

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

APPLICANTS

- and -

THE ATTORNEY GENERAL OF ONTARIO

RESPONDENT

APPLICANTS' AMENDED FACTUM

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PART I - OVERVIEW

1. This application challenges the constitutionality of the *Security from Trespass and Protecting Food Safety Act, 2020*, SO 2020, c 9 (“**Act**”), which the Ontario government passed at the behest of the animal agriculture industry. The Act follows a long line of laws, primarily in the United States, known as agricultural gag, or “ag gag” laws, which are designed to restrict the gathering and dissemination of information and videos that show the conditions in which animals farmed for food and fur are raised, transported, and slaughtered.¹

2. Until fairly recently, the only window Ontarians had into the treatment of farmed animals was selective information and curated images released by companies and industry groups. Beginning in the 2010s, however, animal protection groups began to covertly obtain information and images from farms and slaughterhouses through undercover employee exposés. Similarly, animal protection advocates began gathering near slaughterhouses to bear witness to and document farmed animal suffering during transport.² Footage captured by these sources has often shown abhorrent animal cruelty and suffering, garnered significant media attention, generated public debate and dialogue, and even led to animal cruelty charges and convictions.

3. In response, the animal agriculture industry lobbied the government for new restrictions on animal advocacy. The Act targets the gathering and dissemination of information and recordings of animals in farms, slaughterhouses, and transport trucks across Ontario. Though the stated purposes of the Act relate to “food safety”, it also restricts the gathering and dissemination of

¹ Affidavit of Camille Labchuk affirmed June 30, 2021 [“**Labchuk Affidavit**”] ¶¶ 13-14, **Application Record of the Applicants [“ARA”] Tab B**, pp 43-44; Justin Marceau, “Ag Gag Past, Present and Future” (2015) 38:4 *Seattle UL Rev* 1317 [“**Marceau**”]; Jodi Lazare, “Animal Rights Activism and the Constitution: Are Ag-Gag Laws Justifiable Limits?” *Osgoode Hall Law Journal* 59.3 (2022) [“**Lazare “Are Ag-Gag Laws Justifiable?”**”] at 667-706.

² Maneesha Deckha, “The “Pig Trial” Decision: The Save Movement, Legal Mischief, and the Legal Invisibilization of Farmed Animal Suffering” (2018) 50:1 *Ottawa Law Review* 65-98, at 70-72; Maneesha Deckha, “The Save Movement and Farmed Animal Suffering: The Advocacy Benefits of Bearing Witness as a Template for Law” (2019) *CJCCL* 77-110 [“**Deckha, “The Save Movement**”] at 78-86.

information and recordings taken at fur farms, rodeos, horse racetracks, petting zoos, and agricultural fairs. This shows that its real purpose is not food safety – it is to protect the public image of the animal industry by restricting the public’s right to know.

4. The Act and associated Ontario Regulation 701/20 (“**Regulation**”) unjustifiably restrict expression and contravene the s 2(b) *Canadian Charter of Rights and Freedoms*³ rights of the Applicants and members of the public more broadly. The law also unjustifiably restricts peaceful protest activities in violation of s 2(c) of the *Charter*. The unconstitutionality of this scheme is exacerbated by dangerous and excessive arrest and penalty provisions which themselves violate ss 7, 9, and 11(d) of the *Charter*.

5. The law has served its purpose well. Since it came into force, there have been no undercover exposés at Ontario farms or slaughterhouses. With industry groups now the only source of information about the treatment of farmed animals in this province, public discourse around the treatment of farmed animals has been gutted.

PART II - FACTS

A. The Applicants

6. Animal Justice, Canada’s leading national animal law organization, works to strengthen animal protection laws, alert authorities to animal abuse and mistreatment, and inform the public about the treatment of animals used for food, fashion, entertainment, and scientific research.⁴ Animal Justice regularly relies on information and footage obtained covertly or by demonstrators near transport trucks, sharing it with the public, as well as with enforcement officials when it appears that the *Health of Animals Regulations*, CRC, c 296, or other laws, have been violated.⁵

³ [Part 1 of the Constitution Act, 1982](#), being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the “*Charter*”].

⁴ Labchuk Affidavit ¶¶ 6, 9-11, 15-24, 26, **ARA Tab B**, pp 41-52.

⁵ Labchuk Affidavit ¶¶ 24-25, 27, 65, 104-106, 164-172, **ARA Tab B**, pp 51-52, 65, 76-77, 97-101.

7. Before the Act came into force, Animal Justice had itself conducted one undercover farm exposé and had plans to engage in further exposés. Because of the Act, Animal Justice will no longer conduct these exposés in Ontario.⁶

8. Jessica Scott-Reid is a freelance journalist who reports regularly on issues related to animal rights and welfare in Canada.⁷ To report on how farmed animals are raised, slaughtered, and transported, she relies on firsthand information and footage from others, such as employee whistleblowers, animal advocates, and individuals bearing witness near transport trucks.⁸

9. Louise Jorgensen is a graphic artist and social media content creator with the Animal Save Movement. She is also a volunteer organizer with Toronto Cow Save, which works to improve the lives of cows and other farmed animals through regular vigils at St. Helen’s Meat Packers in Toronto.⁹ In her career and personal life, Jorgensen works to show the public how farmed animals are treated by documenting the animals themselves and the conditions in which they are transported.¹⁰ She uses her images and those taken by others inside farms, slaughterhouses, and transport trucks to publicly expose farmed animal suffering.¹¹

B. Canada’s industrialized animal agriculture system

10. More than 830 million land animals are slaughtered for food in Canada each year, at least 240 million of them in Ontario.¹² Producers and industry groups invest heavily in marketing,¹³ and

⁶ Labchuk Affidavit ¶¶ 28-29, 77, 98, 175-176, **ARA Tab B**, pp 52, 69, 74, 102-103.

⁷ Affidavit of Jessica Scott-Reid [“**Scott-Reid Affidavit**”] ¶¶ 1-4, 10-12, 14-17, **ARA Tab E**, pp 1830-1831, 1833, 1834-1835.

⁸ Scott-Reid Affidavit ¶¶ 8-9, 18-38, **ARA Tab E**, pp 1832-1833, 1835-1846.

⁹ Affidavit of Louise Jorgensen [“**Jorgensen Affidavit**”] ¶¶ 2-5, 7, 16, 44-49, **ARA Tab D**, pp 1551-1553, 1555, 1563-1565.

¹⁰ Jorgensen Affidavit ¶¶ 8, 18, 21, 30-32, 35-36, 41, 60, Ex. I **ARA Tab D**, pp 1553, 1555-1557, 1559-1562, 1677-1696, 1568.

¹¹ Jorgensen Affidavit ¶ 71, Ex. T, **ARA Tab D**, pp 1571, 1801-1813.

¹² Labchuk Affidavit ¶¶ 47-48, **ARA Tab B**, p 58. These numbers do not include horses slaughtered for meat, animals farmed and killed for fur, aquatic animals, or millions of male chicks killed because they cannot lay eggs.

¹³ Affidavit of Jeff Hyndman [“**Hyndman Affidavit**”] Ex. A (pp 30, 34, 36-39), **Application Record of the Respondent [“ARR”], Vol 6, Tab 11A**, pp 1513, 1517, 1519-1522; Affidavit of Eric Schwindt [“**Schwindt**

often market animal products as coming from small, traditional, or “family owned” operations.¹⁴ However, most animal products come from industrialized facilities.¹⁵

11. In recent decades, Canada’s animal agricultural production system has become increasingly industrialized, with the number of animals raised steadily increasing while the total number of farms has decreased.¹⁶ Aside from cows and horses raised for meat, virtually all farmed animals spend their lives indoors on private property.¹⁷ These animals are generally reared using intensive methods, with large numbers of them kept indoors at high densities.¹⁸ As a result, most farmed animal use, suffering, and slaughter is not visible to the public.

12. Some federal regulatory standards govern the treatment of farmed animals during transport and slaughter in Canada. Even so, the Health of Animals Regulations allow animals to be transported for lengthy periods of time without food, water, and rest and, unlike laws in many other western countries, do not set temperature control standards for transport trucks.¹⁹ Millions of farmed animals in Canada die or are injured in transport each year.²⁰

13. Aside from transport and slaughter, no legally binding standards protect the welfare of farmed animals in Ontario. Although the *Provincial Animal Welfare Services Act, 2019*, (“PAWS

Affidavit” ¶¶ 10, 12; ARR Vol 8, Tab 18, p 2122-2123; Cross Examination [“CX”] of Hyndman, pp 15-16, **Joint Cross Examination Transcript Brief [“JCET”], Vol 4, Tab 13**, pp 1444 – 1445.

¹⁴ Labchuk Affidavit ¶ 69, Ex. P, **ARA Tab B**, pp 66-67, 274 -284; Schwindt Affidavit ¶ 18, **ARR, Vol 8, Tab 18**, p 2124; CX of Schwindt, pp 9-11, **JCET, Vol 7, Tab 23**, pp 2752-2754; Affidavit of Dirk Boogerd [“**Boogerd Affidavit**”] ¶¶ 5, 7, **ARR, Vol 2, Tab 3**, pp 215-216; Affidavit of Lidia Picanco [“**Picanco Affidavit**”] ¶ 2, **ARR, Vol 7, Tab 17**, p 2099; Affidavit of Pascal Bouilly [“**Bouilly Affidavit**”] ¶ 3, **ARR Vol 3, Tab 4**, p 470.

¹⁵ Labchuk Affidavit ¶¶ 50-52, **ARA Tab B**, pp 58-60; CX of Schwindt, pp 9-11, **JCET, Vol 7, Tab 23**, pp 2752-2754; Bouilly Affidavit, ¶ 3, **ARR Vol 3, Tab 4**, p 470; CX of Bouilly, pp 7-9, **JCET, Vol 1, Tab 4**, pp 262-264; CX of Currie, pp 5-9, **JCET, Vol 2, Tab 6**, pp 642-646; Picanco Affidavit, ¶¶ 2-3, **ARR, Vol 7, Tab 17**, p 2099-2100; CX of Picanco, pp 8-9, **JCET, Vol 7, Tab 22**, pp 2673-2674.

¹⁶ CX of Currie, pp 7-9, **JCET, Vol 2, Tab 6**, pp 644 -646; CX of Friendship, pp 20-27 **JCET Vol 3, Tab 10**, pp 1088-1095; Labchuk Affidavit ¶¶ 50-51, Ex. H, **ARA Tab B**, pp 58-59, 239-244. See also *Dunmore v Ontario (Attorney General)*, 2001 SCC 94 ¶¶ 52, 54, 62, 65 [“*Dunmore*”]; Lazare “Are Ag-Gag Laws Justifiable?” at 692.

¹⁷ Labchuk Affidavit ¶¶ 25, 48-49, **ARA Tab B**, pp 51, 58.

¹⁸ Labchuk Affidavit ¶¶ 49-52, **ARA Tab B**, pp 58-60.

¹⁹ Labchuk Affidavit, ¶¶ 60-63, **ARA Tab B**, pp 63-64.

²⁰ Labchuk Affidavit, ¶¶ 61-62, **ARA Tab B**, pp 63-64.

Act”) makes it an offence to cause an animal to be in distress, it expressly exempts distress caused by “reasonable and generally accepted” agriculture industry practices.²¹ Industry and government often rely upon the non-binding codes of practice developed by the National Farm Animal Care Council (“**NFACC**”) – a private organization made up largely of industry representatives – as evidence of which practices are “reasonable and generally accepted.”²²

14. Many of the practices included in NFACC guidelines cause significant animal suffering, and several have been banned or restricted in other jurisdictions for this reason.²³ For instance: egg-laying hens kept in battery cages so small the birds cannot spread their wings; mink and foxes raised in tiny cages for fur; calves raised for veal may be separated from their mothers at birth or shortly thereafter and many can be kept isolated in individual stalls for up to eight weeks; mother pigs used for breeding spending much of their lives in gestation crates so small they cannot turn around; and docking the tails of piglets as a routine practice.²⁴

15. Since animals cannot report abuse, authorities are generally made aware of farmed animal abuse only when they receive a complaint from an individual who witnessed it.

C. Undercover exposés promote vital public dialogue and debate

16. There is a long history in North America of activists, journalists, and others covertly documenting and then publicly exposing practices at industrial farms and slaughterhouses that cause extreme physical and psychological harm to animals.²⁵ Conduct shown has shocked the

²¹ [SO 2019 c 13](#), ss 13, 15(1)-(3), (4)(c)(i),(ii), 69(1)(d).

²² Labchuk Affidavit ¶¶ 53-55, **ARA Tab B**, pp 60-61; Affidavit of Dr Moira Harris [“**Harris Affidavit**”] Ex. D, **ARA Tab I**, pp 2159-2172; Peter Sankoff, “Canada’s Experiment with Industry Self-Regulation in Agriculture: Radical Innovation or Means of Insulation?” [\(2019\) 5:1 Can J Comp & Contemporary L 299](#) [“**Sankoff**”] at 302-303.

²³ Harris Affidavit Ex. D, pp 2-5, **ARA Tab I**, pp 2160-2163.

²⁴ Harris Affidavit Ex. D, pp 6-8, 10-11, **ARA Tab I**, pp 2164-2166, 2168-2169); Labchuk Affidavit, ¶¶ 54-55, **ARA Tab B**, pp 60-61; Affidavit of Camille Labchuk affirmed March 14, 2022 [“**Labchuk Reply Affidavit**”], ¶¶ 10-21, **ARA Tab C**, pp 884-887.

²⁵ Marceau, [at 1317-1318, 1332](#); Lazare “Are Ag-Gag Laws Justifiable?”, [at 679, 688](#).

public conscience, garnered significant attention, and fueled public discussion. At times, footage has shown egregious acts of violence and abuse, leading to charges and convictions. Other times, it has captured the grim reality of standard industry practices.

17. In contrast to such footage, images released by companies and industry groups tend to show conditions in a much more favourable light, do not depict workers violently abusing animals, and tend not to show certain standard practices at all (e.g., slaughter, calf/cow separation on dairy farms, tail docking of piglets, hot iron branding of cows, debeaking birds).²⁶ Most farms and slaughterhouses do not make any images of conditions inside available to the public and do not publicly disclose whether they engage in such practices.²⁷

18. Several undercover employee exposés conducted in Canada have shone a light on the appalling treatment of farmed animals in our food system.²⁸ These exposés and others referenced in the record have several common features. Generally, an individual affiliated with an animal protection group gets an entry-level position at an agricultural facility, often requiring little to no experience. They work there for a period ranging from weeks to several months to observe and document conditions, including any patterns of unethical or unlawful conduct.²⁹

19. The individual often uses a false name, both for personal safety and so that they can do future undercover work. They commonly make other false statements, such as falsely claiming not to have a university education or other work experience that may make them seem over-qualified for an entry-level farm or slaughterhouse position, and making corresponding false statements to

²⁶ Labchuk Affidavit ¶¶ 24, 66-71, 110, 113, 116, 121, 129, 134, 137, 140, 146, Ex. N, O, KK, RR, WW, AAA, DDD, **ARA Tab B**, pp 51, 65-67, 78-82, 85, 87-90, 269-271, 460, 554, 752, 773, 788; Scott-Reid Affidavit ¶¶ 22-36, **ARA Tab E**, pp 1837-1843; CX of Scott-Reid, pp 55-57, **JCET Vol 8, Tab 24**, pp 2900-2902

²⁷ Scott-Reid Affidavit ¶¶ 23, 25, 27-28, 43, **ARA Tab E**, pp 1837-1840, 1847; CX of Hyndman, p 89, **JCET, Vol 4, Tab 13**, pp 1518; CX of Bollert, p 9, **JCET Vol 1, Tab 2**, p 102; CX of Bouilly, pp 11-12, **JCET, Vol 1, Tab 4**, pp 266-267.

²⁸ These include the exposés listed in [Appendix “A”](#), which come primarily from the Labchuk Affidavit, ¶¶ 106-147, **ARA Tab B**, pp 77-92. See also Labchuk Reply Affidavit, ¶¶ 22-30, **ARA, Tab C**, pp 887-889.

²⁹ Labchuk Affidavit ¶¶ 107, 135, 138, 141, 150, 159-160, **ARA Tab B**, pp 77, 87, 90, 93, 95-96.

explain any apparent gaps in their resumé; denying that they are affiliated with an animal protection group, are vegan, or are wearing a recording device; and representing themselves as interested in working in a given industry.³⁰

20. The individual does not apply for a job requiring a specialized skill set or education that they do not have (e.g., veterinarian, forklift operator).³¹ The hiring process is often informal, and the positions low-paying, with irregular hours.³² By their nature, many entry-level agricultural jobs involve causing harm to animals.³³ For instance, slaughtering chickens at a slaughterhouse, grinding live male chicks at a hatchery, or cutting tails off piglets at a breeding facility.³⁴

21. The employee wears concealed recording equipment. They may need to make further false representations, such as a false explanation for needing to enter an area of a facility to record animal suffering. The organization coordinating a given exposé, as well as any media outlets with which they may ultimately collaborate, generally take steps to verify the footage.³⁵

22. The group involved instructs the employee to follow all job requirements, including biosecurity protocols, and instructions to report incidents of animal abuse or mistreatment to management.³⁶ They often record themselves reporting such incidents, as well as any response

³⁰ Labchuk Affidavit ¶¶ 89, 150-152, **ARA Tab B**, pp 72, 93; Affidavit of Cindy Beal [“**Beal Affidavit**”] ¶¶ 5-9, 16, 25, 40, 47, 50, **ARA Tab H**, pp 2073-2075, 2077-2078; Affidavit of Jason Lyons [“**Lyons Affidavit**”] ¶ 11, **ARR Vol 7, Tab 14**, p 2021; Picanco Affidavit, ¶ 5, **ARR, Vol 7, Tab 17**, p 2100; Affidavit of Edward Parkinson [“**Parkinson Affidavit**”] ¶ 6, Ex. A, **ARR, Vol 7, Tab 16**, pp 2077.

