



May 15, 2023

Goldie Ghamari
Chair, Standing Committee on Justice Policy
Whitney Block
99 Wellesley Street West
Toronto, ON M7A 1A2

Dear Ms. Ghamari,

Re: Bill 102, Strengthening Safety and Modernizing Justice Act, 2023

Beef Farmers of Ontario (BFO) appreciates the opportunity to comment on Bill 102, *Strengthening Safety and Modernizing Justice Act, 2023*. BFO represents 19,000 beef farmers in Ontario by advocating in the areas of sustainability, animal health and care, environment, food safety, and domestic and export market development.

BFO wishes to focus the entirety of our comments on Bill 102 around the proposed amendments to the *Provincial Animal Welfare Services Act, 2019 (PAWS Act)*.

BFO was an active and supportive partner of the province in the development of the *Provincial Animal Welfare Services (PAWS) Act*. The transition in enforcement responsibility to the Ministry of the Solicitor General, among other changes from the predecessor *OSCPA Act*, was viewed positively by BFO and the agricultural community as it provided a coordinated and uniform approach to animal welfare enforcement, as well as ministerial oversight by, and accountability to, the Ministry of the Solicitor General.

With the Act now more than three years into effect, livestock organizations, like BFO have accumulated many learned experiences with the Act's operation based on reports from our members, direct communications with Animal Welfare Services (AWS) staff, and on-farm response to welfare complaints between BFO Animal Care Advisors and AWS enforcement. Despite this relatively positive working relationship that has been fostered with AWS since PAWS was introduced, we remain seriously concerned with components of the current system.

Together with 11 other livestock and general farm organizations, including the Ontario Federation of Agriculture, we have been calling on the province to initiate meaningful discussions with the agricultural community, and conduct a full review of the Act and its underlying regulations and operational practices to ensure it is appropriately aligned with animal agriculture practices and recognized welfare standards.

While the proposed changes to the Act incorporated into Bill 102 provide some opportunity to have our views and concerns heard, we note that the agricultural community was not consulted or

advised of the pending amendments despite the implications these changes will have on the beef and broader agricultural sector as a whole.

Our desire, ultimately, is to see a system of welfare enforcement based on reasonableness and proportionality that recognizes adopted standards of care for the handling and care of beef cattle and other livestock in Ontario.

Animal care is of the utmost importance to BFO and its members. When concerns involving animal care are identified in Ontario's beef sector, BFO acknowledges its responsibility to consider and offer its perspective to members, the broader agriculture industry and the general public.

1. Improving Cost Recovery and Clarifying and Updating ACRB and Other Processes

Proposed Change: "Specifying the types of costs that are recoverable via a Statement of Account issued to an animal owner/custodian by the Chief Animal Welfare Inspector"

The proposed amendments under Bill 102 regarding Statements of Account (SOAs) and cost recovery are of concern to BFO. AWS has a history of allowing costs to be incurred for the removal, transportation, and/or care of animals removed or seized from owners that far exceed what one would deem reasonable. In a recent case involving removed cattle, the Animal Care Review Board (ACRB) found the incurred costs on the SOA to be unreasonable. BFO would note that the absence of any language within the Act around the reasonableness of costs to be a shortcoming. Notwithstanding, AWS is required to act responsibly when incurring costs for the removal and/or care of animals.

Improvements to the current system, in BFO's view, would require AWS to ensure SOAs are:

- reasonable, based on the most affordable rates by vendors that align with commercial standards
- justifiable and transparent, to reflect the costs of caring for animals to alleviate distress
- not to exceed the market value of the animals in care

BFO believes that AWS should be compelled to establish approved service rates based on industry/commercial standards, and to work with sector organizations to identify service providers that could potentially assist with removal, transportation, care and veterinary services. In a recent case that went before the ACRB, it was noted that there is no evidence to suggest that AWS maintains a list of appropriate vendors, standards or appropriate costs of services, or any directive to ensure costs incurred are reasonable. Thus, while BFO is not opposed to the proposal to specify the types of costs that are recoverable, how those costs are determined and applied requires equal consideration.

At a minimum, we believe AWS has a duty to ensure costs are warranted, reasonable, justifiable, and backed by a transparent procurement process and cost standard.

BFO would also underscore the need for animal owners who have successfully appealed SOAs to have the costs they have incurred, recovered. This would include the legal costs associated with the appeal process if the ACRB or an Ontario court determines that AWS erred in either their decision to remove animals and/or in the reasonableness of the costs that were incurred and charged to the owner.

