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CHAPTER 1

INTRODUCTION

The greatness of a nation and its moral progress can be judged by the way its animals are treated.

Mahatma Gandhi

We have no doubt that these sentiments have broad support in Manitoba and in Canada generally. Most Manitobans would agree that one's treatment of animals has moral implications and that it is wrong to treat animals cruelly or to cause them needless suffering. Evidence of the convictions of Manitobans on this issue can be found in the outrage expressed by the public over incidents of animal mistreatment and in the long history and public support of organizations devoted to the protection of animals.[1]

There is also little doubt that the treatment of animals is viewed as a public matter in which governments have a legitimate interest. Every Canadian province has enacted legislation which gives governmental agents the power to take action on behalf of animals which are suffering.[2] In addition, it is an offence under the federal *Criminal Code* to cause "unnecessary pain, suffering or injury" to an animal.[3] In Manitoba, humane societies have had the statutory power to enter property and to take custody of suffering animals since 1907.[4] We are unaware of any organized effort to restrict government involvement in animal protection; on the contrary, significant efforts are being made to extend it.

In view of this broad support for animal protection, one might reasonably expect that legislation designed to achieve this purpose would be clear and effective. Unfortunately, this is not the case. An examination of Manitoba's animal protection provisions reveals that they are difficult to locate, uncoordinated and confusing. Indeed, they sometimes raise more questions

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[1]The first Society for the Prevention of Cruelty to Animals in Canada was founded by a special Act of the Province of Québec in 1869: *An Act to Incorporate the Canadian Society for the Prevention of Cruelty to Animals*, S.Q. 1869, c. 81. Manitoba enacted legislation in 1895 which contemplated the creation of societies whose purpose would be to prevent "cruelty to animals, and the ill-usage of men, women and children": *An Act respecting Humane Societies*, S.M. 1895, c. 18.

[2]*Animal Protection Act*, S.A. 1988, c. A-42.1 as am.; *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am.; *The Animal Diseases Act*, C.C.S.M. c. A85; *The Animal Husbandry Act*, C.C.S.M. c. A90; *Society for the Prevention of Cruelty Act*, R.S.N.B. 1973, c. 12 as am.; *Animal Protection Act*, R.S.N. 1990, c. A-10; *An Act to Incorporate "The Nova Scotia Society for the Prevention of Cruelty to Animals"*, S.N.S. 1877, c. 86 as am.; *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36 as am.; *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1 as am.; *Animal Health Protection Act*, R.S.Q. 1977, c. P-42, Div. IV.1.1 as en. by S.Q. 1993, c. 18 (unproclaimed; once proclaimed, the Act will be known as *An Act respecting the health, safety and welfare of animals*); *The Animal Protection Act*, R.S.S. 1978, c. A-21 as am.

[3]*Criminal Code*, R.S.C. 1985, c. C-46, s. 446(1).

[4]Although an Act which authorized the creation of humane societies was enacted in 1895, it only permitted representatives of such a society to enter premises to rescue children: *An Act respecting Humane Societies*, S.M. 1895, c. 18. Amendments in 1907 added provisions which allowed representatives of humane societies to enter private property to search for animals "being wantonly, cruelly or unnecessarily beaten, bound, tortured, ill-treated, abused or subjected to pain or discomfort". When found, animals in this condition were to be brought before a justice of the peace, who could order that they be destroyed, returned to their owners or turned over to the humane society: *An Act to amend "The Humane Societies Act"*, S.M. 1907, c. 18.

than they answer. Our negative assessment of current animal protection legislation was reinforced in discussions with representatives of the Winnipeg Humane Society and the Veterinary Services Branch of the Manitoba Department of Agriculture, the two organizations principally responsible for enforcing the legislation. Both expressed the view that reform of these provisions was needed. This Report attempts to perform that task.

A general consensus that some form of animal protection legislation is necessary does not mean that a widespread agreement exists as to the content of such legislation. Although few would argue that current legislation goes too far in protecting animals, some would contend that it does not go far enough. Moreover, because the treatment of animals is widely seen as a moral issue, disputes over appropriate conduct in this area are often extraordinarily contentious.

Upon reflection, we have come to the conclusion that a decision to extend significantly the protection currently offered animals is best made by our elected representatives. Instead, we have focused our efforts in this Report on the more limited (but essential) task of organizing, clarifying and streamlining the current law with the goal of making the existing system of animal protection more effective. We believe that the vast majority of Manitobans, even those who believe that the substance of the law should be changed, will support this objective.

The substance of this Report begins, in Chapter 2, with an overview of the current law in Manitoba and an analysis of its flaws. Chapter 3 sets out the principles on which we believe animal protection legislation should be grounded. In Chapter 4, we focus on intervention to protect animals and Chapter 5 deals with the need for prevention, including the creation of provincial offence provisions to deter animal mistreatment. Questions of entry to private property for the purpose of protecting animals are the subject of Chapter 6. Chapter 7 addresses the appointment of agents to enforce the animal protection scheme we propose. We conclude this Report in Chapter 8 with a recommendation as to the proper location of animal protection provisions within provincial legislation and a restatement of our recommendations.

In preparing this Report, we have been greatly assisted by Vickie Burns, Executive Director of the Winnipeg Humane Society, and Dr. James Neufeld of the Veterinary Services Branch, Manitoba Department of Agriculture. These individuals provided us with valuable insight into the practicalities of animal protection and their comments have been invaluable in assisting the Commission in designing the system of animal protection recommended in this Report.

CHAPTER 2

THE CURRENT LAW IN MANITOBA

Animals in Manitoba are currently protected by several federal statutes, including the *Criminal Code*,[1] and by several provincial statutes, including *The Animal Diseases Act*, *The Animal Husbandry Act*, *The Highway Traffic Act* and *The Wildlife Act*.[2] In this Chapter, we will describe the relevant provisions of each of these statutes. Although, as a provincially constituted body, the Commission has no jurisdiction to recommend any changes to federal legislation, the impact of federal law must be taken into account. We will direct most of our comments, however, to provincial legislation.

A. FEDERAL LEGISLATION

1. The *Criminal Code*

Sections 444 to 447 of the *Criminal Code* prohibit certain behaviour with respect to animals. Section 444, an indictable offence, prohibits wilfully killing, maiming, wounding, injuring and poisoning cattle or leaving poison in a position where cattle may easily consume it. Section 445 prohibits the same behaviour with respect to animals other than cattle which are kept for a lawful purpose, but is punishable by way of summary conviction. However, unless it is done with an intent to defraud, animal owners cannot be convicted of violating sections 444 and 445 for harming their own animals.[3] This fact indicates that sections 444 and 445 are not designed to protect animals *per se* but are aimed at protecting the property rights of animal owners.[4]

Section 447 can be more properly characterized as an animal protection provision but is very narrow in scope. It prohibits anyone from building or maintaining a cock-fighting pit and requires the destruction of cocks found on premises with a cock-pit.

The remaining provision, section 446, is the section most clearly intended to protect animals. It applies to all captive animals or birds, whether domestic or wild by nature. Its

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[1]*Criminal Code*, R.S.C. 1985, c. C-46. Other federal statutes which have the effect of protecting animals include the *Health of Animals Act*, S.C. 1990, c. 21 as am.; *Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.) as am., s. 20(f).

[2]*The Animal Diseases Act*, C.C.S.M. c. A85; *The Animal Husbandry Act*, C.C.S.M. c. A90; *The Highway Traffic Act*, C.C.S.M. c. H60 and *The Wildlife Act*, C.C.S.M. c. W130. *The Highway Traffic Act* and *The Wildlife Act* will not be discussed in detail in this Report although both contain provisions which are intended to protect animals from undue suffering. *The Highway Traffic Act* prohibits the transportation of animals in a way which results in damage, injury or unnecessary suffering to them, with violations of this prohibition punishable by a fine of no more than $100 and a licence suspension of up to 30 days (ss. 233 and 239). Although aimed principally at protecting animal species, *The Wildlife Act* also contains provisions which guard against undue animal suffering as a result of hunting and trapping. For example, it prohibits using a vehicle in order to "chase, drive, flush, pursue, worry, harrass [sic], follow after . . . or search for" any wildlife (s. 22). Similarly, dogs may not be used to hunt big game animals, fur bearing animals or wild turkeys. Indeed, officers are empowered to kill a dog which is running after, pursuing or molesting these animals (ss. 35 and 74). These provisions appear to be aimed at the practice of chasing an animal until it is exhausted before killing it.

[3]*Criminal Code*, R.S.C. 1985, c. C-46, s. 429(3). The exception is destroying or damaging one's own property with an intent to defraud.

[4]This conclusion is reinforced by the fact that all of the animal protection provisions in the *Criminal Code* are found in Part XI which is entitled "Wilful and Forbidden Acts in Respect of Certain Property": *Criminal Code*, R.S.C. 1985, c. C-46.

general subsections prohibit wilfully causing "unnecessary pain, suffering or injury to an animal or bird," abandoning an animal or bird in distress and wilfully neglecting or failing to provide an animal or bird with adequate food, water, shelter and care. Administering a poisonous or injurious drug to an animal is also prohibited. Other subsections prohibit the baiting and fighting of animals and birds and releasing captive birds for the purpose of being shot when liberated. A violation of section 446 is punishable by way of summary conviction with a maximum sentence of a $2000 fine and six months imprisonment or both.[5] In addition, a person convicted of causing unnecessary pain, suffering or injury to an animal or bird may be prohibited by a judge from owning or having custody or control of an animal or bird for up to two years.[6]

The meaning of "wilfully" in section 446 has been clarified by section 429 to include reckless behaviour.[7] Defences of legal excuse and colour of right are permitted.[8] This means that an individual who honestly believed in a state of facts which, if true, would serve as a legal justification or excuse cannot be convicted.[9] Examples of a legal excuse are the killing of an animal in order to protect one's property[10] or as an act of mercy.[11] The phrase "unnecessary pain, suffering or injury" was until recently interpreted to mean substantial or considerable suffering.[12] However, it is now clear that the magnitude of the pain or suffering experienced is irrelevant if it was inflicted unnecessarily and without legal excuse or colour of right. Courts have held that the reasons for causing animal suffering, the accused's ability to take less injurious actions and other circumstances of each case should be considered to determine if the infliction of pain could have been avoided. Any "suffering which one may reasonably avoid for an animal is not necessary."[13]

2. Other Federal Legislation

Like the *Criminal Code*, other federal legislation is also aimed at establishing standards of animal care and treatment in particular situations and enforcing those standards by punishing those who violate them. The *Health of Animals Act* and its regulations set out detailed and specific requirements for the transportation of animals.[14] Violations of the Act or its regulations are punishable, on summary conviction, by a fine of up to $50,000 or imprisonment of up to six

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[5]*Criminal Code*, R.S.C. 1985, c. C-46, s. 446(2) and 787(1).

[6]*Criminal Code*, R.S.C. 1985, c. C-46, s. 446(5).

[7]*R.* v. *Gotto*, [1974] 6 W.W.R. 454 (Sask. D.C.).

[8]*Criminal Code*, R.S.C. 1985, c. C-46, s. 429(2).

[9]See, for example, *R.* v. *Comber* (1975), 28 C.C.C. (2d) 444 (Ont. Co. Ct.).

[10]*R.* v. *Shaw* (1988), 93 A.R. 86 (Prov. Ct.). Here, a man tried to run off a scrub bull from impregnating his purebred herd. Failing this, he contacted the bull's owner, an animal control officer and the police, but all refused assistance. Eventually, he shot the bull. He was acquitted because he had exhausted all other options. By contrast, a man who had corralled a similarly-inclined scrub bull was found guilty for castrating it despite the existence of a pound some twelve miles away: *R.* v. *England* (1924), 43 C.C.C. 11 (Sask. C.A.).

[11]*R.* v. *Mennel* (1893), 1 Terr. L.R. 487 (N.W.T.C.A.), where a man killed an ox whose legs had frozen above the knees and was dying.

[12]*R.* v. *Linder* (1950), 10 C.R. 44 (B.C.C.A.).

[13]*R.* v. *Menard* (1978), 43 C.C.C. (2d) 458 at 466 (Que. C.A.) per Lamer J.A.

[14]*Health of Animals Act*, S.C. 1990, c. 21. Section 64(1)(i) permits the Governor in Council to make regulations "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. . . ." Of these three areas, the most effort has been put into developing detailed regulations for the transportation of animals: see *Health of Animals Regulations*, C.R.C., c. 296, ss. 136-159 as am. The title of these regulations was changed from the *Animal Disease and Protection Regulations* by SOR/91-525.

months or both. Alternatively, violations can be prosecuted by way of indictment, in which case the maximum punishment is $200,000 or imprisonment of up to two years or both.[15]

Regulations under the *Meat Inspection Act*[16] protect animals which are being slaughtered or awaiting slaughter. For example, slaughtering plants must provide animals with proper ventilation and adequate potable water and are not to subject them to overcrowding, exposure to diseased animals or any other form of avoidable pain or distress.[17] Animals which are suspended for slaughter must first be rendered unconscious or electrocuted.[18] A violation of the regulations is punishable by a fine of up to $10,000.[19]

Both the *Health of Animals Act* and the *Meat Inspection Act* are administered by the federal Department of Agriculture.

B. PROVINCIAL LEGISLATION

1. *The Animal Diseases Act*

Although not as detailed as federal legislation, provincial law also sets out standards for the care and treatment of animals and prohibits the violation of these standards. *The Animal Diseases Act* prohibits keeping or transporting animals without adequate "food, water, shelter or attention" or subjecting them to "wanton, cruel or inhumane treatment". Failing to provide treatment for diseases or injuries the animal may suffer is also prohibited.[20] A violation of this provision is punishable by a fine of between $50 and $500 and up to two months incarceration of individual in default. For corporations, the maximum fine is $1000.[21]

By deterring mistreatment of animals, prohibitions and penalties imposed by either provincial or federal legislation will help to protect animals. However, provincial legislation, including *The Animal Diseases Act*, also protects animals by authorizing agents to identify suffering animals and to relieve their distress.[22] As its title indicates, the primary focus of *The Animal Diseases Act* is the prevention and containment of animal diseases. However, the Act also provides for the care and treatment of animals suffering from deprivation. "Deprivation" is defined as a lack of "the necessities for proper sustenance of life".[23] *The Animal Diseases Act* therefore clearly has implications for animals suffering from a cause other than a disease.

Intervention under *The Animal Diseases Act* is controlled by the Director of Veterinary Services of the provincial Department of Agriculture. Although veterinary inspectors appointed by the Lieutenant Governor in Council are legislatively empowered to enter premises or vehicles without a warrant in order to investigate concerns that an animal has a disease or is suffering

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[15]*Health of Animals Act*, S.C. 1990, c. 21, s. 65.

[16]*Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.), s. 20(f) permits the Governor in Council to make regulations "prescribing the equipment and facilities to be used, the procedures to be followed and the standards to be maintained . . . to ensure humane treatment and slaughter of animals. . . ."

[17]*Meat Inspection Regulations, 1990*, SOR/90-288, s. 62 - 65.

[18]*Meat Inspection Regulations, 1990*, SOR/90-288, s. 78. Exceptions are made for birds and domesticated rabbits.

[19]*Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.), s. 21(3).

[20]*The Animal Diseases Act*, C.C.S.M. c. A85, s.13.

[21]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 17.

[22]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 6(2)(a).

[23]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 1.

from deprivation, they are only authorized to do so "upon presentation of a certificate or other means of identification."[24] In practice, all veterinarians who are registered with the Manitoba Veterinary Medical Association are appointed veterinary inspectors but are not issued permanent certificates of appointment. Instead, the Veterinary Services Branch provides letters of authorization when the Director of Veterinary Services believes that entry to specific premises or vehicles is warranted. When authorized to act by the Branch, veterinary inspectors are paid by the provincial Department of Agriculture for their time and reimbursed for their expenses.[25]

Once they have entered premises or a vehicle, veterinary inspectors are limited by the Act to investigating the condition of the animal, its treatment and its surroundings.[26] Any action taken to assist an animal or to ease its suffering must be ordered by the Director of Veterinary Services. The Director may order the seizure of such an animal for examination or observation, its removal for proper treatment, its treatment, its confinement or quarantine and its "disposal", a term which is not defined. Any such order is to be made "at the expense of the owner"[27] but neither the Act nor its regulations make specific provision for recovering the expenses of these actions from the owner.

Although the primary enforcement agents of the Act are veterinary inspectors, peace officers or anyone having charge of a fair, market or other public place in which animals are being shown, sold, displayed or otherwise disposed of, may seize such an animal if he or she believes it to be diseased or suffering from deprivation. After seizing the animal, the nearest veterinarian or inspector is to be notified.[28]

2. *The Animal Husbandry Act*

Unlike *The Animal Diseases Act*, which is primarily aimed at preventing and controlling animal diseases, Part IV of *The Animal Husbandry Act* is solely focused on animal mistreatment. In addition, these provisions differ from *The Animal Diseases Act* in that they contain no penalties for those who mistreat animals; they are exclusively concerned with facilitating the relief of animal suffering.

There are numerous agents of intervention for the purpose of *The Animal Husbandry Act*. Among these are police officers, peace officers[29] and inspectors and agents of a humane society who have been appointed special constables by the Minister of Justice. Special constables are given the powers of a constable or police officer in order to enforce Part IV of the Act "or any other Act for the prevention of cruelty to animals".[30] Although it is not clear, the Act also seems to suggest that inspectors and agents of a humane society also have some powers without being appointed special constables.[31]

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[24]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 6(2).

[25]Meeting with Dr. James Neufeld, Veterinary Services Branch, Manitoba Department of Agriculture, November 17, 1994.

[26]Veterinary inspectors may also require the production of books, documents or records which are believed to relate to the care of an animal and to make copies of them. They also have the right to detain physical evidence from the scene: *The Animal Diseases Act*, C.C.S.M. c. A85, s. 6(2).

[27]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 3.

[28]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 5.

[29]As defined in *The Interpretation Act*, C.C.S.M. c. I80, s. 22(1), "peace officer" includes police officers, bailiffs, sheriff's officers, jail guards, justices of the peace, mayors and reeves. Because it also includes "a person appointed under any Act for the enforcement of that Act", it would seem to include special constables appointed under s. 65 of *The Animal Husbandry Act*, C.C.S.M. c. A90.

[30]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 65.

[31]This issue will be discussed further in this Chapter.

The primary powers of intervention under *The Animal Husbandry Act* are granted to police officers and constables in section 67.[32] These agents are authorized to enter any place without a warrant and to use force if necessary when there are reasonable grounds to believe that one of the following three things is happening:

- the animal has been confined without necessary food, water or attention for more than 15 hours;

- it is being wantonly, cruelly or unnecessarily beaten tortured or abused;

- it is unduly exposed to cold or overcrowding.

Having entered premises pursuant to section 67, an officer or constable may supply the animal with food, water and attention and may recover the costs of this food and attention from the owner. Alternatively, if necessary, the officer or constable may remove the animal. In either case, written notice must be provided "forthwith" to the owner of the animal, if he or she is known.[33]

A constable or police officer also has the authority to take possession of the animal for the purpose of having it examined by a veterinary surgeon, a power which appears to be distinct from the authority to remove the animal for care and treatment. This is permitted if there are reasonable grounds to believe the animal is being ill-treated or neglected. While the officer is also to inform the owner if this step is taken, notification is only required if the owner can be conveniently found. After being examined by a veterinarian, the animal may be destroyed or placed in care for up to 30 days. Either action may be taken without the consent of the animal's owner but the owner is liable for any money spent on the care of the detained animal and the person providing the care has a lien on the animal for these costs.[34]

The power to "take charge" of an animal and have it inspected by a veterinarian is also given to any inspector or agent of a humane society with respect to "any sick, injured, or stray domestic animal or bird".[35] It is not clear that the inspector or agent must be appointed a special constable for this section to be applicable. When an inspector or agent takes charge of such an animal, the owner of the animal remains liable for the costs of its care. Not only does the humane society, as caregiver, have a lien on the animal for the costs of care,[36] but it may sell or dispose of the animal, reimbursing itself from the proceeds of sale, if the owner refuses to pay for the costs of food, care and treatment within five days after being notified or if the owner cannot be found after due inquiry. The balance of the sale proceeds, if any, is to be paid to the owner, if known.[37]

Peace officers have the theoretical power to enter commercial establishments without a warrant during ordinary business hours for the purpose of inspecting animals which are kept there for "sale, hire or exhibition", or which are left to be taken care of for a fee.[38] This section

[32]Although the legislation does not make this clear, we assume that the term "constables" includes inspectors of a humane society who have been appointed special constables.

[33]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 67(2).

[34]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 68.

[35]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(1).

[36]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(1) authorizes an inspector or agent of a society to take charge of a sick, injured or stray domestic animal and proceed as in section 68. Section 68(4) of the Act grants a lien on the animal to a caregiver.

[37]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(2).

[38]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 66.

expressly excludes dwelling houses from its ambit and appears to be aimed at stables, kennels, circuses, zoos, pet stores and the like. However, this power appears to be only potential, since it is contingent on authorization by regulation and no regulations to date have authorized the use of this power.

