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The Silence of the Turkeys: What Does the Agriculture Industry Have to Hide?

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Statute Commented On: [Bill C-205](#), *An Act to amend the Health of Animals Act*, 2nd Sess, 43rd Parl, 2020 (as amended by Committee 21 June 2021)

In 2020, Parliament considered [Bill C-205](#), *An Act to amend the Health of Animals Act*, 1st Sess, 43rd Parl, 2020 (as passed by the House of Commons on first reading 18 February 2020). Bill C-205 was introduced by Mr. John Barlow as a Private Member's Bill in response to protests and farm occupations across Canada by animal activists (see [Hansard](#)). This version of Bill C-205 would have made it an offence for any person, "without lawful authority or excuse," to enter a place in which animals are kept if it could result in the exposure of the animals to a disease or toxic substance (s 9.1). Bill C-205 purports to be concerned with biosecurity risks, however, its focus on punishing trespassers, including animal activists, ignores the evidence that shows biosecurity risks are not caused by trespassers but rather by poor farming practices (see Animal Justice, "[Animal Advocacy or Animal Agriculture? Disease Outbreaks & Biosecurity Failures on Canadian Farms](#)" (13 May 2021)). In a small victory for animal activists, Bill C-205 was amended on review by Committee to recognize that it may be farm owners and operators themselves who are responsible for these risks (see [Bill C-205](#), *An Act to amend the Health of Animals Act*, 1st Sess, 43rd Parl, 2020 (as amended by Committee 21 June 2021) and Animal Justice, "[Federal "Ag Gag" Bill Could Punish Negligent Farmers After Amendments at Committee](#)" (22 June 2021)). This comment will examine similar provincial legislation that is sweeping across Canada, with an emphasis on the legislation enacted in Alberta in 2019.

On September 2, 2019, dozens of animal rights activists, concerned about overcrowding and unsanitary conditions, staged a protest at the Jumbo Valley turkey barns in southern Alberta (Elissa Carpenter, "[Five turkeys spared after 'liberation lockdown' descends on commercial farm in southern Alberta](#)" (2 September 2019)). In response to the protest, Premier Jason Kenney announced on October 3, 2019 that the Alberta government would strengthen protections for farmers from "illegal protests" (CBC News, "[Kenney vows new measures to shield farmers from 'anti-farming militants'](#)" (3 October 2019) (CBC News)).

On November 19, 2019, Bill 27, *Trespass Statutes (Protecting Law-abiding Property Owners) Amendment Act, 2019*, 1st Sess, 30th Leg, 2019 (assented to 5 December 2019), [SA 2019, c 23](#) (*Trespass Statutes*) passed first reading and very quickly thereafter became law. Under the guise of tackling rural crime, the *Trespass Statutes* amends a number of statutes relating to occupiers' liability and trespass. However, the *Trespass Statutes* really takes aim at animal activists and journalists that go undercover as, for example, employees, to expose inhumane conditions at factory farms by deeming them trespassers. For example, the *Petty Trespass Act*, [RSA 2000, c P-11](#) is amended such that "a person who obtains by false pretences permission to enter on land from

the owner or occupier of the land is deemed to have entered on the land without permission” (emphasis added) (s 2(2.4)). The fines for contravention are steep; for a first offence, up to \$10,000, and for a subsequent offence, up to \$25,000 (ss 2(1.3) and 2(2)).

