

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANIMAL JUSTICE, JESSICA SCOTT-REID and LOUISE JORGENSEN

Applicants

- and -

ATTORNEY GENERAL OF ONTARIO

Respondent

- and -

**ANIMAL ALLIANCE OF CANADA, CENTRE FOR FREE EXPRESSION
AND REGAN RUSSELL FOUNDATION**

Interveners

**FACTUM OF THE RESPONDENT,
ATTORNEY GENERAL OF ONTARIO**

October 6, 2023

ATTORNEY GENERAL OF ONTARIO

Civil Law Division

Constitutional Law Branch

720 Bay Street, 4th Floor

Toronto, ON M7A 2S9

Robin Basu, LSO#: 32742K

Tel: 416.995.5249

Email: robin.basu@ontario.ca

Yashoda Ranganathan, LSO#: 57236E

Tel: 647.637.0883

Email: yashoda.ranganathan@ontario.ca

Elizabeth Guilbault, LSO#: 83208O

Tel: 437.244.4293

Email: elizabeth.guilbault@ontario.ca

Counsel for the Respondent, Attorney
General of Ontario

TO: REGISTRAR
Superior Court of Justice
330 University Avenue
Toronto, ON M5G 1R8

AND TO: STOCKWOODS LLP
TD North Tower
77 King Street West, Suite 4130
Toronto, ON M5K 1H1

Andrea Gonsalves, LSO#: 52532E
Tel: 416.593.3497
andreag@stockwoods.ca

Fredrick Schumann, LSO#: 59377L
Tel: 416.593.2490
fredricks@stockwoods.ca

ANIMAL JUSTICE
720 Bathurst St.
Toronto ON M5S 2R4

Kaitlyn Mitchell, LSO#: 55912J
Tel: 647.746.8702
kmitchell@animaljustice.ca

Scott Tinney, LSO#: 78160W
Tel: 416.720.8681
stinney@animaljustice.ca

Counsel for the Applicant, Animal Justice

AND TO: BEDDOES LITIGATION
Suite 1700, 808 Nelson Street
Vancouver, BC V6Z 2H2

Arden Beddoes, LSO#: 62108W
Tel: 604.248.4744
arden@beddoeslitigation.com

Counsel for the Applicants, Jessica Scott-Reid and Louise Jorgensen

AND TO: NICOLAS M. ROULEAU PROFESSIONAL CORPORATION
41 Burnside Dr.
Toronto ON M6G 2M9

Nicolas M. Rouleau, LSO#: 54515D
Tel: 416.885.1361
Fax: 1.888.850.1306
rouleaun@gmail.com

Vibhu Sharma, LSO#: 70130V
Tel: 647.668.3072
sharmavibhu@outlook.com

Counsel for the Intervener, Animal Alliance of Canada

AND TO: ST. LAWRENCE BARRISTERS PC
33 Britain Street
Toronto, ON M5A 1R7

Alexi N. Wood, LSO#: 54683F
Tel: 647.245.8283
alexi.wood@stlbarristers.ca

Lillianne Cadieux-Shaw, LSO#: 74936H
Tel: 647.245.3122
lil.cadieux.shaw@stlbarristers.ca

Nicky (Yujeong) Kim, LSO#: 85526C
Tel: 647.245.0124
nicky.kim@stlbarristers.ca

Counsel for the Intervener, Centre for Free Expression

AND TO: RUBY SHILLER ENENAJOR DIGIUSEPPE BARRISTERS
171 John Street, Suite 101
Toronto ON, M5T 1X3

Tel: 416.964.9664
Fax: 416.963.8305

Stephanie DiGiuseppe, LSO#: 60065J
sdigiuseppe@rubyshiller.com

Heather Gunter, LSO#: 85466L
hgunter@rubyshiller.com

Counsel for the Intervener, Regan Russell Foundation

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LIST OF ABBREVIATIONS

AR – Application Record of the Applicant

AF – Applicants Factum

Aff – Affidavit

Ans-UTA – Answers to Undertakings of the Applicant

Ans-UTR – Answers to Undertakings of the Respondent

Cr-x – Cross-examination

Exh – Exhibit

Exp Rep – Expert Report

fn – Footnote

JTB – Joint Transcript Brief

p – Page

¶ – Paragraph

q – Question

R BoA – Respondent’s Book of Authorities

RR – Record of the Respondent

Supp Exp Rep – Supplementary Expert Report

T – Tab

V – Volume

Respondent’s Witnesses

Bollert – Clarence Robert Bollert

Boogerd – Dirk Boogerd

Bouilly – Pascal Bouilly

Currie – Keith Currie

Hyndman – Jeff Hyndman

Respondent’s agricultural witnesses

Lyons – Jason Lyons

McDowell – Jeff McDowell

Parkinson – Edward Parkinson

Picanco – Lidia Picanco

Schwindt – Eric Schwindt

Jutzi – Tyler Jutzi

Koch – Michael Koch

Respondent’s agricultural witnesses

Respondent’s agricultural transportation witnesses

Atkinson – Priscila Atkinson (Respondent’s witness from Constitutional Law Branch)

Duff – Scott Duff (Respondent’s witness from the Ministry of Agriculture, Food, and Rural Affairs)

Fthenos – Georgios Fthenos (Respondent’s witness from Animal Welfare Services)

Eaman – Ross Eaman (Respondent’s expert witness on the history of journalism)

Fitzgerald – Susan Fitzgerald (Respondent’s expert witness on biosecurity and safety in agricultural transportation)

Friendship – Dr. Robert Friendship (Respondent’s expert witness on animal health and welfare and biosecurity and food safety concerns on animal agricultural farms)

Shapiro – Ivor Shapiro (Respondent’s expert witness on the definition of journalism)

Applicant’s Witnesses

Beal – Cindy Beal (Applicant’s witness from Last Chance for Animals)

Cribb – Robert Cribb (Applicant’s expert witness on journalism)

Harris – Moira Harris (Applicant’s expert witness on standards of animal welfare)

Labchuk – Camille Labchuk (Applicant’s witness from Animal Justice)

Jorgenson – Louise Jorgenson (Applicant and animal activist)

Scott-Reid – Jessica Scott-Reid (Applicant and journalist)

Acronyms and short forms

Act – *Security from Trespass and Protecting Food Safety Act, 2020, SO 2020, c 9*

Regulation – O Reg 701/20

Bill 156 – Bill 156, An Act to protect Ontario’s farms and farm animals from trespassers and other forms of interference and to prevent contamination of Ontario’s food supply

TPA – Trespass to Property Act

PAWS Act – Provincial Animal Welfare Services Act, 2019, SO 2019, c 13

POA – Provincial Offences Act, RSO 1990, c P33

Hansard short form

Bill 156, 3rd reading – Bill 156, 3rd reading, *House of Commons Debates* 42-1, No 167 (June 16, 2020)

PART I – OVERVIEW

1. The Application impugns the *Security from Trespass and Protecting Food Safety Act*, 2020, SO 2020, c 9 and Regulation 701/20. The Application should be dismissed. The Act is not an “ag-gag” law. It does not impede expression by activists, journalists or anyone else, nor does it otherwise breach the *Charter*. It protects animals and people from harm and the integrity of the food supply from biosecurity risks by restricting access to and interaction with private property.
2. The Act secures against unlawful trespass on livestock farms (s. 5(1)), slaughterhouses (s. 5(2)), and animal auctions, shows and competitions (Regulation, s. 6). It prohibits interference or interaction with animals on such premises (s. 5(4)). Consent to trespass or to interact with an animal obtained by duress or false pretences is deemed by the Act to invalidate consent ((ss. 5(6) and 6(4)), subject to an exception for journalists and whistle-blowers set out in the Regulation (ss. 11-12), such that their false statements *do not* invalidate consent, provided certain conditions are met. Finally, the Act protects animal transport from interference by people who obstruct vehicles (s. 6(1)) or interfere or interact with transported animals without consent (s. 6(2)).
3. The Applicants claim that s. 6(2)’s prohibition on *interacting* with farm animals in transport or on premises violates a *Charter* s. 2(b) right to “bear witness” to animals going to slaughter. In addition to impeding motor vehicles, protestors outside slaughterhouses have interfered or interacted with farm animals in trucks by touching or dousing them with or offering fluids. Contrary to the Applicants’ claim, s. 2(b) does *not* embrace a right to conscript private property (including animals) belonging to others in expressive efforts. In any event, given the safety risks of proximity to trucks, the risk of alarming or injuring animals and the need to secure the food supply from potential contamination, the Act’s restrictions on interaction are justified under *Charter* s. 1. The Applicant’s s. 2(c) claim is properly disposed of for the same reasons.
4. The Applicants allege the provisions that deem false pretences to invalidate consent to

trespass or interact with animals violate a claimed s. 2(b) right to lie to a prospective employer to gain access to premises for an “undercover” operation. The Act does not prohibit or punish false statements standing alone; rather, it only imposes legal consequences for unlawful trespass upon, or unlawful interference/interaction with, private property *achieved by means of false statements* (or duress). While s. 2(b) can protect lies, albeit as “low value” expression, it does not immunize the liar from the legal consequences of otherwise wrongful conduct (e.g., trespass) achieved by means of the lie. Lies by an individual to a prospective employer, privately communicated, to induce the employer to hire the individual are also outside the scope of s. 2(b) protection.

5. The Regulation’s exceptions for journalists and whistle-blowers protect journalists’ ability to covertly obtain information on conditions on farms and in slaughterhouses and the ability of whistle-blower employees, including “undercover” activists, to expose animal abuse.

6. In any event, given the pressing need to secure livestock from biosecurity risks, and protect animals and people from other potential harms caused by trespassers, the restrictions on trespass and interference/interaction with animals are justified under *Charter* s. 1.

7. The Applicants impugn the duty of a trespasser to provide their actual name/address, if requested, on the basis of a s. 2(b) right to lie or not speak. This requirement is justified under s. 1, as the inability to obtain this information would frustrate civil and penal process.

8. The power of warrantless citizen’s arrest and the onus on a defendant to prove consent are constitutional. Binding authority has already upheld equivalent provisions in the *Trespass to Property Act*, RSO 1990, c T.21 (*TPA*) and *Provincial Offences Act*, RSO 1990, c P.33 (*POA*).

PART II – FACTS

A. The impugned Legislation protects against biosecurity risks, harm to animal and human health, and increases safety around animal transport trucks

9. The purpose of the impugned Legislation, enacted with all party support, is to:

- deter trespass on defined areas of farms, slaughterhouses and other prescribed premises (animal auctions, shows, competitions) – more particularly defined in the Regulation as “animal protection zones,”¹
- protect the biosecurity of Ontario’s livestock and food supply, and
- increase safety around animal transport trucks.²

10. The Legislation guards against the specific harms that can arise from trespass on animal protection zones and interference with animals in transport, including risks to: (i) biosecurity; (ii) animal health and safety; (iii) health and safety of farmers and their families; and (iv) road and pedestrian safety. The Legislation enhances the protection for animal protection zones that was available under the *TPA*,³ which, along with the common law, restricts access to private property.

(i) Trespass on animal protection zones raises biosecurity risks

11. Biosecurity is a matter of pre-eminent concern in modern agriculture, particularly for livestock. The largest biosecurity risk is the introduction of diseases that can cause widespread sickness and death.⁴ The very contagious nature of many diseases means they can spread easily within a farm and farm to farm when biosecurity measures are not followed.⁵ Pathogens can enter farms or trucks on boots, clothing, other objects, or by way of items ingested by animals.⁶

12. Diseases can have devastating effects. The discovery of one case of mad cow disease in Alberta led to a 33% plunge in Canadian farm cash receipts from cattle in 2003.⁷ The introduction of a disease can require quarantine to control the spread or culling an entire herd or

¹ Regulation, [s 3](#)

² Act, [s 1](#); Bill 156, 3rd reading (Hon Hardeman; Mr. Pettapiece), RR, V10, T20L, p3050, 3070

³ Act, [s 5\(8\)](#)

⁴ Friendship Exp Rep, RR, V5, T9, Exh C, p1434

⁵ Bollert Aff, RR, V1, T2, p95-96, ¶23-26; Friendship Cr-x, JTB, V3, T10, p1141, q319-20; Currie Aff, RR, V3, T5, p803, ¶12

⁶ Friendship Exp Rep, RR, V5, T9, Exh C, p1434

⁷ Statistics Canada, “Study: Potential impact of mad cow disease on farm family income” (18 June 2004, online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/040618/dq040618c-eng.htm>>

flock. If the disease spreads from the farm, it can cause a shutdown of a whole region of farms.⁸ Recent outbreaks of Avian Flu, for example, have impacted millions of Canadian birds.⁹

13. The introduction of a disease like African Swine Fever to a farm can cause massive herd losses, would close Ontario's significant export market and result in substantial losses.¹⁰

Ontario's pork industry makes a significant contribution to the food sector, marketing 5.8 million hogs yearly, creating 15,339 full-time equivalent jobs and \$2.7 billion in annual value.¹¹ Exports are significant, with 60% of pork products exported internationally to markets with stringent quality and safety requirements, such as Japan. Ontario pork is highly sought after and valued in such markets because of Ontario's quality, food safety and traceability standards.¹² An importing country finding a contaminant in Ontario pork would be likely to stop further purchases.¹³

14. Even diseases which do not threaten food safety (e.g., pork reproductive and respiratory syndrome or porcine epidemic diarrhea) can result in high herd losses.¹⁴ Such diseases are easily transmitted when biosecurity measures are not followed. Some viruses spread directly between humans and animals.¹⁵ With COVID-19, the risk of human/mink transmission necessitated new biosecurity measures (e.g., protective equipment and sanitizing procedures).¹⁶

⁸ Currie Aff, RR, V3, T5, p803-4, ¶13; Currie Cr-x, JTB, V2, T6, p657-58, q65; Bollert Aff, RR, V1, T2, p95, ¶25

⁹ Government of Canada, "Status of ongoing avian influenza response by province" (28 Sept 2023), online: <<https://inspection.canada.ca/animal-health/terrestrial-animals/diseases/reportable/avian-influenza/latest-bird-flu-situation/status-of-ongoing-avian-influenza-response/eng/1640207916497/1640207916934>>

¹⁰ Schwindt Aff, RR, V8, T18, p2128, ¶33 and Exh E, p2259-63; Friendship Exp Rep, RR, V5, T9, Exh C, p1434-35

¹¹ Schwindt Aff, RR, V8, T18, p2124, ¶18 and Exh B, p2174

¹² Schwindt Aff, RR, V8, T18, p2124, ¶20

¹³ Friendship Exp Rep, RR, V5, T9, Exh C, p1441

¹⁴ Friendship Cr-x, JTB, V3, T10, p1086-88, q82, 85, 87-89; Friendship Exp Rep, RR, V5, T9, Exh C, p1436-38

¹⁵ Friendship Exp Rep, RR, V5, T9, Exh C, p1434-35; Bollert Aff, RR, V1, T2, p95-96, ¶20, 27

¹⁶ Bollert Cr-x, JTB, V1, T2, p179, q269

15. Biosecurity measures are implemented at farms/facilities and for transporting livestock to reduce the risk of livestock being harmed (e.g., by viruses, bacteria, fungi, parasites, etc.) and maintain the integrity of the food supply for domestic and export markets. They also aim to prevent the spread of disease/contaminants within an operation or to other farms.¹⁷

16. Industry organizations, such as the National Farm Animal Care Council (“NFAACC”), have developed biosecurity best practices.¹⁸ Employees of farm and livestock operators receive training in best practices, regardless of their role or level of contact with animals.¹⁹ Biosecurity protocols also govern visitors to farms, including transport contractors and veterinary staff.²⁰

17. Direct trespassers on farms or people who interact with animals in transport trucks do not know and do not follow biosecurity protocols.²¹ When trespassers fail to abide by biosecurity measures it risks spreading disease already present on a farm.²² Videos taken by groups

¹⁷ Bouilly Aff, RR, V3, T4, Exh F, p598; Friendship Cr-x, JTB, V3, T10, p1145-46, q337-39

¹⁸ Bollert Aff, RR, V1, T2, Exh E, p125, *National Farm-Level Mink Biosecurity Standard Producers’ Guide*; Boogerd Aff, RR, V2, T3, Exh A, p228, *National Farm-Level Biosecurity Standard for the Goat Industry*; Bouilly Aff, RR, V3, T4, Exh A, p487, *Code of Practice for the Care and Handling of Veal Cattle*; Bouilly Aff, RR, V3, T4, Exh F, p591, *Livestock On-Farm Biosecurity Information Guide*; Bouilly Aff, RR, V3, T4, Exh G, p662, *Verified Veal: The Canadian On-Farm Food Safety Program for Veal*; Hyndman Aff, RR, V6, T11, Exh E, p1830, *Biosecurity for Canadian Dairy Farms National Standard*; Schwindt Aff, RR, V8, T18, Exh C, p2176, *Code of Practice for the Care and Handling of Pigs*; Schwindt Aff, RR, V8, T18, Exh F, p2265, *National Swine Farm-Level Biosecurity Standard*; Ans-UTR, JTB, V9, T27D, p3289, *Canadian Pork Excellence Manual*