Proposed Change: “Creating a regulation-making authority under the PAWS Act to prescribe factors to be considered by the ACRB when assessing whether to confirm, vary or revoke Statements of Account – which would provide guidance to adjudicators at the ACRB and help promote greater consistency in ACRB decisions to confirm, vary or revoke a Statement of Account”

It is difficult for stakeholders, like BFO, to provide comment on the proposal that would provide guidance to adjudicators at the ACRB without knowing what that guidance will be. BFO agrees that consistency in the factors used by the ACRB to confirm, vary or revoke SOAs is important.

However, we do not support changes that would limit the ACRB’s authority to determine whether enforcement actions, orders or SOAs were reasonable and/or justified. BFO strongly supports the separation of regulators/enforcement bodies from the independent adjudication process as an important check on enforcement actions and decisions.

BFO is concerned that potential limitations to ACRB’s authority with respect to SOAs may prevent costs that were unreasonably or unjustifiably applied by AWS from being assessed by the ACRB. If the intent of the proposed changes would limit the ACRB’s ability to vary or revoke SOAs, we would be strongly opposed to such a change. BFO would agree, however, that additional guidance to ensure decision consistency at ACRB would be helpful.

Proposed Change: “Enabling unpaid Statements of Account to be collected as a debt to the Crown”

While BFO is not opposed to this, in many cases the value of the removed/seized livestock should cover the SOA. A lengthy holding of removed/seized commercial livestock, such as cattle, provides opportunity for owner compliance, but more often simply adds unnecessary costs that can exceed the market value of the animals with no meaningful improvements to the welfare of the animals in question. If the animals are fit for transport, they should be marketed with the owner’s consent, which would reduce costs to all parties, reduce potential unpaid debt to the province, and eliminate the problems that have been identified with foster farms for commercial livestock.

Under the previous OSPCA Act, instances of unpaid SOAs triggered an allowance for the OSPCA to sell the animals and reimburse itself with the proceeds, holding the balance in trust for the owner. The province should consider this provision in its assessment of the current Act.

Foster farms should not be the default option when beef cattle are removed from the owner. The commercial nature of beef farming and long-term alternative housing are incompatible and should be employed as a last resort. Animal care can be compromised rather than improved during multiple transports and stays at farms not suitable for beef cattle, which has occurred under the current system. Potential appeals of inspector orders and subsequent challenges can extend the fostering timeline of the animals, incurring high costs, in instances beyond the market value of the animals. Moving herds or flocks to new farms also introduces significant biosecurity risks for the transmission of diseases.

Ultimately, there needs to be a better way to manage these cases. In Manitoba, for example, welfare enforcement for livestock is separated from companion animals, and is managed by the Ministry of Ag that employs livestock specialists to oversee investigations, a model that Ontario should seriously investigate.

Proposed Change: “Enabling the ability to prescribe in a regulation under the PAWS Act the timeline for animal owners and custodians to appeal to the ACRB. This provides the opportunity to extend the timeline beyond five business days”

BFO supports this change. Five days is considered inadequate in the case of farmers who are unfamiliar with the legislation and need time to consult and potentially retain counsel, evaluate the merits of appeal, and formulate a response. The ministerial prescription of five business days as the time limit for applying to the ACRB is considered overly restrictive.

There are many examples in other pieces of legislation that include longer appeal windows, including other related animal welfare enforcement legislation in other provinces. BFO fails to appreciate what is gained by Ontario’s short appeal window.

2. Enhancing and Clarifying Inspector Powers to Improve Animal Welfare

Existing Powers: An animal welfare inspector currently has the authority to remove an animal from its owner or custodian to relieve its distress if:

- ***A veterinarian has advised in writing that relieving the animal’s distress requires its removal***
- ***There are grounds to believe the animal is in distress, but the owner or custodian of the animal is not there and cannot be found quickly, or***
- ***An order has been issued and the animal owner or custodian has not complied.***

Removal/seizure of animals in specified circumstances should be warranted, reasonable, and justifiable. This would work to ensure that no unnecessary burden of cost is incurred by either AWS or the owner or caregiver of the animals. Previous enforcement actions by AWS seem to be based on section 15(1)(3), which states that “no person shall knowingly or recklessly cause an animal to be exposed to an undue risk of distress”. However, “undue risk of distress” is not defined in the Act. The subjective definition and its use raises questions about the required grounds for AWS enforcement actions, particularly regarding Animal Welfare Inspector (AWI) orders. The phrase “undue risk of distress” requires a definition in the Act if it continues to be used as rationale for orders or seizures, and how AWS determines that “undue risk of distress” warrants the removal of animals needs to be clarified.