Another section of the Act allows an officer or constable to destroy an animal if it is "so severely injured or sick that, in his opinion, it would be cruel to allow the animal to live".[39] Before killing the animal, however, the officer must seek the consent of the owner. If the owner refuses consent, the officer or constable must obtain the written opinion of a veterinarian that the animal is or appears to be "incapable of being so cured or healed so as to live thereafter without suffering".[40] If no veterinarian is available, the written opinion of "two reputable citizens" will suffice.[41]

Yet another section governs the humane destruction of abandoned or injured (as opposed to abused or neglected) animals, although the same principles apply to both. If an animal has been abandoned or left to die, a constable, police officer or society inspector is to attempt to ascertain the owner and, if the owner can be found, must attempt to obtain his or her consent to the destruction of the animal. If the owner cannot be found or refuses to consent to the animal's destruction, the officer must consult with a veterinarian or, if no veterinarian can be easily located, two reputable citizens. Before killing the animal, the officer must obtain a signed statement from the veterinarian or the two citizens that the animal is or appears to be incapable of being cured or healed as to live without suffering.[42]

If a large domestic animal, such as a horse, cow, sheep or hog, has been injured by a train, the conductor must report this to the nearest station agent, who is to notify the owner (if known) and the nearest constable or an inspector of a humane society. The officer is then to proceed as if the animal was abandoned.[43] However, if a large domestic animal is struck by an automobile, the driver is to notify the owner, if known. Otherwise, the driver must notify the nearest police station or municipal clerk. The police or clerk are to advise the owner (if known) and are to take steps to have the animal disposed of or cared for "as otherwise provided in this Part".[44]

C. CRITIQUE OF PROVINCIAL LEGISLATION

An analysis of these legislative provisions suggests that they suffer from a lack of coordination and clarity with the result that those individuals who are responsible for enforcing and administering these statutes are hampered as much as assisted by them.[45]

The first and most obvious problem with the current law is that it is confusing. This is especially evident in the matter of enforcing agents. There are no less than seven categories of enforcing agents mentioned in the three Acts: the Director of Veterinary Services (*The Animal Diseases Act*), veterinary inspectors (*The Animal Diseases Act*), police officers (*The Highway*

[39]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 70(1).

[40]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 70(2).

[41]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 70.

[42]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 71.

[43]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 72(1).

[44]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 72(2).

[45]This may be a natural consequence of the fact that some parts of the legislation can be traced to a statute enacted in 1933: *The Animal Husbandry Act*, S.M. 1933, c. 1. Although amendments have been made to this legislation over the years, it does not appear that any thorough overhaul of all animal protection legislation has taken place.

Traffic Act and *The Animal Husbandry Act*, ss. 67 and 68), peace officers (*The Animal Husbandry Act*, s. 66), constables (*The Animal Husbandry Act*, ss. 67, 68, 70 and 71), agents of a society (*The Animal Husbandry Act*, s. 69) and inspectors of a society (*The Animal Husbandry Act*, ss. 69, 71 and 72).

Not only are there numerous categories of agents, but different provisions of the Act have grouped them differently. For example, sections 67, 68 and 70 of *The Animal Husbandry Act* refer to a "constable or police officer" and section 69 refers to an "inspector or agent" of a society. However, section 71 refers to a "constable or police officer or the inspector of a society", while section 72 refers to a "constable or inspector of a society."

Each of these categories of agents has different powers granted to them in the pertinent legislation and various provisions allow different officials to act in different circumstances. For example, constables, inspectors or police officers may deal with abandoned animals,[46] but only constables and inspectors are permitted to deal with animals injured by a train.[47]

To make matters even more confusing, "agents and inspectors of a society" are not defined and the Act is silent as to the procedures for their appointment.[48] Indeed, there does not appear to be a definition of "society", although "humane society" is defined.[49] Similarly, it is not clear whether employees of the federal government who are veterinarians but are not registered with the Manitoba Veterinary Medical Association can be appointed veterinary inspectors.[50]

Several distinctions which do not appear to have a rational foundation also appear in the legislation. For example, *The Animal Husbandry Act* sets out two methods by which suffering animals can be euthanized, each with a distinct criterion. The first is contained in section 68(3) and applies after a constable or police officer has taken possession of an animal from its owner and had it examined by a veterinarian. If the veterinarian believes that the animal has been neglected or cruelly treated, he or she may approve of its destruction by the constable or police officer. No other criteria are established as to the extent of the animal's injuries or suffering which would justify its death; it appears that, as long as the animal has been cruelly treated or neglected, the officer and the veterinarian may choose either to destroy or treat it without any guidance from the statute. However, while section 68(3) would allow the destruction of an animal which has been abused, it does not authorize the euthanization of an animal which has been injured or diseased without having been abused.

The second method is set out in section 70 and is also used as the model for the humane destruction of abandoned animals and those which have been struck by a train. Section 70 requires a special constable or police officer first to be convinced that an animal is so severely injured or sick that "it would be cruel to allow the animal to live". If the special constable or police officer is so convinced, a veterinary surgeon or, if none can be found within a reasonable distance, two reputable citizens, must provide a written opinion that "the animal is, or appears to be, incapable of being so cured or healed as to live thereafter without suffering". In other words, if section 70 is used to destroy an animal, it appears that two different tests must be applied by at least two different individuals.

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[46]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 71.

[47]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 72(1).

[48]Although the same word is used, it appears that an inspector of a society is different than an inspector appointed by the minister charged with administering the Act pursuant to section 56.

[49]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 64(1).

[50]Section 6(1) of *The Animal Diseases Act* permits the Lieutenant Governor in Council to appoint "persons" as veterinary inspectors. However, "veterinarian" is defined in section 1 as "a person who holds a valid and subsisting certificate of registration under The Veterinary Medical Act."

Yet another power to euthanize animals is given to the Director of Veterinary Services by section 4 of *The Animal Diseases Act*. The Director is only given the express power to destroy animals which have contracted or been exposed to disease. However, the power to destroy animals which are not diseased is not explicit; it must be implied from the Director's power to "dispose" of an animal, granted in section 3. Even if this power is implied, it would only allow the Director to euthanize an animal which had been deprived of the necessities of life; it would appear that the Director does not have the authority to order the destruction of a severely injured animal, for example.

The notice provisions of the Acts are also confusing and rife with meaningless distinctions. A veterinary inspector acting under *The Animal Diseases Act* is under no obligation to inform the owner or possessor of land that it has been entered. By contrast, *The Animal Husbandry Act* requires a constable or police officer who has taken steps to assist an animal to notify the owner of the animal forthwith, if the owner is known. However, despite the fact that the interference with the animal in providing it food, water and care is relatively slight and the interference with the rights of the occupier of the property may be more significant, there is no obligation to inform the owner or occupier of the property as to the entry. In addition, if the animal is removed for examination by a veterinarian, the agent need only notify the owner in writing of the time and place of the examination if the owner "can be conveniently found."

Yet another apparently pointless distinction can be found by comparing the penalties imposed for abuse or neglect of an animal under *The Animal Diseases Act* and *The Highway Traffic Act*. The former imposes a minimum fine of $50 and a maximum fine of $500 for animal mistreatment, including mistreatment which takes place while animals are being transported. The latter allows a maximum fine of $100 for transporting animals by road in a way which causes them unnecessary suffering.[51]

Another group of concerns about current animal protection provisions centers around their location in provincial legislation. As we have noted, provisions designed to protect animals are currently found in at least four statutes, none of which is entirely dedicated to this important issue. *The Animal Diseases Act*, as its name implies, is devoted primarily to the prevention of the spread of animal diseases. *The Animal Husbandry Act* may be characterized as being concerned principally with the use of animals in agriculture; for example, it contains provisions dealing with artificial insemination of animals, the purchase, sale and breeding of livestock, registration of brands, stray livestock and harm to livestock from dogs. The primary focus of *The Wildlife Act* is the regulation and management of wild species in the context of hunting and trapping; the prevention of animal suffering is of secondary importance. *The Highway Traffic Act* deals with animals only in passing.

As a result of this haphazard approach to animal protection provisions, they are difficult to locate. Not only are they divided into four statutes, but none of the statutes in question readily identify themselves to a searcher as obvious locations for these provisions. If they are to be effective, these provisions must be accessible to those who are affected by them.

In addition, we have specific concerns about the placement of provincial penal provisions in *The Animal Diseases Act*. Although police officers and special constables are entitled to enforce these provisions, they are unlikely to do so because the Act is primarily used by the Veterinary Services Branch and veterinary inspectors whose main concern is to detect, treat and prevent the spread of animal diseases. Veterinarians are less likely to charge someone with

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[51]This maximum penalty under *The Highway Traffic Act* for the inhumane transportation of animals provides a startling contrast to the maximum penalty of $200,000 for the improper transportation of animals available under the federal *Health of Animals Act*, S.C. 1990, c. 21, s. 65.

abuse of an animal than are police officers or special constables, simply because they are not used to the process of arrest, laying charges and proceeding to trial.

Moreover, while prohibitions in *The Animal Diseases Act* include all sorts of abusive behaviour, veterinary inspectors are only granted the power to enter and investigate concerns that an animal is suffering from deprivation. They are not empowered to enter to deal with cases of abuse or torture other than deprivation.[52] Therefore, if an individual is to be charged and brought to trial pursuant to provincial legislation for abusing or torturing an animal, for example, a police officer or special constable would have to gain entry by using the provisions of *The Animal Husbandry Act* in order to lay charges under *The Animal Diseases Act*.[53]

Finally, there appear to be difficulties and potential conflicts between the present legislation and section 8 of the *Charter of Rights and Freedoms*, which protects Canadians from unreasonable searches and seizures.[54] Clearly, entry to private property and the removal or destruction of animals by police officers, special constables and the Director of Veterinary Services are governed by section 8. However, it is unclear whether the provisions governing these activities meet the standards of the Charter.

D. CURRENT PRACTICES

Despite the many flaws in the statutes which contain animal protection provisions, animal protection is taking place in the Province of Manitoba. For the most part, this is due to the work of the Winnipeg Humane Society and the Veterinary Services Branch of the Department of Agriculture.

A meeting with Vickie Burns, Executive Director of the Winnipeg Humane Society, revealed that the Winnipeg Humane Society is currently the only humane society in Manitoba with an active program of animal protection.[55] It is also the principal agent of animal protection within the City of Winnipeg. At this point, only one employee of the Winnipeg Humane Society is engaged in the investigation of reports of suffering animals and the seizure of animals where this is necessary. This special constable has a heavy workload and responds to more than 1000 complaints about animal mistreatment annually. In addition, she occasionally assists the Veterinary Services Branch with suffering animals found outside the city limits.[56]

The Winnipeg Humane Society also operates one of the chief animal caregiving facilities in the City of Winnipeg. Animals which are seized by the special constable are brought to the Humane Society for care and treatment. Although sometimes returned to their owners, these animals are usually retained by the Humane Society which attempts to provide good homes for them. Prior to arranging for the adoption of seized animals, the Humane Society will assess the ability of prospective owners to care properly for them. When adoption of an animal is not possible, it must be euthanized. Although a fee is charged for the privilege of adopting an animal, this rarely covers the costs of the animal's stay with the Humane Society. The Humane Society must rely on the financial support of Manitobans for much of its operating budget.[57]

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[52] The Director of Veterinary Services does have this power under section 3 of the Act, but the inspectors do not.

[53] Of course, entry could also be obtained and charges laid under the *Criminal Code*.

[54] "Everyone has the right to be secure against unreasonable search or seizure": *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 8.

[55] Meeting with Vickie Burns, Winnipeg Humane Society, November 30, 1994. While other societies in the province offer shelter to suffering animals, only the Winnipeg Humane Society appears to be active in responding to complaints about animal suffering.

[56] *Id.*

[57] Meeting with Vickie Burns, *supra* n. 55.

The Humane Society does not view itself as an enforcement agency; it relies on the police and other law enforcement officials to play this role. However, Humane Society employees will occasionally report evidence of mistreatment to the police or to Crown attorneys for appropriate action to be taken.[58]

The Veterinary Services Branch and the veterinary inspectors under its control represent the primary agents of animal protection outside the City of Winnipeg. Dr. James Neufeld of the Branch advised us that all veterinarians registered to practise in the Province of Manitoba are routinely named veterinary inspectors by Order in Council, although not all are prepared to exercise this power. The Veterinary Services Branch exercises close control over veterinary inspectors; as noted, veterinary inspectors are not permitted to enter private property nor to take action with respect to a suffering animal without specific authorization from the Director of Veterinary Services. When acting on the instructions of the Director, they are paid by the Department of Agriculture for both their time and their expenses.[59]

The Veterinary Services Branch does not operate an animal shelter; it is forced to utilize any facilities which may be at hand. Sometimes the Humane Society shelter in Winnipeg is used but the Branch may also place animals with veterinarians, at feed lots or with interested citizens, reimbursing them for the costs of the animals' care.[60]

Both Ms Burns and Dr. Neufeld expressed their dissatisfaction with the current legislation under which they operate and both admitted that their agents were sometimes forced to take action in situations which are not contemplated by legislation. They agreed that the current provisions are frequently unclear and confusing and that they often provide little assistance or direction in the task of animal protection.

E. CONCLUSION

The work of animal protection is being hampered rather than assisted by Manitoba's existing legislation. We believe that a new set of provisions is required which is practical but which is also based on clear and consistent principles.

RECOMMENDATION 1

New provisions governing the treatment of animals and providing for animal protection, based on clear and consistent principles, should be enacted.

In examining both the current legislation and the practice of the two major agents of animal protection, we have come to the conclusion that, although some minor changes are required, a wholesale revision of current practice is not necessary. The primary problem is the legislation, not the practice. In the following chapters, we will set out the approach we believe should be taken to provide clarity and certainty in the area of animal protection. Although we will recommend some modifications to the status quo, we reiterate that, in our view, major reforms in this area of the law must be the responsibility of our elected representatives.

[58]Meeting with Vickie Burns, *supra* n. 55.

[59]Meeting with Dr. James Neufeld, *supra* n. 25.

[60]Meeting with Dr. James Neufeld, *supra* n. 25.

CHAPTER 3

SOCIETY'S INTEREST IN ANIMAL PROTECTION

Despite the fact that current animal protection legislation is a greater problem than the actual practice of agents of animal protection, it seems clear to us that law reform in this area requires more than simply tidying up a few legislative loose ends. The current law is confusing and contradictory because it has developed over several decades in an *ad hoc* fashion.[1] It is not based on a cohesive model of animal protection. In our view, reform of animal protection law cannot take place in the absence of clearly enunciated principles which can be incorporated into legislation and consistently applied by those individuals who are to implement it.

The foundation for any good model of animal protection must be an understanding of the existence and scope of society's interest in protecting animals from harm. As we noted in Chapter 1, the existence of such an interest is, in our view, beyond doubt. The overview of federal and Manitoba legislation provided in Chapter 2 reveals that the welfare of animals has been legislatively entrenched in this province for many decades. Nor is Manitoba unique in creating a provincial animal protection scheme; every province has enacted legislation to protect animals.[2] In some provinces, this sort of legislation has been in place for well over a century.[3]

Moreover, we see no evidence that the interests of society in the protection of animals is diminishing. We believe that the words of Mahatma Gandhi with which we began this Report reflect the views of a substantial majority of Manitobans and Canadians. Our societal values dictate that an appropriate legislative framework be established to provide an adequate level of protection to animals.[4]

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[1]The legislative provisions contained in *The Animal Husbandry Act*, for example, can be traced to *An Act to amend "The Humane Societies Act"*, S.M. 1927, c. 25, s. 2.

[2]*Animal Protection Act*, S.A. 1988, c. A-42.l as am.; *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am.; *The Animal Diseases Act*, C.C.S.M. c. A85; *The Animal Husbandry Act*, C.C.S.M. c. A90; *Society for the Prevention of Cruelty Act*, R.S.N.B. 1973, c. 12 as am.; *Animal Protection Act*, R.S.N. 1990, c. A-10; *An Act to Incorporate "The Nova Scotia Society for the Prevention of Cruelty to Animals"*, S.N.S. 1877, c. 86 as am.; *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36 as am.; *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1 as am.; *Animal Health Protection Act*, R.S.Q. 1977, c. P-42, Div. IV.1.1 as en. by S.Q. 1993, c. 18 (unproclaimed; once proclaimed, the Act will be known as *An Act respecting the health, safety and welfare of animals*); *The Animal Protection Act*, R.S.S. 1978, c. A-21 as am.

[3]Nova Scotia appears to have been the leader in this area in Canada and, perhaps, in North America. In 1824, it enacted legislation which required anyone who "maliciously, unlawfully, and willingly" killed, maimed, wounded, or otherwise hurt any horse, sheep or cattle to pay to the person aggrieved by such an act triple the damages sustained. The legislation also permitted a judge to order such a person's imprisonment or a public whipping: *An Act to punish Persons guilty of maliciously killing or maiming Cattle*, S.N.S. 1824, c. 4. The protection of animals was further strengthened in 1825 by a statute which provided that anyone who mistreated horses, sheep or cattle which they owned or had charge of could be fined up to three pounds, with up to 20 days imprisonment in default: *An Act to prevent the cruel treatment of Horses, Sheep or other Cattle, by Persons owning or having the charge of the same*, S.N.S. 1825, c. 22. In 1877, legislation in Nova Scotia incorporated the Society for the Prevention of Cruelty to Animals and empowered the appointment of "extra constables" in order to "secure compliance" with any Act for the prevention of cruelty to animals: *An Act to incorporate "The Nova Scotia Society for the Prevention of Cruelty to Animals"*, S.N.S. 1877, c. 86, s. 4. In 1880, this Act was amended to allow the S.P.C.A. to take possession of and care for "any animal . . . found at large in a helpless or disabled state": *An Act to Amend the Act to incorporate the Nova Scotia Society for the Prevention of Cruelty to Animals*, S.N.S. 1880, c. 68, s. 7.

[4]In a Preface to a Recommended Code of Practice, published in 1990 by Manitoba Agriculture, the Minister of Agriculture, G.M. Findlay, stated: "A feature and a measure of the moral conduct of a progessive society is the extent to which it is concerned with the welfare of the animals with which it shares the earth.": Manitoba, Manitoba Agriculture, *Recommended Code of Practice for the Care and Handling of Horses in PMU Operations* (1990) (as amended) 1.

In our view, it is irrelevant whether society's interest in protecting animals arises because of "rights" animals have or whether it flows from a moral duty on the part of humans to behave in a "humane" manner toward other forms of life. We believe that a societal consensus exists which acknowledges that animal suffering should be avoided if possible and alleviated when it takes place.[5]

Having identified the existence of society's interest in animal protection, its extent or scope must be defined. This requires a definition of the subject of legislative protection and a discussion of the kind of suffering which will justify intervention. We believe that the scope of society's interest is also limited by certain activities which are widely viewed as legitimate and within which some degree of animal suffering must be accepted as inevitable.

A. DEFINITION OF ANIMAL

To this point, we have used the term "animal" as if a common meaning can be ascribed to it. In fact, it is likely that the term will mean different things to different people. In the context of animal protection, images of cats, dogs and other mammals will spring to the minds of many. However, current legislative definitions make clear that society's interest in protecting and aiding animals extends beyond this narrow scope. Although *The Animal Husbandry Act* does not attempt to define the term fully, it identifies birds and fish as being included. *The Animal Diseases Act* sets out a very broad definition, referring to "any creature not human".[6]

It may be that such an extensive definition is necessary for the proper control of animal diseases, the primary purpose of *The Animal Diseases Act*. However, we have concerns that such a definition is excessive for the purposes of animal protection. In our view, society's interest in protecting and relieving the distress of animals does not yet extend to primitive one-celled organisms, for example, which could well be included in the definition set out in *The Animal Diseases Act*.

At the same time, however, we are not prepared to recommend an overly narrow definition which would restrict society's interest to animals for which humans have a particularly high regard. In our view, society's interest in protecting animals does not depend on their intelligence, beauty, loyalty, utility or any other quality which we attribute to them. It is based exclusively on the recognition of animals as sentient beings with the capacity for suffering. For this reason, we would define animals for the purpose of animal protection legislation as all non-human living beings with a developed nervous system.

RECOMMENDATION 2

For the purposes of animal protection, "animal" should be defined as any non-human living being with a developed nervous system.

B. TYPE OF SUFFERING

Society's interest in preventing and relieving animal suffering also depends on the type of suffering being endured. Society's interest will be greatest when an animal is suffering acute and excruciating pain or when it is exposed to suffering which will, unless immediately halted, result

[5]It should be made clear that we are not dealing here with society's interest in preserving and conserving species of animals; that issue is not the subject of this Report. Instead, we are interested solely in the need to protect individual animals.

[6]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 64(1); *The Animal Diseases Act*, C.C.S.M. c. A85, s. 1.

in death or serious harm. However, we note that legislation in Manitoba and other provinces also refers to suffering which is, potentially, of a less serious nature. For example, provincial legislation often refers to suffering caused by a lack of adequate food and water, a lack of appropriate veterinary care and undue exposure to heat and cold.[7] Few would disagree that society also has an interest in protecting animals from these forms of suffering.

There is yet another type of animal suffering which is suggested by legislative phrases such as "pain and discomfort" and "undue hardship, privation or neglect."[8] In our view, these terms do not refer to occasional experiences of discomfort or irritation on the part of animals. The reference here is to conditions or mistreatment which will, over time, significantly affect an animal's health and well-being. We are aware of several conditions which can have such an effect. They include inadequate housing (including a lack of sufficient space), a chronic exposure to unsanitary conditions, inadequate ventilation and a lack of exercise. In addition, it is possible to subject an animal to anxiety or mental distress over a period of time to the point where its health and well-being is substantially impaired.

