

Falling Behind

AN INTERNATIONAL COMPARISON OF CANADA'S ANIMAL CRUELTY LEGISLATION



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“ CANADA IS THE ONLY COUNTRY WHICH DEFINES ANIMAL CRUELTY PROVISIONS AS VIOLATIONS OF PROPERTY. THIS RESULTS IN “UNOWNED” ANIMALS, SUCH AS WILDLIFE AND STRAYS, BEING VIRTUALLY UNPROTECTED. ”

SUMMARY OF RECOMMENDATIONS:

1. Effective legislation must refer to “negligent” behaviour which is defined as “departing markedly from the standard of care that a reasonable person would use” and does not require the courts to prove that neglect is a willful action.
2. Animal cruelty provisions should protect all animals not just “those kept for a lawful purpose”. This outdated wording needs to be revised and animal offenses should be moved to their own separate section of the Criminal Code.
3. Effective legislation must include a clear and concise definition of “animal”.
4. Effective legislation must prohibit the training of animals to fight other animals and enable the conviction of individuals found to be betting on animal fights.
5. All animals must be protected unilaterally.
6. The penalties dealing with animal cruelty must be increased, both monetarily and punitively.
7. Effective legislation must make it an offence to kill an animal with brutal and/or vicious intent, whether or not the animal dies immediately.



Executive Summary

Almost every day in Canada newspapers cover stories of horrific acts of cruelty to animals. From house cats captured and killed in microwaves to dogs dragged behind cars until they die from their injuries — cases of cruelty abound.

Yet, in a shocking 99.075% of these cases, the perpetrators walk free due to significant flaws in outdated legislation. Canada's animal cruelty legislation has not been modernized since it was written in 1892 leaving law enforcement officers, attorneys and judges at a loss to effectively prosecute criminal acts of cruelty.

Meanwhile, there is an increasing trend globally to improve the protection of animals from cruelty. Over the last few decades, countries all over the world have updated or enacted new animal welfare legislation.

These facts prompted IFAW to undertake a comparison of animal protection legislation in Canada and 13 other countries around the world. The results demonstrate that Canada's current legislation is woefully inadequate, lagging far behind many countries that recognize the importance of adequate animal protection laws.

The report examines legislation from Austria, Croatia, Great Britain, Germany, Malaysia, New Zealand, Norway, the Philippines, Poland, Portugal, South Africa, Switzerland and Ukraine and compares them with Canada's legislation.

Startling facts revealed in the report include:

- Canada ranks at the bottom of all comparisons;
- Canada is alone in offering virtually no protection for wild and stray animals;
- Canada's legislation does not include a clear definition of "animal" whereas other countries are explicit;
- Canada is the only country that does not provide protection for animals being trained to fight each other (see box on Michael Vick page 11);
- Canada is the only country that makes it virtually impossible to prosecute cases of neglect.

Updating the Criminal Code of Canada will provide the courts and police with clear, effective means to prosecute, convict and to potentially mitigate acts of unacceptable animal cruelty. It will also allow politicians to respond to the overwhelming majority of Canadians representing all political parties who are outraged by heinous acts of animal cruelty. Finally, modern and effective legislation to protect all animals will bring Canada up to standard on the global stage.

