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Foreign Ownership of Land and Real Estate in Canada

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## FOREWARD

Since the earliest European settlement of Canada, there has been concern for foreign land ownership, or, as it was called then, absentee ownership. This concern continues today unabated and is reflected in the fact that most provinces utilize some form of legislation or mechanism relating to land ownership by non-Canadians, or, in some cases, non-residents of a particular province or territory.

This study has three aims and is divided into three corresponding chapters. The first aim is to present an overview of federal, provincial and territorial legislation and mechanisms in place related to foreign or non-resident ownership of Canadian land. This is a partial update of a 1973 review by the Federal-Provincial Committee on Foreign Ownership of Land. The CANADIAN CITIZENSHIP ACT is discussed as it relates to the sale of Canadian land, and this is followed by overviews of provincial and territorial legislation regarding or affecting foreign and/or non-resident ownership. It will be noted that much of the legislation deals primarily with agricultural land.

The second chapter is designed to provide a discussion of selected aspects of foreign (non-resident) ownership of real estate in Canada. The information was compiled primarily from newspaper and journal articles, plus other published information. It is structured into two parts, factors affecting foreign investment in Canadian real estate and channels of foreign investment.

The aim of the third chapter is to provide, for the first time, some very general statistics on the dollar values involved in foreign investment in Canadian land and to identify the problems associated in collecting more detailed data. This part of the report was prepared by Teresa M. Omiecinski, International and Financial Economics Division, Statistics Canada, and has been published previously as a technical note in Statistics Canada Catalogue 67-001 "Quarterly Estimates of the Canadian Balance of International Payments, Fourth Quarter 1983".

During the course of this study, it became quite obvious that there was a great deal of legislation on the subject, much of it directed at agricultural land. There were, however, few facts or research which conclusively proved either that foreign land ownership was significant, or even if it was significant, that it was a land use problem or specifically an agricultural land use problem. Where it does seem to be of significance is in the specialized non-agricultural land use of coastal recreation. It appears that much of the existing legislation on agricultural land reacts more to local perceptions of a problem than to facts regarding the existence, significance or the effects of foreign land ownership.

This study is not able to conclude whether or not foreign land ownership is a significant problem either in terms of land use, land ownership, or economics. There is just not enough evidence. It does, however, indicate a need for more rigorous research into such topics as the levels and targets of foreign investment in real estate, the effectiveness and efficiency of land use on property owned by foreigners, the economic effects on land values and balance of payments of the various types of foreign land ownership, and the costs and benefits to Canada of this ownership. Such research can help provide a firm base of facts upon which the need for legislation can be evaluated and the appropriate types of legislation considered.

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## CHAPTER 1

### INTRODUCTION

The objective of this chapter is to present a synopsis of federal, provincial and territorial legislation regarding foreign and non-resident ownership of Canadian land. The extent and nature of the legislation have been examined and the ministries and/or departments responsible for implementation have been identified. Appendix A, in table form, presents statistics of provincial and territorial land and water areas and selected legislation related to foreign and non-resident land ownership.

The provinces and territories of Canada have varying degrees of control over foreign and/or non-resident ownership of land, primarily agricultural land. Several provinces have used restrictive legislation for many years. Prince Edward Island restricted the amount of land that could be owned by an alien in 1859. Other provinces have followed suit in the last 20 years, after farm lobbies convinced several provincial legislatures of the need for restrictions on foreign ownership. These lobbies argued that, in many cases, the foreign ventures were speculative and were inflating land prices, placing farm land beyond the reach of many young Canadian farmers.

In 1973, a precedent-setting case heard by the Supreme Court of Canada, discussed later, ruled that it is within a province's jurisdiction to restrict land ownership on the basis of non-residence. This encouraged the provinces to discuss the issue of foreign ownership of Canada's land at a First Minister's Conference in 1973. The result was that in the September 1974 Speech from the Throne the Government proposed a new CITIZENSHIP ACT (S.C. 1974-75-76, c. 108), which was officially proclaimed on February 15, 1977. Clause 33 of this Act deals with the ownership of land by aliens.

The provinces hold differing views over whether land use or land ownership is the question. The Atlantic Provinces Economic Council summed it up as follows:

...land use regulations cannot provide a complete answer, no matter how well conceived and administered land use planning may be, the issue of ownership cannot be ducked indefinitely... Without a clear understanding of the different uses individuals wish to make of land, and the need for all those uses to be reconciled, land use planning by itself is incapable of preventing non-residents acquiring an ever-increasing amount of prime land. Land use and land ownership are intimately interconnected, and any long-term policy must involve a combination of controls on both sides.<sup>1</sup>

Hence, the provinces continue to strive for the ideal balance of legislation and regulation to optimize the use of prime resource lands, and to protect the undeveloped land on the periphery of urban centres, as well as prime agricultural land, recreational land, and undeveloped properties within urban areas.

#### THE CANADIAN CITIZENSHIP ACT

On September 30, 1974, in the Speech from the Throne, the Federal Government proposed the creation of a new CITIZENSHIP ACT. On October 10, the Honourable James Hugh Faulkner (Secretary of State) introduced Bill C-20, An Act Respecting Citizenship, for first reading and it was ordered to be printed.

The Act received second reading on May 21, 1975, whereupon it was sent for debate. Clause 33, which affects the provincial right to control more strictly the lands within their boundaries, was vigorously debated. Clause 33 offered the provinces two options. The first was through the traditional Common Law, which states that an alien may not own land. However, in general, this aspect of Common Law has been superseded by various Canadian Naturalization Acts which include clauses permitting aliens to own land. The second option was new and involved giving the provinces the right to restrict the sale of land to persons who are not Canadian citizens, or to corporations or associations controlled by such persons. Yet section 33(6) also states that provinces may not restrict the sale of land to landed



immigrants normally resident in Canada. Therefore, this option allowed legislation directed against non-Canadians.

The final draft from the committee hearings, the Fifth Report, was presented to The House of Commons on March 29, 1976. On April 13, 1976 the Bill was read for the third time and passed. Royal Assent was subsequently given and Bill C-20, An Act Respecting Citizenship, became Chapter 108 in the Statutes of Canada. The Act was officially proclaimed on February 15, 1977.

In the interim period, most of the provinces began to incorporate the rights of the Lieutenant-Governor-in-Council arising out of the new CITIZENSHIP ACT into their respective provincial legislation.

The decision of the Supreme Court regarding Richard Alan Morgan and Alan Max Jacobson v. The Attorney General for the Province of Prince Edward Island and Leo Blacqui re et al, established a third option for the provinces. This permitted the provinces to restrict the sale of land to people who live within their borders, or in other words to legislate against non-residents, Canadian citizens included.

The case was the result of an attempt by two citizens of the United States, resident in Rochester, New York, to purchase a parcel of land in Prince County, Prince Edward Island. The Registrar of the County, refused to register the deed of conveyance as it contravened section 3 of the REAL PROPERTY ACT (R.S.P.E.I. 1951, c. 138) which did not permit ownership by non-Canadians.

The appellants, Morgan and Jacobson, brought their case before the Supreme Court of Prince Edward Island where they lost, so they chose to appeal to the Supreme Court of Canada claiming the legislation to be ultra vires, beyond the powers of the province and therefore in federal jurisdiction. The judgement of the Chief Justice, on behalf of a unanimous Supreme Court, was to uphold the provincial statute

restricting sales of land to Canadian citizens and aliens who reside outside of Prince Edward Island.

The position of the respondents (PEI) in this appeal was to tackle the narrow question as to 'whether the province under its property and civil rights power in s. 92 (13) of the CONSTITUTION ACT, 1982, as enacted by CANADA ACT 1982 (U.K.), 1982, c. 11, could discriminate between residents and non-residents with respect to landholdings in the province as the impugned legislation purported to do.' 3

The Morgan judgment has established several factors, most notably that the provinces have primacy in the regulation of landholdings within their boundaries. Furthermore, it would appear "that landownership can no longer be considered a constitutive characteristic of Canadian citizenship." 4

The argument used by the respondents in the Morgan case was that similar legislation had been enacted in Alberta under the COMMUNAL PROPERTY ACT (R.S.A. 1955, c. 52). The respondents noted that the Alberta Government restricted the acquisition of land by Hutterite colonies, as confirmed in the Walter case (Walter v. A.G. Alta. 1969 S.C.R. 383).

In Walter it may be noted, the legislation was upheld in spite of being directed at a particular class of persons. The conclusion might therefore be drawn, by implication, that a province can validly restrict landholding by non-resident Canadian citizens, as well as by aliens. Thus only if the legislation can be said to be in relation to a class of subject within exclusive federal jurisdiction would it be invalid.<sup>5</sup>

This was held by the Supreme Court of Canada to be a valid exercise of the province's right to enact laws governing the ownership of land in the province under section 92(13) of the BRITISH NORTH AMERICA ACT (now the CONSTITUTION ACT).

"Laskin, C.J. thus construed the Walter decision broadly; a province may regulate not only the manner by which land is held but also the

groups of persons who own land."<sup>6</sup> In this manner, the Chief Justice refuted any claims that the legislation was discriminatory. This judgment has therefore led to the third option of restricting provincial land sales, namely, legislate against non-residents, including Canadian citizens. The four provinces which have utilized this option are Manitoba, Prince Edward Island, Quebec and Saskatchewan.

