

Farm Debt Compromises during the Great Depression: An Empirical Study of Applications made under the *Farmers' Creditors Arrangement Act* in Morden and Brandon, Manitoba

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ABSTRACT

This article presents the results of an empirical study of the Farmers' Creditors Arrangement Act (FCAA) in Morden and Brandon, Manitoba. Parliament enacted this federal insolvency statute to address the agricultural crisis of the 1930s colloquially known as the "Dust Bowl". The express purpose of the Act was to "keep the farmer on the farm" by reducing debts to an amount that the farmer could afford to pay. This is the first article to engage in a substantive analysis of the FCAA, and it employs a novel methodology for studying farm debt compromises under

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the Act. This study uncovers notable differences in the way that FCAA applications played out in Morden and Brandon. It reveals that much farm credit was obtained locally, with roughly half of all claims being owed to individuals or estates, which in many instances were the mortgage lender. In addition, medical debts listed the FCAA files call attention to the privation of the “Dirty Thirties” and the financial costs born by individuals for medical care in the pre-public health care era. The empirical findings of this study thus add to historical scholarship about the experience of the Great Depression on the Canadian Prairies by shedding light on the social context of debtor-creditor relations in farming communities, and highlighting regional variations in the application of a federal law designed to help address the farm debt crisis.

I. INTRODUCTION

This article presents the results of an empirical study of applications made under the *Farmers’ Creditors Arrangement Act*¹ (FCAA) in Morden and Brandon, Manitoba in the 1930s and 1940s. The FCAA was one of several pieces of federal legislation that were enacted to address the agricultural crisis colloquially known as the “Dust Bowl”. The express purpose of the FCAA was to “keep the farmer on the farm” by reducing debts to an amount that the farmer could afford to pay based on projected farm revenues.² To date, there has been very little research on the FCAA, and this is the first article to engage in a study of this statute. It reports on an empirical study of FCAA applications in Manitoba, and draws on a number of previously unstudied primary sources held at the Archives of Manitoba and Library and Archives Canada. This article synthesizes and analyzes this empirical data in order to shed light on how the FCAA operated in practice in Morden and Brandon. Morden and Brandon were

¹ *Farmers’ Creditors Arrangement Act*, SC 1934, c 53 [FCAA].

² Stephanie Ben-Ishai & Virginia Torrie, “Farm Insolvency in Canada” (2013) IIC Journal 33 at 42-43 [Ben-Ishai & Torrie], citing RB Bennett (Prime Minister, Conservative) in *Debates of the House of Commons*, 5th Sess, 17th Parl (Ottawa: King’s Printer, 1934) at 3639 [Commons Debates]. See also JEA MacLeod, “The Farmers’ Creditors Arrangement Act” (1936-1938) 2 *Alta L Q* 167; D McLaws, “The Farmers’ Creditors Arrangement Act” (1936-1938) 2 *Alta L Q* 239.

selected because the Archives of Manitoba held a large number of FCAA files from these two communities.

The archival holdings on the FCAA provide some of the most detailed and extensive primary source materials available under any Canadian insolvency statute. Through a series of standard forms, the FCAA files itemized the debts, creditors, assets, farm coordinates, and biographic information of the farmer-debtor and their family members. Many of these files also included the handwritten correspondence between the farmer, creditors, and FCAA officials. The large amount of data available presented a unique opportunity to study how the FCAA operated in practice.

This study reveals notable differences in the way that FCAA applications proceeded in different communities, which suggests that regional factors tempered federal “uniformity” by influencing the way actors interacted with the law. In Morden, applicants spent more time on, and reached a greater proportion of compromises through, the initial stage of the debt negotiation process. In Brandon, farmers spent less time, and reached fewer compromises through this stage of the FCAA process.

Another key finding of this study is the significant extent to which credit was obtained from local and individual creditors as opposed to distant creditors or institutional lenders. In both Morden and Brandon, roughly half of all claims were owed to individuals or estates, and in a number of cases these local creditors were the mortgage lender. This adds complexity to traditional explanations that characterize the farm debt crisis in terms of the competing interests of Western borrowers versus Eastern financial interests. Writing down debts presented a dilemma when the farm mortgage was a primary source of income for the individual or estate lender (e.g. retirement income).³ Interestingly, both of these phenomena

³ See e.g. Letter from the Right Honourable Arthur Meighen, Senator, to the Honourable Mr. Justice Montague, Chief Commissioner (12 February 1938). This letter discusses a proposal filed under the FCAA between Mr. John Witherspoon (farmer from Glenboro, MB) and Mr. and Mrs. West (creditor and former publisher of a weekly newspaper in Glenboro, MB). In the letter, Meighen states that Mr. West should not be working, however, if he does not work, he will be on relief. See further Letter from Mr. West to Meighen (25 March 1938). In this letter West writes that the money means everything to him and Mrs. West and it was what they had laid aside to live on once he was not able to work any longer. West states that if he stopped working now, he would be on relief immediately. Both letters are contained in

were more pronounced in Morden. Lastly, the presence of medical debts in FCAA applications highlights the health effects of the privation experienced by many Prairie farmers during the “Dirty Thirties”, and the financial burden of medical care in the pre-public health care era. This study accordingly offers new insight into debtor-creditor relations in Manitoba during the 1930s and 1940s.

This paper is organized as follows. Section 2 provides an overview of substance and operation of the FCAA. This section describes the main stages in the administrative process established by the Act and the roles of the parties involved. Section 3 discusses the empirical study of FCAA applications in Morden and Brandon, Manitoba, and the methodology. This section reports on the results of the empirical study and analyzes these results in light of national data on FCAA applications collected by the federal Department of Finance. Section 4 offers a conclusion.

II. FARMERS CREDITORS’ ARRANGEMENT ACT, 1934

The FCAA established a novel, administrative procedure and a new tribunal (“Boards of Review”) to facilitate debt compromises of tens of thousands of insolvent farmers during the 1930s and 1940s. A “debt compromise” refers to a revised repayment plan of a debtor’s debt. The repayment plan could take numerous forms and usually included a reduction of the total amount of debt owed, as well as a revised repayment schedule. Parliament intended that the Act would be a temporary measure, which would operate in tandem with other programs to help address the agricultural crisis.⁴ The FCAA operated throughout Canada for several years, but by the 1940s its application was limited to debts incurred prior to May 1, 1935 by farmers residing in the Prairie Provinces.⁵

Meighen Papers (Library and Archives Canada, Ottawa: Microfilm Roll C - 3556).

NB: The mortgage was under Mrs. West’s name. See Form A - Statement of Affairs for John Witherspoon of Glenboro, MB listing Mrs. Florence West as a secured creditor for a mortgage on land in *ibid*.

⁴ Other measures included the Canadian Farm Loan Board, Experimental Farms, Wheat Board, Farm Credit Canada, etc.

⁵ The FCAA 1934 was repealed and replaced in 1943 with a new Act with the same title. The New Act only applied to debts incurred prior to May 1, 1935, unless

The FCAA differed from conventional federal insolvency legislation in several respects. Firstly, whereas other insolvency laws leave the fate of debt compromises up to a creditor vote, the FCAA included a mechanism which allowed the Board of Review to draft and enforce a compromise, overriding creditor objections. Secondly, the Act applied to secured creditor claims, which are ordinarily exempt from bankruptcy and insolvency proceedings due to their nature as “property rights”. Thirdly, the Act was administered by public servants, whereas the *Bankruptcy Act* uses a private delivery model of licensed bankruptcy trustees.⁶ Fourthly, the Act was the only Canadian bankruptcy statute to have been overseen by an administrative tribunal.

Figure 1, below, depicts the major steps in the FCAA process in the form of a flowchart. This flowchart tracks the administrative process established by the FCAA, 1934, which was the version of the Act under which most of the files in this study proceeded. The FCAA, 1934 was repealed and replaced in 1943 by a new FCAA statute, which altered the procedure in some important respects. Most notably, the new Act eliminated the Boards of Review, and the duties of these boards were delegated to the county or district court of the county court district or judicial district in which the farmer resided.⁷ A few of the files in this

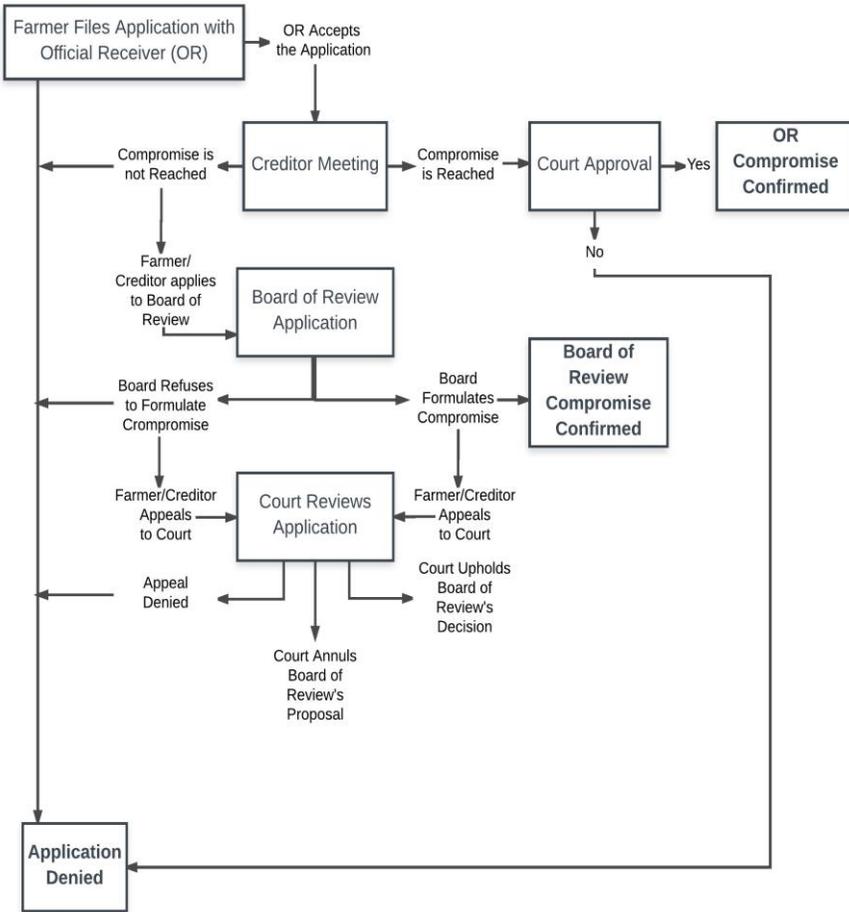
creditor consent was obtained: *Farmers’ Creditors Arrangement Act*, SC 1943-1944, c 26 [FCAA 1943], Preamble, s 2(i); Ben-Ishai & Torrie, *supra* note 2 at 44-47. Initially, the new Act applied only in Alberta and Saskatchewan. However, due to lobbying from the three Prairie premiers, Parliament extended the application of the Act to Manitoba. See FCAA 1943, *ibid*, s 7; Letter to the Prime Minister and Members of the Federal Government from the Premiers of Alberta, Saskatchewan, and Manitoba (1942) and Unanimous Resolution of the Inter-Provincial Debt Conference, Saskatoon (30 June 1942) in United Farmers of Alberta Fonds, *Adjustment and Settlement of Farm Debts* (1905-1970), Calgary, Glenbow Archives (M-1749-34); Virginia Torrie, “Should Paramountcy Protect Secured Creditor Rights: *Saskatchewan v Lemare Lake Logging* in Historical Context” (2018) *Review of Constitutional Studies* [forthcoming] [Torrie 2018].

⁶ In contrast to the FCAA, the composition provisions of the *Bankruptcy Act* in force at the time were left up to a creditor vote, applied only to unsecured claims, were overseen by bankruptcy trustees, and entailed no involvement by the court or an administrative tribunal. See *Bankruptcy Act*, RSC 1927, c 11, Part II “Assignments and Compositions”, ss 9-22 [*Bankruptcy Act* 1927].

⁷ FCAA 1943, *supra* note 5, s 2(1)(c) “court”.

study fell under the FCAA, 1943, and so the key differences between the two versions of this statute are highlighted as part of the overview of the three stages of the FCAA process described below.⁸ Unless otherwise noted, reference to the FCAA refers to the 1934 version of the statute.

Figure 1: Administrative Process under the FCAA



⁸ This section draws on Morris C Shumiatcher, *A Study in Canadian Administrative Law: The Farmers' Creditors Arrangement Acts* (D)ur Thesis, University of Toronto Faculty of Law, 1943) [unpublished] [Shumiatcher]; FCAA, *supra* note 1; FCAA 1943, *supra* note 5 and archival materials in order to offer a synthesis and overview of the FCAA process.

A. Official Receiver

Official Receivers (ORs) appointed under the FCAA were responsible for most of the administrative duties associated with the FCAA process, similar to ORs appointed under the *Bankruptcy Act*. These officials oversaw the first stage in the FCAA process. The Governor General in Council appointed ORs under the FCAA for each judicial district in the Province, and usually selected men with a legal background for this role.⁹ The scarcity of legal work in the mid-1930s – particularly in the Prairie region – prompted many lawyers to seek appointment as an OR under the new Act.¹⁰

ORs held office at the pleasure of the Governor General in Council and were empowered to carry out a wide range of duties under the FCAA. As the principal intermediary of the FCAA process, ORs liaised with farmers, creditors, the Board of Review (BoR), and the court. In addition, ORs were usually appointed as the Official Custodian (OC) and trustee of the farmer's property, except where the farmer was made trustee of their own property.

Only a farmer could initiate the FCAA process and they could only make use of the Act once.¹¹ A farmer who was unable to pay their debts as

⁹ FCAA, *supra* note 1, s 2(3). Under the FCAA 1943, the clerk of the court functioned as the OR, although the Governor in Council could appoint an OR; see FCAA 1943, *supra* note 5, s 3(1).

¹⁰ See e.g. Letter from AK Cates (56-year-old Brandon lawyer) to PM Bennett (28 August 1934), Cates wrote that he and his family would be forced to go onto relief if he did not get the OR post, as the area was experiencing its fourth successive year of drought; Letter from Arthur Sullivan (Lawyer, Sullivan and Cuddy Barristers, Winnipeg) to PM Bennett's Private Secretary (6 November 1934), writing to recommend Cates for the position of OR for Manitoba's Western Judicial District, in which Brandon was located. Both letters are contained in Bennett, Richard Bedford, Correspondence, Ottawa, Library and Archives Canada (Microfilm Roll M-959) [Bennett Papers]. NB: The OR post for Manitoba's Western Judicial District went to another Brandon barrister, Evelyn Guy Hetherington.

