

## **BILL C-246: WHAT IT DOES AND DOESN'T DO**

### **What does Bill C-246 do?**

Bill C-246 is an important step towards bringing Canada's animal protection legislation into the 21<sup>st</sup> century. Canada's animal cruelty laws are considered the weakest of their kind in the western world. They pale in comparison to the legislation in force in most developed countries such as Australia, Austria, Portugal, Poland, New Zealand, Norway, Malaysia, and the entire European Union.<sup>1</sup> The animal cruelty section of the Criminal Code remains substantively unchanged since its enactment in 1892; offences have not been meaningfully updated since 1954. Ninety-two percent of Canadians want animal cruelty laws to be updated to make it easier to convict people who abuse animals.<sup>2</sup>

**Bill C-246 would close several loopholes that prevent the successful prosecution of animal abusers. Prosecutors often avoid laying criminal charges against animal abusers because the animal cruelty provisions are riddled with loopholes and they fear they won't get convictions.** Instead of laying appropriate criminal charges, prosecutors are often forced to lay charges under weaker, less serious provincial regulatory statutes. This widespread practice is a response to the federal government's failure to modernize Canada's animal welfare laws.

- Bill C-246 closes loopholes related to animal fighting, making it illegal to profit from this activity, and to train, breed, and transport animals for the purpose of fighting.
- Bill C-246 ensures all forms of sexual abuse of animals is illegal, closing a dangerous loophole that was made clear in June 2016 when the Supreme Court ruled that the crime of bestiality only prohibits intercourse with an animal. All other sexual abuse of animals is not criminal conduct under Canadian bestiality laws.<sup>3</sup>
- Bill C-246 makes it easier to convict those who neglect animals by failing to provide them with suitable food, shelter, and care. Currently, prosecutors must prove "willful neglect", which is a contradictory and confusing standard that sometimes allows puppy mill operators or those who starve animals to escape criminal conviction.
- Bill C-246 closes a loophole that denies stray or wild animals the same protections against cruelty and killing as other animals. Currently, it is not a criminal offence to brutally beat an unowned animal to death for no reason so long as the animal dies right away.

**Bill C-246 strengthens sentences for repeat animal abusers,** with a mandatory lifetime ban on animal ownership for any person convicted of animal cruelty for a second time.

**Bill C-246 bans shark finning and shark fin imports.**

**Bill C-246 requires fur labelling, and bans cat and dog fur,** which is already illegal in the United States and the European Union.

### **What does Bill C-246 not do?**

Bill C-246 targets animal abuse, not animal use. Contrary to the false claims of opponents of the bill, the proposed **Criminal Code updates do not target animal use industries, nor would they have any effect on industries like** animal agriculture, animal research, hunting, and fishing.

**Bill C-246 does not give animals rights. Under Bill C-246, animals remain legal property.**

- Bill C-246 moves crimes against animals out of the property offences section of the Criminal Code and into a new section entitled "Offences against animals." It does not move crimes against animals into the section dealing with crimes against persons.
- Criminal Code sections exist largely for the sake of organization. Moving crimes against animals into their own section does not confer special rights on animals; it simply helps consolidate crimes against animals into a comprehensive and coherent section of the Criminal Code.

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<sup>1</sup>See *Falling Behind: An International Comparison of Canada's animal cruelty legislation*. IFAW 2008.

<sup>2</sup>See *Envionics Research Group survey in June of 2015: 92% of those surveyed agreed that the Criminal Code should be updated to make it easier to convict people who commit acts of cruelty to animals*.

<sup>3</sup> *R. v. D.L.W.*, 2016 SCC 22.

- Bill C-246 does not change the fact that animals remain property under the law. For instance, the province of Quebec recently went much farther than Bill C-246 by reclassifying animals in its Civil Code not as “things”, but as “sentient beings”. This symbolic change did not change animals’ status as legal property; neither will the proposed amendments in Bill C-246.

**Bill C-246 clarifies the standard of conduct that will be deemed negligent. It does not criminalize mere “clumsy or incompetent” behaviour.**

- Currently, only “wilful neglect” is criminalized under the offence of neglecting an animal. This confusing mental standard does not exist anywhere else in the Criminal Code because it is absurd and contradictory.
- Bill C-246 simplifies the negligence offence by removing this problematic language. Bill C-246 defines “negligently” as a behaviour that markedly departs from the standard of care that a reasonable person would use. This standard for criminal negligence is used throughout the Criminal Code in circumstances in which a duty of care is owed, such as in the offence of dangerous driving.

**Bill C-246 continues to protect animals from suffering caused through recklessness.**

- Opponents of Bill C-246 claim it inserts a new element to the animal cruelty offences such that reckless conduct can be criminalized. This is not new.
- Recklessly harming animals has been illegal since 1892 by virtue of s. 429 of the Criminal Code, which defines “wilfulness” as including “recklessness”.
- Recklessly causing harm to animals will continue to be illegal under Bill C-246, as it should be.

**Prohibiting the “brutal and vicious killing” of an animal will not impact lawful activities involving animals such as farming, hunting, fishing, trapping, and animal research.**

- The addition of a new offence that prohibits the “brutal and vicious killing” of an animal addresses a glaring loophole: currently, it is not a crime to beat an animal to death for no reason so long as the animal dies right away and thus does not suffer.
- In 1997, two Edmonton men tied a border collie and a husky to a tree and smashed their heads in with aluminum baseball bats. The sickening killings sparked nation-wide outrage, but the judge in the case was forced to acquit the men because the animals likely died quickly, stating, “It certainly is not acceptable to me and many other people in this country to kill a dog like [that]... but there is no law.”
- Individuals who brutally and viciously kill animals but escape conviction because the animal, by chance, is killed instantly must still be apprehended. Many violent offenders who harm people start off killing and abusing animals, such as Luka Magnotta, who tortured kittens in multiple online videos but was never apprehended.<sup>4</sup> Animal abuse cannot be allowed to go unpunished.
- The defenses of legal excuse or justification continue to apply to this provision, thus preventing the prosecution of practices that could be interpreted as brutal and vicious killing but that are conducted in accordance with industry regulations or guidelines; for example, killing an animal in the context of agricultural activities, hunting, fishing, or scientific research. The offence targets animal abuse, not animal use.

**Bill C-246 preserves legal defences available to a person accused of a crime against an animal.**

- Section 8(3) of the Criminal Code already requires that common law defences, such as legal justification or excuse, continue to be available for all offences, including offences relating to animals.
- For further clarity, Bill C-246 expressly provides that the defences of legal justification or excuse, and colour of right continue to apply to offences against animals.
- For example, it will continue to be legal to use and slaughter animals for agriculture as they are property of the farmer and killed for a legal purpose. It will also continue to be legal to kill animals through hunting and fishing – both of which are legal, regulated activities.

**Some critics of Bill C-246 have argued that the bill should include an express exemption for animal use activities such as agriculture, scientific research, hunting, fishing, and trapping. Bill C-246 does not include such exemptions - nor should it.**

- No other category of persons or industries is currently exempt from any provision of the Criminal Code.
- The law must have a means of prohibiting unjustifiable cruelty when it occurs within the context of a regulated industry but falls outside behaviour that is considered necessary or acceptable.<sup>5</sup>

<sup>4</sup> See also the case of Brian Whitlock, a Vancouver man who was convicted of bludgeoning a German shepherd named Captain, and is now charged with murdering his mother.

<sup>5</sup> See *Crimes Against Animals: A Consultation Paper*. Minister of Justice and Attorney General of Canada, 1998.