

MEMO: BILL C-264 CRIMINAL CODE AMENDMENTS

COMPARISON OF C-246 WITH CURRENT CRIMINAL CODE ANIMAL CRUELTY PROVISIONS

Background

Cruelty to animals offenses are addressed by both provincial animal protection legislation and by the Criminal Code.

Provincial legislation has been updated and strengthened in each province over the last 15 years to include more offences and stiffer penalties.

The majority of animal cruelty charges are made under provincial statutes not under the Criminal Code. Depending on the province, provincial penalties can equal or exceed criminal code penalties with the exception that they do not carry a criminal record.

The serious nature of Criminal convictions leads the Criminal Code provisions to reflect higher standards for offenses, such as intent, than non-criminal provincial statutes. Bill C-246 lowers these standards and could have the potential of criminalizing far more types of behaviour, less serious types of behaviour, or behaviour already effectively covered by provincial legislation.

Criminal Code Changes under C-246

1. Bill C-246 amends section 182.1 PART XI - Wilful and Forbidden Acts in Respect of Certain Property by moving the animal cruelty provisions out of the "Certain Property" section into PART V - Sexual Offences, Public Morals and Disorderly Conduct section. There is no legal necessity for this move.

2. The bill adds a lower standard of reckless conduct as a criminal offence.

182.1 Everyone commits an offence who wilfully or recklessly...

Section 182.1, that covers "killing or harming animals", has been expanded to include reckless conduct. Recklessness is generally interpreted as exceeding ordinary Negligence. To be reckless, conduct must demonstrate indifference to consequences under circumstances involving peril to the life or safety of others, although no harm is intended. This revision will mean causing unnecessary pain, suffering or injury no longer has to be wilful (intentional) but can also be due to recklessness.

3. The Bill adds two new offences under section 182.1 that are not currently in the Criminal Code:

182.2(1) Everyone commits an offence who, wilfully or recklessly...

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

“Brutally or viciously” is open to interpretation. These offences do not seem to appear in any other Canadian law and have not been interpreted in any Canadian Court. Determining what constitutes “brutal” or “vicious” treatment will therefore need to be determined through the courts. This will open up animal activities to the risks of legal challenges needed to establish case law for defining what constitutes “brutal” or “vicious” treatment. Secondly, the focus of the Criminal Code Animal Provisions is suffering not killing. This new and untested offence includes killing, “regardless of whether the animal dies immediately”.

(c) kills an animal without lawful excuse;

But due to other changes ie adding brutal and vicious killing and perhaps negligence (rather than the current willful negligence) and addition of recklessness lawful excuse needs to be properly defined ie. as determined by federal and provincial regulations, industry standards, etc. to cover off those new provisions. If there is no intent to affect animal use sectors then this should be reinforced within the bill either by defining lawful excuse or by a statement within the bill. This has been a sticking point in past negotiations with CFHS and previous sponsors i.e. Holland et al.

4. The Bill expands the offences to include negligence where currently offences are limited to wilful negligence. This addition of the lower standard of “negligence” means that a person or act no longer has to be wilful but that charges can be laid simply for “departing markedly from the standard of care that a reasonable person would use”. This addition could result in criminalizing more types of animal treatment.

5. Application of Colour of Right protection (acting with legal justification or excuse) has been reduced to only apply to section 430 to 443 which leaves the remaining sections now vulnerable.

6. The bill does not offer specific exceptions for legal conduct currently provided by defined lawful excuse, colour of right. The Bill provides that common law defences still apply to committing an offence, but as a defense this does not offer the current protection for otherwise legal activities such as those deemed lawful or regulated under provincial or federal law, industry standards or common accepted practice.

Summary

C-246 raises the risk of criminalizing currently legal activities and lowers the standards needed to lay criminal charges.

With the widening and strengthening of provincial offences in recent years animal cruelty is adequately addressed without the fundamental far reaching amendments proposed by Bill C-246.

Bill C-246 removes the protections for legal and lawful activities provided under the current criminal law.

Bill C-246 puts the onus on the defendant to prove innocence rather than on the prosecutor to prove guilt.

If these changes are passed they will be used to “test” the legal applications in (costly) court challenges.

These criminal code amendments are not addressing enforcement which all parties agree is the fundamental problem of applying animal protection laws (both criminal code and provincial).