

Canadian Federation of Humane Societies

Legal Analysis

re: **Bill C-15B - Section 15**

Cruelty to Animals

revised October, 2001

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Executive Summary
Bill C-15B – Crimes Against Animals
Canadian Federation of Humane Societies

Need for Bill C-15B – CFHS, it's 100 SPCAs and Humane Societies across Canada and their 400,000 members strongly support the *Bill C-15B* provisions pertaining to crimes against animals. We initiated those changes in order to enable our professionally-trained SPCA inspectors to properly carry out their enforcement duties and police powers, as mandated by provincial SPCA statutes. These are not animal rights initiatives. SPCA inspectors act responsibly to prosecute only serious abuses when warnings or seizures are not effective remedies. Less than 1/3 of 1% of all animal abuse complaints lead to criminal charges. Procedural difficulties, property law concepts and failure by the justice system to accord serious treatment to the existing *Criminal Code* offences resulted in conviction rates of only 46% in 1997-98 (Statistics Canada). The link between cruelty to animals, domestic violence and murder has become well-known. These cruelty provisions have received rigorous scrutiny by SPCA inspectors, teams of criminal lawyers and prosecutors, amongst many others in the course of 35 seminars and briefs over twenty years. Prevention of cruelty provisions must function effectively – they are the bedrock moral principle forming the foundation of SPCAs. The educational and deterrent aspects are paramount. [A and B]

Cruelty Vignettes – Neither photographs nor words can adequately depict the horror the public expresses at atrocities committed against animals. See Appendix A for a *Summary of Some Typical Cruelty Vignettes* indicative of unnecessary suffering inflicted on a wide range of animals. [C4]

Support – Public attitudes toward cruelty have evolved since the horse and buggy days of 1892 when Canada first enacted cruelty laws. Over 50% of Canadian households include an animal. Many hundreds of media reports each year and many thousands of petitions confirm the public's outrage at cruelty cases and the need for *Criminal Code* improvements. Twenty-seven US states have elevated cruelty from a misdemeanour to a felony offence; seven states did so during 1999. [C3]

Cruelty, Not Property [Part V.1] – SPCAs strongly urge that the crimes against animals provisions be removed from the property offences contained in Part XI of the *Criminal Code* and be reconstituted in a separate Part V.1. In the past, crown attorneys and judges have minimized cruelty where owners argued they were entitled to harm their own property – often resulting in the withdrawal of charges, high acquittal rates and slap-on-the-wrist sentences. Humans will continue to have property law rights over their animals, whether by means of numerous common law cases and provincial statutes, or by means of protections afforded by various criminal offences applicable to theft of an animal [s. 322], cattle rustling and alteration of brands [s. 338] and threatening to injure an animal [s. 364.1 (1) (c)]. The cruelty provisions should distinguish sentient animals from chattel property by focussing on the fact that animals can suffer pain and humans owe a moral duty to avoid causing unnecessary suffering – even if the animal is their own property. Prevention of cruelty is a fundamental *Criminal Code* concept which should not be corrupted by misleading property law concepts. A separate Part of the Code will highlight the true basis for the cruelty offence and provide a signal to the justice system and the public that animals are proper objects of moral concern and that humans must avoid causing unnecessary suffering when *mens rea* is applicable. [D1 - 5]

“Animal”[s. 182.1] – The previously open-ended wording has been restricted to apply only to vertebrates and other animals that have the capacity to feel pain. Previously, a person could theoretically have been charged for cruelty to an insect, worm or fish (although we are unaware of

any abusive prosecution, nor would a prosecutor allow it). Now, prosecutors will have a difficult job to prove non-vertebrates experience pain. However, the precise definition of an animal focusses the rationale for a cruelty offence upon an inappropriate causation of unnecessary pain. It will still be necessary for the Crown to prove all the elements of the crime. Farmers and ranchers will lose no rights to protect their cattle from harm. [G1]

Cruelty Offences [s. 182.2 (1)] – The Brief provides a detailed legal analysis of the offences which require proof of “wilful or reckless” intent: (a) *Cruelty Offence*; (b) *Vicious Killing*; (c) *Killing Without Lawful Excuse*; (d) *Poisoning an Animal*; (e) (f) (h) *Promoting Fighting* and (g) *Shooting Liberated Animals*. The Brief analyzes Supreme Court of Canada precedents regarding the concepts “wilfully”, “recklessly”, “unnecessary suffering” and “killing without lawful excuse”. Case law confirms that an explicit reference to “wilfully or recklessly” is redundant and unnecessary, since those concepts are inherently applicable even if they are not stated (*R. v. Buzzanga*). It is contrary to good modern legal drafting to insert these words in the *Code*, but we appreciate that re-inserting those words will reassure those who do not understand criminal law that their rights were never in jeopardy. CFHS has acknowledged from the outset that a crime could not exist without those concepts, which were always inherently present. However, we support reintroduction of the combined words “wilfully or recklessly”. [H2]

“Recklessly”– If the word “wilfully” is to be re-inserted into the section, then the word “recklessly” must be inserted in combination with “wilfully”. The *status quo* must remain as it currently exists. The word “recklessly” can be used to replace the identical concept currently existing in s. 429 (1) of the *Code*. The word “recklessly” is well defined in the Supreme Court of Canada case *R. v. Sansregret*: “In accordance with well-established principles for the determination of criminal liability, recklessness, to form part of the criminal *mens rea* must have an element of the subjective. It is found in the attitude of a person who is aware that there is a danger that his conduct could bring about the result prohibited by the criminal law, but persists, despite the risk.” [H2]

Brutal or Vicious Killing [s. 182.2 (1)(b)] – This provision addresses unusual and reprehensible circumstances where an accused had a specific intent to commit a violent and despicable act far beyond society’s standards, constituting a risk to society of further violence. Normally, cruelty offences would be prosecuted under s. 182.2 (1)(a) to avoid this difficult burden of proof. [H3]

Poisoning an Animal [s. 182.2 (1) d)] We recommend that this poisoning offence should not require proof of wilful or reckless conduct. It should be sufficient that the accused was criminally negligent in placing the poison. We recommend that the poisoning section be moved into s. 182.3 (1) (d). [H5]

Shooting Liberated Animals [s. 182.2 (1) (g)] We object to insertion of the words “at the moment” into s. 182.2 (1) (g) because that implies that a hunter can sit in front of a cage and blast an animal the instant after it exits the cage. That proposed amendment dilutes the existing wording contained in s. 446 (1) (f): “for the purpose of being shot when they are liberated”. Such behaviour is not only unsportsmanlike, but is reprehensible to carry on such a recreational pursuit for the joy of killing an animal where it has no sporting chance of surviving. The section should be amended by altering the last phrase to state: “for the purpose of being shot at when it has been liberated with no reasonable opportunity to escape”. [H7]

Promoting Fighting [s. 182.2 (1) (e)] - Unfortunately, the new section 182.2 (1) (e) no longer contains the wording currently found in s. 446 (1) (f) to the effect that “Evidence of an accused was present at the fighting or baiting of animals or birds, in the absence of any evidence to the contrary,

proof that he encouraged, aided or assisted at the fighting or baiting”. We request that s. 182.2 (1) (e) be amended by stating: “...in any manner encourages, promotes, arranges, assists at, **attends at** or receives money for the fighting or baiting of animals...” Prohibiting persons from being found -ins is the best way to stop such group events. That remedy assists police to route out the perpetrators, by allowing them to detain and question attendees to obtain evidence which provides reasonable grounds for a prosecution against the organizers of the event. [H6]

Criminal Negligence [s. 182.3 (1)] – The criminal negligence offences set out in s. 182.3 (1) include: (a) *Failure to Exercise Reasonable Care*; (b) *Abandonment or Failure to Provide Necessities*; and (c) *Negligently Conveying*. “Negligently” means departing markedly from the standard of care that a reasonable person would use [s. 182.3 (2)]. That typical criminal negligence standard has been confirmed by various Supreme Court of Canada precedents such as *R. v. Naglik* or *R. v. Creighton*. [I1]

Sentencing Improvements [s. 182.2(2) + 182.3(3)] – Elevating the cruelty and criminal neglect offences to become summary conviction and indictable hybrid offences will be an important signal to crown prosecutors and judges to treat animal abuse cases more seriously. The sentencing, fines, prohibition order and restitution order improvements have been widely supported. [H8 and I5]

Fines – Fines for indictable offences may be set at an appropriate amount in the judge’s discretion. Fines for summary offences may not exceed \$2,000. Since a very high proportion of prosecutions will proceed by way of summary conviction, rather than by indictment, we urge that the maximum fine for a summary conviction, cruelty or criminal neglect offence be increased to \$10,000 by inserting a specific reference in s. 182.5. While that fine would not be as high as the \$50,000 fine permitted in the federal *Health of Animals Act*, a \$10,000 fine would put more teeth where it counted the most and would be the type of strong signal to the justice system we have been asking for. [H8 and I5]

Prohibition Order [s. 182.4 (1)(a) + (2)] – Prohibition orders which allow judges discretion to prohibit ownership and control of animals beyond the existing two year limitation. Closing existing loopholes to prevent the accused from continuing to live in the same premises as the abused animal will save such animals from continuing abuse or retaliation. [J1]

Restitution Order [s. 182.4(1)(b) + (3)] – Restitution should be provided to SPCAs who often have to spend thousands of dollars for veterinary, shelter, feeding and care costs where an accused fails to provide necessities for a number of animals, such as a starved herd of cattle. [J2]

Industry Concerns Unfounded – Industry representatives have expressed concerns that the *Bill C-15B* revisions will open the door to “nuisance lawsuits” by animal rights activists. *Bill C-15B* will not affect civil lawsuits and it will not expose industries to any greater risk than as existed for the past 109 years. We are not aware of any cases of an abusive cruelty prosecution in the past. Layers of criminal law protections prevent innocent persons from being charged or convicted. SPCA inspectors are well-trained to responsibly investigate animal abuse. Crime investigations are subject to numerous criminal law safeguards. Animal rights activists will not be entitled to unilaterally launch a prosecution. Seldom will a Justice of the Peace permit an individual to lay criminal charges without a prosecutor’s approval. Crowns may only prosecute upon determining it is appropriate to do so after examining all relevant information. A prosecutor may not proceed unless it is required in the public interest. Counsel must be fair, independent and objective. There must be a strong, solid case of substance to present to the Court based on material evidence and the likelihood that a defence would not be viable. Allegations must be serious in nature rather than trivial or technical

and the conviction must be likely to result in a significant sentence. The prosecutor must prove difficult concepts such as “wilfully”, “recklessly”, “causation”, “unnecessary pain”, and “criminal negligence”. Various evidentiary and procedural problems cause impediments. The *Charter of Rights and Freedoms* protects an accused from an overly-aggressive prosecutor. A judge must be convinced beyond a reasonable doubt that the accused committed all elements of the crime, after hearing the accused’s evidence and legal defences (including the accused’s inherent right to argue lawful excuse). [E1]

Lawful Excuse – Currently, s. 429 (2) explicitly imposes the burden upon an accused to prove that he acted with legal justification or excuse and with colour or right. Concerns about removal of those words in *Bill C-15B* are unfounded. Those concepts are fully covered by the prevailing common law concept “lawful excuse” which forms an inherent defence to every crime. Section 8 (3) of the *Code* and binding Supreme Court of Canada precedents explicitly provide that every rule and principle of common law continues to remain applicable with respect to any circumstances, justification or excuse for an act, and may provide an additional basis for a defence to a charge. Many types of lawful excuse exist, such as killing an animal out of an act of mercy, defending children, other animals or property, honest belief (mistake of fact), necessity, automatism, due diligence, entrapment, provocation, defence with claim of right, third party offender, duress and *res judicata*/issue estoppel, amongst others. Lawful activities such as farming, hunting, trapping, fishing and experimental research are permitted by legislation, regulations and permits – lawful excuses which permit over 400,000,000 animals to be killed in Canada each year. Humane societies kill unwanted pets. Householders kill rats and legally defined pests, slaughter houses are federally or provincially regulated and researchers are subject to provincial legislation. A number of industries have established animal welfare standards. The concept of “unnecessary suffering” inherently permits causing substantial pain to animals as a defence if it was necessary to do so to achieve a lawful purpose, as confirmed by *R. v. Menard*. Pain suffered by an animal only becomes “unnecessary” if another, less painful means of obtaining the end result exists which is known to the accused and is reasonable to use. Similarly, a person accused of criminal negligence against an animal can defend by showing that the standard of care used did not constitute a marked departure from the standard a reasonable person would use. [F1 - 8]

Colour of Right – Currently, an accused can dream up any kind of excuse, claiming that he had a “colour of right” under s. 429 (2) on the basis that he had a mistaken belief as to his entitlement to property. That type of defence is quite appropriate for the other property offences in Part XI, but it is not appropriate as a defence to causing pain, suffering or injury to an animal. In any event, an accused person always has a “lawful excuse” defence available at common law which allows a person to defend his or her ownership or custody of an animal. “Colour of right” should not be allowed as a defence to cruelty. [F7]

Exemptions Rejected – CFHS absolutely opposes outright exemptions from the crimes against animals sections applicable to specified industries or types of animals. Such a radical departure from the existing criminal law would be a substantial corruption of the concept of cruelty. Industries should not be entitled to contract out of cruelty crimes by setting their own standards, but should be subject to the same objective review as anyone else. The fox should not be in charge of the chicken coop. Industry standards may likely provide a lawful excuse defence unless they cause unnecessary suffering. Persons are entitled to cause pain to animals (even if it is substantial) but parliamentarians should not allow anyone to be permitted to cause unnecessary suffering. Exemptions benefiting some persons but not others may be unconstitutional. [F8]

Modern Improvements - The *Criminal Code* cruelty provisions state a fundamental moral concept which has been the foundation for the work of SPCAs for over a hundred years. SPCAs have carried out their statutory mandates responsibly. We are not aware of any case where an SPCA has abused the *Criminal Code* provisions. The basic existing cruelty provisions are continued in *Bill C-15B* with the same substantive effect as currently exist, but the proposed moderate adjustments are necessary to allow SPCAs to carry out their statutory mandate and role in society. [L]

Canadian Federation of Humane Societies

Legal Analysis

re: **Bill C-15B - Section 15** **Cruelty to Animals**

Speaker's Credentials

J. Robert Gardiner is a lawyer and is co-chair of the Status of Animals Committee of the Canadian Federation of Humane Societies ("CFHS"). He has been a director of CFHS, a member of its Executive Committee, Chair of the Wildlife Committee, Trapping Committee, Policy Committee and Resolutions Committee of CFHS in a volunteer capacity. He is the President of the Canadian Association for Humane Trapping and has been a director or member of various trapping and wildlife organizations and committees. He was a member of an Animal Care Committee at a major experimental research institution and was the editor of *Investigating Animal Abuse* (instructing SPCA inspectors on *Criminal Code* issues and was a co-editor of *Crimes Against Animals*, a prosecutors' manual, providing a case-annotated analysis of *Criminal Code* principles applicable to cruelty to animals.

- A -

CFHS AND ITS SPCAs' CONCERNS

A1 CFHS' Programs

CFHS represents over 100 SPCAs, humane societies and other animal welfare organizations across Canada, speaking collectively on behalf of more than 400,000 individuals. CFHS is committed to putting an end to animal suffering by working with governments, industry, the scientific community, educators and the public. CFHS has initiated and been involved in a wide range of animal protection programs dealing with topics such as use of farm animals, experimentation on animals, sealing, trapping, pets, performing animals, transportation of animals, rodeos, wildlife and marine mammals. CFHS has worked with various industries to establish Codes of Practice for the use of animals. CFHS has representatives on the Canadian Council on Animal Care, is a member of the Canada Expert Committee on Farm Animal Welfare Behaviour and participates on the Federal Humane Slaughter Committee. CFHS publishes numerous animal welfare publications and has initiated many seminars and symposiums, such as those linking animal cruelty to domestic violence, school shootings and serial killers.

A2 Statutory Mandate

The cruelty provisions are needed to enable SPCA inspectors to carry out their statutory mandates to investigate incidents of cruelty to animals. Societies for the Prevention of Cruelty to Animals are constituted by provincial legislation for that purpose. Many provincial statutes designate SPCA inspectors as peace officers entitled to exercise the powers of a police officer where an animal is in distress. SPCA inspectors may obtain search warrants, seize animals and issue Orders to relieve animals of distress. A number of senior inspectors have law enforcement backgrounds as ex-police or RCMP officers. Inspectors are trained by the RCMP and provincial law enforcement agencies to investigate crimes, to lay charges and to assist crown counsel to prosecute cruelty offence cases.

- B -

CRUELTY PROSECUTIONS

B1 Enforcement Chart

The following chart gives an indication of the restraint exercised by humane societies and indicates the small number of criminal charges laid compared with the large number of complaints in the respective province or city indicated (based on figures from the year 2000 obtained from member Societies):

	Cruelty Complaints	Investigated	Warnings/ Orders	Prosecutions	Convictions
ALBERTA	N/A	1,792	424	20	11
BC	7,000	7,000	201	9	5
WINNIPEG	2,500	1,665	N/A	3	1
ONTARIO	16,166	16,166	827	97	44
NOVA SCOTIA	2,000	2,000	900	36	1
PEI	402	402	0	1	0
YUKON	46	25	7	1	1
TOTAL	28,114	29,050	2,359	167	63

B2 Few Charges Laid

It is important to note that SPCA inspectors only lay charges in serious cases. As indicated in the chart above, just over half of 1% of investigations were prosecuted in court. Instead, inspectors attempt to prevent animal abuse through education and follow-up visits to ensure appropriate changes have been made to improve animal well-being. Inspectors will often give warnings in the case of relatively minor first offences, or they may confiscate animals when appropriate. The value of the *Criminal Code* as an educational tool and a deterrent to animal abuse is paramount to SPCAs in carrying out their statutory mandate to prevent cruelty to animals. However, as a last resort, and in more serious cases the *Code* can be applied in court. Charges are only brought to court with the approval of the Crown, who will only bring charges in cases where it is considered in the public interest to prosecute.

B3 Low Conviction Rate

The above chart shows that during the year 2000, less than 1/4 of 1% of investigations ended in successful prosecutions.

In 1996 - 97, according to Statistics Canada, there were 645 cruelty charges laid throughout Canada. 196 persons were held to be guilty (30%), 190 cases were stayed or withdrawn (30%) and 251 were acquitted or otherwise disposed of (40%).

In 1997 - 98, there were 362 cruelty charges laid across Canada. Only 167 accused were found guilty (46%), 167 accused had their cases stayed or withdrawn (46%) and 8% were disposed of by other methods.

The low conviction rate and the high acquittal rate are indicative of the need to raise the status of cruelty crimes.

B4 Loss of Confidence

The dismal conviction rate has been very discouraging to SPCAs. In a number of cases, crown prosecutors have refused to prosecute cases even where the evidence confirmed there was a high likelihood of conviction. Typically crown attorneys pay scant attention or preparation in animal cruelty cases. Few crown attorneys appear to understand the leading cases or the factual circumstances. Often crown prosecutors are unwilling to proceed with charges in court. Crown attorneys and judges sometimes minimize the harm caused to animals, allowing an owner to harm his own chattel property in the context of the property offences set out in Part XI of the current *Criminal Code*. Judges often trivialize the offence by imposing a minor sentence upon a criminal convicted of animal abuse. SPCAs have lost confidence in the ability of the current criminal law system to properly address crimes against animals.

B5 More Serious Treatment

The proposed provisions of Bill C-15B will raise these cases from summary convictions to hybrid offences whereby the crown can elect to proceed by either summary or indictable procedures, as stated in s. 182.2 (2) and s. 182.3 (3). By re-characterizing the cruelty and criminal negligence offences as either summary or indictable offences, a judge has a broader sentencing discretion. It is our expectation that re-characterizing cruelty to animals as a hybrid offence and permitting a longer term of imprisonment and higher fines in appropriate cases will send a necessary signal to the justice system indicating that prosecution of animal cruelty cases should be accorded more respect. The improved sentencing regime will provide a broader range of sentencing remedies which the judge may appropriately fit to the circumstances, especially with respect to the more egregious cases. Some judges have expressed their frustration at being fettered by the existing minimal penalties. Many industry organizations representing users of animals have concurred that it is appropriate to increase the penalties in serious and repeat cases.

B6 Out of Date Code

The existing *Criminal Code* cruelty provisions now contained in s. 444 - 447 do not do the job. Society, its technologies, new uses of animals and public attitudes have evolved significantly since the horse and buggy days of 1892 when Canada first enacted cruelty laws.

B7 Fundamental Moral Concept

Entrenchment in the *Criminal Code* of the fundamental moral concept that humans may not wilfully cause unnecessary pain, suffering or injury to animals under their control is the bedrock principle at the foundation of SPCAs.

- C -

THE NEED FOR CRIMINAL CODE IMPROVEMENTS

C1 An Animal Welfare Initiative

The provisions set out in s. 15 of Bill C-15B pertaining to cruelty to animals [s. 182.1 - 182.4 of the *Criminal Code*] were derived from an animal welfare initiative proposed by CFHS and over 100 of its SPCA members across Canada. Their inspectors have often been frustrated by current *Criminal Code* provisions which have prevented them from properly fulfilling their role within the justice

system. A past Executive Director of CFHS, its President and I initiated these animal welfare improvements to the *Criminal Code* in 1981. The pressure for these changes came from CFHS' member SPCAs and their inspectors, with a unanimous request for improved provisions. The cruelty provisions have undergone rigorous scrutiny by SPCA inspectors, philosophers, teams of criminal lawyers and prosecutors and many others during the course of over 35 forums, seminars and briefs during the past 20 years. This is an animal welfare initiative - it was not proposed by animal rights proponents, nor are animal rights organizations mandated to enforce these *Criminal Code* provisions. Only humane society or SPCA inspectors have powers as peace officers to enforce laws, search premises and seize animals.

C2 Same Basic Provisions

The cruelty provisions have remained substantially the same for over 109 years since 1892, with some amendments in 1954. Those basic cruelty provisions of the *Criminal Code* will continue in Bill C-15B with the same substantive effect as currently exists, but the proposed minor adjustments will improve the ability of crown attorneys and judges to prosecute cruelty cases and impose appropriate sentences.

C3 Public Support

Over 50% of Canadian households include a pet. Over and over again, Canadians in every city and region of Canada have expressed outrage in many hundreds of newspaper and media reports about a wide range of cases where atrocities were committed against animals. *Bill C-15B*'s provisions are supported by all animal welfare organizations across Canada. After 20 years of numerous briefs, meetings, symposiums and the Department of Justice's Consultation Paper: *Crimes Against Animals*, there has been an overwhelming public response to update the crimes against animals sections of the *Criminal Code*. Twenty-seven U.S. states have elevated cruelty from a misdemeanor to a felony offence; 7 states did so during 1999. The Consultation Paper generated an unexpectedly-strong response of over 400 briefs and letters, overwhelmingly in support of improvements. The Honourable Anne McLellan received each week 1,000 - 3,000 individual letters and petitions during the months of November and December 1999, when the media indicated legislation was imminent. Many additional thousands of petitions have been forwarded to the Justice Minister. The Ontario Legislature passed a resolution on November 4, 1999 requesting the Justice Minister to strengthen the *Criminal Code* provisions pertaining to cruelty to animals.

C4 Cruelty Vignettes

Neither photograph nor words can adequately express the horror the public expresses at atrocities committed against animals. See a thumbnail sketch of a range of *Cruelty Vignettes* attached as Appendix "C". We consider those few examples as indications of the types of cases deserving of criminal convictions. Cruelty and criminal neglect of animals occurs in a wide range of circumstances.

C5 Linking Animal Abuse To Humans

Animal abuse deserves attention not only because of a concern to prevent unnecessary infliction of suffering upon animals, but also because cruelty to animals is a related cause of other social and criminal problems in society. The connection between cruelty to animals and aggressive criminal violence, child abuse, spousal abuse, serial killings and school shootings has become well known and is used as an investigative tool by the FBI, Scotland Yard and other agencies. See the attached Backgrounder on **Linking Animal Cruelty To Human Violence**, attached as Appendix "D".

MOVING CRUELTY TO PART V.1 FROM PROPERTY PART XI

D1 Replacing Property Concepts by Moral Values

Sections 444 - 447 currently fall under Part XI of the *Criminal Code*, dealing with property offences protecting against mischief, arson and interference with shipwrecks, marine signals and boundary lines. Owners of property tend to be accorded some leeway by crown attorneys and judges to harm their animals - often resulting in withdrawal of charges, high acquittal rates and slap-on-the-wrist sentences. Viewing animal victims as chattels in accordance with property concepts depreciates their intrinsic quality as sentient animate beings capable of suffering as a result of inappropriate human conduct. The new Part V.1 of the *Code* focuses upon intentional or criminally negligent conduct which inflicts unnecessary pain, suffering or injury upon an animal. We consider removal of the cruelty offences from Part XI dealing with property and ownership offences to be one of the most important proposed changes, because it recognizes the separate status of animals based upon the fact they can suffer from pain. They differ significantly from inanimate chattel property. For the purpose of criminal law, it is not relevant to get bogged down in arguments whether or not animals have "rights". However, animals are appropriate objects of moral concern for the purposes of the *Criminal Code*. Humans owe a moral duty to avoid causing unnecessary suffering of animals under their control. The focus should be upon prohibiting criminal conduct by humans which cause avoidable pain, suffering or injury to an animal. The person who intentionally or with criminal neglect abuses an animal deserves society's disapprobation. The offence should not be trivialized by allowing an owner to treat his or her animal as any other type of chattel property which can be damaged or harmed by an owner without any consequences.

D2 Part V.1 - A Separate Part

Previously, Bill C-17 proposed to move the Cruelty to Animals sections into Part V of the *Criminal Code* which focuses upon conduct harmful to society, such as crimes against persons and moral crimes such as sexual offences, public morals, disorderly conduct and abortion. Recognizing that some industrial users of animals have asked for the cruelty to animals sections to be moved out of Part V, we are pleased for those provisions to find a home under a new separate Part V.1 which recognizes that animals who can suffer pain deserve to be separately categorized based upon their own merit.

D3 Cruelty - Distinct from Property Concepts

We realize that crown prosecutors and judges have a heavy caseload and must spend a significant amount of their time dealing with serious criminal and social issues such as prostitution, possession of marijuana and a whole range of other criminal offences, but it has often been difficult for SPCAs to win the support of crown attorneys to lay charges in a proportionately few number of summary convictions of cruelty cases. There has been a notable dichotomy between public outrage about cruelty to animals and lack of interest by crown attorneys to prosecute. Judges are often swayed by the property law concepts contained in Part XI of the *Criminal Code* which relegate the cruelty provisions to be construed in the context of property offences and the conceptual milieu of punishment for damage to property. The *Criminal Code* and applicable case law allows a person to damage or destroy his own property. Accuseds will often argue they were entitled to harm their own animal, because it is their own property. The concept of cruelty has nothing whatsoever to do with property issues. A car is your chattel property, but it has many other attributes. It is a device to get you from one place to another, it could be a status symbol or a means of transporting goods. Animals are also property, but they are quite distinguishable from cars and other chattels in an important aspect - they can feel pain. That sentient ability is the reason why animals deserve their

own distinct recognition and protection under the *Criminal Code*, without corrupting cruelty principles by inapplicable and misleading chattel property concepts.

D4 Property Rights

This does not in any way denigrate from the fact that animals are often a person's property. Improving the *Criminal Code* is not going to allow anyone to take away my dog. The cow you purchased, bred or received as a gift is as much your property as your kitchen table. All of the civil common law and statutory protections of property will remain. So will a number of *Criminal Code* provisions. If someone steals your chicken, you can still lay criminal charges under s. 322 which specifically prohibits theft of an animal. If someone kills, maims, wounds, poisons or injures your mule, pig, sheep, cattle or cat, you will have all of the protection of s. 182.2. If someone attempts to rustle your cattle or alter any brands or markings, s. 338 will still allow you to lay criminal charges. If someone threatens to injure your animal, s. 264.1 (1) (c) still protects you from any such threat.

D5 Moving Out of Part XI

Moving the cruelty provisions out of Part XI is the most important of our objectives for several reasons:

1. A separate Part of the *Code* applicable to animals highlights that the inappropriate causation of unnecessary pain is the true basis for the cruelty and criminal neglect offences, free of the corrupting influences of property law concepts.
2. A separate Part is a signal to crown attorneys and judges to deal with cruelty offences more seriously and upon the appropriate basis.
3. A separate Part will help highlight that animals are separate from humans or chattels. The separate part will help raise consciousness that animals are proper objects of moral concern and that humans must avoid causing unnecessary suffering.

- E -

INDUSTRY CONCERNS UNFOUNDED

E1 Layers of Protection for an Accused

Some animal-use organizations have raised unfounded fears that the *Criminal Code* will be used by animal rights groups as a weapon to attack industry practices affecting animals. Unfortunately, a number of those statements disclose a lack of understanding about criminal law and the protections built into the justice system. A number of protections prevent innocent persons from being convicted. SPCA inspectors are well trained to responsibly investigate animal abuse and recommend charges in only the most serious cases. Animals rights activists have neither the statutory mandate, the police powers nor the investigation skills to succeed in a prosecution. The investigation of a crime must be properly conducted, subject to numerous criminal law safeguards. Seldom will a Justice of the Peace permit an individual to lay charges, especially if the charges are not first approved by a Crown Prosecutor. Crown Counsel must comply with a number of rigorous criteria before they are entitled to prosecute. Attached is a copy of the Core Policy from the Crown Counsel Policy Manual of the British Columbia Criminal Justice Branch, Ministry of Attorney General. A prosecutor may only prosecute an offence which he or she considers appropriate after examining all relevant information and documents. Crown Counsel must be fair, independent and

objective. In order to approve a charge, available evidence must be examined to determine whether there is a substantial likelihood of conviction and, if so, whether a prosecution is required in the public interest. A substantial likelihood of conviction only exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. In determining whether that standard is satisfied, Crown Counsel must determine the weight and admissibility of material evidence and the likelihood that viable, not speculative defenses will succeed. If that evidentiary test indicates a substantial likelihood of conviction, the Crown Counsel must then determine whether the public interest requires a prosecution in the particular circumstances of each case, taking into account the legitimate concerns of the local community. A number of factors must be considered to determine whether it is in the public interest to proceed with a prosecution, such as whether the allegations are serious in nature, and whether a conviction is likely to result in a significant sentence, among many other factors. It may not be in the public interest to proceed with a prosecution where a conviction is likely to result in a very small penalty, or if the offence is of a trivial or technical nature, or if the law is obsolete or obscure. Crown Counsel must also consider the need to maintain public confidence in the administration of justice, as well as a number of other considerations. Before the charge is laid, the Report to Crown Counsel must provide an accurate and detailed statement of the evidence available, failing which the Crown Counsel may require the investigator to obtain additional information or may drop the charges. Other safeguards can become substantial hurdles to conviction. The Crown Counsel must prove each element of the offence beyond a reasonable doubt. That is very difficult to do in cruelty cases, especially proving such concepts as “wilfully” or “unnecessary”. A number of evidentiary and procedural problems can cause impediments. In the end, a judge must be convinced the accused committed all elements of the crime beyond a reasonable doubt, after hearing the accused’s evidence and legal defenses, including an accused’s inherent right to argue lawful excuse.

