, a description of the farmland, a list of secured and unsecured debts, and the occasional character reference.⁴² This was generally followed by a boilerplate preamble to the debt compromise plan, wherein the BoR would qualify their decision as being made in consideration of all representations heard and read, the preamble to the Act, and the “present and prospective capability of the farmers to perform the obligations prescribed and the productive value of the farm.”⁴³ The archival materials provide no indication of whether the plans succeeded in the long-term or not.⁴⁴

An examination of the individual debt compromises, however, reveals that the *FCAA* provided considerable scope for creativity in the crafting of debt compromise plans – essentially offering a blank canvas on which farmers, creditors, ORs and Boards of Review could adjust farm debts. Under section 7, proposals could include compromises, extensions of time, or schemes of arrangement for debts owed to both secured and unsecured creditors.⁴⁵ The guiding principle for *FCAA* proposals was “affordability” so as to ensure, as far as possible, that the farmer would not again fall behind on their debt, while still balancing the interests of creditors. To this end, debts could be completely cancelled, but this occurred only on occasion and usually

⁴⁰ Examples of bonuses for repayment are seen in proposals for farmers Steingart and Neufeld, which are discussed in section III.(c)(iii).

⁴¹ Torrie, *Reinventing*, *supra* note 8 at 13–16; Halliday & Caruthers, “The Recursivity”, *supra* note 8; Bennett, *supra* note 3; *FCAA*, *supra* note 1, Preamble.

⁴² A character reference is included in Bredin, *supra* note 19.

⁴³ Dan Kruchak, St. Boniface County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

⁴⁴ Torrie, “Farm Debt Compromises”, *supra* note 2 at 417.

⁴⁵ *FCAA*, *supra* note 1, s 7.

in respect of small, unsecured claims.⁴⁶ Most often, *FCAA* proposals reduced and rescheduled debt by lowering interest rates and the principal owed, and by spreading payments out over a longer time period. Each compromise was highly tailored to the farmer's unique situation. Nevertheless, certain terms and conditions appeared regularly throughout the files examined, functioning as common set of tools used in an effort to resolve farm financial distress.

Themes emerge from these terms and conditions, which touch on some of the unique aspects of the farm business, as well as common issues around restructuring small and medium sized enterprises (SMEs), and the relative priority of creditors under debtor-creditor and bankruptcy law.⁴⁷ Land and equipment are essential to farm businesses, for example.⁴⁸ Thus, *FCAA* proposals prioritized the preservation of the farmer's land and essential equipment.⁴⁹ In the 1930s, debts owed to the crown, including property tax debts owed to municipal authorities, enjoyed priority relative to virtually all other creditor types.⁵⁰ Being in arrears on property taxes, in many cases, triggered the municipal authority's ability to put the property into a tax sale.⁵¹ The *FCAA* proposals reflected both the fundamental nature of land to farm operations, as well as the priority of crown claims by leaving tax debts intact and having farmers pay tax debts first. In principle, this would provide the farm business with a sound basis from which to generate revenue, which would, in turn, facilitate payment of other debts.

⁴⁶ Torrie, "Farm Debt Compromises", *supra* note 2 at 430.

⁴⁷ On restructuring SMEs, see Janis P Sarra, "Micro, Small and Medium Enterprises (MSME) Insolvency in Canada" (2016), online: *Report for the Marketplace Policy Branch of Industry Canada* <commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1309&context=fac_pubs> [perma.cc/6S3F-3HJV]; Aurelio Gurrea-Martínez, "Implementing an Insolvency Framework for Micro and Small Firms" (2021), online: *International Insolvency Review* [forthcoming] <papers.ssm.com/sol3/papers.cfm?abstract_id=3715654> [perma.cc/CD58-DX8P]; The World Bank, "Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency" (2018), online: *Open Knowledge Repository* <openknowledge.worldbank.org/handle/10986/30474> [perma.cc/XZX9-H4CZ]; Riz Mokal et al, *Micro, Small, and Medium Enterprise Insolvency: A Modular Approach* (Oxford University Press 2018).

⁴⁸ On the legacy of protection for farmland in Saskatchewan see Donald H. Layh, *A Legacy of Protection: The Saskatchewan Farm Security Act: History, Commentary & Case Law* (Langenburg, Saskatchewan: Twin Valley Books, 2009). Today, Saskatchewan and Manitoba are the only two provinces that have provincial receivership regimes designed to protect farmers from losing their farmland, see Virginia Torrie, "Should Paramourncy Protect Secured Creditor Rights? *Saskatchewan v Lemare Lake Logging* in Historical Context" (2017) 22:3 Rev Const Stud 405 at 413.

⁴⁹ Torrie, "Farm Debt Compromises", *supra* note 2 at 417.

⁵⁰ Telfer & Torrie, *supra* note 33 at 108–109; Torrie, "Federalism and Farm Debt", *supra* note 2 at 240–241.

⁵¹ This was of such great concern during the Great Depression that The United Farmers of Canada (Saskatchewan Section), for instance, called for a special session of the provincial legislature to consider relief for farmers, including "no foreclosure under tax-sale proceedings for a period of two years": Torrie, "Federalism and Farm Debt", *supra* note 2 at 212.

The following seven subsections bring to light some of the common terms and conditions which were employed in the *FCAA* proposals in this study and described, concretely, how these furthered the Act's policy objective of keeping the farm.

(a) Farm Maintenance

The Kruchak, Bredin, and Steingart proposals contained clauses that spoke to the long-term goal of maintaining the farmer on his land by allowing the farmer to retain supplies and equipment to sustain farming activities over a year. Crop farming is an enterprise with significant up-front costs, ongoing costs incurred throughout the year, and revenue only generated after the harvest. *FCAA* proposals factored in the farmers' need for food, equipment, and seed as necessary up-front and ongoing costs.

(i) Using crops for stock feed and seed

The Bredin proposal, somewhat uniquely, outlines the circumstances of the farmer in some detail. The representative of his creditor, Great-West Life Assurance Company, described Bredin as "a first-class farmer who worked his land well."⁵² However, Bredin's 1935 crop failed, leaving him with enough seed to feed his stock, but not enough to sow his 1936 crop. Prior to the BoR hearing, the farmer had retained feed for his stock from the 1935 crop and obtained seed wheat on credit as a secured claim on his 1936 crop.⁵³ The BoR did not overturn these arrangements and seemed to affirm them in the proposal.

(ii) Farmer keeps equipment needed for farming

The Kruchak, Steingart, and Bredin compromises all permitted the farmer to retain the equipment he needed in order to run the farm as profitably as possible. Kruchak was put on a payment plan for secured claims against a binder and drill as well as a Fordson tractor and plough, all of which he was permitted to keep.⁵⁴ Steingart's secured debt for his tractor was unaffected by the proposal.⁵⁵ Bredin's had an extensive inventory of equipment which was encumbered by secured loans. The Bredin proposal left some of these loans unaffected, while others were written down and rescheduled on a new payment plan.⁵⁶ None of Bredin's equipment was surrendered or repossessed under his proposal.

⁵² Bredin, *supra* note 19.

⁵³ *Ibid.*

⁵⁴ Kruchak, *supra* note 43.

⁵⁵ Steingart, *supra* note 35.

⁵⁶ Bredin, *supra* note 19.

While the agreement of a secured creditor was required to implement a proposal affecting their security at the OR stage of the *FCAA* process, this was not necessary when the BoR formulated a proposal.⁵⁷ At a time when secured creditor claims were generally not subject to federal bankruptcy and insolvency law, the *FCAA* conferred considerable power on BoRs to deal with secured claims and security interests in the debtor's property.⁵⁸ The necessity of farm land and equipment to a viable farming operation meant that the Act had to be able to adjust debts secured against the farmer's real and personal property.⁵⁹ Otherwise, the policy goal of retaining farmers on farms would have been severely undermined.

(b) Taxes

FCAA proposals often prioritized the payment of tax debt in order to protect the farmer from losing their land in a tax sale.⁶⁰ Property taxes are regressive, and therefore, it was easy for a farmer to fall into arrears after several years of crop failure.⁶¹ In a situation where a farmer did not have enough money to pay all of their debts – the situation farmers who filed under the *FCAA* faced – choices had to be made about which debts to prioritize. There was also doubt about whether the federal government had the constitutional authority to use bankruptcy and insolvency legislation to reduce debts owed to the province, including taxes.⁶² Thus, even for farmers who filed under the *FCAA*, there was a real threat that a municipality could put farm land into tax sale if a farmer failed to pay their property taxes.⁶³

(i) No tax sale unless farmer abandons or fails to pay one-third crop share

The Laurencelle proposal contained a unique provision, which protected one of the farmer's two parcels of land from tax sale, even if he was *unable* to make the scheduled payments.⁶⁴ At the time of the BoR hearing, the land parcel in question was to be sold

⁵⁷ *FCAA*, *supra* note 1, s 7; Torrie, "Farm Debt Compromises", *supra* note 2 at 389.

⁵⁸ Telfer & Torrie, *supra* note 33 at 106, 128.

⁵⁹ Robert Bryce, *Maturing in Hard Times: Canada's Department of Finance through the Great Depression* (Montreal: McGill-Queen's University Press, 1986) at 160, cited in Torrie, "Federalism and Farm Debt", *supra* note 2 at 226.

⁶⁰ *FCAA*, *supra* note 1, s 2(2); *Bankruptcy Act*, *supra* note 6, s 125.

⁶¹ Shumiatcher, *supra* note 2 at 53.

⁶² Torrie, "Farm Debt Compromises", *supra* note 2 at 389. See discussion in Telfer & Torrie, *supra* note 33 at 114–15.

