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The Honourable Ernie Hardeman, MPP Oxford
Minister of Agriculture, Food and Rural Affairs
77 Grenville Street, 11th Floor
Toronto, ON M7A 1B3

Dear Minister Hardeman,

RE: Status of Stables during State of Emergency

My name is D. Sid Freeman and I am legal counsel for a number of boarding facilities and horse owners in the province of Ontario.

On the 17th of March 2020, Premier Ford declared a State of Emergency in Ontario. Essential services were later delineated to include:

Veterinary services (urgent care only) and other **businesses that provide for the health and welfare of animals, including** farms, boarding kennels, **stables**, animal shelters, zoos, aquariums and research facilities.

There has been confusion in the equestrian industry as to the extent stables are to be open. Some have interpreted the state of the law as requiring them to close entirely. Others have interpreted the state of the law as requiring entry into their stables by persons who own and/or lease horses on site. My clients are seeking clarity on this issue. It is our position that the law confers a right and a legal duty on those who own/lease horses to attend to them at the stables in which they are located through the state of emergency.

The nature of horse facilities

Those who have interpreted the declaration of emergency as meaning stables must be closed do so on the assumption that stables are, “indoor facilities that provide recreational programming”. This assumption is both factually and legally incorrect.

Factually, stables are not, “indoor facilities”, consistent with the use of that term in the declaration of emergency. Unlike other places enumerated in the declaration, stables are not facilities where large groups of people gather in close proximity in an airtight venue breathing re-circulated air. Stables are not insulated, air tight buildings. They have fresh air, not re-circulated air. The ambient temperature inside a barn is generally consistent with the outside temperature. The same is true of indoor riding arenas. It is not uncommon for there to be snow inside the arenas in winter and water dripping in through the ceiling in the spring and summer. Boarding facilities do not provide recreational programming although some may provide training for the horse and for the owner/lessee of that horse.

Legally, the Ontario Ministry of Agriculture categorizes horse farms as agricultural, not recreational. Activities included as agricultural on horse farms are boarding and training. Facilities included as agricultural by the Ministry are stables, indoor riding arenas, and outdoor riding arenas (see *Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas*). The ultimate proof that, “stables”, are not indoor facilities that provide recreational programming is in their designation as an essential business. Other essential businesses run in anticipation that customers will attend. Stables where horses are boarded must do so as well.

Considerations related to horse owners/lessees who board their horses

Owners and those who have leased a horse (lessees) are required by law, pursuant to section 13 of the *Provincial Animal Welfare Services Act*, to comply with standards of care. Basic standards of care are set out in O.Reg. 444/19. Apart from considerations of food, water, and appropriate medical attention, basic standards of care require that “every animal must be provided with the care necessary for its general welfare”. This requirement is separate from an additional requirement of, “adequate and appropriate space to enable the animal to move naturally and to exercise”.

Section 15 of the *Act* requires owners and lessees to ensure that the horse they are responsible for is neither in distress nor exposed to undue risk of distress. Distress is legally defined as including being in need of proper care or being subject to physical or psychological hardship, privation, or neglect. Violation of section 15 is categorized by the legislation as a, “Major Offence”, with potential consequences for individuals of fine of up to \$130,000 and/or a term of imprisonment of up to two years. In certain cases, minimum fines of \$25,000 must be imposed.

In the spring and early summer months, horses are prone to developing serious diseases such as thrush, mud fever, and rain rot from wet turn out conditions. Preventing these diseases requires daily monitoring and cleaning. Many stables do not turn horses out in rainy or muddy conditions for reasons related to safety and paddock integrity. Without exercise during these periods, horses can develop a gastrointestinal condition called colic. Colic is an extremely serious condition that can result in death. Lack of turnout can also result in a condition called laminitis which, if not

caught early and treated aggressively, can require compassionate euthanasia. Turning horses out on spring grass can also cause laminitis. Cellulitis, a type of bacteria common in the soil in the GTA, can cause small cuts and scrapes that go unnoticed by barn staff to develop into a serious infection.

In many stables paddocks are of a limited size and do not permit the type of exercise needed to maintain horse health through turnout alone. In addition, horses who are in work require regular exercise beyond being turned out in a paddock in order to maintain their general welfare and prevent psychological hardship. Horses who are injured require intensive daily care, including rehabilitation when sufficiently recovered to do so. Rehabilitation can only be properly done by the owner as they are the person who knows the horse well enough to do so.

