

THE LEGAL STATUS OF ANIMALS IN CANADA: A POLICY PAPER

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PREFACE

*Another world is possible.*¹

Ten years ago, my philosophy professor asked me what it was that justified using animals to my benefit and their detriment. My inability to answer that question in an ethically defensible way opened the door for me to eventually see the reality of our existence as one predicated on animal suffering, misery, and death. I first learned about the reality of industrial meat production, which revealed such unspeakable horrors that I became morally compelled to dedicate my life to its abolishment. For several years, I remained willfully blind to all other forms of animal exploitation. I finally began peeling back the layers of animal use and abuse, of which there seemed to be no end.

My faith in humanity was threatened with each new revelation. No, anally electrocuting animals and stealing their fur in the name of fashion is not necessary. No, depriving animals of maternal love and social contact in the name of basic research is not necessary. No, forcibly confining animals in tiny tanks or cells and watching them go mad from captivity in the name of education is not necessary. No, routinely mutilating animals without anaesthetic and murdering them in the name of food is not necessary. It is no longer enough for me to work only on behalf of farmed animals, and I am now committed to ending all forms of animal oppression.

I moved to Vancouver to attend the University of British Columbia's Faculty of Law hoping that law school would teach me how to change the world for animals. I have taken every opportunity to learn how to use the law for their benefit throughout my legal education, and although I am grateful for my involvement with Animal Legal Defense Fund, Mercy for Animals Canada, Vancouver Animal Defence League, Liberation BC, and the Vancouver Humane Society, and the amazing work done by my peers in those organizations, it's just not enough. Until all of us are free, none of us are free.

This policy paper is something that allows me to focus my efforts on behalf of the countless billions of animals caught in the endless machinery of exploitation by giving me hope that someday - maybe not tomorrow, maybe not in my lifetime, but someday – things can be different, things can be better.

This project contemplates achievement of substantive equality for animals through legislative reform and policy change. I have drafted a comprehensive bill that comes into force in two stages to recognize how far removed we are from the overarching legislative goal of treating animals as moral equals today. The first stage consists of a transitional period of progressive endeavors to foster the incremental attitudinal and institutional changes necessary for the second stage, which prohibits all forms of animal exploitation, requires humans to take animal interests into account, and imposes positive duties on humans with animals in their custody or care.

This work is for you, the animals. I know. I see you. I'm sorry. I'm trying.

¹ Noam Chomsky, *Imperial Ambitions: Conversations on the Post-9/11 World* (New York: Metropolitan Books 2005) at 184

INTRODUCTION

A healthy two-year-old giraffe named Marius was recently shot in the head with a bolt pistol, dismembered, and fed to lions in front of visitors, including children, at the Copenhagen Zoo. These visitors were invited to watch for the ostensible benefit of an informative display of scientific knowledge concerning giraffe anatomy. Although waves of public protest and moral outrage were sparked across the globe as news travelled about the Zoo's plan to kill Marius, in the wake of a petition signed by over 20,000 people to save him, an offer presented by a private individual for 500,000 euros to buy him, and offers from zoos in Britain and Sweden to take him, the Zoo nevertheless chose to end his life, a choice that fell squarely within legal boundaries.

The Zoo has a property interest in all the animals it keeps captive, and is lawfully entitled to use its property as it sees fit – even if that means killing the “property.” Even if there was some kind of legal recourse to prevent the Zoo's reckless disregard for life, any human willing to enforce them on an animal's behalf is precluded from obtaining the necessary legal standing, as the law presently recognizes only human interests in their property, rather than the interests of the animals bound by them.

Private self-regulation offers no assistance where the law fails. According to a spokesperson, the Zoo's actions were in accordance with the practices recommended by the European Association of Zoos and Aquaria, a standard-setting institution with 347 member organizations. Marius was genetically worthless and therefore “surplus” because his genes were already well represented in worldwide captive giraffe populations and consequently unneeded for breeding purposes. As Marius served no recognized purpose, he was seen as useless and dispensable.

This spectacle reflects the status quo. Nonhuman animals are valued only by their instrumentality toward human animal ends.² In this case, Marius' worth and entitlement to continued existence was assessed according to whether his genes were capable of sustaining a genetically diverse captive population of giraffes, leaving his inherent worth as a sentient being with an interest in living unacknowledged, unrecognized, and unconsidered. In short, Marius' life was extinguished against his will, merely because he was no longer wanted.

One month later, the same Danish zoo was undeterred from killing a family of four healthy lions, despite the public backlash over the giraffe's untimely demise. The Zoo claims that euthanizing the family was necessary in order to make room for a young male lion it plans to acquire, a purported justification as toothless as the one used to defend Marius' slaughter. Notwithstanding that this second decision to euthanize has again provoked worldwide criticism, nothing stands in the way of the Zoo exercising its untrammled right to kill its “property” time and time again, and for the most trivial of reasons.

² The author recognizes that language conventions - such as the traditional separation of human animals from nonhuman animals, and the consequent identification of the former simply as “humans” and the latter simply as “animals” - can reinforce unequal power relations. The author adopts this orthodox shorthand for simplicity but rejects the notion that humans have an elevated or morally significant status vis-à-vis other animals.

This type of situation underscores the vital and compelling need for legislative reform. The current legal framework accepts the premise that animals are property wholesale, and treats animals as replaceable commodities whose interests are subordinate to those of the humans who exploit them. Laws are designed to protect human interests in the animals, rather than the animals themselves, and the extent of their protection from institutionalized violence varies with the value humans place on each species.³

This policy paper offers a new framework to transform the human-animal relationship from one of domination and control to one of equality and fairness. It proposes a draft bill that comes into effect in two stages: the first stage implements transitional provisions to encourage the sweeping changes contemplated in the second stage, which effectively abolishes all forms of animal exploitation.

Part I of this paper discusses the historical evolution of the human-animal relationship, including its modern manifestation. Part II describes the systemic failings of federal and provincial animal protection laws. Part III covers the attitudes and institutions that legitimize and perpetuate animal exploitation. Part IV provides an overview of the proposed legislation and explains how its components overcome the foregoing considerations. Finally, the Appendix contains the text of the draft bill.

³ Andrew Linzey (ed), *The Global Guide to Animal Protection* (Chicago: University of Illinois Press 2013) at 230

PART I: BACKGROUND

*Human beings are a part of the animal kingdom, not apart from it. The separation of "us" and "them" creates a false picture and is responsible for much suffering. It is part of the in-group/out-group mentality that leads to human oppression of the weak by the strong as in ethic, religious, political, and social conflicts.*⁴

The evolution of the human-animal relationship can be seen through different historical lenses, each with a particular focus on different aspects of its development. This section first canvasses the nature of this relationship from dominant philosophical standpoints, and then contrasts those perspectives with opposing views that demonstrate that humans are morally, emotionally, and cognitively capable of caring for and treating animals as equals. The section then concludes with an overview of salient contemporary attitudes and the current state of the law.

Philosophical influences

Our philosophical understanding of animals is logically inconsistent. We refuse to acknowledge ourselves as animals, even though we *are* animals. This artificial boundary reifies animals as *others* and creates a false distinction based on separateness that forms the core of the major ideologies that serve to defend our use and abuse of animals, which center around the identification of some arbitrary characteristic possessed only by humans that allegedly justifies our differential treatment of animals and our refusal to acknowledge their moral parity.

Godliness forms one origin of this illusory division. The Book of Genesis sets out a human link to the divine and grants humans "dominion" over animals.⁶ Similarly, St Augustine, an early Christian theologian, expressed the view in the fourth and fifth centuries that humans are endowed with moral worth by virtue of their connection to God, while animals, who lack this connection, do not merit inclusion in the moral community.⁸ This perspective corresponds with the medieval concept of the *scala naturae*, or great chain of being, in which God created a hierarchy of higher and lower beings, with God at its apex, humans below God, and animals below humans.⁹

⁴ Marc Bekoff, *Animals Matter: A Biologist Explains Why We Should Treat Animals with Compassion and Respect* (Boston: Shambhala Publications, Inc 2007) at 170

⁶ Genesis 1:26: "And God said, Let us make [humans] in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth."