- F -

ADDRESSING INDUSTRY CONCERNS

F1 Lawful Excuse

Unfortunately, some industry participants have expressed concerns that by moving the cruelty provisions out of Part XI, persons accused of cruelty crimes would lose the benefit of the defense under s. 429 (2) “where he proves that he acted with legal justification or excuse and with colour of right”. That concern is not valid. All persons accused of any crime are entitled to defend on the basis of lawful excuse. Section 8 (3) of the *Code* provides that every rule and principle of common law continues to remain applicable with respect to any circumstances, justification or excuse for an act, and may provide an additional basis for a defense to a charge. In other words, s. 8 (3) of the *Criminal Code* specifically allows an accused to use any common law principle with respect to circumstances, justification or excuse for an act. That includes “lawful excuse”. It is not necessary or appropriate to insert the words “lawful excuse” into every section of the *Criminal Code* since all of the common law defenses apply to every crime in any event. According to *R. v. Jobidon* (1991), 7 C.R. (4th) 233, 66 C.C.C. (3d) 454 (S.C.C.), under s. 8 (3), courts may look to pre-existing common law rules and principles to give meaning to and to explain the outlines and boundaries of an existing defense or justification. *R. v. Kirzner* (1977), 1 C.R. (3d) 138, 38 C.C.C. (2d) 131 (S.C.C.) provides that s. 8 (3) should not be construed as freezing the power of the court to recognize such new defenses as they may think proper, thus enlarging upon the common law. Some common law defenses with respect to animals have been killing an animal out of an act of mercy, defending children, other animals or property. Other common law defenses include honest belief (mistake of fact), necessity, automatism, due diligence, defense with claim of right, third party offender, duress

and *res judicata*/issue estoppel. “...Lawful excuse includes any honest and reasonable belief in a state of facts which if they had been as the accused believed them to be would have made his act innocent...” *R. v. Ireco Canada II Inc.* (1988), 65 C.R. (3d) 160 (Ont. C.A.)

F2 Supreme Court Imposes Lawful Excuse Inherently

The words “without lawful excuse” are specifically stated with respect to s. 182.2 (1) (c) and (d). That specific defense is only explicitly stated in the sections pertaining to some 20 other offences in the *Criminal Code*. However, as the Supreme Court of Canada has pointed out, other available excuses and justifications such as lawful authority and necessity apply in general to crimes, without any necessity to use the words “without lawful excuse”. See *R. v. Brownridge* (1972) 18 C.R.N.S. 308 (S.C.C.) [reasonable excuse for failing to provide breath sample], applied in *R. v. Holmes* (1988) 64 C.R. (3d) 97 (S.C.C.) [lawful excuse for possession of house-breaking instruments]. Persons who are not criminal lawyers would not realize that such Supreme Court of Canada precedent cases can provide better protection to an accused than the simple wording in s. 429 (2) “where he provides that he acted with legal justification and excuse and with colour of right.”

F3 Laws Authorizing Killing of Animals

Laws which authorize the killing of animals would be deemed to take into account the welfare of the animal and are undoubtedly reasonable in the circumstances as determined by the legislators. There could be no better excuse than compliance with reasonable laws and regulations. Where an accused can point to evidence which could leave a reasonable doubt about a lawful excuse, the Crown must prove beyond a reasonable doubt the absence of the lawful excuse [*R. v. Curtis* (1998) 37 W.C.B. (2d) 306, Ont. C.A.]. The availability of lawful excuse as a defense serves to prevent the punishment of a morally innocent person.

F4 Industry Standards & Legislation

The *Criminal Code* responds to an individual’s crimes against animals, rather than to legitimate industry practices to kill animals. Reasonable, widely-accepted industry standards which avoid causing unnecessary pain, suffering or injury will qualify as a lawful excuse. Legislation, regulations and other lawful excuses permit over 400 million animals to be killed in Canada each year. Typically, provincial or federal legislation or regulations authorize various animal use industries to operate. For instance, statutory provisions enable householders to kill mice, rats and legally-defined “pests”, slaughterhouses are federally or provincially authorized to kill cattle, researchers can kill experimental animals pursuant to provincial legislation, licensed hunters, trappers and anglers are authorized by provincial legislation and regularly permits to kill wild animals and fish (among other examples) - although the requirement that no one can intentionally cause pain, suffering or injury to an animal using any means which is unnecessary, continues as a fundamental requirement. CFHS spoke at a Standing Committee of the House of Commons in 1983 against using the *Criminal Code* as a means of changing industry practices which were subject to standards avoiding unnecessary suffering. We are not aware of any animal use industry organization which is willing to affirm that it approves of methods and equipment which cause avoidable pain, suffering or injury to an animal. Many industries have played a leadership role to promote improved practices. CFHS works with numerous animal use industries which have developed animal welfare standards.

F5 “Unnecessary”

It is essential to note that the concept of “lawful excuse” is inherently built into the cruelty offences, even though those words are not explicitly stated. The concept of “unnecessary suffering” was always the crux of the cruelty offence and the main protection for users of animals. No person can claim to have a lawful excuse if the person intentionally causes unnecessary suffering, but it is an entire excuse to raise a reasonable doubt that the suffering was necessary. The leading precedent, *Regina v. Menard* (1978), 4 C.R. (3d) 333, 43 C.C.C. (2d) 458 (Que. C.A.), has been consistently followed. Any unnecessary amount of pain, suffering or injury caused intentionally or recklessly can provide the grounds for an offence. A person is entitled to cause substantial pain, suffering or injury to an animal if it is necessary to achieve a lawful purpose. Pain is unnecessary if another less painful means of obtaining the end result exists which is known to the accused and is reasonable to use. This leading precedent case confirms the fundamental principle that humans have a lawful excuse to kill animals for a legitimate purpose, but when they do so, they must use methods and equipment which avoid causing unnecessary pain, suffering or injury.

F6 “Negligence”

Similarly, the concept of criminal negligence referred to in s. 182.3 inherently builds in the concept of “lawful excuse.” A person is not guilty of a criminal offence if the types of harm to an animal referred to in s. 182.3 were not caused as a result of the person’s negligence. A person who is negligent should not have any lawful excuse, because the person’s behaviour would, by definition, constitute a marked departure from the standard of care that a reasonable person would use. The lawful excuse is to exercise the degree of care of a reasonable person and to avoid a marked departure from society’s standards.

F7 Colour of Right

“Colour of Right” is a concept which is currently applicable under s. 429 (2) in the phrase “with legal justification or excuse and with colour of right”. A “colour of right” usually pertains to a mistaken belief in an entitlement to property; that type of defense may apply to the property offences in Part XI, but it is not appropriate as a defense to causing pain, suffering or injury to an animal. In any event, an accused person always has a “lawful excuse” defense available at common law which allows a person to defend his or her ownership or custody of an animal. The words “with legal justification or excuse and with colour of right” was an imprecise phrase. The phrase is a jumble of expressions which all mean the same thing. There is no apparent practical distinction between “legal justification” and “lawful excuse” in the context of the cruelty to animals offences. Section 182.2 (1) (c) and (d) have focused the terminology by using the words “without lawful excuse” as the modern means of expressing those concepts. Since the concept of a “colour of right” is a property concept which is irrelevant as a defense in a cruelty case, we urge that concept be eliminated.

F8 No Exemptions - Cruelty is Cruelty

Some animal use industries have asked for special exemptions from the cruelty provisions, or have suggested the cruelty provisions should only apply to pets, or have asked to set their own criteria for what cruelty is in relationship to their use of animals.

CFHS absolutely opposes outright exemptions from the crimes against animals sections, whether the exemptions would apply to specified industries or types of animals. It would be a grave error to provide a cruelty exemption to some or all users of animals.

- (a) A person asking for an exemption from cruelty must be admitting they are committing cruelty as the provisions currently exist in the *Criminal Code*. No one who takes pride in his work should be willing to admit his work makes him such a criminal that he needs an exemption from the law. Animals are not mere chattel property and all of us dealing with animals under our custody or care must take reasonable measures to avoid causing unnecessary pain. We have never met an animal use industry representative who claimed he was causing unnecessary suffering to animals.
- (b) Persons engaged in animal use industries have always been subject to compliance with the *Criminal Code*. Typically, when an individual commits a cruelty offence, members of the same industry are appalled by the conduct and express disapproval of such demeaning behaviour.
- (c) All individuals should be subject to criminal law. For instance, doctors and athletes are held responsible for any assault they commit in the course of their lawful activities and police officers are subject to the criminal law of assault while arresting a person. The fact that a person is engaged in a trade, profession or hobby does not provide justification to escape liability for a cruelty offence. The *Criminal Code* and pertinent case law fully takes into account legitimate activities.
- (d) Industries should not be entitled to contract out of cruelty crimes by setting their own standards, but should be subject to the same objective review as all other persons in society. The fox should not be in charge of the chicken coop. In determining whether unnecessary or unjustifiable pain had been caused, industry standards can provide important evidence that the appropriate standard of humaneness had been achieved, but they should not be built into the *Criminal Code* and they should be subject to the independent objective elements of the cruelty and criminal neglect crimes.
- (e) Allowing exemptions would be a radical departure from the existing criminal law and a substantial corruption of the concept of cruelty.
- (f) Exemptions which benefit some persons and not others in the *Criminal Code* may be unconstitutional.
- (g) The *Criminal Code* and precedent cases such as *R. v. Menard* recognize and approve of legitimate industry uses of animals, allowing substantial pain, as long as it was not unnecessary.
- (h) As parliamentarians, you hardly want to be the ones who authorize persons to cruelly harm animals. Your constituents would be more than a bit upset.

“ANIMAL” – s. 182.1**G1 “Animal”**

The word “animal” is now defined in s. 182.1 as follows:

182.1 In this part, “animal” means a vertebrate, other than a human being, and any other animal that has the capacity to feel pain.

At long last, the *Criminal Code* will contain a definition of an “animal”, which is appropriate for *Criminal Code* purposes, meaning “a vertebrate, other than a human being, and any other animal that has the capacity to feel pain”. The core reason why the Cruelty to Animals provisions exist in the *Criminal Code* is that it is unconscionable to intentionally inflict avoidable pain upon an entity capable of experiencing it. Currently there is no definition of the word “animal” in the *Criminal Code*. However, the words “an animal or a bird” are used, giving rise to a wide-open and ambiguous definition of an “animal”. The new, more restricted definition focuses upon the appropriate basis for the definition in the context of a *Criminal Code* prosecution. The ability to experience pain becomes the guiding factor to determine which animals are protected. The species which qualify under the sub-phylum, “vertebrates” are clearly defined. In fact, most of the medical research on pain as experienced by humans is based upon research upon other vertebrates, thereby confirming scientific opinion that vertebrate animals who have a similar nervous system to humans suffer pain. However, a crown attorney could only succeed to convince a judge that a non-vertebrate suffers pain by leading expert opinion evidence in court that it is the case. The crown attorney would have to achieve a burden of proof beyond a reasonable doubt. The definition of an “animal” confirms that a sentient being which is capable of suffering deserves to be protected as a victim of abuse. Stray and wild animals will be protected from cruelty, although people will still be able to kill animals with a lawful excuse (for example, in accordance with lawful pursuits authorized by statute or regulated by licences or permits, to protect persons, property or other animals, for the purpose of euthanasia or subject to a range of defenses such as automatism, among other lawful excuses referred to in this Brief). It has been argued that under the proposed definition of an animal, any person who used a worm for the purpose of fishing would be subject to criminal charges. That concern is not realistic for several reasons. First, the word “animal” used in the *Criminal Code* for the last 109 years always allowed such a silly statement to be made, but now the definition is more restricted. Secondly, since a worm is not a vertebrate, the crown would have to lead expert evidence to convince a judge that the animal felt pain - a difficult and expensive proposition. More importantly, a crown cannot lay charges where there was not a realistic chance of winning the case. Moreover, it is a fundamental criteria that a crown attorney may not lay charges in the case of common human activities where it would be contrary to the public interest. Furthermore, crowns are obligated not to lay criminal charges in “*diminimus*” cases such as this. Crown attorneys must act as one of several gateways in the criminal justice system and must close the door to prosecution in all criminal cases where those basic prosecutorial criteria are not met.

