

SUBMISSION TO THE

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ON

BILL 100

SUPPORTING ONTARIO'S TRAILS ACT, 2016

BY THE

ONTARIO FEDERATION OF AGRICULTURE

MAY 4, 2016

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 36,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

Proposed *Ontario Trails Act*

OFA categorically disagrees with those who assert that Bill 100 will, in some way, impose trail-related easements on unwilling and unsuspecting owners of private property. In our opinion, such assertions are false and are already serving to harm rural businesses that depend on trail-related tourism.

That being said, OFA does believe that the proposed *Ontario Trails Act* would benefit from a clarifying statement on easements that includes;

- easements will never be unilaterally imposed on any property owner, and
- easements are voluntary and solely at the discretion of the property owner.

OFA is on record as supporting the voluntary nature of any trail-related easements, as set out in section 12(3) of the proposed Act. We further supported the provisions in section 12(9) which would enable a property owner to specify the term for which their easement was valid.

OFA believes that the provisions in section 12(8) on assignment of easements by an eligible body should be dropped. If a property owner chooses to enter into a trail-related easement with an eligible body, the agreement should be with that body only, as negotiated. If the eligible body no longer wants to keep the easement, they should rescind it and not be able to assign the easement.

Section 7 of the proposed *Ontario Trails Act* speaks to the development of best practices. This provision is positive, but we strongly recommend that the trail organization's complete adherence to trail-related best practices be a condition of government funding for a trail or to the trail organization. OFA has repeatedly heard a range of problems from farmers adjacent to former rail lines converted into recreational trails. We have attached our RAILS-TO-TRAILS CONCERNS OF ADJACENT PROPERTY OWNERS paper, addressing thirteen different identified issues and concerns voiced by adjacent property owners, based on their real-world experiences. OFA strongly recommends that these items be addressed as an integral part of any trail best practices guide.

Occupiers' Liability Act

OFA believes that Bill 100 fails to address the legitimate concerns of farmers and rural property owners concerning protection from liability. While both the snowmobile and ATV associations do provide farmers and rural property owners who permit trails to cross their land, other trail groups provide no insurance coverage to adjacent property owners in the event that a trail user leaves the trail proper, trespasses on the adjacent property and injures themselves. To overlook this critical element is a legitimate barrier to trail development. OFA recommends that the Occupiers' Liability Act be amended to shield farmers and rural property owners from liability suits initiated by trespassers.

Trespass to Property Act

The proposed amendments to the Trespass to Property Act fall short of fulfilling OFA's longstanding requests on this subject. Raising the maximum fine to \$10,000 is not, in itself, adequate. In addition to a higher maximum, a set minimum fine of \$500 is necessary to serve as an effective deterrent to trespassing. The current practice on fines (\$50 plus a nominal victim's surcharge) is inconsequential compared to the cost of a snowmobile or ATV which are typically involved in trespassing damage situations. OFA recommends that the

Trespass to Property Act be amended to set the minimum fine levied on conviction at \$500. We further recommend additional effort is undertaken to enforce the Trespass Act to protect farmland and farm businesses and to maintain better relations across the trails system.

OFA fully supports the removal of the ceiling on damage awards.

OFA believes that the government must undertake to educate both the general public as well as enforcement personnel on the provisions in the Act with respect to the notice for agricultural properties. Under section 3 of the Act, entry is prohibited without any signage to fields, gardens, orchards, vineyards as well as to properties fenced to keep animal in or people out. All too often farmers tell us that the police wouldn't lay a charge because their farm wasn't posted. This misperception must be ended. OFA recommends the government undertake a broad information and awareness campaign to emphasize public respect for private property and the fact that agricultural lands do not require signage to indicate their "closed" status.

In addition

Another longstanding OFA ask involves the status of "farm crossings" on abandoned railway rights-of-way converted into recreational trails. Farm crossings were granted to farmers whose lands were cut in two by a rail line, and the crossing provided the farmer with their only means to access an otherwise landlocked portion of their farm. We note that some trail organizations believe that they do not need to recognize farmers' ongoing right to use these crossings after the rail line has been abandoned and sold. We have also seen rail trail groups suggest that abutting farmers would have to sign some form of crossing agreement and pay for farm crossing signage. For us, these attitudes and positions are without merit. Farmers and their crossings came first and the rail line's existence was conditional on the availability of the crossing and any trail

must inherit this condition. The proposed Ontario Trails Act must be amended to clearly and unequivocally recognize farm crossings on abandoned railway rights-of-way converted into recreational trails, and the rights of those whose property is divided by a former rail line to the perpetual use of their crossing.

Farmers recognize the desire of many Ontarians to be able to explore the unique and diverse landscapes that make up rural Ontario. Farmers are prepared to facilitate this experience occurring on recognized trails, some of which may include agreed-upon portions of farms. In return, farmers expect that people using Ontario's system of trails will respect the rights of farmers and other private property owners, stay on the trail proper and abide by any specific trail use requirements and that these terms are reflected in law.

We look forward to working with the Ministry of Tourism, Culture and Sport on the development of trail best practices.



Ontario Federation of Agriculture

Ontario AgriCentre

100 Stone Road West, Suite 206, Guelph, Ontario N1G 5L3

Tel: (519) 821-8883 • Fax: (519) 821-8810 • www.ofa.on.ca

RAILS-TO-TRAILS CONCERNS OF ADJACENT PROPERTY OWNERS

(IN ALPHABETICAL ORDER)

1. BIOSECURITY
2. DOGS
3. DRAIN MAINTENANCE
4. FARM CROSSINGS
5. FARM PRACTICES
6. FENCES
7. LIABILITY
8. LITTER
9. PARKING
10. POLICING
11. PREDATOR CONTROL
12. TRESSPASS/VANDALISM
13. WEED CONTROL

Revised: June 17, 2014



Proponents of rails-to-trails must consider the interests and concerns of abutting farmers arising from the conversion of a rail line into a recreational trail, regardless of its proposed use, *i.e.* motorized or non-motorized. Railway rights-of-way took routes that offered the lowest or flattest gradient. For this reason, railway corridors routinely passed close to farm houses and buildings. In some instances, the railway corridor passed between the house and barns!

The lands of an active railway corridor were private property, owned by the railway, and policed by them too. Only authorized railway personnel were allowed on the right-of-way. Railway police would charge trespassers. Farms cut in two by the railway corridor did not have to deal with people passing close to their house, barns, fields or livestock. The only disruptions from the railway corridor came from the trains themselves, and occasional railway personnel.

Rail line abandonment and the subsequent conversion of these former railway rights-of-way into recreational trails has changed that. It brings trail users effectively into the backyards of Ontario farms. Unfortunately, some trail users view the farmstead as a “public rest stop” along the trail, where they can stop and rest, get a drink of water, or use the bathroom. Services such as these are the responsibility of the trail operators, and if offered, must be provided on the trail property itself.

1. BIOSECURITY:

Unauthorized entry onto farmland can result in crop or livestock damages. Significant harm and financial loss can result to crops or livestock from diseases introduced by unauthorized entrants. Many Ontario farms employ biosecurity measures to maintain herd or crop health by prohibiting entry by non-farm personnel. For example, in potatoes there is the potential to transfer blight from field to field on the footwear of hikers who stray off the trail into one field, then another. Similarly, livestock and poultry disease can be spread from farm to farm through human to animal contact.

2. DOGS:

Some trail users will bring their dog(s) with them. Unleashed dogs may pose a threat not only to other trail users, but also to livestock or poultry producers adjacent to the trail. Unleashed dogs may harass or even kill livestock or poultry. Frightened livestock can injure or even kill themselves stampeding into fences, or onto roads. The local municipality is responsible for compensating the farmer for any losses to livestock/poultry attributed to dogs. The municipality can recover the amount paid out from the dog owner.

3. DRAIN MAINTENANCE:

Municipal drains constructed under the Drainage Act are maintained in accordance with their original design specifications. The implementing by-law contains the design



specifications as well as an assessment schedule to assess costs to the benefitting properties in the drainage area, including roads and railways. Abandoned railway right-of-way owners are required to pay their assessed share of any drain maintenance work.