⁸ Margo DeMello, *Animals and Society* (New York: Columbia University Press 2012) at 37

⁹ *Supra* note 8 at 37

The divide has also been founded on a number of other arbitrary characteristics, aside from godliness, believed to belong only to humans - such as morality, intelligence, self-awareness, and agency - that ostensibly confer our entitlement to exploit beings who lack them.¹¹ In the fourth century BCE, the Greek philosopher Aristotle was convinced that rationality, shown by the capacity to speak, was the basis for an ethical existence.¹² As humans alone have the capacity to speak, humans alone have an ethical existence, and animals, who lack this capacity, exist to serve human ends.

In the thirteenth century, St Thomas Aquinas echoed Aristotle's views based on rationality.¹⁴ Humans are rational, and are therefore *persons* with intrinsic value, while animals are irrational, and are therefore *things* with only instrumental value. René Descartes continued the trend in the seventeenth century, asserting that rationality and speech set humans above animals, who are mere *machines*, without any capacity to feel, think, or feel pain.¹⁵ Descartes would take unanaesthetized dogs, nail them to boards, and dissect them while fully conscious, insisting that their screams were pure mechanical responses, rather than indications of pain. In the eighteenth century, Immanuel Kant again reified the human-animal divide based on rationality, explaining that although humans are vested with moral standing by virtue of their moral agency, animals, who are unable to make rational moral choices, are therefore devoid of inherent worth.¹⁶

Voices of dissent and the rise of the animal movement

The eighteenth century witnessed the first major departure from orthodoxy with the emergence of early animal rights theory, which disputes the moral relevance of any of the justificatory bases outlined above. French philosopher Jean-Jacques Rousseau argued that rationality fails to establish an entitlement for humans to use animals as they see fit, and that sentience, possessed by both, suffices to establish a negative right not to be harmed by others.¹⁸ Soon after, utilitarian philosopher Jeremy Bentham developed Rousseau's ideas. Bentham compared using the colour of a person's skin as justification for human slavery to using the lack of rationality as justification for animal exploitation and abuse, and challenged the logic of according moral status to a human infant lacking rationality and the capacity for speech yet denying moral status for an animal on the same grounds.¹⁹ Bentham's arguments are now widely accepted among animal ethics scholars and have been enormously influential to contemporary discourse.

Utilitarian Peter Singer based his groundbreaking book, *Animal Liberation*²⁰, on Bentham's ideas. Singer insists that there are no morally significant differences between sentient beings - such as race, sex, or species - that justify differential treatment. Humans and animals are sentient and have the capacity to feel pain and pleasure, and therefore have identical interests in avoiding pain and experiencing pleasure. Because the interests of humans and animals are identical, they should be treated the same, and any outcome that produces a greater balance of pleasure over pain is ethically defensible.

¹¹ *Supra* note 8 at 41

¹² *Ibid* at 37

¹⁴ *Ibid* at 38

¹⁵ *Ibid* at 380

¹⁶ *Ibid* at 381

¹⁸ *Ibid*

¹⁹ *Ibid* at 382

²⁰ Peter Singer, *Animal Liberation* (New York: HarperCollins Publishers 1975)

Singer's work promotes animal *welfare*, rather than animal *rights*, and forms the foundation for what is appropriately known as the welfarist approach. The welfarist perspective leaves the moral hierarchy that grounds the institutionalized exploitation of animals unchallenged, and instead focuses on reducing "unnecessary" suffering. The welfarist approach grounds our current approach to protecting animals through the legal system, which sanctions the "humane" exploitation of animals, but prohibits "unnecessary" cruelty, meaning cruelty outside the course of pursuing a recognized human interest.

Legal scholar Gary Francione finds the subordination of animal interests to human interests morally repugnant, and instead advocates an animal *rights* approach.²¹ Animals do not exist for human ends but are ends in themselves, and using them violates every animal's basic right not to be treated as property, irrespective of human benefit. Francione insists that there are no ethically permissible uses of animals, advocates veganism as a moral baseline, and ultimately envisions a world where domesticated animals are liberated from their forced participation in human society and where wild animals are left undisturbed in their natural habitats.

Academics Sue Donaldson and Will Kymlicka recently coauthored *Zoopolis*²², a profoundly innovative work and a potential game changer for the modern animal movement, which they see as having reached an impasse. Although modest animal welfare reforms have been achieved over the last 180 years of organized animal advocacy, there has been "no demonstrable progress towards dismantling the system of animal exploitation."²³ The authors agree that the fundamental negative right not to be exploited is common to all animals, but assert that traditional animal rights theorists fail to account for the intricacies of human-animal relations by focusing exclusively on negative rights, such as the right not to be harmed, without considering the positive obligations that flow from geographical and historical patterns of human interaction.

They argue that the rights approach, which sees non-interference with animals as the basis for ethical treatment, ignores the realities of the many instances where humans and animals have a relationship characterized by interdependence or shared habitat that gives rise to different positive duties.²⁴ For instance, we have domesticated many types of animals who are consequently dependent on us for survival. We are therefore morally obligated to do more than merely refrain from causing them needless harm, but must ensure their wellbeing by providing adequate physical and emotional care. Similarly, many industrial human activities act as a type of slow violence against wild animals who are vulnerable to the devastating cumulative environmental impacts that they entail.

²¹ See generally: Gary Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (New York: Columbia University Press 2008)

²² Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011)

²³ *Ibid* at 3

²⁴ *Ibid* at 9

Donaldson and Kymlicka confront these inadequacies through a new moral framework grounded in citizenship theory that outlines the distinct sets of positive relational duties we owe to animals flowing from the nature of our relationship with them. This group-differentiated approach is facilitated by thinking of animals as belonging to one of three context-specific categories.²⁵ The first category of *domesticated* animals encompasses animals who have been bred over generations to be sociable, cooperative, and interdependent with humans and should therefore be seen as full citizens in mixed human-animal societies, while the next category of *wild* animals comprises those who live apart from human settlements and should be seen as members of autonomous communities on their own territories.

While traditional animal rights theories draw a distinction between domesticated and wild animals, they fail to consider the wild animals with whom we share our spaces.²⁶ The authors explain that the last category of *liminal* animals consists of animals, such as raccoons, squirrels, or pigeons, who seek out areas of human settlement and rely on the resources they find there. These animals should be seen as migrants, or denizens of our cities, rather than as full citizens.

Francione's abolitionist standpoint and Donaldson and Kymlicka's views on group-differentiated relational rights collectively represent the latest evolutionary stage of the modern animal movement and form the theoretical and conceptual framework needed to address the systemic issues inherent to our current relationship with animals.

The contemporary human-animal relationship

Although humans have relied on animals throughout history for a variety of purposes, animal use has proliferated over the last few decades at an alarming rate, owing to the rise of industrialization and consumer demand. Institutionalized animal exploitation is now woven into our society as the economic foundation of massive industries that profit from the classification of animals as resources for human use, and we are now responsible for the ongoing exploitation or killing of countless animals worldwide for food, clothing, fashion, protection, labour, sport, entertainment, research, and companionship. Specific to the Canadian context, more than 700 million animals are used for food²⁹ and more than 3.4 million animals are used for research each year.³⁰

²⁵ *Ibid* at 14

²⁶ *Ibid* at 210

²⁹ British Columbia Society for the Protection of Cruelty to Animals, "Annual Report 2012" online: BC SPCA <www.sPCA.bc.ca>

³⁰ Canadian Council on Animal Care, "Frequently Asked Questions" online: <www.cCAC.ca>

Modern life has become rife with the virtually inescapable spoils of animal exploitation. Consider, for example, an average Canadian citizen, who starts her day by emerging from a bed topped with blankets and pillows stuffed with duck feathers, where she had slept beside her pet dog, Koko. She refills Koko's bowl with dog food, made mostly from slaughterhouse byproducts, and then sits down to her own, of chicken eggs, toast, and cereal with cow milk. Before she leaves for work, she puts on cosmetics that have been tested on rabbits, boots that are made from calfskin, and a coat that is made from sheep's wool. She then drives to the university to spend the day researching the effects of sleep deprivation on chimpanzees, stopping only to eat a ham and cheese sandwich for lunch, before leaving to meet a friend at the Vancouver Aquarium to see some new porpoises that are on display. After her visit, she goes home, sits on her leather couch with a plate of chicken chow mein, turns on the TV, and flips on the television to watch Animal Planet. Finally, she takes her daily dose of Premarin, a hormone replacement drug made from pregnant mares' urine, and returns to her bed to start the cycle anew.