¹¹ Shumiatcher, *supra* note 8 at 918-919, criticizing the one-proposal limit and noting that the FCAA, 1943 allowed farmers to make a second, final proposal. See also discussion in Ben-Ishai & Torrie, *supra* note 2 at 46-47.

they became due, and who was considered an “efficient producer” within the meaning of the Act, could make an application under the FCAA. “Farmer” was defined to mean a person whose primary occupation was farming or tillage of the soil.¹² Most applicants under the Act were natural persons, however, in rare cases corporations made applications under the FCAA.¹³ The scope of the Act was limited to insolvent farmers, and the FCAA incorporated by reference the *Bankruptcy Act*’s definition of insolvency. This insolvency criterion was essential to the constitutional validity of the FCAA as a federal statute, since without this restriction the Act was a debt adjustment law which would be the subject of provincial jurisdiction.¹⁴ “Efficient producer” was interpreted loosely, and basically provided a way to vet applicants based on whether they were believed to be able to make a success of their farm. Few farmers were denied relief based on this criterion. A farmer could initiate the FCAA process before or after an assignment in bankruptcy. If the farmer had already made an assignment in bankruptcy when they applied under the FCAA, the FCAA stayed proceedings under the *Bankruptcy Act*.¹⁵

The initial application under the FCAA was filed with the OR in the judicial district in which the debtor resided, and could be for a

¹² FCAA, *supra* note 1, s 2(1)(f) “farmer”.

¹³ *Barickman Hutterian Mutual Corp v Zastre Estate*, [1939] SCR 223, [1939] 2 DLR 225. The SCC affirmed that corporations, including a Special Act corporation the objects of which included religious purposes, could fall within the FCAA definition of “farmer” if the corporation’s primary occupation was farming or tillage of the soil. See also *National Trust Co v Christian Community of Universal Brotherhood Ltd*, [1941] SCR 601, [1940] 4 DLR 767, where the SCC held that the corporation in question did not fall within the FCAA definition of “farmer” because its principal occupation was not farming or tillage of the soil.

¹⁴ Prior to the FCAA’s enactment, the Prairie Provinces had enacted a series of laws to address the agricultural crisis, including debt adjustment acts, and they continued to enact debt relief legislation even after 1934. See e.g. *Debt Adjustment Act*, SA 1923, c 43; *Debt Adjustment Act*, SA 1937, c 79; *Debt Adjustment Act*, SS 1931, c 59; *Reduction and Settlement of Land Debts Act*, SA 1937, c 27; *Debt Adjustment Act*, SM 1931, c 7. See also discussion in Shumiatcher, *supra* note 8 at Chapter 3, “The History of Debt Adjustment Legislation in Alberta”, 51-146; Thomas GW Telfer, “Rediscovering the Bankruptcy and Insolvency Law Power: Political and Constitutional Challenges to the Canadian *Bankruptcy Act*, 1919-1929” (2017) 80 Sask L Rev 37 at 50-55.

¹⁵ FCAA, *supra* note 1, s 11.

composition of debts, an extension of time, or a scheme of arrangement. A farmer initiated the FCAA process by filling out a *Statement of Affairs* form¹⁶ with the OR in their district along with their proposal for a compromise with their creditors. An FCAA application could only be in respect of an individual farmer; joint proposals (e.g. spouses, brothers) were formally prohibited.¹⁷ The OR reviewed these materials to determine whether the farmer was eligible for relief under the Act. If the farmer was eligible, then the OR completed an *Official Receiver's Certificate*,¹⁸ which certified that the farmer had invoked the FCAA process and therefore all proceedings against the debtor were stayed and debt enforcement efforts stopped.¹⁹ The *Official Receiver's Certificate* was sent by registered mail to the Clerk of the Court in the relevant Judicial District, and the officers of his Municipal District.²⁰

Next, the OR set a date for the first Meeting of Creditors and, on at least ten days notice to all interested parties, sent the following documents to each creditor: *Statement of Affairs*; *Notice to Creditors*;²¹ a voting letter; and a Proof of Debt Form.²² In reply, creditors sent back a notice of whether they intended to be present at the meeting and their proof of debt. If they planned not to attend the meeting, then they also sent back their voting letter. The proof of debt included details of the security (if any) and an Exhibit with particulars that allowed the OR to verify and classify the debt.

The OR also sent by registered mail to the farmer a copy of his *Statement of Affairs* and Proposal, along with the *Notice to Creditors*. Simultaneously, the OR sent to the federal Deputy Minister of Finance the following documents: a copy of *Official Receiver's Certificate*, the original *Notice to Creditors*; and the original *Statement of Affairs*. The Department of Finance collected these forms from all ORs and used the

¹⁶ Labeled "Form A".

¹⁷ This study uncovered some joint applications (e.g. spouses, brothers), which appear to have been processed as ordinary applications.

¹⁸ Labeled "Form K".

¹⁹ FCAA, *supra* note 1, s 11; Shumiatcher, *supra* note 8 at 308.

²⁰ Shumiatcher, *ibid.*

²¹ Labeled "Form J".

²² Shumiatcher, *supra* note 8 at 309–310.

information to compile statistical information about the operation of the FCAA nationally and by province.

Next, the OR verified the farmer's *Statement of Affairs* to determine whether any additional creditors had claims on their assets. Using the relevant FCAA forms, the OR sent requests to: the local Office of the Sheriff requesting a search of any pending executions; the Registrar of Land Titles for a search of the debtor's title and general register; and the Secretary-Treasurer of the relevant municipality for a statement of property taxes owing to municipalities.²³ The FCAA's applicability to tax debts is somewhat unclear. At the time, bankruptcy law did not generally apply to Crown claims and there was constitutional controversy as to whether Parliament had jurisdiction to provide for the adjustment of these claims as part of a federal insolvency law.²⁴ This empirical study revealed that property tax debts were sometimes adjusted downward, but usually by a relatively small amount (e.g. a few dollars) in proportion to the overall tax debt owed. The near-insolvency of many municipalities during the Great Depression was probably a factor in the adjustment of tax debts.

The *Statement of Affairs* form provided details of the farmer's assets and liabilities, his farm operations for the past few years, names and ages of his immediate family members, and a general description of the current state of his land, buildings and equipment. Some farmers filled in these forms themselves, while others engaged a solicitor. In his 1943 DJur thesis, Morris Shumiatcher²⁵ records that many farmers were subject to legal

²³ *Ibid* at 312.

²⁴ Canadian bankruptcy legislation generally did not apply to Crown claims until 1992, when a provision was added to the *Bankruptcy and Insolvency Act* to this effect: *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 86 [BIA 1985]. This section was added by SC 1992, c 27, s 39. See e.g. Factum For the Attorney-General for British Columbia (15 December 1935), Ottawa, King's Printer at 1-4, 9-13, arguing that the FCAA compromises that adjusted land tax debts interfered with provincial jurisdiction, and that the Board of Review's power to adjust provincial Crown claims is *ultra vires*. See *Reference Re the Farmers' Creditors Arrangement Act, 1934*, [1936] SCR 384, 17 CBR 359 [Ref Re FCAA], *aff'd* [1937] AC 391, [1937] 1 DLR 695 (PC). The Majority at the SCC held that federal bankruptcy and insolvency legislation can validly bind Crown claims (at 393). The JCPC decision did not discuss tax debts or Crown claims.

²⁵ After completing his DJur at the University of Toronto, Morris Shumiatcher was invited to work for the office of the Attorney General in Saskatchewan by Premier

proceedings for debt enforcement by the time the FCAA was enacted, and thus had already retained a solicitor to represent their interests.²⁶ Shumiatcher notes that most Alberta farmers were unable to give definite information about the state of their affairs, and this created difficulties for counsel and ORs who were required to record full and accurate information for all FCAA applicants. The Manitoba farmers in this study also tended to fill in the *Statement of Affairs* with rough estimates, especially when valuing their assets. As Shumiatcher explained, few Western farmers had any business training or inclination to keep detailed business records.²⁷ Farmers' concern for their debt obligations tended to manifest in a keen focus on day-to-day farming operations (i.e. efforts to generate revenue), rather than detailed bookkeeping.

At a time and place specified in the *Notice to Creditors* form, the OR convened the first meeting of creditors. In practice, these meetings were usually held in the OR's office, and were quite informal.²⁸ The OR presided over the meeting and recorded the minutes as required by the *Minutes of the Meeting of Creditors* form.²⁹ This form detailed the names of creditors present in person or by proxy; how each creditor voted on any business at the meeting; and, any voting letters received.

The farmer was required to be present at the meeting unless they were excused by a resolution of those who attended the meeting. In practice, the farmer or their counsel usually attended the meeting. When farming operations conflicted with the scheduled date of the meeting, the OR usually rescheduled the meeting for a time when the farmer would be able to attend.

A majority of creditors were required to be present at the meeting, either in person or by voting letter or proxy, in order to make a proper determination on the farmer's proposal. If an insufficient number of

Tommy Douglas (NDP). In 1948 Shumiatcher represented the Government of Saskatchewan in a case before the JCPC concerning provincial farm debt relief legislation: *Reference Re the Farm Security Act, 1944 (Sask)*, [1948] UKPC 87, [1949] AC 110. Shumiatcher also authored the Saskatchewan Bill of Rights, which was used as the model for the Canadian Bill of Rights.

²⁶ Shumiatcher, *supra* note 8 at 305–306.

²⁷ *Ibid* at 307.

²⁸ *Ibid* at 314–315.

²⁹ Labeled “Form B”.

creditors were present, then the OR was required to cancel the farmer's proposal altogether, which ended their protection under the FCAA.³⁰ In this situation, the farmer's only remaining recourse under the Act was to file a request using the *Request for Review* form³¹ asking that the BoR consider their case and formulate a compromise.³²

i. Creditor Voting

Creditors were classified as secured or unsecured for the purpose of voting on a debt compromise. The FCAA provided that a vote in favour of a debt compromise by three-fourths of unsecured creditors could bind the dissenting minority to the agreement.³³ If no compromise was reached, either the farmer or one of their creditors could apply to the BoR, which was empowered to unilaterally craft a debt compromise.

The Act treated secured creditors more deferentially than unsecured creditors, probably due to the constitutional uncertainty about whether Parliament had jurisdiction over secured claims.³⁴ By 1934 when the FCAA came into force, provincial Debt Adjustment Boards had already been in operation for a few years in the Prairie Provinces. The fact that the federal board was established after the provincial boards probably contributed to the general impression that the FCAA trenched on provincial jurisdiction over property and civil rights, especially insofar as the federal statute purported to adjust secured claims.

³⁰ Shumiatcher, *supra* note 8 at 320–321.

³¹ Labeled “Form F”.

³² FCAA, *supra* note 1, s 12(4); Shumiatcher, *supra* note 8 at 320.

³³ FCAA, *ibid*, s 6(2), which adopted the composition provisions of the *Bankruptcy Act* by reference. See *Bankruptcy Act 1927*, *supra* note 4, ss 11–22. Note that ss 16(3) “reasonable security” and 16(5) “priority of debts” did *not* apply in the case of FCAA applications; see FCAA 1943, *supra* note 5, s 9. See also discussion in Shumiatcher, *supra* note 8 at 316.

³⁴ See discussion in Virginia Erica Torrie, *Protagonists of Company Reorganisation: A History of the Companies' Creditors Arrangement Act and the Role of Large Secured Creditors* (PhD Thesis, University of Kent, Kent Law School, 2016) [unpublished] at 80–81, 87, 107–111, 118–127 [Torrie 2016]. See further Torrie 2018, *supra* note 5.

Although the FCAA stayed secured creditor claims,³⁵ ORs had to obtain written consent from secured creditors before dealing with their claims at a creditor meeting.³⁶ Shumiatcher records that consent was rarely obtained because secured creditors preferred to rely on their security, rather than the FCAA, as a remedy for debtor default. Due to their nature as property rights, secured claims are ordinarily not subject to bankruptcy proceedings, which helps explain the secured creditors' resistance to cooperating under the FCAA. Furthermore, under the Canadian Division of Powers, secured creditor rights were regarded as falling under the provinces' exclusive jurisdiction over "property and civil rights", which created uncertainty about the constitutional validity of the FCAA to apply to secured claims.³⁷ If secured creditors did not consent to a compromise, the farmer could apply to the BoR. In the first few years of the FCAA's administration, however, there was doubt about whether the Board could reduce secured creditor claims or the value of the asset against which these claims were secured. As a result, Shumiatcher reported that few Boards of Review adjusted secured creditor claims at all in the early years of the Act. Nevertheless, secured creditors' refusal to participate did not terminate the FCAA process as it applied to unsecured claims.

Shumiatcher was critical of the light treatment afforded to secured claims under the FCAA, stating that it would have been more practical and effective to deal with these debts in the same way as unsecured claims.³⁸ He noted that no official explanation was provided for the seemingly arbitrary difference between the Act's treatment of secured claims as opposed to unsecured claims.³⁹ Despite a widely held view among lawyers and politicians that the FCAA and its sister statute, the *Companies' Creditors Arrangement Act*, were constitutionally invalid for purporting to adjust secured debt, Parliamentarians passed both pieces of legislation without any objections recorded in Hansard.⁴⁰ Secured claims

³⁵ FCAA, *supra* note 1, s 11.

³⁶ Shumiatcher, *supra* note 8 at 317; *Ibid*, s 7.

³⁷ *Constitution Act, 1867* (UK), 30 & 31 Vict c 3, s 92(13); *Ref Re FCAA*, *supra* note 24.

³⁸ Shumiatcher, *supra* note 8 at 318–319.

³⁹ *Ibid* at 319–320.

⁴⁰ On the CCAA bill debates, see discussion in Torrie 2016, *supra* note 34 at 88–91. On the FCAA bill debates, see Commons Debates, *supra* note 2 at 4439, 4508; *Debates of*

were at the crux of the dispute about constitutional jurisdiction over debt adjustment. The FCAA's (initial) deference toward secured creditors' rights attests to this controversy as well as the need for federal action and a single forum to deal with farm debts.

In practical terms, adjusting secured claims is essential to a successful restructuring because secured claims represent a business's largest debts and encumber its most substantial assets. Therefore, a secured creditor's action to enforce its claim strips the business of property and equipment, which frustrates any ancillary efforts to restructure the business as a going-concern. For instance, a mortgagee's action to enforce its claim by foreclosing on a farm terminates efforts to keep the farm in operation.