G2 Cattle

Now all animals will have most of the protections previously accorded only to “cattle”. Farmers and ranchers will lose no rights with respect to their cattle, but other animals will be accorded the same higher procedural and sentencing rights in serious cases, as are applicable to cattle. Cattle continue to receive special protection from cattle rustlers and alteration of brands (s. 338) or with respect to failure to stop at the scene of an accident involving cattle (s. 252 (1)). The five year maximum penalty will continue to apply to offences against cattle, as confirmed by s. 553 (a). Persons concerned about theft of their animals continue to be protected by s. 322 which creates an offence

of theft where a person fraudulently and without colour of right takes, or converts to his own use or the use of another person anything “whether animate or inanimate” with intent to deprive the owner of the thing of his property or interest in it.

- H -

CRUELTY OFFENCES - s. 182.2 (1)

H1 Section 182.2 (1)

Offences falling under subsection (1) of section 182.2 are:

- (1) (a) **Cruelty Offence;**
- (1) (b) **Vicious Killing;**
- (1) (c) **Killing Without Lawful Excuse;**
- (1) (d) **Poisoning an Animal;**
- (1) (e), (f), (h) **Promoting Baiting and Training or Keeping a Fighting Arena**
- (1) (g) **Shooting Liberated Animals.**

Each of those offences require the crown to prove a wilful intention or recklessness, as discussed below.

H2 (1)(a) Cruelty Offence

Section 182.2 (1)(a) provides:

182.2 (1) Every one commits an offence who, wilfully or recklessly,

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

Technical difficulties to prove an accused “wilfully” caused unnecessary pain have impeded many cruelty cases, especially since the victim cannot testify on its own behalf. However, the proposed cruelty offence remains the same as it currently exists under s. 446 (1) (a). The crown still has the identical burden as before to prove the offender’s wilful or reckless intention to cause unnecessary pain, suffering or injury.

- (i) **“Wilfully”** - Section 182.2 (1) expressly uses the word “wilfully” which previously was also a specifically-stated requirement in s. 446 (1) (a). The Supreme Court of Canada has clearly and repeatedly emphasized that intent to commit a crime is a fundamental requirement. It stated in *R. v. Prue and Baril* [1979] 2 S.C.R. 547:

“Indeed, the inclusion of an offence in the *Criminal Code* by that very fact must be taken to import *mens rea*, and there would have to be clear intention against it before a Court would be justified in denying its essentiality.

“The encompassing judgement of my brother Dickson in *Regina v. City of Sault Ste. Marie* [[1978] 2 S.C.R. 1299], does not lead to a different conclusion in the present case...

‘Where the offence is criminal, the Crown must establish a mental element, namely, that the accused who committed the prohibited act did so intentionally or recklessly, with knowledge of the facts constituting the offence, or with wilful blindness toward them.’”

It is a general presumption at common law that the required mental state is either wilful intention or recklessness. In *R. v. Buzzanga* (1979) 49 C.C.C. (2d) 369 (Ont C.A.), the Court of Appeal held:

“The general *mens rea* which is required and which suffices for most crimes where no mental element is mentioned in the definition of the crime, is either the intentional or reckless bringing about of the result which the law, in creating the offence, seeks to prevent and, hence, under s. 281.2 (1) is either the intentional or reckless inciting of hatred in the specified circumstances.”

Other Supreme Court cases reiterate those criteria. Recognizing that wilfulness is an essential element of the proposed cruelty offences in s. 182.2 (1), CFHS specifically stated in its **Response to the Crimes Against Animals Consultation Paper** that the standard of “wilfully” had to remain as a requirement for the cruelty offences which have now been inserted into s. 182.2 (1). Of course, it is not necessary to expressly insert the words “wilfully or recklessly” - the Supreme Court of Canada has made it abundantly clear that those concepts are already inherently included in each offence where no contrary standard of intent is expressly stated. However, to assuage unfounded concerns, we support re-insertion of the express words, “wilfully or recklessly”.

- (ii) **“Recklessly”** - At the present time, “wilfully” as stated in s. 446 (1) (a) is modified by s. 429 (1) of the *Criminal Code* so that it is deemed to include “recklessness”, a lower level of subjective intent which can be easier to prove. Section 429 (1) states:

“**429.** (1) Every one 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, for the purposes of this Part, wilfully to have caused the occurrence of the event.”

It is necessary to insert the words “or recklessly” into s. 182.2 (1) in order to indicate the appropriate level of intent. Moreover, in view of the fact that the word “wilfully” has been reinserted into the section, it is necessary to insert the words “or recklessly” in order to maintain the status-quo by incorporating the concept previously found in s. 429.(1). The concept “recklessly” has been clearly addressed in various leading precedent cases.

“Recklessness” requires actual foresight, subjectively determined, as to whether the accused (given his shortcomings and strengths) foresaw that the consequence could occur or the existence of the circumstance.

As the Supreme Court stated in *Sansregret* (1985) 45 C.R. (3d) 193 at 203 (SCC):

“In accordance with well-established principles for the determination of criminal liability, recklessness, to form a part of the criminal *mens rea*, must have an element of the subjective. It is found in the attitude of a person who is aware that there is a

danger that his conduct could bring about the result prohibited by the criminal law, but persists, despite the risk. It is in this sense that the term ‘recklessness’ is used in the criminal law and it is clearly distinct from the concept of civil negligence.”

Typically, in the past, crown attorneys and judges have overlooked the fact that the word “wilfully” which currently appears in s. 446 (1) (a) actually includes the concept “recklessly” hidden away in s. 429 (1). Now s. 182.2 (1) (a) is drafted to achieve the same objective. At least now the concept of recklessness will not be hidden a number of sections away (as it was in s. 429 (1)) and crown attorneys and judges will immediately recognize that recklessness may be proven to achieve the *mens rea* component of the offence.

- (iii) **Causation** - The primary cruelty provision continues to focus upon a person who “causes (or being the owner, permits to be caused) unnecessary pain, suffering or injury to an animal.” Crown attorneys will still have the onus to prove causation beyond a reasonable doubt, while judges will be able to exercise their sentencing discretion in a manner appropriate to the circumstances.
- (iv) **“Unnecessary” Suffering** - The concept of “unnecessary suffering” was always the crux of the cruelty offence. The leading precedent is *Regina v. Menard* (1978), 4 C.R. (3d) 333, 43 C.C.C. (2d) 458 (Que. C.A.). That case has been consistently followed. *Menard* held that the private operator of a commercial pound could not intentionally kill dogs using hot carbon monoxide gas which caused a painful and prolonged death, when another system (which cooled the gas) decreased pain and distress. Any unnecessary amount of pain, suffering or injury caused intentionally or recklessly can provide the grounds for an offence. The amount of the pain inflicted is not the issue if it is inflicted unnecessarily. However, a person is entitled to cause substantial pain, suffering or injury to an animal if it is necessary to achieve a lawful purpose. Pain is unnecessary if another less painful means of obtaining the end result exists which is known to the accused and is not unreasonable to achieve. This leading precedent case confirms the fundamental principle that humans have a lawful excuse to kill animals for a legitimate purpose, but when they do so, they must use methods and equipment which avoid causing unnecessary pain, suffering or injury.

H3 (1)(b) Vicious Killing

Now s. 182.2 (1) (b) provides for a new brutal and vicious killing offence:

182.2 (1) Every one commits an offence who, wilfully or recklessly,

- (b) kills an animal or, being the owner, permits an animal to be killed, brutally or viciously, regardless of whether the animal dies immediately;

That provision addresses previously-unpunished atrocities which have outraged the public because of the brutal nature of the killings. Judges frustrated at their past inability to address vicious killing of an animal will now have a remedy to address such criminal conduct. This crime focuses upon the brutality of a perpetrator’s intentions rather than upon suffering of an animal. Brutal killing of animals has been a hallmark of aggressive criminals who caused serious harm to humans (see the CFHS Backgrounder entitled *Linking Animal Cruelty to Human Violence*, set out in Appendix “D”, particularly aspects related to *Serial Killers* and *School Shootings*). The words “brutally or viciously” each help clarify the other, showing a malicious mind in the killing method used. The crown would have the burden to prove beyond a reasonable doubt a special subjective intent to commit a vile and despicable act far beyond normal standards applicable to killing of an animal in

appropriate circumstances. This offence would not apply to killing conducted in accordance with industry standards, but would be expected to apply where a person exhibited a vicious intent, such as where a person tied a cat to a railway rail shortly before arrival of a train. This offence recognizes that all of society needs protection against aggressive criminals, even in the case where the animal may not have suffered.

H4 (1)(c) Killing Without Lawful Excuse

Now s. 182.2 (1) (c) prohibits killing an animal without lawful excuse:

182.2 (1) Every one commits an offence who, wilfully or recklessly,

(c) kills an animal without lawful excuse;

It was necessary to insert the words “without lawful excuse” in the specific subsections 182.2 (1) (c) and (d) (but not in the case of other subsections), because those subsections would not work without those words. Many people kill over 400,000,000 animals a year in Canada under different circumstances in the normal course where it is clear no criminal activity is involved. If you take away the words “without lawful excuse” from subsection 182.2 (1) (c) “kills an animal without lawful excuse”, many innocent people would be found guilty. Similarly, with respect to s. 182.2 (1) (d), the words “without lawful excuse” are required to recognize that in some cases, it can be appropriate to poison animals (for example, it is legal to poison a legally-defined “pest” such as a mouse or rat). The words “without lawful excuse” become an ingredient of the offence, which in those explicit cases, must be proved by the crown beyond a reasonable doubt. It would not be appropriate to use the words “without lawful excuse” in the other subsections of 182.2, since they each contain their own internal system to appropriately balance out the elements of the offence, taking into account the rights of society and the accused, and recognizing that all of the common law defenses, including “lawful excuse” are applicable in any event, if they can be shown to be reasonable excuses upon proper evidence.

Unlike some other sections, s. 182.2 (1) (c) and (d) do not use the words “without lawful excuse, the proof of which lies upon him”. As a result, no “reverse onus” is imposed upon an accused in those subsections and therefore that type of Charter challenge by an accused is not applicable.

