

Date: April 14, 2014

Donna Wales
 Invasive Species Program/Policy Advisor
 Biodiversity Policy Section
 Ontario Ministry of Natural Resources
 300 Water Street, 5th Floor, North
 Peterborough, Ontario K9J 8M5

Subject: Bill 167, Invasive Species Act, First Reading Response

Dear Ms. Wales:

I am writing to you on behalf of the nursery and landscape sector in response to Bill 167, Invasive Species Act. While we support the management of invasive species, we stress that in both the discussion paper (#011-9780) and the Invasive Species Act, 2014 (the “Act”), serious gaps have been identified that could severely and negatively impact the sustainability of the nursery and landscape sector.

The Canadian ornamental horticulture industry contributes over 14.6 billion dollars in sales to Canada’s economy and provides over 130,000 full time jobs (and several hundred thousand seasonal jobs). Ornamentals beautify our landscapes, foster sustainable ecosystems, enhance energy conservation, reduce our carbon footprint, contribute to human health, provide employment, and create wealth for Canadians. Ornamentals are the only products of Canadian agriculture on which GST and provincial sales taxes are collected, contributing an estimated \$850 million per year to governments’ budgets. With low net operating margins and the economic downturn, the nursery and floriculture sector is especially vulnerable to new legislation that has the ability to negatively impact sales and cost of production. The sector is very concerned about the potential ramifications of Bill 167 on their core business. Our comments are detailed in the table below. We look forward to working with your Ministry to shape the regulatory framework for Invasive Species in a way that promotes the sustainability of the green sector.

Designation (Listing) of Invasive Species		ISA, Section 3 (1)
Support	<ul style="list-style-type: none"> We support the fact that only species that are prescribed under the Act are to be regulated 	
Concern	<ul style="list-style-type: none"> Some organizations are asking for restrictions on new plants that are lacking scientific assessments if MNR deems them a potential risk. 	
Solution	<ul style="list-style-type: none"> We ask that there be exceptions for certified importers and researchers to allow for adequate assessments to be performed. New plants (and cultivars) requested by our sector require a rigorous Pest Risk 	

Analysis (PRA) and/or Post-Entry Quarantine by the Canadian Food Inspection Agency. Coordinating efforts between USA and Canada further strengthen the protection of our ecology through strict import restrictions.

Designation (Listing) of Invasive Species		ISA, Section 4 (2)
Support	<ul style="list-style-type: none"> We support the two risk categories (significant and moderate), particularly with respect to moderate threat species that will be allowed to be grown, sold and planted in residential and municipal areas. We support the exclusion of a safe/allowable list 	
Concern	<ul style="list-style-type: none"> The development of a safe/allowed species list discourages the discovery and investigation of new, potentially economically and environmentally rewarding species. 	
Solution	<ul style="list-style-type: none"> We request that future regulations do not include allowable plant lists, as they are extremely limiting and complex to manage. 	
Designation (Listing) of Invasive Species		ISA, Section 4 (3)
Support	<ul style="list-style-type: none"> The decision making process for the development of serious threat and moderate threat invasive species is critical We support the inclusion of economic impact evaluations, both for protection and environmental management costs, <u>as well as the specific impacts on industry</u> We support the use of science-based risk assessments 	
Concern	<ul style="list-style-type: none"> There is concern for how the prioritization steps will be completed We are concerned about the use of lists and rankings provided by other agencies, as the criteria will be inconsistent. We question: <ul style="list-style-type: none"> whose opinions will be considered and incorporated into decisions what information will be included and from what sources the timeline for these lists to be created assurance that stakeholders will have an opportunity to be an active participant in the evaluation process It is not clear how plant cultivars will be handled. Several states in the USA are experiencing challenges with this issue There is no process defined for the removal of plants from the prescribed lists. 	
Solution	<ul style="list-style-type: none"> Create a panel with scientists and representatives (we are requesting to participate) of key economic and environmental stakeholders who can evaluate the evidence in a scientific and consistent manner. History has shown that new legislation will be more successfully implemented when all stakeholders are involved in its development. Consider what Pennsylvania and New York City are doing, and the challenges that Connecticut faces. Consider the difficulty/ease of eradication when determining threat level Consider factors that may impact the invasiveness of a species, including presence of natural vectors/carriers, GMOs, etc. Flexibility: If there is new scientific evidence, there needs to be a process to appeal listings, and make changes to the lists. Provide a mechanism for exceptions if new technologies or processes decrease the risk of importing an invasive species. For example, if an imported plant is a potential carrier for an invasive species, there may be technologies for propagation that preclude the host acting as a carrier, making that plant safe/allowable 	

Prevention		ISA, Section 5 (1)
Support	<ul style="list-style-type: none"> We support prevention through early detection and the development of rapid responses to manage new threats 	
Concern	<ul style="list-style-type: none"> We question the ability of this Act to provide a framework that includes “mechanisms for detecting the appearance of invasive species”. 	
Solution	<ul style="list-style-type: none"> Increased investment for research, including Best Management Practices, standardized risk assessments, and eradication methods. Enhanced education programs, for stakeholders and youth Increased coordination with other agencies and nations. 	
Enforcement/Penalties		ISA, Section 10 (2)e ISA, Section 22 (1,2) ISA, Section 30 ISA, Section 44
Support	<ul style="list-style-type: none"> We support the need for penalties when there is a lack of compliance 	
Concern	<ul style="list-style-type: none"> We disagree with the focus on heavy penalties as a tool for prevention. The Act is extraordinarily far-reaching and punitive, as it includes securities (Section 10 (2)e), ability to make orders for species that are not prescribed (Section 22 (1)a), liability for incurred expenses (Section 30), loss of revenue/income, and significant fines (Section 44). Fines are at least double that outlined in other Acts, e.g. Canada Fisheries Act The execution of such penalties has the ability to put horticultural operations out of business and negatively impact Ontario’s economy The Act appears to be deliberately vague regarding the scope of powers of the MNR in managing potential and real threats. 	
Solution	<ul style="list-style-type: none"> We support the use of a compliance policy approach, similar to the Ontario Ministry of Environment’s (Applying Abatement and Enforcement Tools, May 2007). The ‘Informed Judgement Matrix’ encourages the consideration of compliance history, case specific details, and environmental/economic risk before the application of strict penalties. Education and abatement are important components of this approach. Consider a tiered system of fines similar to that of the Canada Fisheries Act (\$15,000 individual, \$75,000 for small revenue corporation, and \$500,000 for large revenue corporation for first offence). Consider the inclusion of a relief clause for situations where the minimum fine would cause undue financial hardship. Remove the ability to order securities. Clearly define the role of Enforcement Officers, and who can act as an Enforcement Officer. We strongly request that the extent of powers and process to be outlined, clarified, and developed with the collaboration of other agencies and stakeholders. 	

Thank you for inviting our feedback and considering our comments. We reiterate our request for stakeholder consultation through the process of generating a priority listing and the designation of species to the serious and moderate threat categories. We ask you to enhance the coordination of efforts among CFIA, CBSA, OMAF&MRA, and other stakeholder agencies, and request that the roles and process for collaborative efforts be defined. We continue to request stakeholder consultation and involvement but to date, we have had no response other than the recommendation to create a blog for commentary (February 26, 2014). We continue to

support measures that reduce the negative impact of invasive species but within the context of a responsible, science-based framework that clearly defines roles of stakeholders.

Sincerely,

A handwritten signature in black ink that reads "Tony DiGiovanni". The signature is written in a cursive style with a large, looped initial "T".

Tony DiGiovanni
Executive Director

Cc: Landscape Ontario Growers' Industry Sectors Group Board of Directors