#### NEWFOUNDLAND AND LABRADOR

There is no legislation governing the extent of foreign ownership in Newfoundland, since this issue is not substantial enough at present to warrant provincial concern.

With the recent oil and gas discoveries on Newfoundland's coast, the provincial Department of Development has established a Committee to monitor development-related activities. The Committee has been instrumental in designating 19 rural communities which could be affected by onshore developments. All land transactions and development within these communities will be monitored and controlled by the Department of Development.

In 1971, an amendment (S.N. 1971, No. 46) to the CROWN LANDS ACT (R.S.N. 1970, c. 71) was passed but never proclaimed, providing no grant, lease, licence or permit to any non-resident company or person except for industrial or commercial development approved by Order-In-Council (s. 122, ss. B).

At present, the only restriction on non-residents acquiring land in the province is a government policy which states that they may not obtain a permit-to-occupy for a remote cabin, a cabin not accessible by road.

#### PRINCE EDWARD ISLAND

Legislation of land ownership in Prince Edward Island (PEI) dates back to 1859. The REAL PROPERTY ACT (R.S.P.E.I. 1951, c. 138), the

vehicle for the restrictions, has been amended often (1914, 1939, 1972, 1974, 1975, 1977, 1980). In 1972, alien land ownership limitations were extended to non-resident Canadians under an Act to amend the REAL PROPERTY ACT (R.S.P.E.I. 1974, c. R-4). In 1974, the restrictions were applied to all corporations, resident and non-resident. The legislation provided that non-resident persons and all corporations, wishing to take and hold more than 4 hectares (10 acres) of land or 330 feet (5 chains) of shore frontage must obtain the prior approval of the Lieutenant-Governor-in-Council. In 1982, the LANDS PROTECTION ACT (R.S.P.E.I. 1982, c. 16) replaced the REAL PROPERTY ACT, maintaining the previous features but adding absolute upper limits on all land holdings. The legislation is both regulatory and prohibitory.

The 1972 amendments to the REAL PROPERTY ACT were tested in the Supreme Court of Canada (Richard Alan Morgan and Alan Max Jacobson v. The Attorney General for the Province of Prince Edward Island and Leo Blacquière). In his judgment on behalf of the full court, Chief Justice Bora Laskin rejected arguments that Canadians in other provinces were discriminated against by the law:

What we see is not an attempt to regulate or control alien residents of Prince Edward Prince Edward Island in what they may do or not do therein, but rather a limitation on landholding by non-residents.<sup>7</sup>

Land Identification Programs, established under the PLANNING ACT (R.S.P.E.I. 1974, c. P-6) did not commence until 1977. They ensured that land acquired by non-residents and corporations will not be subdivided unnecessarily, and that good agricultural land will be maintained in a state of readiness for use.

In 1980, the Land Use Commission, established as an independent body under the PLANNING ACT, assumed the administrative responsibility for the Non-Resident and Corporate Land Sales Program. The Land Use Commission processes applications under these programs, then makes recommendations to the Executive Council on each application. This

process may take only 10 days for straight approval or denial, though six months is the maximum time permitted for completion of the land identification agreement. This agreement ensures that land will not be subdivided unnecessarily and that good agricultural land will be maintained in a state of readiness for use. In 1980, "the Commission made recommendations on 141 non-resident and 89 corporate applications. Land Identification Agreements were signed for 78 properties. Three hearings were held on requests to release land from Land Identification Agreements."<sup>8</sup> Thus, today in PEI a non-resident individual or a non-farm corporation wishing to obtain more than 4 hectares of land must file an application personally or through a lawyer to the Land Use Commission. In addition, no individual may hold more than 400 hectares (1 000 acres) or no corporation may hold more than 1 200 hectares (3 000 acres) without demonstrating to the Cabinet that the holding of excess land would be in the public interest.

The LANDS PROTECTION ACT, proclaimed in May 1982, strengthens the old amendments to the REAL PROPERTY ACT, which were repealed, and introduces the concept of upper-limitation acreage, applicable to residents and non-residents alike. Enforcement procedures for the regulation of ownership and leasing of land have also been strengthened.

PEI has a sound legislative basis for controlling non-resident and corporate land ownership. The legislation appears to have checked large speculative purchases by non-residents, and the province has been able to purchase land for government programs and public purposes through its land legislation. The legislation was never intended to prohibit all land purchases by non-residents or corporations, but it does enable the province to control the type and size of land transactions and pursue its policy of retaining the traditional land-holding patterns of the province.

## NOVA SCOTIA

Nova Scotia land ownership legislation enacted in 1967 and 1969 remains unamended. The LAND HOLDINGS DISCLOSURE ACT (S.N.S. 1969, c. 13) was passed to compel non-residents to disclose their land holdings in a special register, providing an up-to-date inventory of the location and amount of land held by non-residents in Nova Scotia. The Act requires corporations owning or acquiring provincial land to file a disclosure statement regarding the land and its ownership.

- s. 6 (1) The disclosure statement required by the Act shall be in writing and in a form prescribed by the Minister and shall include:
  - (a) the full and proper name and address of the non-resident or corporation;
  - (b) the description of the land holding that is contained in the document of conveyance;
  - (c) the purpose for which the land holding was acquired; and
  - (d) such other information as the Minister prescribes.
- s. 8 This Act shall not apply to a land holding that is within the boundaries of a city or town.  
(S.N.S. 1969, c. 13, s. 6(1) and 8)

It was estimated in 1975 that about two-thirds of the non-resident owned land had been registered. Alternative methods are now being sought to improve the gathering of information on non-resident ownership.

The REAL PROPERTY ACT (R.S.N.S. 1967, c. 261) deals with the rights of aliens:

- s. 1. Aliens, corporations and companies incorporated out of Nova Scotia may take, hold, convey, and transmit real property situated in the Province. (R.S.N.S. 1967, c. 261, s. 1)

With regards to Crown land, the sale and leasing of Crown land to any person is only considered under special circumstances and requires the approval of the Lieutenant-Governor-in-Council.

The Report to the House of Assembly of the Select Committee on Non-Resident Ownership of Land in 1974 concluded:

The Non-Resident Ownership of Land is a misnomer since ownership of land is not the problem. It is the conclusion of the Committee that the problems and difficulties are those of use of land and taxation in respect thereof.

## NEW BRUNSWICK

There is no legislation restricting land ownership in New Brunswick. The province monitors the situation of foreign ownership of farms in conjunction with its Farm Land Identification Program. The only previous reference to aliens was to enable them to acquire, hold, and convey real estate in the province. See the REAL PROPERTY TAX ACT (R.S.N.B. 1973, c. R-2) consolidated to December 31, 1980.

Under Regulation 78 of the REAL PROPERTY TAX ACT, the Minister of Agriculture and Rural Development is given the responsibility of administering the Farm Land Identification Program. A registrar of the Program is appointed by the Minister and it is his duty to maintain a register of farm land.

The Farm Land Identification Program is designed to permit owners, whether resident or non-resident, to defer provincial taxes on farm land identified for farm use; the current rate is \$1.50 per \$100 assessment. This has been introduced in an effort to encourage the preservation of agricultural land for agricultural use and to combat land use development trends that prejudice the maintenance of a viable and vigorous agricultural industry.

Applications for identification, which are voluntary, should be received no later than August 1 of the preceding year. The term identification is used here to mean that an owner declares that he intends to keep the land in agriculture and that he will not do anything to that land to prevent its future agricultural use. The voluntary nature of the Program restricts it as a means of identifying non-resident or foreign ownership.

The land eligible in this program must not be less than 2 hectares (5 acres) in size. It must be used for the production of agricultural products, be capable of being used for agricultural production in the year of application, or be land which is being cultivated from time to time or managed for the production of food for humans or livestock. However, so long as the land remains capable of being used for agriculture, there is no penalty for aliens or non-residents owning land identified within the Farm Land Identification Program.

## QUEBEC

Bill 90, assented to in 1978, is the AGRICULTURAL LAND PRESERVATION ACT (R.S.Q. 1978, c. P-41.1). The Minister of Agriculture who is responsible for the Act, created the Commission de protection du territoire agricole du Québec with the purpose of securing the preservation of agricultural land in Quebec. Section 22 of the Act states that "the Government may, by decree, identify any part of the territory of Quebec as a designated agricultural region," while section 26 declares that "in a designated agricultural region, no person may use a lot for any purpose other than agriculture without the authorization of the Commission."

In 1979, Bill 41, the ACQUISITION OF FARM LAND BY NON-RESIDENTS ACT (R.S.Q. 1979, c. A-4) was passed. This Act governs the acquisition of farm land by non-residents and defines the province's stand on this issue. Section 2 defines a resident as one who "has lived in Quebec for not less than three hundred and sixty-six days during the twenty-four months preceding the date of acquisition of farm land." Exceptions to this stipulation are cited in section 3, while other residents are defined in section 4 as persons who have acquired shares in a company whose principal asset is farm land, or persons who have acquired land in the name or on behalf of a non-resident.

If a non-resident wishes to acquire farm land, land to be used only for agricultural purposes, that person must submit an application to the Commission, similar to the procedure in Prince Edward Island. Upon receiving an application, the Commission looks at the biophysical conditions of the soil and the environment to determine whether the land in question is suitable for cultivation or livestock raising. When assessing an application, the Commission takes into account the economic repercussions of granting the application as well as the effect on the farming community and its operations.

The LAND TRANSFER DUTIES ACT (R.S.Q. 1981, c. D-17) imposed a 33 1/3% land transfer tax (s.4) on all persons not resident in Canada (s.1) or corporations not located in Canada. These corporations are



((s.1(f)) defined as those where 50% of the shares of capital stock are owned by non-resident Canadians, or more than one-half of the directors are not resident in Canada, or more than one-half of the members are not resident in Canada, or that are controlled directly or indirectly in any manner whatever by one or more persons not resident in Canada. This tax is expected to discourage the sale of land to non-resident Canadians.

Crown lands in Quebec are administered by the Minister of Energy and Resources. The sale of this land is regulated by the Minister but he is not prevented from leasing such lands to aliens or non-residents.

### ONTARIO

According to the ALIENS REAL PROPERTY ACT (R.S.O. 1970, c. 19):

- 1 Every alien has the same capacity to take by gift, conveyance, descent, devise, or otherwise, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in Ontario as a natural born or a naturalized subject of Her Majesty. (R.S.O. 1960, c. 13, s.1)

However, in order to obtain some record of how much agricultural land in Ontario is owned by non-residents, Bill 60, the NON-RESIDENT AGRICULTURAL LAND INTERESTS REGISTRATION ACT (R.S.O. 1980, c. 318) was passed and became law on December 1, 1980. Non-resident is defined as: (i) an individual not ordinarily resident in Canada or who, if ordinarily resident, is not a Canadian citizen; (ii) a non-resident corporation; (iii) a partnership, syndicate, association or other organization of which one-half or more of the members are non-resident persons or in which interests represent 50% or more of the total value of the property; (iv) a trust in which non-resident persons within the meanings of subclause i, ii, or iii hold 50% or more of the beneficial interests ((Bill 60, s.1(e)). Non-residents are required to file a registration report when they own or have an interest in any land which is larger than 10 hectares. The report had to be filed by November 30, 1981, for any interest in agricultural

land held on December 1, 1980. Any transactions, new acquisitions or terminations of interest, after December 1, 1980, must have registrations filed within 90 days.

The registration report expires five years after the day it was filed. The Minister of Agriculture and Food is responsible for this Act and four inspectors are appointed to implement the provisions and regulations made by the Lieutenant-Governor-in-Council. Any offence under the Act carries with it a fine of up to \$25 000. However, failure to comply with and evasion of the NON-RESIDENT AGRICULTURAL LAND INTERESTS REGISTRATION ACT have hindered its implementation.

Prior to this Act, regulation or deterrents to foreign owners came in the form of the LAND TRANSFER TAX ACT (R.S.O. 1980, c. 231 amended 1983, c. 20) which charges non-residents 20% and residents 15% tax on conveyances of land. The LAND SPECULATION TAX ACT (R.S.O. 1974, c. 16) also imposed an additional 50% tax on the increase in value realized on the sale of designated land by residents and non-residents, in an effort to discourage speculation, but this Act was repealed in 1978 as the LAND SPECULATION TAX REPEAL ACT (R.S.O. 1978, c. 59).

The CROWN LANDS ACT (R.S.O. 1970, c. 19) gives land purchase preference to Ontario residents for one year after which time, if the property is not sold, the land is made available to all Canadian residents. After two years, an alien is eligible to purchase Crown land.

#### MANITOBA

Manitoba's first legislation controlling the foreign ownership of farm land became effective on April 1, 1977. The Act was amended effective July 20, 1978, and July 15, 1981 respectively. The AGRICULTURAL LANDS PROTECTION ACT (S.M. 1977, c. 45) now in force restricts a non-Canadian individual or foreign-controlled corporation to ownership of 8 hectares (20 acres). Canadian citizens or landed immigrants

permanently resident in Canada are not restricted in purchases of agricultural land. A corporation effectively controlled by Canadian citizens or permanent residents of Canada is not restricted in agricultural land purchases. The Act is administered through the Department of Agriculture under the Agricultural Lands Protection Board.

The CROWN LANDS ACT (R.S.M. 1970, c. 340) does not deal specifically with non-resident or foreign acquisitions of Crown lands. Crown lands (agricultural) are sold by public tender and are subject to restrictions imposed by the AGRICULTURAL LANDS PROTECTION ACT and to approval by the Lieutenant-Governor-in-Council. Crown lands (non-agricultural) are sold without restrictions as to residence or nationality.

For example, an American citizen can buy Crown land for a fishing lodge in northern Manitoba, but cannot purchase Crown land in the agricultural belt for a farm. A Canadian citizen would have the right to purchase Crown land whether agricultural land or not.

The legislation outlined above permits any Canadian or permanent resident to purchase land. A more recent third piece of legislation, the FARM LANDS OWNERSHIP ACT (S.M. 1982-83-84, c. 22, proclaimed September 26, 1984), strengthens the family farm by restricting Manitoba farm land purchases by absentee owners and speculators. This is similar to Prince Edward Island, Quebec and Saskatchewan. Non-residents and non-farm corporations are restricted to purchases of 4 hectares (10 acres) or less. Manitoba residents and family farm corporations may purchase as much land as desired.

In response to concerns expressed by individuals and corporations about the FARM LANDS OWNERSHIP ACT, the following amendments were incorporated into the proclaimed version:

- Individuals and corporations may retain land holdings which are purchased before the date of proclamation.
- A new provision allows non-residents or non-farm corporations to purchase and dispose of interest in farm land, so long as their total land holdings do not increase.
- The amended Act also permits shareholders in family farm corporations to will shares to any person, regardless of where they reside. This allows shareholders in family farm corporations the same rights as individuals who own land as single proprietors.
- In administering the Act, the Farm Lands Ownership Board operates under a set of guidelines which provide for exemptions to the legislations as special cases arise.

#### SASKATCHEWAN

The SASKATCHEWAN FARM OWNERSHIP ACT (R.S.S. 1978, c. S-17) was passed in 1974 to limit the amount of Saskatchewan farm land which could be owned or acquired by non-residents of Saskatchewan or by non-agricultural corporations. Non-residents of Saskatchewan were originally limited to a maximum aggregate landholding (including land held by spouse and dependent children) of \$15 000 of assessed value for municipal taxation purposes. A resident was defined as an individual who resided in Saskatchewan for 183 days or more per year or a farmer who lived outside of Saskatchewan for 183 days or more per year but within 32 kilometres (20 miles) of the Saskatchewan border.

Non-residents already owning land in excess of the maximum were not required to dispose of any landholdings. Non-resident relatives of Saskatchewan farmers (in the previous five years) were exempt from the provisions of the Act in acquiring the farmer's landholdings.

Saskatchewan farmers (in the previous five years) who moved out of the province were not required to dispose of any landholdings.

In response to the purchase of Saskatchewan farm land by non-residents, the SASKATCHEWAN FARM OWNERSHIP ACT was amended effective September 15, 1977, reducing the maximum limit on landholdings for non-residents to 64 hectares. Policies established under the original Act remained in effect. Saskatchewan farmers and their non-resident relatives were exempt as were farmers living outside of Saskatchewan but within 32 kilometres (20 miles) of the border. Also, non-residents were not required to dispose of landholdings acquired between March 31, 1974, and September 15, 1977.

Non-agricultural corporations which had holdings in excess of 64 hectares prior to March 31, 1974, have until January 1, 1994, to reduce their holdings to allowable limits. In order to qualify as an agricultural corporation, the company had to be primarily engaged in the business of farming and at least 60% owned and controlled by resident farmers.

The Saskatchewan Farm Ownership Board was established to administer the Act and was granted authority to issue divestment orders where violations of the Act occurred. The Board was also given authority to grant exemptions to potential residents and to non-agricultural corporations wishing to acquire agricultural lands for non-farming uses.

During the Second Session of the 19th Saskatchewan Legislature, the SASKATCHEWAN FARM OWNERSHIP ACT was again amended. The highlights of the amendments are as follows:

- effective May 6, 1980, non-residents and non-agricultural corporations are limited to a maximum aggregate landholding of 4 hectares (10 acres);
- land acquired prior to May 6, 1980, by non-residents does not have to be disposed of;

- land in excess of 4 hectares acquired by non-agricultural corporations prior to May 6, 1980, must be disposed of by January 1, 1994;
- farmers living outside of Saskatchewan but within 32 kilometres of the border are no longer exempt from the provisions of the Act, and in order to acquire additional lands in Saskatchewan, these farmers must receive a written exemption from the Saskatchewan Farm Ownership Board;
- it is an offence under the Act for a resident person or corporation to acquire a landholding on behalf of a non-resident or non-agricultural corporation;
- the Saskatchewan Farm Ownership Board has authority to grant exemptions to both non-agricultural corporations and non-resident individuals;
- in order to qualify as an agricultural corporation, the company must be primarily engaged in the business of farming and the majority of the issued and voting shares must be owned by resident farmers.

Crown land may be sold or leased only to residents of Saskatchewan. Exemptions and lease differentiation are available through the PROVINCIAL LANDS ACT (R.S.S. 1978, c. P-31) and its associated regulations.

### ALBERTA

Legislation restricting land ownership in Alberta dates back to the 1942, the LAND SALES PROHIBITION ACT, (S.A. 1942, c. 16). The Act states that "no person either by himself or by his servant or agent shall sell or agree to sell any land to any enemy alien or Hutterite" (c. 16, s. 2). In 1947, the Act was replaced by the COMMUNAL PROPERTY ACT (R.S.A. 1955, c. 52), but it was not until 1972 that the anti- Hutterite legislation was repealed.

