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Submission to the Standing Committee on General
Government

*Bill 156: Security from Trespass and Protecting Food
Safety Act, 2020*

Canadian Civil Liberties Association

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Canadian Civil Liberties Association (CCLA)

The CCLA fights for the civil liberties, human rights, and democratic freedoms of all people across Canada. Founded in 1964, we are an independent, national charity, working in the courts, before legislative committees, in the classrooms, and in the streets, protecting the rights and freedoms cherished by Canadians and entrenched in our Constitution.

Overview

CCLA makes this written submission to the Standing Committee on General Government in light of the significant impacts that Bill 156 may have on freedom of expression and freedom of the press. CCLA has been a staunch defender of freedom of expression since its founding over fifty years ago, recognizing that robust protection for freedom of expression is the cornerstone of a free and democratic society.

We are concerned about the implications of Bill 156 on the right to protest and the chilling effect it may have on protesters, journalists and whistleblowers who disclose information for the public good. While the Bill has been touted by the government as aimed at ensuring the safety of the food supply, the actual legislative text and operative provisions indicate that stifling expression is its true purpose. Ontario's *Trespass to Property Act* already provides an appropriate mechanism to deal with trespassers on farmland, and the need for a specialized regime with enhanced penalties and powers of arrest has not been established. Of particular concern are provisions stating that consent to enter “animal protection zones” (as defined in the Bill) has not been granted where such consent was obtained under duress or false pretenses. These provisions, along with extended limitation periods for prosecuting trespassers, demonstrate that enhanced biosecurity is neither the main purpose nor the likely expected outcome of the Bill.

CCLA also wishes to express its concern that this Bill is being considered by Committee at a time when the public is distracted by the ongoing pandemic and declared state of emergency in the province.

A. Trespass to Property Act Is Sufficient

Ontario already has legislation to deter trespassers and hold accountable those who choose to trespass. Bill 156 ousts the operation of the *Trespass to Property Act* for all spaces defined as “animal protection zones” pursuant to section 2 of the Bill. It is noteworthy that the definition of an “animal protection zone” has the potential to be quite broad; the Bill envisions “prescribed requirements” for the designation of such zones (without any indication as to what those requirements might be) as well designating particular areas by regulation. In effect, the

legislative assembly is being asked to pass a law that provides specialized treatment for certain properties and property owners without being told where, how, or to whom the law will apply.

Along similar lines, the Bill prohibits “interfering or interacting” with farm animals (in animal protection zones or being transported by motor vehicles) without defining these terms, and suggests that regulations will be passed to prohibit certain activities (without describing what those activities might be). This vague and broad language is concerning in light of the fact that the Bill creates offences and establishes penalties for violating them. The mere act of taking a photograph might be construed as “interacting” with a farm animal, notwithstanding that it poses no risk to the animal’s safety or the safety of the food supply.

The government has argued that the special treatment afforded by Bill 156 is required in order to protect farmers and their families and to ensure that our food supply is not contaminated. However, several provisions of the Bill belie this purpose. For example, there is no requirement that “animal protection zones” or areas that require biosecurity measures be clearly marked with signage. To the contrary, the Bill provides that it is still an act of trespass for an individual to enter an “animal protection zone” even if there is no signage. Yet the aim of ensuring biosecurity and food safety would clearly be better achieved by requiring that biosecure areas be marked with a notice. Significantly, section 3 of the *Trespass to Property Act* provides that entry may be prohibited by notice to that effect and that entry is prohibited without notice in a closed category of cases.

Bill 156 departs from the *Trespass to Property Act* in a number of other significant ways which, in CCLA's submission, will not further the aims of farm or food safety but will have a chilling effect on freedom of expression and the press. For example, s. 4(6) of the Bill states that consent to enter an “animal protection zone” is invalid if it is given using duress or obtained under false pretenses. This provision seems clearly aimed at investigative journalists or activists who may be seeking to expose animal mistreatment or poor working conditions, but appears to have no connection to the goal of ensuring the safety of the food supply. For example, if a journalist writing an exposé on the conditions of migrant workers during the COVID-19 crisis applied for and succeeded in getting a job on a farm, they would presumably be trained and required to follow all regulations if they were working in a biosecure environment. Nevertheless, the Bill treats such people as trespassers under the guise of protecting food safety. It is also concerning that the term “false pretenses” can be interpreted in a number of ways. If an employee subsequently decides to “blow the whistle” after witnessing the mistreatment of animals, could they be considered a trespasser notwithstanding that they obtained employment on legitimate and truthful grounds? The Bill appears to leave open this possibility.

Similarly, section 20 of Bill 156 creates a limitation period for pursuing offences that is no more than two years after the day on which the offence was committed, or two years after the day *on which evidence of the offence first came to the attention of a police officer*. This provision appears to depart from the normal “discoverability” principle that is codified in the *Limitations*

Act, 2002. To take the example noted above, suppose the investigative journalist is discovered by the farm's owner and terminated, but the farmer chooses not to pursue the trespass offence. Two years later, the journalist publishes an exposé. At that point, the farmer could choose to inform the police about the trespass and the offence could then be pursued. This extension of the time period for pursuing an offence is wholly divorced from the protection and biosecurity goals, but directly related to deterring whistleblowers from coming forward.

B. Chilling Effect on Freedom of Expression & Freedom of the Press

As noted above, CCLA submits that Bill 156 does not truly further the goals of providing greater safety or security to farmers or the food supply. In our view, however, it will have a chilling impact on freedom of expression and freedom of the press, both of which are protected pursuant to section 2(b) of the *Canadian Charter of Rights and Freedoms*. The agricultural sector is increasingly the subject of interest and attention by Canadians who are concerned about its impact on climate, the treatment of animals, and the working conditions of often vulnerable migrant workers. The provisions of Bill 156 may well deter those who would expose concerning working conditions or animal mistreatment. These individuals may already face legal risks by coming forward, including the risk of being sued for defamation, breach of contract or other civil torts. Bill 156 should not add to the already significant consequences that individuals face. Moreover, it is worth noting that in deterring whistleblowers and others from exposing animal mistreatment or unsafe working conditions, the Bill's purported goal of enhancing safety and biosecurity is directly undermined.

CCLA also notes that Bill 156 has the potential to set a dangerous precedent. The reasons for giving special protection to the agricultural sector, farmers and animal processing facilities are specious at best. Bill 156 may open the door to creating other industries or spheres where safety concerns are used to deter needed scrutiny and chill expressive freedom. The COVID-19 pandemic has highlighted that institutions that serve some of society's most vulnerable – prisons, homeless shelters, long-term care homes – face real challenges and may operate in conditions that need to be brought to the public's attention in order to be adequately addressed. Bill 156 should not set us down the slippery slope of closing such institutions to the potential for outside scrutiny.