How Does Canada Compare

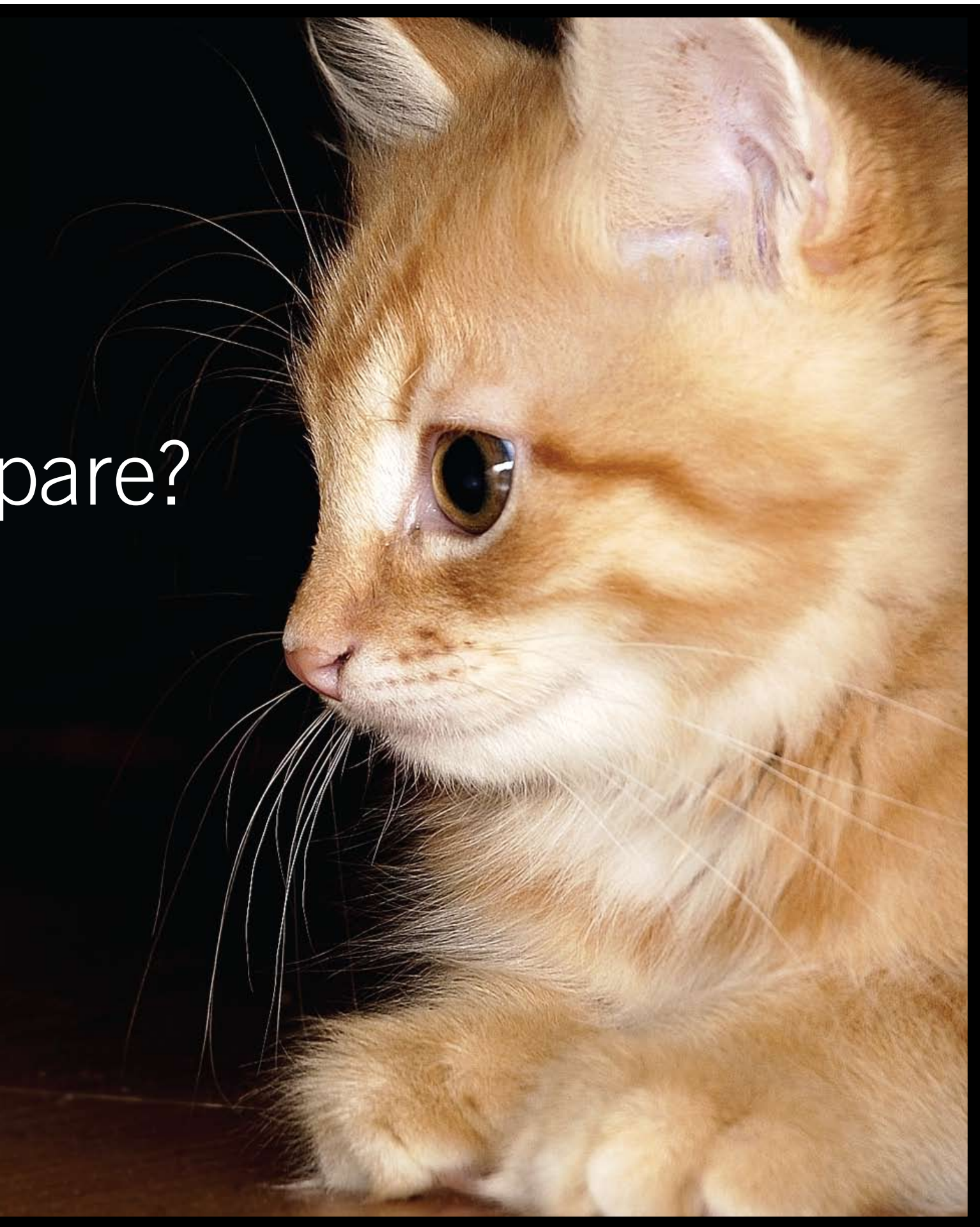
DISCUSSION

This report locates and explores commonalities and distinctions between Canada's animal cruelty legislation and that of thirteen other countries around the world: Austria, Croatia, Great Britain, Germany, Malaysia, New Zealand, Norway, the Philippines, Poland, Portugal, South Africa, Switzerland and Ukraine. These countries were chosen because each has federal legislation, detailed information about their legislation is easily accessible on the World Wide Web, and because the legislation is available in English.

The following ten questions were asked when reviewing each piece of legislation:

1. Does the legislation protect animals from neglect?
2. Are stray animals protected from acts of cruelty?
3. Are wild animals protected from acts of cruelty?
4. Does the legislation include a definition of animal?
5. Is it illegal to train animals to fight each other?
6. Is animal fighting illegal?
7. Are there distinctions made between different kinds of animals?
8. Can offenders be prohibited from owning or living with an animal in the future?
9. Can judges order anyone found guilty of animal cruelty to pay restitution to the animal welfare organization responsible for caring for the abused animals?
10. What are the maximum penalties?