In 1972, the Alberta Select Committee on Foreign Investment produced interim and supplementary reports on public and private lands. The result was the PUBLIC LANDS AMENDMENT ACT (S.A. 1973, c. 49) and the inclusion of section 21.1 in the Public Lands Act (R.S.A. 1980, c. P-30). This section prohibits the sale of public land to non-Canadian citizens and non-Canadian corporations. A non-Canadian

corporation may be described as a corporation in which 75% of the equity shares are not owned by Canadian citizens.

Pursuant to the PUBLIC LANDS ACT, public land in Alberta may be sold to Canadian citizens and Canadian corporations. Public land may also be sold to non-Canadian corporations for commercial or industrial purposes, though the sale is subject to a sell-back agreement. This agreement ensures that if the land is no longer required by the purchaser for the purpose for which it was sold, the Province of Alberta has the first right to buy it back.

In 1974, the LAND TITLES AMENDMENT ACT (R.S.A. 1974, c. 72) was proclaimed and on June 1, 1975, the province began to monitor the extent to which non-Canadian citizens were acquiring a beneficial interest in Alberta land. Any transfer or caveat claiming an interest in lands was to be refused registration unless it was accompanied by a statement relating to the citizenship of each transferee or purchaser.

On April 26, 1977, temporary foreign ownership of land regulations were passed under the dual authority of Section 33 of the Canadian CITIZENSHIP ACT and the Alberta AGRICULTURAL AND RECREATIONAL LAND OWNERSHIP ACT (R.S.A. 1980, c. A-9). On June 1, 1979, permanent regulations were passed with the intention of preventing foreign absentee persons from buying agricultural and recreational land. This legislation restricts a person who is not a Canadian citizen or a permanent resident (landed immigrant) or a foreign-controlled corporation, in which 50% or more of its shares are held by foreigners, from acquiring an interest in "controlled land", which is any land outside the boundaries of a city, town, new town, village or summer village. Non-residents and foreign corporations may own 2 parcels totalling no more than 8 hectares (20 acres). Succession due to the death of a person is not restricted.

The regulations contain exemptions for industrial, resource, commercial, and residential developments. Joint business ventures with Canadian corporations and developments which create jobs for Albertans are also encouraged.

## BRITISH COLUMBIA

In British Columbia (BC), with only 1.6% of the land in Canada Land Inventory agricultural classes 1-3, it is very important that such land be properly utilized. Three Acts have been passed addressing the proper utilization of such lands. Although no legislation bars the sale of land to aliens or non-residents, the AGRICULTURAL LAND COMMISSION ACT (R.S.B.C. 1979, c. 9) is concerned with land use, its primary purpose being to preserve agricultural land and ensure the maintenance of farms. The other two Acts are the LAND TITLE ACT (R.S.B.C. 1979, c. 211) under which attempts are made to obtain estimates of ownership status, and the LAND AMENDMENT ACT (S.B.C. 1976, c. 27) which controls land use to preserve land for farming.

The Agricultural Land Commission administers the first Act. The objects and powers of the Commission are set out in section 7 of the Act; it is the object of the Commission to:

- (a) preserve agricultural land;
  - (b) encourage the establishment and maintenance of farms and ensure that land use in an agricultural land reserve is compatible with agricultural purposes;
  - (c) assist municipalities and regional districts in the preparation of land-reserve plans required under this Act.
- (R.S.B.C. 1979, c. 9, s. 7)

For these objectives, the Commission has power to acquire and dispose of property, by itself or in cooperation with Canada, with any of its agencies or corporations, with a ministry of the province, or with a municipality or regional district.

The Act defines "agricultural land" in section 8:

For the purposes of section 7, the Commission may with the prior approval of the Lieutenant-Governor-in-Council designate as agricultural land, land, including Crown land, that is suitable for farm use. (R.S.B.C. 1979, c. 9, s. 8)

The supporting regulation, with all its associated schedules, is BC Reg. 313/78--Agricultural Land Reserve Procedure Regulation. The AGRICULTURAL LAND COMMISSION ACT was enacted to protect scarce agricultural land from urban encroachment and the demands of recreation and the resource industries such as forestry and mining.



The LAND TITLE ACT requires that every person applying to be registered as an owner or holder of any charges on land is required to furnish a statutory declaration stating citizenship. Corporations must provide the number of directors and particulars of their citizenship and residence.

In 1979, the LAND AMENDMENT ACT was enacted, preventing the sale of Crown lands to non-Canadians and allowing only the lease of waterfront Crown land. British Columbia has since moved to restrict the resale of agricultural Crown lands which had not previously been included in the LAND AMENDMENT ACT.

#### NORTHWEST TERRITORIES AND YUKON

There is no legislation prohibiting the sale or lease of territorial land to non-residents or aliens. At present, however, there is a freeze on the disposition of territorial land until all pending land claims are settled.

#### CONCLUSION

While problems relating to land ownership are similar across the country, the solutions vary from province to province in terms of the type of action taken to counter foreign or non-resident purchases. The major issues appear to be use versus ownership, and the restriction of land ownership based on residence rather than the use of the land. There has been very little monitoring of land utilization by residents versus non-residents (both foreigners and out-of-province owners) and the associated land management practices of each owner category.

Under the new CONSTITUTION ACT, a Charter of Rights and Freedoms is set out that neither Parliament nor any provincial legislature acting alone can change. If property rights are guaranteed at some future date, the Acts discussed in this chapter could be drastically affected in ways which would depend on the precise wording of the clause in the Charter.

## CHAPTER 2

### INTRODUCTION

In the early 1970s, concerns in Canada about the increasing amounts of foreign investment in agricultural land were evidenced by the frequency of reports in newspapers which identified some of the larger and more visible purchases. Indeed, the majority of provincial laws directed to the control of both foreign and non-resident land ownership, especially agricultural land, were passed during the 1970s. As a result, investment in agricultural areas is now generally controlled through legislation, whereas foreign investment in Canadian urban real estate remains largely unrestricted.

Although much has been written on the implications of foreign ownership of Canadian agricultural land, very little research has been conducted on a national scale. The paucity of such analysis may be due to the nature of the subject which is difficult and complex to measure. The following discussion of foreign ownership of real estate in Canada is far from exhaustive, but constitutes an essential step to shed some light on the subject.

What are the factors which motivate non-residents of Canada to invest in Canadian real estate? How is this foreign capital being channelled into Canadian real estate? An attempt is made to answer the above questions by referring to published material such as journal and newspaper articles.

Real estate is defined to indicate land and any improvements thereon. Unless otherwise qualified, a non-resident is a person, corporation or other entity which is domiciled outside of Canada.

## FACTORS AFFECTING NON-RESIDENT INVESTMENT IN CANADIAN REAL ESTATE

Why are non-residents choosing to invest in Canadian real estate? In answering this question, an examination of the factors which seem to influence non-resident investment will be presented. This is followed by a brief review of the types of Canadian real estate non-residents are choosing to purchase.

It seems that economic factors which are motivated by political considerations in the investors' countries act as an initial impetus behind the flow of capital into real estate. Indeed, a study into the effects of foreign ownership of real estate in Vancouver by P.S. Ross and Partners on behalf of the Real Estate Board of Greater Vancouver concluded, "The flow of funds into local real estate is highly dependent upon conditions at the point of origin of these funds."<sup>9</sup> A review of some political developments abroad are discussed. This is followed by a presentation of selected factors on the Canadian scene which encourage the movement of capital into Canadian real estate.

### A. Developments Abroad

Gene Wunderlich of the United States Department of Agriculture explains the crux of the political considerations which motivate non-residents to purchase real estate in the United States. His comments can be applied to Canada.

"An individual motive based on political considerations may be the most viable non economic explanation of why foreign investors purchase U.S. farmland. Personal and political freedom is still more readily accessible in the United States than in many nations, including some reasonably stable nations in Western Europe. Some people who live dangerously close to the boundary of political acceptability may choose to purchase U.S. farmland as a haven or as a place where they can seek asylum as their position in their own country becomes untenable."<sup>10</sup>

Indeed, developments during the past decade in the major countries which invest in Canada highlight these political considerations.

In West Germany, the proximity to the Communist block of countries seems to have caused an uneasiness; "...that the government may become too socialistic whereby free enterprise and capitalism are killed off..."<sup>11</sup> Indeed, The Globe and Mail reported that West Germans invest in Canada for "geopolitical reasons.....which are little affected by what are seen as temporary fluctuations in economic trends and policies".<sup>12</sup>

This fear of socialism has acted as an impetus in other nations causing a flow of international funds into real estate investments. For example, it seems that the election of François Mitterand's Socialist government in France "...has triggered a tremendous wave of French investors looking at Canadian property".<sup>13</sup> Indeed, the European investor "...is hedging against creeping socialism by sending his money to a country with free enterprise."<sup>14</sup>

Italian capital is invested in Canada in response to a sensitivity to domestic politics and the uncertainty created by a high turnover of governments since World War II. Since 1945 there have been 37 governments of which ten have turned over since 1972.

