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# CRIMES AGAINST ANIMALS

## A Consultation Paper

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## CRIMES AGAINST ANIMALS



## INTRODUCTION

When stories of animal abuse and neglect appear in the news, there is always a public outcry and a huge number of letters written to governments, media and other organizations, denouncing the acts and demanding more effective deterrents and punishments. Many people react with concern and even anger, often directed at what they consider the law's inability to deal adequately with conduct that seems obviously wrong. Existing penalties appear to do little to deter people who abuse animals; the result may be a loss of public confidence in the law.

Some argue that one source of the problem may be the way the *Criminal Code* regards animals. Essentially, the Code sees animals as property, and offences involving them are largely treated as property offences. In recent years, many people, including law reform commissions and groups concerned with animal welfare, have argued that this approach is misguided and that the sanctions available are inadequate. Moreover, they point to many American states that have begun to treat animal abuse more seriously and have amended their laws in various ways, including increasing available prison terms, having mandatory minimum sentences for repeat offences, requiring counseling, anger management treatment or community service for convicted abusers, and requiring convicted persons to pay restitution to the humane agency or shelter that cared for the injured animal. Canadian laws in this area, in contrast, have remained largely unchanged since 1892, and the time has come to re-examine the issue.

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, behaviour which threatens not only the welfare of animals, but also the moral and physical welfare of society at large. Intentional cruelty has long been considered by law enforcement experts as an indicator of the potential for increasing violence and dangerousness, and studies have shown that many serial killers and mass murderers have a history of animal abuse (e.g. Kellert and Felthous, 1985). Animal abuse may also be an indicator of other forms of violence in the home, such as abuse of a child, spouse or elderly person (e.g. DeViney, Dickert, & Lockod, 1983). In short, cruelty towards animals is certainly not a trivial issue.

This consultation paper provides an overview of how animals are regarded in our society and in our *Criminal Code*; the third part examines key reform issues and raises specific questions about them.

We would like to hear from you. Your responses to the questions will help us determine what reforms may be necessary to modernize our laws in the area of cruelty to animals to appropriately reflect the views of Canadians.

Please send your comments on the issues raised in the paper by **December 15, 1998** to

CRIMES AGAINST ANIMALS CONSULTATION  
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Department of Justice  
284 Wellington Street, 5th Floor  
Ottawa, Ontario  
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You can also send us your comments by E-Mail. If your comments are sent as attachments, please identify the attached document's

format (i.e. Word 6, WordPerfect 6.1 etc...) in the message area.  
E-Mail Address: [cc.consultations@justice.x400.gc.ca](mailto:cc.consultations@justice.x400.gc.ca)

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## **PART ONE: Animals and Our Society**

Our society clearly does not take a single, consistent approach to the way we regard and treat different animals. Some are adopted into our homes as pets and beloved companions, or as essential helpers for persons with disabilities. Other animals are regarded as sources of food, clothing, or entertainment, or as subjects of scientific research. Some are majestic wild creatures that inspire wonder and respect, while others are seen merely as pests that ought to be eradicated. As well, the same animal might be viewed in completely different ways according to the context.

The treatment of animals is addressed, directly or indirectly, in numerous areas of both federal and provincial law. At the federal level, for instance, there is legislation which sets uniform standards for the care, handling and disposal of animals and for transporting them in and out of Canada. There are regulations that set out the procedures that must be followed when slaughtering animals for food, and others that govern the killing and harvesting of fish and wildlife. Certain laws are intended to protect the health, welfare and living conditions of certain types of animals, while others concern diseases and toxic substances which may harm animals or humans.

Each province has legislation allowing government agencies to take action on behalf of animals that are suffering. There are also laws governing the work of veterinarians, transportation of animals, fur farms, stray animals, livestock and farm animals generally, slaughterhouses, racehorses, dogs, fish, wildlife, and the treatment of animals used in research and experimentation.

In addition to the federal, provincial and territorial statutory provisions, guidelines for research and medical experimentation, developed by the Canadian Council on Animal Care, have been accepted as the standard at many academic, government, and commercial research institutions. Failure to comply with the guidelines can have serious consequences for the funding and continued work of an institution.

