

November 27, 2019

Michael Helfinger, Senior Policy Advisor
Economic Development, Job Creation and Trade
56 Wellesley Street West
11th Floor
Toronto, ON
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Dear Mr. Helfinger:

RE: ERO # 019-0774 - Bill 132, Better for People, Smarter for Business Act, 2019

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 38,000 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 and national economies forward.

OFA supports the Ontario government's efforts to remove unnecessary and burdensome red tape. OFA is pleased to provide comments on specific schedules of the proposed Better for People, Smarter for Business Act, 2019 (Bill 132). Bill 132 is the third in a series of bills through Ontario's Open for Business Action Plan. It proposes legislation which would make several legislative changes across multiple ministries to enable modernization of multiple regulations that are outdated, ineffective, or duplicative of federal regulations or municipal bylaws.

Schedule 2: Line Fences Repeal Act, 2019

OFA categorically opposes the Line Fences Repeal Act, 2019 proposal to repeal the Line Fences Act. Repeal of the Line Fences Act would result in more Red Tape, not less.

The Line Fences Act sets out the mechanism for resolving disputes between abutting property owners over cost-sharing the construction, maintenance or repairs for their shared fence, should the parties be unable to reach an agreement on their own. We refer to property owners intentionally. The Line Fences Act applies to all manner of fencing disputes involving all types of properties. The Act is not solely applicable to rural or farm properties. The Act never mentions "livestock" and its only reference to "farmer" is in section 20 in reference to fencing former railway rights-of-way.

The Line Fences Act does not, in our view, create red tape for property owners. We believe it reduces red tape and unnecessary delays for property owners seeking a resolution to their fencing dispute. It eliminates costly and time-consuming court proceedings, which will be the only recourse for farmers and any other property owners facing a fencing dispute with their neighbour. It provides property owners with a quick resolution to their fencing dispute. OFA

also believes that the Line Fences Act does not create red tape or added costs for municipalities that rely on it.

Awards of the Fence-Viewers can be appealed to the Referee. This will be lost should the Line Fences Act be repealed. The current appeals system, i.e. the Referee, was implemented in the early 1990s to address growing complaints over inconsistent appeal decisions from Small Claims Court judges; the previous venue for hearing fencing appeals. Ministry of Municipal Affairs and Housing staff have indicated that the low number of appeals to the Referee justifies repeal of the Line Fences Act. OFA disagrees with this assessment and views the low number of appeals as demonstrating that the Awards of the Fence-Viewers are wise, fair and reasonable. To the best of our knowledge, no Referee's decisions have been appealed to the Courts. Perhaps the appeal to the Referee has clarified the original Award of the Fence-Viewers, or that the Referee's authority to correct an Award has addressed the appellant's concerns. OFA also notes that directing future fencing appeals to the courts may result in inconsistent appeal decisions, just as occurred in the not-so-distant past.

When there is a fencing dispute, the municipal Fence-Viewers, appointed under the Line Fences Act attend the site, hear from both parties and then make an Award which assigns each party a specified portion of the fence to build or maintain, as well as determining how fencing costs including future maintenance will be shared.

The matters the Fence-Viewers are directed to consider in making their Award, such as the suitability of the fence to the needs of each party, the terrain where the fence will be located, the benefit to both parties from a fence and the nature of fences in the area will be lost if the Line Fences Act is repealed. For many farmers, the line fence serves the added roles of keeping predators out of pastures, thereby reducing livestock losses, helping to maintain biosecurity and deterring trespass in addition to simply marking one's boundaries.

Awards of the Fence-Viewers can be registered on the title of both properties, binding future owners to comply with the provisions in the Award. What happens to the future enforcement of Awards of the Fence-Viewers that have been registered on title, if the Act is repealed? Will Awards be enforceable? By whom? Furthermore, the Fence-Viewers are referenced in the Pounds Act. Should the government follow through and enact the Line Fences Repeal Act, 2019, how will the role of the Fence-Viewers for the Pounds Act be fulfilled?

In OFA's view, the Line Fences Repeal Act, 2019 has several serious shortcomings. It does not require a municipality to pass their own fencing by-law. Neither does section 10. (2) of the Municipal Act require a municipality to pass a fencing by-law. If a municipality does nothing, i.e. does not enact a municipal by-law; does the province expect the courts to handle fencing disputes? Reliance on the courts does not reduce red tape for property owners or municipalities. On the contrary, repealing the Line Fences Act will add red tape and costs. And from past experience, will court decisions be consistent?

How does the province see future fencing disputes being resolved? Reliance on the courts does not cut red tape, costs or provide a timely resolution. In addition, reliance on the courts will add to the time for a final decision, a further burden on property owners who need a fence built or who need their neighbour to share in the costs of fence construction, maintenance or repairs of their shared fence.

