

October 15, 2020

Ontario Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph, Ontario
N1G 4Y2

To Whom it may concern;

Re: Comments on the Proposed Regulatory Provisions: Security from Trespass and Protecting Food Safety Act, 2020

The Ontario Federation of Agriculture (OFA) proudly represents more than 38,000 farm family members across the province, supporting our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. OFA works to ensure the agri-food sector and our rural communities are included, consulted, and considered in any new and changing legislation that impacts the sustainability of our farm businesses. We are the leading agricultural advocate for Ontario farmers, their businesses, and their communities.

Please find below the input and comments from OFA on the Discussion Paper released by the Ontario Ministry of Agriculture, Food and Rural Affairs with respect to Bill 156, the *Security from Trespass and Protecting Food Safety Act, 2020*.

OFA believes that Bill 156 has achieved the desired balance of protecting every citizen's right to protest, along with protecting private property, ensuring a safe workplace for families and employees, and protecting the integrity of our food supply system from field to fork to the benefit of all Ontarians, Canadians and consumers worldwide. OFA takes a position of zero tolerance for animal neglect or abuse, and expects that individuals with knowledge of animal neglect or abuse will have an obligation to report suspected violations to the appropriate authorities, namely local police departments or to a Provincial Animal Welfare Inspector appointed to enforce the Provincial Animal Welfare Services (PAWS) Act, 2019.

Ontario farms are places of business, where animals are raised, safe and sustainable food is produced, and where a living is made. Everyone has a right to a safe workplace, and for our members the workplace is also their home, where families are raised, and children play. The purpose of the *Act* is to prohibit trespassing on farms and other properties where farm animals are located, and limiting interactions with farm animals to ensure the safety of Ontario's food

supply. Anyone trespassing on a farm, in processing facilities, or interacting with farm animals without prior consent or under false pretenses would be impacted by this law. If an individual is abiding by the law, they will not be charged. Anyone trespassing on a farm should be held liable for any injury, loss or damage as a result of their trespass. No individual or group has the right to enter private property or places of business, or to interact with animals without consent, to protect the food system, from farm to table.

Parts 1-4: General Definitions to be Used Throughout the Minister’s Regulation

Parts 1 to 4 of the Discussion Paper propose a suite of definitions for terms to be used throughout the Minister’s Regulation. OFA supports the proposed wording of the definitions for “biosecurity measures [1.1], “harm” [1.3] and “human harm” [1.5] as set out in Parts 1.1 through 1.7 of the Discussion Paper.

With reference to the definition of “farm animal harm” [1.2], we note that while animal activist invasions of farms cause the animals stress, that stress may not meet the threshold for “undue stress” and necessitate veterinary care. We recommend that the definition of “farm animal harm” delete the word “undue”, and that the requirement for veterinary care to determine the degree of harm be dropped.

The definition of “food safety harm” [1.3] must encompass the entire food chain; from farm through to processing facilities and beyond, to grocery and retail stores, public sector facilities and restaurants.

The definition of “hazard” [1.5] needs to include hazards introduced to livestock or poultry feed stored on a farm, as well as to sources of water for livestock or poultry.

The definition of “financial injury” [1.7] should be expanded to include lost opportunity costs. If a young herd or flock must be euthanized due to animal activist invasions, the farmer should not only be compensated for the costs to replace their herd or flock, but also compensated for their end value at maturity, including what the animal produces (i.e. milk, eggs). Consideration must also be given to the genetic potential of animals.

We further support the proposed definitions of an “animal processing facility” [2] and for a “farm” [3].

With reference to the proposed definition of “farm animals” in Part 4, we believe the proposed definition falls short of capturing the full range of livestock, poultry and fish species raised on Ontario farms. Definitions found in the Farming and Food Production Act, 1998 and the Nutrient Management Act, 2002 include a list which is more encompassing of the full spectrum of animals used in agriculture. In lieu of the definition set out in the Discussion Paper, OFA proposes the definition of “farm animal” be worded as follows;

- (a) bison, cattle, horses, donkeys, mules, sheep, goats, swine, rabbits,

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- (b) llamas and alpacas,
 - (c) deer and elk,
 - (d) poultry, including ratites,
 - (e) fur-bearing animals,
 - (f) bees,
 - (g) cultured fish,
 - (h) game animals and birds,
 - (i) animals used to produce eggs, milk, cream or wool,
 - (j) herd or flock protection animals, or
 - (k) any additional animals, birds or fish prescribed by the regulations and raised on a farm.

