

**BILL C-50: AN ACT TO AMEND THE CRIMINAL
CODE IN RESPECT OF CRUELTY TO ANIMALS**

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LEGISLATIVE HISTORY OF BILL C-50

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 16 May 2005

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

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First Reading:

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Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-50: AN ACT TO AMEND THE CRIMINAL
CODE IN RESPECT OF CRUELTY TO ANIMALS*

BACKGROUND

A. General

Bill C-50, An Act to amend the Criminal Code in respect of cruelty to animals, was introduced in the House of Commons on 16 May 2005. Its intention is to target those who knowingly or recklessly cause unnecessary pain, suffering or injury to an animal or cause pain or injury through criminally negligent conduct. The bill does this by proposing a new Part V.1 of the *Criminal Code* to consolidate animal cruelty offences and increase maximum penalties. The changes to the *Criminal Code* will mean that animal cruelty offences are no longer classified as property crimes. Animals will be treated as creatures that deserve protection in their own right because of their capacity to feel pain and suffer.

The changes that Bill C-50 introduces to current *Criminal Code* provisions will:

- Move animals out of the property part of the Code and into a new part created just for animal cruelty offences;
- Make it illegal to brutally or viciously kill animals;
- Raise the penalty for intentional cruelty to a maximum of five years' imprisonment, up from the current six-month penalty;
- Give judges the authority to raise the fine for summary convictions to \$10,000 from the current maximum fine of \$2,000;

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

- Allow crimes of killing, harming or neglecting any species of animal to be charged as an indictable offence or punished by summary conviction. In the current *Criminal Code*, only crimes against cattle are considered an indictable offence carrying a maximum prison term of five years. Crimes against all other animals are currently punishable by summary conviction, which carries a maximum prison term of six months;
- Allow for a lifetime prohibition on future animal ownership (up from the current maximum of two years) and a minimum five-year prohibition for second or subsequent offences; and
- Allow judges to order anyone convicted of cruelty to animals to pay restitution (such as veterinary bills and shelter costs) to the animal welfare organization that subsequently cared for the animal(s).

B. Cruelty to Animals Provisions in Canada

1. The *Criminal Code*

The current cruelty to animals sections in the *Criminal Code* were originally enacted in 1892, with minor revisions in the 1950s. Sections 444 to 447 of the *Criminal Code* deal with the mistreatment of animals. These sections make it an offence to:

- Wilfully cause or permit to be caused unnecessary pain, suffering or injury to an animal or a bird;
- Neglect to provide a domestic animal or bird or an animal or bird in captivity with adequate food, water, shelter or care;
- Wilfully and without lawful excuse kill, maim, wound, poison or injure dogs, birds or animals that are not cattle and are kept for a lawful purpose;
- Wilfully kill, maim, wound, poison or injure cattle; and
- Engage in various specific acts, such as baiting an animal, participating in animal fighting, or causing damage or injury to an animal by transporting it in an unsafe manner.

Offences against animals fall into two categories: intentional and malicious hurting or killing of an animal either generally or in specific ways that are deemed to be cruel; and neglect in the provision of necessary food, water, shelter or care. In either case, the animal suffers needlessly and so both types of offences are illegal.

Although the *Criminal Code* prohibits specific acts that are deemed to be cruel, the catch-all offence prohibits causing “unnecessary” pain, suffering or injury to an animal. “Unnecessary” is not defined in the *Criminal Code* but courts have held that there must be a legitimate purpose motivating the causing of injury or suffering; even within that context, there is an obligation to avoid inflicting pain, suffering or injury that is not inevitable, taking into account the circumstances such as the objective, whether there were alternative means available that would have caused less pain and suffering, and the accessibility of those means.⁽¹⁾ Thus, humans have a lawful excuse to kill animals for a legitimate purpose, but when they do so, they must use methods and equipment that avoid causing unnecessary pain, suffering or injury.

It is a defence to any of the offences against animals (except keeping a cockpit) that the accused acted with legal justification or excuse and with “colour of right.”⁽²⁾ What constitutes a sufficient excuse or justification has to be decided on the facts of each case. The term “colour of right” means an honest belief in a state of facts which, if true, would be a legal justification or excuse. For example, it should be justified to kill an animal that is attacking or threatening to attack another animal, but an animal that is not a threat should be left alone. Statutory authorization also constitutes legal justification, so, for example, it is not an offence to kill an animal in accordance with provincial hunting regulations.

The current anti-cruelty provisions are based on a blending of two separate principles: that animals should be protected from injury or death because of their status as property to their owners; and that animals should be protected from unnecessary cruelty in their own right because they have the capacity to suffer. The first principle is reflected in the fact that the provisions are located in Part XI of the Code, “Wilful and Forbidden Acts in Respect of Certain Property.” Phrases such as “domestic animal” and animals that “are kept for a lawful purpose” indicate that the *Criminal Code* is primarily concerned with those animals in which human beings have a particular interest as property. At the same time, the second principle is evident in that certain of the prohibited acts have nothing to do with protecting an owner’s proprietary interests. Thus, subsection 446(1)(a) makes it an offence for an owner to permit unnecessary pain, suffering or injury from being inflicted upon his or her own animal, thereby protecting the animal’s own interest in being spared from harm.

(1) *R. v. Menard* (1978), 4 C.R. (3d) 333, 43 C.C.C. (2d) 458 (Que. C.A.).

(2) *Criminal Code*, s. 429(2).

Apart from the offence of injuring or endangering cattle, all other offences are summary conviction matters that carry a maximum penalty of six months' imprisonment or a \$2,000 fine, or both.

2. The Impetus for Change

Despite a series of amendments over the years, the offences relating to cruelty to animals have not changed significantly since the first *Criminal Code* was codified in 1892. In response to the dissatisfaction with the provisions expressed by many groups and individuals, in September 1998 the Department of Justice published a consultation paper entitled *Crimes Against Animals*.⁽³⁾ One of the reasons for the department's action was "mounting scientific evidence of a link between animal abuse and domestic violence and violence against people generally."⁽⁴⁾

The consultation paper pointed out, however, that the *Criminal Code* sees animals, at least in part, as property, and offences against them are largely treated as property offences. Because of the emphasis on property, the paper said that critics have pointed out that the courts are inclined to look for a direct harm to human interests, rather than looking at the harm to the animal; the result is quite lenient sentences in many cases. According to the consultation paper, however, a modernized animal abuse law could both make it easier to prosecute animal abuse and send a message to those involved in the criminal justice system that crimes against animals should be treated more seriously. It could function as a more effective deterrent to morally reprehensible behaviour. This behaviour, the paper affirmed, threatens not only the welfare of animals, but also the moral and physical welfare of society at large, since intentional cruelty can be an indicator of the potential for increasing violence and dangerousness.

The consultation paper highlighted another criticism of the current law, which is that it is not consistent and contains a number of gaps. The *Criminal Code* spreads the offences relating to animals across four sections and draws distinctions between different types of animals. In particular, the Code provides a separate section for injuring or endangering cattle, with such acts carrying a much stiffer maximum penalty than for the same acts in respect of all other animals. Another example is that the law prohibits all activities surrounding the release of

(3) Available on-line at the Department of Justice Web site (<http://canada.justice.gc.ca/en/cons/caa/>).

(4) Covering letter to *Crimes Against Animals, A Consultation Paper*, Department of Justice, September 1998.

a captive bird for the purpose of being shot at after it is liberated (subsection 446(1)(f)), even though this is something to which all types of animals can be subjected. To remedy this, there could be a consolidation of provisions that would afford the same protection to all animals.

The paper pointed to another concern, which is that the current provisions fail to reflect adequately the seriousness of the crimes. Critics of the current law have said that it needs to provide penalties that present an effective deterrent to the mistreatment of animals, provide an adequate mechanism for identifying and potentially rehabilitating violent offenders, and reflect society's disapproval of such acts. The current summary conviction procedure is felt by some to be inadequate for the more serious cases of intentional animal cruelty and torture. If animal cruelty were a hybrid offence, the Crown would have more flexibility in dealing with charges.

In addition to sentences of imprisonment and fines, the current law allows the court to prohibit a convicted offender from owning or having care and custody of animals for a maximum of two years. Some have argued, however, that a reformed law should authorize the courts to prohibit convicted offenders from possessing any animals for longer periods of time, perhaps even permanently.

A further concern raised in the consultation paper is that in many cases of animal abuse, a humane society will seize the animal from the custody of the accused if treatment is necessary. The cost of food, boarding and veterinary care can be considerable. There is currently no means of ordering an offender to pay for these costs. Such a measure would be another means of holding offenders responsible for the consequences of their actions, while at the same time it would help to ensure that humane societies recoup sufficient funds to be able to continue their work.

3. Bill C-17

In response to the call for more effective criminal legislation to deal with cases of cruelty to animals, proposed amendments to the *Criminal Code* were introduced in Parliament in December 1999 as Bill C-17, An Act to amend the Criminal Code (cruelty to animals, disarming a peace officer and other amendments) and the Firearms Act (technical amendments). This bill died on the *Order Paper* when the election was called in October 2000.

Bill C-17 would have moved animals out of the property section of the *Criminal Code* (Part XI – Wilful and Forbidden Acts in Respect of Certain Property) and into a new Part V, which would have had the title “Sexual Offences, Public Morals, Disorderly Conduct and Cruelty to Animals.” Thus, animals would no longer be regarded essentially as property but, rather, as beings that feel pain. This view was confirmed in the definition of an “animal” as “a vertebrate, other than a human being, and any other animal that has the capacity to feel pain.” It would also have made it illegal to brutally or viciously kill animals, increased penalties for animal cruelty and neglect, allowed judges to order anyone convicted under the law to pay restitution to the animal welfare organization that cares for the animal(s), and allowed judges to ban those convicted of animal cruelty from owning animals for any length of time.