Shumiatcher recorded that the informal tone of the creditors' meeting contributed to a general feeling of good will and confidence that was conducive to formulating a compromise.⁴¹ As compared to the slower and more adversarial process of discovery in civil suits, the creditors' meetings under the FCAA tended to be a cheap, speedy and comprehensive way of ascertaining the facts needed to formulate a compromise plan.⁴² Meetings were sometimes adjourned in order to obtain the support of dissenting creditors.⁴³ If the dissenting creditor(s) subsequently approved the compromise by letter, this was sufficient for the purposes of the Act and no further meetings were required.⁴⁴

In cases where creditors and the debtor agreed to a debt compromise through this initial procedure, the OR filed the *Report of the Official Receiver*⁴⁵ with the district court and applied for court approval of the plan.⁴⁶ If the compromise did not have the unanimous approval of all

the Senate of Canada, 5th Sess, 17th Parl, (Ottawa: King's Printer, 1934) at 596, 620.

⁴¹ Shumiatcher, *supra* note 8 at 315.

⁴² *Ibid* at 315-316.

⁴³ *Ibid* at 320.

⁴⁴ *Ibid*.

⁴⁵ Labeled "Form C".

⁴⁶ Shumiatcher, *supra* note 8 at 322.

creditors, the OR sent the *Notice of Application to Approval Proposal*⁴⁷ to all interested parties.⁴⁸ Otherwise, no notice was required.⁴⁹

The court reviewed each file and automatically approved proposals that complied with all statutory and regulatory requirements under the Act.⁵⁰ Once the court made the order approving the FCAA proposal, the OR sent the following documents to the Deputy Minister of Finance: a copy of the court order; Special Report of the Official Receiver; *Minutes of the Meeting of Creditors*; the original proposal and any subsequent proposals; and, the *Report of the Official Receiver*.⁵¹ The OR also sent a copy of the court order and the final proposal to the farmer and each of their creditors.⁵²

If the OR procedure failed to reach a debt compromise agreement, the FCAA provided a fifteen-day window during which time the debtor or one of their creditors could request a hearing at the BoR by filing a *Request for Review*.⁵³ After the fifteen-day time period, the farmer's FCAA proposal lapsed along with the stay of proceedings afforded to them by the Receiver's Certificate.⁵⁴ The legal effect of this outcome was the same as if no proposal had ever been filed under the FCAA. Thus, the farmer could potentially assign themselves into bankruptcy but, per section 7 of the *Bankruptcy Act*, the farmer's creditors could not petition the farmer into bankruptcy.⁵⁵ This was distinguishable from the result of a farmer defaulting on a FCAA compromise. In the event that a farmer defaulted on a FCAA compromise, the farmer was automatically placed in

⁴⁷ Labeled "Form D".

⁴⁸ Shumiatcher, *supra* note 8 at 323.

⁴⁹ The OR filed the following documents with the court as part of the application for approval of the plan: a draft order approving the proposal; *Report of the Official Receiver* and any subsequent reports; *Notice to Creditors*; *Minutes of the Meeting of Creditors*; *Statement of Affairs*; the farmer's first proposal; and *Notice of Application to Approval Proposal* (if applicable). See *ibid* at 322–323.

⁵⁰ *Ibid* at 323.

⁵¹ *Ibid* at 324.

⁵² *Ibid* at 325.

⁵³ Labeled "Form F"; FCAA, *supra* note 1, s 12(4); *ibid* at 320.

⁵⁴ Shumiatcher, *supra* note 8 at 320.

⁵⁵ *Bankruptcy Act* 1927, *supra* note 6, s 7.

bankruptcy proceedings under the *Bankruptcy Act*. National statistics compiled by the Department of Finance indicate that roughly two-thirds of FCAA applications ended up before the BoR.⁵⁶

B. Board of Review

The Boards of Review were new administrative tribunals established by the FCAA. The FCAA empowered the Governor in Council to establish a BoR in any province whenever they considered it expedient.⁵⁷ In practice, at least one BoR was formed per province. The Board consisted of three members: a judge from the county or district court; a creditors' representative; and, a farmers' representative.⁵⁸ The creditors' representative was usually selected from a list of names provided by trade groups of secured creditors (generally mortgage holders) likely to be affected by FCAA compromises,⁵⁹ and was often someone with legal training. The farmers' representative had to be a farmer themselves, and in some cases was also legally qualified.

Upon news that the FCAA would establish a BoR in Manitoba, dozens of individuals⁶⁰ and organizations⁶¹ wrote to PM Bennett and members of

⁵⁶ See Minister of Finance, *Final Report: Farmers' Creditors Arrangement Act, 1934* (1 August 1944), Ottawa, Library and Archives Canada (RG 19, vol 426, Schedule 8b) [Minister of Finance].

⁵⁷ FCAA, *supra* note 1, s 12(1).

⁵⁸ *Ibid*, s 12(3).

⁵⁹ Creditor groups representing mortgagees and bankers (e.g. the Canadian Bankers Association and various Mortgagee Associations) submitted lists to the Prime Minister's Office with names of potential creditors' representatives for the Board of Review. The creditors' representative was selected from these lists. See letters dated 6 December 1934 in Bennett Papers, *supra* note 10.

⁶⁰ See e.g. Letter of F.R. Longworth of F.R. Longworth Insurance, Real Estate, Loans in Brandon wrote to PM Bennett asking to be considered for the position as creditors' representative on the Board of Review. Letter dated 15 November 1934 in Bennett Papers, *ibid*.

⁶¹ See e.g. The Manitoba Wholesale Implements Association sent multiple messages to PM Bennett and others in his government urging the appointment of J.A. Tanner, Manager of International Harvester Company in Winnipeg as the creditors' representative. Tanner had 35 years of experience in farm-related industry and was due to retire from International Harvester. See Telegrams dated 22 October 1934, 16 November 1934, Letter dated 22 October 1934. The President of Massey-Harris Company Limited in Toronto also sent a letter recommending Tanner for

his government seeking an appointment for themselves, or recommending individuals for appointment to the Board. In many cases, it appears that the letter writer viewed the BoR positions as patronage appointments, however this study uncovered no evidence indicating that the positions were actually filled on this basis. The documents consulted as part of this empirical study show that the composition of the Manitoba BoR changed within a few years of its formation.⁶² This suggests that appointments might have been for a limited term or that Board members opted to serve for only a few years. Initially, only one BoR was established in each province, but later a second Board was established in certain provinces (e.g. Alberta) to deal with the large volume of applications.

The Board convened a confidential hearing to review each application that came before it. At the hearing, the parties could present their case and offer further supporting evidence and materials. Based on the hearing and materials, the Board would decide whether or not to formulate a debt compromise (in instances where no compromise was reached at the OR stage), or whether or not to amend a compromise (where there was an appeal from the compromise reached at the OR stage). After its deliberations, the Board sent notice of its decision to the parties. The Board would refuse to formulate a compromise in cases where there was no real chance that the farmer could carry out the terms or in instances where the farmer was not really in financial difficulty. Where the Board did formulate a proposal, it had the authority to confirm the proposal, and hence the proposal did not need to be filed with the court. The parties could apply to court to quash the findings or decision of the BoR if the Board had made a mistake or acted beyond its jurisdiction.

C. Court

Under the 1934 version of the FCAA, the role of the court was limited. The court's primary function with respect to the FCAA was to

appointment to the Manitoba Board of Review. See Letter dated 20 November 1934. All correspondence is contained in Bennett Papers, *ibid*.

⁶² See e.g. Board of Review compromise for D. Allison (Morden) (30 December 1940), which indicates that the members of the Board of Review had changed between the date of the original hearing (Hon. P.J. Montague, R.C. Brown, C.S. Booth) and the date the compromise was formulated (Hon S.E. Richards, R.C. Brown, A.M. Campbell).

summarily approve OR compromises which complied with the provisions of the Act and Regulations. Although the court had discretion to refuse to confirm these compromises, it rarely did so in practice. Upon confirmation by the court, the compromise became binding on the parties. The court also heard appeals from BoR compromises, although appeals were rare because the grounds for appeal were very narrow. Most of the files in this empirical study were carried out under the *FCAA*, 1934, and therefore did not include substantial court involvement.

Courts played a larger role under the *FCAA*, 1943. Since courts replaced the Boards of Review under this version of the statute, the courts crafted debt compromises in a number of cases. The few files in this study that involved court participation appear to have taken place under the *FCAA*, 1943.

III. EMPIRICAL STUDY

The goal of this study was to analyze quantitative data from *FCAA* applications made in Morden⁶³ and Brandon⁶⁴ in the 1930s and 1940s in order to shed light on how the *FCAA* operated in practice. Although there have been a number of empirical studies of Canadian bankruptcy and insolvency law,⁶⁵ this is the first such study of the *FCAA*, and one of a few quantitative studies to offer a breakdown of claims by creditor type and analyze write-down rates. The quantitative data was analyzed using

⁶³ Morden County Court District Farmers' Creditors Arrangement Act Filings (1935-1939), (Schedule: A0130, Accession No: GR2469).

⁶⁴ Brandon County Court District Farmers' Creditors Arrangement Act Record Book and Filings (1929-1954), (Schedule: A0130, Accession No: GR3091).

⁶⁵ See e.g. Janis Sarra & Danielle Sarra, "Accessing Insolvent Consumer Debtors, Challenges and Strategies for Empirical Research" (2009) SSRN, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1399627>; Saul Schwartz & Leigh Anderson, "An Empirical Study of Canadian Seeking Personal Bankruptcy Protection" (Ottawa: Industry Canada, 1998) online: <www.strategis.ic.ca/ga/SSG/ca00889e.html>; Saul Schwartz, "The Empirical Dimensions of Consumer Bankruptcy: Results from a Survey of Canadian Bankrupts" (1999) 37 OHLJ 83; Iain DC Ramsay, "Individual Bankruptcy: Preliminary Findings of a Socio-Legal Analysis" (1999) 37 OHLJ 15; Alfonso Nocilla, *Corporate Rescue at the Crossroads* (PhD Thesis, University College London, UK) [in progress].

statistical measures, and the Morden and Brandon data was compared with provincial and national statistics compiled by the Department of Finance.

One significant challenge of this research was that the surviving data was incomplete because some materials had been lost or destroyed over time. The decision to study Morden and Brandon was informed by the fact that the Archives of Manitoba held a large number of FCAA materials for these two communities.⁶⁶ The Morden files cover the time period from 1934-1941, and the Brandon files span 1934-1945. These files therefore represent a snapshot of FCAA applications over a roughly ten-year period. Cities of different sizes were selected – Morden is a small town, while Brandon is a larger city – in order to evaluate the operation of the Act in different contexts.

A. Historical Portrait

Morden and Brandon were founded in 1882 as stops along the Canadian Pacific Railway. While Morden was a fairly minor stop along the route, Brandon was a major junction and trading hub. At the time of the 1931 Census, the populations of Morden and Brandon were about 1,500 and 17,000 people, respectively.⁶⁷ The economies of both centers depended heavily on agriculture, and Brandon is still known as “The Wheat City”.

In total, 19/59 Morden farmers (32%) and 32/98 Brandon farmers (33%) in this study were listed in the 1921 Census of Canada.⁶⁸ Roughly

⁶⁶ The Archives of Manitoba also holds FCAA files for Brandon, Dauphin, Portage la Prairie and St. Boniface: Dauphin County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1934-1944), (Schedule: A0130, Accession Nos: GR0508 and GR6713); Portage la Prairie County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1942), (Schedule: A0130, Accession No: GR2470); St. Boniface County Court District Farmers’ Creditors Arrangement Act Record Book and Filings (1935-1940), (Schedule: A0130, Accession No: GR10178).

⁶⁷ “Census of Canada, 1931”, Table V – Population by districts and sub-districts according to the Representation Act of 1924 compared for the census years 1931-1921 at 42, online: <www.publications.gc.ca/site/eng/9.833207/publication.html>.

⁶⁸ The 1921 Census of Canada is the most recent Canadian census that is available to the public for searching individual entries. See “1921 Census”, Library and Archives Canada online: <www.bac-lac.gc.ca/eng/census/1921/Pages/introduction.aspx>

half of the Morden matches were born outside of Canada and had immigrated around the year 1902. A larger proportion of Brandon matches were Canadian-born as opposed to those in Morden. The average year of immigration for Brandon farmers was 1904. Many of the immigrants came from Europe, especially Russia, while others came from the United States.

Many of the farmers in this study were in their 40s and 50s in 1934 when the FCAA was enacted. The census data shows that most of the farmers were male, married and the head of their own household by 1921. Morden households had an average of seven people, and usually consisted of a couple and about five children. A few Morden households included extended family members and/or a lodger. Brandon households usually consisted of six people, had an average of 2.5 children and were more likely to include a lodger and/or extended family members.

B. Application Outcomes

The two most frequent outcomes observed in this study were OR and BoR compromises. In Morden, OR compromises were the most frequent outcome (47%), followed by BoR compromises (31%). BoR compromises were the most frequent outcome in Brandon (58%), followed by OR compromises (14%). All other outcomes were less frequent, as illustrated in Figure 2, below.

The files do not discuss why the BoR resolved more than half of the applications in Brandon, or why OR compromises were more successful in Morden. Since the BoR only became involved if OR-supervised negotiations failed to reach a compromise, one possibility is that the Morden cases were less contentious.