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“ OF ALL THE COUNTRIES INVESTIGATED, ONLY CANADA REQUIRES NEGLECT TO BE A PRODUCT OF PREDETERMINED ACTION BY USING THE TERM “WILLFUL NEGLECT”. IN ALL 13 OF THE OTHER COUNTRIES REVIEWED, THE ANIMAL CRUELTY LEGISLATION MAKES CLEAR REFERENCE AND PROVISIONS FOR CASES OF NEGLECT. ”

1

QUESTION 1: DOES THE LEGISLATION PROTECT ANIMALS FROM NEGLECT?

The Criminal Code of Canada uses the term “willful neglect” which requires neglect to be a product of predetermined action. In all other countries reviewed, the animal cruelty legislation makes clear reference and provisions for cases of neglect. The “willfulness” of the perpetrator is kept out of the wording, so that intent or motive does not need to be present for the courts to punish crimes of neglect against animals.

Examples:

In **CROATIA**, the Animal Welfare Act prohibits neglecting an animal “in terms of its health, housing, nutrition and care” (s. 16). Within the Act there is no requirement to prove that the individuals acted “willfully” in order for them to be charged with neglecting an animal. The mere act of neglecting an animal is in contravention of the provisions of the Act and is deemed sufficient to have committed the offence.

In **NEW ZEALAND**, the Animal Welfare Act states that all those who keep or are in charge of an animal must take all steps that are reasonable to ensure the physical health and behavioral needs of animals are met both with good practice and scientific knowledge. When animals are ill or injured their keepers must ensure that they receive timely treatment to alleviate all unreasonable and unnecessary pain or distress. Failure to comply with these regulations makes an offender guilty of a strict liability offence. This means that it does not matter whether the individual intended to contravene the Act; the actions or inactions of the offender are sufficient to charge them with neglect.

In **MALAYSIA**, the issue of neglect is legislatively addressed in s. 44(1)(d) of the Animal Act which bars any person from either wantonly or unreasonably doing or committing an act that causes any pain or suffering or, as an owner, permits unnecessary pain or suffering to an animal. The willingness on the part of the offender to commit the offence is not necessary in cases of neglect. Under the legislation it is only required that the individual unreasonably committed an act that caused the unnecessary pain and suffering of an animal.

In **AUSTRIA**, the Federal Act on the Protection of Animals makes it “prohibited to inflict unjustified pain, suffering or injury on an animal or expose it to heavy fear”. The provisions do not require an offender to have acted willfully in the harming or mistreatment of animals.

In **NORWAY**, the Animal Welfare Act states that neglect suffered by an animal does not need to be done willfully by the owner, but that the actions themselves are sufficient for an offence to have been committed.



QUESTION 2: ARE STRAY ANIMALS PROTECTED FROM ACTS OF CRUELTY?

In the Criminal Code of Canada there is no mention of stray animals. The cruelty provisions only apply to animals that are “kept for a lawful purpose” and therefore leaves stray animals virtually unprotected from acts of cruelty. Several of the countries reviewed directly protect stray animals through a sufficiently inclusive definition of animal to include all animals, domestic, wild, or stray.

Examples:

In **MALAYSIA's** Animal Act it is clear in the definition of animal that stray animals are afforded the same protection from cruelty enjoyed by any domestic or other animals.

In **AUSTRIA** it is established in the Federal Act on the Protection of Animals that protection is afforded to all animals including strays.

NORWAY's Animal Welfare Act applies to all animals, allowing stray animals protection. The act states that “animals should be treated well, and consideration shall be given to the instinctive behavior treatment and natural needs of animals, so that there is no risk of causing them unnecessary suffering”.

In **CROATIA's** Animal Welfare Act stray animals are afforded protection through the definition of an animal: all vertebrates.

QUESTION 3: ARE WILD ANIMALS PROTECTED FROM ACTS OF CRUELTY?

As outlined in question number 2 the Criminal Code of Canada is worded so that the cruelty provisions only apply to animals that are “kept for a lawful purpose” and therefore leave wildlife virtually unprotected. Ten countries provide protection to wild animals either through their definition of animal or through specific legislative provisions.

