

By Email [comm-generalgov@ola.org]

June 9, 2020

Standing Committee on General Government  
Ontario Government  
99 Wellesley Street West  
Room 1405, Whitney Block  
Queen's Park  
Toronto, Ontario  
M7A 1R3

Attention Valerie Quioc Lim

Dear Ms. Quioc Lim:

**Re: Bill 156, *Security from Trespass and Protecting Food Safety Act, 2019*  
Standing Committee on General Government  
Written submission on behalf of the Ontario SPCA**

I am writing to you today as General Counsel to the Ontario Society for the Prevention of Cruelty to Animals ("Ontario SPCA") to express our grave concerns regarding Bill 156, *Security from Trespass and Protecting Food Safety Act, 2019* ("Bill 156"). Please accept this letter as the written submission on behalf of the Ontario SPCA.

I have had the benefit of listening to presentations before the Standing Committee on General Government on June 8, 2020 and heard concerns raised by Ontario citizens and certain groups and the questions asked by each of the elected officials concerning Bill 156.

The general consensus is that Bill 156 (i) will stifle whistleblowers who have proven to be key witnesses to otherwise unreported cases of serious cruelty and neglect given the absence of any other effective means to ensure even minimum standards of care are provided, (ii) is unnecessary given that the *Trespass To Property Act*, R.S.O. 1990, c. T. 21 already addresses the vast majority of concerns raised, (iii) despite the suggestion that it will address bio-security concerns on farms, will do the exact opposite, and (iv) is unconstitutional.

The Ontario SPCA has worked to protect animals for 147 years and enforced provincial and federal animal neglect and cruelty laws for 100 years. With vast experience investigating individuals and farms and investigating and inspecting zoos and aquariums together with more than 14 decades working with communities, stakeholders and interest groups on sheltering, veterinary care, spay/neuter programs and education initiatives, the Ontario SPCA brings to the table a unique perspective on Bill 156.

**RUBY  
SHILLER  
ENENAJOR  
DIGIUSEPPE**  
BARRISTERS

197 Spadina Avenue  
Suite 402  
Toronto, Ontario  
M5T 2C8

T 416 964 9664  
F 416 964 8305  
W rubyshiller.com

It is the considered view of the Ontario SPCA that Bill 156 will serve to undermine one of the few mechanisms available to ensure humane treatment of farm animals – the whistleblower. A more effective approach would be to amend the *Provincial Animal Welfare Services Act*, 2019, S.O. 2019, c. 13 (“PAWS Act”) to permit Welfare Inspectors to inspect farms. Under the present law, Welfare Inspectors are only authorized to inspect zoos and aquariums.

The Ontario SPCA is also of the view that any exemption for normal farm practices should be removed from the *PAWS Act* and Regulation 444/19 – Standards of Care and Administrative Requirements - should contain more robust provisions requiring at minimum an adherence to Codes of Practice in order to enable proper protection of farm animals and the enforcement of neglect and cruelty provisions of both the *PAWS Act* and the *Criminal Code of Canada* on Ontario farms.

### **Stifling the Voice of Whistleblowers**

Under the now revoked *Ontario Society for the Prevention of Cruelty to Animals Act* (“OSPCA Act”), the Ontario SPCA employed Inspectors who spent 100 years investigating animal cruelty and neglect in the Province of Ontario. While the Ontario SPCA had the ability to inspect zoos and aquariums, the same was never true for farms. Instead, it relied solely upon complaints from citizens or public authorities.

In many instances, whistleblowers contacted the Ontario SPCA to provide evidence of neglect or cruelty, permitting the Inspectors to then have grounds to enter onto farms to investigate. It is noteworthy that the conduct of a whistleblower is subject to scrutiny by the courts in order to safeguard the rights of farm owners and their employees.

Eyewitness video was key to the successful prosecution of some important cases that not only served to protect animals at risk but encouraged industry-wide improvements to standards and practices. In some cases, prosecutions resulted in re-training of employees to ensure that abusive practices were eliminated. Absent eyewitness video and other supporting evidence provided by whistleblowers, it is unlikely that these cases would ever have seen the light of day. Even if they had been reported, gaining convictions would have been exceedingly difficult without the video evidence.

A good example of the importance of whistleblower evidence is the case against Sprucedale Farm operated by Hybrid Turkeys.

The Ontario SPCA commenced an investigation after receiving a package containing a DVD with approximately six (6) minutes of video footage provided by an employee of Hybrid Turkeys. If Bill 156 had been in force at the time, this employee – a whistleblower – could have been prosecuted.

The video depicted 25 separate alleged incidents of abuse and neglect. Contained in the package was a typed narrative describing the alleged cruelty documented in the video. These acts included the inhumane killing of turkeys on two separate dates and abusive handling of birds during routine procedures. The video also depicted images of sick or injured birds with open wounds, black necrotic tissues, discharge from eyes, some birds unable to stand due to injury or illness and some birds that appeared to have difficulty breathing.



An investigation into the allegations was initially undertaken by both the Ontario SPCA and the Oxford OPP. A coordinated investigation was then established. The sole basis of the investigation was the detailed evidence from the whistleblower.

Hybrid Turkeys was charged with permitting distress to animals in their custody and care, contrary to section 11.2(2) of the *OSPCA Act*. A similar provision is contained in the newly enacted *PAWS Act*.

Hybrid Turkeys pleaded guilty, invested \$250,000 to upgrade equipment and training and received a \$5,600 fine.

Investigators would never have known about the abuses at Hybrid Turkeys had it not been for the whistleblower. Much of the abuse happens behind closed doors. Employees should have the right to whistleblow on their employers without the fear of prosecution and economic ruin. There is an abundance of jurisprudence confirming this right. If whistleblowers are now denied this right, a further barrier will go up making it impossible to ensure that, in the absence of a proper inspection system, some form of investigation can take place.

### **The Trespass to Property Act**

The *Trespass to Property Act* (the “*TPA*”) is an effective tool for addressing the legitimate concerns of farmers: if someone attends on a farm without the permission of the property owner, they are subject to a fine to a maximum of \$10,000. The *TPA* contains very onerous provisions for trespassers. First, the onus is placed upon the defendant (or alleged trespasser) to establish that they attended the property with the consent of the owner or occupier of the property in question. Second, an owner or occupier need only demand that a trespasser leave the property and they must lawfully comply. Third, an owner or occupier may simply place a notice prohibiting a certain class of persons or type of conduct on their property to give effect to the *TPA*. Fourth, an owner or occupier of the premises can either seek the attendance of police to arrest anyone who refuses to leave their property or arrest the trespasser themselves. Fifth, in addition to being liable to a fine of up to \$10,000, the trespasser is liable to a damage award for any damages caused to the owner or occupier of the property without the necessity of bringing a separate lawsuit.

There is no other law required to address the concerns of farmers and to protect their property interests.

### **Bio Security Concerns**

There is no evidence at all that the actions of peaceful protestors or whistleblowers have or will result in any bio-security concerns. The suggestion is that these individuals, otherwise acting lawfully, have or will in some way circumvent bio-security protocols. In our experience investigating complaints of whistleblowers, this has never been an issue. Whistleblowers are typically employees who act lawfully follow the training provided by the employer and adhere to all of their obligations as employees of the farm. They simply see abuse, document it and report it. In fact, whistleblowers are best positioned to report bio-security issues, not create them.



## **Bill 156 is Unconstitutional**

To be clear, the activities that Bill 156 seeks to suppress are (i) lawful protests that do not take place on the property owned by a farmer and (ii) whistleblowing by those who legitimately work on farms. If passed, Bill 156 will significantly impact basic civil liberties by restricting the ability to expose unlawful activities on farms that may identify serious animal welfare issues, workers' rights, food safety and environmental implications, and by interfering with the constitutional right to protest on public roads. Whistleblower protection and the right to protest are in the public interest and reflect fundamental Canadian values.

As drafted, sections 4(6) and 5(2) in particular are unlikely to withstand a constitutional challenge. As Animal Justice, and a number of law school professors have pointed out, many states in the U.S.A. have found similar laws prohibiting entry onto farms under "false pretenses" a violation of the First Amendment right to free speech. In Canada, we enjoy the same rights under section 2(c) of the *Canadian Charter of Rights and Freedoms*. Courts do not permit limits on such rights unless the necessity do so is demonstrably justified by the legislator. There can be no justification as it relates to the offending provisions of Bill 156.

The justification for Bill 156 is seriously flawed and overreaching as much of the bill undermines existing rights and protections while doing nothing substantive to protect food safety or property rights. If, however, the government determines that it will proceed with Bill 156, at the very least, it should be amended to properly comply with the *Canadian Charter of Rights and Freedoms*.

## **Conclusion**

It is the role of government to ensure that all citizens are treated fairly and equally under the law. Legal and thoughtful protest is a vital part of a democracy. Bill 156 proposes to stifle legitimate and important protest. Further, there are gaps in animal welfare legislation. These gaps include the inability to inspect farms to ensure that animals are free from neglect and abuse. Bill 156 proposes to effectively eliminate whistleblowing which, in the experience of the Ontario SPCA, has been an important mechanism for bringing animal neglect and abuse on farms into the light. We ask that Ontario take steps to protect animals and refrain from sending Bill 156 to the floor for a vote.

Yours truly,



Brian Shiller  
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