PUTTING DOWN ROOTS: ASSESSING NEW ENTRANT PROGRAMS FOR DAIRY AND BROILER FARMERS IN ONTARIO

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CONTENTS

Abstract

Canadian farmers are aging. This paper argues that supply management, despite various existing new entrant programs, is a significant factor in the ongoing reduction of young people entering the agriculture industry. Rather than eliminate supply management, however, this paper offers a path for reform that would ensure more new entrant farmers while retaining supply management's supports for producers.

This paper begins with an examination of the economic and legal barriers to entry that are associated with supply management. It then compares and contrasts the new entrant programs of Ontario's dairy and broiler industries and outlines their limitations. The paper concludes by arguing that to further encourage new entry, policymakers should change and expand new entry programs to facilitate prospective farmers wishing to operate on leased lands, issue production quota that has fewer characteristics of absolute ownership, and expand new entrant programs to support entrants who implement alternative modes of production.

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I INTRODUCTION

Canada's farmers are aging, and there is no clear path for the next generation to fill their boots. Some laws and policies designed to help current farmers can have adverse effects on those trying to enter the industry. One such policy is the supply management regime, also known as the quota system. Notwithstanding the critiques of supply management,[1] it is widely agreed by farmers and their organizations that supply management is generally a good policy that elevates and stabilizes farm incomes.[2] However, being a quota holder is a privilege that does not come cheap. In fact, the price of quota and farmland are often insurmountable financial barriers to entry for prospective farmers, effectively shutting them out of the industry altogether. Additionally, supply management systems can be inflexible in allowing alternative forms of production that fall outside the "conventional" modes of production. I will argue that for supply management to stop deterring new farmers, policies must change to allow for production on leased land, the leasing of quota to new entrants, and the expansion of programs that facilitate the entry of farmers who are implementing alternative modes of production.

This paper will focus on new entrant programs for two specific industries: dairy cattle and broiler chickens in Ontario. I will first outline the supply management regime and identify the structural and legal barriers new entrants face. I then consider whether supply management, on balance, is good for new entrants. Next, I will examine contemporary new entrant programs. I argue that these programs should permit and encourage land and quota leasing. There is a growing demand for organic, artisanal, and other alternative modes of production, and young farmers have demonstrated an interest in meeting these demands. I will therefore conclude with a survey of contemporary alternative production programs that appeal to new entrants and argue that the dairy industry should expand its programs using existing broiler programs as a model.

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1. See e.g. Martha Findlay & Margarita Gres, "Supply Management: Problems, Politics and Possibilities" (2012) 5:19 School Public Pol'y 2 at 9, online (pdf): <https://www.policyschool.ca/wp-content/uploads/2016/03/supply-management-hall-findlay.pdf> [perma.cc/T3V4-AV9L] [Findley & Gres]; Robert Mysicka & Marty McKendry, "Beer, Butter, and Barristers: How Canadian Governments Put Cartels Before Consumers," Commentary No. 382 (2013) C.D. Howe Inst 1 at 11–13, online (pdf): <https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_382_0.pdf> [perma.cc/5PK5-4JWA] [Mysicka & McKendry]; Mark Milke, "Canada's Food Cartels versus Consumers" (2012) Fraser Forum 31 at 31 [Milke]; Jen Gerson, "The Dairy Lobby's Iron Grip on Canadian Political Leaders Is Frightening to Behold," *Maclean's* (30 August 2018) at 2, online: <https://macleans.ca/economy/the-dairy-lobbys-iron-grip-on-canadian-political-leaders-is-frightening-to-behold/> [perma.cc/J768-JTA9] [Gerson].

2. The Canadian Federation of Agriculture, The National Farmers Union and The Christian Farmers Federation of Ontario all publicly state their support for supply management in Ontario. See e.g. Canadian Federation of Agriculture "CFA Supports Bill C-282" (8 February 2023), online: <https://www.cfa-fca.ca/2023/02/08/cfa-supports-bill-c-282/> [perma.cc/5LX7-77KT]; National Farmers Union "NFU submission to Senate committee on Bill C-282" (11 October 2024), online: <https://www.nfu.ca/policy/national-farmers-union-submission-to-senate-foreign-affairs-and-international-trade-committee-regarding-bill-c-282-an-act-to-amend-the-department-of-foreign-affairs-trade-and-development-act-supply/> [perma.cc/4MZJ-EYYD]; Christian Farmers Federation of Ontario "Bill Christian Farmers Federation of Ontario, "Bill C-282 Supply Management." (18 July 2023), online: <https://www.christianfarmers.org/issues/letters-submissions/bill-c-282-supply-management> [perma.cc/MZ8M-XEMR].

II INTRODUCTION TO THE SUPPLY MANAGEMENT REGIME

This paper will focus on only the Ontario dairy cattle and broiler chicken supply management boards. This is because they represent the largest supply-managed industries, measured by the number of farms, and there are sufficient differences between their respective supply management regimes for academic study. The Dairy Farmers of Ontario (DFO) and Chicken Farmers of Ontario (CFO) are the regulators of their respective industries and are given authority by their respective enabling legislation.[3]

Supply management was born out of the related issues of low farmer incomes, diminished market power, and severe market fluctuations. These interrelated problems led specific industries within Canadian agriculture to push for a legal regime to control output.[4] This resulted in the federal and provincial governments cooperating to form supply management systems for dairy cattle, broiler chickens, turkeys, eggs for human consumption, and eggs for hatching during the 1970s.[5] Each particular commodity has unique regulatory governing bodies that set their own policies. Supply management concerns a range of factors related to agricultural production, including local production and interprovincial and international trade, that necessitates shared powers between the federal and provincial governments.

It is critical to understand the general operation of the supply management system before considering specific new entrant policies. Contemporary writers in academia, news and politics, and supply management organizations themselves often describe supply management as consisting of three pillars: (1) control of domestic production, (2) control of market price, and (3) control of imports.[6] Domestic production is regulated by allocating farmers a production quota that they must meet and cannot exceed. This keeps the supply to processors constant. The allocations are determined by national and provincial market demand.[7] The farmgate market price of the commodities is controlled by the supply management board, which sets a minimum price that farmers receive from processors. This price minimum is based off the cost of production as assessed by provincial and federal government agencies in conversation

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3. *Milk Act*, RSO 1990, c M.12; *Fees—Administration & Enforcement of Delegated Legislation,* O Reg 143/98, s 2(1); *Farm Products Marketing Act*, RSO 1990, c F.9; *Chickens—Plan*, RRO 1990, Reg 403, ss 4–6.

4. Bruce Muirhead & Hugh Campbell, "The Worlds of Dairy: Comparing Dairy Frameworks in Canada and New Zealand in Light of Future Shocks to Food Systems" in Reidar Almas & Hugh Campbell, eds, *Rethinking Agricultural Policy Regimes: Food Security, Climate Change and the Future Resilience of Global Agriculture*, vol 18 (Leeds: Emerald Group Publishing Limited, 2012) 147 at 149–53, DOI:<10.1108/S1057-1922(2012)0000018009> [Muirhead & Campbell].