4. FARM CROSSINGS:

Both the old *Railway Act* (S 215-216) and the Canada Transportation Act (S 102-103) speak to farm or private crossings; places where property owners who own land on both sides of the right-of-way were provided with a means to access these lands that would otherwise be cut-off from the balance of their farm. Farmers who had a farm crossing before abandonment must continue to enjoy the unrestricted use of their crossing after abandonment. Access to land-locked portions of the farm must remain, despite the change from rail line to recreational trail. Farm use of the crossing must take precedence over recreational use of the trail. The right to use a farm crossing must carry on to future owners of the farm.

5. FARM PRACTICES:

Trail operators and users must recognize the rights of farmers to carry on normal farm practices, despite the fact that these practices may cause odours, noises, dusts, etc. which may pose a nuisance for trail users. Nuisances do not pose any risk to human health or the environment. Normal farm practices are not static. They change as new species of crops and/or livestock appear, or new farming practices are developed. Complaints about farm practices must be referred to the Normal Farm Practices Protection Board, established under the Farming and Food Production Protection Act.

Trail operators must inform trail users that farm practices may adversely affect trail ambience; *i.e.* manure spreading, irrigation, crop spraying or the movement of farm equipment or livestock, all of which are an integral part of farming and cannot be curtailed or delayed.

6. FENCES:

Section 20(1) of the Lines Fences Act (Ontario) was amended in 2006. For farmers, the construction, repair and maintenance of the fences along former railway rights-of-way are the sole and perpetual responsibility of whoever acquires the property. This includes lands owned by the farmer as well as lands rented for farming purposes, from a non-farm owner.

20. (1) Where land that was formerly used as part of a line of railway is conveyed in its entire width by the railway company to a person, the Crown in right of Ontario, a Crown agency or a municipality who is not the owner of abutting land, the responsibility for constructing, keeping up and repairing the fences that mark the lateral boundaries of the land lies with that person, the Crown in right of Ontario, the Crown agency or the municipality, respectively, if

(a) a farming business is carried out on the adjoining land; and

(b) the owner of the adjoining land on which the farming business is carried out notifies the person, the Crown in right of Ontario, a Crown agency or a municipality, as the case may be, that the owner desires that such person or entity construct, keep up or repair the fences that mark the lateral boundaries of the land.

(2) In this section,

“farming business” means a business in respect of which,

(a) a current farming business registration is filed under the Farm Registration and Farm Organizations Funding Act, 1993, or

(b) the Agriculture, Food and Rural Affairs Tribunal has made an order under subsection 22 (6) of the Farm Registration and Farm Organizations Funding Act, 1993 that payment or filing be waived;

“owner” includes heirs, executors and assigns of the owner.

There is no inference in section 20(1) to sharing the cost of construction, repair or maintenance between the right-of-way owners/operators and the abutting farmer. The full 100% of the fencing costs are borne by the right-of-way owners/operators. The reasons behind the requirements of section 20(1) can be traced to the old federal *Railway Act* which required railway companies to “*erect and maintain on the railway fences of a minimum height of four feet six inches on each side of the railway*”. Since the railway was imposed on the farms, fencing was the sole responsibility of the railway while it owned and operated the right-of-way, it follows that whoever assumes ownership of the former railway right-of-way, assumes this fencing responsibility too. Cost sharing does apply to non-farm properties abutting former railway rights-of-way.

The federal *Railway Act* was replaced in 1996 with the Canada Transportation Act. The new Canada Transportation Act does not address fencing in the same manner as did the *Railway Act*. Fencing is now seen as a safety issue. However, Transport Canada has not finalized regulations under the new Act to deal with right-of-way fencing. Until these regulations are developed, the railways have agreed to act as if the *Railway Act* provisions on fencing were still in force.

7. LIABILITY:

Farmers are concerned that despite the provisions of the Occupiers' Liability Act, a trail user who strays off a trail and onto a farm and sustains an injury will sue the farmer. Farm properties can pose numerous risks to uninvited entrants (trespassers), e.g. uneven ground, farm equipment, fences and livestock. While some trail operators do indemnify farmers who permit trails on their farms, that protection is not universal across all types of trails. Government must address the liability obligations of property owners adjacent to recreational trails as well as those who permit trails on their farms.