In Hong Kong, a major factor stimulating the recent outflow of funds is the uncertainty created by the upcoming expiry of the 99 year lease which Britain holds from China under the Convention of Peking for most of this country. Leo Goodstadt of the Euromoney journal touches upon some of these implications:

"...94% of the Colony's land area of 389 square miles must be returned to China in 1997 under the Convention of Peking. This leased area contains 61% of Hong Kong's five million residents, most of its manufacturing capacity and the major zones for urban and industrial development over the next fifteen years."<sup>15</sup>

## B. Domestic Factors

International capital seems to be attracted to Canada because of the stable political environment perceived to exist in this country. Security, rather than financial return, appears to be the primary goal for investing in Canadian real estate, as noted by the study undertaken by P.S. Ross and Partners, "Canada represents a secure and politically stable environment in the eyes of the South East Asian investor...He is more interested in obtaining an investment with a long term future in a politically stable environment."<sup>16</sup> As a result, Chinese investors have been described as having, "patient money and are often prepared to wait as long as ten years to realize a return on an investment."<sup>17</sup> The Ross study also commented that German investors' "...prime interest in Canada is the political and economic security which this country offers."<sup>18</sup>

Non-resident investors are also attracted by the availability of land in Canada. And even more attractive are the prices of farm land. For example, Julius Mage of the University of Guelph reports that good European farm land sells for between \$4 000 and \$12 000 per hectare (\$10 000 and \$30 000 per acre), while farm land in Ontario ranges from \$200 to \$800 per hectare (\$500 to \$2 000 per acre).<sup>19</sup> Moreover, Lewis reported that in the Peace River area "...124 000 acres of the finest farmland in the province - has gone to foreign interests..."<sup>20</sup> since 1976. Similarly, Mage found that 4 269 hectares (10 674 acres) of farm land representing 1.1% of the total farm land in the Huron South Bruce area in Ontario were owned by non-residents of Canada in 1980.<sup>21</sup>

On a national perspective, Mage classifies by type of real estate the problem and extent of absentee land ownership by province. He found that in the Atlantic provinces, concern exists regarding the purchase of recreational land, since it is a valuable asset in this region, whereas in the Prairie provinces, the tenure of agricultural land is an issue. Finally, the loss of agricultural land to urban and

industrial development in British Columbia, Ontario, Quebec and the rural fringes of major metropolitan centres is a concern.<sup>22</sup>

While conditions exist which promote the flow of international capital into Canadian real estate, the goals and preferences of the investor will determine the type of real estate they will choose to purchase. Certain trends emerge. For example, it seems that investors from Hong Kong are attracted to those areas where members of their family reside, usually larger cities such as Vancouver or Toronto. In his study on the ownership of the City of Montreal, Henry Aubin discovered that of 113 apartment properties valued at over \$1 million each, 40% of these were owned by West Germans.<sup>23</sup> Furthermore, Aubin found that according to evaluation records as of December 1976 in the municipality of Montreal, companies based in Liechtenstein owned 30 such properties.<sup>24</sup>

It is interesting to note that Canadian real estate is also purchased by foreign nations for their diplomatic and consul representatives in Canada. Although this type of real estate investment is not motivated by the same factors previously discussed, it does however represent a flow of international capital into Canada. In this regard, Patrick Best stated that "There is an estimated 140 foreign owned properties in Ottawa, Rockcliffe and on the Aylmer Road... with a total market value of more than \$35 million".<sup>25</sup>

In any event, the factors and motives discussed are not all encompassing or absolute. There are always exceptions; motives and influences that are important to one investor could be unimportant to another investor of the same country. However, it seems that generally, economic considerations which are motivated by political factors abroad act as an initial impetus to the flow of capital into real estate. Following this it seems that local economic and social environments in Canada help to explain the direction and volume of investments.

## CHANNELS OF INVESTMENT IN CANADIAN REAL ESTATE

While it has been established that the impetus for the flow of international capital into Canadian real estate is motivated by both external and internal factors, it is the intermediaries who generally provide the channel between the non-resident investor and the Canadian vendor. There are essentially two approaches by which a non-resident of Canada may own real estate: directly under his own name or indirectly through a Canadian representative or company.

### A. Intermediaries

Comprehensive studies on foreign ownership conducted by Aubin<sup>26</sup> for Montreal and by Ross<sup>27</sup> for Vancouver reached similar conclusions. More specifically, Ross found that:

"...funds are usually channelled directly through an intermediary e.g. real estate broker or real estate developer who has developed a credible relationship with the foreign investor."<sup>28</sup>

Other such Canadian intermediaries include relatives residing in Canada, trust companies, lawyers and others.

The Ross study described these real estate brokers as being:

"...of foreign extraction and combine expert knowledge of the local market with the language and cultural background necessary for effective communication with potential foreign investors."<sup>29</sup>

Contacts by real estate brokers with potential non-resident clients are made through referrals from Canadian consulates who may receive inquiries from interested investors, by advertising abroad, by word of mouth advertising, by lawyers with established non-resident clients and a host of other ways. Contacts with potential non-resident

clients may also be developed through an organization known as FIABCI (Fédération Internationale des Administrateurs de Biens Conseils Immobiliers) or the International Real Estate Federation. This international association has a membership of 40 countries represented by one million real estate professionals of national delegations or chapters.

Canadian real estate is also purchased through family members and relatives residing in Canada. For example, some Asian and Hong Kong investors are known to purchase real estate in this manner. In some cases, real estate is purchased and registered under the names of their children who may be attending school and temporarily residing in Canada. Similarly, documentation relating to the purchase of real estate through a trust account in Canada would not indicate ownership by a non-resident, the address of the trust company involved would be recorded.

There are many other intermediaries through whom non-residents of Canada may acquire an interest in Canadian real estate. For example, German banks act as clearing houses for individual German investors who channel their Deutsche marks into Canadian real estate. Similarly, syndicates or limited partnerships pool foreign investors' capital to purchase real estate in Canada. Furthermore, a Canadian intermediary with established contacts may 'position' a building by putting an option on it, and then gather a syndicate of interested non-resident investors who will provide the capital to purchase the building.

#### B. Forms of Ownership

There are a variety of intermediaries through which international capital flows into Canadian real estate. However, there are generally two approaches by which non-residents may choose to own their real estate investment: directly or indirectly. When investing 'directly' in Canadian real estate, the purchase is transacted such that the



deed, assessment records and other documentation related to the sale, identify the owner as a non-resident of Canada.

The formation of shell corporations and other intermediaries for the sole purpose of investing in real estate can also be used. In some instances, these shell corporations may be utilized to circumvent legislation restricting the purchase of real estate by non-residents. For example, in Manitoba, the FARM LANDS OWNERSHIP ACT was introduced in the Legislature to replace the existing AGRICULTURAL LANDS PROTECTION ACT which has been plagued by a number of loopholes. One such loophole was explained by Manitoba's Agriculture Minister, Bill Uruski:

The fact remains that foreign speculators and non farm corporations are still able to secure unlimited amounts of farm land through the formation of dummy corporations.<sup>30</sup>

Determination of the true ownership interests in these shell corporations can become even more complex if they are owned by a complicated chain of other shell corporations and holding companies which have been registered abroad. This was outlined in the Financial Post:

"Because so much of this money is hard to trace - it is often concealed within the larger total assets of holding companies registered in Switzerland, Liechtenstein...."<sup>31</sup>

While there are generally two approaches by which a non-resident may own real estate in Canada, there are a variety of intermediaries through which the transaction may be conducted. Again, these channels of investment discussed are not exhaustive; indeed as the needs of the real estate industry in Canada change, so will these channels employed by non-residents.

#### METHODS AND PROBLEMS OF MEASUREMENT

The 1974 study carried out on behalf of the Real Estate Board of Greater Vancouver noted that, "...there is no immediately feasible method of gathering complete information on all foreign equity flowing

into commercial and multiple family residential real estate in Vancouver."<sup>32</sup> Additionally, in 1972 the Federal Provincial Committee on Foreign Ownership of Land concluded in a report to the First Ministers that, "Generally comprehensive data on the nature and extent of foreign land ownership in Canada are not available."<sup>33</sup> and further recommended that "...it may be desirable that further information be compiled on the extent and growth of this phenomenon."<sup>34</sup>

While some statistics on the extent of non-resident investment in Canadian real estate are available for agricultural land on a provincial basis, similar statistics for other types of real estate, especially urban land, are lacking. Why has the extent of this phenomenon scarcely been documented? Henry Aubin explains:

"No-one keeps statistics on foreign property investments. The investments come in bits and pieces without a central clearing house, and the investors themselves often shun identification... Complicating the calculations is the fact that the investors often own their property through locally incorporated companies with local sounding names..."<sup>35</sup>

As previously discussed, many non-resident investors seek anonymity when purchasing Canadian real estate by employing non direct vehicles of investment. Since their identity is effectively concealed, it is a very formidable task to document these transactions.

A comprehensive national system to collect financial information on these transactions does not exist in Canada. However, there are three general sources of information by which some purchases by non-residents of Canada may be documented. The intermediaries who are involved in transactions with non-residents would have information on these purchases. On the other hand, records indicating ownership of real estate such as provincial, municipal and city assessment rolls, registry and land titles records and incorporations records may also be utilized to measure these transactions. Finally, regulatory sources of information such as the Foreign Investment Review Agency (FIRA), the CORPORATIONS AND LABOUR UNIONS RETURNS ACT (R.S. 1970, c. 31) and provincial transfer tax records would have information on

non-resident purchases of Canadian real estate. These data sources will be described and their shortcomings analysed. This is followed by a proposal by which foreign ownership of real estate may be measured.

