

Farmland Protection and the Federal Government

A national interest or over-stepping jurisdiction?

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FOR DISCUSSION

**Should the federal government
be involved in agricultural
land use planning (AgLUP)?
In protecting farmland?**

For additional details:

Connell, David J., Deborah Curran, and Rebeca Macias Gimenez (2018). Farmland Protection: The Role of the Federal Government. Policy brief. University of Northern British Columbia: Prince George, BC. On-line:

http://www.aglup.org/uploads/1/1/6/6/116674177/aglup_fed_role_brief_501e.pdf

French version:

http://www.aglup.org/uploads/1/1/6/6/116674177/aglup_fed_role_brief_501f.pdf

Use of some terms

USE OF TERMS

Protection, preservation of farmland

- **Preservation** (or conservation) of farmland
 - A broad term that encompasses programs that maintain the productivity of agricultural land, such as soil conservation and other environmental practices. This term also includes tools available to private land owners, such as land trusts and easements, that restrict the use of agricultural land.

USE OF TERMS

Protection, preservation of farmland

- **Protection** of farmland
 - Public land use policy; legislative means at all levels of government (laws, bylaws, regulations) to govern the right to use property, including the restriction of rights for agricultural uses.

USE OF TERMS

Soil conservation

- Inconsistent use in relation to loss of farmland
- Urban expansion
 - A form of soil degradation
 - Treated as a separate issue
 - Or not mentioned at all

**Have to be careful to understand what it means
to conserve, preserve, or protect soil**

USE OF TERMS

Loss of farmland

- More than just conversion for other uses
- Must also consider fragmentation, parcelisation
 - With regard for subdivision of farmland into smaller parcels and increased number of owners of parcels
- And effects of the “urban shadow”
 - Krueger (1961): results in idle land; non-farm ownership, which often results in lower productivity, short-term leases that can destroy the incentive for sound farming practices; high land prices that discourage farming and encourage selling of lots and subdivision to non-economic sized units; and high land taxes that subsidise the further development of farmland
 - A similar concept is “impermanence syndrome”

**A very brief look at
the constitutional framework
(*Constitution Act, 1867*)**

Key considerations: Section 91

- Section 91 covers matters of federal jurisdiction
 - Relates to matters of national importance that affect interprovincial or international trade, setting standards for or permit the use of substances, or to other specific constitutional heads of power (e.g., fisheries)

Key considerations: Section 92

- Section 92 covers matters of provincial jurisdiction
 - **Provincial laws and policies on land and land use planning take precedent**
 - Assigns jurisdiction over matters of merely local and private interest to the provinces

Key considerations: Section 95

- Federal and provincial government have **shared jurisdiction for agriculture**
 - Acknowledges provincial authority to make laws for agriculture
 - Grants the federal government the power to make laws in relation to agriculture in “all or any of the Provinces”
- Over time, courts have limited the scope of federal jurisdiction under s. 95

Opportunities for co-ordinated efforts

- The constitutional and regulatory frameworks allow for **federal-provincial co-ordination**
 - Example: *Agricultural and Rural Development Act*, which provides for the rehabilitation and development of rural areas in Canada, which has enabled provincial programs for agricultural land stewardship
 - This Act covers the current **Canadian Agriculture Partnership** (CAP) (and the previous Growing Forward agreements)

“Co-operative federalism”

Co-operative federalism

- Agreement about how each is to use or refrain from using its legislative powers in the same field
- Flexibility with high tolerance for overlap
- Work together within the existing framework without the onerous and unlikely prospect of changing the *Constitution Act, 1867*

A necessary convenience that serves federal and provincial interests within the restrictions, permissions, and omissions of the Constitution

Other possibilities, such as POGG

- Parliament, with the advice and consent of the Senate and House of Commons, may make laws for the **“Peace, Order, and good Government of Canada”** (POGG)

**Enables federal authority
to assert matters of national concern**

**Why examine
the federal role in AgLUP?**

Why examine the role of the federal government in AgLUP?

1. Historical loss of farmland
2. Absent from national agri-food policy
 - Although recognised by federal bodies and agencies
3. The quality of legislative frameworks for AgLUP vary widely across the country
 - At all levels of government
4. Very little of Canada's best agricultural land is well protected

