



Canadian Federation of Humane Societies

Fédération des sociétés canadiennes d'assistance aux animaux

April 11, 2007

To: The Parliamentary Outdoor Caucus
All Members of Parliament
Animal Use Industry Organizations

Re: Animal Cruelty Legislation

The Canadian Federation of Humane Societies (CFHS) believes that most hunters, anglers, farmers and other animal users are responsible, caring individuals who respect animals and believe they should be treated humanely. Unfortunately, many of the groups representing these individuals are opposing efforts to reform Canada's antiquated animal cruelty offences, for fear the changes would threaten lawful activities.

We are writing to refute the points made recently by various outdoor, agricultural and medical research communities in their support of Bill S-213, amendments to the animal cruelty sections of the *Criminal Code*. Some of these groups have accused the CFHS of misleading Members of Parliament; we will set the record straight on these false accusations.

Bill S-213 would only increase the penalty provisions of the *Criminal Code*, leaving the archaic and flawed offences untouched. This approach is unacceptable and is strongly opposed by the CFHS, humane societies and SPCAs, as well as the Canadian Veterinary Medical Association. Canada needs a modernized law that will protect animals from cruelty and abuse. Bill S-213 will not do this.

The current law was enacted in 1892 and contains gaping loopholes that allow too many animal abusers to escape prosecution. The wording makes it extremely difficult to prosecute cases of criminal neglect of animals, even in horrendous cases where dozens of animals have been starved to death. It also applies differently to different types of animals, resulting in inadequate protection for strays and wildlife. Current legislation contains confusing language and considers animal cruelty offences as property offences. And it does not offer special protection for law enforcement animals. Mark Holland's Bill C-373 would fix all of these flaws.

Industry groups have recently referred to Bill C-373 as contentious and radical. It is interesting to note that many of these same groups had strongly and actively supported this bill's previous iterations in 2003-04. It was only with the introduction of Senator Bryden's bill

that they changed their minds and opposed C-373 and its predecessor, Bill C-50. In fact, in 2003 Bill C-10B had the support of the vast majority of Canadians, the majority of animal industry groups, including farmers, researchers, trappers, pharmaceutical companies, veterinarians, and animal protection groups and was passed unanimously in the House of Commons, but was held up by the Senate. In 2004, many of the organizations who recently wrote you to oppose Bill C-373 had actually written to then-Justice Minister Irwin Cotler to ask that a bill identical to Bill C-373 be re-introduced in the House of Commons.

A public opinion survey conducted by SES Research in November 2006 shows that Canadians want better protection for animals. More than 85% of Canadians believe wild and stray animals should be protected from cruelty. And more than 76% support changing the law so that animal cruelty crimes are no longer treated as property offences. In fact, respondents living in rural areas, those who hunt or fish and people who traditionally vote Conservative are even more likely to support such a change.

Refuting claims made by various animal industry groups

A recent letter to MPs referred to, "... recent claims made by the CFHS in The Hill Times, which falsely stated that anglers, hunters and farmers do not support Senator Bryden's bill and are calling for stronger legislation."

The CFHS' message in The Hill Times did NOT state that anglers, hunters and farmers do not support Bill S-213. It stated that "The CFHS, its member humane societies and SPCAs and a clear majority of Canadians – including hunters, anglers and farmers – demand better legislation than Bill S-213." This statement is based on the results of the survey referred to above that asked Canadians for their views on potential changes to our animal cruelty laws. The results clearly show that Canadians who hunt or fish are at least as likely as the average Canadian to support improvements that are not included in S-213 (but that have been incorporated in Bill C-373).

"Bill C-373 would have a chilling effect on anglers and hunters across Canada and would jeopardize these two major Canadian heritage activities embedded in our culture." "Bill C-373 'would make it possible for a Grandfather to face a federal criminal prosecution for taking his grandchildren fishing'."

These statements are completely false. It is simply absurd to suggest that the changes in Bill C-373 would prevent a Grandfather from taking his grandchildren fishing. The changes proposed in Bill C-373

will NOT have any impact on lawful hunting, angling, farming, scientific research or any other legitimate activity. The bill would make it an offence to 'kill an animal without lawful excuse'. This is not a new offence, although it currently applies only to owned animals. This offence has not threatened farming, scientific research, euthanizing animals or other lawful activities over the past 115 years. Hunting and fishing are lawful activities and would, therefore, be considered a 'lawful excuse', just as other animal use activities are under the current law. The only people who will be affected by Bill C-373 are those who inflict intentional, reckless or negligent cruelty on animals.

"Bill C-373 moves animals one step closer to 'humanness'. This would place Canada as the only constituency with such a designation."

These statements made by the Canadian Federation of Biological Sciences are also totally false. A number of industry groups and politicians have claimed that taking animal cruelty crimes out of the property section of the *Criminal Code* would somehow give animals similar rights to humans.

Removing the cruelty to animals provisions from the property section will NOT give animals any more rights than they have today. Nor will it impact in any way on the ability of people to own their animals, nor the many ways in which animals are treated as property under our legal system. In fact, Bill C-373 still refers to animal owners. Moving animals out of the property section of the *Criminal Code* is simply a signal to courts that animal cruelty crimes are to be taken more seriously than crimes against simple property.

The Canadian Sportfishing Industry Association (CSIA) is concerned that hunting and fishing are not exempt from the offence of killing an animal brutally or viciously and that this offence could be used to prosecute hunters and anglers.