Pervasive and endemic violence is facilitated, promoted, and reinforced through institutions deeply embedded within contemporary culture that are allowed to flourish unhindered by regulation aimed at protecting animal interests. Almost all animals raised for food are forced to live in close confinement, denied their natural instincts, and subjected to routine mutilations. Animals used for research undergo experiments and testing, often painful, and spend their lonely lives in barren cages. Animals used for entertainment are made to race, perform tricks, or otherwise provide amusement until they are no longer profitable. Animals used for hunting lose their lives for the sake of becoming a trophy or a rite of passage. Even animals used for companionship are considered disposable and can easily be killed should they present an inconvenience.

Laws are founded on the premise that animals are property for humans to treat as replaceable commodities and subject to commercial transactions as if they were inanimate objects.³¹ Legislation does exist to regulate our treatment of animals, but that legislation is designed to protect human interests, rather than those of the animals themselves, and although the law recognizes that animals merit some kind of protection, the protection granted is contingent upon human assessment of their value. Animals we keep as companions and think of as family members are kept safe from harm through anticruelty legislation, while animals we keep for their flesh and think of as food are subject to broad exemptions that sanction any violence toward them.

Similarly, the last fifty years have seen a dramatic rise in environmental consciousness, but wild animals have not benefitted from this expanding circle of concern.³² They are considered as mere components of ecosystems, rather than as individuals who have the right to reside safely in their own communities. Moreover, animals are not protected but harmed by laws that endorse putting animals to death in the name of game management, pest control, or wildlife conservation.

³¹ *Supra* note 3 at 230

³² *Ibid*

The legal and commonplace forms of violence toward animals are emblematic of the institutionalized violence that characterizes the human-animal relationship to date. However, a shift in societal attitudes in conflict with this untrammelled use and abuse of animals is gaining momentum. Human interest in animals is becoming increasingly prevalent as evidenced by the expansion of media coverage and scholarship devoted to a vast array of animal-related issues, such as the Copenhagen Zoo's recent decision to kill Marius.

One by one, the previous justifications for animal exploitation, such as lack of feeling, language, or morality, have been gradually eroded, without any valid justifications to take their place. A plethora of reforms reflecting this attitudinal shift, and based on the acknowledgment and recognition of animal interests, have been put into place worldwide over the last decade. For instance, in 2013, the European Union banned some of the most pernicious practices of intensive animal farming, including confinement systems for calves, laying hens, and sows³³; in 2010, an eminent group of scholars and scientists released an international declaration calling for recognition of moral standing for cetaceans³⁴; and in 2006, Vancouver became the first Canadian city to ban rodeos.³⁵

Canada now has the opportunity to become a global leader in what appears to be an inevitable shift in attitudes toward animals by implementing a comprehensive legislative regime that effectively addresses the inconsistency between the basic ethical principle shared by most humans that it is wrong to cause gratuitous suffering and the property paradigm that gives rise to the institutionalized violence reflected by the status quo. The next section begins to set the stage for the vital need for this legislative reform by outlining the fundamental failures of our federal and provincial animal protection statutes.

³³ *Ibid* at 163

³⁴ *Ibid* at 263

³⁵ Vancouver Humane Society, "Achievements" Vancouver Humane Society online: <www.vancouverhumanesociety.bc.ca>

PART II: LEGAL ASPECTS

*All animals are equal, but some animals are more equal than others.*³⁶

Canada's legal system is fatally flawed when it comes to protecting animals in a meaningful way. Although its failings are many, the fundamental defect is the characterization of animals as property, which defines the contours of the human-animal relationship by enabling us to exploit animals as resources valued only as means to our ends, rather than as ends in themselves. The property paradigm violates the rights of animals not to be treated as commodities, fails to recognize their inherent moral worth, and forms the backdrop for the deficiencies that collectively undermine the meaningful protection of animals. This section provides an overview of the current legislative framework and discusses its procedural and substantive failings in the context of illustrative cases.

Federal and provincial anti-cruelty provisions

Many forms of animal protection laws exist in Canada, including anticruelty laws, wildlife protection laws, and industry-specific regulatory standards. However, anticruelty legislation sets out the minimum standards for animal treatment and frames the content of other statutes, and is accordingly of most significance. At the federal level, animal cruelty provisions, which have remained substantively unchanged since they were first introduced in 1982, are found in sections 444-447 of the *Criminal Code*,³⁷ under Part IX, which governs property offences.

Animal cruelty laws fail to protect animals equally and instead confer protection subject to three conditions. An animal will be legally vulnerable to human cruelty unless:

1. The animal is considered human property;
2. The animal is harmed intentionally; and
3. The harm is inflicted outside of the course of legally sanctioned exploitation.

Injuring or endangering animals is an offence only if the animals are considered human property "kept for a lawful purpose" and the defendant acted intentionally,³⁸ while neglecting animals is an offence only if the defendant intentionally fails to provide adequate care.³⁹ Cruelty to animals is an offence only if the defendant acted intentionally and the cruelty was "unnecessary";⁴⁰ meaning that "man in the pursuit of his legitimate purposes is obliged not to inflict pain, suffering or injury which is not inevitable taking into account the purpose sought and the circumstances of the particular case."⁴¹

³⁶ George Orwell, *Animal Farm* (Toronto: Penguin Group 1951) at 90

³⁷ *Criminal Code*, RSC 1985, c C-46

³⁸ Sections 444 and 445

³⁹ Section 446

⁴⁰ Section 445.1

⁴¹ *R v Hughes*, 2007 BCPC 462

At the provincial level, cruelty to animals is uniformly prohibited, although the offences found in each provincial statute are generally subject to broad qualifications that exempt most animal use industries. For example, in British Columbia and Nova Scotia, “reasonable and generally accepted practices” are immune⁴²; while in Manitoba, “generally accepted practices” related to agriculture, exhibitions and fairs, zoos, slaughter, medical care, discipline and training, protection of people or property, sporting events, fishing and hunting, trapping, research and teaching, pest control, predator control, euthanasia, and all other prescribed activities are exempt.⁴³

Fundamental issues

The most problematic aspects of our current legislative regime are related to the fact that existing provisions are designed to protect human, rather than animal interests. The present framework embraces the self-serving premise of animals as property to be used for human benefit, and although our animal protection laws are ostensibly in place to protect animals, our interests in exploiting them are prioritized over their protection. Animals are not seen as bearers of legal rights but as resources to be exploited, and the provisions regulating human interactions with animals fail to create rights in the animals themselves.

The law determines what constitutes acceptable treatment of animals by balancing their interests in avoiding pain and suffering against the human interests involved with a particular use. Cruelty is only an offence if inflicted outside the boundaries of institutionalized abuse - if it is “unnecessary” – so that our economic or personal interests in exploiting animals remain unfettered and unimpaired.

The concept of *cruelty* is a moving target that rests on the anthropocentric determination of whether it is an avoidable part of exploiting animals for a socially sanctioned human purpose, and therefore subjectively *necessary*. Whether conduct is cruel varies according to the use to which an animal is put, which itself escapes all scrutiny, regardless of whether the use can be considered *necessary* in any reasonable sense of the word. Poisoning a rabbit is prohibited if someone keeps her as a pet, but not if someone keeps her for research. Castrating a cat is illegal, but castrating a pig eventually destined for dinner is not. Drowning a dog is taboo, but suffocating a fish by pulling him from his home by a hook and leaving him to die in the air is legitimate.

In *R v Pacific Meat Company Limited et al*, [1957] BCJ No 98, Swencisky J determined whether a method of killing pigs that caused significant suffering was necessary; whether killing pigs was necessary at all did not factor into the analysis. Pigs were shackled by their hind legs and hoisted up into the air. They were then swung against a metal wall before they were stabbed in their throats. Swencisky J found that the defendant’s actions were devoid of legal culpability because this method of killing pigs was commonly practiced in slaughterhouses, and because pain and suffering was a “necessary” part of killing the pigs, which humans had to do to permit them to sell their butchered corpses as food:

Hogs fulfil a purpose of providing food for human beings. Before the hogs can be eaten by mankind they must of necessity be killed, so that the fatal injury that is administered to each hog by the "sticker" is a necessity and therefore not "unnecessary."

⁴² Section 24.02, *Prevention of Cruelty to Animals Act*, RSBC 1996, c 372; section 21, *Animal Protection Act*, SNS 2008, c 33

⁴³ Sections 3(1), 3(2), 4(1), and 4(2), *Animal Care Act*, CCSM 1996, c A84

The emphasis on human over animal interests is also reflected by the common law's assessment of tort damages where animals have been injured or killed. Compensation for harm is measured by the animal owner's property damage, instead of the animal's pain and suffering. Animals are considered chattel property, so compensation is limited to the costs of replacing an injured animal. In *Pezzente v McClain*, 2005 BCPC 52⁴⁴, a woman bought a dog who experienced subsequent health problems, on which the woman spent over \$10,000. The woman sued the breeder for breaching an implied warranty to supply a healthy dog. The court assessed damages by reference to the dog's commercial value, instead of the woman's actual expenditures, and limited the award to the amount she paid for the "defective product." The court found that the decision to spend the money she did was not a "reasonable economic one", and the woman failed in her legal duty to mitigate her loss by euthanizing the dog.

In another case, *Creative Animal Talent v Woodley*, 2010 BCSC 358⁴⁵, the plaintiff sued the defendant to recover the ownership and value of six animals. The parties had a long history together of providing trained animals for commercial productions, where the plaintiff secured the roles for the animals, while the defendant trained them. After a falling out, the plaintiff demanded the return of the animals or payment of like value, claiming a sum of \$250,000, while the defendant argued that the value of the animals was limited to their purchase price before he had trained them, because any increase in their value by virtue of that training belonged to him. The court awarded \$4,000, based on the amount paid to purchase the animals. The court found that there was virtually no trade in trained animals in that industry, and that "the measure of damages for conversion of chattels such as these animals is the replacement cost of the chattel at the date of conversion."⁴⁶

Although courts have recently begun to award compensation for emotional distress to pet owners in circumstances where they have lost their companions because of a tortfeasor's negligence, this practice reflects merely an acknowledgement of the animal's instrumental value to the human owner, rather than the animal's intrinsic value. Courts may be willing to accept that some humans love their animal companions dearly, and are deeply affected by their loss, but they are yet unwilling to recognize that compensation should be awarded for the pain and suffering of the injured animals themselves, and should, as far as possible, restore those animals to the position they would have been in had a tort not occurred.

Wildlife protection efforts are also undercut by a solitary emphasis on human interests.⁴⁷ When animals captivate us, such as pandas who entertain us at the zoo, we sanctify them as charismatic symbols of the natural world and deem them worthy of our protection, but when animals interfere with our economic interests, such as coyotes who disrupt our plans to kill cows for profit by killing them for subsistence instead, we problematize them as nuisances or pests we deem worthy of extermination. This type of reasoning reinforces the same inconsistent moral framework that permits our moral outrage over the yearly dolphin hunt in Taiji, notwithstanding our unapologetic acceptance of the annual seal slaughter that takes place in our own backyard.

⁴⁴ *Pezzente v McClain*, 2005 BCPC 52

⁴⁵ *Creative Animal Talent v Woodley*, 2010 BCSC 358

⁴⁶ *Ibid* at paras 25-28

⁴⁷ *Supra* note 3 at 230

A party will not have civil standing to enforce an animal's legal interests unless the party has a property interest in that animal. Without an owner willing to enforce an animal's interests, animals are locked outside the courtroom doors and denied access to justice, even if another party is willing to act on an animal's behalf. Accordingly, there are many examples where animal protection groups have been unable to obtain standing on behalf of neglected, injured, or endangered animals in the absence of ownership.

One such example is the case of *Reece v Edmonton (City)*, 2010 ABQB 538⁴⁸, which concerns Lucy, an Asian elephant kept captive in Edmonton's Valley Zoo. Lucy is housed alone, contrary to standards set by the Canadian Association of Zoos and Aquariums, and Edmonton's harsh northern climate means that she spends most of her time locked inside a barn.⁴⁹ Lucy's welfare is also compromised in other ways. She is overweight, lethargic, and arthritic, and exhibits stereotypical behaviour common to animals suffering from the severe mental anguish caused by captivity.⁵⁰

Tove Reece, Zoocheck Canada, and People for the Ethical Treatment of Animals (PETA) sought a declaration that the respondent City, as operator of the Valley Zoo, was violating the *Animal Protection Act* by allowing or causing Lucy to be in distress. The respondent argued that the applicants lacked standing and that the only legitimate way to seek a remedy for the alleged harm would be pursuant to the regulatory framework. The applicants argued that because the City was breaching the *Act*, and those administering it were unwilling to enforce it on Lucy's behalf, a declaration was necessary.

Rooke J never got to the merits of the claim or to the issue of standing. He held that the application for a declaration was an abuse of process "because no private individual can bring an action to enforce the criminal law" and that the proper way to proceed would be under the relevant legislation.⁵¹ In obiter, Rooke J stated that the applicants would not have met the test for standing in any event, because claimants must be able to establish interference with a private right before seeking a judicial remedy.⁵²

A majority of the Alberta Court of Appeal upheld Rooke J's decision in *Reece v Edmonton (City)*, 2011 ABCA 238, although Fraser CJ penned an emphatic and strongly worded dissent.⁵³ She maintained that the chambers judge had fatally erred by failing to first consider the "central issue" of standing, which would have determined whether the proceedings were an abuse of process or disclosed no reasonable cause of action.⁵⁴ She argued forcefully that the chambers judge erred by using the abuse of process finding to deny standing⁵⁵; applying the wrong test for abuse of process⁵⁶; and asserting that individuals are precluded from bringing an action to enforce the law in the absence of an interference with a private right, an assertion that she explained is expressly permitted under the *Criminal Code*.⁵⁷

⁴⁸ *Reece v Edmonton (City)*, 2010 ABQB 538

⁴⁹ John Sorenson, *Animal Rights*, (Winnipeg: Fernwood Publishing 2010) at 114

⁵⁰ *Ibid*

⁵¹ *Supra* note 48 at para 6

⁵² *Ibid* at para 9

⁵³ *Reece v Edmonton (City)*, 2011 ABCA 238

⁵⁴ *Ibid* at para 141

⁵⁵ *Ibid*

⁵⁶ *Ibid* para 144

⁵⁷ *Ibid* at para 142

The *Reece* decisions exemplify the consequences of our current legislative regime. Humans are free to enforce their own interests in their animal property, but animals, like Lucy, are barred from enforcing whatever minimal legal protection is available to them. The individuals empowered to commence an investigation to help Lucy under the relevant legislation refuse to do so, and their refusal, if challenged, would be viewed through a lenient lens that accords significant deference to policy decisions, which are non-justiciable. Lucy remains at the Valley Zoo, lonely, bored, and driven mad by captivity, and that is where she will stay, unless and until the proposed legislation is in place.

Moreover, private regulatory efforts reflect the same unitary focus on human interests permeating the public legislative regime. Although the government's failure to protect animals has provided an opportunity for industries that profit from animal use and abuse to police themselves through self-regulation, they have instead chosen to take advantage of extant statutory deficiencies by considering animal interests only as far as doing so is profitable. A patchwork of voluntary codes exists, but none of them have the enforcement, monitoring, or compliance mechanisms needed to be either legitimate or effective. The end result of the combined public and private regulatory efforts is a broken system of exemptions, excuses, and exclusions that treat animals as commodities, ignores their interests, and perpetuates their continued exploitation.

The foregoing discussion has outlined the many legislative failings that the draft bill must overcome to achieve its overarching goal of moral parity. This task requires a monumental overhaul of the law as well as its underlying policy. The next section discusses the policy considerations that the proposed legislation must also address.

PART III: POLICY ISSUES

*Exploitation of animals is a fundamental component of capitalism, systematic and institutionalized, with interlocking industries that breed, feed, cage, sell, transport, experiment upon and slaughter animals, using their skins, flesh, organs and genetic material.*⁵⁸

A comprehensive understanding of the policy grounding the current legal framework serves to inform the course of action needed to ensure an adequate foundation for the proposed legislation. This section examines the societal attitudes and institutions that entrench the status quo and that must accordingly be transformed to ensure acceptance of the comprehensive normative changes implicated by the draft bill.

Attitudes

Speciesism, anthropocentrism, and human exceptionalism work together to create the ideological underpinnings that give rise to the mechanisms we use to perpetuate, reinforce, and legitimize animal exploitation. Speciesism refers to differential treatment based on species membership, and is akin to racism, sexism, and classism, all of which also discriminate based on possession of arbitrary characteristics deemed to be morally significant.⁵⁹ Anthropocentrism is defined as a human-centered worldview that sees humans as the most important element of existence.⁶⁰ Finally, human exceptionalism demarcates humans as morally distinct from other animals.⁶¹ These three interrelated attitudes give rise to an array of justificatory mechanisms that sustain our untrammelled exploitation of animals.