5. Robert Fuller, Donald E Buckingham & Robert Scriven, *Agriculture Law in Canada*, 2nd ed (Toronto: LexisNexis Canada, 2019) at 178–87 [Fuller et al]; Andrew Schmitz, "Canadian Agricultural Programs and Policy in Transition" (2008) 56:4 Can J of Agric Econ 371 at 371, DOI: <10.1111/j.1744-7976.2008.00136.x> [Schmitz].

6. See Alan McIsaac, "The Case for Supply Management" (2008) 31:3 Can Parliamentary Rev 18 at 18, online (pdf): <www.revparl.ca/31/3/31n3_08e_McIsaac.pdf> [perma.cc/SDE5-HF7G] [McIsaac].

7. Schmitz, *supra* note 5 at 382.

with farmers and processors.[8] Finally, imports are restricted to prevent foreign products from undercutting the minimum price established for Canadian producers.[9]

Domestic production can be controlled by either national or provincial bodies. Dairy production is principally governed at the national level with the Canadian Dairy Commission through the Canadian Milk Supply Management Committee, which determines the total demand for dairy products and the fair price to be received by farmers. Members of the Canadian Dairy Commission are appointed by the federal Minister of Agriculture. The provincial share of production is then allocated to provincial bodies such as the DFO for administration.[10] The provincial agencies generally have more control over fluid milk, while milk for further processing is more strictly controlled at the national level.[11] The regulatory framework of broiler chicken production is representative of each supply-managed commodity except dairy cattle. These commodities are principally controlled by the various provincial bodies, such as the CFO, which determine provincial consumption and negotiate prices with Ontario producers.[12] The members who sit on the CFO board are elected by quota holders. The various provincial broiler boards then cooperate on extra-provincial issues such as trade through the national Chicken Farmers of Canada, which is again composed of elected members.[13] The Farm Products Council of Canada oversees this body and the other non-dairy national bodies.[14]

The supply management system controls domestic production by only permitting farmers who hold a quota allocation to produce for the market. In the dairy context, dairy farmers cannot ship any milk without first holding quota.[15] DFO operates a quota exchange to allow farmers to increase their quota holdings via public tender. When a dairy farmer privately sells quota to a buyer, a portion of the quota is not sold to the purchaser but is instead levied by DFO and placed on the quota exchange for any dairy farmer to purchase. The DFO exchange is not an open marketplace. Instead buyers in the DFO exchange purchase their quota through DFO directly by submitting tenders. The price of a quota allocation on the DFO exchange is capped well below the market rate, and farmers often bid the maximum price. When the demand for quota on the exchange exceeds the available supply, the amount of quota on the exchange is equally distributed to all tenderers. This leaves the net amount of provincial production unchanged. In practice, there is normally excess demand compared to supply, and dairy farmers regularly receive only 0.1 units of additional quota per month, or approximately

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8. See Canadian Dairy Commission, "Process for the Annual Cost of Production Survey and Pricing Milk at the Farm Level," online (pdf): <www.cdc-ccl.ca/sites/default/files/2022-10/CoP%20Process%202022-10-13%20%28FINAL%29.pdf> [perma.cc/F73M-MNRL], which governs the farmgate price of milk and is illustrative of other supply managed industries.

9. Schmitz, *supra* note 5 at 372.

10. Halsbury's Laws of Canada (online), *Agriculture*, "Marketing Agricultural Products: Canadian Regulatory Framework: Agricultural Product Marketing Schemes" (V.3(3)) at HAG-188, "Supply Management" (2022 Reissue) [Halsbury's Laws of Canada].

11. Fuller et al, *supra* note 5 at 181–84.

12. *Ibid* at 180, 184, 186.

13. *Ibid* at 180, 186.

14. *Farm Products Agencies Act*, RSC 1985, c F-4, ss 6(1)(a)–(c), 6(2).

15. Dairy Farmers of Ontario, *Quota and Milk Transportation Policies* (Ontario: Dairy Farmers of Ontario, 2010) at part 1, s A 1(g), online (pdf): <https://new.milk.org/wp-content/uploads/2023/11/Quota-Policy-Book-2023_May_12r.pdf> [perma.cc/TK8U-KGX9] [DFO, *Quota Policies*].

one-tenth of a cow's worth of production.[16] This process effectively excludes new entrants, since DFO requires all farmers to hold a minimum of ten units.[17]

But for new entrant programs, the only option for a prospective dairy farmer would be to purchase an ongoing dairy farm. Purchasing quota directly from existing farmers often comes with severe competition from other existing farmers wanting to grow their operations beyond the 0.1 units per month, resulting in price pressures well beyond the capped price found on the exchange. To be competitive, purchasers get around the price cap by offering a premium on the value of the land the quota is tied to. In practice, this means a new entrant dairy farmer cannot purchase quota at the maximum exchange price of $24,000 per unit, but instead must compete with others on the open market.[18]

There is no published data on the premium paid for private quota sales in Ontario. In the open Alberta market, quota presently sells for approximately $50,000 per unit, which is over double the DFO exchange's maximum.[19] This value is likely a reasonable estimate of the true price of Ontario quota outside of the exchange. Additionally, the requisite ten units of quota would only let a farmer have about nine or ten head of cattle in production, but a more reasonable minimal estimate for business purposes is forty units.[20] As a result, a new dairy farmer in Ontario would expect to pay a minimum of $2,000,000 for quota alone to begin a conventional dairy farm.

The story is similar, but not identical, in the context of broilers. Here, farmers may not produce more than 300 chickens without holding quota.[21] Even at the highest farmgate minimum live price of $2.182 per kilogram for a 1 kilogram chicken, farmers are only expected to have a margin of $0.63 per kilogram of live chicken, which means producing 300 chickens is too little to earn a livelihood.[22] Therefore, aside from specified new entrant programs, those wanting to enter the chicken industry or expand their current operations must purchase new quota.

Chicken farmers can choose to purchase quota on an open exchange that is facilitated by CFO, where farmers are private buyers and sellers within the province. This is in contrast to the tender system used by DFO. Another different feature is that the price of quota in the CFO

16. Alex Cairns & Karl Meike, "Price Ceilings on Milk Production Quota Values: Future or Folly?" (2012) 60:1 Can J Agric Econ 93 at 108, n 22, DOI: <10.1111/j.1744-7976.2011.01233.x>.

17. DFO, *Quota Policies*, *supra* note 15 at part 1, s A 8(a).

18. *Ibid* at part 1, s D 1(i).

19. See e.g. Agriculture Canada, "Monthly Trade of Milk Quota by Province" (last modified 16 October 2024), online: <www.agriculture.canada.ca/en/sector/animal-industry/canadian-dairy-information-centre/statistics-market-information/farm-statistics/monthly-exchange-quota> [perma.cc/EKM3-4PDV].

20. Forty units is the minimum number of units that can be held for a new entrant under the New Entrant Quota Assistance Program, *infra* note 58 at 11–12.

21. Chicken Farmers of Ontario, "General Regulation No 2650-2021" (2021), s 2.02, online (pdf): <www.ontariochicken.ca/en/regulations/general-regulation/> [perma.cc/X9CL-4WPX].