⁶³ Some *FCAA* files mention farm lands were at risk of tax sale, e.g. Georges Laurencelle, St. Boniface County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

⁶⁴ No tax debt was owed on the second parcel of land. Laurencelle, *supra* note 63.

for taxes by the Rural Municipality (RM) of La Broquerie, but the farmer had the option to redeem the land from tax sale by paying \$507.13.⁶⁵ At the BoR hearing, the Secretary-Treasurer for the RM of La Broquerie submitted that the town council would acquiesce to the cancellation of interest and penalties associated with the tax debt and an extension of time for payment in the interest of retaining Laurencelle on the land.⁶⁶

The BoR accordingly formulated a payment plan of 10 equal, annual, consecutive instalments at an interest rate of 5% per annum.⁶⁷ Interest was to be paid with each annual instalment. The Board also included a clause in the proposal which would protect the land from tax sale, even if the farmer failed to make the annual payments, subject to certain conditions. Namely, if the farmer could not afford the full payment, he could pay the cash value of one-third of his total crop for the year, and this would operate to prevent the tax sale of his land.⁶⁸ The two exceptions to the operation of this “grace” clause were: the farmer abandoning, conveying or failing to cultivate the land; and, the farmer failing to make the payment owed by June 1 of the following year, whether this was the payment of the full amount or the one-third crop share.⁶⁹ These unique arrangements underscored how important it was to deal with property tax debt – and stave off the municipal remedy of tax sale – as part of restructuring the farmer’s affairs.

(ii) Reduction on mortgage principal only after taxes paid

The Allison file dealt with a total debt of \$22,643.58, making it the largest of all the proposals examined.⁷⁰ The BoR proposal was complex, not only because of the number of outstanding debts, but also due to the way that payments to different creditors interfaced in the debt compromise. Most notably, the proposal linked the payment of tax debts to one of Allison’s mortgages in an idiosyncratic way. The mortgage in question was a fourth mortgage on a parcel of land.⁷¹ Allison had taken the mortgage in 1926 for \$7,000.00, but by the time of the BoR hearing in 1940, the principal plus interest owing had reached \$9,696.00.⁷² The BoR offered a reduction in the mortgage debt to \$6,200.00, but only after the 1937 taxes, as well as related

⁶⁵ Laurencelle, *supra* note 63.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ David Allison, Morden County Court District Farmers’ Creditors Arrangement Act Filings (1935-1939), (Schedule: A0130, Accession No: GR2469). See also Torrie, “Farm Debt Compromises”, *supra* note 2 at 413. The mean debt load for Manitoba farmers who filed under the *FCAA* was less than \$7,500.

⁷¹ Allison, *supra* note 70.

⁷² *Ibid.*

penalties and interest, had been paid to the RM of Roland.⁷³ This term of the compromise illustrates the highly tailored nature of individual *FCAA* proposals, even when determining priorities among different groups of priority creditors, such as tax authorities and mortgagees.

(iii) Consolidating taxes

The Bredin, Laurencelle, and Bohémier files all included the consolidation of tax debt.⁷⁴ Consolidating debts generally simplifies repayment, allowing the debtor to make payments to one creditor instead of several. The consolidation of tax debts operated on the same principle, and generally consolidated principal, interest, arrears and penalties owed. The Bredin file described the consolidation in the following terms:

Taxes shall be consolidated as at the 1st day of January, 1936, including all arrears and the 1935 taxes, and the same shall be payable as if consolidated as at such date and with the same effect as if it had been done in accordance with the Statute in effect at the date of this proposal and shall be payable in the manner therein provided, subject, however, to the first payment thereunder falling due on the 1st day of November, 1936.⁷⁵

It is not clear what “the Statute” refers to. It is unlikely it refers to the *FCAA*, which is silent on the issue of tax debts and crown claims more generally.⁷⁶ It is more likely a general reference to the provincial tax statute, in this case, the *Income Tax Act* of Manitoba.⁷⁷

The Laurencelle and Bohémier files described the consolidation in a more straightforward manner, without reference to “the Statute.”⁷⁸ These consolidations included taxes owing, arrears, penalties, and interest, and in the case of Laurencelle, the amount owing to the RM of St. Boniface to redeem the land from the 1936 tax sale.⁷⁹ Repayment of the tax debts were then scheduled in equal annual instalments,

⁷³ *Ibid.*

⁷⁴ Bredin, *supra* note 19; Laurencelle, *supra* note 63; Jean Marie Bohémier, St. Boniface County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

⁷⁵ Bredin, *supra* note 19.

⁷⁶ Telfer & Torrie, *supra* note 33 at 109–10; Torrie, “Federalism and Farm Debt”, *supra* note 2 at 240–241. The *FCAA*’s silence on the issue of tax debt, and crown claims more generally, amplified controversy of its use to adjust these claims.

⁷⁷ *Income Tax Act*, SM 1924, c 91.

⁷⁸ Laurencelle, *supra* note 63; Bohémier, *supra* note 74.

⁷⁹ Laurencelle, *supra* note 63; Bohémier, *supra* note 74.

subject to a rate of interest of 5% interest per annum, with interest being paid at each annual instalment.⁸⁰

Complexity in debt repayment plans can trigger inadvertent defaults, and therefore strategies such as consolidation, which promote simplicity and clarity, aid in successful restructuring efforts.

(c) Principal

Reductions in the principal amount owing can significantly reduce the burden of debt, as well as the cost of servicing the debt through interest. The *FCAA* provided for the reduction of debt principal, and various proposals used this mechanism to make farmers' debts more affordable. As with the other mechanisms discussed, reductions in principal – whether secured or unsecured – were not used in a blanket fashion. Rather, they were relied upon in certain cases and in relation to certain debts, in keeping with the highly tailored nature of compromises under the Act.

(i) Reducing secured debt

The BoR reduced the principal owing on secured debts in many cases. Often the assets most vital to the farm business – land and equipment – were the subject of secured claims. Reducing the amount of principal owing on these secured debts improved the farmer's chances of successfully paying off their creditors, and therefore lessened the risk that essential assets would be foreclosed upon or seized by secured creditors.

This mechanism of debt adjustment was featured in the proposals for Kruchak, Stec, Bredin, Laurencelle, Sharp, Allison, and Schuddemat. Other empirical studies confirm that the reduction of principal on secured claims was a common feature of BoR compromises.⁸¹ Reductions were not uniformly applied to all secured debts, but were customized to the specific circumstances of the farmers and creditors. The following chart outlines the reductions in secured debts observed in the proposals in this study.

⁸⁰ Laurencelle, *supra* note 63; Bohémier, *supra* note 74.

⁸¹ This is consistent with reduction seen in official statistics and empirical studies of the *FCAA*, see Torrie, "Farm Debt Compromises", *supra* note 2 at 4084–09; Minister of Finance, "Final Report", *supra* note 10, Schedule 8.

Table 2: Reduction of Secured Debts

Farmer	Security	Original Debt	\$ Reduction	% Reduction
Kruchak	Agreement of Sale	\$3,728.00	\$1,663.00	44.6%
Stec	Agreement for Sale	\$6,203.25	\$3,503.25	56.5%
Bredin	Mortgage	\$6,000.00	\$3,050.00	50.8%
Laurencelle	Mortgage under Assumption	\$1,220.42	\$220.42	18.1%
Sharp	Mortgage 1	\$3,670.75	\$1,298.29	35.4%
	Mortgage 2	\$768.92	\$568.92	74%
	Chattel Mortgage	\$463.15	\$223.15	48.2%
Allison	Mortgage 1	\$3,675.25	\$1,875.25	51%
	Mortgage 2	\$9,696.68	\$3,496.68	36.1%
Schuddemat	Promissory Note	\$684.81	\$64.81	9.5%

In tandem with reductions on the principal owed for secured debts, the BoR sometimes reduced the value ascribed to the property subject to the security interest. In some instances, this resulted in the security being worth less than the total amount of the debt, leaving the creditor with an unsecured claim for the difference. This occurred with two equipment liens in the Bredin proposal: one for a tractor and cultivator, and the other for a second-hand wooden separator purchased 10 years earlier. The BoR valued the securities at \$800.00 (on \$1,249.15 owing) and \$175.00 (on \$272.00 owing).⁸²

This reduction may be explained by the depreciation of equipment through its use over time. The 10-year span between the time of purchase and the formulation of the proposal for the second-hand separator would reflect significant depreciation.

⁸² Bredin, *supra* note 19.

The age of the tractor and cultivator is not noted. Notably, a binder purchased only the year before the proposal was brought to the BoR was not devalued.⁸³

The Board provided no express reasons for devaluing the security. However, it is likely that its actions were related to section 8 of the *FCAA*, which provided that no proposal could provide for payment to a secured creditor in excess of the valuation of their security and, further, that no proposal could grant a secured creditor “any new security for an amount in excess of his valuation.”⁸⁴ It seems that the *FCAA* contemplated an assessment and revaluation of security as part of putting farmers’ financial affairs in order.

Farmers’ secured debts relating to equipment were also written down in some instances. The proposals of Bredin and Allison provide examples of how the principal was reduced, as shown in Table 3.

Table 3: Reduced Equipment Values

Farmer	Creditor	Equipment	Debt	\$ Reduction	% Reduction
Bredin	Bank of Montreal	Cream separator	\$550.75	\$325.75	59.1%
	International Harvester	Tractor and cultivator	\$1,249.15	\$449.15	36%
	Waterloo Manufacturing	Separator	\$272.00	\$97.00	35.7%
	Singer Sewing Machine	Sewing machine	\$65.00	\$10.00	15.4%
Allison	CS Jones	Tractor (surrendered)	\$850.00	\$625.00	73.5%

Allison’s arrangement with respect to the tractor was complex. He purchased the tractor in 1928 for \$500.00 at an interest rate of 8% per annum.⁸⁵ He had accrued \$350.00 interest on the debt by September 1938, indicating that, in 10 years, he had

⁸³ *Ibid.*

⁸⁴ *FCAA*, *supra* note 1, s 8.

