Supporting Brief for the Presentation to the Standing Committee on Agriculture
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I am a 3rd generation farmer in Canada, with 2 further generations active on the farm, producing ducks, geese, and specialty chicken.

I write this submission to inform changes that must be made to the way our regulatory agency and the inspection system operates in order to remove barriers to growth of the Agri-Food sector.

I also ask for reparations for the harm that has been caused by the Canadian Food Inspection Agency (CFIA) in recent years. We have experienced unreasonable, inconsistent, heavy-handed, and sometimes under-handed enforcement tactics by the CFIA, and when (not IF) they get it wrong, there is no practical recourse. That must change.

While there are more examples of unfair treatment, I use the 2 matters detailed in this Brief as barriers to growth, as they best demonstrate the disadvantage Canadian Agri-Food producer's face. You cannot say that you want to find ways to support growth, stability, capacity, and cooperation in the food sector, and not deal with these issues.

You will note that I have received a letter of support from the Canadian Federation of Independent Business. The CFIB, the leading advocacy group for small business in Canada, has been tremendously supportive throughout this ordeal, awarding the CFIA the (not-so-coveted) "Paper Weight Award" for their punitive actions against us. This reflects badly on the CFIA, as well as those to whom they are accountable.

Barrier #1: Wrongfully Charged by the CFIA & the Ongoing Battle for Fairness

This has been a long and devastating journey for our family. We are not just a nameless, faceless entity; we are a farm family; my wife, my kids, and my grandkids are all impacted by this.

It pains me to pass along the family farm if unfairness like this is condoned by government - call it a character flaw, but I can't accept intentional unfairness inflicted by authorities. It is nothing short of bullying. Again and again I have heard that I should just walk away, but that means justice and fairness don't matter in Canada.

I can't conceive that our elected parliamentarians will ever have intended that Canadian farm families would be treated this way by civil servants.

The charges against us have been heard and decided in our favor by the Canadian Agricultural Review Tribunal (CART). That is what is called "justice", but it's not fair by any means. The legislation and regulations are problematic and do need some changes, however it is the behaviors of individuals in the CFIA that demand immediate action. CART has **exonerated us of all wrongdoing**, saying it would be '**absurd**' to find Fraser Valley responsible, and that **the evidence did not support the charges**.

In 2015, the CFIA accused us of shipping poultry inter-provincially; from the very beginning, the narrative was set despite clear evidence that we were innocent. There was no doubt we'd be charged with something we had not done. There is NO WAY I can control product once it has left our hands; we can't stop trucks at a provincial border! I asked inspectors what I could do to stop it, but there were no answers – 'it's not our mandate' they said. To this day we still don't have answers; they refuse to respond.

CFIA's 'Enforcement Continuum' that is supposed to ensure a fair and predictable process was set aside on a whim. We were charged under the Meat Inspection Act with 7 counts under Section 8 for illegally shipping meat inter-provincially, and 1 count under Sec 14 for obstruction for not handing over our customer list. This came with a total of $52,000 in fines. Though they knew who had actually sent the product, they said "but for Fraser Valley producing the product, the offense would never have happened". It's not illegal for me to grow the product, so even now we're at risk as someone 'could' send our product out; one would think they should charge who actually sent it?

When they asked for my customer list, I told them they'd have to keep it confidential, and they refused. No operator should be required to disclose confidential information except in the case of imminent danger (even then, every effort should be made to protect proprietary information). This was not a food safety issue, and it was testified that this information had never before been requested except in case of food safety. There was nothing to be gained from an alphabetical listing of customers, but everything to lose for me if they disclosed it, and I have no doubt they would have.

They said they don't have to prove that something 'DID' happen, only that it 'COULD' happen (this is extremely problematic!). They said they had reasonable grounds to believe that it happened, but the legal definition of 'reasonable' must be met; conjecture doesn't cut it, there must be evidence. There was none. The product was found in Alberta, so they said we were guilty, whether we did it or not, or even if we knew about it or not. That is their definition of 'Actus Reus', and as an Absolute Liability Offense, they say that applies. That is simply untrue, and had we not fought back, a new precedent would have been set.

We decided to fight the wrongful charges, incurring over $214,000 in legal fees, and consuming over 5 years of my life. The process was brutal; CFIA investigates, is judge, jury, and executioner (the very definition of a kangaroo court!); if we don't agree, we have limited options, one of which is to go before CART to prove our innocence (Note: one is not innocent until proven guilty under this system). CFIA said that we should just pay the fines to avoid the legal costs. They claim the Administrative Monetary Penalty System (AMPs) is like a traffic ticket; again, this is untrue. Among other things, police must have actual evidence of an offence before they charge someone, and I don't know of any $52,000 traffic fines.

The charges state 'this event was an intentional act'. This is untrue; it is pure conjecture as there was no evidence. We were accused of being part of a 'supply chain logistic' - a conspiracy – again, no evidence. Then they called it a 'sending continuum' saying that whether we knew about it or not, it happened, therefore we are guilty. They said "it wouldn't be fair if the producer wasn't charged", yet we have no control over what happens to product after it leaves our hands. Doing all we could to stop it from being shipped out (i.e. labelling, advising customers, warnings) doesn't matter; that's called 'due diligence', and that is not an allowable defense. Shouldn't we value due diligence?

The only way to ensure a customer (or other third party) doesn't ship my product out of province is to stop producing poultry! Think about it; my competitors could ship our product out of province, and according to the CFIA, we would be deemed guilty. It is absolute nonsense!

The harm that 'COULD be done' they said, is "monetary losses in terms of unfair trade", saying that Federally registered facilities incur significantly higher operating costs than provincial facilities. This, again, is untrue; it is pure conjecture and speculation, and there was NO evidence. (The lowest cost operators on a per-unit basis are the largest, most automated processing plants). The CFIA took the word of my competitor (who was *their confidential informant!*). Sadly, this competitor successfully used CFIA to gain a business advantage over me. This shows incredible bias, and is unfair.

Some of the legal arguments included the following:

1. The Federal Court of Appeal, in the similar case of *Doyon v. Canada*, a case dealing with violations and fines under the A.M.P.S. regime, specifically labeled the A.M.P.S. regime "draconian".
   Doyon v. Canada, 2009 CAF152, para. 21

2. The FCA noted the genesis of the A.M.P.S. regime, being one which was intended to be a "fair and efficient" alternative to the penal system.
   Doyon v. Canada, para. 8

3. In Doyon, the FCA acknowledged that violations brought under the A.M.P.S. regime are treated as "absolute liability offenses", which bar the defenses of due diligence or honest and reasonable mistake of fact, thus leaving very few defenses open to an alleged violator.
   Doyon v. Canada, supra, para. 11

4. The Court pointedly noted that whether an allegedly illegal act was proceeded with by way of either a violation or an offense, was entirely at the discretion of the applicable government ministry.
   Doyon v. Canada, supra, para. 13

5. In summing up the available defenses, in cases where the government proceeds by way of a violation under the A.M.P.S. regime, the Court of Appeal could find very few – the defense of necessity (as noted to have been used in the *Maple Lodge Farms Inc. v. CFIA* case) and a "break in the chain of causation" being the most prominent, to the exclusion of better defenses, including due diligence.
   Doyon v. Canada, supra, para. 11

6. In *Doyon*, the Court noted a number of shortcomings in the "draconian" A.M.P.S. regime, including the ability of bureaucrats to issue a multiplicity of violations, in place of one continuing violation, the punishment of diligent individuals who take reasonable precautions to prevent the commission of an alleged violation, and the removal of the benefit of reasonable doubt, deciding guilt instead on a balance of probabilities in what is essentially a penal offense.
   Doyon v. Canada, supra, paras. 21-25

7. As a result, the Court stated that decision-makers "must be circumspect in managing and analyzing the evidence and in analyzing the essential elements of the violation and the causal link", and "must rely on evidence based on facts and not mere **conjecture**, let alone **speculation**, hunches, impressions or **hearsay**" (emphasis added).
   Doyon v. Canada, supra, para. 28

8. With regard to fines, the Court stated that, because the A.M.P.S. regime permitted the triggering of "a substantial monetary penalty, we must guard against a liberal interpretation that extends the scope of the

essential elements, which are already quite broad, given the fact that the person who committed the violation has absolute liability, that the prosecutor has a considerably reduced burden of proof and that the person who has committed a violation risks higher penalties in the event of a subsequent violation".

Doyon v. Canada, supra, para. 49

9. The Court, in *Doyon*, ultimately found that the Review Tribunal (Agriculture and Agri-Food), as it was then known, had erred in managing and analyzing the evidence put before it by the "prosecution", and it failed to recognize and engage the weakness of the prosecution's evidence, especially given that the Court had found that there were important contradictions in the prosecution's evidence, and several other elements which diminished the "quality and reliability of the evidence of the prosecution" – it set aside, therefore, the decision of the Tribunal.

Doyon v. Canada, supra, paras. 65 and 72-73

We relied on very few precedent cases (including the above) that were relevant to these matters, while the CFIA put a battery of lawyers to work to dredge up some 47 cases (wheeling them into the room with hand-carts). After careful review, and at considerable legal expense, it was found that none were in fact relevant, but was a typical 'David & Goliath' legal tactic designed to bully the little guy into submission. This is reprehensible behavior by a government regulator.

CFIA's violation brief contained numerous mistakes in evidence which were confessed under oath at the Hearing. They knew about these improprieties well before the Hearing, but didn't inform us. They ignored their duty to disclose these; a blatant affront to procedural fairness. Had they not known, it might be easier to accept. This is unethical, and the cases should have been withdrawn! Instead, they told the Tribunal not to expect 100% accuracy in the evidence. That was shocking.

AMPs may be imposed based on 3 criteria: a) the seriousness of the event (there was NO harm done in our case), b) the intent of the offender (I didn't even know about it until CFIA officers advised us, so how could there be intent??, c) the history of the alleged offender (having NO prior charges, there was NO history!). All of these criteria were set aside, and we were charged based on conjecture, speculation, and mistakes.

They presented a sworn affidavit before the Tribunal that was inaccurate and misleading; fortunately I had actual evidence to refute their claims, or the false affidavit would have been taken as truth. This again, is unethical behavior that cannot be allowed to stand.

During the Sec 8 hearing, CFIA officers testified that this was not a matter of food safety; in the subsequent Sec 14 hearing, the same officers testified that it was a food safety matter. When we threatened to introduce their prior sworn testimony, they conceded. They wanted it to be a food safety matter as it would give them increased powers under the Act if meant there was imminent danger. It is unethical to give conflicting testimony under oath. Naively, I thought justice matters.

There are more many examples of unfairness, but clearly this stands in stark contrast to CFIA's commitments: To treat stakeholders professionally, fairly, ethically, and without bias. To be responsive, service oriented, courteous, respectful, and act in such a way as to build and preserve trust (ref. CFIA's Statement of Rights and Services).

All I have asked for is fairness; this should never have happened, yet I fear it will happen again and again unless CFIA finally accepts responsibility. It is unfair that regulated parties be wrongly charged,

using flawed evidence, in a kangaroo court system, and have no option but to pay punitive fines, or spend large sums of money defending ourselves. This is NOT just a cost of doing business for us!

It should be an embarrassment for the CFIA, not a point of pride; for some in the CFIA's ranks, it seems to be the latter. CFIA inspectors and investigators were chatting at the Hearing about the 200+ more AMP-able offences created under the *Safe Food for Canadians Act* for them to use against operators. It is sickening that they intend to cause hardship for good Canadian farm families and food producers! That is a culture that must change; AMPS must be a last resort reserved for the most blatant and repeat offenders.

The *Values and Ethics Code for the Public Sector* says "public servants are to ensure they act at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law". CFIA's own *Code of Conduct* demands that they "consider the impact of their actions on all interested parties, in terms of what is right or wrong or fair, even when legal and regulatory decisions do not require it". This certainly wasn't considered in our case.

Education is required so that ALL CFIA staff clearly understand how they are to treat people. There must be serious consequences for bad actors amongst CFIA staff as their actions can cause irreparable harm to regulated parties, destroy the reputation of the agency, and indeed the elected officials to whom they are to be accountable.

What happens WHEN they get it wrong? Absolutely NOTHING! They've simply said that the matter is closed, and they refuse to engage. There must be **independent oversight** (civilian) with broad powers; this agency has proven it cannot regulate itself. Ministers have proven to be ineffective over-seers as politics always seems to get in the way. Members of Parliament have their hands tied by the Ethics Commissioner so cannot come to the aid of wrongly charged constituents.

I have asked what further recourse we have; it was suggested that the Complaints and Appeals Office (CAO) of the CFIA exists for stakeholders to file appeals if we are unhappy with the decisions or service of the CFIA. I filed a complaint, and as expected, the CAO is not independent at all; they answer to the President, and she has simply told them that this matter is closed, so they cannot engage. Apparently that is the CFIA's definition of being ethical, open, transparent, and fair.

We must be compensated for the harm CFIA has caused. Firstly, for my legal fees; secondly for the hundreds of hours of my time that they have wasted. We should never have been charged to begin with, let alone dragged through 5 years of stress.

The President of CFIA says that I am now supposed to "move forward with a positive attitude". They've treated us unfairly and unethically for the last 5 years, and now I am just supposed to trust them. 'Trust' is having the ability to rely on the character, ability, strength, and truth of someone; the CFIA, and the individuals involved have clearly shown in this instance they are not worthy of trust.

CFIA claims that "this is just one story from our side; they could tell many stories of how operators have disrespected inspectors". That may well be true, but how is that supposed to justify what they have done to my family? Is it really meant to be vindictive?

Lest you might think this is a 'one-off' issue, think again. It may be one of the worst, but there are many more. Plant operators across Canada have shared many difficult stories. Most don't fight; they don't

think they have a chance, they don't have the money, or they lack the will. For those of us who do push back, we can expect there to be consequences in the future.

If the CFIA asks for more money to fund more programs, remember this case. They spent countless hours with numerous inspectors and investigators, from BC all the way to Manitoba, gathering reams of flawed 'evidence', writing inspection reports and violation briefs, compiling 7 - 4" ring binders full of information, culminating in 9 days of CART Hearings with multiple lawyers, CFIA inspectors, and investigators in attendance…to what end? There are still no answers.

We could have instead spent a few hours cooperatively finding solutions, and we would actually have accomplished something other than a total waste all of our time and my money.

The *Safe Food For Canadians Act* may address some of the issues, but it does not go nearly far enough. It must impose serious sanctions against government staff when they act unethically and unfairly in their treatment of regulated parties. The Codes of Conduct that already exist are all but ignored.

I have appealed to the personal integrity of Dr. Mithani, President of CFIA, and to Ms. Hajdu Minister of Health, and Ms. Bibeau, Minister of Agriculture. The issue has been raised in virtual parliament by my Member of Parliament, Mark Strahl, receiving a typical non-answer. They are very aware, but to date have refused to engage. Integrity in government matters; I ask that you hold the perpetrators accountable for what they have done, and compensate us for the unfair behaviors of their staff.

We are a good, decent, hardworking farm family; there are thousands more like us across Canada that also deserve to be treated fairly, ethically, and respectfully.

Barrier #2: Unfair Competition - Duck Imported from Hungary

For the past 5 years, there has been an influx of very cheap imported duck dumped into the Canadian Market, particularly product from Hungary. Canadian laws governing food safety, human welfare, animal welfare, and the environment are much more stringent, so it makes it impossible for Canadian farmers to survive at these lower prices.

The product obviously contained serious food safety and quality concerns. In early 2020, the ***Canadian Commercial Waterfowl Producers Association*** commissioned ***Poultry Health Services Ltd***, an independent consultant, to analyze and report on processed ducks imported from Hungary. Here is a brief summary of the results:

*The report concluded that there were serious quality and wholesomeness defects, as well as food safety risks associated with the product (**full report is available on request**). Of the random samples taken from across Canada, **NOT ONE BIRD met standards set by Canadian authorities**.*

Defects include:

- *Viscera* left in birds (lungs, kidneys, reproductive organs, liver, trachea),*
- *Carcasses having extraneous material (fecal matter) on them, and feathers remaining,*
- *Some are damaged (broken appendages, skin tears / lesions)*
- *Carcass wash test reveals very high levels of bacterial contamination,*

- *Avian influenza is rampant in Hungary, putting Canada's domestic poultry industry at risk,*
- *Some of the product originates from plants that are not listed as approved for Canada***

We will be performing ongoing monitoring to confirm whether this product, still available in Canada today, meets Canada's food safety and quality standards. Product produced in a Canadian plant would NOT pass inspection with the deficiencies noted; it would **result in a hold and/or destroy order**.

CFIA have now reportedly commenced full inspection on all products imported from these regions to ensure Canada's strict food safety requirements are met going forward. That said, serious monetary losses have already been experienced by the sector while we were battling with the Agency to take action.

CFIA, under the Safe Food for Canadians Act, has now downloaded the responsibility onto importers to ensure imported product meets Canadian standards. These importers will now be licenced and required to have Preventative Control Plans in place. It remains to be seen how testing and enforcement will be done as it is typically a very small representative sampling on imports, rather than the rigorous inspections in domestic plants. It is still unfair, but remains to be seen if there is improvement in the outcomes.

We will continue to produce the high quality and safe food Canadian consumer's demand. COVID-19 has served to highlight the importance of food security for Canadians. Local producers of duck are critical to our Canadian market, as Canadian producers make an important contribution not only to the food supply chain, but to our staff and communities as employers and tax payers.

(*Canadian standards dictate that viscera must be removed, or in the case of kidneys, a note may be on the packaging that states "may contain kidneys". The Hungarian product label does not stipulate such. Other organs must be removed. Safe Handling instructions are not to Canadian standards).

(**CFIA has delisted 2 foreign plants due to these concerns, however the product already in Canada was not recalled).

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