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of Manitoba**

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REAL ESTATE

Chapter 6

Farm Land Transactions

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A. INTRODUCTION

Real estate transactions involving farm businesses are similar, in most respects, to those connected with the purchase and sale of any other business. Real estate transactions involving bare farm land are similar to transactions involving other bare lands. However, when dealing with farm land, some special considerations apply.

B. FARM LAND OWNERSHIP RESTRICTIONS

There were no legislated restrictions on the ownership of farm land in Manitoba before 1977. But then escalating land values, coincident with a surge of foreign investment in agricultural land, resulted in efforts at legislative control on several occasions between 1977 and 1984.

In 1984 the first *Farm Lands Ownership Act* was passed. The purpose of *The Farm Lands Ownership Act* was to establish a board to regulate and enforce limits on foreign ownership of farm land in Manitoba. Control of farm land ownership continues to be exercised today through *The Farm Lands Ownership Act*, C.C.S.M. c. F35 ("the Act") as amended from time to time. The last extensive changes to the Act came into effect on June 1, 1997. The provisions of the Act give the Board wide-ranging powers (s. 8), including the power to grant exemptions (s. 3(3)). It was suggested in *Guinn v. Manitoba*, 2009 MBCA 82 (CanLII) that the Act is designed to balance competing policy objectives or the interests of various constituencies (i.e., Manitoba farmers and foreign interests).

All transactions involving farm lands in Manitoba are governed by the provisions of this Act. Lawyers who want to offer their services for these transactions must be familiar with the Act.

1. What is Farm Land?

The definition of farm land in [section 1](#) of the Act makes it clear that land does not necessarily have to be currently used for farming to be land that is governed by the Act.

"farm land" means real property that is situated outside a city, town, village (including an unincorporated village) or hamlet and that is used or is reasonably capable of being used for farming, but excludes

- (a) minerals, excepting sand and gravel, contained in real property,*
- (b) real property used for the purpose of extracting, processing, storing, or transporting of minerals, excepting sand and gravel, and*
- (c) real property used by a corporation supplying telecommunication, railway pipeline or other services prescribed by the board or by regulation where and for so long as the real property is used for the purpose of supplying those services or purposes ancillary thereto.*

The Winnipeg Land Titles Office has been interpreting the term to apply to virtually any land outside a city, town, village or hamlet because the argument is that virtually any land "is reasonably capable of being used for farming."

In *Guinn v. Manitoba*, 2009 MBCA 82 (CanLII) Guinn, a foreign buyer, did not use the land for farming nor was it very suitable for farming. Guinn argued before the Board that the land was wasteland which was grazed, but was not reasonably capable of being used for farming on any commercially viable basis. Other than for [section 15](#) of the Act, the onus for establishing that an interest in farm land is not held contrary to the Act is on the person making that argument under [section 10](#) of the Act.

The Board held that economic viability was not a factor in the determination of whether the land was reasonably capable of being used for farming. At the hearing, the Board had before it a Land Use Assessment Report from the Manitoba Department of Agriculture, Food and Rural Initiatives that acknowledged the restrictions of the land and that a large percentage of the cleared area was regenerating to brush. In Guinn, the Board concluded that the property was farm land based on that report even though Guinn did not use the land for farming.

The Board held that Guinn was in contravention of the *Act* since he was a non-resident who owned farm land as that term was defined in the *Act* and the Court of Appeal concluded that the decision of the Board was owed deference and was not unreasonable

2. Definition of Farming and Farmer

The definitions under the *Act* are broad enough to capture many individuals.

“farming” includes tillage of the soil, livestock production, raising poultry, dairying, fur farming, tree farming, horticulture, bee keeping, fish farming or any other activity undertaken to produce agricultural products; but does not include the purchase and resale of agricultural products, or the commercial processing of agricultural products;

“farmer” means an eligible individual

- (a) who receives a significant portion of his income either directly or indirectly from his occupation of farming, and*
- (b) who spends a significant portion of his time actively engaged in farming; (emphasis added).*

“Farmer” is further defined by Regulation 204/87 (R) as follows:

For the purpose of the definition of “farmer” in The Farm Lands Ownership Act “actively engaged” means participation by an individual in

- (a) the supervision and management of the farming operation, and*
- (b) the application of physical labour to the farming operation, unless the individual is precluded from doing so due to age or physical disability.*

The regulation provides that a “significant portion of his income” means 50% or more of gross income. The addition of the word “gross” adds to the number of persons who would qualify as farmers.

3. Who can Acquire Farm Land?

[Section 2](#) of the Act sets forth who can acquire farm land.

Right to ownership

2. *Any of the following may, directly or indirectly, take, acquire, receive or hold an interest in farm land:*

- (a) an eligible individual;*
- (b) a family farm corporation;*
- (c) a municipality;*
- (d) a local government district;*
- (e) an agency of government;*
- (f) subject to any limitations provided for in the regulations, a qualified Canadian organization; or*
- (g) subject to subsection 3(16), a qualified immigrant.*

“eligible individual” means a natural person who is

- (a) a citizen of Canada, or*
- (b) a permanent resident of Canada within the meaning of the Immigration and Refugee Protection Act (Canada).*

“family farm corporation” means a corporation

- (a) that is primarily engaged in the business of farming,*
- (b) that is under the control in fact of farmers or eligible individuals related to farmers, or a combination of both, and*
- (c) of which a majority of the issued and outstanding shares of each class of share are legally and beneficially owned by farmers or eligible individuals related to farmers.*

a) Qualified Canadian Organization

Only Canadian corporations that meet this definition can acquire farmland:

“qualified Canadian organization” means

- (a) a corporation, partnership, syndicate, joint venture, cooperative or association all the shares or interests of which are legally and beneficially owned by, or*
- (b) the trustee or trustees of a trust all the beneficiaries of which are, eligible individuals, but does not include corporations which have any shares listed on a stock exchange.*

It should be noted that some corporations that don't qualify as family farm corporations can qualify as a qualified Canadian organization, but only if all the shares or interests are legally and beneficially owned by eligible individuals.

***"qualified immigrant"** means a natural person, wherever resident, who establishes to the satisfaction of the board that he or she is entitled to and intends to become an eligible individual within two years after acquiring an interest in farm land.*

b) Non-Canadians

The effect of these provisions is that non-Canadians and public corporations can acquire up to 40 acres of farm land, but no more, before having to apply for an exemption from these provisions to the Manitoba Farm Industry Board which was established on March 1, 2014, under [The Family Farm Protection Act](#), C.C.S.M. c. F15 (see next section below).

Non-Canadians who inherit farm land in Manitoba must apply for an exemption under the legislation (before June 1, 1997, the *Act* automatically allowed for the transfer of land through inheritance from a resident of Manitoba or a retired farmer).

Non-Canadians intending to move to Canada within two years may obtain "qualified immigrant" status and may take title to land without applying to the board. Of course, such a person must have the legal right to immigrate to Canada. If they do not become permanent residents of Canada within two years they must divest themselves of the land or apply to the board for an extension or exemption.

c) Citizens or Permanent Residents of Canada

Citizens or permanent residents of Canada are entitled to unrestricted ownership of farm land in Manitoba. Also, if any interest in a corporation or other organization is wholly owned by citizens or permanent residents there are no restrictions on ownership of farm land by the qualified Canadian organization, except as set by regulation. A corporation partly owned by Canadians and non-Canadians does not qualify unless it is a family farm corporation or a qualified Canadian organization as defined above.

d) Acquiring Farm Land Contrary to the Act

A time limit of one year is established for a person who acquires farm land contrary to the *Act*, to either reduce his or her holdings to 40 acres or obtain an exemption.

As a result, purchasers of farm land who do not qualify for ownership under these provisions are required to apply to the board for permission. They must persuade the board that the acquisition is in the public interest.

C. MANITOBA FARM INDUSTRY BOARD

The Manitoba Farm Industry Board was established under [subsection 3\(1\)](#) of *The Family Farm Protection Act* to enforce [The Farm Lands Ownership Act](#).

Under [section 9](#) of *The Farm Lands Ownership Act* “the board may, by order, determine that an interest in farm land has been or is taken, acquired, received or held in contravention of” the *Act* and any order of the board under section 9(1) is conclusive other than for [section 15](#), the summary conviction section. The board has wide investigative powers under [section 11](#). It receives and considers applications for specific transactions and is empowered to hold hearings and make orders concerning requests for permission for acquisition or to require divestiture of farm land or to be exempt from the application of the *Act*.

1. Exemptions

The board may create exempt classes of ownership and may grant an exception for an individual case. [Section 3\(3\)](#) of the *Act* provides as follows:

Exemptions granted by the board

3(3) The board may, on application or on its own initiative, subject to any regulations and to such terms and conditions as it may impose, by order, and pursuant to and in accordance with the exemption guidelines established by regulation, exempt a person, class of persons, farm land, class of farm land, interest in farm land or class of interest in farm land, from all or any part of this Act.

Exemptions will vary from time to time to represent the current policy of the board and presumably the policy of the government of Manitoba. Practitioners should consider advancing applications to the board in appropriate cases even though there may be a prima facie prohibition.

2. Penalties

Penalties for contravention of the *Act* can be very severe (fines up to \$50,000) under [section 15](#) and are just as severe for aiding or abetting a contravention or advising another person to commit an offence. Lawyers practicing in this area must be careful in advising clients about the operation of the *Act* and it is a prudent practice to always document the advice given.

3. Other Jurisdictions

Restrictions on rural land ownership also apply in most provinces of Canada and many states of the United States of America. The restrictions and requirements vary considerably in different jurisdictions. The extent of the restrictions and matters of application or interpretation tend to change from time to time, reflecting current economic circumstances and political thought. If the client is considering the acquisition of land in another jurisdiction, local counsel in the applicable jurisdiction should be consulted concerning the restrictions that apply generally in that jurisdiction.

D. REAL PROPERTY TAXES

1. Obtaining a Tax Certificate

Tax certificates for rural land are obtained from the municipality or local government district in which the land is located. The appropriate municipality can be determined by using the legal description to refer to a map of municipalities that is available at the Surveys and Mapping Branch, 1007 Century Street, Winnipeg, MB, R3H 0W4.

When the lawyer requests the tax certificate, the municipalities require that the fee for the certificate accompany the request. The cost will vary from one municipality to another and you can request the confirmation of cost by calling the municipality before you forward the tax certificate requisition to the municipal office.

Although taxes are payable before year-end, in all cases taxes in rural municipalities and local government districts are calculated for the calendar year. This must be kept in mind when adjusting taxes between buyers and sellers.

2. Assessing the Value of Farmed Property

The Municipal Assessment Act, C.C.S.M. c. M226 has some special provisions relating to farm property. The document Assessment Facts on Farm Use Assessments answers some commonly asked questions about assessment:

The value of farmland adjacent to urban centres, popular recreation areas and some other land uses can be affected by development potential. Not only does the land have value as farmland but also buyers may be willing to pay a premium on the property because it could be converted to urban, recreational or some other use. The assessor determines what this higher value may be. Consequently, higher taxes may have to be paid on the property. Taxes that reflect development pressure can contribute to premature loss of farmland to development.

To protect farm production, The Municipal Assessment Act provides farmland owners with the ability to request Assessment Services to determine the farm use assessed value. When such a request is made, the assessor determines whether there actually is a difference between the market value of the property and the value for farming alone. If there is a difference, the lower value will be applied to the property.

In particular, where farm property has speculative value on account of being close to an urban center, that property can have an inflated value. Therefore [section 17\(2\)](#) provides as follows,

Farm Property: farming purposes

17(2) A registered owner of Farm Property may request an assessor to determine the Farm Property assessed value of the property on the basis of its use for farming purposes and where so requested, the assessor shall thereafter, and for so long as the property is used for purposes that are prescribed as farming purposes, determine the Farm Property assessed value of the property solely on the basis of use for farming purposes as prescribed under subsection (8).