Examples:

In **CROATIA** special consideration is made for the protection of wild animals. The Animal Welfare Act prohibits actions that either specifically torture or prevent an animal or a population of animals from satisfying their physiological needs for a period of time. Specific examples are listed that include preventing access to water or essential aspects of survival through fencing, destroying either in part or in whole an essential habitat for survival, introducing feral animal species into a habitat and capturing or killing live animals in a way that causes unnecessary or lengthy suffering.

In the **PHILIPPINES** Section 7 of the Animal Welfare Act places a duty on every person to protect the natural habitat of wildlife. The destruction of natural habitats, for the purpose of the Act, is explicitly stated to be a form of cruelty to animals and is strictly prohibited.

“ THE CRUELTY PROVISIONS OF THE CRIMINAL CODE OF CANADA DO NOT INCLUDE A DEFINITION OF ANIMAL OTHER THAN TO REFERENCE SPECIFIC ANIMALS SUCH AS CATTLE. TEN OF THE COUNTRIES REVIEWED INCLUDE A CLEAR, PRECISE DEFINITION OF AN ANIMAL IN THEIR LEGISLATION. ”



4 QUESTION 4: DOES THE LEGISLATION INCLUDE A DEFINITION OF ANIMAL?

The cruelty provisions of the Criminal Code of Canada do not include a definition of animal other than to reference specific animals such as cattle. Ten of the countries reviewed include a clear, precise definition of an animal in their legislation. In addition to the fundamental protections afforded all animals, each of these ten countries provide further, distinct protections to specific categories of animals.

Examples:

GREAT BRITAIN defines “animals” as vertebrates other than man, in section 1(3a) of their Animal Welfare Act which also takes things a step further by designating a national authority to adjust regulations upon scientific enquiry to determine and include specific invertebrates capable of experiencing pain or suffering.

In **MALAYSIA's** Animal Act, “animal” is defined as any living creature other than a human being including any beasts, fish, reptile or insect, whether wild or tame.

In **NORWAY** the Animal Welfare Act enumerates a list of animals requiring protection to include live mammals, birds, toads, frogs, salamanders, newts, reptiles, fish and crustaceans.

NEW ZEALAND's Animal Welfare Act effectively expands legislation to define “animal” as any live member of the animal kingdom that is mammal, bird, reptile, amphibian, fish, octopus, squid, lobster, crayfish or any other member of the animal kingdom which is declared from time to time by the Governor General, by Order in Council, to be an animal for the purpose of the Act.

5 QUESTION 5: IS IT ILLEGAL TO TRAIN ANIMALS TO FIGHT EACH OTHER?

6 QUESTION 6: IS ANIMAL FIGHTING ILLEGAL?

In Canada animal fighting is illegal; however, an individual has to be present at a fight in order to be charged. This means that breeding, training and profiting from fighting animals are still considered legal activities. The other countries studied in this report make animal fighting illegal and all countries except one, explicitly criminalize the training of animals to fight each other.

Examples:

Of the 14 countries surveyed, **GREAT BRITAIN's** Animal Welfare Act provides one of the most aggressive stances to discourage animal fighting and the training of animals to be

aggressive. Section 8 of the Act makes it an offence for a person to cause an animal fight, to take money for admission, to publicize or promote, to inform another person, to be in possession of something used for animal fight and to keep and train animals for fighting or to keep a premises for animal fighting and to be present at an animal fight. Additionally the Act also makes it an offence to (without lawful excuse) supply a video of an animal fight, knowingly publish a video of an animal fight, knowingly show a video of animal fight or possess a video of an animal fight.

CROATIA's Animal Welfare Act specifically prohibits animal fighting and the training of animals to fight, additionally making it illegal to use techniques to increase aggressiveness in animals.

SOUTH AFRICA's Animal Protection Act and **MALAYSIA's** Animal Act prohibit both the training of animals to fight each other and animal fighting, including any keeping or management of premises for the purpose of fighting, any permitting or use of premises for animal fighting, and any receiving of any money for admission for a place which hosts animals fighting.