The mistreatment of an animal in these ways can and often does have an effect on the animal at least as serious as a lack of adequate food and water or an undue exposure to cold or heat. We therefore believe that society's interest in protecting animals from conditions which significantly impair their health and well-being is as legitimate as protecting them from other forms of suffering. Moreover, in the interest of encouraging agents of animal protection to take action, we recommend that the specific forms of mistreatment we have mentioned should be explicitly identified in legislation, rather than being alluded to in vague and general terms.

RECOMMENDATION 3

Animal protection legislation should be based on a recognition that society has a legitimate interest in preventing and alleviating the following conditions which cause animal suffering:

1. ***Treatment which, unless immediately halted, will cause an animal death or serious harm;***

2. ***Treatment which causes an animal to suffer acute pain;***

3. ***A lack of food and water sufficient to maintain an animal in a state of good health;***

4. ***A lack of appropriate veterinary care when an animal is wounded or ill;***

5. ***Treatment which will, over time, significantly impair an animal's health, including, in particular:***

    - ***the confinement of an animal in an area of insufficient space;***
    - ***the confinement of an animal in unsanitary conditions;***
    - ***the confinement of an animal without adequate ventilation;***
    - ***a failure to allow a confined animal an opportunity for adequate exercise;***

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[7]See, for example, *The Animal Diseases Act*, C.C.S.M. c. A85, s. 13; *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 67(1); *Animal Protection Act*, S.A. 1988, c. A-42.1 as am. by S.A. 1989, c. 17, s. 1(2); *Animal Protection Act*, R.S.N. 1990, c. A-10, s. 2; *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 1; *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 2(b).

[8]See, for example, *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 67(1); *Animal Protection Act*, S.A. 1988, c. A-42.1 as am. by S.A. 1989, c. 17, s. 1(2)(c); *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 1; *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 2(b).

- ***the subjection of an animal to treatment which causes it extreme anxiety and mental distress.***

C. EXEMPTIONS

Few would argue with the premise that, in an ideal world, humans would never engage in activities which result in animal suffering. However, since such a world does not exist, we recognize that society's interest in intervening on behalf of animals must be limited by practical considerations. There are a number of activities in which humans engage which result in animal suffering to at least some extent. These include:

- pest control (including the use of poisons);
- agricultural uses of animals;
- medical research and teaching involving animals;
- hunting;
- fishing (both commercial and sport fishing);
- veterinary treatment (including spaying and neutering);
- trapping;
- control of predators;
- protection of people and property;
- animal discipline and training;
- animal slaughter;
- humane euthanasia of animals.

These practices are widely accepted in our society as legitimate. There are some, perhaps many, members of our society who view some or all of these practices as illegitimate and it may be that their views will prevail over time. At this point, however, we judge that a majority of the citizens of Manitoba are not prepared to prohibit these activities.

At the same time, the acceptance of the legitimacy of these activities by most Manitobans is, we believe, accompanied by a significant proviso: they should not be carried out in a manner which causes animals needless suffering. We believe that "needless suffering", in this context, means suffering which is not inevitable and intrinsic to the activity. If these activities are to be permitted, then, those who engage in them should be required to use methods which limit animal suffering to that which is strictly necessary in order to carry out the activity properly. For example, if pests can be controlled by other, more humane methods, a method which causes severe suffering to them should not be permitted.

RECOMMENDATION 4

The conditions which cause animal suffering and which society has an interest in preventing and alleviating should not include conditions which occur in the course of the following activities so long as the activities are carried out in a manner which does not cause animals needless suffering (that is, suffering of a degree which is not inevitable or intrinsic to the activity):

- ***pest control (including the use of poisons);***
- ***agricultural uses of animals;***
- ***medical research and teaching involving animals;***
- ***hunting;***
- ***fishing (both commercial and sport fishing);***
- ***veterinary treatment (including spaying and neutering);***
- ***trapping;***

- *control of predators;*
- *protection of people and property;*
- *animal discipline and training;*
- *animal slaughter;*
- *humane euthanasia of animals.*

In some cases, a determination of whether a method of carrying out these activities causes needless suffering will have to be based on subjective judgment. However, in others, standards of conduct will have been established which can assist in this determination. For example, the Canadian Council on Animal Care has taken an active role in designing appropriate rules for the use of animals in scientific research and teaching.[9] Similarly, both the federal and provincial Departments of Agriculture have established standards for the use of some animals in agriculture.[10] We advocate the use of these and similar standards in making a determination as to whether a particular method of carrying out an exempt activity minimizes animal suffering because they provide certainty for both agents of animal protection and those engaged in the activity.

Another way to provide certainty as to legitimate methods of carrying out exempt activities is by way of regulation. Legislation commonly permits Cabinet or a particular Minister to establish regulations which set out more specific standards than are included in the legislation itself. These regulations can be easily amended from time to time as technology and other circumstances change.

We believe that the use of regulations would be very effective in this context. For example, while the legislation itself might state merely that pest control is an exempt activity so long as it is carried out in a manner which minimizes animal suffering, regulations could set out specific types of poison which can legitimately be used for pest control.

RECOMMENDATION 5

Legislation should permit the creation of regulations which will more specifically define standards of animal care.

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[9]Alberta, *Report of the Animal Care Legislation Review Committee* (1992); Institute of Medical Ethics (Working Party), *Lives in the Balance: The Ethics of Using Animals in Biomedical Research* (1991) 268-271.

[10]"In 1980 the Canadian Federation of Humane Societies (CFHS) began coordinating the process of drafting codes of practice for all livestock species with the drafting of a code of practice for handling chickens . . . . Subsequently, at the request of the Agricultural Institute of Canada (AIC) and the Canadian Veterinary Medical Association (CVMA), the Canadian Society of Animal Science (CSAS) undertook to prepare draft codes of practice for handling other livestock species. The CSAS and the AIC agreed that the successful CFHS coordination of the drafting process should continue, and the draft codes were turned over to that organization. The process has involved representatives of agricultural industries and their organizations, federal and provincial government departments, associations of animal science, representatives of the animal welfare movement, and interested individuals. As a result of this work, the following codes of practice have been published: *Recommended Code of Practice for Handling Chickens from Hatchery to Slaughterhouse* (1983); *Recommended Code of Practice for Care and Handling of Pigs* (1984); *Recommended Code of Practice for the Care and Handling of Special Fed Veal Calves* (1988); *Recommended Code of Practice for the Care and Handling of Mink* (1988); *Recommended Code of Practice for the Care and Handling of Ranched Fox* (1989).": Canada, Agriculture Canada, *Recommended code of practice for the care and handling of poultry from hatchery to processing plant* (1989) 6.

More recently, codes have also been prepared in respect of dairy and beef cattle: Canada, Agriculture Canada, *Recommended code of practice for the care and handling of dairy cattle* (1990); Canada, Agriculture Canada, *Recommended code of practice for the care and handling of farm animals: beef cattle* (1991). The Manitoba government has also published a code respecting horses in PMU operations: Manitoba, Manitoba Agriculture, *Recommended Code of Practice for the Care and Handling of Horses in PMU Operations* (1990) (as am.).

D. "IN DISTRESS"

For the sake of convenience, many provinces have used the term "in distress" to refer to the forms of animal suffering which the legislation is intended to address.[11] Although we do not intend to make a statement about the most appropriate terminology for legislative purposes, we have decided to adopt the same practice for the purposes of this Report. Therefore, references in this Report to an animal "in distress" should be read to mean that the animal so described has a developed nervous system, is being subjected to one of the causes of suffering set out in Recommendation 3 and is not experiencing suffering which is necessarily incidental to one of the exempt activities set out in Recommendation 4.

E. CONCLUSION

Having better defined society's interest in animal protection, we now turn to the actions which can be taken to accomplish it. Typically, animal protection legislation can be divided into two categories: provisions which permit intervention to remove the cause of suffering and to alleviate an animal's distress and provisions which penalize conduct which causes animal suffering. These two forms of animal protection will be discussed in the next two chapters.

[11]See, for example, *Animal Protection Act*, S.A. 1988, c. A-42.1 as am. by S.A. 1989, c. 17, s. 1(2); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 1(2); *Animal Protection Act*, R.S.N. 1990, c. A-10, s. 2(b); *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 1; *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1 as am. by S.P.E.I. 1992, c. 4 as am. by S.P.E.I. 1994, c. 58, s. 8.

CHAPTER 4

INTERVENTION

Manitoba's current animal protection legislation is primarily concerned with the need to empower agents to alleviate the suffering of animals and to shield them from further harm. Indeed, the relevant provisions of *The Animal Husbandry Act* deal exclusively with this issue. Manitoba is not exceptional in this emphasis; every province which has enacted animal protection legislation has authorized intervention on behalf of suffering animals.

We agree that animal protection legislation must authorize intervention to care for animals in distress and to prevent a renewal or continuation of their suffering. Indeed, we believe that intervention of this sort is central to a comprehensive system of animal protection.

Currently, Manitoba legislation grants specified agents of intervention the authority to take three kinds of action after finding an animal in distress: providing care on the spot, removing the animal in order to place it in care and euthanizing it. All three powers will be discussed in this Chapter as well as additional powers which we believe are necessary for the protection of animals.

A. ON THE SPOT CARE

Providing a suffering animal with care on the spot is often the most obvious form of assistance which can be offered to it. In our view, so long as it is sufficient to relieve an animal's suffering and to prevent future suffering, on the spot care is to be preferred over more interventionist measures.

While authorizing immediate care, *The Animal Husbandry Act* currently limits the discretion of agents of intervention by permitting them only to "supply the animal with necessary food, water, and attention" on the spot.[1] Although we acknowledge that these actions will usually be sufficient to alleviate an animal's suffering and may often be the only measures which can be taken without seizing and removing the animal, we note that several provinces use broader language and allow agents to take whatever measures are necessary to assist the animal without removing it.[2] This greater latitude encourages agents to assist a suffering animal on the spot rather than removing it from the premises. We therefore prefer this approach and have confidence in the ability of agents to use these somewhat greater powers appropriately.

We also note that some other provinces require agents first to attempt to locate the person responsible for the animal and seek his or her cooperation and consent to the provision of care; the agent may act only if the person cannot be located or refuses to take the action himself or herself.[3] After considering this restriction, we have decided against recommending it. In our

[1] *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 67(1)(e).

[2] *Animal Protection Act*, S.A. 1988, c. A-42.l, s. 3(1); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 8.1; *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 3(1).

[3] *Animal Protection Act*, S.A. 1988, c. A-42.l, s. 3(1); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 8.1; *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 3(1).

view, the interference with the property rights of the owner or keeper[4] in providing an animal with care on the spot is so minimal that no prior consultation with him or her is necessary. Indeed, the only effect of imposing such a requirement is likely to be an unnecessary delay in aiding the animal. While we hope and expect that agents will deal appropriately with animal owners, we see no need to demand that agents seek them out and obtain their consent before acting.

However, despite the fact that providing care for an animal on the spot interferes only slightly with the property rights of its owner, we suggest that some form of notification of this action should be provided after the fact. Besides representing a gesture of courtesy, notification will serve an educational function by alerting the owner to the fact that more appropriate care of the animal is required. Because of the minimal level of interference with the owner's property rights, we are not unduly concerned about the form of notification; in our view, either written or verbal notification is sufficient.

RECOMMENDATION 6

Agents should be authorized to take all necessary action to relieve the suffering of an animal which is in distress without removing it from the premises on which it is located.

RECOMMENDATION 7

Reasonable steps should be taken after the fact to notify the animal's owner or keeper of any action taken to aid an animal which is in distress without removing it.

B. SEIZURE

In some cases, providing care on the spot will be an insufficient form of intervention. An animal may require treatment which can only be provided at a veterinary hospital or clinic or it may need a lengthy period of specialized care. In addition, there may be substantial fears that, if not removed, an animal may be subjected to a continuing or renewed threat of harm. Every province with animal protection legislation grants agents the power to seize a suffering animal in order to remove it to a place of care and safety.[5]

While the seizure of stray or wild animals may not cause much controversy, it can be argued that the removal of owned animals represents an unwarranted interference with the property rights of animal owners. We disagree. Although we believe that animals should not be seized when other less intrusive options are available and sufficient, we have concluded that society's interests in alleviating and preventing animal suffering justify the removal of an animal when it is necessary for the animal's well-being.

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[4]As used in this Report, the term "keeper" refers to someone who is not the "owner" of an animal in a strict legal sense but who has accepted custody of it. It would apply, for example, to someone who boards an animal for its owner or to someone who keeps a stray animal as a pet. For the purposes of convenience, we have largely eliminated references to "keepers" in this Report. However, references to "owner" or "owners" should be read to include "keeper" and "keepers".

[5]*Animal Protection Act*, S.A. 1988, c. A-42.l, s. 3(1); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335, as am. by S.B.C 1994, c. 13, s. 8.1; *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 67(1)(f); *Society for the Prevention of Cruelty Act*, R.S.N.B. 1973, c. S-12, as am. by S.N.B. 1986, c. 6, s. 17; *Animal Protection Act*, R.S.N. 1990, c. A-10, s. 5(2); *An Act to Incorporate "The Nova Scotia Society for the Prevention of Cruelty to Animals"*, S.N.S. 1877, c. 86 as am. by S.N.S. 1909, c. 165 as am. by S.N.S. 1957, c. 108, s. 3(1); *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 14(1); *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1, s. 14(1); *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 3(1)(c).

RECOMMENDATION 8

Agents should be empowered to seize and remove animals in distress if this is reasonably necessary to provide them with proper care and treatment or to prevent the continuation or recurrence of their suffering.

Of course, this does not mean that seizure and subsequent treatment will always be the most appropriate course of action. Sadly, in some cases, providing care will simply prolong an animal's suffering and euthanasia will be the most humane action that can be taken. We discuss this option more fully later in this Chapter.

1. Decision-maker

Current legislation in Manitoba and elsewhere requires that a veterinarian provide an opinion as to the necessity of an animal's removal before it can be seized.[6] Other provinces are content to leave this decision in the hands of agents responsible for enforcing the legislation, whether or not they are veterinarians.[7]

After considering the matter, we prefer this latter approach. In many cases, the additional time required to obtain a veterinary opinion, especially if it were to be in writing, would add substantially and unnecessarily to the animal's suffering. Moreover, concerns about unnecessary seizures can, we believe, be appropriately dealt with by way of an appeal which we will recommend later in this Chapter.

Of course, having regard to his or her own limitations of knowledge and experience, an agent may be wise to obtain the advice of a veterinarian or other knowledgeable individuals prior to seizing and removing an animal. However, we are of the view that this should not be made mandatory.

RECOMMENDATION 9

An agent should be permitted to seize and remove an animal which is in distress without being required to obtain a veterinary or other opinion as to the necessity of the seizure and removal.

2. Notice

Because removal represents a more substantial interference with the property rights of an owner than providing care on the spot, notice of this action becomes more important. We believe that notice of a removal should be provided by the agent responsible, should be in writing and should provide the date and time of the removal, a description of the seized animal, the identity of the agent responsible and the reason for the removal. In addition, when the place where the animal will be detained is known, this information should be provided; if it is unknown, other information, such as the address or telephone number of the agent, which will

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[6]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 68(3). New Brunswick requires that either a veterinarian or two other individuals support the decision to remove the animal: *Society for the Prevention of Cruelty Act*, R.S.N.B. 1973, c. S-12 as am. by S.N.B. 1986, c. 6, s. 17(3). Another approach has been adopted by Ontario and Prince Edward Island, which allow removal where a veterinarian has examined the animal but also permit an agent to remove the animal without a veterinarian's opinion where the owner cannot be promptly found: *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 14; *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1, s. 14(1).

[7]*Animal Protection Act*, S.A. 1988, c. A-42.1, s. 3(1); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 8.1; *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 3(1).

permit the owner to learn of the location of the animal, should be included. Where feasible, we prefer that this notice be personally delivered to the owner of the animal or left prominently displayed or posted on the premises. Where this is not possible, we would accept service by registered mail.

In cases where an animal is not apparently owned or where its owner cannot be readily identified, *The Animal Husbandry Act* currently requires that agents take reasonable steps to locate the owner.[8] We believe that this requirement is appropriate and would retain it.

RECOMMENDATION 10

Written notice should be provided by the agent responsible for the seizure of an animal to the owner or keeper of the seized animal. The notice should be delivered personally to the owner or keeper of the animal, left prominently displayed on the premises from which the animal was seized or sent by registered mail.

RECOMMENDATION 11

Where the owner or keeper of a seized animal is unknown, reasonable efforts should be made by the agent responsible for the seizure to ascertain and locate the owner or keeper in order to provide notice.

RECOMMENDATION 12

Notice of the seizure of an animal should set out the date and time of the seizure, a description of the seized animal, the identity of the agent responsible and the reason for the seizure. If known, the location where the animal will be kept should be provided; if this is unknown, information should be provided which will enable the owner or keeper to locate the animal.

3. Caregiver

Typically, animals which are seized in or near the City of Winnipeg are placed with the Winnipeg Humane Society for the provision of care and treatment. Animals which are farther away or which cannot be kept by the Winnipeg Humane Society may be placed with veterinarians, livestock feed lots or concerned individuals. When placed in care as the result of authorized actions by veterinary inspectors, the cost of these animals' care is paid by the Veterinary Services Branch of the provincial Department of Agriculture.[9] For the purposes of this Report, we will refer to the person or organization which takes responsibility for and bears the costs of an animal's care, whether provided on the spot or after a seizure, as its "caregiver".

We will recommend later in this Chapter that animal owners should be held ultimately responsible for the costs of care of their animals and that caregivers should be entitled to recover these costs from animal owners. Nevertheless, caregivers run the risk that an animal's owner may be unable or unwilling to pay for these costs and that the caregiver may not be reimbursed.

Given the risk that they will be forced to pay the ultimate cost of an animal's care, we think it only reasonable to permit those who are prepared to act as caregivers to determine the location where that care will be provided and the individual who will provide that care. We

[8] *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(2)(b).

[9] Meeting with Dr. James Neufeld, Veterinary Services Branch, Manitoba Department of Agriculture, November 17, 1994.

expect that the Winnipeg Humane Society and the Veterinary Services Branch will, in most cases, provide payment for the costs of an animal's care and will therefore exercise this authority. However, in cases where neither the Humane Society nor the Veterinary Services Branch are able or willing to provide care, an individual or another organization may express a willingness to do so. Assuming that the seizure itself is legitimate, we can see no reason to foreclose this possibility and would permit such an organization or individual the same right to determine the site of care and the person to provide the care.[10]

RECOMMENDATION 13

The individual or organization which agrees to pay for the initial costs of a seized animal's care (the caregiver) should be able to determine the location where care will be provided and the individual who will provide the care.

4. Limits on Care

Clearly, an animal whose condition or circumstance has necessitated its seizure should receive sufficient care to restore it to health. We believe that caregivers should be legislatively authorized to take all measures which are reasonably necessary to achieve this goal.

However, this does not imply that caregivers should be given the authority to employ treatments which, although beneficial for the animal, are unrelated to its distress. If, as we will recommend, owners are to be held liable for the cost of an animal's care, caregivers should be required to restrict the care they provide to that which is reasonably required for the animal's recuperation.

In general, the same thinking should apply to the length of an animal's seizure; it should remain in care for so long (but only for so long) as is necessary to restore it to health. However, when an animal has been seized due to concerns about its exposure to continued or renewed suffering, this logic may not be relevant; the animal may not require further treatment but the threat of suffering if it is returned may still be present.

Currently, *The Animal Husbandry Act* authorizes a seizure for a maximum of 30 days after which the animal must, presumably, be returned to its owner.[11] Thirty days will, in most cases, be sufficient to allow an animal to recuperate from its injuries or illness and to allow its owner to take action to deal with conditions or circumstances which have caused the animal's suffering. However, we have concerns that, in some cases, 30 days may be insufficient for a seized animal to recuperate fully or for the threat to its well-being to be addressed.

To deal with the first concern, we suggest that the 30-day period should be automatically extended if a veterinarian advises both the caregiver and the animal's owner in writing that an additional period of time is necessary for the full recuperation of the animal. The veterinarian should be required to set out the length of time he or she believes will be sufficient to restore the animal to health but should be allowed to extend this period further if circumstances warrant. We will propose later in this Chapter that the owner of an animal be permitted to appeal to the courts for the return of the animal if he or she believes that its continued seizure is unreasonable.

The second concern - that the threat to the animal's well-being will still exist at the end of the 30-day period - can, we believe, be addressed by the recommendation which we will make

[10]We do not intend to foreclose the possibility that an interested and sympathetic individual may agree to provide the necessary care personally.

[11]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 68(3).

later in this Chapter which would permit an application for the permanent seizure of a seized animal. Therefore, if an animal is seized due to concerns about a threat to its welfare, we would permit the seizure to continue for up to 30 days. However, at the end of that period, we would require that the animal be returned unless an application has been made for permanent seizure of it.

All of our recommendations concerning the return of an animal to its owner are made subject to our recommendations, contained in the next section of this Chapter, which would allow caregivers to retain possession of an animal until the costs of its care have been paid by its owner.

RECOMMENDATION 14

Caregivers should be authorized to provide all treatment and care which is reasonably required to restore a seized animal to health but should not be authorized to provide treatment which is not reasonably necessary to achieve this goal.