⁸⁵ Allison, *supra* note 70.

made little headway in paying off the principal.⁸⁶ The initial proposal concerning this debt would have had Allison surrender the tractor and be released from the debt entirely.⁸⁷ However, the proposal was amended to require a payment of \$225.00 to Jones in addition to the surrender of the tractor.⁸⁸ Presumably, given the high debt Allison was carrying in general, and on the tractor specifically, the Board could not formulate a proposal that would allow the farmer to keep the tractor which would still be fair to creditor Jones.⁸⁹

(ii) Reducing unsecured debt

Reduction of the principal owing on unsecured debts was found in only three farmers' files, however, two of these examples used it quite extensively. Other empirical studies indicate that reductions of unsecured debts were a fairly common mechanism of debt adjustment under the *FCAA*.⁹⁰ While there was a disparity between the reductions used in each farmer's case, within an individual proposal, the BoR tended to reduce unsecured debts by a consistent percentage, as illustrated in Table 4. Kruchak received a roughly four-fifths reduction on unsecured debts, Bredin's debt was reduced by approximately two-thirds and Allison's debt by approximately half, except for a more significant reduction on a \$10.50 debt to the Roland News.

Table 4: Reduced Unsecured Debts

Farmer	Creditor	Debt	\$ Reduction	% Reduction
Kruchak	Bugylik	\$82.00	\$67.00	81.7%
	Hussack	\$9.00	\$7.50	83.3%

⁸⁶ It is unclear if this interest was compounded or not. If it was compounded, the farmer would have paid \$229.00 toward the debt in 10 years. Otherwise, he would have paid only \$50.00.

⁸⁷ Allison, *supra* note 70.

⁸⁸ *Ibid.*

⁸⁹ It is unclear how the *FCAA*, as federal insolvency legislation, was intended to interface with the Manitoba *Executions Act*. Allison's tractor appeared to fall within the provincial exemption under for "the tools, agricultural implements and necessities used by the judgment debtor in the practice of his trade, profession or occupation, to the value of [eight] hundred dollars." See *Executions Act*, RSM 1913, c 66 s 29(f) [*Executions Act*], as am by *An Act to amend "The Executions Act"*, SM 1925, c 20, s 1. Given the bold and creative ways in which BoRs implemented the *FCAA* in practice, it is not surprising that arrangements under the Act seemed to contradict provincial law: Torrie, "Federalism and Farm Debt", *supra* note 2 at 240–241. After all, there was doubt that the *FCAA* itself was *intra vires* Parliament: Telfer & Torrie, *supra* note 33 at 104–05; Torrie, "Federalism and Farm Debt", *supra* note 2 at 241.

⁹⁰ Torrie, "Farm Debt Compromises", *supra* note 2 at 407.

Farmer	Creditor	Debt	\$ Reduction	% Reduction
Bredin	Imperial Oil	\$365.24	\$243.24	66.6%
	Williams	\$100.00	66.00	66%
	McElrea	\$63.00	\$42.00	66.7%
	Raynor	\$163.46	\$108.96	66.7%
	Pearn	\$24.00	\$16.00	66.7%
	Waugh	\$95.00	\$63.00	66.3%
	Morris	\$69.80	\$46.50	66.6%
	Benson	\$45.00	\$30.00	66.6%
	Austin Co-op Assoc	\$14.00	\$9.00	64.3%
Allison	Manitoba Telephone System	\$38.46	\$19.46	50.6%
	Dr. McGavin	\$10.00	\$5.00	50%
	Miller	\$1,027.26	\$513.76	50%
	Roland News	\$10.50	\$7.50	71.4%
	Royal Bank	\$605.09	\$302.59	50%
	Wall	\$18.97	\$9.47	49.9%
	John H Black Estate	\$178.25	\$89.25	50.1%
	British American Oil	\$57.71	\$29.21	50.6%
	Carmen General Hospital	\$51.50	\$26.00	50.5%
	Dr Cunningham	\$265.00	\$132.50	50%

Farmer	Creditor	Debt	\$ Reduction	% Reduction
	Fife	\$66.00	\$33.00	50%
	Kelly	\$63.00	\$31.50	50%

Unlike secured creditors, unsecured creditors would not have seized any of the farmer's assets in the event that he did not pay.⁹¹ The relatively small amounts owed for unsecured debts (compared with farmers' secured debts) and the generous reductions lowered the cost of debt service and made repayment more feasible. This, in turn, may have further incentivized the farmer to pay. The specific relationships between the debtor and his unsecured creditors were not usually described, however, it was common for unsecured creditors to be local individuals, businesses, family members, and health care providers.⁹² Relieving the social stigma tied to indebtedness with one's neighbours likely served as a compelling incentive in itself to repay these unsecured loans.⁹³

The BoR proposals for Steingart and Neufeld cancelled their debts to unsecured creditors and released them from liability for those debts. Table 5 lists the cancelled debts.

Table 5: Cancelled Debts

Farmer	Creditor	Debt
Steingart	Kirchener & Co <i>(judgment debt on seeder plough; plough surrendered)</i>	\$425.00
	British American Oil Co Ltd	\$267.44
	Chortitz Waisenamt	\$52.22

⁹¹ Note, however, that unsecured creditors could seek to enforce their claims by obtaining a court judgment which could attach to specific, non-exempt property of the debtor. The cost associated with this procedure meant it was usually only worthwhile for larger debts. On creditor remedies generally, see C.R.B. Dunlop, *Creditor-Debtor Law in Canada* (Toronto: Carswell, 1981). On provincial exemptions, see Thomas GW Telfer, "The Evolution of Bankruptcy Exemption Law in Canada 1867-1919: The Triumph of the Provincial Model" 2007 Ann Rev Insol L 18.

⁹² Torrie, "Farm Debt Compromises", *supra* note 2 at 379.

⁹³ *Ibid* at 418-421, noting that roughly half of the creditors that appeared in the *FCAA* proposals of Morden and Brandon farmers were individuals and estates.

Farmer	Creditor	Debt
	Canadian Mennonite Board of Colonization	\$106.29
	JR Friesen	\$39.18
Neufeld	Canadian Mennonite Board of Colonization	\$1,728.85
	Kirchener & Co	\$426.11
	Imperial Oil Ltd	\$171.35
	H Bronstone	\$72.00

The cancelled debt owed by Steingart to Kirchener & Co. represented a judgment debt on a seeder plough, and the *FCAA* proposal required the farmer to return the plough. This aspect of the proposal appears to have complied with the Manitoba *Executions Act* then in force.⁹⁴ Section 37 of the Manitoba Act superseded the agricultural equipment exemptions where the subject of the judgment was the purchase price of that item.⁹⁵

(iii) Reduction of principal owing by way of bonus

Two proposals – Steingart and Neufeld – included an intricate incentive scheme for repayment, which seemingly took the place of a schedule of payments.⁹⁶ This was embodied in an extraordinary clause that could very substantially assist the farmer in remaining on the land. It did this in two ways.

First, it appears that the proposal may have lacked a payment schedule, meaning that there were no due dates associated with repaying the debt. It is unclear whether this was actually the case, because the clause included a statement that “the farmer shall continue to comply with all the *terms, provisions, covenants and conditions* in the ... agreement for sale and chattel mortgage.”⁹⁷ The full “terms, provisions, covenants and conditions” of the agreement for sale are not known.⁹⁸ If

⁹⁴ *Executions Act*, *supra* note 89, s 37.

⁹⁵ *Ibid.*

⁹⁶ Steingart, *supra* note 35; Neufeld, *supra* note 35. The relevant clauses in these two proposals are exactly the same except for the amount of debt owed.

⁹⁷ Neufeld, *supra* note 35 [emphasis added].

⁹⁸ The only information that included was that Neufeld’s agreement for sale had an interest rate of 6%. *Ibid.*

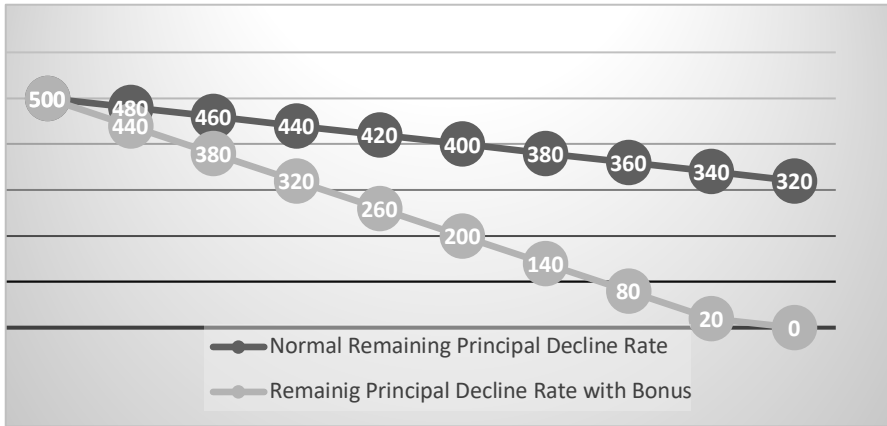
these included a schedule of payments, then that schedule was clearly incorporated by reference into the *FCAA* proposal. If not, however, the absence of due dates would appear to make it impossible for the farmer to default on his payments to creditors. If this was in fact, that case, it was an ingenious mechanism for enhancing the protection enjoyed by farmers under an *FCAA* proposal. Recall that farmers were afforded one chance to restructure their affairs under the *FCAA*, and default on a proposal could lead to bankruptcy, which meant the farmer would lose their farm and livelihood.⁹⁹ In light of this risk, grace clauses, discussed in sections III.(b)(i) and III.(f)(vii), were used fairly commonly in *FCAA* proposals to extend the protection offered by the statute by preventing a farmer from being found in default.¹⁰⁰ Removing due dates from the debt compromise altogether would be an extension of the same idea.