³¹ Beal Affidavit ¶¶ 40, 50 **ARA Tab H**, pp 2077-2078; Labchuk Affidavit ¶ 90, **ARA Tab B**, p 72.

³² Picanco Affidavit, ¶ 5, Ex. B **ARR, Vol 7, Tab 17**, pp 2100, 2108-2113; CX of Picanco, pp 18-20, **JCET, Vol 7, Tab 22**, pp 2683-2685; Harris Affidavit Ex. D, pp 5-6, **ARA Tab I**, pp 2163-2164; Boogerd Affidavit ¶ 5, **ARR, Vol 2, Tab 3**, p 215; Lyons Affidavit ¶¶ 7-8, 12-14, **ARR Vol 7, Tab 14**, pp 2020-2022; Parkinson Affidavit ¶¶ 4-5, 9, Ex. A, **ARR, Vol 7, Tab 16**, pp 2076-2077.

³³ Labchuk Affidavit ¶¶ 155-156, 158, **ARA Tab B**, p 94-95; Harris Affidavit Ex. D (pp 2-14), **ARA Tab I**, pp 2160-2172.

³⁴ Labchuk Affidavit ¶¶ 51, 111, 123, **ARA Tab B**, pp 59, 78-79, 82-83.

³⁵ Labchuk Affidavit ¶¶ 153-154, **ARA Tab B**, pp 93-94; Beal Affidavit ¶¶ 11, 22-23, 26, 41-44, 47, 51 **ARA Tab H**, pp 2073, 2075, 2077-2078.

³⁶ Labchuk Affidavit ¶¶ 81, 85-86, 155, 157, **ARA Tab B**, pp 70-71, 94-95; Beal Affidavit ¶¶ 22, 41, 51 **ARA Tab H**, pp 2075, 2077-2078.

they receive.³⁷ For instance, at Hybrid Turkeys the employee was told that a blind turkey should not be euthanized because she could still produce eggs.³⁸ At Millbank Fur Farm, the employee was told that despite the painful and infected lesion covering much of his head, management did not want a mink euthanized because that would prevent his pelt from being harvested.³⁹

23. Undercover exposés have resulted in owners, directors, and employees being charged with offences, losing their jobs, and having their names publicly reported, causing many to report significant embarrassment, shame, and humiliation.⁴⁰ Some have even faced jail time.⁴¹

24. No undercover employee exposés at agricultural facilities in Canada have been conducted by a journalist affiliated with traditional news media. It is rare for journalists to engage in investigative activities that require obtaining employment under false pretences.⁴² Most often, journalists work with individuals or groups who have already covertly obtained footage, verify the authenticity of that footage, and then report on it.⁴³

25. No agricultural exposés have been conducted in Ontario since the Act came into force.

D. Bearing witness to the suffering of farmed animals in transport

26. Since 2010, animal protection advocates, most notably affiliated with the Animal Save Movement, have been coming together to bear witness to the suffering of farmed animals in

³⁷ Labchuk Reply Affidavit ¶¶ 25-30, **ARA Tab C**, pp 888-889; Beal Affidavit ¶¶ 20-22, 35, 37, **ARA Tab H**, pp 2075-2077; Labchuk Affidavit ¶¶ 86, 117-118, 126-128, **ARA Tab B**, p 71, 81, 84-85.

³⁸ Picanco Affidavit, Ex. C **ARR Vol 7, Tab 17**, p 2114-2115; Labchuk Affidavit, Ex. XX, **ARA Tab B**, pp 756-757; Labchuk Reply Affidavit, Ex. OO, **ARA Tab**, pp 1533-1534. The independent expert who reviewed this footage stated in the CBC Marketplace piece concerning Hybrid Turkeys that this specific bird should have been euthanized.

³⁹ Beal Affidavit ¶ 37, Ex. I and M, **ARA Tab H**, pp 2077, 2109-2110, 2124-2127; Parkinson Affidavit ¶¶ 10-12, Ex. A, **ARR, Vol 7, Tab 16**, pp 2077-2078, 2085; CX of Parkinson, pp 31-34, **ARR Vol 7, Tab 21**, pp 2575-2578. See also Labchuk Affidavit ¶¶ 85-86, Ex. T, **ARA Tab B**, pp 71, 356-357.

⁴⁰ Labchuk Affidavit ¶¶ 107-108, 118, 127, 130-131, 136, 145, 147, 163, **ARA Tab B**, pp 77-78, 81, 84-86, 88, 91-92, 96-97.

⁴¹ Labchuk Affidavit ¶¶ 127-128, **ARA Tab B**, pp 84-85.

⁴² Affidavit of Robert Cribb dated June 23, 2021 [“**Cribb Affidavit**”], Ex. A (pp 5-9), **Tab F**, pp. 2042-2046.

⁴³ Cribb Affidavit, Ex. A (pp 5-7), **ARA Tab F**, pp 2042-2044; CX of Cribb, pp 52-54, **JCET Vol 2, Tab 5**, pp 487-489.

transport.⁴⁴ Because the vast majority of farmed animals in Canada are raised and killed indoors on private property, their lives are generally visible only during transport to slaughter.⁴⁵

27. Bearing witness is a form of social and political protest involving peaceful, subjective, and reflective observation and connection with farmed animals who are suffering.⁴⁶ It is a visceral, emotional experience that requires being close to animals in stopped transport trucks; showing them compassion and kindness in their final moments, including petting and interacting with animals who seek out affection and physical contact; and documenting transport conditions and individual animal suffering by placing cameras at or very near the openings on metal trailers in order to take photos and videos. Taking such footage often and unavoidably results in physical contact with animals who - like dogs and other companion animals - sniff, nudge, lick, and touch participants' hands when they have the opportunity.⁴⁷

28. Participants witness and document dead and injured animals in densely-packed transport trucks, animals transported during summer heat advisories and in frigid winter weather, and animals arriving for slaughter covered in filth, mud, and debris.⁴⁸ Images captured are frequently shared on social media, used by advocacy groups in public campaigns and law reform efforts, published by the news media, and used in complaints to law enforcement officials where it appears that relevant transport standards have been violated.⁴⁹

⁴⁴ Jorgensen Affidavit ¶¶ 10, 20, Ex. E, **ARA Tab D**, pp 1553, 1556, 1607-1651; Deckha, "The Save Movement", [at 78-82](#).

⁴⁵ Jorgensen Affidavit ¶¶ 64-65, 83 **ARA Tab D**, pp 1569, 1574-1575; Labchuk Affidavit ¶¶ 25, 48, 59 **ARA Tab B**, pp 51, 58, 62; Deckha, "The Save Movement", [at 101](#).

⁴⁶ Jorgensen Affidavit ¶¶ 12, 21, 23-24, 28, 29, 32, 36, 65, 77-80, Ex. A, **ARA Tab D**, pp 1554, 1557-1561, 1569, 1572-1573, 1578-1585; Deckha, "The Save Movement", [at 78-84, 93-95, 109-110](#).

⁴⁷ Jorgensen Affidavit ¶¶ 29-38, 72 Ex. G, H, **ARA Tab D**, pp 1559-1561, 1571 1655-1676; CX of Jorgensen, pp 86-87, **JCET Vol 4, Tab 14**, pp 1625-1626.

⁴⁸ Scott-Reid Affidavit ¶¶ 37(b), 37(e), 39, Ex. Q, **ARA Tab E**, pp 1843-1847, 1916-1928; Jorgensen Affidavit ¶¶ 14, 41, 43, Ex. I, J, **ARA Tab D**, pp 1554, 1562-1563, 1677-1721; Labchuk Affidavit ¶¶ 18-19, 164-170(a)-(h), **ARA Tab B**, pp 47-48, 97-101.

⁴⁹ Jorgensen Affidavit ¶¶ 66-70, **ARA Tab D**, pp 1569-1570; Labchuk Affidavit ¶¶ 19, 65, 67-68, 72-73, 164-173, **ARA Tab B**, pp 47-48, 65-68, 97-102.

29. Participants who are observed by passersby, or who share their experience in person or by livestreaming on social media, can expose others to and educate them about the individual animal suffering inherent to many standard industrialized farming practices.⁵⁰

30. While some Save chapters have engaged in forms of civil disobedience such as briefly stopping trucks, others do not.⁵¹ Some participants have given water to pigs and cows on hot days. The Movement's founder, Anita Krajnc, was charged in 2015 with criminal mischief for giving water to a pig in transport on a hot day. She was acquitted after a highly publicized six-day trial.⁵²

31. The Applicant Jorgensen enforces many rules and safety procedures at Toronto Cow Save vigils to ensure a safe and respectful environment for participants, workers, and animals.⁵³

E. The Act

32. Bill 156, the *Security from Trespass and Protecting Food Safety Act, 2020*, was introduced in the Legislature in December 2019 following lobbying by the animal agriculture and trucking industries for new restrictions on animal advocacy.⁵⁴ Extensive consultations were held with animal agriculture and transport industry representatives, and with rural municipalities.⁵⁵ None took place with animal protection groups, journalists, civil liberties groups, or migrant workers

⁵⁰ Jorgensen Affidavit ¶¶ 61-63, 73, 75, **ARA Tab D**, pp 1568-1569, 1571-1572; Deckha, "The Save Movement", at [90, 100, 102, 104-105](#).

⁵¹ Jorgensen Affidavit ¶ 37, **ARA Tab D**, p 1556.

⁵² Jorgensen Affidavit ¶ 19, Ex. C, D, **ARA Tab D**, pp 1556, 1596-1605; *R v Krajnc*, [2017 ONCJ 281](#) ["*Krajnc*"].

⁵³ Jorgensen Affidavit ¶¶ 52-57, **ARA Tab D**, pp 1566-1567.

⁵⁴ Labchuk Reply Affidavit Ex. A-C, G-I, **ARA Tab C**, pp 892-973, 1001-1034; CX of Currie, pp 10-13, **JCET, Vol 2, Tab 6**, pp 647-650; Hyndman Affidavit Ex. A (p 30), **ARR, Vol 6, Tab 11**, p 1513; CX of Bouilly, pp 15-18, Ex. 2 **JCET, Vol 1, Tab 4**, pp 270-273, 367; CX of Fitzgerald, Ex. 2-5, 7-8, **JCET Vol 3, Tab 9**, pp 1045-1050, 1053-1054.

⁵⁵ Affidavit of Scott Duff ["**Duff Affidavit**"], ¶¶ 5-7, 9, **ARR Vol 4, Tab 6** pp 816-817; CX of Duff, pp 9-13, **JCET Vol 2, Tab 7**, pp 693-697; Labchuk Reply Affidavit Ex. B-E, G, K, N, S, AA, **ARA Tab C**, pp 921-984, 1001-1024, 1038-1043, 1065-1084, 1157-1160, 1211-1217; Affidavit of Clarence Robert Bollert ["**Bollert Affidavit**"] ¶¶ 8, 35, **ARR Vol 1, Tab 2**, pp 89, 99; CX of Bollert, pp 81-82, **JCET Vol 1, Tab 2**, pp 174-175; CX of Bouilly, p 14, **JCET, Vol 1, Tab 4**, p 269. These roundtable discussions are in addition to an unknown number of private meetings that were held with industry representatives: see e.g., Hyndman Affidavit, Ex. A (p 30), **ARR, Vol 6, Tab 11**, p 1513; CX of Schwindt, pp 82-85, **JCET, Vol 7, Tab 23**, pp 2825-2828. Further industry roundtables and meetings were also held after Bill 156 was introduced: see, e.g. CX of Duff, pp 11, **JCET Vol 2, Tab 7**, pp 695.

groups, many of whom spoke out against the Bill.⁵⁶

33. When Bill 156 was introduced, the Agriculture Minister claimed its purpose was to protect farmers and biosecurity from threats posed by activists who trespass on farms to document animals' living conditions.⁵⁷ However, the Bill was also intended to reduce undercover exposés at agricultural facilities through a prohibition on entry under “false pretences”.⁵⁸

34. Even though trespassing on farms that grow grains, vegetables, and other crops can cause damage and pose biosecurity risks, the government refused to include vegetable farms in the Act's scope because the focus of the law is “animal activism”.⁵⁹ At the same time, the Bill did not establish any biosecurity requirements for farms and slaughterhouses.⁶⁰

(i) The “false pretences” prohibition

35. The Act establishes “animal protection zones”, defined broadly to include not only areas at farms and slaughterhouses, but also areas at fur farms, livestock auctions, petting zoos, horse racetracks, and rodeos.⁶¹ Subsection 5(6) of the Act prohibits entry into these zones under “false pretences” – an offence unparalleled in Ontario law. This “false pretences” language appears in

⁵⁶ Labchuk Affidavit ¶¶ 37-38, Ex. C, D, **ARA Tab B**, pp 54-55, 156-187; Duff Affidavit, ¶¶ 54-56, Ex. H, **ARR Vol 4, Tab 6** pp 831-832, 894-1167. Duff testified that he made phone calls to one or more unnamed animal protection groups: Labchuk Reply Affidavit ¶ 7, **ARA Tab C**, p 884; CX of Duff, p 9, **JCET Vol 2, Tab 7**, pp 693.

⁵⁷ Labchuk Affidavit, Ex. A, E, **ARA Tab B**, pp 121, 212-213.

⁵⁸ CX of Duff, pp 24-25, **JCET Vol 2, Tab 7**, pp 708-709; CX of Bouilly, pp 20-27, **JCET Vol 1, Tab 4**, pp 275-282; CX of Bollert, pp 60-70, Ex. 1, **JCET Vol 1, Tab 2**, pp 153-163, 185-191. See also: Ontario, Legislative Assembly, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(18 February, 2020\) at 6946](#) (Bailey); Ontario, Standing Committee on General Government, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(12 June, 2020\)](#) at G-706 (Smith), G-707-G-708 (Harris); Ontario, Legislative Assembly, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(16 June, 2020\)](#) at 8132 (Hardeman), 8156 (Kramp), 8161 (Barrett); Ontario, Standing Committee on General Government, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(9 June, 2020\)](#) at G-680 (Smith), G-695 (Barrett).

⁵⁹ Labchuk Reply Affidavit Ex. J, **ARA Tab C**, pp 1035-1037; CX of Duff, pp 14-15, 18, 21-22, 24-25 **JCET Vol 2, Tab 7**, pp 698-699, 702, 705-706, 708-709.

⁶⁰ Biosecurity standards vary from facility to facility. While the *Health of Animals Act*, [SC 1990, c 21](#) and *Health of Animals Regulations*, [CRC, c 296](#) establish disease reporting requirements and mandate disinfecting certain containers and vessels, the various biosecurity protocols referenced by the Respondent's affiants are voluntary and not legally binding.

⁶¹ Regulation, [ss 5, 6](#). Farm sanctuaries, which care for and protect rescued farmed animals, are not included.

U.S. ag gag laws, several of which have been struck down as unconstitutional.⁶²

36. Section 9 of the Regulation provides that any false statement, whether oral or written, made to the owner or occupier of a farm, slaughterhouse, or “prescribed premises” to obtain consent to enter an “animal protection zone” is a “false pretence.”

37. The Regulation sets out narrow exemptions from the “false pretences” prohibition for some employee whistleblowers and investigative journalists. As set out below, these exemptions are of no practical use and the legislative scheme can still lead to significant penalties for employee whistleblowers, animal protection advocates, researchers, or investigative journalists.

(ii) The journalist exemption

38. Section 11 of the Regulation sets out an exemption for some journalists in some circumstances. First, to meet the exemption, a person must fall within the following definition:

“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;

“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. (s 11(2))

39. This definition protects only traditional news media, while excluding many who engage in newsgathering and dissemination in our modern age of the internet, blogs, and social media.⁶³ It does not apply to those who publish their work independently,⁶⁴ nor those who obtain footage on

⁶² Lazare “Are Ag-Gag Laws Justifiable?”, [at 674-676, 679-680, 703-704](#).

⁶³ Cribb Affidavit, Ex. A (pp 2-5), **Tab F**, pp. 2039-2042.

⁶⁴ See e.g., Sonia Faruqi, *Project Animal Farm: An Accidental Journey into the Secret World of Farming and the Truth About Our Food* (New York: Pegasus Books, 2015), [“**Faruqi**”] at 143-144, 159-160, **Applicants’**

their own and later work with a media organization to publish that footage.⁶⁵

40. To avoid potential prosecution under the “false pretences” prohibition, a journalist must also meet the list of requirements set out at s 11(1) of the Regulation. Importantly, they cannot cause, or contribute to causing, any harm to an animal (s 11(1)(d)). Most entry-level agricultural jobs involve causing some form of harm to animals through standard industry practices.

41. Similarly, because the journalist will run afoul of the “false pretences” prohibition if they cause “harm to an individual”, as defined in the Regulation, they cannot directly, or as a result of obtaining access to the facility, cause “undue stress” or emotional or psychological injury to the facility’s owners, operators or employees. As noted above, such “harm” is a common result of the publication of undercover exposés.