#### A. Canadian Intermediaries

A wealth of both qualitative and quantitative information which would aid in documenting the extent of direct and indirect ownership of Canadian real estate by non-residents could be gained from the Canadian intermediaries such as lawyers, brokers and other agents. In fact, the Ross foreign real estate investment study in Vancouver found that "...so far as quantitative information is concerned, realtors were able to provide the best and most comprehensive information ... a large majority of foreign investment in local realty passes through the hands of realtors..."<sup>36</sup>

Additionally, lawyers could provide quantitative information since they assist in most real estate transactions. The formation of a shell corporation may also require legal assistance. Information on individual transactions is often viewed (quite properly) as confidential.

#### B. Ownership Records

##### 1. Assessment Records

All provincial assessment rolls contain comparable types of information such as the name and address of the owner and the address of the property recorded for all types of real estate. Hence, non-resident property owners may be determined by identifying non Canadian mailing addresses.

Collection of relevant ownership data is facilitated by a centralized and computerized provincial assessment roll such as in the case of British Columbia, Nova Scotia, Ontario and Prince Edward Island. This may be accomplished by writing an appropriate program to identify non-resident property owners or with the use of a residency code which

may be incorporated in the computer system. Complications may arise if the assessment roll is not computerized. The cost of reviewing each property record on the rolls is prohibitive.

Difficulty in researching ownership also arises when the assessment function is assigned to the individual municipality as in the case of Quebec or where the responsibility for it is split among jurisdictions such as in Alberta, Manitoba and Saskatchewan. A substantial amount of resources may be required to collect the relevant information from the numerous jurisdictions.

Relevant financial data are not accessible on all assessment rolls. Although some provincial assessment divisions record sales information, these data are often considered confidential and special arrangements are required to access them. Where sales information is not available, assessed values may be used in determining the value of properties owned by non-residents of Canada. However, evaluation problems may occur because of the different methods of arriving at assessed values.

Most importantly, however, assessment records identify only those investments which are recorded in the name of the non-resident. From Mage and Stock's report, they encountered this identification problem when they commented that "...some landowners, particularly European, seem reluctant to openly record their true addresses" and therefore used ways "...to disguise ownership of Ontario farmland..."<sup>37</sup> Therefore, transactions conducted by Canadian intermediaries or through indirect mechanisms, i.e. corporations, trust accounts, agents, etc., representing non-resident interests would not be identified as such, since these properties will be identified as Canadian owned and show a Canadian address.

## 2. Registry and Land Titles Offices

Since a transfer of ownership of real estate must be accompanied by corresponding documentation registered with the provincial registry

and land titles offices, these contain relevant ownership information. Unfortunately, as with assessment information, similar problems arise when real estate is indirectly purchased by non-residents since the documentation would record the property as being Canadian owned.

As with assessment records, the sheer volume of information in the absence of computer facilities poses a major obstacle in utilizing this source of information to determine the extent of non-resident investment in Canadian real estate.

### 3. Incorporations

As previously discussed, a popular mechanism employed by non-resident investors is to establish corporations for the sole purpose of purchasing real estate. Furthermore, it seems that Canadian lawyers or residents working on behalf of non-residents are named as directors and officers of these shell companies in order to provide a 'Canadian front'. In most provinces, actual ownership may not be discerned from documentation registered with provincial incorporations branches. Mage and Stock discovered that, "A private company registered in Ontario is set up which owns the land. A corporate search does not reveal the true owner's interest unless he is a director or officer."<sup>38</sup>

However, the Quebec Service des Compagnies identifies the foreign owner if it is a foreign corporation. This information is not available where a corporation is set up by foreign unincorporated concerns.

Furthermore, it is impossible to identify these shell corporations as such, formed for the sole purpose of investing in real estate, from documentation registered with provincial incorporations branches. For example, in Ontario under the articles of incorporation, the object for which the corporation is formed, is no longer examined by the Ontario Companies Services Branch. Similarly, in British Columbia, the articles of incorporation have not been identified since 1973. On the other hand, the Service des Compagnies in Quebec has developed a

very comprehensive computer system which among many things can identify corporations by type of activity.

In addition to the problem of identifying these corporations, some provincial jurisdictions simply lack computer facilities which are essential when working with such a volume of information.

Perhaps, the most spectacular example of the anonymity that can be achieved by non-resident investors through the use of these shell corporations is in one of the largest and most complex real estate deals in Toronto, popularly known as the Great Apartment Sale. This transaction involved 10 931 Toronto apartment units which Cadillac Fairview initially sold to Greymac Credit Corporation for \$270 million. Before this transaction was completed, Greymac subsequently sold the rights to purchase these properties to Kilderkin Investments Limited of Mississauga for \$312 million. In turn, Kilderkin flipped these properties over to a series of numbered companies representing private investors, said to be controlled by Saudi Arabian investors, for a sum of \$500 million.

Involved in the controversy which has evolved from the sale is the determination of the true owners of the apartment units represented by Ontario numbered companies. Arthur Johnson noted that:

"It has been impossible to determine the beneficial owners of the buildings from public documents in registry offices or in the Companies Branch of the Ministry of Consumer and Commercial Relations."<sup>39</sup>

The Minister of Consumer and Commercial Relations had,

"...also said that there are no provincial laws that would allow investigators to determine the identity of the real owners of the 39 numbered companies."<sup>40</sup>

## C. Regulatory Sources of Information

### 1. Foreign Investment Review Agency

Although real estate transactions are normally not considered as a business enterprise, and therefore reviewable, under the FOREIGN INVESTMENT REVIEW ACT (R.S. 1970, 1973-74, c. 46), real estate transactions which are greater than \$10 million dollars may be reviewable. However, this threshold may be qualified by the absence or presence of 'passive management' by the foreign investor. Therefore, the purchase of real estate by a non-resident which is beyond the threshold would be exempt from review if, for example, the services of a Canadian management company are utilized. However, if such a transaction included active management by the non-resident, the FOREIGN INVESTMENT REVIEW ACT would consider this as an acquisition of control of a business and would be exempt from review.

Also, the information which is collected by FIRA on reviewable real estate transactions is considered strictly confidential. This information could assist in documenting the nature and extent of foreign investment in Canadian real estate.

### 2. CORPORATIONS AND LABOUR UNIONS RETURNS ACT

Under this Act, all non-financial corporations whose assets exceed \$10 million and whose gross revenue is greater than \$15 million must submit selected financial information. This data source can provide a glimpse of the activities of the shell corporations described earlier, only if the corporation is owned by a foreign corporation.

### 3. Transfer Tax Records

The Ontario LAND TRANSFER TAX ACT levies a tax of 20% of the sale price on all conveyances of agricultural and recreational land to non-residents of Canada. Similarly, Quebec's LOI DES DROITS SUR LES TRANSFERTS DE TERRAINS imposes a 33 1/3% tax on transfers of

basically vacant land to non-residents of Canada. This includes conveyances on essential vacant land and properties where the value of the buildings is less than the value of the land. These represent a valuable source of information since the value of real estate acquired by non-residents may be imputed based upon the value of the tax collected.

It is apparent that there is not one single data source which may be utilized to document the extent of non-resident investment in Canadian real estate. On the other hand, the data sources which have been described could be aggregated to produce a national estimate. However, this patchwork approach would not be accurate due to the risk of double counting, there is a substantial amount of overlap between the data sources. How then can complete information be collected on the nature and extent of non-resident investment in Canadian real estate?

One approach which will provide such information in the United States is the proposed FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT, 1980, Internal Revenue Service (IRS) which will take effect January 1, 1985. This Act will impose strict reporting requirements on all foreign persons or entities with U.S. real property interests (includes condominiums, rental real estate, time sharing units, etc.) and will impose a capital gains tax on the disposition of an U.S. real property interest by a non-resident. The current tax rate is 20% for individuals and 28% for corporations on the taxable portion of a capital gain.<sup>41</sup>

The IRS has recognized the various mechanisms by which non-residents may purchase real property interests and has proposed three registration forms to accommodate them. One form is intended for U.S. real property holding corporations with foreign shareholders which have 50% or more of the value of the corporation's gross assets in U.S. real property interests.<sup>42</sup> A second form concerns foreign corporations and any other U.S. or foreign partnership, estate or trust with a foreign investor who owns a real property interest of greater than U.S. \$50 000. Foreign individuals who own a U.S. real



property interest valued at \$50 000 or more would be required to file a third form.<sup>43</sup>

Information such as the description of the property, name and address of the owner, original costs and fair market value will be required on these forms.<sup>44</sup>

These requirements under the FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT will provide the necessary information to the IRS which will assist in administering the capital gains tax. Secondly, it will also provide valuable information as to the extent of real estate holdings of non-residents of the U.S.

### CONCLUSION

The phenomenon of foreign investment in Canadian real estate is complex and is affected by internal and external factors. Non-residents of Canada are motivated by a multitude of factors and utilize a variety of mechanisms by which their capital may be invested in Canadian real estate. Data are scattered and difficult to obtain and therefore little specific information is known. Judgements regarding the implications, benefits or disadvantages of foreign ownership of land have been avoided due to the complexity of the subject and a lack of real information to document the situation.