¹⁹ Currie Cr-x, JTB, V2, T6, p662-63, q81-83; Parkinson Cr-x, JTB, V7, T21, p2600, q256; Jutzi Cr-x, JTB, V4, T15, p1672-74, q101-11; Hyndman Aff, RR, V6, T11, p1482, ¶28; Hyndman Cr-x, JTB, V4, T13, p1532-33, q447-51

²⁰ Friendship Exp Rep, RR, V5, T9, Exh C, p1439-40; Fitzgerald Exp Rep, RR, V5, T8, Exh C, p1258-59; Bollert Aff, RR, V1, T2, p97-98, ¶32; Jutzi Aff, RR, V7, T12, p1887-88, ¶15; McDowell Aff, RR, V7, T15, p2049, ¶6; Parkinson Aff, RR, V7, T16, p2080-81, ¶19; McDowell Cr-x, JTB, V6, T20, p2528, q20

²¹ Bollert Aff, RR, V1, T2, p98, ¶33; Boogerd Aff, RR, V2, T3, p223, ¶30; Bouilly Aff, RR, V3, T4, p474, ¶14; Currie Aff, RR, V3, T5, p804, ¶17; Hyndman Aff, RR, V6, T11, p1481, ¶24; Schwindt Aff, V8, T18, p2129-30, ¶38; McDowell Cr-x, JTB, V6, T20, p2528, q19

²² Friendship Exp Rep, RR, V5, T9, Exh C, p1435-36, 1444

trespassing on farms show trespassers who do not wear (or constantly remove) masks, do not wear farm-dedicated clothing or shoes, and do not change their clothes and shoes when moving from one area to another (as is often required by biosecurity protocols).²³ In one example, trespassers took close-range photos of deadstock bins before moving to other areas of the farm. This poses a significant risk of pathogen spread. Deadstock is legally required to be segregated.²⁴

18. Trespassers who slip into a farm at night – whether for mere mischief or, as activists, seeking to document animal welfare issues or husbandry practices to which they object – have been known to roam around and alarm and release animals without regard to biosecurity.²⁵ Meanwhile activists who gain access to a farm “undercover” on false pretences as new hires may be trained by the operator on the farm’s biosecurity protocols, but have little incentive to comply, since their purpose on the farm is not to maintain their employment. Cross-examination of Animal Justice’s affiant disclosed that her assertion that undercover operatives placed on farms abide by the rules established by the operator was hearsay and very thinly sourced (almost entirely from just two experiences with undercover operations).²⁶ Animal Justice has no training material for its undercover operatives on compliance with employer rules and expectations, has no written agreements with its undercover operatives and relies only on an unwritten “policy” that they will comply with farm rules. Nor is there any standard of practice published by any animal advocacy group for undercover investigations.²⁷

²³ Parkinson Aff, RR, V7, T16, p2081, ¶¶21-22 and Exh D, p2098; Bollert Aff, RR, V1, T2, p98-99, ¶34 and Exh H-I, p203, 206

²⁴ Schwindt Aff, RR, V8, T18, p2129-30, ¶38-39 and Exh G, p2295; [O Reg 106/09](#)

²⁵ Bollert Aff, RR, V1, T2, p89-91, ¶9-14; Currie Aff, RR, V3, T5, p805, ¶19-20; Parkinson Aff, RR, V7, T16, p2081, ¶21-22 and Exh D, p2098

²⁶ Labchuk Aff June 30 2021 [1st Labchuk Aff], AR, V1, Tab B, p94, ¶155; Labchuk Cr-x, JTB, V6, T17, p2131-88, q498-703

²⁷ Labchuk Cr-x, JTB, V6, T17, p2153, 2187-88, q561-63, 697-703

19. With respect to interfering/interacting with transported animals, it may be contended that such activities pose no risks if an activist merely douses or provides animals in transport with fresh water (as a court found in dismissing a charge of mischief).²⁸ Animal welfare and biosecurity measures, however, cannot assume the benign intentions of such individuals.

(ii) Trespass poses other risks to animal health and safety

20. Trespass and interference with farm animals also pose other health and safety risks to farm animals. Trespassers may startle or frighten animals, causing them stress.²⁹ The noise and proximity of protestors beside animal transport trucks, sometimes going so far as to place their hands or arms into the trucks and touch the animals, can be similarly stressful for animals.³⁰ Stress can lead to several negative health outcomes for farm animals. Startled or frightened animals may become physically ill.³¹ They may stampede, risking injury or death to themselves or people.³² Frightened animals may also produce less (e.g., milk from dairy cows).³³

21. Undercover operatives have also caused or allowed harm to animals. The evidence shows that undercover operatives can neglect their duties. Since they are taking videos of animals for later release, they do not immediately report animal welfare issues to management.³⁴

22. Further, the evidence shows that undercover operatives may abandon their duties entirely once their covert goals are achieved, without regard for the impact this may have on the animals or the farmers who hire them. In one instance, an undercover operative agreed to work on

²⁸ *R v Krajnc*, [2017 ONCJ 281](#)

²⁹ Boogerd Aff, RR, V2, T3, p223, ¶31; Bouilly Aff, RR, V3, T4, p474, ¶15; Currie Aff, RR, V3, T5, p804, ¶18; McDowell Aff, RR, V7, T15, p2049, ¶7; McDowell Cr-x, JTB, V6, T20, p2529, q22-23; Hyndman Aff, RR, V6, T11, p1481, ¶25

³⁰ Fitzgerald Exp Rep, RR, V5, T8, Exh C, p1267; Jutzi Aff, RR, V7, T12, p1892-93, ¶34-35

³¹ Bouilly Aff, RR, V3, T4, p474, ¶15; Bollert Aff, RR, V1, T2, p91, ¶14

³² Currie Aff, RR, V3, T5, p804, ¶18; McDowell Aff, RR, V7, T15, p2049, ¶6

³³ Hyndman Aff, RR, V6, T11, p1481, ¶25

³⁴ Parkinson Aff, RR, V7, T16, p2077-79, ¶10-15; 1st Labchuk Aff, AR, V1, Tab B, p95, ¶159-60; Beal Cr-x, JTB, V1, T1, p22-23, q78-80

particular days in exchange for requested time off. Without notice, she did not show up for her scheduled shift and never returned to work. The goats on the farm had been left for hours in discomfort by the time the operators became aware that no one had shown up to milk them.³⁵

(iii) Trespass can negatively impact the health and safety of farmers and their families

23. Trespass can cause undue stress on farmers and their families because of the damage to property, release of animals, and the fear and worry for the animals' welfare.³⁶

24. Frequent instances of trespass and interference with animals have created a culture of fear amongst farmers and employees. Farmers and employees have been harassed online.³⁷ Farmers have been afraid to report trespass for fear of reprisal.³⁸ They can be afraid to wear company clothing³⁹ and may fear for their safety when preventing activists from entering premises because of the risk of escalation.⁴⁰ The Legislation can reduce these risks.

(iv) Trespass around animal transport trucks raises safety risks

25. When activists try to interact with animals in transport trucks they can put themselves and the drivers at risk. When trucks approach slaughterhouses or other facilities, people have entered the road to stop the truck,⁴¹ placed their hands inside the truck to interact with the animals,⁴² sometimes touching them or taking close-up photos from within the trucks, and/or stood

³⁵ Lyons Aff, RR, V7, T14, p2022-25, ¶16-26

³⁶ Currie Aff, RR, V3, T5, p807, ¶27-28; McDowell Aff, RR, V7, T15, p2050, ¶9; Hyndman Aff, RR, V6, T11, p1480, ¶23; Boogerd Aff, RR, V2, T3, p225, ¶38-39; Bollert Aff, RR, V1, T2, p92-93, ¶18-19

³⁷ Schwindt Aff, RR, V8, T18, p2131-32, ¶42-47 and Exh I, K, p2300-2, 2306

³⁸ Lyons Aff, RR, V7, T14, p2030, ¶38-39 and Exh D-G, p2040, 2042, 2044, 2046; Currie Aff, RR, V3, T5, p808, ¶30

³⁹ McDowell Aff, RR, V7, T15, p2050, ¶9

⁴⁰ Currie Aff, RR, V3, T5, p808-9, ¶32

⁴¹ Duff Aff, RR, V4, T6, p820, ¶13 and Exh D1, D3, p868-70; Koch Aff, RR, V7, T13, p2006, ¶5; Fitzgerald Exp Rep, RR, V5, T8, p1265

⁴² Koch Aff, RR, V7, T13, p2007-8, ¶7 and Exh C, p2015; Koch Cr-x, JTB, V6, T18, p 2253-54, 2256-58, q41-45, 56-66; Fitzgerald Exp Rep, RR, V5, T8, p1265

dangerously close to the truck. These activities pose serious safety risks to activists, as drivers have limited visibility around their trucks and noise can drown out warnings or cries of alarm or distress.⁴³ When traffic is disrupted by such activities, vehicles must drive around the transport trucks to avoid protesters, putting motorists and bystanders at risk.⁴⁴

26. Although the Applicants object to the opinion evidence of Susan Fitzgerald on these points, activist groups themselves acknowledge these dangers. New Wave Activism posted an online “waiver” that participants must sign to acknowledge the risks associated with protests around transport trucks). The “waiver” lists risks including death or injury from being dragged under the wheels, and death or injury from passing vehicles.⁴⁵

27. Toronto Cow Save had a video on its website of a truck operator and safety marshal giving safety instructions to activists. They noted that due to the size of transport trucks “things could turn catastrophic in an instant” and protestors should “stay two metres away from any moving vehicle.”⁴⁶ The death of an activist struck by a transport truck in 2020 is a tragic example of the life-threatening danger posed by the proximity of pedestrians to transport trucks.⁴⁷

B. The pre-existing law of trespass was insufficient to deter trespass in this context

28. The Legislation addresses the reality that the common law of trespass and the *TPA* did not provide sufficient deterrence in the agricultural context.

29. While the common law of trespass prohibits the physical invasion of property and makes the trespasser liable for damages (or an injunction), no remedy is available unless the

⁴³ Koch Cr-x, JTB, V6, T18, p2265-66, q99; Duff Aff, RR, V4, T6, p820, ¶13 and Exh D5, p876; Fitzgerald Exp Rep, RR, V5, T8, p1266-67, 1299-1300; Jutzi Aff, RR, V7, T12, p1890, ¶24-25 and Exh B, G, p1978, 2000; Koch Aff, RR, V7, T13, p2007, ¶6; Jorgensen Cr-x, JTB, V4, T14, p1607-8, q281-87

⁴⁴ Jutzi Aff, RR, V7, T12, p1895, ¶39; Koch Cr-x, JTB, V6, T18, p2261-63, q80-89

⁴⁵ Schwindt Aff, RR, V8, T18, Exh N, p2317

⁴⁶ Jorgensen Cr-x, JTB, V4, T14, p1603-7, q263-80 and Exh 12B, p1650

⁴⁷ Duff Aff, RR, V4, T6, p835-36, ¶68-70

owner/occupier of the land commences a civil suit, with all of the difficulties that can entail.⁴⁸

30. The *TPA* makes trespass an offence punishable by up to a \$10,000 fine and provides a limited right to damages and costs against the defendant in lieu of a civil suit.⁴⁹ However, the limitation period is six months.⁵⁰ Activists hold footage captured from trespasses (including undercover operations) for six-months before releasing it, avoiding penal risk under the *TPA*.⁵¹

31. Unlike the Act, the common law and the *TPA* are silent on situations where consent to enter premises has been obtained under false pretences, as with undercover operations.

32. Section 14(1) of the Act makes it an offence to breach the Act's prohibitions relating to:

- trespass in ss. 5(1), (2) and (3),
- interference or interaction with farm animals in ss. 5(4) and 6(2),
- obstructing an animal transport vehicle in s. 6(1),
- responding to a request under the Act for name and address with false or misleading information in s. 8(4);
- failure to comply with an owner/occupier's request to cease interfering or interacting with an animal or to leave the premises in s. 9(2), and
- interfering with an arrest under the Act in s. 12.

33. Section 14(2) of the Act makes it an offence to use duress or false pretences to breach the prohibitions on trespass in ss. 5(1), (2) and (3), or the prohibition on interference or interaction with farm animals in ss. 5(4) and 6(2).

⁴⁸ Marjorie Benson, Marie-Ann Bowden & Dwight Newman, *Understanding Property: A guide to Canada's Property Law* (Toronto: Thomson Carswell, 2008) at 130, R BoA, T4, p70

⁴⁹ *TPA*, [ss 3\(1\)\(b\)](#), [12](#)

⁵⁰ *POA*, [s 76\(1\)](#)

⁵¹ *Beal Cr-x*, JTB, V1, T1, p19-23, 65-67, q67-70, 77-80, 268-73; *1st Labchuk Aff*, AR, V1, Tab B, p95-96, ¶159-60; *Parkinson Aff*, RR, V7, T16, p2076, 2079-80, ¶4, 15-17; *Bouilly Aff*, RR, V3, T4, p478-79, ¶25-28, 30; *Picanco Aff*, RR, V7, T17, p2102-4, ¶9-12, 15-17; *Boogerd Aff*, RR, V2, T3, p224-25, ¶35-36; *Boogerd Cr-x*, JTB, V1, T3, p233-34, 249-50, q85-86, 116-20; *Ans-UTR*, JTB, V8, T27, p3272-73; *Ans-UTR*, JTB, V10, T27I, p3772-74; *Duff Aff*, RR, V4, T6, p817, ¶10, 33-34

34. Under s. 15 of the Act, the offences created by s. 14(1) are punishable on conviction by a maximum fine of \$15,000 for a first offence and \$25,000 for subsequent ones. If an individual is charged with an offence under s. 14(1) of the Act and the case proceeds under Part I of the *POA*, the set fines, fixed by the Chief Justice of the Ontario Court of Justice, range from \$200 to \$550.⁵² No penalty is stipulated in the Legislation for breach of s. 14(2) of the Act. As a result, the general penalty of a \$5,000 maximum fine in s. 61 of the *POA* would apply to that offence.

C. The Legislation is tailored to protect journalists and whistle-blowers

35. Concerns were submitted at Standing Committee that the Legislation might be viewed as deterring journalists and whistle-blowers from reporting on animal abuse. Thus the definition of “false pretences” and the journalist and whistle-blower exceptions in the Regulation were adopted, as noted at Third Reading, to “provid[e] the right balance [between] protecting farmers, their families and their animals with the right of freedom of expression.”⁵³ Under these provisions, journalists and whistle-blowers – even those who secured consent by deception – are deemed *not* to have secured consent on false pretences, provided certain conditions are met.

36. The Applicants contend the exception for journalists is too narrow because the definition of journalist in s. 11(2) of the Regulation does not encompass *everyone* who publishes, whether or not they are connected to the news media or a similar institution. On the contrary, the definition is appropriate and supported by the expert evidence.

37. Under s. 11(2) of the Regulation, a “journalist” means a person who:

- (a) is employed or hired by, or works in connection with, the news media, a press association, news agency, wire service or post-secondary journalism course or program, and

⁵² See tables of set fines in Schedule B

⁵³ Bill 156, 3rd reading (Hon Hardeman), RR, V10, T20L, p3056; see also Bill 156, 3rd reading (Hon Hardeman), RR, V10, T20L, p3053-54; Regulation, [ss 11-12](#)

(b) contributes directly to the collection, writing or production of information for dissemination by the news media or other entity referred to in clause (a) to the public in the public interest;

and “news media” means corporations or entities whose primary function is to disseminate information to the general public on a regular basis, whether in writing or by radio, television or similar electronic means.

38. Ontario’s expert witnesses Ivor Shapiro and Ross Eaman support this definition as appropriate. Mr. Shapiro is former Associate Dean of the journalism program at Toronto Metropolitan University.⁵⁴ Dr. Eaman is an Associate Professor of Journalism at the University of Ottawa.⁵⁵ The Applicants tendered evidence from investigative journalist, Robert Cribb.