The definition should also capture livestock used for work, personal use, or boarded by an operator for another person.

Part 5: Establishment of Additional Animal Protection Zones on Farms

Part 5 of the Discussion Paper speaks to “animal protection zones”. Section 2 of the *Act* defines “*animal protection zone, with respect to a farm, animal processing facility or prescribed premises, as an area on the farm, facility or premises on which farm animals may be kept or located and that is,*

- (a) an enclosure for farm animals, whether or not it is marked as an animal protection zone,*
- (b) an area that meets prescribed requirements and is marked as an animal protection zone by the owner or occupier using signs in accordance with the regulations, or*
- (c) an area prescribed by the regulations as an animal protection zone for the purposes of this Act.”*

Part 5 of the Discussion Paper, Establishment of Additional Animal Protection Zones on Farms seems to be focused solely on farms as an animal protection zone, to the exclusion of other places where farm animals are kept. However, it is important not to lose sight of Section 1 of the *Act*, which states, “The purposes of this Act are to prohibit trespassing on farms and *other properties on which farm animals are located* and to prohibit other interferences with farm animals...”. Protection of farm animals on farms is important, but regulatory silence in relation to “other places on which farm animals are found” opens the door to activist harassment and interference with farm animals at community pastures, fairs, exhibitions, assembly yards, sales barns, rest stops, etc., and other places where farm animals are routinely kept.

OFA proposes that the *Act* and Regulation encompass four types of “animal protection zones”: farms, pastures, livestock/poultry transport vehicles and other farm animal facilities. The “other farm animal facilities” would include agricultural fairs and exhibitions, auction sales, commercial vehicle inspection stations (i.e. weigh scales), community pastures, livestock transport rest stops, sales barns, and stockyards when farm animals are present.

The Discussion Paper overlooks places where livestock are routinely kept and are not included as on-farm “animal protection zones”. One example would include the portion of a farm where

livestock are pastured, but not adjacent to the barn, which is a common and required best practice to protecting both animal health and the health of our environment. Harassment of, and interference with, livestock in an enclosed pasture deserves the same degree of protection as when these animals are in a barn. The consequences of interference are no different. Biosecurity and livestock enclosures may be compromised. Animals can be stressed by the presence of unfamiliar people, and their food and/or water could be contaminated by trespassers. The Discussion Paper does not include pasture areas in their definition of animal protection zones. The definition of an animal protection zone should include pasture areas both on the “home farm” and on additional farm properties that are part of the overall farming operation such as “community pastures”, which are enclosed by a fence intended to keep animals in or people out, when farm animals are present.

Facilities such as fairs, exhibitions, assembly yards, sales barns, rest stops, etc. with enclosures for farm animals, should also be considered as an “animal protection zone” when farm animals are present.

Part 5 of the Discussion Paper wavers between those animal protection zones that do not require signage and those additional animal protection zones that do require signage. OFA recommends that enclosures or areas requiring signage be limited to places where it may not otherwise be clear to expect that animals are present, or to situations where animals are temporarily handled or housed in a location not normally used for livestock. OFA reiterates the reality that any animal protection zone on a farm or animal processing facility is on private property and there is no right to be there unless invited or permitted.

Part 5 of the Discussion Paper also poses some considerations and limitations on the extent of the additional animal protection zone on a farm (pages 6-7) imposed by owner/occupiers of premises;

- **Any additional animal protection zone cannot encompass the entire premises;**

OFA supports this limitation.

- **On a farm with livestock, the animal protection zone encompasses the buildings which house farm animals and the land located between and directly surrounding those buildings;**

OFA supports this limitation.

- **Any additional animal protection zone is limited to the yard(s) directly adjacent to these buildings if the animals are regularly loaded, unloaded in the yards or travel through the yards;**

OFA supports this limitation.