Secondly, the incentive scheme itself compounded the effect of the farmer's payments, thereby reducing his debt at a faster rate. The ultimate result was similar to a simple reduction in the amount of debt owed. However, the structure used to reduce the debt is notable for incentivizing repayments. The clause consisted of a formula by which the farmers could access "bonus" funds that would augment the payments made on their debt. In the absence of a payment schedule of any kind, the bonus funds would provide an important incentive – perhaps the only legal or financial incentive – for the farmer to repay the debt.

The incentive scheme was complex, so it is useful to first explain the basic principle involved. Suppose a debtor owes \$500.00 to creditor. Under the terms of an ordinary repayment plan, every \$1.00 paid toward the debt reduces the outstanding debt by \$1.00. A bonus scheme for paying down the debt amplifies the effect of the debtor's payments by providing, for example, that for every \$1.00 paid the debt is reduced by \$3.00. In effect, every \$1.00 paid by the debtor unlocks \$2.00 in "bonus" funds which are applied against the outstanding debt. The bonus funds are not actually "funds" at all, but rather a form of incremental debt forgiveness provided by the lender which incentivizes repayment. Figure 1 illustrates the significant impact that such a bonus scheme can have on the repayment of a \$500.00 debt.

⁹⁹ *FCAA*, *supra* note 1, s 2(3). See discussion in Shumiatcher, *supra* note 2 at 638–651; Ben-Ishai & Torrie, *supra* note 1 at 36–41.

¹⁰⁰ This was in step with provincial debt adjustment discourses in the prairies at that time, see e.g. Torrie, "Federalism and Farm Debt", *supra* note 2 at 210–211, 212–213, 219.

Figure 1: Incentive Scheme for Repayment of \$500 Debt Using Bonus Funds

The Neufeld proposal included a bonus of \$2.00 per \$1.00 paid, as described in the example above, and included a few further parameters. The total amount of bonus funds available was capped at \$3,700.00. In addition, the clause contemplated that interest would be charged on the bonus at a rate of 6%, but it is unclear whether the interest was effectively an additional bonus that the farmer could earn (beyond the \$2.00 per \$1.00 paid) or whether the farmer was obligated to pay 6% interest as a kind of surcharge for making use of the bonus funds. In the former case, each \$1.00 payment would have resulted in a reduction of the amount owed of \$1.00 (payment) + \$2.00 (bonus) + \$0.12 (interest on bonus), equalling \$3.12. In the latter case, each \$1.00 payment would have resulted in a reduction of the amount owed of \$1.00 (payment) + \$2.00 (bonus) - \$0.12 (interest on bonus), totalling \$2.88. The vagueness of the clause on this point made the clause more complex than it need have been. In spite of the lack of clarity, the incentive scheme was a remarkable feature of certain *FCAA* proposals and held clear benefits for overindebted farmers who wished to stay on the land and continue farming.

The Steingart and Neufeld proposals were the only ones in this study that appear to have omitted payment deadlines and employed the repayment bonus scheme described above, instead of relying on the default protection clause found in many other *FCAA* proposals.¹⁰¹ The surviving documents do not shed light on why the Board of Review adopted an unorthodox approach – even by *FCAA* measures – for these two farmers. It is notable that the debts owed on farmland in the Steingart and Neufeld

¹⁰¹ See section III.(f)(vii).

proposals were much higher than average.¹⁰² The debts owed on land ranged from \$358.99 to \$9,696.68 in the other files studied, with a mean of \$3,226.40 and median of \$3,144.89. The Steingart and Neufeld land debts were \$15,968.99 and \$14,139.73, respectively.¹⁰³ It seems probable that these especially large debts required a different approach, with enhanced protections for the farmers against the likelihood of foreclosure. This unique mechanism of debt repayment illustrates the tremendous flexibility that the *FCAA* afforded the BoR to compose proposals in a bespoke manner in furtherance of the Act's policy objectives. By treating each file individually instead of adhering to a rigid formula, the BoR, debtor and creditors were able to come up with creative, individualized approaches to restructuring farm debts.¹⁰⁴

(d) Interest

The adjustment of interest rates was another tool in the Board of Review's toolkit when crafting debt compromises that would be affordable for farmers. The regulation of interest is a federal head of power, yet, the use of interest as a term or condition of a lending agreement is generally a matter of provincial jurisdiction.¹⁰⁵ The treatment of interest in the text of the *FCAA*, as well as the changes to interest rates made by the Boards of Review, were the subject of notable constitutional controversy.¹⁰⁶ Parliament had treated the interest issue carefully in the text of the *FCAA* because of concern that adjusting interest rates on existing contracts overstepped federal jurisdiction.¹⁰⁷ Nevertheless, Boards of Review did not confine their changes to interest rates to what the Act specifically provided. Rather, they seem to have approached the matter taking for granted that they held plenary power to adjust interest rates as they saw fit, guided by the goal of making debt service affordable for

¹⁰² The Steingart and Neufeld mortgage debts were significantly above the average of total debts (secured and unsecured) carried by Manitoba farmers who accessed the Act, see Torrie, "Farm Debt Compromises", *supra* note 2 at 314; Minister of Finance, "Final Report", *supra* note 10, Schedule 8b.

¹⁰³ National Trust Co. one of the largest trust companies in Canada and was a creditor on many different *FCAA* files. These are the only two files which seem to include this particular payment incentive to these two creditors with unusually high debts. This is in keeping with the observation that institutional creditors tended to support debt relief efforts which would allow them to treat debtors differently, while they tended to oppose uniform debt reductions and moratoria. See Torrie, *Reinventing*, *supra* note 8 at 31, 42–43; Torrie, "Federalism and Farm Debt", *supra* note 2 at 223–224.

¹⁰⁴ Corporate restructuring of this time period was similarly treated each case in a one-off fashion and individual restructuring plans were not seen as having precedential value. See Torrie, *Reinventing*, *supra* note 8 at 50–51.

¹⁰⁵ Telfer & Torrie, *supra* note 33 at 118, 125–26; *Constitution Act, 1867* (UK), 30 & 31 Vict c 3, ss 91(19), "Interest", 92(13) "Property and Civil Rights"; *Interest Act*, RSC 1927, c 102, s 2.

¹⁰⁶ *House of Commons Debates*, 17-5, vol 4 (4 June 1934) at 3653 (Right Hon RB Bennett), cited in Torrie, "Federalism and Farm Debt", *supra* note 2 at 227–228. See further Telfer & Torrie, *supra* note 33 at 118, 125–26. See also Torrie, "Federalism and Farm Debt", *supra* note 2 at 213, 227.

¹⁰⁷ *FCAA*, *supra* note 1, s 17(1), providing that farm mortgage interest rates could be reduced from over 8% to 5% subject to certain conditions.

farmers.¹⁰⁸ This exacerbated the federalism issue. Nevertheless, the reduction or elimination of interest was a crucial component of dealing effectively with a farmer's outstanding debts and crafting a repayment plan which would be financially feasible, and thus allow him to stay on the land and continuing farming.

(i) Reduction or elimination of interest

Many *FCAA* proposals included a reduction or elimination of interest on debts as a way to ease the cost of debt service on farmers. The proposals for Bredin, Neufeld, Tychonkyj, Allison, and Schuddemat all incorporated interest rate reductions.

Bredin was offered a reduction in interest from 7% to 3% on the mortgage held by his 80-year-old father.¹⁰⁹ This mortgage was not to be paid until other creditors had been paid in full. Therefore, one reason for the interest rate reduction was likely the extended amount of time Bredin would expect to carry this debt. Moreover, it appeared that the BoR included this mortgage in the proposal for equitable reasons, as an obligation by the farmer to support his father, rather than because the mortgage was Bredin's legal responsibility, as described in section III.(f)(v) in greater detail.

Neufeld's lien note on a binder with International Harvester was reduced from 7% and 8% to 4%.¹¹⁰ The proposal does not clarify what is meant by the original, seemingly variable, rates of 7% or 8% or how these applied. In contrast, Tychonkyj's interest rate on an agreement for sale with M.M. Penner was reduced from 7% to 5% per annum.¹¹¹ The Schuddemat file contains a judgment to cover a promissory note for \$684.81, including principal and interest, which the BoR reduced to \$620.00 with no further interest owing.¹¹²

The Allison proposal included an interest rate reduction on the mortgages on two land parcels until the outstanding debt had been reduced to a specific amount. For Parcel 1, the \$5,340.77 owed to Prudential Insurance was not reduced, but the annual interest rate was set at 5% until the total amount owing declined to \$4,500.00.¹¹³ At that point, the interest rate increased to 6% per annum. The mortgage on Parcel 2, which was owed to Mary Bonny and the estate of Robert Thomson, was reduced from \$3,675.25 to \$1,800.00, including principal and interest. Interest on this debt was

¹⁰⁸ Torrie, "Federalism and Farm Debt", *supra* note 2 at 241.

¹⁰⁹ Bredin, *supra* note 19.

¹¹⁰ Neufeld, *supra* note 35.

¹¹¹ John Tychonkyj, St. Boniface County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

¹¹² James Schuddemat, Brandon County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1929-1954), (Schedule: A0130, Accession No: GR3091).