RECOMMENDATION 15

A seized animal should be returned to its owner or keeper as soon as it has regained its health, so long as there are no significant concerns that it would be subject to further suffering upon its return. In any event, it should be returned within 30 days of its seizure unless:

(a) ***a veterinarian advises in writing that a specific further period of time is necessary for the animal's recuperation; or***

(b) ***an application has been made for its permanent seizure.***

C. PAYMENT OF THE COSTS OF CARE

Whether care has been provided to an animal on the spot or after it has been seized and removed from its owner's possession, the costs of this care will have to be paid. Every province with animal protection legislation places ultimate responsibility for paying these costs on the owner of the animal.[12] We agree with this approach. As the person responsible for the animal's well-being, it should fall to its owner and not to government, humane societies or sympathetic individuals to provide proper and sufficient care for it; there is no reason why the owner should not pay for the costs of care which is being provided on his or her behalf.

RECOMMENDATION 16

The owner or keeper of an animal should be obliged to pay for the reasonable costs of the animal's care provided on the spot or after its seizure.

[12]*Animal Protection Act*, S.A. 1988, c. A-42.l, s. 5; *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 8.9; *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 68(4); *The Animal Diseases Act*, C.C.S.M. c. A85, s. 3; *Society for the Prevention of Cruelty Act*, R.S.N.B. 1973, c. S-12, as am. by S.N.B. 1986, c. 6, s. 17(4); *Animal Protection Act*, R.S.N. 1990, c. A-10, s. 9(1); *An Act to Incorporate "The Nova Scotia Society for the Prevention of Cruelty to Animals"*, S.N.S. 1877, c.86 as am. by S.N.S. 1909, c. 165 as am. by S.N.S. 1957, c. 108, s. 3(3); *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 15(1); *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1, s. 15(1); *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 6.

Provisions to this effect are also contained in legislation in Québec which, although enacted, has not yet been proclaimed: *Animal Health Protection Act*, R.S.Q. 1977, c. P-42, s. 55.9.14. as en. by S.Q. 1993, c. 18 (unproclaimed).

1. Statement of Account

Currently, a caregiver is given an automatic lien on an animal for the costs of care which it has provided.[13] This allows him or her to retain possession of the animal until these costs have been paid by the animal's owner. *The Animal Husbandry Act* gives an owner five days after receiving notice to provide payment of these costs. If this period elapses without payment, the animal may be sold or otherwise disposed of. If it is sold, proceeds of the sale are used first to pay the costs of care and the remainder is remitted to the owner.[14]

This system appears to be working adequately and we have no desire to alter its basic structure. We would maintain the requirement that those who have paid for the care of the animal should be required to provide notice as to the costs of care which have been provided. However, rather than merely being notified, as the law currently requires,[15] we believe that the animal's owner is entitled to a statement of account which itemizes the costs which have been incurred. This will permit the owner to assess the reasonableness of these costs and intelligently examine his or her options concerning an appeal which we recommend later in this Chapter.

We believe that a statement of account should set out not only the costs of care and treatment to the date of the statement but should include the daily costs of food and shelter for the period between the time the statement of account was issued and its payment. The owner should be responsible for all of these costs.

One of the problems with the current legislation is that it suggests that different caregivers have different obligations and powers with respect to the recovery of the costs of care. For example, *The Animal Husbandry Act* grants an automatic lien on the animal to anyone who provides it with care but allows only a humane society to sell or dispose of it if these costs are not paid.[16] Similarly, only humane societies are obliged to notify the owner of the costs of care.[17] Although it specifies that treatment and care which is provided by the Veterinary Services Branch is to be "at the expense of the owner",[18] *The Animal Diseases Act* provides no direction at all for notifying the owner and recovering the costs of care.

We believe that these anomalies represent flaws in the legislation rather than an attempt to draw distinctions between caregivers. In any event, we see no reason why the procedures for recovering the costs of an animal's care should not be applied to all caregivers.

RECOMMENDATION 17

The individual or organization which has paid for the costs of an animal's care should provide the owner or keeper of the animal with an itemized statement of account after the animal has recuperated sufficiently to be returned to its owner or keeper. The statement of account should set out the costs of care to date and a daily charge which will be applied until the account is paid.

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[13]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 68(4).

[14]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(2). Although s. 68(4) gives an automatic lien to any person providing care to the animal, under s. 69(2), only the society may sell or dispose of the animal and reimburse itself out of the proceeds.

[15]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(2).

[16]*The Animal Husbandry Act*, C.C.S.M. c. A90, ss. 68(4) and 69(2).

[17]*The Animal Husbandry Act*, C.C.S.M. c. A90, s.69(2).

[18]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 3.

2. Enforcement

Currently, a caregiver has a limited power to prod the owner of a seized animal to pay the costs of care. The primary instrument available to the caregiver is the automatic lien granted by legislation.[19] We have no difficulty in agreeing that, subject to a successful appeal,[20] a caregiver should not be obliged to return a seized animal to its owner until and unless the statement of account has been paid in full. Our recommendations concerning the need to return an animal after it has recovered or within a 30-day period, for example, should not be interpreted to mean that it must be returned despite a failure on the part of its owner to pay the costs of its care.

However, we do not view the caregiver's right to retain a seized animal as sufficient to encourage recalcitrant animal owners to meet their obligations. Inevitably, some owners will be prepared to give up an animal rather than to pay the costs of its care. In situations where an owner refuses to pay and an animal is less valuable than the costs of its care or where it cannot be sold, the caregiver will be unable to recover these costs. We view this as unfair and unsatisfactory. Caregivers should not be forced to bear this burden. We therefore suggest that a statement of account should be enforceable in Small Claims Court or in the Court of Queen's Bench (depending on the amount of the account) as a debt. Once judgment is obtained, caregivers would be in a position to collect the costs of care from owners of animals; for example, they would be able to garnish wages or to seize assets in order to satisfy this judgment.

By requiring the caregiver to sue the animal owner to enforce the statement of account, we are also granting the owner an opportunity to challenge the legitimacy of the care which has been provided to the animal. If the owner believes that the care has been excessive or unreasonably expensive, he or she can make this argument in court. The judgment ultimately issued by the court should therefore include only the reasonable costs of care.

RECOMMENDATION 18

Caregivers should be given an automatic lien on an animal to which care has been provided and should not be required to return a seized animal to its owner or keeper until the costs of care have been paid.

RECOMMENDATION 19

A statement of the costs of care provided to an animal in distress should be enforceable in Small Claims Court or the Court of Queen's Bench to the extent that the costs of care which have been provided by the caregiver are reasonable.

3. Time to Pay

Although some provinces have shortened the time granted to an owner for payment after a statement of account has been provided,[21] we would maintain the current time period of five days in order to provide owners every opportunity to regain possession of their animals. However, it is also important that caregivers be permitted to minimize and recoup the costs of care by taking

[19] *The Animal Husbandry Act*, C.C.S.M. c. A90, s. 68(4).

[20] We will recommend the implementation of an appeal process later in this Chapter.

[21] For example, Alberta allows the sale or adoption of a seized animal three business days after it has been seized: *Animal Protection Act*, S.A. 1988, c. A-42.1, s. 7(1). Similarly, Saskatchewan grants the owner only 72 hours after the seizure of the animal to pay or agree to pay the costs of its care or face the prospect of losing the animal: *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 7.

timely action with respect to seized animals. Therefore, we propose that the seized animal's owner should be given five days after receiving a statement of account either to make payment of the statement of account or to file an appeal and serve it on the caregiver. If the owner does neither, he or she should be viewed as having relinquished all rights to the animal; the caregiver should then be permitted to sell, give away, keep or euthanize the animal.

RECOMMENDATION 20

Unless the owner or keeper of a seized animal, within five days after receiving a statement of account

- ***serves on the caregiver a notice of appeal; or***
- ***makes payment of the statement of account,***

his or her rights to the animal should come to an end and should be transferred to the caregiver; the caregiver should then be allowed to sell, give away, keep or euthanize the animal, as he or she sees fit.

4. Proceeds of Sale

Although we believe that the owner of the animal should lose all rights to the animal if payment of the costs of care is not made, we are prepared to maintain the current practice of returning to the owner excess proceeds of sale if the animal can be sold for a sum greater than the costs of care. However, in view of the fact that the owner will have had five days to provide payment, we are not prepared to require that the caregiver make every effort to sell the animal at the best possible price. Our primary interest is the animal's well-being, not the financial impact of its seizure on its owner. Therefore, we believe that a caregiver should be able to place the animal in a suitable new environment without undue concern over the effect of this action on the animal's owner.

If a sale of the animal is not feasible or if a sale fails to pay the full costs of care, the owner should remain liable for the costs of care up to the time when his or her rights to the animal are relinquished. The caregiver should be entitled to sue the owner in order to recover those costs of care which are not covered by the proceeds of sale.

RECOMMENDATION 21

If a seized animal is sold, the proceeds should be used to pay the costs of care; excess proceeds should be returned to the owner or keeper.

RECOMMENDATION 22

If the proceeds of the sale of the animal are insufficient to pay for the costs of care, the owner or keeper should remain liable for the unpaid costs of care.

5. Unknown Owner or Keeper

Currently, in cases where the owner is unknown or cannot be located, *The Animal Husbandry Act* requires that due inquiry be made to ascertain and locate him or her. If these efforts are unsuccessful, the animal may be sold, given away or euthanized as if the owner had

failed to respond to a statement of account. However, current legislation is unclear as to the ultimate recipient of excess proceeds of disposition in this situation.[22]

The current law is appropriate as far as it goes. In order to protect the rights of animal owners, caregivers should be obliged to make reasonable efforts to identify and locate the owner of all seized animals. Furthermore, we see no alternative to allowing caregivers to dispose of seized animals if their owners cannot be found. However, we believe that some provision should be made for those cases (which we expect to be rare) where a seized animal whose owner cannot be found is sold and the proceeds of its sale exceed the costs of its care.

We are aware that, in the vast majority of cases, the caregivers for seized animals will be the Winnipeg Humane Society or the Veterinary Services Branch. We also anticipate that, as in the past, these organizations will often be unable to obtain full reimbursement for the costs of care they will provide to animals. In order to offset some of the costs faced by these organizations and in recognition of the valuable public service they provide, we believe that it is reasonable to permit them to retain the entire proceeds of sale when an animal which they cared for and whose owner cannot reasonably be found is sold.

We suggest a different approach when the caregiver for a seized animal is someone other than the Winnipeg Humane Society or the Veterinary Services Branch, however. Allowing such a person a windfall would discourage him or her from taking reasonable steps to locate the seized animal's owner. We suggest that any proceeds of sale which remain after paying the legitimate costs of the seized animal's care should be remitted to the government for use in providing protection to other animals.

RECOMMENDATION 23

Reasonable efforts to identify and locate the owner or keeper of a seized animal should be made by the animal's caregiver. If these are unsuccessful, the caregiver should be permitted to sell, give away, keep or euthanize the animal.

RECOMMENDATION 24

If care has been provided to an animal by a humane society or the Veterinary Services Branch and if the owner or keeper of an animal cannot be found after reasonable efforts have been made and the animal is sold, the caregiver should be permitted to retain the entire proceeds of sale.

RECOMMENDATION 25

If care has been provided to an animal by someone other than a humane society or the Veterinary Services Branch and if the owner or keeper of the animal cannot be found and the animal is sold, the costs of care should be paid from the proceeds of sale and the excess proceeds should be remitted to the provincial government.

D. APPEAL

It is inevitable that some owners will take issue with the removal of their animals, with their continued seizure or with the costs of their care. It would be naïve to suggest that agents and caregivers will invariably act appropriately in these matters; occasional mistakes will no

[22]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 69(2), states that, after reimbursing itself, the Humane Society may pay the balance of the proceeds of sale "to the owner of the animal or to the person entitled thereto."

doubt be made. In order to rectify particular injustices as well as to deter unnecessary seizures and excessive detention of seized animals, we suggest that an avenue of appeal be created.

The most appropriate body to hear these appeals is, in our view, the Court of Queen's Bench. Depending on the grounds for an appeal, it should be initiated by the filing of an application naming either the agent responsible for the seizure, the caregiver or both as respondents. In our view, the legitimacy of the seizure, the need for the continued detention of the animal and unreasonable costs of its care should all serve as grounds for such an appeal.[23]

The court should be permitted to order the return of the animal to its owner if the animal was improperly seized. By this, we do not mean to imply that the animal should be returned if some mere technical flaw can be identified in the original seizure. For example, a failure to comply fully with the technical requirements of notice should not result in the animal's return unless its continued seizure is otherwise inappropriate.[24] However, if the animal was not in fact suffering from distress (as we have defined it) at the time of the seizure, we believe that it should be returned to its owner.[25] We believe that the responsibility to prove that the animal was in fact in distress when seized should rest with the agent responsible for the seizure.

In addition, even if the seizure were appropriate, we believe that the seized animal should be returned to its owner if its continued detention is unnecessary. If the judge is convinced that the animal has recovered sufficiently from its injury or illness and that its safety and well-being would not be jeopardized as a result, its return should be ordered. The onus for demonstrating these facts should rest, in our view, with the applicant.

Any terms and conditions which appear just to the court should be permitted as part of such an order. For example, the court may wish to require that, prior to the animal's return, its owner must pay all or part of the costs of its care incurred while it was being detained. The court should also be able to reduce or eliminate the amount owing to the caregiver for the costs of care if it determines that the seizure was illegitimate or that the costs as set out in the statement of account are unreasonable.

We believe that the procedural rules for applications to the court are adequate for the appeal we propose. However, as a matter of practice, it will be necessary for the animal's owner to file an application within five days of receiving a statement of account if he or she wishes to retain ownership of the animal. Failure to file an appeal within five days will result in the transfer of the owner's right to the animal to the caregiver who will then be entitled to sell the animal, give it away or euthanize it.

RECOMMENDATION 26

An owner or keeper of a seized animal should be permitted to appeal its seizure, its continued seizure or the costs of its care to the Court of Queen's Bench by way of application naming the agent responsible for the seizure, the caregiver or both as respondents.

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[23]We expect that, for the most part, the issue of the reasonableness of the costs of care will be dealt with in Small Claims Court or the Court of Queen's Bench when the owner is sued for these costs. However, we believe that, in cases where the owner takes issue with the statement of account and does not wish his or her animal sold or otherwise disposed of, an avenue of appeal should be available.

[24]We are not speaking here of actions by an agent of animal intervention which violate an individual's rights as guaranteed by the *Charter*; an individual aggrieved by such a violation is already entitled to seek an appropriate remedy: *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 24(1).

[25]Distress, as we have defined it in Chapter 3, would include all of the types of suffering listed but would exclude suffering resulting from exempt practices which are carried out in a manner which do not cause needless suffering.

RECOMMENDATION 27

The court should be permitted to order the return of a seized animal to its owner or keeper if:

(a) the animal was not in distress at the time of its seizure or

(b) the animal has recuperated and its safety and well-being would not be jeopardized as a result of its return.

RECOMMENDATION 28

The court should be permitted to impose terms or conditions on an order for the return of a seized animal and should also be able to reduce the amount owing for the costs of care to the extent that the claimed amounts are unreasonable.

E. PERMANENT SEIZURE

The *Criminal Code* permits a judge, as part of a sentence, to prohibit a convicted person from owning or keeping an animal for up to two years. It appears that this provision could result in a permanent seizure of an animal when concerns exist that it will be subject to further abuse or mistreatment. However, while useful, this provision is inadequate to protect these animals properly in many cases. For example, it will be ineffective when a criminal prosecution is not appropriate[26] or when a conviction cannot be obtained.[27] Furthermore, under the *Criminal Code*, the status of the animal will remain unresolved until the criminal matter is finalized, which may take many months.

Manitoba's legislation does not currently permit the permanent seizure of an animal; since *The Animal Husbandry Act* does not permit detention of an animal for more than 30 days, it appears that, so long as the costs of its care have been paid, an animal must be returned to its owner even when there are concerns about its continued mistreatment and even if its owner has been charged under the *Criminal Code* and is awaiting trial.

Several provinces have recognized the inadequacy of the *Criminal Code* in preventing the continued mistreatment of animals and have acted by allowing the permanent seizure of an animal under provincial legislation. Some provinces permit such an order only as part of a sentence for a violation of a provincial offence.[28] However, this approach suffers from many of the same disadvantages as the *Criminal Code* provision - lengthy delays until the charges can be heard and an inability to obtain an order of permanent seizure if charges are inappropriate or a conviction impossible to obtain. Newfoundland has taken a different approach by permitting a judge to grant an order of permanent seizure independently of "criminal" proceedings.[29]

In order to prevent the return of an animal when it is likely to be mistreated, we believe that the possibility of an order of permanent seizure should be established in Manitoba

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[26]One situation in which a prosecution would be inappropriate is when the owner is unfit to stand trial.

[27]It is not clear, for example, that proceedings under the *Criminal Code* would result in a conviction in the case of some of the suffering which we have recommended should justify intervention.

[28]*Animal Protection Act*, S.A. 1988, c. A-42.1, s. 12(2); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 14(3).

[29]*Animal Protection Act*, R.S.N. 1990, c. A-10, s. 16

legislation. For the reasons we have outlined, we prefer an approach which, like Newfoundland's, separates the question of a permanent seizure from penal proceedings. We therefore suggest that any individual or organization should be permitted to apply to the Court of Queen's Bench for an order of permanent seizure of an animal which is or has been in distress. This order should be granted, in our view, if it is in the best interests of the animal to do so. If granted, conditions or terms could be attached to the order. For example, if the animal is extraordinarily valuable, it may be appropriate to order the applicant to sell it and remit some of the sale proceeds to the animal's owner. However, subject to any terms and conditions which may be imposed, the effect of an order of permanent seizure should be to grant the applicant ownership of the animal; the applicant should be permitted to keep it, sell it, give it away or euthanize it.

As a general rule, once an application for an order of permanent seizure has been filed, we would allow the detention of a seized animal to continue until such time as a judge can consider the application. However, we would permit the owner of such an animal to seek an interim order granting him or her possession of the animal until the application can be heard. If such an order is not granted and the detention continues during this period, the owner should be liable for all reasonable costs of the animal's care incurred until the hearing. In order to ensure that these costs are paid, we believe that the court should have the power to order the animal's owner to post security for these costs.[30]

RECOMMENDATION 29

Any person or organization should be permitted to file an application in the Court of Queen's Bench for permanent seizure of an animal which is or has been in distress. The order should be granted if it is in the best interests of the animal to do so; the court should be permitted to attach appropriate terms and conditions to such an order.

RECOMMENDATION 30

If an application for permanent seizure of an animal has been filed, the animal's detention should be maintained until the application has been considered, unless the court orders the return of the animal to its owner or keeper on an interim basis.

RECOMMENDATION 31

Unless the animal is returned to its owner or keeper on an interim basis, its owner or keeper should be liable for the costs of its care until the hearing of an application for permanent seizure; the court should be empowered to order the owner or keeper to post security for the costs of its care.

F. ORDERS AS TO CARE

Ontario and Prince Edward Island have adopted legislation which allows agents to order the owner of an animal to take specific actions which the agent believes to be necessary to relieve an animal's suffering. These orders must be in writing, must specify a time limit for compliance and must be served upon the owner or custodian personally or by registered mail. So long as the order is in effect, agents may enter without a warrant any premises in which the

[30]We expect that an animal owner with little chance of defeating an application for permanent custody would agree to give up the animal prior to a hearing of the application in order to avoid paying the costs of care.

animal is kept for the purpose of determining whether the order has been carried out.[31] Ontario also requires that, once the owner or custodian of the animal has complied with the order, the agent is to withdraw it in writing.[32] Both provinces have established an appeal mechanism for owners or custodians who take issue with the order or with an agent's refusal to remove it. Appeals in both provinces lie to a special board created for this purpose and a further appeal to the courts is permitted in Ontario.[33]

We have considered recommending the creation of a similar system for use in Manitoba but have concluded that it is unnecessary and would be unduly expensive. We have already proposed granting powers to agents which could be used to much the same effect as such an order. For example, an agent could agree not to remove an animal if its owner agreed to take prompt action to alleviate its suffering or to rectify the conditions which are causing it harm. Alternatively, the animal could be removed and detained until such time as remedial actions have been taken by the owner, thereby eliminating concerns about the animal's well-being after its return.

Because we believe that a wise use of the powers which we have recommended will alleviate the need for the power to make orders, we are reluctant to recommend that a bureaucracy be established to deal with disputes and appeals which will inevitably arise when such orders are made.

RECOMMENDATION 32

Since other powers can be used to the same effect, it is not necessary to give agents of intervention the power to order owners and keepers of animals to take specific actions to protect the well-being of animals or to relieve their distress.

G. EUTHANASIA

In some cases, it will be more humane to euthanize an animal than to permit its continued suffering. However, euthanasia must be viewed as an extraordinary measure and not to be taken lightly. For this reason, current Manitoba legislation establishes criteria which are to be applied before an animal is euthanized and also requires that individuals other than an agent concur that the criteria have been met.

We agree with the philosophy underlying the current legislative provisions concerning the humane destruction of a suffering animal but take issue with the number of tests which are set out in current legislation. In our view, there ought to be only one criterion which should be applied before an animal is euthanized. We believe that an animal should be euthanized by an agent only when it would be inhumane to allow it to live. Such a conclusion may be reached, for example, if the animal is unlikely to recover from its injuries or illness or if it is likely to endure undue or continuous suffering during its recuperation and thereafter.

[31] *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 13; *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1, s. 12.

[32] *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 13.

[33] Ontario's legislation creates an Animal Care Review Board consisting of at least three members appointed by Cabinet who are remunerated for their efforts: *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s.16. Prince Edward Island's legislation creates a Review Board consisting of two members from each of its counties appointed by the Minister of Agriculture. Every hearing panel must have at least three sitting members: *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1, s. 13.