Figure 2: Application Outcomes

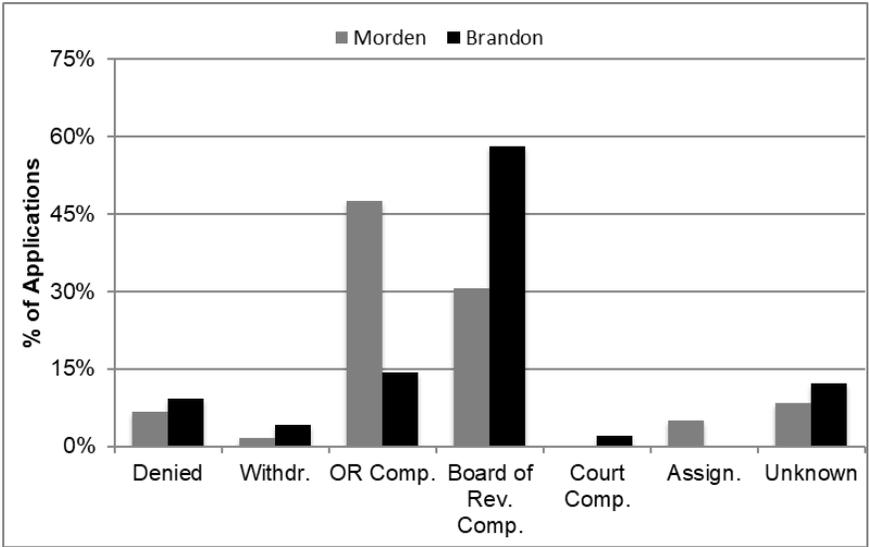
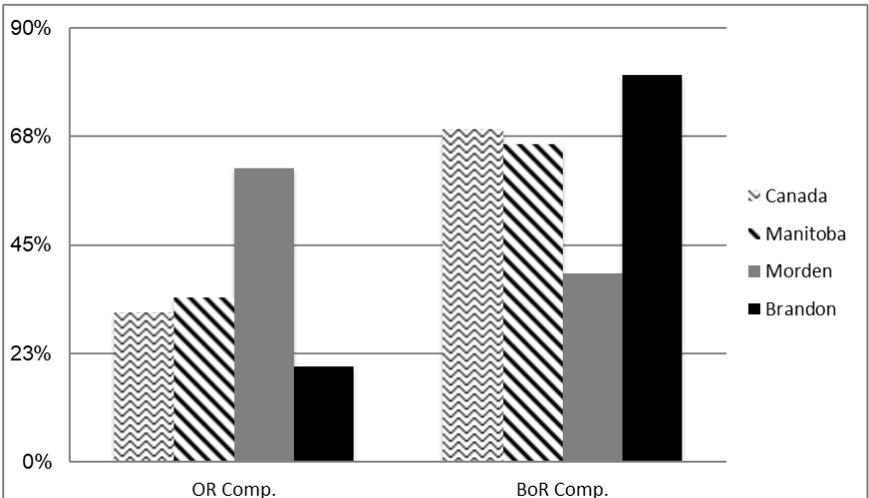


Figure 3: Proportion of Compromises Completed by Official Receivers as opposed to Boards of Review



Approximately 41% of all compromises concluded under the FCAA resulted from the OR-supervised procedure.⁶⁹ The figure for proposals by prairie farmers was slightly lower, at 32% – being 24%, 34% and 41% for Alberta, Saskatchewan and Manitoba, respectively.⁷⁰ The reasons for this difference were probably due to the fact that prairie farmers carried higher debt loads on average (these averages were roughly \$7,200 to \$9,350 in the prairies versus \$6,900 nationally⁷¹) and experienced the worst of the drought, dust storms, hail and grasshopper plagues that afflicted Canadian agriculture in the 1930s. Furthermore, compared with farmers in Ontario and Quebec, or on either coast, prairie farmers were further away from the large cities that purchased their agricultural products and from which they bought supplies for their farms and homes. As a result, these farmers paid higher freight rates than farmers in other parts of Canada. Taken together, this meant that prairie farmers faced poorer prospects for making a success of their farms *and* required larger debt reductions than the average Canadian farmer in order to have a realistic “second chance” at farming. In other words, the factors that made it difficult for prairie farmers to obtain creditor support for their proposals were the very reasons why these farmers were most in need of debt adjustment legislation like the FCAA. This helps explain why Parliament retained the FCAA for Alberta and Saskatchewan farmers, despite passing amendments in 1938, which made the Act non-applicable throughout the rest of Canada.⁷²

National statistics compiled by the Department of Finance indicate that BoR compromises were about twice as frequent as OR compromises in Manitoba as well as nationally. The proportion of OR to BoR compromises for Canada, Manitoba, Morden and Brandon are depicted in Figure 3, above. Department of Finance statistics also indicate that the mean pre-compromise debt and write-down amounts in BoR compromises tended to be higher than OR compromises (see Figures 7 and 8, below). It

⁶⁹ Minister of Finance, *supra* note 56. These percentages were calculated using the numbers listed in the Table titled “Statistical Review of 47,509 cases in which Official Receivers effected Voluntary Settlements or Boards of Review formulated and confirmed Proposals” in Schedule 8b.

⁷⁰ *Ibid.*

⁷¹ *Ibid.* These numbers are listed in Schedule 8b.

⁷² *An Act to Amend the Farmers' Creditors Arrangement Act, 1934*, SC 1938, c 47, s 9. See also discussion in Ben-Ishai & Torrie, *supra* note 2 at 45.

is possible that higher debt loads contributed to the contentiousness of compromise negotiations, which increased the likelihood that an application would go before the BoR. However, the reasons for the greater contentiousness of applications in Brandon as opposed to Morden does not seem to be due to the need to accommodate a larger number of creditors. The mean number of creditors per file was slightly lower in Brandon (5.7) than in Morden (6.5). Although, in both places, the average number of creditors was lower for files that resulted in OR compromises as opposed to BoR compromises.

When applications ended in a denial, it was usually at the BoR stage. Some of the files included the Board's reasons for denying relief under the FCAA. The BoR tended to use one of several boilerplate phrases to state its reasons for denying relief. These statements essentially reiterated the language of the statute.⁷³ For instance, the BoR denied H. Elmhirst's application based on "the prospective capability of the farmer to perform his prescribed obligations and the productive value of the farm."⁷⁴ The same BoR denied J. Wright's application by stating that it could not "formulate a proposal in fairness and justice to the debtor and the creditors and therefore declines to formulate a proposal."⁷⁵

All withdrawn applications in this study were withdrawn by farmers, or their representatives. A farmer could withdraw at any point in the process, and the timing of, and reasons for, withdrawal varied. Two Brandon farmers, F. Lyons (47 days) and T. Nelson (67 days), withdrew their applications because they reached satisfactory private arrangements with their creditors.⁷⁶ In another instance a Brandon farmer died, which prompted his widow to make an application under the FCAA, however, she withdrew her application after 239 days.⁷⁷ Unfortunately, the file does not provide reasons for her decision to withdraw the application. It is possible that she was not eligible for FCAA relief because she did not qualify as a "farmer" within the meaning of the Act.⁷⁸

⁷³ FCAA, *supra* note 1, ss 12(8), 12(9).

⁷⁴ H. Elmhirst (Brandon).

⁷⁵ J. Wright (Brandon).

⁷⁶ F. Lyons and T. Nelson (Brandon).

⁷⁷ D. Switzer (Brandon).

⁷⁸ FCAA, *supra* note 1, s 6(1). Amendments to the FCAA in 1938 added a provision that

The FCAA prohibited joint applications (e.g. spouses, brothers). This presented an issue in practice because some farms were jointly owned. Notwithstanding the single applicant policy, several files in this study appear to have been joint applications, in effect, which reflected the partnership structure of some farming operations.⁷⁹

The Morden files contained three applications that resulted in an assignment for the general benefit of creditors. These files consisted of a single document marked “Assignment for the General Benefit of Creditors”, which may have referred to an assignment under the *Bankruptcy Act* or provincial assignments legislation.⁸⁰ None of the Brandon files examined in this study resulted in this outcome. The Department of Finance also tracked “assignments” submitted to ORs as part of its FCAA statistics, suggesting that this referred to an assignment under the federal *Bankruptcy Act*.⁸¹

An assignment in bankruptcy resulted in a liquidation proceeding and discharge of remaining debts, whereas an FCAA compromise reduced some of the farmer’s debts and allowed them to continue farming. Debtors who made an assignment in bankruptcy turned over all of their property, including their farm in some cases, to the OR.⁸² The OR, acting

allowed an application to be continued, or initiated, on behalf of a farmer who had died: FCAA, *supra* note 1, s 6A, as amended by SC 1938, c 47, s 4.

⁷⁹ It would have been very difficult to conduct single applicant applications in cases where land and other assets were owned jointly.

⁸⁰ It is not clear from the FCAA files whether this referred to a federal or provincial assignment. See FCAA, *supra* note 1, ss 2(1)(a), 2(2), which defined “assignment” as “an assignment made under the *Bankruptcy Act* by a farmer”. This language is consistent with that used for voluntary assignments under the *Bankruptcy Act* 1927, *supra* note 6, s 9 “Assignment of general benefit of creditors”. Note, however, that this language is also consistent with one of the “Acts of Bankruptcy” set out in s 3(a) of the *Bankruptcy Act*, which refer to provincial assignment mechanisms.

⁸¹ See e.g. Minister of Finance, *supra* note 56, Schedule 1, indicating that ORs had dealt with 912 “assignments”. The report does not specify what kind of “assignments” these were.

⁸² Despite bankruptcy, farmers were entitled to keep certain real and personal property specified in provincial exemption laws. The list of personal exemptions varied by province, and included property related to agricultural operations in several provinces. In addition, in some provinces, including Manitoba, Saskatchewan and Alberta, debtors were entitled to a homestead exemption, which allowed the debtor to keep 160 acres on which to live and farm. The homestead exemption was intended, in part,

as a trustee for the creditors, liquidated the property and distributed the proceeds (net of costs) to creditors according to the scheme of distribution set out in the *Bankruptcy Act*.⁸³ One Morden farmer assigned on the same day that he filed under the *FCAA*.⁸⁴ The other two assignments occurred a couple of years into the *FCAA* process. J. Zacharias and C. Evenson assigned 795 days and 931 days, respectively, after they made application under the *FCAA*.⁸⁵

It is not clear from the archival materials why these farmers opted for an assignment in bankruptcy over the *FCAA* process.⁸⁶ A failed *FCAA* compromise resulted in an automatic, involuntary bankruptcy process under the *Bankruptcy Act*, which was funded by the Government of Canada.⁸⁷ A voluntary assignment into bankruptcy on the other hand, came at a direct cost to farmers. Therefore, it is possible that these farmers opted for voluntary bankruptcy in order to reduce the social stigma (despite the additional financial cost) or that they thought that the *FCAA* process would be futile.

to draw settlers to the Canadian West. See discussion in Thomas GW Telfer, "The Evolution of Bankruptcy Exemption Law in Canada 1867-1919: The Triumph of the Provincial Model" (2007) *Annual Review of Insolvency* L 593. Although the provincial exemptions protected a Prairie farmer from the loss of their farm and equipment in case of a few bad years, they did not go far enough to address the prolonged and severe farm debt crisis of the 1930s. After several years of successive crop failures and low wheat prices, "Dust Bowl" farmers needed not only exemptions, but also debt write-downs of principle and interest, cash infusions to purchase necessities like seed grain, and new farming techniques suitable for Prairie topography, in order to keep farming.

⁸³ R. Findlay, C. Evenson, and J. Zacharias (Morden).

⁸⁴ R. Findlay (Morden).

⁸⁵ C. Evenson, and J. Zacharias (Morden).

⁸⁶ Note that Quebec farmers were prohibited from making voluntary assignments into bankruptcy. See *Bankruptcy Act*, SC 1919, c 36, s 9.

⁸⁷ *FCAA*, *supra* note 1, s 2(3), stating that a failed composition under the *FCAA*, if that failure was for reasons within the farmer's control, was an "Act of Bankruptcy" for the purposes of the *Bankruptcy Act*. This would allow creditors to bring involuntary bankruptcy proceedings against the farmer. See discussion in Shumiatcher, *supra* note 8 at 638-651; Ben-Ishai & Torrie, *supra* note 2 at 36-41.

C. Duration of FCAA Process

The start and end dates of the FCAA process were recorded to track how long the FCAA process took for every file that contained this information. These start and end dates represent the best available information for each file, but they are limited by the incompleteness of the files. Thus the sample size for calculating timeframes was 52/59 Morden files and 61/98 Brandon files. In addition, the timeframes only capture the time spent in the FCAA process itself; they do not refer to the timeframes for repayment that the terms of the compromises established.

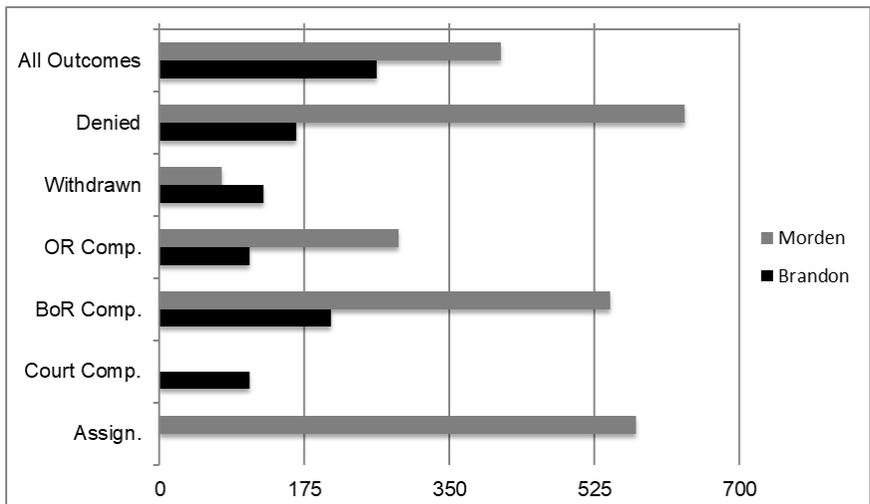
The mean times frames - although they are approximate - provide interesting contrasts between Morden and Brandon generally and between the different outcomes of the FCAA process. The overall mean timeframe for FCAA applications in Morden was 412 days, whereas in Brandon it was only 262 days. The additional 150-days (roughly five months) it took to complete the FCAA process in Morden represents a noteworthy delay in a process that was intended to address an urgent problem.⁸⁸ Nevertheless, the stay of proceedings provided by the FCAA tempered the urgency of the situation by suspending debt enforcement efforts.

The mean timeframes for all comparable outcomes requiring completion of the formal process (Denied, OR and BoR compromises) were significantly longer in Morden than in Brandon, as illustrated in Figure 4, below. For example, a OR compromise took an average of 289 days in Morden, but only 109 days in Brandon. The average BoR compromise took 544 days in Morden, but just 207 days in Brandon - a difference of nearly one year. Furthermore, the duration of individual applications that resulted in OR compromises were more variable in Morden, ranging from 40 to 1149 days, as opposed to 15 to 300 days in Brandon. This suggests that the administration of the FCAA operated more slowly, and perhaps more sporadically, in Morden. In this respect, it is noteworthy that the average time to complete an OR compromise in Morden (289 days) was almost three months longer than the average time

⁸⁸ Note that ORs were inundated with applications as soon as the FCAA was enacted, which contributed to delays generally, particularly in the prairie provinces. See Department of Finance, *Farmers' Creditors Arrangement Act Bulletin No. 4 to all Official Receivers* (December 1934), Ottawa, Library and Archives Canada at 2-3, (Microfilm Reel: M-959) [Department of Finance].

to complete a BoR compromise in Brandon (207 days). This data supports the possibility that debtors and creditors in Morden were more motivated to try to reach a compromise through the OR-supervised process, and hence spent more time on this initial stage of the process before escalating the matter to the BoR.