There was opposition, however, from various farming, hunting and angling groups that felt the changes would put them at risk of prosecution for carrying out legitimate and lawful activities. This concern appeared to stem from the potential for differing opinions on what constituted the killing of an animal “brutally or viciously.” Another concern was that the rights of property ownership would no longer be available. In response, the Department of Justice stated that the amendments would make no changes to the way the law applies to currently lawful activities involving animals.

4. Bill C-15 and Bill C-15B

Following the 2000 election, an omnibus bill – Bill C-15 – was introduced on 14 March 2001. This bill included amendments to the cruelty to animals sections of the *Criminal Code* that were largely similar to those introduced in Bill C-17, save that there would be a new Part V.1 (“Cruelty to Animals”) in the *Criminal Code*. The House of Commons passed a motion on 26 September 2001 directing the Standing Committee on Justice and Human Rights to split Bill C-15 into two separate bills. The bill was split and Bill C-15B became An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act.

Hearings on Bill C-15B began before the Standing Committee on Justice and Human Rights on 16 October 2001. The committee heard from such groups as the Fur Institute of Canada and the Canadian Cattlemen’s Association who expressed concern that the bill would threaten their industries. There was also concern over the possibility of frivolous lawsuits under the new bill. The bill was subsequently amended to ensure that the principles of common law that render any circumstance a justification or excuse for an act or a defence to a charge would continue to apply to offences against animals in the new Part V.1 of the *Criminal Code*.

Bill C-15B passed Third Reading in the House of Commons and First Reading in the Senate on 4 June 2002. The bill also passed Second Reading in the Senate on 13 June 2002, but did not proceed beyond the Legal and Constitutional Affairs Committee of the Senate before Parliament was prorogued.

5. Bill C-10 and Bill C-10B

On 9 October 2002, Bill C-15B was reintroduced in Parliament as Bill C-10. That same day, the new legislation – which read exactly like its predecessor – passed First, Second and Third Reading in the House of Commons and, on 10 October 2002, passed First Reading in the Senate. On 20 November 2002, Bill C-10 passed Second Reading in the Senate. It was referred to the Legal and Constitutional Affairs Committee, which was also ordered to split the bill. The section pertaining to the *Firearms Act* became Bill C-10A, while the part pertaining to animal cruelty became Bill C-10B, An Act to amend the Criminal Code (cruelty to animals).

On 29 May 2003, Bill C-10B passed Third Reading in the Senate, after senators approved a number of amendments to the legislation. These amendments included changing the definition of the term “animal” to a “vertebrate, other than a human being” and adding a new provision that would give special treatment to traditional Aboriginal trapping, hunting and harvesting practices. Bill C-10B was then sent back to the House of Commons for a vote on the amendments. The bill was sent between the two Houses of Parliament until it died on the *Order Paper* when Parliament prorogued on 12 November 2003.

6. Bill C-22

When Parliament resumed in the spring of 2004, Bill C-10B was reintroduced as Bill C-22. It passed First, Second and Third Reading in the House of Commons on 8 March 2004, then passed First Reading in the Senate on 9 March 2004. Second Reading of Bill C-22 took place on 20 April 2004, when the bill was sent to the Legal and Constitutional Affairs Committee. The bill had not yet been discussed in committee when Parliament was dissolved on 23 May 2004.

While the provisions in Bill C-22 were largely similar to those proposed in earlier versions of the bill, two changes were made. One change was that the term “animal” was now defined to mean “a vertebrate, other than a human being” (as in the Senate amendment to

Bill C-10B). This removed any reference to any other animal that has the capacity to feel pain. The other change was that specific reference was now made to the defences set out in subsection 429(2) of the *Criminal Code*. The bill clarified that these defences would apply to any offence related to cruelty to animals.

Concerns were raised by some that there were no clear guarantees to protect traditional Aboriginal hunting, fishing and trapping rights. It was felt, therefore, that Bill C-22 had the potential to make criminals out of Aboriginal people who follow a way of life that is central to their identity.⁽⁵⁾ In addition, there was a fear that animal rights groups would use a new law on animal cruelty to further their goals, described as the eventual ban on the consumptive use of animals, the challenging of legitimate animal use practices and the setting of new legal precedents.⁽⁶⁾

C. Laws in Other Countries on Animal Cruelty

1. England and Wales

The current law on animal welfare in England and Wales is contained in over 20 pieces of legislation. The key piece of legislation is the *Protection of Animals Act 1911*. This statute sets the standard below which conduct towards domestic and captive animals becomes unlawful, by defining an offence of cruelty to these categories of animal. The offence of cruelty is widely drawn; it applies to all acts done in relation to domestic and captive animals, other than those carried out lawfully under the *Animals (Scientific Procedures) Act 1986*. The law regulating people's conduct towards animals remained virtually unchanged until the introduction of the *Agriculture (Miscellaneous Provisions) Act 1968*. This legislation was largely directed towards farmed animals and focussed, for the first time, on the question of their welfare – going beyond defining a standard below which conduct must not fall, to defining how animals must be cared for. The *Agriculture (Miscellaneous Provisions) Act 1968* was the first legislation to use the term “welfare” in relation to animals; it creates an offence of causing unnecessary pain or distress to livestock, or knowingly permitting such pain or distress to be caused.