8. LITTER/GARBAGE:

Litter from irresponsible trail users can damage harvesting equipment and injure livestock. Illegal garbage dumping is a concern of many rural property owners,



particularly farmers who may own a number of farm properties remote from their home farm.

9. PARKING:

Rail trails cross numerous concession roads and highways. Every point where the trail crosses a road provides a point of access to the trail for trail users. Rural concession roads are narrow, and offer few, if any, parking opportunities. As farm operations have grown in size, so too has the machinery. On-road parking at planting or harvest times could make it impossible to move agricultural equipment along these roads, thereby interfering with time-sensitive harvest operations.

10. POLICING:

The issue of who will “police” the trail is a concern for adjacent landowners. Railway rights-of-way are private property. Recreational rail trails provide additional access points to a farm property. There must be an effective, responsive way of enforcing the rules of use, and keeping trail uses on the trail, and out of abutting farms. In addition, who will set the rules on when the trail will be open for use, and how will the trail be closed to ensure that there is no unauthorized “after hours” use?

11. PREDATOR CONTROL:

Rail trail operators should carefully consider the implications of activities that create or enhance habitat on the trail for species that prey on livestock or crops; e.g. coyotes, raccoons, deer, etc. Should predator problems on adjacent farms arise, rail trail operators must allow farmers, or their agents, to hunt or trap predators on the right-of-way, and in adjacent fields.

12. TRESPASS/VANDALISM:

Active railway rights-of-way are private property, and trespassers can be charged. Rail trails provide a new point of access to the farm, often made worse by fences in need of significant repair, if not complete replacement. Rail trail operators must be responsible for fencing, signing and policing of the trail to mitigate incidents of trespassing. Trail operators should undertake to educate trail users on the provisions of the Trespass to Property Act, including the provisions that agricultural land **does not** need to be posted to indicate that access is not permitted.

The OFA advocates that the penalty provisions of the Trespass to Property Act be upgraded to establish a minimum fine of \$500.00 and that the ceiling on damage awards under the Act be raised to equal the Small Claims Court maximum, currently \$25,000.



13. WEED CONTROL:

Ontario's Weed Control Act requires all property owners to destroy noxious weeds or weed seeds on their property unless their property is sufficiently far enough away from land used for agricultural or horticultural purposes to not adversely affect it. Trail operators must commit to control any and all noxious weeds growing on the right-of-way, in accordance with the Weed Control Act.

A number of the weeds on Ontario's Noxious Weeds list not only pose a threat to agricultural operations, but also to human health. Among the listed weeds that pose a threat to human health are poison ivy and giant hogweed. Former railway rights-of-way seem to offer ideal habitat for these weeds. Effective control of these weeds is difficult, due to their persistence as well as the human consequences from contact with plants, sap, etc.

OFA Policy - Abandoned Railway Rights-of-Way (ARROWs)

OFA encourages the short, intermediate and long-term retention of abandoned rights-of-way by the province as an integral part of a rural redevelopment and revitalization strategy.

Occasionally surplus rights-of-way are abandoned by their holding authority, e.g. CNR, CPR, and Ontario Hydro. OFA opposes sale of these right-of-ways for non-agricultural purposes if the right-of-way was agricultural before severance, is found in a predominately agricultural area and would not have been permitted by the municipal official plan.

As part of the abandonment process, the original holding authority should complete an environmental audit of the property to identify any site contamination. Should the environmental audit identify contamination, the holding authority must undertake a thorough clean-up of the property so the purchaser can possess "clean" land.

When the government determines ownership is in the provincial interest, it must give the adjacent landowners the first right to lease the right-of-way under an interim-use agreement, until the government decides to convert the right-of-way into an acceptable public use, such as a transportation or utility corridor.

When a government or non-government agency obtains ownership, responsibility for weed control, fencing, drainage and farm crossings must transfer to the new owner. There must be provisions that guarantee farmers' rights to freely conduct normal farm practices, such as irrigation, spraying and manure spreading on adjacent lands.

SOURCE: OFA Policy Manual - May 1999

FROM: OFA Board Resolution - January 1995