Canadians were outraged when NFL star Michael Vick was found guilty of several dog fighting related charges. In Canada Michael Vick could not have been charged because it is not an offence to train animals to fight each other, it is only an offence to encourage, aid or assist in the fighting of dogs. In Canada dog fight perpetrators have to be caught red-handed in order to be charged. For example, in 2005 the RCMP and the British Columbia SPCA raided a property and found a dog fighting ring and other paraphernalia used for training dogs to fight. A total of 25 scar and wound inflicted dogs were confiscated that day and later had to be returned to their owner because under Canada's animal cruelty provisions a crime had not occurred. In fact, there have been no convictions of any individual involved with dog fighting in BC.



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QUESTION 7: ARE THERE DISTINCTIONS MADE BETWEEN DIFFERENT KINDS OF ANIMALS?

Canada creates distinctions between different animals, such as cattle, without actually including a definition of animal in the legislation. Other countries do create distinctions between different kinds of animals, however, it should be noted that the distinctions refer to categories or sub-groups of animals, many of whom are afforded additional protection.

Examples:

CROATIA's Animal Welfare Act distinguishes between domestic, stray and wild animals however; all are protected in different sections of the Act. Companion animals are protected in Articles 47-50, zoo animals in Articles 50-52, circus animals in Article 53 and pet shop animals under Article 58.

POLAND's Animal Protection Act creates different categories of animals such as domestic animals, farm animals and lab animals, however each category of animal is provided protection in different sections of the code.

AUSTRIA's Federal Act on the Protection of Animals provides detailed definitions, separating animals into six broad categories of domestic animals, pets, wild animals, hoofed game, animals kept for farming purposes and fodder animals. Section 3 of the Act established that the legislation applies to all animals with only a few exceptions.



8

QUESTION 8: CAN OFFENDERS BE PROHIBITED FROM OWNING OR LIVING WITH AN ANIMAL IN THE FUTURE?

In Canada offenders can be prohibited from owning or living with an animal for maximum of two years. This is the shortest maximum provision of the countries with prohibitions. Seven of the countries reviewed allow for lifetime prohibitions of owning animals.

Examples:

In AUSTRIA's Federal Act on the Protection of Animals, a person convicted of cruelty to animals can be prohibited from keeping all or certain species of animals indefinitely.

In GREAT BRITAIN the Animal Welfare Act, under certain circumstances, can disqualify an offender from owning, keeping, participating in keeping animals, or from being party to an arrangement under which the offender is entitled to control or influence the way in which animals are kept.

In NEW ZEALAND offenders can be prohibited from owning an animal under the Animal Welfare Act.

In NORWAY, upon commitment of a more serious contravention of the Animal Welfare Act or upon multiple offences, the offender may be deprived either temporarily or indefinitely of the right to own, keep, use, trade or slaughter, care for animals, or of the right to hunt and fish.

In CROATIA when an offender is convicted of cruelty against a companion animal for the second time, the Animal Welfare Act has provisions allowing the court to remove the animal from the offenders and prohibit them from ever owning another animal.

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QUESTIONS 9: CAN JUDGES ORDER ANYONE FOUND GUILTY OF ANIMAL CRUELTY TO PAY RESTITUTION TO THE ANIMAL WELFARE ORGANIZATION RESPONSIBLE FOR CARING FOR THE ABUSED ANIMALS?

The Criminal Code of Canada does not obligate the courts to order restitution costs. Seven countries allow the court to make offenders pay restitution to animal welfare organizations that care for abused animals subsequent to acts of abuse or cruelty.

Examples:

AUSTRIA's Federal Act on the Protection of Animals states that upon conviction of an offence, the previous keeper shall reimburse to the authority all costs connected with the temporary custody and care of the animal(s).

In MALAYSIA the Animal Act provides for the recovery of expenses from offenders to provide restitution to any veterinary authority or officer providing care of the animals subject to violation of the legislation.

In SOUTH AFRICA the court may order that a person convicted of an offence under the Animal Protection Act repay all expenses incurred by another person in veterinary bills, food or accommodation.

In POLAND section 2 of the Animal Protection Act states that a person convicted of an offence may be further penalized by fines which can be awarded to the Poland Society for the Prevention of Cruelty to Animals or a similar animal protection organization.

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QUESTION 10: WHAT ARE THE MAXIMUM PENALTIES?

At a maximum of six months Canada has the lowest length of incarceration second only to Malaysia, and the second lowest maximum fines for perpetrators convicted of animal cruelty.

Examples:

SWITZERLAND's Federal Act on Animal Protection states that anyone who intentionally maltreats, overworks, neglects, cruelly puts to death, kills wantonly, organizes fights or inappropriately experiments on animals is liable to arrest and a fine up to 20,000 Swiss francs (approx 17,500 CAD).

Under GREAT BRITAIN's Animal Welfare Act the maximum fine is 20,000 pounds (approx 42,000 CAD). The maximum prison sentence is 51 weeks.

Under AUSTRIA's Federal Act on the Protection of Animals the maximum fine for a first offence is 7,500 Euros (approx 10,750 CAD) and 15,000 Euros (approx 21,500 CAD) for a second offense.

	Canada	Austria	Croatia	Great Britain	Germany	Malaysia
Does the legislation protect animals from neglect?	neglect must be "willful"					
Are stray animals protected from acts of cruelty?	only protects animals "kept for a lawful purpose"					
Are wild animals protected from acts of cruelty?	only protects animals "kept for a lawful purpose"					
Does the legislation include a definition of animal?						
Is it illegal to train animals to fight each other?						
Is animal fighting illegal?	offenders can only be charged if caught in the act					
Are there distinctions made between different kinds of animals?						
Can offenders be prohibited from owning or living with an animal in the future?	maximum 2 years	indefinitely	second offence lifetime	indefinitely		
Can judges order anyone found guilty of animal cruelty to pay restitution to the animal welfare organization responsible for caring for the abused animals?						
What are the maximum penalties?	Fine: 2,000 CAD Prison: 6 months Summary offence	Fine: 15,000 Euros (21,500 CAD)	Fine: 100,000 HRK (19,500 CAD)	Fine: 20,000 GBP (42,000 CAD) Prison: 51 weeks	Fine: 50,000 DM (36,600 CAD) Prison: 3 years	Fine: 200 Ringgits (60 CAD) Prison: 6 months

LEGEND

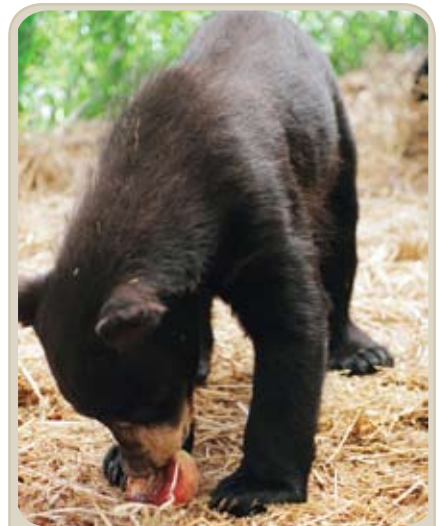
YES NO

New Zealand	Norway	Philippines	Poland	Portugal	South Africa	Switzerland	Ukraine
●	●	●	●	●	●	●	●
●	●	●	●	●	○	● at municipal level	○
●	●	●	●	○	●	○	●
●	●	○	●	●	●	○	●
●	●	●	●	●	●	○	●
●	●	●	●	●	●	●	●
●	●	○	●	●	●	●	●
● dependant on courts	● indefinitely	○	●	UNKNOWN	● dependant on courts	● indefinitely	UNKNOWN
●	UNKNOWN	○	●	○	●	●	○
Fine: 50,000 NZD (37,700 CAD) Prison: 3 years	Fine: Unknown Prison: 1 year	Fine: 5,000 PHP (115 CAD) Prison: 2 years	Fine: 2,500 PLN (940 CAD) Prison: 2 years	UNKNOWN	Fine: 4,000 ZAR (580 CAD) Prison: 2 years	Fine: 20,000 CHF (17,500 CAD) Prison: Unknown	UNKNOWN