H5 (1)(d) Poisoning an Animal

Section 182.2 (1) (d) pertains to poisoning an animal:

182.2 (1) Every one commits an offence who, wilfully or recklessly,

(d) without lawful excuse, poisons an animal, places poison in such a position that it may easily be consumed by an animal, administers an injurious drug or substance to an animal or, being the owner, permits anyone to do any of those things.

This provision remains the same as its predecessors. See the discussion regarding “lawful excuse” discussed in detail under the previous heading **F4 (1)(c) Killing Without Lawful Excuse**, above. Our SPCA members recommend that this poisoning offence should not require proof of wilful or reckless conduct. It is difficult to prove that intention in such a case. It should be sufficient that the accused was criminally negligent in placing the poison. We recommend that s. 182.2 (1) (d) be amended by deleting the words “wilfully or recklessly” and by moving that provision into s. 182.3 (1) (d).

H6 (1)(e),(f) and (h) Promoting Fighting

Section 182.2 (1) (e) prohibits encouraging fighting, baiting or training animals to fight:

182.2 (1) Every one commits an offence who, wilfully or recklessly,

- (e) in any manner encourages, promotes, arranges, assists at or receives money for the fighting or baiting of animals, including training an animal to fight another animal;
- (f) builds, makes, maintains, keeps or allows to be built, made, maintained or kept, a cockpit or any other arena for the fighting of animals on premises that he or she owns or occupies;
- (g) being the owner, occupier or person in charge of any premises, permits the premises or any part of the premises to be used in the course of an activity referred to in paragraph (e) or (f).

Unfortunately, the new section no longer provides that “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”. We request that s.182.2 (1) (e) be amended by stating: “...in any manner encourages, promotes, arranges, assists at, **attends at** or receives money for the fighting or baiting of animals...” Subsection 182.2 (1) (f) prohibits persons from building, maintaining, keeping or allowing a cockpit or any other arena for the fighting of animals on premises he or she owns or occupies. According to subsection 182.2 (1) (h), a person being the owner, occupier or person in charge of any premises, permits the premises or any part of the premises to be used in the course of an activity referred to in paragraph (e) or (g) is also guilty of an offence. These offences previously existed in s. 446 and 447, but they have been improved and extended to all animals. Cockpits have been extended to “any other arena for the fighting of animals” and several loopholes have been closed. It is now an offence to train an animal to fight other animals. A judge is no longer necessarily required to order fighting animals to be destroyed.

H7 (1)(g) Shooting Liberated Animals

Section 182.2 (1) provides:

182.2 (1) Every one commits an offence who, wilfully or recklessly,

- (g) 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 animals are liberated by hand, trap, contrivance or any other means for the purpose of being shot at the moment they are liberated;

Previously only captive birds were protected from being shot at the time they were liberated. Now all animals are protected in those circumstances. A person who is the owner, occupier or in charge of any premises used for that purpose is also guilty of an offence. We object to insertion of the words “at the moment” because that implies that a hunter can sit in front of a cage and blast an animal the instant after the animal exits the cage. In our view, such behaviour is not only unsportsmanlike, but it is reprehensible to carry on such a recreational pursuit for the joy of killing an animal in a case where the animal has no sporting chance of surviving. Hunters should provide a reasonable opportunity for an animal to escape being shot when it is liberated from a confinement.

H8 (2) Indictable and Summary Sentences – Cruelty Offences

According to s. 182.2 (2), a person who commits an offence of intentional or reckless cruelty under s. 182.2 (1) is either guilty of an indictable or a summary conviction offence. Such a hybrid offence allows the crown to proceed by way of an indictable offence in serious or repeated cases (with a maximum sentence of up to five years in prison) or as a summary conviction (giving rise to a maximum of 18 months imprisonment). Previously judges and crown prosecutors were constrained by summary conviction procedures and sentences, including fines not exceeding \$2,000 and sentences to a maximum of 6 months. The new section will allow appropriate fines in any amount in the judge’s discretion where the crown proceeds by indictment. On summary conviction, the maximum fine will remain at \$2,000. Since a very high proportion of prosecutions will proceed by way of summary conviction, rather than by indictment, we urge that the maximum fine for a summary conviction, cruelty or criminal neglect offence be increased to \$10,000 by inserting a specific reference in s. 182.5. While that fine would not be as high as the \$50,000 fine permitted in the federal *Health of Animals Act*, a \$10,000 fine would put more teeth where it counted the most and would be the type of strong signal to the justice system we have been asking for. The importance of the increased terms of imprisonment and fines is the signal it gives to the justice system to treat crimes against animals more seriously, while allowing for greater flexibility in a range of sentences. CFHS hopes these signals will help improve the existing low rate of convictions.

- I -

CRIMINAL NEGLIGENCE - S. 182.3 (1)

I1 Section 182.3 (1)

The three offences falling under section 182.3 (1) include:

- (a) **Failure To Exercise Reasonable Care,**
- (b) **Abandonment or Failure To Provide Necessities; and**
- (c) **Negligently Conveying.**

Each of those offences requires the crown to prove a standard of criminal negligence (not civil negligence). These 3 offences continue the concepts previously found in s. 446. The crown need not (but may) prove the accused intended or recklessly caused the harm, but must show criminal negligence (that the accused engaged in a marked departure from the standard of care a reasonable person would use). Criminal negligence is a much higher standard than civil negligence.

I2 (1)(a) Failure To Exercise Reasonable Care

Subsection 182.3 (1) (a) states:

182.3 (1) Every one commits an offence who,

- (a) negligently causes unnecessary pain, suffering or injury to an animal;

The concept of “wilful neglect” currently set out in s. 446 (1) (c) is an anachronism. Modern criminal law has moved away from a requirement to prove that neglect was intended, with respect to a crime where a person failed to carry out an obligation. The concept of neglect is actually incompatible with a requirement for wilfulness or intention; neglect is a lesser and distinct state of mind. In any event, the concept “wilful neglect” was already currently modified by s. 446 (3) which

says that failure to exercise reasonable care is proof that the pain/injury was caused by wilful neglect. That is the same effect as the proposed s. 182.3 (1) (a).

Section 182.3 (2) is specifically worded to define “negligently”:

- (2) For the purposes of paragraphs (1) (a) and (c) “negligently” means departing markedly from the standard of care that a reasonable person would use.

The proposed wording requires a Crown to prove that the accused engaged in a marked departure from the standard of care a reasonably prudent person would have shown in the specific circumstances of that particular activity, assessed on an objective basis, where he/she had a legal obligation. See *R. v. Naglik*, [1993] 3 S.C.R. 122, (S.C.C.).

In a series of cases, the Supreme Court of Canada explored the concept of fault in some “criminal negligence” cases (as distinguished from “civil negligence”). Failure to provide necessities is an example of criminal negligence. In *R. v. Creighton*, [1993] 3 S.C.R. 3, (S.C.C.), McLachlan J. writing for the majority of the court, suggested the following approach to prove such offences. The first question is whether the *actus reus* is established. This requires that the negligence constitute a marked departure from the standards of a reasonable person in all the circumstances of the case. The next question is whether the *mens rea* is established. Usually the *mens rea* of an objective foresight of risk of harm is inferred from the facts. The standard is that of a reasonable person in the circumstances of the accused. It can be inferred that a person who committed a manifestly dangerous act failed to direct his mind to the risk and the need to take care. Short of incapacity, personal traits are not relevant whether those factors might indicate, for example, either a lack of experience or a special experience.

The concept of criminal negligence has been analyzed in various recent cases such as *R. v. Hundal*, (1993) 79 C.C.C. (3d) 97 (dangerous driving), *R. v. Finlay* (1993), 23 C.R. (4th) 321, 83 C.C.C. (3d) 513 (S.C.C.) (s. 86 (2) - careless handling or storage of a firearm or ammunition), *R. v. Naglik* (1993) 23 C.R. (4th) 335, 83 C.C.C. (3d) 526 (S.C.C.) (s. 215 - failure, without lawful excuse, to provide necessities of life for a child), *R. v. Yanover* (No. 1) (1985), 20 C.C.C. (3d) 300 (Ont. C.A.) (s. 70 and 80 - a person possessing an explosive substance must use reasonable care to prevent bodily harm or damage to property), *R. v. Lockhart* (1993), 19 C.R. (4th) 263 (B.C. C.A.) (s. 219, 220 and 221 - causing death or bodily harm by criminal negligence) and *R. v. Gossett* (careless discharge of a firearm). It is clear that criminal offences based on neglect are premised upon a standard of criminal neglect, even if this is not expressly stated in the words of the offence.

I3 (1)(b) Abandonment or Failure To Provide Necessities

Subsection 182.3 (1) (b) states:

182.3 (1) Every one commits an offence who,

- (b) being the owner or the person having the custody or control of an animal, abandons it or fails to provide suitable and adequate food, water, air, shelter and care for it;

The redundant words “abandonment in distress” are restated as “abandonment” in s. (1) (b). The concepts stated above pertaining to negligence are applicable to this offence.

I4 (1)(c) Negligently Conveying

Subsection 182.3 (1) (c) states:

182.3 (1) Every one commits an offence who,

- (a) negligently injures an animal while it is being conveyed;

This provision should be amended so that the word “driven” (previously set out in s. 446 (1) (b)) should be combined with the word “conveyed”. The word “conveyed” indicates that the animals are transported, whereas the word “driven” implies that a person is guiding the animals to move from one place to another under their own power. The concepts of negligence stated above are applicable. The words “wilful neglect” are no longer used for the same reason expressed above.

I5 (3) Indictable and Summary Sentences – Criminal Negligence

According to s. 182.3 (3), now a person convicted of a failure to exercise adequate care of an animal under subsection 182.3 (1) (a), (b) or (c) may be guilty of an indictable offence, with imprisonment for a period up to two years, or may be punished on the basis of a lesser summary conviction. Section 787 provides a penalty of 6 months/\$2,000 for all summary conviction offences, “except where otherwise provided”. Nothing is “otherwise provided” for the subsection 182.3 (1) (a), (b) and (c) neglect offences upon summary conviction, since they have a relatively low 2 year maximum imprisonment upon indictment, unlike the more serious subsection 182.2 cruelty offences which appropriately have a maximum 5 year/18 month indictable/summary conviction term of imprisonment. We request that s. 182.3 (3) (c) be added providing for a maximum fine of \$10,000 in the case of a summary conviction offence, for the same reasons stated at H8.

- J -

PROHIBITION AND RESTITUTION ORDERS**s. 182.4 (1) - (3)****J1 Prohibition Orders**

Section 182.4 (1) (a) allows a judge to issue a prohibition order:

182.4 (1) The court may, in addition to any other sentence that it may impose under subsection 182.2 (2) or 182.3 (3),

- (a) make an order prohibiting the accused from owning, having the custody or control of or residing in the same premises as an animal during any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of 5 years;

Previously judges’ hands were tied by a two-year limitation on an order prohibiting an accused from owning or having the custody or control of an animal during a period exceeding two years. Under the proposed provisions judges would also be able to issue prohibition orders preventing an accused from residing in the same premises as an animal, thereby closing a common loophole. Humane societies and judges have often expressed frustration at the two-year limitation. Prohibition orders may now be imposed during any period the court considers appropriate (including a ban of up to a lifetime). In the case of a second or subsequent offence, a prohibition order must extend for a

minimum of five years. Humane societies applaud this as a major protection for animals. Pursuant to subsection 182.4 (2), an accused who contravenes a prohibition order is guilty of an offence punishable on summary conviction.

J2 Restitution

Section 182.4 (1) (b) allows a judge to issue a restitution order:

182.4 (1) The court may, in addition to any other sentence that it may impose under subsection 182.2 (2) or 182.3 (3),

- (b) On application of the Attorney General or on its own motion, order that the accused pay to a person or an organization that is taking care of an animal as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal, if the costs are readily ascertainable.

That should allow SPCAs to recover veterinary, shelter, feeding and care costs, which have amounted to \$50,000 or \$60,000 in some cases where malnourished herds of cattle or unsanitary menageries of cats or dogs have been resuscitated at substantial expense. Many local humane societies struggle to survive on minimal budgets, primarily funded by donations and the heroic efforts of their volunteers. Pursuant to subsection (7), provisions applicable to enforcement of a restitution order are found in s. 740 - 741.2 of the *Code*, modified to suit the circumstances applicable to animal abuse. In effect, the judge can exercise his/her discretion to order the offender to pay for all pecuniary damages, including actual and reasonable costs for the care of the animal, temporary housing, food, care, transportation, loss of income or support. A restitution order takes priority over and must be paid before a fine or an order of forfeiture. It becomes enforceable as if it were a civil judgment. Any money found on the accused at the time of arrest may be paid on account of the restitution order, if it does not belong to others. Notice of the restitution order must be given to the person who has to be paid. A person who provides care for an abused animal retains the right to make any civil claim.

J3 Other Remedies

In addition to the above sentences, as part of a probation order, judges can issue a “behave order” requiring a person to keep the peace and be of good behaviour. A judge can order an accused to allow an SPCA inspector to inspect premises on a regular basis and monitor the care given to animals. An offender can be ordered to provide appropriate care for an animal. Attendance at an anger management course or psychological therapy can be ordered under probation.

- K -

RELATED OFFENCES

K1 Threatening Abuse of an Animal

Section 264.1 (1) (c) clarifies that every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat to kill, poison or injure an animal that is the property of any person. For instance, 61% of 39 women living in women’s shelters in Hamilton and Owen Sound, Ontario who owned pets and who had been abused by their partners, said their pets had either been abused, killed or threatened by their partners. 48% said that concern for the safety

of their pets prevented them from leaving their abusive home sooner. Other studies confirm a high co-relation between persons who abuse animals and who commit violent acts or threats against their children, spouses or other persons.

K2 Theft

Section 322 creates an offence of theft where a person fraudulently and without colour of right takes, or converts to his own use or the use of another person anything “whether animate or inanimate” with intent to deprive the owner of the thing or his property or interest in it. This section appropriately deals with the aspect of an ownership interest in property, where, for example, a person who steals an owner’s dog should be subject to criminal penalties. Section 322 (5) provides that for the purposes of that section, a person who has a wild living creature in captivity shall be deemed to have a special property interest in it while it is in captivity and after its escape from captivity. Normally a wild animal is the property of the crown until a person takes control of it. This provision extends ownership interests into a wild living creature after it has escaped from captivity, so that a person who takes it would be guilty of theft.

K3 Rustling Cattle & Altering Brands

Section 338 makes it an offence to fraudulently take, hold, keep in possession, conceal or receive, appropriate, purchase or sell cattle that are found astray, or to fraudulently obliterate, alter or deface a brand or mark on cattle, or make a counterfeit mark, resulting in an indictable offence liable to imprisonment for a term not exceeding five years. Theft of cattle is an indictable offence which can give rise to imprisonment for a term not exceeding 10 years. Section 338 (1) (a) applies to cattle that are found astray, but it does not encompass a dog or cat astray and it is questionable whether s. 322 provides protection to stray animals. In a number of cases, persons have obliterated, altered or counterfeited microchips or tatoos or valuable dogs and cats as part of the process of stealing and selling them. Such animals should also be protected by an appropriate revision to s. 338, both with respect to counterfeiting and theft.

K4 Bestiality

Section 160 provides that every person who commits bestiality is guilty of an indictable or summary conviction and is liable to imprisonment for a term not exceeding 10 years, or is guilty of an offence punishable on summary conviction. Bestiality is committed where an accused human being carries out intercourse in any way with a beast or bird as an unnatural sexual indulgence. It is interesting that a longer term of imprisonment is provided for, even though no person is directly injured, nor is there a requirement that any unnecessary pain, suffering or injury has occurred to the animal. This offence apparently has less concern for the animal and more concern to protect society at large from an immoral and indecent act which offends society’s rules of propriety.

- L -

NEED FOR IMPROVEMENTS

L1 Taking Justice Seriously

Humane societies need to regain confidence that the justice system will recognize that crimes against animals are serious offences. These provisions need to enable crown attorneys, judges and the peace officers of SPCAs to better protect animals, resulting in fewer prosecution withdrawals and acquittals. At the same time, s. 182.1- 4 is carefully balanced to recognize the rights of persons who have a lawful excuse to kill animals.

L2 Why Protect Animals?

Unfortunately, animals sometimes suffer avoidable pain when under human control. Sentient animals constantly make decisions and often express emotions, including aversion to pain and injury. People who control animals owe them a duty of care and must avoid causing them harm.

L3 A Fundamental Moral Value

Prevention of cruelty to animals continues to be a fundamental moral value. The bedrock of the *Criminal Code* and civilization itself is to prevent violence that harms victims. Animals capable of suffering pain under human control deserve to be protected from a person who inflicts unnecessary suffering.

Appendix A - Cruelty Vignettes

Calgary - Jasmine, a kitten, was thrown up against the wall, had its neck strangled and bent back and forth by a woman's boyfriend. Witnesses reported seeing a man throw the kitten off a third floor balcony after trying to break its back. The man left the building, picked the kitten up, threw it onto the roadway and stomped and kicked the cat about five metres along the street. Jasmine was found by tracing her trail of blood to a dumpster - she survived.

Kitchener - A woman mad at her roommate killed her roommate's pet cat by cooking it in a microwave oven. She was placed on probation after both the crown and defense lawyers agreed the offence did not merit a tougher sentence.

Victoria - Over a period of seven years, the Victoria SPCA gave various warnings and had to seize 89 animals from the alleged offenders because of neglect and ill treatment. Sixteen charges of cruelty to horses and cows were laid in one of the worst cases of animal abuse in Victoria's history. The crown counsel refused to proceed with the case, claiming the court calendar was too busy. SPCA Executive Director Lynn West begged prosecutors to proceed with just one charge, but they refused, deciding instead to enter into a two-year peace bond with the alleged offenders, requiring them to allow veterinarians to inspect their property every six weeks. Since then, two of the animals have died. As Lynn West said, "this was a case that cried out for justice, and justice wasn't done."

Winnipeg - 130 dogs owned by a dog breeder were seized in a raid by the Winnipeg Humane Society. Almost all of the dogs were malnourished. Many were kept in fecal-laden cages, while others were left in outdoor pens despite sub-zero temperatures. The Winnipeg Humane Society incurred \$51,000 worth of veterinary care and shelter costs. The crown attorney asked the court to order the puppy mill owner to pay for the SPCA's costs of caring for the dogs, but the court could not do so. The dog breeder was sentenced to four months in jail for mistreating his animals, had to pay a \$500 fine and was placed on supervised probation for two years during which he was prohibited from owning any dogs for breeding purposes.

Brampton - A man threw a terrier against a concrete wall, placed the injured dog in a garbage bag and left him to die in a dumpster. The man was fined \$250 and ordered not to own an animal for two years.

Edmonton - Two tenants who had received complaints about their noisy dogs were accused of tying two dogs to a tree and clubbing them to death with a baseball bat. The judge ruled on evidence given by a veterinarian that while beating a dog to death is wrong, the dogs died instantaneously and therefore did not suffer. The two men were found innocent.

St Catharines - A man convicted of killing a pup and injuring a grown dog with a hammer received a \$500 fine and two year's probation.

Bewdley - A man dragged his one-year old rottweiler for 1.3 kilometres chained to a trailer hitch on the back of a pickup truck travelling 60 - 70 km/h near Port Hope, Ontario. The 60 lb. female dog, named Nikita suffered a broken leg as well as massive lacerations on her face and body, areas where the skin was burned off on her paws, chest, back, sides and haunches leaving a trail a blood down the road. Patches of flesh had rubbed practically to the bone. Witnesses saw the driver stop the truck to stand the collapsed dog back on her feet before driving off again. Angry witnesses yelled at him to stop. A "lynch mob" of 30 livid neighbours massed outside the driver's home and called him a "piece of trash", but he escaped through the back of the property. Vet bills amounted to \$7,000. The man forced the humane society to give his dog back. The public sent well over \$50,000 in donations to the Northumberland Humane Society for Nikita's care and there was an outpouring of public outrage in the press.

Port Hope - A man kicked and beat a 7-month-old kitten and poured Tabasco sauce in her eyes and ears. She ended up with two broken hips and a broken tail and lost the sight in one eye. The man was fined \$500, ordered to pay vet costs of \$553 and was ordered not to own or be in charge of any cats or dogs for one year.

Alberta - A man beat a cat with a pipe and a board and then drowned it in a bucket of water. He was fined \$300 for wilfully killing an animal.

Miramichi - A farmer tied his two-year old Belgian horse behind a farm wagon and pulled it down a chip seal road. The horse fought the rope and had its neck extended, resisting as it was pulled about 200 feet. The farmer stopped, backed up his vehicle and the trailer hit the horse. He got out and used a piece of wood to hit the horse five times on the back, with sufficient force that the wood broke. Then the farmer got back in the truck and accelerated quickly. The horse fell to the ground and couldn't get back up. It slid into a ditch and the farmer kept pulling it along. Various bruises and abrasions as well as the swelling left by the rope around the horse's neck confirmed the beating and strangulation. Even though the farmer lost a \$1,200 investment, the judge said: "Without question, this is a serious act of abuse... In this case, a denunciatory sentence is called for. General deterrence is a fact and must be taken into account." The farmer was sentenced to 90 days in jail on an intermittent sentence, was placed on two years probation and fined \$1,000.

Victoria - A driver expressed road rage after being made to wait while the dog's owner stopped his pickup truck to allow a line of ducks to cross the street. The man beat the dog with a golf club to get back at the pickup truck driver for holding him up. Recognizing the cruelty charge only allowed a maximum six-month sentence and/or a \$2,000 fine, the Victoria crown attorney charged the man with mischief and possessing a weapon dangerous to the public peace instead of cruelty to animals, leaving the door open to a sentence of up to 10 years in prison.