1. Absent from national agri-food policy

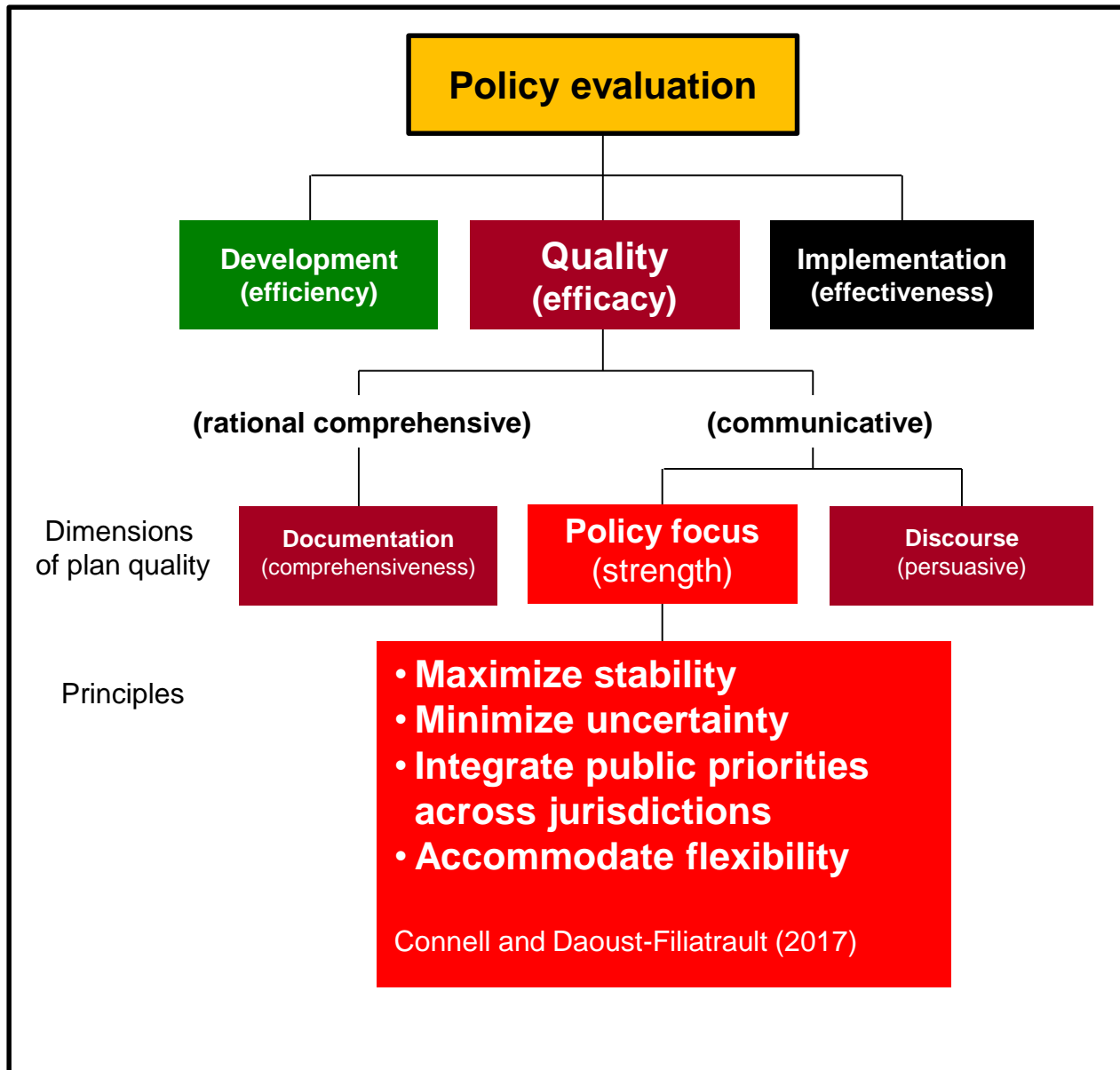
Examples

- CAP (Canadian Agricultural Partnership)
 - As well as previous Growing Forward agreements
- A Food Policy for Canada
 - Not mentioned among priorities or actions
 - Although soil is recognised
- “Barton Report”
 - “much arable land”

2. Quality of legislative frameworks for AgLUP vary widely across the country

At all levels of government

- Based on assessments of strength of policy focus to protect farmland
- Provinces range from strong to weak
- Local governments within provinces vary widely



Four principles of public policy

1. Maximise stability
2. Integrate public priorities across jurisdictions
3. Minimise uncertainty

Only after one takes care of the first three...

4. Accommodate flexibility

Published journal article:

Connell, David J., and Lou-Anne Daoust-Filiatrault (2017). Better Than Good: Three Dimensions of Plan Quality. *Journal of Planning Education and Research*, 1-8.

[open access]

Strength of provincial legislative frameworks for farmland protection

Province	Overall Strength
Québec	Strong
British Columbia – Zone 1	Somewhat Strong
Ontario – Greenbelt	Somewhat Strong
Ontario – Prov. Policy Statement	Moderate
Nova Scotia	Somewhat Weak
British Columbia – Oil and Gas Comm.	Somewhat Weak
Manitoba	Somewhat Weak
Saskatchewan	Somewhat Weak
Prince Edward Island	Weak
Newfoundland	Weak
New Brunswick	Weak
Alberta	Weak

Source: [updated version] Connell, David J., W. Caldwell, C. Bryant, G. Cameron, T. Johnston, and M. Margulis (2016). *Farmland: A Prerequisite for Farmers, Food -- and Agri-food Policy*. Prince George, BC: University of Northern British Columbia. On-line:

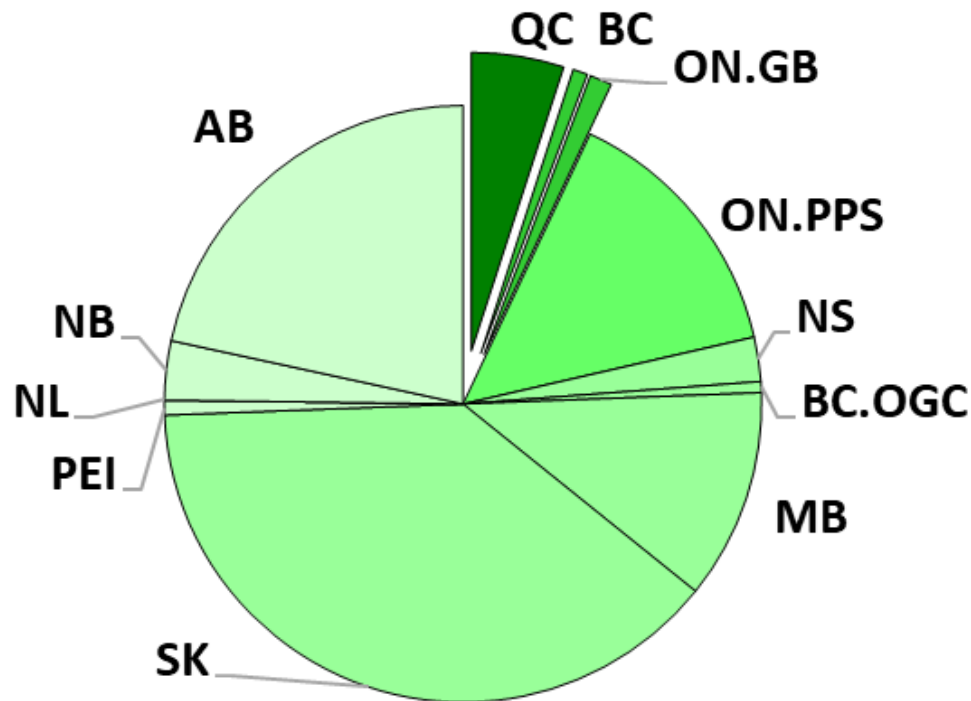
http://www.aglup.org/uploads/1/1/6/6/116674177/aglup_policy_brief_603.pdf

French: http://www.aglup.org/uploads/1/1/6/6/116674177/aglup_policy_brief_603-french.pdf

Strength of provincial legislative frameworks for farmland protection

PROV	Overall Strength	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accomm. flexibility
QC	Strong	5	4	4	3
BC	Somewhat Strong	5	3	4	4
ON-GB	Somewhat Strong	4	4	3	4
ON-PPS	Moderate	3	4	3	4
NS	Somewhat Weak	3	3	3	3
BC-OGC	Somewhat Weak	4	2	2	3
MB	Somewhat Weak	3	3	2	2
SK	Somewhat Weak	2	4	3	2
PE	Weak	2	5	2	2
NL	Weak	2	3	2	3
NB	Weak	2	3	2	2
AB	Weak	2	2	1	1

Only 7.0% of the best farmland is protected by at least **somewhat strong** provincial legislative f/w



Rating	Province	% of prime land	Cum% prime land
Strong	QC	5.0	
Somewhat strong	BC	0.8	5.8
Somewhat strong	ON.GB	1.2	7.0
Moderate	ON.PPS	14.4	21.4
Somewhat weak	NS	2.4	23.8
Somewhat weak	BC-OGC	0.6	24.4
Somewhat weak	MB	11.4	35.8
Somewhat weak	SK	38.6	74.4
Weak	PEI	0.8	75.2
Weak	NL	0	75.2
Weak	NB	3.2	78.4
Weak	AB	21.6	100

**Protected Dependable (Prime) Land
as % of Canada's Total Dependable Land**

Response of AAFC Minister reflects generally accepted position on AgLUP

Minister's response to submitted policy brief

FARMLAND

A Prerequisite for Farmers, Food -- and Agri-food Policy (August, 2016)

From: Minister / Ministre (AAFC/AAIC)
To: David.Cornell
Subject: Your correspondence to the Minister of Agriculture and Agri-Food - Quote: 223495
Date: Friday, September 23, 2016 1:35:24 PM

Quote: 223495

David J. Cornell, PhD
Associate Professor
University of Northern British Columbia
david.cornell@unbc.ca

Dear Dr. Cornell:

Thank you for writing and sharing a copy of your policy brief on protecting farmland in Canada. I appreciate being made aware of your concerns and perspective about this matter.

Land-use planning is the responsibility of provincial governments and municipalities. The Government of Canada recognizes that farmland is one of Canada's most valuable assets and will continue, with provincial governments and other partners, to support farmers in their role as stewards of this resource.

Federal, provincial, and territorial governments are currently working together to develop the next agricultural policy framework, which will launch on April 1, 2018. Collaboration between governments has been key to providing consistent policy and program direction with regional flexibility to meet the challenges and opportunities facing the sector.

We are currently looking for feedback on the *Calgary Statement*, which was released by federal, provincial, and territorial ministers of agriculture on July 22, 2016. The statement outlines the key priority areas that will guide the development of the next agricultural policy framework.

You can read the *Calgary Statement* framework by submitting your feedback accessible via www.agri.gc.ca/agf.

Furthermore, the Government of Canada promotes healthy living and safe food produced by Canadian ranchers and is part of my mandate, which you may find in the [agriculture-and-agri-food-mandate](http://www.agri.gc.ca/agf). We will establish a more integrated and collaborative government that takes into account considerations and interdependencies.

Agriculture and Agri-Food Canada, provincial governments, other federal government departments, and municipalities will determine the scope and direction of the framework.

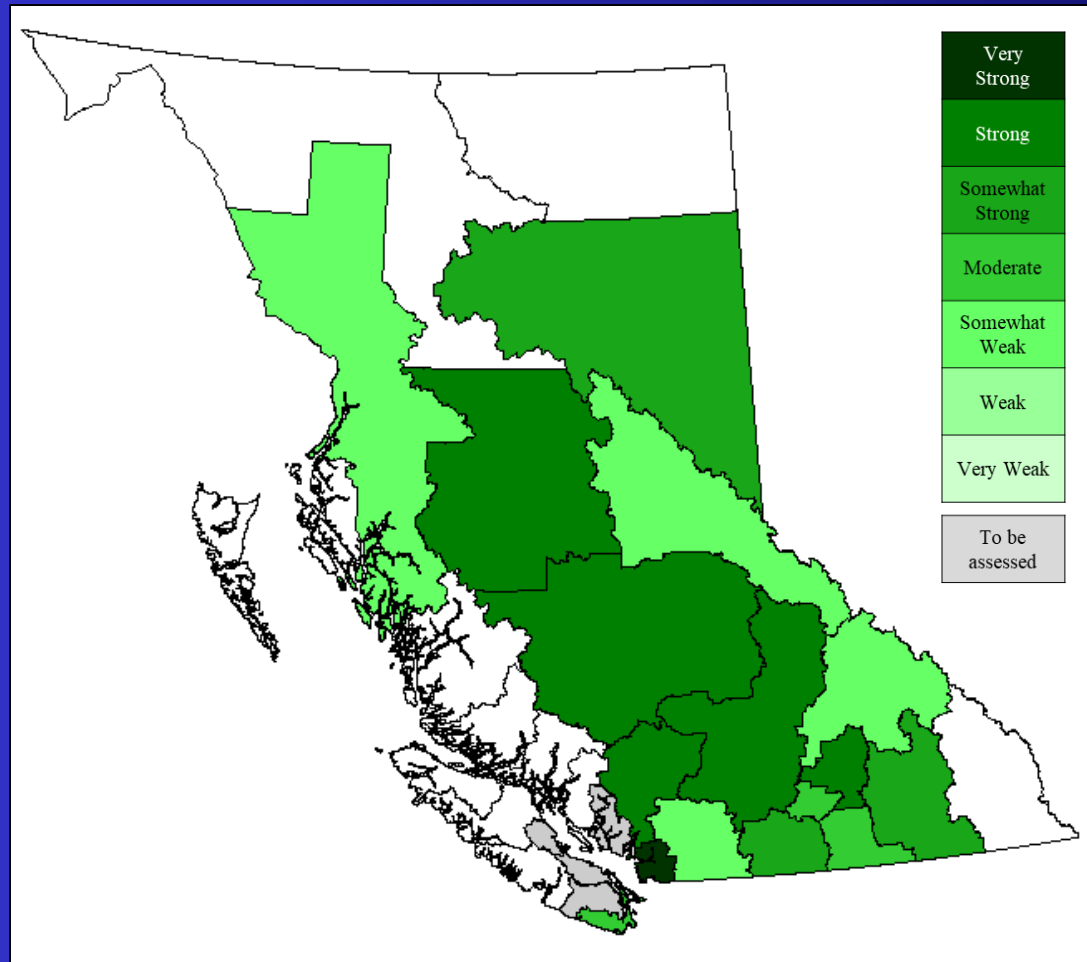
Once again, thank you for sharing this information. Your feedback will help shape the direction of future policy and programs for the agriculture and agri-food sector.

Sincerely,

Lawrence MacAulay, PC, MP

“Land-use planning is the responsibility of provincial governments and municipalities.”

Strength of legislative frameworks: BC's Regional Districts



Connell, David J. 2017. Farmland Protection: Strengthening BC's Legislation. Prince George, BC: University of Northern British Columbia. On-line: http://www.aglup.org/uploads/1/1/6/6/116674177/aglup_bc_policy_brief_401.pdf

Strength of legislative frameworks: BC lower mainland

SITE	Overall strength	Maximise stability	Integrate across jurisd.	Minimise uncertainty	Accomm. flexibility
British Columbia Zone 1	Somewhat Strong	5	3	4	4
Metro Vancouver RD, BC	Strong	5	4	5	3
Delta, BC	Very Strong	5	5	4	4
Surrey, BC	Strong	5	4	4	5
Richmond, BC	Strong	5	4	4	4
Pitt Meadows, BC	Strong	4	4	4	3
Township of Langley, BC	Moderate	3	4	2	3
Coquitlam, BC	Moderate	3	3	3	2
Maple Ridge, BC	Somewhat Weak	3	3	2	3
Port Coquitlam, BC	Somewhat Weak	2	2	2	2
Fraser Valley RD, BC	Somewhat Weak	3	2	2	2
Chilliwack, BC	Somewhat Strong	5	4	2	3
District of Kent, BC	Somewhat Strong	5	4	3	3
Abbotsford, BC	Moderate	4	2	3	5
FVRD Area G	Moderate	3	3	3	3

Strength of legislative frameworks: Quebec Montreal metro area

SITE	Overall strength	Integrate across jurid.			
		Maximise stability	Minimise uncertainty	Accomm. flexibility	
Quebec	Very Strong	5	4	4	3
Montreal Metropolitan Community	Moderate	3	2	5	2
Roussillon RMC, QC	Somewhat Strong	4	4	3	4
Saint-Constant	Weak	2	2	2	2
Vaudreuil Soulanges RMC, QC	Somewhat Strong	4	3	5	4
Veaudreuil-Dorion, QC	Somewhat Weak	3	3	2	2
Longueuil, Agglomeration de, QC	Very Strong	4	5	4	4
Boucherville, QC	Somewhat Weak	2	2	3	3
Marguerite-D'Youville, RMC, QC	Somewhat Strong	4	3	5	3
Varennnes, Ville, QC	Weak	1	2	2	2

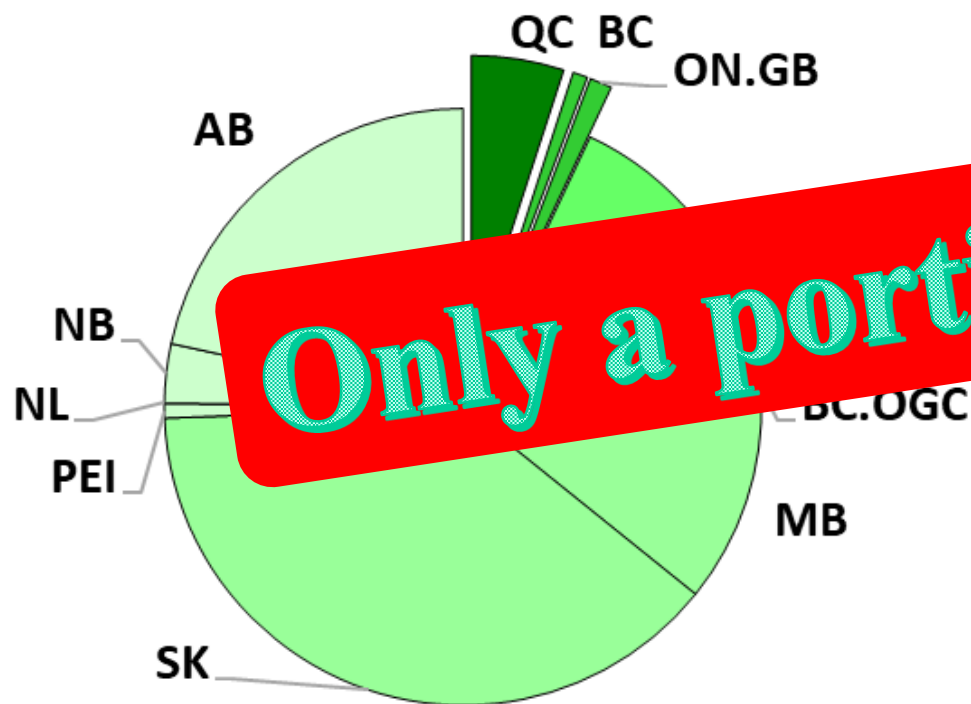
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Vaudreuil Soulanges RMC, QC	Somewhat Strong	4	3	5	4
Marguerite-D'Youville, RMC, QC	Somewhat Strong	4	3	5	3
Veaudreuil-Dorion, QC	Somewhat Weak	3	3	2	2
Boucherville, QC	Somewhat Weak	2	2	3	3
Saint-Constant	Weak	2	2	2	2
Varenes, Ville, QC	Weak	1	2	2	2

