

February 6, 2020

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720 Bay Street, 11th Floor
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Honourable Ernie Hardeman
Ministry of Agriculture, Food and Rural Affairs
77 Grenville St., 11th Floor
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Dear Ministers,

Re: Bill 156, *Security from Trespass and Protecting Food Safety Act, 2019*

We the undersigned Canadian law professors and constitutional and criminal law experts write to express our concerns with Bill 156, *Security from Trespass and Protecting Food Safety Act, 2019* (“**Bill 156**”). Aspects of the Bill would infringe individuals’ rights to freedom of expression and peaceful assembly, and therefore violate the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

Bill 156 increases fines for trespassing on agricultural property. In an effort to muzzle employee whistleblowers, it also makes it an offence to gain access to a farm under “false pretenses”. Owners of farm property are given significant powers to arrest individuals on their property. The Bill also restricts individuals’ ability to peacefully gather on public property near trucks transporting animals to slaughter.

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. These laws are commonly known as “agricultural gag (ag-gag) laws”. For instance, the US 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.¹ In December 2019, the US 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 organizations to exercise First Amendment rights and educate the public about important animal welfare and food safety issues.²

Until November 2019, there were no ag-gag laws in Canada. Alarmingly, Alberta recently passed such a law after hurrying it through the legislative process in just 10 days. Now, Ontario is proposing to follow suit with Bill 156.

Fundamentally, section 2(b) of the *Charter* is aimed at promoting and safeguarding the open debate and discussion essential to a free and democratic society.³ The right to freedom of

¹ *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).

² *Animal Legal Defense Fund et al. v Kimberly Reynolds et al.* (Case 4:19-cv-00124-JEG-HCA).

³ *Irwin Toy Ltd. v. Québec (Attorney General)*, [1989] 1 SCR 927 at 976.

expression includes expression that gives the public, including consumers, access to information that would enable them to make informed food purchasing choices.⁴

Whistleblowers have long played a vital role in exposing animal cruelty, unsafe working conditions, and environmental problems on industrial farming operations. Such exposés are in the public interest, promoting an open dialogue about animal use practices and food safety. Ag-gag laws can also adversely affect industry by eroding public confidence in the food system.⁵

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, and even offensive, speech in these circumstances is protected by the American First Amendment. It is similarly protected under section 2(b) of the *Charter*.

As with many US ag-gag laws, section 4(6) of Bill 156 appears to target investigative journalists and protected speech, and has no connection to the stated goal of protecting property and biosecurity. It would insulate private actors from being held publicly accountable. Section 5(2) would unreasonably curtail rights to protest on public property. In an open democratic society, streets and other public places are an important place for public discussion and political expression.⁶ Protecting rights to protest on public property is critically important to safeguard freedom of expression, and its corollary, the right to listen.

Whistleblowers play a major role in shaping public opinion and policies around agricultural practices. If Bill 156 is passed as-drafted, it would effectively cut off an important source of public information and a driver of policy change. It would silence journalists and those who advocate for animal protection by exposing the abuse of animals at agricultural facilities and violate their *Charter* rights to freedom of expression. We urge the Government of Ontario to amend Bill 156 and respect the basic constitutional rights of its citizens.

Yours truly,
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⁴ *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199.

⁵ See, e.g., “Awareness of ag-gag laws erodes trust in farmers and increases support for animal welfare regulations”, J.A. Robbins, B. Franks, D.M. Weary, M.A.G. von Keyserlingk, *Food Policy* 61 (2016) 121-125.

⁶ *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.

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