22. Chicken Farmers of Ontario, "Historical Farm-Gate Minimum Live Prices by Weight Category—2022" (last accessed 3 December 2024), online: www.ontariochicken.ca/en/farmer-dashboard/resources/fgmlp-2a8cbc5236b77a7c28ad664851ca79ba/historical-farm-gate-minimum-live-prices/historical-farm-gate-minimum-live-prices-by-weight-category-—-2022/ [perma.cc/E4G8-KQEV]; Chicken Farmers of Ontario, "Historical Farm-Gate Minimum Live Prices" (last accessed 3 December 2024), online: www.ontariochicken.ca/en/farmer-dashboard/resources/fgmlp/historical-farm-gate-minimum-live-prices/ [perma.cc/659B-QNSM].

exchange is determined by the market; CFO is not directly involved. The buyer can produce the volume of chicken the seller is no longer able to produce, leaving the net production in the province unchanged.[23] Chicken farmers can also purchase an ongoing farming operation and effectively step into the shoes of the seller, again leaving the net provincial output unchanged.

The broiler supply management system requires farmers to maintain a minimum holding of quota. CFO requires all chicken farmers to have a minimum of 14,000 units.[24] The going rate of chicken quota in February 2023 was approximately $200 per unit, although this information is not made publicly available by CFO. Therefore, a young farmer looking to enter the broiler chicken industry would have to make a one-time, upfront payment of approximately $2,800,000 to purchase quota and acquire the right to sell chicken to the market.

These costs of acquiring quota ($2,800,000 for broiler farmers and $2,000,000 for dairy farmers) are in addition to other inputs, such as farmland. The average Ontario farm was valued at $17,143 per acre in 2022, but this amount increases over threefold for farms with above-average soil quality or those located near major urban centres.[25] If a prospective farmer wants to buy a reasonable 100 acres to start their chicken or dairy operation, they will thus need access to at least $3 or $4 million before constructing a barn, buying equipment, and paying other associated costs.[26]

III SHOULD ONTARIO HAVE SUPPLY MANAGEMENT AT ALL?

Supply management has been under fire from critics who argue that the entire system should be abolished. The arguments raised by these critics range from broad policy concerns facing the entire industry and all Canadian consumers to specific concerns for new entrants. Some of the most significant arguments raised by critics of the system point out that supply management is a legally imposed, court-backed cartel that controls the output of food, which artificially creates shortages and inflates prices for consumers.[27] This means that in the aggregate, Canadian consumers likely pay more for supply-managed products than they otherwise would, which especially harms lower-income consumers.[28] However, proponents of supply management are often quick to respond that Canadian supply-managed farmers do not

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23. Chicken Farmers of Ontario, "Supply Management & History" (last accessed 02 December 2024), online: <www.ontariochicken.ca/en/supply-management-history-fba57fae60e995fa7fcc4d8e263f4475/> [perma.cc/HF4T-22HY].

24. Chicken Farmers of Ontario, "Quota Policy No 261-2022, Regulation" (2022), ss 8.04–8.06, online (pdf): <www.ontariochicken.ca/CFO/media/Assets/Regulation_Policy%20PDFs/261-2022-Quota-Policy.pdf?ext=.pdf> [perma.cc/6LMJ-DGA4] [CFO Quota Policy].

25. Statistics Canada, "Value per Acre of Farm Land and Buildings at July," Table 32-10-0047-01 (29 May 2024), DOI: <10.25318/3210004701-eng>.

26. Christie Young & Melissa Watkins, "New Farmers and Alternative Markets Within the Supply-Managed System" (2010) at 57, 61, online (pdf): <https://metcalffoundation.com/wp-content/uploads/2011/05/new-farmers-and-alternative-markets.pdf> [perma.cc/3BTD-KF8C] [Young & Watkins].

27. Findlay & Gres, *supra* note 1.

28. Mysicka & McKendry, *supra* note 1.

receive millions of dollars in subsidies and bailouts given to farmers in non-supply-managed systems such as the United States.[29]

To focus more pointedly on new entrants, those seeking to dismantle supply management argue that as a barrier to entry, supply management stifles competition and innovation, which means that innovators and new entrants are disincentivized from producing.[30] They argue that the favouritism displayed by politicians protects those already in the industry compared to those who are not.[31] On the face of this argument, it would appear that completely tearing down this legal barrier to entry would only serve to help new entrants, since they would only have to worry about natural barriers to entry such as high land prices. However, upon further study the best path forward for new entrants is still through supply management.

Quota and land prices are undoubtedly two major hurdles for those wanting to enter the chicken or dairy industries.[32] Prospective farmers, especially young people, have voiced their concern about the gatekeeping that results from these prohibitive costs to enter supply-managed industries. In Ontario, the National Farmers Union has pushed for changes to the supply management system to make it easier for new entrants.[33] Similarly in Quebec, Union Paysanne has called for reforms to supply management for young farmers, especially those looking to produce through non-conventional means.[34] More specifically, these groups seek policy reform that would decapitalize quota for the next generation of farmers, allow quota-exempt direct marketing, and have a generally more equitable redistribution of quota from retiring farmers to new entrants, among other reforms.

These arguments are well premised in the idea that Ontario ought to maintain some system of supply management to maintain the viability of farms. However, decapitalizing quota would likely cause serious issues since there has already been a great deal of investment in quota allocations as valuable property. For example, farmers may use their quota as security for other loans or intend on selling their quota to fund their retirement. Decapitalization would also create unfairness for those who have borrowed heavily to purchase quota and will have nothing to show for it upon its legally imposed devaluation.[35]

A 2018 academic study focusing exclusively on young farmers and prospective farmers, the first of its kind in Canada, asked respondents to rank what they perceived as their biggest

29. McIsaac, *supra* note 6.

30. Milke, *supra* note 1.

31. Gerson, *supra* note 1.

32. Attaining knowledge and skills is also a significant issue for new farmer entrants, but this issue is beyond the scope of this paper. For an introduction, see Michael Ekers et al, "Will Work for Food: Agricultural Interns, Apprentices, Volunteers and the Agrarian Question" (2016) 33:3 Agric & Hum Values 705 [Ekers et al].

33. Cathy Holtslander, "Strengthening Supply Management: Defending Canadian Control of our Market Space and Advancing Food Sovereignty," Discussion Paper (Saskatoon: National Farmers Union, 2016) at 6, online (pdf): <www.nfu.ca/wp-content/uploads/2019/10/Strengthening-Supply-Management.pdf> [perma.cc/Z4G8-AUXK] [Holtslander].

34. Benoit Girouard, "Towards Supply Management 2.0 in Canada," Discussion Paper (Quebec: Union Paysanne, 2014) at 2, online (pdf): <archives.unionpaysanne.com/publications/Toward-Supply-Management-2-0-in-Canada.pdf> [perma.cc/7YSN-D9MA].

