

May 23, 2023

Ministry of the Solicitor General
Strategic Policy, Research, and Innovation Division
George Drew Building
25 Grosvenor Street, 9th Floor.
Toronto, ON M7A 1Y6

Submitted online through the Regulatory Registry website

To Whom It May Concern:

Re: Regulatory Registry posting # 23-SOLGEN-007: Proposed Amendments to the Provincial Animal Welfare Services Act, 2019

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations administered by all levels of government. We are passionate and dedicated to ensuring that the agri-food sector and rural communities are considered and consulted with for any new or changing legislation that would impact the sustainability and growth of our farm businesses.

Ontario's agri-food sector is an economic powerhouse – producing more than 200 farm and food products, fuelling rural communities, generating nearly 750,000 jobs, and contributing over \$47 billion to Ontario's annual GDP. The province's agri-food strategy, Grow Ontario, aims to strengthen the agri-food sector, support economic growth, and ensure an efficient, reliable and responsible food supply. By removing barriers, unnecessary costs and red tape, Ontario farmers will be positioned to seize opportunities and rise to the challenge of an ambitious growth strategy, allowing the agri-food sector to drive the economy forward.

OFA firmly believes in and advocates for the humane treatment of all animals, including farmed livestock and poultry. Ontario farmers uphold high standards of care for their animals in alignment with accepted codes of practice and normal farming activities. Ontario's farmers and farm organizations are concerned about the health, safety, welfare, and comfort of the animals under their care. Ontario's livestock commodity groups and farm organizations were active supporters in the development of the *Provincial Animal Welfare Services (PAWS) Act, 2019*, which came into effect on January 1, 2020. This new statute was welcomed by many commodity groups and farm organizations as it brought with it an updated, more uniform approach to delivering animal welfare enforcement in Ontario. At the time, provincial farm organizations and commodity groups worked

together with the government in the development of this new animal protection model, designed to keep our entire industry accountable and responsible for the care and protection of animals in the province.

OFA previously provided comments to the Standing Committee on Justice Policy regarding Schedule 6: Provincial Animal Welfare Services Act, 2019 of Bill 102, Strengthening Safety and Modernizing Justice Act, 2023. OFA is pleased to present our agricultural perspective on Proposal 23-SOLGEN-007: Proposed Amendments to the Provincial Animal Welfare Services Act, 2019.

Proposed Amendments to Improve Cost Recovery and Clarifying and Updating Animal Care Review Board and Other Processes

The proposed amendments regarding Statements of Account and cost recovery are concerning to OFA. Currently under the PAWS Act, Animal Welfare Services (AWS) can issue a Statement of Account outlining costs owed by the animal owner or custodian when AWS has provided necessities to relieve that animal's distress, or when animals are seized and kept in the care of AWS. The rationale behind the proposed amendments is that the Act is not sufficiently specific about the types of costs which are recoverable by AWS; The proposed amendments would authorize the services of Statements of Account in a more extensive range of circumstances and include a broader range of costs respecting the animal if incurred in relation to the specified circumstances. The proposed amendments would specify the types of costs that are recoverable via a Statement of Account by the Chief Animal Welfare Inspector.

OFA understands the need for cost recovery; however, costs under the current Act are uncontrolled and highly subjective. The proposed amendments to subsections 31(1) and (2) have the potential to further increase costs for animal owners or custodians by expanding the range of costs able to be recovered by AWS in the event of animal distress. Proposed subsection 31(2) states "...costs *may include but are not limited to the following*:...". This wording is subjective and vague, without any language as to the reasonableness of costs. Cost recovery needs to be backed by a transparent process that includes a cost standard. OFA believes that the costs able to be recouped by AWS need to be warranted, reasonable and justifiable, linked into an actual cost of production model related to the animal(s) in question, and should not exceed the market value of the animals in care.

OFA understands the necessity for guidance for the Animal Care Review Board (ACRB) to consider when assessing whether to confirm, vary or revoke Statements of Account. The proposed prescribed factors to be considered by the ACRB during the assessment of Statements of Account need to ensure that the costs in the specified circumstances were indeed warranted, reasonable, and justified, and allow for a clear and transparent process to confirm, vary, or revoke Statements of Account. OFA would not support changes that would limit the ACRB's authority to determine whether Statements of Account were warranted, reasonable and justified; The ACRB needs to retain the ability to assess, confirm, vary, and revoke Statements of Account if costs were applied unreasonably or unjustifiably by AWS, but with additional guidance to ensure decision consistency.

Under the current Act, the specified five business days for appeal is insufficient; those unfamiliar with the process or legislation, or that wish to consult or retain counsel have inadequate time to do so. OFA supports the proposed amendments to Subsection 38(2), which would enable the ability to prescribe in regulation under the Act the timeline for animal owners and custodians to appeal orders, decisions to remove, keeping of animals in the Chief Animal Welfare Inspector's care, or Statements of Account. Extending the timeline beyond five business days would help alleviate the restrictiveness of such a short window of time to appeal and allow the needed time for animal owners or custodians to make informed decisions.

Enhancing and Clarifying Inspector Powers to Improve Animal Welfare Outcomes

Removal/seizure of animals in specified circumstances should be necessary, reasonable, and justifiable. This would work to ensure that there no unnecessary burden of cost is incurred by either AWS or the owner or caregiver of the animals. Previous enforcement actions by AWS seem to be based on section 15(1)(3), which states that “*no person shall knowingly or recklessly cause an animal to be exposed to an undue risk of distress*”. However, “*undue risk of distress*” is not defined in the Act. The subjective definition and its use raises questions about the required grounds for AWS enforcement actions, particularly regarding Animal Welfare Inspector (AWI) orders. The phrase “*undue risk of distress*” requires a definition in the Act if it continues to be used as a rationale for orders or seizures, and how AWS determines that “*undue risk of distress*” warrants the removal of animals needs to be clarified.

Section 31 outlines the provisions for taking possession of an animal in distress. 31(1)(b) of the Act states that “*an animal welfare inspector may remove an animal from the place where it is and take possession of the animal for the purpose of providing it with necessities to relieve its distress, if...*”. This section suggests that taking possession of an animal is only warranted where the animal is in actual distress; *Distress* is defined in the Act as:

“... *the state of being,*

- (a) *in need of proper care, water, food or shelter,*
- (b) *injured, sick, in pain or suffering, or*
- (c) *abused or subject to undue physical or psychological hardship, privation or neglect;”*

However, section 31(1)(c) allows for the removal of an animal when “*an order respecting the animal has been made under section 30 and the order has not been complied with*”. OFA questions taking animals into the possession of AWS when they are not deemed to be in distress. We believe other actions and compliance approaches should be prioritized in lieu of animal removal in the event of non-compliance with orders by animal owners or custodians unless the animal is indeed in distress. Utilizing alternatives, such as monetary penalties, would reduce the burden and costs associated with animal removal and housing of animals for extended periods of time under Subsection 31(1)(c).

Additional PAWS Act Considerations

OFA is concerned that the targeted amendments focused on enhancements and clarifications to inspector powers, cost recovery and streamlining operations, and updates to ACRB processes,

do not go far enough. Alongside livestock commodity groups, OFA has previously requested a meeting with the Ministry of the Solicitor General to discuss how the PAWS Act can better protect animal welfare in the province and meet the expectations of all concerned. The PAWS Act is now more than three years into effect; given the length of time that has passed and now with some experience working through actual cases involving livestock, OFA believes a more thorough review process is warranted, to ensure the process is functioning as intended and meeting expectations.

Recent cases have exposed concerning gaps that the agricultural community, in partnership with the Ontario government, would like to see addressed. OFA suggests that the proposed changes to the PAWS Act be delayed until a more thorough review of the Act can be conducted and additional gaps addressed, rather than reopening the Act in the near future. OFA recommends the following to help alleviate some of these gaps:

Definitions: Commercial Animals/Livestock

It is important to differentiate between commercial animals (livestock) used for agriculture from other types of animals such as domestic pets and wildlife in the legislation or corresponding regulations. Delineating animals in this manner would allow for tailored decision-making, policies, and procedures specific to commercial animals, such as standards of care, in the event of distress, disposal methods in the event of seizure, and costs associated with care.

Seizure and Removal Process

As mentioned previously, OFA believes taking possession of an animal should only be necessary where it is in actual distress, or when other compliance approaches have been unsuccessful. The movement of livestock between farms and locations poses a significant risk to biosecurity, with the real potential to introduce diseases and pests onto farms, and into herds and flocks. When warranted, the seizure and removal of livestock needs to be done in accordance with existing federal and provincial legislation, regulations, policies, and industry standards of practice. Livestock require specialized handling and transport compared to domestic animals. Individuals contracted to remove/seize livestock must be specifically trained and sufficiently experienced to ensure the health, safety, and welfare of the animals are not further compromised, and risk to animal handlers is minimized. Equipment to handle and transport the animals is equally as crucial to ensure minimal stress and promote animal welfare.

In the event of livestock seizure, ensuring suitable alternative sites to house seized livestock is imperative to make certain animal distress is alleviated. Sites to house livestock must be suitable and compatible with the seized species and should be already equipped with the necessities required to house the animals in a good state of welfare. For example, pens, fencing, etc. need to be suitable for the seized species and already exist at the alternative site prior to animals being transported there. Individuals providing care to the seized animals must also be trained in normal farm practices and must be familiar with the requirements needed to care for the species being housed. In the absence of appropriate housing, care, and handling, the health and welfare of livestock may be further compromised.

Livestock farming is a commercial endeavour. Farm animals have very different disposal methods that are not available to domestic animals, such as commodity markets. Owners or custodians of

the seized livestock must be provided with a voluntary option to dispose of animals through traditional means, such as a sales yard or an auction barn, instead of removing animals when warranted.

For example, Manitoba's Animal Care Act includes references to commercial animals pertaining to the disposal of seized and abandoned animals and their associated appeals, and standards for commercial animal markets (sections 14(1) and 14(2)). Livestock under Manitoba's Animal Care Act are not usually relocated to alternative sites but are taken to appropriate livestock markets where they are sold at market price. This removes the unnecessary burden of resource-heavy and costly removal and housing of seized livestock. Proceeds of the sales can then be allocated towards Statements of Account, with excess funds being awarded back to the owner or caregiver.

Costs and Statement of Account

Interventions by AWS must be adapted to reduce costs to both AWS and owners or custodians to reduce potential exorbitant costs associated with relieving distress in livestock, such as removal, transportation, and housing, and in the event of an appeals process. Current costs that are recoverable via Statements of Account are subjective, inconsistent, and arbitrary. Assuming they are justified, OFA believes that costs included in Statements of Account must be reasonable, consistent, and in line with industry standards.

For example, Alberta's Animal Protection Regulations specify tariffs of expenses that may be charged with respect to animals that have been taken into custody, and include tariffs for:

- reasonably necessary transportation of livestock,
- food, water, care and shelter for an animal, depending on weight
- necessary veterinary treatment, including drugs, medicines, and the actual cost of the treatment, and
- the costs of destroying an animal

OFA suggests rates for costs that are recoverable via Statements of Accounts be included in regulation under the PAWS Act.

Furthermore, OFA believes that the value of any seized, marketable livestock should be assessed immediately. Statements of Account should not exceed the maximum market value of the assessed livestock. A threshold must exist; if Statements of Accounts approach the maximum value of assessed livestock, alternative options must be presented to the animal owner or custodian such as selling animals in appropriate markets. This would ensure the ability to recoup costs by AWS, and that an insurmountable financial burden is not borne by the animal owner in the event of a lengthy appeals process.

Mental Health Training and Resources

Previously, significant animal care cases involving commercial livestock have indicated a strong correlation between animal distress and mental health and/or financial stressors of the owners or custodians. As public servants, AWS must be trained in utilizing the full range of community agencies, services, and social resources to assist in animal protection investigations and enforcement. Mental health training and resources would help AWI respond to situations more

appropriately and ensure that individuals experiencing mental health challenges or financial stress get needed aid when needed.

OFA understands that the capacity to provide mental health support to livestock farmers can be limited. The Farmer Wellness Initiative provides access to free counselling services and tailored mental health support and resources to all Ontario farmers and their families.

Data Collection and Sharing

Data collection and sharing are critical to maintaining and improving the state of animal care in Ontario. To further strengthen public trust in the system and improve transparency, OFA requests more data collection and reporting on all animal welfare cases, including those involving livestock.

At a minimum, reports should include:

- number of complaints (including those deemed nuisance complaints),
- Designation of complaints (commercial, domestic, wildlife) and species involved,
- number of investigations resulting from complaints,
- orders, and
- outcomes of animal protection inquiries (including seizures, removals, costs, etc.).

This basic information and statistics should be made available to the public on an ongoing basis.

Training of Inspectors

OFA believes that training of AWI needs to be enhanced regarding livestock standards, practices, handling, and care. A better understanding of normal farm practices and standards of care is necessary for inspectors to properly assess the conditions and care of farm animals, and for the process thereafter. Inspectors need to be trained in biosecurity practices and protocols, to minimize the risk of spreading disease when entering farms.

OFA welcomes this opportunity to present its comments on the proposed Amendments to the Provincial Animal Welfare Services Act, 2019. We trust that the Ministry will carefully consider OFA's perspectives and our other recommendations on the proposal to help strengthen the protection of livestock and animal welfare in the province.

Sincerely,



Peggy Brekveld
President

cc: The Honourable Michael Kerzner, Solicitor General
The Honourable Lisa Thompson, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors