



June 2, 2021

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Clerk of the Committee of Agriculture and Agri-Food
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, Ontario
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Via email

Dear Committee Members:

Re: Committee Consideration of Bill C-205, *An Act to Amend the Health of Animals Act*

These are the comments of Animal Justice regarding Bill C-205, *An Act to Amend the Health of Animals Act* (“**Bill C-205**”). As Canada’s leading national animal law organization, Animal Justice strongly opposes Bill C-205, particularly section 9.1, which reads as follows:

9.1 No person shall, without lawful authority or excuse, enter a building or other enclosed place in which animals are kept knowing that or being reckless as to whether entering such a place could result in the exposure of the animals to a disease or toxic substance that is capable of affecting or contaminating them

As explained in further detail below, we are concerned that section 9.1 of the Bill targets conduct that is already illegal, and would introduce draconian fines on top of penalties which already exist under provincial trespass laws. The Bill focuses only on rare trespass incidents on farms while ignoring real and documented risks to biosecurity resulting from the conduct of farm owners and operators. Moreover, if passed, the Canadian Food Inspection Agency (“**CFIA**”) has clearly indicated that it does not have the resources or capacity to enforce Bill C-205.

We urge the Committee to abandon Bill C-205, and to focus its efforts on enacting legally binding standards to protect the welfare of farmed animals and prevent the emergence and spread of diseases at Canadian farms. At a minimum, Bill C-205 requires significant amendment (as discussed below).

1. Background

More than 800 million land animals are slaughtered for food each year in Canada, the vast majority of whom spend their lives confined indoors at intensive livestock operations. There are generally no legally binding standards of care to protect the welfare of these

animals, aside from when they are transported or slaughtered. Animals kept in intensive livestock operations tend to be confined indoors by the hundreds or thousands under stressful conditions that create the perfect breeding grounds for the emergence and spread of disease.¹

Canada lacks legally binding, proactive biosecurity protocols to prevent the emergence and spread of disease at intensive livestock operations. The federal *Health of Animals Regulations* grant veterinary inspectors powers to make orders to sanitize facilities where there is a risk of disease; grant veterinary inspectors powers to make orders regarding the sanitization of public sales, markets, or livestock auctions; and regulate the sanitization of containers used for the import and general transportation of animals and animal products,² but these narrow provisions fall short of establishing comprehensive biosecurity measures to prevent known sources of infection in the animal agriculture industry. They do not set out legally binding protocols to guide farming practices and address the primary sources of biosecurity risks on farms. Similarly, provincial legislation tends to empower officials to respond to existing biosecurity hazards rather than providing measures which must be followed on farms and other agricultural facilities to prevent disease outbreaks. While the CFIA has developed a biosecurity guide³ to assist Canadian producers in developing on-farm biosecurity plans and to prevent the emergence and spread of diseases, this guide is not legally binding and adherence is voluntary.

Scientific research has shown that, without proactive and legally binding rules in place, many Canadian farms have demonstrated poor adherence to voluntary biosecurity protocols. For instance, in one 2019 study, researchers found poor adoption of infection spread reduction measures on Canadian dairy farms, with a majority of farms not adopting sanitary practices. Less than 15% of farms studied had measures in place to limit or control visitors coming in, with only half requiring visitors to adhere to infection minimization processes like changing boots and clothing.⁴ Similarly, a 2011 study using hidden cameras to evaluate biosecurity protocol adherence on a number of Quebec chicken farms also showed poor compliance. The study showed that personnel regularly

¹ See, e.g. Jay P. Graham, PhD et al, “The Animal-Human Interface and Infectious Disease in Industrial Food Animal Production: Rethinking Biosecurity and Biocontainment”, Public Health Rep. 2008 May-Jun; 123(3): 282-299. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2289982/>; Bryony A. Jones et al, “Zoonosis emergence linked to agricultural intensification and environmental change”, Proc. Natl Acad Sci USA, 2013 May 21; 110(21) 8399-8404. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3666729/>. See also: <https://www.theguardian.com/commentisfree/2020/apr/20/factory-farms-pandemic-risk-covid-animal-human-health>;

² *Health of Animals Regulations*, CRC, c 296, ss. 104 - 109

³ Canadian Food Inspection Agency. National Biosecurity Standards and Biosecurity Principles. Government of Canada. Online: <https://inspection.canada.ca/animal-health/terrestrial-animals/biosecurity/standards-and-principles/eng/1344707905203/1344707981478>