Recommendations

In order for Canada to have animal cruelty legislation that is effective, internationally relevant, and reflects the views of modern Canadian society the current legislation must be improved in the following ways:

1. Effective legislation must only refer to “negligent” behaviour which is defined as “departing markedly from the standard of care that a reasonable person would use” and not require the courts to prove that neglect is a willful action. Currently less than ¼ of 1% of animal cruelty complaints result in successful convictions, meaning that an astonishing 99.075% of acts of cruelty in Canada go unpunished. The majority of these complaints are cases of neglect. In Canada the court must prove that cases of neglect are willful. In other words, motive must be proven. For example, a farmer who starved his sheep despite repeated warnings was found not guilty because the court couldn't prove he intended to starve them.
2. Animal cruelty provisions must protect all animals not just “those kept for a lawful purpose”. This outdated wording needs to be revised and animal offenses should be moved to their own section of the Criminal Code. Putting animals in their own section of the Code will protect all animals from cruelty and also reflects Canadians view that all animals should be protected from cruelty. At present, not all animals are protected from criminal acts of cruelty because provisions are found under the property section of the Criminal Code. This means that wild and stray animals, which are not considered property, are virtually unprotected.

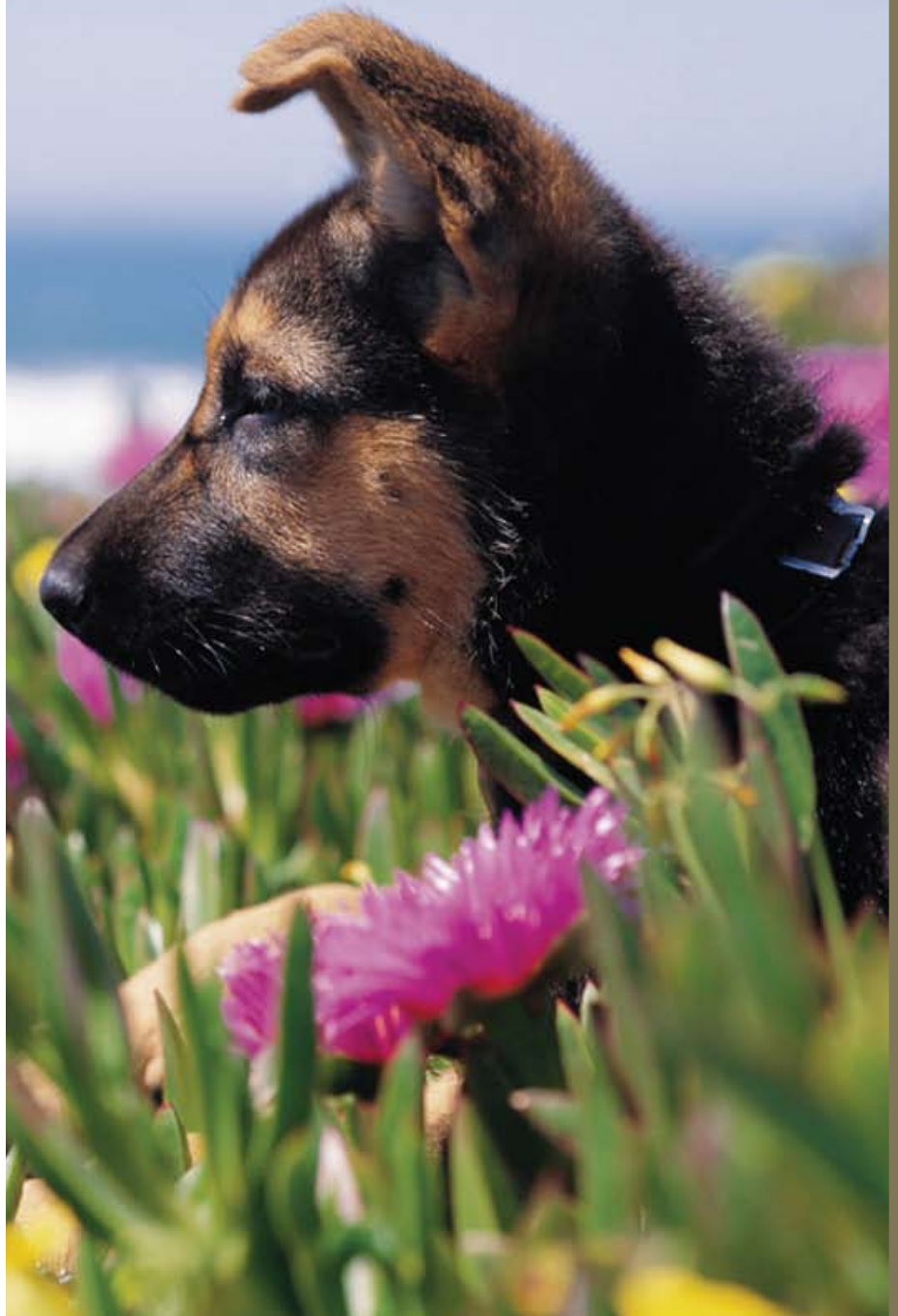


In June 2004 a Wakefield, Quebec area man snatched a baby bear cub from its mother on his jet-ski. As the animal struggled to get away he beat it, held it underwater and drove over it with his jet-ski several times to subdue it. All of the details of the capture were proudly relayed back to the local newspaper by the man. Although the story garnered an international outcry no animal cruelty charges were laid because wild animals are not protected from acts of cruelty.



3. Effective legislation must include a clear and concise definition of animal. The majority of legislation reviewed includes a definition of animal; however, Canada's legislation fails to do so.
 4. Effective legislation must prohibit the training of animals to fight other animals and enable the conviction of individuals found to be betting on animal fights. The recent outcry in Canada over the case of Michael Vick in the United States demonstrates that Canadians demand these actions be dealt with (see box on Michael Vick page11).