We use a number of linguistic means to legitimize the status quo. We defend our oppression of animals by constructing them as *different from* and *inferior to* us. We have already discussed the illusory dividing line that reifies animals as *others* and enshrines our purported superiority, but animals are then further constructed as different and inferior through linguistic maneuvers that manufacture complicity to the institutionalized violence so endemic to our relationship with animals. For instance, animals are frequently portrayed negatively by using their names as insults or by depicting images of cruelty that trivialize and normalize violence toward them.⁶² We use expressions like: She is a stupid cow; he was bleeding like a stuck pig; or they were running around like chickens with their heads cut off.

⁵⁸ *Supra* note 49 at 18

⁵⁹ Raymond Corbey and Annette Lanjouw (eds), *The Politics of Species: Reshaping our Relationships with Other Animals*, (New York: Cambridge University Press 2013) at 1

⁶⁰ Angus Stevenson and Christine A Lindberg (eds), *New Oxford American Dictionary* (Oxford University Press 2010)

⁶¹ *Supra* note 59 at 40

⁶² Arran Stibbe, "Language, Power and the Social Construction of Animals" (2001) 9:2 *Society & Animals* at 150

We also legitimize animal exploitation by classifying animals as property valued only by their instrumentality. Constructing animals as *objects* rather than *subjects* rationalizes our refusal to acknowledge their moral worth, agency, and interests and allows us to distance ourselves from their suffering. Animals become property in law through a legal fiction, while animals become property in society through language. We refer to an animal as *it* instead of *she* or *he*, and we use metonyms to construct animals as objects for our use by naming them for their perceived utility.⁶³ For instance, we refer to chickens we use for their eggs as *layers*, chickens we use for their flesh as *broilers*, and rats we use for experiments as *lab rats*.

Last, we minimize the consequences of the violence endemic to our incessant use and abuse of animals and facilitate our moral disengagement by psychologically and physically distancing ourselves from their suffering.⁶⁴ This phenomenon is particularly evident in the animal farming industry. We describe animal foods with words that conceal their animal origin⁶⁵ - we buy *meat*, not flesh; *pork*, not pigs; and *beef*, not cows. We describe animals using mass nouns, rather than count nouns, that obscure their individual identities⁶⁶ - we buy *some* chicken, not part of *a* chicken. We sequester factory farms, fur farms, and animal research facilities far away from the public eye, so we can avoid their reality.

In these ways, speciesism, anthropocentrism, human exceptionalism, and all of their combinations and permutations collectively act as a powerful force to shape the way we think about animals and in turn, ground the institutions through which we use them.

Institutions

Our relationship to animals is complex, multi-faceted, and riddled with contradictions. Some animals we keep as pets, who we love, name, and share our lives with. Other animals we raise as food, who we hate, eat, and sequester ourselves from. But whether we hate them or love them, animals are entirely vulnerable to our whims, because, as property, we are legally entitled to buy them, sell them, kill them, or otherwise use them without considering their interests.

We have already discussed the myriad ways that we exploit animals. Although these practices must be confronted, they are mere reflections of the underlying problem of the pernicious attitudes that lie at the heart of the animal question. Institutional outcomes are products of existing ideologies that support the current manifestation of the human-animal relationship. Consequently, if our fundamental attitudes toward animals change, we can expect that our behaviour will shift accordingly to reflect our new beliefs.

Notwithstanding the crucial importance of attitudinal change, the profit motive is a further powerful behavioural driver critical to achieving the necessary institutional metamorphosis. The pursuit of profit plays a key role in shaping institutional outcomes, and must not be ignored as a potentially significant roadblock to successfully implementing the proposed legislation and achieving its ultimate goal of recognized moral parity. Our use and abuse of animals permeates our economic reality and many of us rely on exploiting animals for financial gain.

⁶³ Les Mitchell, "Nonhumans and the Ideology of Purpose" (2012) 25:4 *Anthrozoös* at 496

⁶⁴ *Ibid* at 498

⁶⁵ Clifton P Flynn (ed), *Social Creatures: A Human and Animal Studies Reader* (Brooklyn: Lantern Books 2008) at 134

⁶⁶ Alison Sealey and Nickie Charles, "'What Do Animals Mean to You?': Naming and Relating to Nonhuman Animals" (2013) *Anthrozoös* at 487

This discussion reveals the need for a fundamental shift in ethical views and cultural, behavioural, and economic institutions to set the stage for the new legislative regime. As such, the question then becomes whether law presents a feasible and effective means of achieving this kind of social change.

Law as a vehicle for social change

Attempting to regulate behaviour through statutory means alone is insufficient to achieve the sweeping societal change required and envisioned by the proposed legislation. If the draft bill comes into force on its own, it will likely fail, but the draft bill will have a far greater chance of success if transitional mechanisms are first implemented to foster support and acceptance of the legislative objectives. The following example from the Industrial Revolution demonstrates the capacity for social change to leverage meaningful legislative reform.

In nineteenth century Britain, many thousands of children were exploited for their labour, but their oppression was ultimately eradicated through slow and incremental reform that relied on norm development and a complex mix of resources.⁶⁷ Legal scholar Jerry L Anderson argues that this reform presents a successful model of how powerless groups obtain legal protection that can be applied to analogous situations.⁶⁸ He draws a convincing parallel between the use and abuse of child labourers in the Industrial Revolution and our current use and abuse of animals in contemporary society. Like those children, animals are powerless to exercise their agency, unable to effectively organize and protest their exploitation, and unable to seek reform directly through legal standing or access to the political system.⁶⁹ Moreover, the shared vulnerabilities of these two groups give rise to the further commonality that both have spurred reform movements based primarily on ethical concerns.⁷⁰

This shows that achieving the ultimate goal of moral parity between humans and animals through the legal system is indeed possible. However, supporting mechanisms must be in place to address the fact that successfully implementing the legislative aims is predicated on substantive normative changes. The next section explains how the draft bill proposes to address the law and policy needed to achieve the ultimate goal of moral parity.

⁶⁷ Jerry L Anderson, "Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement" (2011) 4 *Journal of Animal Law and Policy* at 4

⁶⁸ *Ibid* at 5

⁶⁹ *Ibid*

⁷⁰ *Ibid*

PART IV: CONCLUSION

It is not larger, cleaner cages that justice demands in the case of animals used in science, for example, but empty cages: not "traditional" animal agriculture, but a complete end to all commerce in the flesh of dead animals; not "more humane" hunting and trapping, but the total eradication of these barbarous practices.

For when an injustice is absolute, one must oppose it absolutely. It was not "reformed" slavery that justice demanded, not "reformed" child labor, not "reformed" subjugation of women. In each of these cases, abolition was the only moral answer. Merely to reform injustice is to prolong injustice.⁷¹

The proposed legislation's overarching goal of moral equality necessarily implies a major overhaul of the existing human-animal relationship. This monumental goal is facilitated by the draft bill's incremental approach, which encourages normative changes before delineating compulsory duties and obligations by assigning legislative sections to one of two in-force dates. This section provides an overview of the draft bill and connects each component to the problem of law or policy it is intended to address.

The first stage is directed at policy change, and contemplates a rollout of transitional provisions intended to gradually encourage our acceptance of animals as moral equals and our collective shift away from exploitative industries by confronting the entrenched attitudes and institutions that perpetuate and reinforce the status quo. The second and final stage is focused on enforcement, and uses hard law to ensure moral parity by guaranteeing basic legal rights for animals, imposing certain duties of care on humans, and categorically prohibiting animal exploitation.

Stage 1

The commencement provisions of Part 14 provide for Parts 1, 2, and 9-12 of the draft bill to come into force in stage one:

- Part 1 provides interpretive guidance;
- Part 2 establishes an entity called the Animal Commission;
- Parts 9-10 set out offences and penalties;
- Part 11 delineates the scope of regulatory powers; and
- Part 12 sets out the transitional provisions.⁷²

⁷¹ Tom Regan, "The Philosophy of Animal Rights" online: Culture & Animals Foundation <www.cultureandanimals.org>

⁷² See the Appendix for the proposed legislative text.

Part 1 sets out definitions, a purpose clause, and guiding principles to clarify and inform statutory interpretation. Part 2 vests the Animal Commission with a dual mandate to represent the interests of animals at all levels of government decision-making and to control implementation and enforcement of the new legislation. The Animal Commission is entrusted with a central role in achieving the legislative objectives, and is accorded significant resources and discretion to accomplish its statutory role. The Lieutenant Governor in Council appoints the Animal Commission's members, officers, and employees, while the Attorney General oversees its activities to ensure its accountability.