Stable owners, most of whom have had to cut staff due to loss of income from the closure of stables, are not able to replace the level of care provided by owners and lessees to prevent and properly manage the health conditions that can arise. Owners and lessees who are prohibited from attending their horses are unable to perform the monitoring legally required by them and are therefore forced into a position of violating their legal duties in regard to welfare.

Considerations related to Stable Owners

Many stable owners board horses that are the subject of a lease contract. Some of the leased horses are owned by the stable owner, while others are not. Leasing a horse typically involves a fee for the use of that animal in addition to fees associated with its upkeep. Interference with the use of a leased animal may give rise to civil liability (heads of damage include tortious interference with contractual relations, breach of contract, civil fraud, and unjust enrichment). Interference with a lease may also void the lease contract leaving the stable owner financially responsible for the costs of the upkeep for the leased animal with no income to do so.

Stable owners with boarders may also be liable to civil and criminal liability for charging full board fees as a portion of those fees are for the use of facilities that owners/lessees are denied the use of. Stable owners need to also be concerned with the potential for criminal liability for barring the access of horse owners to an animal that is their property. Section 430 of the *Criminal Code* makes it a criminal offence to obstruct, interrupt, or interfere with the lawful use, enjoyment, or operation of property.

Stable owners are also vulnerable to civil actions should a horse become ill or die while owners/lessees are denied the ability to monitor the welfare of and provide care for the animal.

CoVid-19 considerations

The equestrian world was already expert in infectious disease control before the emergence of CoVid-19. Outbreaks of highly contagious and deadly equine infectious diseases such as Strangles, Equine Influenza, and Equine Herpes Virus are fairly common. The horse industry has well established infectious disease control protocols. There has been a long history of rigorous compliance with these types of protocols by stables owners and equestrians.

During the pandemic, medical experts have stressed the importance of fresh air, sunshine, and exercise. For many horse owners/lessees, caring for and exercising their horses is their primary means of physical exercise and mental wellness. They are being harmed by denial of access to their horses.

Physical distancing is something that is a matter of necessity when dealing with horses as it is generally unsafe to be within six feet of another person when riding or handling a horse. Owners and lessees typically have their own personal equipment for each horse they are responsible for. This equipment is generally stored away from the equipment of other riders in an enclosed locker and is not touched by anyone other than the owner or lessee.

Going to a stable to exercise and manage the welfare needs of one's horse presents considerably less risk than attending a grocery store, an alcohol retailer, a laundromat, a hotel, or many of the other enumerated essential business.

Conclusions

Stables are listed as an essential business during the state of emergency. Legal requirements for horse welfare, contract performance, and property protection/enjoyment, mandate that horse owners and lessees be permitted to attend stables. No legislative changes are needed to give this legal effect. As a result, it would be helpful for a letter of clarification to be provided by the Ministry at this time.

The following protocol are recommended for the attendance of owners/lessees at stables during the state of emergency:

1. The number of owners/lessees/chaperones that may attend each barn at one time may not exceed the maximum number of people permitted to gather by the provincial government;
2. Owners/lessees are to attend pursuant to a schedule drawn up by the barn owner or pursuant to a sign up schedule online.
3. Only owners/lessees are to attend except where that person is under the age of sixteen. Those under the age of 16 may be accompanied by one adult chaperone.
4. Owners, lessees, and adult chaperones of minors are not attend if they or anyone they have had contact with has experienced symptoms of CoVid within the last 15 days.
5. Owners, lessees and adult chaperones of minors are not to attend if they or anyone they have had contact with has travelled outside of Ontario in the last 15 days.
6. Owners/lessees/chaperones must practice social distancing while on the premises.

7. Given that training is legally classified as an agricultural activity and to ensure the safety of owners/lessees, stable owner/operators may conduct training sessions to an owner/lessee during their scheduled visit.
8. Stable owners/operators retain the right to bar anyone from their premises for the duration of the state of the emergency due to failure to adhere to the CoVid protocol.

I thank you in advance for your assistance in this matter and I look forward to engaging with you further on this matter

Yours very truly,

D. Sid Freeman

CC: Tara Barry, Chief of Staff to the Minister of Agriculture, Food and Affairs