35. Halsbury's Laws of Canada, *supra* note 10 at HAG-89 "Price Pooling Program"; Fuller et al, *supra* note 5 at 181.

barriers to entry and what they believed to be the most successful agricultural programs.[36] Survey respondents overwhelmingly indicated that their largest obstacles were land prices and an inability to access enough capital to pay for other start-up costs, such as quota.[37] Respondents identified supply management as their least favourite program.[38] These hurdles have kept young people from being able to start their own farms and are undoubtedly a major reason the average Canadian farmer is 55 years of age.[39]

The most convincing reason that supply management helps young farmers is farmer retention. Approximately one-half of new farms in Canada do not remain in business for more than five years.[40] This is a significant yet often overlooked reality of farming in Canada. Given this rate of entry and quick exit, conversations about new entrants must also consider the viability of a new farm operation. It is significant that the trend of entry and quick exit does not hold true for supply-managed industries. For example, new dairy farmers in Canada only have a 2 per cent chance of exiting in the first five years of business.[41] This means that once a new entrant in a supply-managed industry is able to break down the barriers of entry and hold quota, they are much more secure than their non-supply-managed peers. Improving farmer retention has significant benefits for individuals beyond new farmers, such as by improving the sustainability of rural communities and fostering economic growth.

It should be noted that the failure rate of supply-managed and non-supply-managed farms may not be perfectly comparable. The excessive costs of being a new entrant in a supply-managed industry means that those farms are more likely to be larger and more capital intensive and therefore are statistically less likely to fail.[42] In addition, prospective farm businesses under the supply management regime benefit from lenders appreciating the income stability and farmgate price minimums enabled by supply management and therefore being more likely to advance funds to a supply-managed farmer.[43] Further, lenders will assess the viability of a farm business when a new entrant approaches them for financing to purchase quota, and for those farmers who are able to use new entrant programs, quota boards only select applicants who can present an adequate business plan.[44] This means that only new entrants with demonstrably viable business plans will be able to enter the industry. While new entrants in non-supply-managed industries undoubtably face similar pressures from lenders and other third parties, all of the variables between supply-managed and non-supply-managed new entrants have yet to be studied. Given the vast difference in failure rates between supply-

36. Julia LaForge et al, "New Farmers and Food Policies in Canada" (2018) 5:3 Can Food Stud 128 at 128, DOI: <10.15353/cfs-rcea.v5i3.288> [LaForge et al].

37. *Ibid* at 131.

38. *Ibid* at 137.

39. Hongyu Chen et al, "Dynamics of Farm Entry and Exit in Canada" (2022) 51 Agric & Resource Econ Rev 86 at 86, DOI: <10.1017/age.2021.22> [Chen et al].

40. *Ibid* at 87–90.

41. *Ibid* at 96.

42. *Ibid* at 97.

43. Halsbury's Laws of Canada, "Marketing Agricultural Products," *supra* note 10 at HAG-89, "Price Pooling Program"; Fuller et al, *supra* note 5 at 181.

44. Chicken Farmers of Ontario, "New Entrant Chicken Farmer Policy No 267-2024, Regulation" (2024), s 6.02, online: <www.ontariochicken.ca/en/policies/new-chicken-farmers-entrant-policy/> [perma.cc/SH7N-BSRK]; DFO, *Quota Policies*, *supra* note 15 at part 1, s F 14–19.

managed and non-supply-managed new entrants, this topic is certainly worthy of consideration and further research.

The benefits of supply management are advocated by farmer organizations. The National Farmers Union, despite being more likely to represent younger and smaller farmers who are the most affected by both the legal and natural barriers to entry, calls for supply management to remain in place, albeit with certain reforms.[45] The National Farmers Union argues that the three pillars of supply management (production, price, and import restrictions) are necessary to keep farmer income stable and sufficient to remain in business. These stable and sufficient incomes are likely important drivers in keeping new entrant farmers in business where their non-supply-managed peers will be more likely to fail. Supply management can also help new farmers plan their business around the fixed prices they will receive for their products.

Many international farmers who are not in a supply management system also recognize the benefits of supply management and call for the implementation of similar policies in their own jurisdictions. The most relevant comparison is the United States, where the deregulated market has become infamous for production gluts and export dumping, meaning farmers must be heavily subsidized to remain in business while exporting their products for below the cost of production.[46] The deregulated American market is now also facing high levels of concentration that exclude new entrants.[47] Certain farm groups, such as the Wisconsin Farmers Union's Dairy Together or the Disparity to Parity food movement, seek the implementation of a program based on Canadian supply management (which they call "growth management") with important reforms, such as easier access for new entrants.[48] Other jurisdictions that are now feeling the effects of withdrawing from a system of supply management similarly have seen new entrants barred from agriculture because of rapid concentration.[49] This is another reason why new entrants would be better off with a properly regulated system.

Supply management thus has a vital role to play in keeping Canadian farms—especially newly established and smaller farms—in business. This paper has also shown that farmers in both Canada and abroad desire supply management. Supply management should therefore not be eliminated in its entirety, but policy changes clearly need to be made to help new entrants get into the industry to benefit from the economic security of holding quota.

45. Holtslander, *supra* note 33; National Farmers Union, "Supply Management" (last accessed 19 November 2024), online: <www.nfu.ca/campaigns/supply-management/> [perma.cc/QK8E-48FF].

46. See Food & Water Watch, "The Economic Cost of Food Monopolies: The Dirty Dairy Racket" (January 2023), online (pdf): <www.foodandwaterwatch.org/wp-content/uploads/2023/01/RPT2_2301_EconomicCostofDairy-WEB.pdf> [perma.cc/P6KQ-CTNJ] [Food & Water Watch].

47. *Ibid* at 5–6.

48. Karen Hansen-Kuhn, "Reshaping Supply Management in the US: Looking North and South for Inspiration" (26 April 2021) online: <www.iatp.org/reshaping-supply-management-us> [https://perma.cc/8M4G-KL64]; Food & Water Watch, *supra* note 46 at 19.

49. Muirhead & Campbell, *supra* note 4 at 161.

IV CONTEMPORARY NEW ENTRANT PROGRAMS: DAIRY

Most Canadian supply management boards, including DFO and CFO, have recognized that the legal structure of the quota system has made it difficult for new entrants. Thus, both DFO and CFO have implemented new entrant programs to support those interested in starting a dairy or chicken farm in Ontario. This paper will outline and assess the current approaches DFO and CFO have taken for conventional new entrants.

DFO has two different programs aimed at helping new entrants begin conventional dairy production. The New Producer Program (NPP) gives new entrants an opportunity to purchase quota on the exchange without competing with established dairy farms.[50] As described above, the small amount of dairy quota available on the exchange is equally distributed each month to all those who tender bids, so new entrants cannot attain the requisite minimum quota holding.[51] From its inception in 2009 until June 1, 2021, new entrants under the NPP were assigned a month where they would have priority to purchase between 10 and 35 units of quota on the exchange, thus giving new entrants a path to production outside of buying out an existing farm.[52] DFO would assign each successful applicant their own month in a long queue. This program helped new entrants by partially reducing their upfront quota costs. It did not, however, help farmers in acquiring the land they need to raise their livestock.