Figure 4: Mean Duration by Application Outcomes (in days) – Morden and Brandon



The slower pace of FCAA administration in Morden was probably also due to the fact that it was a smaller centre than Brandon. There were 13 ORs for Manitoba,⁸⁹ and since Morden was a small town, the individual who served as its OR may have occupied other roles as well, or acted as an OR for several towns. In addition, there were probably longer intervals between sittings of Morden’s BoR, possibly because the Board circulated among neighbouring towns as well. This may further explain the larger differences in mean timeframes between the three outcomes requiring completion of the administrative process in Morden (ranging from 289 to 633 days). The same three outcomes in Brandon, on the other hand, are within 100 days of each other. As a much larger center, Brandon’s BoR

⁸⁹ Minister of Finance, *supra* note 56, Schedule 5.

seems to have sat frequently, if not continually. It also appears to have had jurisdiction over a larger catchment area, as the Brandon farms were scattered over a larger geographic area than those found in the Morden files.

The higher number of creditors per file in Morden may also have contributed to the slower pace of applications because there were more parties for the OR to coordinate with as part of negotiations. The mean number of creditors in applications that resulted in OR compromises was 5.82 in Morden, but just 3.71 in Brandon. For applications that ended in BoR compromises these averages were 7.16 and 6.34, respectively. Therefore, one hypothesis was that there might be a correlation between the number of creditors per file and length of time it took to reach a compromise. The data indicated only a weak positive correlation between these two variables for Morden (0.34) and an even weaker relationship for Brandon (0.17), as shown in Table 1, below. The correlation remains weak even when the calculations are narrowed down to the type of compromise (OR compromise versus BoR/Court compromise).

Table 1: Number of Creditors Per File and Time to Reach Compromise Correlation Calculations

	Morden	Brandon
	Number of Creditors Per File	Number of Creditors Per File
# of Days to Reach Compromise (all compromise types)	0.30	0.17
# of Days to Reach OR Compromise	0.29	0.24
# of Days to Reach BoR/Court Compromise	0.27	0.05

The average duration of the FCAA process for the OR and BoR compromises roughly correspond to the respective lengths of the administrative channels that led to each compromise outcome. OR compromises tended to take less time because these came out of the initial stage of compromise negotiations, while BoR compromises tended to take longer since this was a secondary stage of the FCAA process. The two court compromises in this study also took longer than the average OR compromises. This accords with the fact that courts replaced the Boards of Review in the 1943 Act, and this were the secondary stage of the process under the revised version of the FCAA.

These timeframes provide a glimmer of insight into the speediness (or slowness) of the administrative process that the FCAA established. The incompleteness of many files indicates that the FCAA process tended to be longer than the mean timeframes calculated in this study.

Interpreting these timeframes in light of additional primary source materials suggests that the FCAA process was reasonably efficient at processing applications. The FCAA established a novel administrative architecture, including a new tribunal in the form of BoR, and it took time to get these up and running and staffed with workers. In the first few months that the Act was in force, ORs received more than 10,000 applications, and had difficulty obtaining and maintaining adequate stocks of FCAA Forms.⁹⁰ Many of the FCAA applications in this study were made in 1934 or 1935, and thus were part of this application bulge. The initial backlog prompted Parliament to amend the Act in 1935 to extend the stay of proceedings from 60 to 90 days because, in many cases, the stay was expiring before the first meeting of creditors.⁹¹ Figures presented to Parliament in February 1938 indicated that 26,365 debt compromises had been concluded and a further 5,375 were in progress.⁹²

⁹⁰ Department of Finance, *supra* note 88.

⁹¹ FCAA, *supra* note 1, s 11(1), as amended by SC 1935, c 20, s 3.

⁹² *House of Commons Debates*, 18th Parl, 3rd Sess (14 February 1938) at 395, cited in Ben-Ishai & Torrie, *supra* note 2 at 47.

D. Debt Loads

i. Assets

In general, farmers' assets and asset values were not key considerations in crafting FCAA compromises. Details of farmers' assets were recorded sporadically and the "values" attributed to specific assets were very rough estimates. In its reports on the FCAA, the Department of Finance did not record assets values. The Boards of Review appear to have placed little or no direct weight on estimates of asset values. Rather, the focus of debt compromises was usually the rate of interest on the farmer's loans and the productive capacity of the farm (i.e. what the farmer could reasonably afford as debt service). Thus, the description of the quality (rather than the monetary value) of the farmer's most important asset – the farmland – appears to have been a more important consideration. In some cases a farm inspector hired under the FCAA assessed the quality of the land, but in other instances the opinion of the farmer as to the quality of their land was relied upon.

In the Morden files, 20/59 files (34%) provided some sort of information about the farmer's assets, such as land, implements, and livestock. In the Brandon files this figure was 35/98 files (36%). From this subset of data, the mean asset value for a farmer applying under the FCAA was about \$3,300 in Morden, and \$4,100 in Brandon. The Brandon files were more methodical in listing the asset value information, which makes the mean asset values for these farmers somewhat more indicative of an average farmer's assets upon making an FCAA application. Of the Brandon files that contained asset information, 60% recorded asset values for land, implements and livestock, and 75% included asset values for either land and equipment or livestock, or equipment and livestock. Using 1935 as the base year, the mean value of a Brandon farmer's assets in today's dollars would be about \$72,000.

ii. Debts

Statistics compiled by the Department of Finance show that the dollar value and percentage of mean write-offs under FCAA compromise varied from one province to another, and tended to be higher in the Prairie

Provinces.⁹³ The mean amount of debt written off in FCAA compromises in Morden (38%) and Brandon (36%) was just over one-third of the farmer's total liabilities, as depicted in Figure 5.⁹⁴ This was in line with the national average (38%), but slightly lower than the average for Manitoba (45%).⁹⁵ The files examined in this study, however, do not indicate what factors led to the reduction of debts in individual cases.

In general, unsecured creditors held smaller claims and were subject to higher write-downs than secured creditors, measured in proportion to the dollar value of their claim. In Morden and Brandon, the number of secured and unsecured claims per application were approximately even. Figure 6 presents data for Canada, Manitoba, Morden and Brandon which shows that, on average, 85-90% of a farmer's total debt was secured.⁹⁶ The write-down rates for unsecured claims in Morden (54%) and Brandon (52%) were consistent with the national average of 53%, while the average for Manitoba (70%) was somewhat higher.

⁹³ Minister of Finance, *supra* note 56, Schedule 7a.

⁹⁴ Note that only 48/59 Morden files provided both pre- and post-compromise data. In Brandon 81/98 files included pre-compromise data, and only 75/98 files included the post-compromise information.

⁹⁵ Minister of Finance, *supra* note 56, Schedule 7a, "Statistical Review of 46,081 Cases Disposed of by Boards of Review and Official Receivers to March 31, 1942". Note that the Department of Finance statistics do not include Court compromises. The Manitoba averages are based on 4,369 cases.

⁹⁶ A small number of claims (2% in Morden, 1% in Brandon) could not be identified as either secured or unsecured, and thus were categorized as "unknown".

Figure 5: Mean Write-Down as a Percentage of Claim Amount (All Compromise Types)

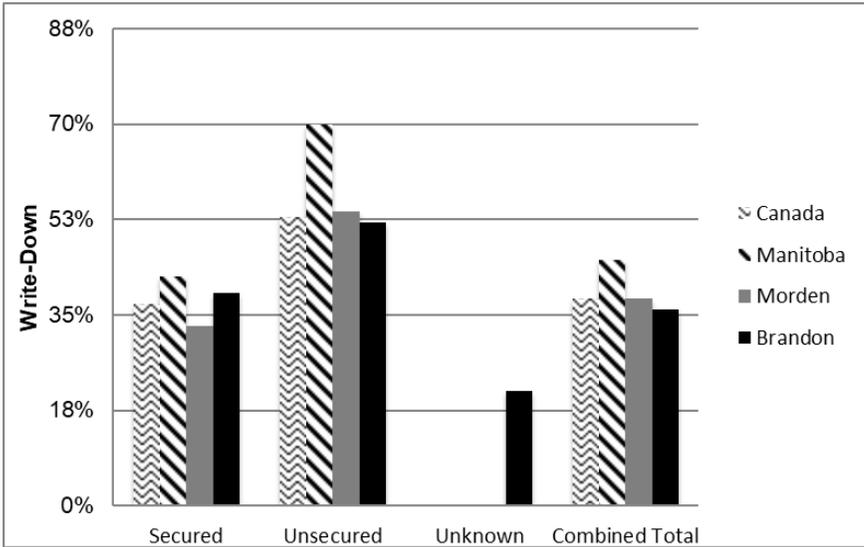
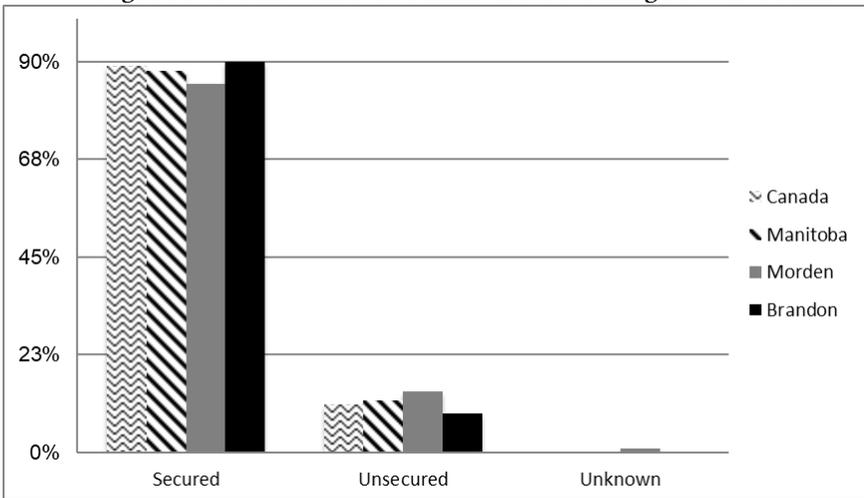


Figure 6: Dollar Value of Claims as a Percentage of All Claims



The FCAA incorporated by reference the *Bankruptcy Act* provisions governing debt compositions, extensions and schemes of arrangement, which required a three-fourths majority of unsecured creditor support based on the value of creditor claims.⁹⁷ Under the FCAA, a secured creditor was entitled to vote as an unsecured creditor for any shortfall between the value of the security and the outstanding debt owed to a secured creditor.⁹⁸ However, secured creditor consent was necessary in order to adjust the secured portion of the claim.⁹⁹ If a secured creditor refused consent, the farmer could apply to the BoR, which was empowered to adjust secured debts without the consent of the secured creditor.¹⁰⁰ Since the farmer's largest debt was usually the mortgage, mortgagees enjoyed an effective veto over debt compromises proposed at the OR stage. This may help explain why BoR compromise were roughly twice as common as OR compromises in Manitoba and nationally, and four times as common in Brandon, as shown in Figure 3, above. It also sheds further light on the high degree of creditor support that was necessary to formulate a compromise at the OR stage. In practice, an OR compromise required the support of all secured creditors as well as that of three-fourths in value of all unsecured claims. It is therefore noteworthy that OR compromises were the most frequent outcome in the Morden files, as shown in Figure 3, above. The mortgagee in the Morden files was often a wealthy individual, rather than a company, and thus it is possible that these mortgagees were more inclined to consent to a debt compromise at the OR stage.

The consistency in write-down rates suggests that the Morden and Brandon BoRs may have used a standard set of criteria for analyzing and reducing farmers' debt loads. In 1947, Shumiatcher wrote that the BoR in Alberta developed the practice of writing off roughly one-third of the farmer's debt in most cases.¹⁰¹ This "rule of thumb" probably influenced

⁹⁷ FCAA, *supra* note 1, s 6(2); *Bankruptcy Act* 1927, *supra* note 6, ss 11–22. Note that ss 16(3) "reasonable security", 16(5) "priority of debts" did not apply in the case of FCAA applications; see FCAA, *supra* note 1, s 9.

⁹⁸ FCAA, *ibid*, s 8.

⁹⁹ *Ibid*, s 7.

¹⁰⁰ *Ibid*, s 12(6).

¹⁰¹ Shumiatcher, *supra* note 8 at 723–724, 743–754.

the write-offs in OR compromises too, since the failure of these negotiations meant that either the farmer or a creditor could apply to the BoR to formulate a compromise.

The mean write-down rates for OR and BoR compromises are depicted in Figures 7 and 8, below. The write-down rate for secured claims as part of OR compromises in Morden and Brandon was fairly consistent with the averages for Canada and Manitoba, The write-down rate for unsecured claims, however, ranged from 20% in Brandon to 55% for Manitoba. The average write-down rates for all claims (secured and unsecured) were 32% for Canada, Morden and Brandon, and 40% for Manitoba.

Looking at BoR compromises, the mean write-down rates for secured claims are fairly consistent across the Canada, Manitoba, Morden and Brandon, and range from 38% to 43%. The mean write-down rate for unsecured claims is noticeably higher, ranging from 72% to 78% for Manitoba, Morden and Brandon. The national mean write-down rate is lower at 56% for unsecured claims as part of BoR compromises. This difference may be a reflection of prairie farmers carrying more debt than farmers in other parts of Canada. The average write-down rates for all claims (secured, unsecured and unknown) in Canada, Manitoba, Morden and Brandon are fairly similar, ranging from 40% to 47%.