Strength of legislative frameworks: Ontario Greater Golden Horseshoe

SITE	Overall strength	Integrate			
		Maximise stability	across jurisd.	Minimise uncertainty	Accomm. flexibility
Ontario (GB)	Somewhat Strong	4	4	3	4
Ontario (PPS)	Moderate	3	4	3	4
Halton Region (overall)	Somewhat Strong	4	4	3	4
Halton Region (GB)	Strong	5	4	4	4
Halton Region (PPS)	Moderate	3	4	3	4
Halton Hills (overall)	Strong	4	5	4	4
Halton Hills (GB)	Strong	4	5	4	4
Halton Hills (PPS)	Strong	4	5	4	4
Milton (overall)	Moderate	4	3	2	3
Milton (GB)	Somewhat Weak	3	1	1	3
Milton (PPS)	Moderate	4	3	3	3
Region of Peel (overall)	Moderate	3	5	2	3
Region of Peel (GB)	Strong	4	5	4	4
Region of Peel (PPS)	Somewhat Strong	4	5	2	4
Town of Caledon (overall)	Somewhat Strong	4	5	2	4
Regional Municipality of Niagara, ON	Somewhat Strong	3	4	4	4
Reg. Munic. of Niagara (GB)	Strong	4	4	4	4
Reg. Munic. of Niagara (PPS)	Moderate	3	4	3	4
Niagara-on-the-Lake, ON (GB)	Somewhat Strong	4	3	4	3

Only 7.0% of the best farmland is protected by at least **somewhat strong** provincial legislative f/w



Rating	Province	% of prime land	Cum% prime land
Somewhat strong	QC	5.0	5.0
Somewhat strong	BC	0.8	5.8
Somewhat strong	ON.GB	1.2	7.0
Somewhat weak	ON.PPS	14.4	21.4
Somewhat weak	NS	2.4	23.8
Somewhat weak	BC-OGC	0.6	24.4
Somewhat weak	MB	11.4	35.8
Somewhat weak	SK	38.6	74.4
Weak	PEI	0.8	75.2
Weak	NL	0	75.2
Weak	NB	3.2	78.4
Weak	AB	21.6	100

**Protected Dependable (Prime) Land
as % of Canada's Total Dependable Land**

**A brief history of the role
of the federal government
in land use policy**

Federal govt has stayed out of land use planning, but involved in other ways

- Farmland protection
- Farmland preservation
- Soil conservation

Important distinctions

Yet, urban expansion and loss of farmland have been considered as part of soil conservation

Direct or indirect implications for farmland protection

- Thomas Adams (1917) [Conservation Commission]
- *Prairie Farm Rehabilitation Act* (PFRA) (1935)
- *Agricultural Rehabilitation and Development Act* (ARDA) (1961)
- *Resources for Tomorrow* (1961)
 - Agriculture
 - Regional Planning
 - Jurisdiction
- Standing Senate Committee on Agriculture and Forestry (2016)

No reference to loss of farmland or farmland protection

- Federal Task Force on Agriculture (1967-69)
- Science Council of Canada (1986)
- Canadian Agricultural Partnership (2018-2023)
 - Previous Growing Forward agreements

A Food Policy for Canada

- Consultation document (four themes)
 - No direct mention of agricultural land
 - Soil conservation is included
- H of C Standing Committee on Agriculture and Agri-Food (2017)
 - Identified loss of farmland as an issue that affects farmers' access to land

INFORMAL SURVEY

**What role do you think
the federal government should have
in farmland protection?**

Legal review led to six possible roles of the federal government

1. No direct role

Status quo

2. Stand-alone policy statement

Aspirational; no direct ties to other policies

3. Integrated statement

Aspirational policy statement with ties to other policies

4. Integrated policy

Included as statement in other agri-food policy (e.g., Food Policy for Canada)

5. Co-operative federalism

Provinces and federal government bound by agreement(s) (e.g., like CAP)

6. Federal legislation

Provinces bound by federal law

QUESTION

Rank the six possible roles of the federal government in order of preference from most to least.

No ties permitted.

Validity

In general terms, think of validity with regard for a scenario being a correct or appropriate role for the federal government. That is, to what extent do you believe that the scenario is well-grounded, logical, and justifiable? Also, to the best of your ability, consider whether you believe that the scenario represents a legal option that can be executed with the proper authority and formalities.

Viability

In general terms, think of viability with regard for the chance of a scenario succeeding, whereby success requires a scenario to be accepted politically, capable of working, implemented appropriately, and produce positive outcomes.

1. Neutral position

(status quo: not our jurisdiction)

The general position taken by the federal government is that land use planning is a matter of provincial jurisdiction. In this context, there is no role for the federal government in AgLUP.

2. Stand-alone policy statement

(aspirational; no direct ties to other policies)

The federal government could issue an aspirational policy statement that is not tied legislatively to other policies or agreements. The statement could express a national interest in protecting farmland and encourage all levels of government to incorporate farmland protection in their statutory land use plans.

3. Integrated Statement (aspirational policy statement with some ties to other policies)

The federal government could issue an aspirational policy statement that is issued in conjunction with, but not legislatively bound by, other policies or agreements. The statement could express a national interest in protecting farmland and encourage all levels of government to incorporate farmland protection in their statutory land use plans.

4. **Integrated policy** (e.g., included as statement in Food Policy for Canada)

A federal statement of national interest in protecting farmland could be issued as part of a broader agri-food policy. The national food policy is an example of a policy that could accommodate a policy on farmland protection. The policy could express a national interest in protecting farmland, encourage all levels of government to incorporate farmland protection in their statutory land use plans, and include guidelines for protecting farmland.

