



**June 9, 2020**

**Standing Committee on General Government  
Room 1405, Whitney Block  
Queen's Park  
Toronto, ON M7A 1A2**

**VIA EMAIL: [comm-generalgov@ola.org](mailto:comm-generalgov@ola.org)**

Dear Standing Committee Members:

**RE: Bill 156, *Security from Trespass and Protecting Food Safety Act, 2020***

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These are the comments of Animal Justice regarding Bill 156, *Security from Trespass and Protecting Food Safety Act, 2020*. Animal Justice has deep concerns that Bill 156 is dangerous “agricultural gag”, or “ag gag”, legislation<sup>1</sup> that will further conceal animal cruelty in the food system, and violates constitutional rights. We urge the government to abandon Bill 156 and instead, enact new laws to protect farmed animals from suffering. At a minimum, Bill 156 requires significant amendments in order to remedy the unconstitutional aspects of the Bill.

## **I. Background**

Animal Justice is Canada’s leading national organization focused on animal law. We advance legal protections for animals by working to strengthen animal protection laws at all levels of government, going to court to ensure animals have a voice in legal proceedings, and educating the public about animal protection issues.

Animal Justice works extensively to protect transparency, and ensure the public has access to accurate information about the myriad ways that animals are used and suffer for human purposes. Most animal suffering and death in Canada takes place at the hands of the animal farming industry, which slaughtered 834 million land animals for food last year alone.<sup>2</sup> Animals confined on Canadian factory farms<sup>3</sup> are subjected to appalling conditions. There are no federal or provincial laws regulating on-farm animal welfare, and no government inspections of farms to assess the well-being of animals. Standard animal farming

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<sup>1</sup> The term “ag gag” refers to legislation that prohibits covert documentation or investigation of conditions in the farming industry. It was made popular by Mark Bittman in a 2011 article in the New York Times.

<sup>2</sup> See: <https://www.animaljustice.ca/blog/canada-slaughtered-834-million-animals-in-2019>

<sup>3</sup> “Factory farm” refers to facilities that raise and slaughter animals using intensive methods, confining pigs, chickens, turkeys, cows, goats, or other animals in confinement indoors under strictly controlled conditions for feeding, growth, and breeding.

practices—even those that cause significant pain—are exempt from Ontario’s general animal protection laws.<sup>4</sup> Standard industry practices that are considered legal include crowding egg-laying hens into battery cages so small that they cannot spread their wings; confining mother pigs in gestation and farrowing crates so small that they cannot turn around; tethering calves to veal crates; taking baby calves away from their dairy cow mothers immediately after birth—causing distress to both mother and baby; and performing painful mutilations without anesthesia, including slicing off the tails of piglets, debeaking hens, and castrating cows and pigs.

During the Committee hearings on June 8, 2020, industry representatives referred to a duty on the part of employees to report animal abuse. There is no such duty at law. The only duty to report contained in the *Provincial Animal Welfare Services Act* applies to veterinarians (s 14).

In other words, animal welfare on farms is almost entirely unregulated, and farms are not subject to public oversight of proactive government inspections to monitor the treatment of animals. The animal farming industry is allowed to make up its own rules, and it polices itself<sup>5</sup>.

Although Animal Justice’s focus is the welfare of animals, it is also important to note the physical and psychological health risks faced by workers at factory farms, including slaughterhouses. These health risks have been subject to significant public debate and discussion in recent months given outbreaks of COVID-19 among workers at slaughterhouses across North America. Furthermore, the COVID-19 pandemic has highlighted the need to prevent the emergence of new zoonotic diseases that can wreak havoc on human populations. Experts have repeatedly identified factory farms as breeding grounds for such diseases in the future, just as they have given rise to deadly forms of bird and pig flu in the past.

It is against this backdrop that Animal Justice opposes Bill 156 in the strongest possible terms. There should be more transparency in animal farming—not less.

## **II. It is unacceptable for Bill 156 to be pushed through the legislative process while the province is in a state of emergency due to a pandemic**

Bill 156 has significant implications for animal welfare, workers’ rights, and public health, as well as Ontarians’ constitutionally protected rights to free expression and peaceful assembly. It is completely inappropriate for the government to push this Bill through the legislative process while the province is in a state of emergency due to the COVID-19 pandemic, with hundreds of new cases of the virus being reported each day. The

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<sup>4</sup> See section 4(c)(ii) of the *Provincial Animal Welfare Services Act, 2019*, SO 2019, c 13.