“Value” ordinarily means the fair market value which is what the property might reasonably sell for in the open market on the applicable date from a willing seller to a willing buyer. Since this could be overly onerous to farmers, they are entitled to apply for a special assessment according to [section 17\(2\)](#) of *The Municipal Assessment Act* and that Farm Property assessed value is the value used as long as the property continues to be used for farming purposes.

3. Changing Use from a Prescribed Farming Purpose

There is a serious trap for unwary lawyers hidden in [section 17](#) of *The Municipal Assessment Act*. Unfortunately, many urban lawyers are not aware of the impact of this important provision. Purchasers and their lawyers must remember that

17(5) Where the registered owner or occupier of Farm Property to which a Farm Property assessed value under subsection (2) applies changes the use of the property from a prescribed farming purpose to a purpose that is not a prescribed farming purpose, the registered owner shall,

- (a) in respect of each year for which taxes are levied against the property on the basis of a Farm Property assessed value under subsection (2); or*
- (b) in respect of the five years that immediately precede the year in which the change of use occurs;*

whichever is the lesser period, pay to the municipality an amount of taxes that represents the difference between the taxes that were levied in respect of the property on the basis of the Farm Property assessed value under subsection (2) and the taxes that would have been levied in respect of the property had a Farm Property assessed value under subsection (2) not applied. (emphasis added)

[Section 17\(5\)](#) of *The Municipal Assessment Act* was introduced by the legislature to keep farm land that was being used for farming purposes at a lower property tax level of assessment, even though the fair market value of the land is significantly more and would call for a substantial increase in property taxes as a result. If farm land is located near urban development it may have an additional speculative value that may greatly exceed its value strictly for farm use and this may be reflected in the fair market value assessment of such properties.

Therefore, farmers who are using the property for farm purposes are permitted to apply for special tax treatment during the time that they are using the property for that purpose. If the application is granted, the appropriate assessor will establish two values for that farm land. One value is commonly referred to as a “farm market value” and the other a “farm use-value.” The farm use-value may be substantially lower than the farm market value, resulting in significantly less tax being paid by the farmer who is using the farm for farming purposes.

The farm use assessment remains in effect until the use of the parcel changes, even if the ownership of the parcel changes. However, when the property use changes from a farming use to a non-farming use, *The Municipal Assessment Act* requires that the property should be taxed at the higher farm market value.

Change in use tax payback

17(5) Where the registered owner or occupier of Farm Property to which a Farm Property assessed value under subsection (2) applies changes the use of the property from a prescribed farming purpose to a purpose that is not a prescribed farming purpose, the registered owner shall,

- (a) in respect of each year for which taxes are levied against the property on the basis of a Farm Property assessed value under subsection (2); or*
- (b) in respect of the five years that immediately precede the year in which the change of use occurs;*

whichever is the lesser period, pay to the municipality an amount of taxes that represents the difference between the taxes that were levied in respect of the property on the basis of the Farm Property assessed value under subsection (2) and the taxes that would have been levied in respect of the property had a Farm Property assessed value under subsection (2) not applied.

Once the use of the parcel changes, the assessment is revised and the owner at the time of revision must pay the difference between the taxes that were paid based on the Farm Use Value and the taxes that would have been paid had the property been assessed at Farm market value during those years. The owner at the time of the revision will have to pay the difference going back as far as 5 years before the year in which the change of use occurs.

The municipality is notified by Assessment Services of the difference between the farm use assessment and the farm market assessment and the number of previous years that the payback applies for up to a maximum of five years.

The Municipal Assessment Act [section 17\(5\)](#) provides for clawback to be added to the taxes for the farm property in the year of the change. This tax obligation is calculated on the existing assessments but applies by adding an increased tax lump sum payable in the year the change in use applies. The person who changes the use of the property is required to pay additional taxes for the year of the change, and up to five years previously.

If the farm land is sold, however, the significance of the clawback can be of great importance to the buyer or seller. The clawback of the tax benefit will have to be paid by the person who

owns the property when the use change occurs. The problem is that the owner at the time of the use change could be required to pay for the difference between the farm use taxes and the farm market taxes going back up to 5 years before this current use change.

The purchaser will want to argue that the clawback for the past years should be paid by the selling farmer who got the benefit of the tax break during those past years. On the other hand, the selling farmer will want to argue that the purchaser should pay all of the additional taxes for the past years because the purchaser triggered the change of use. Either position is arguable so the matter has to be considered and addressed by the real estate agents of the parties (if there are any) and the parties' lawyers. The parties can negotiate a settlement between them for the liability.

If either party is hit with an unusually large and surprising tax bill that party is likely to be very dissatisfied. Lawyers must warn their clients and interpret the contract correctly to make the adjustment that the parties have agreed upon. If the agreement is silent as to who bears the burden, the appropriate inferences will have to be made as to who should pay the taxes. In any event, the person who owns the farm land when its use changes will be billed and pursued by the appropriate municipal government.

If a lawyer is involved in drafting the agreement, the parties should consider this issue before the agreement is finalized, so that the adjustment is made in accordance with the parties' reasonable and agreed expectations.

4. Date of Tax Adjustments on Farm Sales

Tax adjustments on farm sale transactions are frequently made as of January 1 rather than as of the closing date. The intent in such cases is generally to have the party who will realize the crop for that year become responsible for payment of the taxes for the entire year. Intent concerning this adjustment should be determined with the client. If adjustment is to be made as of a date other than closing, there must be a specific reference in the sale-purchase agreement (see *The Law of Property Act*, C.C.S.M. c. L90, [section 34](#)).

E. MARKETING QUOTAS

Many farm products in Manitoba are subject to regulated marketing either by producer/marketing boards or according to production contracts with processors. Marketing of such farm products is prohibited unless the producer has obtained the right to market from the relevant board, under what is commonly referred to as a “quota.” Without the appropriate quota, a producer does not have the legal authority to market a product. Failure to obtain the appropriate quota can have disastrous consequences for the purchaser of farm land who assumes that they will be able to continue to market the farm product in the same way that the seller was marketing the product but fails to get the quota re-allotted.

Lawyers representing purchasers or their lenders must ensure that the re-allotment of the quota is considered early in the process.

1. Regulation of Farm Products

The Farm Products Marketing Act, C.C.S.M. c. F47 establishes the Manitoba Farm Products Marketing Council, whose responsibilities include establishing and supervising boards and commissions, enforcing regulations, supervising inspectors and hearing appeals of board and commission decisions.

Part 2 of *The Farm Products Marketing Act* permits the Lieutenant Governor in Council to establish, by regulation, a plan to promote, regulate and manage the production or marketing of farm products in Manitoba, and to establish producer boards or commissions to administer, under the supervision of the Manitoba Farm Products Marketing Council, this plan. Regulated products are any farm product for which a plan is established.

The producer boards include:

- Manitoba Chicken Producers
- Manitoba Beekeepers Association
- Manitoba Egg Farmers
- Dairy Farmers of Manitoba
- Manitoba Pork Council
- Manitoba Turkey Producers
- Peak of the Market
- Keystone Potato Producers Association

Section 6(1) of *The Farm Products Marketing Act* permits the Lieutenant Governor in Council, by regulation, to authorize a board or commission to make regulations and orders to carry out the provisions of the *Act*. The regulations include requiring a producer or any person engaged in the marketing of a regulated product to register with or obtain licenses from a producer/marketing board. The regulations also provide that the quotas are the property of

the respective producer boards and the right to a quota allocation by the board is not negotiable and no producer shall transfer, sell, or assign any quota.

In other words, the farmer transferring a farm to the purchaser is not entitled to transfer the quota to the purchaser. However, marketing boards do permit, in the case of the transfer of a farm as a going concern, the transferring farmer to release the quota back to the marketing board and the purchasing farmer to apply for re-allotment of the same quota to the purchaser provided the appropriate forms are completed and conditions satisfied. The parties and their counsel should not assume that the re-allotment of the quota will occur. The purchase and sale of a farm involving regulated products should not close until the re-allotment quota has been approved.

2. Quotas and Value of Farm

The transferability of a quota will affect the value of the farm. For example, a dairy farm without a milk quota is of little value, even if it has first-class milk production facilities. This would be a major consideration both for the purchaser and the lender granting financing. It is therefore most important to include in any sale-purchase agreements specific conditions providing for successful re-allotment of any quota, entitlement, or contract that the purchaser requires to market the product(s) for which the farm is organized.

Note: the relevant marketing board will not permit this to be characterized as a transfer of quota from the vendor to the purchaser. Generally, marketing boards do not permit attachment of value to quotas where there is a transfer of ownership. They take the position that a quota has no value. Allocation of purchase price agreements submitted to the board cannot show a value being assigned to a production quota.

Quotas and production contracts are normally required to be kept in good standing by the holder and can be increased, decreased or revoked by the issuer. Care should be taken to determine the status of any such contracts at the time a sale-purchase agreement is structured and again when it is closed. Appropriate conditions should be included to address the issue of fluctuation during the executory period.

3. Quotas and Lenders

Each marketing board has re-allotment procedures as well as forms for this purpose. They do not permit the quota to be mortgaged or secured in favour of a lender but do consent to the producer signing documentation that indicates that the marketing board will not permit the re-allotment of the quota without the consent of a particular lender. As well, the forms do not permit the borrowers/producer to submit the quota back to the board for cancellation in return for the cash value of that production quota. If this were done, the interest of the lender would be severely prejudiced.

The documentation will ordinarily permit the lender to realize on its security in the event of default by the producer and to request a re-allotment of quota to a new purchaser in the event the lender is required to transfer the property to a new purchaser. This provides substantial protection to lenders, and they will ordinarily want to take advantage of it.

Lenders want to make sure that their security interest attaches to the production quota since it is often the most important asset of the farm. If the lender has no security over that production quota, its security is seriously eroded. On the other hand, marketing boards traditionally take the position that the quota is owned by them, not the producer. However, they all have mechanisms in place to acknowledge that, under appropriate circumstances, the lender can have an interest in the production quota and, provided the appropriate documentation is completed by the parties, the board will not permit the producer to release or transfer the quota without the consent of the lender. Such security interests have been the subject matter of litigation. Accordingly, lawyers should ensure that they are up-to-date on the status of the law when involved in such transactions and cautious in offering opinions on the validity of this type of security.

The lender may want to consider filing a financing statement in the Personal Property Registry to protect what it believes it has, namely, a security interest in the quota. This matter, however, remains controversial.

There is judicial authority which indicates that it may be possible for a producer to grant a security interest to a lender sufficient to support the registration of a financing statement, even though the marketing board takes the position that it, and only it, is the “owner” of the quota. See *Farm Credit Canada v K & R Poultry Ltd*, 2011 SKQB 316 (CanLII), par. 5,

[5] Chicken Farmers of Saskatchewan (“CFS”) is the regulatory body governing the quota, as the quota holder only has a right to use the quota, and does not own it. However, this is collateral that may be granted as security for a quota holder's indebtedness, as was done in the loans referred to above. CFS provided Letters of Acknowledgement, signed by its board member and by the producers of quota, being Cornerstone and Dalmeny, acknowledging that each of Cornerstone and Dalmeny granted FCC a financial interest in the quota and that the producers would notify FCC of any application to transfer all or part of the quota to another. CFS acknowledged that it would not approve of the transfer of any quota without the written consent of FCC.

Then there is the litigation between the plaintiff lender, the Bank of Montreal and the defendant borrower, Bale. The upshot is that the court decisions set out a distinction between the quota as property that can be the subject matter of a security agreement under *The Personal Property Security Act* and the lender's valid and enforceable contractual rights in the debtor's allotment of quota.

Bale was a farmer who signed a general security agreement assigning, among other things, his milk quota to the Bank as security for a loan.

When he defaulted and the Bank claimed a security interest in Bale's milk quota, Bale brought a motion for summary judgment to dismiss the Bank's claim. Bale's application was granted. The decision was affirmed and the Court of Appeal held that the milk quota is not property within the meaning of *The Personal Property Security Act* and cannot be the subject-matter of a security agreement. It is reported as *Bank of Montreal v. Bale* (1992), 4 P.P.S.A.C.

(2d) 114 (Ont. C.A.), affirming (1991), [1991 CanLII 7181 \(ON SC\)](#), 5 O.R. (3d) 155, 2 P.P.S.A.C. (2d) 194 (Gen. Div.), leave to appeal to S.C.C. refused).

However, the litigation continued and in [Bank of Montreal v. Bale](#), 1994 CanLII 7282 (ON SC) the Bank sought a declaration and an injunction to enforce what it argued was a contractual interest in the borrower Bale's milk quota. The milk quota was specifically referred to in a schedule of the things assigned, transferred and set over to the bank and the defendant agreed in the general security agreements that he would not, without the prior written consent of the plaintiff, sell or dispose of any of the collateral in the ordinary course of business or otherwise.

The plaintiff lender Bank was successful with its argument that it had a valid and enforceable contractual right in the debtor's allotment of quota and obtained such a declaratory order. The court concluded that notwithstanding that, according to the earlier decision of the Court of Appeal the assignment of the milk quota could not constitute a security interest under the P.P.S.A., Bale's assignment was entitled to be enforced contractually subject to the rights of the Ontario Milk Marketing Board. The court said that the defendant should not be allowed to transfer his milk quota without respecting the contract he signed. The plaintiff was entitled to a declaration that it had a valid and enforceable contractual right in the milk quota and all proceeds derived therefrom and an order enjoining the defendant from disposing of the milk quota without the consent of the plaintiff followed.

...This covenant is particularly important given that the milk quota can be transferred in two circumstances without the prior approval of the Ontario Milk Marketing Board. The plaintiff's interest in the milk quota can be no greater than the defendant's interest in such quota and as the plaintiff acknowledged, its right to enforce its contract is subject to the regulations of the Ontario Milk Marketing Board.

Before offering any legal opinion about this issue, the prudent lawyer must check the current state of the law.

4. Marketing Boards

The appropriate marketing board should be contacted early in the executory period to be advised of the agreement between the seller and the buyer and any lender and also to settle the requirements for transfer approval. It should be noted that not all farm products are subject to production quotas. The following lists the addresses of the most frequently encountered marketing boards:

Manitoba Chicken Producers

1357 Kenaston Blvd
Winnipeg, MB, R3P 2P2

Manitoba Egg Farmers

18 - 5 Scurfield Blvd
Winnipeg, MB, R3Y 1G3

Manitoba Pork Marketing Co-op Inc.

750 Marion St
Winnipeg, MB, R2J 0K4

Peak of the Market

(formerly Manitoba Vegetable
Producers Marketing Board)
1200 King Edward St
Winnipeg, MB, R3H 0R5

Dairy Farmers of Manitoba

4055 Portage Ave
Winnipeg, MB, R3K 2E8

Keystone Potato Producers Association

P.O. Box 545
Portage la Prairie, MB R1N 3B9

Manitoba Turkey Producers

895B Century St
Winnipeg, MB, R3H 0M3

5. Special Crop Contracts

Lawyers should be aware that certain farm products such as potatoes may involve specific contracts with specific processors. If the purchaser expects to receive the benefit of such contracts, terms to that effect should be inserted into the purchase and sale agreement and the contracts examined to make sure they can be assigned. Then the appropriate assignments consented to by the processor should be obtained before closing.

F. CHATTELS

The sale of farm land is frequently accompanied by the sale of machinery, equipment, livestock and other chattels. Care should be taken to include accurate descriptions of such assets in the purchase/sale agreement or, where applicable, in security documents in favour of lenders.

Registry offices where claims against goods relevant to farm operations can be made include the [Personal Property Registry of Manitoba](#) and the Bank of Canada. In both cases claims are registered against the name of the debtor. For a discussion of personal property security and Part VIII ([sections 425 to 436](#)) of the *Bank Act* see the materials on the Law Society of Manitoba Education Centre website under [Lawyer Resources/Practice Area Fundamentals Corporate Commercial Law – The Personal Property Security Act](#).

1. Personal Property Registry Searches

A lawyer representing a purchaser of such personal property must take great care to ensure that there are no registrations that would affect the ability of the vendor to transfer title/ownership in such goods to the purchaser.

The lawyer must be careful to use the correct name of the vendor when searching at the appropriate registry office. For example, in the [Personal Property Registry of Manitoba](#), it would be necessary to search the full true and correct name of the vendor as defined in the [regulations](#) to *The Personal Property Security Act*. If the correct name is not searched, the search response received might not indicate that a registration is in effect against the name that has been searched. But if the searched name is not the correct name of the vendor, there might be a registration in effect against the correct name. That registration would be binding upon the purchaser notwithstanding the faulty search. Similar considerations would apply to searches in other registry offices, such as the Bank of Canada.

Similarly, lawyers representing lenders filing financing statements in the [Personal Property Registry](#) must be sure that they know the correct name of the producer/borrower. Failure to file under the correct name may result in the security interest of the lender being subordinate to the security interest of others.

[Regulations](#) under *The Personal Property Security Act* provide a mechanism for determining what a person's name is for registrations under that *Act*. The entire Personal Property Registry system relies on the correct name of the debtor since there is no certificate of title against which the security interest or financing statement can be filed.

Note that if a farmer carries on business under a name that is not the farmer's own, the financing statement should also be registered against that name if it has been registered under [The Business Names Registration Act](#), C.C.S.M. c. B110.

See a more detailed discussion of name searches in the Personal Property Registry on the Law Society of Manitoba Education Centre website under [Lawyer Resources/Practice Area Fundamentals Corporate Commercial Law – The Personal Property Security Act](#).

2. Allocation of Purchase Price

If possible, the agreement of purchase and sale should provide for an allocation of the purchase price among various assets, such as land, buildings, and other classes of assets. This is often important for tax purposes both for vendors and purchasers, and income tax advisors should be consulted.

G. LAND DESCRIPTION AND SIZE

Lawyers representing parties to the sale of farm land should become familiar with the land survey systems used in Manitoba which system is explained in the excellent article by The Honourable Mr. Justice Kenneth Hanssen appended to this chapter.

Where farm land is to be sold, care must be taken to identify the correct parcel of land. The land description on the title should be scrutinized to make sure that it is the exact parcel intended to be conveyed, purchased, mortgaged, or encumbered. Make sure that your client understands exactly which parcel of land is referenced. Serious errors can be avoided by a simple examination of the documentation. A sketch outlining the property can be useful in explaining the land description to the client. If in doubt, consult a [Manitoba land surveyor](#).

A significant discrepancy in the estimated size of a parcel of land can be an important clue that a mistake has been made. A section of land does not necessarily consist of 640 acres. At best, a section of land consists of approximately 640 acres in most cases. Even at that, some sections are larger or smaller than others. If the exact size is important, the client should be urged to consult a [Manitoba land surveyor](#). Municipal records or [Manitoba Assessment Branch](#) department records can give an approximate indication of the size of the parcels involved, but these records are not entirely reliable. As farm land values escalate, the issue of land size becomes increasingly important to the parties. Solicitors therefore must be careful to confirm the correct parcel of land.

1. Subdivision Control

Farm land transactions sometimes involve a subdivision, which will require subdivision approval by the planning authorities under [The Planning Act](#), C.C.S.M. c. P80. For example, assume that a retiring farmer sells land but wishes to retain the house and yard site. [Section 121\(1\)](#) of *The Planning Act* and [section 263\(1\)](#) of *The City of Winnipeg Charter*, S.M. 2002, c. 39 provide that the District Registrar of the Land Titles Office shall not accept for registration any instrument, such as a transfer of land, that has the effect of, or that may have the effect of, subdividing a parcel of land, unless that subdivision has been approved by the planning authority. In other words, a parcel of land may not be severed from another parcel of land which is described in a certificate of title, unless that subdivision is approved by the planning authorities, or it fits into one of the exceptions specified in either [section 121\(2\)](#) of *The Planning Act* or [section 263\(3\)](#) of *The City of Winnipeg Charter*.

One important exception to the requirement for subdivision approval occurs where each parcel resulting from the subdivision consists of 80 acres or more in area, and both abut on a public road or are being consolidated with an adjoining parcel of land which abuts on a public road. Such parcels may be subdivided without subdivision approval.

Subdivision issues should be identified early on in the transaction. [The Planning Act](#) provides that any instrument that has the effect of subdividing a parcel does not create or convey any interest in land unless that subdivision has been approved by the approving authority, but nothing affects an agreement for a subdivision of a parcel where the agreement contains an

express provision making it subject to the approval of the approving authority. Even if the plan is not required by the Land Titles Office, the parties should seriously consider obtaining a survey from a [Manitoba land surveyor](#), to ensure that the location of the buildings is known so that they are included or not, as the case may be, in the legal documentation.

[Section 122](#) of *The Planning Act* provides that, “*an interest in land is not created or conveyed by an unregistered instrument that purports to subdivide land or to have the effect of subdividing land contrary to this Part.*” As a result, any agreement to buy and sell land, where subdivision approval would be needed, should be made subject to obtaining approval. The agreement should also provide for reasonable deadlines for obtaining the subdivision approval, and make clear who will bear the burden of making and paying for the application. The cost of subdividing property may be substantial, particularly if the Land Titles Office requires a plan of subdivision to be prepared and registered. The agreement should provide who is to pay the costs of the subdivision or indicate that the transaction will be aborted if conditions are not satisfactory to either the vendor or the purchaser or both.

The subdivision approval process may take considerable time depending on the complexity of the transaction. If a subdivision is required, the appropriate conditions should be inserted into the agreement of purchase and sale. It would not make sense to have possession delivered before subdivision approval being given since a transfer of land cannot be registered. The parties should take into consideration what will happen if subdivision approval is not obtained.

2. Zoning in Rural Areas

[Section 68](#) of *The Planning Act* permits municipalities other than the City of Winnipeg to enact zoning by-laws. [Section 80\(1\)](#) sets out procedures for amending zoning by-laws and [section 103](#) provides the procedures for applications for approval of conditional uses.

a) Sensitive Land

While most municipal zoning by-laws deal with the traditional zoning issues of permitted use, yards and alignments and other issues commonly found in urban situations it is important to be aware of issues that may be unique to rural areas.

As an example, [section 71\(3\)](#) of *The Planning Act* permits municipal zoning by-laws to include special provisions providing for the erection of any building or structure on sensitive land (this includes land that is susceptible to flooding, permafrost or erosion, or that has unstable slopes or poor drainage).

Similarly, in dealing with a flood-prone area, it is wise to inquire with the province if any regulations relating to flooding are in effect and if the property complies with the regulations.

When dealing with the Red River Valley Flood Plain, a letter should be sent to the [Water Branch of the Conservation Department of the Province of Manitoba](#) inquiring whether an appropriate permit was issued for the construction of the structure and whether the structure complies with the existing permit or regulations.

b) Livestock Operations

Another example of unique circumstances found in rural areas is portions of zoning bylaws dealing with permitted waste units for intensive livestock operations. The permitted waste units establish the criteria for the maintenance of a specified number of livestock on a site.

In dealing with livestock in a rural setting it is wise to inquire with the municipality to determine the following:

- if the property is properly zoned;
- if the property is subject to any conditional use;
- the number of permitted livestock.

Lawyers who represent purchasers of livestock operations must also be familiar with the requirements of the local government to establish livestock operations in the relevant municipality. For example, frequently livestock operations require a conditional use permit from the local government to lawfully exist and operate. In such cases, the lawyer should review the conditional use permit with the prospective purchaser to make sure that the existing operation complies with that permit.

The lawyer might also contact the local government to obtain written assurances that all permits have been complied with according to their records. The purchaser or the purchaser's lender might even want to seek specific professional advice from qualified persons to determine whether or not the operation is likely in compliance with the governmental conditions.