RECOMMENDATION 33

An agent should be allowed to euthanize an animal where it would be inhumane to allow it to live.

1. Decision-maker

We recognize that mistakes can be made in assessing an animal's condition and that a mistaken decision to euthanize an animal can never be rectified. For this reason, we believe that, as a general rule, agents should not be permitted to make the decision to euthanize an animal unilaterally. The possibility of errors will be reduced if a veterinarian has had an opportunity to examine the animal and can provide an opinion as to the possibility of its recovery and its level of future suffering. We would therefore suggest that, unless an agent is a veterinarian,[34] he or she should be required to obtain the opinion of a veterinarian prior to euthanizing an animal. In cases where such an opinion would be difficult or impossible to obtain in a timely fashion, we would permit the opinions of two other individuals to suffice. Only when the opinions of neither a veterinarian nor other individuals can be obtained in a timely fashion would we allow the agent to act unilaterally. In all cases, the opinions which would justify a humane killing should be based on the criteria set out above.

RECOMMENDATION 34

Prior to euthanizing an animal, an agent should be required to obtain the opinion of a veterinarian that it would be inhumane to allow the animal to live. If such an opinion cannot be obtained in a timely fashion, the opinions of two other persons to this effect should be allowed to suffice. If neither the opinion of a veterinarian nor two other individuals can be obtained in a timely fashion, an agent should be permitted to euthanize the animal on the basis of his or her own opinion that it would be inhumane to allow it to live. If the agent is a veterinarian, no other opinion should be required.

2. Notice

Given the extent to which the humane killing of an animal interferes with the property rights of its owner, we believe that reasonable efforts should be made after the destruction of an animal to identify and locate its owner in order to provide notice to him or her. The notice should be in writing and should provide information identifying the euthanized animal and the date of its destruction as well as the agent responsible and the names of the individuals who provided concurring opinions. The notice should be delivered in person or by registered mail.

RECOMMENDATION 35

The owner or keeper of an animal which has been euthanized should be advised of the euthanization by written notice identifying the animal and setting out the date of the euthanization, the name of the agent responsible and the individuals who provided supporting opinions. The notice should be delivered in person or by registered mail.

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[34] We will propose in Chapter 6 that veterinarians should be appointed animal protection officers.

CHAPTER 5

PREVENTION

To this point, we have focused on the powers which we believe should be given to agents to intervene on behalf of animals in distress. Yet, while intervention is often effective in relieving an animal's suffering and preventing the recurrence of its distress, none of the forms of intervention we have recommended will be particularly effective in preventing the suffering from occurring in the first place.

In our view, the prevention of animal suffering is a crucial component of a comprehensive animal protection scheme. The very term "animal protection" implies that animal suffering will be prevented, not merely alleviated after it takes place. Moreover, as the well-known adage suggests, prevention is usually more efficient and less costly than curing harm after the fact. In our view, a system of animal protection would be incomplete without effective measures designed to prevent animal suffering.

A. EDUCATION

In many cases, animal suffering is due to ignorance as to the effects of human behaviour or actions on animals. To the extent that this is the case, a significant degree of prevention can be accomplished by means of educational campaigns which alert people to the consequences for animals of their activities.

In light of the fiscal realities faced by all governments, we are not prepared to recommend specific expenditures on educational programs. Nevertheless, we are aware that educational services are offered by the Winnipeg Humane Society[1] and the provincial Department of Agriculture.[2] We believe that programs of this sort should be supported and encouraged whenever possible. In addition, we suggest that the government remain open to new opportunities to provide information to members of the public as to the proper care and use of animals.

RECOMMENDATION 36

Existing and new programs which educate the public as to the proper care and treatment of animals should be supported and encouraged.

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[1]The Winnipeg Humane Society operates a number of educational programs concerning the proper care and treatment of animals, including some which are focused on children.

[2]One of the educational programs operated by the Department of Agriculture is the endorsement and distribution of codes of animal treatment for a variety of livestock including beef and dairy cattle, hogs and chickens.

B. PROVINCIAL OFFENCE PROVISIONS

Unfortunately, whatever the positive effects of information campaigns and programs, education alone is insufficient as a preventative measure. Even a person who is aware of the effect of his or her behaviour on animals may mistreat them out of deliberate cruelty or an indifference to their suffering. An effective system of prevention cannot rely exclusively on the goodwill of educated individuals; it requires the threat of penalties for the mistreatment of animals.

Typically, the threat of penalties for unacceptable behaviour is provided by the creation of offence provisions in legislation. These sorts of provisions are themselves educational in that they advise individuals as to the behaviours which society considers unacceptable. However, they also have a deterrent effect; rational individuals who know that their conduct could result in the imposition of a penalty will usually alter their behaviour to avoid the sanction.

We believe that an offence provision can constitute an important component in a thorough-going animal protection scheme. However, in order for it to do so, it must buttress and support the other elements of the system. For example, we have set out the types of suffering which we believe society has an interest in preventing and alleviating as well as the activities which we believe should be exempt from government intervention. If prohibitions are to be effective in deterring the conduct which causes these forms of suffering, they must reflect these basic beliefs as to the extent of society's interest in animal protection.

We are aware of several objections which could be raised to the creation of a provincial offence. It could be argued that a provincial offence is unnecessary either because intervention itself is likely to have a deterrent effect or because deterrence is provided by way of federal legislation. It may also be contended that such a provision is unconstitutional. We will examine each of these objections in turn.

1. Objections to a Provincial Offence

(a) Intervention alone can adequately deter animal mistreatment

There is no doubt that the forms of intervention we have recommended will have a deterrent effect on at least some animal owners. The possibility of losing an animal (either temporarily or permanently) and of being forced to pay for the costs of its care and treatment will undoubtedly discourage some owners from engaging in behaviour which causes animal suffering. However, while we recognize that the threat of intervention will have some effect on the conduct of owners of animals, the limits of this form of deterrence should be noted.

One limitation is that the deterrent effects of intervention are restricted to animal owners and keepers; because it cannot affect them, the seizure of an animal will not deter mistreatment on the part of individuals who do not own or keep the animals they are causing to suffer. Those who are prepared to harm wild animals or animals which are owned by other people will not be discouraged by the fact that the animal may be seized.

A second limitation is that the deterrent effects of intervention on an owner who does not place a high value on an animal (the likely attitude of someone who is mistreating an animal) will probably be minimal. Such a person may well be indifferent to the seizure of the animal and is likely to try to avoid paying for the costs of its care. Deterrence of his or her mistreatment of the animal will depend solely on the vigour with which such a person is pursued by the caregiver for the costs of care.

Finally, forcing an owner to pay for the costs of a suffering animal's care is an unreliable means of deterrence because the costs of care may well be unrelated to the suffering experienced by the animal. An owner might inflict excruciating suffering on an animal but if it recovers quickly and without expensive treatment, the costs of his or her behaviour for the owner will be minimal.

All three of these limitations would be addressed by the creation of a provincial offence provision. Such a provision could be designed to apply to individuals who are neither owners nor keepers of animals; it would therefore have a broader deterrent effect than intervention alone. Since it would be enforced by the justice system rather than by caregivers, it is likely to be more certain and therefore more likely to deter improper conduct. Finally, an offence provision would allow for the imposition of penalties which are commensurate with the suffering caused rather than dependent on the speed and costs of the animal's recovery.

We have concluded that intervention alone will not provide the level of deterrence required for an adequate program of prevention. We believe that an offence provision is needed to reinforce the positive effects of intervention on behalf of suffering animals.

(b) Federal legislation provides sufficient deterrence

If intervention alone offers insufficient deterrence for those who are inclined to mistreat animals, it may be argued that federal legislation, especially the *Criminal Code*, provides an adequate deterrent effect. If so, a provincial offence would be superfluous.

We do not doubt that federal legislation has some deterrent effect on those who would otherwise mistreat animals. However, it must be remembered that federal legislative provisions were not designed as part of an animal protection scheme. The *Meat Inspection Act* was intended to safeguard the production of meat and other animal products; its animal protection provisions form part of that scheme. Similarly, the *Health of Animals Act* was designed to prevent the spread of animal diseases and ensure the good health of animals while being transported, not to protect all animals from distress. Although the standards incorporated into regulations made pursuant to these statutes are no doubt effective in deterring certain kinds of behaviour, their highly limited ambit will leave unaddressed the vast majority of circumstances in which animals could be mistreated.

Unlike the *Meat Inspection Act* and the *Health of Animals Act*, the *Criminal Code* does not suffer from a limited scope; its animal cruelty provisions are sufficiently broad to encompass any and all circumstances in which animals are mistreated. However, because the purpose of the *Code* is to punish immoral and antisocial behaviour, we believe that its provisions are inappropriate for use in the system of animal protection we propose.

One problem with using the *Criminal Code* as a deterrent for a provincial animal protection scheme is that it may not prohibit the sorts of animal suffering we believe society has an interest in preventing. Rather than setting out specific acts which are prohibited, section 446 (the key prohibition in the *Code*) speaks of "unnecessary pain, suffering or injury".[3] This provision requires a judge to determine in the circumstances of each case whether the behaviour which caused the animal's suffering was unnecessary. The judge must analyze the reasons for the infliction of suffering, the means available by which the suffering could have been avoided and other relevant facts. The vague and general language of the *Code* may well result in acquittals or refusals to prosecute for actions which would clearly be encompassed by the

[3]*Criminal Code*, R.S.C. 1985, c. C-46, s. 446.

provincial offence we propose.[4] At the same time, it could be interpreted to apply to activities which we believe should be exempt from societal intervention.[5]

Another effect of the lack of specificity in the *Criminal Code* is that deterrence is reduced. General terminology may be appropriate in the context of the *Criminal Code* because it permits flexibility on the part of judges to "do justice" in each case. However, one of its consequences is that convictions are more difficult to obtain. When it is not clear beyond a reasonable doubt that the *Criminal Code* applies to an act of mistreatment, judges must resolve this uncertainty in favour of the accused. In many cases, therefore, anything other than the most egregious treatment of an animal is likely to result in an acquittal. By contrast, we believe that animal mistreatment should be deterred even if it is less than appalling in its extent or effect.

The deterrent effect of section 446 is also limited by the fact that, under the *Criminal Code*, the Crown must prove beyond a reasonable doubt not only that the accused person committed the illegal act but also that he or she possessed the mental element necessary for the offence.[6] By contrast, a "strict liability" provincial offence requires the Crown only to prove that the illegal act was committed; the accused person must then demonstrate that he or she exercised due diligence in meeting the standards demanded by the legislation.[7] We believe that, in the interests of preventing animal mistreatment, it is appropriate to place an onus on the accused individual to show that reasonable efforts were made to avoid inflicting suffering on an animal.

Finally, we believe that the maximum penalties currently available under the *Criminal Code* are insufficient to deter animal mistreatment in some cases. Effective deterrence requires that the penalties imposed result in greater costs for the offender than the benefits of breaking the law. While the maximum penalties available under the *Criminal Code* will deter casual or occasional animal abuse, we doubt that they will outweigh the benefits of systematic animal mistreatment in at least some large commercial enterprises.[8] We have concluded that more substantial maximum penalties are required to adequately protect animals from harm.

Our comments concerning the unsuitability of the *Criminal Code* and other federal legislation for the purposes of the animal protection scheme we propose should not be taken as commenting on their effectiveness for their intended purposes. Nevertheless, having concluded that they are unsuitable in the context of a comprehensive system of animal protection, we believe that an offence provision which is more closely connected to the other components of the system and which offers a higher level of deterrence is required.

(c) Provincial offence is unconstitutional

A final objection to the creation of a provincial offence could be made on the grounds that it is unconstitutional. Section 91 of the *Constitution Act, 1867* grants the federal government exclusive jurisdiction over criminal law; provinces are therefore not allowed to enact laws which are criminal in nature.[9] In fact, as we have noted, the *Criminal Code* currently prohibits cruelty

[4]For example, a judge applying the *Criminal Code* might not consider that a lack of sufficient space, ventilation or exercise constitutes the sort of suffering contemplated by the *Criminal Code*.

[5]For example, a judge might conclude that any harm caused to animals in the course of recreational hunting or fishing is "unnecessary" within the meaning of the *Criminal Code*.

[6]In the case of section 446 of the *Criminal Code*, the Crown must prove that the accused person wilfully, recklessly or negligently caused the suffering in question.

[7]*R.* v. *City of Sault Ste. Marie* (1978), 85 D.L.R.(3d) 161 (S.C.C.).

[8]The *Criminal Code* permits a maximum fine of up to $2000 or six months imprisonment or both: *Criminal Code*, R.S.C. 1985, c. C-46, ss. 446(2) and 787(1).

[9]*Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 91(27).

to animals. Since these provisions have never been struck down as exceeding the federal government's jurisdiction over criminal law, it may be argued that provinces have no power to create an offence for animal mistreatment.

While we take this argument seriously, it must be kept in mind that not every offence provision is criminal in nature; indeed provincial offences may be constitutional even when they affect the same activities as the *Criminal Code*.[10] Provinces have been given jurisdiction over a variety of areas, including the regulation of property and civil rights in the province.[11] If an offence provision is necessarily ancillary to a provincial legislative scheme whose "pith and substance" falls into an area of provincial jurisdiction, it will be upheld, even if it overlaps with federal legislation.[12]

We believe that animal protection as a whole will be found to regulate property and civil rights in the province or to fall under some other head of provincial jurisdiction. This belief is strengthened by the long history of provincial animal protection legislation in Canada and the fact that, to our knowledge, no such legislation has been struck down as exceeding provincial jurisdiction.

If we are correct in our belief that the other aspects of the animal protection scheme we have proposed will survive constitutional scrutiny, it seems to us unlikely that an offence provision which forms part of an animal protection "package" would be struck down. We have indicated our reasons for concluding that prevention of animal suffering should be addressed in an animal protection scheme and why we believe that deterring animal mistreatment is a critical element in preventing animal harm. We have also explained the reasons for our belief that intervention and federal legislation in themselves will not provide the level of deterrence needed to prevent the mistreatment of animals. We have concluded that a provincial offence which is based on the types of suffering we believe society has an interest in preventing is necessary if a comprehensive and effective system of animal protection is to be created. In our view, then, there is a "rational, functional connection" between the protection of animals and a provincial law prohibiting animal mistreatment.[13] We believe that, to the extent that a provincial offence provision intrudes upon the federal government's criminal law jurisdiction, it will be characterized by the courts as necessarily incidental to the legitimate exercise of provincial authority.

Our confidence in the legitimacy of a properly designed offence provision is supported by the fact that current legislation in several provinces, including Manitoba, regulates the care of animals and prohibits behaviour resulting in harm to animals.[14] We are unaware that any of these provisions have been struck down as being outside provincial jurisdiction.

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[10]For example, the *Criminal Code* prohibits driving a motor vehicle "in a manner that is dangerous to the public" while *The Highway Traffic Act*, a provincial statute, prohibits driving a vehicle on a highway "without due care and attention or without reasonable consideration for other persons using the highway": *Criminal Code*, R.S.C. 1985, c. C-46, s. 249(1)(a); *The Highway Traffic Act*, C.C.S.M. c. H-60, s. 188.

[11]*Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 92(13).

[12]P.W. Hogg, *Constitutional Law in Canada* (3rd ed., 1992) 377ff.

[13]The "rational, functional connection" test was first enunciated by Laskin J.A., then of the Ontario Court of Appeal, in *Papp* v. *Papp*, [1970] 1 O.R. 331 at 335-336. This test has since been adopted by the Supreme Court of Canada in such cases as *R.* v. *Zelesky*, [1978] 2 S.C.R. 940 and *Multiple Access* v. *McCutcheon*, [1982] 2 S.C.R. 161.

[14]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 13; *Animal Protection Act*, S.A. 1988, c. A-42.1, s. 2(1); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 14(1); *Animal Protection Act*, R.S.N. 1990, c. A-10, s. 4.

RECOMMENDATION 37

A provincial offence should be created which prohibits the mistreatment of animals.

2. Designing a Provincial Offence

Much of the content of the offence provision we propose may be divined from our reasons for advocating its creation. In particular, we have stated that the mistreatment prohibited by an offence should be based on the causes of animal suffering which we believe society has an interest in preventing. We concluded in Chapter 3 that these causes of suffering should include:

1. Treatment which, unless immediately halted, will cause an animal death or serious harm;
2. Treatment which causes an animal to suffer acute pain;
3. A lack of food and water sufficient to maintain an animal in a state of good health;
4. A lack of appropriate veterinary care when an animal is wounded or ill;
5. Treatment which will, over time, significantly impair an animal's health, including, in particular:
    - the confinement of an animal in an area of insufficient space;
    - the confinement of an animal in unsanitary conditions;
    - the confinement of an animal without adequate ventilation;
    - a failure to allow a confined animal an opportunity for adequate exercise;
    - the subjection of an animal to treatment which causes it extreme anxiety and mental distress.

Manitoba legislation currently contains a prohibition against the mistreatment of animals. Section 13 of *The Animal Diseases Act* reads as follows:

> 13(1) No person shall keep or maintain any animal without adequate and proper food, water, shelter or attention or subject any animal to any wanton, cruel or inhumane treatment or fail to obtain and provide treatment for any diseased or injured animal.
>
> 13(2) No person shall transport or maintain in any yard or place of temporary confinement during transport any animal under conditions of deprivation of adequate and proper food, water, shelter or attention or subject any animal during transport to any wanton, cruel or inhumane treatment.[15]

In our view, this provision could be validly interpreted to prohibit all of the conditions from which we believe animals should be protected. Despite this, we are not inclined to recommend that section 13 be adopted unaltered as part of our proposed system of animal protection.

While useful, section 13 suffers from some of the ambiguity and subjectivity of the *Criminal Code*. For example, it provides no guidance as to what should be considered adequate and proper shelter and it does not attempt to define treatment which should be considered

[15]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 13.

wanton, cruel or inhumane. Some of the causes of suffering we believe should be deterred are not expressly set out in that provision, resulting in uncertainty on the part of the general public, agents of animal protection and the judges who are to apply the law. As in the case of the *Criminal Code*, we fear that this will erode the deterrent effect of the provision. Greater clarity is required.

In addition, section 13 fails to provide explicitly for any exceptions to the prohibitions it contains. A judge would be forced to decide in the circumstances of each case whether animal suffering which is intrinsic to many farming practices, animal research, pest or predator control and other activities which we believe should be exempt is "wanton, cruel or inhumane". We prefer more specific language which will provide greater certainty for animal owners as well as for agents of animal protection and judges.

For these reasons, we propose that a provincial offence provision should explicitly prohibit the sorts of mistreatment which we believe society has an interest in preventing. The provision should also make clear that the exempt activities which we set out in Chapter 3 are not prohibited so long as they do not result in needless animal suffering.

Of course, the prohibitions we recommend cannot apply to everyone in the same way. It would be unreasonable to suggest, for example, that every person has a responsibility to provide all animals with appropriate shelter or veterinary care. We have concluded that the duty to provide adequate care for an animal must be based on an individual's relationship with it.

We doubt that there would be significant dispute over the contention that ownership of an animal imposes such a duty. An individual who owns an animal enjoys the benefits of ownership; he or she must also accept its responsibilities. In our view, these responsibilities require not only that owners refrain from inflicting suffering upon their animals but that they take positive steps to ensure their health and well-being. Specifically, we believe that owners have an obligation to supply their animals with sufficient and suitable food and water, to provide them with veterinary care when necessary and to prevent their undue exposure to cold or heat. They also have a responsibility, in our view, to ensure that their animals are maintained in a proper environment with sufficient space, adequate ventilation and proper sanitation, are allowed suitable exercise and are not subjected to anxiety or mental distress to the point where their health or well-being is significantly impaired.

However, owners are not the only individuals who have a responsibility to animals. We believe that the same standards of care can and should be expected of those who, though not owners of animals, have accepted custody of them. A person who boards or trains animals or who keeps a stray animal as a pet, for example, may not hold legal title to an animal but has accepted an obligation to ensure its well-being. We have used the term "keeper" to describe a person in this position; statutes in other Canadian jurisdictions have used other terms.[16] However, all of these statutes have imposed on these individuals the same responsibility as those who enjoy legal ownership of animals. For the purpose of an offence provision, therefore, we suggest that no distinction should be drawn between owners and keepers of animals; the same standards should apply to both.

Although owners and keepers of animals have a special obligation toward them, we believe that most Manitobans would concur that everyone has some responsibility to avoid

[16]These individuals have been described by legislation in Canada as persons "having the custody or control of an animal" [*Criminal Code*, R.S.C. 1985, c. C-46, s. 446(c)], "ordinarily in charge" [*Animal Protection Act*, S.A. 1988, c. A-42.1, s. 2(1)] and "responsible for an animal" [*Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 14]. Québec's new but unproclaimed legislation describes them as "custodians of an animal": *Animal Health Protection Act*, R.S.Q. 1977, c. P-42 as am. by S.Q. 1993, c. 18, s. 55.9.2. Our Report on *Tort Liability for Animals*, although discussing civil rather than criminal liability, referred to these people are "harbourers": Manitoba Law Reform Commission, *Tort Liability for Animals* (Report #78, 1992) 34.

actively imposing suffering on animals. Therefore, we propose that, unless engaged in an exempt activity, everyone should be prohibited from causing animals acute pain, serious injury or death as well as causing them anxiety or mental distress to the point where their health or well-being is significantly impaired.

As noted earlier, one of the reasons we believe a provincial offence is required is that it may be designed to impose "strict liability" on animal owners or keepers. A provincial offence can be drafted to require the Crown to prove only that the owner or keeper of an animal failed to meet the standards of the legislation; it is then up to the accused person to demonstrate that he or she exercised "due diligence" in meeting these standards. We believe that the protection of animals warrants the use of this approach. We think that it is not unreasonable to require that those who have not provided adequate care for their animals provide acceptable reasons for this failure.

RECOMMENDATION 38

It should be a provincial offence for any person wilfully to cause an animal:

- ***acute suffering;***
- ***serious injury or harm; or***
- ***anxiety or mental distress to the point where its health or well-being is significantly impaired.***

RECOMMENDATION 39

It should be a provincial offence for an owner or keeper of an animal to fail to:

- ***provide it with water and food sufficient to maintain it in a state of good health;***
- ***provide it with appropriate veterinary care;***
- ***prevent its undue exposure to cold or heat;***
- ***provide an environment in which its health or well-being is not significantly impaired and, in particular, to fail to provide it with:***

  - adequate space;
  - sanitary conditions;
  - adequate ventilation;
  - an opportunity for adequate exercise; and
  - freedom from anxiety and mental distress

unless he or she demonstrates that due diligence was exercised.

We noted in Chapter 3 that certain activities are widely accepted as legitimate within our society so long as they are carried out in a manner which does not cause animals needless suffering. Because we are of the view that society's interest in protecting animals does not (at least at this point in time) extend to these activities if they are appropriately conducted, we would exempt them from the purview of the offence provisions we have just recommended. In other words, even if an individual causes suffering to an animal of a kind which we have recommended should be prohibited, he or she should not be convicted if the suffering was

intrinsic to one of these exempt activities and if the activity was being conducted in a manner which did not cause unnecessary suffering to the animal.

RECOMMENDATION 40

It should not be an offence to cause animal suffering while engaged in one of the following activities so long as the activity is carried out in a manner which does not cause animals needless suffering (that is, suffering of a degree which is not inevitable or intrinsic to the activity):

- ***pest control (including the use of poisons);***
- ***agricultural uses of animals;***
- ***medical research and teaching involving animals;***
- ***hunting;***
- ***fishing (both commercial and sport fishing);***
- ***veterinary treatment (including spaying and neutering);***
- ***trapping;***
- ***control of predators;***
- ***protection of people and property;***
- ***animal discipline and training;***
- ***animal slaughter;***
- ***humane euthanasia.***

3. Penalties

The current punishment under Manitoba provincial legislation for the mistreatment of an animal is a fine of between \$50 and \$500 with a maximum of two months imprisonment if the fine is not paid.[17] In the case of corporations, the maximum fine rises to \$1000.[18] The *Criminal Code* imposes somewhat higher maximum penalties; it permits a fine of up to \$2000 or six months imprisonment or both.[19]

We view the maximum penalty permitted by current law as insufficient to deter and punish animal abuse and mistreatment. We are particularly concerned about mistreatment in the course of the commercial use of animals. In many of these cases, it will be less expensive to pay even the maximum fine rather than to incur the costs of providing appropriate care for animals or creating a suitable environment for them. If mistreatment of animals is to be deterred, the punishment for mistreatment must outweigh the benefits of non-compliance.

One way to reform the inadequate penalties currently available is to encourage the federal government to amend the *Criminal Code*. However, while we are prepared to recommend that the provincial government use its influence with the federal government to this end, we are more interested in the actions which the province can take to increase the deterrent effect of provincial offence provisions. We propose that more substantial penalties for animal mistreatment should be introduced for a violation of the provincial offence we propose.

In our view, the penalties recently introduced by the Province of Alberta for mistreatment of animals are more appropriate than those currently in force in Manitoba. Alberta's legislation would impose a maximum fine of \$5000 for a first offence while a second offence within two

[17]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 17(2).

[18]*The Animal Diseases Act*, C.C.S.M. c. A-85, s. 17(3).

[19]*Criminal Code*, R.S.C. 1985, c. C-46, ss. 446(2) and 787(1).

years of the first could result in a fine of up to $10,000.[20] We believe that fines of this magnitude, which will increase unless the offending behaviour is altered, will have the effect of deterring most deliberate mistreatment of animals.

In order to ensure that the fines which are imposed are paid, we would permit judges to impose a term of incarceration of up to six months for a failure to make payment.

RECOMMENDATION 41

Mistreatment of an animal as defined in provincial legislation should be punishable by a fine of up to $5000 for a first offence and by a fine of up to $10,000 for a second offence which takes place within two years of the first.

RECOMMENDATION 42

Judges should be permitted to impose a period of imprisonment of up to six months for a failure to pay the fine imposed.

RECOMMENDATION 43

The federal government should be encouraged to increase the maximum penalties currently permitted for mistreatment or abuse of animals under the Criminal Code.

As we have noted, the *Criminal Code* and some provincial statutes permit a judge, as part of a sentence, to prohibit a person convicted of cruelty to animals from owning or keeping a particular abused animal.[21] In considering the utility of a similar provision in Manitoba, we have kept in mind that we have already recommended that the Court of Queen's Bench should be given the power to order the permanent seizure of an animal. It can be argued that, in light of this earlier recommendation, the power to prevent a convicted person from owning or keeping an animal in the hands of a sentencing judge would be superfluous. Nevertheless, we cannot overlook the possibility that a case may "fall through the cracks" of the system we have proposed. For example, an application for permanent seizure may not be made even when it is warranted. Granting a judge the power to prevent a convicted person from continuing to have custody of an animal he or she has mistreated would allow this oversight to be rectified. Such an order would force the convicted person to sell, give away or euthanize the abused animal.

RECOMMENDATION 44

As part of a sentence for a violation of the prohibition on the mistreatment of animals, a judge should be permitted to prohibit the convicted person from owning or keeping any animal which he or she has mistreated.

Although it is clear that the *Criminal Code* and legislation in some provinces gives sentencing judges the power to prohibit a convicted person from owning or keeping the particular animals which have been mistreated, it is not clear whether it is possible to prohibit a convicted person from owning or keeping any animals at all or to limit the number or type of

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[20] *Animal Protection Act*, S.A. 1988, c. A-42.l, s. 12(1).

[21] *Criminal Code*, R.S.C. c. C-46, s. 446; *Animal Protection Act*, S.A. 1988, c. A-42.1, s. 12(2); *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 14(3).

animals which the convicted person may own or keep.[22] Nevertheless, we can easily envision circumstances in which such a power should be made available to the court in order to prevent the future mistreatment of animals. In our view, an individual who has repeatedly demonstrated an inability or unwillingness to care properly for the animals in his or her charge should be made subject to such an order.

Although potentially severe, an order of this sort would serve two purposes. First, it would substantially increase the deterrent effect of the prohibition on animal mistreatment. In commercial operations involving animals, for example, the prospect that those engaged in the offence might be prohibited from owning or keeping any animals (with the result that they would lose their livelihoods) would discourage the mistreatment of animals on a large scale. Second, it would permit a preventative approach to animal protection. The orders of permanent custody we have previously recommended are restricted to the specific animal which has been mistreated; they cannot prevent a person who has mistreated animals from obtaining new animals which may also be subject to mistreatment. By contrast, the order we are now proposing could limit or deny the right of a person who had mistreated animals to own or keep any animals for a lengthy period of time.

In our view, the maximum length of such an order should be five years in the case of a first offence and up to ten years if the person is convicted of mistreating animals a second time within two years. A violation of such an order should itself be an offence with a maximum fine of $5000 for a first offence and of $10,000 for a second offence within two years of the first.

RECOMMENDATION 45

In addition to any other penalty which is imposed, a judge should also be allowed to prohibit a convicted person from owning or keeping any animals or to restrict the number or type of animals the convicted person may own or keep.

RECOMMENDATION 46

The maximum length of an order prohibiting a convicted person from owning or keeping any animals or restricting the number or type of animals the convicted person may own or keep should be five years for a first offence and ten years for a second offence which takes place within two years of the first.

RECOMMENDATION 47

An individual who violates an order prohibiting him or her from owning or keeping any animals or restricting the number or type of animals he or she may own or keep should be subject to the same penalties as are available for a violation of the prohibition against the mistreatment of animals.

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[22]Alberta's legislation allows a judge when sentencing someone who has violated the Act or the regulation to make "an order restraining the owner from continuing to have custody of *the* animal for a period of time specified by the Court" (emphasis added): *Animal Protection Act*, S.A. 1988, c. A-42.l, s. 12(2). This strongly suggests that a judge can only make an order which concerns the particular animal whose mistreatment resulted in the conviction.

Section 446(5) of the *Criminal Code* is more ambiguous. It reads as follows:

> Where an accused is convicted of an offence under subsection (1), the court may . . . make an order prohibiting the accused from owning or having the custody or control of an animal or bird during any period not exceeding two years.

British Columbia's new legislation uses similar wording: *Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335 as am. by S.B.C. 1994, c. 13, s. 14(3). These provisions suggest that a broader prohibition is possible.

CHAPTER 6

ENTRY TO PRIVATE PROPERTY

A. INTRODUCTION

In designing a cohesive system of animal protection which includes both intervention and prohibitions, we have attempted to take into account both the need to protect animals and the need to respect the rights and interests of individuals. Our proposals with respect to intervention, for example, have not ignored the interests of animal owners and keepers[1] but have balanced them against the need for providing care and protection to suffering animals.

One of the rights of individuals which, we believe, requires special attention is the right to privacy, protected by section 8 of the *Charter of Rights and Freedoms*.[2] Since intervention will often involve entries to private property which are likely to be identified as "searches" under section 8, we have decided to devote a Chapter to the development of a system which, we believe, will permit action on behalf of animals while respecting the rights of individuals to privacy.

B. THE LAW

At common law, an individual's protection against entry by agents of the government was based on his or her rights of ownership and possession of property. This protection could, nevertheless, be overcome by legislation permitting entry onto private property.

The *Charter's* restrictions on the right of governmental agents to enter private property differ from the common law in two ways. First, the courts have identified the protection it provides as being founded on the right of an individual to privacy rather than merely to the enjoyment of his or her property.[3] Second, entrenchment of this right in the *Charter* means that it cannot normally be overcome by legislation; unless governmental infringement of this right can be justified as "reasonable", the statute which authorizes the infringement must invoke the "notwithstanding clause"[4] or it will be struck down.

In applying section 8 to entries to private property, the courts have attempted to strike a balance between the interests of society in controlling the behaviour of its members and the

[1]The extent to which property rights are protected by the *Charter* is unclear. See *Bertram S. Miller Ltd.* v. *The Queen* (1986), 31 D.L.R.(4th) 210 (Fed. C.A.), for a discussion of this issue. Nevertheless, whatever the level of their protection by the *Charter*, property rights are recognized by custom and the common law and we have therefore taken them into account.

[2]"Everyone has the right to be secure against unreasonable search or seizure": *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 8 (hereinafter "the *Charter*").

[3]*Hunter* v. *Southam Inc.* (1984), 11 D.L.R. (4th) 641 at 652-653 (S.C.C.).

[4]*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 33.

rights of individuals to privacy. We have also tried to find this balance in developing recommendations as to appropriate entry provisions. However, in doing so, we have been unable to rely on the courts for specific guidance; to our knowledge, no court has dealt with the implications of section 8 of the *Charter* on the entry powers of agents acting to protect animals. Therefore, we have been forced to base our recommendations on the general principles which the courts have enunciated.

As described by the courts, the right of privacy protected by section 8 of the *Charter* is somewhat fluid in nature and depends on an individual's "reasonable expectation of privacy" in various circumstances.[5] This, in turn, will depend on a number of factors.

One of the factors which the courts will take into account is the property being entered and the use to which it is put. For example, in most cases, an individual's reasonable expectation of privacy will be relatively high in his or her residence but considerably lower in commercial premises, especially those which are open to the public.[6]

Another factor which will be taken into consideration is the activity in which the individual is engaged and the need for its regulation. The Supreme Court has stated:

> In a modern industrial society, it is generally accepted that many activities in which individuals can engage must nevertheless to a greater or lesser extent be regulated by the state to ensure that the individual's pursuit of his or her self-interest is compatible with the community's interest in the realization of collective goals and aspirations.[7]

Because of the need to regulate certain activities, the courts have drawn a distinction between entries to ensure compliance with regulatory schemes and those which are used to enforce criminal offences.[8] Regulatory or administrative laws are distinguished from criminal laws in that they are designed to control or regulate lawful activities, the stigmas and penalties associated with their violation are not as serious as is the case with criminal offences and the purpose of their enforcement is not primarily to apprehend and punish wrongdoing but to promote compliance with regulatory standards. For these reasons, even though they may include offence provisions, administrative schemes have been viewed as qualitatively different than criminal prohibitions.

One of the major restrictions which have been placed on investigations which have been characterized as "criminal" in nature is that a warrant or similar authorization is normally required prior to entries to private property. This requirement is based on the courts' view of the *Charter's* protection against unreasonable search and seizure as preventing improper entries before they occur, rather than merely permitting a determination of their legitimacy after the fact.[9] Requiring authorization from an objective and impartial decision-maker will reduce the

[5]*Hunter* v. *Southam Inc.*, *supra* n. 3.

[6]See *Bertram S. Miller Ltd.* v. *The Queen*, *supra* n. 1, at 242 and 250, where the two majority opinions referred to a distinction between commercial premises and private homes. See also *R.* v. *Silviera* (1995), 97 C.C.C.(3d) 450 (S.C.C.). Speaking for the majority in that case, Mr. Justice Cory stated at 498: "The unauthorized presence of agents of the state in a home is the ultimate invasion of privacy. It is the denial of one of the fundamental rights of individuals living in a free and democratic society."

[7]*Thomson Newspapers Ltd.* v. *Canada (Director of Investigation & Research, Restrictive Trade Practices Commission)* (1990), 67 D.L.R. (4th) 161 at 220 (S.C.C.) (per La Forest J.). La Forest reiterated this statement in *Comité Paritaire de l'Industrie de la Chemise* v. *Potash* (1994), 115 D.L.R. (4th) 702 at 711 (S.C.C.).

[8]See, for example, *Bertram S. Miller Ltd.* v. *The Queen*, *supra* n. 1, at 250, and *Comité Paritaire de l'Industrie de la Chemise* v. *Potash*, *supra* n. 7, at 713. The categorization of an offence as "criminal" for the purposes of this distinction may not necessarily correspond with the classification of an offence as "criminal law" for the purposes of determining whether it falls within federal jurisdiction.

[9]See, e.g., *Hunter* v. *Southam Inc.*, *supra* n. 3, at 653 (per Dickson C.J.).

likelihood that unreasonable entries will occur.[10] For this reason, entries which take place as part of a criminal investigation and without the benefit of a warrant suffer from a "presumption of unreasonableness".[11] Despite this presumption, warrantless entries may be upheld as reasonable where taking the time to obtain a warrant would defeat the purpose of the entry.[12] For example, a warrantless entry is likely to be permitted where a delay would result in the loss or destruction of the evidence which is being sought in the entry.

In general, fewer restrictions are placed on agents who enter property in order to enforce a regulatory scheme than are imposed on those who are investigating a "criminal" offence.[13] One important example of this greater latitude relates to inspections which form part of a regulatory regime. Almost by definition, inspections are routine or random in nature; they are not prompted by reasonable and probable grounds for belief that an offence has been committed. Because of this, the grounds for obtaining a warrant for an entry for the purposes of inspection will not exist. Nevertheless, the courts have recognized that, in many cases, the only way to ensure that regulatory standards are being met is through a program of inspections.[14] Inspections have therefore been permitted if they are necessary to ensure compliance with a valid regulatory program. In fact, so long as they meet this test, even those inspections which take place in response to a complaint or in the presence of suspicions that an offence is being or has been committed will be found to be legitimate.[15]

C. OUR PROPOSALS

Taking all of this into account, we propose that entries to private property be governed by a system which divides all premises into three categories: (a) residences, (b) non-residential premises and (c) premises where animals are kept for commercial purposes. We believe our system offers an acceptable and constitutional balance between the interests of society in protecting suffering animals and the reasonable expectations of privacy of individuals whose property will be entered.

1. Residences

We believe that individuals' expectations of privacy are highest in the apartments, houses and other premises in which they make their homes. Therefore, although society has a legitimate interest in protecting animals in residences, the powers of agents to enter premises in pursuit of those interests must, in our view, be significantly restricted.

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[10]For a discussion of the need for prior authorization and the elements which will constitute proper authorization, see *Hunter* v. *Southam Inc.*, *supra* n. 3.

[11]*Hunter* v. *Southam Inc.*, *supra* n. 3, at 654.

[12]In *Hunter* v. *Southam Inc.*, *supra* n. 3, at 653, Dickson C.J. (as he then was) stated:

> I recognize that it may not be reasonable in every instance to insist on prior authorization in order to validate governmental intrusions upon individuals' expectations of privacy. Nevertheless, where it is feasible to obtain prior authorization, I would hold that such authorization is a pre-condition for a valid search and seizure.

[13]See, for example, *Comité Paritaire de l'Industrie de la Chemise* v. *Potash*, *supra* n. 7.

[14]In *Thomson Newspapers Ltd.* v. *Canada*, *supra* n. 7, at 220, La Forest J. provided several examples where an inspection system was necessary. He said:

> The restauranteur's compliance with public health regulations, the employer's compliance with employment standards and safety legislation, and the developer's or homeowner's compliance with building codes or zoning regulations, can only be tested by inspection, and perhaps unannounced inspection, of their premises.

See also, *Comité Paritaire de l'Industrie de la Chemise* v. *Potash*, *supra* n. 7, at 711.

[15]*Comité Paritaire de l'Industrie de la Chemise* v. *Potash*, *supra* n. 7.

We propose two significant limits on agents' entry powers to homes. First, no entry should take place unless reasonable and probable grounds exist to believe that an animal suffering from distress (as defined in Chapter 3) is located inside the residence. Second, as a general rule, agents should be required to obtain a warrant from a judicial officer prior to entering a residence. Allowing an impartial person to review the evidence prior to an entry will ensure that reasonable and probable grounds do, in fact, exist for belief that an animal is suffering within the residence.

We propose one exception to the general rule that warrants should be required before entries to residences take place: police officers should, we believe, be permitted to enter residences without a warrant in circumstances where obtaining a warrant would not be feasible. When immediate action is necessary in order to save an animal from severe harm or death, for example, a police officer should not be required to take the time necessary to obtain a warrant. Despite the high level of privacy associated with a residence, in an emergency such as this, we believe that society's interest in protecting animals outweighs the desirability of an impartial review of the evidence prior to an entry.

We are aware of the danger of physical violence in the case of a warrantless entry to a residence. Occupants are likely to resist such entries and, unless the situation is dealt with carefully, physical harm could result. Therefore, although we believe that individuals other than police officers should be empowered to act on behalf of suffering animals,[16] we would restrict the power to enter residences without a warrant to police officers. Of all the possible agents of animal protection, we believe that police officers are the best suited to conduct these entries in a manner which will reduce the risk of harm to themselves and others.

In addition, we recognize that the power of warrantless entry to residences is exceptional and could be abused. Because of their experience in law enforcement and their knowledge of the rights afforded individuals in our society, we have confidence that police officers will use this extraordinary power with discretion.

When granting a warrant to enter a residence, the judicial officer issuing it may impose any limitations he or she believes are appropriate. However, unless reasons exist to the contrary, we believe that warrants should normally authorize agents to use reasonable force in order to effect an entry. The power of entry without the ability to enforce it is an empty power.

It may be observed that the limits we would place on entries to residences correspond to those imposed by the courts on criminal investigations. Indeed, we have gone even further than the courts by allowing only police officers (rather than all agents of intervention) to enter a residence when obtaining a warrant is not feasible. We wish to make clear, however, that our position is not prompted by a belief that these entries for the purposes of animal protection can be equated to criminal investigations. On the contrary, the primary purpose of these entries will be to alleviate the distress of a suffering animal and to prevent its recurrence; enforcing an offence provision will be only a secondary objective. The restrictions we have proposed are based, not on our concerns that greater latitude would render these entries unconstitutional, but on the high regard we have for the privacy to which individuals are entitled within their own homes.

RECOMMENDATION 48

Agents should normally be required to obtain a warrant prior to entering a residence. A warrant for this purpose should be based on reasonable and probable grounds for belief that an animal in the residence is suffering from distress.

[16]Our recommendations with respect to agents of animal protection are set out in Chapter 7.

RECOMMENDATION 49

Police officers should be permitted to enter a residence without a warrant if they have reasonable and probable grounds to believe that an animal in the residence is in distress and if obtaining a warrant is not feasible in the circumstances.

RECOMMENDATION 50

Unless good reasons exist for denying this power, a warrant should permit agents to use reasonable force to effect entry to residences.

RECOMMENDATION 51

When entering a residence without a warrant, police officers should be allowed to use reasonable force to achieve entry.

2. Non-residential Premises

Animals may be kept in a variety of non-residential premises, including yards, sheds, garages, barns, corrals, pastures, kennels, pet shops, zoos and vehicles. In our view, non-residential premises such as these give rise to a somewhat lower expectation of privacy than residences. We therefore suggest that agents should be slightly less circumscribed in their entries to these premises than to residences.