Section 31 outlines the provisions for taking possession of an animal in distress. 31(1)(b) of the Act states that “an animal welfare inspector may remove an animal from the place where it is and take possession of the animal for the purpose of providing it with necessities to relieve its distress, if...”. This section suggests that taking possession of an animal is only warranted where the animal is in actual distress. Distress is defined in the Act as:

“... the state of being,

- (a) in need of proper care, water, food or shelter,
- (b) injured, sick, in pain or suffering, or
- (c) abused or subject to undue physical or psychological hardship, privation or neglect;”.

However, section 31(1)(c) allows for the removal of an animal when “an order respecting the animal has been made under section 30 and the order has not been complied with”. BFO seriously questions taking animals into the possession of AWS when they are not deemed to be in distress. We believe other actions and compliance approaches should be prioritized in lieu of animal removal in the event of non-compliance with orders by animal owners or custodians, unless the animal is indeed in

distress. Utilizing alternatives, such as monetary penalties, would reduce burden and costs associated with animal removal and housing of animals for extended periods of time under subsection 31(1)(c).

Proposed Change: “Creating a requirement for animal owners and custodians to inform an animal welfare inspector when ownership or custodianship of an animal changes if the animal is subject to an active compliance order”

This is simply unrealistic for commercial livestock. The primary method of sale within the commercial livestock sector is through public auction. Even if the seller is aware of who bought their animal(s), they are often purchased by agents working on behalf of other buyers unbeknown to the seller. To add, many commercial livestock animals, particularly cattle, have multiple owners over the course of the animal’s life as they progress through stages of the production cycle. BFO questions what will be gained by such a requirement, within the context of commercial livestock.

Compliance orders on farm, and the health status of a particular animal are not mutually exclusive. If the animal that has been removed is deemed fit for transport under the federal *Health of Animals Regulations*, that animal will then be subjected to inspection at the point of sale. The compliance, or lack thereof on farm has no meaningful linkage to the animal that has then been removed and sold. AWS can continue to assess compliance against active orders on the farm in question, but the need to follow removed animals to new owners makes little practical sense, particularly given the fact that those animals will be subject to other enforcement and inspection requirements, and are under the care and control of an individual who was not involved with the earlier compliance issues.

Proposed Change: “Enabling the ability to exclude persons from interviews during inspections, except counsel for the person”

BFO is concerned that granting the proposed ability to exclude outside parties will become the standard rather than the exception during welfare investigations on farms. The agricultural sector has a long history of industry-government collaboration in welfare cases that has been formalized through MOUs with both the OSPCA and AWS.

BFO expects that our Animal Care Advisor (ACA) service, which provides technical sector expertise and support during welfare investigations, will continue to be welcomed and encouraged during complaints against beef farmers in Ontario. BFO’s ACA service has worked closely with the enforcement branches of the OSPCA/AWS for more than a decade. Many of the other livestock associations in Ontario employ similar programs and support services.

On behalf of BFO, we thank the Standing Committee on Justice Policy for the opportunity to comment on Bill 102, *Strengthening Safety and Modernizing Justice Act, 2023*.

We would like to reinforce that the broader agricultural community has been requesting a formal review of the PAWS Act and the underlying system of enforcement that may extend beyond the proposed changes within Bill 102 under consideration by this committee. While some of our suggestions may require future legislative amendments to execute, the preponderance of our issues can be addressed through regulatory, MOU or procedural means. We would value the

opportunity to engage further on the issues identified in this submission, and on our additional suggestions for improvement to the current system of enforcement.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Chaffe", with a long, sweeping underline.

Jack Chaffe
BFO President

Cc: Hon. Michael Kerzner
Hon. Lisa Thompson
Ms. Christine Hogarth, Parliamentary Assistant (SolGen)
Mr. Bob Bailey, Parliamentary Assistant (SolGen)
Mr. Trevor Jones Parliamentary Assistant (OMAFRA)
Mr. Rob Flack, Parliamentary Assistant (OMAFRA)