A search can also be made at [Conservation Manitoba](#) to see if it has any record of violations. Local governments and the Department of Conservation might not be aware, however, of violations that exist, and any written response must be accepted with those limitations in mind. The purchaser should be aware of those limitations and may want to obtain an analysis of the property from the appropriate professionals.

c) Building Location Certificates

If a building location certificate is available, then, as in any other commercial transaction, a zoning memorandum should be ordered to determine if the property complies with yards and alignments. Unfortunately, in many cases involving agricultural property, building location certificates are not available, on account of the large sizes of land involved. Of course for smaller parcels of land building location certificates should be considered where appropriate. Lawyers must use their judgement to determine when the cost of a building location certificate would be warranted. Estimates can be obtained in advance from [Manitoba land surveyors](#) for that purpose.

3. ***The Transportation Infrastructure Act***

In dealing with real property in rural areas it is necessary to consider various restrictions relating to provincial highways and freeways in the province of Manitoba. *The Transportation Infrastructure Act*, C.C.S.M. c. T147 proclaimed in force on March 1, 2019, replaced *The Highways Protection Act*, C.C.S.M. c. H50 and *The Highways and Transportation Act*, CCSM c H40. It eliminated the Highway Traffic Board and transferred jurisdiction over provincial highways to the government.

The Transportation Infrastructure Act provides for limitations on the entrances, exits and access to limited access highways and freeways. Generally speaking limited access highways are provincial trunk highways, and freeways are major arterial highways such as P.T.H. #1. In the definitions in [section 1](#) of the Act:

"freeway" means a departmental road designated as a freeway under the regulations.

"limited-access highway" means a limited-access highway described in section 20.

And [sections 20](#) and [21](#):

Limited-access highways

20 The following departmental roads are limited-access highways:

- (a) provincial trunk highways, except to the extent that they are exempted by regulation;*
- (b) other departmental roads to the extent that they are designated by regulation as limited-access highways.*

Termination of access on highway becoming limited-access highway

21(1) When a departmental road becomes a limited-access highway, any rights of access to the highway terminate, except in respect of an access that exists at the time the departmental road becomes a limited-access highway and that has not been closed under subsection (2).

Closing access

21(2) The minister may, by written order, close an access to a departmental road that exists when the departmental road becomes a limited-access highway.

Termination of access on highway becoming freeway

21(3) When a departmental road is designated as a freeway, any rights of access to the departmental road terminate.

Compensation or alternate access

21(4) If land adjacent to a departmental road becomes inaccessible from that departmental road as a result of subsection (1), (2) or (3), the minister must either

- (a) provide a service road or other reasonable alternate means of accessing that land; or*
- (b) pay compensation in accordance with subsection (5) to any person that holds an interest in that land.*

Compensation for loss of access rights

21(5) If compensation is payable to a person under clause (4)(b),

- (a) the minister may enter into a compensation agreement with the person; or*
- (b) if the minister is unable to reach an agreement, under clause (a) the matter must be submitted to arbitration to be conducted in accordance with The Arbitration Act.*

a) Confirm Access

Accordingly, it is prudent in dealing with land requiring access to a limited access highway or freeway to obtain confirmation of such access. This can be important to both buyers and their lenders. Inconvenient access to a property can seriously affect its value.

b) Control Area and Line

A [permit](#) is required for development adjacent to provincial highways. Provincial highways include provincial trunk highways, provincial roads and provincial access roads. See [section 28](#) of *The Transportation Infrastructure Act*.

Permit for accesses and objects on or near departmental road

28(1) Subject to the regulations, a person must not do any of the following unless the minister has issued a permit for the activity:

- (a) construct, modify or relocate an access or intensify its use;*
- (b) construct, modify or relocate a structure, or change or intensify the use of a structure,*
 - (i) on or across a departmental road, or*
 - (ii) in a controlled area;*
- (c) plant a tree within 15 m of a departmental road located outside*
 - (i) the City of Winnipeg, and*
 - (ii) an urban municipality or local urban district established or continued under The Municipal Act, including, for certainty, a city having a special charter;*

(d) *keep*

(i) *an access or structure that was constructed, modified or relocated, or whose use was intensified, in violation of clause (a) or (b), or*

(ii) *a tree planted in violation of clause (c).*

As of March 1, 2019, the authority to issue permits for development including accesses, structures, signage and trails adjacent to provincial highways is delegated to the [Highway Planning and Design Branch](#) of Manitoba Infrastructure, as stipulated under [The Transportation Infrastructure Act](#).

If the land being acquired is next to a controlled area as defined in the *Act* and Regulations it is imperative to determine if the building or other structures on the land are within the controlled area and, if so, whether a permit has been issued.

Controlled areas

22(1) *Subject to the regulations, the following areas adjacent to a departmental road are controlled areas:*

(a) *in the case of a departmental road other than a limited-access highway or a freeway, the area on each side of the highway that is within 38.1 m of the outer edge of the road allowance, but only if the highway is located outside*

(i) *the City of Winnipeg, and*

(ii) *an urban municipality established or continued under The Municipal Act, including, for certainty, a city with a special charter;*

(b) *in the case of a limited-access highway or freeway,*

(i) *the area on each side of the highway that is within 38.1 m of the outer edge of the road allowance, and*

(ii) *any additional area established as a controlled area under the regulations.*

[Controlled Areas and Limited-Access Highways Regulation 12/2019](#) provides that controlled areas are defined on a controlled area map. "Controlled area map" means the March 1, 2019 version of the department's [Controlled Area Map](#) which is also available for inspection in paper format at the department, at the following location:

Highway Planning and Design Branch
1420-215 Garry Street
Winnipeg, MB R3C 3P3

4. Onsite Wastewater Management Systems

In 2009 and 2010, the [Onsite Wastewater Management Systems Regulation](#) (M.R. 83/2003 of [The Environment Act](#), C.C.S.M. c. E125), was twice amended to prohibit new sewage ejector systems and phase out existing sewage ejector systems. Many farms and rural properties have been using this method of wastewater management for years. Under these regulations, whenever land on which such a sewage ejector system is located is either transferred or subdivided, the owner must take the system out of service and decommission it. However, the 2010 amendments allow the owner to apply for an exemption to the decommissioning if certain requirements are met, including:

- (1) the land is not located in an identified sensitive area,
- (2) if a soil test of the land meets environmental standards,
- (3) if the property contains a minimum of 10 acres, and
- (4) there is compliance with all other regulatory requirements, such as setbacks, etc.

Also, in certain cases, a vendor and purchaser may apply to [Manitoba Conservation for permission to transfer property with an ejector system](#) on the condition that the purchaser shall, within two years from the date of transfer, decommission the ejector system and install a replacement system.

Therefore, in any rural (farm or acreage) land transaction, it is important to determine what type of onsite wastewater management system is in place and to ensure that both the vendor and purchaser are aware of the regulations and have taken steps to comply as part of the offer to purchase.

Property owners not connected to a municipal system that served their area at the time of the 2009 amendments are required to connect to the system (and decommission their existing wastewater management system) before the earlier of October 2014 or upon transfer or subdivision of the land. For municipal collection systems installed and in service after the 2009 amendments, homeowners must connect to the system (and decommission their existing wastewater management system) within 5 years of it becoming operational, or upon transfer or subdivision, whichever is earlier.

Failure to comply with these provisions could result in fines up to \$50,000 or six months in jail, for a first offence. Also, a judge can order restitution to third parties (e.g. a buyer) who have suffered damages due to non-compliance. Severe penalties can also be imposed upon lawyers who illegally assist a contravention of [The Environment Act](#).

H. HOMESTEAD CONSIDERATIONS

[Section 4](#) of *The Homesteads Act*, C.C.S.M. c. H80 prohibits certain dealings in homesteads by owners without the required homestead consents. A person who owns a homestead cannot dispose of that homestead (disposition includes a sale, mortgage or registration of another encumbrance) without the consent of the owner's spouse or common-law partner. Determining what constitutes a homestead can be more complicated for rural properties than for urban ones. [Section 1](#) of *The Homesteads Act* defines the homestead connected with farm land as follows:

- (b) in the case of a residence outside a city, town or village occupied by the owner and the owner's spouse or common-law partner as their home, the residence and the land on which it is situated, consisting of not more than 320 acres or a half section, subject to the following conditions:*
 - (i) if the land exceeds 320 acres in the same section, the 320 acres shall be comprised of the quarter section on which the residence is situated, together with such other lands in that section as the owner or the owner's personal representative shall designate,*
 - (ii) if the land is in more than one section, river lot or parish lot, the homestead shall be comprised of the quarter section, river lot or parish lot on which the residence is situated, together with the other lands in that section or adjacent to or across a road or highway from the section, river lot or parish lot, but if the land so described exceeds 320 acres the owner or the owner's personal representative shall designate 320 acres of the land as the homestead including the quarter section, river lot or parish lot on which the residence is situated.*

I. FARM PURCHASE FINANCING

The following are the most likely sources of financing for farm transactions:

- Chartered banks;
- Credit unions (Caisse Populaires);
- [Farm Credit Canada](#);
- [Manitoba Agricultural Services Corporation](#).

All of these sources have independent loan policies that vary from time to time. They must therefore be consulted in the specific case to determine whether, and upon what terms, financing may be available.

1. Vendor Financing

As farm values have increased, it has become more difficult to get financial institutions to finance the full amount of purchase money that is needed by many purchasers. As a result, vendor financing will sometimes become part of the financing package. Traditional lenders ordinarily insist upon having a first charge. In such circumstances.

Lenders' lawyers must be aware of [section 17](#) of *The Mortgage Act*, C.C.S.M. c. M200 which provides as follows:

Mortgages, how affected by conveyances subsequently registered

17 To remove doubts, every mortgage duly registered against the lands comprised therein is, and, subject to section 31 of The Builders' Liens Act, shall be deemed to be, as against the mortgagor, his heirs, executors, administrators, assigns and every other person claiming by, through, or under him, a security upon the lands to the extent of the moneys or money's worth actually advanced or supplied to the mortgagor under the mortgage (not exceeding the amount for which the mortgage is expressed to be a security), notwithstanding that the moneys or money's worth, or some part thereof, were advanced or supplied after the registration of any certificate of judgment or of any conveyance, mortgage, or other instrument, affecting the mortgaged lands, executed by the mortgagor or his heirs, executors, or administrators, and registered subsequently to the first-mentioned mortgage, unless before advancing or supplying the moneys or money's worth the mortgagee in the first-mentioned mortgage had actual notice of the registration of the certificate of judgment or of the execution and registration of the conveyance, mortgage, or other instrument; and the registration of the certificate of judgment, conveyance, mortgage, or other instrument, after the registration of the first-mentioned mortgage, does not constitute actual notice to the mortgagee of the judgment, conveyance, mortgage, or other instrument. (emphasis added)

In other words, in certain circumstances, the traditional lender who wants to secure a first charge, and has a first mortgage registered in the Winnipeg Land Titles Office, might lose priority to a subsequent encumbrancer, such as a vendor, unless a postponement of advances agreement is obtained from the subsequent encumbrancer. If the lender's lawyer knew about the mortgage back to the vendor, which of course is ordinarily the case, and if the lawyer's knowledge is deemed to be that of the lender, then it could be argued that when the lender advances money after the registration of a mortgage in favour of the vendor, even if it is registered subject to the first mortgage in favour of the lender, that advance is subordinate to the mortgage in favour of the vendor. This could have disastrous consequences for the lender and the lender's lawyer.

J. LAND TRANSFER TAX

Land transfers in Manitoba are generally subject to a progressive land transfer tax payable when the transfer documents are registered. Since farm transactions usually involve substantial consideration, this tax also becomes substantial. However, farm transactions are exempt from the tax so long as three conditions are met:

- The purchaser is a farmer or a spouse or common-law partner of a farmer, or a family farm corporation;
- The land is farm land; and
- The land will continue to be used for farming purposes.