<sup>5</sup> Although representatives of meat industry commodity groups refer repeatedly in public statements and before the Committee industry representatives to “regular inspections”, there are no government inspections of animal welfare conditions on Ontario farms. Industry representatives are referring to visits done by their own industry commodity organizations, which are not publicly available. Industry commodity organizations have no law enforcement authority.

government should be focused on combatting the pandemic, protecting Ontario's economy, and responding to the serious issues being raised by protests across the province regarding police brutality and systemic racism.

The government passed its motion to send Bill 156 to Committee hearings on June 2, 2020, providing less than 48 hours for interested parties to register to appear by the deadline of June 4, 2020 at 10 am. Hearing participants then learned that Committee hearings would be held in private despite the ease with which hearings taking place electronically via Zoom can be livestreamed. Governments and business worldwide regularly stream meetings and hearings using this technology. The federal Parliament has been doing so since the onset of its virtual sittings. There was no technological barrier to hearings on Bill 156 being streamed.

After public outcry, the first day of the Committee's hearings was made public but the second day of hearings was private. Animal Justice officially reserves the right to submit additional comments in response to submissions made to the Committee on June 9, 2020, once a recording of the hearing or the transcript is made publicly available.

### **III. Bill 156 would punish whistleblowers and further conceal hidden animal cruelty in the farm industry**

Bill 156 is similar to ag gag legislation passed or proposed in multiple U.S. states. Ag gag laws seek to prevent the public from accessing truthful information about the conditions of animals on farms, and protect the financial interests of the farming industry.

Without government regulations or monitoring, animal cruelty on Ontario farms is typically concealed from public view and even the most egregious cases of abuse go undetected and unprosecuted. One of the only opportunities for the public to pull back the curtain and see the truth about farming conditions in Ontario has been when employee whistleblowers bring appalling conditions into the public spotlight. There have been multiple examples of undercover videos revealing horrific abuse on Ontario farms and in slaughterhouses, and whistleblower footage has led to prosecutions and convictions that would not otherwise have taken place. Whistleblower footage from Ontario farms and slaughterhouses has been covered by high-profile media publications and programs, including W5 and Marketplace.

For instance, employee whistleblower footage shot in 2014 showed turkeys being kicked and beaten with shovels, among other disturbing acts, at the Hybrid Turkeys facility in Kitchener. Whistleblower footage in 2018 showed unsanitary conditions and lack of veterinary care at a mink farm near Guelph. In both cases, authorities investigated and laid animal cruelty charges. In the Hybrid Turkeys case, the company pled guilty. In the mink farm case, the charges are still before the courts.

Yet Bill 156 would make a bad situation far worse by punishing employee whistleblowers who expose animal cruelty on farms and in slaughterhouses, instead of punishing those responsible for harming animals. Section 2 of Bill 156 establishes “animal protection zones” at farms, slaughterhouses, and other prescribed premises where farm animals are kept. It increases maximum fines for trespassing in these areas from \$10,000 under the current *Trespass to Property Act* to \$15,000 for a first offence, or \$25,000 for subsequent offences.<sup>6</sup>

Most importantly, consent to enter an animal protection zone is rendered invalid under section 4(6) if it is obtained under “false pretenses.” This is directly aimed at preventing individuals from gaining employment on farms in order to document and publicly expose animal abuse by not disclosing to their employer that they are an investigative journalist or are affiliated with an animal protection group and intend to expose animal cruelty if they witness. Farmers are provided with the authority to arrest any trespassers on their property without a warrant under section 7(1)(d).

This provision would also target an employee who was hired with no plan to film or otherwise expose animal cruelty, but who has signed an employment agreement or non-disclosure agreement prohibiting them from filming or photographing conditions in a facility. If that person later saw animal cruelty or other troubling conditions in the workplace, they could be prosecuted for trespass and subject to significant fines, even for exposing illegal conduct.