Not surprisingly, there is also a broad spectrum of attitudes and opinions in our society about how people should treat animals. Some people view animals as independent beings capable of feeling pain and emotion and therefore worthy of consideration in every way that people are, while others view animals as little more than machines or products to use in any way that benefits humans, regardless of the process. Falling somewhere in between these two extremes is the great majority who generally feel that it is acceptable to use animals in some circumstances and for some purposes, but that every reasonable effort should be made to reduce or eliminate unnecessary animal suffering and pain.

Most Canadians clearly agree that animals, however they are being used, should be treated humanely and protected from intentional or needless cruelty or harm. Every province has animal protection legislation empowering agents to seize and treat animals that are being abused or are in distress, and hundreds of thousands of Canadians support humane societies and their efforts to reduce needless animal suffering. Nonetheless, the issue remains a highly sensitive one which affects a wide range of people, from medical researchers to animals rights advocates, from the food and clothing industries to farmers and Aboriginal groups, and many others, including cultural and religious groups.

The objective of any reform of the Criminal Code in this area would be to find a way to deal

appropriately and effectively with offenders who commit morally reprehensible, criminal acts against animals, while at the same time continuing to recognize that our society considers it acceptable to use animals in various industries and activities.



## **PART TWO: Animals and the *Criminal Code***

The proper aim of the criminal law is to contribute to the maintenance of a just, peaceful and safe society by prohibiting behaviour that causes or threatens to cause serious harm to individuals or society. It is therefore essential to note that the offence of cruelty to animals is not intended to forbid conduct that is socially acceptable or authorized by law. The current provisions do not restrict or otherwise interfere with normal and regulated activities involving animals, such as hunting, fishing, and slaughter for food, and the same would be true of a reformed law. Criminal prohibitions are directed at conduct that falls outside of normally accepted behaviour.

Sections 444 to 447 of the *Criminal Code* (see [Appendix](#)) deal with the mistreatment of animals. These sections describe offences that involve killing, maiming, wounding, injuring or endangering cattle (444); or other animals that are kept for a lawful purpose (445); or more generally causing unnecessary pain, suffering or injury to an animal by any means (446); or causing unnecessary suffering by various specific acts, such as baiting an animal, transporting an animal in an unsafe manner, releasing a bird from captivity for the purpose of being shot, and neglecting to provide adequate food, water, shelter or care (446). Section 447 concerns the keeping of a cockpit.

In principle, 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. Although the two types of crime may clearly be quite different, especially from the perspective of the person involved, the animal suffers needlessly in either case and so both types of offences are illegal.

When we have custody or possession of an animal, particularly a domestic animal, we accept the role of benevolent provider. The animal is dependent on us and requires our assistance to survive. A person who takes on that role is expected to provide what is necessary for a healthy life, and Canadians agree that there should be a penalty for failure to live up to a minimum standard of care for that animal.

Intentional and malicious cruelty, on the other hand, is a different type of offence. For most people, it is difficult if not impossible to imagine how someone could injure or torture an animal for no purpose. Yet it happens all too frequently in Canadian society and is very seldom reported. Because there is a connection between violence toward animals and violence toward people, and because animals don't deserve to be hurt needlessly, this type of conduct must continue to be condemned.

Although the Code prohibits specific acts which 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 which 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. (See the Quebec Court of Appeal's judgment in *R. v. Menard*, 1978.)

It is a defence to any of the offences against animals that the accused acted with legal justification or excuse or with "colour of right." What constitutes a sufficient excuse or justification has to be decided on the facts of each case, and "colour of right" means an honest belief in a state of facts which, if true, would be a legal justification of excuse. For example, it has been held to be justified to kill an animal that is attacking or threatening to attack another animal (*R. v. Fusell*, 1920), but the tracking and killing of a dog that had frightened the accused's sheep without attacking and then left and ceased to pose any danger was not justifiable (*R. v. Etherington*, 1963). Statutory authorization also constitutes legal justification, so it is not an offence for example to kill an animal in accordance with provincial hunting regulations.



### **PART THREE: Reconsidering the Criminal Law**

More and more people believe that animal abuse is not taken seriously enough by those within the criminal justice system and by the law itself, and that the *Criminal Code* is largely ineffective in deterring it. In fact, these offences are rarely prosecuted, and when prosecuted, often do not proceed to trial. Even where there is a conviction, many feel that the sanctions are inadequate. Apart from the offence of injuring or endangering cattle, all other offences are summary conviction matters which carry a maximum penalty of six months' imprisonment or a \$2,000 fine, or both.

This part of the paper looks at several specific criticisms of the law and suggests possible legislative responses.

#### **Offences**

##### *Clarifying underlying principles*

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," along with offences like mischief, arson and interfering with international boundary marks. The wording of the sections is qualified by phrases that suggest a focus on property and protection of proprietary and possessory interests. Phrases such as "domestic animal," "an animal or bird wild by nature that is kept in captivity," or animals that "are kept for a lawful purpose" indicate that the Code is primarily concerned with those animals in which human beings have a particular interest as property. The section on keeping cockpits deals specifically with confiscation of property.

At the same time, the second principle is evident in that certain of the prohibited acts clearly have nothing to do with protecting any of the owner's possessory or proprietary interests. For instance, in addition to prohibiting any person from wilfully inflicting unnecessary harm on an animal that belongs to someone else, paragraph 446(1)(a) forbids an owner to inflict unnecessary pain on his or her own animal. This offence does not protect any of the owner's proprietary interests, but rather protects the animal's own interest in being spared from harm. More importantly, paragraph 446(1)(a) protects "an animal or a bird" without any of the qualification found in the other sections about the animal or bird being owned, kept, possessed or domesticated in any way. It therefore applies to all animals, regardless of the existence of a property relationship with a person.

In recent years, many critics, including law reform commissions and groups concerned with animal welfare, have argued that an approach that protects animals, even in part, by virtue of their status as property is misguided and offensive, 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. They also argue that this approach fails to convey the seriousness of the crimes to the various players in the criminal justice system, including prosecutors and judges. Because of the emphasis on property, 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 most cases.

Calls for reform have therefore urged that the provisions be removed from the part of the Code that deals with property, and that changes should be made to eliminate references to the property status of animals within the cruelty offences. A number of bodies, including the former Law Reform Commission of Canada, have called for the creation of a separate chapter in the Code for crimes against animals. Alternatively, the offences could be moved to a different part of the Code, such as Part II, "Offences Against Public Order," or Part V, "Sexual Offences, Public Morals and Disorderly Conduct."

One objective of a reformed law might therefore be to clarify the basis on which animals are protected. Since this is already an underlying principle, it would not constitute a radical shift in the law, but such an amendment would serve to make clear that this is the primary basis for criminal prohibitions.

Moreover, it would not result in diminished protection of proprietary and possessory interests; the financial loss to the owner if an animal is stolen or killed could be addressed by various other property offences, such as theft or wilful destruction of property.

*QUESTION: Should the criminal law continue to treat animals primarily as property or should the law protect animals from abuse regardless of their status as property?*

### *Eliminating inconsistencies*

Another criticism of the current law is that it contains numerous inconsistencies and gaps. Currently, the offences relating to animals are spread across four sections, with distinctions drawn 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 a captive bird for the purpose of being shot at after it is liberated (446(1)(f)), even though this is something to which all types of animals can be subjected.

As well, section 445 refers to "dogs, birds or animals that are not cattle," while section 446 refers to "animals or birds." Since no one would disagree that dogs and birds are both animals, this language seems unnecessary and confusing. Consistent with the shift in approach from property crime to a direct focus on the mistreatment of animals, it might be possible to consolidate the current sections into one single comprehensive provision that would afford the same protection to all animals.

*QUESTION: Should the Criminal Code provisions on animal abuse be simplified and consolidated? Do you agree that all animals should be protected from all types of abuse identified in the Criminal Code?*

An additional area of concern is section 447, relating to cockpits, which states that the cocks must be seized by the peace officer who discovers them and brought to a justice, who must order that they be destroyed. It may be unnecessary to require that the animals be destroyed if they are healthy and not dangerous to the public. Critics have recommended that the justice be given a power to order that the animals be treated in accordance with the provincial statute on animal protection, which may or may not require euthanasia.

*QUESTION: Should the Criminal Code authorize a justice to order that seized cocks be turned over to the appropriate humane agency for proper disposition and treatment, rather than requiring that they be destroyed?*

## Defences

As noted above, legal justification, excuse and colour of right are specific defences to a charge of animal cruelty. These defences are in the part of the Code that deals with property offences, often require a case-by-case analysis of the particular circumstances, and provide little guidance to the courts to determine what should constitute a sufficient excuse. If the cruelty offences were removed from that part of the Code and the law reformed, it might be appropriate to consider how a new scheme should draw the line between unlawful and unjustified cruelty and the causing of an acceptable level of pain in the course of a legitimate activity.