Part III of *The Tax Administration and Miscellaneous Taxes Act*, C.C.S.M. c. T2 starting at [section 111](#) governs land transfer tax and should be consulted where eligibility for exemption is uncertain. [Section 111\(2\)](#) of the *Act* provides that “family farm corporation” “farmland”, “farmer” and “farming” have the same meaning as in [The Farm Lands Ownership Act](#).

Where the exemption applies, care must be taken to prepare the land title documentation correctly. The purchaser must establish that he or she is exempt. This is done by declaration (Box 18 on the transfer of land – Land Transfer Tax Exemption Evidence). The following wording is currently accepted by the Land Titles Office:

“The land is farm land, the transferee is a farmer, and the land will continue to be used for farming.”

If land transfer tax is payable it could be reduced considerably if separate transfers of land are filed for each 80-acre parcel, instead of including all the land in one transfer.

K. GST

The Excise Tax Act, RSC 1985, c E-15, levies a consumption tax on consumers in Canada on all taxable supplies. Real estate lawyers must remember that the transfer of real property constitutes a supply and may or may not be taxable.

If the transaction is taxable, it is the vendor's responsibility to collect tax from the recipient (purchaser) who must pay the GST to the vendor (or in exceptional circumstances directly to the Canada Revenue Agency). Where the supply is taxable and the vendor fails to collect the tax, CRA can demand payment of the tax from the vendor. The vendor might have great difficulty in obtaining reimbursement from the purchaser.

A lawyer acting for a vendor in respect of a proposed sale of farm land must determine whether the client is responsible to collect and remit any GST payable on the sale.

1. Purchaser Registered with CRA

Section 221 of the *Excise Tax Act* provides that if the purchaser is registered with CRA and has obtained a business identification number the purchaser is entitled to self-assess. In such cases, the purchaser is not required to pay GST to the vendor on land and buildings.

The purpose of the provision, which is not truly an exemption, is to allow the purchaser to claim an immediate offsetting input tax credit. The vendor's solicitor should, however, get written confirmation from CRA that the purchaser is registered with them.

Remember that if the purchaser's corporation is registered that is not the same as the purchaser being registered. Similarly, if the purchaser's spouse is a registrant with CRA, that does not assist the purchaser. The transferee on the transfer of land must be the registrant for the *section 221* exception to apply. Section 221 does not apply in the event of the sale of a farm as a going concern, because its application is restricted to the land and buildings.

However, in such circumstances *section 167* of the *Excise Tax Act* may apply. Section 167 provides that in the sale of a farm as a going concern, if the purchaser is a registrant with CRA and if the transfer consists of the sale of all or substantially all of the assets necessary to conduct the farming operation, and the parties jointly elect, GST is not applicable. This is a substantial advantage for eligible purchasers, but care must be taken to ensure that all of the conditions in section 167 of the *Act* are fulfilled.

Once again, if GST has not been collected and remitted to the government, it is the vendor (and hence the vendor's lawyer) who bears the risk of failing to collect the GST from the purchaser.

2. Exemptions from GST on Disposition of Farm Land

If the sale transaction does not fit into either [section 221](#) or [section 167](#) of the *Excise Tax Act*, many of the items being transferred may still be exempt from GST. There are numerous exemptions granted to farm equipment, livestock and the like in the *Act* and these must be scrutinized in such a case.

a) Ordinarily, GST Applies

Although there are some important exemptions and rules relating to the disposition of farm properties, ordinarily the GST will apply to a farm land sale to a third party in the same way it would apply on the sale of any other type of commercial property. Some important exemptions are found in [Schedule V](#) to the *Act*. Real estate lawyers should be familiar with those exemptions to assist in determining whether or not GST is payable.

b) Schedule V Exemptions

Naturally, purchasers do not want to pay GST if they can avoid it, but vendors are required to collect GST on behalf of the government and if they fail to do so when GST is payable, the vendors can be personally liable to the government.

[Article 10 of Schedule V](#) provides a specific exemption in some circumstances of a transfer from an individual farmer to a related individual. It provides as follows:

10. A supply of farmland by way of sale made by an individual to another individual who is related to or who is a former spouse or common-law partner of the individual where

- (a) the farmland was used at any time by the individual in a commercial activity that is the business of farming;*
- (b) the farmland was not used, immediately before the time ownership of the property is transferred under the supply, by the individual in a commercial activity other than the business of farming; and*
- (c) the other individual is acquiring the farmland for the personal use and enjoyment of that other individual or any individual related thereto.*

In other words, if the sale of the farm property is from an individual to a related individual who will use the land for their enjoyment and not in the business of farming or other commercial activities, there will be no GST on the sale.

There is another exemption in [Article 12 of Schedule V](#) which provides that,

12. A supply of farmland by way of sale made to a particular individual, an individual related to the particular individual or a former spouse or common-law partner of the particular individual by a person that is a corporation, partnership or trust where

- (a) immediately before the time ownership of the property is transferred under the supply,*
- (i) all or substantially all of the property of the person is used in a commercial activity that is the business of farming,*
 - (ii) the particular individual is a member of the partnership, a beneficiary of the trust or a shareholder of or related to the corporation, as the case may be, and*
 - (iii) the particular individual, the spouse or common-law partner of the particular individual or a child (within the meaning of subsection 70(10) of the Income Tax Act) of the particular individual is actively engaged in the business of the person; and*
- (b) immediately after the time ownership of the property is transferred under the supply, the farmland is for the personal use and enjoyment of the individual to whom the supply was made or an individual related thereto.*

Canada Revenue Agency interprets the expression “all or substantially all” to mean 90% or more. If all these conditions can be satisfied, then a GST exemption will apply.

Of course, vendors will want to make sure that they collect GST from the purchaser if the exemptions are not applicable. They will expect appropriate advice from their professional advisors to avoid liability for paying GST if they fail to collect it from purchasers.

Lawyers representing vendors and solicitors must be familiar with these provisions to ensure that the parties understand their responsibilities and comply with the *Act*.

L. INCOME TAX CONSIDERATIONS

There are income tax considerations to be addressed when properly dealing with the sale of farmland. Lawyers should work closely with vendors' accountants to determine such potential tax issues including the following:

- Deemed dispositions
- V day value
- Capital gains exemptions
- Alternative Minimum Tax
- Rollovers to spouses or children
- Clawback of Old Age Security
- Allocation of the purchase price between the types of assets being sold (land, residence, outbuildings, grain bins, etc.)

Communication between the clients, the lawyer and the clients' accountant is vital to avoid unintended and possibly onerous tax consequences in farmland sales.

M. PRECEDENTS AND FORMS

1. Offer to Purchase Real Estate

[Document follows on next page]

OFFER TO PURCHASE REAL ESTATE

TO: ("VENDOR"):

ADDRESS:

PHONE NO:

email:

FROM: ("PURCHASER"):

ADDRESS:

PHONE NO:

email:

1. The PURCHASER hereby Offers to Purchase from the VENDOR all of the VENDOR'S interest in the following lands, premises, goods and chattels legally described as:

(a) There shall be included in or with the property all fixtures and, in particular, all such electric light fixtures, heating and plumbing fixtures, TV antennae, fitted carpets, curtain rods, drapery tracks, screen and storm windows and doors as are now on the Property, but excluding these fixtures:

(b) All goods and chattels which are not fixtures shall be excluded excepting for the following, which are included:

For the total purchase price (in lawful money of Canada) of:

\$ _____

which the purchaser agrees to pay as follows:

A deposit to be applied towards the cash payment on this Offer (to be refunded if this offer is not accepted)

\$ _____

A further cash payment on or before possession date

\$ _____

The balance as follows:

Cash and Mortgage

\$ _____

Total Purchase Price

\$ _____

ALLOCATION of PURCHASE PRICE

2. Purchase and sale of this transaction shall be allocated as follows:

Land	\$
Residence and Yard	\$
Additional Land or Acreage	\$
Outbuildings/Bins/Other	\$ _____
TOTAL	\$

SEWAGE SYSTEMS on FARM RESIDENTIAL PROPERTIES

3. Ejector sewage systems are not permissible on properties in Manitoba involved in a sale or subdivision, unless, following an inspection, a Certificate of Exemption is issued by the Province of Manitoba, Conservation Department. If this property contains a residential yard site with an existing ejector sewage system, it may be necessary for this system to be modified or removed entirely to comply with Manitoba Environment Regulations either by the vendor prior to the date of possession or by the purchaser within 2 years of the date of possession. The vendor and purchaser agree that they will attend to any required removal and/or modifications to an existing sewage system and any costs arising out of same as follows: _____

CLOSING

4. All Adjustments of taxes, rentals, insurance premiums and any other adjustments to be made as of the _____ day of _____, 201____. Possession shall be given by _____ a.m/p.m on the _____ day of _____, 201____. (State whether vacant or subject to a tenancy/otherwise)

RISK OF DAMAGE

5. The property, until date of possession, shall remain at the risk and responsibility of the Vendor. If the property suffers substantial damage which is not repaired before the time of possession to substantially the same condition it was in prior to the damage occurring, the Purchaser may terminate this agreement.

VENDOR'S PROMISES AS TO THE STATUS OF THE PROPERTY

6. The Vendor promises that at the time of possession:

(a) The Property will be free from all encroachments by adjoining structures and improvements except: _____

(b) The structures and improvements on the land will not encroach beyond the limits of the land or on any public utility right-of-way, except: _____

(c) Unless otherwise specified in this Offer, the Property and all included items will be in substantially the same condition they were in at the date of this Offer;

(d) The Property will comply with all applicable building and zoning regulations (or be in legal conformity) except: _____

(e) Additional promises: _____

VENDOR'S PROMISES AS TO TITLE AND OWNERSHIP

7. The Vendor promises that at the time of possession:

(a) The property will not be subject to any mortgage, encumbrance or other interest which is registered against the title to the Property of which is valid or enforceable against the Property without being so registered, excepting only for the following:

(i) any mortgage herein agreed to be assumed as part of the purchase price;

- (ii) any private or public building or use restriction caveat with which the Property complies;
- (iii) any easement, the existence of which is apparent on inspection of the Property;
- (iv) any public utility caveat protecting a right-of-way for a service to which the Property is connected;
- (v) any Claim which it is the Vendor's responsibility hereunder to remove as a condition of closing;
- (vi) any Claim which may be caused by or is the responsibility of the Purchaser; and
- (vii) (insert any other exceptions, including tenancies) _____

- (b) All included fixtures and goods and chattels will be owned by the Vendor free from any security or other interest (including any rental contract) except as follows:

_____ and the Purchaser shall assume responsibility for all such security or other interests from and after the Possession Date.

- (c) The Vendor will be or be entitled to be rightfully in actual and personal peaceable possession and occupation of the whole of the Property (except for any tenancies agreed to be assumed by the Purchaser).

INSPECTION

8. In signing this agreement, I rely entirely upon my personal inspection and knowledge of the property independent of any representation made by or on behalf of the owner except for the specific undertaking that the building(s), if any, on the premises have never been insulated with Urea Formaldehyde Insulation. This agreement, when accepted by the owner, shall constitute a binding contract of purchase and sale, and time shall, in all respects be of the essence thereof.

TAXES CONCERNING CHANGE OF USE OF PROPERTY and LAND TRANSFER TAX

9. If this transaction results in a change in the use of the property from a "Farm Property" assessment to an assessment of a different use, the Purchaser shall be responsible for all realty taxes, local improvements and assessment rates arising from the change in use of the property in accordance with Section 17(5) of The Municipal Assessment Act (Manitoba) or successor legislation. The Purchaser shall be responsible for the Land Transfer Tax, if any, imposed in connection with the registration of the transfer of land herein.

GOODS & SERVICES TAX

10. This sale is a taxable transaction under the Goods and Services Tax. The Purchaser confirms that he is a Goods and Services Tax registrant. The purchaser, prior to closing shall sign a Declaration covenanting to self-assess and report this purchase for GST and be liable for all GST associated with this transaction and to indemnify and save harmless the Vendor from all liability in association with collection of GST on this transaction.

DEPOSIT

11. The Purchaser hereby makes a cash deposit of \$_____ in trust on account of this purchase payable to the Vendor/his Solicitor/ which deposit is to be returned to me without deduction or interest if the Vendor does not accept this offer by the _____ day of _____, 201____.

If the Purchaser does not waive the financing condition and financing is not approved, the deposit shall be refunded to the Purchaser unless the Offer specifies that the deposit is non-refundable.

Should the Purchaser fail to comply with the terms of this offer, the Vendor may (at his option) cancel this agreement and retain the deposit as liquidated damages and not as a penalty, or take what other remedies he, the Vendor, may have at law.

After the Offer has been accepted by the Vendor the deposit shall become part of the purchase price and shall be held by the vendor's solicitor, in trust, for the Vendor to be paid over to him when he carries out his obligation under this agreement, but to be returned to the Purchaser should he fail to do so.

CONDITIONS

12. The Purchaser shall obtain approval of financing by _____ a.m./p.m. on the _____ day of _____, 201____. If, by this date the Purchaser does not either waive this condition in writing or have written approval of financing, this Offer is null and void.

CONTRACT

13. Once accepted, this Offer is a legally binding contract and is binding upon the parties hereto, their personal representatives, heirs, successors, executors, administrators and assigns.

MORTGAGE FINANCING

14. If any part of the purchase price is to be paid from the proceeds of a new mortgage, payment of that amount may be delayed by the time necessarily required for registration of the mortgage to be completed by the Land Titles Office, and reported to the mortgagee. The Purchaser agrees to execute any such mortgage documents prior to the closing date.

LATE PAYMENT

15. If any part of the purchase price is paid after the closing date, that amount shall bear interest (unless such interest is waived by the Vendor) at the Purchaser's mortgage rate.

TIME

16. Time is of the essence of this Agreement.

17. All references to times in this agreement mean Manitoba time.

DEADLINE FOR ACCEPTANCE BY VENDOR

18. This Offer, if not accepted by the _____ day of _____, 201____, shall expire.

OTHER TERMS

19. (a) This agreement contains all of the promises, agreements, representations, warranties and terms between the parties relating to the transaction hereby contemplated, and:
- i. anything not included in writing in this agreement will have no force or effect whatsoever,
 - ii. any amendments made to this agreement will have no force or effect whatsoever unless it is in writing and signed by each of the parties hereto;

iii. in making this Offer, the Purchaser relies entirely on the Purchaser's personal inspection of the Property and the Vendor's promise contained (and only those contained) in this Offer.

(b) The Vendor's promises contained in this agreement which the vendor and the purchaser agree will survive and continue in the effect after the closing of this transaction are 5; 6(c); 7(b); 7(c), 9 and 10.

The Vendor hereby specifically authorizes the solicitor(s) for the Vendor and the Purchaser to obtain any and all information required pertaining to the amount of realty taxes, arrears, and any other outstanding amounts which may be added to the tax roll levied against the property.

(c) Each of the Vendor and the Purchaser authorize each other, or their respective Solicitors, to pay and deliver to their respective solicitors, any money or documents due in connection with this transaction and for so doing, this shall be their full and sufficient authority and the receipt of each such solicitor respectively shall be a good discharge therefor.

(d) In closing this transaction, the Vendor's solicitor and the Purchaser's solicitor may by agreement between them, impose and undertake trust conditions upon each other provided that such trust conditions will not alter or vary the contractual obligations of the parties to this agreement.

(e) This agreement shall be binding upon and shall enure to the benefit of the Vendor and the Purchaser and each of their respective successors, assigns and personal representatives.

(f) This Agreement may be executed in two or more counterparts, and by facsimile or e-mail, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

Signed by the Purchaser on the _____ day of _____, 201____.

Witness

Purchaser

Witness

Purchaser

Name of Purchaser's solicitor: _____

ACCEPTANCE

The Vendor hereby accepts the above Offer.

Or

The Vendor accepts the above Offer subject only to the following amendments ("Counter-offer") which must be accepted by the Purchaser by the ____ day of _____, 201_____. (If none, state "NONE"):

Signed by the Vendor on the ____ day of _____, 201_____.

Witness

Vendor

Witness

Vendor

Name of Vendor's solicitor: _____

ACCEPTANCE BY PURCHASER OF COUNTER-OFFER

The Purchaser hereby accepts the above Counter-offer.

Signed by the Purchaser on the ____ day of _____, 201_____.

Witness

Purchaser

Witness

Purchaser

NOTE: If the Purchaser wishes to accept the Counter-offer (if any) but subject to any additional terms or conditions, this will constitute a counter-counteroffer and the Purchaser should submit an entirely new Offer to Purchase.

VENDOR'S HOMESTEADS ACT STATEMENTS

(Delete the inapplicable statements and initial those deletions)

I (We), the Vendor(s) in the said Offer to Purchase now accepted (the "Agreement") do solemnly (severally) declare as follows:

1. The person who has signed the acceptance to the said Offer to Purchase is my spouse or common-law partner and has Homestead rights in the within property.
2. The person who has consented to the disposition of the homestead provided for by the Agreement is my spouse or common-law partner and has Homestead rights in the within property.
3. I am not a married person.
4. I am not a common-law partner as defined in the Homesteads Act.
5. The property being sold and purchased under the Agreement is not my homestead within the meaning of The Homesteads Act.

(SEVERALLY) DECLARED before me at _____
the _____ of _____
in Manitoba, this _____ day of _____
, 201____

A Notary Public / Commissioner for Oaths
in and for the Province of Manitoba
My Commission Expires:

HOMESTEADS ACT CONSENT

I, _____, do solemnly declare as follows:

1. I am the spouse or common-law partner of the Declarant and have homestead rights in the within property.
2. I am aware that The Homesteads Act gives me a life estate in the homestead and that I have the right to prevent this disposition of the homestead by withholding my consent.
3. I am aware that the effect of this consent is to give up my life estate in the homestead to the extent necessary to give effect to this disposition.
4. I execute this consent apart from my spouse or common-law partner freely and voluntarily without any compulsion on the part of my spouse or common-law partner.

DECLARED before me at _____)
the Town of _____, in _____)
Manitoba, this _____ day of _____)
, 201____)
)

A Notary Public
in and for the Province of Manitoba

2. Goods and Services Tax Declaration

[Document follows on next page]

GOODS AND SERVICES TAX DECLARATION

CANADA)
PROVINCE OF MANITOBA)
TO WIT)

I, _____ of the Town of Treherne, in the Province of Manitoba,
DO SOLEMNLY SWEAR AS FOLLOWS:

1. THAT I am the purchaser of the property legally described as follows:

2. THAT I am a Goods and Services Tax registrant and my registration number is:

3. THAT I am the sole party claiming income from this property.
4. THAT I agree to self-assess and report this purchase for GST and be liable for all GST associated with this transaction.
5. THAT I agree to indemnify and save harmless the Vendor from all liability in association with collection of GST on this transaction.

SWORN before me at the Town)
of Treherne, in the Province)
of Manitoba, this _____ day)
of _____, 201____) _____

A Notary Public in and for the
Province of Manitoba

3. The Land Survey Systems in Manitoba by The Honourable Mr. Justice Kenneth R. Hanssen

[Document follows on next page]

THE LAND SURVEY SYSTEMS IN MANITOBA

The Honourable Mr. Justice Kenneth R. Hanssen

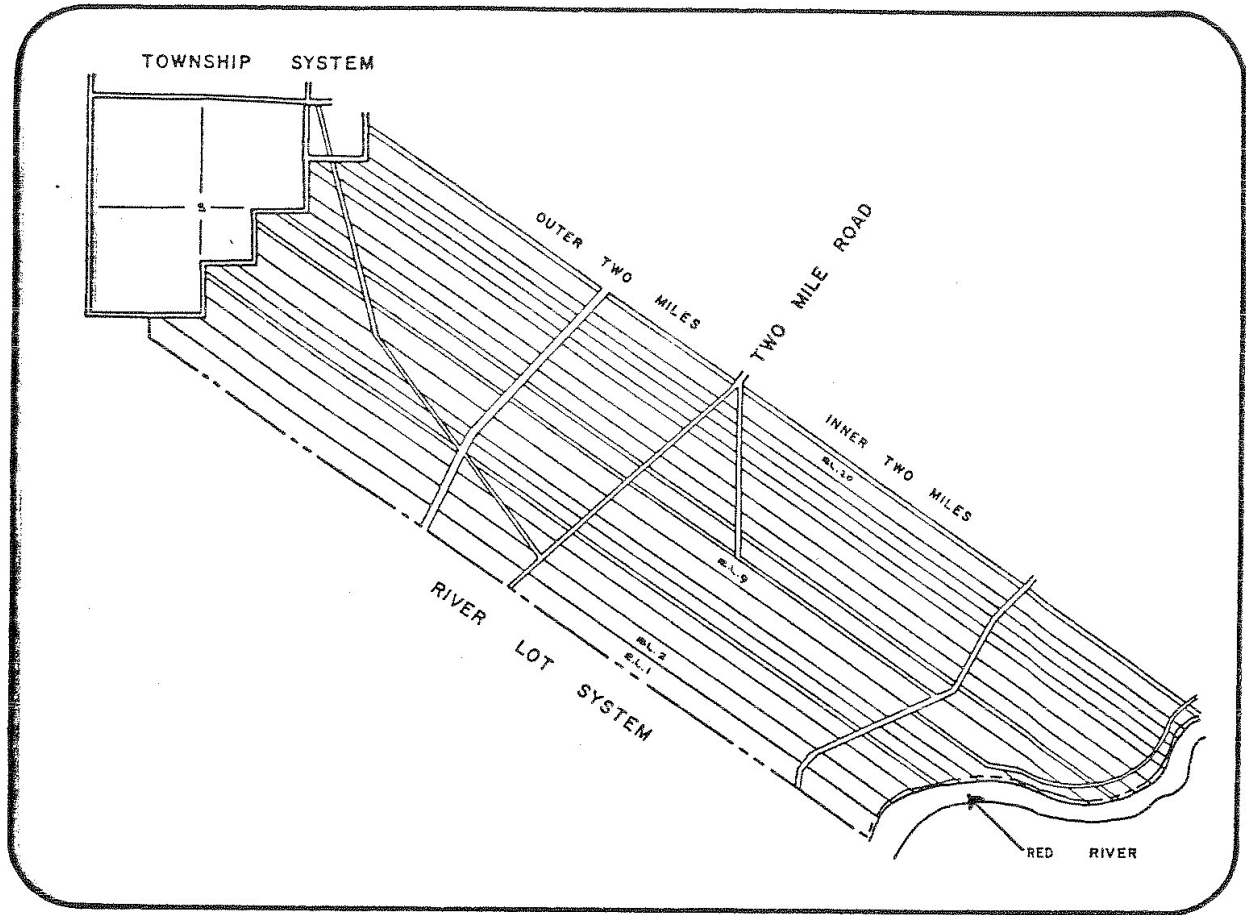
Nearly all land in Manitoba was originally divided in accordance with one of three different systems of survey which have been used in this province. A basic understanding of each of these systems is important to any lawyer who becomes involved in the conveyance of farm land.

1. River Lot System of Surveys

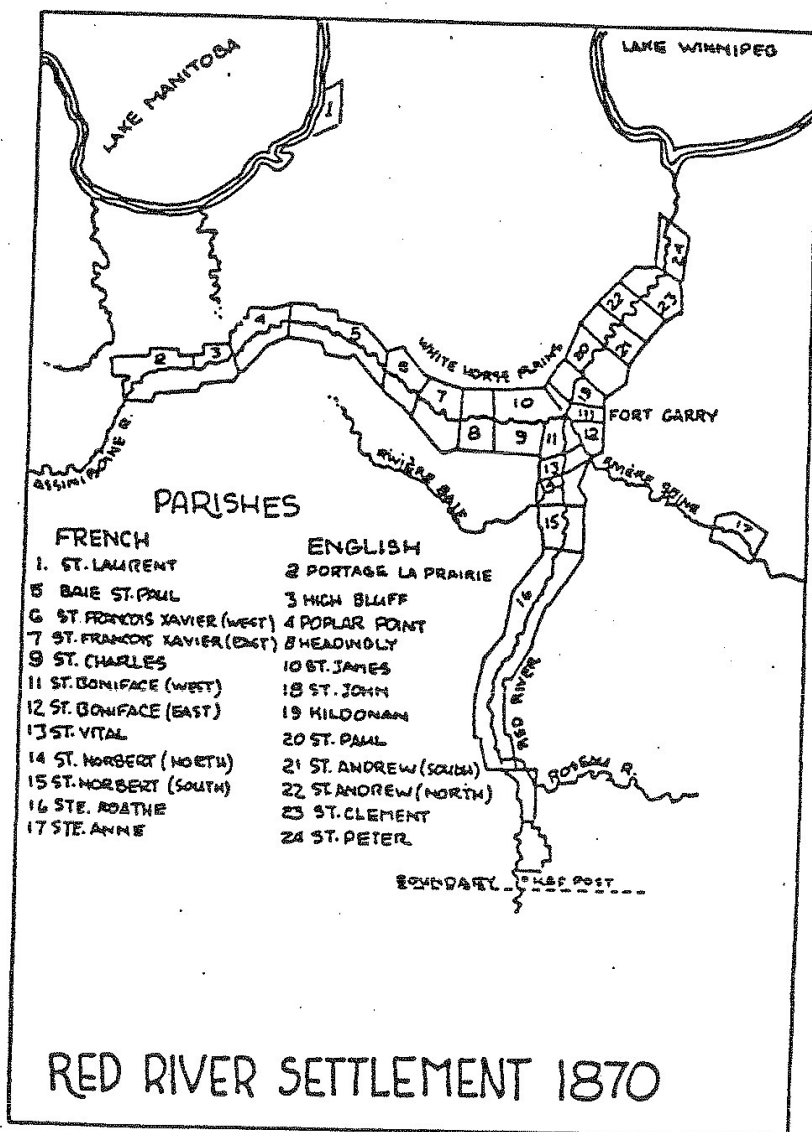
The River Lot System of Surveys began with the arrival of the first settlers around 1812. At that time, the Red and Assiniboine Rivers were the primary means of transportation and the settlers naturally wanted to be located on these rivers.

River frontages were laid out along a base line which was run parallel to the river and the property boundaries were marked about every 5 chains (330 feet) along this base line. The depth of the river lot was about 160 chains (2 miles) and ran at right angles to the base line. A road known as the "Two Mile Road" was placed at this point approximately parallel to the river.

Later it was decided that the river lots should be extended two miles further than the Two Mile Road to enlarge the river acreage. This area of land came to be known as the "Outer Two Miles".



The following diagram shows the extent of the River Lot System in Manitoba.

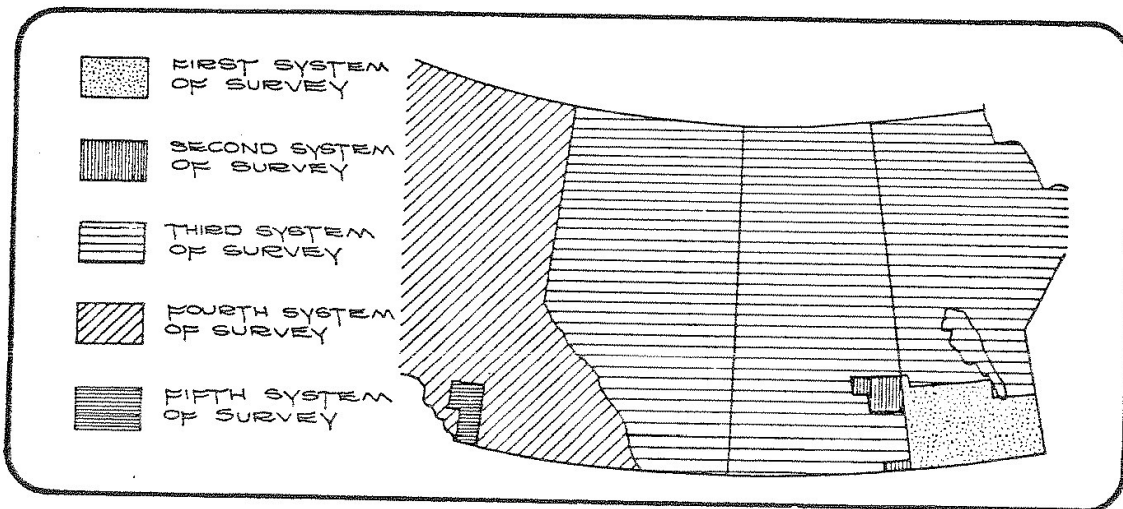


Ownership of a River Lot is described in the Land Titles Office by reference to the River Lot number and the Parish within which it lies.

The River Lot survey system gave way to the Township System of Survey in about 1871 when it was decided to survey and open to settlement the area now known as the Prairie Provinces.

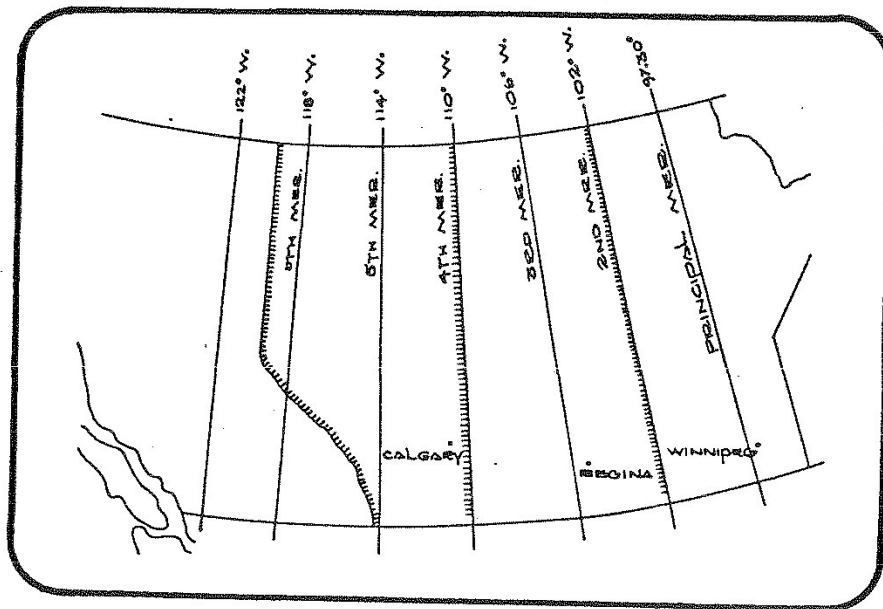
2. The First System

In all, five different forms of township survey were used in the four western provinces, but only the first and third systems were used in Manitoba.



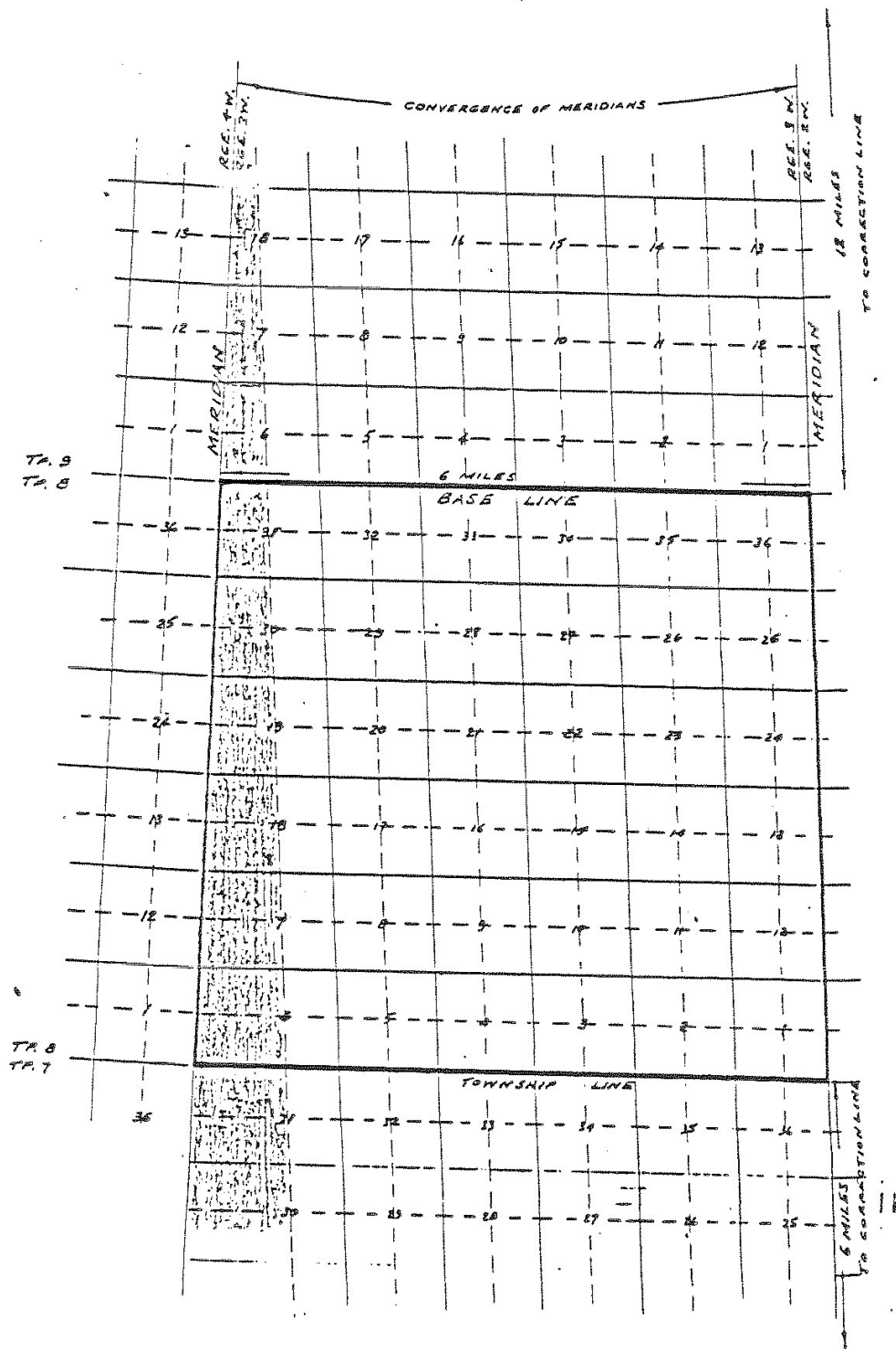
In about 1871 the Dominion Government decided to develop a grid system for land description in the West. The basic grid was formed by the intersection of township lines running east and west and range lines running north and south and an attempt was made to space these lines to form squares of approximately equal size.

The grid system required that a meridian (a north-south line) be chosen and this meridian was established at $97^{\circ}27'4''$ west longitude (about 3 miles west of Headingley) which was at that time the approximate point to which settlement had progressed. Five other meridians were located to the west of this prime or first meridian at about every 4° longitude.