Part 9 enumerates the offences the draft bill creates. Part 10 provides that in the case of a first offence, a person is liable to a fine of up to \$50,000, an additional fine of up to \$5,000 per day if the offence continues past the first day, and imprisonment up to two years. In the case of a subsequent offence, a person is liable to a fine of up to \$100,000, an additional fine of up to \$10,000 per day if the offence continues past the first day, and imprisonment unlimited by a statutory maximum term. Courts are also empowered to prohibit the person from any conduct that the court believes will risk further commission of the offence or to direct the person to take any action the court considers appropriate to remedy the any harm caused by the offence.

Part 11 vests the Lieutenant Governor in Council with authority to make regulations, and is expressly permitted to delegate matters and confer discretionary powers.

Part 12 sets out additional definitions as well as the transitional provisions intended to transform societal attitudes and institutions to facilitate the second stage. These provisions impose regulations to ensure basic protection for animals, phase out exploitative institutions, promote humane education, and provide incentives for efforts that further any legislative objectives.

Animals are afforded minimal protection is afforded by prohibiting animal abuse and animal trafficking. Anyone convicted of these offences is identified in a national public registry and banned from having care or custody of any animal.

The draft bill ensures that ongoing animal exploitation will eventually be phased out. The bill regulates all Industries that exploit animals for any purpose, and although industries may continue ongoing operations in certain circumstances, because trafficking is prohibited, no person may acquire any new animals for exploitative purposes, and is thereby barred from operating in perpetuity.

A person must generally meet certain criteria in order to operate an exploitative business during stage one. First, a person is only eligible if the person uses animals at the time stage one comes into effect. Second, the person must successfully apply to the Animal Commission for permission, which requires the person to establish that any animals will be kept in good health until their death and that the person has a plan in place to ensure compliance with stage two.

Although the draft bill establishes specific humane education initiatives, it also confers express discretion upon the Animal Commission to create inducements for any person who furthers the same goal. Any person who exploits animals is required to disclose comprehensive statistics to inform the public about the number of animals used, how the animals are kept, and how the animals are disposed of. Further, the Animal Commission is expressly empowered to provide for humane education in public schools, or to offer economic incentives to any person who implements public education campaigns.

The Animal Commission is also expressly empowered to plan and implement any initiatives that further any legislative objectives, whether on its own accord, by offering economic inducements to the public, or by entering public-private partnerships.

Ideally, the statutory requirements of stage two will reflect a crystallization of the transmutation of attitudes and institutions effected by stage one, rather than a draconian attempt to impose authoritarian rule on an unconvinced audience. The draft bill anticipates that stage one will engender a transformation of the present normative landscape into one that provides fertile ground for the absolute prohibitions engendered by stage two to firmly take root in place of the unqualified permissions that epitomize the exploitative and anthropocentric status quo.

Stage 2

As provided by the commencement provisions of Part 14, the remaining provisions of the draft bill come into effect in stage two:

- Part 3 vest animals with basic legal rights;
- Part 4 creates a reporting and investigation system for statutory violations;
- Part 5 allows for the establishment of animal sanctuaries;
- Parts 6-8 account for the different relationships humans have with domestic, liminal, and wild animals;
- Part 13 confers ministerial authority to accept any consequential amendments suggested by the Animal Commission.

Part 3 abolishes the notion of animals as property, recognizes animals as legal persons with equal interests, and establishes animals as legal rights-holders who may own property, enter contracts, and file tort claims. No person may abuse, exploit, or traffic an animal without risk of legal sanctions, including identification in a national public offender registry.

Part 3 also creates a statutory civil right of action for any animal who has been abused, exploited, or trafficked, and provides a mechanism for any interested party to apply for legal standing on an animal's behalf by becoming a litigation guardian.

Part 4 imposes a duty to report on any person with a reasonable belief that an animal has been or will be endangered or injured because of a statutory contravention. Any person making a report is guaranteed anonymity and made immune from civil liability. The Animal Commission is vested with broad investigative powers, and the courts are vested with broad dispositive powers, to ensure the speedy resolution of matters falling under this Part.

Part 5 allows any person to apply to the Animal Commission for permission to establish an animal sanctuary, and leaves the requirements that must be met in order to do so as a matter for regulation.

Parts 6-8 reflect Donaldson and Kymlicka's views espoused in their book, *Zoopolis*, concerning the differences in the positive relational obligations we owe to animals depending on the nature of their relationship with us. Domesticated animals are entitled to a rigorous standard of care, which is a function of how we have bred them to be dependent on us and of how deeply their lives are intertwined with ours. No person may have care or custody of a domesticated animal without approval of guardianship by the Animal Commission. Guardians have a fiduciary duty to act in the best interests of an animal they have guardianship over, are responsible for ensuring that animal's health, and commit an offence if they fail to do so.

Liminal animals have the right to coexist with humans in urban spaces and the right to have their interests considered when those spaces are developed. Although, as discussed above, abusing an animal constitutes an offence, municipalities are given express authority to employ non-lethal means to discourage liminal animals from making permanent homes within their boundaries. Wild animals are minimally protected from human harm caused by interference or habitat loss, but the draft bill relies heavily on the ministerial authority conferred by Part 13 to accept the Animal Commission's recommendations for consequential amendments to fill in any legislative gaps, such as this one, that are more appropriately addressed through other statutes.

Coda

The proposed legislation offers us a means to embrace the true meaning of equality, to overturn hundreds of years of oppression, and to affirm our own humanity by extending compassion to animals who share our interests in enjoying freedom, developing social bonds, and pursuing happiness. The road to moral parity may be long, but it is one that must be taken, because until all of us are free, none of us are free.

APPENDIX: THE STATUS OF ANIMALS ACT

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THE STATUS OF ANIMALS ACT

Title

An Act to extend the laws in Canada to recognize the equal status of animals and humans

Short title

This Act may be cited as the Status of Animals Act

PART 1 - INTERPRETATION

Definitions

1 In this Act:

Abandonment means intentionally leaving a domesticated animal without making adequate provisions for the domesticated animal's health

Abuse means intentionally harming an animal in a way that compromises that animal's health

Animal means any living vertebrate other than human beings

Animal Commission means the government body established under Part 2

Animal product means any product derived from animals or partially derived from animals, and includes flesh, milk, eggs, wool, leather, pharmaceuticals, bone meal, honey, and whey

Domesticated animal means any animal who has been bred for interdependence with humans, and includes cats, dogs, chickens, cows, and pigs

Distribute includes offer to distribute, sell, or offer to sell

Economic incentives are financial inducements offered by government and include tax incentives, grants, and subsidies

Exploitation means using any animal for personal gain in a way that compromises the animal's health, basic interests, or dignity, and includes using animals for food, research, clothing, or entertainment

Guardian means any person approved under section 24

Health means the physical, psychological, and social wellbeing of an animal, as prescribed by regulation

Inherent interests means interests that are of equal importance to human interests

Interference means causing wild animals to become dependent on humans and includes feeding wild animals, socializing wild animals, and permitting wild animals to access improperly stored garbage

Legal person means a recognized holder of legal rights

Liminal animal means any animal who is not a domesticated animal or a wild animal and who lives within a human settlement, and includes mice, squirrels, pigeons, raccoons, skunks, and crows

Litigation guardian means any person certified under section 15

No net loss rule means that habitat loss in one area must be equally balanced with habitat reclamation or restoration in another

Person includes any human, corporation, registered charity, or nonprofit organization

Representative means any human entitled to enter into binding agreements on behalf of an animal

Sentience means the ability to have a subjective experience or the ability to experience pain and suffering

Sanctuary means an organization that accepts and cares for stray or surrendered animals

Standing means the entitlement to represent an animal in legal proceedings

Trafficking means the transportation, transfer, harbouring, or receipt of any animal for the purpose of exploitation

Wild animal means any animal who lives apart from and independent of human settlements but is nevertheless vulnerable to the effects of human activities, and includes deer, eagles, bears, fishes, and cougars

Purpose

- 2** The purpose of this Act is to extend the laws in Canada to guarantee the basic legal rights held by animals as equal members of the community they share with humans and to recognize the fiduciary obligations humans owe to animals arising from their vulnerability to human actions.