39. All three of these affiants agreed that, at a minimum, a journalist is someone who uses journalistic methods.⁵⁶ Journalists gather evidence and verify the information they publish to ensure that they are disseminating accurate information on a matter of public interest.⁵⁷

Journalism is distinct from other forms of communication because journalism is more valuable.⁵⁸ This value flows from the verification of information and a commitment to “find not just the facts, but also the truth about the facts.”⁵⁹ To ensure accuracy, a journalist gives the subject of the article an opportunity to comment.⁶⁰ Activist groups have conceded they do not do so.⁶¹

40. As Mr. Shapiro explains, a definition of journalism that would call for an assessment of

⁵⁴ Shapiro Aff, RR, V8, T19, p2326, ¶1

⁵⁵ Eaman Aff, RR, V5, T7, p1208, ¶1

⁵⁶ Cribb Exp Rep, AR, V7, Tab F, Exh A, p2042; Shapiro Cr-x, JTB, V8, T25, p3081-82, q176; Eaman Cr-x, JTB, V2, T8, p869-72, 886-90, q182-87, 222-30; Mr. Eaman’s view is that some individuals who employ journalistic methods of evidence gathering and verification may still not be considered journalists by other journalists (e.g., writers of advertorials)

⁵⁷ Shapiro Cr-x, JTB, V8, T25, p3081-82, 3122, 3124-27, q176, 298, 305-12; Shapiro Exp Rep, RR, V8, T19, Exh C, p2349, 2353, 2359, 2363; Cribb Cr-x, JTB, V2, T5, p468-70, 488-89, q123-31, 185-88; Eaman Cr-x, JTB, V2, T8, p827, q80; Eaman Exp Rep, RR, V5, T7, Exh C, p1234-35

⁵⁸ Cribb Cr-x, JTB, V2, T5, p559-60, q401-2

⁵⁹ Cribb Cr-x, JTB, V2, T5, p560, q403, Exh 5, p636

⁶⁰ Cribb Cr-x, JTB, V2, T5, p467-68, q118-20

⁶¹ Beal Cr-x, JTB, V1, T1, p21, q75

whether journalistic methods were used is impossible to operationalize and contrary to the principle of free press.⁶² In Mr. Shapiro's view, there are only three options: (1) *anyone* who *claims* to be a journalist should be granted privileges and exemptions reserved for journalists; (2) no such privileges and exemptions should be offered to *anyone*; or (3) an objective, rather than subjective, line should be drawn between journalists and others.⁶³ As Ontario has done here, many jurisdictions choose the third option by requiring a demonstrable *connection* between the claimed journalist and *news media* or similar entities or organizations.⁶⁴

41. Mr. Cribb conceded on cross-examination that Mr. Shapiro was better positioned to assess the s. 11(2) definition of journalist.⁶⁵ Mr. Shapiro's academic work includes considering how to define "journalism" and "journalist." In 2012, Mr. Shapiro led a study of news-media accountability commissioned by Canada's Association of News Publishers. As Chair of the Ethics Advisory Committee of the Canadian Association of Journalists (2009-2016), he led the process of updating the Association's ethical guidelines and creating a statement of its Principles for Ethical Journalism. This included a panel report entitled "What is Journalism".⁶⁶

42. Contrary to para 39 of the Applicants' Factum, Mr. Shapiro opines that someone who does investigative work and *later* publishes with news media is working "in connection with" a journalist, a situation that s. 11(2) captures.⁶⁷

43. The expert evidence, including Mr. Cribb's, does *not* support the claim that journalist should be defined to include "those who publish their work independently." There is no way to

⁶² Shapiro Exp Rep, RR, V8, T19, Exh C, p2361

⁶³ Shapiro Exp Rep, RR, V8, T19, Exh C, p2362

⁶⁴ Shapiro Exp Rep, RR, V8, T19, Exh C, p2362

⁶⁵ Cribb Cr-x, JTB, V2, T5, p529, q308

⁶⁶ Shapiro Exp Rep, RR, V8, T19, Exh C, p2345-46

⁶⁷ Shapiro Exp Rep, RR, V8, T19, Exh C, p2359-60

ascertain whether people publishing independently (without any connection to news media) are actually doing journalism. News media organizations have standards and codes of conduct that require that anything they publish meets these criteria.⁶⁸ Mr. Cribb conceded that publishing undercover footage captured by a non-journalist which could not be verified as accurate would be misleading or contrary to the public interest⁶⁹ and, by his own definition, not journalism.⁷⁰

D. The meaning of “harm to an individual” and “harm to farm animals” in the journalist and whistle-blower exceptions in ss. 11 and 12 of the Regulation

44. The Applicants complain that to take advantage of the exceptions, a journalist or whistle-blower must not have “cause[d] or contribute[d] to causing harm to a farm animal, harm with respect to food safety or harm to an individual.” Their complaint has no factual support and, as explained in Part IV below, depends on an unreasonable reading of the Regulation.

45. The Applicants allege that, in connection with journalists, this condition means that the exception does not apply if the *mere publication* of an undercover exposé (as opposed to the journalist’s misconduct on the farm while undercover) results in emotional or psychological injury to the facility’s owner/operator (Applicant’s Factum at para 41).

46. As set out further below in Part IV, this interpretation of the Regulation should be rejected. It would undermine the exception to interpret “harm to an individual” to include the stress caused by criticism contained in a journalist’s work product. On the evidence, undercover journalists *can* comply with the requirement not to cause harm. Mr. Cribb agreed on cross-examination that a journalist engaged in an undercover investigation would make efforts not to

⁶⁸ Cribb Cr-x, JTB, V2, T5, p457-59, 462, q92-96, 106; Shapiro Exp Rep, RR, V8, T19, Exh C, p2365-66; Eaman Cr-x, JTB, V2, T8, p827, q80; Scott-Reid Cr-x, JTB, V8, T24, p2912-13, q304-8

⁶⁹ Cribb Cr-x, JTB, V2, T5, p487-89, q178-88

⁷⁰ Cribb Exp Rep, AR, V7, Tab F, Exh A, p2043; Cribb Supp Exp Rep, AR, V7, Tab G, Exh B, p2069-70; Cribb Cr-x, JTB, V2, T5, p533-36, q324

cause harm during the undercover work. He testified that the undercover investigator is to assume the role of observer and not to cause harm or create any liability while undercover.⁷¹ He agreed that being careful to avoid harm would be standard for most news media organizations.⁷²

47. In connection with both journalists and whistle-blowers, the Applicants contend that “harm to an animal” would include standard animal husbandry practices, such as tail docking or euthanizing an animal. As set out below in Part IV, this interpretation should not be accepted as it would render the exception meaningless. As a factual matter, farm workers are *expected* to engage in standard animal husbandry practices in fulfilment of their employment obligations. This includes actions that, in the Applicants’ view, “harm” farm animals. The requirement not to cause “harm” to an animal does not turn every farm employee who is an undercover journalist or whistle-blower into an offender under the Legislation.

E. Animal Welfare and Animal Husbandry in Ontario

48. Ontario’s publicly staffed and enforced regulatory regime for the prevention of abuse to animals and the protection of animal welfare applies to Ontario’s farms, farm owners/operators and workers, as well as animal transporters and processing facilities. Conduct or neglect that causes or permits distress to an animal, or amounts to animal abuse, neglect or cruelty can be investigated and is subject to remedial orders as well as penal and other sanctions. The *Provincial Animal Welfare Services Act, 2019 (PAWS)* confers broad powers on the regulatory authorities, including the provincial staff of animal welfare inspectors.⁷³

49. The *PAWS* legislation does not impose sanctions on an activity “regarding agricultural animal care, management or husbandry” carried on in accordance with “standards of care or

⁷¹ Cribb Cr-x, JTB, V2, T5, p503-5, q223-27

⁷² Cribb Cr-x, JTB, V2, T5, p 505-6, q232-35

⁷³ *PAWS Act*, [s 24-31](#); Fthenos Aff, RR, V5, T10, p1450-52, 1456-57, ¶3, 6-10, 27-28

administrative requirements” that expressly provide that they apply to that activity, or if none apply, the “reasonable and generally accepted practices of agricultural animal care, management or husbandry.”⁷⁴ Abuse or causing or permitting distress outside the confines of this exception remains penalized under the legislation.

50. The Applicants contend that the suffering of farm animals as a result of generally accepted (albeit sometimes contentious) standard animal husbandry practices, such as tail docking piglets or housing sows in farrowing crates, needs to be exposed by way of the undercover operations of animal activists. The evidence in the record shows that there is ample publicly available information on such practices to inform public debate on whether such activities should be permitted, limited or reformed, or whether the public should reduce or eliminate its consumption of farmed animal products.⁷⁵ Undercover operations to expose standard practices are not necessary for this purpose, nor are they necessarily conducive to informed public debate. The Applicants’ cross-examination of Robert Friendship, one of Canada’s leading veterinary experts on swine, demonstrates that standard practices (e.g., collecting and segregating stillborn piglets, euthanizing animals by the most humane means, such

⁷⁴ *PAWS Act*, s 15(4)

⁷⁵ This information is available on industry groups’ websites (Labchuk Cr-x, JTB, V5, T16, p1864-66, q336-37, 341; Bouilly Aff, RR, V3, T4, p476, ¶19 and Exh H, p764-65), NFACC Codes (Scott-Reid Cr-x, JTB, V8, T24, p2899-2901, q241-48; Friendship Cr-x, JTB, V3, T11, p1195-96, q595; Boogerd Aff, RR, V2, T3, Exh L, p373-450; Bouilly Aff, RR, V3, T4, Exh A, p487-571; Hyndman Aff, RR, V6, T11, Exh D, p1762-1828; Schwindt Aff, RR, V8, T18, Exh C, p2176-2253), newspaper articles (Scott-Reid Cr-x, JTB, V8, T24, Exh 10, p2991-95), peer-reviewed scientific research published on platforms available to the general public (Harris Cr-x, JTB, V4, T12, p1304-5, 1356-57, 1361-91, q44-51, 191-94, 206-89), by interviewing a veterinarian (Scott-Reid Cr-x, JTB, V8, T24, p2902-3, q258-61), in European legislation (Harris Cr-x, JTB, V4, T12, p1390-92, 1396-1401, q289-96, 306-15) and active debate and reform of standard practices in Canada and abroad (Friendship Cr-x, JTB, V3, T10, p1176-79, q491-511; Harris Cr-x, JTB, V4, T12, p1390-1401, q289-316; Scott-Reid Cr-x, JTB, V8, T24, p2882-85, q153-66; Bollert Cr-x, JTB, V1, T2, Exh 3, p195-98; Harris Exp Rep, AR, V8, Tab I, p2162, fn5, 7 - Council Directive [2008/120/EC](#) and Council Directive [199/74/EC](#))

as a bolt gun applied to the head) can be misleadingly depicted or interpreted in undercover video footage, and accompanying voiceover narration, released by activist groups.⁷⁶

PART III – ISSUES

51. Ontario’s position on the issues is:

- A. The Applicants’ interpretation of “harm to an individual” and “harm to an animal” in the journalism and whistle-blower exceptions in the Regulation is incorrect.
- B. The Legislation does not breach s. 2(b) of the *Charter* in purpose or effect.
- C. What the Applicants actually seek is a right under s. 2(b) to, using deception, trespass on and interfere with or conscript private property to enhance their expression, with immunity from the consequences. Section 2(b) does not embrace such a right. The narrow circumstances in which a positive obligation to facilitate or enhance expression can arise do not apply here.
- D. The s. 2(c) claim is properly disposed of for the same reasons as the s. 2(b) claim.
- E. The requirement placed on a trespasser to provide their real name/address, if requested, is justified under s. 1.
- F. Binding appellate authority holds that citizen’s arrest provisions do not violate ss. 7 or 9.
- G. Requiring the accused to prove consent does not violate s. 11(d).
- H. In the alternative, any *Charter* breach is demonstrably justified under s. 1.

PART IV – LAW AND ARGUMENT

A. Statutory Interpretation

52. Before considering the Applicants’ *Charter* claims, the Legislation must be properly

⁷⁶ Friendship Exp Rep, RR, V5, T9, Exh C, p1444-46; Friendship Cr-x, JTB, V3, T10, p1193-96; 1st Labchuk Aff, AR, V1, Tab B, p70-71, ¶83, 87 and Exh T, p357

construed.⁷⁷ The Applicants’ interpretation of “harm to an individual” and “harm to an animal” in the journalism and whistle-blower exceptions in the Regulation is incorrect.

53. The Applicants’ interpretation of “harm to an animal” in the Regulation does not accord with principles of statutory interpretation which provide that the words of a statute must be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.⁷⁸ The journalist and whistle-blower exceptions would be meaningless if “harm to farm animals” included standard husbandry practices engaged in routinely by farm employees at the direction of their employer. The very target of the exceptions (journalists and employee whistle-blowers) would not qualify for the exception if the Applicants’ interpretation were accepted. The Legislature is not to be taken as having enacted a provision which is meaningless or that can have no application.⁷⁹

54. The same can be said of the Applicants’ interpretation of “harm to an individual” in the Regulation as it applies to journalists. There is a risk of “harm” – in the sense of emotional or psychological stress – occasioned by any journalist’s publication critical of a person. The Legislature did not intend to render the publication of undercover exposés by journalists, without more, a source of liability for the journalists, making the journalist exception meaningless.

55. Even if the Regulation could bear the interpretation proffered by the Applicants, such an interpretation would be, at best, only equally plausible as compared with the narrower reading. In the face of equally plausible interpretations, that which accords with *Charter* values is to be

⁷⁷ *Canada (AG) v JTI-Macdonald Corp*, 2007 SCC 30, ¶4, 48-69 [*JTI-Macdonald*]; *Ontario (AG) v Fraser*, 2011 SCC 20, ¶3, 98-109

⁷⁸ *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, ¶21, citing Driedger in *Construction of Statutes* (2nd ed 1983), p87

⁷⁹ Ruth Sullivan, *The Construction of Statutes*, 7th ed, (Loose-leaf updated 2022), § 8.03, R BoA, T6, p78-79; *R v Proulx*, 2000 SCC 5, ¶28

preferred.⁸⁰ The Applicants’ reading does not accord with the *Charter* values underlying s. 2(b) as it would disentitle a journalist from the exemption as a result of the mere fact of publishing.

B. No breach of *Charter* s. 2(b)

56. The Legislation does not breach *Charter* s. 2(b) as: (i) the impugned legislation targets trespass on and interference with private property – not expression; (ii) there is no *Charter* right to trespass on private property or to conscript or interfere with property (including an animal) belonging to another person to facilitate or fulfill one’s freedom of expression.

(i) The Legislation targets trespass on and interference with property – not expression

57. The Legislation does not infringe s. 2(b) of the *Charter* in its purpose or effect.⁸¹ The Applicants say (Factum para 58) the Legislation “...targets expression regarding the treatment of farmed animals.” However, they cannot point to any provision that restricts such expression. Instead, they say that the Legislation targets expression by restricting: (a) false oral speech (Factum para 74); and (b) “investigative deception,” which they say is “preparatory to speech” (Factum para 75). The Applicants are mistaken.

58. The Legislation does not target false oral speech or investigative deception. It targets, and imposes penal consequences on, trespass on private lands and interference with privately-owned animals. Contrary to the claims of the Applicants, the “false pretences” provisions do not prohibit or limit lies or misrepresentations. Rather, the false pretences provisions specify the legal effect of lies or misrepresentations in relation to the validity of an owner/occupier’s (or truck driver’s) grant of consent to enter lands or interact with privately owned livestock. The

⁸⁰ *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, ¶60-62; see also *R v Sharpe*, 2001 SCC 2, ¶33 [*R v Sharpe*]

⁸¹ The Applicants bears the burden of proof to show infringement of their rights: Peter Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Thomson Reuters, 2021) (Loose-leaf updated 2021), § 38:4, R BoA, T5, p72; *R v Kutynec*, [1992] OJ No 347 (CA), p10; *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, p178 (per McIntyre J)

prohibitions of the Act make this clear. No false pretences are sanctioned except in so far as they were the means by which a trespass or unlawful interference/interaction was achieved.

59. While saying things with words is protected under *Charter* s. 2(b), doing things with words can still carry legal consequences. Freedom of expression does not immunize speakers from the legal consequences of their words if the words carry legal significance when uttered. For example, laws that attach legal significance to words uttered to establish contractual relations or to marry do not engage s. 2(b). Similarly, words can be used to provide an alibi defence to a crime. If the words are discovered to be untrue, the alibi will fail and the crime punished. This does not punish the deception expressed in the alibi, but rather the underlying crime.⁸² Here, the underlying wrongful acts, sanctioned by way of prohibition and penal consequences, are the trespass on lands and prohibited/interaction with the livestock belonging to someone else.

(ii) No *Charter* right to express oneself at private businesses, on private lands or to trespass on or interfere with private property to facilitate expression

60. There is no *Charter* right to express oneself freely at private businesses or to trespass on or interfere/interact with private property to facilitate expression.

61. Expression is beyond the scope of s. 2(b) if: a) the historical or actual function of the place is inconsistent with free expression, and b) other aspects of the place suggest that expression within it would undermine the values of free expression.⁸³ As the Supreme Court states, even in public places there are venues where free expression does not engage s. 2(b):

It would be difficult to contend that [the purposes of free expression] are served by “public” expression in the sanctum of the Prime Minister’s office, an airport control tower, a prison cell or a judge’s private chambers, to return to examples where it seems self-evident that the guarantee of free expression has no place. These are not places of public debate aimed at promoting either the truth or a better understanding of social and political issues. Nor is expression in these places related to the open

⁸² The question of the punishment for perjury is distinct.