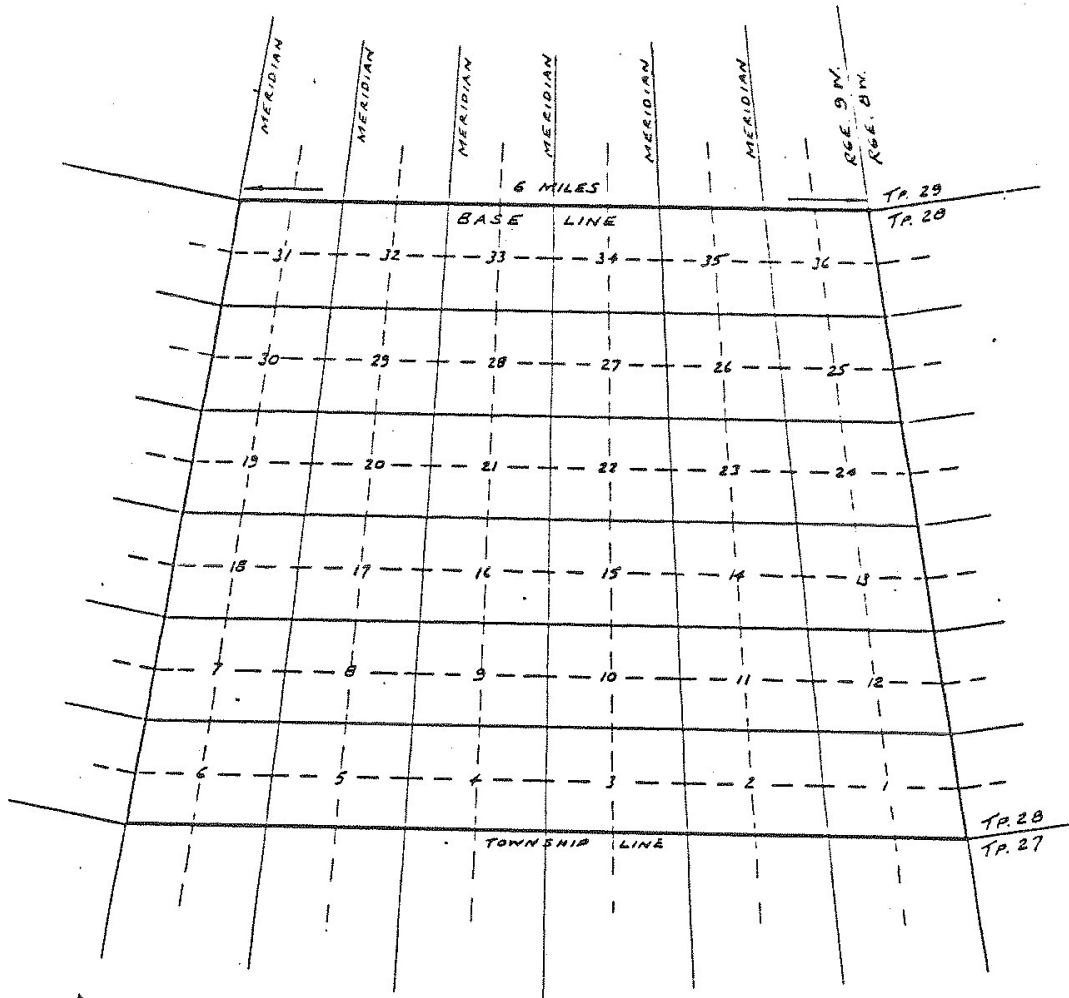


Commencing at the Principal Meridian and the 49° latitude (that is, the U.S.-Canada border) one mile distances were laid out running east, west and north. Every six of these were considered a unit of one range on the latitude and one township on the meridian.

1ST. SYSTEM OF SURVEY



3RD SYSTEM OF SURVEY



TP8

TP7

TP6

TP5

TP4

TP2

TP1

SECOND CORRECTION LINE

BASE LINE

FIRST CORRECTION LINE

23 49TH

R2 R1 R1 R2 R3

PARALLEL OF LATITUDE

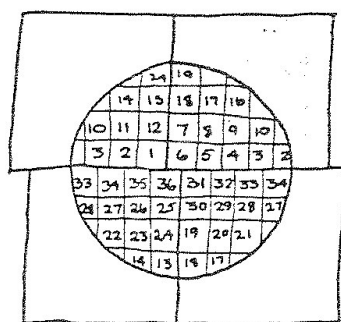
WPM EPM

LEGAL SUBDIVISION

1/8 MILE SQUARE

40 ACRES

QUARTER SECTION, 1/2 MILE SQUARE - 160 ACRES



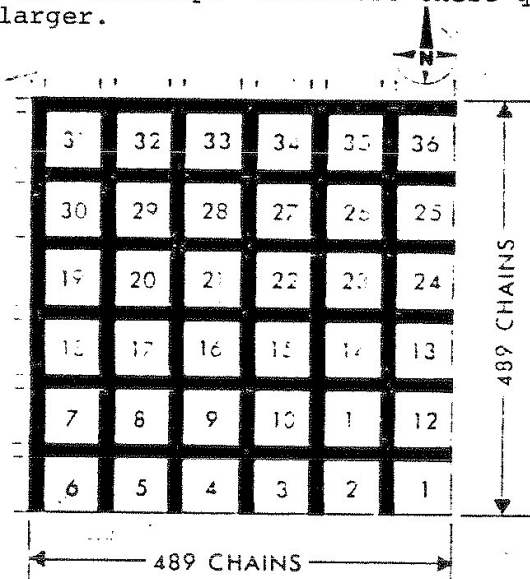
DETAIL OF CORRECTION LINE

The range and township lines present a grid of land packages, most of which are almost square and more or less six miles on each side. Some confusion may arise at this point because each of these parcels of land is also called a township.

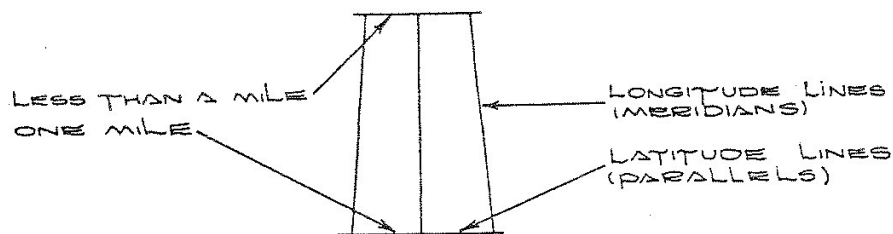
The township is then further divided into 36 sections of land, each approximately one square mile in area. Each of the 36 sections (containing approximately 640 acres or 259 hectares) are broken down into 4 quarters called "quarter sections". The quarter sections (containing approximately 160 acres or 65 hectares) are referred to as the North East ($NE\frac{1}{4}$), South East ($SE\frac{1}{4}$), South West ($SW\frac{1}{4}$) and North West ($NW\frac{1}{4}$) of a particular section. Each section can also be divided into 16 "legal subdivisions" which contain approximately 40 acres or 16.25 hectares.

This system of land division made possible simple and accurate land descriptions for Land Titles Office purposes by simply describing the land by reference to the legal subdivision or quarter section and the section, township, range and meridian.

The first system of township survey was utilized for most of southern Manitoba. It was the simplest of the five township surveys used in western Canada. This system contained one square mile sections with $1\frac{1}{2}$ chain (99 feet) road allowances. Each township contained six road allowances running north and south and six running east and west. A township was laid out so that it measured 489 chains on its base line and 489 chains along its eastern boundary (i.e. six $1\frac{1}{2}$ chain road allowances (99 feet) and six sections with 80 chains (1 mile) each). Both the East and West boundaries of the township are meridians and the East boundaries of all Sections are made parallel to the east boundary of the township. Theoretically speaking the surplus created is left in the last tier of quarter sections adjoining the west limit of the township. Therefore these quarter sections should always be larger.

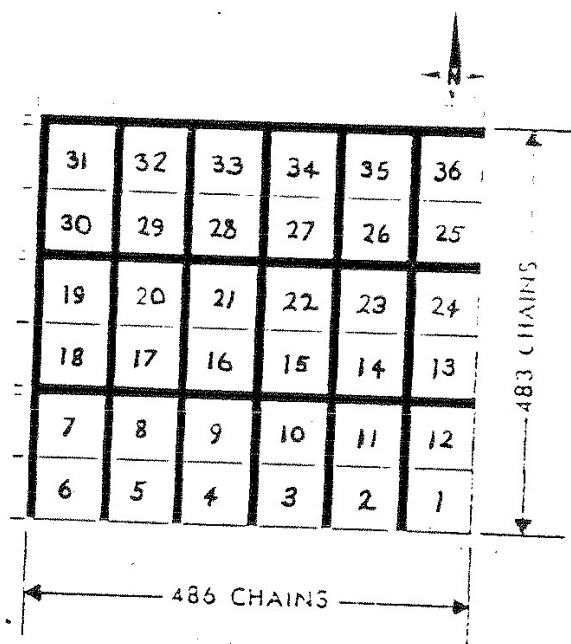


Because meridians converge to the North Pole as you proceed North, the northern border of any township must measure slightly less in distance than its southern border. Since townships would continue to decrease in area as you go further north, if no attempt was made to correct the difference, the northern townships would be smaller in area than the southern ones. To avoid this, the second township line north of the 49th parallel and every fourth township thereafter were established as correction lines. At each correction line, the range line is displaced a certain distance to the west. The jog to the west increased the area of the townships north of each correction line thereby compensating for the convergence effect.



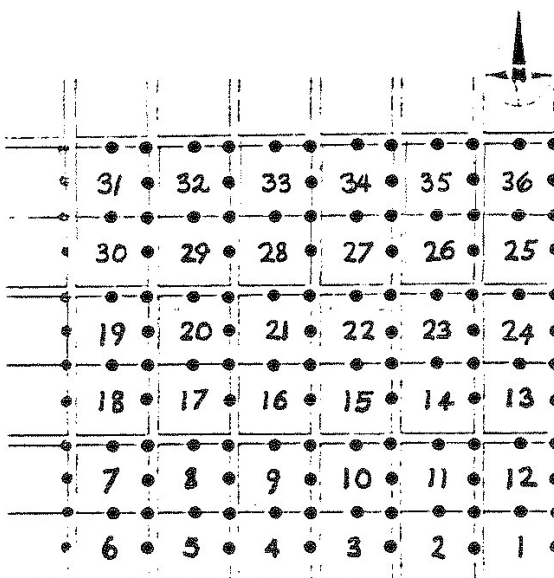
3. The Third System

In this survey, road allowances were reduced to one chain (66 feet) in width. This survey contained only 3 road allowances running east and west, rather than 6. These road allowances ran along every second east-west section line. Six road allowances ran north and south as in the first survey system. As well, the excess or deficiency of area was distributed uniformly throughout all quarter sections of the township.



Monuments

Monuments are the markers which were placed during the original surveys. These monuments in general consisted of a mound of earth 5' x 5' built between four pits that were dug 12" deep with sides 3' x 3'. A wooden stake would be placed at either the North corner or centre of the mound indicating the actual section or quarter section corner.



Dots indicate locations of monuments in a typical township of the third survey.

Errors in Original Survey

It is important to remember that there were many errors made during the original surveys. We have already seen how the converging meridians made it difficult to lay out townships so that they were all the same size. As well, in hilly or rough terrain, chaining measurements were often inaccurate. The less sophisticated survey equipment of the day could also contribute to errors creeping into the original surveys.

One must, therefore, always bear in mind that a quarter section of land does not always contain 160 acres (or 65 hectares). It is possible to find quarter sections in Manitoba that have as few as 130 acres (approximately 53 hectares) or as many as 180 acres (approximately 73 hectares).

If a surveyor is called upon to reestablish the boundaries of a parcel of land, the surveyor has a duty to establish the boundary line according to the original monumentation. If the original monuments can no longer be found, the duty of the surveyor is to attempt to reestablish the monuments by means of evidence on the ground such as old fence lines, roads, etc. which can be related back to the original monumentation. It is only as a last resort where there is no evidence which can establish with reasonable certainty the location of the original monumentation, that a surveyor can remeasure the property using theoretic measurements.

See Kingston vs. Hyland, (1919), 48 N.B.R., 324(K.B.). Also see unreported decision of Mr. Justice Kroft in Huebner et al vs. Wiebe et al (Manitoba Queen's Bench), delivered November 4, 1983.