

**The Health of Animals Act and Regulations:  
an example of how Canada has failed to protect farmed animals**

by

Rachel Godley

A thesis submitted in partial fulfillment of the requirements for the degree of

Masters of Laws

Faculty of Law

University of Alberta

©Rachel Godley, 2014

## **Abstract**

Farmed animal welfare is an increasingly pressing issue both in Canada and abroad. This thesis surveys the current laws Canada has in place to protect farmed animal welfare. It looks at the *Health of Animals Act* and regulations as an example of why laws that should protect farmed animals are failing to do so. Pervasive problems with animal welfare legislation are identified and explained, including issues with the fragmented legal framework, and the strength, scope, and interpretation of laws.

## **Acknowledgement**

Thanks to my supervisor Peter Sankoff for his expert insight and ongoing feedback, to my family and friends who have supported me throughout this endeavor, and to the vegan and vegetarian community, who continually remind me of the importance of all our efforts in the fight for animal justice

## **Contents**

<b>CHAPTER 1 - INTRODUCTION .....</b>	<b>1</b>
1. OPENING ACT .....	1
2. ROAD MAP .....	2
3. INTERPRETATION AND ASSUMPTIONS .....	3
3.1. “Meaningful protection” and “welfare” .....	3
3.2. Animal-interest laws .....	4
3.3. Focus on farmed animals .....	6
4. A RECENT HISTORY OF ANIMAL FARMING TECHNIQUES .....	6
4.1. Chickens .....	9
4.2. Pigs .....	11
4.3. Cows .....	13
4.4. Transportation .....	15
1. THE RISE OF THE FARMED ANIMAL WELFARE MOVEMENT .....	15
 <b>CHAPTER 2 - LEGAL FRAMEWORK AND STRUCTURE OF LAWS PERTAINING TO FARMED ANIMALS IN CANADA .....</b>	<b>22</b>
THE LEGAL OVERVIEW SETS THE STAGE FOR A DISCUSSION OF THE STRENGTHS AND WEAKNESSES OF CANADA’S FARMED ANIMAL WELFARE LAWS IN THE NEXT CHAPTER. ....	23
PART A: A LEGAL OVERVIEW OF FARMED ANIMAL PROTECTION LAWS IN CANADA .....	23
1. CANADA’S ANTI-CRUELTY LAWS .....	23
1.1. The federal Criminal Code .....	24
1.2. Provincial anti-cruelty statutes .....	26
2. CANADA’S AGRICULTURE LEGISLATION RELATING TO FARMED ANIMALS .....	27
3. INDUSTRY CODES - VOLUNTARY GUIDELINES .....	30
PART B: THE HEALTH OF ANIMALS ACT AND REGULATIONS – AN ANATOMY OF AGRICULTURAL WELFARE LAWS .....	33
1. HEALTH OF ANIMALS ACT AND REGULATIONS .....	34
CHAPTER CONCLUSION .....	40
 <b>CHAPTER 3 - AN EVALUATION OF FARMED ANIMAL PROTECTION LAWS IN CANADA .....</b>	<b>42</b>
1. STRENGTHS .....	43
1.1. Laws concerning animals exist – the message .....	43
1.2. Power to create new welfare provisions .....	43
1.3. Enforcement powers .....	45
1.4. Flexible terminology .....	46
2. WEAKNESSES .....	48
2.1. Flexible terminology .....	49
2.2. Scope of protection .....	56
2.3. Strength of protection .....	60
2.4. Fragmented approach .....	64
3. CHAPTER CONCLUSION .....	69
 <b>CHAPTER 4 - CONCLUSION .....</b>	<b>70</b>

<b>BIBLIOGRAPHY .....</b>	<b>76</b>
PRIMARY SOURCES .....	76
SECONDARY SOURCES .....	80
<b>APPENDICES .....</b>	<b>90</b>
APPENDIX A .....	90
<i>Provincial legislation concerning farmed animals .....</i>	<i>90</i>
APPENDIX B .....	93
<i>National Farm Animal Care Council Voluntary Codes of Practice for the Care and</i>	
<i>Handling of Farm Animals.....</i>	<i>93</i>
APPENDIX C .....	95
<i>Flexible terminology .....</i>	<i>95</i>

# CHAPTER 1 - INTRODUCTION

## 1. *Opening act*

A tractor trailer rumbles down Lakeshore Boulevard in Toronto early on a quiet January morning.<sup>1</sup> It is minus 25 degrees and the truck has been on the road for 15 hours. Its occupants, save the driver, have not eaten, drank or rested since the journey began. The cargo is a load of pigs. They have been sent from an industrial farm in northern Ontario to Toronto to be slaughtered at Quality Meat Packers near trendy Liberty Village.

After waiting several hours in the cold, the animals are unloaded. Some of the pigs' flesh has frozen to the sides of the un-insulated transport container. It is cut and torn away from the wildly squealing animals. Workers yell and swear at the pigs and shock them with electric prods as they are not moving fast enough, tired after their journey and distressed by unfamiliar surroundings and noises.<sup>2</sup> Two pigs have died in transport. Their bodies are thrown in a dumpster on site. The last pig in the trailer has a deep laceration on its leg and is unable to walk. A Canadian Food Inspection Agency inspector is present and says the pig must be euthanized. She gives a verbal warning but does not issue a fine. There is no veterinarian available and the inspector is not permitted to do the job herself. The animal suffers for hours before the vet arrives.

It's a typical day for the employees involved in this scene, and this is a typical experience for farmed animals; everything described above is legal, and common, in Canada.<sup>3</sup>

---

<sup>1</sup> The Opening Act section of this paper is a composite. The details have been distilled from various cases and reports.

<sup>2</sup> TG Knowles & PD Warriss, "Stress physiology of animals during transport" in: Temple Grandin ed, *Livestock Handling and Transport*, 2nd ed. (Wallingford: CAB International, 2000) at 385-407; "Curb the Cruelty: Canada's farm animal transport system in need of repair" (Toronto: World Society for the Protection of Animals Canada, 2010) [WSPA, "Curb the Cruelty"] at 4.

<sup>3</sup> Bisgould, Lesli. *Animals and the Law* (Toronto: Irwin Law Inc., 2011) [Bisgould, 2011] (millions of animals are dead on arrival (DOA) at slaughterhouses) at 180-181; WSPA, "Curb the Cruelty", *ibid* (for example, "[o]ne downed cow was left on a pile of dead animals overnight until a company employee noticed the animal raise her head and vocalize in distress. The cow was finally euthanized after suffering

There are laws in Canada governing the treatment of animals generally, and the transportation of livestock is specifically addressed.<sup>4</sup> Yet every year in Canada hundreds of millions of food animals languish in industrial farming systems, subject to systemic abuse during all phases of life. Millions die before they even reach the slaughterhouse.<sup>5</sup>

This thesis uses the *Health of Animals Act* and regulations as an example of how the current laws that address farmed animals and their welfare in Canada are failing to provide meaningful protection. The intent of this work is to contribute to an increasing body of scholarship in the field of farmed animal welfare in the hope that it will eventually spur legislative transformation.

## **2. Road map**

This first Chapter serves to introduce the topic of farmed animal welfare. It gives a brief background of the current industrial farming practices that elicit the most objection from animal welfare advocates and outlines interpretation and assumptions relied on in writing this thesis.

The second Chapter surveys the current legal landscape as it relates to farmed animals in Canada. Part A introduces the reader to federal and provincial laws directed at preventing animal cruelty, and to agricultural statutes specifically dealing with farmed animal products, handling, and care. The voluntary industry codes that form part of Canada's protection framework are also reviewed. Part B looks at the anatomy of agricultural laws

---

for at least 58 hours." In addition, "[Canadian Food Inspection Agency] inspectors are not authorized to euthanize animals or relieve their suffering for humane reasons, and few animal inspectors are veterinarians or specifically trained to address animal welfare problems during transport" at 9-10).

<sup>4</sup> *Health of Animals Regulations*, CRC, c 296 [*Health of Animals Regulations*]; *Health of Animals Act* *Health of Animals Act*, SC 1990, c 21 [*Health of Animals Act*] (the *Health of Animals Regulations* contain welfare provisions for the transportation of livestock).

<sup>5</sup> WSPA, "Curb the Cruelty", *supra* note 2 ("[Canadian Food Inspection Agency] statistics indicate that 634,634 chickens, 11,439 turkeys, 3,396 pigs and 153 cattle died during transport in the time period for which [World Society for the Protection of Animals] requested records (October 9, 2008 to January 9, 2009). This amounts to 649,622 animals arriving dead in just three months" at 11).

relating to farmed animals and their welfare, using the *Health of Animals Regulations* as an example.

The third Chapter examines the main strengths and weaknesses of the animal welfare framework introduced in the second Chapter. The *Health of Animals Act* and regulations are used to illustrate how Canada's farmed animal welfare framework fails to protect farmed animals.

### ***3. Interpretation and assumptions***

In writing this paper, I worked from a base of assumptions. The assumptions serve the purpose of allowing me to build on established arguments and scholarship and to focus on the central ideas put forth. In addition, I ascribed a fixed meaning to certain terms, which are clarified below to facilitate reader comprehension.

#### **3.1. “Meaningful protection” and “welfare”**

In this paper, I use the term “meaningful protection” in relation to laws that deal with the treatment of animals. There are two main approaches to animal protection. Animal welfarists condone the use of animals by humans but aim to create laws so that animals are treated in the best possible way, thereby providing meaningful protection.<sup>6</sup>

Abolitionists are against using animals at all, and argue regulation of animal use serves only to harm animals by making the public think that animals are being protected, such that people become more complacent exploiting them for food and other uses.<sup>7</sup>

The discussion and suggestions in this paper are based on a welfarist approach. It presumes that more and better agricultural animal welfare laws would provide

---

<sup>6</sup> For more information see eg Gary Francione & Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (New York: Columbia University Press, 2010).

<sup>7</sup> See eg: Gary Francione, *Animals, Property and the Law* (Philadelphia: Temple University Press, 1995) [Francione, 1995]; Gary Francione, *Introduction to Animal Rights: Your Child or the Dog* (Philadelphia: Temple University Press, 2000) [Francione, 2000].

meaningful protection for farmed animals; that laws that demand better housing, handling and husbandry practices can improve both the welfare and lives of animals.

Of course standards of welfare are in the eye of the beholder, with vast differences of opinion as to what constitutes welfare. As opposed to industry definitions of welfare, which are closely tied to production statistics,<sup>8</sup> the definition of “welfare” from which this paper works is outlined in the British Government’s “Brambell Report”.<sup>9</sup> This report led to the Animal Welfare Council’s “five freedoms” of animal welfare:<sup>10</sup> freedom from thirst, hunger and malnutrition; freedom from discomfort; freedom from pain, injury and disease; freedom to express normal behaviour; and freedom from fear and distress.<sup>11</sup> The standard of animal welfare sought after in this paper is embodied in these freedoms.

### **3.2. Animal-interest laws**

There are many reasons to regulate activities concerning farmed animals, including: the protection of human economic interests;<sup>12</sup> the devastating environmental impact of

---

<sup>8</sup> Jed Goodfellow, *Captured by Design: The Story of Farm Animal Welfare Regulation in Australia - The Future of Animal Law*, (18 October 2012), PhD candidate, Macquarie Law School, [unpublished] (industrial animal farmers often assert that good productivity establishes livestock welfare. However, industrial farming productivity is largely due genetic modifications and natural coping mechanisms rather than good welfare at 15-18).

<sup>9</sup> Roger Brambell, *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems* (HMSO London: Her Majesty’s Stationary Office, 1965) [“Brambell Report”] (named after the chairman of the committee, further discussed below).

<sup>10</sup> “Five Freedoms”, *Farm Animal Welfare Council* (accessed 4 March 2011) online: FAWC <<http://www.fawc.org.uk/freedoms.htm>> [“Five Freedoms”]; IJH Duncan, “Science-based assessment of animal welfare: farm animals” (2005) 24:2 Rev sci tech 483 (while more recent definitions of animal welfare differ, they tend to share these common attributes).

<sup>11</sup> European Commission, *Health and Consumers, Food* “Animal Welfare on the Farm”, online: EUROPA <[http://ec.europa.eu/food/animal/welfare/farm/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/farm/index_en.htm)> (the five freedoms are the foundation of much of the European Community’s legislation: “[I]n 1998, Council Directive 98/58/EC on the protection of animals kept for farming purposes gave general rules for the protection of animals of all species kept for the production of food, ... [they] reflect the so-called 'Five Freedoms' as adopted by the Farm Animal Welfare Council”).

<sup>12</sup> “All about Canada’s red meat industry”, Agriculture and Agri-food Canada (accessed: 28 November 2012), online: <[www.agr.gc.ca](http://www.agr.gc.ca)> (animal agriculture is big business in Canada. For example, the red meat industry is the largest sector of the Canadian food manufacturing industry in Canada and posted \$24.2 billion of shipments in 2010).

industrial farming;<sup>13</sup> human health concerns relating to drug-resistant bacteria and growth hormones and;<sup>14</sup> a general moral and ethical obligation to do so. However, this paper makes the assumption that animals are worth protecting in their own right, as sentient beings with intrinsic value.<sup>15</sup> Canada's farmed animal welfare legislation indicates that animal welfare is important by virtue of its very existence. Prohibitions against "unnecessary suffering" further attest to the fact that animals have a capacity to suffer and that we have an obligation to minimize their suffering.<sup>16</sup>

I am writing this paper to argue that better regulation is required to improve the lives of farmed animals. I am not writing this paper to convince the public at large that farmed animal welfare matters or provide reasons why they should care about the health and well being of animals they may or may not consume.<sup>17</sup>

---

<sup>13</sup> See generally: Henning Steinfeld et al., "Livestock's Long Shadow: environmental issues and options", (Rome: United Nations Food and Agriculture Organization, 2006) online: UNFAO <<http://www.virtualcentre.org>>; Henning Steinfeld, United Nations Food and Agriculture Organization, "Livestock a Major Threat to Environment: Urgent Remedies Needed" (29 November 2006), online: FAO <<http://www.fao.org/newsroom/en/news/2006/1000448/>>.

<sup>14</sup> See generally: Colin Campbell & Thomas Campbell, *The China Study* (Dallas: BenBella Books, 2006); Samuel S Epstein, "Hormonal Milk and Meat: A Dangerous Public Health Risk", *The Huffington Post* (13 April 2010) online: <http://www.huffingtonpost.com> (the genetically modified species and amount of growth drugs and hormones used in raising animals for human consumption may in turn affect the health of those who consume meat); Tom Philpott, "Six months after the outbreak, who's investigating the CAFO-swine flu link?" *Grist: A Beacon in the Smog* (29 October, 2009), online: *Grist* <<http://www.grist.org>>; "Antibiotics Prove Powerless as Super-Germs Spread", *Der Spiegel* (27 January 2012) online: <<http://www.spiegel.de>> (the routine use of antibiotics in factory farm production leaves humans vulnerable to flu pandemics by creating drug-resistant bacteria); Twyla Francois, "Broken Wings: The Breakdown of Animal Protection in the Transportation and Slaughter of Meat Poultry in Canada" (A report for the Ethical Treatment of Food Animals) (Vancouver: Canadians for the Ethical Treatment of Food Animals, 2009) [Francois, "Broken Wings"] (animal agriculture linked to human health issues including listeria, bacterial infections, antibiotic resistance, avian influenza at 36-38).

<sup>15</sup> European Commission, *Health and Consumers, Animals* "Animal Welfare main Community legislative references", online: EUROPA <[http://ec.europa.eu/food/animal/welfare/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/index_en.htm)> (this is also the stated approach of the European Community: "The European Commission's activities [in animal welfare] start with the recognition that animals are sentient beings").

<sup>16</sup> For example, the *Health of Animals Act* long title: "[a]n Act respecting diseases and toxic substances that may affect animals or that may be transmitted by animals to persons, and respecting the *protection of animals*" [emphasis added].; Christina G Skibinsky, "Changes in Store for the Livestock Industry? Canada's Recurring Proposed Animal Cruelty Amendments" (2005) 68 Sask L Rev 173 – 222 (specifically, the legislation dealing with the handling of animals in livestock production consistently supports the premise that livestock production causes pain, suffering, and distress to animals by authorizing "necessary" animal pain, suffering, and distress to be caused by livestock industry workers at para 19).

<sup>17</sup> There is strong evidence that animals do experience suffering and an associated assumption that animal suffering matters. This has been extensively written about by an ever-increasing number of philosophers,

### 3.3. Focus on farmed animals

Beyond farmed animals, there are several other categories of animals that the government in Canada regulates. These include companion animals, laboratory animals, entertainment animals and wildlife. Each category of animal use is associated with a different level of visibility, attracting differing levels of public empathy and politicking. Each is the subject of widely divergent levels and methods of legal protection. The concerns for different categories of animal groups are different, making direct comparison between groups somewhat problematic. Including a critique of all types of animal protection legislation would result in a scope too broad for this paper. As such, while recognizing that there are many common issues between the groups, this paper focusses on farmed animal issues.<sup>18</sup>

## 4. *A recent history of animal farming techniques*

In order to understand why farmed animal welfare is now gaining more attention as an issue, it is useful to know a bit about the evolution of animal farming.

Prior to the mid 1900s, animals in Canada spent time outdoors. They were able to perform natural behaviours such as grazing, pecking, flapping their wings and interacting with one another. Family farms were small, allowing farmers to care for animals one-on-one.<sup>19</sup> While many of the objectionable husbandry practices discussed in this paper

---

scientists, lawyers and other highly intelligent, well-respected scholars and professionals. See generally: Peter Singer, *Animal Liberation* (New York: HarperCollins Publishers, 1975); Francione, 1995, *supra* note 6; Tom Regan, *The Case For Animal Rights* (Los Angeles: University of California Press, 1983); Matthew Scully, *Dominion – the Power of Man, the Suffering of Animals, and the Call to Mercy* (New York: St. Martin's Press, 2002); Marian Stamp Dawkins, *Why Animals Matter* (New York: Oxford University Press, 2012); and Stephen Wise, *Rattling the Cage: Towards Legal Rights for Animals* (Cambridge, Massachusetts: Perseus Books, 1999).

<sup>18</sup> The *Health of Animals Act* and regulations will be used to illustrate the lack of meaningful protection provided by all farmed animal regulations, including slaughter and industrial farming regulations.

<sup>19</sup> "Putting Meat on the Table: Industrial Farm Animal Production in America" *A Report of the Pew Commission on Industrial Farm Animal Production* (April 2008)[PEW Report] (for example, the average number of cows per farm prior to time period was 30, making it possible for farmers to care for each animal

existed at that time, there has been a drastic intensification of animal farming, and an according intensification of cruelty - this is both in terms of sheer numbers of animals being farmed and the degree of suffering endured.

In the 1940s, a combination of genetic, chemical, and technological advances resulted in large productivity increases for farmed animals. Animals were bred to mature much more rapidly, often as a result of synthetic hormones, and to produce more milk, eggs and meat per animal.<sup>20</sup> They required less food and care as their movement was minimized and their environment mechanized. Sub-therapeutic use of anti-biotics meant that many more animals could be kept in a much smaller amount of space without inducing illness.<sup>21</sup> Corporate investors attracted to the increased profits of the production-line model of animal farming began to buy up family farms; though the number of farmed animals continues to expand, the number of farms has shrunk dramatically.<sup>22</sup> The

---

on an individual basis. The average number of cows is now 350, making individual attention unrealistic at 29); Charlotte Montgomery, *Blood Relations: Animals, Humans, and Politics* (Toronto: Between the Lines, 2000) (with the automation of farms, "it is possible to have one person run an eighty-thousand-bird operation". Farmers cannot provide an individual level of care to this number of animals at 149).

<sup>20</sup> Rick Mills, "A Harsh Reality" (accessed 12 May 2013) online: <<http://aheadoftheherd.com/newsletter/2011/A-Harsh-Reality.html>> (through selective breeding and genetic modification, animals began to grow far bigger, much faster, and on less feed. This allows for economies of scale and maximization of profit for farmed animal operations); Goodfellow, *supra* note 8 (while the health of the animal may be sustained through natural coping mechanisms and use of external aids such sub-therapeutic anti-biotics, its welfare becomes poor. Productivity masks welfare issues).

<sup>21</sup> Skibinsky, *supra* note 16; Industrial farms are often referred to as "ILOs" - Intensive livestock operations or "CAFOs" - Confined or Concentrated Animal Feeding Operations.

<sup>22</sup> Agriculture and Agri-Food Canada, "Next Generation of Agriculture and Agrifood policy Economic Backgrounder Changing structure of primary agriculture" (13 August 2012) online: AAFC <[http://www4.agr.gc.ca/resources/prod/doc/pol/consult/econom/pdf/structure\\_e.pdf](http://www4.agr.gc.ca/resources/prod/doc/pol/consult/econom/pdf/structure_e.pdf)> (the total number of pig farms decreased significantly between 1971 and 2001, though the total number of pigs almost doubled during this period and the average number of pigs per farm has increased 14 fold. Animal productivity has increased by over 20% thanks to genetic engineering among other things. Rather than farrow to finish operations, most farms now represent a specialized step in the chain. Almost 90% of hogs are produced under a contractual arrangement.); Statistics Canada, "Intensive Livestock Farming: Does Farm Size Matter?" (Ottawa: Statistics Canada, Agriculture Division, 2001), online: <<http://www.statcan.gc.ca/pub/21-601-m/21-601-m2001048-eng.pdf>> at 1; Skibinsky, *supra* note 16 at 11; Clifford J. Sherry, *Animal Rights*, 2<sup>nd</sup> ed. (Santa Barbara: Library of Congress Cataloging-in-Publication Data, 2009) (this book speaks to a similar intensification of livestock farming practices in the United States, including that 80% of cattle processing is owned by four companies at 38-39); Katrina Sharman, "Farm Animals and Welfare Law: An Unhappy Union" in Peter Sankoff & Steven White eds, *Animal Law in Australasia* (Sydney: The Federation Press, 2009) (the author cites trends in the Australian chicken industry. For example, three companies supply 80% of the poultry market, 94% of pig farmers have left the market in the last 30 years, but production has increased 130%, and operations have become vertically and horizontally integrated from farrow to finish This type of consolidation has also been occurring for decades

production of animal products became so efficient that between 1950 and 2003 while inflation caused consumer prices to rise almost eight-fold the price of eggs and meat did not even double.<sup>23</sup>

Though consumers in Canada spend less for their meat and producers happily profit, farmed animals pay the price for this intensification of production. They now languish in confinement housing in vast sheds devoid of natural light and materials, unable to move comfortably or engage in normal behavior. The industrial animal farming housing types and methods described below are currently ubiquitous in the industry in Canada.<sup>24</sup> The intention of outlining these practices is not to survey every animal farming practice, but rather to outline the most common in order to give an idea of how animals are treated in the industry. The focus of this section is to expose systemic cruelty, i.e. legal treatment of animals that is built into industrial farming systems such as the use of battery cages, gestation crates, beak trimming etc. However, there is also some coverage of incidental animal suffering that happens on modern farms as a result of treatment that, while common, is not generally acceptable. Behaviours include poor animal handling, improperly stunning animals before processing them, or not euthanizing them humanely. As discussed in subsequent chapters, flexible language used in legislation means that the line between legal and illegal treatment of farmed animals is often blurred and standard practices are often considered legal.

---

in Canada at 38); “The Farm Crisis: Its Causes and Solutions” (Kananaskis: National Farm Union, 2005) (this report notes the rise of “[l]arge Canadian processors and retailers, as well as dominant multi-nationals” and “the rise of corporate power and consolidation” at 8 and makes particular reference to “Monsanto, Cargill, Weston, ADM, and the other giants” at 11).

<sup>23</sup> Erik Marcus, *Meat Market: Animals, Ethics, and Money* (Boston: Bio Press, 2005) (productivity increases mean lower prices - between 1950 and 2003, inflation caused consumer prices to rise by 770%, cars and house prices rose even more dramatically by 1400% and 1500% respectively. By contrast, milk prices increased only 350%, and by the end of the period, the price of eggs and meat had yet to double at 7); PEW Report, *supra* note 19 (these production increases mean the price of animal products dropped significantly. “In 1970, the average American spent 4.2% of his or her income to buy 194 lbs of red meat and poultry annually. In 2005, Americans spent, on average, 2.1% of their annual income to buy 221 lbs of red meat and poultry” at 3).

<sup>24</sup> Skibinsky, *supra* note 16 (the author says that “ILOs [...] practise: (1) indoor and close confinement of animals; (2) mutilation of animals for purposes of keeping them in tight confinement situations; (3) routine use of antibiotics; (4) corporation-run assembly-line means of production; and (5) other “methods” that keep animals from exercising their natural faculties and leading satisfying lives. ILO operators follow these practices because placing animals in certain situations allows producers to obtain greater economic returns” at para 11).

## 4.1. Chickens

There are two different types of chickens used in the animal farming industry. Birds used for meat are called “broilers”, and those used for the production of eggs are referred to as “layer” hens.

Layer hens live in “battery cages”. These enclosures are constructed from wire and are extremely small. Eight to ten hens are kept in each cage, and each hen has roughly the space of a standard sheet of paper to itself.<sup>25</sup> Physical repercussions of life in a battery cage include chronic calcium deficiency, osteoporosis, and feather loss and skin wounds caused by cannibalism and perpetual contact with other hens.<sup>26</sup> Insufficient space and barren, synthetic environments mean hens are not able to engage in natural behaviours such as nesting, dust bathing, pecking, spreading their wings, or standing fully upright.<sup>27</sup> This confinement causes stress that results in pecking other birds; chickens’ beaks are partially seared off to reduce this problem, often causing chronic pain.<sup>28</sup>

Layer hens are sold for low-grade meat when they are “spent”, or can no longer produce an acceptable quantity of eggs. They are slaughtered when they are less than two years

---

<sup>25</sup> The Humane Society of the United States, “An HSUS Report: The Welfare of Intensively Confined Animals in Battery Cages, Gestation Crates, and Veal Crates” (accessed 16 March 2013), online: HSUS <[www.humanesociety.org/.../hsus-the-welfare-of-intensively-confined-animals.pdf](http://www.humanesociety.org/.../hsus-the-welfare-of-intensively-confined-animals.pdf)> [HSUS, “Intensively Confined”] at 2 (cages measure 432-555 cm<sup>2</sup> – statistics from *Cage management for layers* in: Donald Bell DD and Daniel Weaver Springer (eds), *Commercial Chicken Meat and Egg Production*, 5th ed (Norwell, MA: Kluwer Academic Publishers, 2002)).

<sup>26</sup> EC, Commission, Scientific Veterinary Welfare Section, *Report of the Welfare of Laying Hens*, Directorate General for Agriculture, VI/BII.2 (Brussels: EC, 1996) [EC, “Welfare of Laying Hens”] (this calcium deficiency results in broken bones and leads to fractures, paralysis, and death at 44-46. Many confined layer hens suffer from fatty liver hemorrhagic syndrome, which results from physical confinement and the diets used for rapid growth at 44-45).

<sup>27</sup> See Francois, “Broken Wings”, *supra* note 14 (the author details diseases of genetically modified broiler and their six-week lifespan at 4).

<sup>28</sup> EC, “Welfare of Laying Hens”, *supra* note 26 (“[b]eak trimming” or debeaking refers to the removal of one-third to two-thirds of a bird’s beak in order to prevent cannibalism from overcrowded conditions in poultry barns and battery cages 48 at 51); “Broken Wings”, *supra* note 14 (details detoeing, dubbing or cutting off a chickens comb, generally done with household scissors, desnooding or cutting off the flesh-bit that grows over a chicken’s nose, and debeaking. These procedures cause acute pain, sometimes chronic, inhibiting ability to eat at 7).

old, though they would naturally live 15 to 20 years.<sup>29</sup> Their bones are calcium deficient from laying eggs and subject to breakage, particularly when handled roughly in transport.<sup>30</sup>

Female chicks for the layer industry are sourced from hatcheries. Male layer hens do not have good meat and are sorted and killed after hatching. Killing by high-speed macerator is the accepted “humane” method.<sup>31</sup>

Broiler hens are bred specifically for meat. Industrially farmed broilers are kept in high-density barns at 20-25 birds per square metre.<sup>32</sup> There is usually no access to the outdoors and broilers are also subject to beak trimming to reduce fighting<sup>33</sup>. A high concentration of ammonia in the litter and environment leads to respiratory diseases. Resting and walking in the contaminated litter also leads to infection such as breast blisters, dermatitis, and hock burns.<sup>34</sup> Broilers have been bred to grow very fast. This causes problems from lameness to high mortality rates from heart failure. Broilers that reach adult weight are slaughtered at 39 days old.<sup>35</sup>

---

<sup>29</sup> Francois, “Broken Wings”, *supra* note 14 at 14-24.

<sup>30</sup> *Ibid.* (It is common for upwards of 2% of layer hens to arrive dead at the slaughterhouse due to stress, weather and inappropriate handling).

<sup>31</sup> CBC News, “Male chicks ground up alive at egg hatcheries” (1 September 2009) online: CBC <<http://www.cbc.ca/news/male-chicks-ground-up-alive-at-egg-hatcheries-1.823644>> (though it is common for chicks to be left in the garbage to suffocate rather than being properly euthanized).