(iii) The employee whistleblower exemption

42. Section 12 of the Regulation exempts certain employees who do not make false oral or written statements about their job qualifications pursuant to s 10 of the Regulation (s 12(1)(b)). The exemption applies only if the employee obtains “information or evidence of harm to a farm animal, harm with respect to food safety or harm to an individual, or another illegal activity” (s 12(1)(c)).

43. While the definitions of “harm to a farm animal” and “harm to an individual” at s 1 of the Regulation are quite broad, the words “another illegal activity” in s 12(1)(c) indicate that the information or evidence gathered by the employee must be of “illegal activity” – documenting animal suffering caused by standard industry practices will not suffice. If an employee enters an

Abbreviated Book of Authorities (“BOA”) Tab 11; Timothy Pachirat, *Every Twelve Seconds* (Yale University Press, 2011), at 15, 86-87, **BOA Tab 16;** Kathryn Gillespie, *The Cow with Ear Tag #1389* (Chicago: University of Chicago Press, 2018), at 22-24, 28-31, 33-35, 91, **BOA Tab 12**. See also Jodi Lazare, “Ag-Gag Laws, Animal Rights Activism, and the Constitution: What is Protected Speech?” ([2020\) 58:1 Alberta Law Review](#) [Lazare, “What is Protected Speech?”], at 85-86; Deckha, “The Save Movement”, [at 92-93](#).

⁶⁵ Cribb Affidavit, Ex. A (pp 2-5), **ARA Tab F**, p 2042. See also Beal Affidavit ¶¶ 4, 6-7, 15, 37, 49, **ARA Tab H**, pp 2072-2074, 2077-2078; Labchuk Affidavit ¶¶ 107, 111, 117, 126, 141 **ARA Tab B**, pp 77-79, 81, 84, 90.

area of a facility under false pretences to document illegal activity, they can be charged under the Act up and until the time that they obtain such evidence.

44. That the information or evidence obtained must show illegal activity is reinforced by s 12(1)(d) of the Regulation – the “quick report” requirement – which requires that once the employee obtains information or evidence, they provide it to law enforcement “as soon as practicable”. Quick report mechanisms appear in many American ag gag laws.⁶⁶ . Again, there would be no reason to report standard industry practices, since such practices are not illegal.

45. The quick report requirement also prevents employees from documenting patterns of treatment over time to show a clear picture of conditions at the facility.⁶⁷ Indeed, it is not required for the s 11 journalist exemption. The Respondent’s affiant Duff explained that it was not necessary to include a quick report requirement for journalists because they need the ability to expose what is “really happening” by documenting patterns of abuse or misconduct.⁶⁸ The quick report requirement also presumes that employees – who are generally not instructed as to which practices are and are not illegal, and are not told to contact law enforcement with complaints⁶⁹ – will be able to promptly determine when conduct is unlawful.

46. Further, as with the s 11 journalist exemption, if the employee directly or indirectly causes any harm to a farmed animal, they lose the protection of the exemption (s 12(2)(a)(ii)). If they injure or kill a farmed animal, even if it is at their employer’s direction, they are not exempt.

47. Finally, s 12(2)(b) directs that the exemption does not apply if the person fails to comply with any “biosecurity measures”.⁷⁰ However, “biosecurity measures” is not defined. A facility

⁶⁶ Lazare "Are Ag-Gag Laws Justifiable", [at 676-677](#); Marceau, [at 1340](#).

⁶⁷ Lazare, “What is Protected Speech?”, [at 95](#).

⁶⁸ Duff Affidavit, ¶¶ 93, 99-100, Ex. H, **ARR Vol 4, Tab 6** pp 842, 844.

⁶⁹ CX of Picanco, pp 20-23, 65, **JCET Vol 7, Tab 22**, pp 2685-2688; CX of Boogerd, pp 53-54, **JCET Vol 1, Tab 3**, pp 251-252; CX of Bouilly, pp 51-55, **JCET Vol 1, Tab 4**, pp 306-310.

⁷⁰ See also [s 11\(1\)\(c\)](#).

could thwart all whistle-blowers by creating a “biosecurity” requirement that precludes cameras.

(iv) “Interacting” with farmed animals

48. The Act also creates prohibitions targeting peaceful protests and other activities near trucks transporting animals to slaughter by prohibiting any “interference or interaction” with these animals “without the prior consent of the driver of the motor vehicle” (s 6(2)). Similarly, s 5(4) of the Act prohibits any person from “interacting” with a farmed animal in an animal protection zone without the consent of the facility’s owner or occupier.

49. Section 23(g) empowers the Minister to make regulations governing prohibited interactions and interference with farmed animals. Section 8 of the Regulation lists activities that constitute “interferences and interactions”, including: (a) having direct or indirect physical contact with a farmed animal; (b) providing food, water, or medicine to a farmed animal; or (c) any activity that causes or is likely to cause harm to a farmed animal or food safety.

(v) Penalties and enforcement

50. Individuals or groups who interact with a farmed animal or enter a prescribed premises under “false pretences” are liable on conviction to a fine of up to \$15,000 for a first offence and up to \$25,000 for any subsequent offence (Act s 15). The fines can increase in some circumstances, including when an individual, such as a facility’s owner or operator, experiences undue stress as a result of the unlawful entry or interaction (Regulation s 16(4)).

51. Furthermore, there is a reverse onus in the prosecution of these offences. The consent of a facility’s owner or operator, or of a transport truck driver, to enter premises or interact with animals is presumed not to have been given (s 14(3)(a)). The accused must prove on a balance of probabilities that they obtained consent (s 14(3)(b)).

52. Owners and occupiers of prescribed facilities are granted authority to request an individual’s name and address or arrest them without a warrant if they believe the individual has

violated s 5 of the Act, including by entering under “false pretences” (Act, s 8(1); Regulation s 15). It is an offence to provide false or misleading information in response to the request (s 8(4)).

F. The Respondent has tendered improper evidence

53. Much of the Respondent’s evidence is improper and inadmissible, or simply irrelevant (such as that relating to farm trespass), and should be disregarded. In particular:

(a) **Improper expert evidence.** There are two threshold issues with the Respondent’s proffered expert evidence:

(i) Susan Fitzgerald is not an impartial expert and cannot fulfil the duties of an expert under rule 4.1.⁷¹ On behalf of the numerous industry groups that she represents, Fitzgerald actively lobbied for Bill 156, and penned letters and press releases in support along with other animal agriculture interest groups. She has repeatedly publicly stated that she is “pleased” with the Act. Some of the Respondent’s fact witnesses (Duff, Schwindt, Jutzi) testified about her role in lobbying for the Act.⁷²

(ii) Ross Eaman, tendered as an expert in the history of journalism, opines on several matters outside the scope of his expertise, including (incorrectly) on legal matters. For instance, he opined that before the Act came into force, journalists undercover at an animal facility could have been charged with trespassing, but now the Act protects their ability to go undercover so *more* stories will be reported.⁷³

(b) **Improper opinion from fact witness Scott Duff.** Duff was tendered as a fact witness but much of his affidavit offers legal opinion about the constitutionality of the Act and interpretation of its provisions. Additionally, he is not an animal welfare expert but he gives opinion evidence about animal behaviour and welfare, and biosecurity.⁷⁴

(c) **Credibility, hearsay and weight issues.** The evidence of several of the Respondent’s fact witnesses lacks credibility, or is based on inadmissible hearsay, and should not be given

⁷¹ *White Burgess Langille Inman v Abbott and Haliburton Co.*, [2015] 2 SCR 182 ¶¶ 26,27, 30, 35-36,45, 49

⁷² CX of Fitzgerald, pp 22-24, 32-33, 40, 44-45, 48, 55, 59-60, 62, 65, Ex. 2-5, 7-8 **JCET Vol 3, Tab 9**, pp 935-937, 945-946, 953, 957-958, 961, 968, 972-973, 975, 978, 1045-1050, 1053-1054; CX of Duff, pp 15-17, 56-59, **JCET Vol 2, Tab 7**, pp 699-701, 740-743; CX of Jutzi, pp 54-55, **JCET Vol 4, Tab 15**, pp 1705-1706; CX of Schwindt, pp 60-67, Ex. 2, **Vol 7, Tab 23**, pp 2803-2810, 2839-2841; CX of Bouilly, Ex. 2, **JCET Vol 1 Tab 4**, pp 367; Schwindt Affidavit, Ex. O, **ARR Vol 8, Tab 18**, pp 2318 – 2323; Duff Affidavit, Ex. L, **ARR Vol 4, Tab 6**, pp 1186-1188.

⁷³ Affidavit of Ross Eaman [“**Eaman Affidavit**”], Ex. C (pp 13-19), **ARR Vol 5, Tab 7**, pp 1235-1241; CX of Eaman, pp 49-54, 66-69, 71-72, 97-110, **JCET Vol 2, Tab 8**, pp 845-850, 862-865, 867-868, 893-906.

⁷⁴ Duff Affidavit, ¶¶ 12, 18, 20-21, 23-25, 35-40, 86-107, 109-110, 112-113, 122-128, **ARR Vol 4, Tab 6**, pp 819-820, 822-824, 827-828, 839-849, 852-854; CX of Duff, pp 60-68, 102-106, **JCET Vol 2, Tab 7**, pp. 744-752, 786-790.

weight. These are listed in [Appendix “B”](#) to this factum.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

54. This application raises important and interrelated questions about the constitutionality of the legislation. The Applicants’ position on the issues raised, as addressed herein, is as follows:

- (a) The Act and Regulation violate s 2(b) of the *Charter* by restricting free expression and freedom of the press, in purpose and effect, through the “false pretences” prohibition, the prohibitions on “interference and interaction” with farmed animals, and the prohibition on providing false statements about one’s name and address;
- (b) The Act and Regulation restrict freedom of peaceful assembly, contrary to s 2(c) of the *Charter*, by substantially limiting bearing witness and other peaceful protest activities near farmed animals in transport;
- (c) The Act and Regulation infringe ss 7 and 9 of the *Charter* by permitting arbitrary, warrantless arrests (including by private citizens) absent objectively reasonable and probable grounds; and
- (d) Subsection 14(3) of the Act violates s 11(d) of the *Charter* by creating a reverse onus that relieves the Crown of its burden to prove a key element of the offence: lack of consent.

55. These violations are not justified under s 1 of the *Charter*. The Applicants reserve their s 1 arguments for reply.

56. The Applicants have standing to raise these issues. They have a “personal and direct interest” in the question of the legislation’s constitutionality, and are “specifically affected” by the Act given their history of engagement in the expressive activities that it restricts.⁷⁵ If necessary, the Applicants should be granted public interest standing based on their genuine interest and real stake in the law’s constitutionality.⁷⁶ This application is a reasonable and effective way of enabling

⁷⁵ *Carroll v Toronto-Dominion Bank*, 2021 ONCA 38 [“*Carroll*”] ¶ 33. See also: Labchuk Affidavit ¶¶ 174-179, **ARA Tab B**, pp 102-104; Scott-Reid Affidavit ¶¶ 41-44, **ARA Tab E**, pp 1847-1848; Jorgensen Affidavit ¶¶ 81-86, **ARA Tab D**, pp 1574-1575.

⁷⁶ *Canada v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 [“*Downtown Eastside*”], ¶¶ 42-43; *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27, [“*Council of Canadians with Disabilities*”] ¶¶ 49-51.

the Court to comprehensively adjudicate the constitutionality of multiple, interrelated provisions.⁷⁷

A. The Act and Regulation violate s 2(b) of the Charter

57. This application engages the core of s 2(b)'s purpose: promoting and safeguarding the open debate and discussion essential to a free and democratic society.⁷⁸ In light of this core purpose, courts have consistently recognized that political expression is “at the very heart of the values sought to be protected by section 2(b)”.⁷⁹

58. The legislation targets expression regarding the treatment of farmed animals – a matter of concern to the public, who increasingly pursue purchasing choices that align with their values.⁸⁰ Indeed, respect for animals is now a fundamental Canadian value.⁸¹ These shifting public attitudes reflect our continually-improving understanding of the important capacities non-human animals share with humans, including pain, emotion, thought, and complex communication.⁸²

59. The importance of transparency and oversight of the treatment of farmed animals is also underscored by their vulnerability. As Fraser CJA noted in *Reece v Edmonton (City)*:

Why are the rights of animals important in our society? Animals over whom humans exercise dominion and control are a highly vulnerable group. They cannot talk -- or at least in a language we can readily understand. They have no capacity to consent to what we do to them. Just as one measure of society is how it protects disadvantaged groups, so too another valid measure is how it chooses to treat the vulnerable animals that citizens own and control.⁸³

60. Freedom of expression enables truth-seeking, participation in social and political decision-

⁷⁷ *Council of Canadians with Disabilities*, ¶¶ 66-67; *R v Nur*, 2015 SCC 15, ¶ 51; *Downtown Eastside*, ¶¶ 52, 71; *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35, ¶ 189

⁷⁸ *Irwin Toy Ltd. v Québec (Attorney General)*, [1989] 1 SCR 927 [*“Irwin Toy”*], at 976; Lazare, “What is Protected Speech?“, at 96-97.

⁷⁹ *Libman v Quebec (Attorney General)*, [1997] 3 SCR 569 [*“Libman”*], ¶ 29; *R v Keegstra*, [1990] 3 SCR 697 [*“Keegstra”*], at 762-763; Lazare “Are Ag-Gag Laws Justifiable?“, at 678-679.

⁸⁰ Labchuk Affidavit ¶¶ 74-75, **ARA Tab B**, p 68. See also Zak Franklin, “Giving Slaughterhouses Glass Walls: A New Direction in Food Labelling and Animal Welfare” (2015) 21:2 *Animal Law Review* 285, at 313-314.

⁸¹ *Senate Debates, 42nd Parl, 1st Sess., Vol 150, No 210 (29 May 2018)* at 5625 (Hon. Murray Sinclair); *R v DLW*, 2016 SCC 22, ¶ 69, *R v Alcorn*, 2015 ABCA 182, ¶¶ 41-42; *Reece v Edmonton (City)*, 2011 ABCA 238, Fraser CJ in dissent [*“Reece”*] ¶ 54; *R v Haaksman*, 2013 ONCJ 66, ¶ 14, **BOA Tab 6**; *R v Connors*, 2011 BCPC 24, ¶ 40.

⁸² Lesli Bisgould, *Animals and the Law* (Toronto: Irwin Law, 2011), at 39-40, **BOA Tab 9**.

⁸³ *Reece*, Fraser CJ in dissent, ¶ 88.

making, individual self-fulfillment, and human flourishing.⁸⁴ Gathering and disseminating information and footage showing the conditions in which farmed animals are raised, transported, and slaughtered promotes these underlying values and is in the public interest. Furthermore, the Applicants’ efforts to expose animal suffering are motivated by their conscience and moral conviction – deeply held beliefs that are akin in many respects to religious beliefs – making this expression of heightened value in society, worthy of stringent protection under s 2(b).⁸⁵ By restricting expression related to the welfare of farmed animals, as well as public health and safety, and workers’ rights, the legislation offends the values underlying s 2(b) and has no place in a free and democratic society.

(i) The freedom of expression analysis

61. The Supreme Court of Canada has set out a three-part test for s 2(b) claims:

- (a) Is the activity within the sphere of conduct protected under s 2(b), in that the activity conveys or attempts to convey a meaning?⁸⁶ This includes capturing and disseminating photos and video footage.⁸⁷
- (b) Does the method or location of the activity clearly undermine “the values that underlie the guarantee”, removing it from s 2(b) protection?⁸⁸
- (c) If the activity is protected, does the impugned law infringe that protection, either in purpose or effect?⁸⁹

62. A law restricts expression in purpose where the restriction is based on content, in that it is

⁸⁴ *Irwin Toy*, at 976.

⁸⁵ Richard Haigh and Peter Bowal, “Whistleblowing and Freedom of Conscience: Towards a New Legal Analysis” (2012), *Comparative Research in Law & Political Economy*, [Research Paper No. 1974982](#) [“*Haigh and Bowal*”], pp 2, 6-7, 19, 22-25, 29-31, 33-34, 43-44; *R v Morgentaler*, [1988] 1 SCR 30 at 179; *Maurice v Canada (Attorney General)*, [2002] FCT 69 [“*Maurice*”] at ¶¶ 1, 9; *R v Big M Drug Mart*, [1985] 1 SCR 295 ¶¶ 94-95, 124; *Syndicat Northcrest v Amselem*, [2004] 2 SCR 551 ¶ 39-44.

⁸⁶ *Libman*, ¶ 31; *Irwin Toy*, at 969-970, 978, 1005-1007.

⁸⁷ *R v Butler*, [1992] 1 SCR 452 [“*Butler*”].

⁸⁸ *Montreal (City) v 2952-1366 Quebec Inc.*, 2005 SCC 62 [“*Montreal (City)*”], ¶¶ 60-61, 72; *Greater Vancouver Transportation Authority v Canadian Federation of Students – British Columbia Component*, 2009 SCC 31 [“*Greater Vancouver Transportation Authority*”], ¶ 28; *Keegstra*, at 728-734; *Irwin Toy*, at 969-70.

⁸⁹ *Canadian Broadcasting Corp v Canada (Attorney General)*, [2011] 1 SCR 19 [“*CBC v Canada*”], ¶¶ 33, 38, 54; *Irwin Toy*, at 971, 978-979, 1005-1007; *Montréal (City)*, ¶¶ 56, 82-85.

aimed at preventing the expression of a particular message. Restrictions based on content *prima facie* restrict freedom of expression. A law can also infringe s 2(b) where it establishes a restriction that is content-neutral, but its effect is to prevent individuals from engaging with the underlying values of freedom of expression.⁹⁰

63. As explained below, all three prongs of the s 2(b) test are met for ss 5(4), 5(6), 6(2), 6(4), and 8(4) of the Act, all of which restrict expression in both purpose and effect.

(ii) False pretences prohibition, ss 5(6) and 6(4)

64. Subsection 5(6) makes it an offence to enter an animal protection zone at a farm, slaughterhouse, rodeo, petting zoo, fur farm, or other designated facility under “false pretences”. Similarly, s 6(4) makes it an offence to interfere or interact with farmed animals in transport if consent to do so is obtained from the driver under “false pretences”.

(1) Subsections 5(6) and 6(4) restrict activities protected by s 2(b)

65. Any oral or written statement, whether false or not, used to gain access to a farm, slaughterhouse, rodeo, or other prescribed facility is an activity that is *prima facie* protected under s 2(b). Likewise, representations made to interact with farmed animals in transit are *prima facie* protected. Deliberate lies are a legitimate form of expression, particularly when made in pursuit of truth regarding matters of social and political importance.⁹¹ Lying may serve useful social purposes, including fostering political participation and individual self-fulfillment.⁹²

66. In addition to constituting an expressive activity, the misrepresentations targeted by ss 5(6) and 6(4) are investigative deceptions – intentional misrepresentations about one’s political or

⁹⁰ *Irwin Toy*, at [974-976](#).

⁹¹ *Irwin Toy*, at [976-977](#); *Ford v Quebec (Attorney General)*, [\[1988\] 2 SCR 712](#) [“*Ford*”], pp 765-767; *Animal Legal Defense Fund v Otter*, [No. 1:2014cv00104](#), pp 9-13; *Animal Legal Defense Fund v Wasden*, [No. 15-35960 \(9th Cir. 2018\)](#), pp 2-3.

⁹² *R v Zundel*, [\[1992\] 2 SCR 731](#), [“*Zundel*”] pp 754-756.

journalistic affiliations, educational background, or motives used to gather information that is in the public interest.⁹³ A false statement made to enter an “animal protect zone” or approach a transit truck in a way that involves interaction with animals, in order to gather information, photos and video with a view to disseminating it to the public, is on a continuum of expressive activity and cannot be isolated from the eventual exposé. Aside from certain journalists working in connection with the news media (discussed below), the only false statements made to gain access to facilities that are exempt from this broad prohibition are certain statements made by employees about their qualifications pursuant to s 10 of the Regulation; that is, statements which do not falsely express or imply that the person making the statement possesses “qualifications necessary to carry out the employment in a manner that would not cause harm to farm animals... food safety, or harm to an individual”.⁹⁴

67. While this appears to narrow the application of these provisions to exclude false statements that do not carry this connotation, s 10 of the Regulation must be read in light of s 12, which expressly applies “despite sections 9 and 10” and prescribes further conditions a person must satisfy to be exempted from the legislation as a “whistle-blower”. To be protected by the s 12 exception, a person must meet the prescribed criteria even if their statement concerned employment qualifications and is not caught by s 10.

68. As noted above, s 12(1)(d) is a “quick reporting” requirement, which directs that the person must obtain information or evidence of an illegal activity *and* disclose that information or evidence to law enforcement authorities “as soon as practicable.”⁹⁵ Until they do so, they can be charged.

⁹³ Lazare, “What is Protected Speech?”, at 95, 102-103; Alan K. Chen and Justin Marceau, “High Value Lies, Ugly Truths, and the First Amendment” (2015) 68:6 Vanderbilt Law Review [“*Chen and Marceau*”], at 1438.

⁹⁴ The scope of misrepresentations about employment qualifications captured by s 10 of the Regulation is unduly vague. “Harm to an individual” begs the question: what type of harm qualifies? Emotional injury and stress are a virtual certainty when the purpose of one’s entry is to publicly expose workplace health and safety violations or animal abuse.

⁹⁵ Regulation, ss 12(1)(c)-(d).

This prevents whistleblowers from documenting and providing evidence to authorities (and the public) of patterns of abuse or from exposing suffering caused by standard industry practices.

69. Subsection 12(2)(a)(ii) directs that the employee cannot, directly or indirectly, cause any harm to a farmed animal, regardless of whether that harm is a requirement of their job.⁹⁶ As discussed above, virtually all entry-level workers in “animal protection zones” are required to harm to animals by participating in killing them, mutilating their bodies, or confining them for prolonged periods of time.

70. The s 12 criteria apply to employees who are already at a severe power disadvantage relative to their employer and who experience unique health and safety risks.⁹⁷ The quick report requirement presents a particularly high barrier for marginalized individuals, including migrant farm workers, who may be hesitant to complain or disclose information to law enforcement authorities due to social and economic factors. These individuals are often in a position of “political impotence [and]...vulnerability to reprisal by their employers” including a constant risk of repatriation if their employment status changes.⁹⁸

71. Aside from the narrow set of representations exempted under ss 10 and 12, all other written and oral false statements made to gain access to facilities subject to the Act are prohibited by virtue of s 9 of the Regulation. This includes false statements made by all employees – for instance, an employee who falsely claims to have entered the kill floor of a slaughterhouse because they just wanted to “see what this part of the plant was like” when in fact they entered to document unsafe

⁹⁶ Regulation, ss 12(2)(a)(ii).

⁹⁷ *Wallace v United Grain Growers Ltd*, [1997] 3 SCR 701, ¶¶ 92-93; *Slaight Communications Inc v Davidson*, [1989] 1 SCR 1038, [“*Slaight*”] 1051-1052; *Dunmore*, ¶ 150; Caitlin A. Ceryes and Christopher D. Heaney, “Ag-Gag Laws; Evolution, Resurgence, and public Health Implications”, *New Solutions: A Journal of Environmental and Occupational Health Policy* 28(4), at 669-674.

⁹⁸ *Dunmore*, ¶ 41.

workplace conditions or animal suffering.⁹⁹ Lying when asked about one’s affiliation with an animal protection group, or about carrying a concealed camera, or about one’s intention to document and publicly expose unethical or unlawful activity, are all captured.¹⁰⁰

72. The “false pretences” prohibition also captures virtually all lies made by non-employees, including a researcher entering a veal farm by falsely claiming that she wants to start her own veal farm,¹⁰¹ entering a slaughterhouse claiming that she is interested in working in the industry,¹⁰² or attending an auction by falsely claiming she is there as a potential buyer; an individual who lies (intentionally or not) about having a camera in their backpack when entering a petting zoo; a known animal rights lawyer giving a false name to attend an “open farm day” and observe conditions inside an intensive livestock operation. The list is virtually limitless.

(2) *The method and location of the expression do not remove it from protection*

73. Subsections 5(6) and 6(4) of the Act restrict a broad range of misrepresentations that do not involve violence or threats of violence.¹⁰³ Furthermore, regardless of where these expressions occur, these provisions establish state-imposed limits and punishments regarding speech, thus implicating the *Charter*.¹⁰⁴

(3) *Subsections 5(6) and 6(4) infringe s 2(b) both in purpose and effect*

74. The restrictions established by ss 5(6) and 6(4) are based on content. First, in conjunction with s 9 of the Regulation, the provisions clearly and unequivocally target non-violent false oral and written speech, the restriction of which *prima facie* limits free expression.¹⁰⁵

⁹⁹ See, e.g. Michael Holtz, “6 Months Inside One of America’s Most Dangerous Industries”, *The Atlantic*, (14 June, 2021), online: <https://www.theatlantic.com/magazine/archive/2021/07/meatpacking-plant-dodge-city/619011/>. Such an employee would need to meet all s 12 criteria to avoid penalties under the Act.

¹⁰⁰ Labchuk Affidavit, ¶¶ 89-90, **ARA Tab B**, p 72

¹⁰¹ Faruqi, pp 143-144, **BOA Tab 11**.

¹⁰² Faruqi, pp 159-160, **BOA Tab 11**.

¹⁰³ *Greater Vancouver Transportation Authority*, ¶ 28; *Zundel*, at 754-756.

¹⁰⁴ *Montréal (City)*, ¶ 62

¹⁰⁵ *Irwin Toy*, at 974-975

75. Second, in targeting investigative deceptions, ss 5(6) and 6(4) are also aimed at preventing expression related to animal cruelty at farms, slaughterhouses, auctions, rodeos, fur farms and other facilities by reducing the number of undercover exposés at such facilities.¹⁰⁶ Viewed purposively, investigative deceptions constitute “preparatory to speech” necessary to enable specific expressions – such as the dissemination of photographs or video footage showing the treatment of animals – that relate to the underlying values of free expression.¹⁰⁷

76. The importance of footage in the context of farmed animal advocacy was discussed by the Idaho District Court in a challenge to that state’s ag gag law:

Audio and visual evidence is a uniquely persuasive means of conveying a message, and it can vindicate an undercover investigator or whistleblower who is otherwise disbelieved or ignored. Prohibiting undercover investigators or whistleblowers from recording an agricultural facility’s operations inevitably suppresses a key type of speech because it limits the information that might later be published or broadcast.¹⁰⁸

77. Indeed, as with other forms of research, supporting material and sources are crucial for those who disseminate the results of research and information-gathering about conditions at agricultural facilities. As the Federal Court has recognized, “[a]n opinion is only as good as the facts on which it is based. If they are unable to communicate those facts, researchers will be significantly hampered in the dissemination of their results.”¹⁰⁹

¹⁰⁶ CX of Duff, pp 24-25, **JCET Vol 2, Tab 7**, pp 708-709; CX of Bouilly, pp 20-27, **JCET Vol 1, Tab 4**, pp 275-282; CX of Bollert, pp 60-70, Ex. 1, **JCET Vol 1, Tab 2**, pp 153-163, 185-191. See also: Ontario, Legislative Assembly, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(18 February, 2020\) at 6946](#) (Bailey); Ontario, Standing Committee on General Government, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(12 June, 2020\)](#) at G-706 (Smith), G-707-G-708 (Harris); Ontario, Legislative Assembly, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(16 June, 2020\)](#) at 8132 (Hardeman), 8156 (Kramp), 8161 (Barrett); Ontario, Standing Committee on General Government, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(9 June, 2020\)](#) at G-680 (Smith), G-695 (Barrett).

¹⁰⁷ *Animal Legal Defense Fund et al v Otter et al*, [No. 1:2014cv00104](#), pp 1-2, 6, 9-18, 26; Chen and Marceau, [pp 1472-1473](#); Will Potter, “Ag-Gag Laws: Corporate Attempts to Keep Consumers in the Dark” (2017) *5:1 Griffith Journal of Law & Human Dignity* 1, at 8, 20. See also *Animal Legal Defence Fund et al v Herbert et al*, [No. 2:2013cv00679 \(2017 D. Utah\)](#), pp 1, 24-27; *Western Watersheds Project et al, v Michael et al*, [No. 15-CV-169-SWS](#), pp 15-19; *Animal Legal Defence Fund et al v Reynolds et al*, [No. 4:17-cv-00362-JEG-HCA \(2019 S.D. Iowa\)](#), at 2-3; *Animal Legal Defence Fund et al v Kelly et al*, [2:18-cv-02657-KVH \(2020 D. Kansas\)](#), at 33-35.

¹⁰⁸ *Animal Legal Defense Fund et al v Otter et al*, [No. 1:2014cv00104](#), p 13.

¹⁰⁹ *Doshi v Canada (Attorney General)*, 2018 FC 710, ¶ 84.

78. Undercover exposés are critical to advancing public discourse and influencing policy reforms. They serve as a primary information source about animal welfare for consumers, given that industry ads and messaging tell only one side of the story.¹¹⁰ By informing public opinion, exposés can contribute to shifts in industry standards recognized by bodies such as NFACC.¹¹¹

79. In addition to its purpose, the legislation’s effect is to restrict expression, limiting access to information that animal agriculture industries want to keep out of public view. To determine whether the law’s effect is to restrict free expression, the Court is to determine whether the activity at issue promotes at least one of the purposes underlying s 2(b).¹¹² Investigative deceptions and other false statements made to gain access to agricultural facilities and transport trucks promote (a) the search for truth about the treatment of farmed animals and related matters of social and political significance, (b) participation in social and political decision-making about these issues, and (c) individual self-fulfillment.

80. Covert investigations advance the search for truth and promote participation in social and political decision-making. Canadians are increasingly concerned about protecting animals from mistreatment and unnecessary suffering, and this informs their purchasing choices.¹¹³ That is why covert investigations are widely covered in the media, and why the Act seeks to stop them. For these reasons, it is in the public interest for employees to expose unlawful and unethical activity, even when doing so requires not revealing their full intentions to their employer.¹¹⁴ The Supreme Court of Canada has recognized that “important controversies” are often unearthed only because

¹¹⁰ Lazare, “What is Protected Speech?”, at 86, 99.

¹¹¹ Harris Affidavit Ex. D (p 3), **ARA Tab I**, pp 2161; Lazare, “What is Protected Speech?”, at 85-86.

¹¹² *Irwin Toy*, at 976; *Ford*, at 765-766.

¹¹³ Labchuk Affidavit, ¶ 72, Ex. Q, **ARA Tab B**, pp 68, 285-311; Scott-Reid Affidavit, ¶ 41, Ex. T, **ARA Tab E**, pp 1847, 1977-2034; *Reece*, Fraser CJ in dissent, ¶¶ 54-56.

¹¹⁴ Nicole E Negowetti, “Opening the Barnyard Door: Transparency and the Resurgence of Ag-Gag & Veggie Libel Laws” (2015) [38:4 Seattle UL Rev 1345](#) at 1384.

of secret sources, including internal whistleblowers at slaughterhouses specifically.¹¹⁵ Restricting the dissemination of information and footage that contradicts industry messaging effectively insulates private actors from being held publicly accountable.

81. Deceptions made to gain access to agricultural facilities also promote individual self-fulfillment of the employee, journalist, or concerned citizen who is seeking to protect animals and expose injustice. Individuals who enter facilities to covertly document animal suffering, for instance, may be motivated by deeply and conscientiously held beliefs that abuse of animals, and suffering caused by standard industry practices, is morally reprehensible, and even that the use of animals for food, fur, rodeo entertainment, and other purposes is morally wrong.¹¹⁶ Exposing these moral wrongs can foster feelings of dignity and moral worth.¹¹⁷ Even if some Ontarians would rather not see where their meat comes from, the right to create speech about these conditions belong to a minority whose expression is entitled to *Charter* protection.

82. Finally, ss 5(6) and 6(4) violate s 2(b) of the *Charter* in effect through their impact on freedom of the press. Press freedom is of vital and unique importance within the context of s 2(b).¹¹⁸ Its underlying purpose is to facilitate social and democratic discourse by guaranteeing the public's "right to know".¹¹⁹ As held by the majority in *Denis v Côté*:

By investigating, questioning, criticizing and publishing important information, the media contribute to the existence and maintenance of a free and democratic society... By

¹¹⁵ *R v National Post*, 2010 SCC 16 [“*National Post*”], ¶ 28.

¹¹⁶ *Maurice*, ¶¶ 1, 9.

117 *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, ¶¶ 76-77; *R. v. Guignard*, [2002] 1 SCR 472, ¶ 23.

¹¹⁸ See, e.g. *Denis v Côté*, 2019 SCC 44 [“*Denis*”], ¶ 45; *R v Vice Media Canada Inc.* 2018 SCC 53 [“*Vice Media*”], ¶ 123; *Canadian Broadcasting Corp v Lessard*, [1991] 3 SCR 421 [“*Lessard*”], McLachlin J. in dissent, at 451-452; Benjamin Oliphant, “Freedom of the Press as a Discrete Constitutional Guarantee”, (2013) 59-2 *McGill Law Journal* 283, at 325-326 [“*Oliphant*”].

¹¹⁹ *Vice Media*, ¶ 125.

contributing to the free flow of information, journalists also help to ensure “[p]roductive debate” on questions of public interest[.]¹²⁰

83. The provisions threaten newsgathering activities that are integral to news dissemination and are thus protected under s 2(b) as “a necessary precondition for meaningful expression”.¹²¹ As part of its protection of newsgathering activities, the freedom of the press guarantee protects filming and taking photographs.¹²²

84. If a law attempts to distinguish between journalists and non-journalists, it must do so in furtherance of s 2(b)’s objective of promoting the gathering and dissemination of information for the public’s benefit without undue state interference, and not for the purpose of justifying draconian restrictions on the public’s basic information gathering rights by reserving some rights for a narrow class of persons deemed to be “journalists”.¹²³ The Act fails in this regard. It does not seek to accord heightened rights to particular individuals in the interest of democracy; at best, it strips slightly fewer rights from “journalists” as compared to all other individuals.¹²⁴ The right to document and disseminate accurate information about unethical behaviour by public and private institutions belongs to all citizens and cannot be reserved for “journalists” alone.¹²⁵

85. Moreover, the focus of the freedom of the press analysis is on the activity itself and not the individual engaging in it. The more the activity accords with standards of professional journalistic

¹²⁰ *Denis*, ¶ 45. See also *Grant v Torstar Corp.*, 2009 SCC 61 [“*Torstar*”], ¶ 52; Oliphant, p 287; *Canadian Newspapers Co v Canada (AG)*, [1988] 2 SCR 122, at 129; *National Post*, ¶ 28; *Canadian Broadcasting Corp v New Brunswick (AG)*, [1996] 3 SCR 480, ¶ 23 [“*CBC v New Brunswick*”].

¹²¹ *Globe and Mail v Canada (Attorney General)*, 2010 SCC 41, ¶ 56; *CBC v Canada*, ¶ 46; *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 [“*Edmonton Journal*”], p 1371; *CBC v New Brunswick*, ¶¶ 23-27; *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835, at 876-877; *Ontario (Public Safety and Security) v Criminal Lawyers’ Association*, 2010 SCC 23, ¶¶ 30-31; *Lessard*, pp 429-430; Oliphant, p 290.

¹²² *CBC v Canada*, ¶ 46; *Vice Media*, ¶ 128

¹²³ *Vice Media*, ¶ 129-130. See also Cribb Affidavit, Ex. A (pp 2-5), **ARA Tab F**, pp. 2039-2042.

¹²⁴ See, e.g. *Journalistic Sources Protection Act*, SC 2017, c 22; *Income Tax Act*, RSC 1985, c 1 (5th Supp); Cribb Affidavit, Ex. A (pp 2-5), **ARA Tab F**, pp. 2039-2042.

¹²⁵ CX of Shapiro pp 72-76, **JCET Vol 8, Tab 25**, pp 3087-3091; Affidavit of Robert Cribb dated March 14, 2022 [“**Cribb Reply Affidavit**”] Ex. B (pp 1-2), **ARA Tab G**, pp 2068-2069; CX of Cribb, pp 101-104, **JCET Vol 2, Tab 5**, pp 536-539.

ethics for gathering and communicating accurate information in the public interest, the more likely it is to attract protection under 2(b).¹²⁶ Those undertaking “press-like functions” in service of the public’s right to know should thus benefit from protection under s 2(b) absent a compelling reason for state interference.¹²⁷ The key is whether the information being gathered and disseminated is truthful and relevant to matters of public interest, not who the individual is employed by or whether the product ultimately communicated is “balanced” or “fair”.¹²⁸

86. The legislation infringes press freedom by: (a) restricting newsgathering rights of traditional “journalists”, (b) further restricting newsgathering rights of those who do not meet the prescribed definition of “journalist”, and (c) cutting off key journalistic sources.

87. **Restricting newsgathering rights of traditional journalists.** “Traditional journalists’ must meet the requirements in s 11(1) of the Regulation to avoid prosecution when they enter a facility under “false pretences”. They cannot cause “harm to an individual” due to their entry. If the journalist uncovers unethical or unlawful conduct, they will report publicly on those activities, putting them at risk of prosecution if those exposed suffer undue stress or emotional or psychological injury. This risk is very real. According to the Applicants’ expert Rob Cribb: “[i]nvestigative journalism often results in emotional distress, or claims of emotional distress, on the part of subjects of stories. While journalists don’t seek to cause distress unnecessarily, the priority is to inform the public in a fair and accurate manner.”¹²⁹ In other words, stress and

¹²⁶ *Vice Media*, ¶ 129-130; Cribb Affidavit, Ex. A (p 2), **ARA Tab F**, pp. 2039; Stephanie J Frazee, “Bloggers as Re-porters: An Effect-Based Approach to First Amendment Protections in a New Age of Information Dissemination” (2006) 8:3 *Vand J of Ent & Tech L* 609, at 639.

¹²⁷ Oliphant, pp 292, 295-296, 301-302; Jamie Cameron, “Section 2(b)’s Other Fundamental Freedom: The Press Guarantee, 1982-2012” *Research Report No.23/2013 (2013) Osgoode Hall Law School*, at 19; Jamie Cameron, “Of Scandals, Sources and Secrets: Investigative Reporting, National Post and Globe and Mail” (2011) 54:9 *Sup Ct L Rev* (2d) 233 at 254-55; Jamie Cameron, “A Reflection on Section 2(b)’s Quixotic Journey, 1982-2012” (2012) 58:6, *Sup Ct L Rev* 163, Osgoode’s Annual Constitutional Cases Conference, p 183.

¹²⁸ CX of Shapiro, pp 106-112, **JCET Vol 8, Tab 25**, pp 3121-3127; CX of Cribb, pp 90-91, **JCET Vol 2, Tab 5**, pp 525-526.

¹²⁹ Cribb Affidavit, Ex. A (pp 2, 10), **ARA Tab F**, pp 2039, 2047.

emotional injury to those whose conduct is exposed comes with the territory.

88. Though aspects of the s 11(1) requirements are vague and likely open to judicial interpretation – what is a “valid journalistic purpose”, for instance? – indisputably the effect of s 5(6) of the Act is to chill undercover journalism at agricultural facilities in Ontario. Most journalists do not go undercover. Undercover work “is stressful and potentially dangerous, requires long, intense preparation, research and hours. And all of that could yield nothing.”¹³⁰ Faced with such risks, journalists and their employers will choose not to use false pretences to gather and publish important information about conditions at facilities covered by the Act.¹³¹

89. **Restricting newsgathering rights of those who do not meet the definition of “journalist”.** The definition of “journalist” in s 11(2) of the Regulation focuses on an individual’s affiliation with the “news media” and not on the activity that the individual is engaging in – that is, whether they are gathering truthful information on matters of public interest with a view to publishing or disseminating that information. Thus, the definition fails to focus on the activity itself, as s 2(b) demands, and fails to recognize the modern journalistic order, in which many people who are not employed by media organizations do important journalistic work and even contribute to “world changing” news.¹³² As the Supreme Court has recognized, “[t]hese new disseminators of news and information should, absent good reasons for exclusion, be subject to the same laws as established media outlets.”¹³³

90. **Cutting off key journalistic sources.** Finally, the Act restricts or eliminates the “whistleblowers and other anonymous sources” on whom journalists rely to gather, assess and

¹³⁰ Cribb Affidavit, Ex. A (pp 8-9), **ARA Tab F**, pp. 2045-2046. The Respondent’s expert Ivor Shapiro agreed that in light of Cribb’s expertise as an investigative journalist, Shapiro defers to him on the practice of investigative work, including going undercover (CX of Shapiro, pp 18-19, **JCET Vol 8, Tab 25**, pp 3033-3034).

¹³¹ Cribb Affidavit, Ex. A (p 10), **ARA Tab F**, pp. 2047.

¹³² Cribb Affidavit, Ex. A (pp 4-5), **ARA Tab F**, pp. 2041-2042; CX of Shapiro, pp 49-50, **JCET Vol 8, Tab 25**, pp 3064-3065.

¹³³ *Torstar*, ¶ 96

disseminate information.¹³⁴ Measures that prevent the media from accessing and gathering news and information may constitute a violation of s 2(b).¹³⁵ Jessica Scott-Reid, for instance, is a freelance journalist who does not herself engage in undercover work. Much of her work takes the form of opinion pieces focused on matters of animal rights and welfare – pieces that undoubtedly constitute journalism.¹³⁶ She relies on whistleblowers and other sources who engage in undercover work or covertly obtain information and footage inside agricultural facilities and transport trucks.

91. Many important controversies have been unearthed only with the help of whistleblowers and anonymous sources.¹³⁷ In perhaps no context is this truer than with respect to the treatment of farmed animals behind closed doors on private property. The effect of ss 5(6), as well as ss 6(2) and (4), is to reduce and eliminate these integral sources, thus drastically interfering with the ability of Scott-Reid and others engaged in journalism to meaningfully and accurately report on the treatment of farmed animals in Ontario.

(iii) “Interference or interaction” prohibition, ss 5(4) and 6(2)

92. The prohibitions in ss 5(4) and 6(2) of the Act likewise violate s 2(b) of the *Charter*.

(1) *Participating in vigils and bearing witness near animal transport trucks is a protected form of expression*

93. Bearing witness and documenting conditions in animal transport trucks is a form of social and political expression that, like other forms of peaceful protest, lies at the heart of s 2(b).¹³⁸ However, vigils are different from many forms of protest. Rather than holding signs and sharing information with passersby, the core of the vigil is being near farmed animals arriving for slaughter in order to bear witness to their suffering as sentient individuals; observe and document the

¹³⁴ *Denis*, ¶ 47; *Vice Media*, ¶ 132; Cribb Affidavit, Ex. A (p 2), **ARA Tab F**, p 2039.

¹³⁵ Oliphant, at 290-291.

¹³⁶ CX of Shapiro, pp 108-112, **JCET Vol 8, Tab 25**, pp 3123-3127.

¹³⁷ *National Post*, ¶ 28.

¹³⁸ See e.g., Deckha, “The Save Movement”, p 82; Kathryn Gillespie, “Witnessing Animal Others: Bearing Witness, Grief, and the Political Function of Emotion” (2016) 31:3 *Hypatia* 572, p 576.

conditions in which they are being transported;¹³⁹ and show kindness and compassion to them in their final moments, including by petting animals who seek affection.¹⁴⁰ These actions frequently and unavoidably result in direct and indirect physical contact with animals.¹⁴¹

94. In assessing this practice under s 2(b), it must be observed that what qualifies as conveying meaning for the purposes of the first prong of the s 2(b) test is a subjective matter dependent on the perspective of the person alleging a s 2(b) infringement.¹⁴² Jorgensen’s participation in weekly Toronto Cow Save vigils is a fundamental medium through which she shows the public how farmed animals are treated in order to promote transparency and dialogue about the treatment of animals raised and slaughtered for food in Ontario.¹⁴³

(2) Subsections 5(4) and 6(2) restrict peaceful protest in purpose and effect

95. Subsection 6(2) of the Act was enacted in response to concerns raised by the trucking and pork industries about demonstrations, particularly those involving the Fearman’s pig slaughterhouse in Burlington.¹⁴⁴ Industry and government made repeated reference to unsafe conduct at this facility, much of which was already illegal in Ontario.¹⁴⁵ The scope of conduct captured by s 6(2) extends far beyond such dangerous activities and captures forms of peaceful protest that cause no harm to animals and public safety.¹⁴⁶ In crafting the restrictions, Ontario

¹³⁹ This is done both to share publicly and with law enforcement when it appears the federal [Health of Animals Regulations](#) have been violated.

¹⁴⁰ Jorgensen Affidavit, ¶¶ 15, 30, 65, 79, **ARA Tab D**, pp 1555, 1559, 1569, 1573.

¹⁴¹ Jorgensen Affidavit ¶¶ 30-38, 72, Ex. G, H, **ARA Tab D**, pp 1559-1561, 1571 1655-1676; CX of Jorgensen, pp 86-87, **JCET Vol 4, Tab 14**, pp 1625-1626.

¹⁴² Chanakya Sethi, “Beyond *Irwin Toy*: A New Approach to Freedom of Expression under the *Charter*” (2012) [Appeal 21:45](#); Lazare, “What is Protected Speech?”, at [98-99](#); Deckha, “The Save Movement”, at [82-83, 93](#).

¹⁴³ Jorgensen Affidavit, ¶¶ 8, 15, 18, **ARA Tab D**, pp 1553, 1555-1556.

¹⁴⁴ Ontario, Legislative Assembly, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(10 Dec 2019\)](#) at 6794 (Hardeman), 6798 (Barrett), and 6805 (Vanthof); Ontario, Legislative Assembly, Official Report of Debates (Hansard), [42nd Parl, 1st Sess \(16 Jun 2020\)](#) at 8144-8146 (Pettapiece); Duff Affidavit, ¶¶ 13, 21, 70, **ARR Vol 4, Tab 6**, pp 820, 823, 836.

¹⁴⁵ See e.g., Jutzi Affidavit, ¶¶ 36, 38, **ARR Vol 7, Tab 12**, pp 1893-1894; Duff Affidavit, ¶¶ 13, 21, 70, **ARR Vol 4, Tab 6**, pp 820, 823, 836. See also *Highway Traffic Act*, [RSO 1990, c H8](#), ss 140(4), 144(22), *Criminal Code*, ss [264.1, 423\(1\)\(a\) and \(g\)](#).

¹⁴⁶ *Krajnc*, ¶¶ [57-76](#).

sought to address industry concerns only, ignoring concerns raised repeatedly by demonstrators regarding dangerous and aggressive conduct by drivers.¹⁴⁷ The legislation is specifically targeted at activities involved in bearing witness. Therefore, it is not content-neutral and is instead a *prima facie* limit on the free expression rights of Jorgensen and other participants.¹⁴⁸

96. While not all aspects of demonstrations organized by Jorgensen and others are directly restricted by the prohibition on “interaction” with farmed animals, s 2(b) protects not only the content of the message but also the way it is delivered because these factors are profoundly interconnected.¹⁴⁹ Jorgensen is free to convey her ideas at a distance, but since she cannot observe farmed animals or take compelling photos of them without risking direct or indirect physical contact with them, s 6(2) restricts the very means that make her expression effective.¹⁵⁰ Indeed, physical contact with animals is an “indispensable component of bearing witness.”¹⁵¹

97. There is no evidence that individuals petting farmed animals or being licked or nudged by animals while photographing conditions inside stopped transport trucks pose any risks to biosecurity or food safety. In fact, in 2017 the Ontario Court of Justice rejected the Crown’s argument that the activities involved in bearing witness pose any kind of risk to the animals, or to the food they are destined to become.¹⁵²

98. Subsection 6(2), in its effect, also limits Jorgensen’s ability to pursue self-fulfilment and

¹⁴⁷ Duff Affidavit, ¶¶ 13, 21, 70, **ARR Vol 4, Tab 6**, pp 820, 823, 836; CX of Duff, pp 50-51, **JCET Vol 2, Tab 7**, pp 734-735; Jutzi Affidavit, ¶ 36, **ARR Vol 7, Tab 12**, pp 1893-1894; Labchuk Reply Affidavit ¶¶ 33-35, Ex. PP-SS, **ARA Tab C**, pp 890-891, 1535-1550; Schwindt Affidavit, Ex. O, **ARR Vol 8, Tab 18**, pp 2318-2323; CX of Schwindt, pp 60-67, Ex. 2, **JCET Vol 7, Tab 23**, pp 2803-2810, 2839-2841; CX of Koch, p 22-25, 35-43, Ex. 1, **JCET Vol 6, Tab 18**, pp 2264-2267, 2277-2285, 2299-2385; CX of Fitzgerald, pp 47-50, **JCET Vol 3, Tab 9**, pp 960-963.

¹⁴⁸ Lazare, “What is Protected Speech?” [at 98](#); Jorgensen Affidavit, ¶¶ 81-85, **ARA Tab D**, pp 1574-1575.

¹⁴⁹ *Ford*, [at 767](#)

¹⁵⁰ *Bracken v Niagara Parks Police*, 2018 ONCA 261 [“*Bracken*”], [¶57](#)

¹⁵¹ Jorgensen Affidavit, ¶ 65, **ARA Tab D**, p 1569. See also CX of Jorgensen, p 87, **JCET Vol 4, Tab 14**, p 1626, noting that animals regularly approach and touch her while she is taking photographs near transport trucks.

¹⁵² *Krajnc*, ¶¶ [57-76](#); Lazare “Are Ag-Gag Laws Justifiable?”, [at 696-697](#).

engage in expression that enables her own flourishing through conversation with others and full participation in the life of the community.¹⁵³ Bearing witness – including actions that often necessitate direct or indirect physical contact with animals – is expression that relates to her deep moral and ethical beliefs regarding the treatment of animals. Far more frivolous activities, such as distributing hardcore pornography and “engaging in leisure activities”, have been recognized to be protected as part of an individual’s pursuit of self-fulfilment and human flourishing.¹⁵⁴

99. Finally, s 5(4) prohibits a range of conduct, including a worker providing food, water, or medicine to an animal, or petting or having other contact with the animal, without their employer’s consent. To take examples documented in exposés, prohibited “interactions” include euthanizing a suffering mink or turkey despite a manager’s desire to keep the animal alive to produce a product, or a worker providing food to sick pigs awaiting euthanasia even though their employer considers it a waste of money.¹⁵⁵ It was due in large part to this section’s implications for workers that Justice For Migrant Workers sought leave to intervene in this application.¹⁵⁶

100. As noted, the power imbalance between employer and individual workers is particularly pronounced in the agricultural sector. Freedom of expression can play an important role in redressing or alleviating this imbalance.¹⁵⁷ Subsection 5(4) restricts the s 2(b) rights of workers to manifest their beliefs through physical acts intended to convey meaning, including compassion and kindness to animals in need – acts integral to their individual self-fulfilment.¹⁵⁸

¹⁵³ Richard Moon, “Limits on Constitutional Rights: The Marginal Role of Proportionality Analysis” (2017) 50:1 *Israel LR* at 4-7.

¹⁵⁴ *Montréal (City)*, ¶ 84; *Butler*, at 461; *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573.

¹⁵⁵ Beal Affidavit, ¶¶ 36-37, **ARA Tab H**, p 2077; Labchuk Affidavit, ¶¶ 83-87, 135-137, Ex. T, **ARA Tab B**, pp 70-71, 87-88, 356-357; Labchuk Reply Affidavit, ¶¶ 22-30, Ex. NN-OO, **ARA Tab C**, pp 887-889, 1531-1533.

¹⁵⁶ *Animal Justice et al v Attorney General of Ontario*, 2023 ONSC 3147, ¶¶ 12-18.

¹⁵⁷ Keir JM Vallance, “Lest You Undermine Our Struggle”: Sympathetic Action and the Canadian *Charter* of Rights and Freedoms, (2015) 53:1 *Alta L Rev* 139, [“*Vallance*”] at 160, quoting *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2013 SCC 62 ¶ 32.

¹⁵⁸ Vallance, at 162-163. See also *Morin v Prince Edward Island Regional Administrative Unit No. 3 School Board*, 2002 PESCAD 9, 212 Nfld & PEIR 69, leave to appeal refused, [2009] SCCA No. 414, ¶¶ 68, 72, 96, **BOA Tab 4**.

(iv) Subsections 5(6) and 6(2) infringe the rights of listeners

101. Subsections 5(6) and 6(2) of the Act also infringe s 2(b) of the *Charter* by restricting activities that provide important information to members of the public. “[V]iewers, listeners and readers” have a right to receive information on matters of social and political importance.¹⁵⁹

102. In *Subway v CBC* (a defamation action flowing from a CBC program examining chicken meat products at the global sandwich chain) the Ontario Superior Court of Justice noted that “[t]here are few things in society of more acute interest to the public than what they eat. To the extent that Subway’s products are consumed by a sizable portion of the public, the public interest in their composition is not difficult to discern”.¹⁶⁰ Similarly, most members of the public consume meat and dairy products – many also attend rodeos and/or petting zoos and wear fur. It is in the public interest to allow consumers to see what happens in animal industries, not just to animals but also what those working in these spaces are exposed to. The expression rights of whistleblowers can be particularly important to the public’s right to such knowledge.¹⁶¹

103. Canadians express themselves through their purchasing choices, making commercial transactions an expressive activity protected under s 2(b) of the *Charter*.¹⁶² As the Federal Court recognized in *Kattenburg*, consumers must have accurate information about the origin of products, as well as access to information being kept from them, including through “counter-advertising”, to express their political views through conscientious food-purchasing choices.¹⁶³

¹⁵⁹ *Harper v Canada*, 2004 SCC 33, ¶¶ 17, 19; *Edmonton Journal*, at 1339-1340; *Ford*, at 767. See also *Thomson Newspapers Co v Canada (Attorney General)*, [1998] 1 SCR 877, ¶ 41; *Dagenais*, ¶ 81.

¹⁶⁰ *Subway v CBC*, 2019 ONSC 6758, ¶ 18 (rev’d in 2021 ONCA 26, but not on this point)

¹⁶¹ *National Post*, ¶ 28. See also Richard Moon, “The Social Character of Freedom of Expression” (2009) 2:1 *Amsterdam L Forum* 43 [“Moon, “Social Character”]; *Keegstra*, at 763; Richard Moon, “The Constitutional Protection of Freedom of Expression” (Toronto: University of Toronto Press, 2000), at 3-4, **BOA Tab 13**.

¹⁶² *Lavigne v OPSEU*, [1991] 2 SCR 211 [“*Lavigne*”], at 267.

¹⁶³ *Kattenburg v Canada (Attorney General)*, 2019 FC 1003, ¶¶ 113-117 (aff’d 2021 FCA 86); *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199 [“*RJR-MacDonald*”]. See also Marie-Claude Desjardins & Sabrina Tremblay-Huet, “The Consumers’ Right to Information about Animal Welfare: The Canadian Framework for Labelling of Food Products of Animal Origin” in Heather McLeod-Kilmurray, Angela Lee & Nathalie Chalifour, eds, *Food Law and Policy in Canada* (Toronto: Carswell, 2019), at 287, **BOA Tab 10**.

(v) *Prohibiting false statements about one’s name and address violates s 2(b)*

104. Where the owner or occupier of an agricultural facility finds a person present in violation of s 5 of the Act, and they request that person’s name and address, s 8(4) makes it an offence for the person to “provide false or misleading information” in response. This prohibition on false speech engages s 2(b) of the *Charter* for the reasons outlined above regarding ss 5(6) and 6(4) of the Act. Unlike other prohibitions on giving false information about one’s identity to a private person – the *Criminal Code* prohibition on obtaining credit by fraud, for instance – there is no legitimate public purpose behind s 8(4).¹⁶⁴

105. Subsection 8(4) leaves whistleblowers and others with only the following choices: (a) provide truthful information about their name and address, even though it may pose a risk to their safety if the information is made public, or prevent them from engaging in future undercover work if their cover is blown; or (b) risk up to \$15,000 in fines by providing a false name and address.¹⁶⁵ Alternatively, they can (c) refuse to answer the request or remain silent (also a form of protected expression),¹⁶⁶ potentially escalating the conflict and putting them at risk of citizen’s arrest. Leaving individuals to choose between their liberty and steep penalties and even citizen’s arrest “countermands the rule of law” and violates s 2(b) of the *Charter*, which guarantees the right to not disclose (or express) sensitive information.¹⁶⁷

B. The legislation violates section 2(c) of the *Charter*

106. Section 2(c) of the *Charter* guarantees the freedom of peaceful assembly – an important and distinct right that is crucial to the law on public demonstrations in Canada.¹⁶⁸ It guarantees

¹⁶⁴ *Criminal Code*, ss 362(1)(b); *McAteer v Canada (Attorney General)*, 2014 ONCA 578 [“*McAteer*”], ¶¶ 70-85.

¹⁶⁵ *CCLA v Attorney General of Ontario*, 2020 ONSC 4838 [“*CCLA*”], ¶¶ 43-45, 73.

¹⁶⁶ *Slaight*, at 1080.

¹⁶⁷ *RJR-MacDonald*, ¶ 124; *CCLA*, ¶ 42; *McAteer*, ¶ 70; *Ontario Restaurant Hotel & Motel Assn v Toronto (City)*, [2004] OJ No 190, ¶¶ 44-45 (SCJ), **BOA Tab 4**; *Lavigne*, p 267; *Slaight*, at 1080.

¹⁶⁸ Basil S. Alexander, “Exploring a More Independent Freedom of Peaceful Assembly in Canada”, (2018) 8:1 *UWO J Leg Stud* 4 [“*Alexander*”] at 1-5, 16-18.

access to and use of public spaces, including roads and sidewalks “around which public life unfolds”, and reflects the role of peaceful protest as an “essential tool in democracy to promote legitimate interests, raise public awareness, and influence governments.”¹⁶⁹ This right of access and use for a broad spectrum of assemblies is also protected under international law, including under Article 21 of the *International Covenant on Civil and Political Rights*.¹⁷⁰

107. The purpose of s 2(c) overlaps with that of freedom of expression: protecting a collective activity or action requiring physical space in order to be carried out. It is “speech in action”: where a given expression is protected, s 2(c) protects the lawful *means* of that expression. This collective physical action is one of the only ways for groups and individuals without access to media or funds to express themselves in a public manner.¹⁷¹

108. To determine whether an activity is protected under s 2(c), courts use an “activity-based contextual approach” that examines the “activity in question in its full context” and in light of the purposes underlying the *Charter*’s guarantee of freedom of assembly, as well as its compatibility with the primary purpose or function of the public space at issue.¹⁷² If the activity is not incompatible, it is protected by s 2(c) and the analysis moves on to s 1.¹⁷³

109. Peaceful demonstrations and bearing witness to animal suffering in transport serve both a communicative and a pressure function.¹⁷⁴ Jorgensen and other participants aim to advance the

¹⁶⁹ *Hussain v Toronto (City)*, 2016 ONSC 3504, ¶ 38; *R c Lebel*, [1999] JQ No 4995, ¶ 83, **BOA Tab 7**; *Garbeau c Montréal (Ville de)*, 2015 QCCS 5246, ¶ 1 [“*Garbeau*”]. See also *R v Singh*, 2011 ONSC 717, ¶ 39, **BOA Tab 8**; *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1, ¶ 48; Alexander, [at 2](#).

¹⁷⁰ *Multilateral – International Covenant on Civil and Political Rights* (Adopted by the General Assembly of the United Nations on 19 December 1966) [No. 14668](#), Article 21; *Garbeau*, ¶¶ 120-156; Alexander, [at 9](#). See also, Human Rights Committee, “General comment No. 37 (2020) on the right of peaceful assembly (article 21)” [CCPR/C/GC/37, \(17 September, 2020\)](#) [“**Article 21 Commentary**”].

¹⁷¹ *R v Behrens*, [2001] OJ No. 245, [“*Behrens*”] ¶ 36, **BOA Tab 5**.

¹⁷² *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1, ¶¶ 47-48, 50; *Batty v Toronto (City)*, 2011 ONSC 6862, ¶ 1; *Committee for the Commonwealth of Canada v Canada*, [1991] 1 SCR 139 [“*Committee for the Commonwealth*”] at 164-166; *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#), ¶ 197.

¹⁷³ *Committee for the Commonwealth*, [at 234-235](#).

¹⁷⁴ *Behrens*, ¶ 36, **BOA Tab 5**.

interests of society by bringing the wrongs of the industrial meat and dairy industries to the attention of the public, inspiring dialogue and change.¹⁷⁵ To be carried out effectively, this collective activity requires physical space near farmed animals in transport, since the only way to see and document animals in metal trucks is to be physically near or at the truck's openings.¹⁷⁶

110. For Jorgensen and other demonstrators, bearing witness is not only personally fulfilling and transformative, but is also the key means by which they capture compelling images and information to (a) draw the public's attention and interest to farmed animal protection and (b) communicate with and influence on those in power.¹⁷⁷ These peaceful actions pose no risk to public safety, order, and health, yet are prohibited by s 6(2) of the Act simply because they frequently and unavoidably result in direct and indirect physical contact with animals.¹⁷⁸

111. Even if bearing witness inconvenienced to some extent the businesses transporting the animals, the fact that individuals' assembly may inconvenience another's use of a public street is not enough to justify infringing s 2(c). Indeed, public demonstrations are often disruptive by design.¹⁷⁹ The right to peaceful assembly takes precedence over the convenience and economic interests of industries whose activities are the subject of the protest.¹⁸⁰

112. By substantially undermining the ability of Jorgensen and others to get near enough to animals in transport to observe, document, and bear witness to their experience, s 6(2) of the Act

¹⁷⁵ Deckha, "The Save Movement", at [102-104](#); Jorgensen Affidavit ¶¶ 7-9, 11, 17, 21, 24, 50-51, 79, **ARA Tab D**, pp 1553-1555, 1557-1558, 1565, 1573.

¹⁷⁶ Alexander, at [9-10](#); Deckha, "The Save Movement", at [80-81, 100](#); Jorgensen Affidavit ¶¶ 23-27, **ARA Tab D**, pp 1557-1558.

¹⁷⁷ Alexander, at [8](#).

¹⁷⁸ BS Alexander, "Demonstrations and the Law: Patterns of Law's Negative Effects on the Ground and the Practical Implications" (2016) 49:3 *UBC L Rev* 869; G Babineau, "La manifestation: une forme d'expression collective" (2012) 53:4 *Cahiers de droit* 761 (QL), at 761-764; *R v Big M Drug Mart*, [1985] 1 SCR 295, at 336-37; Alexander, at [6](#); *Krajnc*, ¶¶ 57-76; Article 21 Commentary, ¶¶ 40-46. See also OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd Ed), [CDL-AD \(2010\) 020, \(9 July, 2010\)](#) ["**The Guidelines**"], ¶¶ 68-93.

¹⁷⁹ *Ontario (Attorney General) v Dieleman*, [1994] OJ No 1864 (QL), at 77; Alexander, [p 7](#).

¹⁸⁰ Article 21 Commentary, ¶¶ 40, 53; The Guidelines, ¶¶ 94-100.

infringes s 2(c) of the *Charter*.¹⁸¹ The fact that the Act does not prohibit demonstration at a distance from transport trucks is no answer, since the physical space needed to effectively observe and document conditions inside metal transport trucks is at or near the truck’s openings, where physical contact with animals is inevitable.¹⁸²

C. The legislation infringes ss 7 and 9 of the *Charter*

113. Paragraph 8(1)(d) of the Act and s 15 of the Regulation breach ss 7 and 9 of the *Charter* as they permit facility owners to conduct arbitrary arrests without reasonable and probable grounds.

114. Pursuant to s 8(1)(d) of the Act, a facility owner may arrest a person whom they find in an animal protection zone contrary to s 5. While s 8(2) of the Act purports to limit this power to circumstances where an arrest would be permitted under the *Trespass to Property Act* (“*TPA*”),¹⁸³ s 15 of the Regulation then effectively extends the power beyond the circumstances permitted by the *TPA*, and provides that “[f]or greater certainty,” the citizen’s arrest power may “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” (emphasis added). In other words, the arrest power may be exercised without reasonable and probable grounds if the owner of the facility (who presumably will have no legal or law enforcement training) subjectively *believes* such grounds exist.

115. An arrest lacking objective justification is unlawful and arbitrary, contrary to both ss 7 and 9 of the *Charter*.¹⁸⁴ Section 9 of the *Charter* guarantees the right not to be arbitrarily detained or imprisoned. With respect to s 7 of the *Charter*, arrests implicate individuals’ liberty interests. The

¹⁸¹ Alexander, [at 13-14](#).

¹⁸² *Bracken*, ¶ 57; Jorgensen Affidavit ¶¶ 35, 65, 72, 81, **ARA Tab D**, pp 1560, 1569, 1571, 1574; CX of Jorgensen, pp 86-87, **JCET Vol 4, Tab 14**, pp 1625-1626.

¹⁸³ [RSO 1990, c T.21](#), s 9.

¹⁸⁴ *R v Grant*, [2009] 2 SCR 353, ¶¶ 19-20.

use of force in an arrest, and even the threat of such force, engages individuals' liberty and security of the person interests.¹⁸⁵ Subsection 8(1)(d) of the Act permits the deprivation of those rights in a matter not in accordance with the principles of fundamental justice, which prohibit arbitrary arrests, warrantless arrests without objective reasonable and probable grounds, and the use of excessive force by state actors.¹⁸⁶ The power given to citizens to arrest is necessarily narrower and not more expansive than that given to police.¹⁸⁷

116. The Supreme Court of Canada has emphasized the importance of the *Criminal Code* requirement for *objectively* reasonable and probable grounds to be present before a peace officer may conduct a warrantless arrest:

Without such an important protection, even the most democratic society could all too easily fall prey to the abuses and excesses of a police state... In the case of an arrest made without a warrant, it is even more important for the police to demonstrate that they have those same reasonable and probable grounds upon which they base the arrest.

The importance of this requirement to citizens of a democracy is self-evident.¹⁸⁸

117. Because s 8(1)(d) of the Act and s 15 of the Regulation lack this protection, in the context of a citizen's arrest no less, they are intolerable in a democratic society.¹⁸⁹ Subsections 8(1) and (4) of the Act are also exceptional in that, unlike citizen's arrests under the *Criminal Code* and *TPA*, the individual making the arrest is empowered to question the person being arrested.¹⁹⁰

118. Because these provisions require a mere subjective belief held by a private citizen, they also fail to prescribe with sufficient specificity the criteria for when an arrest may take place.¹⁹¹ A

¹⁸⁵ *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, ¶¶ 26, 47

¹⁸⁶ *R v Nasogaluak*, [2010] 1 SCR 206; *Fleming v Ontario*, 2019 SCC 45, ¶ 65.

¹⁸⁷ *R v Blerot*, 1998 CarswellSask 880, ¶ 13.

¹⁸⁸ *R v Storrey*, [1990] 1 SCR 241 [“*Storrey*”], at 249-251. Note that the Applicants are not aware of any other Canadian law that permits arrests without objectively reasonable and probable grounds, even by the police. See, e.g. *Criminal Code* s 495; *TPA* ss 9(1), 10.

¹⁸⁹ *Criminal Code*, s 495; *Storrey*, at 249-251; *Dumbell v Roberts*, [1994] 1 All ER 326 (CA), at 329, **BOA Tab 3**.

¹⁹⁰ *TPA*, ss 9(1), s 9(2), 10.

¹⁹¹ *R v Hufsky*, [1988] 1 SCR 621, at 632-633; *R v Ladouceur*, [1990] 1 SCR 1257, at 1277.

subjective belief in reasonable and probable grounds could be held by a facility owner for all manner of reasons, including elementary mistakes of law, a suspicion that an employee lied on their resume years earlier, or a belief that an employee gave food or water to an animal when their supervisor told them to withhold it. Thus, the provisions authorize arbitrary detentions contrary to ss 7 and 9 of the *Charter*.

D. The Act violates s 11(d) of the *Charter*

119. Any person charged with an offence has the right to be presumed innocent until proven guilty beyond a reasonable doubt, with the state bearing the burden of proof.¹⁹² “Reverse onus” provisions, which require “an accused to disprove on a balance of probabilities the existence of a presumed fact, which is an important element of the offence in question” violate this right by making it possible for an accused to be convicted even though there is a reasonable doubt.¹⁹³ Yet s 14(3) of the Act does precisely that, relieving the Crown’s need to prove a critical element of the offence (lack of consent). Subsection 14(3) of the Act therefore violates s 11(d) of the *Charter*.¹⁹⁴

PART IV - COSTS AND ORDER REQUESTED

120. The Applicants request an order granting the relief set out in the notice of application, including their costs. In the event that they are unsuccessful in this application, the Applicants ask that no costs be awarded against them as public interest litigants of limited financial means.¹⁹⁵

¹⁹² *Charter* s. 11(d); *R v Oakes*, [1986] 1 SCR 103 [“*Oakes*”], at 121.

¹⁹³ *Oakes*, at 132.

¹⁹⁴ The Applicants rely upon and support the Intervener Animal Alliance of Canada’s more comprehensive argument regarding the Act’s violation of s 11(d).

¹⁹⁵ *British Columbia (Minister of Forests) v Okanagan Indian Band*, [2003] 3 SCR 371, ¶ 20; *Incredible Electronics Inc v Canada (Attorney General)*, (2006) 80 OR (3d) 723, ¶¶ 86-100; *DeLarue v. Kawartha Pine Ridge District School Board*, 2012 ONSC 7372, ¶ 4, **BOA Tab 2**; *Canadian Foundation for Children, Youth & the Law v Canada (Attorney General)*, [2001] OJ No 1110, ¶ 4, **BOA Tab 1**.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of July, 2023.



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SCHEDULE “A” – LIST OF AUTHORITIES**Case law**

1. *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#)
2. *Abbotsford (City) v Shantz*, [2015 BCSC 1909](#)
3. *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, [2013 SCC 62](#)
4. *Animal Justice et al v Attorney General of Ontario*, [2023 ONSC 3147](#)
5. *Animal Legal Defence Fund et al v Herbert et al*, [No. 2:2013cv00679 \(2017 D. Utah\)](#)
6. *Animal Legal Defence Fund et al v Kelly et al*, [2:18-cv-02657-KVH \(2020 D. Kansas\)](#)
7. *Animal Legal Defence Fund et al v Reynolds et al*, [No. 4:17-cv-00362–JEG-HCA \(2019 S.D. Iowa\)](#)
8. *Animal Legal Defense Fund v Otter et al*, [No. 1:2014cv00104](#)
9. *Animal Legal Defense Fund v Wasden*, [No. 15-35960 \(9th Cir. 2018\)](#)
10. *Batty v Toronto (City)*, [2011 ONSC 6862](#)
11. *Bracken v Niagara Parks Police*, [2018 ONCA 261](#)
12. *British Columbia (Attorney General) v Council of Canadians with Disabilities*, [2022 SCC 27](#)
13. *British Columbia (Minister of Forests) v Okanagan Indian Band*, [\[2003\] 3 SCR 371](#)
14. *Canada v Downtown Eastside Sex Workers United Against Violence Society*, [2012 SCC 45](#)
15. *Canadian Broadcasting Corp v Canada (Attorney General)*, [2011 SCC 2](#)
16. *Canadian Broadcasting Corp v Lessard*, [\[1991\] 3 SCR 421](#)
17. *Canadian Broadcasting Corp v New Brunswick (AG)*, [\[1996\] 3 SCR 480](#)
18. *Canadian Foundation for Children, Youth & the Law v Canada (Attorney General)*, 2001 OJ No 1110
19. *Canadian Newspapers Co v Canada (AG)*, [\[1988\] 2 SCR 122](#)
20. *Carroll v Toronto-Dominion Bank*, [2021 ONCA 38](#)
21. *CCLA v Attorney General of Ontario*, [2020 ONSC 4838](#)
22. *Chaoulli v Quebec (Attorney General)*, [2005 SCC 35](#)
23. *Committee for the Commonwealth of Canada v Canada*, [\[1991\] 1 SCR 139](#)

24. *Dagenais v Canadian Broadcasting Corp*, [\[1994\] 3 SCR 835](#)
25. *DeLarue v Kawartha Pine Ridge District School Board*, 2012 ONSC 7372
26. *Denis v Côté*, [2019 SCC 44](#)
27. *Doshi v Canada (Attorney General)*, [2018 FC 710](#)
28. *Dumbell v Roberts*, 1944 1 All ER 326 (CA)
29. *Dunmore v Ontario (Attorney General)*, [2001 SCC 94](#)
30. *Edmonton Journal v Alberta (Attorney General)*, [\[1989\] 2 SCR 1326](#)
31. *Fleming v Ontario*, [2019 SCC 45](#)
32. *Ford v Quebec (Attorney General)*, [\[1988\] 2 SCR 712](#)
33. *Garbeau c Montréal (Ville de)*, [2015 QCCS 5246](#)
34. *Globe and Mail v Canada (Attorney General)*, [2010 SCC 41](#)
35. *Grant v Torstar Corp*, [2009 SCC 61](#)
36. *Greater Vancouver Transportation Authority v Canadian Federation of Students – British Columbia Component*, [2009 SCC 31](#)
37. *Harper v Canada*, [2004 SCC 33](#)
38. *Hussain v Toronto (City)*, [2016 ONSC 3504](#)
39. *Incredible Electronics Inc v Canada (Attorney General)*, [\[2006\] 80 OR \(3d\) 723](#)
40. *Irwin Toy Ltd v Québec (Attorney General)*, [\[1989\] 1 SCR 927](#)
41. *Kattenburg v Canada (Attorney General)*, [2019 FC 1003](#)
42. *Lavigne v OPSEU*, [\[1991\] 2 SCR 211](#)
43. *Libman v Quebec (Attorney General)*, [\[1997\] 3 SCR 569](#)
44. *Maurice v Canada (Attorney General)*, [2002 FCT 69](#)
45. *McAteer v Canada (Attorney General)*, [2014 ONCA 578](#)
46. *Montréal (City) v 2952-1366 Québec Inc*, [2005 SCC 62](#)
47. *Morin v Prince Edward Island Regional Administrative Unit No. 3 School Board*, [2002 PESCAD 9, 212 Nfld & PEIR 69](#)
48. *Mounted Police Association of Ontario v Canada (Attorney General)*, [2015 SCC 1](#)
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52. *R c Lebel*, 1999 JQ No 4995
53. *R v Alcorn*, [2015 ABCA 182](#)
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58. *R v Connors*, [2011 BCPC 24](#)
59. *R v DLW*, [2016 SCC 22](#)
60. *R v Grant*, [[2009](#)] [2 SCR 353](#)
61. *R. v. Guignard*, [[2002](#)] [1 SCR 472](#)
62. *R v Haaksman*, 2013 ONCJ 66
63. *R v Hufsky*, [[1988](#)] [1 SCR 621](#)
64. *R v Keegstra*, [[1990](#)] [3 SCR 697](#)
65. *R v Krajnc*, [2017 ONCJ 281](#)
66. *R v Ladouceur*, [[1990](#)] [1 SCR 1257](#)
67. *R v Morgentaler*, [[1988](#)] [1 SCR 30](#)
68. *R v Nasogaluak*, [[2010](#)] [1 SCR 206](#)
69. *R v National Post*, [2010 SCC 16](#)
70. *R v Nur*, [2015 SCC 15](#)
71. *R v Oakes*, [[1986](#)] [1 SCR 103](#)
72. *R v Singh*, 2011 ONSC 717
73. *R v Storrey*, [[1990](#)] [1 SCR 241](#)
74. *R v Vice Media Canada Inc.*, [2018 SCC 53](#)
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76. *Reece v Edmonton (City)*, [2011 ABCA 238](#)

77. *RJR-MacDonald Inc. v Canada (Attorney General)*, [\[1995\] 3 SCR 199](#)
78. *RWDSU v Dolphin Delivery Ltd*, [\[1986\] 2 SCR 573](#)
79. *Singh v Minister of Employment and Immigration*, [\[1985\] 1 SCR 177](#)
80. *Slaight Communications Inc v Davidson*, [\[1989\] 1 SCR 1038](#)
81. *Subway v CBC*, [2019 ONSC 6758](#)
82. *Syndicat Northcrest v Amselem*, [\[2004\] 2 SCR 551](#)
83. *Thomson Newspapers Co v Canada (Attorney General)*, [\[1998\] 1 SCR 877](#)
84. *Wallace v United Grain Growers Ltd*, [\[1997\] 3 SCR 701](#)
85. *Western Watersheds Project et al, v Michael et al*, [No. 15-CV-169-SWS](#)
86. *White Burgess Langille Inman v Abbott and Haliburton Co*, [\[2015\] 2 SCR 182](#)

Secondary sources, commentary and legislative debates

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SCHEDULE “B” – LIST OF STATUTES

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.

Criminal Code, RSC 1985, c C-46

Protection of persons acting under authority

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Idem

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

When not protected

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

When protected

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- (c) the person to be arrested takes flight to avoid arrest;
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- (e) the flight cannot be prevented by reasonable means in a less violent manner.

Power in case of escape from penitentiary

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act*, if

- (a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and
- (b) the escape cannot be prevented by reasonable means in a less violent manner.

Bestiality

160 (1) Every person who commits bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Compelling the commission of bestiality

(2) Every person who compels another to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Bestiality in presence of or by child

(3) Despite subsection (1), every person who commits bestiality in the presence of a person under the age of 16 years, or who incites a person under the age of 16 years to commit bestiality,

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

Order of prohibition or restitution

(4) The court may, in addition to any other sentence that it may impose under any of subsections (1) to (3),

(a) make an order prohibiting the accused from owning, having the custody or control of or residing in the same premises as an animal during any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of five years; and

(b) on application of the Attorney General or on its own motion, order that the accused pay to a person or an organization that has taken care of an animal as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal, if the costs are readily ascertainable.

Breach of order

(5) Every person who contravenes an order made under paragraph (4)(a) is guilty of an offence punishable on summary conviction.

Application

(6) Sections 740 to 741.2 apply, with any modifications that the circumstances require, to orders made under paragraph (4)(b).

Definition of *bestiality*

(7) In this section, *bestiality* means any contact, for a sexual purpose, with an animal.

False pretence or false statement

362 (1) Every one commits an offence who

(a) by a false pretence, whether directly or through the medium of a contract obtained by a false pretence, obtains anything in respect of which the offence of theft may be committed or causes it to be delivered to another person;

(b) obtains credit by a false pretence or by fraud;

(c) knowingly makes or causes to be made, directly or indirectly, a false statement in writing with intent that it should be relied on, with respect to the financial condition or means or ability to pay of himself or herself or any person or organization that he or she is interested in or that he or she acts for, for the purpose of procuring, in any form whatever, whether for his or her benefit or the benefit of that person or organization,

(i) the delivery of personal property,

(ii) the payment of money,

(iii) the making of a loan,

- (iv) the grant or extension of credit,
- (v) the discount of an account receivable, or
- (vi) the making, accepting, discounting or endorsing of a bill of exchange, cheque, draft or promissory note; or
- (d) knowing that a false statement in writing has been made with respect to the financial condition or means or ability to pay of himself or herself or another person or organization that he or she is interested in or that he or she acts for, procures on the faith of that statement, whether for his or her benefit or for the benefit of that person or organization, anything mentioned in subparagraphs (c)(i) to (vi).

Arena for animal fighting

447 (1) Everyone commits an offence who builds, makes, maintains or keeps an arena for animal fighting on premises that he or she owns or occupies, or allows such an arena to be built, made, maintained or kept on such premises.

Punishment

- (2)** Every one who commits an offence under subsection (1) is guilty of
- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
 - (b) an offence punishable on summary conviction and liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years less a day, or to both.

Arrest without warrant by peace officer

- 495 (1)** A peace officer may arrest without warrant
- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
 - (b) a person whom he finds committing a criminal offence; or
 - (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitation

- (2)** A peace officer shall not arrest a person without warrant for
- (a) an indictable offence mentioned in section 553,
 - (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
 - (c) an offence punishable on summary conviction, in any case where
 - (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence, may be satisfied without so arresting the person, and
 - (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Consequences of arrest without warrant

- (3)** Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of
- (a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

Evidence Act, RSO 1990, c E23

Expert evidence

12 Where it is intended by a party to examine as witnesses persons entitled, according to the law or practice, to give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding. R.S.O. 1990, c. E.23, s. 12.

Multilateral – International Covenant on Civil and Political Rights (United Nations, 19 December 1966) No. 14668

Article 21. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

O Reg 701/20: General under the Security from Trespass and Protecting Food Safety Act, 2020, SO 2020, c 9

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.

Aggravating factors

16. For the purposes of subsection 15 (2) of the Act, the following are prescribed as circumstances that increase the gravity of an offence:

1. Where a farm animal was killed or needed to be killed during the commission of the offence or as a result of the offence.
2. Where harm to a farm animal, other than the animal's death, occurred during the commission of the offence or as a result of the offence.
3. Where harm with respect to food safety occurred during the commission of the offence or as a result of the offence.
4. Where harm to an individual occurred during the commission of the offence or as a result of the offence, except where the harm consisted of monetary loss incurred as a result of damage to property or destruction of property caused during the commission of an offence under subsection 5 (7) of the Act.
5. Where biosecurity measures were breached during the commission of the offence or as a result of the offence.
6. Where buildings in which people resided were entered during the commission of the offence.
7. Where a trailer or any other part of a motor vehicle transporting farm animals was entered during the commission of the offence.
8. Where farm animals were removed or released from an animal protection zone or from the trailer of a motor vehicle transporting farm animals during the commission of the offence.
9. Where all or part of an animal carcass was removed from an animal protection zone or from the trailer of a motor vehicle transporting farm animals during the commission of the offence.

Provincial Animal Welfare Services Act, 2019, SO 2019 c 13**Standards of care and administrative requirements for animals**

13 (1) Every person who owns or has custody or care of an animal shall comply with the standards of care and the administrative requirements with respect to every animal that the person owns or has custody or care of.

Exception, agricultural activities

(2) Subsection (1) does not apply in respect of an activity regarding agricultural animal care, management or husbandry carried on in accordance with the reasonable and generally accepted practices of agricultural animal care, management or husbandry, unless the standards of care or administrative requirements expressly provide that they apply to that activity.

Exception, veterinarians

(3) Subsection (1) does not apply to,

- (a) a veterinarian providing veterinary care, or boarding an animal as part of its care, in accordance with the standards of practice established under the *Veterinarians Act*;
- (b) a person acting under the supervision of a veterinarian described in clause (a); and
- (c) a person acting under the orders of a veterinarian described in clause (a), but only in respect of what the person does or does not do in following those orders.

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.

Exception, veterinarians

(5) Subsections (1), (2) and (3) do not apply to,

- (a) a veterinarian providing veterinary care, or boarding an animal as part of its care, in accordance with the standards of practice established under the *Veterinarians Act*;
- (b) a person acting under the supervision of a veterinarian described in clause (a); and
- (c) a person acting under the orders of a veterinarian described in clause (a), but only in respect of what the person does or does not do in following those orders.

Regulations — Lieutenant Governor in Council

69 (1) The Lieutenant Governor in Council may make regulations...

(d) prescribing standards of care for the purposes of this Act, including prescribing different standards in respect of different classes of animals, circumstances, conditions or activities;

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

Same, Trespass to Property Act

(2) For greater certainty, nothing in clause (1) (d) shall be construed as giving an owner or occupier a right or ability to make an arrest that is beyond, or otherwise greater than, what subsection 9 (1) of the *Trespass to Property Act* provides that a person may do.

Compliance with request

(3) A person who receives a request under clause (1) (b) or (c) shall comply promptly with the request.

Prohibition: false or misleading information

(4) No person shall provide false or misleading information in response to a request for the person's name and address made under clause (1) (a).

Arrest by other person

(5) An arrest under clause (1) (d) may be carried out by a person authorized by the owner or occupier of a farm, animal processing facility or prescribed premises, as the case may be, to do so on his or her behalf.

Reasonable force

10 The owner or occupier of a farm, animal processing facility or prescribed premises, or any other person who carries out an arrest under section 8, may use only such force as is necessary and reasonable in the circumstances to carry out the arrest.

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.

Onus of proof

- (3) In the prosecution of an offence under subsection 5 (1), (2), (3) or (4) or 6 (2),
- (a) the consent of the owner or occupier of the farm, animal processing facility or prescribed premises or the consent of the driver of the motor vehicle transporting a farm animal, as the case may be, is presumed not to have been given; and
 - (b) the onus is on the person charged with the offence to prove on the balance of probabilities that he or she obtained the consent of the owner or occupier or the consent of the driver, as the case may be, before engaging in the conduct that he or she is accused of doing without consent.

Same, sign

- (4) For the purposes of subsection (3), consent is sufficiently proven if the defendant establishes on the balance of probabilities that,
- (a) a sign was posted at or near the animal protection zone on the farm, animal processing facility or prescribed premises authorizing persons to enter in or on the animal protection zone or authorizing the interference or interaction with farm animals or the carrying out of the prescribed activity in or on the animal protection zone; and
 - (b) the defendant reasonably believed that the sign authorized the defendant to enter the animal protection zone on the farm, animal processing facility or prescribed premises or to interfere or interact with the farm animal or to carry out the prescribed activity in or on the animal protection zone.

Colour of right as defence

- (5) It is a defence to a charge of contravening subsection 5 (1), (2), (3), (4) or (7) that the person charged reasonably believed that he or she had title to or other legal interest in an animal protection zone on the farm, animal processing facility or prescribed premises that entitled him or her to enter the animal protection zone or to do anything that is prohibited under subsection 5 (4) or (7).

Same, s. 6 (2)

- (6) It is a defence to a charge of contravening subsection 6 (2) that the person charged reasonably believed that he or she had title to or other legal interest in the farm animal that entitled him or her to interfere or interact with the farm animal.

Use of motor vehicle

- (7) If a motor vehicle is used to commit an offence under paragraph 1 or 3 of subsection (1), the driver of the motor vehicle is guilty of an offence under this Act.

Motor vehicle owner and driver liable

- (8) If the driver of a motor vehicle that is used to commit an offence under paragraph 1 or 3 of subsection (1) is not the owner of the motor vehicle, then, upon the driver being found guilty of the offence, both the driver and the owner of the motor vehicle shall be held jointly and severally liable to pay the fine payable for the offence under section 15 unless, at the time the offence was committed, the motor vehicle was in the driver's possession without the consent of the owner.

Notice to motor vehicle owner

- (9) Despite subsection (8), the owner of a motor vehicle shall not be held jointly and severally liable to pay a fine under that subsection unless notice that the motor vehicle was used to commit the offence in question is provided to the owner by a police officer promptly after the driver of the motor vehicle is charged with the 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.

...

Limited liability

20 (1) If a person enters in or on an animal protection zone on a farm, animal processing facility or prescribed premises in contravention of this Act, interferes or interacts with a farm animal or carries out a prescribed activity in or on the animal protection zone in contravention of this Act, the owner or occupier of the farm, facility or premises shall not be liable for any injury, loss or damages suffered by that person unless,

- (a) the owner or occupier created a danger with the deliberate intent of doing harm or damage to the person; or
- (b) the injury, loss or damages were caused by actions taken by the owner or occupier with wilful or reckless disregard for the presence of the person.

Same, transportation of farm animals

(2) If a person contravenes this Act by stopping, hindering, obstructing or otherwise interfering with a motor vehicle transporting farm animals or by interfering or interacting with a farm animal being transported on a motor vehicle, the driver of the motor vehicle shall not be liable for any injury, loss or damages suffered by that person unless,

- (a) the driver created a danger with the deliberate intent of doing harm or damage to the person; or
- (b) the injury, loss or damages were caused by actions taken by the driver with wilful or reckless disregard for the presence of the person.

Power to arrest

(3) Nothing in subsection (1) or (2) shall affect the right of an owner or occupier of a farm, animal processing facility or prescribed premises or of any other person to carry out an arrest under section 8, subject to the requirements set out in section 10.

Regulations

23 The Minister may make regulations governing anything necessary or advisable for the effective administration and enforcement of this Act including,

- (g) governing interferences and interactions with farm animals that are prohibited under subsection 5 (4) or 6 (2) including restricting, limiting or clarifying the types of actions or gestures that are considered to be interferences or interactions for the purposes of those subsections;

Trespass to Property Act, RSO 1990, c. T.21**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.

Delivery to police officer

(2) Where the person who makes an arrest under subsection (1) is not a police officer, he or she shall promptly call for the assistance of a police officer and give the person arrested into the custody of the police officer.

Arrest without warrant off premises

10 Where a police officer believes on reasonable and probable grounds that a person has been in contravention of section 2 and has made fresh departure from the premises, and the person refuses to give his or her name and address, or there are reasonable and probable grounds to believe that the name or address given is false, the police officer may arrest the person without warrant.

APPENDIX “A” – EXAMPLES OF UNDERCOVER EXPOSÉS IN CANADA

- **Élevages Périgord de Saint-Louis-de-Gonzague Duck Farm.** One of the earliest Canadian farm exposés was conducted at a large Quebec foie gras facility in 2007. It showed violent acts such as live ducks having their heads ripped off, live ducks bashed against walls, and an employee attempting to slit a duck’s throat with what appeared to be a hunting knife. It also showed suffering caused by standard foie gras industry practices, such as force-feeding and confinement of ducks.¹ The exposé garnered significant media attention, resulted in at least one employee being fired, and has been referenced in anti-foie gras campaigns by numerous groups.²
- **Hybrid Turkeys.** In 2014, Mercy For Animals Canada released an exposé from a Hybrid Turkeys breeding facility in Oxford County, Ontario. Hybrid is one of the largest turkey breeders in the world, and is responsible for approximately 90% of turkey meat sold in Canada.³ An individual affiliated with Mercy For Animals Canada obtained a job as a barn operator – a contract position requiring no experience.⁴ The footage they shot shows turkeys being kicked, thrown, and beaten with shovels, botched euthanasia, turkeys with open wounds, and birds with apparent injuries and illnesses, such as a bird whose organs dragged behind her when she walked and a blind turkey left to suffer.⁵

The exposé aired on CBC’s Marketplace, garnered significant media attention, and resulted in 11 provincial animal cruelty charges against the company and five employees based on 25 separate incidents of apparent abuse and neglect.⁶ The company ultimately pleaded guilty to one charge and undertook efforts to improve its euthanasia practices.⁷

- **Délimax Veal.** In 2014, Mercy For Animals Canada released an undercover exposé from a Délimax Veal-affiliated farm in Quebec. The footage shows violent treatment of calves, such as workers kicking and punching animals, botched euthanasia with a rifle, and employees grabbing calves by the testicles to force them into their narrow wooden stalls. It

¹ Labchuk Affidavit ¶¶ 141-146, Ex. EEE, **ARA Tab B**, pp 90-92, 795.

² Labchuk Affidavit ¶¶ 145-146, **ARA Tab B**, pp 91-92.

³ Picanco Affidavit, ¶ 2-3, Ex. C, **ARR, Vol 7, Tab 17**, pp 2099-2100, 2114; CX of Picanco, pp 8-12, **JCET, Vol 7, Tab 22**, pp 2673-2677; Affidavit of Jeff McDowell [“**McDowell Affidavit**”] Ex. B, **ARR Vol 7, Tab 15**, p 2064; Labchuk Affidavit, Ex. YY, **ARA Tab B**, p 758-769

⁴ Picanco Affidavit, ¶¶ 5-6, Ex. B, **ARR, Vol 7, Tab 17**, pp 2100-2101, 2108-2113; CX of Picanco, pp 14-15, **JCET, Vol 7, Tab 22**, pp 2679-2680.

⁵ Picanco Affidavit, ¶ 10, Ex. C, **ARR Vol 7, Tab 17**, pp 2102, 2114-2115; Labchuk Affidavit Ex. XX, **ARA Tab B**, p 756-757; Labchuk Reply Affidavit, Ex. LL-OO, **ARA Tab C**, pp 1527-1534; CX of Picanco, pp 30-32, 35-41 **JCET, Vol 7, Tab 22**, pp 2695-2697, 2700-2706).

⁶ Labchuk Affidavit ¶ 136, Ex. D, XX, YY, ZZ, **ARA Tab B**, pp 88, 181-182, 756-772.

⁷ Picanco Affidavit ¶ 20, **ARR, Vol 7, Tab 17**, p 2104; CX of Picanco, pp 51-54, Ex. 1-2, **JCET, Vol 7, Tab 22**, pp 2716-2719, 2734-2743; Labchuk Affidavit ¶¶ 135-137, Ex. D, XX, YY, ZZ, **ARA Tab B**, pp 87-88, 181-182, 756-772.

also shows standard veal industry practices such as confining calves alone in small crates.⁸ The exposé aired on CTV's W5. One worker was convicted of animal abuse and mistreatment.⁹

- **Chilliwack Cattle Sales.** In 2014, Mercy For Animals Canada released an undercover exposé from Chilliwack Cattle Sales Ltd., a dairy company in B.C. The footage showed egregious animal abuse, including employees kicking, punching, and beating cows on their faces and bodies; employees squeezing animals' wounds and ripping out their hair; and sick and injured cows being forced to stand using chains and tractors, with one cow being hung in the air by a chain around her neck.¹⁰ The exposé resulted in multiple charges being laid against the company and seven employees. Those employees ultimately pleaded guilty to animal abuse charges, with three being sentenced to jail time.¹¹ Chilliwack Cattle Sales was fined a total of \$225,000 and the company's director was fined \$75,000 after pleading guilty to several counts of animal abuse.¹²
- **Millbank Fur Farm.** In 2018, Last Chance for Animals released an undercover exposé from Millbank Fur Farm Ltd. near Guelph, Ontario, showing mink with untreated, festering wounds covering significant parts of their bodies, as well as mink fighting each other, and maggots and cobwebs throughout the barn. The footage also showed standard industry practices, such as thousands of mink kept in barren metal cages with many pacing repetitively, mink being placed in boxes to be gassed, and the process of removing dead animals' fur.¹³

The footage garnered significant media coverage and resulted in 14 animal cruelty charges being laid against the company.¹⁴ The company pleaded guilty to one charge relating to an animal known as "Shed Three Mink" who was documented with an infected wound on his head that grew in size for approximately one month, resulting in his ear falling off and his eventual death.¹⁵

- **Paragon Farms.** From September-November 2020, Animal Justice coordinated an undercover employee exposé at Paragon Farms, a pig breeding facility in Putnam, Ontario.

⁸ Labchuk Affidavit, ¶ 132, Ex. UU, **ARA Tab B**, pp 86-87, 733-734; Bouilly Affidavit, ¶¶ 27-30, Ex. J, **ARR Vol 3, Tab 4**, pp. 479-480, 769-770.

⁹ Labchuk Affidavit, ¶¶ 133-134, **ARA Tab B**, p 87.

¹⁰ Labchuk Affidavit, ¶ 126, Ex. PP, **ARA Tab B**, pp 84, 514-515.

¹¹ Labchuk Affidavit ¶¶ 127-128, Ex. PP **ARA Tab B**, pp 84-85.

¹² Labchuk Affidavit, ¶ 128, Ex. SS, **ARA Tab B**, pp 84-85, 568, 571.

¹³ Labchuk Affidavit, ¶ 107, **ARA Tab B**, p 77; Harris Affidavit Ex. D (p 12), **ARA Tab I**, p 2170; Beal Affidavit ¶¶ 37-39, Ex. I, N, **ARA Tab H**, pp 2077, 2109-2110, 2128-2133.

¹⁴ Labchuk Affidavit ¶ 107, Ex. Z, **ARA Tab B**, pp 77, 388-399; Beal Affidavit ¶¶ 24, 26, 28, Ex. J, K, **ARA Tab H**, pp 2075, 2111-2120.

¹⁵ Labchuk Affidavit, ¶ 109, **ARA Tab B**, p 78; Beal Affidavit ¶¶ 28, 30, 35, Ex. J, L, M, **ARA Tab H**, pp 2076-2077, 2111-2112, 2121-2136. (See Parkinson Affidavit, ¶ 12, Ex. A **ARR, Vol 7, Tab 16**, pp 2078, 2084-2085; Beal Affidavit ¶¶ 34-36, Ex. K, **ARA Tab H**, pp 2076-2077, 2113-2120).

Footage obtained at Paragon aired on CTV's W5 on November 28, 2021 and showed employees kicking pigs and striking them with boards; pigs denied access to water, including one instance in which a room of pigs was left without water for five days; medical ailments such as severe vaginal prolapses; and botched euthanasia by bolt gun. The Respondent's swine health expert, Dr. Friendship, conceded that the footage showed unacceptable practices that he had never seen before in his many visits to pig farms.¹⁶ It also showed standard industry practices, such as workers feeding pigs the feces of other pigs and animal suffering caused by tail docking and castrating piglets without anaesthetic.¹⁷

The employee observed a botched caesarian section on the first day of their employment – a concerning and potentially illegal incident – and continued to witness and document problematic conduct throughout the duration of their employment. The most violent incident of striking and kicking animals occurred toward the end of their employment.¹⁸ Animal Justice submitted a complaint to animal welfare services the day after the employee quit their job at Paragon.¹⁹ As a result of this exposé, Paragon Farms (operating as Ontario Management Group Inc. and Great Lakes Pork Inc.) pleaded guilty to two counts of animal abuse was fined a total of \$20,000. One employee of Paragon Farms, Raul Molina-Valdez pleaded guilty to a count of animal abuse and was fined \$1,000.²⁰

On December 4, 2020 – six days after the Paragon Farms exposé aired on W5 – Ontario announced the Act would come into force on December 5, 2020. No undercover exposés have been conducted at agricultural facilities in Ontario since the Act came into force.

¹⁶ CX of Friendship, pp 125-137, **JCET Vol 3, Tab 10**, pp 1193 – 1205.

¹⁷ Labchuk Affidavit ¶¶ 83-84, 87 **ARA Tab B**, pp 70-71. CX of Friendship pp 90-92, **JCET Vol 3, Tab 10**, pp 1158-1160.

¹⁸ Labchuk Affidavit ¶¶ 88-89, **ARA Tab B**, p 72.

¹⁹ Labchuk Affidavit ¶¶ 92-93, **ARA Tab B**, p 73.

²⁰ Ontario Court of Justice Information of Ontario Management Group Inc. and Great Lakes Pork Inc. operating in general partnership as Paragon Farms, p 7, **BOA Tab 14**; Ontario Court of Justice Information of Raul Molina-Valdez, p 4, **BOA Tab 15**.

APPENDIX “B” – RESPONDENT’S AFFIANTS’ CREDIBILITY ISSUES

- **Jason Lyons** made several allegations about the exposé at his goat farm that are contradicted by the actual footage provided by the Applicants’ affiant, Cindy Beal. With no basis, he speculated that the exposé used a “dark filter” to make his farm look dirty (para 32), that the video was “manipulated” (para 33), that Last Chance for Animals showed the same goat with lesions over and over (contradicted by Beal Exhibit “D”), and that the audio of him talking about injuring a kid during tube feeding was wrong (contradicted by Beal Exhibit “F”). Lyons’s evidence cannot be accepted in the face of the objective video evidence. His evidence that it is normal for handlers to drag goats by their legs and for goats to escape from their pens was contradicted by the Applicant’s affiant, Moira Harris (at Q8). In light of his discredited testimony about the exposé, Beal’s evidence on these points should be preferred.
- **Dirk Boogerd** in turn relies on Lyons’s false characterizations in his own affidavit (paras 29, 35, 40). Boogerd has no direct evidence on these points and where he relies on Lyons, his evidence should be rejected.
- **Lidia Picanco** drastically downplayed the Hybrid exposé in her affidavit (para 10) and effectively admitted this during cross-examination (CX pp 38-40).
- **Edward Parkinson** also drastically underplays what the footage of his mink farm showed during LCA’s exposé (para 12). Further, during his cross-examination he presented a totally new and completely baseless explanation about why he was not at fault for the animal suffering shown in the exposé at his fur farm. The recording reveals an employee acknowledging that the mink was in terrible condition but management would not permit euthanizing him because they wanted to save his pelt. Parkinson suggested in cross-examination that this employee was a friend of the individual who made the undercover recording and made it up to please her. This testimony—which is unfounded and incredible on its face—should be rejected. Parkinson’s affidavit also appends at Exhibit “B” an affidavit from an individual named Kevin Bosman, which appears to have been adduced for the truth of its contents. No argument has been advanced for why this affidavit should be accepted on a hearsay basis. Bosman could have provided his own affidavit and been offered for cross-examination. The Bosman Affidavit and Parkinson’s evidence relying on it (para 17) should be rejected.
- **Keith Currie** makes several hearsay statements including about ducks trampling one another at King Cole ducks and of the Jumbo Valley occupation (paras 19-20). He was not present for these events and provides a description at odds with photos and videos of the event at issue (see Labchuk affidavit para 69, Exhibit P). His evidence about them should be disregarded.

- **Clarence Bollert** includes at Exhibit “J” to his affidavit a number of letters that make unfounded allegations of which he has no personal knowledge, and which appear to have been adduced for the truth of their contents. These hearsay statements should be disregarded.
- **Boogerd, Currie, Bollert, Pascal Bouilly and Jeff Hyndman** all make claims about practices that they say either cause no suffering or are in fact good for animals, but that are obviously harmful: early calf/kid separation from mothers, veal hutches, anal electrocution of foxes, gestation crates for pigs. These claims belie common sense, are contradicted by the Applicants’ expert Dr. Harris (see Harris Affidavit, Exhibit D, pp 6-8, 10-11, 13), and are patently self-serving and industry-serving. They should be rejected.
- **Boilerplate allegations with no basis in fact.** Several of the Respondent’s affiants have identical, generic statements in their affidavits that have no basis in fact. When cross-examined on these “copy/paste” statements, the affiants could not back them up. These statements include the following:
 - “activists who trespass onto farms not only threaten the health and safety of our farms, our families, and our employees, but also our livestock, crops, and the overall food supply”, do not have knowledge of biosecurity protocols (Currie paras 10, 17, Hyndman paras 23-24, Boogerd paras 29-30, Bouilly para 14. See also Hyndman CX at pp 101-109);
 - activists “often” startle and frighten animals including due to their “unfamiliar clothing”, cameras, or “strange noises and gestures” (Bouilly para 15, Hyndman para 25, Boogerd para 31, McDowell para 7, Currie para 18);
 - before the Act, farmers were reluctant to even report illegal activities (Currie para 30, Currie CX at pp 43-44);
 - farmers’ barns/workplaces and homes are one and the same (Currie paras 29, 33, Boogerd para 38, Bouilly paras 21, 32);
 - undercover employees “rarely” report abuse, allow abuse to take place “over a course of weeks or even months in order to collect footage that can later be edited into an advocacy piece” (Currie para 25, Boogerd para 35, Bouilly para 25);
 - activists lack “experience” for entry level positions and put “the safety of animals, other workers, the public and the entire food system at risk” (Currie para 26, Boogerd para 29, Bully para 8, Hyndman para 23, Schwindt para 39);

- after an exposé, it is “common” for groups to hold onto footage for “six months plus a day” (Boogerd para 36, Bouilly para 26 – both explicitly admitted they had no proof of this ever happening);
statements that protestors “frequently” drop debris, etc. in transport truck trailers (Duff para 21, Schwindt para 55, Jutzi para 32)

This pattern of affiants making scripted, baseless allegations about “activists” and “farmers” is reason for the Court to be cautious in accepting the evidence of the Respondent’s fact witnesses.