The Line Fences Act has provisions to address specific circumstances that will be lost. Section 1. (2) addresses a fencing dispute where the two properties are in different municipalities. Section 3 grants a property owner the right to build a boundary fence. Section 11. (4) exempts

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a property owner from trespassing when entering the neighbouring property to build or maintain a line fence. Section 19 empowers a municipality to divide an unopened road allowance between the property owners on opposite sides. Section 22 addresses the situation where a tree has fallen on a line fence. In the absence of a provincial fencing by-law template, how will each of these situations be addressed? While the Line Fences Act has an enforcement mechanism, there is no mention in either the Line Fences Repeal Act, 2019 or the Municipal Act about who will enforce a municipal fencing by-law, and how enforcement will be carried out.

While the Line Fences Repeal Act, 2019 does recognize the need to continue the special provisions in the Line Fences Act pertaining to fencing former railway rights-of-way, by inserting them into the Municipal Act and the City of Toronto Act, 2006, **OFA believes this demonstrates the value of the Line Fences Act itself, and underscores our demand that Schedule 2 of Bill 132, be withdrawn in its entirety.**

Schedule 4: Ministry of Agriculture, Food and Rural Affairs

OFA supports the legislative changes outlined in Schedule 4.

The proposed changes include giving organizations that fall under the Agricultural and Horticultural Organizations Act the flexibility and financial cost savings by removing the requirement to both mail and publish notices of annual meetings.

Proposed changes to the Agricultural Products Insurance Act, 1996 will enable farmers to appeal a broader range of production insurance issues. Currently the Agriculture, Food and Rural Affairs Appeal Tribunal can only hear appeals with respect to production insurance eligibility and the claim amount.

This Tribunal also holds hearings with respect to the accreditation of farm organizations like OFA. We support the proposed change to the Farm Registration and Farm Organizations Funding Act, 1993 that would allow the Tribunal to decide to grant provisional accreditation when appropriate.

OFA and the other two accredited general farm organizations request an additional amendment to the Farm Registration and Farm Organization Funding Act, 1993.

All farm businesses with an annual gross farm income of \$7,000 or more are required by law to register their farming businesses and make payment to their selected accredited farm organization. Registrants may apply, within the prescribed time, for a refund of the payment as noted in section 21 of the Farm Registration and Farm Organizations Funding Act, 1993. It is left to the accredited farm organizations to not only receive and process these refund requests, but also pay for Agricorp's Farm Business Registration (FBR) delivery costs associated with these registrations. Over \$370,000 is returned in refunds each year. The accredited farm organizations estimate that for 2020 when the accredited farm organizations take on the full burden of the FBR program delivery costs, it will cost over \$25,000 in administrative effort related to processing refunds. To address the out of pocket costs associated with honouring refund requests, **the accredited farm organizations request an amendment to the Farm Registration and Farm Organization Funding Act, 1993 to enable the accredited farm organizations to deduct a refund processing fee from the amount paid to the refund requester.** This refund processing fee would be a cost recovery measure.

Schedule 9: Ministry of the Environment, Conservation and Parks

OFA supports the Ontario government's proposed changes to amend the Pesticides Act to align Ontario's system of pesticide classification with the federal pesticide categories. OFA believes this alignment will streamline the approval process while still ensuring appropriate oversight. The federal Pest Management Regulatory Agency (PMRA)'s review and registration of pest control products in Canada employs a rigorous science- and evidence-based process in an open and transparent manner. Pesticides are stringently regulated in Canada to ensure human health and the environment remain protected.

OFA supports the proposal to change the Resource Productivity and Recovery Authority's mandate to include digital reporting services through its registry for a wider range of waste and resource recovery programs. OFA supports improvements to registry systems designed to simplify and expedite report filing requirements, broaden the suite of programs able to use the digital registry platform and enable government oversight of these programs during transition to the Resource Productivity and Recovery Authority. These improvements are designed to limit duplication of effort, cut costs and streamline processes in urban centres and denser populated rural regions. However, we would like to highlight the challenges in more rural and northern regions where broadband data and internet services are limited, existing services are of mediocre standards and include dead zone areas with no reception.

The vast bulk of MECP objectives are met through the proposed amendments in urban and southern Ontario. **OFA recommends that rural and northern regions be allowed the use of paper filings until suitable internet and broadband services are available.** Impacted stakeholders in rural and northern regions should not be penalized and must be afforded consideration to meet requirements comparable to digital filing requirements.