(5) Senator Charlie Watt, *National Post*, 30 October 2004, p. A23.

(6) Dr. Bessie Borwein, *National Post*, 6 October 2004, p. A19.

In January 2002, the Department for Environment, Food and Rural Affairs began a public consultation on what people would like to see in 21st-century animal welfare legislation. The result of this consultation was the draft Animal Welfare Bill,⁽⁷⁾ which was published on 14 July 2004. The draft bill is intended to address the current lack of legal protection for the welfare of companion and kept animals, including farmed animals. It is intended to re-enact the substance of the cruelty offence set out in the 1911 Act, but also to introduce a new offence of failing to take reasonable steps to ensure an animal's welfare. The key purpose of this new welfare offence is to enable action to be taken about an animal's welfare before suffering has occurred. Currently, companion and kept animals are protected only by the cruelty offence in the 1911 Act, which requires evidence of unnecessary suffering before action can be taken against an offender.

The bill affords protection to vertebrate animals other than human beings, but the categories of animals that are protected under it depend upon the offence in question. The cruelty offence can apply to any animal. The draft bill would make it an offence to act or fail to act and thereby cause an animal to suffer. The suffering must be considered "unnecessary," meaning it could reasonably have been avoided or reduced or was not for a legitimate purpose. Operating on an animal without due care and humanity, arranging an animal fight, or poisoning an animal are also made offences.

The bill would also make it an offence to fail to take reasonable steps to ensure an animal's welfare, but this applies only in respect of animals that are owned or for which someone is responsible or in charge. An animal's welfare is taken to consist of the meeting of its needs in an appropriate manner, and those needs are taken to include:

- The need for adequate food and water at appropriate intervals;
- The need for a suitable environment in which to live;
- The need to be able to exhibit normal patterns of behaviour;
- Any need to be housed with, or apart from, others of its own or other species; and
- The need for appropriate protection from, and diagnosis and treatment of, pain, injury and disease.

(7) Available on-line at: <http://www.archive2.official-documents.co.uk/document/cm62/6252/6252.pdf>.

Provision is made for codes of practice to be issued to provide practical guidance in respect of the Act. Extensive powers are given to seize and care for animals in distress. The bill, however, does not extend to scientific procedures involving animals, which are carried out under the *Animals (Scientific Procedures) Act 1986*. Nor is the bill intended to apply to wild animals.

Punishment for any of the offences outlined above can lead to imprisonment for up to 51 weeks and/or to a fine. In addition, the animal in question may be taken away from its owner and the owner may be disqualified from keeping any animals indefinitely. Failure to make either kind of order must be explained in open court. If an animal is seized, the person subject to the disqualification may be ordered to pay any reasonable expenses.

2. United States

In the United States, animal cruelty legislation is enacted by the individual states. One example of such legislation is that found in New York State's Agriculture and Markets Law, Chapter 69 of the Consolidated Laws, sections 332-379.⁽⁸⁾ In this statute, "animal" includes every living being, except a human being. A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, or deprives any animal of necessary sustenance, food or drink, is guilty of a misdemeanour, punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both.

Exclusions from criminal liability include properly conducted scientific tests, experiments or investigations, involving the use of living animals approved by the state commissioner of health. A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. Here, "aggravated cruelty" means conduct which: (i) is intended to cause extreme physical pain; or (ii) is carried out in an especially depraved or sadistic manner. Aggravated cruelty to animals is a felony, which may be punished with up to two years' imprisonment. It is not considered an act of aggravated cruelty to engage in lawful hunting, trapping or fishing.

(8) Available on-line at: http://www.animallaw.info/statutes/stusnyag_mkts332_379.htm.

3. New Zealand

The *Animal Welfare Act 1999*⁽⁹⁾ governs the welfare of animals in New Zealand. It replaced the *Animals Protection Act 1960* and took effect on 1 January 2000. The range of animals protected by legislation has been widened to include any live member of the animal kingdom that is a mammal, a bird, a reptile, an amphibian, a fish, and any octopus, squid, crab, lobster, or crayfish. It also includes any mammalian fetus or any avian or reptilian pre-hatched young in the last half of its period of gestation or development. It excludes human beings. The Act allows the Minister to appoint approved organizations to enforce the legislation and destroy, sell or rehouse animals that are given into their care. Inspectors are appointed on the recommendation of an approved organization. Under the Act, the Royal New Zealand Society for the Prevention of Cruelty to Animals is already deemed to be an approved organization.