⁸³ *Montreal (City) v 2952-1366 Québec Inc*, 2005 SCC 62, ¶60-62, 74-77 [*Montreal (City)*]

and welcoming environment essential to maximization of individual fulfillment and human flourishing.⁸⁴

62. Private businesses are not places of public debate. Section 2(b) “has not historically conferred a right to use another’s private property as a forum for expression.”⁸⁵ Private spaces do not have the historical or actual function of promoting expression.⁸⁶ Generally speaking, free expression is incompatible with the actual use and function of private spaces and does not promote the values of s. 2(b). Here, the deceptive statements said to attract s. 2(b) protection are private representations made to private employers in a private context, very likely on private lands but in any event in private spaces. All of this has historically been outside the purview of s. 2(b). Such deceptive statements are not made in public spaces or via public media. Section 2(b) is not engaged by a lie to a private employer to gain employment.

63. Private businesses are places where “an open right to intrude and present one’s message by word or action [would] be [in]consistent with what is done in the space.”⁸⁷ Allowing individuals to trespass and interfere with private businesses to facilitate their expression would undermine, rather than further, the core s. 2(b) value of self-fulfillment.⁸⁸ Road blockages to allow individuals to interfere with private property inside trucks would also conflict with values protected by s. 2(b). The right to freedom of expression does not guarantee being able to express

⁸⁴ *Committee for the Commonwealth of Canada v Canada*, [1991] 1 SCR 139, [p156-58](#) (per Lamer and Sopinka JJ), [p228-232](#) (per McLachlin J) [*Committee for the Commonwealth*]

⁸⁵ *Committee for the Commonwealth*, [p228](#); see also *Russo v Ontario Jockey Club* (1987), 46 DLR (4th) 359, [p1, 4](#) (Ont HCJ); *Re NB Broadcasting Co and CRTC* (1984), 13 DLR (4th) 77, [p426-27](#) (FCA); *R v Waters* (1990), 54 CCC (3d) 40 (Sask KB), [¶21-22](#); *Compagnie générale des établissements Michelin-Michelin & Cie v CAW-Canada*, [1997] 2 FC 306, [¶79, 88-91, 96, 100-1, 106](#) [*Michelin*]; *Montreal (City) v Buczynsky*, [1990] QJ No 2365, [p317\(b\), 318\(d\)-319\(c\)](#); *R v Osborne*, 2007 NBPC 3, [¶32](#)

⁸⁶ *Michelin*, [¶79, 88-91, 96, 106](#)

⁸⁷ *Montreal City*, [¶76](#)

⁸⁸ *Irwin Toy Ltd v Quebec (AG)*, [1989] 1 SCR 927, [p976](#) [*Irwin Toy*]

a message by any method in any location.⁸⁹

64. Additionally, the activities conducted in private agricultural businesses – such as raising healthy livestock free from the risk of disease, transporting livestock safely to processing facilities, and processing them for human consumption – require security, privacy and limited access. As the dissemination of expression in private spaces is not protected by s. 2(b), there is no basis (outside of the limited circumstances of “positive rights” claims under s. 2(b)) for a s. 2(b) right to trespass or interact with privately owned animals, whether for information gathering or to make expression more meaningful or fulfilling.

65. In connection with *false* speech privately communicated, the values underlying s. 2(b) are not served, as there is no public “marketplace of ideas” to counter the false expression or discover truth. The Supreme Court has most recently reiterated how s. 2(b) functions in the context of public debate, which can serve as a corrective to lies or other offensive speech:

Some speakers seek to contribute to public discourse by countering ignorant or harmful expression with an informed or compassionate response. ... The theory is that dissenting voices can “out-compete more pernicious speech” in the marketplace of ideas ... In American First Amendment jurisprudence, this concept is called “counterspeech” ...

In s. 2(b) jurisprudence, the idea of counter-speech inheres in the recognition that the open exchange of ideas is a precondition to unlocking the value of free expression. For example, in *Keegstra*, at p. 766, this Court noted that “it is partly through a clash with extreme and erroneous views that truth and the democratic vision remain vigorous and alive” ... [citations omitted].⁹⁰

Here, by contrast, there is no opportunity for “counter-speech” to correct the false information.

66. There is no merit to the Applicants’ assertion that the location or context of expression is not relevant because the Legislation puts “state-imposed limits and punishments regarding

⁸⁹ *R v Breen*, 2023 BCPC 84, ¶118-123 [*Breen*]

⁹⁰ *Hansman v Neufeld*, 2023 SCC 14, ¶80-81

speech” (Factum para 73). First, the Legislation does not impose limits on speech. As discussed, the Legislation imposes penalties for trespass and interference with property.

67. Second, even if the Legislation imposed limits on speech, the Supreme Court has held that s. 2(b) of the *Charter* generally imposes a negative obligation on the state rather than a positive obligation of protection or assistance.⁹¹ The Applicants frame their claim as a “negative” s. 2(b) claim, and they cite the *Irwin Toy* case which establishes the test for such a claim.

68. The Supreme Court has characterized claims as negative claims “where the claimant seeks ‘freedom from government legislation or action suppressing an expressive activity in which people would otherwise be free to engage.’”⁹² The Applicants are not *otherwise free to engage* in trespass or interference with private property. Limiting or punishing such activities does not, therefore, limit *Charter* protections. A law that attaches penalties to already unlawful conduct, such as trespass and interference with private property, does not infringe s. 2(b).

(iii) No guarantee that speech will be effective

69. There is no s. 2(b) guarantee that one’s speech will be effective. Section 2(b) of the *Charter* protects the *free exercise* of the fundamental freedoms; it does not guarantee that a particular manifestation of that freedom will be effective in achieving its objectives.⁹³ In *Ktunaxa Nation v British Columbia*,⁹⁴ the claimants asserted that the building of a ski resort would drive the object of their religious belief – the Grizzly Bear Spirit – from its sacred location.⁹⁵ The Supreme Court held that the state did not have a duty to protect the object of religious belief: there is no right to effective religious belief. The same holds for s. 2(b).

⁹¹ *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34, ¶16 [*Toronto(City)*]

⁹² *Toronto (City)*, ¶16, citing *Baier v Alberta*, 2007 SCC 31, ¶35 [*Baier*]

⁹³ *Toronto (City) v Ontario (Attorney General)*, 2019 ONCA 732, ¶41; *Toronto (City)*, ¶39

⁹⁴ *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, ¶70-75 [*Ktunaxa Nation*]

⁹⁵ *Ktunaxa Nation*, ¶69

70. Here, as in *Ktunaxa* but with s. 2(b) instead of s. 2(a), the Applicants seek protection not for their free expression but for its *effectiveness*. First, they want deceptions used to secure consent to access property or interact with animals belonging to others (i.e., false pretences) *to be effective* in precluding punishment for trespass or unlawful interaction with animals. Section 2(b) does not guarantee that a person’s deceptions must be effective to free that person from legal consequences of otherwise wrongful acts achieved by way of the deception.

71. Second, the Applicants say that without “investigative deceptions,” they would not be able to engage in specific expression “...such as the dissemination of photographs or video footage showing the treatment of animals...” (Factum para 75). Relying on U.S. caselaw, they argue that such expression is “...a uniquely persuasive means of conveying a message...” (Factum para 76). This claim – for a right to covertly access private property to gather information for dissemination – is a positive rights claim and, as discussed below, the Applicants cannot meet the test established for such a claim. But it also is a claim for the effectiveness of the Applicants’ expression: they say they must be free to deceive so they can gather information. Not only do they want the deception to be effective (freeing them from punishment for trespass), they also claim a right to deceive to trespass and gather information to foster the effectiveness of their ultimate expression on animal welfare or industry practices.

72. Third, in connection with the claimed right to “bear witness” as an expressive activity, the Applicants say their expression of bearing witness is more fulfilling when they interact with livestock (e.g., by touching). Freedom of expression does not mean that property belonging to another can be conscripted to make expression more meaningful or fulfilling. There is no right to have other people’s animals as an audience or participants in one’s expression. The *Charter* does not change the fact that farm animals are private property and does not give the claimants a right

to use other people's property for their own purposes.

C. No positive obligation under *Charter* s. 2(b)

73. What the Applicants actually seek is a positive s. 2(b) right to trespass on private agricultural businesses and to interfere/interact with private property (animals) to facilitate their expression, as well as immunity from the legal consequences of doing so. There is no positive obligation on the government to facilitate the Applicants' expression in this way by refraining from making the offending trespass or interference with property unlawful.

74. The Supreme Court has held that a positive obligation to facilitate expression can arise only in "rare," "narrowly circumscribed" circumstances.⁹⁶ There are two tests for assessing a positive s. 2(b) claim: the *CLA* test and the *Baier/City of Toronto* test. Neither is met here.

(i) The Applicants cannot establish a right to access information under the *CLA* test

75. The Applicants' claim is that s. 2(b) guarantees them immunity if they trespass to gather information about the treatment of farmed animals for dissemination. Section 2(b) does not confer a right to trespass on private lands to obtain information.

76. Even where the information sought is *held by government* (not the situation here), a s. 2(b) right to access information arises only in very limited circumstances. This is because s. 2(b) protects freedom of expression, not a general right of access to information.⁹⁷

77. In *Ontario v Criminal Lawyers Association* ("*CLA*"), the Supreme Court held that access to information held by government is a "derivative" right under s. 2(b) which may arise where accessing the information is a necessary precondition of meaningful expression on the functioning of government. This derivative right to disclosure of government information only

⁹⁶ *Toronto (City)*, ¶17

⁹⁷ *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23, ¶35 [CLA]; *Ontario (Attorney General) v Fineberg*, 1994 CanLII 10563 (ON SC), p11

arises where: (1) without the access sought, meaningful public discussion and criticism on a matter of public interest would be “substantially impeded”; and (2) there are no countervailing considerations inconsistent with production. This is the *CLA* test.⁹⁸

78. The *CLA* test does not apply because the Applicants do not seek access to information *held by government*. Here, information is being covertly gathered on private property. The *CLA* test is nevertheless instructive as it shows the high threshold the Supreme Court has established for s. 2(b) claims in which access to (government-held) information is required for the purpose of further expression, public consideration and debate. Here, the Applicants want constitutionally guaranteed covert access to private spaces to obtain information to inform the public. Ontario submits that the test for covert information-gathering access to private property (if it is to be recognized at all) should certainly not be lower than the *CLA* test. If the *CLA* test did apply here, the Applicants could not meet it because: (1) they cannot establish that meaningful discussion and criticism on the treatment of farmed animals cannot take place without their access to animal protection zones; and (2) there are countervailing considerations inconsistent with access.

a) The Applicants can engage in meaningful discussion and criticism on the treatment of farmed animals without trespassing or interfering with private property

79. The Applicants cannot meet the first step of the *CLA* test. On the evidence, the Applicants cannot show that without access to animal protection zones they are unable to engage in meaningful discussion and criticism on the treatment of farmed animals. The evidence reveals the Applicants can and do engage in meaningful public discussion and criticism regarding the treatment of farmed animals,⁹⁹ including the husbandry practices to which they object.

⁹⁸ *CLA*, ¶37-38 [italics added]

⁹⁹ Scott-Reid Cr-x, JTB, V8, T24, p2871-72, 2913-14, 2925-30, 2933-44, q103-8, 310-15, 340-54, 355-56, 371-436 and Exh 6-12, p2975-3015; Jorgensen Cr-x, JTB, V4, T14, p1582-89, q169-90;

80. In *CLA*, the Court held that where the information sought is publicly known, a s. 2(b) right to access information held by government does not arise. Section 2(b) does not guarantee access to all documents in government hands. The Court held that the derivative right to access information was not engaged because the claimant could not show that meaningful public discussion or criticism regarding the handling of a controversial OPP investigation at issue could not take place under the existing access to information scheme. The Court noted that much was already publicly known that permitted criticism of the OPP investigation.¹⁰⁰

81. The treatment of animals on farms or in slaughterhouses is not secret. Generally accepted agricultural practices that the Applicants criticize are publicly known. These practices are published in manuals and standards by the agricultural industry, are studied by academics, governments and various interest groups and are available to the Applicants and the public. In fact, they are subject to active debate and reform in Canada and abroad (para 50 above).

82. With respect to animal transport, the Applicants challenge the prohibition on interfering/interacting with animals without consent or where consent is invalid due to duress or false pretences. The Applicants are free to engage in protests on public sidewalks adjacent to livestock trucks provided they do not interfere/interact with the animals or obstruct the vehicles. From public sidewalks, the Applicants can observe animals in the trucks.¹⁰¹ They can take pictures of them, including close-ups that show the animals inside, and post on social media.¹⁰² They can and do write articles about the conditions in which the animals are kept/transported and

Labchuk Cr-x, JTB, V5, T16, p1799-1800, 1851-60, 1882-84, 1890-91, q208-9, 312-29, 392-394, 410; Atkinson Aff, RR, V1, T1, Exh A, p5-86

¹⁰⁰ *CLA*, ¶159

¹⁰¹ Jorgenson Cr-x, JTB, V4, T14, p1554-56, q45-58

¹⁰² Jorgenson Cr-x, JTB, V4, T14, p1554, 1556-60, 1563-64, 1567-79, 1582-88, q45-48, 56-60, 63-80, 92-97, 107-15, 167, 169-87 and Exh 2-5, 7-8, p1632-35, 1639-40; Atkinson Aff, RR, V1, T1, Exh A, p62-71; Koch Affidavit, RR, V7, T13, p2008-9, ¶8-9

they post their observations and speculation as to the animals' fears about what awaits them in the slaughterhouse.¹⁰³ Nothing in the Legislation prevents this, nor is interfering/interacting with the animals necessary for this expression to fully enliven public debate about animal transport or slaughter or the public's consumption of meat.

b) Countervailing considerations are inconsistent with the access sought

83. Even if the *CLA* test were applicable, the Applicants would not be able to meet the second step, as countervailing considerations are inconsistent with the access they seek. They are not simply seeking disclosure of documents, as in *CLA*. They seek a right to trespass on and interfere/interact with private property, and immunity from penalties for so doing.

84. As discussed above, trespass on animal protection zones and interference with animals on animal transport trucks raise public interest concerns regarding:

- biosecurity of farmed animals, including food safety and economic impacts of biosecurity risks;
- animal health and safety;
- road safety; and
- physical and mental health and safety for farmers and their families.

Further, the rights that the Applicants seek undermine the right of farmers (and food processors) to the control, use and enjoyment of their privately held lands and animals.¹⁰⁴

85. If this Court were to accept the Applicants' claim to a right to use deception to trespass on private businesses to obtain video and pictures on the basis that those are a specific type of expression not otherwise available, that would mean that activists for other causes would have a similar right to trespass to obtain such information for dissemination.

¹⁰³ Scott-Reid Cr-x, JTB, V8, T24, Exh 6-21, p2975-3015; Labchuk Cr-x, JTB, V5, T16, Exh 28-31, p2065-80; see also footnote 99 above

¹⁰⁴ Labchuk Cr-x, JTB, V6, T17, p2128-29, q490-91

86. For example, as in the U.S., anti-abortion activists would claim constitutional protection for covert access to abortion clinics to facilitate “specific expression” such as disseminating images that clinics do not make public. U.S. courts have rejected such claims.¹⁰⁵ Healthcare or seniors activists could claim a right to engage in deception to enter restricted areas of hospitals or care homes to take pictures and videos not otherwise publicly available. Animal rights groups have used undercover operations to trespass into laboratories where animals are used in medical science.¹⁰⁶ The security risks of unauthorized entry into such labs cannot be overstated.

87. The Applicants’ assertion that their expression is “worthy of stringent protection under s. 2(b)” because it is “motivated by their conscience and moral conviction” (Factum para 60) is not unique. Anti-abortion activists also have “deeply held beliefs that are akin in many respects to religious beliefs” in the same way as asserted by the Applicants. The degree of one’s conviction does not confer a right to intrude on others’ private spaces to facilitate one’s advocacy.

(ii) The Applicants cannot establish a positive right to facilitation of expression under the *Baier/City of Toronto* test

88. In *City of Toronto v Ontario*, the Supreme Court re-affirmed the distinction between negative and positive rights claims and simplified its test for a positive rights claim under s. 2(b).¹⁰⁷ A negative rights claim under s. 2(b) relates to government prohibiting or limiting free expression. It relates to “gags”, not megaphones. A positive rights claim is for support to facilitate expression. It is a claim for a megaphone.

