



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

June 24, 2015

Ms. Gillian Steeve, Manager
Sport, Recreation and Community Programs Division
Ministry of Tourism, Culture and Sport
777 Bay Street, 23rd Floor
Toronto, ON
M7A 1S5

Dear Ms. Steeve;

RE: EBR Registry 012-4102 Bill 100 – Proposed Supporting Ontario's Trails Act, 2015

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

As a long-standing member of the Ontario Trails Coordinating Committee, the Ontario Federation of Agriculture welcomes the opportunity to present the perspectives of Ontario's farmers on Bill 100. Ontario's farmers have a unique perspective on trails; many voluntarily permit seasonal snowmobile trails to use portions of their farms, a number trails based on former railway rights-of-way cross through farms, and there is mounting societal pressure for increased recreational access to privately-owned lands.

Section 7 of the proposed *Ontario Trails Act, 2015* enables the Minister to develop "best practices". While the development of trails best practices is laudable, compliance with these trails best practices will only be voluntary. If compliance with best practices is to be voluntary, then the OFA recommends that trails funding be tied to compliance with and adherence to these trails best practices.

We also note no direction on the potential trail-related matters that would be addressed through these best practices. Over the years, OFA has heard from farmers from all across Ontario concerning their experiences with trails. We've assembled those into the attached summary paper, **RAILS TO TRAILS CONCERNS OF ADJACENT PROPERTY OWNERS**. Adjacent farmers have identified a broad range of concerns related to the operation of recreational trails that run through or adjacent to their farms. To date, thirteen different topics have been identified. The OFA recommends that Bill 100 be amended to include these thirteen issues as the basis of guidance to trail operators on specific best practices, thereby enabling them to address the legitimate concerns of farmers and other rural property owners with lands either crossed by a recreational trail, or with a recreation trail adjacent to their property.

Section 8 establishes mandatory reviews of Ontario's Trails Strategy and routine progress reports on the implementation of the Trails Strategy. However, there is no specified review schedule; only that reviews will occur when the Minister considers a review "appropriate". The OFA proposes that reviews of Ontario's Trails Strategy occur at least every ten years.

Under section 10(2) the Minister shall ensure that the trails strategy, etc. are not inconsistent with Ontario legislation. While this statement is positive, OFA believes that the province must clearly communicate the various Act and their provisions applicable to trails to trail operators to ensure all are fully informed of their obligations. For example, trail proponents and operators must be made aware of applicable statutory provisions, such as the Line Fences Act, pertaining to the fencing of former railway rights-of-way adjacent to agricultural lands. The province should also provide financial assistance to municipalities and trail operators to ensure they can fulfil this statutory obligation.

Public access to trails information, as identified in section 11, is positive.

Under section 12 private land owners may grant an easement to an eligible body for a trail. Given that this easement is fully voluntary, OFA has no objections to these provisions. That being said, section 12 seems to lack provisions for termination of an easement, by the property owner. Provisions to terminate an easement before its term expires must be added to section 12 of the proposed *Ontario Trails Act, 2015*.

The subject of merged land titles of farm properties has posed difficulties for a number of Ontario farmers caught unaware of the consequences of acquiring an additional farm property abutting their "home" farm. They become aware that the titles have merged only when trying to sell one of their farms, or when planning the transfer of farm properties to their children. To date the provincial government has been unsympathetic and unwilling to address this scenario; one that only involves properties under the Land Registry System. Now we note that under section 12(15), an "eligible body" will not be similarly burdened by a merged land title. This inequity is completely unjustifiable and unacceptable. If an "eligible body" is shielded from the burden of a merged land title, then so should all other property owners. OFA requests that the province amend its legislation to ensure private land owners are not similarly burdened by merged titles.

Schedule 3 (Occupiers' Liability Act)

The proposed amendments to the Occupiers' Liability Act simply do not address the legitimate liability concerns of farmers and other rural property owners whose property is crossed by, or adjacent to a recreational trail. Specifically, property owners need protection should a trail user leave the trail property, trespass on private property, and sue the private property owner for any "injuries". Farmers and other rural property owners deserve liability protection in the instance of trespass.

Schedule 6 (Trespass to Property Act)

The proposed amendments to the Trespass to Property Act would increase the maximum fine from \$2,000 to \$10,000 [section 2(1)] and remove the current \$1000 ceiling on damage awards on conviction of trespassing; leaving no ceiling on awards [section 12 (1)].

Incidents of trespass often prove costly to farmers. Unauthorized access to croplands by motorized vehicles damages crops. Diseases, blights, etc. can be transferred from farm to farm on vehicle tires or even footwear, damaging or even destroying crops or livestock.

The proposed amendments to the Trespass to Property Act do not address OFA's long-standing requests. Our requested amendments to the Trespass to Property Act are clearly, concisely and thoroughly set out in Bill 36, a Private Member's Bill amending the Trespass to Property Act, proposed by MPP Sylvia Jones. OFA's long-standing proposal for amendments to the Trespass to Property Act focuses on a set minimum fine of \$500. There currently are no set minimum fine provisions in the Act, and Bill 100 proposes no set minimum fine. We firmly believe that a set minimum fine of \$500 would serve as a more effective deterrent to trespassing than any increase in the maximum fine, one we're unlikely to ever see imposed. OFA demands the Trespass to Property Act amendments contained in Bill 36 be wholly incorporated into Schedule 6 of Bill 100.

With respect to damage awards [section 12(1)] our ask has been for a \$25,000 ceiling on damage awards on conviction of trespassing, a figure based on the current Small Claims Court maximum, and a figure we believe sufficiently high to capture those damages to agricultural crops and property commonly associated with trespass.

We believe that Bill 100 has overlooked a key trails-related issue; the status of farm crossings after the railway has abandoned the line and sold the property to a municipality, trail group, etc. Those who acquire these former railway rights-of-way often fail to recognize that the railways granted these crossing rights to farmers whose property was cut in two by the rail line. These crossings provided the farmer with his/her only means to access lands across the rail line. Without the farmer's continued right to use these crossings to cross the right-of-way, regardless of changes in ownership, a portion of their land is rendered useless. The OFA demands amendments in the proposed Trails Act to preserve crossing rights.

OFA welcomes this opportunity to provide its perspectives on Bill 100, the proposed Supporting Ontario's Trails Act, 2015 and trusts our concerns will be addressed.

Sincerely,



Don McCabe
President

cc: OFA Board of Directors
OFA County Federations

Encl.



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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