Notably, it is not only animal cruelty that would remain hidden. An employee whistleblower could also be prosecuted for revealing unsafe working conditions, or biosecurity hazards that could lead the public health threats. Slaughterhouses are known as one of the most dangerous workplaces, with workers suffering high mental and physical injury rates. The COVID-19 pandemic has exacerbated the existing risks. Canada’s largest COVID-19 outbreaks have been in slaughterhouses, such as the Cargill cow slaughterhouse in High River, Alberta that is responsible for nearly 1,000 infections in workers and at least two deaths.<sup>7</sup> Workers have expressed concern about poor conditions and a lack of personal protective equipment (PPE), and have stated that they do not feel safe on the job. In Ontario, there have been at least 130 documented COVID-19 infections linked to slaughterhouses. Under Bill 156, a worker in an Ontario slaughterhouse who blew the whistle on unsafe or illegal conditions that could spread COVID-19—such as overcrowding or lack of personal protective equipment—could face prosecution, large fines, court costs, and automatic civil liability.

#### **IV. “Animal protection zones” restrict lawful protest and expression in public spaces**

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<sup>6</sup> Note that Ontario’s existing maximum trespassing fine is already higher than other provinces’ trespassing fines. Trespassing in other sensitive areas in Ontario, such as schools, would still be punishable by the \$10,000 maximum set out in the *Trespass to Property Act*.

<sup>7</sup> See: <https://factoryfarmcollective.ca/covid-19/>

Bill 156 provides that farms and slaughterhouses where farmed animals are kept are “animal protection zones” into which citizens are prohibited from entering without permission. The government is empowered to prescribe additional premises by regulation as animal protection zones, leaving the door open to restrictions on virtually any area where animals used for farming are kept. The wide scope of this provision is troubling and opens the door to this section being used to further restrict lawful protest.

For example, section 4(4) prohibits a person from “interacting” with an animal in an animal protection zone. This provision is troublingly broad, and could cover a person who is lawfully on their own property or public property that happens to be next to an animal protection zone. If that person speaks across a fence to animals in the animal protection zone, photographs them, allows an animal to nuzzle their hand, or provides animals with food or water—even if the animals are suffering from thirst or hunger—they could be prosecuted.

At the hearings before the Standing Committee on General Government on June 8, 2020, Niagara-on-the-Lake horse carriage operator Laura Sentineal testified that she would request that the government use this provision to create an animal protection zone around her horse carriages, which operate in public spaces. Individuals opposed to the use of horses for carriage rides regularly engage in lawful protest and exercise their rights to express themselves regarding the use and treatment of horses by Ms. Sentineal’s business.

The ability of the government to create additional animal protection zones, even on public property, is troubling and raises constitutional issues which will be addressed later in this submission.

#### **V. Bill 156 restricts lawful protest outside slaughterhouses**

Bill 156 would also interfere with lawful protest activities outside slaughterhouses. Section 5 makes it an offence to stop a truck transporting farmed animals to slaughter, or even to “interact” with animals in such a truck—even on public property. This provision appears directly targeted at citizens involved in the Save Movement—a coalition of groups that bears witness to the transport of farmed animals for slaughter. Members of the Save Movement gather outside slaughterhouses to peacefully witness animals inside transport trucks in their final moments, and gather footage of their suffering to share with the world and convey a political message that slaughtering animals for food is morally problematic. Members of the Save Movement also frequently witness violations of Canada’s animal transport regulations inside trucks, such as overcrowding; sick, injured and bleeding animals; dead and dying animal; animals suffering from heat exhaustion and frostbite; and animals suffering from food and water deprivation.

Bill 156 restricts individuals’ ability to peacefully gather on public property near trucks transporting animals to slaughter. The prohibition against interacting with animals in transport trucks is vague and extremely broad, and could capture speaking to animals,

touching them, photographing or filming the conditions they endure, or providing them with water—even on a hot day, and even if they are suffering from extreme thirst.

Save Movement founder Dr. Anita Krajnc received international attention when she was charged with criminal mischief for giving water to a pig in a transport truck on a hot day. Following her highly publicized trial she was acquitted. Bill 156 appears to be an attempt by the farming industry at retribution for this acquittal.