<sup>32</sup> EC, Commission, Health and Consumer Protection Directorate, *Report of the Scientific Committee on Animal Health and Animal Welfare on The Welfare of Chickens Kept for Meat Production (Broilers)* (Brussels: EC, 2000) [EC, “Welfare of Chickens Kept for Meat Production”] at 15; Code of Practice for the Care and Handling of Farm Animals: Chickens, Turkeys and Breeders from Hatchery to Processing Plant (Ottawa: Canadian Agri-food Research Council, 2003) (the recommended density for broilers is 38kg.metre<sup>3</sup>, which, according to the EC Report, *ibid.* is more than 25 birds per meter squared at 18).

<sup>33</sup> EC, “Welfare of Chickens Kept for Meat Production”, *ibid* at 86.

<sup>34</sup> *Ibid* at 51, 57, 54, 64, 68&81.

<sup>35</sup> *Ibid* at 12.

## 4.2. Pigs

In the farming industry, female pigs, called “sows”, are kept for breeding. A sow’s piglets are raised to become full-grown hogs, and are slaughtered for pork products.<sup>36</sup>

Sows are typically kept in individual steel stalls called “gestation crates” when they are pregnant.<sup>37</sup> The stalls are only about the size of a sow, resulting in a highly limited range of movement.<sup>38</sup> A “farrowing crate” is a modified crate that allows the sow to nurse her piglets in an adjacent pen area through metal bars.<sup>39</sup>

Sows in industrial farming systems are repeatedly impregnated to produce hogs for meat. They are switched back and forth between crates until slaughter, and are not able to turn around, lie in a natural position, or engage in any normal pig behaviours such as nesting, rooting, or interacting with other animals.<sup>40</sup> The slated floors of the sow crates contribute to injury from slipping, joint damage, lameness, and foot wounds.<sup>41</sup> The physical restriction causes urinary tract infections, reduced muscle mass, weakened bone structure, and lameness.<sup>42</sup>

Repeated impregnation takes a physical toll on the sows and exacerbates these problems. In addition, pigs are naturally active, social, and intelligent animals.<sup>43</sup> Sows unable to

---

<sup>36</sup> Sows are also slaughtered for production of meat once they are no longer fit to reproduce.

<sup>37</sup> The term “sow stall” is sometimes used instead of gestation crate.

<sup>38</sup> EC, Commission, *Communication from the Commission to the Council and the European Parliament on the welfare of intensively kept pigs in particularly taking into account the welfare of sows reared in varying degrees of confinement and in groups* (Brussels: EC, 2001) [EC, “Welfare of Intensively Kept Sows”](the pen area is typically 2’ x 7’ at 5).

<sup>39</sup> *Ibid.*

<sup>40</sup> HSUS, “Intensively Confined”, *supra* note 25 at 5; See also *ibid*, EC, “Welfare of Intensively Kept Sows”, *supra* note 38 at 16.

<sup>41</sup> EC, “Welfare of Intensively Kept Sows”, *ibid* at 5.

<sup>42</sup> EC, Commission. *Report of the Scientific Veterinary Committee on the welfare of intensively kept pigs* (Brussels: EC, 1997)[EC, “Welfare of Intensively Kept Pigs”] at 10&93.

<sup>43</sup> Chris McLaughlin, “The Intelligent Pig The Smartest Domestic Animal in The World” (16 December 2008), online: Suite 101.com <<http://www.suite101.com/content/the-intelligent-pig-a84448>>; Lisa Duchene, “Are Pigs Smarter than Dogs” *Research Penn State Probing Questions* (8 May 2006), online: Penn State <<http://www.rps.psu.edu/probing/pigs.html>> (pigs are extremely intelligent - many researches

interact with other animals or with natural surroundings exhibit repetitive behaviours<sup>44</sup> and become aggressive.<sup>45</sup>

The offspring of sows are raised for meat. They are kept in high-density barns without access to natural materials, fresh air, or sunlight. Arthritis and other joint problems are common from standing on slatted floors over manure pits with no natural flooring.<sup>46</sup> These conditions cause stress and fighting. To cope with these problems, piglets' tails are cut off, their teeth are clipped, and piglets are castrated, all without anesthetic.<sup>47</sup> Over-crowding, bad ventilation, and dirty conditions cause diseases such as lung lesions caused by pneumonia and mange. Sick pigs are usually killed rather than treated, as it is more economical to dispose of the animal than treat it. Pigs growing too slowly are "thumped" to death by having their head slammed on the floor. This is not always effective, and many are left to die slowly.<sup>48</sup>

Boars are used for their semen, which is used to artificially inseminate the sows. Boars are naturally aggressive animals. Prior to transportation it is standard practice to "boar bash", or break the boar's snout with a metal pipe or other blunt object.<sup>49</sup> This induces

---

believe they are at least as clever as dogs and smarter than chimpanzees); Salvatore Cullari, "Re: Have pigs got a higher IQ than dogs?" (12 April 2000), online: Madsoci Network: Zoology <<http://www.madsoci.org/posts/archives/2000-04/955599153.Zo.r.html>> (pigs learn tasks faster and have remarkable memories. They also exhibit team work in problem solving).

<sup>44</sup> EC "Welfare of Intensively Kept Pigs", *supra* note 42 (repetitive behaviours are referred to as "stereotypic". Bar-biting, head-weaving, pressing drinkers without drinking, and repetitive tongue motions are examples of this type of behaviour, which is indicative of psychological issues and impaired welfare at 91).

<sup>45</sup> *Ibid* at 93.

<sup>46</sup> Olivier Berreville, Canadian Centre for Policy Alternatives "Canadian pig industry: the need for change" (10 December 2012), online: CCPA <<http://www.policyalternatives.ca/publications/commentary/canadian-pig-industry-need-change>>.

<sup>47</sup> Berreville, *ibid*; EC, "Welfare of Intensively Kept Pigs", *supra* note 42 at 142-143.

<sup>48</sup> Berreville, *Ibid*.

<sup>49</sup> Twyla Francois, "Investigation of Boar Bashing, Tooth Breaking and Snout Cutting at Ottawa Livestock Exchange (formerly Leo's Livestock Exchange Ltd.) and Investigation of Slaughterhouses that accept these boars: Hebert & Fils and Viandes Giroux", External Report (Winnipeg: Animals Angels', 2007) at 11.

enough pain to reduce fighting during transportation.<sup>50</sup> Tusk and tooth clipping is also used for the same purpose.

### 4.3. Cows

There are two categories of cows used in animal farming: dairy cows kept for producing milk and beef cattle used for meat.

Housing concerns for dairy cows include overcrowding in barns, the widespread tethering of dairy cows to restrict movement, and the lack of access to pasture.<sup>51</sup> In order to produce milk, dairy cows must be impregnated each year. Cows often suffer from lameness as their bodies are weak from perpetual pregnancy cycles, walking on concrete floors and from the weight of their udders.<sup>52</sup> Mastitis is a significant issue, exacerbated by mechanic milking and cows being bred to produce double the quantity of milk compared to 40 years ago.<sup>53</sup> Removal of the cows' horns ("disbudding") without anesthetic is common, as is chronic pain from tail docking.<sup>54</sup> "Spent" dairy cows are typically sent to slaughter to become low-grade meat after less than five years – their natural lifetime is close to 20.<sup>55</sup>

---

<sup>50</sup> *Ibid.*

<sup>51</sup> Mercy for Animals, "Dairy's Dark Side - The Sour Truth Behind Milk – Experts", (accessed 12 October 2013), online: MFA <<http://www.mercyforanimals.org/dairy/expert-statements.asp>> ["MFA Dairy"]; Compassion in World Farming, "EU dairy industry exposed" (5 December 2012), online: CIWF <[http://www.ciwf.org.uk/news/beef\\_and\\_dairy\\_farming/eu\\_dairy\\_industry\\_exposed.aspx](http://www.ciwf.org.uk/news/beef_and_dairy_farming/eu_dairy_industry_exposed.aspx)>.

<sup>52</sup> See e.g., Compassion in World Farming, Press Release, "Dairy industry exposed in new investigation" (5 December 2012), online: CIWF <[http://www.ciwf.org.uk/includes/documents/cm\\_docs/2013/p/pr20121205.pdf](http://www.ciwf.org.uk/includes/documents/cm_docs/2013/p/pr20121205.pdf)>.

<sup>53</sup> Farm Sanctuary, "Cows used for Dairy" (accessed 24 October 2013), online: Farm Sanctuary <<http://www.farmsanctuary.org/learn/factory-farming/dairy/>> [Farm Sanctuary, "Dairy"].

<sup>54</sup> American Veterinary Medical Association, "Tail Docking of Cattle" online: AMVA <<https://www.avma.org/KB/Policies/Pages/Tail-Docking-of-Cattle.aspx>> (tail docking is the removing of a tail of an animal. The AMVA "opposes routine tail docking of cattle"); See also: Farm Sanctuary, "Dairy", *ibid.* & "MFA Dairy" *supra* notes 53 & 51.

<sup>55</sup> Farm Sanctuary, "Dairy", & "MFA Dairy", *ibid*

In North America, while female dairy calves may be raised to become dairy producers, male calves do not produce milk and their meat is not suitable to be raised for beef.<sup>56</sup> Instead they are taken from their mothers soon after birth and either slaughtered soon thereafter to become “bob” (low-grade) veal or are confined in individual “veal crates” for 16-18 weeks to become standard-quality veal before slaughter.<sup>57</sup> Veal crates prevent most movement, which makes the flesh more tender as the calf’s muscles are not able to develop. This situation is intensified in some facilities by tethering the head of the calf to the front of the crate.<sup>58</sup> Calves in confinement crates often suffer from “leg and joint disorders, indigestion, diarrhea, muscle atrophy, chronic pneumonia, and wounds from rubbing against the crate”.<sup>59</sup> Separation from the herd as well as their mothers causes the young calves extreme stress.<sup>60</sup>

Beef cattle are generally able to graze outdoors for the first part of their life.<sup>61</sup> However, at under a year of age, they are transported long distances to be fattened in over-crowded feed-lots. They are subject to painful procedures such as branding, castration and dehorning<sup>62</sup> and killed when they reach market weight at about 18 months.<sup>63</sup>

---

<sup>56</sup> *Ibid.*

<sup>57</sup> Ontario Veal Association, “The real deal about Veal” (2003), online: OVA <[http://www.ontarioveal.on.ca/all\\_about\\_veal/vealquestions.html](http://www.ontarioveal.on.ca/all_about_veal/vealquestions.html)>; United States Department of Agriculture, “Veal from Farm to Table” (accessed 17 April 2014), online: USDA <[http://www.fsis.usda.gov/wps/portal/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/veal-from-farm-to-table/CT\\_Index](http://www.fsis.usda.gov/wps/portal/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/veal-from-farm-to-table/CT_Index)>.

<sup>58</sup> HSUS, “Intensively Confined”, *supra* note 25 at 7.

<sup>59</sup> Canadian Federation of Humane Societies, “Veal Crates” (Accessed 18 March 2013), online: CFHS <[http://cfhs.ca/farm/veal\\_crates/](http://cfhs.ca/farm/veal_crates/)>.

<sup>60</sup> Farm Sanctuary, “Behind the Moustache” (accessed 28 March 2013), online: Farm Sanctuary <<http://www.farmsanctuary.org/videos/factory-farming-and-undercover-investigations/behind-the-mustache/>>.

<sup>61</sup> Farm Sanctuary, “Cows used for Meat” (accessed 24 October 2013), online: Farm Sanctuary <<http://www.farmsanctuary.org/learn/factory-farming/dairy/>> [Farm Sanctuary, “Cows used for Meat”].

<sup>62</sup> Ontario Ministry of Agriculture and Food, “Dehorning of Calves – Fact Sheet” online: <<http://www.omafr.gov.on.ca/english/livestock/dairy/facts/09-003.htm>> (“[d]ehorning removes the horn and horn-producing tissue after horns have formed from the bud”. It is a procedure performed to reduce fighting and make handling and transport easier. It also increases the value of the animal).

<sup>63</sup> Farm Sanctuary, “Cows used for Meat”, *supra* note 61.

#### 4.4. Transportation

Transportation of farmed animals in Canada is also problematic. In spite of being the main area regulated by Canada's *Health of Animals Regulations*, animals may go without food, water, or rest while for days while in transit.<sup>64</sup> The lack of required training for workers and handlers results in rough treatment and cruel methods of handling livestock such as electric prods and goads.<sup>65</sup> The uncontrolled climate in vehicles is a problem, with many animals freezing to death or suffering from heat stroke.<sup>66</sup> Poor treatment during transport is made worse by the fact that the animals are often weak, injured, and vulnerable from the conditions on industrial farms.

#### 1. *The rise of the farmed animal welfare movement*

In the 1960s, animal advocates in the United Kingdom became concerned about the lack of space for farmed animals and their unnatural existence in industrial farming systems. The British government responded by commissioning an investigation into the matter.<sup>67</sup> The resulting report spawned the widely-referenced “five freedoms” of animal welfare discussed in Chapter 1.<sup>68</sup> Over time, this updated view of the requirements of animal

---

<sup>64</sup> See: *Health of Animals Act*, s 148.

<sup>65</sup> Karen Levenson, Twyla Francois, Stephanie Brown et al, “The Need For Change - A Report On Canada's Inadequate Transport of Animals Regulations” (2011), online: Animal Alliance of Canada <<http://www.animalalliance.ca/wp-content/uploads/2011/07/an-overview-of-regulations-for-the-transport-of-farm-animals-in-canada.pdf>> (in addition to condemning transportation times, this report includes a laundry list of recommendations for transport including: Ensuring tachographs and tachometers are on trucks to record travel times and control speeds and distances, letting people beyond CFIA inspect trucks, and requiring mandatory training and licensing at 8).

<sup>66</sup> “Broken Wings”, *supra* note 14 (at “-9.4°C combs and wattles of poultry are susceptible to freezing and frostbite causing painful tissue damage” at 12); *R v Maple Lodge Farms*, 2013 ONCJ 535 [*Maple Lodge Farms*] (this is a recent case in which Maple Lodge Farms was successfully prosecuted under the *Health of Animals* regulations for failing to take appropriate precautions to protect two loads of egg-laying chickens in transit to its slaughterhouse. However, the case notes that trucks with an egg-laying bird mortality rate of under 4% do not trigger an inspection at paras 156-157).

<sup>67</sup> “Brambell Report”, *supra* note 8 (named after the chairman of the committee).

<sup>68</sup> “Five Freedoms”, *supra* note 9 (a few years after the “Brambell Report”, the UK government established the Farm Animal Welfare Council (FAWC) as an independent advisory body); OIE World Organization for Animal Health Terrestrial Animal Health Code (2012), online: <<http://www.oie.int/international-standard-setting/terrestrial-code/access-online/>> & European Commission, Health and Consumers, Food “The Scientific Committee on Animal Health and Animal Welfare (SCAHAW)” online: <[http://ec.europa.eu/food/fs/aw/aw\\_scahaw\\_en.html](http://ec.europa.eu/food/fs/aw/aw_scahaw_en.html)> (for example, the EU scientific committee reports

welfare began to take hold in Europe. By the mid 1980s, countries such as England and Sweden had already begun to address the most controversial farmed animal confinement practices.<sup>69</sup> Other European countries soon began to follow suit.<sup>70</sup> With the rise of the European Community, farmed animal welfare became a continental concern.

The European Community now has laws eliminating the most intensive confinement systems and has begun to address some of the other prominent systemic practices eliciting concern. While the European Community's effort to give farmed animals a life worth living is far from complete, it is at least on its way. Australia, New Zealand, and parts of the United States have begun to follow in Europe's footsteps, initiating the process of changing their own farmed animal protection laws to reflect the increasingly expansive scientific understanding of farmed animal welfare and societal expectations regarding humane treatment. By comparison, Canada is lagging behind.

The European Community banned the use of new battery cages in 1999.<sup>71</sup> Several European countries completed the phase-out of this practice well before the 2012 deadline, including Switzerland in 1992,<sup>72</sup> Sweden in 1999,<sup>73</sup> and Germany in 2007.<sup>74</sup> California and Michigan have also banned battery cages, and a federal United States ban

---

and the OIE website are replete with information on farmed animal welfare requirements); Apprehensions about animal welfare in industrial farming confinement systems are increasingly backed by scientific studies that have shed previous doubts about sentience and intelligence of these animals.

<sup>69</sup> Marlene Halverson, "Management in Swedish Deep-Bedded Swine Housing Systems: Background and Behavioral Considerations" *Department of Applied Economics University of Minnesota*, online: <<http://infohouse.p2ric.org/ref/21/20979.htm>> (for example, The Swedish ban, required by the 1988 *Farm Animal Protection Act*, took effect in 1994); *The Welfare of Farmed Animals (England) Regulations 2007*, Schedule 6 (a veal crate ban in the UK has been in effect since 1990).

<sup>70</sup> See below for examples of European Community countries with farmed animal protection legislation.

<sup>71</sup> EC, *Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens* [2004], OJ, L203 (the new law provided for phasing out battery cages by 2012, and prevented new battery systems from being built after 2003 at 53-57).

<sup>72</sup> *Swiss Animal Protection Act 1978* (though Switzerland is not part of the European Union).

<sup>73</sup> *Swedish Animal Welfare Act*, SFS 1998:56.

<sup>74</sup> Veronica Hirsch, "Legal Protections of the Domestic Chicken in the United States and Europe", *Animal Legal and Historical Center, Michigan State University College of Law* (2003), online: Animal Legal and Historical Center <<http://animallaw.info/articles/dduschick.htm#4A>> (Germany also banned the enriched cages, which have perches, a nest, litter for pecking and scratching, and more space per bird, from 2012).

is under consideration.<sup>75</sup> While these battery cage bans by and large condone other caged systems for layer hens, they represent an improvement in animal welfare as the “enriched” cages allowed under the legislation provide for perches, scratch pads, additional space, and other amenities to accommodate a hen’s natural behaviour. By contrast, it is estimated that 98% of the 26 million layer hens raised in Canada are kept in battery cages.<sup>76</sup>

The European Community has released a Council Directive concerning conditions for broiler chickens that addresses overcrowding by setting maximum stocking densities, and covers lighting, litter, feeding, and ventilation requirements.<sup>77</sup> In addition, this Directive bans surgical interventions “carried out for reasons other than therapeutic or diagnostic purposes which result in damage to or the loss of a sensitive part of the body or the alteration of bone structure [unless] other measures to prevent feather pecking and cannibalism are exhausted”.<sup>78</sup> In the case of de-beaking, a veterinarian must be consulted and the procedure may only be carried out by “qualified staff” on chicks less than ten days old. While beak trimming in the UK is not completely banned, the government is “absolutely committed to banning beak trimming in the long term”.<sup>79</sup> Beak-trimming has been banned in Sweden, Finland, Switzerland and Norway.<sup>80</sup> Canada has made no legislative moves to address broiler overcrowding or painful management techniques such as beak trimming, which remain standard practice throughout the industry.

The European Community issued a directive banning the use of individual sow stalls in

---

<sup>75</sup> Humane Society of the United States, “Barren cramped cages: life for America’s egg-laying hens” (19 April 2012), online: HSUS <[http://www.humanesociety.org/issues/confinement\\_farm/facts/battery\\_cages.html](http://www.humanesociety.org/issues/confinement_farm/facts/battery_cages.html)>.

<sup>76</sup> *Ibid.*

<sup>77</sup> EC, *Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production*, [2007] OJ L 182/19 [Council Directive 2007/43/EC].

<sup>78</sup> *Ibid* s 12.

<sup>79</sup> Department for Environment, Food, and Rural Affairs, “New safeguards for chickens” (8 November 2010), online: DEFRA <<http://www.defra.gov.uk/news/2010/11/08/chicken-safeguards/>>.

<sup>80</sup> Compassion in World Farming, *The UK ban on beak-trimming is under serious threat* (accessed 22 Feb 2013), online: CIWF <<http://www.ciwf.org.uk/donate/pages/beaktrimming.aspx?appealcode=WL1110>>; *Animal Welfare Act* 1995 (Norway) (beak trimming prohibited in Norway).

2001.<sup>81</sup> This directive also mandated improved floorings, access to materials for rooting, and training for handlers. Several European countries banned gestation crates well before the prescribed date including Sweden in 1988<sup>82</sup> and in the UK in 1999<sup>83</sup>. New Zealand has also committed to phasing out gestation crates by 2015.<sup>84</sup> While the majority of the United States still use sow stalls, including the five with the highest pork production revenues,<sup>85</sup> nine states have banned their use, signalling a move in this direction.<sup>86</sup> Sow stall bans generally allow limited use of sow crates before and after a sow gives birth, but represent a marked improvement as compared to permanent intensive confinement. While the Manitoba Pork Council has talked about a voluntary phase out of gestation crates by 2027 and the brand-new Code for Pigs reflects this, there are no plans to make sow stalls illegal.<sup>87</sup> In Canada, more than 1,440,000 sows are kept for the purpose of

---

<sup>81</sup> EC, *Council Directive 2001/88/EC of 23 October 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs* [2001] OJ, L 316 at 0001-0004 (the ban applies to all systems built or repaired after 2003, with the complete ban taking effect in 2013. Individual stalls are still permitted for limited use starting from one week before the expected time of farrowing to four weeks after service).

<sup>82</sup> Halverson, *supra* note 60 (the Swedish ban, required by the 1988 *Farm Animal Protection Act*, took effect in 1994).

<sup>83</sup> *The Welfare of Farmed Animals (England) Regulations 2007*, Schedule 8, s 27 (these regulations allow sows and gilts to be kept in individual pens seven days before the predicted day of farrowing up to the weaning of piglets, though the pens are large enough to turn around).

<sup>84</sup> Animal Welfare (Pigs) Code of Welfare 2010 (NZ) (Minimum Standard no. 11 at 21; Animals Australia, “Pig industry moves on sow stalls!” (17 November 2010), online AA <<http://www.animalsaustralia.org/features/sow-stall-vote.php>> (Australia’s pig industry, rather than the government, has agreed to restrict use of sow stalls by 2017).

<sup>85</sup> National Pork Producers Council, “Top Pork Producing States” (2012), online: NPPC <<http://www.nppc.org/pork-facts/>> (the top three five hog farming states in terms of gross pork revenue, including Iowa, Illinois and North Carolina, which all generate more than a billion dollars of revenue from pork, have not yet committed to any initiatives to ban sow stalls).

<sup>86</sup> Humane Society United States, “Crammed into Gestation Crates: life for America’s breeding pigs” (14 December 2012), online: HSUS <[http://www.humanesociety.org/issues/confinement\\_farm/facts/gestation\\_crates.html](http://www.humanesociety.org/issues/confinement_farm/facts/gestation_crates.html)> (Arizona, California, Colorado, Florida, Maine, Michigan, Ohio, Oregon, and Rhode Island have all banned sow stalls); North Carolina in the Global Economy, “Hog Farming”, online: Duke University Sociology <[http://www.soc.duke.edu/NC\\_GlobalEconomy/hog/overview.shtml](http://www.soc.duke.edu/NC_GlobalEconomy/hog/overview.shtml)> [“Hog Farming”].

<sup>87</sup> Code of Practice for the Care and Handling of Pigs (Ottawa: Canadian Pork Council and the National Farm Animal Care Council, 2014), online: [http://www.nfacc.ca/pdfs/codes/pig\\_code\\_of\\_practice.pdf](http://www.nfacc.ca/pdfs/codes/pig_code_of_practice.pdf) [Code for Pigs]; Kevin Rollason, Winnipeg FreePress, “Pork council backs bid to end hog-crate use” (3 May 2013), online: <<http://www.winnipegfreepress.com/business/pork-council-backs-bid-to-end-hog-crate-use-205729751.html>>.

reproducing. Almost all of these are kept in sow crates.<sup>88</sup>

In terms of painful procedures, the UK has limited incidents of tail docking and tooth clipping:

[n]either tail docking nor tooth clipping shall be carried out routinely but only when there is evidence, on the farm, that injuries to sows' teats or to other piglets have occurred or are likely to occur as a result of not carrying out these procedures. Where tooth clipping appears necessary, this shall only be carried out within seven days of birth.<sup>89</sup>

Norway and Switzerland have banned pig castration.<sup>90</sup> No Canadian jurisdiction has considered the regulation of any of these issues.

Europe banned veal crates 15 years ago in 1998.<sup>91</sup> A veal crate ban has been in force in the United Kingdom since 1990<sup>92</sup> and in Finland since 1996.<sup>93</sup> Six states in the U.S. have banned the use of veal crates, opting instead for group housing.<sup>94</sup> In 2012, more than 223 000 calves in Canada were slaughtered at federally-inspected plants alone, and the vast majority of these were raised in crates.<sup>95</sup>

---

<sup>88</sup> Canadian Coalition for Farm Animals, "Sow stalls" (accessed 13 March 2013), online: CCFA <<http://www.humanefood.ca/sowstalls.html>>.

<sup>89</sup> *The Welfare of Livestock Regulations 1994* (UK) 1994/21263, Schedule 3 Part IV.

<sup>90</sup> Canadian Coalition for Farm Animals, "Fact sheet on pig castration in Canada" (accessed 15 April 2012), online: CCFA <[www.pigsatrisk.com/documents/pig\\_castration.pdf](http://www.pigsatrisk.com/documents/pig_castration.pdf)>.

<sup>91</sup> EC, *Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves* (Codified version), [2008] OJ L 010 at 0007 - 0013 (from 1998, confined individual pens were banned after eight weeks, and no confined individual were to be built or repaired. The total ban began in 2007. The Directive also bans tethering and muzzling, and nutrition requirements for feed).

<sup>92</sup> *The Welfare of Farmed Animals* (England) Regulations 2007, Schedule 6.

<sup>93</sup> Finland *Animal Welfare Act* (247/1996, amendments up to 1430/2006 included) and *Animal Welfare Decree* (396/1996, amendments up to 401/2006 included) s 18.

<sup>94</sup> Humane Society of United States, "Veal Crates: Unnecessary and cruel" (22 February 2013), online: HSUS <[http://www.humanesociety.org/issues/confinement\\_farm/facts/veal.html](http://www.humanesociety.org/issues/confinement_farm/facts/veal.html)> (Arizona, California, Colorado, Maine, Michigan, and Ohio and Rhode Island have passed laws to ban veal crates).

<sup>95</sup> Agriculture and Agri-food Canada, "Number of Calves Slaughtered in Federally Inspected Establishments in Canada" (accessed 22 February 2013), online: agr.gc.ca <<http://www3.agr.gc.ca/apps/aimis-simia/rp/index-eng.cfm?action=ePR&R=105&PDCTC=>>>.

The practice of tail docking dairy cows has been banned in a number of European countries and three of the United States.<sup>96</sup> The European Commission launched a Call for Tender concerning a "[s]tudy on the improved methods for animal-friendly production, in particular on alternatives to the castration of pigs and on alternatives to the dehorning of cattle" in 2008.<sup>97</sup>

While European regulations impose a maximum transport time of eight hours without food, water, and rest,<sup>98</sup> Canadian law permits travel times that are four to nine times longer than this, depending on the species of animal being transported.<sup>99</sup> Use of electrical goads and prods that are commonly used for loading and unloading in Canada are limited elsewhere.<sup>100</sup> In addition, European regulations have official training requirements for drivers and animal handlers; Canadian regulation does not.<sup>101</sup>

To be clear, the farmed animal welfare laws in the jurisdictions mentioned above still suffer from many of the same deficiencies as Canada's laws, particularly in relation to effective administration and enforcement.<sup>102</sup> It is fair to say that no country or region has

---

<sup>96</sup> Humane Society of the United States, *An HSUS Report: Welfare Issues with Tail Docking of Cows in the Dairy Industry* (October 2012), online: HSUS <[www.humanesociety.org/.../HSUS-Report-on-Tail-Docking-of-Dairy-Cows.pdf](http://www.humanesociety.org/.../HSUS-Report-on-Tail-Docking-of-Dairy-Cows.pdf)>.

<sup>97</sup> Dr MA Oliver, "ALCASDE - Alternatives to Castration and Dehorning" (9 December 2009) Director General for Health and Consumers Animal Health and Welfare Directorate (SANCO/2008/D5/018, Girona).

<sup>98</sup> EC, *Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97*, [2004] OJ L 3/1 [EC, *Council Regulation Protection of animals during transport*] (in addition to strict rules around transportation taking more than eight hours, this regulation also provides for methods of monitoring compliance such as satellite, vehicle standards, and extreme limitations around using electric prods); *Quebec Food, Regulation respecting*, RRQ, c P-29, r 16.8.3 (Quebec has a 12 hour transport maximum before animals should be fed and watered: "Every carrier must water and feed the animals in his care at least every 12 hours").

<sup>99</sup> Section 148 of the *Health of Animals* regulations (1)(a) allows swine or other monogastric animals to be in transport for up to 36 hours and (1)(b) allows cattle, sheep, goats or other ruminants to be confined in transport for up to 48 hours. Subsection (3) allows chicks to be without food and water for up to 72 hours; Also see discussion of *Health of Animals Regulations* below.