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- **Any additional animal protection zone cannot include land that does not fall within the legal boundaries of the premises;**

OFA supports this limitation.

- **The boundaries of the additional animal protection zone must clearly indicate that no access is allowed;**

OFA does not support this requirement if the additional animal protection zone is on a farm. Under the Trespass to Property Act, signage is not required for “*a garden, field or other land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and have not attained an average height of more than two metres and woodlots on land used primarily for agricultural purposes; or that is enclosed in a manner that indicates the occupier’s intention to keep persons off the premises or to keep animals on the premises*”.

- **Signs must accompany the additional animal protection zone to indicate the area is an additional animal protection zone and that entry is not permitted;**

See above.

- **The sign must be of a sufficient size to allow a circle of 10 centimetres (4 inches) in diameter to be contained wholly within it, and**

If OMAFRA pursues signage under the *Security from Trespass and Protecting Food Safety Act, 2020* and Regulation, then a circle of 10 centimetres in diameter is too small. Trespassing activists will argue the sign was too small to be seen.

- **Markings will be placed so that they are clearly visible in daylight under normal conditions and signs indicating no entry must accompany the markings around the boundaries of the additional animal protection zone.**

OFA supports this provision. There seem to be no specifics around the wording of signs to mark additional animal protection zones; clarity is needed on wording, size (other than the 10 cm requirement) and frequency of location. Some guidance on spacing and wording would be helpful. Perhaps required signs should be at every normal point of entry (e.g. gate), and readily apparent when approaching the fence line.

OMAFRA is also contemplating including in the animal protection zone a perimeter around buildings containing animals. This perimeter could be a set distance, such as 5 feet surrounding each building.

The Discussion Paper mentions a 5-foot perimeter around buildings containing farm animals (page 7). It makes no mention of a perimeter around livestock transports, at animal processing facilities or at “other properties on which farm animals are located” such as fairs, exhibitions,

assembly yards, sales barns, rest stops, etc. While OFA supports the concept of a perimeter around all forms of animal protection zones, we believe that the perimeter around an animal protection zone must differ between different types of facilities. For livestock and poultry barns, the area immediately around these buildings plus adjacent yards, we propose that the perimeter be a minimum of 15 metres (50 feet). This distance aligns with the biosecurity and restricted access zones around poultry barns. We further recommend that this distance also apply to animal processing facilities, assembly yards, sales barns, and rest stops.

For livestock and poultry transport vehicles, and farm animals at fairs and exhibitions, OFA proposes a 2-metre (6.5-foot) perimeter from the livestock/poultry transport *trailer*; the same as is advocated for COVID-19 physical distancing.

OFA is concerned about how the proposed regulatory approaches would address issues concerning unwanted visitors using technology (e.g. drones). Surveillance of farms and animals with modern surveillance techniques could spook the animals, causing stress and potential injury, and should be treated as trespassing.

The distances specified in regulations around animal protection zones must be appropriate to prevent the interference or interaction with farm animals. The distance must be easily implementable and enforceable by police and other enforcement agents.

Interference and harassment of horse-drawn carriages has been a challenge recently for agriculture. Animal activists who protest horse drawn carriages harass the horse, driver and the passengers with shouts, bull horns and waving signs. It is unlikely that an animal protection zone for horse drawn carriages could ever be extensive enough to completely shield the horse, driver, and the passengers from being harassed. For horse drawn carriages, OFA proposes that the animal protection zone include the horse or horses, the carriage or conveyance they draw, plus a 2-metre zone around the horse(s) and carriage. In addition, individuals engaging in activities that harass or are likely to harass the horse, driver and the passengers should be defined and penalized.

Part 6: Dealing with Interfering and Interacting with Farm Animals

Part 6 of the Discussion Paper speaks to interaction with farm animals, including restriction, limitation or clarification of actions or gestures. Interacting with livestock can create unique risks, including the introduction and exposure of animals to disease, stress, and potentially contaminating the food supply. The Discussion Paper proposes defining interaction to include acting in such a way as to have an effect on a farm animal which causes harm, undue stress, breaks biosecurity protocols or could be reasonably expected to create a situation in which harm is likely to occur. In any situation, interaction with farm animals without prior consent including on livestock transport trucks should be prohibited; regardless of whether it causes harm, undue stress, breaks biosecurity protocols, or could be reasonably expected to create a situation in which harm is likely to occur.