## CHAPTER 3

### INTRODUCTION

Despite the difficulties identified in Chapter 2, this chapter covers the results of a study which was undertaken to establish a benchmark estimate of non-corporate foreign investment in Canadian real estate. While it was felt that the volume of these investments was probably substantial, this was an area which had barely been documented on a statistical level. There are numerous problems associated with the measurement of these transactions, foremost of which is the difficulty in identifying non-resident property owners, as foreign investors may employ various Canadian intermediaries to purchase and hold Canadian real estate on their behalf.

The data sources utilized in the study are briefly described, followed by an explanation of the methods used in processing the data to derive estimates of the market and book values of non-corporate foreign investment in Canadian real estate. The estimated values of these investments are presented in the accompanying tables, using 1981 as the benchmark year. Prior to this study, position estimates of these investments were based on information obtained from newspaper clippings, journal articles, and occasional studies undertaken by the federal and provincial governments.

### DATA SOURCES

As part of the background research, interviews were held with officials in the government and private sectors to investigate potential data sources. Canada has traditionally been open to real estate investment by non-residents. In the 1970s, some provinces enacted legislation to limit foreign ownership of land, principally agricultural land. It was found that very little information on non-corporate foreign investments was being collected at either the provincial or national level. In fact, there was a glaring paucity of available information on non-corporate foreign investments in Canadian

real estate. Information which was available largely consisted of occasional studies undertaken by provincial governments on land ownership and selected information arising from provincial legislation governing purchases of land by non-residents of Canada as well as non-residents of several provinces, as outlined in Chapter 1. Much of this legislation focused primarily on foreign ownership of agricultural lands.

A major source of information which was utilized in identifying foreign non-corporate investment was the assessment rolls from selected provincial, municipal and civic jurisdictions. The range of information available on these rolls varies among jurisdictions, as outlined in Chapter 2 of this study. Depending upon the organization of the assessment rolls, non-resident property owners were defined, for the purposes of this study, on the basis of a non-Canadian mailing address, postal code or residency code. Corporate properties where the property owners showed foreign addresses were excluded. These holdings include non-resident owned corporations which own real estate as a by-product of their major industrial activity in Canada, including hotels and motels and non-resident owned land development companies. Such investments are classified as "direct investment" in balance of payments statistics, and therefore do not fall under this study. Direct investment statistics will be briefly discussed later in this chapter. This type of foreign investment in Canada is generally well documented and covered through an extensive survey framework, in contrast to the non-corporate types of investment from abroad.

Other data sources employed included information from provincial regulatory agencies which administer legislation restricting purchases of land by non-residents (both of Canada and several provinces) or require that the foreign owned property be registered with the provincial authorities. Where possible, these data sources were also edited to delete foreign corporate holdings which were classified in the direct investment statistics. Unlike assessment data which provide information on outstanding real estate holdings, in many cases regulatory information was available on a transactions (sales) basis only.

## PROCESSING OF DATA

On the assessment rolls, only those properties registering foreign addresses were identified. Foreign owned properties where the deed, assessment record or other documentation related to the sale are registered under a Canadian intermediary, can rarely be distinguished from Canadian owned properties. Intermediaries which may be used include Canadian corporations, partnerships, syndicates, trust accounts, relatives residing in Canada, or children attending school and temporarily residing in Canada. Consequently, estimates were required to account for any properties acquired in this manner. Since there is very little quantitative information on these nominee holdings of non-residents, estimates were based upon qualitative information. It is not actually known to what extent foreign investors make use of nominees to acquire or hold Canadian investments and therefore the resultant estimates contained in the accompanying tables should be used with caution.

## DERIVATION OF MARKET VALUE ESTIMATES

All data sources utilized were standardized to a market value estimate using 1981 as the benchmark year. Property valuations recorded on the assessment rolls differ not only between provinces but also may vary from county to county within a province. To derive a market value estimate of those foreign non-corporate properties identified on the assessment rolls, ratios of the market value to assessments were used to inflate the recorded assessed values. Where such ratios were not available, the market value was derived by using the relationship of the assessment data to the average market price in that jurisdiction.

These market value estimates are presented in Table 1, which shows the value of non-corporate foreign investment in Canadian real estate by type of property and area of control. Three broad categories of property investments are identified: farm land and vacant land, residential and other. The farm land and vacant land category constitutes, in fact, two separately defined sub-categories of

property, namely farm and vacant land. Farm land is defined as land which is used for agricultural purposes including land previously farmed and vacant farm land. Vacant land encompasses all types of vacant land parcels, including undeveloped land in both the developed and the fringe areas of urban centres. The residential category includes the value of land and any improvements thereon, such as single family residences, seasonal dwellings or properties with more than one residence, such as apartments, condominiums or row housing. The other category may be described as a catch all category, and includes miscellaneous holdings such as shopping centres, office buildings, warehouses, light manufacturing and retail establishments. The value of this category is relatively small, since most investments of this nature would be held through Canadian corporations and therefore classified in the direct investment statistics.

Geographically, each type of property category was only allocated between Eastern and Western Canada, given confidentiality provisions and/or data deficiencies in certain provinces.

The market value of non-corporate holdings controlled by residents of the United States and all other countries is also shown in Table 1. While the data were not disaggregated beyond these two areas, other prominent investments identified in the data sources included West Germany, Hong Kong and The Netherlands.

TABLE 1

NON-CORPORATE FOREIGN-CONTROLLED HOLDINGS OF CANADIAN REAL ESTATE, AT  
MARKET VALUE, YEAR-END 1981 - BY TYPE OF PROPERTY AND AREA OF CONTROL

	<u>Eastern</u> <u>Canada</u> (1)	<u>Western</u> <u>Canada</u> (2)	<u>Total</u>
- millions of dollars -			
<u>Type of property</u>			
Farm land and vacant land	375	575	950
Residential	875	375	1 250
Other	150	50	200
TOTAL	1 400	1 000	2 400

Controlled by residents of

United States	975	500	1 475
Other Countries	425	500	925
TOTAL	1 400	1 000	2 400

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(1) Comprises Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec and Ontario.

(2) Comprises Manitoba, Saskatchewan, Alberta, British Columbia, Yukon and the Northwest Territories.

Source

International and Financial Economics Division, Statistics Canada

## DERIVATION OF BOOK VALUE ESTIMATES

In order to arrive at a book value of non-corporate foreign investment in Canadian real estate, equity factors were estimated and applied to the market value estimates. The book value refers to the original foreign capital invested in the real estate as well as any repayments of related mortgage, domestic earnings retained or any other direct claims on the property. In deriving the equity factors, the following were considered: ratios of cash down payments to total transactions price (available on some assessment rolls), the behaviour of market prices in different regions of Canada and estimates of length of time the properties have been held.

It is the book value estimates which are published in Canada's International Investment Position (IIP) statistics and are presented in Table 2. Other foreign investments in Canadian real estate which are transacted through Canadian corporations are classified in the IIP statistics as either direct or portfolio investments. Direct investment generally refers to foreign investments in a Canadian company, where the foreign investor is presumed to have some say in the management of the company. Since it is difficult to determine such influence, a foreign ownership threshold of 10% or more is used in classifying investments as direct. This is a general rule only, as there are instances where equity investments of less than 10% are deemed to be direct. Investments where the foreign ownership threshold is less than 10% are, however, generally classified as a portfolio investment. Both direct and portfolio investments are recorded at book values only. Market value estimates of these investments are not available. Estimates of direct and portfolio investments at year-end 1980 are also shown in Table 2 to provide an estimate of the total book value of foreign investment in Canadian real estate. Geographical estimates of direct, portfolio and miscellaneous (non-corporate) investment in Canadian real estate are shown in Tables 3, 4 and 5, respectively.

TABLE 2

BOOK VALUE OF TOTAL FOREIGN INVESTMENT IN CANADIAN REAL ESTATE  
YEAR-ENDS 1977-1980

	1977	1978	1979	1980
	- millions of dollars -			
Direct Investment	898	898	989	1 036
Portfolio Investment	1 723	1 916	1 931	2 049
Miscellaneous (Non Corporate)	590	635	665	705
TOTAL	3 211	3 449	3 585	3 790

Source:

International and Financial Economics Division, Statistics Canada

TABLE 3

BOOK VALUE OF FOREIGN DIRECT INVESTMENT IN CANADIAN REAL ESTATE  
YEAR-ENDS 1977-1980

	1977	1978	1979	1980
	- millions of dollars -			
Owned by residents of:				
United States	144	87	81	71
United Kingdom	194	200	205	150
Other Countries	560	611	703	815
TOTAL	898	898	989	1 036

Source:

International and Financial Economics Division, Statistics Canada



TABLE 4

BOOK VALUE OF FOREIGN PORTFOLIO INVESTMENT IN CANADIAN REAL ESTATE  
YEAR-ENDS 1977-1980

	1977	1978	1979	1980
	- millions of dollars -			
Owned by residents of:				
United States	1 022	1 488	1 523	1 548
United Kingdom	89	72	27	37
Other Countries	612	356	381	464
TOTAL	1 723	1 916	1 931	2 049

Source:

International and Financial Economics Division, Statistics Canada

TABLE 5

BOOK VALUE OF NON-CORPORATE FOREIGN INVESTMENT IN CANADIAN REAL  
ESTATE, YEAR-ENDS 1977-1981

	1977	1978	1979	1980	1981
	- millions of dollars -				
Owned by residents of:					
United States	395	400	405	420	435
Other countries	195	235	260	285	300
TOTAL	590	635	665	705	735

Source:

International and Financial Economics Division, Statistics Canada

Capital flows relating to non-corporate foreign investments in Canadian real estate are a component of the item "Other Long Term Capital Transactions" in the balance of payments statistics of Statistics Canada, while direct and portfolio investments in Canadian real estate companies are classified respectively in "Foreign Direct Investment in Canada" and "Outstanding Canadian Stocks", in the balance of payments statistics. Tables 3, 4 and 5 of this chapter were published in the technical note of Statistics Canada Catalogue 67-001 referred to in the Foreward of this report.