¹¹³ Allison, *supra* note 70. \$4,000.00 principal plus \$1,340.77 in interest and advances.

reduced from 7% to 5% per annum until the total amount owing reached \$1,400.00.¹¹⁴ Thereafter, the annual interest rate increased to 6%. An interest rate reduction at the beginning of the repayment schedule would help to reduce the payment burden on Allison during the time when the interest payments would be the largest. Under this formula, the first annual interest payments on each of these mortgages would be \$267.04 and \$90.00, respectively, at 5%, as opposed to the later payments of \$320.45 and \$108.00 at 6%. Allison was also given a reduction on the interest rate owing for a mortgage on a third parcel of farmland, from 7% to 5% per annum.¹¹⁵

An interest rate reduction was also proposed on Allison's lien note with Cockshutt Plow for a double disc drill.¹¹⁶ The original rate was 6% before maturity and 8% thereafter. The BoR reduced this to a flat rate of 4% simple interest.¹¹⁷ The BoR reduced the principal owing to C.S. Jones under a lien note on a tractor and eliminated the per annum interest rate of 8% by reducing it to 0%.¹¹⁸ The BoR waived the interest on Allison's debts to 12 other unsecured creditors.¹¹⁹

Section 17(1) of the *FCAA* provided guidance on interest rates for mortgages on farm land, and was the only provision of the Act to address interest rates.¹²⁰ If a mortgage on farm land carried an interest rate in excess of 7% per annum, a debtor could rely on section 17(1) to reduce the rate of interest to 5% by ensuring their payments on the mortgage were current and paying three months' interest. While interest rates were reduced to 5% in many of the aforementioned proposals, they do not appear to be made pursuant to this provision. Reductions pursuant to this provision would have to be in excess of 7% interest, apply to mortgages on farm land only, and include a three-month advance payment on interest. No proposals in this study conform to all three of these stipulations. However, the rate of 5% does appear to be a rate deemed reasonable by the BoR that was applied in many instances.

(ii) Simple interest instead of compound

Interest on some debts was described as "simple interest," while for others, it was just described as "interest" or "per annum interest." No proposals in this study expressly described compound interest, which is when interest is charged on top of interest. The application of simple interest is found in the Kruchak, Bredin, Neufeld, and Allison files. Simple interest would have been more economical than compound interest for

¹¹⁴ *Ibid.* \$1,000.00 (Thomson estate) and \$1,500.00 (Bonny) principal plus \$1,175.25 interest.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *FCAA*, *supra* note 1, s 17(1).

the debtor because interest would not be charged on top of interest already incurred, but rather just on the principal.¹²¹ With interest and principal coming due annually on these proposals, interest would not have compounded over time. According to the default protection clauses (discussed in section III.(f)(vi)), annual payments were *first* applied to interest, *then* to principal. This order of payment ensured that the farmer avoided accruing compound interest.

(iii) Interest charged only after maturity

The Sharp proposal includes an interest charge of 5% per annum on a scheduled payment plan for mortgages on land with interest charged only *after* maturity.¹²² This clause may be interpreted to mean that the 5% would be calculated only on the date on which the final payment is due — it would not be paid annually. In effect, this term stayed any interest payments until after the principal was paid in full.

(e) Changing security

(i) Converting secured debt to unsecured

In the Kruchak proposal, the BoR took the very unusual action of deeming a secured debt to be unsecured. As a secured creditor has an interest in the debtor's property, they ordinarily enjoy strong legal rights which, in the early 1930s, were unaffected by bankruptcy or insolvency law.¹²³ Although deeming a secured debt to be unsecured is unorthodox in the debtor-creditor context, it was consistent with the *FCAA*'s purpose of "keep[ing] the farmer on the farm."¹²⁴ By weakening a creditor's rights to the farmer's farm land, the BoR helped ensure the farmer would stay on his farm generating income to pay his debts. This mechanism of debt adjustment has not been observed in any other *FCAA* files, indicating it was a rare – perhaps singular – action by the BoR.

¹²¹ See "simple interest", online: *Investopedia* <www.investopedia.com/terms/s/simple_interest.asp> [perma.cc/3X65-4YD3].

¹²² Russel Sharp, Brandon County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1929-1954), (Schedule: A0130, Accession No: GR3091).

¹²³ *Bankruptcy Act*, *supra* note 6, ss 106–111 (secured creditor may prove debt), 112 (secured creditor excluded from bankruptcy distribution if they elect not to prove debt). See discussion in Torrie, "Federalism and Farm Debt", *supra* note 2 at 240; Virginia Torrie, "Paramourncy", *supra* note 48 at 410–412; Telfer & Torrie, *supra* note 33 at 107–08.

The *Companies' Creditors Arrangement Act*, SC 1933, c 36 and *FCAA*, *supra* note 1, enacted in 1933 and 1934, respectively, were the first federal insolvency statutes that purported to affect secured creditor claims on a compulsory basis: Torrie, *Reinventing*, *supra* note 8 at 61; Telfer & Torrie, *supra* note 33 at 73, 77–78; Torrie, "CCAA Reference", *supra* note 33 at 46–47.

¹²⁴ Bennett, *supra* note 3.

As is usual in *FCAA* proposals, the mechanisms relied upon to reduce the farmer's debt to the point where it was affordable were highly tailored to the farmer's unique situation. Thus, some background is necessary to understand the context in which Kruchak's secured debt was changed into unsecured debt.

The Kruchak proposal describes the land that served as collateral for the secured loan as follows. Kruchak purchased land parcels (totalling 170 acres) from Victor Mager, who died in 1930.¹²⁵ Victor Mager's son, Gustave Mager, inherited the agreement of sale for the property. The Imperial Bank of Canada held the agreement and title to the land as collateral security for repayment of money now owed by Gustave Mager to the Bank.¹²⁶ At the BoR hearing, Mager offered Kruchak a bonus of \$0.40 for every dollar paid until the agreement of sale was paid in full.¹²⁷ The amount owing on the agreement of sale at the time of the hearing was \$3,728.00, which the BoR reduced to \$2,065.00.¹²⁸ The BoR payment plan would have Kruchak pay increasing amounts on the principal with a 5% rate of interest from 1936 to 1944.¹²⁹ Under this scheme, Kruchak would pay \$1,460.50 in principal and interest between November 1, 1936, and November 1, 1945. The balance of \$1,390.00 would be due on November 1, 1945.¹³⁰

The proposal stated that the balance was to be both "considered" unsecured and "treated" in the manner of other unsecured accounts on the proposal.¹³¹ The unsecured debts were all treated in the following manner: they would be paid in six equal, annual instalments; and, they would incur no interest. The proposal did not provide reasons for why the BoR changes a secured debt into unsecured debt. However, "considering" the debt as unsecured offered protection for the farmer by eliminating the creditor's right to seize their security (the land) in satisfaction of the debt.

(ii) Creditor will discharge claim to lands under collateral mortgage

The Sharp file contains another unusual clause affecting secured creditor rights. This proposal provided that the creditor shall, in addition to taking less than was due,

¹²⁵ Kruchak, *supra* note 43.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.* The BoR did not directly address Gustave Mager's offer of \$0.40 for every dollar paid, so it is unknown if this offer was accepted by the BoR or the Bank. See section III.(c)(iii) on another bonus incentive scheme.

¹²⁸ *Ibid.*

¹²⁹ These payments consisted of \$50.00 per year from 1936 to 1938, \$75.00 per year from 1939 to 1941, and \$100.00 per year from 1942 to 1944.

¹³⁰ Kruchak, *supra* note 43.

¹³¹ *Ibid.*

discharge its claim against the encumbered properties.¹³² This term would have both reduced the debt and terminated the creditor's secured interest in the land. Eliminating a creditor's security interest in the debtor's property promoted the fundamental purpose of the *FCAA*, which was to keep the farmer farming the land.

(f) Payment Plans

Payment plans were a major feature of most *FCAA* proposals and provided a schedule by which the farmer would pay off debts incrementally. These plans clarified expectations set out by the BoR, court, or creditors in the case of a proposal formulated during the first stage of the *FCAA* process. The clarity provided by the payment plans might have mitigated the chances of default by the farmer. However, the schedule of payments usually did not clearly indicate the amount of interest amount owing, instead just providing the formula for its calculation. This makes it challenging to ascertain the amount owing with specificity, and may have been a contributing factor to farmers' defaulting on the plans.¹³³ The payment plans did not follow a set structure and were expressed in a variety of ways.

(i) Payment plan implemented despite alternative proposals by creditors

The Konowalchuk and Bohémier files included BoR decisions which ignored creditors' offers to reduce debts, if paid promptly and in full, in favour of spreading out debt payments over several years.¹³⁴ These proposals further indicate that the Board carefully considered each situation that came before it, weighing various factors, and did not simply incorporate suggestions or offers made as part of negotiation efforts.

In the Konowalchuk file, the Manitoba Farm Loans Association offered to reduce the farmer's debt from \$2,719.02 to \$2,300.00, if the latter amount was paid in full before November 1, 1937.¹³⁵ Konowalchuk said they would not be able to raise the money in time and asked the BoR to "formulate its proposal in accordance with its usual practice."¹³⁶ The BoR fixed the debt at \$2,719.02 and proposed an annual payment plan (plus 5% interest) of \$65.00 from 1938 to 1940, \$100.00 from 1941 to

¹³² The file states one amount owing on the mortgages. It does not state how many mortgages and the amount owing on each of them individually.

¹³³ Default under *FCAA* plans was a common phenomenon, due to sustained poor farming conditions, and led to the extension of relief through the *FCAA*, 1943, see Shumiatcher, *supra* note 2, at 794–805 pp. The complexity of the proposals may have been a contributing factor.

¹³⁴ Both of these hearings were held at Ste. Anne on May 26, 1937.

¹³⁵ Anton Konowalchuk, St. Boniface County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

¹³⁶ *Ibid.*

1943, and \$135.00 from 1944 to 1946, with the balance owing on November 1, 1947.¹³⁷ In the Bohémier file, the Manitoba Farm Loans Association offered to reduce the amount owing on a mortgage (\$950.22) by 10%, calculated as of the date when the farmer paid in full.¹³⁸ In its proposal, however, the BoR fixed the mortgage at \$950.22 with an interest rate of 5%, payable over a 10-year period. It is probable that Bohéimer was also unable to pay the full amount owing on the loan to the Association.

As the debt reduction offers made by the Manitoba Farm Loans Association were intended to induce the farmers to pay off the entire debt, and the farmers were not in a position to do so, the Board took a different approach. Debt was rescheduled to give the farmer more time to pay, and the amount owing was not reduced in the interests of the creditor, which would now have to wait longer to be repaid in full.

(ii) Amortized annual instalments on secured debt

The Stec file contained only one debt: an agreement for sale on River Lot 28 near Lorette, Manitoba in the RM of Taché.¹³⁹ This debt was reduced from \$6,203.25 to \$2,700.00, including principal and interest, and re-amortized and made payable in 25 equal, consecutive, annual instalments at an interest rate of 6% per annum.¹⁴⁰

(iii) Equal annual instalments

FCAA proposals frequently rescheduled debt payments by providing that debts be paid in equal installments, usually on an annual basis. Farmers Kruchak, Bredin, Neufeld, Sharp, and Allison all had equipment that was subject to chattel mortgages or liens.¹⁴¹ These debts were made payable in equal, consecutive, annual instalments, with interest to be paid annually with each principal's instalment.¹⁴² Schuddemat had one equipment debt that was split into two annual, consecutive payments of roughly equivalent amounts.¹⁴³ The Kruchak and Bredin proposals included equal annual instalments on

¹³⁷ Bohémier, *supra* note 74. By my calculation, the balance owing would have been \$1,819.02, plus 5% interest.

¹³⁸ *Ibid.*

¹³⁹ Mike Stec, St. Boniface County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

¹⁴⁰ *Ibid.*

¹⁴¹ In the case of Bredin, *supra* note 19. This applied to five of his six equipment liens.

¹⁴² Kruchak, *supra* note 43; Bredin, *supra* note 19; Neufeld, *supra* note 35; Sharp, *supra* note 122; Allison, *supra* note 70.

¹⁴³ Schuddemat, *supra* note 112.

unsecured debts.¹⁴⁴ For Kruchak, this included two small debts and one larger debt of \$275.00.¹⁴⁵

Laurencelle and Bohémier were put on an equal annual instalment plan for taxes over 10 and six years, respectively.¹⁴⁶ The Laurencelle tax payment plan, as noted in section III.(b)(i), included a protective clause on these payments to stay any bankruptcy proceedings. This clause provided that a one-third share of the annual crop value would be accepted in lieu of full payment, subject to certain conditions.¹⁴⁷

(iv) Annual instalments on secured debt for multiple years, balance due in final year

Most of the proposals in this study described a payment plan for secured debt by way of variable annual instalments over 10 years. Usually, the plan would set an initial principal payment for the first three years, when the interest payments would be highest. The subsequent three years contemplated an increased principal payment, followed by three more years at a still higher principal payment. The remainder of the funds owing would come due in the tenth year. This could mean that the payment owed in the final year of the payment schedule was quite large, as illustrated in Table 6. The payment schedule extended the timeline for repaying the debt, giving the farmer time to earn more money from farming. However, one is left to wonder how the farmer was to come up with the funds to make the very large final payment.

¹⁴⁴ Kruchak, *supra* note 43; Bredin, *supra* note 19.

¹⁴⁵ Kruchak, *supra* note 43.

¹⁴⁶ Laurencelle, *supra* note 63; Bohémier, *supra* note 74.

¹⁴⁷ Laurencelle, *supra* note 63.

Table 6: Sharp – Payment Plan for Debt to Manitoba Farm Loans Association

	Principal Payment	Interest Payment (5%)	Balance Owing
Debt Owed as of November 1, 1938			\$2,372.46
November 1, 1939	\$50.00	\$118.62	\$2,322.46
November 1, 1940	\$75.00	\$116.12	\$2,247.46
November 1, 1941	\$100.00	\$112.37	\$2,147.46
November 1, 1942	\$125.00	\$107.37	\$2,022.46
November 1, 1943	\$150.00	\$101.12	\$1,872.46
November 1, 1944	\$150.00	\$93.62	\$1,722.46
November 1, 1945	\$175.00	\$86.12	\$1,547.46
November 1, 1946	\$200.00	\$77.37	\$1,347.46
November 1, 1947	\$200.00	\$67.37	\$1,147.46
November 1, 1948	\$1,147.46	\$57.37	\$0.00

(v) No payment on mortgage until other creditors paid in full

The Bredin file contained a mortgage held by the farmer's father, as noted above, which was the subject of many interventions by the BoR, including a reduction in principal, a reduction on the interest rate, and also a clause stating that no payments were to be made on this mortgage until all other creditors had been paid in full, other than Great-West Life Assurance.¹⁴⁸ The reasons for this are not explicit in the file. However, it seems that this mortgage was a debt adopted by the farmer on behalf of his 80-year-old father, who was not able to farm the land himself. The proposal states that the mortgage had been initially given to the father in 1928 for \$4,646.00 at 7% interest per annum, after which, no payments had been made toward principal or interest.¹⁴⁹ This debt is unique among those described in this study in that it appears to describe a trust between the farmer and his father, where the farmer was not the legal, but the equitable title holder to the land.

¹⁴⁸ Bredin, *supra* note 19.

¹⁴⁹ *Ibid.*

The BoR explicitly limited the benefit conferred by the proposal on this debt in item 3: “Any claim which by law exists, or shall hereafter come into existence against the assets of C.E.A. Bredin [father] in favor [*sic*] of the Province of Manitoba, shall be unaffected by this proposal.”¹⁵⁰ The mortgage in the father’s name is a debt assumed by his son, but the son was not the debtor, *per se*. Therefore, section 2(3) of the *FCAA*, which protected Bredin from bankruptcy proceedings (as he was the farmer who had applied for relief under the Act), did not extend to his father, notwithstanding the fact that Bredin had assumed responsibility for paying his father’s mortgage. Since the debt was legally the father’s, and not the son’s, the BoR proposal established a payment plan that deprioritized payment of this assumed debt relative to the debts incurred by Bredin himself.

It is unusual for a mortgage debt to be one of the lowest priority debts in a business restructuring. Secured claims, such as mortgages, typically enjoy priority over many other types of claims. The bespoke arrangements made in the Bredin file with respect to the father’s mortgage debt reflects the fact that *FCAA* proposals were customized to individual circumstances.

(vi) Default protection clause

Of the 12 Manitoba proposals examined in this study, nine contain included a clause that prevented the farmer from being found in default due to a variety of circumstances beyond his control.¹⁵¹ These “default protection clauses” or “grace” clauses protected the farmer from involuntary bankruptcy proceedings. Default on an *FCAA* proposal constituted an act of bankruptcy, as noted above, which would allow a farmer’s creditors to petition him into bankruptcy – notwithstanding section 7 of the *Bankruptcy Act*, which would normally exempt farmers from involuntary proceedings.¹⁵² By saving a farmer from being found in default under an *FCAA* proposal, the default protection clauses effectively provided the farmer with additional “chances” to avail himself of the relief offered by the Act. The BoRs creatively employed default protection clauses to extend the protection offered by the *FCAA* to insolvent farmers.

The default protection clauses found in most of the files used modified boilerplate language. It appears that although the BoR used such a term fairly routinely, they did not do so slavishly. Instead, they adjusted the boilerplate language in light of individual circumstances, in keeping with the general approach of tailoring the debt compromise to each farmer’s specific situation. First, the BoR tended to provide guidelines for the execution of the repayment formulas that applied to the secured creditors. In general, the default protection clauses provided that in the case where the farmer could not afford all of his scheduled debt service payments for the

¹⁵⁰ *Ibid.*

¹⁵¹ This arose in the context of the tax debt in the Laurencelle file, discussed in section III.(b)(i).

¹⁵² *FCAA*, *supra* note 1, s 2(3). See further Torrie, “Farm Debt Compromises”, *supra* note 2 at n 87.

year, he should deliver one-third of his grain crop to the nearest grain elevator for payment to the land vendor or mortgagee. In some instances, the default protection clause allowed for the delivery of the cash equivalent of the one-third crop share.¹⁵³ If the farmer delivered one-third of his crop or its cash equivalent, then, pursuant to the terms of the default protection clause, in most cases, he could not be found in default on *any* of his debts subject to the proposal for that year, including debts owed to creditors who held security against the farmland. In other words, the default protection clause extended a one-year grace period to the farmer in respect of all of his debts subject to the proposal. In some files, however, default protection only extended to the debts secured against the farmer's land.¹⁵⁴ This clause underscores the importance of farmers' avoiding default – particularly with respect to debts secured against land – and likely bankruptcy, so as to allow them to continue farming. The following subsections unpack the three different aspects of the default protection clauses.

a. Payment of one-third crop share

Farmers were required to farm according to best practices as a precondition of relying on the default protection clause.¹⁵⁵ In other words, the farmer had to make concerted efforts to grow the best crop possible. However, as the Dust Bowl years amply demonstrated, even the most diligent farming practices did not guarantee a good harvest.¹⁵⁶ These realities, and the fact that they were largely beyond the farmer's control, necessitated grace periods at a minimum, and possibly additional chances to restructure debts under the *FCAA*.¹⁵⁷ These practical considerations seem to have inspired the default protection clauses.