89. Simplifying the test originally set out in *Baier, City of Toronto* fixed an elevated threshold for positive s. 2(b) claims: “is the claim grounded in the fundamental *Charter* freedom

¹⁰⁵ *Armes v City of Philadelphia*, [706 F Supp 1156 \(1989\)](#) (US District Ct, ED Penn); *Madsen v Women’s Health Centre, Inc*, [512 US 753 \(1994\)](#) (USSC); *Planned Parenthood Federation of America, Inc. v Newman* (Court of Appeals, [9th Circuit, 2022](#))

¹⁰⁶ Beal Cr-x, JTB, V1, T1, p83-85, q364-373 and Exh 2, p91-92

¹⁰⁷ *Toronto (City)*, ¶21; *Baier*, ¶30

of expression, such that, by denying access to a statutory platform or by otherwise failing to act, the government has either substantially interfered with freedom of expression, or had the purpose of interfering with freedom of expression?”¹⁰⁸ “Substantial interference” means “radically frustrating expression to such an extent that meaningful expression is effectively precluded.”¹⁰⁹

90. Here, the Applicants say s. 2(b) requires the subordination of existing private property rights to enable their information gathering. This is not a claim to be free of censorship (a negative rights claim) but rather is a claim to be able to access others’ property to *amplify* or *facilitate* their speech. The Applicants cannot meet the *Baier/City of Toronto* test. They cannot establish that without a right to trespass and interfere/interact with farm animals – impairing property rights – their expression on the treatment of animals or the animals’ experience in being transported to slaughter is “radically frustrated” or “effectively precluded”.¹¹⁰

D. The s. 2(c) claim is properly disposed of for the same reasons as the s. 2(b) claim.

91. Further analysis under *Charter* s. 2(c) is not necessary as the s. 2(c) claim is properly analyzed and disposed of for the same reasons as the s. 2(b) claim. The Supreme Court has not established a separate test for s. 2(c). In the vast majority of cases, the s. 2(c) analysis is subsumed in other section 2 rights (without separate analysis).¹¹¹ The cases cited by the

¹⁰⁸ *Toronto (City)*, ¶[25](#)

¹⁰⁹ *Toronto (City)*, ¶[27](#)

¹¹⁰ *Atkinson Aff*, RR, V1, T1, Exh A, p56-71; *Scott-Reid Cr-x*, JTB, V8, T24, Exh 4, 8, 10, 12, 14-21, p2970, 2979, 2991, 3006, 3008-15; *Labchuk Cr-x*, JTB, V5, T16, Exh 28, 32-35, 36A, 37, 39, 41, p2065-76, 2082-85, 2087, 2089-91, 2092; see also footnote 99 above

¹¹¹ See *Ontario (Attorney General) v Trinity Bible Chapel*, 2023 ONCA 134, ¶[68](#), citing *Figueiras v Toronto Police Services Board*, [2015 ONCA 208](#) and *British Columbia Federation v British Columbia Pubic School Employers Assn*, [2009 BCCA 39](#), leave to appeal refused [[2009\] SCCA No 160](#); *Ontario (Attorney General) v Dieleman*, 1994 CanLII 7509 (ON SC), ¶[700-702](#); *Smiley v Ottawa (City)*, 2012 ONCJ 479 ¶[41](#); *Attorney General of Ontario v 2192 Dufferin Street*, 2019 ONSC 615, ¶[54](#); *Batty v City of Toronto*, 2011 ONSC 6862, ¶[63](#) [*Batty*]; *Breen*, ¶[121-3](#)

Applicants as the binding precedents for s. 2(c) are decisions analyzing s. 2(b) and 2(d).¹¹²

E. The requirement on a trespasser to provide their name/address is justified under s. 1

92. The Applicants challenge the requirement of a trespasser, while on the premises, to provide their real name/address, if requested by an owner/occupier, on the basis of a claimed s. 2(b) right to lie or remain silent. This requirement is justified under s. 1 since an inability to obtain this basic information would frustrate civil and penal processes.¹¹³ In any event, if a trespasser is reluctant to provide this to a private individual and is then subject to a warrantless arrest, they can supply it to the police. (Section 11(1) of the Act requires that police be summoned to take custody of a person who has been subject to a citizen's arrest under the Act.)

F. The citizen's arrest power does not infringe ss. 7 or 9 of the Charter

93. The citizen's arrest power in the Legislation¹¹⁴ does not violate ss. 7 or 9 of the *Charter*. Section 8(2) of the Act limits the circumstances of an arrest to those permitted under s. 9(1) of the *TPA*. In *R v Asante-Mensah*, the Court of Appeal held that s. 9(1) of the *TPA* does not violate ss. 7 or 9. The Court held that s. 9(1) of the *TPA* mirrors the citizen's arrest powers available at common law.¹¹⁵ *Asante-Mensah* provides a complete answer to this claim.

94. The Applicants argue that s. 15 of the Regulation extends the citizen's arrest power in s. 8 of the Act beyond s. 9(1) of the *TPA* (Factum para 114). Section 15 of the Regulation provides that “[f]or greater certainty,” the citizen's arrest power may “only be exercised if the owner or

¹¹² *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1, ¶61, ¶64, ¶69 [MPAO]; *Batty*, ¶63, *Committee for the Commonwealth*, p164-6

¹¹³ In *Moore v The Queen*, [1979] 1 SCR 195, in upholding the soundness of an obstruction of justice charge, the SCC held it was reasonable to demand identification to enforce the law (in that case a regulatory statute): p203-205. *Moore* remains binding precedent despite it pre-dating the *Charter*: *R v Hudson*, 1990 CanLII 7486 (SK KB), ¶12-13, aff'd 1990 CanLII 7756 (SK CA); see also *R v Julom*, 2022 ABCA 198, ¶55-57

¹¹⁴ Act, 8(1)(d); Regulation, s 15

¹¹⁵ *R v Asante-Mensah*, 2001 CanLII 7279 (ON CA), ¶24, 33, 38 [*Asante-Mensah*]

occupier believes that there are reasonable and probable grounds for carrying out the arrest, which may, depending on the circumstances, require asking the person why he or she is in or on the premises.” Focussing on the words “believes” and “require asking the person why he or she is in or on the premises” the Applicants argue that a subjective personal belief on the part of the owner/occupier is enough to ground arrest. This argument is meritless for two reasons.

95. First, the Court of Appeal and Supreme Court have held that where legislation speaks of belief that there are “reasonable and probable grounds,” such a state of belief includes (implicitly) both a subjective and objective component.¹¹⁶ The words “she or he *believes* on reasonable and probable grounds” mean that it is not sufficient for the person making the arrest to personally believe that there are reasonable and probable grounds. Rather, a reasonable person in their shoes would have believed that reasonable and probable grounds existed.¹¹⁷

96. The fact that s. 15 of the Regulation states that determining whether there are reasonable and probable grounds may “...require asking the person why he or she is in or on the premises” supports the conclusion that the citizen’s arrest provision requires objective justification for the arrest which may require inquiries as to why the person is on the premises.

97. Second, s. 9(1) of the *TPA* uses the same language as s. 15 of the Regulation. Section 9(1) of the *TPA* states: “...the occupier of premises, or a person authorized by the occupier, may arrest without warrant any person he or she *believes* on reasonable and probable grounds to be on the premises in contravention of section 2.”¹¹⁸ There is no substance to the argument that the impugned arrest power goes *beyond* what is in the *TPA*. The powers are the same.¹¹⁹

¹¹⁶ *Assante-Mensah*, ¶33; *Storrey v The Queen*, 1990 CanLII 125 (SCC), p250-51 [*Storrey*].

¹¹⁷ *Storrey*, p250-51

¹¹⁸ *TPA*, s 9(1) [italics added]

¹¹⁹ Regulation, s 15; *TPA*, s 9(1); *Asante-Mensah*, ¶33

98. Whether a particular owner had reasonable and probable grounds for a particular arrest will depend on the circumstances of each arrest. The impugned provisions require reasonable and probable grounds and, therefore, do not authorize arbitrary or unlawful detentions.

G. Putting the onus on the accused to prove consent does not violate s. 11(d)

99. Section 14(3) of the Act does not violate s. 11(d) of the *Charter*. As the Supreme Court noted in *R v Schwartz*, when considering whether a reverse onus provision infringes s. 11(d), the question is not whether the accused must disprove an element or prove an excuse but whether the accused may be convicted while a reasonable doubt exists.¹²⁰ Section 14(3) of the Act does not permit the accused to be convicted despite a reasonable doubt.

100. Challenges to similar provisions in s. 47(3) of the *POA* and s. 2(1) of the *TPA* have been repeatedly dismissed, including by the Court of Appeal.¹²¹ Section 47(3) of the *POA* and s. 2(1) of the *TPA*, closely mirror s. 14(3) of the Act. Courts have reasoned that provisions that put the burden on the accused to prove an exemption do not raise a risk that they will be convicted despite there being a reasonable doubt as to guilt. This is because proof of the exemption by the accused would resolve all doubts in their favour.¹²²

101. The presumption in the Act avoids placing the virtually impossible burden on the Crown to prove a negative (the absence of consent from *any* person with apparent authority at a facility). As held in *Schwartz*, a reverse onus provision is rational where the accused is in the best position

¹²⁰ *R v Schwartz*, [1988] 2 SCR 443, ¶79-80 [*Schwartz*]

¹²¹ See for example *R v Ahmad*, [2019 ONCJ 853](#); *R v Shaikh*, [2013 ONCJ 33](#); *Proulx (informant) v Krukowski*, [1993 CanLII 9408](#) (ON CA), *R v Lee's Poultry Ltd*, [1985 CanLII 166](#) (ON CA) [*Lee's Poultry*] adopting the House of Lord's reasoning in *R v Edwards*, [1975] 1 QB 27 (Eng QB); *R v Clouston*, [1986] OJ No 1869 (Co Ct), R BoA, T2, p30; *R v Asante-Mensah*, [1996] OJ No 1821 (Ont Ct Gen Div) ¶133, reversed on other grounds (2001), 204 DLR (4th) 51 (CA), affirmed [2003 SCC 38](#), R BoA, T1, p18; *R v Shaikh*, [2013] OJ No 457 (OCJ), ¶90-91, 111, R BoA, T3, p60-64

¹²² *Schwartz*, ¶80

to resolve the issue and prove the existence of an exemption.¹²³ Given the scale of some farm operations, it would be difficult, if not impossible, to check with every possible individual (including former employees) to prove the absence of consent.¹²⁴

H. In the alternative, any rights limitation is justified under s. 1 of the *Charter*

102. The impugned provisions do not breach the *Charter*. However, in the event this Court should find a breach, any such breach is justified under the *Oakes* test because: (1) the Legislation furthers the pressing and substantial objectives of deterring trespass, protecting the biosecurity of food production and increasing safety around transport trucks; (2) the provisions are rationally connected to these objectives; (3) the provisions are carefully tailored to minimally impair *Charter* rights; and (4) the benefits of the Legislation outweigh any deleterious effects.

(i) The Legislation furthers pressing and substantial objectives

103. The proper question at this stage of the s. 1 analysis is whether Ontario has *asserted* a pressing and substantial objective. Ontario is not required “to provide evidence of actual harm to demonstrate that each objective is pressing and substantial.”¹²⁵ The Supreme Court has recognized that “[o]ften legislation does not simply further one goal but rather strikes a balance among several goals, some of which may be in tension”.¹²⁶

104. The purpose of the Legislation is to deter trespass on animal protection zones, protect the biosecurity of Ontario’s food production and supply and increase safety around transport trucks.¹²⁷ Each of these goals is pressing and substantial.

105. A breach of biosecurity measures can have devastating impacts on the health of livestock,

¹²³ *Schwartz*, ¶80, 84; see also *Lee’s Poultry*

¹²⁴ *Duff Aff*, RR, V4, T6, p 828-29, ¶40-43

¹²⁵ *Harper v Canada*, 2004 SCC 33, ¶25, 93

¹²⁶ *M v H*, [1999] 2 SCR 3, ¶100

¹²⁷ Act, s 1; Bill 156, 3rd reading (Hon Hardeman; Mr. Pettapiece), RR, V10, T20L, p3050, 3070

with potentially severe adverse consequences for animals, farmers, processors, consumers and Ontario's access to export markets (paras 11-15 above). Trespass on farms creates negative mental health impacts and can endanger the physical safety of farmers, their families, and employees (paras 23-24 above). Trespass also violates the farmers' privacy interests and autonomy and self-fulfillment through control, use and enjoyment of their property. The Legislation guards against these harmful effects, in addition to protecting the safety of protestors who engage in protest activities around transport trucks (paras 25-27 above).

106. The Legislation also fills the gaps or weaknesses in the pre-existing law, such as the *TPA*, by addressing the unique issues presented by covert trespass on animal protection zones (paras 28-34 above). The Legislation extends the limitation period to deter trespassers who would otherwise evade liability by waiting until the six month limitation period applicable to the *TPA* has passed before publicly releasing materials obtained through trespass. Similarly, the Act directly addresses circumstances where consent is obtained under false pretences.

107. There is no merit to the Applicants' allegation that a goal of the Legislation is "to reduce undercover exposés at agricultural facilities."¹²⁸ The terms of the Legislation¹²⁹ and legislative history make clear that the Act's focus is on the important goals of deterring unlawful trespass on animal protection zones, protecting the biosecurity of Ontario's food supply and increasing safety around animal transport trucks.¹³⁰ Further, the Legislation expressly provides an exception for journalists and whistle-blowers to guard against any potential adverse impact of the Act.

(ii) The challenged provisions are rationally connected to these objectives

108. The Supreme Court has described the rational connection step of the analysis as "not

¹²⁸ Applicants' Factum, ¶33

¹²⁹ Act, [s 1](#)

¹³⁰ Bill 156, 3rd reading (Hon Hardeman; Mr. Pettapiece), RR, V10, T20L, p3050, 3070

particularly onerous.”¹³¹ Concrete evidence is not required; Ontario need only show that there is a “reasoned apprehension of harm”¹³² which may be based on “reason or logic”.¹³³

109. It is reasonable and logical to conclude the impugned measures will address trespass and interference with livestock vehicles, breaches of biosecurity, increased risks to the food supply, and danger to human safety. The evidence shows that trespassers do not follow biosecurity protocols, have caused harm to animals by neglecting farm duties when working undercover and have caused undue stress to animals, farmers, their families and employees (paras 16-24 above).

110. The evidence also shows that where protestors interfere with transport trucks, or interfere/interact with the animals inside, they cause real risks of harm to the protestors and drivers (paras 25-27 above). The Legislation is rationally connected to addressing these risks.

(iii) The Legislation is minimally impairing

111. The minimal impairment stage asks “whether the limit on the right is reasonably tailored to the pressing and substantial goal put forward to justify the limit.”¹³⁴ Legislatures are not to be held to a standard of perfection, but rather are accorded leeway in the tailoring process.¹³⁵

112. In cases of complex social problems, such as the present case, legislative answers may not be simple, evident or scientifically measurable. As such, the Legislature’s response should be accorded considerable deference. Importantly, “... government is not required to pursue the least drastic means of achieving its objective, but it must adopt a measure that falls within a range of reasonable alternatives.”¹³⁶ Courts will not find a law defective “merely because they

¹³¹ *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69, ¶228. See also *JTI-Macdonald*, ¶40; *Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, ¶156-7

¹³² *R v Sharpe*, ¶85

¹³³ *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199, ¶153 [*RJR-MacDonald*]

¹³⁴ *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, ¶53 [*Hutterian*]

¹³⁵ *RJR-MacDonald*, ¶160; *Hutterian*, ¶54

¹³⁶ *MPAO*, ¶149

can conceive of an alternative which might better tailor objective to infringement.”¹³⁷

113. The Legislation is minimally impairing because: (a) it is carefully tailored to exempt journalists and whistle-blowers; (b) a less impairing alternative would not achieve the pressing and substantial objectives; and (c) it is not akin to so called U.S. “ag-gag” laws.

a) The Legislation is tailored to exempt journalists and whistle-blowers

114. The Legislation is carefully tailored to provide exceptions for journalists and whistle-blowers. This means that a person who meets the definition of a journalist or whistle-blower under the Regulation who obtains consent to enter an animal protection zone by false pretences has a full defence to a charge of trespass.

115. These exceptions ensure that journalists and employee whistle-blowers are not prevented from gathering information and reporting on the treatment of animals on farms.¹³⁸

116. Contrary to the Applicants’ position that the exceptions are “of no practical use” (Factum para 37), the criteria to meet the exceptions, properly construed, directly correspond to the nature of undercover journalism and the situation of employee whistle-blowers. As discussed above, the Applicants’ interpretation of the provisions is unreasonable. Those provisions merely require that a journalist or whistle-blower not cause harm to animals or persons in the course of their time undercover (beyond “harm” caused by the application of standard husbandry practices). As noted, it is contrary to ethical standards of undercover journalists to put people or property at risk of harm (para 48 above).

