

Summary Assessment of Provincial Legislative Framework QUEBEC¹

Overall, the strength of Québec’s legislative framework for protecting farmland is **very strong**. The strongest aspects of the framework are its stability and level of integration across jurisdictions. There are no significant elements that contribute to uncertainty. However, one consequence of a stable framework with a high level of integration is a lower ability to accommodate flexibility. A profile of the provincial legislative framework is provided at the end.

Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
Québec	*****	*****	****	**

* = Very weak; ***** = Very strong

Maximise stability

In 1978, the agricultural land protection law, the second in Canada, was created in Québec, an Act respecting the protection of agricultural land (LPTAA²). The LPTAA established a land reserve and a quasi-judicial tribunal (CPTAQ), thus providing the highest level of stability. The main objective of the Act is to “secure a lasting territorial basis for the practice of agriculture, and to promote, in keeping with the concept of sustainable development, the preservation and development of agricultural activities and enterprises in the agricultural zones established by the regime” (LPTAA, Art. 1.1).

The LPTAA maximizes stability of agricultural land use planning for many reasons: it is difficult to topple; it is well-entrenched in acts of legislation, policy, and governance structures that are based on clear, concise language, and can hold up to court challenge. The main areas covered by the LPTAA include the following:

- a) The use of land for purposes other than agriculture;
- b) Cutting maple sugar bush and the use of a sugar bush for a purpose other than the maple;
- c) Subdivision;
- d) The disposition (sale or gift) of a lot if the owner retains a right of ownership over a contiguous lot;
- e) Topsoil removal.

¹ From:

Akkari, Cherine, Christopher Bryant, and David. J. Connell (2015). “Agricultural Land Use Planning in Canada: Case Study of RMC de Haut-Richelieu, QC.” Montreal, QC: University of Montreal.

Lisso, Olivier, Claude Marois, and David. J. Connell (2015). “Agricultural Land Use Planning in Canada: Case Study of RMC de Roussillon, QC.” Montreal, QC: University of Montreal.

² LPTAA – *Loi sur la protection du territoire et des activités agricoles*

ARPALAA _ *An Act Respecting the Preservation of Agricultural Land and Agricultural Activities*

Since its creation, the LPTAA has been managed by the *Commission de protection du territoire agricole du Québec* (CPTAQ). The Commission is an autonomous, decision-making organization. By applying criteria set out in the Act, the Commission decides each application on its merits. Hence, the regime is based on the administrative discretion of the Commission (although the Province can substitute itself for the Commission at any time for the benefit of the ‘greater good’) (LPTAA, Art. 96). The most important criterion is found in section 3 of the Act, whose only function is to “secure the preservation of the agricultural land of Québec.”

The Act has priority over all other general or special laws. Therefore, all other criteria mentioned in the Act are always viewed by the Commission. Also, the Supreme Court has once reminded lower court judges that the Act is also interested in the reclamation of land having agricultural potential, besides the protection of existing cultivated land. As such, the courts cannot, without the Commission, decide that land is not suited for agriculture and so remove it when that land has been intentionally included in an agricultural zone or region.

Under the Act respecting land use planning and development (LAU), government policies (or *les Orientations gouvernementales* in French) for land use and development plans are the responsibility of the *Ministère des Affaires municipales et de l’Occupation du territoire* (MAMOT). The policies cover issues that municipalities, metropolitan communities and MRC must consider in land use and development plans (“dans les orientations des schémas d’aménagement”).

Regarding the issue of the protection of agricultural land and agricultural activities, the main orientation of the MAMOT is to plan for agricultural land use and development while giving priority to agricultural land and activities in order to promote the economic development of regions (MAMOT, 2005: 7). Land use and development plans of MRCs must comply with the different orientations of MAMOT, such as major development orientations, land allocations, normative provisions for odor management in agricultural areas and management of hog breeding units. The broad guidelines serve to indicate the general development objectives of the MRC, then the major land uses are identified. In case an MRC or municipality refuses to comply with the opinion of a responsible minister, the MAMOT has the power to change the land use and development plans of the MRC or urban plans.

Integrate public priorities across jurisdictions

Requirements for integrating public priorities for protecting agricultural lands are included in both the LAU and LPTAA. Under the LAU (S.II.s.5), a development plan should determine the main directions of land and determine general policies for its uses. In this context, as per s2.1, the plan should also, ...identify planning guidelines and land uses that the regional county municipality considers appropriate to ensure, in the agricultural zone within its territory, the compatibility of development standards and urban development with the aim of ensuring priority use of land for purposes agricultural activities and, within this framework, the harmonious coexistence of agricultural and non-agricultural uses.

Under the LPTAA (s.79.1),

Every regional county municipality and every community shall, in respect of the agricultural zone in its territory, exercise its powers in the area of land use planning and development in such a way as to promote priority for the use of land for agricultural activities and in keeping with the object of this Act.

As a matter of policy, agricultural land protection has been kept out of the hands of regional and local planning authorities, through the municipal powers established under the Act respecting land use

planning and development (LAU). In fact and since the implication of the MAPAQ in the treatment of land use planning in 1984, the LPTAA is entered first by force by the legislative framework for the protection of agricultural land and then it is supplemented by provisions of the LAU. The LPTAA takes precedence over the LAU (LPTAA, Art. 98). Hence, unlike the latter, which simply sets out the framework rules of the planning process while leaving the content of planning policies to locally elected officials, the LPTAA creates a control regime with a single-minded objective and concentrates all powers in the Commission, which has total control over the agricultural zone.

From 1978 to 1983, the CPTAQ negotiated the limits of the agricultural area of Québec with municipalities and the *Union des producteurs agricoles* (UPA). In 1987, the Commission began a process of revision of the agricultural zone, in order to ensure harmonization between the limits of agricultural land and the first generation of MRC development plans (MRC created by LAU in 1979) (CMM, 2012a: 4). This revision was completed in 1992. Thus, the legislation shows a good level of integration across jurisdictions.

Minimise uncertainty

The legislative framework serves to minimise uncertainty by several means. First and foremost, the decision-making process is centralised within a single commission (i.e., there are no regional panels as there are in British Columbia). This structure ensures a higher level of consistency among decisions. Another element of the framework, as prescribed in the LPTAA, is the obligation of local governments to fully substantiate an application to CPTAQ. Very few decisions (3%) of the CPTAQ are contested before the Administrative Tribunal of Québec and are rarely successful, thus minimising uncertainty.

The LPTAA also serves to minimise uncertainty by taking a very restrictive approach to permitted uses. Section 26 clearly states, “Except in the cases and circumstances determined in a regulation under section 80, no person may, in a designated agricultural region, use a lot for any purpose other than agriculture without the authorization of the commission.” Whereby, section 80 refers to the article that enables the province to establish additional regulations.

The requirement for MRCs to have a development plan specifically for the agricultural zone (PDZA) also minimises uncertainty. Following the recommendations of the report of the Commission on the future of agriculture and agri-food in Québec (CAAAQ, 2008), each MRC is required to have a PDZA to establish a more complete diagnosis of their farm area in order to foster a dynamic occupancy and greater protection. Although the PDZA does not have the same legal weight as a municipal development plan, the PDZA nevertheless will broaden the MRC skills in the planning of agricultural land and agricultural activities.

Accommodate flexibility

When first developed in 1978, the LPTAA was based on the agricultural context of the Montreal area and was not necessarily compatible with the reality of the more remote areas. This is partly why the LPTAA has long been considered by municipalities and MRC to be a barrier to rural development (CPTAQ, 2001a and 2001b; CPTAQ, 2007). Subsequently, in 1996, significant amendments to the LPTAA helped to ensure greater protection of agricultural land and agricultural activities, while allowing flexibility in the application of different provisions. The objective was to increase the consideration of regional characteristics, including increasing the role of MRC in the development of agricultural territories. As Article 62 of the LPTAA states, when rendering a decision the commission shall take a range of factors into consideration, including local conditions, such as the impact on the economic development of the region and the socioeconomic conditions necessary for the viability of a community where justified by the low population density of the region.

Summary Assessment of Provincial Legislative Framework: Québec

Legislative Framework for Québec

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	<p>Politique de Souveraineté alimentaire (2013)</p> <p>Orientations gouvernementales du MAMROT (2001 et 2005)</p>	<p><i>LPTAA : Loi sur la protection du territoire et des activités agricoles (1978)</i></p> <p><i>LAU : Loi sur l'aménagement et l'urbanisme (1979)</i></p> <p><i>LATANR : Loi sur l'acquisition de terres agricoles par des non-résidents (1979)</i></p>	<p>CPTAQ : Commission de protection du territoire agricole du Québec</p> <p>Administrative Tribunal of Québec</p>
REQUIRED INTEGRATION	<p>LPTAA 79.1. Every regional county municipality and every community shall, in respect of the agricultural zone in its territory, exercise its powers in the area of land use planning and development in such a way as to promote priority for the use of land for agricultural activities and in keeping with the object of this Act.</p> <p>From the date of its coming into force, every revised RCM land use and development plan or revised metropolitan land use and development plan, amendment to an RCM land use and development plan or a metropolitan land use and development plan or interim control by-law of a regional county municipality or community that affects an agricultural zone is deemed to be consistent with the first paragraph.</p> <p>LAU (S.II.s.5): [a development plan should] identify planning guidelines and land uses that the regional county municipality considers appropriate to ensure, in the agricultural zone within its territory, the compatibility of development standards and urban development with the aim of ensuring priority use of land for purposes agricultural activities and, within this framework, the harmonious coexistence of agricultural uses and non-agricultural</p>		
LOCAL	<p>Plan de développement de la zone agricole (PDZA)</p>	<p><i>Plan d'Urbanisme</i></p> <p>Schéma d'aménagement</p> <p>Règlement de zonage</p>	<p>Comité consultatif agricole</p> <p>Union des producteurs agricoles</p>

Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]

Enforceable policy, regulations pursuant to acts [bold]

Aspirational policy at all levels [plain text]