Figure 7: Mean Write-Down as a Percentage of Claim Amount (Official Receiver Compromises)

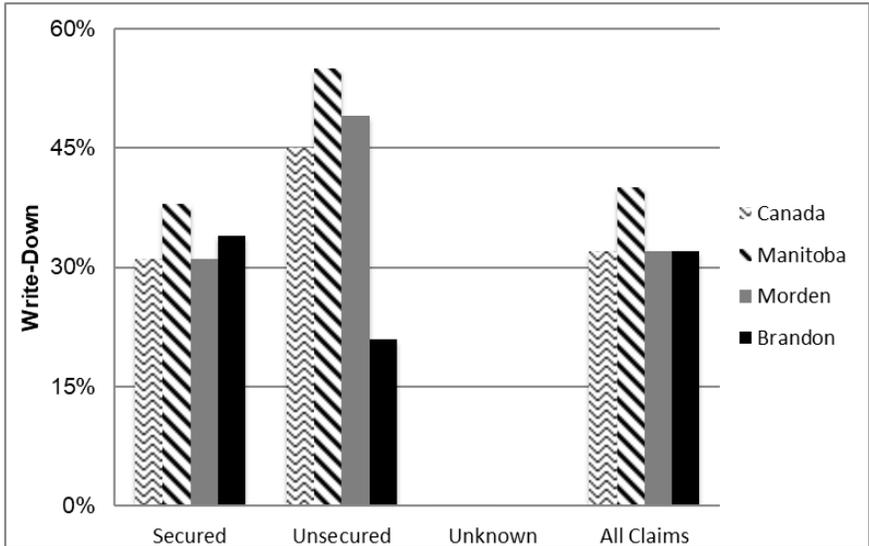
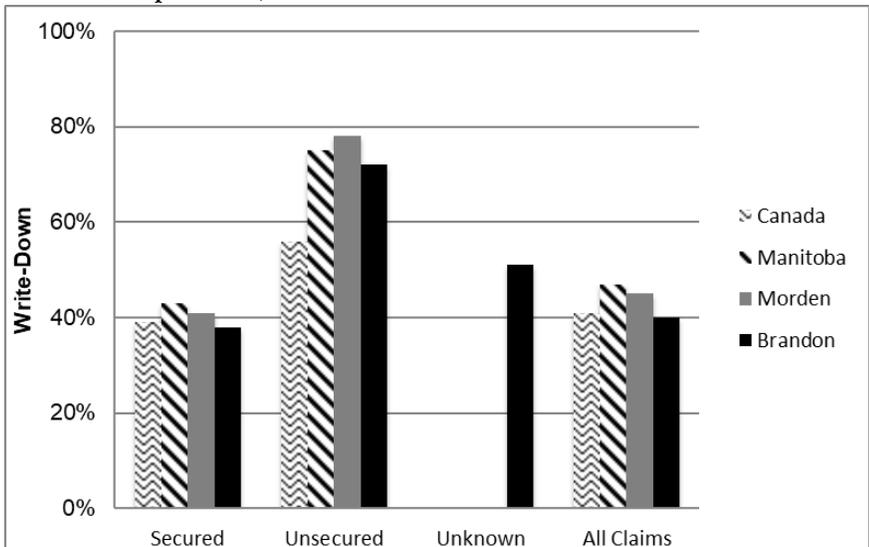


Figure 8: Mean Write-Down as a Percentage of Claim Amount (Board of Review Compromises)



The mean dollar amounts of pre-compromise debt, post-compromise debt and debt reductions in Morden and Brandon were generally higher

than the averages for Canada and Manitoba, as shown in Figure 9, below. The one exception is mean debt reduction for Manitoba, which is higher than that of Morden, but less than that of Brandon. In general, Morden farmers listed less debt in their applications than those in Brandon. In addition, a few Brandon farmers listed debts that were much higher than the mean for that area (see Figure 12 and discussion, below), which slightly skewed the Brandon averages.

Adjusting these figures for inflation provides a rough indication of what these debt compromises would look like in contemporary terms. The mean pre-compromise debt ranged from about \$109,000 to \$162,000.¹⁰² Compromises carried out under the FCAA usually reduced farmers' debts to between \$67,000 and \$97,000. This underscores the fact that the FCAA was used to restructure the estates of fairly small owner-operators, and highlights the potential efficiency of using an administrative process for the large number of farm debt compromises carried out during the 1930s.¹⁰³

¹⁰² These figures were calculated using an online inflation calculator with 1935 as the base year. Bank of Canada Inflation Calculator, online: <www.bankofcanada.ca/rates/related/inflation-calculator/>.

¹⁰³ The FCAA process is in contrast to the private delivery model involving trustees in bankruptcy under the *Bankruptcy Act* in the 1930s, see Thomas GW Telfer, "The New Bankruptcy 'Detective' Agency" (Paper delivered at The Canadian Confederation: Past, Present and Future, Montreal, 16-18 May 2017) [unpublished manuscript]. This private delivery model continues today under the *BIA 1985*, *supra* note 24, Part III, Division II.

Figure 9: Mean Debt Compromise Figures (All Compromise Types)

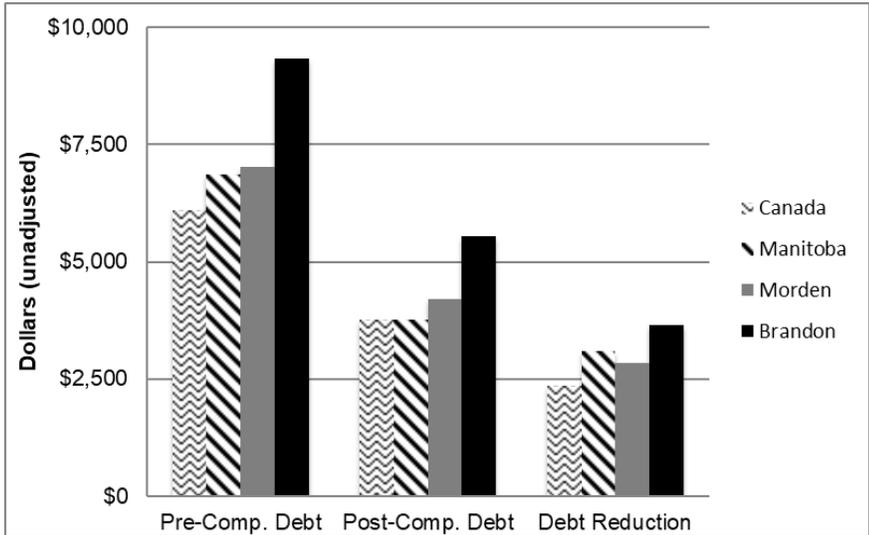


Figure 10: Mean Debt Compromise Figures (Official Receiver Compromises)

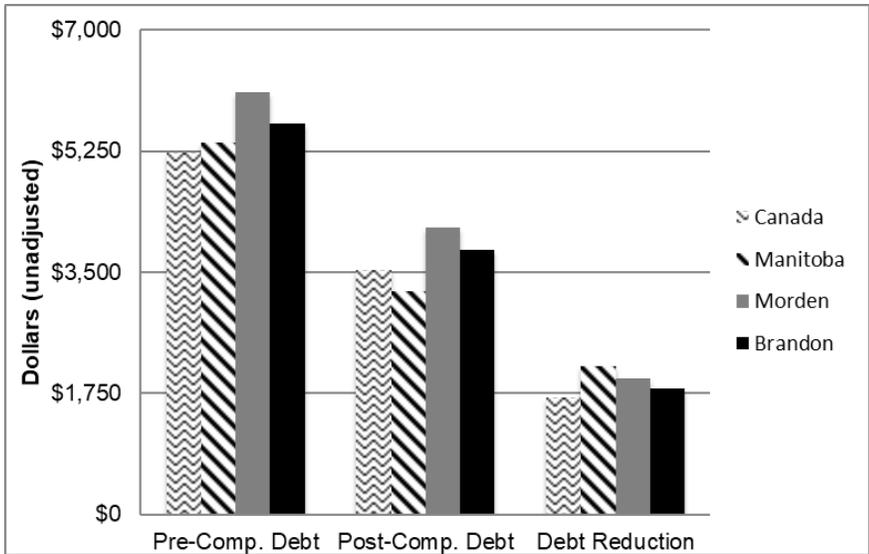
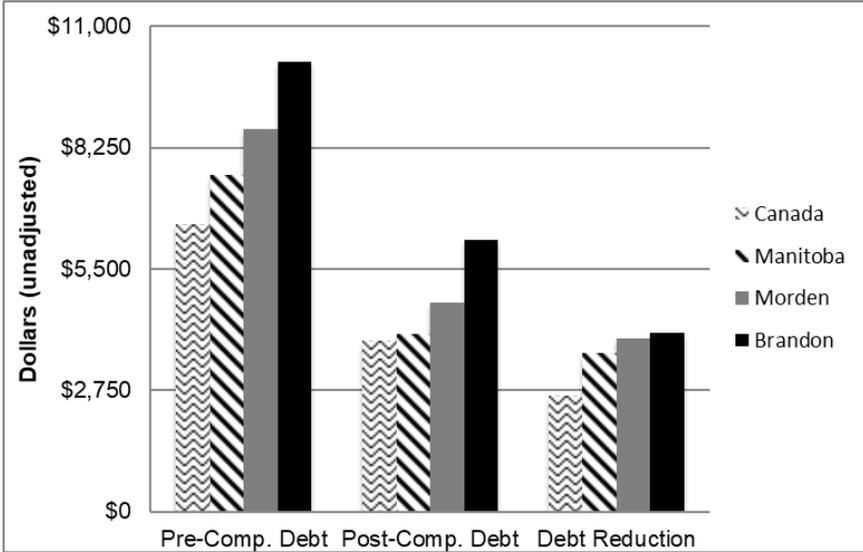


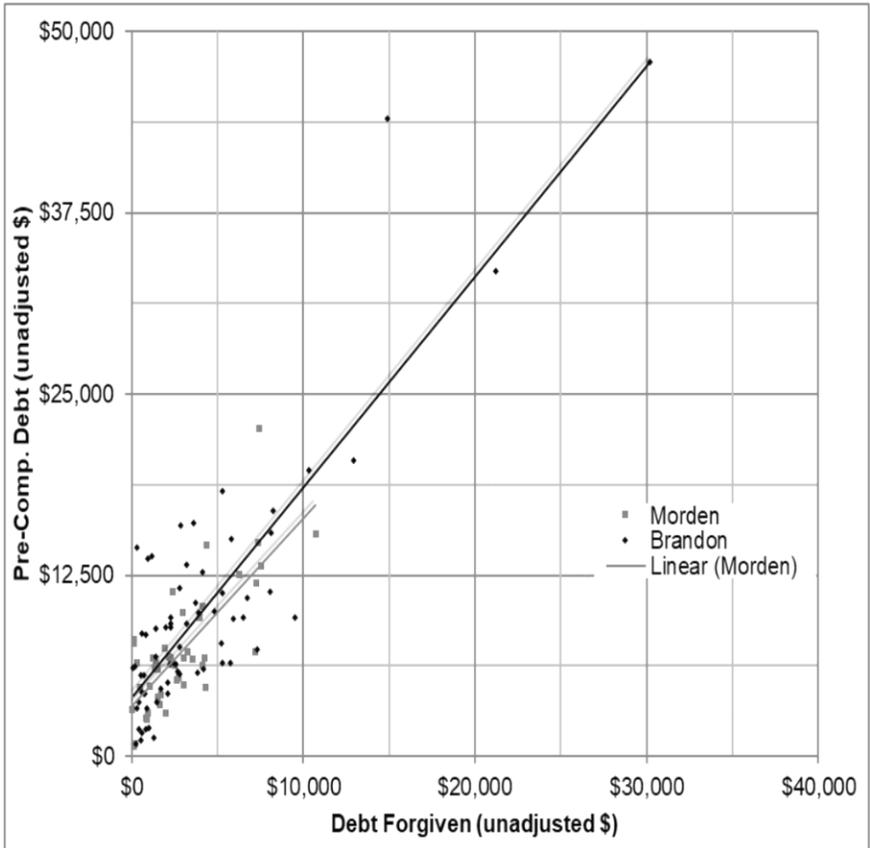
Figure 11: Mean Debt Compromise Figures (Board of Review Compromises)



Figures 10 and 11, above, illustrate the amount of pre-compromise debt, post-compromise debt and debt reductions according to compromise type. Figure 10 shows that, for OR compromises, the amount of pre-compromise debt ranged from roughly \$5,200 to \$5,600 in Canada, Manitoba and Brandon, with the average being a bit higher in Morden at \$6,100. Interestingly, despite having higher average pre-compromise debts, the mean debt reduction in Morden was 32%, which is in line with the debt reductions in Canada and Brandon. Whereas the average debt reduction for all OR compromises in Manitoba was slightly higher at 39%.

Figure 11 shows that the averages of pre-compromise debt for BoR compromises were more varied, with Morden and Brandon exceeding the national and provincial averages by several thousand dollars. The amount of post-compromise debt more or less reflects the differences in pre-compromise debt. The mean debt write-downs for BoR compromises were higher than for OR compromises, being 40% for Canada, 47% for Manitoba, 45% for Morden and 39% for Brandon.

Figure 12: Correlation between Pre-Compromise Debt and Debt Forgiven – Morden and Brandon



In Morden and Brandon there was a strong positive correlation between the amount of a farmer's pre-compromise debt and the amount of debt forgiven under the FCAA. This is illustrated in Figure 12, above. This correlation is interesting in light of several differences between the Morden and Brandon files. The Brandon files had higher mean pre-compromise and post-compromise debts, and more than half of these files resulted in a debt compromise formulated by the BoR, unlike in Morden. This finding supports the idea that the BoR in both centers used a standard (if approximate) set of criteria for reducing the debts of farmers.

None of the other correlations calculated indicated a strong relationship in both Morden and Brandon.¹⁰⁴ Since a farmer's largest debt was usually a mortgage on their land, one hypothesis was that there might be a correlation between the size of a farmer's land and their total pre-compromise debts. Although the data indicated a fairly strong positive correlation for Morden farms (0.59), the positive correlation for Brandon farms (0.31) was much weaker. The correlation in Morden is also tempered by the fact that there were fewer Morden files, and so this data provides only weak support for the idea that land size drove up farmers' debt loads. In neither Morden, nor Brandon, was the number of creditors per file strongly correlated to the size of the farmer's land, amount of pre-compromise debt, or the amount of debt forgiven.

Since secured creditor support was essential to any debt compromise at the OR stage, another hypothesis was that larger amounts of secured debt might be correlated with BoR compromises. Two correlation calculations were performed to assess the strength and direction (positive or negative) between these two variables: amount of secured debt and type of FCAA compromise. The first variable included all secured debts, and the second variable looked at two outcomes: OR and BoR compromises. In both the Morden and Brandon files there was only a weak positive correlation with BoR compromises based on a farmer's secured debts. Given the small number of files in this study and the weakness of the positive correlation, these results, unfortunately, do not point to any strong conclusions of the impact of secured debt on the type of FCAA compromise.

FCAA compromises gave farmers a "second chance" to make a success of their farm by reducing their debt to an amount that they could realistically pay in light of the productive capacity of the farm. Of the files in this study that included the farmer's *Statement of Affairs*, most included a statement from the farmer that their land was in fair or good condition, further suggesting the likelihood of turning the farm into a profitable operation. Therefore, it appears that the short-term impact of the FCAA was positive for farmers.

¹⁰⁴ Tax debts were excluded from these calculations due to their ambiguous treatment under the FCAA.