<sup>100</sup> EC, *Council Regulation (EC) No 1/2005*, *supra* note 98, at para 25.

<sup>101</sup> *Ibid* at para 7.

<sup>102</sup> See eg: Evaluation of the EU Policy on Animal Welfare & Possible Options for the Future (SANCO Evaluation of the EU Policy on Animal Welfare & Possible Options for the Future (Food Policy Evaluation Consortium GK, Directorate-General for Health and Consumers) available online: EU Policy on Animal

yet come close to enacting a comprehensive regime that ensures farmed animals are treated in accord with the “five freedoms”. However, as outlined, other jurisdictions – particularly the European Community – are moving in the right direction by showing a willingness to consider farmed animal welfare through modern legislative efforts.<sup>103</sup>

---

Welfare <<http://www.eupaw.eu/docs/Executive%20Summary%20-%20SANCO%20-%20Animal%20Welfare%20Evaluation%20final.pdf>>; Nikki Sinclair, Public Service Europe, “EU and some nations not taking animal welfare seriously” (4 January 2013), online: PS <<http://www.publicserviceeurope.com/article/2904/eu-and-some-nations-not-taking-animal-welfare-seriously>> (for example, “[d]espite the ban on individual pig stalls, some 80 per cent of countries still do not comply with the EU legislation”).

<sup>103</sup> See eg: Peter Sankoff, “The Animal Rights Debate and the Expansion of Public Discourse: Is it Possible for the Law Protecting Animals to Simultaneously Fail and Succeed?” (2012) 18:2 Animal L 281 [Sankoff, “Public Discourse”] (“New Zealand has followed the modern approach to welfare pioneered in the European Union ... [e]ven at first glance, New Zealand’s laws has benefits in comparison to the Canadian System” at 301); European Commission, Health and Consumers, “Animal Health and Welfare” (accessed 20 May 2013), online: EC <[http://ec.europa.eu/food/animal/welfare/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/index_en.htm)> (Europe has a comprehensive system to address animal welfare); “Hog Farming”, *supra* note 86 (in the United States, there appears to be a slow but steady move in the direction of better animal welfare laws. Progress is indicated by the consideration of a national law to ban battery cages and state initiatives to ban confinement methods. However, North Carolina and Iowa, the two biggest hog farming states, have done little to protect animal welfare).

## CHAPTER 2 - LEGAL FRAMEWORK AND STRUCTURE OF LAWS PERTAINING TO FARMED ANIMALS IN CANADA

This Chapter reviews the legal framework and structure of laws relating to farmed animals in Canada. The laws governing animals in Canada are complex. They are enacted by all levels of government and there is often shared jurisdiction over related subject matter. Animal laws tend to be clustered around animal uses, such as research or entertainment, but these areas may overlap, and criminal anti-cruelty legislation also applies. All this means that if you wanted to learn about the laws governing the treatment of rabbits in Canada, for example, you would have to examine laws addressing animal cruelty, food production, agriculture, entertainment, research, domestic pets, and wild animals in federal, provincial and municipal jurisdictions. Laws concerning the treatment of food animals are similarly complex. Both federal and provincial governments regulate agriculture, including farmed animals,<sup>104</sup> and there are also general "catch-all" anti-cruelty laws both federally and provincially.<sup>105</sup> Provisions affecting food animals can also be found in other statutes, such as feed, food safety, and even entertainment.<sup>106</sup>

Part A is about the most significant laws affecting agricultural animals. It opens with a survey of existing federal and provincial anti-cruelty legislation and agricultural laws affecting farmed animals. The supplementary role of voluntary federal guidelines for farmed animal handling and care is also reviewed in order to complete the picture of the Canadian government's farmed animal protection framework.

---

<sup>104</sup> *Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3, reprinted in RSC 1985, App II No 5 (farmed animal welfare is regarded as an agricultural issue. Section 95 of the *Constitution Act* allows both provincial and federal government to make laws in relation to agriculture, under which farmed animals fall).

<sup>105</sup> This is subject to exceptions in the acts, as discussed in Chapter Three. Cruelty to animals generally is a criminal offense under federal jurisdiction, pursuant to s 91(27), though the province also weighs in on animal cruelty pursuant to Property and Civil Rights in the Province (s 92(13)) or Generally all Matters of a merely local or private Nature in the Province (s 92(16)). The federal government regulates animals and their products for import or export, or consumption in another province, and provincial farmed animal regulations relate to animals and animal products that will be consumed in the same province in which they were produced.

<sup>106</sup> Rodeos or exhibitions, such as the Calgary Stampede Royal Winter Fair use farmed animals for entertainment purposes.

Part B looks at how laws relating to farmed animals are drafted and how they function in theory and practice. The *Health of Animals Act* and regulations are categorized according to their purpose to illustrate this. The objective is for the reader to understand the intent and format of laws concerning agricultural animals.

This legal overview sets the stage for a discussion of the strengths and weaknesses of Canada's farmed animal welfare laws in the next chapter.

## ***PART A: A Legal Overview of Farmed Animal Protection Laws in Canada***

While the main intent of this Part is to give the reader an idea of the legal landscape related to farmed animals, it also serves to introduce the issue of fragmentation discussed in Chapter Three. Fragmentation of farmed animal welfare laws occurs in part because of federalism, the system of government in Canada where power is shared between federal and provincial governments. Federalism complicates the framework of laws that relate to farmed animals, as both federal and provincial governments are responsible for animal issues. Fragmentation also occurs because laws relating to agricultural animals are not found in one central statute or set of regulations addressing farmed animals. Instead, provisions that protect farmed animals are found here and there in a number of different statutes dedicated more generally to anti-cruelty laws and several different components of agriculture, even within the same jurisdiction. In order to simplify the overview, this Part is divided into anti-cruelty laws and agricultural laws. Applicable federal and provincial laws are discussed under each of these headings.

### ***1. Canada's anti-cruelty laws***

This section gives an overview of Canada's anti-cruelty legislation. It is divided into sections that reflect the division of federal and provincial powers. Anti-cruelty legislation regulates human behaviour towards animals. It is generally criminal or quasi-criminal in nature, and has a strong moral underpinning. As touched on above, as sentient beings, anti-cruelty laws aim to protect an animal's interest in being free from pain and distress.

They also protect human morality from harm associated with violence.<sup>107</sup> Cases involving cruelty against farmed animals may be dealt with under the federal *Criminal Code*<sup>108</sup> or under various provincial animal protection statutes.<sup>109</sup>

### 1.1. The federal Criminal Code

The anti-cruelty provisions found in Canada's *Criminal Code* date back to the Code's inception in 1892, and have changed little since that time.<sup>110</sup> The *Criminal Code* continues to be a main source of animal protection, acting as Canada's catch-all animal cruelty legislation.

When the *Criminal Code* provisions concerning animals were first passed, their main function was to protect an owner's economic stake in an animal as property.<sup>111</sup> The area of the *Criminal Code* that deals with cruelty to animals is still contained in Part XI: "Wilful and Forbidden Acts in Respect of Certain Property". However, it is clear that the current intent of the cruelty provisions is to protect animals for their own sake, as they apply to all those who harm animals - owners and strangers alike.

---

<sup>107</sup> Joanne Klineberg, "Cruelty to Animals and the Criminal Code of Canada", *An Introduction to Animals and the Law* (Toronto: Law Society of Upper Canada, Continuing Legal Education, 3 October 2007) Tab 1 at 1-2.59, cited in Bisgould, 2011 *supra* note 3 (anti-cruelty laws are "animated by the general purposes of the criminal law, which are to promote a safe and peaceful society and to prevent and punish acts which harm or threaten to harm society and which tend to undermine social values". Cruelty legislation exists to safeguard "human morality"); An equally important purpose is to reduce violent behaviour generally, as there is a high correlation between animal abuse and other violent crimes towards people, including domestic violence and murder. See generally: Cassandra Carkuff Williams, "The link Between Animal Abuse and Human Violence" (2011) 1:1 J Animal L & Ethics at 106-108; Joan E Schaffner, "Linking Domestic Violence, Child Abuse, and Animal Cruelty" (2006) George Washington, Legal Studies Research Paper No 307 (SSRN); Elaine Hughes & Christiane Meyer, "Animal Welfare Law in Canada and Europe" (2000) 6 Animal L 23 ("one of the main arguments in favour of anti-cruelty legislation is the need to promote the welfare of humans". The authors go on to link violent offenders with animal abuse at 31) [Hughes & Meyer].

<sup>108</sup> RSC 1985, c C-46.

<sup>109</sup> See section below on provincial cruelty legislation for further information on provincial statutes.

<sup>110</sup> Hughes & Meyer, *supra* note 107 (the authors note that the Criminal Code "has not been thoroughly reviewed since the advent of modern animal rights philosophies" at 41); Bisgould, 2011, *supra* note 3 (see generally: "Development of Anti-Cruelty Laws in the Criminal Code" at 58).

<sup>111</sup> Bisgould, 2011, *supra* note 3 at 59.

Section 445.1(1)(a), under the “Cruelty to Animals” heading, is the primary animal cruelty provision and is geared towards addressing the intentional infliction of pain. The provision makes it an offence to cause “unnecessary pain, suffering or injury to an animal or a bird”.<sup>112</sup> In order to obtain a conviction under this section, the prosecution must show that any pain inflicted upon the animal in question was “unnecessary”. This is often problematic in the context of farmed animals; in determining whether animal suffering is necessary, somewhat trivial human interests, such as a taste for meat, regularly trump an animal’s interest in not suffering. This is further discussed in the context of flexible language as an issue in Chapter Three.

Also of importance is section 446(1)(a), which creates the offense of “by wilful neglect cause(ing) damage or injury to animals or birds while they are being driven or conveyed”. Subsection (b) prohibits wilful neglect generally, including the failure to “provide suitable and adequate food, water, shelter and care” for an animal,<sup>113</sup> with the intention of punishing crimes of neglect and “passive” cruelty. Subsection 446(3) states that where no contrary evidence exists, evidence showing a person “failed to exercise reasonable care or supervision” is proof of willful neglect.<sup>114</sup> While these provisions could be useful in relation to the transportation of farmed animals, authorities more commonly prosecute under the *Health of Animals Act*, outlined below.

Numerous bills have been tabled over the years attempting to make modest improvements to the *Criminal Code* provisions, for example, by having the animal protection provisions currently located under a “property” heading moved “to a general part covering various morals-based offences”.<sup>115</sup> These have been successfully opposed by

---

<sup>112</sup> S 445.1(1) Every one commits an offence who (a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird.

<sup>113</sup> S 446(1) Every one commits an offence who (a) by wilful neglect causes damage or injury to animals or birds while they are being driven or conveyed; or (b) being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.

<sup>114</sup> S 446(3) For the purposes of proceedings under paragraph (1)(a), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it damage or injury is, in the absence of any evidence to the contrary, proof that the damage or injury was caused by wilful neglect.

<sup>115</sup> Bisgould 2011, *supra* note 2 at 92-96.

animal use industries even in the face of wide public support. One bill that finally passed was a private member's bill that raised the fines only.<sup>116</sup>

## 1.2. Provincial anti-cruelty statutes

Every province, along with the Yukon Territory, has enacted some sort of animal protection legislation with the objective of preventing certain types of cruelty against animals.<sup>117</sup> For example, Alberta, Nova Scotia, Saskatchewan and the Yukon have *Animal Protection* acts.<sup>118</sup> Ontario, British Columbia, Quebec and New Brunswick have *Prevention of Cruelty to Animals* acts.<sup>119</sup> Other provinces have similarly named acts with comparable functions.<sup>120</sup>

Much like the federal legislation, these statutes aim to provide animals protection from pain and distress inflicted by humans. For example, s. 11.2 of the *Ontario Society for the Prevention of Cruelty to Animals Act*<sup>121</sup> prohibits anybody, including owners and custodians, from causing or permitting an animal to be in distress. "Distress" is typically defined as:

[T]he state of being in need of proper care, water, food or shelter or being injured, sick or in pain or suffering or being abused or subject to undue or unnecessary hardship, deprivation or neglect [...]<sup>122</sup>

Some regulations under the provincial anti-cruelty acts go into further detail as to how animals must be kept, such as Ontario Regulation 60/09 *Standards of Animal Care*.<sup>123</sup>

---

<sup>116</sup> *Ibid* ("the amendments were vociferously opposed, largely by corporate interest groups involved in animal exploitation" who said the substantive amendments represented "an assault by 'animal rights extremists' on the fundamental structures of Canadian society, which concealed a hidden agenda that would humanize animals [...] Despite persistently strong public support and extensive media attention, Bills C-17, C-15B, and all but one of their successors failed to pass" at 92&95).

<sup>117</sup> With the exception of the Northwest Territories and Nunavut - their main animal legislation is their respective Herd and Fencing Acts: *Herd and Fencing Act*, RSNWT 1988, c H-2 and *Herd and Fencing Act*, RSNWT (Nu) 1988, c H-2.

<sup>118</sup> See Appendix A-1 for list of legislation.

<sup>119</sup> See Appendix A-2 for list of legislation.

<sup>120</sup> See Appendix A-3 for list of legislation.

<sup>121</sup> RSO 1990, c O-36 s 1(1) [*OSPCA Act*].

<sup>122</sup> *Ibid*; See also Appendix A-4 for further definitions of distress.

<sup>123</sup> See Appendix A-5 for detailed text.

Standards in s 2(6)(a) specify that animals must be provided with adequate and appropriate “space to enable the animal to move naturally and to exercise”.

However, every provincial act contains a provision that exempts generally accepted agricultural practices or farmed animal husbandry. For example, Ontario’s *SPCA Act*’s ss 11.1 (2) and 11.1 (6) provide that the distress provisions do “not apply in respect of [...] an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry”.<sup>124</sup> “Generally accepted practice” remains undefined in provincial legislation.

Although no cases have yet been brought to challenge the legality of farmed animal agriculture techniques vis-a-vis the provincial anti-cruelty legislation, some provinces’ animal cruelty legislation, including Alberta, British Columbia, Ontario, Nova Scotia and the Yukon, specifies that activities must be “carried on in accordance with *reasonable* and generally accepted practices” [emphasis added] (see Appendix A-6). There may be room with the inclusion of “reasonable” for challenging industrial farming and abusive husbandry techniques; as other countries have banned industrial farming methods, it could be argued that the use of these practices are unreasonable.<sup>125</sup> The chances of such a challenge succeeding may increase when stricter voluntary codes are passed, as discussed below.

## ***2. Canada’s agriculture legislation relating to farmed animals***

Laws relating specifically to farmed animals are created and administered by ministries of agriculture at both federal and provincial levels.<sup>126</sup> Provisions that address the handling

---

<sup>124</sup> See Appendix A-6 for detailed text of Ontario’s *SPCA Act* and other provincial exclusion clauses.

<sup>125</sup> *R v Muhlbach*, 2009 CarswellAlta 2352 & *R v Muhlbach*, 2011 ABQB 9 [*Mulbach*] (the *Mulbach* case from Alberta considered reasonableness in the context of generally accepted farming practices. However, this case did not concern industrial farming methods).

<sup>126</sup> Health Canada, “Canadian Food Inspection Agency Joins Health Portfolio” (10 October 2013) <[http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/\\_2013/2013-137-eng.php](http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/_2013/2013-137-eng.php)> (this year it was announced that the Canadian Food Inspection Agency, which administers laws relating to farmed animal welfare, which currently reports to the Minister of Agriculture and Agri-Food, will join Health Canada and the Public Health Agency of Canada in reporting to the Minister of Health); Barry Wilson, The Western Producer, “CFIA says farewell to Ag Canada” (18 October 2013), online: <<http://www.producer.com/2013/10/cfia->

and care of farmed animals can be found in a variety of agricultural statutes addressing issues as diverse as food safety, disease prevention, and marketing of animal products, which exacerbates the fragmentation issue further discussed in Chapter Three.

At the federal level, the Ministry of Agriculture and Agri-food has enacted several agricultural statutes relating to farmed animals and the products derived from them. This includes legislation such as the *Safe Food for Canadians Act*<sup>127</sup>, the *Feeds Act*<sup>128</sup> and the expansive *Canada Agricultural Products Act*<sup>129</sup>, under which regulations pertaining to dairy, eggs, livestock and poultry carcass grading regulations have been made.<sup>130</sup> However, there are very few statutes containing provisions that deal specifically with farmed animal welfare. The agricultural statutes relating to agricultural marketing and animal products relate to animals only after the animals have been killed or their product has been taken.<sup>131</sup>

Only two statutes actually address the welfare of farmed animals in any fashion. The *Health of Animals Regulations*, enacted under the authority of the *Health of Animals Act*,

---

says-farewell-to-ag-canada/> (“[t]his change also further underscores the CFIA’s commitment to food safety as a top priority [...] Agriculture minister Gerry Ritz will continue to oversee CFIA plant and animal health work, plant varietal regulation and export promotion”); Provincial bodies responsible for animal welfare include: Alberta Agriculture and Rural Development; BC Ministry of Agriculture and Lands; Manitoba Agriculture, Food and Rural Initiatives; New Brunswick Department of Agriculture and Aquaculture; Newfoundland Services – Agriculture; Nova Scotia Department of Agriculture; Ontario Ministry of Agriculture, Food and Rural Affairs; PEI Department of Agriculture, Fisheries and Aquaculture; Quebec Department of Agriculture, and Fisheries and Food Saskatchewan Agriculture and Food.

<sup>127</sup> *Safe Food for Canadians Act*, SC 2012, c 24.

<sup>128</sup> *Feeds Act*, RSC 1985, c F-9.

<sup>129</sup> *Canada Agricultural Products Act*, RSC 1985, c 20 (4th Supp).

<sup>130</sup> Other Acts pertaining to animal products include the *Consumer Packaging and Labelling Act*, RSC 1985, c C-38, the *Agricultural Products Marketing Act*, RSC 1985, c A-6, and the *Canadian Dairy Commission Act*, RSC 1985, c C-15; The *Canada Agricultural Products Act* regulations that relate to animal products include: *Dairy Products Regulations*, SOR/79-840, *Egg Regulations*, CRC, c 284, *Livestock and Poultry Carcass Grading Regulations*, SOR/92-541.

<sup>131</sup> “Dedicated” farmed animal legislation within the context of this thesis means a central statute or regulations, with animal welfare as its specific primary purpose.; Vapnek, Jessica and Megan Chapman, *Legislative and Regulatory Options for Animal Welfare* (Rome: Food and Agriculture Organization of the United Nations, 2010) (the regulation of transport and slaughter of farmed animals is inextricably linked with prevention of contaminated meat and human disease. As such, legislation addressing these areas is common even in countries with little animal law at 60).

has a section on the transportation of animals with a relatively high concentration of provisions that benefit animal welfare.<sup>132</sup> The *Meat Inspection Regulations*, enacted pursuant to the *Meat Inspection Act*,<sup>133</sup> also contains multiple provisions that relate to the welfare of farmed animals before and during slaughter.

In a similar vein, each province regulates certain aspects of agricultural practice. However, as with the federal statutes, provincial agricultural legislation containing animal welfare provisions is generally restricted to the areas of transport and slaughter. For example, the Alberta statutes that relate to farmed animals include: the *Agricultural Operation Practices Act*<sup>134</sup>; the *Brand Act*<sup>135</sup>; the *Livestock and Livestock Products Act*,<sup>136</sup> the *Livestock Diseases Act*<sup>137</sup>; the *Livestock Industry Diversification Act*<sup>138</sup>; the *Dairy Industry Act*<sup>139</sup>; *Livestock Identification and Commerce Act*<sup>140</sup>; the *Meat Inspection Act*<sup>141</sup>; and the *Animal Protection Act*<sup>142</sup>. Of these statutes, only the latter two contain

---

<sup>132</sup> The *Hatchery Regulations*, CRC, c 1023, also under the *Health of Animals Act*, have one provision requiring adequate ventilation for chicks packed in boxes (s 22 The boxes used by a hatcheryman for the marketing of chicks shall [...] provide adequate ventilation for the chicks).

<sup>133</sup> The *Meat Inspection Act*, SNS 1996, c 6 [*Meat Inspection Act*] is scheduled to be subsumed by the *Safe Food for Canadians Act*, SC 2012, c 24, though as of 10 April 2013, no part of the *Act* or regulations covered aspects of farmed animal welfare during slaughter, and the *Meat Inspection Act* and Regulations were still in force.

<sup>134</sup> RSA 2000, c A-7.

<sup>135</sup> RSA 2000, c B-6.

<sup>136</sup> RSA 2000, c L-18 (under this statute there are many regulations concerning animal medicine, traceability, and disease notification are made, including the *Livestock Market and Livestock Assembling Station Regulation*, Alta Reg 70/2000, the *Production Animal Medicine Regulation*, Alta Reg 299/2003, the *Reportable and Notifiable Diseases Regulation*, Alta Reg 209/2008, the *Swine Traceability Regulation*, Alta Reg 218/2011, the *Traceability Cattle Identification Regulation*, Alta Reg 333/2009 and the *Traceability Premises Identification Regulation*, Alta Reg 200/2008).

<sup>137</sup> RSA 2000, c L-15 (this *Act* has regulations relating to disease control and disposal of dead animals including: *Designated Communicable Diseases Regulation*, Alta Reg 301/2002, *Destruction and Disposal of Dead Animals Regulation*, Alta Reg 229/2000, and *Livestock Disease Control Regulation*, Alta Reg 69/2000).

<sup>138</sup> SA 2006, c L-16.2 [*Livestock Industry Diversification Act*] (various regulations are made under this statute).

<sup>139</sup> RSA 2000 c D-2 [*Dairy Industry Act*].

<sup>140</sup> SA 2006, c L-16.2 (regulations under this Act include the *Livestock Identification and Commerce Delegation Regulation*, Alta Reg 207/2008, the *Livestock Identification and Commerce General Regulation*, Alta Reg 208/2008, and the *Livestock Market and Livestock Assembling Station Operator's Licence Regulation*, Alta Reg 110/2009).

<sup>141</sup> RSA 2000, c M-9.

any type of animal welfare provision, including some regulations concerning transport, assembly stations and animal markets.<sup>143</sup> This spread is typical of the range of provincial statutes relating to farmed animals, with no province standing out as a leader or a laggard with respect to farmed animal protection.<sup>144</sup> In fact, the structure and content of statutes relating to farmed animal welfare are similar across the provinces and on a federal level; the *Health of Animals Regulations*, discussed in the second Part of this Chapter, is a standard model.

### ***3. Industry codes - voluntary guidelines***

The Canadian government has supported the creation of voluntary Recommended Codes of Practice for the Handling and Care of Farm Animals (“Codes”), which outline various animal care requirements.<sup>145</sup> The Codes are not law and are not binding on the industry;<sup>146</sup> they are discussed in this Chapter in order to give a complete picture of the farmed animal policy framework and the government’s engagement with agricultural animal welfare. As they seem to be the only farmed animal welfare initiative the Canadian government is willing to invest in, they may play an important role in advancing farmed animal welfare law in Canada.

---

<sup>142</sup> RSA 2000, c A-41 (the *Animal Protection Regulation*, Alta Reg 203/2005 is made under this Act).

<sup>143</sup> The animal welfare provisions in these latter statutes relate to transport and slaughter (some treatment of animals in livestock markets and assembling stations is included in section 6, but this can be considered an aspect of transport). Some of the other statutes and regulations contain one or two provisions concerning animals, but nothing that could be considered notable given the extremely minor role that they play in the scheme of the acts; for example: the *Livestock Industry Diversification Act* which mainly relates to cervids, discusses humane killing and antler removal by a qualified vet in ss 11-12 and the *Dairy Industry Act* says in s 13(1) that “[a] dairy barn must be designed and constructed in a manner that (c) prevents injury to and damage by dairy animals”.

<sup>144</sup> Farm Animal Council Network, “A Summary Report On Farm Animal Welfare Law in Canada For the Farm Animal Council Network” (Winter 2013), online: NFACC <<http://www.nfacc.ca/resources/Farm%20Animal%20Welfare%20Law%20in%20Canada.pdf>> [“FACN Summary Report”] at 3.

<sup>145</sup> National Farm Animal Care Council, “Codes of Practice for the Handling and Care of Farm Animals” (access April 15, 2013), online: NFACC <<http://www.nfacc.ca/codes-of-practice>> [NFACC]; “Codes of practice and the National Farm Animal Care Council” *Canadian Federation of Humane Societies* (accessed 1 April 2013), online: CFHS <[http://cfhs.ca/farm/codes\\_of\\_practice/](http://cfhs.ca/farm/codes_of_practice/)> [CFHS, “Codes of Practice”] (historically funding from the Canadian government to create and review the Codes has been difficult to obtain. However, in 2010, the federal government finally pledged \$3.4 million to update the Codes).

<sup>146</sup> Except where invoked by regulation, as discussed below.

The Codes are administered by the National Farm Animal Care Council (“NFACC”), which is largely comprised of industry and government representatives, although there are a handful of animal welfare organizations involved.<sup>147</sup> There are currently fourteen Codes addressing the handling and care of pigs, dairy cattle, veal calves, beef cattle, layer hens, chickens, and turkeys and breeders, among other animals.<sup>148</sup> The NFACC website states that the Codes represent “our national understanding of animal care requirements and recommended best practices”.<sup>149</sup> However, the Codes generally condone farming practices that are currently in use rather than encouraging farmers to adopt more humane practices that have come to be commonplace in other countries.<sup>150</sup> While the Codes are meant to be revised every five years, until recently, many had not been updated since the late 80s or early 90s, and some are still ten or more years old.<sup>151</sup>

---

<sup>147</sup> National Farm Animal Care Council, “Partners” (accessed 20 October 2013), online: NFACC <<http://www.nfacc.ca/partners>> (out of 30 “partners”, three are provincial SPCAs and one is the Canadian Federation of Humane Societies. The vast majority are industry); *Recommended Code of Practice for the Care and Handling of Farm Animals: Pigs*, Publication 1898/E (Ottawa: Agriculture and Agri-food Canada, 1993) (only a small proportion of contributors came from welfare organizations. For example, just three of the 28 members of the committee that created the 1993 Code for Pigs represented an animal welfare organization, whereas twelve were from meat councils and other industry associations and eight were from Agriculture and Agri-food Canada. Other industry associations include the Ontario Trucking Association and Prairie Swine Centre at 53-54. The newly released Code for Pigs closely reflects this spread at 64); Arnja Dale, “Devil in Disguise” in Peter Sankoff & Steven White eds, *Animal Law in Australia* (Sydney: The Federation Press, 2009) (the author notes that economic considerations are “overplayed” in codes, and other considerations, such as the welfare of the animals they are intended to protect, are underplayed at 197).

<sup>148</sup> See Appendix B for a full list of NFACC Codes.

<sup>149</sup> CFHS, “Codes of Practice”, *supra* note 145.

<sup>150</sup> Bisgould, 2011, *supra* note 3 at 173-174; Lesli Bisgould, Wendy King and Jennifer Stopford, “Anything Goes: An Overview of Canada’s Legal Approach to Animals on Factory Farms” (Toronto: April 2001) [Bisgould, “Anything Goes”] (the author elaborates on the painful industrial farming practices condoned by the Codes at 40-61); EC, *Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens* [2004], OJ, L203 at 53-57 (the NFACC Code for layers still condones the use of battery cages that allow as little as 67 square inches of space per bird. Section 4.1 speaks to the boons of caged systems. The European Community banned battery cages in 1999, and now mandates enriched environments for hens including perches, scratch pads and nesting boxes).

<sup>151</sup> NFACC *supra* note 145 (The NFACC received a grant in 2010 and significant progress was made with updates - the new Code for Pigs in particular shows marked signs of improvement, proposing a phase out of gestation crates by 2024 - but funding to update the Codes was exhausted in March 2014, and the path ahead is unclear); See Appendix B for dates of current and previous Codes (for example, the Codes for deer and veal calves date back to 1996 and 1998 respectively).

It is unclear what the role of the Codes really is, and if they do or will yield any measurable benefits to farmed animals. As there is no monitoring or enforcement it is difficult to assess their efficacy. There seem to be two ways that the Codes may benefit the welfare of agricultural animals - by influencing interpretations of flexible language, and through invoking the Codes in legislation so as to make them binding.

The Codes may assist with more favourable interpretations of flexible language in legislation. As the Strengths section in Chapter Three points out, flexible language in laws has the potential to positively benefit animals. Informally, if Codes with high standards are used to inform decision makers about appropriate animal treatment, this could raise the bar for standards of care.<sup>152</sup> In jurisdictions such as Manitoba, the Codes are referenced in legislation as a guideline for what constitutes an “acceptable” animal farming practice.<sup>153</sup> While the low standards in today’s Codes serve as an easy defence for poor animal treatment, higher Code standards in the future could serve to improve standards for animal welfare. Producers will be able to look to the Codes for guidance and no longer be able to rely on the codes as a defence.