117. With respect to animal transport, the Legislation does not prohibit activists from conducting protests, looking into, or taking pictures of animals inside transport trucks (para 83 above). Rather, it sets reasonable and minimally impairing limits to ensure that those activities

¹³⁷ *Frank v Canada (Attorney General)*, 2019 SCC 1, ¶166, citing to *RJR-MacDonald*, ¶160

¹³⁸ Bill 156, 3rd reading (Hon Hardeman), RR, V10, T20L, p3055-56

can safely take place.¹³⁹ The Legislation only targets the dangerous activity and interference/interaction with the livestock of others, not “bearing witness” or protest.

b) Allowing trespass and interference with animals in transport does not achieve the objectives

118. The Legislature is not required to employ a less impairing alternative which does not achieve its objective.¹⁴⁰ The pressing and substantial objectives of the Legislation could not be achieved if trespassers were permitted to enter farms under false pretences or interact with animals in transit. This would pose serious risks to biosecurity and the food supply. Moreover, the objective of road and pedestrian safety would be defeated.

c) There is no merit to the Applicants analogy to so called U.S. “ag-gag” laws

119. The Legislation is not akin to U.S. “ag-gag” laws, which have been struck down as unconstitutional. First, U.S. “ag-gag” laws contain no exceptions to the offence of gaining entry by false pretences for anyone.¹⁴¹ Second, the American courts determined that the U.S. “ag-gag” laws were enacted to quash investigative reporting or stop “the vegetarian people” who are “trying to kill the animal industry.”¹⁴² By contrast, here the record provides no support for the contention that the impugned law is aimed at suppressing speech.¹⁴³

120. The definition of “false pretences” and the journalist and whistle-blower exceptions were expressly provided to ensure the Legislation would “provid[e] the right balance [between] protecting farmers, their families and their animals with the right of freedom of expression.”¹⁴⁴

¹³⁹ Duff Aff, RR, V4, T6, p846, ¶104

¹⁴⁰ *Hutterian*, ¶54

¹⁴¹ See e.g., *Animal Legal Defense Fund v Wasden*, [828 F 3d 1184](#) (Court of Appeals, 9th Circuit, 2018) [*Wasden*]; *Animal Legal Defense Fund v Herbert*, [263 F Supp 3d 1193](#) (Dist Court, D Utah, 2017) [*Herbert*]; *Animal Legal Defense Fund v Reynolds*, [353 F Supp 3d 812](#) (Dist Court, SD Iowa, 2019) [*Reynolds*]; *Animal Legal Defense Fund et al v Otter*, [118 F Supp 3d 1195](#) (Dist Court, D Idaho, 2015) [*Otter*]

¹⁴² *Herbert*, [p1198](#); *Wasden*, [p1196-98](#); *Otter*, [p1201-2](#)

¹⁴³ Bill 156, 3rd reading (Hon Hardeman), RR, V10, T20L, p3050

¹⁴⁴ Bill 156, 3rd reading (Hon Hardeman), RR, V10, T20L, p3053-54, 3056

121. Finally, despite the U.S. courts' acceptance that property rights and biosecurity were important State interests, the "ag-gag" laws did not pass strict scrutiny because the States provided *no evidence* of biosecurity risks or other harms posed by trespassing activities.¹⁴⁵ Here, the evidence shows that trespass causes real risks to biosecurity and to animal and human health.

122. The fact that the Legislation requires whistle-blowers to report illegal activity "as soon as practicable" and some U.S. "ag-gag" laws also require timely reporting does not convert the Legislation into an "ag-gag" law. The requirement to report as soon as practicable is consistent with the goal of protecting animal welfare and is consistent with employee obligations as well as the ethical obligations of undercover journalists and activists to avoid unnecessary suffering.¹⁴⁶ Farmers, activists and the government all condemn animal abuse.¹⁴⁷ Yet, it is activists who complain that blowing the whistle "early" means that cannot obtain the most compelling footage.¹⁴⁸ As between avoiding continued animal suffering and capturing more visceral footage, the balance must fall in favour of the former.

(iv) The benefits of the Legislation outweigh any deleterious effects

123. The final stage of the s. 1 analysis weighs the salutary and deleterious effects of the Legislation. This balancing exercise "allows for a broader assessment of whether the benefits of the impugned law are worth the cost of the rights limitation."¹⁴⁹

124. The Legislation has the salutary effects of deterring unlawful trespass and protecting biosecurity at animal protection zones, which in turn protect the integrity of food production and avoid harm to animals, farmers and other industry participants, consumers and exports. The

¹⁴⁵ *Reynolds*, [p824-25](#); *Herbert*, [p1212](#)

¹⁴⁶ *Duff Aff*, RR, V4, T6, p844, ¶99-100

¹⁴⁷ Bill 156, 3rd reading (Hon Hardeman), RR, V10, T20L, p3055-56

¹⁴⁸ 1st Labchuk Aff, AR, V1, Tab B, p95, ¶159-60; *Beal Cr-x*, JTB, V1, T1, p22-23, q78-80

¹⁴⁹ *Hutterian*, [¶77](#)

Legislation also has the positive benefit of protecting safety near transport trucks.

125. The alleged deleterious effect (if any) on the expressive aspect of interacting/interfering with animals in transport trucks is minor, as the Legislation does not prohibit protests but merely sets reasonable limits to ensure that protests take place safely.

126. The prohibition on trespass has a minimal deleterious impact on expressive interests as it regulates conduct that was already unlawful at common law and under the *TPA*. While trespassers are restricted from entering farms under false pretences, except as journalists or whistle-blowers under the Regulation, the Legislation does not stop activists from disseminating information and expressing their views on animal abuse and suffering, including that caused by common husbandry practices to which the Applicants take exception. To the extent (if any) that the Legislation inhibits the “freedom to lie,” the Supreme Court has held that deceptions are low value expression, more easily limited under s. 1 than expression at the core of s. 2(b).¹⁵⁰

127. The journalist exception allows undercover journalists (including those using false pretences to gain access to property) to capture information and footage on a farm or facility. Information they gather on conditions and practices affecting animal welfare is still available to them and the public. The whistle-blower exception ensures that employees (even covert activists hired on false pretences) are not deterred from entering properties, recording and reporting animal abuse when it occurs. The salutary effects justify any minimal limitation of rights.

PART IV – ORDER REQUESTED

128. Ontario requests that the Application be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF OCTOBER, 2023.



Robin K. Basu



Yashoda Ranganathan



Elizabeth Guilbault

¹⁵⁰ *JTI-Macdonald*, ¶68

SCHEDULE “A – LIST OF AUTHORITIES”

Case law

- | No. | Title |
|-----|---|
| 1 | <i>Alberta v Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37 |
| 2 | <i>Andrews v Law Society of British Columbia</i> , [1989] 1 SCR 143 |
| 3 | <i>Animal Legal Defense Fund et al v Otter</i> , 118 F. Supp 3d 1195 (Dist. Court, D. Idaho, 2015) |
| 4 | <i>Animal Legal Defense Fund v Herbert</i> , 263 F. Supp. 3d 1193 (Dist. Court, D. Utah, 2017) |
| 5 | <i>Animal Legal Defense Fund v Reynolds</i> , 353 F. Supp. 3d 812 (Dist. Court, SD Iowa, 2019) |
| 6 | <i>Animal Legal Defense Fund v Wasden</i> , 828 F. 3d 1184 (Court of Appeals, 9th Circuit, 2018) |
| 7 | <i>Armes v City of Philadelphia</i> , 706 F Supp 1156 (US Dist. Court, ED. Pennsylvania, 1989) |
| 8 | <i>Attorney General of Ontario v 2192 Dufferin Street</i> , 2019 ONSC 615 |
| 9 | <i>Baier v Alberta</i> , 2007 SCC 31 |
| 10 | <i>Batty v City of Toronto</i> , 2011 ONSC 6862 |
| 11 | <i>Bell ExpressVu Limited Partnership v Rex</i> , 2002 SCC 42 |
| 12 | <i>British Columbia Federation v British Columbia Pubic School Employers Assn</i> , 2009 BCCA 39 , leave to appeal refused [2009] SCCA No 160 |
| 13 | <i>Canada (AG) v JTI-Macdonald Corp</i> , 2007 SCC 30 |
| 14 | <i>Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario</i> , 2019 ONCA 393 |
| 15 | <i>Committee for the Commonwealth of Canada v Canada</i> , [1991] 1 SCR 139 |
| 16 | <i>Compagnie générale des établissements Michelin-Michelin & Cie v CAW-Canada</i> , [1997] 2 FC 306 |
| 17 | <i>Figueiras v Toronto Police Services Board</i> , 2015 ONCA 208 |

- 18 *Frank v Canada (Attorney General)*, [2019 SCC 1](#)
- 19 *Hansman v Neufeld*, [2023 SCC 14](#)
- 20 *Harper v Canada*, [2004 SCC 33](#)
- 21 *Irwin Toy Ltd. v Quebec (AG)*, [\[1989\] 1 SCR 927](#)
- 22 *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, [2017 SCC 54](#)
- 23 *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, [2000 SCC 69](#)
- 24 *M v H*, [1999] [2 SCR 3](#)
- 25 *Madsen v Women’s Health Centre, Inc.*, [512 US 753](#) (USSC, 1994)
- 26 *Montreal (City) v 2952-1366 Québec Inc.*, [2005 SCC 62](#)
- 27 *Montreal (City) v Buczynsky*, [\[1990\] QJ No 2365](#)
- 28 *Moore v The Queen*, [\[1979\] 1 SCR 195](#)
- 29 *Mounted Police Association of Ontario v Canada (Attorney General)*, [2015 SCC 1](#)
- 30 *Ontario (AG) v Fraser*, [2011 SCC 20](#)
- 31 *Ontario (Attorney General) v Dieleman*, [1994 CanLII 7509](#) (ON SC)
- 32 *Ontario (Attorney General) v Fineberg*, [1994 CanLII 10563](#) (ON SC)
- 33 *Ontario (Attorney General) v Trinity Bible Chapel*, [2023 ONCA 134](#)
- 34 *Ontario (Public Safety and Security) v Criminal Lawyers’ Association*, [2010 SCC 23](#)
- 35 *Planned Parenthood Federation of America, Inc. v Newman* ([Court of Appeals, 9th Circuit, 2022](#))
- 36 *Proulx (informant) v Krukowski*, [1993 CanLII 9408](#) (ON CA)
- 37 *R v Ahmad*, [2019 ONCJ 853](#)
- 38 *R v Asante-Mensah*, [1996] OJ No 1821 (Ont Ct (Gen Div), reversed on other grounds (2001), 204 DLR (4th) 51 (CA), affirmed [2003 SCC 38](#))
- 39 *R v Asante-Mensah*, [2001 CanLII 7279](#) (ON CA)
- 40 *R v Breen*, [2023 BCPC 84](#)
- 41 *R v Clouston*, [1986] OJ No 1869 (Co Ct)
- 42 *R v Edwards*, [1975] 1 QB 27 (Eng QB)

- 43 *R v Hudson*, [1990 CanLII 7486](#) (SK KB)
- 44 *R v Hudson*, [1990 CanLII 7756](#) (SK CA)
- 45 *R v Julom*, [2022 ABCA 198](#)
- 46 *R v Krajnc*, [2017 ONCJ 281](#)
- 47 *R v Kutynec*, [\[1992\] OJ No 347 \(CA\)](#)
- 48 *R v Lee's Poultry Ltd.*, [1985 CanLII 166](#) (ON CA)
- 49 *R v Osborne*, [2007 NBPC 3](#)
- 50 *R v Proulx*, [2000 SCC 5](#)
- 51 *R v Schwartz*, [\[1988\] 2 SCR 443](#)
- 52 *R v Shaikh*, [2013] OJ No 457 (OCJ)
- 53 *R v Shaikh*, [2013 ONCJ 33](#)
- 54 *R v Sharpe*, [2001 SCC 2](#)
- 55 *R v Waters* (1990), [54 CCC \(3d\) 40](#) (Sask KB)
- 56 *Re NB Broadcasting Co and CRTC* (1984), [13 DLR \(4th\) 77](#) (FCA)
- 57 *Rizzo & Rizzo Shoes Ltd (Re)*, [\[1998\] 1 SCR 27](#)
- 58 *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] [3 SCR 199](#)
- 59 *Russo v Ontario Jockey Club* (1987), [46 DLR \(4th\) 359](#) (Ont HCJ)
- 60 *Smiley v Ottawa (City)*, [2012 ONCJ 479](#)
- 61 *Storrey v The Queen*, [1990 CanLII 125](#) (SCC)
- 62 *Toronto (City) v Ontario (Attorney General)*, [2019 ONCA 732](#)
- 63 *Toronto (City) v Ontario (Attorney General)*, [2021 SCC 34](#)

Secondary sources

- | No. | Title |
|-----|--|
| 64 | Marjorie Benson, Marie-Ann Bowden & Dwight Newman, <i>Understanding Property: A guide to Canada's Property Law</i> (Toronto: Thomson Carswell, 2008) |

- 65** Peter Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Thomson Reuters, 2021) (Loose-leaf updated 2021), § 38:4
- 66** Ruth Sullivan, *The Construction of Statutes*, 7th ed, (Loose-leaf updated 2022), § 8.03

SCHEDULE “B” -- LIST OF STATUTES

[Security from Trespass and Protecting Food Safety Act, 2020, SO 2020, c 9](#)

Purposes

1 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 in order to,

- (a) eliminate or reduce the unique risks that are created when individuals trespass on those properties or interfere with farm animals, including the risk of exposing farm animals to disease and stress as well as the risk of introducing contaminants into the food supply;
- (b) protect farm animals and the food supply chain from the risks described in clause (a);
- (c) protect the safety of farmers, their families and persons working in or on farms, animal processing facilities and prescribed premises as well as the safety of drivers of motor vehicles transporting farm animals; and
- (d) prevent any adverse effects the risks described in clause (a) may have on Ontario’s overall economy.

[...]

Prohibitions re trespass, etc.

Animal farms

5 (1) No person shall enter in or on an animal protection zone on a farm without the prior consent of the owner or occupier of the farm.

Processing facilities

(2) No person shall enter in or on an animal protection zone on an animal processing facility without the prior consent of the owner or occupier of the facility.

Other animal premises

(3) No person shall enter in or on an animal protection zone on prescribed premises without the prior consent of the owner or occupier of the premises

No interaction with farm animals

(4) No person shall interfere or interact with a farm animal in or on an animal protection zone

on a farm, animal processing facility or prescribed premises, or carry out a prescribed activity in or on the animal protection zone, without the prior consent of the owner or occupier of the farm, facility or premises.

No implied consent

(5) For the purposes of subsections (1), (2), (3) and (4), prior consent of an owner or occupier shall not be inferred by a person seeking to enter in or on an animal protection zone referred to in those subsections, or to interfere or interact with a farm animal or carry out a prescribed activity in or on the animal protection zone, solely on the basis that,

(a) the owner or occupier has not prohibited the person directly, orally or in writing, from entering the animal protection zone, from interfering or interacting with a farm animal or carrying out the prescribed activity or has not otherwise objected to the person's presence; or

(b) no signs have been erected on the farm, animal processing facility or prescribed premises to restrict or prohibit the entry in or on the animal protection zone or the interference, interaction or prescribed activity.

Consent under duress, false pretences

(6) For the purposes of subsections (1), (2), (3) and (4), consent to entering in or on an animal protection zone, to interfering or interacting with farm animals or to carrying out prescribed activities is invalid if it is obtained from the owner or occupier of the relevant farm, animal processing facility or prescribed premises using duress or under false pretences in the prescribed circumstances or for the prescribed reasons and a consent so obtained shall be deemed not to have been given.

Animal protection zone signs

(7) No person shall deface, alter, damage or remove any signs that have been posted on a farm, animal processing facility or prescribed premises to demarcate an animal protection zone or to prohibit or regulate access to or activities carried out in or on animal protection zones.

Non-application of Trespass to Property Act

(8) The *Trespass to Property Act* does not apply to animal protection zones to which this section applies.

Prohibition re transportation of farm animals

6 (1) No person shall stop, hinder, obstruct or otherwise interfere with a motor vehicle transporting farm animals.

No interaction with farm animals

(2) No person shall interfere or interact with a farm animal being transported by a motor vehicle without the prior consent of the driver of the motor vehicle.

No implied consent

(3) For the purposes of subsection (2), prior consent of the driver of a motor vehicle transporting farm animals shall not be inferred by a person seeking to interfere or interact with a farm animal being transported solely on the basis that the driver has not specifically prohibited the person from doing so.

Consent under duress, false pretences

(4) For the purposes of subsection (2), consent to interfering or interacting with a farm animal is invalid if it is obtained from the driver of the motor vehicle transporting the farm animal using duress or under false pretences in the prescribed circumstances or for the prescribed reasons and a consent so obtained shall be deemed not to have been given

[...]

Responses by owner, occupier

8 (1) The owner or occupier of a farm, animal processing facility or prescribed premises who finds a person in or on an animal protection zone on the farm, facility or premises, in contravention of subsection 5 (1), (2) or (3), or doing anything in contravention of subsection 5 (4) or (7) may, while the person is still located on the farm, facility or premises,

- (a) request that the person provide his or her name and address;
- (b) if the person is doing anything in contravention of subsection 5 (4) or (7), request that the person cease doing so;
- (c) request that the person leave the premises; or
- (d) arrest the person without a warrant.

[...]

Offences

14 (1) Every person who contravenes any of the following provisions is guilty of an offence:

1. Subsection 5 (1), (2), (3) or (4).
2. Subsection 5 (7).
3. Subsection 6 (1) or (2).
4. Subsection 8 (3) or (4).
5. Subsection 9 (2).
6. Section 12.

Consent under duress, false pretences

(2) Any person who uses duress or false pretences in the prescribed circumstances or for the prescribed reasons to obtain the consent of the owner or occupier of a farm, animal processing facility or prescribed premises or the driver of a motor vehicle transporting farm animals, to do anything that would otherwise be prohibited under subsection 5 (1), (2), (3) or (4) or 6 (2) is guilty of an offence.

[...]