While the statute still contains penalties for the ill-treatment of animals, there is a greater emphasis on prevention. It requires owners of animals, and persons in charge of them, to attend properly to the welfare of those animals. This can be done by ensuring that an animal's physical, health, and behavioural needs are met by:

- Providing it with proper and sufficient food and water;
- Providing it with adequate shelter;
- Providing it with the opportunity to display normal patterns of behaviour;
- Handling it physically in a way that minimizes the likelihood of unreasonable or unnecessary pain or distress; and
- Protecting it from, and rapidly diagnosing, any significant injury or disease.

These obligations are qualified, however, as the needs in each individual case are assessed according to what is appropriate to the species, environment and circumstances of an animal.

Detailed minimum standards are contained in codes of welfare. The codes developed by the National Animal Welfare Advisory Committee specify minimum standards and recommendations for best practice. While breach of a code will not constitute an offence in itself, it may lead to legal action for breaches of the *Animal Welfare Act 1999*.

(9) Available on-line at: http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes.

It is an offence to kill an animal in a manner that causes unreasonable or unnecessary pain or distress. It is a defence in any prosecution for an offence against the humane killing provision that all reasonable steps were taken not to commit a breach of the obligation, or that the offence took place in an emergency situation or that the minimum standards in a relevant code of welfare were equalled or exceeded. Wilful ill-treatment of an animal is also an offence. An individual committing this offence is liable on conviction on indictment to imprisonment for three years or to a fine of up to \$50,000 or to both.

While the *Animal Welfare Act 1999* does not make it unlawful to carry out animal pest control, or to hunt or fish for animals in the wild, ill-treatment of animals in the wild outside the hunting, fishing or pest control context would be in breach of the Act. The Act also provides for restrictions on the types of traps and devices used in trapping and for other purposes, and for animals caught alive to be killed humanely. In addition, the Act contains provisions on surgical procedures on animals, animal exports, and the use of animals in research, testing and teaching.

The statute sets out defences to prosecutions as well. Thus, while there is an obligation to meet the physical, health and behavioural needs of an animal, this is to be done “in accordance with good practice and scientific knowledge.” Therefore, the first line of defence is to assert that there is no breach of the basic obligation because the person has acted in accordance with good practice and scientific knowledge. In addition, some of the offences state that it is committed if something is done “without reasonable excuse.” Here, the prosecution would have to establish a *prima facie* case that the obligation has been breached. The defendant then can prove that he or she had a reasonable excuse in the circumstances.

4. Australia

In Australia, cruelty to animals legislation is enacted by the states. In Victoria, for example, the relevant legislation is the *Prevention of Cruelty to Animals Act 1986*.⁽¹⁰⁾ This Act incorporated many changes to the *Protection of Animals Act 1966* that had been suggested by the Animal Welfare Advisory Committee. The Act defines an animal as a live member of a vertebrate species, including any fish, amphibian, reptile, bird, mammal (other than a human being), or a live crustacean.

(10) Available on-line at:

[http://www.dpi.vic.gov.au/dpi/nrenfa.nsf/9e58661e880ba9e44a256c640023eb2e/b1a12f014176a69dca256f34002535c8/\\$FILE/Prevention%20of%20Cruelty%20to%20Animals%20Act%20V61%20Oct%2004.pdf](http://www.dpi.vic.gov.au/dpi/nrenfa.nsf/9e58661e880ba9e44a256c640023eb2e/b1a12f014176a69dca256f34002535c8/$FILE/Prevention%20of%20Cruelty%20to%20Animals%20Act%20V61%20Oct%2004.pdf).

Part 2 of the Act is entitled “Protection of Animals.” Section 9 of this Part makes it an offence to treat an animal with cruelty. This section has many aspects in common with the proposed provisions found in Bill C-50. Some different aspects of cruelty, however, are enumerated, such as abandoning an animal of a species usually kept in a state of confinement or for a domestic purpose, or using spurs with sharpened rowels on an animal. Breach of this provision can lead to six months’ imprisonment. Committing an act of cruelty that results in the death or serious disablement of an animal can lead to twelve months’ imprisonment. In addition, a court may disqualify the offender from having custody of an animal for up to five years. It is a defence to an accusation of cruelty if the person acted reasonably, or reasonably omitted to do an act, in defending himself or herself or any other person against an animal or against any threat of attack by an animal.

The statute also provides for the appointment of inspectors. By agreement with the Royal Society for the Prevention of Cruelty to Animals (RSPCA), the Department of Primary Industries limits its inspection activities to farm animals generally and refers domestic animal cases to the RSPCA. Part 3 of the *Prevention of Cruelty to Animals Act 1986* is designed to ensure that animals used in research are treated as humanely as possible. The Act requires various licences to be obtained before any experiments on animals may be carried out.

The Act also makes it an offence to cause animals to fight, or to bait animals or to use them as lures. Other offences include the trap-shooting of birds and the use of certain leghold traps. Contravention of these provisions may lead to imprisonment for up to one year.