 5. All animals must be protected unilaterally. Cruelty is cruelty, yet Canada's cruelty legislation protects different animals in different ways. Cattle are protected differently than companion animals. Wild animals and strays are left virtually unprotected.
 6. The penalties dealing with animal cruelty must be increased, both monetarily and punitively. The legislation should also allow the court to prohibit offenders from owning animals in the future and to make restitution payments to the organizations charged with caring for the abused animals.
NOTE: It is essential to point out that only improving the penalties on legislation that is already woefully inadequate does nothing to effectively improve the legislation or to further protect animals from cruelty. Good penalties do not make good laws.
- There are other important changes to the Criminal Code that must be addressed which are not within the scope of this report. As it stands, the legislation has not been updated since 1892. The outdated wording and loopholes within the legislation allows many offenders to go free.
7. Effective legislation must make it an offence to kill an animal with brutal and/or vicious intent, whether or not the animal dies immediately. The wording that is currently in place allows people to kill animals brutally and viciously if the animal dies immediately. For example, someone who ties an animal to a train track can get away with it by arguing that the animal died quickly and did not suffer.

“ IT IS ESSENTIAL TO POINT OUT THAT ONLY IMPROVING THE PENALTIES ON LEGISLATION THAT IS ALREADY WOEFULLY INADEQUATE DOES NOTHING TO EFFECTIVELY IMPROVE THE LEGISLATION OR TO FURTHER PROTECT ANIMALS FROM CRUELTY. GOOD PENALTIES DO NOT MAKE GOOD LAWS. ”



CONCLUSIONS

Canada's animal cruelty legislation lags far behind laws in many other countries.

Globally, there is an increasing trend to improve the protection of animals from cruelty. Over the last few decades countries from all over the world have created legislation that moves animals out of the realm of property, as they are designated in Canada, and recognizes them as beings which require at least minimum standards of protection. Updating of the current Criminal Code of Canada will afford courts and police with clear, effective means to prosecute, convict and to potentially mitigate acts of unacceptable animal cruelty.

The overwhelming majority of Canadians want modernized and effective legislation that will protect animals from acts of cruelty. Amending the animal cruelty provisions of the Criminal Code is an opportunity for our Parliamentarians to represent the will of Canadians.





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