Penalties

15 (1) A person who is found guilty of an offence under subsection 14 (1) is liable on conviction to a fine of,

- (a) for a first offence, not more than \$15,000; and
- (b) for any subsequent offence, not more than \$25,000.

Increased penalties

(2) If a person is found guilty of an offence as a result of a contravention of subsection 5 (1), (2), (3), (4) or (7) or 6 (1) or (2) and the court finds that the offence was committed in prescribed circumstances that resulted in an increase to the gravity of the offence, the amount of the penalty may be increased in accordance with the regulations.

Decision not to increase

(3) If a court determines that the amount of a penalty should not be increased despite the existence of prescribed circumstances mentioned in subsection (2), the court shall include the reasons for this determination in its decision.

O Reg 701/20: General

Animal protection zone

3. (1) For the purposes of clause (b) of the definition of “animal protection zone” in section 2 of the Act, the owner or occupier of the farm, animal processing facility or prescribed premises may mark an area as an animal protection zone only if,

(a) the area meets the following requirements:

- (i) it does not include the entire farm, animal processing facility or prescribed premises, as the case may be,
- (ii) it only includes land on which farm animals are reasonably likely to be kept or located,
- (iii) it is located within the legal boundaries of the farm, animal processing facility or prescribed premises, and
- (iv) it does not impede access to the front door of any residence on the farm, animal processing facility or prescribed premises; and

(b) the owner or occupier marks the area in accordance with the following requirements:

- (i) the boundaries of the animal protection zone are clearly demarcated,
- (ii) an orange sign, sufficiently large to include a circle of 30 centimetres in diameter within it, is erected at each ordinary point of access to the animal protection zone indicating that the area is an animal protection zone, and
- (iii) markings and signs are clearly visible in daylight.

(2) The following areas are prescribed as animal protection zones for the purposes of clause (c) of the definition of that term in section 2 of the Act:

1. Land where farm animals are gathered for the purposes of being transported from the farm to another place.
2. An area of one metre from the outside wall of any building where farm animals are kept if,
 - i. there is an entrance, exit or other opening into the building located on the wall, and

- ii. the one-metre area is located within the boundaries of the farm, animal processing facility or prescribed premises.
3. With respect to prescribed premises described in section 6,
 - i. pens within the premises where farm animals are kept,
 - ii. any rings or other areas where farm animals are displayed or shown, and
 - iii. any areas for loading or unloading farm animals at the premises.

(3) Despite subsection (2), areas described in paragraph 3 of that subsection are deemed not to be animal protection zones at any time when farm animals are not present in the area.

[...]

Farm animal

5. For the purposes of the definition of “farm animal” in section 2 of the Act, any livestock, poultry, cultured fish or fur-bearing animal that is raised, bred or kept for one of the following agricultural purposes is prescribed as a farm animal:

1. For consumption.
2. To provide a commodity, such as milk, eggs, wool or textiles for consumption or human use.
3. To propel vehicles.
4. To provide labour on or off the farm, including the guarding of other farm animals.
5. To be ridden for pleasure.
6. To be shown publicly at an exhibition.
7. To undertake competitions that are authorized under the law.

Prescribed premises

6. For the purposes of the definition of “prescribed premises” in section 2 of the Act, areas in the following premises in which farm animals are kept are prescribed as prescribed premises:

1. Premises at which farm animals are ordinarily bought or sold and in respect of which a licence has been issued under the *Livestock Community Sales Act*.
2. Premises at which farm animals are displayed for public viewing.
3. Premises at which farm animals lawfully compete against one another

Interferences and interactions with farm animals

8. (1) For the purposes of subsections 5 (4) and 6 (2) of the Act, the following acts are considered interferences and interactions with farm animals if they are carried out without the consent required under those subsections:

1. Directly or indirectly having physical contact with a farm animal, whether the farm animal is dead or alive.
2. Providing any substance, whether in liquid or solid form, to a farm animal, including spraying or throwing any substance on or at a farm animal.
3. In the case of an interference or interaction for the purposes of subsection 5 (4) of the Act,
 - i. releasing a farm animal from an animal protection zone, or
 - ii. creating conditions in which a farm animal could escape from an animal protection zone.
4. In the case of an interference or interaction for the purposes of subsection 6 (2) of the Act,
 - i. releasing a farm animal from a motor vehicle in which it is being transported, or
 - ii. creating conditions in which a farm animal could escape from a motor vehicle in which it is being transported.
5. Any other activity that causes or is likely to cause harm to a farm animal or harm with respect to food safety.

(2) For greater certainty, the acts described in subsection (1) are considered interferences and interactions with farm animals being transported by a motor vehicle for the purposes of subsection 6 (2) of the Act whether the acts occur while the motor vehicle is moving or while it is stationary.

False statement resulting in contravention of Act

9. A person who gives a false statement to the owner or occupier of a farm, animal processing facility or prescribed premises or to the driver of a motor vehicle transporting farm animals and who obtains the consent of the owner, occupier or driver to carry out an act that, without the consent, is prohibited under subsection 5 (1), (2), (3) or (4) or 6 (2) of the Act, is considered to have obtained the consent under false pretences for the purposes of subsections 5 (6), 6 (4) and 14 (2) of the Act if,

- (a) the statement is made either orally or in writing;
- (b) the false statement is given for the purpose of obtaining the consent;
- (c) the owner, occupier or driver provides the consent in reliance on the false statement; and

- (d) as a result of the consent being given, the person making the statement carries out an act that would otherwise be prohibited under the Act.

False statement re employment qualifications

10. (1) This section applies where,

- (a) a person gives a false statement to the owner or occupier of a farm, animal processing facility or prescribed premises or to the driver of a motor vehicle transporting farm animals, orally or in writing, for the purpose of obtaining employment;
- (b) the employment requires the employee to carry out acts that, without the consent of the owner, occupier or the driver, would be prohibited under subsection 5 (1), (2), (3) or (4) or 6 (2) of the Act;
- (c) the false statement expresses or implies that the person making the statement possesses the qualifications necessary to carry out the employment in a manner that would not cause harm to farm animals, harm with respect to food safety or harm to an individual, when in fact the person does not possess those qualifications;
- (d) the owner or occupier of the farm, animal processing facility or prescribed premises, or the driver of the motor vehicle transporting farm animals employs the person who gave the false statement in reliance on the false statement; and
- (e) the terms of the employment expressly or impliedly give the employee the employer's consent to carry out an act that would otherwise be prohibited under subsection 5 (1), (2), (3) or (4) or 6 (2) of the Act.

(2) The consent given by the owner or occupier of a farm, animal processing facility or prescribed premises or by the driver of a motor vehicle transporting farm animals to an employee in accordance with clause (1) (e) is considered to have been given under false pretences for the purposes of subsections 5 (6), 6 (4) and 14 (2) of the Act, if the employee was employed in the circumstances described in clauses (1) (a) to (d).

Exception, journalists

11. (1) Despite sections 9 and 10, a consent to carry out an act that is otherwise prohibited under section 5 or 6 of the Act given by the owner or occupier of a farm, animal processing facility or prescribed premises or by the driver of a motor vehicle transporting farm animals to a person who gave a false statement shall not be considered to have been obtained under false pretences for the purposes of subsections 5 (6), 6 (4) and 14 (2) of the Act, if the person is a journalist and,

- (a) the false statement does not imply or express that the journalist possesses the qualifications necessary to do a particular task or job in a manner that would not cause harm to farm animals, harm with respect to food safety or harm to an individual, when in fact the journalist does not possess those qualifications;

(b) the journalist, while acting in a professional capacity and for a valid journalistic purpose, enters in or on an animal protection zone, or gains access to a motor vehicle transporting farm animals, in order to gather information and disseminate that information to the public;

(c) the journalist complies with all biosecurity measures relating to farm animals being kept in animal protection zones on the farm, animal processing facility or prescribed premises or being transported by the motor vehicle;

(d) the journalist does not cause or contribute to causing harm to a farm animal, harm with respect to food safety or harm to an individual; and

(e) the owner or occupier of the farm, animal processing facility or the prescribed premises or the driver of the motor vehicle, as the case may be, does not ask the journalist to leave the farm, facility or premises or the area where the motor vehicle is located, or to stop interfering or interacting with farm animals, before the journalist has completed gathering information.

Definitions

(2) In this section,

“journalist” means a person who,

(a) is employed or hired by, or works in connection with, the news media, a press association, news agency, wire service or post-secondary journalism course or program, and

(b) contributes directly to the collection, writing or production of information for dissemination by the news media or other entity referred to in clause (a) to the public in the public interest; (“journaliste”)

“news media” means corporations or entities whose primary function is to disseminate information to the general public on a regular basis, whether in writing or by radio, television or similar electronic means. (“médias d’information”)

Exception, whistle-blowers

12. (1) Despite sections 9 and 10, a consent to carry out an act that is otherwise prohibited under section 5 or 6 of the Act given by the owner or occupier of a farm, animal processing facility or prescribed premises or by the driver of a motor vehicle transporting farm animals to a person who gave a false statement shall not be considered to have been obtained under false pretences for the purposes of subsections 5 (6), 6 (4) and 14 (2) of the Act if,

(a) the person who gave the false statement is,

- (i) an employee of the owner or occupier of the farm, animal processing facility or prescribed premises,
 - (ii) an employee of the owner of the motor vehicle company responsible for transporting farm animals,
 - (iii) an employee of the owner of the farm animals being transported by a motor vehicle company, or
 - (iv) the owner of a company that is allowed on the farm, animal processing facility or prescribed premises or that is allowed to accompany or have access to the motor vehicle transporting farm animals, or any employee of such a company;
- (b) the false statement does not imply or express that the person possesses the qualifications necessary to do a particular task or job in a manner that would not cause harm to farm animals, harm with respect to food safety or harm to an individual, when in fact the person does not possess those qualifications;
- (c) as a result of the false statement and the consent obtained from the owner or occupier or the driver, the person who gave the false statement was able to obtain information or evidence of harm to a farm animal, harm with respect to food safety or harm to an individual, or another illegal activity, being carried out on a farm, animal processing facility or prescribed premises or in or near a motor vehicle transporting farm animals; and
- (d) the person who gave the false statement discloses the information or evidence described in clause (c) to a police officer or other authority as soon as practicable after obtaining the information or evidence.

Same

- (2) Subsection (1) does not apply to a consent given to a person described in clause (1) (a) if,
- (a) the person directly or indirectly,
 - (i) caused or contributed to the disclosed harm to a farm animal, harm with respect to food safety, harm to an individual or illegal activity, or
 - (ii) caused any harm to a farm animal, any harm with respect to food safety or any harm to an individual in order to obtain the information that is disclosed to the police officer or other authority;

(b) the person failed to comply with any biosecurity measures relating to farm animals being kept in animal protection zones on the farm, animal processing facility or prescribed premises or being transported by the motor vehicle; or

(c) before the person completed gathering information, the owner or occupier of the farm, animal processing facility or the prescribed premises or the driver of the motor vehicle, as the case may be, asks the person to leave the farm, facility or premises or the area where the motor vehicle is located, or to stop interfering or interacting with farm animals

[...]

Grounds for arrest

15. For greater certainty, the right of an owner or occupier of a farm, animal processing facility or prescribed premises to arrest a person found in or on the farm, animal processing facility or prescribed premises under clause 8 (1) (d) of the Act may, by virtue of subsection 8 (2) of the Act, only be exercised if the owner or occupier believes that there are reasonable and probable grounds for carrying out the arrest, which may, depending on the circumstances, require asking the person why he or she is in or on the premises.

[Canadian Charter of Rights and Freedoms, s 8, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)

Rights and freedoms in Canada

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

[...]

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[...]

Detention or imprisonment

9 Everyone has the right not to be arbitrarily detained or imprisoned.

[...]

Proceedings in criminal and penal matters

11 Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

[Trespass to Property Act, RSO 1990, c T21](#)

Trespass an offence

2 (1) Every person who is not acting under a right or authority conferred by law and who,

- (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on premises when entry is prohibited under this Act, or
 - (ii) engages in an activity on premises when the activity is prohibited under this Act;
or
- (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Prohibition of entry

3 (1) Entry on premises may be prohibited by notice to that effect and entry is prohibited without any notice on premises,

- (a) that is 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
- (b) 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.

[...]

Arrest without warrant on premises

9 (1) A police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2.

[...]

Damage award

12 (1) Where a person is convicted of an offence under [section 2](#), and a person has suffered damage caused by the person convicted during the commission of the offence, the court shall, on the request of the prosecutor and with the consent of the person who suffered the damage, determine the damages and shall make a judgment for damages against the person convicted in favour of the person who suffered the damage.

Provincial Offences Act, RSO 1990, c P33

Evidence and burden of proof

Evidence taken on another charge

47 (1) The court may receive and consider evidence taken before the same justice on a different charge against the same defendant, with the consent of the parties. R.S.O. 1990, c. P.33, s. 47 (1).

Certificate as evidence

(2) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as proof, in the absence of evidence to the contrary, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case. R.S.O. 1990, c. P.33, s. 47 (2); 1993, c. 27, Sched.

Burden of proving exception, etc.

(3) The burden of proving that an authorization, exception, exemption or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the authorization, exception, exemption or qualification does not operate in favour of the defendant, whether or not it is set out in the information. R.S.O. 1990, c. P.33, s. 47 (3).

General penalty

61 Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than \$5,000. R.S.O. 1990, c. P.33, s. 61.

Limitation

76 (1) A proceeding shall not be commenced after the expiration of any limitation period prescribed by or under any Act for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

Distress

Causing distress

15 (1) No person shall cause an animal to be in distress.

Permitting distress

(2) No owner or custodian of an animal shall permit the animal to be in distress.

Exposure to undue risk of distress

(3) No person shall knowingly or recklessly cause an animal to be exposed to an undue risk of distress.

Exception

(4) Subsections (1), (2) and (3) do not apply in respect of,

- (a) an activity permitted under the *Fish and Wildlife Conservation Act, 1997* in relation to wildlife in the wild;
- (b) an activity permitted under the *Fish and Wildlife Conservation Act, 1997* or the *Fisheries Act (Canada)* in relation to fish;
- (c) an activity regarding agricultural animal care, management or husbandry carried on in accordance with,
 - (i) any standards of care or administrative requirements that expressly provide that they apply to that activity, or
 - (ii) if no standards of care or administrative requirements expressly provide that they apply to that activity, the reasonable and generally accepted practices of agricultural animal care, management or husbandry;
- (d) a prescribed class of animals or animals living in prescribed circumstances or conditions;
and
- (e) prescribed activities.

[...]

GENERAL INSPECTION POWERS

Inspection to determine compliance

24 (1) An animal welfare inspector may enter and inspect any place for the purpose of determining compliance with,

- (a) a condition in an authorization that is issued under section 20 or 21;
- (b) an order to relieve an animal's distress under section 30; or
- (c) the standards of care or administrative requirements or the reasonable and generally accepted practices of agricultural animal care, management or husbandry, if the animals are kept for,
 - (i) an entertainment, commercial, educational or charitable purpose, or
 - (ii) a purpose prescribed by the Lieutenant Governor in Council related to sport.

Dwellings

(2) Subsection (1) does not authorize an animal welfare inspector to enter a place, or part of a place, that is being used as a dwelling without a warrant unless the occupier of the dwelling consents to the entry.

Accredited veterinary facilities

(3) Subsection (1) does not authorize an animal welfare inspector to enter and inspect an accredited veterinary facility, or part of such a facility, for the reason described in clause (1) (c), unless the inspector has reasonable grounds to believe that an animal to be found there is not being treated in accordance with the standards of practice under the *Veterinarians Act*.

Warrant

(4) On application without notice, a justice may issue a warrant authorizing an animal welfare inspector to enter and inspect a place if the justice is satisfied by information under oath or affirmation that there are reasonable grounds to believe that an inspection under this section is required for any of the reasons described in subsection (1).

Warrant for dwelling

(5) An application under subsection (4) that is made for the purposes of entering and inspecting a place, or part of a place, that is used as a dwelling must specify that the warrant is to enter and inspect a dwelling.

Accredited veterinary facilities

(6) In the case of an application under subsection (4) that is made for the purpose of entering and inspecting an accredited veterinary facility, or part of such a facility, for the reason described in clause (1) (c), the justice shall not issue the warrant unless the animal welfare inspector also satisfies the justice that there are reasonable grounds to believe an animal in the facility is not being treated in accordance with the standards of practice established under the *Veterinarians Act*.

Telewarrant

(7) If an animal welfare inspector believes that it would be impracticable to appear personally before a justice to apply for a warrant under subsection (4), he or she may, in accordance with the regulations, seek the warrant by telephone or other means of telecommunication, and the justice may, in accordance with the regulations, issue the warrant by the same means.

Warrant timing and expiry

(8) A warrant issued under this section shall specify the times during which the warrant may be executed and specify a date the warrant expires, which shall be no more than 30 days after the warrant is issued.

Extension

(9) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days upon application without notice by an animal welfare inspector.

Other conditions

(10) A warrant issued under this section is subject to any other conditions that may be specified in the warrant.

Police assistance

(11) An animal welfare inspector may call upon police officers for assistance in executing the warrant.

Use of force

(12) An animal welfare inspector, and any police officers called to assist the inspector, may use whatever force is reasonably necessary to execute the warrant.

Powers during inspection

25 (1) During an inspection under section 24, an animal welfare inspector may,

- (a) inspect any animal or thing that the inspector believes on reasonable grounds to be relevant to the inspection;
- (b) open any receptacle, baggage, package, container, cage or other thing where the inspector believes on reasonable grounds that it may contain something relevant to the inspection;
- (c) conduct any test, take any measurement, specimen or sample, set up any equipment and make any photographic or other record that may assist in the inspection;
- (d) require the production of any animal or thing, including any document or data that is relevant to the inspection;
- (e) use or cause to be used any computer or other device that contains or is able to retrieve information, for the purpose of examining information relevant to the inspection that is contained in or available to the computer or other device, and produce or cause to be produced a printout or other output from the computer or other device of information that is relevant to the inspection;
- (f) remove any documents or other things that are relevant to the inspection for the purpose of making copies or of further inspection; and
- (g) ask questions that are relevant to the inspection.

Assistance

(2) An animal welfare inspector may be accompanied or assisted by any person during an inspection under section 24 regardless of whether the entry is made with or without a warrant.

Time of entry

(3) A warrantless entry under section 24 shall be made only between the hours of 9 a.m. and 5 p.m. during a business day, or at any other time when the place is open to the public.

Copies

(4) An animal welfare inspector may make copies of any documents produced or removed during the inspection.

Return of things

(5) If an animal welfare inspector removes any document or thing under clause (1) (f), the inspector shall copy the document or thing or further inspect it and return it promptly to the person from whom it was taken, unless it is not reasonable for the person to expect the thing to be returned.

Assisting inspector during inspection

26 A person shall give all reasonable assistance to an animal welfare inspector conducting an inspection under section 24, including by,

- (a) producing any animal or thing required by the inspector in the course of the inspection; and
- (b) providing any information relevant to the inspection in response to the inspector's questions.

Power to make reasonable inquiries

27 (1) An animal welfare inspector may, for any of the purposes described in clauses 24 (1) (a), (b) and (c), demand that the owner or custodian of the animal respond to reasonable inquiries. 2019, c. 13, s. 27 (1).

Same

(2) For the purposes of subsection (1), an animal welfare inspector may make inquiries by any means of communication. 2019, c. 13, s. 27 (2).

Orally or in writing

(3) The animal welfare inspector may require the owner or custodian to respond orally or in writing, as the inspector may determine. 2019, c. 13, s. 27 (3).

Production

(4) In requiring an owner or custodian to respond to an inquiry under subsection (1), an animal welfare inspector may require the production of any thing, including a document, or data related to the inquiry. 2019, c. 13, s. 27 (4).

Document or data in electronic form

(5) If a document or data is retained in electronic form, an animal welfare inspector may require that a copy of it be provided to him or her on paper or electronically, or both. 2019, c. 13, s. 27 (5).

Subject of demand

(6) If an animal welfare inspector makes a demand under subsection (1), the owner or custodian who is subject to the demand shall respond to the inspector within the time provided for in the demand. 2019, c. 13, s. 27 (6).

Power to exclude persons

(7) An animal welfare inspector who exercises the power set out in subsection (1) may exclude any person from questioning, except counsel for the individual being questioned. 2023, c. 12, Sched. 6, s. 1.

ENTRY WHERE ANIMAL IS IN DISTRESS

Entry where animal is in distress

28 (1) An animal welfare inspector who believes on reasonable grounds that an animal in distress is to be found in a place may enter and search that place with the consent of the occupier for the purposes of determining whether to exercise powers under sections 30 to 33. 2023, c. 12, Sched. 6, s. 2 (1).

Warrant

(2) On application without notice, a justice may issue a warrant authorizing an animal welfare inspector to enter and search a place for the purposes mentioned in subsection (1) if the justice is satisfied by information under oath or affirmation that there are reasonable grounds to believe that an animal in distress is to be found there. 2023, c. 12, Sched. 6, s. 2 (1).

Warrant for dwelling

(3) An application under subsection (2) that is made for the purposes of entering and searching a place, or part of a place, that is used as a dwelling must specify that the warrant is to enter and search a dwelling. 2019, c. 13, s. 28 (3).

Accredited veterinary facilities

(4) In the case of an application under subsection (2) that is made in relation to an accredited veterinary facility, or part of such a facility, the justice shall not issue the warrant unless the animal welfare inspector satisfies the justice that there are reasonable grounds to believe that an animal to be found there is being abused or subjected to undue physical or psychological hardship, privation or neglect. 2019, c. 13, s. 28 (4); 2023, c. 12, Sched. 6, s. 2 (2).

Telewarrant

(5) If an animal welfare inspector believes that it would be impracticable to appear personally before a justice to apply for a warrant under subsection (2), he or she may, in accordance with the regulations, seek the warrant by telephone or other means of telecommunication, and the justice may, in accordance with the regulations, issue the warrant by the same means. 2019, c. 13, s. 28 (5).

Warrant timing and expiry

(6) A warrant issued under this section shall specify the times during which the warrant may be executed and specify a date the warrant expires, which shall be no more than 30 days after the warrant is issued. 2019, c. 13, s. 28 (6).

Extension

(7) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days upon application without notice by an animal welfare inspector. 2019, c. 13, s. 28 (7).

Other conditions

(8) A warrant issued under this section is subject to any other conditions that may be specified in the warrant. 2019, c. 13, s. 28 (8).

Police assistance

(9) An animal welfare inspector may call upon police officers for assistance in executing the warrant. 2019, c. 13, s. 28 (9).

Use of force

(10) An animal welfare inspector, and any police officers called to assist the inspector, may use whatever force is reasonably necessary to execute the warrant. 2019, c. 13, s. 28 (10).

Assistance

(11) An animal welfare inspector may be accompanied or assisted by any person during a search under this section regardless of whether the search is made with or without a warrant. 2019, c. 13, s. 28 (11).

Critical distress

29 (1) An animal welfare inspector may enter a place, other than a place, or part of a place, that is being used as a dwelling, without a warrant and search for an animal for the purposes of determining whether to exercise powers under sections 30 to 33 if the inspector has reasonable grounds to believe that an animal in the place is in critical distress. 2019, c. 13, s. 29 (1); 2023, c. 12, Sched. 6, s. 3.

Same, dwelling

(2) An animal welfare inspector may enter a place, or a part of a place, that is being used as a dwelling without a warrant and search for an animal if the inspector has reasonable grounds to believe that,

(a) an animal in the place is in critical distress; and

(b) the time required to obtain a warrant under section 28 may result in serious injury or death to the animal. 2019, c. 13, s. 29 (2).

Police assistance

(3) An animal welfare inspector may call upon police officers for assistance in effecting the entry and search. 2019, c. 13, s. 29 (3).

Use of force

(4) An animal welfare inspector, and any police officers called to assist the inspector, may use whatever force is reasonably necessary to effect the entry and search. 2019, c. 13, s. 29 (4).

Assistance

(5) An animal welfare inspector may be accompanied or assisted by any person during a search under this section. 2019, c. 13, s. 29 (5).

Accredited veterinary facilities

(6) An animal welfare inspector shall not enter or search an accredited veterinary facility, or part of such a facility, under this section unless the inspector has reasonable grounds to believe that an animal in critical distress to be found there is being abused or subjected to undue physical or psychological hardship, privation or neglect. 2019, c. 13, s. 29 (6).

POWERS IN RELATION TO ANIMALS IN DISTRESS

Order to owner of animals, etc.

30 (1) An animal welfare inspector who has reasonable grounds to believe that an animal is in distress and who is able to promptly find the owner or custodian of the animal may order the owner or custodian to take such action as may, in the opinion of the inspector, be necessary to relieve the animal of its distress, which may include, without limiting the generality of the foregoing, having the animal examined and treated by a veterinarian at the expense of the owner or custodian. 2019, c. 13. S. 30 (1).

Order to be in writing

(2) The order shall be in writing and shall have printed or written thereon the content of subsections 38 (1), (3) and (5). 2019, c. 13. S. 30 (2).

Note: On October 1, 2023, the day named by proclamation of the Lieutenant Governor, subsection 30 (2) of the Act is amended by striking out “(1), (3)” and substituting “(1), (2), (3)”. (See: 2023, c. 12, Sched. 6, s. 4 (1))

Time for compliance with order

(3) The order shall specify the time within which any action required by the order shall be performed. 2019, c. 13. S. 30 (3).

Required compliance with order

(4) Every person who is served with an order under this section shall comply with it in accordance with its terms until such time as it may be revoked by an animal welfare inspector or the Board. 2023, c. 12, Sched. 6, s. 4 (2).

Same

(4.1) If an order under this section is modified or confirmed by the Board, subsection (4) applies in respect of the order as modified or confirmed. 2023, c. 12, Sched. 6, s. 4 (2).

Revocation of order

(5) If, in the opinion of an animal welfare inspector, an order made under subsection (1) has been complied with, the inspector shall revoke the order and serve notice of the revocation in writing on the owner or custodian of the animal that is the subject of the order. 2019, c. 13. S. 30 (5).

Note: On October 1, 2023, the day named by proclamation of the Lieutenant Governor, section 30 of the Act is amended by adding the following subsections: (See: 2023, c. 12, Sched. 6, s. 4 (3))

Change of ownership

(6) If an animal that is the subject of an order under this section is transferred to a different owner, the former owner of the animal shall collect prescribed contact information from the new owner and immediately provide written notice to an animal welfare inspector of the transfer and the prescribed contact information. 2023, c. 12, Sched. 6, s. 4 (3).

Change of ongoing custody

(7) If custody of an animal that is the subject of an order under this section is transferred from a person who has ongoing custody of the animal to a different person to have ongoing custody of the animal, the former custodian shall collect prescribed contact information from the new custodian and immediately provide written notice to an animal welfare inspector of the transfer and the prescribed contact information. 2023, c. 12, Sched. 6, s. 4 (3).

Taking possession of animal in distress

31 (1) 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,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 31 (1) of the Act is amended by striking out “for the purpose of providing it with necessities to relieve its distress” in the portion before clause (a) and substituting “for the purpose of relieving its distress”. (See: 2023, c. 12, Sched. 6, s. 5 (1))

(a) a veterinarian has advised the inspector in writing that relieving the animal’s distress necessitates its removal;

(b) the inspector has inspected the animal and has reasonable grounds for believing that the animal is in distress and the owner or custodian of the animal is not present and cannot be found promptly; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 31 (1) (b) of the Act is repealed and the following substituted: (See: 2023, c. 12, Sched. 6, s. 5 (3))

(b) the inspector has inspected the animal and has reasonable grounds for believing that,

(i) the animal is in distress and the owner or custodian of the animal is not present and cannot be found promptly, or

(ii) the animal is in critical distress; or

(c) an order respecting the animal has been made under section 30 and the order has not been complied with. 2019, c. 13, s. 31 (1); 2023, c. 12, Sched. 6, s. 5 (2).

Taking possession, animal trained to or participating in fight

(2) An animal welfare inspector may remove an animal from the place where it is and take possession of the animal if the inspector has reasonable grounds for believing that,

(a) the animal is being trained to fight another animal; or

(b) the animal is participating or soon will participate in a meeting, competition, exhibition, pastime, display or event at or in the course of which an animal fights another animal. 2019, c. 13, s. 31 (2).

Police assistance

(3) An animal welfare inspector may call upon police officers for assistance in removing the animal. 2019, c. 13, s. 31 (3).

Use of force

(4) An animal welfare inspector, and any police officers called to assist the inspector, may use whatever force is reasonably necessary to remove the animal. 2019, c. 13, s. 31 (4).

Notice

(5) An animal welfare inspector who has removed an animal under subsection (1) or (2) shall promptly serve written notice of his or her action on the owner or custodian of the animal, if known, and on the Chief Animal Welfare Inspector. 2019, c. 13, s. 31 (5); 2023, c. 12, Sched. 6, s. 5 (4).

Decision to keep in care

(6) The Chief Animal Welfare Inspector may decide to keep an animal that was removed under subsection (1) or (2) in the Chief Animal Welfare Inspector's care if,

(a) the Chief Animal Welfare Inspector determines it is necessary to relieve the animal's distress;
or

(b) the Chief Animal Welfare Inspector has reasonable grounds to believe that,

(i) the animal may be placed in distress if returned to its owner or custodian, or

(ii) the animal may be trained to fight another animal if returned to its owner or custodian. 2019, c. 13, s. 31 (6).

Notice

(7) The Chief Animal Welfare Inspector shall promptly serve written notice of his or her decision to keep an animal in the Chief Animal Welfare Inspector's care in accordance with subsection (6) on the owner or custodian of the animal, if known. 2019, c. 13, s. 31 (7); 2023, c. 12, Sched. 6, s. 5 (5).

Provisions to be printed on notice

(8) A notice to an owner or custodian of an animal required by this section shall have printed or written on it the content of subsections 38 (1), (4) and (5). 2019, c. 13, s. 31 (8).

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

IT IS ORDERED, pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the attached Items of Schedule 82 under the Provincial Statutes and Regulations thereunder is the Set Fine.

This Order comes into effect on September 2, 2020

DATED AT TORONTO September 2, 2020

A handwritten signature in blue ink that reads "Lise Maisonneuve". The signature is written in a cursive style and is positioned above a horizontal dotted line.

Lise Maisonneuve, Chief Justice
Ontario Court of Justice

Ontario Court of Justice
September 2, 2020

SCHEDULE 82

Security from Trespass and Protecting Food Safety Act, 2020

Item	Offence	Section	Set Fine
1.	Stop, hinder, obstruct or interfere with motor vehicle transporting farm animals	6(1)	\$400.00

dm

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

IT IS ORDERED, pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the attached Items of Schedule 82 under the Provincial Statutes and Regulations thereunder is the Set Fine.

This Order comes into effect on December 5, 2020.

DATED at the City of Ottawa, Ontario, December 4, 2020



.....
**Lise Maisonneuve, Chief Justice
Ontario Court of Justice**

SCHEDULE 82

Security from Trespass and Protecting Food Safety Act, 2020

Item	Offence	Section	Set Fine
1.	Enter animal protection zone on farm without consent	5 (1)	\$400
2.	Enter animal protection zone on animal processing facility without consent	5 (2)	\$400
3.	Enter animal protection zone on prescribed premises without consent	5 (3)	\$400
4.	Interfere with farm animal in or on animal protection zone on farm without consent	5 (4)	\$550
5.	Interfere with farm animal in or on animal protection zone on animal processing facility without consent	5 (4)	\$550
6.	Interfere with farm animal in or on animal protection zone on prescribed premises without consent	5 (4)	\$550
7.	Interact with farm animal in or on animal protection zone on farm without consent	5 (4)	\$550
8.	Interact with farm animal in or on animal protection zone on animal processing facility without consent	5 (4)	\$550
9.	Interact with farm animal in or on animal protection zone on prescribed premises without consent	5 (4)	\$550
10.	Carry out prescribed activity in or on animal protection zone on farm without consent	5 (4)	\$550
11.	Carry out prescribed activity in or on animal protection zone on animal processing facility without consent	5 (4)	\$550
12.	Carry out prescribed activity in or on animal protection zone on prescribed premises without consent	5 (4)	\$550
13.	Stop, hinder, obstruct or interfere with motor vehicle transporting farm animals	6 (1)	\$400
14.	Interfere with farm animal being transported without consent of driver	6 (2)	\$550

15.	Interact with farm animal being transported without consent of driver	6 (2)	\$550
16.	Fail to comply with request to cease activity	8 (3)	\$200
17.	Fail to comply with request to leave farm, facility or premises	8 (3)	\$200
18.	Provide false or misleading information to owner or occupier	8 (4)	\$200
19.	Fail to comply with request to cease activity	9 (2)	\$200
20.	Fail to comply with request to cease interfering or interacting with farm animal	9 (2)	\$200

Am

**ANIMAL JUSTICE, JESSICA
SCOTT-REID and LOUISE
JORGENSEN**

Applicants

-and-

**ATTORNEY GENERAL OF
ONTARIO**

Respondent

-and-

**ANIMAL ALLIANCE OF CANADA, CENTRE FOR
FREE EXPRESSION AND REGAN RUSSELL
FOUNDATION**

Interveners

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**FACTUM OF THE RESPONDENT,
ATTORNEY GENERAL OF ONTARIO**

ATTORNEY GENERAL OF ONTARIO

Civil Law Division

Constitutional Law Branch

720 Bay Street, 4th Floor

Toronto, ON M7A 2S9

Robin Basu, LSO#: 32742K

Tel: 416.995.5249

Email: robin.basu@ontario.ca

Yashoda Ranganathan, LSO#: 57236E

Tel: 647.637.0883

Email: yashoda.ranganathan@ontario.ca

Elizabeth Guilbault, LSO#: 83208O

Tel: 437.244.4293

Email: elizabeth.guilbault@ontario.ca

Counsel for the Respondent, Attorney General of Ontario