The default protection clauses provided that, subject to certain conditions, a farmer needs only to deliver a one-third portion of his crop in order to avoid default. Limiting payment to a one-third share of the crop was in recognition of the fact that the farmer needed to retain a share to sow next year's crop and for personal subsistence until another harvest brought in more cash. Capping payment to creditors at a one-third share advanced the *FCAA*'s twin goals to help farmers pay their debts while keeping them on the land to continue farming in the future.

¹⁵³ This appears in compromises from 1937 and later in this study.

¹⁵⁴ Konowalchuk, *supra* note 135; Tychonkyj, *supra* note 111.

¹⁵⁵ The phrase used in the compromise documents is "in a good and husbandlike manner", referring to the way in which farmers were expected to farm their lands. See e.g. Kruchak, *supra* note 43.

¹⁵⁶ See e.g. Marchildon, *supra* note 12; David C Jones, *Empire of Dust: Settling and Abandoning the Prairie Dry Belt* (Calgary: University of Calgary Press, 1987); Canada, Report on Rural Relief due to Drought Conditions and Crop Failures in Western Canada, 1930-1937 by EW Stapleford, (Ottawa: Minister of Agriculture, 1939).

¹⁵⁷ Shumiatcher, *supra* note 2 at 918–919; Ben-Ishai & Torrie, *supra* note 1 at 46–47.

b. Adjusting Creditor Priorities

If the farmer's crop did not yield an average of 10 bushels per acre of No. 2 Northern Wheat, then creditor priorities shifted such that tax payments were prioritized over other debt obligations.¹⁵⁸ Proceeds from the one-third crop share were applied toward the farmer's yearly payments under the proposal as follows: property taxes, interest owed to the vendor or mortgagee, and principal owing to the vendor or mortgagee. As the amount of the proceeds might well be less than what was owed for these three debt obligations, the priority of payments was significant.

Prioritizing the payment of property taxes lessened the chance that the land would become subject to tax sale, thereby enhancing the prospect that the farmer would remain on the land. Any deficiencies in interest payments for the year were made payable by the farmer in equal instalments over the following three¹⁵⁹ or four years.¹⁶⁰ Any deficiencies in principal payments became due on the same day as the last scheduled payment of principal as set out in the proposal's payment schedule. In other words, deficiencies in principal payments were deferred until the very end of the payment schedule. Third, a one-year grace period would be given to the farmer in most instances.¹⁶¹ Payments owed to *all* other creditors would be postponed for one year, and payment schedules were moved forward accordingly.

A couple of proposals elaborate on the scheme of tax payment by the vendor or mortgagee in cases where the farmer's crop averaged *less than* the cash value of 10 bushels per acre of No. 2 Northern Wheat.¹⁶² As *FCAA* proposals were informed by individual farmers' circumstances, it could be that the land in these cases was marginal, and there were likely to be years with crop yields of less than 10 bushels per acre.¹⁶³ These proposals describe two further protections for the farmer. First, the proposals offer an alternate method for tax payment, whereby the farmer paid taxes directly to the municipality and was credited for that payment by the vendor or mortgagee. If the farmer elected this option, then the vendor or mortgagee would deduct the amount equivalent to the tax payment from the one-third crop share. Second, if the farmer defaulted on his November 1 payment, then delivery or payment within a reasonable time thereafter, plus payment of any legal costs incurred by the vendor or mortgagee,

¹⁵⁸ This is considered a high grade and an industry benchmark.

¹⁵⁹ Bredin *supra* note 19; Kruchak, *supra* note 43; Neufeld, *supra* note 35; Steingart, *supra* note 35; Stec, *supra* note 139.

¹⁶⁰ Laurencelle, *supra* note 63; Bohémier, *supra* note 74; Tychonkyj, *supra* note 111; Sharp, *supra* note 122; Konowalchuk, *supra* note 135.

¹⁶¹ Konowalchuk, *supra* note 135; Tychonkyj, *supra* note 111.

¹⁶² Laurencelle, *supra* note 63; Allison, *supra* note 70; Bohémier, *supra* note 74; Tychonkyj, *supra* note 111; Sharp, *supra* note 122; Konowalchuk, *supra* note 135.

¹⁶³ The quality of the land was usually noted in Form A "Statement of Affairs": "Rules and Regulations", *supra* note 39, Rule and Regulation 6(b) at 196–197, 206. However, not every file included all of these forms. See Torrie, "Farm Debt Compromises", *supra* note 2 at 385–388.

would save the farmer from default and restore to him his rights under the proposal. The proposals do not specify what is a “reasonable” amount of time. As the timing of the harvest season can vary somewhat depending on the crop and weather factors, the flexibility of this term served to align payment schedules to harvest cycles. This, in turn, helped the farmer avoid defaulting on the proposal. The requirement that the farmer pays any legal costs incurred by the creditor balanced the interests of creditors with those of the farmer and served as an incentive for the farmer to pay as soon as he could.

c. Enhanced Protection for Creditors

One proposal Allison’s offered was enhanced protection for *creditors* through a series of additional terms with which the farmer had to comply before he could avail himself of the default protection clause.¹⁶⁴ Recall that Allison’s debts were much larger than most other Manitoba farmers. Therefore, the BoR crafted a modified default protection clause in this farmer’s case with a view toward balancing the interest of the farmer and his creditors.¹⁶⁵

Pursuant to the terms of this default protection clause, in the event that Allison missed the November 1 payment, he first had to notify the mortgagees in writing within a reasonable time after harvest.¹⁶⁶ The flexibility of this timeline and the fact that it takes place *after* the harvest allowed the farmer to defer the job of letter-writing until the time-sensitive task of harvesting was complete. Second, Allison had to provide a detailed statement of the acreage sown and harvested to demonstrate that year’s yield.¹⁶⁷ In turn, the mortgagees were entitled to ask the farmer to make a statutory declaration to verify the claims of his accounting. If the mortgagee requested this declaration, the farmer was obliged to provide it within 15 days.¹⁶⁸ If the farmer failed to comply with this request, he could not rely on the default protection clause. This would mean that the farmer would be in default of the *FCAA* proposal, and his creditors would be free to enforce their claims.

This provision to protect the farmer’s mortgagees is unique in the context of the proposals examined. The BoR did not typically add creditor protections to proposals. The BoR’s motivation for including such a measure, in this case, was not articulated. It is possible that this type of provision was used in other cases or became more common in similar files over time. Alternatively, this may have been a singular provision included in light of the specific problems Allison had with debt repayment. Such a term must have been necessary, in the Board’s view, to fairly balance creditor

¹⁶⁴ Allison, *supra* note 70.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

interests in light of the fact that this farmer's debt history was quite complicated and his ability to repay seemingly less likely than others.

(g) Creditor interests under the *FCAA*

Beyond the unique terms of the default protection clause contained in *FCAA* proposals, BoRs balanced the interests of creditors with debtors in a variety of more traditional ways. The *FCAA* was extraordinary legislation in that it prioritized keeping the farmer on the farm, made affordability a key criterion of debt compromises, and established an administrative apparatus in the BoRs with broad powers to adjust debts.¹⁶⁹ It served as an important counter-weight to the more creditor-friendly tenor of many debtor-creditors laws and was justified in Parliament and the press by the severe hardships faced by Canadian farmers in the 1930s.¹⁷⁰ Nevertheless, the Act was meant to balance the interest of creditors with those of the farmer.¹⁷¹

The design of the *FCAA*'s administrative structure and interface with the *Bankruptcy Act* demonstrated regard for creditors' interests. The BoR itself consisted of a judge as well as a creditor's representative and a farmer's representative – giving equal weight to both creditors and farmers as constituencies.¹⁷² A number of institutional creditors supported the idea of legislation like the *FCAA*, in light of the exceptional challenges faced by the agricultural sector.¹⁷³ Devising payment plans for farmers that allowed them to stay on the land and continue farming could actually improve creditors' prospects for debt collection, given the mass-default scenario that was occurring in the farming sector.

According to the text of the legislation, a farmer received only one opportunity to adjust their debts under the *FCAA*, with default on the compromise being considered an act of bankruptcy.¹⁷⁴ As noted above, the ramification of this was that the farmer could be forced into bankruptcy by their creditors – something that was not possible otherwise.¹⁷⁵ Thus, while the *FCAA* extended a lifeline to overindebted

¹⁶⁹ Torrie, "Federalism and Farm Debt", *supra* note 2 at 234–235, 237; Torrie, "Farm Debt Compromises", *supra* note 2 at 392–394.

¹⁷⁰ Torrie, "Federalism and Farm Debt", *supra* note 2 at 208–210; Ben-Ishai & Torrie, *supra* note 1 at 38–39; Marchildon, *supra* note 12 at 283.

¹⁷¹ *FCAA*, *supra* note 1, s 12(9).

¹⁷² *Ibid*, s 12(3); Torrie, "Farm Debt Compromises", *supra* note 2 at 392.

¹⁷³ Torrie, "Federalism and Farm Debt", *supra* note 2 at 223–225.

¹⁷⁴ *FCAA*, *supra* note 1, s 2(3); Torrie, "Federalism and Farm Debt", *supra* note 2 at 229.

¹⁷⁵ *FCAA*, *supra* note 1, s 2(2), stating the *FCAA* was to be "read and construed as one with the *Bankruptcy Act*", which was, in essence, a creditor remedy. The first draft of the bill that became the *Bankruptcy Act of 1919* was prepared by a creditor trade group, see Thomas GW Telfer, "The Canadian Bankruptcy Act of 1919: Public Legislation or Private Interest?" (1994-1995) 24:3 Can Bus LJ 357 at 358; Thomas GW Telfer,

farmers, the trade-off was that creditors enjoyed enhanced legal rights to collect on the farmer's debt in the event he defaulted on the proposal.