The objective would be to find a way to allow for sufficient flexibility to forbid all sorts of behaviour that society finds reprehensible while allowing those activities that are sufficiently beneficial to allow for some pain and injury to be caused to the animals involved. Flexibility is most easily achieved by providing general concepts and allowing the courts to decide on the facts of each case. Nonetheless, it might be appropriate for Parliament to provide a greater measure of direction to the courts by defining some terms or setting out certain factors that must be taken into account in balancing the interests of the animal against the objective of the activity and the means used.

It may also be possible to provide greater guidance by specifically listing activities which do not constitute a crime, such as hunting in accordance with regulations or conduct in conformity with accepted animal husbandry or veterinary practices. The problem with this approach is that even within the context of an accepted industry or activity, acts of cruelty can occur. For example, even if a person has a valid hunting licence, it would still constitute cruelty to torture and mutilate an animal that could otherwise have been lawfully shot with a bullet. The law must still have a means of prohibiting unjustifiable cruelty, even within the realm of accepted activities.

*QUESTION: How do you think the law should draw the line between criminal acts against animals and causing justifiable pain and suffering?*

## Penalties and Procedure

In addition to criticisms about how the offences are set out in the Code, another concern is that the current procedures and sanctions fail to reflect adequately the seriousness of the crimes. The law 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.

## *Penalties*

Currently, the law prohibits a broad range of acts, from failing to provide sufficient water to one's pet and causing it to get dehydrated to sadistic acts such as nailing a kitten to the floor, pouring gasoline on it and setting it on fire. All of these crimes, apart from those committed against cattle, are summary conviction offences only. Summary conviction procedure is typically limited to the less-serious offences, and the maximum penalties are six months in prison, a fine of \$2000, or both.

While some cases of animal abuse may in fact be appropriately dealt with as minor summary conviction offences with lesser penalties, many argue that this is clearly inadequate for the more serious cases of intentional animal cruelty and torture. Critics point to other jurisdictions, such as the United States, where many states have felony anti-cruelty provisions which allow for lengthy sentences (in some states as high as five or ten years), to be served in state penitentiaries, rather than local or county prisons. Even in those states that have only a misdemeanor anti-cruelty offence, most have a maximum term of imprisonment of at least one year and fines of at least \$5000.

Critics call for a reformed law that would provide a broad range of criminal sanctions for crimes against animals. This approach could make the offence a hybrid offence, providing the Crown with more flexibility in dealing with charges. In the prosecution of a hybrid offence, the prosecutor can choose to proceed either by summary conviction or by indictment. Generally, for less-serious offences, the prosecutor could continue the current practice of proceeding by summary conviction.

In more serious cases, however, the prosecutor could proceed by way of indictment, which would allow for increased sentences, including the possibility of a prison term of five years, and any fine considered appropriate by the judge. Proceeding by indictment can be a more complicated procedure, though, since the accused has a choice to be tried before a provincial court judge, a judge sitting alone, or a judge and jury. If the accused chooses a trial before a judge sitting alone or a judge and jury, he or she is also entitled to a preliminary inquiry, with accompanying costs and delays.

The special protection given to cattle also extends to procedure and sentencing. Section 444 makes killing, maiming, wounding, poisoning or injuring cattle an indictable offence, and provides for a maximum penalty of "imprisonment for a term not exceeding five years" and with no upper limit on the possible fines. Yet under section 445, the same acts committed against "dogs, birds or animals that are not cattle" may be prosecuted only on summary conviction with lesser penalties as noted above.

The higher penalties for crimes against cattle are based on the fact that, historically, cattle were particularly valuable economically to their owners as property. While it is obviously still the case that cattle are a valuable economic resource to their owners, many other types of animals also provide income to their owners, such as fur-bearing animals and animals used in the entertainment industry. The distinction may not be sufficiently relevant today to be maintained in the law. Also, a penalty structure based exclusively on the economic usefulness of the animal is not in accord with the concern for the welfare of animals and their need to be protected from cruelty regardless of their status as property.

Critics argue that other animals should receive the same protection as cattle. This would not result in the reduction of the level of protection that cattle, and consequently cattle owners, currently receive. The owners' proprietary interests would still be protected by laws governing theft and other property offences.