This follows in the footsteps of a number of U.S. states that have passed similar legislation, also known as “ag-gag” laws or “agricultural gag” laws (Jodi Lazare, “[Ag-Gag Laws, Animal Rights Activism, and the Constitution: What is Protected Speech?](#)” (2020) 58:1 Alta L Rev 83 at 96 (Lazare)). Other Canadian provinces have passed or are considering similar legislation (*ibid* at 91-92). For example, in December 2019, Ontario introduced Bill 156, *Security from Trespass and Protecting Food Safety Act, 2020*, 1st Sess, 42nd Leg, 2020 (assented to 18 June 2020), [SO 2020, c 9 \(Bill 156\)](#). Bill 156 generally prohibits trespassing on farms and slaughterhouses under the guise of protecting farm animals, the food supply chain, and farmers from risks brought about by trespassers. Similar to the *Trespass Statutes*, Bill 156 makes it an offence to enter a farm or slaughterhouse “under false pretences” (at s 5(6)). While the regulations create an exception for journalists, it is heavily qualified (see *General*, [O Reg 701/20](#), s 11). The fines under Bill 156 are also high; for a first offence, up to \$15,000, and for any subsequent offence, up to \$25,000 (s 15(1)). Ontario’s ag-gag legislation is currently being [challenged](#) by Animal Justice on the grounds that it restricts freedom of expression as set out in section 2(b) of the *Charter* by preventing persons from gathering and publicly disseminating information documenting the treatment of farmed animals (Animal Justice, “[Fighting Canada’s Dangerous “Ag Gag” Laws](#)” (10 September 2020), Animal Justice, “[Animal Justice Files Legal Challenge to Ontario “Ag Gag” Law](#)” (9 March 2021)).

Most harm to animals is caused on private property behind closed doors (Lesli Bisgould, *Animals and the Law*, (Toronto: Irwin Law, 2011) at 49 (Bisgould)). Animal rights activism in the form of farm occupations, protests, and undercover investigations, for example, produces information that is kept hidden from the public (Lazare at 86). This information is “crucial to public discourse on society’s treatment of animals and on the ethics and morality of meat consumption and food production methods” (*ibid*). Undercover investigations also lead to a number of positive outcomes, including, for example, stronger animal protection laws (Sarah Hanneken, “Principles Limiting Recovery against Undercover Investigators in Ag-Gag States: Law, Policy, and Logic” (2017) 50:3 J Marshall L Rev 649 at 657). Undercover investigations “have revealed egregious animal cruelty, unsafe working conditions, and severe food-safety violations, leading to meaningful institutional change” (*ibid* at 711). Setting aside the negative impact on public discourse and awareness, the impact of ag-gag laws on farmed animals is enormous, as farmed animals already lack what meager protections are afforded by the law.

The law views animals through an anthropocentric lens; that is, it “privileges human subjectivities and interests and discounts, disavows or ignores animal ones” (Maneesha Deckha, “[Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability under a Property Paradigm](#)” (2013) 50:4 Alta L Rev 783 at 786). Animals are treated as property under the law, regardless of sentience and relationality (*ibid* at 813). The property status of animals and the resulting legal assumptions “permit virtually any use of animals, however fundamental the harm that use causes them, and however trivial by comparison is the human owner’s interest in causing it” (Bisgould at 48).

While there are various laws that protect animals from being harmed in certain ways, it is generally understood that the agriculture industry is excluded from having to comply with animal welfare laws (Bisgould at 189). Although s 2(1.1) of the *Animal Protection Act*, [RSA 2000, c A-41](#) (APA) prohibits anyone from causing an animal to be in distress, s 2(2) provides a defence if the distress results from “an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.” Compliance with standards created by the industry itself provides an exclusion or defence for practices which might otherwise be unlawful due to the harm caused (Bisgould at 191). As it relates to farmed animals, “with the exception of certain aspects of transport and slaughter, there is no legislation that directly addresses the daily treatment and care of animals, unless that treatment was malicious in nature or grossly inconsistent with the way those animals are treated on other farms” (Peter Sankoff, “Canada’s Experiment with Industry Self-Regulation in Agriculture: Radical Innovation or Means of Insulation” (2019) 5 Can J Comp & Contemp L 299 at 312).

Ag-gag legislation adds insult to injury for farmed animal welfare. Farmed animals are nothing more than property under the law and are generally excluded from animal protection legislation, leaving them vulnerable to cruel industry practices. Now their suffering is being silenced, as the introduction of ag-gag legislation stifles the ability of animal activists and journalists to expose the harmful practices that occur and to effect societal change. If Premier Jason Kenney is correct in his assertion that “[Alberta's farmers and ranchers treat their animals well](#),” (CBC News) why not show the public, instead of hiding behind ag-gag laws?

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