## **VI. Bill 156 is an unconstitutional “ag gag” bill**

As explained in further detail below, as drafted, Bill 156 violates sections 2(b) and (c) of the *Canadian Charter of Rights and Freedoms* (“the *Charter*”) as it unlawfully restricts freedom of expression, freedom of the press, and freedom of peaceful assembly.<sup>8</sup>

By prohibiting individuals from seeking employment to expose illegal and unethical animal cruelty, workplace safety issues, and filthy conditions, Bill 156 would silence investigative journalists and whistleblowers and shut down open debate and discussion that is essential in a free and democratic society. The right to freedom of expression includes expression that gives the public, including consumers, access to information that would enable them to make informed food purchasing choices.<sup>9</sup> Whistleblowers play an important role in exposing troubling practices on farms, and exposés are in the public interest as they foster an open dialogue about animal use practices, workplace conditions, and food safety.

Prohibiting individuals from lawfully protesting on public property outside slaughterhouses violates freedom of expression, as well as freedom of assembly as protected under section 2(c) of the *Charter*.

Prohibiting individuals from interacting with animals is unacceptably vague and broad, and further restricts free expression. As noted above, interactions on public property enable the dissemination of information and are protected by section 2(b) of the *Charter*.

In the United States, courts have struck down laws similar to section 4(6) of Bill 156 on the basis that laws restricting or prohibiting whistleblowing activities on farms violate the First Amendment right to free speech. For instance, the U.S. District Court in Utah found misrepresentations made to gain access to an agricultural facility can be protected under the First Amendment and a law prohibiting access to such facilities under “false pretenses” was overly broad and therefore unconstitutional.<sup>10</sup> In December 2019, the U.S. District Court in Iowa granted a preliminary injunction enjoining the state from enforcing its most recent ag gag law in light of the public interest in allowing people and

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<sup>8</sup> Constitutional concerns regarding Bill 156 were set out in a February 6, 2020 letter to the Attorney General and Minister of Agriculture from 43 Canadian constitutional and criminal law experts. That letter is enclosed for the Committee’s review.

<sup>9</sup> *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199.

<sup>10</sup> *Animal Legal Defense Fund et al. v Herbert et al.* 263 F. Supp. 3d 1193, 1196-98 (D. Utah 2017) (Case No. 2:13-cv-00679-RJS).

organizations to exercise First Amendment rights and educate the public about important animal welfare and food safety issues.<sup>11</sup>

It is in the public interest for employees to expose unlawful and unethical activity, even when doing so requires not revealing their full intentions to their employer. Therefore, dishonest speech in these circumstances is protected by the American First Amendment. It is similarly protected under section 2(b) of the *Charter*.

Section 5(2) of Bill 156 would unreasonably curtail rights to protest on public property in violation of sections 2(b) and (c) of the *Charter*. In an open democratic society, streets and other public places are an important place for public discussion and political expression.<sup>12</sup> Protecting rights to protest on public property is critically important to safeguard freedom of expression, and its corollary, the right to listen.

The multiple ways that Bill 156 violates the *Charter* cannot be saved by section 1 of the *Charter*. The government's stated objective in introducing Bill 156 is to prevent trespass on private property, protect biosecurity on farms, and protect the food supply. Yet the constitutionally-suspect provisions in Bill 156 have no connection to these stated goals. For example, the government has failed to explain why a whistleblowing employee, who is lawfully employed at a farm or slaughterhouse, follows all the rules of employment and biosecurity, yet films and exposes animal cruelty poses any risk to biosecurity or the food supply. U.S. courts have explicitly rejected government arguments that ag gag laws are necessary or have any connection to protecting food safety or biosecurity. If anything, Bill 156 makes biosecurity on farms worse, as it will stop whistleblowers from exposing filthy conditions that could lead to pathogens, viruses, bacterial infections, or other public health threats. Confining thousands of genetically-similar animals in crowded barns creates the perfect breeding grounds for deadly viruses like swine flu and bird flu. Although COVID-19 likely emerged from a wild animal market in China, a deadly virus could easily emerge from a factory farm in Canada. Preventing whistleblowers from exposing biosecurity concerns makes the public less safe from the public health threats posed by animal farms.

In the U.S., ag gag laws have now been struck down in Idaho, Utah, Iowa, and Kansas, with constitutional challenges pending in North Carolina and Arkansas. If passed, Bill 156 will inevitably be challenged as well.