The material in the files provides a snapshot of the FCAA process and unfortunately did not track compromises over time. Therefore, it is hard to know what happened to the farms in the long run. It is not clear if farmers were able to make the payments set out in the compromise, and therefore it is difficult to tell if the compromises were realistic in light of “the productive value of the farm and capacity of the farmer to pay”, as stated in the Act.¹⁰⁵ One of the Brandon files included a second application, which demonstrates that the initial compromise was not sustainable in all cases. In this case the first compromise reduced the farmer’s debts by 35%, and less than three years later his application proposed that his debts be reduced again, this time by 21%.¹⁰⁶ The reasons given for the second proposal were factors that affected many farmers: “[the farmer] generally is unable to meet his affairs under the present depressed conditions and particularly poor crops in the years 1936-38.”¹⁰⁷ This is in line with a broader trend of ongoing agricultural difficulties, especially in the Prairies, which prompted Parliament to allow farmers to make a second application under the Act.¹⁰⁸

In addition to reducing outstanding debts, FCAA compromises affected debts in several other ways. Compromises tended to include a clause that reserved a portion (usually one third) of the farmer’s income from crops to ensure they had adequate funds to pay for farm operation costs and living expenses until the next harvest. FCAA plans frequently consolidated debts, reduced or eliminated the interest on loans, and instituted new payment schedules based on the timing of the autumn harvest. Sometimes a portion of the farmer’s crop (usually one-third) was designated as collateral for their mortgage payments for the year, and delivery of this collateral to the local grain elevator or payment of the cash equivalent to the mortgagee satisfied the farmer’s mortgage payments for the year. Furthermore, the terms of the compromise often included a clause that suspended the farmer’s liability for debt payments in years

¹⁰⁵ FCAA, *supra* note 1, Preamble, s 12(8).

¹⁰⁶ R. Miller (Brandon). It appears that Miller’s debt (as reduced by his first proposal) was his “initial” debt for his second proposal.

¹⁰⁷ *Ibid.*

¹⁰⁸ See Ben-Ishai & Torrie, *supra* note 2 at 47, citing Shumiatcher, *supra* note 8 at 919-920.

when their crop failed. Therefore, debt reductions were only one aspect of the impact that FCAA compromises had on farmers and their creditors.

E. Creditors

A breakdown of the creditors listed in the FCAA files provides further insight into operation of the Act in practice, as well as lending and borrowing practices in the 1930s. In most cases, the files contained one or two large debts (e.g. a mortgage on farmland) as well as several small debts (e.g. telephone bills, medical bills, etc.), amounting to a mean number of creditors per file of 6.5 in Morden and 5.7 in Brandon.

The files contained 195 unique creditors in Morden, and 274 unique creditors in Brandon. Contrasting these figures with the total number of creditor claims listed in the files indicates that there was repeat lending by some creditors. However, no one creditor, or type of creditor (e.g. a bank), dominated the lending business in either community. The five most frequent creditors represented only 18.6% and 19% of total claims recorded in Morden and Brandon, respectively (see Tables 4 and 5, below). Roughly half of the creditors recorded in the Morden and Brandon files were individuals or estates, and less than half of these claims were secured in both Morden (40%) and Brandon (34%). These findings accord with the observations of other bankruptcy historians, who have noted that local interests played a large role in debtor-creditor relations into the early twentieth-century.¹⁰⁹

In the Morden files, the local nature of the most frequently occurring creditors is particularly noteworthy (see Tables 4 and 5, below). It illustrates that commercial relations in that community tended to be more personal than in Brandon, which in turn may help to explain the higher proportion of OR compromises in Morden. A local general store, Nitikman, Sirluck & Safeer, was the second most frequent creditor in the Morden files, whereas only a few Brandon files list debts to general stores (see Tables 4 and 5, below). The third mode creditor in Morden was a local farm implement company, Cowie and Mott, which appeared more frequently than the large American farm implement company,

¹⁰⁹ See discussion in Thomas GW Telfer, *Ruin and Redemption*: (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2014) at 149, 157-162; Virginia Torrie, Book Review of *Ruin and Redemption* by Thomas GW Telfer, (2016) 31.2 BFLR 427 at 429-430.

International Harvester. The other mode creditors in the Morden files consisted of two individuals/estates and a doctor: John H. Black Estate and H. Gladstone, and Dr. Menzies. Thus, five of the eight most frequently occurring creditors in Morden were local businesses or individuals. In contrast, none of the most frequently occurring creditors in the Brandon files were local businesses or individuals.

The total mean write-off of debts listed in the FCAA files is very similar in Morden and Brandon. This is not surprising in light of the similarities in the breakdown of secured and unsecured debts between the two sets of files, and the relative mean write-off for each type of claim.

Table 2: Creditor Types - Morden

	as a % of creditor types
Individuals and Estates	51
Banks	7
Mortgage Cos	2
Trust Cos	2
Government	1
Assurance/Insurance Cos	2
Credit/Loan Cos	0
Trade Cos	27
Unknown/Other	1
Doctors	5
Hospitals	1

Table 3: Creditor Types – Brandon

	as a % of creditor types
Individuals and Estates	47
Banks	10
Mortgage Cos	4
Trust Cos	3
Government	3
Assurance/Insurance Cos	5
Credit/Loan Cos	4
Trade Cos	19
Unknown/Other	0
Doctors	5
Hospital	0

After “Individuals and Estates”, the second most frequent creditor type was “Trade Companies”, which included general stores, oil companies, lumber companies, farm implement companies (e.g. Massey-Harris), etc. “Trade Companies” represented a slightly higher proportion of the total creditors recorded in Morden (27%) than in Brandon (19%). Trade Company claims were secured 37% of the time in Morden, and 54% of the time in Brandon (see Tables 6 and 6, below).

The farmers in this study often obtained a mortgage from a mortgage company, trust company, insurance/assurance company, or an individual/estate. Debts owed to these three kinds of financial institutions combined appear slightly less often in the Morden files (8%) as they do in the Brandon files (12%). In addition, the Morden files contained only one claim by a Credit/Loan Company, representing less than 1% of the total

number of all claims, whereas this type of creditor made up 4% of all claims in Brandon. It is possible that “Individuals and Estates” were more frequent mortgage lenders in Morden than in Brandon. This is consistent with the higher number of “Individuals and Estates” claims in Morden, and the fact that these claims were secured more often in Morden (40%) than in Brandon (34%), as shown in Tables 6 and 7, below. A qualitative analysis of Morden files also supports this interpretation of the quantitative data, as several files identify an individual or estate as mortgagee.¹¹⁰ However, further qualitative research would be required to test out this hypothesis.

Another similarity in the composition of creditors across both centers is the number of claims made by doctors and hospitals. These medical claims highlight the fact that health care in Canada was still private at the time that the FCAA was in force.¹¹¹ The extreme weather and poverty that characterized the “Dirty Thirties” accentuated the need for medical services because both factors made people more prone to illness. Prairie homes were usually uninsulated, and people often ran out of fuel to heat their homes. As the Great Depression wore on, clothing and bedding wore out to the point where it was no protection against the cold. During this period, winter temperatures across Canada also reached record-breaking lows.¹¹² On farms, where outdoor work was part of daily life, women often put the clothing needs of the men ahead of their own, relegating themselves to wearing little more than rags and remaining indoors through the winter months.¹¹³ Relief payments did not cover the cost of

¹¹⁰ E.g. File for John Nelson lists John H. Black Estate as main creditor (Secured) (Board of Review, Morden).

¹¹¹ The first steps toward public healthcare occurred after World War II. See Health Canada, “Canada’s Health Care System”, online: <www.hc-sc.gc.ca/hcs-sss/pubs/system-regime/2011-hcs-sss/index-eng.php>.

¹¹² Environment and Climate Change Canada, “Top Weather Events of the 20th Century”, online: <<https://ec.gc.ca/meteo-weather/default.asp?lang=En&n=6A4A3AC5-1>> (accessed 24 September 2016) [Weather Events].

¹¹³ In one particularly bad case in Alberta, the FCAA inspector noted that the farming couple’s clothing was in such bad shape that they were a few threads away from having nothing with which to cover themselves. See *Farmers’ Creditors Arrangement Act Case Files and Ledgers* (1929-1951), Wetaskiwin, Archives of Alberta (Accession No: GR1968.0294, Box 1).

clothing, and in desperation many Canadians wrote to Prime Minister Bennett (Conservative) asking for new clothes – usually long underwear and coats.¹¹⁴ Some of these writers intimated that they were contemplating suicide if their situations do not begin to improve soon; others blamed or threatened Bennett for the widespread destitution.¹¹⁵ Relief payments did not cover medical costs, and many letters to Bennett recounted the illnesses of the writer and their family. In a letter to Bennett dated April 19, 1932, Charles Grierson of Winnipeg wrote:

I have been unemployed for 26 months and am married and have three children all sick, ages 4, 2½ years, and 14 months. We have lost our home, furniture and all during the 26 months of unemployment. [Emphasis in original].¹¹⁶

In a subsequent letter dated June 8, 1933, Grierson wrote:

It is now 40 months since I had the pleasure of a pay check. My family, all undernourished, ill clothed and ill sheltered are in need of Medical Assistance.¹¹⁷

The meagreness and monotony in peoples' diets contributed to health issues. Farmers on relief subsisted on potatoes and beans for the most part – unemployment relief did not cover fruits or vegetables. Tooth decay was a common ailment.¹¹⁸ Very hot, dry summers compounded health issues. An intense heat wave in July 1936 caused the deaths of nearly 1,200 people in Manitoba and Ontario.¹¹⁹ That summer, temperatures in Brandon reached 43.3 degrees Celsius, and most people had no way to escape the heat.¹²⁰ The hot weather also led to several polio epidemics in

¹¹⁴ See e.g. Letter from Edwina Abbott of Passman, SK (October 16, 1933); Letter from Mrs. Muriel Balle of James Stn, ON (September 11, 1934) at 91; Letter from Mrs. J.W. Gruzlewski of Cambrian, SK (January 31, 1935) reproduced in LM Grayson & Michael Bliss, eds, *The Wretched of Canada: Letters to R.B. Bennett 1930-1935* (Toronto: University of Toronto Press, 1971) at 56-57.

¹¹⁵ See e.g. Letter from BC (December 1934), reproduced in *ibid* at 95-97.

¹¹⁶ Letter from Charles Grierson of Winnipeg, MB (April 19, 1932), reproduced in *ibid* at 22-23.

¹¹⁷ Letter from Charles Grierson of Winnipeg (June 8, 1933), reproduced in *ibid* at 46-47.

¹¹⁸ Janice Patton, *How the Depression Hit the West* (Toronto: McClelland and Stewart, 1973) at 4 [Patton].

¹¹⁹ *Ibid* at 33; Weather Events, *supra* note 112.

¹²⁰ The date July 5, 1937 remains Canada's hottest day on record, when temperatures in Midale and Yellowgrass, Saskatchewan reached 45 degrees Celsius. See Weather Events, *supra* note 112.

the mid-1930s, which killed or crippled thousands of children.¹²¹ High winds, coupled with persistent dry weather produced dust storms that could asphyxiate people and livestock. People who inhaled too much dust developed “dust pneumonia” and suffered with tuberculosis-like symptoms, which proved fatal in some cases. In the Dust Bowl regions in the heart of the Canadian and American prairies, herds of cattle suffocated and died from the blowing dust.

In light of the above, it is not surprising that medical debts appear frequently in the FCAA files and that doctors were made (made?) creditors.¹²² Doctors represented 5% of total claims in both places, and hospital claims represented 1% of claims in Morden and less than 1% in Brandon. Interestingly, in Morden there were almost as many medical debts (6%) as bank debts (7%). Doctors and hospitals were almost always unsecured and took some of the largest write-downs under FCAA compromises, despite representing a small proportion of farmers’ total debt loads. Doctors’ claims were written down by a mean amount of 43% in Morden and 63% in Brandon, although their claims amounted to less than 1% of the dollar value of total debts in both communities.

The number of bank claims also represented a similar proportion of the total number claims in Morden (7%) and Brandon (10%). On average, bank claims were secured 50% of the time in Morden, and 75% of the time in Brandon. In none of the files in this study was a bank the mortgage lender, since at the time, Canadian chartered banks were prohibited from mortgage lending.¹²³

In both communities a bank was the most frequent creditor, as illustrated in Tables 4 and 5, below. The three banks which appear as

¹²¹ Patton, *supra* note 118 at 33.

¹²² This accords with a number of contemporary American studies on personal insolvency, which identify medical debt as a significant cause of personal bankruptcy. See e.g. Teresa A Sullivan, Elizabeth Warren & Jay L Westbrook, *The Fragile Middle Class: Americans in Debt* (New Haven: Yale University Press, 2000); David U Himmelstein et al., “Medical Bankruptcy in the United States, 2007: Results of a National Study” (2009) 122:8 *The American J Medicine* 741. See further, Daniel Austin, “Medical Debt as a Cause of Consumer Bankruptcy” (2014) 67:1 *Maine L Rev* 1.

¹²³ See discussion in Torrie 2016, *supra* note 34 at 66–67, citing *inter alia* EP Neufeld, *The Financial System of Canada: Its Growth and Development* (New York: St. Martin’s Press, 1972) at 110–111 [Neufeld 1972].

mode creditors in this study – Bank of Montreal, Royal Bank of Canada and Canadian Bank of Commerce – were the three largest Canadian chartered banks, measured by total assets, from 1910 through 1950.¹²⁴ In 1930 these three banks together held nearly three-quarters of the total assets held by all Canadian chartered banks.¹²⁵ It makes sense that the largest banks would have the most branches and do more lending than other, smaller banks. Of note, however, the Bank of Montreal – the second largest bank in Canada in the 1930s and 1940s – did not have a branch in Morden and does not have a branch there today.¹²⁶ Morden still has branches of the Royal Bank of Canada and Canadian Imperial Bank of Commerce.¹²⁷ The location of bank branches within a community was likely a significant factor in terms of which bank a farmer decided to borrow from.

Table 4: Individual Mode Creditors – Morden

	# of transactions	% of total transactions
1. Royal Bank of Canada	14	4.6
2. Nitikman, Sirluck & Safeer	10	3.3
3. Cowie & Mott**	7	2.3
4. John H. Black Estate	6	2.0

¹²⁴ Neufeld 1972, *ibid*, table 4:6 Relative Size of Individual Chartered Banks 1870-1970 (selected years) at 99. “Total assets” refers to all domestic and foreign assets held. Royal Bank of Canada was the largest, followed by Bank of Montreal and the Canadian Bank of Commerce.

¹²⁵ The precise figure is 72.5%, *ibid*.