Guiding principles

- 3** This Act must be administered and interpreted in accordance with the following principles:
- (a) Animals are sentient beings with dignity, inherent value, and rights, including the right to life, liberty, and bodily integrity;
 - (b) Animals have legitimate individual and species-specific capabilities, needs, and

- desires;
- (c) Animals and their interests merit equal consideration under the law.

PART 2 - ANIMAL COMMISSION

Purpose

- 4** The Animal Commission is hereby established to promote, represent, and protect animal interests at all levels of government decision-making.

Mandate

- 5** The Animal Commission's mandate is to implement and enforce this Act, and for that purpose may do the following:
 - (a) Research, plan, and execute initiatives to facilitate the objectives of this Act;
 - (b) Provide advice and information to government ministries for the reform or amendment of any branch of law;
 - (c) Enter into agreements with federal and provincial ministers and agencies, local and aboriginal governments, and other persons and organizations for carrying out the purposes of this Act;
 - (d) Determine applications for guardianship or for certification as a litigation guardian;
 - (e) Act as a representative, guardian, or litigation guardian for any animal;
 - (f) Establish and administer a health insurance plan for domesticated animals or a trust fund to provide emergency medical treatment for liminal or wild animals;
 - (g) Advise all levels of government on any matter contemplated by this Act;
 - (h) Seek intervenor status in any legal proceeding involving any animal;
 - (i) Conduct investigations and hearings; and
 - (j) Make recommendations for consequential amendments under section 47.

Composition

- 6** (1) The Lieutenant Governor in Council must:
 - (a) Appoint at least ten members; and
 - (b) Designate one of the members as the chair.
- (2) Any officers or other employees needed for the Animal Commission to fulfill its obligations under this Act may be appointed by:
 - (a) The Lieutenant Governor in Council; or
 - (b) The Animal Commission:
 - (i) In accordance with the Public Service Act; and
 - (ii) With the approval of the Lieutenant Governor in Council.
- (3) The Lieutenant Governor in Council may provide for the salaries and expenses of the appointees under subsection (1) or (2).

Subcommittees

- 7** (1) The Animal Commission may appoint committees, the members of which need not be members of the Animal Commission, and may refer any matter to committees for consideration and report to the Animal Commission.
- (2) The Lieutenant Governor in Council may provide for the salaries and expenses of the members of a committee appointed under subsection (1).

Delegation

- 8** (1) The Animal Commission may delegate, to local governments:
- (a) The powers of investigation under Part 4; and
 - (b) The powers to administer guardianship under Part 6.
- (2) A delegation made under this section:
- (a) Is revocable, and does not prevent the Animal Commission from exercising the delegated power; and
 - (b) May be made subject to terms the Animal Commission considers appropriate.

Transparency

- 9** (1) The Animal Commission must publicly disclose:
- (a) Detailed administrative, operational, and financial statistics; and
 - (b) Any other requirements prescribed by regulation.
- (2) The Animal Commission must report on its activities to the Attorney General:
- (d) Annually; or
 - (e) Upon the request of the Attorney General.
- (3) The Attorney General must lay the annual report before the Legislative Assembly.

PART 3 – BASIC LEGAL RIGHTS

Status

- 10** (1) Animals are legal persons with inherent interests.
- (2) For greater certainty:
- (a) Animals are not property, commodities, or objects; and
 - (b) No person has an ownership interest in any animal.

Rights

- 11** Animals may:
- (a) Own property;
 - (b) Enter contracts; and
 - (c) File tort claims.

Prohibitions

- 12** (1) Any person who intentionally or recklessly abuses an animal commits an offence, unless:
- (a) The person acts in self-defence or in defence of another person or another animal; and
 - (b) The act committed is reasonable in the circumstances.
- (2) Any person who intentionally or recklessly exploits an animal commits an offence.
- (3) Any person who intentionally or recklessly traffics an animal commits an offence.

Conviction

- 13** (1) Any person convicted of exploitation, trafficking, or abuse:
- (a) Will be identified in a public federal registry; and
 - (b) Is prohibited from acting as a guardian or a litigation guardian.
- (2) Subsection (1) does not apply to minors.

Civil right of action

- 14** (1) Any animal who has been exploited, trafficked, or abused has a civil right of action against the person convicted.
- (2) Any damages awarded under subsection (1) are to go, in trust, to the animal's litigation guardian.

Certification as litigation guardian

- 15** (1) Any person may apply to the Animal Commission for:
- (a) Certification as a litigation guardian;
 - (b) Joint certification as a litigation guardian;
 - (c) A transfer of certification as a litigation guardian; or
 - (d) A surrender of certification as a litigation guardian.
- (2) The Animal Commission must not approve an application under subsection (1) unless satisfied that:
- (a) Approval is in the best interests of the animal on whose behalf the application is made; and
 - (b) Any requirements prescribed by regulation are met.

Litigation guardians

- 16** (1) A litigation guardian is entitled to legally represent any animal for whom certification is granted.
- (2) A litigation guardian must act in the best interests of the animal represented.

PART 4 – REPORTS AND INVESTIGATIONS

Endangered or injured animals

- 17** (1) Any person who reasonably believes that an animal has been or will be endangered or injured because of a contravention of this Act must report the circumstances to the Animal Commission.
- (2) Despite the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, a person must not disclose the identity of a person who makes a report under this section.
- (3) Any person who makes a report to the Animal Commission in accordance with subsection (1) is immune from civil liability.

Animals in distress

- 18** (1) Any person who encounters an animal in distress has a duty to:
- (a) Seek medical assistance for the animal; or
 - (b) Report the circumstances to the Animal Commission.
- (2) Despite the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, a person must not disclose the identity of a person who makes a report under this section.
- (3) Any person who makes a report to the Animal Commission in accordance with subsection (1) is immune from civil liability.

Powers of investigation

- 19** (1) The Animal Commission is entitled to investigate:
- (a) Upon receipt of a report under section 17 or 18; or

- (b) On reasonable belief that an animal has been or will be endangered or harmed because of a contravention of this Act.
- (2) In conducting an investigation, the Animal Commission may:
 - (a) Interview any person who may assist in the investigation;
 - (b) Obtain any information required in the circumstances, including a report from a veterinarian;
 - (c) Apply to the court for an order to enter any premises.
- (3) The court may make an order under subsection (2) authorizing the Animal Commission to enter any premises.

Outcome of investigation

- 20** (1) After conducting an investigation, the Animal Commission may:
- (a) Take no further action;
 - (b) Enter into a contract for care on behalf of any animal; or
 - (c) Apply to the court for an interim order pending a hearing.
- (2) The court may make an interim order under subsection (1) for a period of up to 90 days.

Orders

- 21** (1) The court may, pursuant to a hearing, make any order the court believes is in the best interests of the animal.
- (2) Without limiting subsection (1), if the animal is a domesticated animal, the court may:
- (a) Make an order:
 - (i) Returning the animal to the guardian; or
 - (ii) Assigning guardianship to another person; or
 - (b) Issue a peace bond or protection order to ensure the animal's safety.

Review

- 22** Any person may seek review of an order made under section 21.

PART 5 - SANCTUARIES

Formation

- 23** (1) No person may operate a sanctuary unless approval is granted on application to the Animal Commission.
- (2) The Animal Commission must not approve an application under subsection (1) unless satisfied that:
- (a) Approval is in the best interests of the animals on whose behalf the application is made; and
 - (b) Any requirements prescribed by regulation are met.

PART 6 - DOMESTICATED ANIMALS

Guardianship

- 24** (1) Any person may apply to the Animal Commission for:
- (a) Guardianship of a domesticated animal;
 - (b) Joint guardianship of a domesticated animal;

- (c) A transfer of guardianship of a domesticated animal; or
 - (d) A surrender of guardianship of a domesticated animal.
- (2) The Animal Commission must not approve an application under subsection (1) unless satisfied that:
- (a) Approval is in the best interests of the domesticated animal for whom guardianship is sought; and
 - (b) Any requirements prescribed by regulation are met.

Disputes

- 25** (1) If guardianship is disputed between two or more persons, any party may apply to the Animal Commission for a hearing.
- (2) The Animal Commission may grant a hearing in accordance with the regulations.

Review

- 26** Any person may seek review of a decision made under section 24 or 25.