⁴ Denis-Robichaud, J., Kelton, D.F., Bauman, C., Barkema, H.W. (2019) Biosecurity and herd health management practices on Canadian dairy farms. Journal of Dairy Science. 2019 July 102(10). https://www.researchgate.net/publication/334660417_Biosecurity_and_herd_health_management_practices_on_Canadian_dairy_farms

disregarded biosecurity measures, including disrespecting clean vs. contaminated areas, failing to adequately wash their hands, and failing to properly change boots and clothing. The researchers concluded that the nature and frequency of the errors suggested a lack of understanding of biosecurity principles.⁵

2. Bill C-205 ignores serious risks to biosecurity in the animal agriculture sector

Risks of disease emergence and spread in the animal agriculture sector are serious. Disease outbreaks can have devastating impacts on farmed animals, as well as significant economic impacts. For instance, as a direct result of the discovery of one case of mad cow disease on a farm in Alberta in 2003, Statistics Canada estimated that each Canadian beef cattle farmer lost, on average, \$20,000 of income that year.⁶ In 2004, Canadian officials announced that 19 million chickens in southwestern British Columbia would be killed in response to cases of H7 influenza in workers.⁷ For these reasons, biosecurity at industrial animal agriculture operations is a matter of great importance.

Despite the stated purposes behind Bill C-205,⁸ it does not further biosecurity objectives. CFIA data since 2000 shows that there has not been a single documented case of a disease incident caused or contributed to by someone entering onto an agricultural facility without permission. This data is set out in the enclosed report prepared by Animal Justice. That is not to say that rare instances where individuals trespass on farms present no disease risks at all. But the evidence is clear that the risks posed by these rare instances are significantly smaller than risks posed by routine farming practices and the conduct of farm owners and operators themselves.

Dr. Jaspinder Komal, the Chief Veterinary Officer for Canada and Vice President of the Science Branch at the CFIA, provided compelling testimony to this point before the Committee on May 6, 2021. In his submissions, Dr. Komal stated as follows:

Is there a level of risk? We think the level of risk that will be induced by trespassers would be very minimal, because in order to have a risk from a disease perspective, you have to have continuous and prolonged contact with the animals, as that's how diseases are spread. African swine fever is one of them, which is a very slow disease that actually is transmitted between pigs, unless humans are within the farm, in the pig barn with the pigs for a longer period of time and then transmitting the virus.⁹

⁵ Racicot, M., Venne, D., Durivage, A., Vaillancourt, J. (2011) Description of 44 biosecurity errors while entering and exiting poultry barns based on video surveillance in Quebec, Canada. Preventative Veterinary Medicine. 2011 July 1;100(3-4): 193-9. <https://pubmed.ncbi.nlm.nih.gov/21605922/>

⁶ See: <https://www150.statcan.gc.ca/n1/daily-quotidien/040618/dq040618c-eng.htm>

⁷ See: <https://www.cidrap.umn.edu/news-perspective/2004/04/canada-kill-19-million-poultry-stop-avian-flu>

⁸ See e.g., MP John Barlow Statement (Feb 18, 2020). Online: <https://johnbarlowmp.ca/2020/02/18/mp-barlow-introduces-private-members-bill-to-protect-biosecurity-on-farms/>

⁹ Standing Committee on Agriculture and Agri-Food Transcript (May 6, 2021). Online: <https://www.ourcommons.ca/DocumentViewer/en/43-2/AGRI/meeting-31/evidence>

Dr. Kumal later added that “in scientific literature we haven't seen much evidence of transmission of disease through [trespassing or from people demonstrating]”.

As outlined in the enclosed report, scientific literature and data from the CFIA, which monitors and investigates disease outbreaks on farms, shows that disease risks in animal agriculture are overwhelmingly caused by farm owners and operators failing to follow their own voluntary biosecurity protocols, or farmed animals coming into contact with wild animals that may carry viruses. Examples of activities that have resulted in disease outbreaks and other biosecurity problems at farms include animals being fed the remains of other animals (e.g. mad cow disease), farm operators sharing needles and other equipment between animals, workers entering multiple facilities, and viruses passing the species barrier between animals and workers (e.g. bird flu, swine flu). Outbreaks of COVID-19 at mink farms in British Columbia, and around the world, have made the news recently. All documented instances were caused by infected workers, who then passed the virus on to minks.¹⁰

Bill C-205 would not address any of these known risks to biosecurity. Unlike all other provisions in the “Prohibitions” section of the *Health of Animals Act*, which apply to all persons, section 9.1 would effectively exempt farm owners and operators. It would apply only to persons who enter a farm without lawful authority. To truly prevent the emergence and spread of diseases on Canadian farms, Canada needs legally binding biosecurity standards that apply to all persons, including farm owners and operators.