DESCRIPTION AND ANALYSIS

Bill C-50 consists of four clauses. The following discussion highlights selected aspects of the bill and does not review every clause.

A. Clause 1: Part V.1 of the *Criminal Code* – Cruelty to Animals

Clause 1 creates a new Part V.1 of the *Criminal Code* entitled “Cruelty to Animals.” The bill therefore proposes to move the current provisions relating to cruelty to animals from Part XI, which is entitled “Wilful and Forbidden Acts in Respect of Certain Property,” to the newly created Part V.1. This change is significant because it would change the

way the *Criminal Code* regards animals, in that the cruelty to animals offences would no longer be treated, in large part, as property crimes and animals would be regarded essentially as beings that feel pain.⁽¹¹⁾ This clarifies the policy of the law: because of their capacity to feel pain, animals should be protected from intentional cruelty, regardless of whether they are property or not. Protecting animals, even in part, by virtue of their status as property has been criticized on the grounds this “suggests that the law is less concerned with protecting animals as beings capable of suffering than with the protection of human proprietary interests, and does not satisfactorily convey a moral obligation to avoid inflicting unnecessary harm.”⁽¹²⁾ In addition, it is argued that this approach “fails to convey the seriousness of the crimes to the various players in the criminal justice system, including prosecutors and judges.”⁽¹³⁾

1. Section 182.1: Definition

New *Criminal Code* section 182.1 defines the term “animal” for the purposes of Part V.1 as a “vertebrate, other than a human being.” This is another example of a proposed change in how the *Criminal Code* views animals, so that they will be seen less as property and more as beings with the capacity to feel pain. In addition, all animals that satisfy the definition will be protected, whereas the current provisions limit their application, in some cases, to certain types of animals (for example, cattle and domesticated animals).

2. Section 182.2: Killing or Harming Animals

Proposed section 182.2(1) of the *Criminal Code* sets out the activities in relation to animals that will attract criminal liability, if committed wilfully or recklessly:

(11) Not all of the current provisions have as a purpose the protection of proprietary interests. For example, section 446(1)(a) provides protection to all animals, even though there may be no property relationship with a person.

(12) Department of Justice, *Crimes Against Animals, A Consultation Paper*, “Part Three: Reconsidering the Criminal Law,” September 1998.

(13) *Ibid.*

- Causing or, being the owner, permitting to be caused unnecessary pain, suffering or injury to an animal (section 182.2(1)(a));⁽¹⁴⁾
- Killing an animal or, being the owner, permitting an animal to be killed, brutally or viciously, regardless of whether the animal dies immediately (section 182.2(1)(b));
- Killing an animal without lawful excuse (section 182.2(1)(c));⁽¹⁵⁾
- Poisoning an animal, placing poison so that it may be easily consumed by an animal, administering an injurious drug or substance to an animal or, in the case of an owner, permitting any of these things to be done. The offence would apply only if the person acted without lawful excuse (section 182.2(1)(d));⁽¹⁶⁾
- Encouraging, promoting, arranging, assisting at or receiving money for the fighting or baiting of animals, including training an animal to fight another animal (section 182.2(1)(e));⁽¹⁷⁾
- Making, maintaining, keeping or allowing to be made, maintained or kept a cockpit or any other arena for the fighting of animals on premises that he or she owns or occupies (section 182.2(1)(f));⁽¹⁸⁾

(14) The current provision is similar and also requires that the person commit the act “wilfully.” See *Criminal Code* section 446(1)(a). Section 446(3) states that “evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it pain, suffering, damage or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering, damage or injury was caused or was permitted to be caused wilfully ...” In addition, section 429(1) states that everyone “who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed ... wilfully to have caused the occurrence of the event.”

(15) Currently, it is an offence to wilfully kill, maim, wound or injure cattle or to wilfully and without lawful excuse kill, maim, wound or injure domestic animals; see *Criminal Code* sections 444 and 445. Section 429(2) states that no one “shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.”

(16) The current provisions are similar and apply when the person does these acts wilfully; see *Criminal Code* sections 444(a) and (b) (cattle), 445(a) and (b) (other animals – kept for a lawful purpose) and 446(1)(e) (domestic animals or animals kept in captivity). The proposed provisions would apply to all animals and would not be limited to specified animals as is now the case. In addition, section 429(1) states that everyone “who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed ... wilfully to have caused the occurrence of the event.”

(17) This is similar to the current provision; see *Criminal Code* section 446(1)(d), which uses the following language: “encourages, aids or assists at the fighting or baiting of animals or birds.”

(18) This is similar to the current provision, which is limited to cockpits. See *Criminal Code* section 447(1).

- Activities relating to the liberation of captive animals for the purpose of being shot at the moment they are liberated (section 182.2(1)(g));⁽¹⁹⁾ and
- Being the owner, occupier or person in charge of any premises, permitting the premises to be used in the course of an activity referred to in paragraph (e) (fighting or baiting) or (g) (liberating a captive animal to be shot) (section 182.2(1)(h)).⁽²⁰⁾

New section 182.2(2) sets out the penalties for the offences outlined above. These are hybrid offences with a maximum punishment of five years' imprisonment when the Crown proceeds by indictment. When the Crown proceeds by way of summary conviction, the maximum penalties are 18 months' imprisonment and/or a fine of not more than \$10,000.