Guardians

- 27** (1) A guardian must act in the best interests of the domesticated animal under guardianship.
- (2) A guardian is responsible for ensuring the health of the domesticated animal under guardianship.
- (3) Without limiting subsection (2), a guardian must provide, at a minimum, adequate:
- (a) Socialization and training for successful integration into society;
 - (b) Protection from harm, including from humans, other animals, and natural disasters;
 - (c) Medical care and treatment;
 - (d) Opportunities for exercise, recreation, and play; and
 - (e) Food, water, and shelter.
- (4) A guardian must ensure that the domesticated animal under guardianship is permanently identified:
- (a) By microchip implant; or
 - (b) As prescribed by regulation.

Representation

- 28** A guardian may act as a representative for the domesticated animal under guardianship.

Prohibitions

- 29** (1) No person may have care or custody of a domesticated animal unless that person is a guardian.
- (2) Any person who contravenes section 27(2) or 27(3) or abandons an animal is deemed to have contravened section 12(1).

PART 7 - LIMINAL ANIMALS

Rights

- 30** Liminal animals have the right to
- (a) Coexist with humans in urban spaces; and
 - (b) Have their interests considered in assessing proposed developments.

Municipalities

- 31** (1) Municipalities may employ any non-lethal means chosen in accordance with the principles of minimal impairment and proportionality to limit the population of incoming liminal animals by:
- (a) Reducing incentives;
 - (b) Developing physical barriers; or
 - (c) Using active disincentives.
- (2) Without limiting subsection (1), municipalities may:
- (a) Limit food sources or nesting sites;
 - (b) Construct fences;
 - (c) Install sound systems or netting; or
 - (d) Use unpleasant, but innocuous substances.

PART 8 - WILD ANIMALS

Prohibitions

- 32** (1) Any person who intentionally, recklessly, or negligently interferes with wild animals commits an offence.
- (2) Subsection (1) does not apply in circumstances of catastrophe.

Habitat protection

- 33** The Animal Commission, when making recommendations with respect to wild animals under section xx:
- (a) Has a duty to protect the habitat of wild animals; and
 - (b) Must implement, at a minimum, a no net loss rule.

PART 9 - OFFENCES

Offences

- 34** (1) A person who contravenes section 39 or 41-46 commits an offence.
- (2) A person who contravenes section 12, 16(2), 17(1), 18(1), 23(1), 27(1), 29, 31, or 32 commits an offence.

PART 10 - PENALTIES

Penalties

- 35** (1) A person who commits an offence under this Act is liable on conviction to:
- (a) In the case of a first offence:
 - (i) A fine of not more than \$50,000; and
 - (ii) In the case of a continuing offence, a further fine of not more than \$5,000 for each day during which the offence continues after the first day; and
 - (iii) Imprisonment for not more than two years.

- (b) In the case of a subsequent offence:
 - (i) A fine of not more than \$100,000; and
 - (ii) In the case of a continuing offence, a further fine of not more than \$10,000 for each day during which the offence continues after the first day; and
 - (iii) Imprisonment.
- (2) Without limiting subsection (1), a court may, having regard to the nature of the offence and the circumstances of its commission, make an order:
 - (a) Prohibiting the person from doing any act or engaging in any activity that may, in the court's opinion, result in the continuation or repetition of the offence; or
 - (b) Directing the person to take any action the court considers appropriate to remedy the harm that resulted from the commission of the offence.

PART 11 - REGULATIONS

Power to make regulations

- 36** (1) The Lieutenant Governor in Council may make regulations:
- (a) Referred to in section 41 of the *Interpretation Act*;
 - (b) Referred to in this Act as:
 - (i) Having to be in accordance with the regulations; or
 - (ii) Being a matter for regulation; or
 - (c) Respecting reviews, appeals, and the Animal Commission.
- (2) The Lieutenant Governor in Council may, in making a regulation under this Act:
- (a) Delegate a matter; or
 - (b) Confer a discretionary power.

PART 12 - TRANSITIONAL PROVISIONS

Definitions

37 In this Part:

Animal agricultural operation means any facility where animals are raised for their body parts or secretions, including their eggs, milk, flesh, fur, or wool

Applied research means the practical application of science toward a recognized and significant problem

Aquarium means any facility that keeps marine mammals in captivity for public display, and includes a marine mammal park, dolphinarium, or oceanarium

Hunting means pursuing any animal with the intent to kill

Rodeo means a public sporting exhibition where animals, including horses, cows, or goats, are forced to participate in competitive activities, including calf roping, team roping, steer wrestling, chuckwagon racing, bareback bronc riding, bull riding, barrel racing, and wild cow milking

Trapping means using a device to capture an animal for food, fur, sport, pest control, wildlife management, or any other purpose not required to preserve, maintain, or ensure the animal's health

Zoo means any facility that keeps animals in captivity for public display, conservation, or

study, and includes a wildlife park, menagerie, safari park, game reserve, or game farm

Policy initiatives

- 38** (1) The Commission, in its absolute discretion, has authority to plan and implement policy initiatives that will facilitate the objectives of this Act.
- (2) Without limiting subsection (1), the Commission may:
- (a) Collect annual fees from any person exploiting animals in accordance with this Part;
 - (b) Provide for humane education in public schools; or
 - (c) Offer economic incentives to any person who:
 - (i) Implements public education campaigns;
 - (ii) Invents, produces, or markets replacements for animal products.

Prohibitions

- 39** (1) Any person who intentionally or recklessly abuses an animal commits an offence, unless:
- (a) The person acts in self-defence or in defence of another person or another animal; and
 - (b) The act committed is reasonable in the circumstances.
- (2) Any person who intentionally or recklessly traffics an animal commits an offence.

Conviction

- 40** (1) Any person convicted of abuse or trafficking:
- (a) Will be identified in a public federal registry; and
 - (b) Is prohibited from having care or custody of any animal.
- (2) Subsection (1) does not apply to minors.

Transparency

- 41** (1) Any person who distributes animal products must provide a label that identifies:
- (a) The species of animals used;
 - (b) How the animals were kept; and
 - (c) Any other requirements prescribed by regulation.
- (2) Any person who exploits, uses, or cares for animals must publicly disclose statistics on:
- (a) The species and number of animals exploited, used, or cared for;
 - (b) How the animals are kept;
 - (c) How the animals were disposed of;
 - (d) Any other requirements prescribed by regulation.

Research facilities

- 42** (1) A person is prohibited from using animals for research unless approved on application to the Animal Commission.
- (2) The Animal Commission must not approve an application under subsection (1) unless satisfied that:
- (a) There are no alternatives to using animals;
 - (b) The animals will experience no more than minor pain and suffering;
 - (c) The overall health of the animals will not be compromised;
 - (d) The research is directed toward the cure or treatment of a life threatening disease; and
 - (e) As prescribed by regulation:

- (i) Any animals will be kept in good health until death; and
 - (ii) A plan is in place to ensure compliance with the future requirements of this Act.
- (3) Subsection (1) does not apply to research already underway, if:
 - (a) There are no alternatives to replace the animals being used;
 - (b) The research is applied research;
 - (c) The research will be completed no later than one year after this section comes into force.

Zoos, aquariums, and circuses

- 43** (1) A person is prohibited from using animals for display or entertainment at zoos, aquariums, or circuses unless approved on application to the Animal Commission.
- (2) The Animal Commission must not approve an application under subsection (1) unless satisfied that:
- (a) The zoo, aquarium, or circus is already in existence and currently uses animals; and
 - (b) As prescribed by regulation:
 - (i) Animals will be kept in good health until their death; and
 - (ii) A plan is in place to ensure compliance with the future requirements of this Act.

Rodeos

- 44** Rodeos are prohibited.

Hunting and trapping

- 45** Hunting or trapping is prohibited.

Animal agriculture

- 46** (1) Animal agricultural operations are prohibited unless approved on application to the Animal Commission.
- (2) The Animal Commission must not approve an application under subsection (1) unless satisfied that:
- (a) The animal agricultural operation is already in existence; and
 - (b) As prescribed by regulation:
 - (i) Animals will be kept in good health until they are killed;
 - (ii) Animals will be killed by the most humane methods possible; and
 - (iii) A plan is in place to ensure compliance with the future requirements of this Act.

PART 13 - CONSEQUENTIAL AMENDMENTS

Power to make consequential amendments

- 47** Any minister may, on the advice of the Animal Commission, amend, repeal, or revoke any provision in any other enactment as a consequence of this Act.

PART 14 - COMMENCEMENT

When in force

- 48** (1) Parts 1, 2, and 9-12 will come into force on January 1, 2015.
(2) Parts 3-8 and 13 will come into force on January 1, 2025.

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