The offence of killing an animal brutally or viciously has been included in the amendments since they were first introduced by then Justice Minister, Anne McLellan in 1989, and is included in Bill C-373. This offence is aimed at particularly violent, heinous crimes that, under today's law, fall through the cracks. For example, several years ago two men beat their dog to death with a baseball bat. The dog died on the first blow so the abusers could not be charged because the dog did not suffer. Another example is a cat that was tied to a railroad track. Again, no charges could be laid because the cat died instantly when the train came along. Clearly, these are violent offences against animals that should be prosecuted.

It is unrealistic to think that someone could be charged with killing an animal brutally or viciously for engaging in normal hunting or fishing, for killing animals at a slaughterhouse or any other lawful activity. This offence would only be used for particularly heinous, violent acts that are well outside any standard, accepted practice. While it is true that animal rights groups have stated their opinion that certain animal use activities are brutal, it is our judicial system that will determine what is brutal and vicious, not animal rights activists.

Regarding the suggestion that hunting and fishing should be exempt from certain offences, this would be completely inappropriate. Nobody should be exempt from the *Criminal Code*. Hunters, anglers, farmers, trappers, researchers and humane societies all have a duty to carry out their activities responsibly and according to normal practices. Similarly, police officers and hockey players are not exempt from assault laws and have a duty to carry out their activities responsibly.

"The common law defences (legal justification, excuse and colour of right) are not useful in these circumstances."

The defences of legal justification and excuse most definitely apply. Colour of right, however, is an obscure property defence that is not relevant to animal cruelty offences.

Section 8(3) of the *Criminal Code* applies universally to every offence under the Code. It states: "Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or defence to a charge continues in force and applies ..." These common law defences serve as a defence for legitimate animal users or owners whose practices are either sanctioned by law or accepted in their respective industries.

Even though Section 8(3) exists and applies, Bill C-373 goes even further to include a clause stating, "For greater certainty, the defences set out in subsection 429(2) apply, to the extent that they are relevant, in respect of proceedings for an offence under this Part." (Section 429(2) is referred to instead of Section 8(3) because it currently applies to the animal cruelty offences and industry groups were concerned they would lose something.) It must be noted that the express incorporation of the common law defences has not been done in any other part of the *Criminal Code*. This inclusion leaves no doubt as to the applicability of the defences.

"Private prosecutions will be brought by animal rights groups or individuals. Federal Attorney Generals and provincial Court Attorneys are not required to oversee private prosecutions."

This assertion by CSIA is false. It will be even more difficult for animal rights groups or individuals to bring private prosecutions under Bill C-373 than it is today. And there have been no successful private prosecutions for animal cruelty over the past 115 years.

A change was introduced in 2002 that requires the intervention of a provincial court judge in private prosecutions. Section 507.1(1) of the *Criminal Code* requires a judge to conduct an independent inquiry into the allegations made in a private prosecution and to ensure the Attorney General has had a reasonable opportunity to participate in the inquiry process. Based on this inquiry, the judge will determine whether or not the case should proceed. This would happen before an accused person is even notified. In some provinces, including Ontario, private prosecutions also require the consent of the Attorney General.

"Any private prosecutions by animal rights activists will be well funded, carefully presented and supported by many members of the animal rights associations."

This statement may be relevant for civil lawsuits. However, it is not particularly relevant in the case of prosecutions under the *Criminal Code*. Regardless of how much money is spent or how many supporters a group may have, a criminal prosecution will not proceed without the approval of a provincial court judge and, in some provinces, the Attorney General.

The CSIA quotes Liz White of the Toronto-based animal rights group Animal Alliance of Canada, stating that humane societies and other groups will push the new legislation to the limit and test the parameters of the law. Ms. White has no authority to make such a statement. Animal Alliance does not work with nor govern humane societies in Canada. Humane Societies and SPCAs are animal welfare, not animal rights organizations. Most have statutory mandates to prevent animal abuse through education and enforcement of animal cruelty laws. Humane society and SCPA inspectors work closely with police and the Crown in their investigative work.

"Animal rights activists have suggested that Bill S-213 does not cover stray animals. This was patently refuted by the Senior Assistant Deputy Minister at the Senate Committee, who noted that Section 446(1)(a) does in fact cover stray animals and does not require changes proposed by the animal rights community and Bill C-373 as they are incorrectly suggesting."

While it is true that Section 446(1)(a) technically applies to stray animals, the reality is that there are very few cases of such charges under the current legislation, as explained by another official who

appeared before the Senate Committee together with the Senior Assistant Deputy Minister. The current wording and the fact that animal cruelty crimes are considered property offences make it difficult to pursue cases of abuse of stray or wild animals.

Under the current law, the offence of 'killing an animal without lawful excuse' does not apply to stray or wild animals; Bill S-213 would not change this flaw. Bill C-373 would ensure that this offence applies to all animals, whether owned or not.

The CFHS believes it would be a tragedy if Bill S-213 is passed. After seven years of debate, during which consensus was reached in 2003, it makes no sense to enact a bill that maintains 1892 offences merely adjusted for inflation.

While Bill C-373 makes important and long-overdue amendments to the law, it does not make radical changes. It maintains the crucial words and phrases that describe the offences. This is important because the interpretation of these words has been clearly defined over the last 115 years of jurisprudence. This should give comfort to the animal industries that are concerned about how changes would impact their activities.

The CFHS has legal opinions from prominent lawyers clarifying the application of lawful excuse, addressing the removal of animal crimes from the property section and explaining how the changes in C-373 provide greater protection for animal users than the current provisions. We have already circulated them widely but we would be pleased to make them available to any interested parties.

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