3. Section 182.3: Failing to Provide Adequate Care

New section 182.3 sets out the following series of offences relating to the failure to provide adequate care:

- Negligently causing unnecessary pain, suffering or injury to an animal (section 182.3(1)(a));⁽²¹⁾
- Wilfully or recklessly abandoning an animal or negligently failing to provide suitable and adequate food, water, air, shelter and care for the animal if they are the owner or the person having custody or control of the animal (section 182.3(1)(b));⁽²²⁾ and
- Negligently injuring an animal while it is being conveyed (section 182.3(1)(c)).⁽²³⁾

(19) This is similar to the current provision but is expanded to cover all animals and not only captive birds. See *Criminal Code* section 446(1)(f).

(20) This is similar to the current provision, but that is limited to the activity referred to in paragraph (g). See *Criminal Code* section 446(1)(g).

(21) This offence essentially captures what is in current section 446(3).

(22) This is similar to the current provision, which is limited to domesticated animals or birds or an animal or bird that is in captivity. See *Criminal Code* section 446(1)(c).

(23) This is similar to the current offence, which applies when damage or injury is done "by wilful neglect"; see *Criminal Code* section 446(1)(b). Section 446(3) states that "evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it pain, suffering, damage or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering, damage or injury was caused or was permitted to be caused ... by wilful neglect ..."

New section 182.3(2) defines the term “negligently” for the purposes of subsection 182.3(1) as meaning departing markedly from the standard of care that a reasonable person would use.

New section 182.3(3) sets out the penalties for the offences included in section 182.3(1). Once again these are hybrid offences with a maximum of two years’ imprisonment when the Crown proceeds by indictment. When the Crown proceeds by way of summary conviction, the offender will be liable to imprisonment for up to six months and/or a fine of not more than \$5,000.

4. Section 182.4: Order of Prohibition or Restitution

In addition to any other sentence set out above, section 182.4(1)(a) will allow a court, as it now can, to make an order prohibiting the accused from owning an animal or having custody or control of an animal. A new feature will also allow a court to prohibit the accused from residing in the same premises as an animal. The maximum length of the prohibition is also changed from its current maximum of two years to allow the court to make the prohibition for any period it feels is appropriate and, in the case of second and subsequent offences, for a minimum of five years.⁽²⁴⁾

Proposed section 182.4(1)(b) adds a new feature to the provisions dealing with cruelty to animals by authorizing a court to order, on application by the Attorney General or on its own motion, that the accused pay reasonable costs incurred to take care of an animal that were incurred as a result of the commission of the offence. Payment could be made to any individual or organization that cared for the animal and would include any costs that were readily ascertainable.

Proposed section 182.4(2) provides that a person who contravenes a prohibition order made by the court under section 182.4(1)(a) is guilty of an offence punishable on summary conviction and liable to imprisonment for up to six months and/or a fine of not more than \$2,000.⁽²⁵⁾

Proposed section 182.4(3) makes the general provisions in the *Criminal Code* concerning restitution orders applicable to orders made under section 182.4(1)(b) that an individual pay for the care of an animal.

(24) The current provision is found in the *Criminal Code* section 446(5).

(25) See *Criminal Code* section 787.

5. Section 182.5: Common Law Defences

This section ensures that the defences set out in subsection 429(2) of the *Criminal Code* will apply, to the extent that they are relevant, in respect of proceedings for an offence under the new Part V.1 of the *Criminal Code*. Subsection 429(2) provides that no person shall be convicted of an offence concerning, in part, cruelty to animals, where he proves that he acted with legal justification or excuse and with colour of right.

6. Section 182.6: Aboriginal Rights

This section can be described as a non-derogation clause. It is meant to ensure that nothing in Part V.1 shall be construed so as to abrogate or derogate from the protection provided for existing Aboriginal or treaty rights of the Aboriginal peoples of Canada. These rights are recognized and affirmed in section 35 of the *Constitution Act, 1982*.

7. Section 182.7: Law Enforcement Animals

Proposed section 182.7(2) makes it an offence to wilfully or recklessly poison, injure, or kill a “law enforcement animal” while it is aiding or assisting a peace officer or public officer engaged in the execution of their duties or a person acting in aid of such an officer. A “law enforcement animal” is defined in proposed section 182.7(1) as a dog, a horse or any other animal used by a peace officer or public officer in the execution of their duties. The punishment for this offence is identical to that provided for in section 182.2 – on indictment, a maximum of five years’ imprisonment and on summary conviction, a maximum of 18 months’ imprisonment and/or a \$10,000 fine. In addition to these penalties, a court may order the offender to pay all reasonable costs associated with the loss of or injury to the law enforcement animal as a result of the commission of the offence. These costs must be “readily ascertainable.”