Incorporating the Codes by reference in existing legislating is another way they may have a beneficial impact on the welfare of farmed animals. This option could create a legal obligation to ensure a degree of welfare, giving the Codes some teeth. For example, some provincial regulations already adopt or make reference to the Codes. Section 4(1) of Newfoundland’s *Animal Protection Standards Regulations*<sup>154</sup> adopts the “codes and standards” in many of the NFACC Codes; section 8 (1) of Alberta’s *Livestock Market and Livestock Assembling Station Regulation*<sup>155</sup> says “(a)n operator of a livestock market or a livestock assembling station shall care for and handle each species of livestock at

---

<sup>152</sup> For example, the Codes can be used to inform treatment standards; in *R v Maple Lodge Farms*, 2013 ONCJ 535, 110 W.C.B. (2d) 280, the *Recommended Code of Practice for the Care and Handling of Pullets, Layers and Spent Fowl* was used to determine that the company had not been duly diligent when loading spent hens at para 390.

<sup>153</sup> Animal Care Regulation, Man Reg 126/98 (other provinces, such as Manitoba, make reference to the NFACC codes, indicating that the practices condoned by the Codes qualify as “acceptable” at 2(2)).

<sup>154</sup> NLR 36/12.

<sup>155</sup> Alta Reg 70/2000.

that facility in accordance with the *Recommended Code of Practice for the Care and Handling of Farm Animals* concerning that species of livestock”; and section 4(1) of Prince Edward Island’s *Animal Health Regulations*<sup>156</sup> explicitly adopts the Codes’ standards of care as law. If the Codes were to be changed to include husbandry practices that mandate better welfare practices, they would become *de facto* law in these situations.

In both of these respects, the standards embodied in the Codes may play an important role determining which husbandry practices are legal in the future, particularly as legislative changes to protect farmed animals in Canada do not appear to be forthcoming. However, at present the Codes “are serving to entrench cruelty associated with industrialized farming practices” rather than assisting in the advancement of farmed animal welfare.<sup>157</sup> As such, their efficacy in addressing the welfare of farm animals is currently limited. While they may ensure a higher standard of animal welfare, farmed animals are a vulnerable group<sup>158</sup> and these voluntary measures are a less than ideal means of protecting them from harm.<sup>159</sup>

### ***PART B: The Health of Animals Act and Regulations – an anatomy of agricultural welfare laws***

The *Health of Animals Act* and its regulations are a focal point of this paper. This is because they currently represent Canada’s best attempt to-date at addressing farmed animal welfare in law; the *Act* includes animal protection as a primary purpose and the

---

<sup>156</sup> PEI Reg EC193/91.

<sup>157</sup> Dale, *supra* note 147 at 176.

<sup>158</sup> See eg: Ani B Satz, “Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property” (2009) 16:2 Animal L 65 (“[d]omestic animals are vulnerable due to both their biology (limited capacities compared to most humans) and their environment (social and legal constructs that support their use for human benefit)” at 79).

<sup>159</sup> John Sorenson, *About Canada – Animal Rights* (Nova Scotia: Fenwood Publishing, 2010) (“[g]overnment considers animal welfare a low priority and defer to animal-exploitation industries, allowing them to set their own standards and to police themselves through voluntary adherence to recommended codes of practice they design. These are accepted by the courts as establishing acceptable standards, meaning the most atrocious cruelties are condoned as standard operating procedure”); Vapnek, *supra* note 112 (voluntary measures should be complementary to the main legislation rather than the central component of welfare initiatives at 33).

regulations contain the most detailed provisions of any statute concerning farmed animal welfare. This Part gives the reader some background for the discussion of strengths and weaknesses of current farmed animal welfare laws in Chapter Three by shedding light on the content and format of typical provisions in farmed animal welfare regulations.

### ***1. Health of Animals Act and regulations***

The *Health of Animals Act* stands out in Canadian legislation. It is one of few acts that contain welfare provisions specifically concerning farmed animals, and even refers to the protection of animals in its long title. The name alone suggests it is dedicated to the wellbeing of animals and in theory this is a primary purpose of the legislation.<sup>160</sup> The statute also has great potential for growth. The Act authorizes the Governor in Council to create regulations governing the “care, handling and disposition of animals” and “for the humane treatment of animals and generally”.<sup>161</sup> The ability of a Minister or Governor in Council to make animal protection regulations is also common to provincial welfare legislation.<sup>162</sup>

In spite of the capacity to include welfare regulations, there are currently limited provisions concerning animal protection contained in the *Act* itself; those that exist strictly concern purpose, definitions, granting power to inspectors and governor in

---

<sup>160</sup> While it is common in other countries to refer to animal welfare as a central purpose in farmed animal regulation, Canada has not yet adopted this practice. The *Health of Animals Act* is one of the few places where the importance animal welfare is recognized by the government in Canada. By contrast, England’s *Animal Welfare Act 2006*, 2006, c 45, is “[a]n Act to make provision about animal welfare; and for connected purposes” and New Zealand’s *Animal Welfare Act 1999*’s s 9 states “[t]he purpose of this Part is to ensure that owners of animals and persons in charge of animals attend properly to the welfare of those animals”.

<sup>161</sup> S 64(1) “[t]he Governor in Council may make regulations for the purpose of protecting human and animal health through the control or elimination of diseases and toxic substances and generally for carrying out the purposes and provisions of this Act, including regulations (i) for the humane treatment of animals and generally (i) governing the care, handling and disposition of animals, (ii) governing the manner in which animals are transported within, into or out of Canada, and (iii) providing for the treatment or disposal of animals that are not cared for, handled or transported in a humane manner.

<sup>162</sup> For example see *Food Safety Act*, SBC 2002, c 28, s 23, *Meat Inspection Act* and *Livestock and Livestock Regulations Products Act*, RSO 1990, c L.20 s 16. Note the in provincial anti-cruelty statutes, governor in councils usually have power to define generally accepted practices: eg *OSPCA Act* s 22 and the *Animal Protection Act*, 1999, SS 1999, c A-21.1 s 18.

Council, and punishment for offences.<sup>163</sup> Most provisions relating to animal protection and welfare are found in the regulations. Specifically, the part devoted to farmed animal transportation is notable for its attention to animal wellbeing.<sup>164</sup> Provisions address the transport of sick animals, feeding, watering and resting animals during transport, specifications of conditions for resting pens, and prohibitions against overcrowding.<sup>165</sup> Many of these transportation provisions are the same as, if not identical to, those contained in provincial statutes.<sup>166</sup>

Outside of the Part in the *Health of Animals* regulations that addresses transportation, there is far less attention paid to animal protection. The regulations contain more than 200 provisions, and only between 7% and 8% have any impact on animal welfare. This percentage is actually high in the broader scheme of farmed animal laws in Canada, as most legislation relating to farmed animals and their products focusses almost exclusively on aspects such as food safety and marketing. In fact, the purpose of provisions relating to farmed animals varies quite widely. There are five soft categories under which provisions relating to farmed animals in Canadian legislation fall:<sup>167</sup>

1. Provisions that have beneficial effects on farmed animals alone;
2. Provisions that are framed to concern farmed animal welfare that have beneficial effects on both animal and human interests;
3. Provisions that concern human health, economics, or other human interests that have an incidentally beneficial effect on farmed animals;
4. Provisions that concern human health, economics, or other human interests that have a neutral effect on farmed animals; and

---

<sup>163</sup> See sections 2(1), 32(1), 38(1), 64(1), 65 and 69.

<sup>164</sup> Sections 138-159.

<sup>165</sup> See sections 138(2), 138(4), 140, 143(1)(e), 148(1), and 148(5)(c).

<sup>166</sup> For example, *Animal Protection Regulation*, Alta Reg 203/2005 s 10 is very similar to the provisions in the *Health of Animal Regulations* s. 138: S. 10(1) “No person shall load or transport animals that, by reason of infirmity, illness, injury, fatigue or any other cause, would suffer unduly during transport”, and 10(3) “No person shall continue to transport an animal that becomes injured, ill or otherwise unfit for transport during a journey beyond the nearest suitable place where it can receive proper care and attention”. Saskatchewan’s *Livestock Inspection and Transportation Regulations*, 1978, Sask Reg 242/78, has a number of similar transportation provisions.

<sup>167</sup> An entire farmed animal-related statute may also tend to fall within one of these categories i.e. there are many statutes and regulations that are completely neutral to farmed animal welfare, as they involve products made from the animal after it has been killed.

5. Provisions that concern human health, economics, or other human interests that are detrimental to farmed animal welfare.

The *Health of Animals* regulations are used to illustrate these five types of farmed animal provisions below.

*1. Provisions that have beneficial effects on farmed animals alone*

This category is by far the most neglected in Canada. Although the *Health of Animals Regulations* are notable for their comparative attention to animal welfare, only 1%-2%<sup>168</sup> of provisions are designed exclusively to benefit animals.<sup>169</sup>

One such provision is s 138(2)(a), which provides that animals who “by reason of infirmity, illness, injury, fatigue or any other cause [that] cannot be transported without undue suffering during the expected journey” must not be transported.<sup>170</sup> Generally where an animal cannot be transported, its value to the owner will be lost, making this a provision that favours farmed animal interests over those of humans.<sup>171</sup> Another such provision is s 138(4), which prohibits transporting an animal “that is injured or becomes ill or otherwise unfit for transport during a journey beyond the nearest suitable place at which it can receive proper care and attention.” This is economically detrimental to

---

<sup>168</sup> In order to obtain these figures, I went through the *Health of Animals Regulations*, listed each provision under one of the five categories where it fit best, and calculated the percentage of provisions in each category. Classifying provisions is not an exact science, but the percentages listed give a good idea of the breakdown of the provisions in this statute.

<sup>169</sup> Vapnek, *supra* note 131 (even in this category there may be incidental economic benefits to humans, such as being able to charge a premium for animal products at 5).

<sup>170</sup> Section 138(1) No air carrier or sea carrier shall take on board for exportation out of Canada an animal affected with or suffering from a communicable disease (2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal (a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

<sup>171</sup> As it must then be killed on the farm, and consumption of the meat is allowed only by the farmer and the family, and is not to be sold (for example s 2(1.1) of the *Meat Inspection Regulation*, BC Reg 349/2004, (*Food Safety Act*)).

human owners, and is a notably progressive regulation even when viewed from an international platform.<sup>172</sup>

2. *Provisions that are framed to concern farmed animal welfare that have beneficial effects on both animal and human interests*

While provisions in this category protect farmed animal welfare, and are intended to have this effect, they also have a significant positive impact on human interests. For example, the *Health of Animals Regulations* provides prohibitions against overcrowding in s 140. Not overcrowding animals is clearly beneficial for the animals themselves as it is easier for them to move about, find a comfortable resting position and breathe. However, if animals are injured through overcrowding, owners will lose money on damaged animals.<sup>173</sup>

Another example of this type of provision is specifications for angles and foot holds on ramps, as found in ss 139(3) - (6). Not slipping or falling off a ramp is beneficial to animals as they avoid death and pain from injuries, but an alive and uninjured animal is also economically beneficial to the owner, as it will fetch a higher price.

The benefit to humans in relation to provisions prohibiting beating animals are even more subtle: sections 139(1) and (2) provide that “(n)o person shall beat an animal being loaded or unloaded in a way likely to cause injury or undue suffering to it”. This seems strictly in the animal’s interest, but if animals are beaten or injured this can cause bruising and stress, and the economic worth of their meat might be negatively impacted.<sup>174</sup>

---

<sup>172</sup> Vapnek, *supra* note 131 at 69.

<sup>173</sup> Keith E Belk, John A Scanga, Temple Grandin *et al*, “The Relationship Between Good Handling / Stunning and Meat Quality in Beef, Pork, and Lamb” (Meat Science Program, Department of Animal Sciences, Colorado State University, delivered at the American Meat Institute Foundation, Animal Handling And Stunning Conference, 21 February 2002).

<sup>174</sup> *Ibid*.

These animal-friendly provisions are not particularly numerous in Canada's farmed animal laws. The *Health of Animals Regulations* are more animal welfare-oriented than most legislation, and this type of provision makes up only about 5% of these regulations.

3. *Provisions that concern human health, economics, or other human interests that have an incidentally beneficial effect on farmed animals*

This genre of provision generally concerns safety, cleanliness and sanitization processes aimed at preventing the spread of disease. In the *Health of Animals Regulations*, this type of provision makes up about 5% of the regulations. For example, s 3(1) mandates the separation of sick animals. While the provision aims to avoid spread of disease to humans, avoiding exposure to illness incidentally benefits other animals by keeping them healthy. Section 93, which stipulates that auctions and markets must be kept in sanitary condition, incidentally benefits animals by allowing them to access to a clean environment, but is intended to keep the final product suitable for human consumption. Section 105 concerning disinfection of poultry crates for transport is of the same vein.

The quantity of this type of provision depends largely on the statute; legislation concerning animal products coming from live animals, such as milk and eggs, tend to have a high number of sanitization provisions that fall under this category. However, many general animal products acts refer to products made from carcasses where the animal is no longer alive to benefit from the provisions.

4. *Provisions that concern human health, economics, or other human interests that have a neutral effect on farmed animals*

This type of provision mainly concerns definitions, powers of ministers and inspectors, permits and certification, restrictions on movement of animals, and provisions relating to marketing, sale, transport and handling of products after the animal has been killed. The majority of the provisions in the *Health of Animals Regulations*, close to 70% in all, fall within this category. Examples include: s 54 restricting imports of certain animal fodder;

s 119 concerning keeping records in semen storage facilities; and ss 178 – 182 concerning removing, switching, tampering with, and creating false animal identification tags. These provisions are largely administrative and facilitate handling of animals and disease control, but do not have a positive or negative impact on the animal.

Most regulations and regulatory provisions in both federal and provincial legislation pertaining to farmed animals and their products in Canada fall under this category. Examples of entire acts and regulations relating to farmed animals that have a neutral effect on animals are the *Food Safety and Quality Act*, 2001<sup>175</sup>, *Disposal of Dead Farm Animals Regulations*<sup>176</sup> and the *Milk Act*<sup>177</sup>.

5. *Provisions that concern human health, economics, or other human interests that are detrimental to farmed animal welfare*

This type of provision has the potential to permit harm to animals in the short term, over the long term or both. In the *Health of Animals Regulations*, there are not many provisions that fall squarely under this category, though a few subtle examples exist. For example, s 5(1) permits a veterinary inspector to order the destruction of any animal *suspected* to be affected with a communicable disease, - a situation clearly detrimental to the animal.<sup>178</sup> Section 96 requires that all animals sold “at a public sale, auction or market” must be identified by tag or brand.<sup>179</sup> This provision encourages painful branding for the human interest of being able to identify the animal.

---

<sup>175</sup> SO 2001, c 20 [*Food Safety and Quality Act*, 2001].

<sup>176</sup> O Reg106/09 made under the *Nutrient Management Act*, 2002.

<sup>177</sup> RSO 1990, c M.12.

<sup>178</sup> S 5(1) Where an animal is affected or suspected of being affected with a communicable disease or has been in contact with an animal so affected or suspected of being so affected, a veterinary inspector may order the person having the possession, care or custody of the animal, (a) to quarantine, keep separate or treat the animal, (b) to destroy the animal, or (c) to destroy the animal and dispose of its carcass in such a manner, at such a place or places, under such conditions and within such period of time as are necessary to prevent the spread of the communicable disease, which manner, place or places, conditions and time shall be specified in the order.

<sup>179</sup> S 96 No person shall offer an animal for sale at a public sale, auction or market of livestock unless the animal is identified by tag or brand or is one of a lot confined to a pen”.

There do not tend to be a lot of these provisions in Canadian farmed animal legislation. Rather, most practices causing harm to animals for human gain – such as intensive confinement housing – tend to be implicitly allowed through an *absence* of regulation rather than condoned by law.<sup>180</sup> However, some statutes, such as Alberta’s *Livestock Identification and Commerce Act*<sup>181</sup> do encourage painful procedures such as branding and dehorning.<sup>182</sup>

In summary, there are a significant amount of laws that relate to farmed animals both in federal and provincial legislation. However, as with the *Health of Animals Regulations*, not all of these provisions protect farmed animals. In fact, the vast majority of laws concerning animals that exist protect human interests, from human health to economic pursuits, or have a neutral impact.<sup>183</sup> The examples from *Health of Animals Regulations*’ above illustrate this tendency to focus on human objectives rather than animal welfare.<sup>184</sup>

## ***Chapter conclusion***

This Chapter aimed to expose the reader to the legal framework in Canada relating to animal welfare in general, and farmed animal protection in particular.

---

<sup>180</sup> For example, while Canadian legislation does not specifically allow intensive confinement housing for farmed animals, there is no legislation prohibiting this common practice. Issues with the scope of animal welfare regulation such as this will be further discussed in Chapter Three.

<sup>181</sup> SA 2006, c L-16.2.

<sup>182</sup> See also Saskatchewan’s *Horned Cattle Purchases Act*, RSS 1978, c H-6, s 3, which says that cows with horns must be sold at a lower price than dehorned cattle, providing financial incentive for farmers to perform this painful procedure.

<sup>183</sup> Largely due to the purpose of protecting animals as referenced in the long title, and the presence of provisions that specifically relate to farmed animal welfare.

<sup>184</sup> The long title of the *Health of Animals Act* is: “[a]n Act respecting diseases and toxic substances that may affect animals or that may be transmitted by animals to persons, and respecting the protection of animals”, though it is overwhelmingly geared towards the prevention of diseases and toxic substances being transmitted from animals to humans.

This first Part of this Chapter provided an overview of laws and voluntary codes that relate to farmed animals in Canada. Federal and provincial laws designed to prevent animal cruelty, including the *Criminal Code* and provincial animal protection acts were reviewed first. The next section looked at federal and provincial agricultural laws that relate specifically to farmed animals. Finally, the utility of the voluntary NFACC Codes was discussed. This Part served to emphasize the fragmented nature of farmed animal welfare protection in Canada.

The second Part of this Chapter introduced the *Health of Animals Act* as an example of farmed animal welfare legislation in Canada. The regulations were then dissected to reveal that even in Canadian legislation that has animal welfare as a primary objective, only a small fraction of provisions actually serve this purpose. The next Chapter will expand on these concepts and explore the central issues with animal regulations.

## **CHAPTER 3 - AN EVALUATION OF FARMED ANIMAL PROTECTION LAWS IN CANADA**

The purpose of this Chapter is to evaluate the effectiveness of the farmed animal protection legal framework and laws introduced in Chapter Two. The first part reviews the strengths of Canada's protection laws. At the most basic level, the fact that animal protection laws exist in Canada at all is a strength, particularly as compared with nations that have no legal animal protection for animals. Indeed, the very inclusion of protection provisions in Canadian law is a clear indication that animal welfare is an important value in our society. Although the current laws provide only modest protection, provisions exist that allow for the expansion of welfare regulations. Existing animal protection enforcement powers could facilitate such an expansion. In addition, the flexible language employed allows laws to evolve to reflect changes in social attitudes concerning the humane treatment of animals.

The second part of this Chapter looks at the weaknesses in Canada's current legal framework for farmed animal protection. The first section discusses drawbacks to the flexible language used in protection provisions. In particular, it points out that the wording used, ostensibly to protect animals, is generally interpreted in a way that favours human interests far more than the animals the legislation purportedly intends to protect. Issues with the scope of legislative protection are then identified; for example, crucial areas, most notably on-farm treatment of animals, are not addressed in Canada's animal welfare laws. The strength of protection laws is subsequently explored, and it is argued that many of the welfare standards specified in laws are not strict enough to provide any measure of protection. Lastly, the weaknesses section looks at how Canada's fragmented approach to animal welfare law negatively affects administration and development of laws.

## **1. Strengths**

### **1.1. Laws concerning animals exist – the message**

The previous Chapter gave an overview of anti-cruelty and agricultural statutes relating to animals in Canada. The very fact that animal protection laws exist is a considerable strength. Aside from the fact that having animal welfare laws in place is arguably more beneficial to animals than having no protection at all,<sup>185</sup> that animal welfare provisions are included in Canadian law is a symbolic recognition of the sentience of animals and of a corresponding duty to consider their interests in our moral assessment.<sup>186</sup> While the priority that protection of animals is given may be lower than other legislative objectives, this nod to welfare sends a message that animal protection is an issue to consider independently of human interests.<sup>187</sup> This arguably sets the stage for more robust animal welfare legislation in the future.

### **1.2. Power to create new welfare provisions**

A key strength of Canada's existing animal protection laws is their potential for expanded coverage. Animal welfare scholar Robert Garner noted that:

[T]he value of primary statutes governing animal agriculture [...] is not so much in the basic unnecessary cruelty provisions they contain, but in the potential they afford for abolitionist regulations to be added.<sup>188</sup>

He points to regulations that have banned sow crates and veal tethers under existing British animal welfare acts as an example of the potential to expand protection through the introduction of new welfare provisions.<sup>189</sup>

---

<sup>185</sup> See Peter Sankoff, "The Welfare Paradigm: Making the World a Better Place for Animals?" in Peter Sankoff & Steven White eds, *Animal Law in Australasia* (Sydney: The Federation Press, 2009) [Sankoff, "Welfare Paradigm"] (given that some countries, particularly in the developing world, have no animal protection laws, this is a notable feature, though Sankoff notes that the current welfare laws "may be impeding the quest for real change by cloaking dubious practices in a veneer of reality" at 33).

<sup>186</sup> *Ibid* ("[s]imply stated we believe that animals *matter*, and that their welfare is something worthy of being considered" at 8).

<sup>187</sup> However, as the Weaknesses section below points out, this message is somewhat undermined by Canada's fragmented approach to animal protection and lack of central welfare statute.

<sup>188</sup> Robert Garner, *Animal Welfare: A Political Defense*, 1 J Animal L & Ethics 161 (2006) at 168 [Garner, "A Political Defense"].

<sup>189</sup> *Ibid*.

The United Nations Food and Agriculture Organization (UNFAO) supports the idea that existing welfare legislation assists the in future expansion of animal protection. It notes that the approach of having provisions in primary legislation or central welfare statute that allow for new secondary laws or regulations to be made facilitates the creation of more detailed regulatory protection in the future:

An important [...] aspect of animal welfare laws is the ability to update legislation to keep pace with scientific developments; for that reason, principal national legislation may be kept more basic, with more detailed requirements set out in implementing regulations and other subsidiary legislation which can be more easily changed.<sup>190</sup>

Though not all statutes in Canada concerning animals contain explicit welfare provisions, most grant power to a Minister or Governor in Council to create regulations addressing animal welfare. For example, s 64 (1) of the *Health of Animals Act* expressly gives power to the Governor in Council to create regulations “for the purpose of protecting [...] animal health”, including “for the humane treatment of animals”.<sup>191</sup> As such, the *Health of Animals Act* is a potentially powerful platform for the introduction of further federal animal welfare regulations, particularly given its stated “protection of animals” purpose in the long title.<sup>192</sup>

Anti-cruelty statutes have a similar capacity for expansion. Although generally accepted agricultural practices are currently excluded from their purview, Governors in Council

---

<sup>190</sup> Vapnek, *supra* note 131 at 9.

<sup>191</sup> Other examples of this type of provision include Alberta’s *Animal Protection Act*, RSA 2000, c A-41, s 15(1)(b), which allows the Minister to make “regulations respecting the care of animals” and Manitoba’s *Animal Care Act*, CCSM c A-84, s 39 (a,b,c,f), which permits the minister to make regulations “designating an activity as an accepted activity, [...] specifying standards or codes of conduct, criteria, practices or procedures as acceptable, [...] specifying practices or procedures that are prohibited” and “for the purposes of the definition “commercial animals” in subsection 1(1), designating species or types of animals”.

<sup>192</sup> Lederman Law Library, “Regulations” (accessed 24 May 2013), online: Queen’s University <<http://library.queensu.ca/law/lederman/regulations>>; Legislative Assembly of Ontario, Bills and Law Making (accessed 24 May 2013), online: LAO <<http://www.ontla.on.ca/lao/en/bills/>> (a regulation needs only to be published in the Canada Gazette, whereas a bill must go through three readings in the House of Commons, is subject to legislative committee scrutiny, and must receive royal assent. A new animal welfare statute would need to be passed in Parliament, which by nature is even more involved and politicized than simply creating regulations where the power to do so already exists).

have the power to define activities that constitute generally accepted practices.<sup>193</sup> By creating regulations specifying that certain methods of animal farming are no longer generally accepted, the protection these statutes provide could easily be expanded to ban industrial confinement housing and controversial husbandry techniques.

While currently the laws protecting farmed animals in Canada are less robust than those of other Western jurisdictions, the provisions that allow animal welfare regulations to be made under existing laws may simplify future expansion of farmed animal protection measures.<sup>194</sup>

### 1.3. Enforcement powers

Another advantage to the existing legal framework for farmed animal welfare is that the powers to enforce laws already exist. These powers include enforcement agents, a punishment scheme and a court process. Like the ability to create new welfare provisions, these powers allow for easy expansion of protection laws in the future. For example, the federal Canadian Food Inspection Agency and provincially designated agriculture officers are responsible for enforcing the *Health of Animals Regulations*. They have legislative tools at their disposal to enforce laws and their duties would naturally expand to encompass additional protection regulations made under the *Health of Animals Act*.<sup>195</sup> Similarly, provincial agricultural statutes and anti-cruelty statutes

---

<sup>193</sup> For example, s 26(2)(l) of British Columbia's *Prevention of Cruelty to Animals Act*, RSBC 1996, c 372 says the Lieutenant Governor in Council has power to make regulations "respecting generally accepted practices of animal management that apply to a regulated activity". Nova Scotia's *Animal Protection Act*, SNS 2008, c 33 allows Governors in Council to prescribe or adopt "acceptable codes of practice respecting animals" in section 40(1)(o).

<sup>194</sup> However, the expansion of existing laws and the creation of new protection regulations under current statutes would face significant opposition from the animal industry. For example, attempts to alter the *Criminal Code* to provide modest additional protection for animals have been successfully resisted by animal use enterprises. As such, while this option theoretically exists to further animal protection, it remains a difficult route to use in practice; Hughes & Meyer, *supra* note 107 (*Criminal Code* anti-cruelty provisions "ha(ve) not been thoroughly reviewed since the advent of modern animal rights philosophies" at 40-41); See generally: Bisgould, *supra* note 107 ("[d]evelopment of the Anti-Cruelty Laws in the Criminal Code". Although penalties for contraventions were increased in 2008, the provisions themselves remain static due to industry pressure and politicking at 58-67).

<sup>195</sup> New regulations would be subject to enforcement under ss 65–73 of the *Health of Animals Act*.

already have designated law enforcement agents and punishment schemes in place. These existing enforcement powers may avoid the cost and delay caused by creating an entirely new enforcement body that would exclusively focus on ensuring compliance with animal welfare laws.<sup>196</sup>

#### **1.4. Flexible terminology**

Subjective terminology in the protection provisions is another potential benefit of Canada's existing animal welfare laws. Subjective provisions in law require interpretation by judges and adjudicators. In common law jurisdictions such as Canada, law evolves partly through judicial decisions based on precedents and ideology. Flexible terminology in welfare laws such as the prohibition of "unnecessary" or "undue" animal suffering may serve to advance animal protection. Judges interpreting these terms have the flexibility to make decisions that incrementally change the law to reflect societal sentiments and concepts of social justice.<sup>197</sup>

Animal welfare scholar Robert Garner believes that political debate and animal advocacy may turn flexible statutory language into a strength:

It is true that the concept of animal welfare is based on unnecessary suffering, and it is also true that this principle is imprecise. Its imprecision, however, is its strength. What is regarded as

---

<sup>196</sup> However, there are already issues with the current enforcement of welfare provisions. Tight budgets and funding cuts mean inspection officers of law enforcement bodies are overburdened. Putting additional strain on the enforcement system through the expansion of welfare provisions may be ineffective as enforcement resources are already too scarce to properly monitor compliance with laws. See for example: Bill Curry & Stuart A Thompson, "Tory cuts to hit food inspection agency, Aboriginal Affairs" (5 April 2013), online: The Globe and Mail <<http://www.theglobeandmail.com/news/politics/tory-cuts-to-hit-food-inspection-agency-aboriginal-affairs/article10797384/>>.

<sup>197</sup> Giacomo A Ponzetto & Patricio AM Fernandez, "Case Law versus Statute Law: An Evolutionary Comparison", *J Legal Stud*, 37:2 (2008) 379 ("[a] vast literature has all but proved that Supreme Court decisions are shaped by ideology at least as much as by precedent. Recent research has shown that this is not a unique feature of Constitutional law but that individual tastes and ideologies affect rulings in ordinary appellate courts as well"); Allan C Hutchinson, *Evolution and the Common Law* (Cambridge: Cambridge University Press, 2005) ("the common law has shown that its capacity to adapt to changing circumstances is a vital feature. The success of the common law (is owed to) this ability to be flexible, open, experimental, and adaptable" at 268); See also: Lawyers Weekly, "Practice Profile: Animal law - the 'next social justice movement'" (11 August 2011), online: Lawyers Weekly (Australia) <<http://www.lawyersweekly.com.au/>> and Jerry L Anderson, "Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement", (2011) 4:1 *Stan J Animal L & Pol'y* (the author compares the reaction of society to child labour in the industrial revolution to animal welfare in industrial farms).

unnecessary is not static, and can be altered by subjective political debate. There is enormous potential for animal advocates to expand what is regarded as unnecessary.<sup>198</sup>

He goes on to say that changing cultural norms and knowledge gains, including recognition of the capacity and degree of animals to suffer, can and have informed what is “necessary” over time. Other scholars have echoed this sentiment, pointing out the positive aspects of vague and subject language in the protection provisions: “terminology of this sort ... provides a great deal of flexibility and allows solutions to be tailored [by judges] to individual cases through a balancing of relevant factors.”<sup>199</sup>

Of course there are limits to this kind of tailoring, as judges are bound by the doctrine of *stare decisis* and must follow the decisions of courts that bind them.<sup>200</sup> However, if they are able differentiate the case at hand based on attributes such as material facts, new evidence or changing social contexts, judges may depart from a previous ruling.<sup>201</sup>

Animal protection is a newer area of law, and there are few precedents binding decision makers. For example, s 139 (1) of the *Health of Animals Regulations*, which prohibits beating an animal during loading or unloading “in a way likely to cause injury or undue suffering to it”, has not been judicially considered. While similar standards may be looked at during interpretation, a court or tribunal could define the standard for how severe a beating must be to cause an animal “undue” suffering. It would arguably have the leeway to rule that any beating harder than a light tap with a paddle would cause the animal to suffer unduly.

---

<sup>198</sup> Garner, “A Political Defense”, *supra* note 188 (Garner goes on to say that wearing fur and testing cosmetics on animals used to be acceptable whereas now “many people in the Western world frown upon both practices” at 166).

<sup>199</sup> Mike Radford, *Animal Welfare Law in Britain, Regulation and Responsibility* (Oxford: Oxford University Press, 2001) at 15-28.

<sup>200</sup> Gerald Gall, “The Doctrines of Precedent and *stare decisis*” in *The Canadian Legal System*, 5th ed (Scarborough, Ontario: Thomson Canada Ltd, 2004); William Twining and David Miers, *How to Do Things with Rules*, 3<sup>rd</sup> ed (London: George Weidenfield and Nicolson Ltd, 1991); Jeremy Paul, “A Bedtime Story” (1998) 74 Va L Rev 915.

<sup>201</sup> *Ibid.*

By the same token, there are few cases considering the flexible language used in provincial protection provisions in the context of farmed animals. “[R]easonable and generally accepted agriculture practices” are exempt from cruelty prosecutions in Ontario, Nova Scotia, British Columbia and Yukon and Alberta. Therein lies an opportunity to question which animal farming practices are “reasonable”; test cases could be brought to challenge intensive confinement practices.<sup>202</sup> *R v Mulbach*, a case looking at whether a farmer’s mistreatment of his animals constituted cruelty, has already confirmed that “[j]ust because a practice is common, does not mean it is reasonable”.<sup>203</sup> If in the future a court found that a reasonable and generally accepted practice did not include common modes of industrial intensive confinement, by implication these industrial confinement methods would become illegal in that province without need for legislative amendment.<sup>204</sup> In addition, such a decision might have a domino effect, as a ruling of this nature would be persuasive when a similar provision was judicially considered in another province.<sup>205</sup> As per the foregoing, there are distinct benefits to flexible language use in welfare provisions.

## 2. Weaknesses

---

<sup>202</sup> See Appendix A-6.

<sup>203</sup> 2009 CarswellAlta 2352 (“the word “reasonable” followed by the word “and” indicates that the practices to which the subsection refers to are not the be-all and end-all if they are simply generally accepted. The practices have to be objectively reasonable” [...] “[a]s mentioned, this section requires any generally-accepted practice to be reasonable. One of the factors to consider when looking at the reasonableness is the general practice in the ranching community. Just because a practice is common, does not mean it is reasonable” at paras 4&16); *R v Muhlbach*, 2011 ABQB 9 (in the appeal, the Queens’ Bench judge also iterated that a “practice found in the ranching community must be reasonable in order to form a valid defence”).

<sup>204</sup> There would be a significant period of time before the decisions took effect in order to give farmers a chance to change their practice. Such a decision would also almost definitely be appealed and have multiple intervenors, as any case of this level of interest would (see for example Bedford’s constitutional challenge of the *Criminal Code* provisions concerning prostitution *Bedford v Canada (Attorney General)*, 2010 ONCA 814). Advancing animal protection in this way has the potential to evolve the state of a given area of law more quickly than the cumbersome legislative process of passing bills and publishing regulations though legislature will often respond by creating new provisions or legislation that clarify the situation.

<sup>205</sup> S Waddams and J Brierley, *Canadian Legal Encyclopedia*, Law, “Judicial Decisions” (accessed 15 May 2013), online: <<http://www.thecanadianencyclopedia.com/articles/law>>; see generally: Gall, *supra* note 2000.

In spite of the strengths outlined above, there are several flaws in the design and administration of Canada's farmed animal protection laws. As per the Chapter introduction, this part discusses how flexible language can work against animal welfare, how issues with the scope and strength of the regulation result in a lacuna of protection, and how the fragmented approach to farmed animal protection results in faulty administration and low public awareness of, and engagement with, farmed animal protection issues.

## **2.1. Flexible terminology**

While the section above outlined the potential advantages to using flexible language in animal welfare provisions, there is also a significant disadvantage: language of this sort fails to specify how animals should be treated and therefore requires interpretation. This causes problems for farmed animal producers, transporters, inspectors, and decision makers alike, as each must assess whether a given activity causes “unnecessary” or “undue” suffering in order to perform their job.<sup>206</sup> What makes flexible language most detrimental with respect to farmed animals is that it is nearly always interpreted to the animal's disadvantage. Judges, enforcement agents and producers are all similarly biased in their interpretation, though the judiciary is the focus of this section.

Many welfare provisions in the *Health of Animals* regulations and other protection laws reflect the central idea that unnecessary suffering should be avoided. This is why there is usually a standard prohibition against causing “undue” suffering.<sup>207</sup> Pain and distress should generally be “minimized” or not caused where “avoidable” and animals should be handled and slaughtered in a “humane” manner. For example s 62(1) of the federal *Meat*

---

<sup>206</sup> *Jeffrey Bogaerts v Attorney General of Ontario*, (23 October 2013) Ottawa 749/13 (Ont Sup Ct J) (problems with flexible language are the focus of this recent application, which alleges that the use of the term “distress” in the *OSPCA Act* violates fundamental principles of justice in *Charter* as it does not provide fair notice respecting minimally acceptable care and treatment of animals in Ontario, provide sufficient direction to those enforcing the law to prevent arbitrary exercise of their discretion, and is unconstitutionally overbroad, amongst other things. The problem occurs with the interpretation of other flexible terms in animal protection statutes, such as “reasonable” or “overcrowded”).

<sup>207</sup> See for example ss 138 and 155 in Appendix C-1.

*Inspection* regulations<sup>208</sup> say “[n]o food animal shall be handled in a manner that subjects the animal to avoidable distress or avoidable pain”. Section 21(1) of Alberta’s *Meat Inspection Act*<sup>209</sup> similarly directs that “[a] person shall minimize pain and distress of any animal that is being prepared for slaughter or slaughtered.”<sup>210</sup> Under *Ontario’s Meat* regulations<sup>211</sup>, s 75(1) indicates that “[n]o person shall slaughter a food animal at a slaughter plant in a way that subjects it to avoidable pain or distress.” These flexible terms require the decision maker to “weigh the human benefit to be obtained against the potential harm to the animal”.<sup>212</sup>

In the prosecution of a contravention of a welfare provision prohibiting unnecessary suffering, there are generally two elements to show: (1) that the animal has suffered; and (2) that such suffering is unwarranted or unnecessary.<sup>213</sup> The first element, that the animal has suffered, should be a reasonably straightforward finding of fact in most cases.<sup>214</sup> However, the second element is much more problematic. For a conviction, prosecution must show that pain caused is “undue”, “unnecessary” or not “avoidable”. In other words, the court must determine whether animal suffering caused by a given activity is sufficient to make the activity illegal.<sup>215</sup> This requires a utilitarian balancing

---

<sup>208</sup> *Meat Inspection Regulations*, 1990, SOR/90-288 (see Appendix C-2 for full text of regulation).

<sup>209</sup> RSA 2000, c M-9 (see Appendix C-2 for full text of regulation).

<sup>210</sup> See also Nova Scotia’s *Meat Inspection Regulations*, NS Reg 46/90. See (see Appendix C-2 for full text of regulation).

<sup>211</sup> *Ontario’s Meat*, O Reg 31/05. See also Ontario’s *Food Safety and Quality Act*, 2001, SO 2001, c 20 s 4 (see Appendix C-2 for full text of regulations).

<sup>212</sup> Hughes & Meyer, *supra* note 107 at 32; Though “undue”, “avoidable” and “unnecessary” suffering could be perceived as requiring different standards of proof, this has not yet been considered by the courts and is not consequential in this illustration of the downfalls of the use of flexible language.

<sup>213</sup> If the source of the law is criminal, an element of mental guilt may also need to be proven.

<sup>214</sup> Peter Sankoff, “Canadian Federal Law Prohibiting Cruelty Against Animals”, 19th Annual Conference Standing Up for Animals: Can a Bad Economy Inspire Greater Goodness?, Lewis & Clarke Law School. October 14 - 16th, 2011 (however, Sankoff notes that “[u]nfortunately, judges often choose to ignore obvious signs of discomfort. See, eg. *McRae*, [2002] OJ No 4987 (SCJ) (a dog yelping and crying after being kicked was not conclusive evidence of suffering); *Miller*, [2003] YJ No 170 (SC)(dog being kicked “viciously” but no evidence of pain). One would hope that judges would be more willing to draw inferences of pain and suffering, especially where the acts in question were without justification” at 3).

<sup>215</sup> Mike Radford, *Animal Welfare Law in Britain, Regulation and Responsibility* (Oxford: Oxford University Press 2001) (flexible language provides “little idea of permissible conduct [...] until such terms are imbued by with some form of structure by the judiciary” at 15-28).

approach to weigh the pain and suffering an animal endures against the benefit that arises from humans inflicting the pain.<sup>216</sup>

There has been little case law that lays out how the balancing test should work. *R v Ménard*<sup>217</sup> is a case from 1978 that concerns acceptable methods of euthanizing stray animals. It takes its lead from a British case from the late 1800s, *Ford v Wiley*,<sup>218</sup> and has come the closest to defining criteria courts should consider when engaging in the determination of “necessary” suffering.<sup>219</sup> In spite of increasing societal concern and changing mores, in no small part based on the many advances in our comprehension of animal science and sentience in the 35 years that have passed since *Ménard* was decided (125 years in the case of *Ford v Wiley*), it remains a foundational case that guides animal welfare law. A brief passage from this decision indicates how the balancing test operates:

‘Without necessity’ does not mean that man, when a thing is susceptible of causing pain to an animal, must abstain unless it be necessary, but means that man in the pursuit of his purposes as a superior being, in the pursuit of his well-being, is obliged not to inflict on animals pain, suffering or injury which is not *inevitable* taking into account the purpose sought and the circumstances of the particular case. In effect, even if it not be necessary for man to eat meat and if he could abstain from doing so, as many in fact do, it is the privilege of man to eat it.<sup>220</sup>

From the outset, this passage highlights how any infliction of pain upon animals is justifiable if it serves a human interest that is in step with societal values.<sup>221</sup> “[T]he starting point is not that harm [to animals] is generally wrong, and must be justified, but

---

<sup>216</sup> Bisgould, 2011, *supra* note 3 (Jeremy Bentham was a founder of utilitarianism. He proposed that the moral righteousness of an action was that which produced the greatest good for the greatest number at 25); Sankoff, “Welfare Paradigm”, *supra* note 185 (Bentham’s utilitarian approach sought to protect animals from harm while still allowing humans to use animals for a palpable benefit at 10, 13&15).

<sup>217</sup> (1978), 43 CCC (2d) 458 [*Ménard*].

<sup>218</sup> UK [1889], 23 QBD 203 [*Ford v Wiley*].

<sup>219</sup> Sankoff, “Welfare Paradigm”, *supra* note 185 (the author recognizes *Ménard* as “one of the more elaborate attempts to define what kind of harm against animals is impermissible” and goes on to note that the decision boils down the concept that harm to animals is a relative, rather than absolute concept, and that the use of terminology such as unreasonable and unnecessary indicate that “any kind of suffering can be justified as long as it has a strong enough reason to support it” at 19-21).

<sup>220</sup> *Ménard*, *supra* note 217 at 465.

<sup>221</sup> Hughes & Meyer, *supra* note 107 (the authors succinctly describe this “utilitarian” balancing of animal interests vs human interests at 32).

that it is humanity's privilege to inflict it".<sup>222</sup> As such, the scales are heavily tipped in favour of the given human use before the balancing has even begun.<sup>223</sup>

As *Ménard* indicates, there are two main considerations when contemplating the necessity of animal suffering in the equation: (1) "the purpose sought"; and (2) "the circumstances of the particular case". With regard to purpose, *Ménard* makes it clear that it is man's privilege to use animals "in pursuit of his purposes" as a "superior being". "Necessity" is more akin to a "reasonable desire" for the outcome.<sup>224</sup>

However, there are legal limits to our use of animals. The purpose of the cause for animal suffering must be legitimate in the sense that it must be supported and valued by society.<sup>225</sup> Courts will not sanction the infliction of pain and distress for sadistic purposes. This was indicated in *R v Pacific Meat Company*<sup>226</sup>, a rare decision that dealt with the unnecessary suffering of farmed animals during slaughter:

[I]f someone who was not employed in a slaughter house was to shackle a hog as described in this case [...] just to hear it squeal or for any other sadistic reason [...] than I would hold that such pain and suffering was 'unnecessary'.<sup>227</sup>

Cases such as *R v DL*<sup>228</sup>, where the accused was convicted of beating a cat with a hockey stick for his own amusement, and *R v Cunningham and Whiffin*<sup>229</sup>, where the accused was convicted for starving and hanging a horse, show that inflicting pain for sadistic purposes is not tolerated. Similarly, actions that waste the economic capital of the animal and harm

---

<sup>222</sup> Sankoff, "Welfare Paradigm", *supra* note 185 at 21.

<sup>223</sup> Hughes & Meyer, *supra* note 107 (the authors note that Canadian animal protection law does not restrict "normal and regulated activities" and that "the morality of the list of current uses will also not be questioned" at 41).

<sup>224</sup> Sankoff, "Welfare Paradigm", *supra* note 185 at 22.

<sup>225</sup> *Ibid* at 15.

<sup>226</sup> [1957] BCJ No 98 (Co Ct).

<sup>227</sup> *Ibid* (however, the judge goes on to sanction the method of killing the hogs since "[b]efore the hogs can be eaten by mankind they must of necessity be killed" at para 74).

<sup>228</sup> 1999 ABPC 41 (available on CanLII).

<sup>229</sup> 2011 BCPC 358.

arising from laziness or poor management are also not condoned.<sup>230</sup> For example in 2010 a Manitoba couple was convicted for failing to provide adequate food and water to more than 2,000 hogs.<sup>231</sup>

However, society as whole has agreed that it is acceptable to raise and slaughter animals for food, and generally supports the system by purchasing and consuming animal products. As such, the balance test in the context of farmed animals does not question the broader necessity of killing animals for food - as the *Ménard* passage points out, humans do not need to eat meat to thrive, but “it is the privilege of man to eat it”. In Canada’s legal system, the arguably frivolous taste preference of humans for animal products prevail over a farmed animal’s interest in not suffering.<sup>232</sup>

When it comes to the treatment of agricultural animals, it is the methods of raising, transporting, and slaughtering animals that must be analyzed by the courts during a prosecution of animal protection laws rather than the ultimate purpose of these activities.<sup>233</sup> This is shown in both *R v Mulbach* and *R v Doyon*<sup>234</sup>, where the methods of raising and transporting the animals were respectively scrutinized, rather than the broader purpose of raising animals for food. In *R v Maple Lodge Farms*<sup>235</sup>, the Court goes so far

---

<sup>230</sup> See generally: Sankoff, “Welfare Paradigm”, *supra* note 185 at 23-24.

<sup>231</sup> CBC News Manitoba, “Farmers charged for neglecting hogs” (4 November 2010), online: <<http://www.cbc.ca/news/canada/manitoba/story/2010/11/04/mb-hog-farm-charges-manitoba.html>> (“Martin and Dolores Grenier are charged with, among other things, failing to provide adequate food and water to more than 2,000 hogs”. This qualified as an egregious case of abuse caught under provincial protection legislation).

<sup>232</sup> Singer, *Animal Liberation*, *supra* note 17 (this is in contrast to how animal rights philosopher Peter Singer feels animal interests should be considered. Singer is an advocate of utilitarianism, or the “greatest good for the greatest number” when it comes to ethical decision making. His view is that in measuring ethical behavior, animal interests should be considered in a similar manner to human interests, and that separating human interests from those of other animals is arbitrary and “speciesist”).

<sup>233</sup> Bisgould, 2011, *supra* note 3 (the author summarizes the state of the law that *Ménard* has left us with: “Within the industrial context, the prohibition against “unnecessary suffering” looks only at a specific act, which occurs in the course of broader animal use, such as the use of a bullhook to control an elephant in a circus. It does not invite an examination of the “underlying assumption that elephants can be used as circus performers in the first place” at 49).

<sup>234</sup> *Doyon v Canada (AG)*, 2009 FCA 152 [*Doyon*] (this case is further discussed below).

<sup>235</sup> 2013 ONCJ 535, 110 WCB (2d) 280.

as to state at the outset that “[t]he subject matter of the case is not concerned with whether society should slaughter chicken for food production”.<sup>236</sup>

Assessing the legitimacy of the method used to raise and slaughter animals is where the balancing test gets tricky. At this point in the test, the focus is on precautions taken to reduce animal suffering while carrying out the purpose of providing food for humans. This is the part of the test that recognizes while humans have a natural right to use animals as an ends, we also have a moral obligation to reduce their suffering in doing so. This concept is what animal rights advocate Gary Francione refers to as the “humane treatment principle”: that humans have the right to use other animals where it is “necessary”, but only in a way that is “humane”.<sup>237</sup>

However, the acceptable treatment of animals while carrying out the ultimate purpose is affected by human-centric factors that, at least from an animal’s perspective, can be considered trivial. The Court in *Ménard* makes it clear that man’s interests are to trump animals by stating that “the animal is inferior to man”<sup>238</sup> and also clarifying that men “do not renounce the right given to them by their position as supreme creatures to put animals at their service to satisfy their needs”<sup>239</sup>.

The most notable example of human interests trumping animal interests is the weight put on economic considerations. This is illustrated in the context of *Ménard* when the Court remarked that “[o]ne cannot devote to the euthanasia of animals large sums of money without taking into account social priorities”.<sup>240</sup> The Court in *Doyon v Canada (AG)*<sup>241</sup>, where the accused was acquitted of transporting causing undue suffering to a hog during transport contrary to section 138(2)(a) of the *Health of Animals* regulations” also focused

---

<sup>236</sup> *Ibid* para 3.

<sup>237</sup> Francione, *supra* note 6 at xx111&7.

<sup>238</sup> *Ménard*, *supra* note 217 at 464.

<sup>239</sup> *Ménard*, *ibid* at 465.

<sup>240</sup> *Ménard*, *ibid* at 466-467.

<sup>241</sup> *Doyon*, *supra* note 234.

on the financial considerations of animal protection; the Court perceived the \$2000.00 monetary penalty as inordinately high, given the value of a pig was only \$100.00.<sup>242</sup> It went on to interpret the flexible language in this provision to narrow a previous interpretation of “undue”, thus limiting the scope of protection.<sup>243</sup> In *R v Maple Lodge Farms*, the Court confirmed that the Canadian Food Inspection Agency’s “threshold” or acceptable amount of layer hens that die in the trucks on the way to the slaughterhouse is 4%.<sup>244</sup> These deaths are considered just a cost of doing business;<sup>245</sup> “Empirical evidence shows, and theory suggests, that the common law tends towards economic efficiency”<sup>246</sup>. Detrimental interpretation of flexible statutory language intended to protect animals consistently reflects this evidence.

In conclusion, while animal protection legislation is a laudable nod to the moral obligation to protect animals, human interests almost invariably prevail over animal interests where flexible language and a utilitarian balance test is used.<sup>247</sup> The vague provisions in animal welfare laws open the door for application that is detrimental to the animals they are meant to protect;<sup>248</sup> the whole exercise is highly abstract making it especially susceptible to be rigged in favour of human wants and “needs” rather than helping to ensure a reasonable degree of welfare for animals.<sup>249</sup> Ultimately, the test for

---

<sup>242</sup> *Ibid* at paras 23&56.

<sup>243</sup> Bisgould, 2011, *supra* note 3 ([t]he leading precedent for the interpretation of ‘undue suffering’ in s 138(2)(a) is currently *Doyon v Canada(AG)*, 2009 FCA 152. This decision challenged a previous, more liberal interpretation of “undue suffering” in *Attorney General of Canada v Porcherie des Cèdres Inc.*, 2005 FCA 59. While narrowing the scope of protection in *Doyon*, the Court was “circular [in its] articulations of the proper way to interpret” the section at 185-186).

<sup>244</sup> *R v Maple Lodge Farms*, *supra* note 66 at para 157.

<sup>245</sup> *Ibid* (the Court also noted that “the evidence unfortunately supports the inference that economic factors tended to be placed above acts which were known or ought to have been known, to reduce the effects of undue exposure to weather such as leaving a buffer of empty crates” at para 343).

<sup>246</sup> Richard O Zerbe, “Justice and the Evolution of the Common Law” (2006) 3:1 *JL Econ. & Pol’y* 81 at 81-82.

<sup>247</sup> A quintessential example of a trivial human interest that, in most jurisdictions, trumps animal suffering is the practice of cropping a certain breed of dogs’ ears or tail for aesthetic reasons.

<sup>248</sup> See generally: Bisgould, 2011, *supra* note 3 (“Issues in Interpretation” at 71).

<sup>249</sup> For example, the lack of metrics in the balancing test makes it almost impossible to measure suffering of an animal and to discern where the dividing line between the actual harm cause and the need for it should be.

causing unnecessary suffering is closer to “reasonable desire” and, due to current interpretation, is not effective in protecting farmed animals.<sup>250</sup>

## 2.2. Scope of protection

Arguably the most pressing content-driven issue where agriculture animal laws are concerned is what regulation in Canada fails to cover, or, to put it another way, the scope of protection. The UNFAO identifies management, housing, transport, and slaughter as key substantive areas of animal welfare regulation.<sup>251</sup> While some aspects of transport and slaughter are dealt with under the *Health of Animals Act*, the *Meat Inspection Act*, and various provincial regulations, Canada’s farmed animal welfare laws completely fail to address *any* aspect of confinement housing and critical aspects of management including painful elective procedures and day-to-day handling.<sup>252</sup>

In regard to housing, the *Health of Animals Regulations* and provincial agricultural regulations do not contain provisions concerning the “type and condition of the accommodations” in which farmed animals should be kept.<sup>253</sup> The NFACC Codes contain the only official direction for agricultural animal housing in Canada.<sup>254</sup> These Codes currently condone such things as the use of veal crates, tethers, and battery cages. While the recently released NFACC Code for Pigs proposed a phase out of sow crates by 2024, as discussed, the Code is not binding unless it is invoked by legislation.<sup>255</sup>

---

<sup>250</sup> Peter Sankoff, “Welfare Paradigm”, *supra* note 185 at 22.

<sup>251</sup> Vapnek, *supra* note 131 (in fact, as indicated in Chapter Two, the only area of the significant components of farmed animal welfare law outlined by the UNFAO that Canada covers are transportation and slaughter. Housing and management are almost completely unaddressed at 37).

<sup>252</sup> See Chapter Two.

<sup>253</sup> Vapnek, *supra* note 131 at 70; As discussed in Chapter Two, federal and provincial cruelty regulations fail to capture agricultural animal confinement housing in their “catch-all” provisions.

<sup>254</sup> See for example the Code of Practice for the Care and Handling of Farm Animals: Veal Calves (Ottawa: Canadian Agri-food Research Council, 1991) at 4 and the Recommended Code of Practice for the Care and Handling of Pullets, Layers and Spent Fowl (Ottawa: Canadian Agri-Food Research Council, 2003) at 7.

<sup>255</sup> Code for Pigs, *supra* note 87.

By contrast other countries have legally recognized housing to be an important aspect of welfare. As discussed in Chapter One, the European Community and several other jurisdictions have banned most intensive confinement housing types. Many of these jurisdictions also require environmental enrichment for housing, such as toys for pigs, and perches, nest boxes, and scratching pads for hens. Canada's failure to regulate in this area has a significant detrimental impact on farmed animal welfare throughout an animal's life.<sup>256</sup>

With respect to management, the *Health of Animals Regulations* and other statutes fail to include provisions that address how farmed animals should be "handled, cared for and controlled".<sup>257</sup> Two significant aspects of farmed animal management include proper training for animal handlers and the use of non-therapeutic surgical procedures. These activities both have a "profound impact on animals' daily lives".<sup>258</sup>

Proper training and licenses for workers that have direct contact with farmed animals are regarded by the UNFAO as an essential component of welfare legislation.<sup>259</sup> The *Health of Animals Regulations* deals only with animal handlers during transport, requiring that a "person experienced in dealing with livestock" be on board a ship.<sup>260</sup> There are no laws

---

<sup>256</sup> See generally: Peter Stevenson, *Compassion in World Farming*, "Reviewing the Costs – The Economics of Moving to Higher Welfare" (Surrey: CIWF, 2011).

<sup>257</sup> Vapnek, *supra* note 131 at 72.

<sup>258</sup> *Ibid*; Temple Grandin, *Behavioral Principles of Livestock Handling* (accessed 10 May 2013), online: <<http://www.grandin.com/references/new.corral.html>> (a handler's attitude towards the animals he works with has a sizeable impact on the animal's wellbeing).

<sup>259</sup> The only area in Canada's welfare scheme that addresses this point is the voluntary Codes, such as the Code for Dairy Cows (Code of Practice for the Care and Handling of Farm Animals - Dairy Cattle (Ottawa: Dairy Farmers of Canada and the National Farm Animal Care Council, 2009). For example, Section 3.2, "Stockmanship Skills Related to Animal Health and Welfare", recognizes that "[h]uman-animal interactions affect the productivity and welfare of dairy cattle. Not only is the technical competence of animal handlers important but also the way in which they interact with cattle. A negative belief about cows increases the likelihood of aversive handling, which results in a fearful animal. Fear leads to stress, reduced welfare, and reduced productivity"); Vapnek, *supra* note 131 (however, FAO says that voluntary measures should be complementary to main legislative instruments at 33).

<sup>260</sup> Section 152(1)(a) (official qualifications and training are not required).

that address training for workers that handle animals on the farm, where an animal spends the majority of its life.<sup>261</sup>

In addition, Canadian law has yet to contemplate the use of non-therapeutic surgical procedures such as tail-docking, tooth-cutting, castration, branding, and beak trimming.<sup>262</sup> The NFACC Codes address these procedures in varying degrees. The Code for Dairy Cows bans tail-docking unless medically necessary, and mandates that pain control must be used for castration and branding if necessary.<sup>263</sup> However, the newly released Code for Pigs still condones “elective husbandry procedures” including castration, tail-docking, ear-clipping, and tusk-trimming.<sup>264</sup> As discussed in the Chapter One, many other jurisdictions have begun to phase out questionable management techniques, or have at least begun to scrutinize their use.

Even in the areas Canada does regulate, important considerations remain outside the scope of existing laws. For example, while regulations concerning transportation exist, the coverage is incomplete. The *Health of Animals Regulations* transportation provisions do not require training for drivers to minimize risk of injury or animal suffering as in other jurisdictions, nor are there provisions requiring pre-trip planning, climate-controlled

---

<sup>261</sup>By contrast the European Community has extensive training requirements for animal handlers, particularly in transport. See generally: Europa, *Animal welfare during transport*, Summaries of EU legislation: EC, *Council Regulation No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97* <[http://europa.eu/legislation\\_summaries/food\\_safety/animal\\_welfare/f83007\\_en.htm](http://europa.eu/legislation_summaries/food_safety/animal_welfare/f83007_en.htm)>; Other jurisdictions, such as the UK, have extensive guidelines outlining training requirements for slaughterhouse workers and animal handlers. For example: Department for Environment, Food and Rural Affairs, “Guidance note on the licensing and training of slaughtermen” (London, DEFRA, 2011) (any one carrying out: the restraint of an animal for the purposes of stunning, slaughtering or killing; the stunning, slaughter or killing of animals; the pithing of stunned animals; the assessment of effective stunning or killing; the shackling or hoisting of stunned animals; and the bleeding of animals which are not dead must have a provisional or registered license at 4).

<sup>262</sup> As discussed in Chapter One, these practices are already legislated or under discussion in other jurisdictions. Canada has yet to begin the process of addressing management practices in legislation.

<sup>263</sup> Ontario Ministry of Agriculture and Food, “Cattle Identification” (5 July 2012), online: OMAFRA <<http://www.omafra.gov.on.ca/english/food/foodsafety/facts/10-011.htm>> (in spite of the fact that the NFACC Code for Dairy Cows was released in 2009, an Ontario Ministry of Agriculture and Food guideline on cattle identification says that “hot branding is extensively used in Western Canada”. This would not likely be the case if cattlemen were also obliged to pay for associated pain control methods).

<sup>264</sup> Code for Pigs, *supra* note 87 at 33&35.

vehicles, or steps to ensure an appropriate temperature for animals in transport trucks.<sup>265</sup> At a result, millions of animals are killed or injured from inappropriate handling and die from extreme weather conditions in transport each year.<sup>266</sup>

Slaughter is another area that remains problematic in spite of regulation. For example, while there are provisions to reduce unnecessary suffering generally, there are no laws to limit the speed of the slaughter line, which means it goes as fast as possible in order to maximize profits. This results in rough handling of animals and improper stunning before live bleeding and disembowelment.<sup>267</sup> In addition, there is no certification required for slaughterhouse workers and while there is often a veterinarian on-site, there is no personnel dedicated to the oversight of animal welfare.

In summary, the complete absence of housing and comprehensive management regulation means that farmed animals in Canada are legally unprotected from routine abuse for between 98%-99.99% of their lives.<sup>268</sup> In their final days, animals also suffer due to the inadequacy of existing transport and slaughter regulations. In order for Canada to adequately safeguard farmed animal welfare, future legislation must address on-farm issues such as housing, management and handling, and expand coverage of transportation and slaughter.

---

<sup>265</sup> WSPA, “Curb the Cruelty”, *supra* note 2 (“[t]he importance of having more independent and specially-trained inspectors to assess the health and welfare of animals from farm to slaughter cannot be overstated” and “[d]rivers appear to be unaware of regulations, including their right, indeed their responsibility, to refuse to transport an injured animal” at 8&10).

<sup>266</sup> WSPA, “Curb the Cruelty”, *ibid.* (“[o]n December 8, 2008, when the temperature was recorded at -12 °C on route, a truck arrived with 1,491 dead chickens – 32.7 per cent of the load, or one out of every three birds” [...] There should be a mandatory requirement that all animal transport vehicles be equipped with heating and cooling systems” at 12&14; EC, Council Regulation *Protection of animals during transport*, *supra* note 98 (by contrast, in addition to strict rules around transportation taking more than eight hours unless the transportation vehicle meets certain requirements allowing for the feeding and watering of animals on board, this regulation also provides for methods of monitoring compliance such as satellite, vehicle standards, and extreme limitations around using electric prods).

<sup>267</sup> Edana Brown, Diplomat & International Canada, “Solutions for inhumane slaughterhouse practices” (30 September 2013), online: <<http://diplomatonline.com/mag/2013/09/solutions-for-inhumane-slaughterhouse-practices/>>.

<sup>268</sup> A dairy cow is allowed to live six or seven years, but is only protected during transport and slaughter, which represents approximately two days or 0.079% of her life. Broiler chickens or veal calves have the shortest lives of farm animals, so their approximate lifetime percentage of protection is 2%.

### 2.3. Strength of protection

Although some Canadian laws address farmed animal welfare, the strength of protection provided is often a concern. In the context of this paper, strength of protection refers to the level of protection or strictness of standards specified in welfare provisions. Standards lacking depth most often relate to metrics such as allowable periods of time in a specified enclosure or explicit space requirements. These are known as “objective standards” or “bright-line rules” as they provide clearly defined criteria in law.<sup>269</sup>

Bright-line rules can be a good way to frame farmed animal welfare provisions as they circumvent the previously discussed problems with interpretation of flexible language. Unfortunately, Canada has few bright-line provisions in its farmed animal welfare law.<sup>270</sup> Those that do exist are often weak, exacting lower standards than are required in other jurisdictions, and many lack standards sufficient to ensure an adequate degree of protection for the affected animals. Rest and feeding intervals during transportation, ramp inclination, and fines are three examples of insufficient depth of protection in the *Health of Animals Regulations*, discussed below.

The standards in the *Health of Animals Regulations* attracting the greatest criticism are the provisions laying out mandatory watering, feeding and rest intervals during transport. Section 148 of the *Health of Animals Regulations* allows horses and pigs to be confined in a transport vehicle without food, water, or rest for 36 hours. Cattle, sheep, and goats

---

<sup>269</sup> Bryan A Garner, ed, *Black's Law Dictionary* 8<sup>th</sup> ed (St. Paul: Thomson/West, 2005) (a bright-line rule is defined as “[a] legal rule of decision that tends to resolve issues, esp. ambiguities, simply and straightforwardly, sometimes sacrificing equity for certainty” at 160); In the context of animal welfare, this would be a regulation that prescribes a measurable standard, such as dimensions for a pen or exact quantities of bedding required. This is in contrast to the type of provisions where subjective language allows for a range of acceptable activity.

<sup>270</sup> Other regions, particularly the European Community, that regulate extensively in farmed animal welfare more frequently use objective numeric values to assign animal welfare standards. For example: EC, *Commission Directive 2001/93/EC of 9 November 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs*, [2001] OJ, L 316 (“[i]n the part of the building where pigs are kept continuous noise levels as loud as 85 dBA shall be avoided [...] Pigs must be kept in light with an intensity of at least 40 lux for a minimum period of minimum eight hours per day”).

can be similarly confined for up to 52 hours, and chicks for 72 hours.<sup>271</sup> Provincial transportation requirements are comparable to the *Health of Animals Regulations*.<sup>272</sup> These intervals are easily the longest in the industrialized world, and there is no “limit on the total length of the journey”,<sup>273</sup> as animals being imported or exported may be deprived of food, water and rest for much longer since the timed intervals start and end at the border.<sup>274</sup>

By comparison, the European Community mandates feeding, water and rest periods after eight hours of transportation and does not stop the clock at international borders.<sup>275</sup> Even the United States’ transportation interval provisions, which have been attacked by animal welfare groups, cap the transportation interval without food, water or rest at 28 hours, or half of the upper Canadian limit.<sup>276</sup>

Canada’s depth of protection for transportation intervals are problematic because transportation is “extremely stressful” for animals. Animal suffering increases the longer

---

<sup>271</sup> The other animals this section applies to are equines, swine or other monogastric animals and ruminants.

<sup>272</sup> *Quebec Food, Regulation respecting*, RRQ, c P-29, r 16.8.3 (except Quebec, which has a 12 hour transport maximum before animals should be fed and watered: “[e]very carrier must water and feed the animals in his care at least every 12 hours”).

<sup>273</sup> S 148; Levenson, *supra* note 65 (in addition to condemning transportation times, this report includes a laundry list of recommendations for transport including: ensuring tacographs and tacometers are on trucks to record travel times and control speeds and distances, letting people beyond CFIA inspect trucks, and mandatory training and licensing at 8).

<sup>274</sup> Bisgould, 2011, *supra* note 3 (for animals transported out of Canada, the time limits apply only prior to crossing the border. “The ongoing reduction of slaughter facilities, industrial concentration in fewer locations, the size of the country and the extent of the trade in live animals with the United States and other countries, make long distance transportation a common event” at 175); WSPA, “Curb the Cruelty”, *supra* note 2, (“[i]n 2008 alone, more than 9.4 million pigs and 1.5 million cattle were exported from Canada to the United States and some continued on long, gruelling journeys to Mexico. Canada also exports cattle to Colombia and thousands of pigs to Russia, South Korea, Venezuela and Vietnam, among other countries for breeding purposes” at 4).

<sup>275</sup> EC, *Council Regulation, Protection of animals during transport*, *supra* note 98 (the maximum transport time is eight hours unless the transportation vehicle meets certain requirements allowing for the feeding and watering of animals on board. In addition to strict rules around transportation taking more than eight hours, this regulation also provides for methods of monitoring compliance such as satellite, vehicle standards, and extreme limitations around using electric prods).

<sup>276</sup> *Animal Welfare Act*, 49 USC §80502 (the act allows eight additional hours of transportation for sheep where they will be unloaded at night at s (a)(1)).

the journey takes, with mortality rates for farmed animals increasing exponentially with journey length.<sup>277</sup>

A less obvious example of inadequate depth of protection in the *Health of Animals Regulations* is the prescribed ramp inclination for loading and unloading livestock. Section 139(3) says that ramps for loading and unloading animals should not have an incline of greater than 45°. <sup>278</sup> The steepness of the Canadian standard is more than double the 20° incline standard adopted by other countries and recommended by experts.<sup>279</sup> Steep ramps increase the likelihood that an animal will slip or fall - and this is no minor concern. If an animal is injured and there is no veterinarian on site to euthanize it, the animal may suffer for hours or even days.<sup>280</sup> Animals already nervous from transport may slip down steeper ramps, become startled, and clog the chutes such that handlers will then aggressively whip or use electrical prods on them in order to force them to move, causing additional stress and suffering.<sup>281</sup> As such ramps at a 45° angle do little to protect an animal's welfare.

---

<sup>277</sup> WSPA, "Curb the Cruelty", *supra* note 2 ("[m]ore comprehensive studies confirm that journey duration and temperature can have significant impacts on pre-slaughter mortality, with mortality rates increasing by as much as 80 per cent for journeys longer than four hours [...] In one case a third (32.7 per cent) of the chickens arrived dead. In reviewing the reports, it would seem that this most frequently happens on occasions when the birds are transported over long distances and in cold weather conditions [...] it is apparent that higher numbers of DOAs in Ontario and New Brunswick most often result when trucks travel for longer than eight hours in sub-zero temperatures" at 9&14).

<sup>278</sup> S 139 (3) Every ramp, gangway, chute, box or other apparatus used by a carrier in loading or unloading animals shall be so maintained and used as not to cause injury or undue suffering to animals and where livestock is loaded or unloaded by a ramp, gangway, chute or other apparatus, the slope shall not be greater than 45 degrees.

<sup>279</sup> Temple Grandin, "Behavioural Principles of Livestock Handling", American Registry of Professional Animal Scientists (1989), online: Temple Grandin <<http://www.grandin.com/references/new.corral.html>> ("a 15 degree slope is recommended for pigs"); Department of Primary Industries, State Government Victoria, Agriculture, "Code of Practice for Welfare of Farm Animals During Transportation" (AG0004), online: <<http://www.dpi.vic.gov.au/agriculture/dairy/dairy-cattle-health-welfare/farm-animals-transportation>> (this Code recommends a 20° incline for ramps); Welfare During Transport, "UK Advice for transporters of cattle Ramp angles for loading and unloading" (DEFRA Publications, London), (accessed 12 April 2013) online: <[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69387/pb12544a-transport-cattle-110315.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69387/pb12544a-transport-cattle-110315.pdf)> (the Regulation stipulates a new maximum ramp angle of: 20°00' for calves and 26°34' for cattle at 5).

<sup>280</sup> WSPA, "Curb the Cruelty" *supra* note 2 (there have been reports of injured animals suffering for up to 52 hours before being euthanized at 22).

<sup>281</sup> *Ibid* at 26.

A third example of inadequate depth of protection in Canadian farmed animal welfare law is the amount of the fines provided for infractions of the *Health of Animals* regulations in the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.<sup>282</sup> When an inspector encounters a *Health of Animals Act* violation, he may proceed by laying charges under the *Act* or by issuing a notice and proceeding by way of monetary penalty under the *AAAMPA*. Proceeding by way of the *AAAMPA* is often preferred as prosecutions under the quasi-criminal offenses in the *Act* require that all elements of the violation be proven on a criminal standard of proof – beyond a reasonable doubt.<sup>283</sup> By contrast, *AAAMPA* charges only require the Crown to prove the act occurred on a civil balance of probabilities standard.

The *AAAMPA* fines, which are lower than many other jurisdictions, have been criticized as not providing adequate deterrence.<sup>284</sup> For example, the *AAAMPA* provides fines of just \$500.00 for a minor violation and \$10 000.00 as an upper limit, depending on the gravity criteria and whether an individual or a company caused the violation.<sup>285</sup> By contrast in Europe animal welfare violations attract maximum fines in the \$20 000.00 -

---

<sup>282</sup> SC 1995, c 40 [*AAAMPA*].

<sup>283</sup> “FACN Summary Report”, *supra* note 144.

<sup>284</sup> WSPA, “Curb the Cruelty” *supra* note 2 (“[p]unishments are inadequate and don’t serve as deterrents” [...] WSPA believes that such paltry sums can hardly be viewed by the large slaughter, transport and production companies as a strong deterrent. They are more likely to be viewed as the cost of doing business” at 33); Biscould, 2001, *supra* note 3 at 184; Mohan, Prabhu. “Efficacy of Administrative Monetary Penalties in Compelling Compliance with Agri-food Statutes” (Ottawa: Faculty of Law, University of Ottawa, 2011) (the author notes a “failure of the legislature to fix sufficiently high penalties” and says that “[l]ow penalties do not deter non-compliance and therefore substantial fines are required” at 90); By contrast the Court in *Doyon* calls the penalties “substantial depending on the gravity accorded through the AMPs Regulations” at 22.

<sup>285</sup> *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187 [*AAAMPA Regulations*](the fines range from \$500.00 for a minor violation s 5(1)(a) to a maximum of \$10 000.00 in 5(3) for a very serious violation. The gravity criteria is listed in s 6); While fines under s 65 the *Health of Animals Act* itself fines range from \$50 000.00 - \$250 000.00, fewer animal welfare cases proceed under this section (rather using the *AAAMPA* instead as it is easier to convict). In the cases that do use s 65, the court issues much lower fines than the maximum, for example in *R v Way*, [2012] OJ No 1067 the fine was \$2 500.00.

\$40 000.00 range.<sup>286</sup> The low fines set out in the *AAAMPA* are mirrored in some provincial animal welfare legislation.<sup>287</sup>

Low fines are both functionally and symbolically problematic. Functionally, the lower the fine, the more likely it is to be regarded as “just another cost of doing business”, making the likelihood of violating welfare legislation higher.<sup>288</sup> Low fines also signal a low value the lives of farmed animals, encouraging poor treatment and future violations.<sup>289</sup>

Rest and food intervals, ramp inclinations, and low fine limits are just three areas where the inadequate depth of protection provided for in the *Health of Animals Regulations* is illustrated. These and other insufficient bright line standards are pervasive in Canadian farmed animal legislation. However, as mentioned above, Canada’s farmed animal welfare laws tend to shy away from using metrics to prescribe standards, and instead use flexible terms to indicate legal welfare requirements.

## 2.4. Fragmented approach

The final problem area with Canada’s farmed animal welfare framework is its fragmented approach to animal protection. As introduced in Chapter Two, the fragmentation of laws

---

<sup>286</sup> Marc Massie et al, *Falling Behind - An International Comparison of Canada’s Animal Cruelty Legislation* (International Fund for Animal Welfare, 2008) at 14; UK *Animal Welfare Act* 2006, 2006 c 45 (20 000 gbp); New Zealand *Animal Welfare Act* (fines are \$50 000.00 to \$250 000.00 for strict liability offenses at s 25).

<sup>287</sup> “FACN Summary Report”, *supra* note 144 (for example, PEI has \$100.00 – 2 000.00 fine for animal cruelty at 10).

<sup>288</sup> There is some argument as to whether higher fines equal fewer violations, though many scholars believe higher fines to be an important part of effective regulations. See for example Prabhu, *supra* note 284. (“Low penalties do not deter non-compliance and therefore substantial fines are required” at 90).

<sup>289</sup> Hughes & Meyer, *supra* note 107 (“larger maximum fines and more severe terms of imprisonment can influence prosecutors and judges by showing the seriousness of the offences, helping to prevent trivialization of the issue. Also, larger penalties provide at least the possibility of commanding the attention of those engaged in large commercial operations, which might otherwise systematically profit from animal neglect” at 67); “WSPA, Curb the Cruelty”, *supra* note 2 (“[t]he total value of fines given for violations of the *Health of Animals Regulations* in 2006 was a mere \$221,800 across the country with individual fines ranging from \$500 to \$2,000”) at 33; Prabhu, *supra* note 284 (however, higher penalties trigger a higher amount of due process, slowing procedures in the process. Prabhu explains pros and cons of Administrative Monetary Penalties at 82-91).

is closely related to both Canada's federalism and the lack of consolidation of animal laws in each jurisdiction.<sup>290</sup> Laws are divided between federal and provincial jurisdictions and there is no legislation dedicated to farmed animal welfare – provisions are scattered across a variety of agricultural and anti-cruelty legislation.

It is common for the governments of federalist nations to experience issues with fragmentation. Inter-jurisdictional issues from environmental protection to securities regulations are much harder to manage when federal, provincial and even municipal governments get a say.<sup>291</sup> One scholar notes how the division of powers in a federalist state interferes with law-making and effective administration with respect to climate change regulation:

Regions are largely competent but the federal government retains the responsibility over certain aspects such as product standardization, protection against radiation and transit of waste. Regarding energy, the Regions have the competence over renewable energy policy and rational energy use, but the federal government controls nuclear energy and off-shore wind energy. As for transport policy, road transport, seaports, regional airports and public transport are subnational competences but rail transport and the national airport are federal responsibilities. Moreover, the federal government has the control over taxation, a policy instrument that is important in all policy domains. Indeed, while the spending autonomy of the subnational governments is very large, their power to levy taxes is limited [...] As a consequence of the incoherent allocation of competences, the different levels of government are highly dependent on one another if they want to attain a minimum degree of policy coherence, and certainly of effectiveness<sup>292</sup>

This passage highlights some of the difficulties with laws and federalism relating to jurisdictional interdependencies and shared jurisdiction. Federalism affects animal welfare law in similar ways as, by nature, it involves components of food safety, feed, animal and plant disease, import and export, transportation, agriculture, criminal, and

---

<sup>290</sup> Though most federal jurisdictions split responsibility for animal protection this way, including Australia, the United States and even Switzerland.

<sup>291</sup> Ander Happaerts, Simon Schunz & Hans Bruyninckx, "Federalism and Intergovernmental Relations: The Multi-Level Politics of Climate Change Policy in Belgium", (2012) 20:4 J Contemp Eur Stud 441-558 (local environmental problems, such as toxic spills, may be better served by federalism as local governments can respond more expediently to this kind of pressing issue. However, "in multi-level states, where competences are shared between national and subnational governments, climate change poses several co-ordination and co-operation challenges" at 442).

<sup>292</sup> *Ibid* at 443-444.

environmental law, and is similarly complicated by shared jurisdiction and inter-jurisdictional dependency.<sup>293</sup>

The fact that both federal and provincial jurisdictions are responsible for animal protection can lead to a problem of "too many cooks", as both provincial and federal authorities are responsible for the creation and implementation of animal welfare laws. Rather than leading to an overkill in protection, this tends to leave animals less protected than they would be if one central authority were responsible, as it allows politicians "pass the buck", with both federal and provincial authorities leaving it to the other to take the lead. This "delay[s] implementation and frustrates "democratic accountability".<sup>294</sup>

Administering and enforcing animal welfare provisions is also difficult because the provisions are scattered throughout a variety of statutes, many with purposes unrelated to animal welfare, which creates additional confusion. For example, the main purpose of the *Health of Animal* regulations is to stop the spread of disease from animals to humans. The transportation section is the only part of the regulations that addresses animal welfare, and only some provisions relate to animal protection. This results in confusion with regard to focus, which likely leads to a bifurcated and muddled approach to enforcement. Similarly, in the *Meat Inspection* regulations, animal welfare-related provisions are found under the "examination, inspection, and packaging and labeling"

---

<sup>293</sup> Philip Rocco, *The Political Roots of Uncooperative Federalism* (Berkeley: Scholars Strategy Network, 2014) ("constraints on what federal agencies could do without the approval of state governors and legislators, [make] each step in government action more complex". Policy failures are a hazard of law making and administration in federal states, as laws may conflict with each other at 2); In the farmed animal realm, transportation and slaughter are examples where the federal government only has jurisdiction if the animal is intended for consumption outside the province. In some instances federal paramountcy may interfere with the functioning and legitimacy of provincial laws. In others, provincial initiatives may hamper federal policy by constraining legislation in areas of concurrent jurisdiction; World Society for the Protection of Animals, "WSPA Humane Treatment of Animals, Harris/Decima Poll Results" (3 December 2010), online: WSPA <<http://www.animalwelfarebc.org/pdf/WSPA-HumaneTreatmentofAnimalsExecutiveSummary.pdf>> (in addition, different political party agendas and priorities federally and provincially also contribute to the federalism fragmentation issue. For example, the Conservative party is less likely to support animal welfare initiatives than a more left-wing group; (the poll showed that in regard to several components of animal welfare law, conservatives were 10%-26% less supportive of animal welfare initiatives. The survey specifically noted that conservative voters are 8-23% less likely to support a Universal Declaration on Animal Welfare at the United Nations, and this political group is consistently the least supportive of animal welfare protection measures).

<sup>294</sup> Rocco, *ibid* at 2; Happaerts at 448.

heading in Part III, and there is no mention of animal welfare as a purpose in the enabling legislation. Again, this leads to confusion for enforcement agents, makes inconsistent enforcement more likely and means that animal welfare takes a back seat to other legislative objectives.<sup>295</sup>

Another problem with fragmentation is that it makes it harder for the public to engage with farmed animal issues. The UNFAO cites the public, or “civil society”, as an important contributor to animal welfare laws and a “key partner in implementation” of resulting legislation.<sup>296</sup> The absence of a central welfare statute makes it challenging to find a clear focal point for the public to engage in political discussions about animal protection laws and legal issues; in the current protection framework, animal protection cannot be talked about in a general way that encompasses respect and protection for all animals, but must be discussed and addressed in the context of multiple pieces of legislation with unrelated objectives, creating confusion and complexity.<sup>297</sup>

The scattered animal welfare provisions also make it difficult to include formal mechanisms for public involvement in animal protection. Centralized animal protection statutes can involve civil society through provisions that require a public participatory process for drafting subsidiary legislation. Such a statute would facilitate public discourse and engagement – for example New Zealand’s *Animal Welfare Act* includes mandatory review periods that keep farmed animal welfare concerns on the political agenda and in the minds of public, government, and industry.<sup>298</sup> This is because each code must be

---

<sup>295</sup> Brown, *supra* note 267 (“[t]he result [of the fragmented approach] is a bit of a regulatory hodge-podge and overall lack of consistency that tends to weaken legislative credibility and make the laws more difficult to enforce”).

<sup>296</sup> This is largely because the protection of animal welfare is closely related to public demand and our general perception of how animals should be treated.

<sup>297</sup> Peter Sankoff, “Five Years of the ‘New’ Animal Welfare Regime: Lessons Learned From New Zealand’s Decision to Modernize Its Animal Welfare Legislation” (2005) 11 *Animal L. Rev.* 7 [Sankoff, “Five Years”] (the author notes his belief that New Zealand’s *Animal Welfare Act*, while not fully functional, at least is effective in that it sends a message to “that animal welfare is a matter of public importance, and one to be taken seriously” and “creat(es) a public recognition that laws protecting the interests of animals are important” at 308).

<sup>298</sup> *Animal Welfare Act*, 1999, s 78; Sankoff, “Public Discourse”, *supra* note 103 (whereas review of Canadian animal welfare provisions is left “to the whim of legislators” at 303).

reviewed once every ten years and, due to the staggered review periods, almost every year there is an animal issue in the spotlight.

A centralized animal welfare act would reduce issues with federalism and allow for the inclusion of provisions that specify objectives such as raising societal awareness of animal issues and the “establishment of a culture of respect for animal welfare”.<sup>299</sup> For example, Japan’s *Act of Welfare and Management of Animals (1973)* refers to raising public awareness “with regard to the welfare and proper care of animals” and Israel’s *Animal Protection Law (1994)* establishes a fund for public “education, information, training and assistance”.<sup>300</sup> Preambles and purpose sections in the dedicated animal welfare legislation of other jurisdictions clearly state the importance of protecting farmed animals as sentient creatures.<sup>301</sup> Taiwan and the Philippines even include a directive to “have compassion for living creatures” in their respective constitutions.<sup>302</sup> This type of provision, included in a central legislation with an unequivocal purpose to protect animal welfare, could serve as a valuable starting point for improving farmed animal welfare in Canada, and could help to minimize issues associated with fragmentation.

---

<sup>299</sup> Vapnek, *supra* note 131 (the government of several jurisdictions – such as New Zealand and a number of European countries – have enacted animal welfare statutes under which provisions relating to all uses of animals can be found at 43 to 45); Sankoff, “Public Discourse”, *ibid* (“[i]n contrast to Canada’s fragmented legislation, New Zealand centralized all of its provisions on animal treatment within one statute: the *Animal Welfare Act* of 1999 (AWA)” at 301).

<sup>300</sup> In article 3 and s 14(b), respectively.

<sup>301</sup> The European Community has issued directives created specifically to deal with the protection and treatment of farmed animals. See Chapter One for examples of various European animal protection statutes. The European Unions’ laws and publications continually highlight the importance of animal welfare. The Amsterdam Treaty of 1997 (*Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts*, signed on 2 October 1997) recognized animals as sentient beings rather than just property or agricultural products. See also: EU Animal Welfare Strategy 2012-2015, EU 2012 Directorate General for Health and Consumers European Commission – B-1049 Brussels (“European citizens care deeply about animal welfare, and in recent years more and more people have become concerned about the ethical treatment of animals. Thanks to the European Union’s Lisbon Treaty, animals are recognized as sentient beings, meaning that they are capable of feeling pleasure and pain” at 1); Vapnek, *supra* note 131 (the FAO notes that Philippines, Taiwan, Tanzania, India have a constitutional base to have compassion for living creatures at 27).

<sup>302</sup> Vapnek, *ibid* at 27.

### **3. Chapter conclusion**

Canada's farmed animal welfare laws are not without merit. The existence of animal protection provisions in Canadian law sends a message that the welfare of animals is important and reflects society's view that animals should be treated humanely. The current laws may facilitate the introduction of further protection in the future through provisions that allow for the creation of more advanced subsidiary animal welfare regulations, and the new laws could be supported by preexisting enforcement powers. In addition, the flexible language found in most animal welfare provisions may allow the law to advance through judicial interpretation, preventing animal welfare regulations from becoming stagnant.<sup>303</sup>

In spite of these strengths, the inherent shortcomings of laws concerning farmed animal protection in Canada are significant, and result in a lacuna of meaningful protection for the majority of an animal's life. The use of flexible and subjective language is a double-edged sword. Though cited as a potential strength, it may also be the law's most significant weakness as it currently serves to condone many of the controversial confinement farming and industrial practices. Having statutes that address animal welfare is generally beneficial, but most crucial issues, including animal housing and painful husbandry practices, remain unaddressed and existing provisions lack the strength to be effective. The fragmented animal welfare law in Canada due to federalism and an unconsolidated approach fuels these issues by ensuring that animal welfare takes a back seat to other issues and impedes the public from engaging to advocate for more protection.

Together these inefficacies create a situation where current farmed animal welfare laws in Canada are supporting systematic animal suffering and abuse rather than providing meaningful protection.

---

<sup>303</sup> Vapnek, *ibid* at 9 (the book encourages specific welfare provisions to be part of regulations as they are more easily changed and can be updated to reflect the latest science on animal welfare).

## CHAPTER 4 - CONCLUSION

The treatment of industrially farmed animals in Canada is out of step with Canadian values. In spite of federal and provincial laws addressing cruelty, Canada's farmed animals remain among the most inhumanely treated in the developed world. In this paper, a look at the federal *Health of Animals Act* and regulations helps shed light on where Canada's farmed animal protection framework has fallen short of ensuring a meaningful degree of agricultural animal welfare.

The breakdown of the types of provisions in the *Health of Animals Act* and regulations reveals a significant amount about laws relating to farmed animal protection in Canada. Most of the laws that relate to farmed animals are geared towards achieving objectives unrelated to animal welfare, and a substantial portion have no impact on animal welfare at all. This mix of provisions relating to farmed animal is mirrored in the spread of legislation that touches on farmed animal welfare across Canada.

The *Health of Animals Act* is a microcosm of the issues with the efficacy of Canada's legal framework for farmed animal protection. It encapsulates the four central issues inhibiting the efficacy of Canada's farmed animal welfare framework including scope, flexible language, strength of provisions and fragmentation.

The scope of the protection in the *Health of Animals Act* is limited to the transportation of farmed animals. As such it reflects the lacunae of protection in Canada with respect to the critical areas of welfare legislation identified by the UNFAO including housing, transportation, slaughter and management. This is a major impediment to agriculture animal welfare, as farmed animals remain unprotected from systemic abuse throughout most of their lives. In order effectively benefit animals, the coverage of laws must be expanded to include aspects of housing and management, which profoundly affect an animal's welfare on a daily basis.

Even in legislation where vital areas of farmed animal protection, such as slaughter and transportation, are addressed, the function of farmed animal protection laws is impeded

through the use of flexible language. While flexible language has the potential to advance farmed animal welfare law, the subjective language in the provisions in the *Health of Animals Act* and other animal welfare laws across Canada is commonly interpreted to favour human over animal interests.<sup>304</sup> This means that although provisions appear to ensure a reasonable degree of animal welfare, in practice they offer little in the way of protection.<sup>305</sup>

Bright line rules specifying quantifiable standards can help to avoid issues with flexible language. Though there are currently bright line rules in the *Health of Animals* regulations and other welfare laws in Canada, their numbers are few and there are issues with the strength of provisions. For example, specifications for maximum transport times and ramp inclinations are not strict enough to make a difference in welfare. Going forward, bright line rules should be used more frequently and should ensure that, at a minimum, requirements are in line with the latest scientific evidence and in step with other developed countries.

The *Health of Animals Act* and regulations also help paint a picture the issues with the highly fragmented farmed animal protection framework in Canada. The *Act* deals only with issues in the federal government's jurisdiction, reflecting the way in which

---

<sup>304</sup> *R v Maple Lodge Farms*, *supra* note 66 (however, this is not always the case. For example, the recent *R v Maple Lodge Farms* case opens with a Mahatma Gandhi quote: “the greatness of a nation and its moral progress can be judged by the way its animals are treated” at para 1, reminding readers that a nation can be judged on how it treats its animals. It goes on to interpret flexible provisions in the *Health of Animals* regulations and finds that, in this case, the interest of chickens in not suffering outweighed human interest in economic gain).

<sup>305</sup> However, documentaries and articles exposing the routinely inhumane treatment of agriculture animals have begun appearing more frequently in the media as animal issues further penetrate societal consciousness, it is possible that the flexible provisions will be interpreted in a less consistently detrimental fashion. See for example: CBC Marketplace “The Trouble With Turkeys & Spot Check: Social Media” (14 March 2014), online: CBC <<http://www.cbc.ca/marketplace/episodes/2013-2014/the-trouble-with-turkey>> [“Trouble With Turkeys”]; CTV News, “W5 – Behind the Barn Door” (documentary) (18 October 2013) online: CTV <<http://www.ctvnews.ca/w5/undercover-investigation-reveals-horrific-conditions-within-egg-industry-1.1503296#ixzz2nmk3xplf>> [“Behind the Barn Door”]; Kennedy, Tom. “W5 - Food for Thought” (Documentary), *CTV* (7 December 2012), online: CTV <<http://www.ctvnews.ca/w5/undercover-investigation-reveals-disturbing-and-inhumane-treatment-of-factory-farm-animals-1.1070919>> [“Food for Thought”]; “Revealed: No Country for animals” (Documentary), *Global News* (29 July 2010), online: Global News <<http://globalnews.ca/news/94400/revealed-no-country-for-animals/>> [“No Country for Animals”].

federalism fragments jurisdiction over animal welfare and inhibits effective protection. In addition, the *Act* only contains some of the federal agricultural regulations applicable to farmed animals, and ensuring food safety is arguably the primary purpose. This results in unclear priorities and confusion, thereby illustrating the issues of fragmentation of scattered provisions. The problems created by the fragmentation of farmed animal welfare laws in Canada, such as lack of a focal point to advance welfare laws, and difficulty administering and enforcing laws, could be reduced through the creation of a central piece of farmed animal welfare legislation in each jurisdiction, and would ideally be administered by an independent animal welfare agency.

In spite of these weaknesses, Canada's current laws are arguably better than nothing: the existence of welfare laws is reflective of the belief most Canadians hold that farmed animals should be treated humanely. The design of the current laws makes it easier for ministers and governors in council to expand laws and for the administration and enforcement to be encompassed in the current regime. The flexible language used also allows for expanded protection through generous interpretation of protection provisions. However, these strengths are not currently serving to counteract the weaknesses in Canada's farmed animal welfare framework, and legislation remains ineffective.

Addressing the issues outlined above by updating and creating new central legislation devoted to farmed animal welfare would go a long way in ensuring protection for agricultural animals in Canada. Avoiding flexible language, creating more strict bright line rules, including laws to ensure the welfare of farmed animals with respect to housing and management, and more comprehensively addressing slaughter and transport would all help to fix the issues with the current framework. However, the passage of new farmed animal protection laws would face significant opposition by animal use industries, and the government has shown no signs that farmed animal welfare will be on the political agenda in the near future.

Given the political disinterest and industry opposition to the creation of stronger farmed animal welfare laws, animal welfare advancement strategies that make use of the NFACC

Codes, discussed in Chapter Two, may represent an easier path forward. The Codes are not afflicted to the same degree by the issues with farmed animal legislation: they avoid fragmentation as they can be used in both federal and provincial jurisdictions, can all be found in a central location, and most importantly have the unequivocal stated purpose of animal protection. They also provide comprehensive coverage as compared to existing law - the scope of protection is much broader than in legislation, addressing housing and management in addition to transport and slaughter. Though use of flexible language, strength of protection and insufficient bright line rules are still issues with the Codes, were they binding, they would represent a marked improvement over Canada's current agricultural animal welfare laws. As such, a good strategy for animal protection may be to find a way to make the Codes *de facto* law.

Although they are not law, incorporating the Codes through reference in existing legislation would be one way to make them binding. This could be done through invoking certain provisions or even an entire Code. Adopting this approach in agricultural legislation that already contains some farmed animal welfare provisions would make more sense than referencing them in anti-cruelty legislation, as the creation of the Codes has a highly agricultural underpinning.<sup>306</sup> On both federal and provincial levels, this approach to improved welfare would likely be a more successful solution than attempting to create new welfare laws outright, as the industry is heavily involved in their creation of the Codes and may be more willing to be bound by their own terms.<sup>307</sup>

A softer option, illustrated in the Codes section in Chapter Two, would be to reference the Codes as standards in legislation, but not make them *de facto* law. This would at least force courts to consider the Codes when interpreting flexible language and attract less industry opposition. While this is a step in the right direction, it does not go far enough in protecting animals as a vulnerable group.

---

<sup>306</sup> As per Chapter Two, it is largely representatives from the agricultural industry and governmental agricultural departments, along side the National Farmed Animal Care Council who create the Codes.

<sup>307</sup> In fact, for the newer Codes, the NFACC holds copyright with the respective national association of farmers e.g. the Canadian Pork Council, the Canadian Cattlemen's Association, the Dairy Farmers of Canada, the Canadian Sheep Federation etc. At least in theory, it should be harder for industry to argue against adoption of the Codes when their name is on them.

Whether the way forward entails eventually creating improved farmed animal welfare laws or embellishing and invoking Codes in existing legislation, enforcement may be the biggest hurdle to making the protection effective. Even in the current framework, documentaries have revealed that a significant amount of suffering inflicted on farmed animals, such as cruel handling and improper euthanasia, is actually illegal, but remains common practice due to the low level of official oversight of animal farming operations.<sup>308</sup> Although European countries have much better farmed animal welfare legislation in place, compliance still remains a problem.<sup>309</sup> Ensuring effective oversight and enforcement will be critical to compliance and efficacy with any improved protection framework.<sup>310</sup>

In conclusion, revamping Canada's existing farmed animal welfare laws through addressing the problem areas identified in this paper would likely result in a significant increase in protection for agricultural animals. However, there is a lack of interest on the part of the Canadian government in strengthening laws to better protect farmed animals and a large amount of potential industry opposition to increased legal protection. As such, improving the NFACC Codes and invoking them in federal and provincial legislation may be Canada's best bet for the first steps in farmed animal protection going forward. Either path would require that changes to the protection framework be supported by enforcement mechanisms that ensure compliance in order to be effective. In any event, as

---

<sup>308</sup> See eg: "Behind the Barn Door", "Food for Thought", "Trouble with Turkeys" and "No Country for Animals", *supra* note 305 (coverage shows workers kicking, throwing, punching and otherwise needlessly physically abusing animals on a regular basis).

<sup>309</sup> See eg: EC, Commission, Health and Consumer Protection Directorate, *Final report of a specific audit carried out in Italy from 15 to 26 March 2010 in order to evaluate the implementation of controls for animal welfare on farms and during transport in the context of a general audit* (Brussels: EC, 2010) <[http://ec.europa.eu/food/fvo/rep\\_details\\_en.cfm?rep\\_id=2842](http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2842)> (for example, as of 2010, 84% of Italian farms were still using un-enriched cages for hens at I); EC, Commission, Health and Consumer Protection Directorate, *Final report of an audit carried out in Italy from 09 to 18 November 2011 in order to evaluate the implementation of controls for animal welfare on farms and during transport*, (Brussels: EC, 2010) <[http://ec.europa.eu/food/fvo/rep\\_details\\_en.cfm?rep\\_id=2526](http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2526)> (for example forced moulting is condoned in some regions at 2); Widespread Breaches of Pig Welfare in the EU Summary Report (Godalming, UK: Compassion in World Farming, 2013)(these reports on investigations of farms in the EU confirm that contrary to regulation, overcrowding and routine tail docking are wide spread and few facilities are providing the required enrichment materials for pigs).

<sup>310</sup> Prabhu, *supra* note 284 at 197.

illustrated by using the *Health of Animals Act* and regulations in this paper, Canada's current legal framework for farmed animal protection is flawed, fails to protect agricultural animals in any meaningful way, and is in drastic need of repair.

# BIBLIOGRAPHY

## *Primary Sources*

### Legislation

#### **Canadian**

- Agriculture and Agri-Food Administrative Monetary Penalties Act*, SC 1995, c 40.
- Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187.
- Agricultural Produce Grading Act*, RSBC 1996, c 11.
- Agricultural Produce Grading Act Hatchery Regulation*, BC Reg 101/78.
- Agricultural Products Marketing Act*, RSC 1985, c A-6.
- Animal Care Act*, CCSM c A84.
- Animal Care Regulation*, Man Reg 126/98.
- Animal Health Act*, RSY 2002, c 5.
- Animal Health Act*, SA 2007, c A-40.2.
- Animal Health and Protection Act*, RSPEI 1988, c A-11.1.
- Animal Health and Protection Act*, SNL 2010, c A-9.1.
- Animal Health Protection Act*, RSQ, c P-42.
- Animal Health Regulations*, PEI Reg EC193/91.
- Animal Liability Act*, CCSM c A95.
- Agricultural Operation Practices Act* RSA 2000, c A-7.
- Animal Protection Act*, 1999, SS 1999, c A-21.1.
- Animal Protection Act*, RSA 2000, c A-41.
- Animal Protection Act*, RSY 2002, c 6.
- Animal Protection Act*, SNS 2008, c 33.
- Animal Protection Regulations*, 2000, RRS c A-21.1 Reg 1.
- Animal Protection Regulation*, Alta Reg 203/2005.
- Animal Protection Regulations*, PEI Reg EC71/90.
- Animal Protection Standards Regulations* NLR 36/12.
- Baby Chick Protection Act*, RSNS 1989, c 29.
- Brand Act*, RSA 2000, c B-6.
- Canada Agricultural Products Act*, RSC 1985, c 20 (4th Supp).
- Canadian Dairy Commission Act*, RSC 1985, c C-15.
- Canadian Food Inspection Agency Act*, SC 1997, c 6.
- Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3, reprinted in RSC 1985, App. II No. 5.

*Consumer Packaging and Labelling Act*, RSC 1985, c C-38.  
*Criminal Code*, RSC 1985, c C-46.  
*Dairy Act*, CCSM c D10.  
*Dairy Industry Act*, RSA 2000, c D-2.  
*Dairy Products Regulations*, SOR/79-840.  
*Designated Communicable Diseases Regulation*, Alta Reg 301/2002.  
*Destruction and Disposal of Dead Animals Regulation*, Alta Reg 229/2000.  
*Disposal of Dead Farm Animals Regulations* O Reg106/09.  
*Egg Regulations*, CRC, c 284.  
*Federal Courts Act*, RSC, 1985, c. F-7.  
*Food Products Act*, RSQ, c P-29.  
*Food, Regulation respecting*, RRQ, c P-29, r 1.  
*Food Safety Act*, SBC 2002, c 28.  
*Food Safety and Quality Act*, 2001, SO 2001, c 20.  
*General*, RRO 1990, Reg 729 (*Livestock Community Sales Act*).  
*General Regulations*, PEI Reg EC147/68 (*Livestock Community Auction Sales Act*).  
*Hatchery Licensing and Hatchery Supply Flock Policy Regulation*, NB Reg 82-97.  
*Hatchery Regulations*, CRC, c 1023.  
*Health of Animals Act*, SC 1990, c 21.  
*Health of Animals Regulations*, CRC, c 296.  
*Herd and Fencing Act*, RSNWT (Nu) 1988, c H-2.  
*Horned Cattle Purchases Act*, RSS 1978, c H-6 s. 3.  
*Livestock Act*, RSBC 1996, c 270.  
*Livestock and Livestock Products Act*, CCSM c L170.  
*Livestock and Livestock Products Act*, RSA 2000, c L-18.  
*Livestock and Livestock Regulations Products Act*, RSO 1990, c L.20.  
*Livestock and Poultry Carcass Grading Regulations*, SOR/92-541.  
*Livestock Community Sales Act*, RSO 1990, c L.22.  
*Livestock Dealer Regulations*, 1995, RRS c A-20.2 Reg 9.  
*Livestock Diseases Act*, RSA 2000, c L-15.  
*Livestock Disease Control Regulation*, Alta Reg 69/2000.  
*Livestock Identification and Commerce Act* SA 2006, c L-16.2  
*Livestock Identification and Commerce Delegation Regulation*, Alta Reg 207/2008.  
*Livestock Identification and Commerce General Regulation*, Alta Reg 208/2008.  
*Livestock Industry Diversification Act*, RSA 2000, c L-17.

*Livestock Industry Diversification Act*, SA 2006, c L-16.2.

*Livestock Inspection and Transportation Regulations*, 1978, Sask Reg 242/78.

*Livestock Market and Livestock Assembling Station Operator's Licence Regulation*, Alta Reg 110/2009.

*Livestock Market and Livestock Assembling Station Regulation*, Alta Reg 70/2000.

*Livestock Operations Act*, SNB 1998, c L-11.01.

*Meat*, O Reg 31/05 (*Food Safety and Quality Act*), 2001, SO 2001, c 20.

*Meat Inspection Act*, RSA 2000, c M-9.

*Meat Inspection Act*, RSC, 1985, c 25 (1st Supp).

*Meat Inspection Act*, SNS 1996, c 6.

*Meat Inspection Regulation*, BC Reg 349/2004.

*Meat Inspection Regulations*, 1990 SOR/90-288.

*Meat Inspection Regulations*, CNLR 801/96.

*Meat Inspection Regulations*, NS Reg 46/90.

*Milk Act*, RSO 1990, c M-12.

*Milk Industry Act*, RSBC 1996, c 289.

*Milk Industry Standards Regulation*, BC Reg 464/81.

*Natural Products Act*, SNB 1999, c N-1.2.

*Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O-36.

*Poultry Health Protection Act*, RSNB 2011, c 207.

*Prevention of Cruelty to Animals Act*, RSBC 1996, c 372.

*Prevention of Cruelty to Animals Regulation*, BC Reg 231/95.

*Production Animal Medicine Regulation*, Alta Reg 299/2003

*Public Health Act*, RSNWT (Nu) 1988, c P-12.

*Quebec Food*, Regulation respecting, RRQ, c P-29.

*Reportable and Notifiable Diseases Regulation*, Alta Reg 209/2008.

*Rules of the Review Tribunal (Agriculture and Agri-Food)*, SOR/99-451.

*Safe Food for Canadians Act*, SC 2012, c 24

*Sale of livestock by auction*, Regulation respecting the, RRQ, c P-42, r 11.

*Slaughter House Regulations*, PEI Reg EC478/62.

*Society for the Prevention of Cruelty to Animals Act*, RSNB 1973, c S-12.

*Society for the Prevention of Cruelty to Animals Act*, General Regulation, NB Reg 2000-4.

*Standards of Care*, O Reg 60/09.

*Swine Traceability Regulation*, Alta Reg 218/2011.

*Traceability Cattle Identification Regulation*, Alta Reg 333/2009.

*Traceability Premises Identification Regulation*, Alta Reg 200/2008.

## **International**

*Amsterdam Treaty of 1997 (Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts).*

*Animal Welfare Act 2006 (England)*, 2006, c45.

*Animal Welfare Act 1999 (NZ)*, 1999/142.

*Animal Welfare Act (Norway).*

*Animal Welfare Act*, 49 USC §80502.

*Animal Welfare (Pigs)*, Code of Welfare 2010 (NZ).

EC, *Commission Directive 2001/93/EC of 9 November 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs* [2001] OJ, L 316.

EC, *Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens*, [2004], OJ, L 203.

EC, *Council Directive 2001/88/EC of 23 October 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs*, [2001] OJ, L 316.

EC, *Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production* [2007] OJ L 182/19.

EC, *Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves* (Codified version), [2008] OJ L 010.

EC, *Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97*, [2004] OJ L 3/1.

*Finland Animal Welfare Act* (247/1996, amendments up to 1430/2006 included) and *Animal Welfare Decree* (396/1996, amendments up to 401/2006 included).

*Swiss Animal Protection Act*, 1978.

*Swedish Animal Welfare Act*, SFS 1998:56.

*Swiss Federal Act on Animal Protection of March 9, 1978*, Swiss APA 1978.

*UK Animal Welfare Act 2006*, 2006 c 45.

*Welfare of Farmed Animals (England) Regulations*, 2007.

*Welfare of Livestock Regulations 1994 (UK)*, 1994/21263.

## **Jurisprudence**

*Bedford v Canada (Attorney General)*, 2010 ONCA 814.

*Canada (Attorney General) v Porcherie des Cèdres Inc*, 2005 FCA 59.

*Doyon v Canada (Attorney General)*, 2009 FCA 152.

*Ford v Wiley*, UK [1889], 23 QBD 203.

*Jeffrey Bogaerts and Attorney General of Ontario*, [2013] Court File No. 749/13, (Ont Sup Ct J).  
*Reece v Edmonton (City)*, 2011 ABCA 238.  
*Regina v Pacific Meat Company Limited et al*, [1957] BCJ No 98, 24 WWR 37, 119 CCC 237.  
*R v Cunningham and Whiffin*, 2011 BCPC 358.  
*R v DL*, 1999 ABPC 41.  
*R v Maple Lodge Farms*, 2013 ONCJ 535, 110 WCB (2d) 280.  
*R v Muhlbach*, 2009 CarswellAlta 2352.  
*R v Muhlbach*, 2011 ABQB 9.  
*R v Ménard (1978)*, 43 CCC (2d) 458.

## ***Secondary Sources***

### **Books**

Bennett, Richard. “Animal Welfare, Economics and Policy” in Michael Appleby ed, *Animal Welfare* (CAB International, 1997).  
 Bisgould, Lesli. *Animals and the Law* (Toronto: Irwin Law Inc, 2011).  
 Campbell, Colin and Thomas Campbell, *The China Study* (Dallas: BenBella Books, 2006).  
 Dawkins, Marian Stamp. *Why Animals Matter* (New York: Oxford University Press, 2012).  
 Francione, Gary. *Animals, Property and the Law* (Philadelphia: Temple University Press, 1995).  
 Francione, Gary. *Introduction to Animal Rights: Your Child or the Dog* (Philadelphia: Temple University Press, 2000).  
 Francione, Gary and Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (New York: Columbia University Press, 2010).  
 Gall, Gerald. *The Canadian Legal System*, 5th ed. (Scarborough, Ontario: Thomson Canada Ltd, 2004)  
 Garner, Bryan A, ed *Black’s Law Dictionary* 8<sup>th</sup> ed. (St. Paul: Thomson/West, 2005).  
 Hutchinson, Allan C. *Evolution and the Common Law* (Cambridge: Cambridge University Press, 2005).  
 Knowles, TG and PD Warriss. “Stress physiology of animals during transport” in: Temple Grandin ed, *Livestock Handling and Transport*, 2nd ed (Wallingford: CAB International, 2000).  
 Marcus, Erik. *Meat Market: Animals, Ethics, and Money* (Boston: Bio Press, 2005).  
 Montgomery, Charlotte. *Blood Relations: Animals, Humans, and Politics* (Toronto: Between the Lines, 2000).  
 Quirk, Hannah, Toby Seddon, and Graham Smith (eds). *Regulation and Criminal Justice: Innovations in Policy and Research* (Cambridge: Cambridge University Press, 2003).  
 Radford, Mike. *Animal Welfare Law in Britain, Regulation and Responsibility* (Oxford: University Press 2001).

Sankoff, Peter and Steven White, eds. *Animal Law in Australasia* (Annandale: The Federation Press, 2009).

Scully, Matthew. *Dominion – the Power of Man, the Suffering of Animals, and the Call to Mercy* (New York: St. Martin's Press, 2002).

Sherry, Clifford J. *Animal Rights*, 2<sup>nd</sup> ed. (Santa Barbara: Library of Congress Cataloging-in-Publication Data, 2009).

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

Sorenson, John. *About Canada – Animal Rights* (Fenwood Publishing: Nova Scotia 2010).

Twining, William and David Miers, *How to Do Things with Rules*, 3<sup>rd</sup> ed. (London: George Weidenfield and Nicolson Ltd., 1991).

Wise, Stephen. *Rattling the Cage: Towards Legal Rights for Animals* (Cambridge, Massachusetts: Perseus Books, 1999).

Vapnek, Jessica and Megan Chapman, *Legislative and Regulatory Options for Animal Welfare* (Rome: Food and Agriculture Organization of the United Nations, 2010).

### **Periodicals and essays**

Anderson, Jerry L. "Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement", *Stanford Journal of Animal Law and Policy*, Vol. 4, No. 1, 2011, Drake University Law School Research Paper No. 11-09.

Dale, Arnja. "Devil in Disguise" in Peter Sankoff and Steven White eds, *Animal Law in Australasia* (Sydney: The Federation Press, 2009).

Duncan, IJH. "Science-based assessment of animal welfare: farm animals" (2005) 24:2 *Rev sci tech* 483.

Garner, Robert. "Animal Welfare: A Political Defense", 1 (2006) *J Animal L & Ethics* 161.

Happaerts, Ander, Simon Schunz & Hans Bruyninckx, "Federalism and Intergovernmental Relations: The Multi-Level Politics of Climate Change Policy in Belgium", (2012) 20:4 *J Contemp Eur Stud* 441-558

Hughes, Elaine L. and Christiane Meyer. "Animal Welfare Law in Canada and Europe" (2000) 6 *Animal L* 23.

Paul, Jeremy. "A Bedtime Story" (1998) 74 *Va L Rev* 915.

Ponzetto, A Giacomo and Patricio AM Fernandez. "Case Law versus Statute Law: An Evolutionary Comparison", *Journal of Legal Studies*, 37:2 (2008) 379.

Rocco, Philip, *The Political Roots of Uncooperative Federalism* (Berkeley: Scholars Strategy Network, 2014)

Sankoff, Peter. "The Animal Rights Debate and the Expansion of Public Discourse: Is it Possible for the Law Protecting Animals to Simultaneously Fail and Succeed?" (2012) 18:2 *Animal L* 281.

Satz, Ani B. "Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property" (2009) 16:2 *Animal L* 65.

Schaffner, Joan E. "Linking Domestic Violence, Child Abuse, and Animal Cruelty" (2006) George Washington, Legal Studies Research Paper No 307.

Sharman, Katrina. "Farm Animals and Welfare Law: An Unhappy Union" in Peter Sankoff &

Steven White eds, *Animal Law in Australasia* (Sydney: The Federation Press, 2009).

Skibinsky, Christina G. "Changes in Store for the Livestock Industry? Canada's Recurring Proposed Animal Cruelty Amendments" (2005) 68 Sask L Rev 173.

Sankoff, Peter. "Five Years of the 'New' Animal Welfare Regime: Lessons Learned From New Zealand's Decision to Modernize Its Animal Welfare Legislation" (2005) 11 Animal L Rev 7.

Sankoff, Peter. "The Welfare Paradigm: Making the World a Better Place for Animals?" in Peter Sankoff & Steven White eds, *Animal Law in Australasia* (Sydney: The Federation Press, 2009).

Williams, Cassandra Carkuff. "The link Between Animal Abuse and Human Violence" (2011) 1:1 J Animal L & Ethics.

Zerbe, Richard O. "Justice and the Evolution of the Common Law" (2006) 3:1 JL, Econ & Pol'y 81.

## **Reports**

Bisgould, Lesli. Wendy King and Jennifer Stopford. "Anything Goes: An Overview of Canada's Legal Approach to Animals on Factory Farms" (Toronto: April 2001).

Cockram, Dr Michael. "Transportation of animals for slaughter in Canada: current practice, welfare issues and regulatory control" (Charlottown: Atlantic Veterinary College University of Prince Edward Island) (accessed 15 May 2013), online:  
[http://www.awfc.ca/english/news/upei\\_program.pdf](http://www.awfc.ca/english/news/upei_program.pdf).

Department for Environment, Food and Rural Affairs, "Guidance note on the licensing and training of slaughtermen" (London, DEFRA, 2011).

EC, Commission, *Communication from the Commission to the Council and the European Parliament on the welfare of intensively kept pigs in particularly taking into account the welfare of sows reared in varying degrees of confinement and in groups* (Brussels: EC, 2001).

EC, Commission, *Report of the Scientific Veterinary Committee on the welfare of intensively kept pigs* (Brussels: EC, 1997).

EC, Commission, Health and Consumer Protection Directorate, *Report of the Scientific Committee on Animal Health and Animal Welfare on The Welfare of Chickens Kept for Meat Production (Broilers)* (Brussels: EC, 2000).

EC, Commission, Health and Consumer Protection Directorate, *Final report of a specific audit carried out in Italy from 15 to 26 March 2010 in order to evaluate the implementation of controls for animal welfare on farms and during transport in the context of a general audit* (Brussels: EC, 2010).

EC, Commission, Health and Consumer Protection Directorate, *Final report of an audit carried out in Italy from 09 to 18 November 2011 in order to evaluate the implementation of controls for animal welfare on farms and during transport*, (Brussels: EC, 2010).

EC, Commission, Scientific Veterinary Welfare Section, *Report of the Welfare of Laying Hens*, Directorate General for Agriculture, VI/BII.2 (Brussels: EC, 1996).

Europa, *Animal welfare during transport*, Summaries of EU legislation: Council Regulation (EC) No1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97.

European Commission. “Communication from the Commission to the Council and the European Parliament on the welfare of intensively kept pigs in particularly taking into account the welfare of sows reared in varying degrees of confinement and in groups” (Brussels: European Commission, 2001).

———. “EU Animal Welfare Strategy 2012-2015”, EU 2012 Directorate General for Health and Consumers European Commission – B-1049 Brussels.

Evaluation of the EU Policy on Animal Welfare & Possible Options for the Future (SANCO Food Policy Evaluation Consortium GK, Directorate-General for Health and Consumers) available online: EU Policy on Animal Welfare  
<<http://www.eupaw.eu/docs/Executive%20Summary%20-%20SANCO%20-%20Animal%20Welfare%20Evaluation%20final.pdf>>.

Farm Animal Council Network, “A Summary Report On Farm Animal Welfare Law in Canada For the Farm Animal Council Network” (Winter 2013), online: NFACC  
<<http://www.nfacc.ca/resources/Farm%20Animal%20Welfare%20Law%20in%20Canada.pdf>>.

Francois, Twyla. “Broken Wings: The Breakdown of Animal Protection in the Transportation and Slaughter of Meat Poultry in Canada” (Vancouver: Canadians for the Ethical Treatment of Food Animals, 2009).

———, “Investigation of Boar Bashing, Tooth Breaking and Snout Cutting at Ottawa Livestock Exchange (formerly Leo’s Livestock Exchange Ltd.) and Investigation of Slaughterhouses that accept these boars: Hebert & Fils and Viandes Giroux”, External Report (Winnipeg: Animals Angels’, 2007).

Humane Society of the United States, “An HSUS Report: The Welfare of Intensively Confined Animals in Battery Cages, Gestation Crates, and Veal Crates” (accessed 16 March 2013), online: HSUS <[www.humanesociety.org/.../hsus-the-welfare-of-intensively-confined-animals.pdf](http://www.humanesociety.org/.../hsus-the-welfare-of-intensively-confined-animals.pdf)>.

———, “An HSUS Report: Welfare Issues with Tail Docking of Cows in the Dairy Industry” (October 2012), online: HSUS <[www.humanesociety.org/.../HSUS-Report-on-Tail-Docking-of-Dairy-Cows.pdf](http://www.humanesociety.org/.../HSUS-Report-on-Tail-Docking-of-Dairy-Cows.pdf)>.

Levenson, Karen. “A Comparison of Canadian and EU Animal Welfare Standards” (Animal Alliance of Canada, December 2011).

Levenson, Karen, Twyla Francois, Stephanie Brown et al. “The Need For Change - A Report On Canada’s Inadequate Transport of Animals Regulations” (Animal Alliance, 2011).

McInerney, John. “Animal Welfare, Economics and Policy: A Report on a Study Undertaken for the Farm and Animal Health Economics Division of DEFRA” (Ottawa: Department for Environment, Food and Rural Affairs, 2004).

Mench, Dr Joy. *An HSUS Report: The Welfare of Animals in the Meat, Egg, and Dairy Industries*, online: Humane Society of the United States  
<[www.humanesociety.org/assets/pdfs/farm/welfare\\_overview.pdf](http://www.humanesociety.org/assets/pdfs/farm/welfare_overview.pdf)>.

Massie, Marc et al. “Falling Behind - An International Comparison of Canada’s Animal Cruelty Legislation” (International Fund for Animal Welfare, 2008).

Mohan, Prabhu. “Efficacy of Administrative Monetary Penalties in Compelling Compliance with Agri-food Statutes” (Ottawa: Faculty of Law, University of Ottawa, 2011).

Pew Commission. “Putting Meat on the Table: Industrial Farm Animal Production in America”, A Report of the Pew Commission on Industrial Farm Animal Production (April 2008).

Rogers, Brambell. *Report of the Technical Committee to Enquire into the Welfare of Animals kept*

*under Intensive Livestock Husbandry Systems* (HMSO London: Her Majesty's Stationary Office, 1965).

Steinfeld, Henning et al. "Livestock's Long Shadow: environmental issues and options", (Rome: United Nations Food and Agriculture Organization, 2006) online: UNFAO <<http://www.virtualcentre.org>>.

Stevenson, Peter. *Compassion in World Farming*, "Reviewing the Costs – The Economics of Moving to Higher Welfare" (Surrey: CIWF, 2011) at 6.

"The Farm Crisis: Its Causes and Solutions" (Kananaskis: National Farm Union, 2005).

*Widespread Breaches of Pig Welfare in the EU Summary Report* (Godalming, UK: Compassion in World Farming, 2013).

World Society for the Protection of Animals, "Curb the Cruelty: Canada's farm animal transport system in need of repair" (WSPA, Toronto: 2010).

### **Conference papers and presentations**

Belk, Keith E, John A Scanga, Temple Grandin et al. "The Relationship Between Good Handling / Stunning and Meat Quality in Beef, Pork, and Lamb" (Meat Science Program, Department of Animal Sciences, Colorado State University) delivered at the American Meat Institute Foundation, Animal Handling And Stunning Conference (21 February 2002).

Jed Goodfellow, *Captured by Design: The Story of Farm Animal Welfare Regulation in Australia - The Future of Animal Law*, (18 October 2012), PhD candidate, Macquarie Law School, [unpublished].

Sankoff, Peter. "Canadian Federal Law Prohibiting Cruelty Against Animals", 19th Annual Conference Standing Up for Animals: Can a Bad Economy Inspire Greater Goodness?, Lewis & Clarke Law School. October 14 - 16th, 2011.

### **Electronic Sources**

#### **Government websites - national and supra-national**

Agriculture and Agri-food Canada, "All about Canada's red meat industry" (accessed 28 November 2012), online: agr.gc.ca <[www.agr.gc.ca](http://www.agr.gc.ca)>.

———, "Changing structure of primary agriculture" (13 August 2012) online: AAFC <<http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1201189157429>>.

———, "Number of Calves Slaughtered in Federally Inspected Establishments in Canada" (accessed 22 February 2013), online: agr.gc.ca <<http://www3.agr.gc.ca/apps/aimis-simia/rp/index-eng.cfm?action=ePR&R=105&PDCTC=>>>.

———, "Growing Forward Framework Agreement" (accessed 24 May 2013), online: agr.gc.ca <<http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1217941012105&lang=eng>>.

Department for Environment, Food and Rural Affairs, "UK Advice for transporters of cattle Ramp angles for loading and unloading" (DEFRA Publications, London), (accessed 12 April 2013) online:

<[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69387/pb12544a-transport-cattle-110315.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69387/pb12544a-transport-cattle-110315.pdf)>.

———, “New safeguards for chickens” (8 November 2010), online: DEFRA  
<<http://www.defra.gov.uk/news/2010/11/08/chicken-safeguards/>>.

Department of Primary Industries, State Government Victoria, Agriculture “Code of Practice for Welfare of Farm Animals During Transportation” (AG0004), online:  
<<http://www.dpi.vic.gov.au/agriculture/dairy/dairy-cattle-health-welfare/farm-animals-transportation>>

European Commission, Health and Consumers, “Animal Health and Welfare”, online: EC  
<[http://ec.europa.eu/food/animal/welfare/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/index_en.htm)>

———, Health and Consumers, Food “Animal Welfare on the Farm”, online: EC  
<[http://ec.europa.eu/food/animal/welfare/farm/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/farm/index_en.htm)>

———, Health and Consumers, “Animal Welfare main Community legislative references”,  
online: EC <[http://ec.europa.eu/food/animal/welfare/index\\_en.htm](http://ec.europa.eu/food/animal/welfare/index_en.htm)>.

———, Health and Consumers, Food, “The Scientific Committee on Animal Health and Animal Welfare (SCAHAW)” (accessed 24 May 2013) online: EC  
<[http://ec.europa.eu/food/fs/aw/aw\\_scahaw\\_en.html](http://ec.europa.eu/food/fs/aw/aw_scahaw_en.html)>.

Health Canada, “Canadian Food Inspection Agency Joins Health Portfolio” (10 October 2013)  
<[http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/\\_2013/2013-137-eng.php](http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/_2013/2013-137-eng.php)>.

Legislative Assembly of Ontario, Bills and Law Making (accessed 24 May 2013), online: LAO  
<<http://www.ontla.on.ca/lao/en/bills/>>.

OIE World Organization for Animal Health Terrestrial Animal Health Code (2012) online OIE  
<<http://www.oie.int/international-standard-setting/terrestrial-code/access-online/>>.

Oliver, Dr MA. “ALCASDE - Alternatives to Castration and Dehorning” (9 December 2009)  
Director General for Health and Consumers Animal Health and Welfare Directorate  
(SANCO/2008/D5/018, Girona).

Ontario Ministry of Agriculture and Food, “Cattle Identification” (5 July 2012), online:  
OMAFRA <<http://www.omafra.gov.on.ca/english/food/foodsafety/facts/10-011.htm>>.

———, “Dehorning of Calves – Fact Sheet” online:  
<<http://www.omafra.gov.on.ca/english/livestock/dairy/facts/09-003.htm>>.

Statistics Canada, “Intensive Livestock Farming: Does Farm Size Matter?” (Ottawa: Statistics  
Canada, Agriculture Division, 2001).

Steinfeld, Henning. United Nations Food and Agriculture Organization, “Livestock a Major  
Threat to Environment: Urgent Remedies Needed” (29 November 2006), online: FAO  
<<http://www.fao.org/newsroom/en/news/2006/1000448/>>.

United States Department of Agriculture, “Veal from Farm to Table” (accessed 17 April 2014),  
online: USDA <[http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/veal-from-farm-to-table/CT\\_Index](http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/veal-from-farm-to-table/CT_Index)>.

## **Public websites - NGOs**

Animals Australia, “Pig industry moves on sow stalls!” (17 November 2010), online AA  
<<http://www.animalsaustralia.org/features/sow-stall-vote.php>>.

———, “Sow stalls” (accessed 13 March 2013), online: CCFA  
<<http://www.humanefood.ca/sowstalls.html>>.

———, “Fact sheet on pig castration in Canada” (accessed 15 March 2013), online: CCFA <[www.pigsatrisk.com/documents/pig\\_castration.pdf](http://www.pigsatrisk.com/documents/pig_castration.pdf)>.

Canadian Federation of Humane Societies, “Codes of practice and the National Farm Animal Care Council” (accessed 1 April 2013), online: CFHS <[http://cfhs.ca/farm/codes\\_of\\_practice/](http://cfhs.ca/farm/codes_of_practice/)>.

———, “Veal Crates” (Accessed 18 March 2013), online: CFHS <[http://cfhs.ca/farm/veal\\_crates/](http://cfhs.ca/farm/veal_crates/)>.

———, “Dairy industry exposed in new investigation” (5 December 2012), online: CIWF <[http://www.ciwf.org.uk/includes/documents/cm\\_docs/2013/p/pr20121205.pdf](http://www.ciwf.org.uk/includes/documents/cm_docs/2013/p/pr20121205.pdf)>.

———, “EU dairy industry exposed” (5 December 2012), online: CIWF <[http://www.ciwf.org.uk/news/beef\\_and\\_dairy\\_farming/eu\\_dairy\\_industry\\_exposed.aspx](http://www.ciwf.org.uk/news/beef_and_dairy_farming/eu_dairy_industry_exposed.aspx)>.

———, “The UK ban on beak-trimming is under serious threat” (accessed 22 Feb 2013), online: CIWF <<http://www.ciwf.org.uk/donate/pages/beaktrimming.aspx?appealcode=WL1110>>.

———, “The Welfare of Pigs in the European Union”, (accessed 20 May 2013) online: CIWF <[http://www.ciwf.org.uk/what\\_we\\_do/pigs/state\\_of\\_eu\\_pigs/pig\\_welfare\\_explained.aspx](http://www.ciwf.org.uk/what_we_do/pigs/state_of_eu_pigs/pig_welfare_explained.aspx)>.

Farm Animal Council Network, “A Summary Report On Farm Animal Welfare Law in Canada” (Winter 2011) online: FACN <<http://www.nfacc.ca/resources/Farm%20Animal%20Welfare%20Law%20in%20Canada.pdf>>.

———, “Five Freedoms” (accessed 4 March 2013), online: FAWC <<http://www.fawc.org.uk/freedoms.htm>>.

Farm Sanctuary, “Behind the Moustache” (Accessed 28 March 2013), online: Farm Sanctuary <<http://www.farmsanctuary.org/videos/factory-farming-and-undercover-investigations/behind-the-mustache/>>.

———, “Cows used for Dairy” (accessed 24 October 2013), online: Farm Sanctuary <<http://www.farmsanctuary.org/learn/factory-farming/dairy/>>.

———, “Cows used for Meat” (accessed 24 October 2013), online: Farm Sanctuary <<http://www.farmsanctuary.org/learn/factory-farming/dairy/>>.

Humane Society International, “Puppy Mills in Canada” (accessed 11 November 2013), online: HIS <[http://www.hsi.org/world/canada/work/puppy\\_mills/facts/canada\\_puppy\\_mills.html](http://www.hsi.org/world/canada/work/puppy_mills/facts/canada_puppy_mills.html)>.

Humane Society of the United States, “Barren cramped cages: life for America’s egg-laying hens”, online: HSUS <[http://www.humanesociety.org/issues/confinement\\_farm/facts/battery\\_cages.html](http://www.humanesociety.org/issues/confinement_farm/facts/battery_cages.html)>.

———, “Crammed into Gestation Crates: life for America’s breeding pigs” (14 December 2012), online: HSUS <[http://www.humanesociety.org/issues/confinement\\_farm/facts/gestation\\_crates.html](http://www.humanesociety.org/issues/confinement_farm/facts/gestation_crates.html)>.

———, “Veal Crates: Unnecessary and cruel” (22 February 2013), online: HSUS <[http://www.humanesociety.org/issues/confinement\\_farm/facts/veal.html](http://www.humanesociety.org/issues/confinement_farm/facts/veal.html)>.

Mercy for Animals, “Dairy’s Dark Side - The Sour Truth Behind Milk – Experts”, (accessed 12 October 2013), online: MFA <<http://www.mercyforanimals.org/dairy/expert-statements.asp>>.

## **Public websites – media and other**

Berreville, Olivier. Canadian Centre for Policy Alternatives, “Canadian pig industry: the need for change” (10 December 2012), online: CCPA

<<http://www.policyalternatives.ca/publications/commentary/canadian-pig-industry-need-change>>.

Brown, Edana. Diplomat & International Canada, “Solutions for inhumane slaughterhouse practices” (30 September 2013), online: <<http://diplomatonline.com/mag/2013/09/solutions-for-inhumane-slaughterhouse-practices/>>.

CBC News, “Male chicks ground up alive at egg hatcheries” (1 September 2009) online: CBC <<http://www.cbc.ca/news/male-chicks-ground-up-alive-at-egg-hatcheries-1.823644>>.

CTV News, “W5 report sparks investigations into Manitoba pig farm” (10 Dec 2012), online: CTV <<http://www.ctvnews.ca/canada/w5-report-sparks-investigations-into-manitoba-pig-farm-1.1072729>>.

Cullari, Salvatore. “Re: Have pigs got a higher IQ than dogs?” (12 April 2000), online: Madsci Network: Zoology <<http://www.madsci.org/posts/archives/2000-04/955599153.Zo.r.html>>.

Curry, Bill and Thompson, Stuart A. “Tory cuts to hit food inspection agency, Aboriginal Affairs” (5 April 2013), online: The Globe and Mail <<http://www.theglobeandmail.com/news/politics/tory-cuts-to-hit-food-inspection-agency-aboriginal-affairs/article10797384/>>.

Duchene, Lisa. “Probing Questions: Are Pigs Smarter Than Dogs,” Research Penn State, May 2006.

Epstein, Samuel S. “Hormonal Milk and Meat: A Dangerous Public Health Risk”, The Huffington Post (13 April 2010) online: HP <<http://www.huffingtonpost.com>>.

Fricker, Peter. “Factory farming cruel for animals and hard on the planet, too”, *The Vancouver Sun* (25 September 2007), online: Canada.com <<http://www.canada.com/vancouversun/news/editorial/story.html?id=9b4d78ca-3f3a-4dd3-932f-c705eb6f9fac>>.

Grandin, Temple. “Behavioural Principles of Livestock Handling”, American Registry of Professional Animal Scientists (1989), online: Temple Grandin <<http://www.grandin.com/references/new.corral.html>>.

Halverson, Marlene. “Management in Swedish Deep-Bedded Swine Housing Systems: Background and Behaviorial Considerations” online: Department of Applied Economics University of Minnesota <<http://infohouse.p2ric.org/ref/21/20979.htm>>.

Hirsch, Veronica. “Legal Protections of the Domestic Chicken in the United States and Europe”, Animal Legal and Historical Center, Michigan State University College of Law (2003), online: ALHC <<http://animallaw.info/articles/dduschick.htm#4A>>.

Lawyers Weekly, “Practice Profile: Animal law - the 'next social justice movement'” (11 August 2011), online: Lawyers Weekly (Australia ) <<http://www.lawyersweekly.com.au/>>.

Makin, Kirk. Globe and Mail, “Ontario system eliminates patronage in choosing judges proponent say” (27 April 2012) online: Globe and Mail <<http://www.theglobeandmail.com/news/politics/ontario-system-eliminates-patronage-in-choosing-judges-proponent-says/article4103317/>>.

McLaughlin, Chris. “The Smartest Domestic Animal in The World” (16 December 2008), online: ALF <[http://www.animalliberationfront.com/Philosophy/Morality/Speciesism/Pig\\_Intelligence.htm](http://www.animalliberationfront.com/Philosophy/Morality/Speciesism/Pig_Intelligence.htm)>.

Mills, Rick. “A Harsh Reality” (accessed 12 May 2013), online: AheadoftheHerd.com <<http://aheadoftheherd.com/newsletter/2011/A-Harsh-Reality.html>>.

Newswire, “Most Canadians say politicians' stance on farm animal welfare would affect their vote, says new poll” (28 December 2010), online: Newswire.ca  
<<http://www.newswire.ca/en/story/588507/most-canadians-say-politicians-stance-on-farm-animal-welfare-would-affect-their-vote-says-new-poll>>.

North Carolina in the Global Economy, “Hog Farming”, online: Duke University Sociology  
<[http://www.soc.duke.edu/NC\\_GlobalEconomy/hog/overview.shtml](http://www.soc.duke.edu/NC_GlobalEconomy/hog/overview.shtml)>.

Philpott, Tom. “Six months after the outbreak, who’s investigating the CAFO-swine flu link?”  
*Grist: A Beacon in the Smog* (29 October, 2009), online: Grist <<http://www.grist.org>>.

Queens University, Lederman Law Library, “Regulations” (accessed 24 May 2013), online: Queen’s University <<http://library.queensu.ca/law/lederman/regulations>>.

Sinclair, Nikki. Public Service Europe, “EU and some nations not taking animal welfare seriously” (4 January 2013), online: PS <<http://www.publicserviceeurope.com/article/2904/eu-and-some-nations-not-taking-animal-welfare-seriously>>.

Smith, Jill Sherrill. “Intensive Hog Farms: Global Corporations Belly Up to the Rural Trough” (accessed 28 April 2013), online:  
<<http://www.mondata.com/action/mediaPrintDetail.asp?id=440>>.

Tapper, Josh. “Maple Lodge Farms faces 60 criminal charges as thousands of chickens perish”,  
*The Toronto Star* (8 Jan 2012) online: The Toronto Star <<http://www.thestar.com>>.

Wilson, Barry. The Western Producer, “CFIA says farewell to Ag Canada” (18 October 2013), online: <<http://www.producer.com/2013/10/cfia-says-farewell-to-ag-canada/>>.

Waddams S. and J. Brierley. *Canadian Legal Encyclopedia*, Law, “Judicial Decisions” (accessed 15 May 2013), online: <<http://www.thecanadianencyclopedia.com/articles/law>>.

## **Industry websites**

American Veterinary Medical Association, “Tail Docking of Cattle” online: AMVA  
<<https://www.avma.org/KB/Policies/Pages/Tail-Docking-of-Cattle.aspx>>.

National Farm Animal Care Council, “Codes of Practice for the Handling and Care of Farm Animals” (access April 15, 2013), online: NFACC <<http://www.nfacc.ca/codes-of-practice>>.

———, “Partners” (accessed 20 October 2013), online: NFACC  
<<http://www.nfacc.ca/partners>>.

National Pork Producers Council, “Top Pork Producing States” (2012), online: NPPC  
<<http://www.nppc.org/pork-facts/>>.

Ontario Veal Association, “The real deal about Veal” (2003), online: OVA  
<[http://www.ontarioveal.on.ca/all\\_about\\_veal/vealquestions.html](http://www.ontarioveal.on.ca/all_about_veal/vealquestions.html)>.

## **Documentaries**

CBC Marketplace “The Trouble With Turkeys & Spot Check: Social Media” (14 March 2014), online: CBC <<http://www.cbc.ca/marketplace/episodes/2013-2014/the-trouble-with-turkey>>.

CTV News, “W5 – Behind the Barn Door” (documentary) (18 October 2013) online: CTV  
<<http://www.ctvnews.ca/w5/undercover-investigation-reveals-horrific-conditions-within-egg-industry-1.1503296#ixzz2nmk3xplf>>.

Kennedy, Tom. "W5 - Food for Thought" (Documentary), *CTV* (7 December 2012), online: CTV <<http://www.ctvnews.ca/w5/undercover-investigation-reveals-disturbing-and-inhumane-treatment-of-factory-farm-animals-1.1070919>>.

"Revealed: No Country for animals" (Documentary), *Global News* (29 July 2010), online: Global News <<http://globalnews.ca/news/94400/revealed-no-country-for-animals/>>.

# APPENDICES

## Appendix A

### Provincial legislation concerning farmed animals

#### A-1 - Animal Protection Acts

*Animal Protection Act*, RSA 2000, c A-41 (Alberta).

*Animal Protection Act*, SNS 2008, c 33 (Nova Scotia).

*Animal Protection Act*, 1999, SS 1999, c A-21.1 (Saskatchewan).

*Animal Protection Act*, RSY 2002, c 6 (Yukon).

#### A-2 - Prevention of Cruelty to Animals Act

*Prevention of Cruelty to Animals Act*, RSBC 1996, c 372 (British Columbia).

*Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36 (Ontario).

*Society for the Prevention of Cruelty to Animals Act*, RSNB 1973, c S-12 (New Brunswick).

*An Act respecting Societies for the prevention of cruelty to animals*, RSQ, c S-32 (Québec).

#### A-3 - Other Protection Acts

*Animal Health and Protection Act*, SNL 2010, c A-9.1 (Newfoundland and Labrador).

*The Animal Care Act*, C.C.S.M. c. A84 (Manitoba).

*Animal Health and Protection Act*, RSPEI 1988, c A-11.1 (Prince Edward Island).

*Animal Health Protection Act*, RSQ, c P-42 (Québec).

#### A-4 - Definitions of Distress - examples

##### PEI

*Animal Health and Protection Act*, s 8(1) For the purposes of this Part an animal is deemed to be in a state of distress if it (a) is in need of food, water, care or treatment; (b) is sick, in pain or suffering or has been injured; or (c) is abused or subjected to cruelty or neglect.

##### Saskatchewan

*The Animal Protection Act*, 1999, s 2(2) Subject to subsection (3), for the purposes of this Part, an animal is in distress if it is: (a) deprived of adequate food, water, care or shelter; (b) injured, sick, in pain or suffering; or (c) abused or neglected.

##### Alberta

*Animal Protection Act*, s 1(2) For the purposes of this Act, an animal is in distress if it is a) deprived of adequate shelter, ventilation, space, food, water or veterinary care or reasonable protection.

#### A-5 - Detailed Standard of Care Requirement - example

Ontario Regulation 60/09 *Standards of Animal Care*

## Section 2

- (1) Every animal must be provided with adequate and appropriate food and water.
- (2) Every animal must be provided with adequate and appropriate medical attention.
- (3) Every animal must be provided with the care necessary for its general welfare.
- (4) Every animal must be transported in a manner that ensures its physical safety and general welfare.
- (5) Every animal must be provided with an adequate and appropriate resting and sleeping area.
- (6) Every animal must be provided with adequate and appropriate, (a) space to enable the animal to move naturally and to exercise; (b) sanitary conditions; (c) ventilation; (d) light, and; (e) protection from the elements, including harmful temperatures.
- (7) If an animal is confined to a pen or other enclosed structure or area, (a) the pen or other enclosed structure or area, and any structures or material in it, must be in a state of good repair; (b) the pen or other enclosed structure or area, and any surfaces, structures and materials in it, must be made of and contain only materials that are, (i) safe and non-toxic for the animal, and (ii) of a texture and design that will not bruise, cut or otherwise injure the animal; and (c) the pen or other enclosed structure or area must not contain one or more other animals that may pose a danger to the animal
- (8) Every animal that is to be killed must be killed by a method that is humane and minimizes the pain and distress to the animal; an animal's pain and distress are deemed to be minimized if it is killed by a method that produces rapid, irreversible unconsciousness and prompt subsequent death.

\*Other provincial regulation, including New Brunswick's Regulation 2000-4 under the *Society for the Prevention of Cruelty to Animals Act*, OC 2000-48 contains similar provisions.

### A-6 - Exclusion clauses for protection provisions - examples

#### Alberta

*Animal Protection Act*, RSA 2000, c A-41, s 2(2) This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.

#### British Columbia

*Prevention of Cruelty to Animals Act*, RSBC 1996, c 372, s 24.02 A person must not be convicted of an offence under this Act in relation to an animal in distress if (b) if the person is an operator, the distress results from an activity that is carried out in accordance with the prescribed standards of care that apply to the regulated activity in which the operator is engaged, or (c) the distress results from an activity that is carried out in accordance with reasonable and generally accepted practices of animal management that apply to the activity in which the person is engaged, unless the person is an operator and those practices are inconsistent with prescribed standards.

#### Nova Scotia

*Animal Protection Act*, SNS 2008, c 33, s 21(4) Subsections (1) and (2) do not apply if the distress, pain, suffering or injury results from an activity carried on in the practise of veterinary medicine, or in accordance with reasonable and generally accepted practices of animal management, husbandry or slaughter or an activity exempted by the regulations.

#### Ontario

*Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36, s 11.1 Exception (2) Subsection (1) does not apply in respect of, (a) an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry; or 11.2(6) Subsections (1) and (2) do not apply in respect of, (c) an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry.

Saskatchewan

*Animal Protection Act*, 1999, SS 1999, c A-21.1, s 1(3) An animal is not considered to be in distress if it is handled:(a) in a manner consistent with a standard or code of conduct, criteria, practice or procedure that is prescribed as acceptable; or (b) in accordance with generally accepted practices of animal management.

Yukon

Animal Protection Act, RSY 2002, c 6, s 3(3) Subsections (1) and (2) do not apply if the distress results from an activity carried on in accordance with reasonable and generally accepted practices of animal management, husbandry or slaughter provided that these practices are carried out in a humane manner.

## **Appendix B**

### **National Farm Animal Care Council Voluntary Codes of Practice for the Care and Handling of Farm Animals<sup>311</sup>**

#### **Beef Cattle**

Code of Practice for the Care and Handling of Farm Animals: Beef Cattle, Publication 1870/E (Ottawa: Agriculture Canada, **1991**).

Code of Practice for the Care and Handling of Beef Cattle (Calgary: Canadian Cattlemen's Association and the National Farm Animal Care Council, **2013**).

#### **Bison**

Code of Practice for the Care and Handling of Farm Animals: Bison (Ottawa: Canadian Agri-food Research Council, **2001**).

#### **Chickens, Turkeys and Breeders**

Code of Practice for the Care and Handling of Farm Animals: Chickens, Turkeys and Breeders from Hatchery to Processing Plant (Ottawa: Canadian Agri-food Research Council, **2003**).

#### **Dairy Cattle**

Code of Practice for the Care and Handling of Farm Animals: Dairy Cattle (Ottawa: Dairy Farmers of Canada and the National Farm Animal Care Council, **2009**).

#### **Deer**

Code of Practice for the Care and Handling of Farm Animals: Farmed Deer (Ottawa: Canadian Agri-food Research Council, **1996**).

#### **Fox**

Code of Practice for the Care and Handling of Farm Animals: Ranches Fox, Publication 1831/E (Ottawa: Agriculture and Agri-food Canada, **1989**).

Code of Practice for the Care and Handling of Farmed Fox (Moncton: Canada Fox Breeders Association and the National Farm Animal Care Council, **2013**).

#### **Goats**

Code of Practice for the Care and Handling of Farm Animals: Goats (Ottawa: Canadian Agri-food Research Council, **2003**).

#### **Horses**

Code of Practice for the Care and Handling of Farm Animals: Horses (Ottawa: Canadian Agri-food Research Council, **1998**).

Code of Practice for the Care and Handling of Equines (Ottawa: Equine Canada and the National Farm Animal Care Council, **2013**).

#### **Pigs**

Recommended Code of Practice for the Care and Handling of Farm Animals: Pigs, Publication 1898/E (Ottawa: Agriculture and Agri-food Canada, **1993**).

Code of Practice for the Care and Handling of Pigs (Ottawa: Canadian Pork Council and the National Farm Animal Care Council, **2014**).

---

<sup>311</sup> Citations for the antecedent version of each Codes have been included where available in order to illustrate the time-related deficiencies in the Code revision process.

**Pullets, Layers and Spent Fowl**

Code of Practice for the Care and Handling of Pullets, Layers and Spent Fowl (Ottawa: Canadian Agri-Food Research Council, **2003**).

**Mink**

Code of Practice for the Care and Handling of Farm Animals: Mink, Publication 1819/E (Ottawa: Agriculture and Agri-food Canada, **1988**).

Code of Practice for the Care and Handling of Farmed Mink (Rexdale: Canada Mink Breeders Association and the National Farm Animal Care Council, **2013**).

**Sheep**

Code of Practice for the Care and Handling of Farm Animals: Sheep (Ottawa: Canadian Agri-food Research Council, **1995**).

Code of Practice for the Care and Handling of Sheep (Guelph: Canadian Sheep Federation and the National Farm Animal Care Council, **2013**).

**Transport**

Code of Practice for the Care and Handling of Farm Animals: Transport (Ottawa: Canadian Agri-food Research Council, **2001**).

**Veal Calves**

Code of Practice for the Care and Handling of Farm Animals: Veal Calves (Ottawa: Canadian Agri-food Research Council, **1991**).

## Appendix C

### Flexible terminology

#### C-1 – Vague provisions in the Federal *Health of Animals Regulations* - examples

S 138(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal (*a*) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey.

S 155 A veterinary inspector may order a sea carrier to keep empty such pens on a vessel as are designated by a veterinary inspector in order to accommodate animals that are injured or become ill or otherwise unfit for transport during the voyage.

S 159 Every sea carrier shall provide every vessel in which animals are transported with a sufficient quantity of veterinary drugs suitable for the treatment of the animals on board.

S 143(1) No person shall transport or cause to be transported any animal in a railway car, motor vehicle, aircraft, vessel, crate or container if injury or undue suffering is likely to be caused to the animal by reason of (*a*) inadequate construction of the railway car, motor vehicle, aircraft, vessel, container or any part thereof; (*d*) undue exposure to the weather; or (*e*) inadequate ventilation.

S 140(2) No person shall transport or cause to be transported any animal in any railway car, motor vehicle, aircraft, vessel, crate or container that is crowded to such an extent as to be likely to cause injury or undue suffering to any animal therein.

#### C-2 – Vague provisions in other animal welfare legislation - examples

Federal Meat Inspection Regulations, s 62(1) No food animal shall be handled in a manner that subjects the animal to avoidable distress or avoidable pain.

Alberta's Meat Inspection Act, RSA 2000, c M-9, s 21(1) A person shall minimize pain and distress of any animal that is being prepared for slaughter or slaughtered.

Nova Scotia's Meat Inspection Regulations, NS Reg 46/90, s 84 In slaughtering an animal or rendering it unconscious, no person shall use (a) an instrument, unless at the time the ability and physical condition of the person enable the person to use the instrument without causing the animal unnecessary pain.

Ontario's Food Safety and Quality Act, 2001, SO 2001, c 20, s 4(1) says "Every person who is responsible for the care of and has control over a fallen animal shall promptly kill it or arrange for it to be killed, in a humane manner in either case.

Ontario's Meat, O Reg 31/05; Under Food Safety and Quality Act, 2001, SO 2001, c 20, s 75 (1) No person shall slaughter a food animal at a slaughter plant in a way that subjects it to avoidable pain or distress.