OFA requests that OMAFRA clarify that animals on a livestock transport vehicle are within an animal protection zone, regardless of whether the vehicle is stopped or in motion, and that interaction with those animals onboard is strictly prohibited. The regulation must indicate that a livestock or poultry transport vehicle need not be moving; that it only need be on a highway, as defined in the Highway Traffic Act or at an animal processing facility, agricultural fair and exhibition, auction sale, commercial vehicle inspection station (i.e. weigh scale), community pasture, livestock transport rest stops, sales barn or stockyard when farm animals are present. Livestock transport vehicles should be considered an animal protection zone from the time the animals are loaded until the time they are unloaded at their final destination, regardless of where the vehicle is located, or whether or not the vehicle is in motion.

Additionally, livestock transport vehicles must be free to enter or leave private property without interference and should be protected under new regulations. OFA asks that OMAFRA ensure that livestock transport vehicles entering and leaving a farm, processing facility, or any other animal protection zone be protected from interaction and interference.

OFA appreciates that OMAFRA is including prohibiting specific activities which would involve indirect activity with farm animals, such as removing a farm animal from an animal protection zone or assisting a farm animal to leave an animal protection zone. Additionally, OFA recommends that this section specifically mention entering livestock and poultry barns, or other buildings and animal housing facilities, to prevent action that could place livestock at risk.

Part 7: Dealing with Obtaining Consent Under False Pretenses Under Sections 5(6) and 6(4)

Part 7 of the Discussion Paper outlines the situations in which consent would be voided, unless the person is exempted as a journalist and there is no harm. OFA is satisfied with the situations outlined by OMAFRA, however, is concerned with the exemption for journalists which is discussed below.

Part 8: Exemptions Under Section 7(g) of the Act

8.1: Exemptions for Journalists in the Minister's Regulation

Part 8.1 of the Discussion Paper considers exempting journalists from certain portions of section 5 of the *Act*, which speaks to entering animal protection zones, interacting with farm animals, consent, and false pretenses. OMAFRA is considering exempting journalists from these provisions, as concerns were raised at Committee that the *Act* may limit the ability of journalists to report animal abuse or other issues. OFA does not see the need for exemptions based on profession from any portions of Section 5 of the *Act*. OFA recognizes the important role that journalists and the media have within society; however, other than those with inspection or enforcement authority, no profession has the right to access private property without legitimate consent. Exemptions from key provisions based on profession (with the exception of inspection or enforcement officers) undermine the entire purpose of this *Act*, which is focused on preventing

trespassing. It is integral to the *Act* that no one has the right to enter an animal protection zone who does not have legislative or inspection authority, regardless of profession. While members of the public may believe that they are on good ethical ground when entering private property or a place of business, it still does not give them the right to violate the law. The Canadian Charter of Rights and Freedoms provides the right to protest, freedom of speech etc., but it does not immunize anyone from liability for crimes committed in the course of newsgathering.

Private citizens are not trained or equipped to collect evidence of suspected violations. Their evidence is potentially tainted and skewed for their own purposes. Individuals trespassing on farm or through processing facilities for the sake of newsgathering or “under-cover investigations” are self-appointed vigilantes. They have a specific agenda, be it ending all animal agriculture or to aid a commercial enterprise make money by selling news or attracting viewers to online sites, etc. The “evidence” collected is skewed in a way to cause the misrepresentation of the agriculture industry, or for personal or commercial gain.

In 2019, the government of Ontario introduced and passed the strongest animal welfare legislation in the country. Concerns around the issue of animal abuse and the ability and obligation to report such actions are entrenched within the PAWS Act, 2019, which came into force January 1st, 2020. The *Security from Trespass and Protecting Food Safety Act* acts as a complement to the PAWS Act, and together ensure the highest standards of animal care, protection of people, animals, and the province’s food supply, while respecting lawful and peaceful protest. Anyone concerned about the health and welfare of animals is encouraged to contact the Ontario Animal Protection Call Centre, available 24 hours a day.