The true intent behind bill 156 is further belied by section 20, which creates a two-year limitation period for pursuing offences. The two-year clock will start to run from the day on which the offence was committed or, troublingly, two years after the day on which evidence of the offence came to the attention of a police officer. That is, if an investigative journalist or employee whistleblower were to make a video or photograph taken covertly

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<sup>11</sup> *Animal Legal Defense Fund et al. v Kimberly Reynolds et al.* (Case 4:19-cv-00124-JEG-HCA).

<sup>12</sup> *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, [2009] 2 SCR 295 at paras 42-47, 77; *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 SCR 141 at paras 61, 67; *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139 at 150.

at a farm or slaughterhouse public, they could be prosecuted for trespass under “false pretenses” two years after the date of public release. This extension of the time for pursuing an offence is not rationally connected to protecting biosecurity or private property and appears designed to deter whistleblowing activities in the agricultural sector.

## **VII. Bill 156 would turn farmers into a private police force**

Bill 156 explicitly empowers farm and slaughterhouse owners / occupiers to arrest individuals whom they decide have trespassed onto property, including those deemed to be there under false pretences. Although the existing *Trespass to Property Act (TPA)* contains a similar citizen’s arrest provision, Bill 156 goes much further by asking farm or slaughterhouse owners or occupiers to interpret the complex provisions of Bill 156 involving false pretence. Under the *TPA*, trespass is a relatively straightforward question. Under Bill 156, determining a trespass or other violation of provisions against “interacting” with animals is not a straightforward analysis.

Yet farm and slaughterhouse owners and occupiers are being empowered to make determinations as to whether an offence has been committed, and deprive the liberty of other individuals by effecting a citizen’s arrest. The Bill then prohibits persons from attempting to interfere with an arrest being carried out by the owner or occupier of a farm or animal protection zone (s 11). Cumulatively, these provisions could cause already heated situations of conflict between farmers and animal advocates to escalate quickly and unnecessarily.

As noted multiple times during debates on the Bill and the Standing Committee hearings, the first legal proceedings to arise out of Bill 156 could very well be suits against farmers for unlawful arrest, rather than cases against animal advocates.

## **VIII. Proposed amendments**

Animal Justice urges the government to scrap Bill 156 in its entirety. Even the provisions that do not clearly violate the *Charter* are overly punitive, inappropriately extend police powers to private citizens, and appear to be designed to conceal animal cruelty and protect the profits of the farming industry, which risks losing support when it is exposed for acts of abuse and cruelty against farmed animals. Other aspects of the Bill are redundant (e.g. Ontario already has some of the strongest trespassing fines in the country). Finally, it is notable that despite the stated intention of the bill to protect biosecurity, it contains no provisions aimed at this objective, similar to those contained in the federal Bill C-205.

At a minimum, the legislation should be amended to remove the provisions that are clearly unconstitutional, including:

- deleting the prohibition on s. 4(4) on interacting with animals in an animal protection zone;

- deleting the prohibitions under s. 4(6) that makes it a trespass to access an animal protection zone under false pretences;
- deleting the prohibition under s. 5(1) on protesting on public property;
- deleting the prohibition under s. 5(2) on interacting with animals on trucks who are bound to slaughter;
- deleting the prohibition under s. 5(4) on gaining permission to interact with animals on transport trucks using false pretences; and
- deleting section 7(3), which makes it an offence to provide information that misleads another private citizen.

Animal Justice appreciates the opportunity to comment on the proposed changes and hopes the Standing Committee on General Government will take the concerns highlighted in this submission into consideration in respect of the proposed changes.

Instead of passing unconstitutional legislation at the behest of powerful farm industry interests, we urge you to scrap Bill 156 and instead take immediate action to legislate rules for the protection of farmed animals, and develop oversight and transparency for farms. Ultimately, if the government is concerned about citizens trespassing on farms, it should address the root cause of these trespasses in order to prevent their occurrence, including the lack of regulation and oversight of animals on farms. The public is experiencing a crisis of confidence in the animal farming system, and attempting to shut down lawful protest and publicity, instead of addressing the poor conditions on farms, will not resolve these concerns.

Governments have a responsibility not merely to protect profits of industries, but to act in the public interest and protect the vulnerable—including animals, who are some of the most vulnerable members of our society.

Please do not hesitate to contact me if you should have any questions or wish to discuss this matter further. I can be reached directly at 613-292-8360 or by email at [camille@animaljustice.ca](mailto:camille@animaljustice.ca).

Yours sincerely,



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