The province should seize all communications and training opportunities presented throughout the transition to reduce, reuse, recover and recycle waste resources. The proposed amendments are designed to align with the public facing 'Reducing Litter and Waste in Our Communities' discussion paper. As such, **OFA recommends that all communications surrounding waste management transitions include explanatory reference defining who the producers are under a producer responsibility scheme, including who must file, from whom fees are collected, identifying sectors in the expanded RPRA stakeholder registry and describing anticipated impacts and non-impacts to the general public.**

OFA's comments regarding Administrative Monetary Penalties (AMP) reflect our position on the application of AMPs on all impacted legislation, unless otherwise stipulated.

OFA agrees with the need to hold the people of Ontario accountable to the rules. No one should profit from contravention of the laws and obtaining an advantage over those who do follow the rules. However, there are many different approaches that can be used to hold people accountable.

OFA is pleased that there is some discretion regarding the dollar amount Administrative Monetary Penalty (AMP) charged, up to a determined maximum. **OFA recommends that any AMP ordered be proportional to the risk to the environment caused by the infraction.** OFA encourages the continued use of MECP's Informed Judgement Matrix along with case specific considerations for agricultural operations and furthermore that "Compliance Category 1" infractions are not subject to an AMP, due to the lack of risk to the environment.

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OFA recommends that ordering an AMP should be the decision of the Director, not that of a Provincial Officer. OFA does not believe that Provincial Officers (PO) should be given the power to impose an AMP on an agricultural operation. There is potential for discrepancy in application across the province if PO have the authority to make these charges. It also makes for an inappropriate appeals process for the decision of a Provincial Officer to be challenged to the Director who is ultimately responsible for the PO. We believe that in most circumstances, the Director will support the decision of his/her employee, making the appeal process appear biased and potential for appellants to feel they did not receive a fair or legitimate review.

The absolute liability clause establishes the requirement that a person pay an administrative penalty even if they took all reasonable steps to prevent the contravention or had an honest belief that no contravention occurred. **OFA recommends that the consideration of due diligence and/or mitigation measures should be a significant factor in considering if an AMP is even going to be applied to an agricultural operation.** Agricultural operations are subject to many external forces (i.e. weather) that are beyond the control of the farmer. Failing to recognize the due diligence a farmer takes to mitigate their risk of these variable factors outside of their control is unacceptable.

OFA is in favour of the Total Penalty provisions that establish the maximum AMP for each contravention. This recognizes the reality that correcting a contravention can often take some time and may rely in part on the schedule of a third party or weather conditions, for example.

OFA recognizes that much of this proposal is enabling, with details being contained within regulation. **OFA recommends that the agricultural industry be consulted in early discussions if the decision is made to develop corresponding regulations.**

Schedule 16: Ministry of Natural Resources and Forestry

Schedule 16 proposes amendments to several statutes administered by the Ministry of Natural Resources and Forestry. OFA's comments will focus on the proposed amendments to Aggregate Resources Act and to the Fish and Wildlife Conservation Act.

The proposed amendments to the Aggregate Resources Act reflect the Environmental Registry posting (019-0556) which closed November 4. They provide a bit more clarity than ERO 019-0556, but much of the real detail will come out in future regulations

Proposed amendments to the Aggregate Resources Act in Schedule 16 of Bill 132, the *Better for People, Smarter for Business Act, 2019* contains language OFA opposes. In proposed section 12. (1.1), it states that, "the Minister or the Local Planning Appeal Tribunal shall not have regard to road degradation that may result from proposed truck traffic to and from the site". By totally ignoring the realities of road degradation by gravel trucks, the provincial government is callously ignoring the negative impacts of gravel truck traffic on municipal roads, to the detriment of these roads, and to the added road maintenance costs shouldered by these municipalities and their taxpayers. Imposing such a burden is arbitrary, unfair and unnecessary. OFA demands that section 12. 1.1 be rewritten to require the Minister of the Local Planning Appeal Tribunal fully consider road degradation amongst factors related to truck traffic and haul routes.

Haul routes are an important issue for farmers, particularly those whose farm is situated on a haul route. The aggregate licensing/approvals process needs to objectively address the legitimate agricultural implications and consequences from dusts, noises and aggregate truck

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traffic on farm operations on haul routes. Dusts and noises generated from aggregate truck traffic can negatively impact crops and livestock. Dusts are abrasive and harmful not only to livestock feeding on these crops, but also to harvesting equipment. Noises disturb livestock and poultry, potentially compromising herd/flock health, resulting in reduced production and farm income. Increased aggregate truck traffic poses a challenge for farmers using these same roads with their slow-moving farm vehicles during planting, crop spraying and harvesting seasons. OFA believes that an agricultural perspective on haul routes is one that is overlooked by aggregate operators, municipalities and the Ministry of Natural Resources and Forestry. The concerns of farmers whose farm is situated close to one or more haul routes be objectively considered during the aggregate licensing/approvals process, with requirements to avoid, minimize or mitigate the negative effects of dust, noise or truck traffic on agricultural operations. Section 12 of the Aggregate Resources Act needs to address these matters.