The NPP had serious flaws. New entrants were required to purchase all their quota, upfront, at DFO's capped price. This is a major hurdle since it would cost a new entrant between $240,000 and $840,000, depending on herd size.[53] New entrants had to have their own farm, either owned or rented, within six months of purchasing their quota, thus adding a further cost to new entrants who did not already own their own farm, a barn with equipment, and cattle.[54] As a result, those who could not access enough capital for market rate quota and land could not use this program at all.

Further, new entrants were restricted because there was not enough quota available on the exchange each month for a new entrant to purchase the minimum amount of quota, even with their priority status.[55] Although DFO has not published this information, farmers have reported being in the queue for decades before reaching the month they are assigned to buy quota.[56] The NPP has now stopped taking applications but will continue to operate for those already accepted into the program. DFO has accounted for the issue of the lack of supply on the quota exchange. Beginning in January 2024, instead of giving a new entrant priority status

50. DFO, *Quota Policies*, *supra* note 15 at part 1, s G 1- G 2.

51. Fuller et al, *supra* note 5 at 178–87; Schmitz, *supra* note 5 at 371.

52. DFO, *Quota Policies*, *supra* note 15 at part 1, s G 1(s), G 2(a).

53. See discussion in Section II of this paper.

54. DFO, *Quota Policies*, *supra* note 15 at part 1, s G 1(x).

55. *Ibid* at part 1, s G 1(u)–(w).

56. Frances Anderson, "New Entrant Program Is Open through October: The NEQAP Program Has Helped Give a Start to 88 Producers over the Past Decade," *Ontario Farmer* (18 August 2020) A8, online: <www.proquest.com/docview/2435082556?parentSessionId=wQHQVZpXatKtRl19M6P7t4SB3GBCdM9lsBxEj5Z18q0%3D&pq-origsite=primo&accountid=15115> [perma.cc/5YBH-VMHQ] [Anderson, "New Entrant Program"].

every month, there will be a single new entrant with priority status for a four-month period.[57] This makes it more likely a new entrant will have access to sufficient quota on the exchange for their priority period. This policy change has decreased the number of new entrants who could benefit from the NPP each year from twelve down to four. There does not appear to be any relief in sight for new entrants on the NPP waiting list who do not expect to be farming for decades.

The shuttering of NPP applications has left DFO with only one program that presently accepts applications for new entrants to begin dairy farming in Ontario. The New Entrant Quota Assistance Program (NEQAP) operates to help new entrants acquire quota without the same upfront costs of purchasing an ongoing dairy farm or the full value of quota on the exchange as is the case under the NPP.[58] Those accepted to NEQAP must purchase between twenty and thirty quota units, and DFO will then grant the new entrant an additional twenty units.[59] The new entrant is given the same priority on the exchange as was outlined in the NPP.[60] The NEQAP new entrant can use the purchased and granted quota for ten years before DFO begins to take back the granted quota at a rate of 0.1 units per month.[61] New entrants will then have to purchase replacement quota to make use of the cows, barn, and equipment they acquired to ship milk using the initial granted quota. Part of the application requires applicants to indicate where they intend to operate their farm. While the applicant does not need to own the farm or have secured a lease at the time of making the application, the applicant does need to have either a beneficial freehold or leasehold interest in the land they will milk on.[62] Therefore, new entrants must either already own or be in a position to purchase a new farm, or have the expected cash flow to afford a lease on a farm when they submit an application, and they must be able to prove their financial viability to the panel who selects new entrants into the NEQAP.

V CONTEMPORARY NEW ENTRANT PROGRAMS: BROILERS

CFO operates a program that is substantially similar to NEQAP. The New Chicken Farmers Entrant Policy (NCFEP) is designed to help new farmers enter the industry with the help of CFO.[63] Those accepted under the NCFEP must purchase a minimum of 4,000 units of quota, and CFO will then grant 10,000 units on a temporary basis.[64] The temporarily granted quota is then taken back at a rate of 30 per cent on year five, another 30 per cent on year ten,

57. Dairy Farmers of Ontario, "Annual Report 2022" at 15, online (pdf): <https://new.milk.org/wp-content/uploads/2023/11/2022-Dairy-Farmers-of-Ontario-Annual-Report.pdf> [perma.cc/J462-ENU9].

58. Dairy Farmers of Ontario, "New Entrant Quota Assistance Program" (28 November 2023), online: <https://new.milk.org> [perma.cc/W7HT-M48S].

59. DFO, *Quota Policies*, *supra* note 15 at part 1, s F 23, 25.

60. *Ibid* at part 1, s F 20.

61. *Ibid* at part 1, s F 31.

62. *Ibid* at part 1, ss A 1(c), B 8(a)-(c), C 5.1 - 5.2.

63. CFO, NCFEP, *supra* note 44, ss 1.01, 2.03(a), 3.01(a), 3.01(c).

64. *Ibid*, s 6.01(c).

and the final 40 per cent on year fifteen.[65] The new entrant must purchase replacement quota to keep themselves at the 14,000-unit limit.[66] It is noteworthy that a successful applicant must be the beneficial owner of a farm suitable for chicken production.[67] No chicken farmer, new entrant or otherwise, may produce on rented lands or facilities.[68]

The dairy NEQAP and broiler NCFEP are currently the best options for prospective new entrant farmers who want to pursue conventional modes of production in their respective industries. NEQAP has helped new entrants shrink their upfront cost of acquiring quota by 40 to 50 per cent when compared to a new entrant under the NPP and helps reduce costs even more for new dairy entrants without any DFO help. The NCFEP has reduced the upfront quota cost to a new broiler entrant by 70 per cent when compared to a new entrant who purchases their own quota in full. These are undoubtedly positive steps for new entrants in Ontario, but new entrants still face challenges.

VI PROPOSED REFORMS FOR CONVENTIONAL PRODUCTION

It is clear that change is needed within Ontario's supply management regime to encourage entry into the various supply-managed industries. One such change would be to encourage the leasing of farmland where farmers raise their supply-managed livestock. As noted previously, CFO requires farmers to be the beneficial owner of the lands they raise their chickens on, and new entrant dairy farmers must disclose their potential landlord, if applicable, during a NEQAP or NPP application.[69] Each program offered by DFO and CFO prefers land ownership. Even with the price of quota aside, simply owning farmland in Ontario is an expensive endeavour, especially for young farmers and those who do not come from a farming background and can typically rely on assistance from older generations.[70] Accommodating tenant farmers would allow more potential new entrants to enter the industry.

Allowing broiler and dairy farmers to produce on rented land would provide other benefits to new entrants. By working on rented lands, all farmers, including those in supply-managed commodities, reduce their overall debt load during the critical (and inherently risky) first years. Agricultural economists Laurie Baker and Paul Thomassin studied long-term leasing of farmland and showed that farms operating on leased lands could be more financially viable than those purchased using mortgages.[71] Baker and Thomassin found that the younger the farm business was and the less help it received from older generations of farmers, the more favourable leasing was for the farm business.[72] Their study also noted that some new entrants

65. *Ibid*, ss 9.02 (a)–(c).

66. *Ibid*, s 6.01(d).

67. *Ibid*, s 6.01(b).

68. CFO Quota Policy, *supra* note 24, ss 4.07, 6.0.

69. DFO, *Quota Policies*, *supra* note 15 at part 1, ss A1(c), B8, C5.1–5.2; CFO Quota Policy, *supra* note 24, ss 4.07, 6.01.

70. LaForge et al, *supra* note 36 at 134–135.

71. Laurie Baker & Paul Thomassin, "Financing New Farm Entrants: The Long-Term Leasing Option" (1991) 39:2 Can J Agric Econ 255, DOI: <10.1111/j.1744-7976.1991.tb03571.x>.

72. *Ibid* at 258–259, 262.

would only survive a farm debt crisis like Canada experienced in the 1980s by choosing to lease rather than buy their farms.[73] It is important to note that other capital-intensive industries outside of a supply management regime, including other types of farming, can serve as successful examples of businesses operating on leased lands.

Representatives of certain quota boards have spoken publicly about the fact that new entrant programs are designed to avoid leasing.[74] One argument against leasing is the decreased predictability of production, a key component of supply management. This is possible because holding quota not only gives a farmer the right to produce, but it also comes with a concurrent *obligation* to produce or face a fine. There could be cause for concern if a farmer loses their leasehold interest in a property and is unable to continue production. However, this argument can be mitigated since these board representatives have already noted the substantial number of suitable empty barns across the province that could be used for production.[75] There is also an existing system of short-term foster farms that can raise chickens on behalf of a farmer who is unable to do so, thus demonstrating CFO's ability to show some flexibility in production when necessary.[76] This practice could be leveraged to ensure production levels remain constant despite frictional interruptions to production. Additionally, Canada's supply management regime has not been immune to the globalization of the food system, with the recent Canada-United States-Mexico-Agreement deal allowing increased imports of US dairy products. Also, Canada does engage in a lower amount of dairy exports.[77] Each of these aspects could be coordinated to account for a risk to short-term unpredictability of supply that would have long-term benefits to new entrants.

The DFO quota exchange consistently shows that demand for quota exceeds supply.[78] The inflated prices of broiler quota also suggest that there is ample demand for quota in the market. Therefore, it is probable that if a particular farmer cannot secure a lease renewal and must sell their quota, another farmer elsewhere in the province will be willing to quickly buy their quota and keep the supply relatively constant with minimal lag time. Additionally, the quota boards have to constantly monitor provincial supply and demand and accordingly adjust quota allotments. Finally, it should be remembered that new entrant farms are generally smaller. This works to further decrease the chances of a material impact on the provincial supply resulting from a farmer failing to secure a lease. The Ontario supply management system is demonstrably accustomed to some risks of supply and is well equipped to deal with the short-term risks that may accompany land leasing.

Supply management boards should accept land leasing as a viable option for farmers. Leasing should not be seen as something less than land ownership. The best characterization of the substantial equivalency between the two is to consider the property rights that are attached

73. *Ibid* at 256, 262.

74. Frances Anderson, "DFO Tries Again to Formulate Plan to Encourage New Dairy Entrants; There Are Several Other Provincial Models on Which to Base the Ontario Program," *Ontario Farmer* (15 May 2007) at 1–2. [Anderson, "DFO Tries Again"].

75. *Ibid*.

76. CFO Quota Policy, *supra* note 24, s 7.

77. Ljiljana Biukovic, "The First Challenge to Canada's Supply Management System under CUSMA: Tweaking the Supply Management System One Dispute at a Time" (November 2022) Can YB Int'l L 59 at 341–364, DOI: <10.1017/cyl.2022.16>; Food & Water Watch *supra*, note 46 at 18.

78. Refer to the discussion in Section II of this article.

to the owner compared to the lessee of farmland. Farmers who rent their land can contract to being entitled to the full benefit and use of the land for a given term. This can include rights of occupancy, the security of tenure for the occupant, and the ability to control and benefit from the use or improvement of the land. Outside of DFO and CFO regulations and preferences, there would be no legal barrier for a farmer to undertake a dairy or broiler operation on rented land that the same farmer would not face on land they purchased. CFO has already begun to allow some production on rented lands with the temporary allowance in the Specialty Breeds Program.[79] CFO could use this as a basis for expanding chicken production on rented lands. It is commonplace for businesses in other industries to lease rather than own their place of business where they are still able to successfully deliver consistent goods and services to their customers. Dairy and broiler farmers should also have this option.

A second improvement that should be made to the supply management regime is the leasing of quota for new entrants. The present approach as seen by NEQAP and NCFEP require new entrants to buy a significant amount of quota upfront and then pay for the rest later. This poses similar problems as farmland ownership in terms of being a major financial hurdle. Instead, supply management boards should offer an option for new entrants to rent quota so they can benefit from the cash flow of the farm business without the impediment to entry of upfront costs or the risks associated with high debt loads.

CFO does not have to look far for inspiration on quota leasing. The Artisanal Chicken Program grants farmers a licence to produce for a single year with a licencing fee for each chicken they produce rather than quota.[80] This system is a possible model for production by new entrants. Although only a single year before renewal is likely too short for ideal business planning, it is a CFO requirement for smaller markets such as the Artisanal Chicken Program.[81] The Egg Farmers of Ontario also have a program of leasing quota to producers that is ancillary to regular quota ownership.[82] Egg producers are sometimes able to rent quota from the quota board to account for short-term demand increases or to accommodate larger-than-expected flocks.[83] This program was amended by the Egg Farmers of Ontario to better suit the needs of new entrants, who would benefit from decreased start-up costs that come with quota leasing. If conventional farmers or farmers in alternative production programs could lease quota for several years at a time, they would be able to enjoy all the benefits of quota ownership without the upfront costs. This would allow the farms to have positive cash flow earlier in their operations and possibly save for future purchases of quota or farmland.

The British Columbia dairy supply management board tried to reduce the burden on new entrants by granting farmers free quota and not having it be taken back by the supply management board, as is the case for NEQAP and NCFEP. However, this policy drastically

79. See full discussion in Section VII of this article.

80. Chicken Farmers of Ontario, "Artisanal Chicken Policy Regulation No 268-2024" (2024), s 8.03, online (pdf): <www.ontariochicken.ca/en/policies/artisanal-chicken-policy/> [perma.cc/8ZEY-DW6U] [CFO "Artisanal Chicken Policy"].

81. *Ibid*, s 5.01(f).

82. Egg Farmers of Ontario, "Layer Leasing Program (LLP)" (2023), online (pdf): <https://www.getcracking.ca> [perma.cc/FE9X-VRCY].

83. Egg Farmers of Ontario, "Special Layer Lease Policy" (2020) at 1, online (pdf): <https://www.getcracking.ca> [perma.cc/QBJ4-J9PK].

failed, as new entrants were selling their farms and the granted quota as a windfall.[84] This program did not result in the creation of many new farms. Quota leasing has an advantage over the granting system because a quota board, such as the DFO, could put restrictions on the assignment of quota leases to other farmers without the approval of the quota board. This would prevent the farmer from selling the quota as their own or being able to transfer a right to produce for a limited time under a lease or licence agreement. This would achieve the goals of facilitating new entry without the associated risk of quota earmarked for new entrants being transferred to established farmers.

Allowing new entrants to lease quota would eliminate the associated need to finance the upfront purchase of quota. The courts have been unclear about the proprietary rights associated with agricultural production quotas, which has led to a complex system of directions and agreements between farmers, lenders, and supply management boards to give effect to quota as security for loans.[85] Allowing new entrants to lease their quota and the resulting decapitalization of this asset would eliminate the need for new entrants to borrow the upfront cost of the quota and therefore avoid the risk and complications arising from secured lending for purchasing quota all the while benefiting new entrants.

Establishing a program of leasing quota would have the potential to introduce instability to the production of supply-managed commodities. On the one hand, the ability to pay rent is likely less of a risk than an inability to make mortgage payments under the existing system. However, on the other hand, if farmers do not have an ownership interest in their quota, they would be more likely to stop producing with little or no notice to the supply management board. This issue could be mitigated by adequate conditions being placed on the quota lease by the board, such as defined terms and requisite notice periods. Otherwise, the same factors that would allow for the market as a whole to be responsive to changes in production levels (as discussed above in the context of land rent) would be applicable as well.[86]

The administration of a quota-leasing program for new entrants would also not be burdensome on supply management boards to operate. The farmgate price of supply-managed goods is already centrally regulated based on the cost of production across the industry.[87] Supply management boards could consider the farmgate price and adjust the rental fee for new entrants accordingly. This way, new entrants can be assured their new business will turn a profit so the cash flow can be used to pay down other debts or expand the business. Similarly, the amount of quota to be distributed under a new entrant leasing program could begin by matching the amount already offered to new entrants by way of a grant. Finally, supply management boards would benefit more from a lease than the current system of grants because the boards would receive payment from the outset of the agreement that can be used to offset the costs of the program. This is unlike the present system, which is funded through an assessment on quota transactions like a sales tax.

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84. Anderson, "DFO Tries Again," *supra* note 74.

85. *Saulnier (Receiver of) v Saulnier*, 2008 SCC 58.

86. See the discussion in Sections IV and V of this article.

87. See full discussion in Section II of this article.

VII ALTERNATIVE PRODUCTION PROGRAMS

As previously mentioned, there has been an increase in market demand for food produced through alternative means to "conventional" production. This includes organic, free range, and small-scale production, among others. Young farmers are more likely to adopt these alternative modes of production.[88] If the Canadian food system is ever going to increase the proportion of food produced through non-conventional means, it is imperative to help young farmers enter the industry. Many prospective farmers can only envision beginning a farm using these alternative means. For this reason, supply management must be accommodating.

The major avenues for new entrants into the Ontario dairy and broiler industries, the NEQAP and NCFEP, are designed for conventional producers rather than alternative producers. The NEQAP's minimum of forty units, being four times greater than the DFO minimum quota holding, is likely to be too large of an operation for those involved in alternative forms of production to undertake.[89] Alternative producers who do not want to have this level of production scale or intensity are left with no other options for assistance to entry.[90] Likewise, the NCFEP minimum of 14,000 units would require any new entrant to adopt an industrial model of agriculture to accommodate the approximately 84,000 chickens a new entrant would be obligated to produce with the granted quota every year.[91] This would be far too large of an operation for alternative chicken producers who often rely on self-marketing, free range rotating pasturing, and other forms of alternative production. While these smaller operations will not benefit from the economies of scale of conventional operations, their economic viability is a business decision rather than a regulatory concern. In recognition of this, certain supply management boards have created special programs to allow new entrants to produce using alternative methods.

DFO and CFO have diverged in their responses to meeting the need for new alternative entrants. CFO has created several innovative programs to create a path for new entrants who wish to produce using alternative means to fill market demand. The Artisanal Chicken Program allows for the production of 600–3,000 chickens per year to targeted markets such as a specific restaurant or a farmers' market.[92] Approved artisanal producers receive a licence to produce a prescribed amount of chicken for one year.[93] Those already holding licences are prioritized for the following year's licence grants.[94] The artisanal producer does not need to hold quota since they have this CFO licence to produce. Artisanal producers must pay a licence fee based on the number of chickens they are eligible to produce, and they pay similar levies as conventional quota holders to support CFO.[95]

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88. Korb Hoppe, "Understanding US Farm Exits," Economics Research Report No 1 (2006) at 2, online (pdf): <https://www.ers.usda.gov/webdocs/publications/45555/17621_err21_1_.pdf?v=2467.9> [perma.cc/63DU-7EUW].

89. *DFO Quota Policies*, *supra* note 15, at part 1, s A 8(a)–(d).

90. Marj Benson, "Law as Imagination & Inspiration: What Time Is It Now?" in Donald E Buckingham & Ken Norman, eds, *Law, Agriculture and the Farm Crisis* (Saskatoon: Purich Publishing, 1992) 21 at 23.

91. CFO, NCFEP, *supra* note 44, s 6.01(c).

92. CFO "Artisanal Chicken Policy," *supra* note 80, s 6.01.

93. *Ibid*, s 7.0.

94. *Ibid*, s 8.04.

95. *Ibid*, ss 8.03, 9.03.

Another program, the Local Niche Chicken Markets program, bridges the gap between the artisanal program and conventional chicken production. While the most a farmer can produce under the artisanal program is 3,000 chickens per year and the minimum a conventional quota holding farmer can produce is 14,000 units (approximately 84,000 chickens per year), the niche markets program allows for the production of 1,000–10,000 quota units (approximately 6,000–60,000 chickens per year).[96] The purpose of this program is for producers to meet the needs of certain defined markets, such as selling to a geographic market or delivering a particular product that is not available elsewhere. It is noteworthy that these producers must purchase and hold quota to produce under this program. Those producing under this program must meet the same health and safety, animal welfare, and other minimum standards applicable to other broiler producers.[97]

The artisanal and niche markets programs are viable options for alternative modes of chicken production and can be especially useful for farmers near major urban centres where there is greater demand within niche markets and better infrastructure for processing small-scale chicken flocks.[98] Both of these programs result in decreased upfront costs to producers through either the lowering or elimination of minimum quota units. However, these programs require farmers to acquire their own farms and barns for production without assistance from the program.[99] They cannot operate on rented land. This represents a high initial cost for farmers who only want to produce a small amount of chicken and who, in the case of the artisanal program, are only guaranteed a right to produce for a single year.

CFO has developed a further program to meet specific market needs. The Ontario Specialty Breeds Chicken program targets "ethnic markets" in the Greater Toronto Area where there is a strong demand for silkie and Asian yellow hair chickens, which are both traditional Asian breeds.[100] Successful applicants to this program are given an allotment outlining how much speciality breeds chicken they can produce. The amount of this allotment is determined at the discretion of CFO.[101] One of the key considerations of CFO when deciding whether to grant an allotment is the overarching goal of helping new entrants begin chicken farming.[102] However, unlike conventional quotas, specialty breed allotment holders cannot transfer their allotment.[103] Much like all other CFO programs, specialty breeds farmers must operate land they own, but there is a one-year grace period where these farmers can operate on rented land.[104]

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96. Chicken Farmers of Ontario, "Local Niche Chicken Markets Policy Regulation No 215-2015" (2015), s 6, online (pdf): <www.ontariochicken.ca/en/policies/local-niche-chicken-markets-policy/> [https://perma.cc/LD4G-DC89].