8.2: Exemptions for Whistleblowers in the Minister’s Regulation

Part 8.2 of the Discussion Paper speaks to exempting others from the applications of certain portions of Section 5 of the *Act* and protecting whistleblowers. OFA recognizes the important role that *bona-fide* whistleblowers have within society, and their function in exposing animal abuse. Someone who has been hired based on their prior work history and resumé, at a farm, food processing facility, etc. has, in our eyes, an absolute duty to report a perceived instance of animal abuse. The appropriate authorities should be notified immediately to allow an objective investigation to be conducted and the source of distress to be alleviated for the animals. Whistleblowers should not hold on to photos or video evidence over the course of a week, six months, or two years. To address this situation, OFA recommends that OMAFRA consider the following additional condition to deem whistleblowers as *bona-fide* and exempt: That the whistleblower did not provide “evidence” of animal abuse or poor welfare, or food safety risks to anybody or other group, other than the appropriate authorities. If the whistleblower provides evidence to any person or group other than the appropriate authorities, it is clear that the health and welfare of animals and the safety of our food system is not their priority.

OFA believes that the *Act* as it is written already protects whistleblowers. If an individual is a *bona-fide* employee, they would not have gained consent to be within an animal protection zone under false pretenses or duress. They would not be considered to be trespassing or have committed an

offence under the *Act*. The purpose of the *Act* is to protect farmers and the food system from trespass and biosecurity breaches, and ensure legitimate consent is obtained for a person to be within an animal protection zone.

Part 9: Dealing with Obtaining Consent Under False Pretenses in Section 14(2) in Relation to Journalists and Whistleblowers

Part 9 of the Discussion Paper proposes exempting journalists and whistleblowers from Section 14(2) of the *Act*, which makes it an offence for a person to obtain consent under false pretenses in the prescribed circumstances or for the prescribed reasons. As mentioned above, OFA does not see the need for exemptions of any profession from Section 14(2), other than those with inspection or enforcement authority. The purpose of any trespass legislation is to give greater control over entry or use of an owner's or tenant's premises, to provide penalties and remedies for breaches of the *Act*, and to facilitate the recreational use of private lands. To exempt certain persons or professions from obtaining legitimate consent to enter animal protection zones or interact with livestock undermines the entire purpose of this *Act*.

If whistleblowers are *bona-fide* employees they would have already gained legitimate consent to be within an animal protection zone, and to interact with livestock, and would therefore already be exempt from the false pretenses portion of the *Act*.

It is important that any exemptions for obtaining consent under false pretenses do not put humans, animals, or food safety at risk. If a person falsely represents their qualifications regarding safe animal handling or food safety to obtain consent to enter an animal protection zone, human, animal and food safety may be at risk.

Part 10: Increased Penalties for Presence of One or More Aggravating Factors

OFA supports the proposed aggravating factors allowing for increased penalties for persons who are found guilty of committing offences under the *Act*, as outlined in Part 10 of the Discussion Paper.

Farmers and agri-food employees work hard to ensure high standards of animal welfare, and a safe and healthy food supply for Canadians. Farmers, their families, and agri-food workers have the right to be safe on the job and in their homes. OFA encourages OMAFRA to consider regulations that are practical, implementable and enforceable. If the proposed regulations are not practical, implementable and enforceable, farmers, their families, agri-food workers, livestock, and the entire food system is unprotected. OFA supports stronger education and enforcement of new and existing legislation, to ensure the safety of Ontario's food value chain, from farm to table.

OFA appreciates this opportunity to provide OMAFRA with its perspectives and suggestions on the Proposed Regulatory Provisions: *Security from Trespass and Protecting Food Safety Act, 2020*.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Currie". The signature is fluid and cursive, with the first name "Keith" written in a larger, more prominent script than the last name "Currie".

Keith Currie
President

cc: The Honourable Ernie Hardeman; Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors