

ONTARIO FEDERATION OF ANGLERS & HUNTERS



Ontario Conservation Centre

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March 11, 2016

Honourable Judy Sgro, MP
Humber River-Black Creek
House of Commons
Ottawa, Ontario
K9J 8L5

Dear Ms. Sgro:

On behalf of the Ontario Federation of Anglers and Hunters (OFAH), our 100,000 members, supporters and subscribers, our 725 member clubs across the province and the 1.5 million licenced anglers and hunters in Ontario, we are writing to express our profound concerns over the recently introduced Bill C-246.

As you note from legislative examples since the late 1990s, the animal use community across Canada has a strong record of support for reasonable amendments to current laws that deal with the humane treatment of animals. By way of specific examples, there was broad support within the animal use community for Bill S-203 (39th Parliament) and Bill C-35 (41st Parliament), both of which proposed sensible changes to animal cruelty laws in Canada.

However, you will also know that the history of animal cruelty legislation in Parliament has been highly contentious, with the introduction of a number of bills that impacted negatively on the animal use community.

The sponsor of Bill C-246 has suggested that the bill focuses entirely on the trade in cat and dog fur, the sale of shark fins, and updates to the Criminal Code to assist with prosecutions of those who unnecessarily harm animals. The said MP has also suggested that the bill is exactly what the Department of Justice wants, and that it does not negatively impact upon responsible anglers, hunters, farmers, or others engaged in the responsible, sustainable, and lawful utilization or harvest of animals. While we can easily and, even eagerly, support the notions underscored by the first two measures noted above, the inclusion of the last point, particularly given the absence of certain definitions and the widening of certain offences, leads to potential criminalization of animal use community activities. This means that Bill C-246 goes well beyond mere updates of the Criminal Code and protections that most could support. In fact, Bill C-246 expands into contentious and legally questionable issues that led to the defeat of many similar bills in the past.

On the face of it, the issue of cruelty to animals prevention seems innocuous but, in reality, the proposed creation of a reverse-onus dilemma, inadvertent legal gaps, inappropriate definitions, terminology juxtaposition, and the loss of vital precedent combined in this legislation to present a threat to legitimate, legal and humane animal use communities such as agriculture, anglers, and hunters.

For the sake of clarity, this is not just our assertion. It is a matter of historical legislative record. By way of specific example, the definition of animal contained within previous animal cruelty legislation was explosive in itself (<http://www.theglobeandmail.com/news/national/definition-of-animal-may-hold-up-cruelty-law/article1159970/>). Moreover, the eventual rejection of that legislation (on multiple occasions since the early 2000s) was focused on what the Senate Legal and Constitutional Affairs Committee (Chaired by the current Speaker of the Senate) called "major drafting errors" (<http://sen.parl.gc.ca/gfurey/legalconst.htm>). Sadly, Bill C-246 contains many of the shortcomings already identified in previous incarnations of the legislation.

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For your benefit, the following outlines current reality and outlines some of our major concerns with the legislation:

- The Criminal Code section "Cruelty to Animals" already has comprehensive provisions that criminalize various kinds of cruelty and neglect. There are also provincial and territorial protection statutes that create offences relating to cruelty to animals.
- Section 445.1(1) of the Criminal Code already states that every one commits an offence who (a) willfully causes or, being the owner, willfully permits to be caused unnecessary pain, suffering, or injury to an animal or a bird.
- Other subsections of Section 445.1 are more specific in dealing with other aspects of animal cruelty and behaviour governing the use of animals and birds.
- Section 445 also prohibits anyone "wilfully and without lawful excuse" who kills, maims, wounds, poisons, or injures domestic animals and birds.
- Section 446 already speaks to "Causing Damage or Injury."
- Sections 444 and 445 already deal with killing, injuring, or endangering cattle.
- The suggestion has been made that the changes contemplated by Bill C-246 are similar in nature to what the Department of Justice has sought previously. Nothing could be further from the truth.
- In 1998, the department considered revisions to the Criminal Code relating to cruelty to animals. The department issued a consultation paper that reviewed the legislative and judicial history of those sections to assist with the federal purpose of those sections.
- At the time, they noted that "the offence of animal cruelty to animals is not intended to forbid conduct that is socially acceptable or authorized by law." The paper further noted that "Criminal prohibitions are directed at conduct that falls outside of normally accepted behaviour." The provisions were not intended to restrict or interfere with normal and regulated activities involving animals such as hunting, fishing, or raising of animals for food. Bill C-246 could do exactly that.
- The wording in the Justice Department paper has been frequently used by the courts, has been in the Criminal Code for decades, and has been consistently interpreted by the courts across the country in the manner outlined above.
- For instance, in a 2014 court case around the re-institution of the spring bear hunt in Ontario, the Ontario Court rejected the argument made by animal rights activists that a mistake made by a hunter would be "wilful" or cause "unnecessary pain or suffering" and, therefore, would not be considered criminal behaviour. This would change under Bill C-246.
- The wording in Bill C-246 would cause offences against animals to no longer be considered offences against "certain property." The bill either creates new sections, or moves the animal cruelty sections out of sections 445-447 of the Criminal Code and creates a new section entitled "Cruelty to Animals." In essence, this moves animals out of the property section and gives them rights similar to persons. The suggestion in the preamble to the legislation that the bill merely consolidates various offences under represents the suggested changes contained in the bill.
- The new Section 182.1 adds a test of "reckless" to the current "wilfully" aspect of the Criminal Code, which expands the kind of conduct that could be criminalized. This could result in behaviour not currently considered criminal under the application of "wilful" to be considered "reckless" under the new addition and, therefore, subject to criminal charges.
- Under Section 182.2(1), the bill adds new provisions under animal killing not currently in the Criminal Code or in any known legal statute. This is particularly serious, given that previous offences focus on cruelty, not killing. This would place the courts in the position of having to evaluate the method of killing that is used, a test that has not been previously used in any Canadian statute or been interpreted in any Canadian Court.
- The term "lawful excuses" is not defined.
- Together, subsections (b) and (c) of the newly worded Section 182.2(1) could have the effect of criminalizing many popular heritage and commercial activities.

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- The bill also includes the addition of a negligence standard and creates a new offence under Section 182.3(1), which widens the test for criminalizing from “wilfully” under current law to the much lower standard of “negligence.” This lower standard, as with reckless, has the potential of criminalizing far more types of behaviour.
- Activities by a very broad range of persons, including Aboriginal and non-Aboriginal anglers, hunters, trappers, veterinarians, farmers, farriers, aquaculturists, zoos and circuses, equestrians, medical researchers, scientists, and many others working with animals could all be effected.
- This is a vast expansion of criminal liability to areas of lawful activity that are not currently affected by criminal law or are already regulated by other existing federal and provincial laws.
- Exceptions for lawful conduct should be clearly listed in the legislation to ensure that these activities are not included in the Criminal Code and not criminalized.
- There is a considerable precedent to suggest that the removal of the “Colour of Right” defence will negatively impact upon the responsible animal use community.
- Last, and by no means least, a federal bill that criminalizes behaviour that is deemed lawful, and is regulated by provincial or territorial law raises issues of constitutionality relating to the validity of the statutes.

Once again, we wish to reiterate that the debate around this issue has been and continues to be divisive, and Bill C-246 does not reflect consensus, any more than previous attempts at similar legislation did.

In the past, the outdoor community, which contributes \$15.2 billion annually to the national economy, and our colleagues in the agricultural, religious, medical research, science, and post-secondary sectors have opposed similar legislation. We respectfully ask that you vote against Bill C-246 on Second Reading, and urge your colleagues in the Liberal caucus to do the same.

Thank you in advance for your time and attention in this important matter.

Yours in Conservation,



Angelo Lombardo
Executive Director



Greg Farrant
Manager, Government Affairs & Policy

AL/GF/gh

cc: OFAH Board of Directors
Matt DeMille, OFAH Manager, Fish & Wildlife Services

bcc: Leslie Ballentine, Ballentine Communications Group