Lastly, the BoR did not formulate proposals in every case. There were instances where it declined to formulate a proposal because it could not do so in fairness to both the farmer and his creditors.¹⁷⁶ Even when the Board did formulate a proposal, it did not always offer reductions on debts or interest rates, or employ many of the devices discussed in this article which could make the farmer's debt servicing costs more affordable or manageable. Each compromise was utterly unique and crafted to suit the particular circumstances.

This rest of this section canvasses a few features of *FCAA* proposals which reflected a balancing of creditor interests.

(i) Return of equipment

Farm equipment was sometimes surrendered to a secured creditor to satisfy all or part of a farmer's debt.¹⁷⁷ In the Neufeld file, the Board ordered the repossession of a seeder plow to satisfy an outstanding judgment.¹⁷⁸ In the Allison file, the Board ordered the return of a tractor.¹⁷⁹ These sorts of arrangements were quite common under the *FCAA* and illustrate that the BoR did not override creditors' property interests in every case.

(ii) Must break and cultivate land

In the Laurencelle file, the BoR ordered the farmer to break and cultivate land as a term of the proposal.¹⁸⁰ The rationale for this requirement was probably to increase the farmer's production level, and hence revenues.¹⁸¹ The fact that the proposal put

Ruin and Redemption: The Struggle for a Canadian Bankruptcy Law, 1867-1919 (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2014) at 146.

¹⁷⁶ *FCAA*, *supra* note 1, s 12(3); Torrie, "Farm Debt Compromises", *supra* note 2 at 392. See e.g. (J Wright) Brandon County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1929-1954), (Schedule: A0130, Accession No: GR3091), cited in Torrie, "Farm Debt Compromises", *supra* note 2 at 399.

¹⁷⁷ See section III.(c)(i).

¹⁷⁸ It seems that the *FCAA* proposal superseded the Manitoba *Executions Act*, which would have appeared to protect this equipment from seizure. See *Executions Act*, *supra* note 89, s 37.

¹⁷⁹ Allison, *supra* note 70.

¹⁸⁰ Laurencelle, *supra* note 63.

¹⁸¹ A lack of financing can inhibit small, owner-operated farms from purchasing the machinery necessary to break and cultivate land. This is presently a challenge for African farmers, for instance, and the Pretorial Protocol is an effort to address the issue. See Roy Goode, Official Commentary on the Cape Town Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Mining, Agricultural and Construction Equipment (UNIDROIT, April 2021); Roy Goode, "Subsistence

express requirements on the farmer in this regard – breach of which would lead to a default on the proposal – suggest that the term was intended to benefit creditors. The farmer had purchased the 160-acre parcel of land in 1920 for \$1,200.00, and by the time of the proposal in 1936, he still owed \$1,220.42.¹⁸² Laurencelle owned a second 160-acre parcel of uncultivated land, purchased for only \$100.00 in 1935, which was not subject to the *FCAA* proposal. The BoR ordered that the farmer break and cultivate five acres of land per year that the *FCAA* proposal was in force, starting in 1937. In essence, each year of the repayment schedule formulated under the Act carried a positive obligation on the part of the farmer to break five acres of unbroken land. The BoR, however, did not specify which parcel of land the farmer was to break, and it is not clear how many acres in the first parcel of land were already under cultivation.

The ability of a farmer to omit some of his assets from *FCAA* proceedings was sanctioned by the Act, but was a departure from practices under the *Bankruptcy Act*.¹⁸³ An empirical analysis of surviving *FCAA* files suggests that the practice of omitting some assets was fairly common. If the effect of the Laurencelle proposal was to require the farmer to break the second parcel of land, *i.e.* because most or all of the first parcel was already under broken, it would be an interesting means of drawing the omitted parcel of land under the auspices of the *FCAA* proposal. In any case, this file illustrates the BoR taking a more directive role in terms of specifying how the farmer was to farm in a “good and husband like manner.”

(iii) Creditor to receive all proceeds from livestock sale, up to arrears owing

The Sharp proposal provides an interesting example of how an OR compromise dealt with security in livestock under a chattel mortgage.¹⁸⁴ The proposal reduced the amount of the security and established a payment plan consisting of six instalments.¹⁸⁵ This payment plan appeared to balance the interest of the creditor by providing that it was to receive full proceeds from all livestock sales, up to the amount of any arrears.¹⁸⁶ The farmer was also obligated to maintain the number and value of the livestock, which were subject to the creditor’s security interest.

Farming in Africa and the Pretoria Protocol to the Cape Town Convention” (2020/21) 37 BFLR [forthcoming].

¹⁸² Laurencelle, *supra* note 63.

¹⁸³ Under the *Bankruptcy Act*, *supra* note 6, ss 6, 9(6), the debtor would have to turn over all of their property to the bankruptcy trustee. *FCAA*, *supra* note 1, s 6(2) places the OR in the trustee’s role.

¹⁸⁴ Sharp, *supra* note 122. This proposal was reached voluntarily by the debtor and creditors under the supervision of an OR.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

(iv) Interest on principal increases after a portion of the principal is paid

The Allison file included a unique feature regarding interest rates on two of his three mortgages, which balanced debtor and creditor interests. The debtor was provided with a reduced interest rate of 5% until the amounts owing decreased to \$4,500.00 and \$1,400.00.¹⁸⁷ At this point, the interest rate increased to 6%. The debtor benefited from the lower interest rates in the early stages of the proposal, when the debts were largest, while the creditor benefited from the higher interest rate in the latter part of the proposal. As discussed above, the Allison file is a particularly good example of the tremendous leeway accorded to BoRs to fashion bespoke compromises that addressed the interests of debtors and creditors.

IV. Conclusion

This article has shown how proposals formulated under the *FCAA* often went further in pursuit of the Act's policy objective than the text of the statute suggested was possible. Debt adjustment under the *FCAA* employed creative new terms such as default protection clauses which enhanced the protection farmers enjoyed under the Act. Boards ignored apparent limitations in the statute, such as the specific provision for adjusting interest rates, and proceeded to adjust interest rates according to what they thought was warranted in each farmer's case.¹⁸⁸ A number of creative new mechanisms for dealing with overindebtedness and creditor priorities were devised, including the changing of a secured debt into an unsecured one, and implementing bonus schemes to incentivize repayment. Each debt compromise was utterly unique, demonstrating that the Board took account of individual circumstances, such as family relations and how these could impact debt obligations and competing creditor priorities. The proposals indicate a clear focus on maintaining farm land and equipment and dealing with rights of creditors holding tax claims and secured claims in ways that mitigated the ability of these creditors to enforce their claims against the farmer's property. In addition, Boards of Review were mindful of the need for debt service to be affordable and the necessity of ensuring that the farmer would have the funds to continue farming until the next harvest, whether the current harvest produced enough revenue to cover their debts or not. Aligning payment schedules to harvest cycles through annual payments, as opposed to monthly ones, further illustrates how debt proposals under the *FCAA* were informed by farming operations.

It is evident that Boards of Review did not simply apply routine terms in a blanket fashion, even though certain terms came up fairly frequently. Furthermore, it did not necessarily accept the suggestions of creditors in formulating a proposal, but considered each application and fashioned a bespoke compromise that balanced competing interests. While keeping the farmer on the farm was the overarching policy objective of the Act, creditor interests and concerns were not entirely disregarded.

¹⁸⁷ Allison, *supra* note 70. The total proposed amounts owing were \$5,340.77 and \$1,800.00, respectively.

¹⁸⁸ *FCAA*, *supra* note 1, s 17(1).

Specifically, this empirical analysis gives us a sense of *how* ORs and BoRs gave effect to the statutory requirement that farmer and creditor interest be considered, creating a compromise that was fair to both constituencies.¹⁸⁹ In this regard, the Board's innovativeness is in evidence. It did things such as put additional requirements on farmers seeking to rely on a default protection clause and create a positive obligation on farmers to break and cultivate more land each year in order to avoid default on the *FCAA* compromise.

This empirical analysis brings to light the tremendous degree of adaptation and inventiveness of debt adjustment conducted under the *FCAA*. It shows that "law in practice" notably differed from "law on the books," guided by the Act's bold policy mandate of "keep[ing] the farmer on the farm."¹⁹⁰ This, in turn, underscores the value of a socio-legal analysis for evaluating small business restructuring regimes, such as the *FCAA*, whether they be of historical interest or current relevance. Many of the issues faced by Boards in restructuring owner-operator farms in the 1930s have contemporary parallels in the discourses and practice of providing effective and efficient business restructuring for SMEs.¹⁹¹ Thus, a variety of mechanisms of debt adjustment used under the *FCAA* brought to light by this paper may prove valuable for current discourses as well.

¹⁸⁹ *Ibid*, s 12(9).

¹⁹⁰ Torrie, *Reinventing*, *supra* note 8 at 13–16; Halliday & Caruthers "The Recursivity", *supra* note 8; Bennett, *supra* note 3; *FCAA*, *supra* note 1, Preamble.

¹⁹¹ Sarra, "Micro, Small and Medium" *supra* note 47; Gurrea-Martínez, "Implementing" *supra* note 47; The World Bank, "Saving Entrepreneurs" *supra* note 47; Mokal *et al*, *supra* note 47. See further the recently adopted prepackaged insolvency scheme for SMES: *Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021* (India), online: <ibbi.gov.in/uploads/legalframework/04af067c22275dd1538ab2b1383b0050.pdf>