5. Co-operative federalism

A commitment to enter into bilateral or multilateral federal-provincial agreements (like CAP) on the preservation and enhancement of agricultural land with a commitment to annual monitoring and reporting on progress. The agreements could include guidelines for farmland protection, conversion, and non-farm development; set maximum standards for farmland conversion based on CLI soil types; and provide recommendations for how to decrease the conversion of farmland to non-farm uses.

6. Federal legislation

Adopt federal legislation enabling the development of bilateral or multilateral federal-provincial agreements about agricultural land. The federal law could include standards for the preservation and enhancement of agricultural land, such as no net loss, no reduction in soil-based food producing capacity. The law could require provincial governments, within a set period (e.g., three years), to demonstrate how their legislative frameworks for AgLUP conform to these standards.

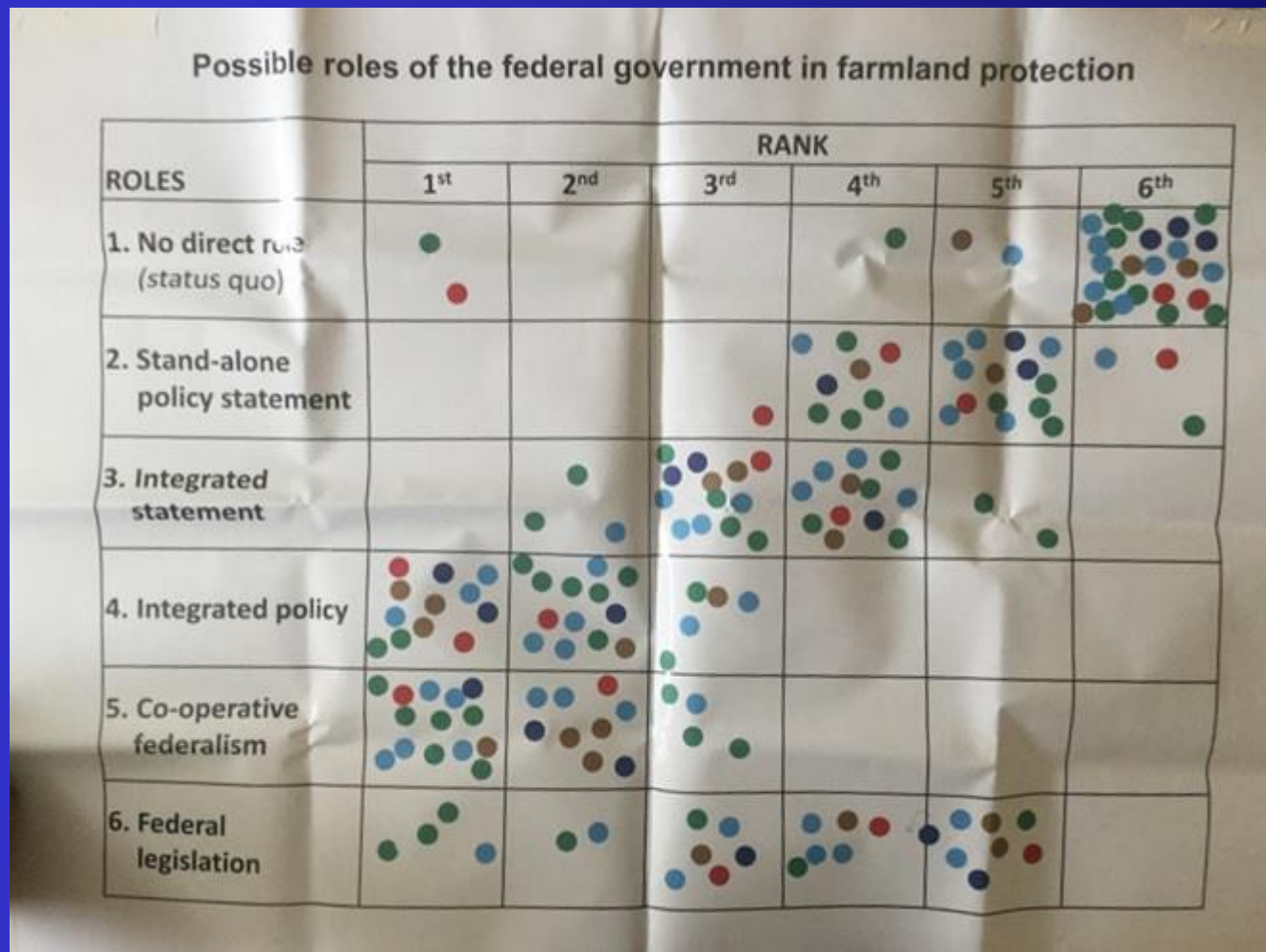
QUESTION

Rank the six possible roles of the federal government in order of preference from most to least.

No ties permitted.

Post your answers on the poster
using the sticky dots provided to you

Results of survey completed with participants during session



Key informant interviews

Results and observations

Ranked scenarios: from most to least preferred

		Ranked choices					
	SCENARIOS	1st	2nd	3rd	4th	5th	6th
Scen1	Status Quo	0	0	1	3	3	3
Scen2	Policy Statement	0	1	2	3	3	1
Scen3	Integ Statement	1	1	3	3	2	0
Scen4	Integ Policy	1	8	1	0	0	0
Scen5	Coop Federalism	7	0	1	1	1	0
Scen6	Federal Legislation	1	0	2	0	1	6

Key outcomes

- Not mutually exclusive
- Scenario 5: Co-operative Federalism (light)
 - Bilateral agreements under CAP
 - Funding provided to support AgLUP and related programs
- Scenario 4: Integrated Policy
 - Scenario 4a: policy to govern Crown land use decisions

Critical questions

Two critical questions

- Climate change: future impacts
- Timing: When to act?

**Interesting parallels with Constitutional questions
about national pollution pricing
(Saskatchewan Court of Appeal decision;
Ontario Court of Appeal decision)**

Climate change

- Heightens the need to protect farmland today and could influence the future role of the federal government in AgLUP

Is this sufficient to warrant federal intervention as a national interest?

When to intervene?

- Based on present trends, it is likely that concern for farmland protection will gain momentum in the future
 - What would be a benchmark for acting?
 - How much land must be converted to non-farm uses?

Constitutional challenge of national pollution pricing (carbon tax)

- Pith and substance
- Progressive interpretation “living tree”
- Section 95: concurrent jurisdiction

Sask. Court of Appeal decision

- Based on tests for division of powers
- A split 3-2 decision, the Court determined that the federal government has power to enact national pricing for GHG pollution
- The decision is wide ranging, with the two opposing views expanding the possibilities

Sask. Court of Appeal decision

- A key aspect of the majority reason by Justice Richards centred on the “pith” analysis
- Three-step argument:
 - A **national interest in GHG emissions** was determined to be too broad and too far-reaching
 - As was an interest in **cumulative GHG emissions**

Sask. Court of Appeal decision

However,

- Establishing “**minimum national standards of price stringency for GHG emissions**” was determined to meet the “singleness, distinctiveness and indivisibility” requirement

How might this argument be applied to AgLUP to protect farmland?

Sask. Court of Appeal decision

What do you think about each of the following statements of national interest:

- **“Protecting farmland”**
- **“Farmland protection for food sovereignty”**
- Establishing **“minimum national standards for use of agricultural lands for food production”**

POLLUTION PRICING (carbon tax)

Ontario Court of Appeal decision

- Three in agreement, one concurring
- One dissenting

Ontario Court of Appeal decision

Justice Strathy

- Pith and substance: A matter must not be so “lacking in specificity” or “so pervasive that it knows no bounds”

Ontario Court of Appeal decision

Pith and substance

- [74] Neither Ontario's nor Canada's proposed characterization is persuasive. Ontario's description is too broad and is designed to support its submission that the law effectively gives Canada sweeping authority to legislate in relation to "local" provincial matters, thereby excluding any provincial jurisdiction in relation to GHGs. Canada's definition is too vague and confusing, since GHGs are inherently cumulative and the "cumulative dimensions" are undefined.

Ontario Court of Appeal decision

Pith and substance

- [77] The *Act*'s purpose and effects demonstrate that the pith and substance of the *Act* can be distilled as: “**establishing minimum national standards to reduce greenhouse gas emissions.**”
The means chosen by the *Act* is a minimum national standard of stringency for the pricing of GHG emissions.

Ontario Court of Appeal decision

Dissenting

- Cumulative carbon emissions too amorphous
- Minimum standards *of what?*
- Affects property rights and matters merely local

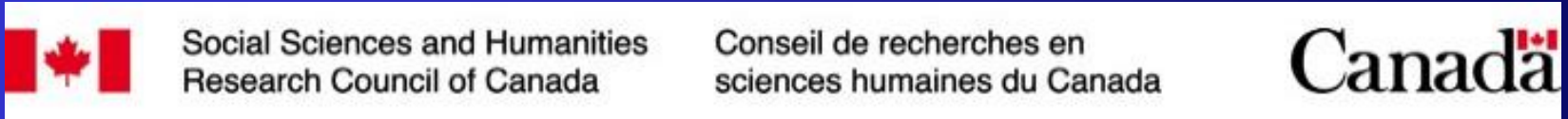
CONCLUSION

**In spite of 45+ years of efforts,
more must be done.**

**Protecting farmland
cannot be an after-thought.**

**It must be a pre-requisite
for all agri-food policy**

Funding (past and current)



- Agriculture and Agri-Food Canada: Agricultural Policy Research Fund
- Omineca Beetle Action Coalition: Northern Agriculture Research Initiative
- Cariboo-Chilcotin Beetle Action Coalition
- Real Estate Foundation of British Columbia Partnering Fund
- Office of Research, University of Northern BC

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