

Thank you for the invitation. I'm very happy to be able to share my perspective with the committee.

My name is Dr. Jodi Lazare.

I am an assistant professor at the Schulich School of Law at Dalhousie University, where I teach the mandatory constitutional law course as well as a seminar called animal law.

I hold a research grant from the Social Sciences and Humanities Research Council of Canada to study the constitution dimensions of animal advocacy and farm trespass legislation.

I will use my time here to touch on my primary concern with the proposed bill...

And that is, simply, that it might not correspond with the constitutional division of powers.

That is, this might be outside of the federal government's legislative jurisdiction.

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This committee has heard a number of times now that statutory consistency across provincial jurisdictions is a worthwhile goal...

I agree. Uniform federal legislation is certainly more efficient than a patchwork of different laws across provinces.

However, the nature of Canada's constitutional structure is such that it's not always possible to have statutory or legislative conformity or consistency across provincial lines...

And the federal government, with all due respect, certainly cannot force conformity if it is acting outside of its area of jurisdiction.

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I understand the idea that this bill aims to improve biosecurity on farms – that it is, in substantial part, about protecting animals, and the food system, preventing disease.

But my concern is that that may not be *exactly* what the bill does, in practice.

I'm sure that the members of the committee do not need this kind of breakdown, but in the interests of clarity, I ask you to please bear with me as I take you through my thinking about the constitutional analysis here.

In determining whether a law was properly adopted by a particular level of government, according to the constitutional division of powers, courts look at what that law actually does.

They look a law's purpose and at its effects, to uncover what's known as the "pith and substance" or "dominant feature" of a law.

They might look at the context of the adoption of a law – perhaps at current events motivating its introduction, and at speeches and debates and committee hearings like this one.

All of which, in the present case, as I understand things, suggest that this bill is not, *in actual fact*, or *in concrete terms*, entirely about protecting biosecurity on farms.

And that's because, as this committee has heard a number of times now, biosecurity threats on farms are not driven by trespassers, protestors, and activists.

By people without lawful authority to be on the farm, in other words.

This committee has heard from Dr. Komal, the chief veterinary officer of Canada and a chief officer at the CFIA.

He, and others have talked about the fact that there is no documented evidence, or instances of an activist, protestor, or trespasser introducing disease onto a farm.

And you've heard from others that the greatest risks to animals on farms are transmitted from farm to farm – from workers, suppliers, etc. going between farms – and not from individuals who are present without lawful authority.

So all of this leads me to conclude that, from a constitutional perspective, this is actually *not* a bill protecting public health and safety, which the federal government could enact using the criminal law power...

Rather, these hearings and the speeches and debates that preceded them, make it quite clear that this bill is about shutting down *activism* and *trespass*, and about protecting the mental health of farmers and farm families...

In other words, it is about the protection of a particular industry... And about shutting down activism in the form of trespass.

In constitutional terms, the **dominant feature** of this bill is not biosecurity, or health and safety, but rather, trespass and activism.

And, as we all know, these things fall under provincial jurisdiction over property and civil rights.

We only need look to at the fact that all provinces have trespass laws, and some have laws specific to trespass on agricultural operations, although two of those laws are currently the subjects of constitutional challenges.

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I want to be clear, here, that I am not suggesting that the federal government cannot legislate to protect public health and safety, and biosecurity on farms.

Parliament can do this, under the criminal law power. And using its concurrent power over agriculture.

My submission, rather, is that, as it's currently written, that is not what this bill does – because it does not actually target the most likely sources of biosecurity risks.

In fact, it targets, as we've heard, the least likely source.

But a law that provided for restrictions relating to biosecurity, and that applied to *everyone* that enters a farm – to those *most likely* to threaten biosecurity by transmitting disease among animals – that would be more likely to survive constitutional scrutiny.

Whereas in its current form, this amendment might not survive a constitutional challenge in court.

I will leave it at that and of course am happy to answer questions.

Thank you.

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Potential questions, notes...

- Would better NFACC codes help?
  - Legislated standards would be better (Codes are not legally binding; no legal repercussions for failing to adhere, even if, for some industries – dairy – there are market/economic consequences)
  - There are no laws governing on-farm activities and animal welfare – a problem from a policy and from a rule of law perspective (it's not clear ahead of time what is legal or not; some provinces incorporate codes and some do not; they might constitute a defence to a charge of cruelty or distress but failure to conform is not an offence → confusing, legally ambiguous)
  - Industry standards with industry enforcement and inspection (e.g. ProAction) lack transparency

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- there is a distinction between trade in the products of agriculture and agriculture itself
- the feds cannot regulate trade in the products of, once they enter the market, but they can regulate care for livestock as an agricultural activity
- but this bill does not do that because it is not *actually about* biosecurity

#### Deterrent effect

Leading criminologist in Canada, Professor Emeritus at U of Toronto, Anthony Doob, among many others in both the US and Canada, has written that sentence severity has no deterrent effect on rates of offences.

I would suggest that the motivation for entering farms means that any deterrent effect of this provision would be even lower.

Literature from the US suggests that many activists simply will not hesitate to break the law, so as to garner attention to themselves and to their cause. So in some sense, prohibiting these kinds of activities might actually invite further trespass as a form of civil disobedience.

#### Provincial legislation

All provinces have trespass legislation, which does not require proof of damage. Penalties vary.

Alberta – \$10,000 (first offence)

Ontario – same

BC – court can order restitution in case of damages

MB – \$5,000

#### Federal

*Criminal Code* – break and enter

*Criminal Code* – mischief

#### Canadian biosecurity legislation

It's a stretch to say that Canada has a legally binding or comprehensive system of **on-farm** biosecurity protocols in place (on-farm is important bc *Health of Animal Act* does regulate transport protocols; *Safe Food for Canadians Act* re. slaughter). Rather, there is a patchwork of federal and provincial laws that seem more aimed at addressing disease and biosecurity after an issue on a farm (e.g. obligation to report).

In other words, current system is not comprehensive or proactive enough to prevent disease outbreaks ahead of time.