3. Trespassing is already illegal in Canada

Under Bill C-205, persons who enter a building in which farmed animals are kept without lawful authority could be guilty of an indictable offence and liable to a fine of up to \$250,000 or up to two years of imprisonment. An organization could be fined as much as \$500,000. To be liable to these significant penalties, an individual does not have to actually cause any harm to a farmed animal or to food security. Rather, an individual could be found guilty if they are found to have been “reckless as to whether entering... **could** result in the exposure of the animals to a disease or toxic substance...” that is **capable** of affecting an animal.

Furthermore, Bill C-205 does not address a legislative gap. It targets conduct that is already illegal. Every province has anti-trespass legislation. People who enter farms without permission can be, and have been, prosecuted under these laws. It is also illegal under the *Criminal Code* and provincial animal welfare legislation to harm or poison animals. If an individual were to harm a farmed animal or food safety while trespassing they may also be found guilty of *Criminal Code* offences such as mischief or breaking and entering.

¹⁰ See e.g.: <https://www.theglobeandmail.com/canada/british-columbia/article-minks-test-positive-for-covid-19-on-bc-farm-where-workers-sick/>; see also: <https://globalnews.ca/news/7874109/bc-mink-farm-covid-19-quarantine/>

In the rare instances when individuals have trespassed on farms, they have often been charged under these existing laws.¹¹ By way of example, in all of the following instances, charges were laid against individuals involved:

King Cole Ducks: Individuals wearing protective gear entered an industrial duck farming facility in Ontario in February 2020 and live-streamed conditions inside. They documented dead ducks in varying stages of decomposition being kept in a windowless building with hundreds of live ducks. The ducks had no access to water for swimming and there was no bedding in the building, leaving several ducks with limbs caught in the wire mesh flooring. Following the incident, several of the activists were charged with trespassing.

Excelsior Pig Farm: In 2019, several individuals wearing protective gear and masks entered a B.C. pig farm after provincial law enforcement authorities failed to lay charges following the release of footage from the facility showing dead pigs and piglets in varying stages of decomposition left among living animals; adult pigs with growths, lacerations, and other injuries that appeared to be untreated, leaving many animals unable to stand; and hundreds of pigs kept in gestation crates so small they could not turn around. These individuals live-streamed conditions inside of the facilities and four of them are now facing 21 charges.¹²

Jumbo Valley Turkey Farm: A September, 2019 sit-in at this Alberta turkey farm has been the subject of significant discussion before this Committee. Several individuals wearing masks and protective gear entered the farm and sat inside, filming conditions. Four were then charged with a number of offences.¹³

Porgreg Pig Farm: A December, 2019 incident, wherein a number of individuals wearing masks and protective gear entered a pig farm in Saint-Hyacinthe, Quebec to stage a sit-in and document conditions inside, has been the subject of significant discussion before this Committee. Some members have erroneously claimed that the incident resulted in a disease outbreak at the facility.¹⁴ The individuals live-streamed from inside the facility, showing hundreds of pigs kept in gestation crates so small they could not even turn around, pigs crowded in filthy conditions, and poor ventilation. The provincial ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec ("MAPAQ") then attended the facility and authored a

¹¹ Note that the fact of charges having been laid on a date following an incident does not always make the news, leaving the erroneous appearance in some instances that no charges were laid.

¹² See: <https://www.abbynews.com/news/photos-court-appearance-for-pig-farm-animal-activists-met-with-protesters/>

¹³ See: <https://www.cbc.ca/news/canada/calgary/charges-turkey-farm-protest-fort-macleod-1.5332104#:~:text=15-Four%20animal%20rights%20protesters%20have%20been%20charged%20after%20allegedly%20breakin%20g,farm%20and%20the%20adjacent%20highway.%22>.

¹⁴ Standing Committee on Agriculture and Agri-Food Transcript (May 6, 2021) at pp. 5 - 6. Online: <https://www.ourcommons.ca/Content/Committee/432/AGRI/Evidence/EV11314227/AGRIEV31-E.PDF>

report documenting the horrific conditions inside.¹⁵ Eleven individuals who entered the facility were arrested and charged.¹⁶

As these examples demonstrate, in the rare instances that individuals have trespassed on farms, they have generally done so: (a) knowing that it is illegal and they will likely face charges; and (b) in order to document and expose animal suffering. Adding yet another layer of illegality is not an effective way to prevent future trespassing incidents. Rather, we urge the government to address the root cause of the current crisis of confidence in the animal farming system. This includes creating legally binding standards of care to protect the welfare of farmed animals, as well as proactive and transparent enforcement of those standards.

4. Trespass to property is a matter of provincial jurisdiction

Bill C-205 appears to be aimed not at addressing known disease risks in the animal agricultural sector, but at creating a new legal mechanism, in addition to existing provincial laws, to charge individuals who trespass on farms. Bill C-205 is, in effect, an anti-trespassing law, and may therefore be unconstitutional as an intrusion on provincial jurisdiction. Provinces have historically been responsible for enacting trespass laws in Canada. All provinces have laws prohibiting individuals from trespassing on private property. In fact, several have gone further in recent years and enacted agricultural gag, or “ag gag” laws designed to make it even more difficult for individuals to document and publicly expose animal abuse and suffering in farms, slaughterhouses, and transport trucks.