97. *Ibid*, s 6.03.

98. Chen et al, *supra* note 39 at 94–95.

99. CFO Quota Policy, *supra* note 24, ss 4.07, 6.01.

100. Chicken Farmers of Ontario, "Specialty Breeds Chicken Program" (last accessed 18 November 2024), online: <www.specialtybreeds.ca/Home.aspx> [perma.cc/L6CR-29C8].

101. Chicken Farmers of Ontario, "Regulation No 265-2023: Specialty Breeds Chicken Policy" (08 August 2023), ss 4.03, 4.08, 7.01, 7.09, online (pdf): <www.ontariochicken.ca/en/policies/specialty-breeds-chicken-policy/> [perma.cc/FAH7-546U].

102. *Ibid*, s 1.0(2).

103. *Ibid,* s 7.02.

104. *Ibid*, s 5.06.

These CFO programs are a step in the right direction in terms of helping prospective farmers to produce using the methods of their choosing; however, the programs are not perfect. The artisanal and speciality breeds programs only guarantee producers an annual allotment rather than a lifetime right to produce, like conventional quota holders get. It is inequitable to hold artisanal and specialty breeds farmers to this lower standard of certainty for their flocks. This harms farmers since they cannot take advantage of long-term business planning strategies, but it also harms consumers who are not guaranteed a supply of culturally appropriate food or food that is grown in a way that is acceptable to them. CFO should either implement longer-term allotments beyond a single year or consider leasing quota that may only be used for specific methods of production at longer terms.

In the dairy context, DFO does not presently have programs for alternative modes of production that are well suited for new entrants. While DFO does have opportunities for alternative production through grass-fed or organic milk programs, neither of these programs make it easier for a new farmer to enter the industry and begin using alternative modes of production—they are merely options for those already in the industry or for new entrants who will apply through conventional programs.[105] The purpose of these programs is to fill demands from processors and were not created with new entrants in mind.[106] They are not designed for smaller-scale production, direct marketing, or other factors that could be better suited for new entrants.

Unlike the context of CFO's programs, where there are stated objectives to attract new entrants and those who have no prior connection to supply management are favoured for selection, DFO makes no distinction between who can enter these alternative production programs. DFO has at least set aside one NEQAP applicant per year in the whole province to start organic dairy farming.[107] However, the designation for only one single new entrant pursuing alternative modes of production for the entire province is more representative of DFO's preference for conventional dairy production than a commitment to new alternative entrants. It should be noted that DFO did have an Artisan Dairy Program to serve small-scale markets, but this program was only available for processors, not farmers, and has since been cancelled.

DFO should follow in the footsteps of CFO in designing its own alternative producer programs. A legal regime, such as supply management, should not categorically prohibit certain farmers from choosing their own methods of production. Regulators should instead equitably govern farmers who choose different methods of production. Removing the existing barriers to entry that exist for alternative production in a measured manner that protects the integrity of the supply management system can help more willing farmers enter the industry. Social ideas such as food sovereignty and specific cultural requirements of food may be more likely to be achieved by alternative and smaller-scale modes of dairy production.[108] Finally, smaller-scale production can be a gateway to conventional production for new entrants who cannot access the requisite capital to begin dairy farming under the NEQAP. If DFO can expand its

105. Young & Watkins, *supra* note 26 at 30–34.

106. Dairy Farmers of Ontario, "Grass-Fed Milk Standard" (6 August 2021), online (pdf): <new.milk.org/wp-content/uploads/2023/11/Grass-Fed-standard-latest-August-5-2021-1> [perma.cc/7D7R-G3XX].

107. Anderson, "New Entrant Program," *supra* note 56 at A.8.

108. Holtslander, *supra* note 33 at 18.

new entrants aid to those wanting to produce through alternative methods, the Ontario dairy industry will better serve both consumers and producers.

DFO could facilitate alternative modes of production by eliminating the minimum quota holding and creating a minimal quota exemption, as is the case with CFO. The NEQAP should be amended to at least allow a new dairy farmer to hold the minimum quota holding, not the current system that requires new entrants to hold four times the regulatory minimum. Half of Canadian farmers already work off the farm, so DFO should permit small-scale dairy production for those who want to farm and work another job and not mandate new entrants to have so many head of cattle that they must devote their entire working day to the farm.[109] Issues regarding costs of administration and operations such as picking up milk from small farms should be negotiated between interested parties rather than unilaterally taken off the table by DFO.

Food sovereignty is gaining momentum as a social movement in Canada.[110] The current policies requiring new entrant farmers to conform to conventional production only serves to encourage centralization and the movement of production away from isolated areas that already struggle with local food sovereignty. Similarly, small consumer markets for culturally significant dairy products like certain varieties of cheese may be unable to find culturally suitable products if they fall out of the mainstream. Allowing small farmers to produce in the manner they want will alleviate some of these concerns. Success was found in the broiler context for the production of chicken for consumers who wanted to purchase chicken raised and processed with traditionally Chinese or Portuguese methods. This could be accomplished for dairy by adopting programs similar to the CFO artisanal, niche markets, or specialty breeds programs.

DFO can change its policies to help new alternative entrants by allowing those who would otherwise be unable to enter the industry because of financial constraints. Younger and new entrant farmers need to increase the profit margin of their operations to make up for the smaller scale of production. DFO should allow new alternative entrants to milk fewer cows than is currently mandated and encourage value-added activities like cheese making such that new farmers are more likely to have a successful business. "Raw" or unpasteurized milk has been proposed as one such option, but this has not been accepted by the courts out of health and safety concerns.[111] Nevertheless, DFO has other options that new farmers could safely explore, such as farmgate sale and agritourism. New entrants who are unable or unwilling to produce on a conventional scale should be permitted to run their business how they want without undue barriers to entry.

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109. Ekers et al, *supra* note 32 at 711.

110. Food Secure Canada, *Resetting the Table: A People's Food Policy for Canada* (2015) at 9, online (pdf): <https://foodsecurecanada.org/wordpress/wp-content/uploads/2023/06/2015-FSC-22Resetting-the-Table-A-peoples-food-policy22.pdf> [perma.cc/LH3G-BZ4K].

111. *R v Schmidt*, 2014 ONCA 188.

VIII CONCLUSION

In this paper I have argued that the supply management regime should encourage production on leased land, allow for the leasing of quota to new entrants, and expand programs that facilitate the entry of farms that implement alternative modes of production. The supply management regime was created to protect the Canadian family farm, but without helping newcomers enter the industry, supply management is destined to protect only those granted quota and their heirs. Supply management is a strong, time-tested policy choice that works in the Canadian agricultural landscape, but it requires incremental changes to ensure viable and sustainable farms, to diversify niche production possibilities, and to encourage new and intergenerational entrants to fill the ever-changing needs of Canadians for milk, eggs, chicken, and turkey meat. Such policy initiatives, some of which have been pointed out in this paper, are not difficult to imagine, but they will require a new sense of flexibility for policymakers managing Canada's supply management systems.