Winnipeg - Winnipeg Police watched as a man threw a cat to the ground and crushed its skull with his heel. He was acquitted of wilfully killing an animal "kept for a lawful purpose" because of the way s. 445 (a) of the *Criminal Code* is worded. The crown could not prove the cat was owned.

Brampton - A man convicted of taping shut a dog's mouth and causing the dog to suffocate to death received a \$250 fine and one year's probation.

Ontario - A judge ruled that a man **deliberately** dragged his girlfriend's 6-month old puppy for blocks down a city street tied to his car. A motorist finally chased him down, bringing the horrific incident to an end. The man was sentenced to one year probation, and ordered to pay the Ontario SPCA \$750.

Alberta - A \$50 fine and one-year probation was the sentence given to a man who pleaded guilty to animal cruelty. He was cited as saying that he was only trying to "shoo" a 6-month old puppy away (with a shovel)... but when he saw how badly he had injured it, he decided that he should put it out of its misery - so he killed it.

Newfoundland - A man was given a \$400 fine, ordered to pay the vet bill, and given probation after being found guilty of cruelty and neglect of his dog. The dog was found in the backyard tied to a doghouse. It was very thin and wore a harness that had been pulled so tightly that the harness had become imbedded in the dog's flesh and had to be surgically removed.

Appendix B - Linking Animal Cruelty and Violence to Humans

- FBI and Scotland Yard recognize that violence towards animals is one of five key indicators of a person who will commit violent acts against people. A past history of violence is a predictor of future aggression.
- 27 U.S. states have felony offences for animal cruelty, with prison sentences up to 10 years.
- U.S. public opinion polls show that 81% of the surveyed respondents supported strengthening animal cruelty laws. 71% were in favour of upgrading cruelty offences from misdemeanors to felonies. 89% said social agencies, educators, law enforcers and animal welfare organizations should share information about animal abusers as a means of reducing child abuse.
- Animal abusers often suffer from low self-esteem, a history of family abuse, frustration and an inability to manage anger. Childhood cruelty may provide a child with a sense of power and mastery over animals. Typical factors are revenge, retaliation, intimidation, deviant arousal or peer pressure.
- A 1997 study by the Massachusetts Society for the Prevention of Cruelty to Animals and Northeastern University found that 70% of animal abusers had committed at least one other criminal offence and almost 40% had committed violent crimes against people.
- In one American study, 118 out of 135 criminals, including robbers and rapists, admitted that when they were children, they had burned, hanged and stabbed domestic animals.
- A recent survey of 100 Calgary women entering shelters showed that of the ones that had pets (65), 56% stated that their abuser either threatened and/or hurt or killed a pet.
- 61% of 39 women who had been abused by their partners and were living in women's shelters in Hamilton and Owen Sound said their pets had either been abused or killed by their partners. 48% said concern for the safety of their pets prevented them from leaving their abusive homes sooner.
- 78% of 63 people charged with animal cruelty had also been charged with violence or threats of violence against people (Jim McIsaac, Winnipeg Police Services).
- A 1985 study of 152 criminals and non-criminals in Kansas and Connecticut found that 50% of the aggressive criminal subjects had histories of inflicting substantial animal cruelty, compared to 8% of non-aggressive criminals and 6% of non-criminals. (Kellert and Felthous "Childhood Cruelty Toward Animals Among Criminals and Non-Criminals", *Human Relations Volume 38, No. 12*, PP. 1113 - 1129).
- Of 23 British families with a history of animal abuse, 83% had been identified by social service agencies as having children at risk of abuse or neglect (James Hutton, 1981).
- A 1996 survey of women in a northern Utah shelter showed that 71% of the women with pets reported that their animals had been threatened, injured or killed by their abusers. ("Domestic Violence and Cruelty to Animals", *Latham Letter*, Winter 1996, Frank R. Ascione, Ph.D.)
- 58% of sexual homicide perpetrators who were sexually abused as children recounted childhood animal cruelty (Dr. Patricia Schene "One By One Is Not the Only Way" *Advocate*, American Humane Association, Fall/Winter 1993).

- See *Cruelty to Animals and Interpersonal Violence (Readings in Research)* edited by Dr. Randall Lockwood and Frank R. Ascione, Purdue University Press (800) 933 - 9637 (ISBN 1-55753-106-4) (\$24.95 U.S.) and *Child Abuse, Domestic Violence and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention* by Frank Ascione and Phil Arkow Purdue University Press (ISBN 1-55753-143-9) (\$24.95 U.S.)

Appendix C - Serial Killers, School Shootings and Youth Crimes

Albert DeSalvo (the Boston Strangler) - killed 13 women. In his youth he trapped dogs and cats in orange crates and shot arrows through the boxes.

Theodore Bundy - executed for multiple murders. He claimed he spent early years with a grandfather who tormented animals. Evidence linked him to graves filled with animals bones.

Paul Bernardo - raped and tortured victims. He cooked and ate his wife's pet iguana.

Mark Lepine - shot 14 women at Laval University. He slaughtered pigeons.

Jeffrey Dahmer - staked cats to trees and decapitated dogs.

Keith Hunter Jesperson (Happy Face Killer) - strangled eight women. He bashed gopher heads, beat, strangled and shot stray cats and dogs. "You're actually squeezing the life out of these animals." "Choking a human being or a cat - it's the same feeling." "I'm the very end result of what happens when somebody kills an animal at an early age."

Richard Trenton Chase - killed women. He was caught with a bucket of blood which he claimed was cow's blood and he was released. Later, a blender and stew pots with animal parts, as well as hundreds of leashes were found.

Henry Lee Lucas - was implicated in 30 murders and claimed to have killed 300 people. As a child, he killed every cat on his parent's farm.

David Berkowitz - killed 13 people. He killed his neighbour's Labrador retriever.

Jason Massey - shot a girl, disemboweled her and her head and hands were missing. He claims to have killed 37 cats, 29 dogs and 6 cows.

Carroll Edward Cole - reputed to be one of the most prolific serial killers in U.S. history - convicted for 5 of 35 murders accused. He confessed his first act of violence was to strangle a puppy under the porch of his house.

Patrick Sherrill (the Oklahoma Mail Carrier) - shot 14 co-workers and himself in 1986. He had stolen neighbourhood pets, tied them with baling wire and goaded his own dog to mutilate them.

Robert Alton Harris - murdered two 16 year old boys, doused a neighbour with lighter fluid and tossed matches at him. His initial run-in with police was for killing neighbourhood cats.

James Huberty - killed 21 children and adults at a McDonald's restaurant in San Ysidra, California. He had shot his neighbour's dog with an air gun.

Michael Cartier - shot Kristine Lardner twice and then himself. He broke the legs of a cat he gave her, threw it through a second storey window and was charged with animal abuse, but not convicted. He would have been in jail, if convicted, when he killed Kristine. He ripped the legs off a rabbit when he was a child.

Appendix D - General Backgrounder on CFHS

The Canadian Federation of Humane Societies works to improve animal welfare in Canada. As national body representing humane societies and SPCAs in every province, our mission is to promote compassion and humane treatment for all animals.

Each year, like any other organization or business, the CFHS must plan its focus and strategy, and decide where crucial dollars are to be spent for the year. With the multitude of issues and causes concerning animal welfare today, selecting specific issues to focus on is always difficult.

As with all business plans, there may be mitigating circumstances or new issues throughout the year that could result in the need to make changes in our direction and focus – but at present this document clearly outlines our areas of focus for 2001.

ANIMALS IN ENTERTAINMENT

The CFHS continues to encourage municipalities, particularly in Ontario, to introduce municipal bylaws prohibiting circuses with wild and exotic animals. There are already 25 such bylaws in British Columbia and Nova Scotia. We have developed an information brochure to raise public awareness about the suffering and inappropriateness of exotic animals in circuses. These are being distributed to the public through our member societies and other organizations.

The CFHS has been striving to convince the Fisheries Minister to stop the capture, import and export of marine mammals into and out of Canada for the purpose of public display. If the Minister had heeded our recommendations two years ago, the 12 beluga whales would not have been taken from the wild in Russia and imported to Marineland Niagara Falls in 1999. And the two that have already died could have been saved. Currently 10 beluga whales and seven killer whales are crowded into Marineland's facilities.

FARM

For more than 20 years, we have participated with government and industry in the development of Codes of Practice for the care and handling of farm animals. New codes for bison and goats were developed in 2000 and the poultry code is slated for review in 2001. The poultry code requires particular attention because of the serious welfare concerns regarding current chicken farming practices. These concerns include battery cages, unnecessary beak trimming, and forced moulting, which involves depriving birds of food and water to increase egg production.

The CFHS will also continue to participate in the national committee on spent hens. Spent hens are described as hens who have reached the end of their reproductive lives, and are, therefore, in very weakened condition. The committee is working to develop guidelines on humane handling and possibly on-farm slaughter to avoid needless and agonizing transportation of these birds.

HUMANE EDUCATION

In 2001 we will be developing resource information on exotic animals as pets. The exotic pet industry causes a great deal of animal suffering, mostly due to ignorance. There are thousands of reptiles (iguanas, other lizards and snakes) being kept as pets – mostly by people who don't know how to care for them and are not informed about proper care and nutrition when they purchase the pet. This often results in immense suffering followed by a premature death.

We will also continue publication of our semi-annual newspaper for kids called *Animals and Us*. This fun and educational paper is full of animal stories, puzzles, and games for kids from grades 4-6. The newspaper is also published on our website at www.cfhs.ca.

THE LAW

With the dissolution of *Bill C-17* due to the federal election last fall, we will again focus on changes to the Cruelty to Animals sections of the *Criminal Code*. Justice Minister Anne McLellan has promised to introduce much-needed changes to the *Code*. We will be working hard to hold her to that promise and bring forward a bill that will result in tougher and more appropriate sentences for people who abuse animals.

The CFHS is also developing a Prosecutions Manual to assist crown prosecutors, judges, and government justice departments with animal cruelty cases.

RESEARCH ANIMALS

The CFHS continues to provide representatives to participate in the regular monitoring of animals used in Canadian research facilities. We are developing video and print resources to help educate these representatives.

CFHS promotes the refinement, reduction and replacement of animals in research, testing and teaching and continues to push for the use of alternatives to live animals wherever possible.

WILDLIFE

The Federation works to educate Canadians about wild animals, whether in our own backyards or in the wilds. We also want to see better protection for wild animals in captivity through the introduction of enforceable standards for zoos.

CFHS has added a fifth factsheet to our *Living with Urban Wildlife* series. The Pigeon factsheet will help residents, building owners and municipalities humanely address conflicts with these birds. Single copies are available free from CFHS, along with the other factsheets on racoons, skunks, squirrels and mice and rats. They can also be viewed on our website.