A more robust application process for applications to extract within the water table is a good idea, but one that does not go far enough. The proposed “more robust” process should apply to not only within the water table aggregate license applications but also to above-the-water-table license applications. While within the water table, aggregate license applications merit greater scrutiny of their potential impacts on water resources, the above the water table license applications can impact groundwater resources and private water wells too. In previous submissions on the Aggregate Resources Act, OFA emphasized the need to go beyond protection of municipal drinking water sources and include the private water wells that Ontario’s farmers, rural residents and rural businesses are solely dependent on for drinking water, household water as well as for watering livestock and poultry or for irrigation. During the license or permit application process, the water quantity and quality produced by private wells must be measured and recorded. Should aggregate extraction adversely impact either water quantity or water quality or both, the aggregate operator must be obligated to provide a sufficient volume of potable water to fully replace domestic uses, watering livestock or poultry or irrigation for as long as necessary. OFA recommends that any amendments to the Aggregate Resources Act ensure that private water wells are fully accounted for and protected against any loss of water quantity, water quality or both.

The proposed amendments to the Fish and Wildlife Conservation Act focus on “wildlife diseases”. The potential introduction of a wildlife disease to Ontario could be catastrophic. The proposed amendments lay the groundwork for a government response should a wildlife disease be detected or be believed to be present in Ontario.

OFA whole heartedly supports the amendments to the Fish and Wildlife Conservation Act as set out in Schedule 16 of Bill 132, the *Better for People, Smarter for Business Act, 2019*.

Schedule 17: Highway Traffic Act amendments

The proposed Highway Traffic Act amendments are focussed in three areas; firstly, the provisions for vehicle emissions equipment are transferred from the Environmental Protection Act to the Highway Traffic Act. The emissions equipment provisions focus on non-compliance; tampering with emissions equipment and with “defeat devices” for heavy duty diesel commercial motor vehicles. OFA supported two recent Environmental Registry of Ontario (ERO) postings, notably ERO 019-0416, New regulation for vehicle emissions and ERO 019-0646, Transfer of motor vehicle provisions from the Environmental Protection Act to the Highway Traffic Act. OFA also supports the statutory provisions to transfer vehicle emissions into the Highway Traffic Act. We fully recognize that these statutory provisions cannot address where facilities to test the emissions of heavy-duty diesel commercial motor vehicles are

located or prescribe the distribution of test facilities across Ontario. We have raised our concerns in ERO 019-0416 and ERO 019-0646.

Secondly, the proposed amendments also deal with Highway Traffic Act provisions dealing with recreational on-road operation of all-terrain vehicles (ATVs) and/or off-road or utility vehicles (ORVs). The amendments focus on municipal by-law powers to permit off-road vehicles, or classes of off-road vehicles, to operate on the shoulder of specified municipal roads. The amendments also authorize a municipality to set a lower speed limit for recreational on-road use than is set in the regulations and to set specific times when recreational on-road use is permitted.

OFA emphasizes that operation of off-road vehicles on highways, by farmers, is set out in the Off-Road Vehicles Act and section 27 of Regulation 316/03 under the Highway Traffic Act. Many enforcement officers are unaware of the ability of farmers to operate an off-road vehicle on the roads for “agricultural purposes” as set out in section 2. (2)(b) of the Off-Road Vehicles Act. OFA does not oppose the proposed amendments to section 191.8 of the Highway Traffic Act. OFA does, however, strongly request that messaging on changes to section 191.8 of the Highway Traffic Act includes acknowledgement of the ability of farmers under section 2. (2)(b) of the Off-Road Vehicles Act to operate an off-road vehicle on the roads for “agricultural purposes”.

Lastly, the proposed amendments to the Highway Traffic Act includes expand the existing powers to stop and inspect commercial motor vehicles and road building machines to permit examination of the vehicle’s on-board computer system to ensure operator and vehicle compliance. OFA does not object to these expanded inspection provisions.

OFA supports the Ontario government’s efforts to remove unnecessary and burdensome Red Tape while ensuring a healthy environment.

OFA is a strong advocate of eliminating unnecessary red tape and regulatory burden for Ontario’s agricultural community. Assessing potential risks, impacts, costs and burden of certain regulatory options is critical, and Bill 132 has identified opportunities to reduce administrative burden while remaining focussed on protecting our environment. From our perspective, after removing Schedule 2, the bill strikes a fair balance of reducing red tape and administrative burden while ensuring the appropriate safeguards are in place to protect the environment.

Sincerely,



Keith Currie
President

cc: OFA Board of Directors