In general, we believe that agents acting to protect animals should still require a warrant prior to entering non-residential premises. As in the case of entries to residences, a warrant should be based on reasonable and probable grounds for belief that an animal on the premises is suffering from distress and should normally permit the agent to use reasonable force if necessary to gain entry. However, because of the reduced level of privacy associated with these premises and the reduced likelihood of confrontations with residents, we would allow all agents (not only police officers) to enter them without a warrant if obtaining a warrant is not feasible in the circumstances. This would allow agents to take immediate action when delay would result in serious suffering or harm to an animal. Agents who enter without a warrant in an emergency should be entitled to use reasonable force to effect entry.

RECOMMENDATION 52

Warrants should normally be required for entries to non-residential premises and should be based on reasonable and probable grounds for belief that an animal on the premises is in distress.

RECOMMENDATION 53

Agents should be permitted to enter non-residential premises without a warrant if they have reasonable and probable grounds to believe that an animal on the premises is in distress and if obtaining a warrant is not feasible in the circumstances.

RECOMMENDATION 54

Unless good reasons exist for denying this power, a warrant should permit agents to use reasonable force to effect entry to non-residential premises.

RECOMMENDATION 55

Agents entering non-residential premises without a warrant should be allowed to use reasonable force to achieve entry.

3. Premises Where Animals Are Kept for Commercial Purposes

We view premises where animals are kept for commercial purposes as a subset of the broader, "non-residential premises" category. We believe that, although agents should be allowed to enter these premises as they would any other non-residential premises, they should be given an additional power to inspect these premises at reasonable times. We take this position for two reasons.

First, we believe that the level of privacy an individual can reasonably expect while conducting commercial activities is much lower than in his or her own home or while engaged in non-commercial pursuits. Our view is supported by judicial comments in several cases which have identified commercial premises as attracting a minimal expectation of privacy.[17] In our view, routine or random inspections of commercial operations do not infringe significantly on the level of privacy which can be reasonably anticipated in these premises.

Second, we believe that the potential for animal suffering to occur is greater in a commercial setting than in other contexts. Animals which are found in farms, pet shops, animal breeding and training establishments, commercial kennels, circuses, zoos, rodeos and other commercial premises, as well as those which are transported for commercial purposes, are usually kept in large numbers. Some commercial operations involve hundreds and even thousands of animals. For this reason, neglect on the part of their owners and keepers or a deliberate decision to mistreat them will often result in suffering on a much larger scale than when they are kept for non-commercial purposes.

In addition, some of those who keep animals for commercial purposes may occasionally place business considerations ahead of the welfare of their animals. They may, for example, feel the need to cut costs in order to remain competitive and may decide to do so at the expense of their animals' health and safety. Animals which are kept for commercial purposes may therefore face a greater risk of harm than animals which are kept on a non-commercial basis.

The most obvious way to prevent harm to animals in commercial settings is to develop standards which every commercial operator must respect. Rigorous enforcement of these standards creates an environment in which no competitor can gain an unfair advantage over others by mistreating animals. We have noted the benefits of using regulations to establish detailed standards of animal treatment and we encourage their use. However, even when regulations have not been developed, we believe that the vigorous enforcement of the more general standards we have recommended will be beneficial.

We believe that the only effective enforcement mechanism in this context is an inspection system. If agents are granted the power to visit any and all premises where animals are kept for commercial purposes, they will be in a position to prevent animal suffering before it takes place and to respond to it quickly when it occurs; knowing that an inspection could take place at any time, commercial users of animals are likely to take seriously the standards established for animal care. On the other hand, if agents are prevented from acting until and unless they have reasonable and probably grounds to believe that animals are in distress on the premises, the fear

[17]See *Bertram S. Miller Ltd.* v. *The Queen*, *supra* n. 1, at 242 and 250 and *R.* v. *Silviera*, *supra* n. 6, at 498.

of punishment on the part of commercial users will diminish and they will be more likely to violate standards of animal care if it suits their purposes to do so.

In our view, the authority to inspect premises or vehicles where animals are kept for commercial purposes should be accompanied by the power to use reasonable force to gain entry. Of course, reasonable force in the context of an inspection will differ from reasonable force when there is reason to believe that an animal is suffering.[18] However, we do not believe that an agent with the power to inspect should be forced to obtain a warrant reiterating that power whenever an inspection is thwarted by an uncooperative animal owner or keeper.

It may be that, in some cases, a residence will be used as a place where animals are kept for a commercial purpose. However, because of the high level of privacy we believe individuals in our society can reasonably expect in their homes, we propose that residences should not be susceptible to inspections, even when animals are kept there for commercial purposes.

RECOMMENDATION 56

For the purposes of inspection, agents should be allowed to enter at any reasonable time non-residential premises in which they have reasonable and probable grounds to believe animals are being kept for commercial purposes. No warrants should be required for these inspections and reasonable force should be permitted to effect entry.

4. Notification

The Province of Saskatchewan requires its agents to attempt to locate the occupier of premises prior to entry and to seek this person's cooperation in effecting entry.[19] Until very recently, British Columbia required agents to provide notification to the occupier of property which had been entered.[20] However, most other provinces do not impose on their agents the duty to notify occupiers of property either before or after an entry has taken place.

Naturally, we hope that agents will deal respectfully with occupiers of property which is being or has been entered. We believe that notification before the entry is appropriate if the occupier can be easily located and after the entry if the occupier is not present. Notification will prevent misunderstandings and confusion and will also often serve to ease an occupier's mind as to the cause of the entry. However, other than requiring that agents provide proof of their status upon demand, we do not believe that a prior notification requirement should be imposed on agents.

We take a different position with respect to notification after an entry has taken place. In our view, an occupant of private property is entitled to be notified of the fact of an entry which, after all, represents an infringement of his or her privacy. Post-entry notification will also serve to reduce the alarm which may be experienced by occupants who find evidence of an entry and conclude that they have been burglarized. Written notification left prominently displayed on the premises or delivered shortly after the entry will serve to dispel any fears that the occupant may have.

[18]For example, when an animal is suffering acutely and the occupier of premises is absent, it may be reasonable for an agent to break in to a building to rescue the animal. The same action is not likely to be considered reasonable when the occupier is absent during an inspection and there are no reasonable and probable grounds to believe that an animal is suffering inside a building.

[19]*The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 4(3).

[20]*Prevention of Cruelty to Animals Act*, R.S.B.C. 1979, c. 335, s. 12(5). Section 12 has recently been repealed by the *Prevention of Cruelty to Animals Amendment Act, 1994*, S.B.C. 1994, c. 13, s. 13.

RECOMMENDATION 57

When entering private property, agents should be required to provide proof of their status upon demand.

RECOMMENDATION 58

If the occupier of premises being entered is not present at the time of the entry, the agent should be required to notify the occupier of the fact of the entry by means of a written notice left prominently displayed on the premises or delivered personally or by registered mail as soon as possible after the entry.

CHAPTER 7

AGENTS OF ANIMAL PROTECTION

One of the most significant defects in current animal protection legislation is the lack of clarity and coordination with respect to its agents of intervention and enforcement. There are at least seven categories of agents referred to in *The Animal Husbandry Act* and *The Animal Diseases Act*, each with distinct responsibilities and powers. It is a credit to these agents and their agencies that they have managed to operate at a relatively high level of effectiveness despite the inadequacies of the legislation. Nevertheless, it seems clear that the current legislation is hampering rather than assisting their work. Reform is needed.

At the same time as it diffuses authority among a variety of agents and agencies, however, the current legislation actually restricts or prevents the appointment of other individuals who are well-positioned to act on behalf of animals. For example, it is not clear that federal Department of Agriculture inspectors who are placed at abattoirs can be appointed to act under provincial law unless they are registered as veterinarians in the Province of Manitoba.[1] Similarly, employees of other provincial government departments may be precluded from acting as veterinary inspectors unless they are registered veterinarians. Again, reform is required.

In our view, new provisions should be enacted which simplify the appointment of agents and which eliminate meaningless distinctions between them. This would permit a clear and coherent approach which should have a positive effect on both intervention and enforcement of animal protection laws.

A. APPOINTMENT OF AGENTS

We propose the creation of two categories of animal protection agent. First, we suggest that police officers in Manitoba maintain their current mandate both to intervene and enforce animal protection legislation. The R.C.M.P. and municipal police forces have long been involved in enforcing both the *Criminal Code* and provincial legislative provisions which protect animals. In addition, they have often acted to protect and relieve the suffering of animals. Any animal protection scheme we could recommend would be severely hampered without the participation of police forces in this province.

In our view, police officers should be viewed as a separate category of agent for two reasons. First, we believe that police officers should be differentiated from other agents by their possession of a special power. We have proposed that only police officers be granted the power to enter residences without a warrant in circumstances where obtaining a warrant would not be feasible; all other agents would be prohibited from entering any residence without a warrant.[2]

[1] In permitting the Lieutenant Governor in Council to appoint "inspectors", *The Animal Diseases Act* does not expressly require that they be veterinarians. However, the Act defines "inspector" as a "*veterinary* inspector appointed under this Act" (emphasis added) and defines "veterinarian" as "a person who holds a valid and subsisting certificate of registration under The Veterinary Medical Act": *The Animal Diseases Act*, C.C.S.M. c. A85, ss. 6(1) and 1. This implies that only veterinarians can serve as inspectors.

[2] See Chapter 6.

Second, we believe that, by virtue of their role as the chief law enforcement agents in the province, all police officers should be automatically given responsibility for enforcing the prohibitions and utilizing the powers of intervention we have recommended. Unlike other agents, their appointments should not depend on their willingness to perform these tasks; these tasks should be considered part of their overall law enforcement role.

RECOMMENDATION 59

Police officers should be granted the power to act as agents of intervention and enforcement for the protection of animals.

For the sake of simplicity and clarity, we believe that all other agents of animal protection should fall into a single category. These agents, whom we will refer to as animal protection officers, should all be given the same powers and responsibilities; they should each be empowered to intervene to protect animals in the ways we have recommended and should also have the authority to enforce prohibitions against animal mistreatment by issuing offence notices to anyone who they believe has violated the law.[3]

Since animal protection officers will be acting as agents of the provincial government, it is important that they be held accountable to the government for their actions. At a minimum, this means that the government must appoint them to this position; we suggest that they should be named by the provincial Cabinet through Orders in Council. In addition, to ensure accountability, the government should be able to review each officer's appointment at regular intervals and whenever questions arise as to the officer's use of his or her powers. If an officer's powers have been used improperly, the government should have the authority to revoke his or her appointment.

This level of control corresponds to that which the government currently exercises over agents of the Winnipeg Humane Society who have been appointed special constables. However, veterinary inspectors currently operate under considerably greater restrictions; they must receive authorization from the Director of Veterinary Services whenever they wish to enter private property and whenever they wish to take action on behalf of suffering animals.

We have considered recommending the use of the "prior authorization" model for all animal protection officers but have concluded that it is excessively expensive, cumbersome and, in the end, unnecessary. There would be substantial costs in administering such a system and, almost inevitably, the delays which would result from the obligation to seek approval before acting would add to animal suffering and trauma. Moreover, we believe that, if government is able to appoint only those individuals in whose judgment it has confidence and to withdraw the appointment when circumstances warrant, it should not be necessary to approve every action taken by agents. We are satisfied that the powers of appointment and withdrawal of appointment we have proposed will be sufficient to control the activities of animal protection officers.

RECOMMENDATION 60

Other than police officers, only one other category of agent should be created for the protection of animals: animal protection officers. All agents in this category should have the same powers.

[3] *The Summary Convictions Act*, C.C.S.M. c. S230, ss. 13 and 16.

RECOMMENDATION 61

All animal protection officers (other than police officers) should be appointed by Order in Council on the basis of the government's confidence in their ability and judgment.

RECOMMENDATION 62

The appointment of animal protection officers should be reviewable and revocable.

The approach we are recommending would give the government great flexibility in selecting animal protection officers. It would allow government, for example, to appoint federal employees to this position by making appropriate arrangements with the federal government. It would also permit the appointment of employees of various provincial government departments if they are in a position to act in this capacity.[4]

At the same time, we fully expect and hope that the government will use its powers of appointment to retain the effective elements of the status quo. We are especially impressed with the partnership which has been maintained between the government and the Winnipeg Humane Society. Our proposals would permit the continued "cross-appointment" of specific individuals by both the Humane Society and the provincial government. These individuals would be authorized as animal protection officers to enter premises, intervene on behalf of animals and to lay informations concerning the violation of provincial offences. Simultaneously, as agents of the Humane Society, they would be able to authorize the placement of seized animals at the Humane Society shelter and commit the Humane Society to paying for the costs of their care. We believe that this sort of arrangement is in the interests of animals and the public.

RECOMMENDATION 63

Efforts should be made to maintain the current practice of appointing as agents of animal protection individuals representing humane societies with powers to place animals in humane society shelters.

We expect that government will also wish to maintain its current practice of appointing veterinarians as agents of animal protection. Veterinarians, under the direction of the Veterinary Services Branch, have traditionally played an active and important role in identifying the mistreatment of animals and in caring for those who have suffered neglect or abuse. Our proposals would not permit the appointment as animal protection officers of veterinarians as a group but we recommend that individual veterinarians be appointed animal protection officers when the government is confident that they would act appropriately and wisely.

RECOMMENDATION 64

Appropriate veterinarians should be appointed on an individual basis to act as animal protection officers.

Our proposal will also give the government flexibility in utilizing the services of animal protection officers. We have already recommended that the government maintain an arrangement with the Winnipeg Humane Society so that its expertise, goodwill and financial resources can be used to protect animals. Similar arrangements could be made with other humane societies which may emerge in other locations. In addition, the provincial government

[4]For example, it may be that employees of the provincial Department of Transportation may be in a position to prevent animal mistreatment while animals are being transported. If so, their appointment as animal protection officers should be considered.

may well be able to reach an agreement with the federal government as to the appointment of federal agents and officials who could then act in this capacity. Various arrangements could also be made with individual animal protection officers. For example, the government may wish to continue to appoint veterinarians who will only act in this capacity when the need arises and will be reimbursed for their time and costs. Other individuals may be prepared to act on an occasional basis without being paid.

Although we are not prepared to make any recommendations with respect to the organization of government departments, we note that the Department of Agriculture, through the Veterinary Services Branch, has traditionally been responsible for the protection of animals outside the City of Winnipeg. In the absence of some other organization prepared to assume this responsibility, we believe that government must continue to play an active part in animal protection. The outstanding work of the Veterinary Services Branch provides a good example of the continuing role we believe government should assume.

B. LIABILITY OF AGENTS

The Animal Husbandry Act grants officers, humane societies and their representatives immunity from liability for any action taken in good faith while carrying out their duties under the Act.[5] This sort of immunity is not uncommon in Canadian legislation[6] and we believe that it is appropriate in this context. To make agents vulnerable to lawsuits for actions which they believe to be legitimate and warranted would inhibit their effectiveness; agents would be likely to decline to act rather than face the possibility of being found liable. Clearly, this would have a detrimental effect on animal protection.

Our position on this issue does not mean that those who have been harmed by the grossly inappropriate actions of agents should be unable to recover for their loss; in our view, an agent should be held liable when he or she acts maliciously or in bad faith. However, agents should be exempt from liability for actions which they genuinely believed to be necessary and legitimate.

RECOMMENDATION 65

Animal protection officers should be immune from liability for actions taken in good faith and in the course of their duties.

C. OBSTRUCTION OF AGENTS

The Animal Diseases Act creates an offence for obstructing a veterinary inspector in the performance of his or her duties under the Act. A violation of this prohibition will result in a fine of between $50 and $500 or to imprisonment for up to two months.[7]

We believe that such an offence is needed in order to provide protection to agents and to ensure the effective use of their powers. If animal owners or keepers are permitted to prevent agents from carrying out inspections or from intervening to protect suffering animals, the powers

[5]*The Animal Husbandry Act*, C.C.S.M. c. A90, s. 73.

[6]P.W. Hogg, *Liability of the Crown* (2nd. ed., 1989) 91. Canadian provincial legislation which grants this immunity to agents of animal protection includes the *Animal Protection Act*, S.A. 1988, c. A-42.l, s. 14; *Animal Protection Act*, R.S.N. 1990, c. A-10, s. 18; *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36, s. 19; *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1, s. 17; *The Animal Protection Act*, R.S.S. 1978, c. A-21, s. 12.

[7]*The Animal Diseases Act*, C.C.S.M. c. A85, s. 17.

we have recommended agents be given would be extremely limited in their utility. An offence provision needs to be established in order to give agents the authority they need to carry out their roles.

It would be extremely unfortunate if an individual were to be punished less severely for obstructing an agent than for mistreating animals. If this were the case, those individuals who were engaged in the mistreatment of animals would find it worth their while to prevent agents from entering premises where they might find evidence of mistreatment. For this reason, we believe that obstructing an agent should be punishable by the same penalties as are available for the mistreatment of animals.

RECOMMENDATION 66

An offence provision should be created which prohibits the obstruction of an animal protection officer in the performance of his or her duties. A violation of this prohibition should be punishable by the same penalties as are available for a violation of the prohibition against animal mistreatment.

CHAPTER 8

CONCLUSION

A. IMPLEMENTATION

As we have noted, current legislative provisions relating to the protection of animals may be found in four statutes: *The Animal Diseases Act, The Animal Husbandry Act, The Highway Traffic Act* and *The Wildlife Act*. One obvious difficulty which is caused by distributing these provisions among various statutes is that of locating them in their entirety. An individual searching for animal protection legislation may come across relevant provisions in one of these statutes but is unlikely to be aware of the existence of other provisions elsewhere.

A second problem which is caused by the current distribution of animal protection provisions is the confusion and inconsistency which we identified in Chapter 2. There appears to have been little effort to coordinate the enactment and amendment of the provisions in these statutes. This is likely due to the fact that those responsible for making changes to one Act were unaware of the implications for relevant provisions in the other statutes.

In remedying the current law, we have recommended a cohesive and coherent legislative structure for the protection of animals. Much of the benefit of our approach will be dissipated if its provisions are dispersed among several statutes. Dividing our proposed provisions into several existing Acts would almost inevitably result in the lack of coordination we have attempted to reform. If our work is to have significant value, our recommendations should be incorporated into a single statute.

RECOMMENDATION 67

All animal protection provisions should appear together in one statute.

The conclusion that all animal protection provisions should appear in one statute does not determine the best location for them, however. In our view, the placement of our package of legislative provisions should be guided by the need to make them accessible to animal owners and keepers, animal protection officers, legal practitioners and the public generally. This requires that the statute in which they are placed be easily identifiable as containing provisions designed to protect animals.

This principle makes it difficult to place these provisions within an existing statute unless the name of the statute were changed to indicate the presence of animal protection provisions. Without a name change, an individual searching for these provisions would be unlikely to look for them within either *The Animal Diseases Act* or *The Animal Husbandry Act*. In addition, retaining the current title for either of these Acts while adding animal protection provisions are likely to distort the scheme we have proposed. Placing animal protection provisions in the context of *The Animal Diseases Act* is likely to result in confusion between the protection of animals and the prevention of animal diseases, with the latter likely to take priority. Similarly, placing animal protection provisions within an Act whose title suggests that it governs the use of animals in agriculture (and whose other provisions, in fact, deal with this activity) suggests that

the primary focus of animal protection provisions is agriculture and farming practices. Clearly, our proposals are much broader in scope.

There are two approaches which would solve this problem. The first is to place the scheme we propose within an existing Act while changing the title of the Act to reflect this inclusion. Indeed, it might be possible to combine provisions relating to animal diseases, animal husbandry and animal protection within one statute, entitled *The Animals Act* or given some similar title.

A second approach is to create a new Act devoted entirely to animal protection and standing apart from other statutes. An Act entitled *The Animal Protection Act* or given a similar designation would serve several purposes. First, it would leave no doubt that Manitoba does, in fact, have animal protection legislation. Second, it would make animal protection provisions easy to find; rather than being forced to scan various pieces of legislation which may contain relevant provisions, those seeking them could find them merely by examining a table of Manitoba legislation. Third, the creation of a separate statute would signal the importance of animal protection; rather than an afterthought, animal protection would be the subject of legislation in its own right.

Although we prefer the latter approach, we are not prepared to make it the subject of a recommendation. However, we do recommend that the title of the Act in which animal protection provisions appear should reflect that fact.

RECOMMENDATION 68

The presence of animal protection provisions should be reflected in the title of the statute in which they have been placed.