Alberta and Ontario have ag gag laws that prevent undercover exposés at agricultural facilities by making it an offence to enter a facility under “false pretences”.¹⁷ PEI recently passed Bill 120, *An Act to Amend the Animal Health Act*, that is nearly identical to Bill C-205.¹⁸ The interplay between Bill C-205 and provincial ag gag laws is another matter to which this Committee should give careful consideration. Because Bill C-205 applies to individuals who enter a facility “without lawful authority”, section 9.1 could apply to a broad range of individuals - including investigative journalists and employee whistleblowers - in Alberta and Ontario, and any other province that chooses to adopt similar ag gag laws in the future.

5. Inadequate Resources for the CFIA to Enforce Bill C-205

Compounding the above-noted problems with Bill C-205 is the fact that the CFIA—the body that would be tasked with administering the new law—is ill-equipped to handle

¹⁵ See: <https://ici.radio-canada.ca/nouvelle/1795985/porcherie-porgreg-militants-antispecistes-rapport-accablant-mapaq?fromApp=appInfoIos&partageApp=appInfoIOS&accèsVia=partage>

¹⁶ See: <https://montreal.ctvnews.ca/animal-activists-occupy-a-pig-farm-in-saint-hyacinthe-and-are-arrested-1.4719827>

¹⁷ Note that Animal Justice is currently challenging the constitutionality of Ontario’s ag gag law on the basis that it contravenes Charter-protected rights to free expression and peaceful protest.

¹⁸ See: <https://docs.assembly.pe.ca/download/dms?objectId=5fea6563-d6a4-4454-84e9-624c4e7ad93e&fileName=chapter-86.pdf>

enforcement. As Dr. Komal, the Vice President of the Science Branch at the CFIA, remarked at the May 6, 2021 Committee hearing:

[E]xisting legislation already clearly defines and deals with issues related to private property, and its enforcement largely rests with provincial authorities, including peace officers. There are also existing federal provisions under the *Criminal Code* that deal with trespassing, as well as specific prohibitions on animal cruelty and abuse. **What Bill C-205 proposes represents a significant shift from what the CFIA has been mandated to do, and therefore would require an investment of additional inspection resources, further training, and increased legal authorities to assume these additional responsibilities.** Given the combination of *Criminal Code* provisions, provincial trespass and animal health legislation and producers' commitment to on-farm biosecurity that already exist, the proposed amendments would provide limited additional protection to farmers and producers.¹⁹ [emphasis added]

Dr. Komal went on to state that the current resources that the CFIA possesses are “for inspectors to be working under the *Health of Animals Act* to investigate diseases.”²⁰ These limited resources should not be further diverted towards enforcing trespassing laws, as there are already authorities in place who oversee the enforcement of these types of offences.

As Dr. Komal further noted, enforcing Bill C-205 would be a “game-changer” for the CFIA. The Agency would require more inspectors, with substantially more resources, instruments, tools, and training— all in the name of enforcing a Bill that takes aim at conduct that provincial authorities are already tasked with policing.

6. Conclusion

Bill C-205 is unnecessary and would not improve biosecurity at intensive livestock operations. We urge the Committee to reject the Bill. Instead, the federal government should take action to create legally binding standards of care for the protection of farmed animals, as well as legally binding biosecurity standards to prevent the emergence and spread of diseases on Canadian farms.

Alternatively, in the event that the Committee chooses to support Bill C-205 as a means to address alleged biosecurity concerns, we strongly suggest that it be amended to ensure that the prohibition established in section 9.1 applies to all persons. This would ensure that all individuals present at farms and agricultural facilities are held to the same standards and are subject to the same fines and penalties for entry that could cause the introduction of disease. To this end, we propose striking the words “without lawful authority or excuse” from section 9.1

¹⁹ Standing Committee on Agriculture and Agri-Food Transcript (May 6, 2021). Online: <https://www.ourcommons.ca/DocumentViewer/en/43-2/AGRI/meeting-31/evidence>

²⁰ Ibid

Thank you for your consideration of these comments. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Scott Tinney
Staff Lawyer, Animal Justice



Kaitlyn Mitchell
Staff Lawyer, Animal Justice

Encl.

About Animal Justice

Animal Justice is Canada's leading animal advocacy organization focused on using the law to protect animals. Animal Justice works to strengthen animal protection laws across Canada, pushes to hold industries accountable for animal suffering and mistreatment, and gives animals a voice in courtrooms across the country.