B. Clause 2: Amendment to section 264.1(1)(c) of the *Criminal Code*

Section 264.1(1)(c) of the *Criminal Code* makes it an offence to utter a threat to kill, poison or injure an animal or bird that is the property of any person. Clause 2 of the bill amends this subsection by deleting the reference to “or bird.”

C. Clause 3: Repeal of Current Provisions

Clause 3 repeals the current provisions dealing with cruelty to animals.

D. Clause 4: Coming Into Force

The provisions of the bill will come into force on a day or days to be fixed by order of the Governor in Council.

COMMENTARY

Opinion has been divided with regard to Bill C-50 and to previous versions of the proposed legislation.

The response of groups and individuals seeking increased protection for animals has been generally positive. Bill C-50, for example, is supported by the Canadian Federation of Humane Societies, which has supported all previous incarnations of this bill.⁽²⁶⁾ Liz White of the Animal Alliance of Canada has been quoted as saying of a previous version of Bill C-50: “What this piece of legislation does is elevate the issue in the court’s mind. It signals to judges that this is an issue that should be taken seriously. Whether it filters down to the courts depends largely on the people who take prosecutions to court. But it’s an excellent first step.”⁽²⁷⁾ The Ontario SPCA has said of Bill C-50: “We are encouraged that this bill contains important elements of its predecessors – most recently Bill C-22 – including moving animal cruelty crimes out of the property crimes section of the *Criminal Code* and into their own section, and increasing maximum penalties ... We are hopeful ... that our investigators will then be better equipped with the legal tools they require to charge and prosecute animal abusers.”⁽²⁸⁾

Some groups, however – including farmers and hunters – have been troubled by certain of the new aspects of the cruelty to animals provisions. For example, they were concerned about removing the cruelty provisions from the property sections of the *Criminal Code* and creating a new Part for them. David Borth, General Manager of the B.C. Cattlemen’s

(26) See the Federation’s Web site at: <http://www.cfhs.ca/CriminalCode/index.htm>.

(27) “Animal Rights Activists Applaud Tougher Laws,” *Ottawa Citizen*, 14 March 2001, p. A6.

(28) See the Ontario SPCA Web site at: <http://www.ospca.on.ca/newshound.html#Reintroduction>.

Association, stated: “It’s moving from property rights to almost human rights” and added that “we do have some concern about what this is indicating.”⁽²⁹⁾ A group of hunting and fishing membership associations has written to Minister Cotler, stating their objection to section 182.2(1)(b), which makes it an offence to kill an animal brutally or viciously without defining those terms and without exempting from this offence normal hunting and fishing. The hunting and fishing membership associations fear that the new offence will be used by animal rights activists to bring private prosecutions to harass lawful anglers and hunters.⁽³⁰⁾

When Bill C-17 was before the House of Commons, some people were concerned about the possible applications of the law. Thus, hunters, trappers, farmers and biomedical researchers feared criminal prosecution for certain acts such as branding. Some of these groups had requested that the language in the legislation be clarified.⁽³¹⁾ For example, they were concerned about the possible interpretation that might be given to the phrases “caus[ing] unnecessary pain, suffering or injury” and “brutally or viciously” killing an animal. Bill C-50 is drafted to allow some causing of pain and suffering to animals by including the word “unnecessary,” but this term is always subject to interpretation. This uncertainty led the Canadian Institutes of Health Research and the Natural Sciences and Engineering Research Council to be concerned that a previous version of Bill C-50 could allow animal rights groups to use these undefined terms against scientists who use animals in their research.⁽³²⁾

A measure of disappointment has been expressed that the bills introduced to update the law on animal cruelty do not address factory farm practices such as overcrowded stalls and battery cages. Stephanie Brown, Toronto spokesperson for the Canadian Coalition for Farm Animals, has said: “We are fighting an uphill battle in the animal food production system.”⁽³³⁾

(29) “Cruelty to Animals will bring Tougher Sentences and Heftier Fines,” *Vancouver Sun*, 14 March 2001, p. A4.

(30) A copy of this letter can be found on the Web site of the Hunting for Tomorrow Foundation.
http://www.huntingfortomorrow.com/reports_files/BCWF%20110.pdf.

(31) For an example of concerns that were raised about the application of this legislation, see “Animal Cruelty Law Opens Legal Can of Worms,” *Ottawa Citizen*, 24 March 2000, p. A6.

(32) Anthony Wilson, “Cruelty bill threatens research,” *Capital News*, 15 February 2002, available on-line at: <http://temagami.carleton.ca/jmc/cnews/15022002/n4.shtml>.

(33) Sharda Vaidyanath, “Justice Minister Introduces Bill to Protect Animal Rights – May 31st 2005,” 31 May 2005, available on the Global Action network Web site at:
<http://www.gan.ca/animal+news.en.html?neid=36>.