¹²⁶ *Ibid*, table 4:6 Relative Size of Individual Chartered Banks 1870-1970 (selected years) at 99. “Total assets” refers to all domestic and foreign assets held. Note that Morden did have a Bank of Montreal branch at one point in the late 20th century, but it closed.

¹²⁷ Note that Canadian Bank of Commerce and Imperial Bank of Canada merged in 1960, forming the Canadian Imperial Bank of Commerce.

5. International Harvester**	5	0.2
5. H. Gladstone***	5	0.2
5. Dr. Menzies	5	0.2
5. Canadian Bank of Commerce*	5	0.2
All Others	248	81.3
TOTAL	305	100
Most Frequent Creditors (combined)	57	18.6

Table 5: Individual Mode Creditors - Brandon

	# of transactions	% of total transactions
1. Bank of Montreal*	28	6
2. International Harvester Company**	12	2.6
3. Canada Permanent Mortgage Corporation	11	2.4
4. Massey-Harris Company**	11	2.4
5. Imperial Oil Company**	10	2.2
6. Imperial Life Assurance Company	9	1.9
6. Manitoba Farm Loans Association	9	1.9

All Others	374	80.6
TOTAL	464	100
Most Frequent Creditors (combined)	90	19

Three farm implement companies were mode creditors in the FCAA files examined. In Morden, Cowie & Mott and International Harvester were the third and fifth most frequent creditors, respectively. In Brandon, International Harvester and Massey-Harris were the second and fourth most frequent creditors. Massey-Harris was a large Canadian farm implement company, headquartered in Toronto, and most of its operations and sales were concentrated in North America.¹²⁸ International Harvester was a large American farm implement company, which dominated the US market and was Massey-Harris' main competitor in the Canadian market.¹²⁹ Cowie & Mott Implements, on the other hand, was a small Canadian farm implement company located in Morden, Manitoba.¹³⁰ Other farm implement companies also appear as creditors in the FCAA files, such as Cockshutt Plow Company, based in Brantford, Ontario, which is the fourth largest creditor listed for D. Allison (Morden, Board of Review).¹³¹

The fact that farm implement companies appear frequently in the FCAA files is in keeping with the trend toward greater farm mechanization

¹²⁸ E.P. Neufeld, *A Global Corporation: A History of the International Development of Massey-Ferguson Limited* (Toronto: University of Toronto Press, 1969) at 4-5 [Neufeld 1969]. Roughly half of the company's sales and profits were made outside of North America as early as 1908. Note that the company has been called Massey Ferguson since 1958.

¹²⁹ *Ibid* at 21, citing W.G. Philips, *The Agricultural Implement Industry in Canada: A Study of Competition* (Toronto: University of Toronto Press, 1956) at 14 [Philips].

¹³⁰ Howard W. Winkler, "Early Environs of Morden" (1971) 16:3 *Manitoba Pageant*, online: <www.mhs.mb.ca/docs/pageant/16/morden.shtml>; W.J. Cram, "The History of Maple Leaf School District: Re-union of old timers and ex-students", online <www.manitobia.ca/resources/books/local_histories/431.pdf> at 17.

¹³¹ D. Allison (Board of Review, Morden).

in the first half of the 20th century.¹³² During this period, Canadian farms replaced much of the animal and human labour involved in farming with farm implements and machinery. As a result, farm implements and machinery came to represent a larger proportion of farm capital. Between 1901 and 1951 farm implements and machinery grew from 8% to 14% of Canadian farm capital.¹³³ This trend was more pronounced among Prairie farms. For example, in Saskatchewan the increase was from 9% to 26%.¹³⁴

Technological advances in the early 20th century also increased the cost of implements, and farm implement companies began competing with one another based on the terms of credit offered to potential purchasers.¹³⁵ This led to lax¹³⁶ credit policies and a significant expansion in the amount of credit extended by implement companies to farmers in the years leading up to the Great Depression.¹³⁷ The inability of many farmers to make payments brought to light the consequences of the lenient credit policies of the preceding decades and had a significant, negative impact on the Canadian farm implement industry.¹³⁸ Farm

¹³² Neufeld 1969, *supra* note 128 at 9-12. This process was disrupted somewhat in the 1930s and early 1940s by the economic depression and reallocation of manufacturing capacity toward war industries in the early 1940s.

¹³³ *Ibid* at 9.

¹³⁴ *Ibid*.

¹³⁵ Philips, *supra* note 129 at 146.

¹³⁶ Other scholars have described these credit policies as “reckless”. See *ibid* at 146.

¹³⁷ Despite lending more money to farmers, many farm implement companies did not increase the size of their reserve fund in proportion to the amount of credit extended. As a result, by the 1920s the receivables carried by farm implement companies were rising steadily relative to other assets. Massey-Harris is a case in point. In 1926 that company’s receivables represented 34% of total sales and 20% of total assets. In 1930 these figures increased to 79% and 40%, respectively. See *ibid* at 146.

¹³⁸ E.g. the share price of Massey-Harris dropped from \$99.50 in 1929 to just \$2.50 in 1932 – a 97.5% reduction in three years – while Cockshutt Plow Company’s share price fell from \$53 to \$3 in the same period. Farm implement companies struggled through the 1930s although, rather ironically, it was also a period of major technological innovation in farm implements. For example, in 1937 Massey-Harris perfected a self-propelled combine, an implement that combines three separate operations involved in harvesting grain crops – reaping, threshing and winnowing – into a single process. To this day, the combine remains one of the most important labour-saving devices on farms. But in the 1930s few farmers could afford to purchase a new combine. See Neufeld 1969, *supra* note 128 at 35-37.

implement companies took large write-downs, while sales dropped and collection efforts added further costs to their operations, which put some companies in a precarious financial position.¹³⁹

The farms in this study represent a snapshot at roughly the midway point in farm mechanization. The FCAA files indicate that Morden and Brandon farmers used various combinations of draught animals, farm labourers and self-propelled machinery together with attachments and other farm implements.¹⁴⁰ The value of farm animals listed by farmers often exceeded that of farm implements and machinery.¹⁴¹ Data contained in the FCAA files fits with the view that many farmers in the 1930s were using implement technology from the 1920s. This makes sense in light of the depressed state of agriculture and farm incomes in the 1930s which made purchasing new equipment – and even repairing or replacing existing equipment – financially prohibitive for many farmers.¹⁴² During periods of prosperity, the high up-front cost of purchasing farm implements and machinery meant that farmers usually financed these purchases. Repayment took the form of set payments, usually on a monthly basis. During the “Dust Bowl” years, when farmers often could not afford the monthly payments, interest accumulated on delinquent accounts and some farm equipment wore out or broke down before it was paid off.

¹³⁹ E.g. by 1932 Massey-Harris’ accounts receivable represented a staggering 216% of total sales, and in 1934 its accounts receivable amounted to 50% of its total assets. The company spent \$2.5 million to collect \$23 million in receivables – just over 10% – between 1926 and 1936. See *ibid* at 151.

¹⁴⁰ When farm implement information was included in the *Statement of Affairs*, farmers typically reported several of the following pieces of equipment: plough, drill, binder, harrow, separator, wagon, sleigh, disc, and tractor. When animals were listed in the *Statement of Affairs*, farmers recorded no more than five horses. Some of these were draught animals (i.e. sometimes the horses were listed as “work horses”), but the records do not consistently make this distinction. Of all the farmers in this study that were also included in the 1921 Census, roughly 60% employed a labourer on their farm.

¹⁴¹ Note the farms in this study were principally crop growing farms, so they only had a few animals on the farm.

¹⁴² The low figures for the late 1920s and early 1930s, particularly for the prairies, suggest replacement of existing implements, rather than the addition of new implements. See AE Safarian, *The Canadian Economy in the Great Depression* (Toronto: McClelland and Stewart, 1970) at 199.

The aggregated financial data collected in this study indicates that debt reductions under the FCAA appear to have affected different types of creditors fairly evenly. The mean amount of debt written-off by a given creditor type (e.g. trade companies) tended to vary according to the mean proportion of debt held by that creditor type in relation to the farmer's overall debt load.

In Morden, for example, Individuals and Estates were the most frequently occurring creditor type (51% of all claims, as shown in Table 2, above), and also represented the largest proportion of debt reductions (53%, Table 6, below) and mean write-offs (44% of claim amount, Table 6, below). Banks claims were slightly anomalous in this respect, because although banks represented only 7% of all claims, they incurred the second-highest mean write-offs in Morden (52% of claim amount). In addition, 17% of the total debt reduced in Morden was bank debt, which represents the highest write-off rate relative to lending frequency for any creditor type in the community. Part of the reason for this might have been that bank claims tended to be for larger amounts than those of other creditor types and/or Western antipathy toward Eastern financial institutions. It is also possible that banks were better able to bear the losses associated with debt write-downs than other creditor types, which may have been a factor in the crafting of BoR compromises.

Tables 6 and 7, below, present the debt reductions by creditor type for Morden and Brandon. "Total # of Claims" refers to the sum of individual claims for a given creditor type. "% of Total Claims" represents this sum as a percentage of total creditor claims recorded for the community. "% of Overall Debt" expresses the total write-offs incurred by the creditor type as a percentage of the total amount of debt written off by all creditor types. "Mean Write-Off %" refers to the mean write-off incurred by the creditor type expressed as a percentage of the mean claim amount. The last three columns ("Secured", "Unsecured", "Unknown") indicate the proportion of the claims for each creditor type according to whether they were secured, unsecured, or nature of the claim was unknown.

Table 6: Debt Reductions by Creditor Type – Morden

Creditor Type	Total # of Claims	% of Total Claims	% of Overall Debt Reduction	Mean Write-Off %	Secured	Unsecured	Unknown
Individuals and Estates	157	51%	51%	44%	40%	58%	2%
Banks	22	7%	17%	65%	50%	50%	0%
Mortgage Companies	7	2%	8%	39%	86%	14%	0%
Trust Companies	5	2%	1%	11%	100%	0%	0%
Assurance/ Insurance Companies	6	2%	5%	32%	100%	0%	0%
Credit/Loan Companies	1	0.30 %	0.03%	100 %	100%	0%	0%
Trade Companies	81	27%	13%	49%	37%	63%	0%
Government	3	1%	3%	17%	67%	0%	33%
Doctors	15	5%	0.32%	43%	13%	87%	0%
Hospitals	4	1%	0.05%	31%	0%	100%	0%
Unknown/ Other	4	1%	0.19%	24%	25%	50%	25%

Table 7: Debt Reductions by Creditor Type – Brandon

Creditor Type	Total # of Claims	% of Total Claims	% of Overall Debt Reduction	Mean Write-Off %	Secured	Unsecured	Unknown
Individuals and Estates	219	47%	35%	50%	34%	66%	0%
Banks	48	10%	10%	41%	75%	25%	0%
Mortgage Companies	17	4%	18%	59%	94%	6%	0%
Trust Companies	15	3%	6%	37%	100%	0%	0%
Assurance/ Insurance Companies	21	5%	9%	16%	95%	5%	0%
Credit/Loan Companies	20	4%	11%	50%	100%	0%	0%
Trade Companies	87	19%	5%	49%	54%	45%	1%
Government	13	3%	6%	43%	85%	15%	0%
Doctors	22	5%	0.4%	63%	0%	95%	5%
Hospitals	2	0%	0%	0%	0%	100%	0%
Unknown/ Other	0	0%	0%	0%	0%	0%	0%

“Mean Write-Off” provides an indication of how different types of creditors were affected, relative to other creditor types, by the debt reductions carried out under the FCAA. In Morden, the seven creditor types that incurred the highest mean write-offs were Banks (65%), Trade Companies (49%), Individuals and Estates (44%), Doctors (43%),

Mortgage Companies (39%), Assurance/Insurance Companies (32%), and Hospitals (31%), respectively.¹⁴³ While in Brandon, the eight creditor types most affected by debt reductions under the FCAA were Doctors (63%), Mortgage Companies (59%), Individuals and Estates (50%), Credit/Loan Companies (50%), Trade Companies (49%), Government (43%), Banks (41%), and Trust Companies (37%), respectively. The mean write-off for these creditor types was within 10% of the total mean write for the community, which was 44% in Morden and 49% in Brandon. The two exceptions were Banks in Morden and Doctors in Brandon.

IV. CONCLUSION

This study analyzes the operation of the FCAA in Morden and Brandon, Manitoba and brings to light some of the financial and social aspects of farm debt compromises during the 1930s. It provides insight into the impact of the Great Depression and the Dust Bowl on Prairie farmers and the role of the FCAA in addressing the financial symptoms of these crises.

The study reveals that the FCAA consistently effected debt write-downs of approximately one-third of the farmer's overall debt. The Boards of Review followed a rough "rule of thumb" when crafting debt compromises, which in turn served as a *de facto* benchmark for negotiations at the OR stage. The analysis also revealed that a significant proportion of farm credit was obtained from local individuals and institutions, particularly in Morden. The difference between Morden and Brandon in this regard suggests that the proportion of claims from local creditors may be linked to the size of the town or city.

The creditor typology demonstrates that, with only a couple of exceptions, no one type of creditor was regularly singled out for larger than average write-downs, and that different creditors were treated fairly evenly in proportion to the size of their claims. One of the exceptions to this finding – medical debts – is noteworthy for calling attention to the social context in which debt compromise negotiations took place. Doctors took some of the highest write-downs in proportion to their claim amounts.

¹⁴³ "Credit/Loan Companies" were omitted from this list because only one debt in Morden fell into this category.

The duration of the FCAA process was, on average, significantly longer for Morden than it was for Brandon. This is likely due to the size of each city. While Brandon may have had ORs that exclusively did the OR work in Brandon, Morden's OR likely occupied other roles and/or functioned as an OR in neighbouring towns. Morden's slower pace might also be linked to fewer sittings of the BoR than in larger cities like Brandon.

By comparing the Morden and Brandon data with national statistics, this article has shown that the data from these two communities is largely in keeping with national and provincial averages. In this respect, the frequency with which OR compromises were reached in Morden stands out from the aggregated provincial and national data, and highlights the potential role of local factors in the way in which actors interacted with this federal insolvency statute. This article thus highlights the importance of regional factors to understanding how the FCAA operated in different communities. Adopting a uniform statute for Great Depression Canada did not prevent local practices and standards from emerging.

This study provides a framework for further empirical work, which might consider additional communities in Manitoba and other provinces. In light of the regional variation uncovered in this study, studying the operation of the FCAA in additional communities may bring to light the broader trends in the statute's application and/or additional local factors which impacted the way that different actors interacted with this federal insolvency law.