## CONCLUSION

The study outlined in this chapter represents a first endeavour at measuring non-corporate foreign investment in Canadian real estate. Some of the experimental techniques which were used in the study will likely be reviewed as additional information becomes available. For example, further analysis is required to refine the methodology used in deriving the ratios used in the estimation of market and book value estimates from assessment data. Further research is necessary to effectively estimate the extent of foreign nominee holdings. Given the above qualifications, the estimates contained in the accompanying tables should be viewed only as a rough indicator.

It is anticipated that another benchmark study will be undertaken in a few years, when the methodology will be refined further and the survey coverage extended. As more experience is gained in working with these data, it is hoped that the estimates will be improved and more information made available.

## FOOTNOTES

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3. Ibid. p. 356.
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37. Mage and Stock. p. 5.
38. Ibid. p. 6.
39. Johnson.
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APPENDIX A

PROVINCE/ TERRITORY	TOTAL AREA INCL. FRESH WATER* (km <sup>2</sup> )	CROWN LANDS** (km <sup>2</sup> )	PRIVATELY HELD LAND** (km <sup>2</sup> )	SELECTED LAWS
NEWFOUND- LAND AND LABRADOR	405 720	Fed. 2 779 Prov. 382 746	17 992	<u>CROWN LANDS (AMENDMENT ACT)</u> S.N. 1971 No. 46-- not yet proclaimed but would restrict granting and leasing of Crown land to resident individuals and corporations.
PRINCE EDWARD ISLAND	5 660	Fed. 45 Prov. 685	4 927	<u>LAND DEVELOPMENT CORPORATION ACT</u> R.S.P.E.I. 1974, C.L.2--established a Crown Corporation to purchase recreational and agricultural properties. <u>RURAL PROPERTY TAX ACT</u> R.S.P.E.I. 1974 R-6--permits the provincial government to regulate the purchase of land by non-residents. Land purchases can, if appropriate, be referred to the L.D.C. who may purchase for public use. <u>PLANNING ACT</u> R.S.P.E.I. 1974 P-6--an agreement to use land in a satisfactory manner may be a condition placed on a non-resident buyer. <u>LAND USE COMMISSION ACT</u> R.S.P.E.I. 1974 c.22-- administers and makes recommendations on applications to the Non-Resident and Corporate Land Sales Programs. <u>LANDS PROTECTION ACT</u> R.S.P.E.I. 1982 c.16--repealed s.3,4,4.1,4.2 and 5 of the <u>REAL PROPERTY ACT</u> R.S.P.E.I. 1974, cap. R-4. It states acreage limitations for individuals (resident and non-resident) and corporations (farm and non-farm) and disclosure requirements.



PROVINCE/ TERRITORY	TOTAL AREA INCL. FRESH WATER* (km <sup>2</sup> )	CROWN LANDS** (km <sup>2</sup> )	PRIVATELY HELD LAND** (km <sup>2</sup> )	SELECTED LAWS
NOVA SCOTIA	55 490	Fed. 1 626 Prov. 16 510	37 354	<p><u>LAND HOLDINGS DISCLOSURE ACT</u> S.N.S. 1969 c.13--non-resident owners are required to register the land area they hold and to declare their citizenship.</p> <p><u>LANDS AND FORESTS ACT</u> R.S.N.S. 1967 c. 163 Part I --sale is prohibited but non-residents may lease.</p> <p><u>REAL PROPERTY ACT</u> R.S.N.S. 1967 c. 261--permits aliens, corporations, and companies incorporated in Nova Scotia to purchase land.</p>
NEW BRUNSWICK	73 440	Fed. 2 181 Prov. 31 502	39 754	<p><u>CROWN LANDS AND FORESTS ACT</u> R.S.N.B. 1973 c. 38.1, 1980--no restrictions.</p> <p>Farm Land Identification Program--exists under Regulation 78 of the <u>REAL PROPERTY TAX ACT</u>, R.S.N.B. 1973, C-R-2.</p>
QUEBEC	1 504 680	Fed. 2 775 Prov. 1 418 486	119 420	<p><u>LOI SUR L'ACQUISITION DE TERRES AGRICOLES PAR DES NON-RESIDENTS</u>, Bill 41, 1979</p> <p><u>LOI SUR LA PROTECTION DE TERRITOIRE AGRICOLE</u> Bill 90, 1978--established a 4.5 million acre protected area for agriculture.</p> <p><u>LAND TRANSFER DUTIES ACT</u> 1981 c.D-17</p> <p><u>LANDS AND FOREST ACT</u> 1977 c.T-9--no restriction on sale, minor restrictions on leasing of certain lands to non-residents.</p>

PROVINCE/ TERRITORY	TOTAL AREA INCL. FRESH WATER* (km <sup>2</sup> )	CROWN LANDS** (km <sup>2</sup> )	PRIVATELY HELD LAND** (km <sup>2</sup> )	SELECTED LAWS
ONTARIO	1 068 580	Fed. 9 886 Prov. 939 673	119 023	<u>LAND TRANSFER TAX ACT</u> S.O. 1972 c.15--a 20% tax on the sale of land to non-residents. <u>CROWN LANDS ACT</u> R.S.O. 1970 c.19--no restrictions on sale, minor restrictions on leasing of certain lands to non-residents. <u>NON-RESIDENT AGRICULTURAL LAND INTERESTS REGISTRATION ACT</u> , (R.S.O. 1980, c. 318)
MANITOBA	649 950	Fed. 5 382 Prov. 506 626	138 079	<u>AGRICULTURAL LANDS PROTECTION ACT</u> S.M. 1977 A-15 --purchase of agricultural lands by non-residents is limited to 20 acres. <u>CROWN LANDS ACT</u> R.S.M. 1970 C 340--sales prohibited to non-residents but land may be leased. <u>FARM LANDS OWNERSHIP ACT</u> S.M. 1982-83-84 c. 22.
SASKATCHEWAN	652 330	Fed. 15 649 Prov. 389 312	246 939	<u>SASKATCHEWAN FARM OWNERSHIP ACT</u> R.S.S. 1978 c. S-17 --land holdings of non-residents are limited to 10 acres. <u>CROWN PROVINCIAL LANDS ACT</u> R.S.S. 1978 c.P-31--no restrictions on sale or lease. <u>LAND BANK ACT</u> R.S.S. 1979 c. L-2--provides for purchase and lease of farms from and to resident farmers.

PROVINCE/ TERRITORY	TOTAL AREA INCL. FRESH WATER* (km <sup>2</sup> )	CROWN LANDS** (km <sup>2</sup> )	PRIVATELY HELD LAND** (km <sup>2</sup> )	SELECTED LAWS
ALBERTA	661 190	Fed. 63 553 Prov. 414 111	183 521	<p><u>LAND TITLES AMENDMENT ACT</u> S.A. 1974 c. 72-- provincial government began to monitor foreign investment in land.</p> <p><u>FOREIGN OWNERSHIP OF LAND REGULATIONS</u> Reg. 160/1979 --non-Canadian individuals and companies are limited to 20 acre land purchases.</p> <p><u>AGRICULTURAL AND RECREATIONAL LAND OWNERSHIP ACT</u> R.S.A. 1980 c. 2 (supp.)--non-Canadian individuals are companies are limited to 20 acre land purchases.</p> <p><u>PUBLIC LANDS ACT</u> S.A. 1973 c. 49--no Crown Land grants to foreigners and prohibits lease to non-residents for agricultural purposes.</p>
BRITISH COLUMBIA	947 800	Fed. 8 984 Prov. 884 572	55 040	<p><u>LAND TITLE ACT</u> R.S.B.C. 1979 c. 211--purchasers of land must register land and declare their citizenship.</p> <p><u>AGRICULTURAL LAND COMMISSION ACT</u> R.S.B.C. 1979 c. 9 --provides protection for prime farmland from urban and industrial development.</p> <p><u>LAND ACT</u> R.S.B.C. 1970 c. 206--prevents sale of Crown land to foreigners. Since 1973, non-resident Canadians and landed immigrants can only lease Crown land if they conform to land-use policies.</p> <p><u>LAND AMENDMENT ACT</u> S.B.C. 1976 c. 27--prevents the sale of Crown lands to non-Canadians and allows only the lease of waterfront Crown land.</p>

PROVINCE/ TERRITORY	TOTAL AREA INCL. FRESH WATER* (km <sup>2</sup> )	CROWN LANDS** (km <sup>2</sup> )	PRIVATELY HELD LAND** (km <sup>2</sup> )	SELECTED LAWS
NORTHWEST TERRITORIES and YUKON	3 909 770	Fed. 3 911 884 Terr. 3 880	243	

\* Figures from Energy, Mines and Resources Canada: Geographical Mapping Division

Note: All figures have been rounded to the nearest 10 to reflect their approximate nature.

\*\* Figures from the Canada Year Book: 1980-81, p. 21,27.

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