Even within a single provision that does not distinguish between types of animals, there would be room

for tailoring a particular sentence to the seriousness of a particular crime. The judge retains the discretion to decide what sentence is appropriate, and is able to take into account the effects of the crime, both psychological and economic, on the animal's owner.

*QUESTION: Should the maximum term of imprisonment be increased from six months, perhaps to a term of up to five years, for the more serious cases of animal abuse? Should the law allow for a fine much greater than \$2000 in the more serious cases?*

### *Prohibiting Ownership*

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. This measure is further indication that the law is already at least partly concerned with the welfare of animals in and of themselves. Ownership bans are used relatively frequently in cruelty cases, and can be both an effective tool for preventing the commission of further offences and a viable alternative to imprisonment.

A reformed law could authorize the courts to prohibit convicted offenders from possessing any animals for longer periods of time, perhaps even permanently under certain circumstances. The legislation could specify criteria to assist the judge in exercising this discretion, including such factors as the circumstances of the offence and the person's previous criminal record, especially any previous instances of animal abuse. It could provide a sliding scale scheme whereby, for example, on conviction for a first offence, the court would be authorized to impose a prohibition order for a period not exceeding five years, and upon a subsequent conviction for a cruelty offence, a prohibition order could be mandatory.

*QUESTION: Should the prohibition on owning animals be increased from a maximum of two years up to a possible lifetime ban? Should there be a minimum ban for subsequent convictions?*

### *Restitution*

In many cases of animal abuse, a provincial or local humane society will step in and seize the animal from the custody of the accused if treatment is necessary. The cost of food, boarding and veterinary care can be considerable, depending on the size and number of animals seized, and the extent of injuries. It might be possible to provide a specific power of the court to order that, in addition to any other penalty, the offender repay the reasonable costs of any individual or agency that has provided care to the animal in the interim. 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 agencies recoup sufficient funds to be able to continue their work.

*QUESTION: Should a person who is convicted of injuring an animal be required to repay the cost of care for that animal?*

*Thank you for taking the time to read this consultation paper. We look forward to receiving your comments on these important issues.*

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### **Appendix - Criminal Code sections 444-447**

444. Every one who wilfully

(a) kills, maims, wounds, poisons or injures cattle, or

(b) places poison in such a position that it may easily be consumed by cattle,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

445. Every one who wilfully and without lawful excuse

(a) kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose, or

(b) places poison in such a position that it may easily be consumed by dogs, birds or animals that are not cattle and are kept for a lawful purpose,

is guilty of an offence punishable on summary conviction.

446. (1) Every one commits an offence who

(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

(b) by wilful neglect causes damage or injury to animals or birds while they are being driven or conveyed;

(c) being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it;

(d) in any manner encourages, aids or assists at the fighting or baiting of animals or birds;

(e) wilfully, without reasonable excuse, administers a poisonous or an injurious drug or substance to a domestic animal or bird or an animal or a bird wild by nature that is kept in captivity or, being the owner of such an animal or a bird, wilfully permits a poisonous or an injurious drug or substance to be administered to it;

(f) promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition,

exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or

(g) being the owner, occupier or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (f).

(2) Every one who commits an offence under subsection (1) is guilty of an offence punishable on summary conviction.

(3) For the purposes of proceedings under paragraph (1)(a) or (b), 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 or was caused by wilful neglect, as the case may be.


(4) For the purpose of proceedings under paragraph (1)(d), evidence that an accused was present at the fighting or baiting of animals or birds is, in the absence of any evidence to the contrary, proof that he encouraged, aided or assisted at the fighting or baiting.

(5) Where an accused is convicted of an offence under subsection (1), the court may, in addition to any other sentence that may be imposed for the offence, make an order prohibiting the accused from owning or having the custody or control of an animal or a bird during any period not exceeding two years.

(6) Every one who owns or has the custody or control of an animal or a bird while he is prohibited from doing so by reason of an order made under subsection (5) is guilty of an offence punishable on summary conviction.

447. (1) Every one who builds, makes, maintains or keeps a cockpit on premises that he owns or occupies, or allows a cockpit to be built, made, maintained or kept on such premises is guilty of an offence punishable on summary conviction.

(2) A peace officer who finds cocks in a cockpit or on premises where a cockpit is located shall seize them and take them before a justice who shall order them to be destroyed.

 C.L. September 14, 1998