B. LIST OF RECOMMENDATIONS

1. New provisions governing the treatment of animals and providing for animal protection, based on clear and consistent principles, should be enacted. (p. 12)

2. For the purposes of animal protection, "animal" should be defined as any non-human living being with a developed nervous system. (p. 14)

3. Animal protection legislation should be based on a recognition that society has a legitimate interest in preventing and alleviating the following conditions which cause animal suffering:

    1. Treatment which, unless immediately halted, will cause an animal death or serious harm;

    2. Treatment which causes an animal to suffer acute pain;

    3. A lack of food and water sufficient to maintain an animal in a state of good health;

    4. A lack of appropriate veterinary care when an animal is wounded or ill;

    5. Treatment which will, over time, significantly impair an animal's health, including, in particular:

        - the confinement of an animal in an area of insufficient space;
        - the confinement of an animal in unsanitary conditions;

- the confinement of an animal without adequate ventilation;
- a failure to allow a confined animal an opportunity for adequate exercise;
- the subjection of an animal to treatment which causes it extreme anxiety and mental distress. (pp. 15-16)

4. The conditions which cause animal suffering and which society has an interest in preventing and alleviating should not include conditions which occur in the course of the following activities so long as the activities are carried out in a manner which does not cause animals needless suffering (that is, suffering of a degree which is not inevitable or intrinsic to the activity):

   - pest control (including the use of poisons);
   - agricultural uses of animals;
   - medical research and teaching involving animals;
   - hunting;
   - fishing (both commercial and sport fishing);
   - veterinary treatment (including spaying and neutering);
   - trapping;
   - control of predators;
   - protection of people and property;
   - animal discipline and training;
   - animal slaughter;
   - humane euthanasia of animals. (pp. 16-17)

5. Legislation should permit the creation of regulations which will more specifically define standards of animal care. (p. 17)

6. Agents should be authorized to take all necessary action to relieve the suffering of an animal which is in distress without removing it from the premises on which it is located. (p. 20)

7. Reasonable steps should be taken after the fact to notify the animal's owner or keeper of any action taken to aid an animal which is in distress without removing it. (p. 20)

8. Agents should be empowered to seize and remove animals in distress if this is reasonably necessary to provide them with proper care and treatment or to prevent the continuation or recurrence of their suffering. (p. 21)

9. An agent should be permitted to seize and remove an animal which is in distress without being required to obtain a veterinary or other opinion as to the necessity of the seizure and removal. (p. 21)

10. Written notice should be provided by the agent responsible for the seizure of an animal to the owner or keeper of the seized animal. The notice should be delivered personally to the owner or keeper of the animal, left prominently displayed on the premises from which the animal was seized or sent by registered mail. (p. 22)

11. Where the owner or keeper of a seized animal is unknown, reasonable efforts should be made by the agent responsible for the seizure to ascertain and locate the owner or keeper in order to provide notice. (p. 22)

12. Notice of the seizure of an animal should set out the date and time of the seizure, a description of the seized animal, the identity of the agent responsible and the reason for the seizure. If known, the location where the animal will be kept should be provided; if this is

unknown, information should be provided which will enable the owner or keeper to locate the animal. (p. 22)

13. The individual or organization which agrees to pay for the initial costs of a seized animal's care (the caregiver) should be able to determine the location where care will be provided and the individual who will provide the care. (p. 23)

14. Caregivers should be authorized to provide all treatment and care which is reasonably required to restore a seized animal to health but should not be authorized to provide treatment which is not reasonably necessary to achieve this goal. (p. 24)

15. A seized animal should be returned to its owner or keeper as soon as it has regained its health, so long as there are no significant concerns that it would be subject to further suffering upon its return. In any event, it should be returned within 30 days of its seizure unless:

    (a) a veterinarian advises in writing that a specific further period of time is necessary for the animal's recuperation; or

    (b) an application has been made for its permanent seizure. (p. 24)

16. The owner or keeper of an animal should be obliged to pay for the reasonable costs of the animal's care provided on the spot or after its seizure. (p. 24)

17. The individual or organization which has paid for the costs of an animal's care should provide the owner or keeper of the animal with an itemized statement of account after the animal has recuperated sufficiently to be returned to its owner or keeper. The statement of account should set out the costs of care to date and a daily charge which will be applied until the account is paid. (p. 25)

18. Caregivers should be given an automatic lien on an animal to which care has been provided and should not be required to return a seized animal to its owner or keeper until the costs of care have been paid. (p. 26)

19. A statement of the costs of care provided to an animal in distress should be enforceable in Small Claims Court or the Court of Queen's Bench to the extent that the costs of care which have been provided by the caregiver are reasonable. (p. 26)

20. Unless the owner or keeper of a seized animal, within five days after receiving a statement of account

    - serves on the caregiver a notice of appeal; or

    - makes payment of the statement of account,

    his or her rights to the animal should come to an end and should be transferred to the caregiver; the caregiver should then be allowed to sell, give away, keep or euthanize the animal, as he or she sees fit. (p. 27)

21. If a seized animal is sold, the proceeds should be used to pay the costs of care; excess proceeds should be returned to the owner or keeper. (p. 27)

22. If the proceeds of the sale of the animal are insufficient to pay for the costs of care, the owner or keeper should remain liable for the unpaid costs of care. (p. 27)

23. Reasonable efforts to identify and locate the owner or keeper of a seized animal should be made by the animal's caregiver. If these are unsuccessful, the caregiver should be permitted to sell, give away, keep or euthanize the animal. (p. 28)

24. If care has been provided to an animal by a humane society or the Veterinary Services Branch and if the owner or keeper of an animal cannot be found after reasonable efforts have been made and the animal is sold, the caregiver should be permitted to retain the entire proceeds of sale. (p. 28)

25. If care has been provided to an animal by someone other than a humane society or the Veterinary Services Branch and if the owner or keeper of the animal cannot be found and the animal is sold, the costs of care should be paid from the proceeds of sale and the excess proceeds should be remitted to the provincial government. (p. 28)

26. An owner or keeper of a seized animal should be permitted to appeal its seizure, its continued seizure or the costs of its care to the Court of Queen's Bench by way of application naming the agent responsible for the seizure, the caregiver or both as respondents. (p. 29)

27. The court should be permitted to order the return of a seized animal to its owner or keeper if:

    (a) the animal was not in distress at the time of its seizure or

    (b) the animal has recuperated and its safety and well-being would not be jeopardized as a result of its return. (p. 30)

28. The court should be permitted to impose terms or conditions on an order for the return of a seized animal and should also be able to reduce the amount owing for the costs of care to the extent that the claimed amounts are unreasonable. (p. 30)

29. Any person or organization should be permitted to file an application in the Court of Queen's Bench for permanent seizure of an animal which is or has been in distress. The order should be granted if it is in the best interests of the animal to do so; the court should be permitted to attach appropriate terms and conditions to such an order. (p. 31)

30. If an application for permanent seizure of an animal has been filed, the animal's detention should be maintained until the application has been considered, unless the court orders the return of the animal to its owner or keeper on an interim basis. (p. 31)

31. Unless the animal is returned to its owner or keeper on an interim basis, its owner or keeper should be liable for the costs of its care until the hearing of an application for permanent seizure; the court should be empowered to order the owner or keeper to post security for the costs of its care. (p. 31)

32. Since other powers can be used to the same effect, it is not necessary to give agents of intervention the power to order owners and keepers of animals to take specific actions to protect the well-being of animals or to relieve their distress. (p. 32)

33. An agent should be allowed to euthanize an animal where it would be inhumane to allow it to live. (p. 33)

34. Prior to euthanizing an animal, an agent should be required to obtain the opinion of a veterinarian that it would be inhumane to allow the animal to live. If such an opinion

cannot be obtained in a timely fashion, the opinions of two other persons to this effect should be allowed to suffice. If neither the opinion of a veterinarian nor two other individuals can be obtained in a timely fashion, an agent should be permitted to euthanize the animal on the basis of his or her own opinion that it would be inhumane to allow it to live. If the agent is a veterinarian no other opinion should be required. (p. 33)

35. The owner or keeper of an animal which has been euthanized should be advised of the euthanization by written notice identifying the animal and setting out the date of the euthanization, the name of the agent responsible and the individuals who provided supporting opinions. The notice should be delivered in person or by registered mail. (p. 33)

36. Existing and new programs which educate the public as to the proper care and treatment of animals should be supported and encouraged. (p. 34)

37. A provincial offence should be created which prohibits the mistreatment of animals. (p. 39)

38. It should be a provincial offence for any person wilfully to cause an animal:

- acute suffering;
- serious injury or harm; or
- anxiety or mental distress to the point where its health or well-being is significantly impaired. (p. 41)

39. It should be a provincial offence for an owner or keeper of an animal to fail to:

- provide it with water and food sufficient to maintain it in a state of good health;
- provide it with appropriate veterinary care;
- prevent its undue exposure to cold or heat;
- provide an environment in which its health or well-being is not significantly impaired and, in particular, to fail to provide it with:
  - adequate space;
  - sanitary conditions;
  - adequate ventilation;
  - an opportunity for adequate exercise; and
  - freedom from anxiety and mental distress

unless he or she demonstrates that due diligence was exercised. (p. 41)

40. It should not be an offence to cause animal suffering while engaged in one of the following activities so long as the activity is carried out in a manner which does not cause animals needless suffering (that is, suffering of a degree which is not inevitable or intrinsic to the activity):

- pest control (including the use of poisons);
- agricultural uses of animals;
- medical research and teaching involving animals;
- hunting;

- fishing (both commercial and sport fishing);
- veterinary treatment (including spaying and neutering);
- trapping;
- control of predators;
- protection of people and property;
- animal discipline and training;
- animal slaughter;
- humane euthanasia. (p. 42)

41. Mistreatment of an animal as defined in provincial legislation should be punishable by a fine of up to $5000 for a first offence and by a fine of up to $10,000 for a second offence which takes place within two years of the first. (p. 43)

42. Judges should be permitted to impose a period of imprisonment of up to six months for a failure to pay the fine imposed. (p. 43)

43. The federal government should be encouraged to increase the maximum penalties currently permitted for mistreatment or abuse of animals under the *Criminal Code*. (p. 43)

44. As part of a sentence for a violation of the prohibition on the mistreatment of animals, a judge should be permitted to prohibit the convicted person from owning or keeping any animal which he or she has mistreated. (p. 43)

45. In addition to any other penalty which is imposed, a judge should also be allowed to prohibit a convicted person from owning or keeping any animals or to restrict the number or type of animals the convicted person may own or keep. (p. 44)

46. The maximum length of an order prohibiting a convicted person from owning or keeping any animals or restricting the number or type of animals the convicted person may own or keep should be five years for a first offence and ten years for a second offence which takes place within two years of the first. (p. 44)

47. An individual who violates an order prohibiting him or her from owning or keeping any animals or restricting the number or type of animals he or she may own or keep should be subject to the same penalties as are available for a violation of the prohibition against the mistreatment of animals. (p. 44)

48. Agents should normally be required to obtain a warrant prior to entering a residence. A warrant for this purpose should be based on reasonable and probable grounds for belief that an animal in the residence is suffering from distress. (p. 48)

49. Police officers should be permitted to enter a residence without a warrant if they have reasonable and probable grounds to believe that an animal in the residence is in distress and if obtaining a warrant is not feasible in the circumstances. (p. 49)

50. Unless good reasons exist for denying this power, a warrant should permit agents to use reasonable force to effect entry to residences. (p. 49)

51. When entering a residence without a warrant, police officers should be allowed to use reasonable force to achieve entry. (p. 49)

52. Warrants should normally be required for entries to non-residential premises and should be based on reasonable and probable grounds for belief that an animal on the premises is in distress. (p. 49)

53. Agents should be permitted to enter non-residential premises without a warrant if they have reasonable and probable grounds to believe that an animal on the premises is in distress and if obtaining a warrant is not feasible in the circumstances. (p. 49)

54. Unless good reasons exist for denying this power, a warrant should permit agents to use reasonable force to effect entry to non-residential premises. (p. 49)

55. Agents entering non-residential premises without a warrant should be allowed to use reasonable force to achieve entry. (p. 50)

56. For the purposes of inspection, agents should be allowed to enter at any reasonable time non-residential premises in which they have reasonable and probable grounds to believe animals are being kept for commercial purposes. No warrants should be required for these inspections and reasonable force should be permitted to effect entry. (p. 51)

57. When entering private property, agents should be required to provide proof of their status upon demand. (p. 52)

58. If the occupier of premises being entered is not present at the time of the entry, the agent should be required to notify the occupier of the fact of the entry by means of a written notice left prominently displayed on the premises or delivered personally or by registered mail as soon as possible after the entry. (p. 52)

59. Police officers should be granted the power to act as agents of intervention and enforcement for the protection of animals. (p. 54)

60. Other than police officers, only one other category of agent should be created for the protection of animals: animal protection officers. All agents in this category should have the same powers. (p. 54)

61. All animal protection officers (other than police officers) should be appointed by Order in Council on the basis of the government's confidence in their ability and judgment. (p. 55)

62. The appointment of animal protection officers should be reviewable and revocable. (p. 55)

63. Efforts should be made to maintain the current practice of appointing as agents of animal protection individuals representing humane societies with powers to place animals in humane society shelters. (p. 55)

64. Appropriate veterinarians should be appointed on an individual basis to act as animal protection officers. (p. 55)

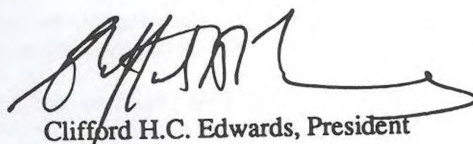
65. Animal protection officers should be immune from liability for actions taken in good faith and in the course of their duties. (p. 56)

66. An offence provision should be created which prohibits the obstruction of an animal protection officer in the performance of his or her duties. A violation of this prohibition should be punishable by the same penalties as are available for a violation of the prohibition against animal mistreatment. (p. 57)

67. All animal protection provisions should appear together in one statute. (p. 58)

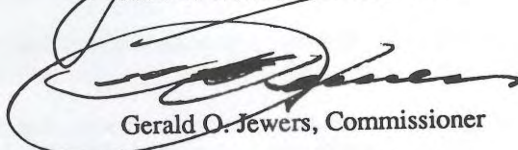
68. The presence of animal protection provisions should be reflected in the title of the statute in which they have been placed. (p. 59)

This is a Report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 13th day of Febuary 1996.



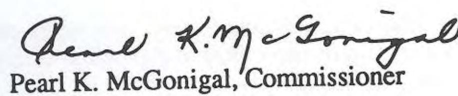
Clifford H.C. Edwards, President

John C. Irvine, Commissioner



Gerald O. Jewers, Commissioner

Eleanor R. Dawson, Commissioner



Pearl K. McGonigal, Commissioner

EXECUTIVE SUMMARY OF

REPORT ON ANIMAL PROTECTION

EXECUTIVE SUMMARY

Laws to protect animals have a long history in Canada; animal protection statutes were first introduced in Nova Scotia in 1824 and in Manitoba in 1907. Today, every Canadian province has in place legislation which permits government agents to take action on behalf of suffering animals. In addition, provisions to protect animals may be found in federal statutes, including the *Meat Inspection Act*, the *Health of Animals Act* and the *Criminal Code*.

In Manitoba, the most important animal protection provisions are located in *The Animal Diseases Act* and *The Animal Husbandry Act*, although provisions protecting animals can be found in several other statutes as well. The lack of a single Act devoted to animal protection means that these provisions are difficult to locate and have evolved independently, with the result that inconsistencies between the statutes are common. In addition, incremental changes over several decades have allowed numerous anomalies to develop even within individual Acts. The result is an inefficient legislative structure for animal protection with conflicting and uncoordinated provisions enforced by a variety of officials and agencies.

To rectify this situation, the Manitoba Law Reform Commission proposes a reorganized system of animal protection based on clear principles upon which the Commission believes the vast majority of Manitobans can agree. It begins by reiterating that society has a legitimate interest in protecting animals from suffering. The extent of this interest is delineated by defining "animal" and by setting out in specific terms the types of animal suffering which will justify societal intervention (in the form of care for animals and punishment of those responsible for their distress). The Report also proposes that certain activities (including agricultural uses of animals, hunting, fishing, trapping, pest control, animal slaughter and euthanasia) should be exempt from intervention so long as the suffering they cause to animals is inevitable and intrinsic to the activity.

The Report goes on to discuss the particular actions which agents of government should be able to take on behalf of suffering animals. The circumstances in which the suffering animal should be provided with care on the spot, removed for treatment or euthanized are set out as well as notice requirements when these actions are taken. The Report affirms the principle that the owner or keeper of an animal should be responsible for the reasonable costs of care provided to it and proposes a system to ensure that this obligation is met. It also recommends that, in appropriate circumstances, an order of permanent seizure should be granted so as to prevent continuing mistreatment.

Although providing care for suffering animals is important, the Report also stresses the need for active measures to prevent the mistreatment of animals. Educational efforts are endorsed as a means of prevention but the Commission acknowledges that deterrence is also necessary. It therefore recommends that a provincial offence provision should be retained. Based on the principles set out earlier, the offence provision proposed by the Commission would result in substantially greater penalties than currently exist in provincial law. As a further preventative measure, the Report recommends that, in addition to any other penalty, a judge should be empowered to prohibit an offender from owning or keeping animals for a period of up to five years.

Special attention is paid by the Commission to the powers of agents to enter private property in order to investigate concerns about animal suffering. It recommends that, although a warrant should be required for most entries, agents should be allowed to enter premises without a warrant in emergencies. In addition, it would allow warrantless entries in order to inspect premises where animals are kept for commercial purposes.

In order to simplify and strengthen the current system of enforcing animal protection laws, the Report recommends that only two categories of agent should have enforcement responsibilities: police officers and individuals appointed for this purpose by the provincial Cabinet.

Simplicity and ease of use are also the aims of the Commission's recommendation that all animal protection provisions should be incorporated into a single Act and that the title of the Act should reflect this fact.

SOMMAIRE DU RAPPORT SUR

LA PROTECTION DES ANIMAUX

SOMMAIRE

Au Canada, ce n'est pas d'hier que l'on adopte des lois pour protéger les animaux. En effet, la Nouvelle-Écosse adoptait une loi sur la protection des animaux dès 1824 et le Manitoba dès 1907. Aujourd'hui, toutes les provinces canadiennes ont des lois permettant à des agents gouvernementaux d'intervenir en faveur des animaux souffrants. En outre, des dispositions visant à protéger les animaux se retrouvent dans des lois fédérales, notamment la *Loi sur l'inspection des viandes*, la *Loi sur la santé des animaux* et le *Code criminel*.

Au Manitoba, les dispositions les plus importantes sur la protection des animaux se trouvent dans la *Loi sur les maladies des animaux* et la *Loi sur l'élevage*, bien qu'il y en ait aussi dans plusieurs autres lois. Il est difficile de trouver ces dispositions du fait qu'elles sont éparpillées dans diverses lois. De plus, comme elles ont évolué indépendamment les unes des autres, il n'est pas rare de déceler des incohérences dans les lois. De même, les modifications progressives apportées au fil de plusieurs décennies ont fait que de nombreuses anomalies se sont développées, et ce, à l'intérieur même d'une même loi. Il en résulte donc une structure législative truffée de dispositions incompatibles et incohérentes que doivent faire appliquer une variété de représentants et d'agences du gouvernement.

Afin de remédier à la situation, la Commission de réforme du droit du Manitoba propose une restructuration des dispositions législatives sur la protection des animaux se fondant sur des principes clairs auxquels peut souscrire, selon elle, la vaste majorité des Manitobains. Cette restructuration réitère, comme point de départ, que la société a un intérêt légitime à protéger les animaux contre la souffrance. L'étendue de cet intérêt est délimitée par la définition d'«animal» et par la détermination, en termes précis, des types de souffrance animale qui justifient l'intervention de la société (sous forme de soins à prodiguer aux animaux et de peines à imposer aux personnes responsables de leur détresse). Dans son rapport, la Commission recommande que certaines activités (notamment l'usage d'animaux à des fins agricoles, la chasse, la pêche, le piégeage, la lutte contre les insectes et les animaux nuisibles, l'abattage des animaux de boucherie et l'euthanasie) soient soustraites à une telle intervention pour autant que la souffrance qu'elles causent aux animaux ne puisse être évitée et soit intrinsèque à l'activité.

La Commission poursuit en faisant état des mesures particulières que les agents du gouvernement devraient pouvoir prendre à l'égard des animaux qui souffrent. Les circonstances faisant qu'il faudrait prodiguer des soins immédiats à l'animal, l'enlever pour le faire traiter ou l'euthanasier sont aussi énoncées tout comme les exigences en matière d'avis à donner au moment de la prise de telles mesures. La Commission souscrit au principe selon lequel le propriétaire ou le gardien de l'animal devrait être tenu de payer les frais raisonnables des soins prodigués et propose un système pour garantir l'exécution de cette obligation. Elle recommande également qu'une ordonnance de saisie permanente soit rendue dans certaines circonstances afin d'empêcher que ne se poursuive le mauvais traitement.

Sans vouloir amoindrir l'importance de prodiguer des soins aux animaux qui souffrent, la Commission insiste sur la nécessité de mesures actives visant à prévenir les mauvais traitements. Elle préconise l'éducation comme moyen de prévention tout en reconnaissant la nécessité de mesures de dissuasion. Par conséquent, elle recommande à la province d'édicter une disposition sur les infractions.

D'après les principes susmentionnés, cette disposition sur les infractions que propose la Commission devrait entraîner des peines plus sévères que ne prévoient les lois provinciales actuelles. Comme autre mesure de prévention, la Commission recommande que l'on autorise les juges à interdire aux contrevenants de posséder ou de garder des animaux pendant des périodes pouvant aller jusqu'à cinq ans.

La Commission se penche aussi de façon particulière sur les pouvoirs des agents de pénétrer dans les propriétés privées afin d'enquêter sur les animaux qui y souffriraient. Bien qu'elle reconnaisse que les agents devraient être munis d'un mandat d'entrée dans la plupart des cas, elle recommande qu'ils soient, en situation d'urgence, autorisés à pénétrer sans mandat sur les lieux où il y aurait des animaux qui souffrent. De même, elle recommande qu'ils soient autorisés à pénétrer sans mandat sur les lieux où des animaux sont gardés à des fins commerciales.

Dans le but de simplifier et de renforcer le système actuel d'application des lois sur la protection des animaux, la Commission recommande que la responsabilité de veiller à l'application de ces lois ne soit confiée qu'à deux catégories de personnes : les agents de police et les personnes désignées expressément à cette fin par le Cabinet provincial.

Par souci de simplicité et de facilité d'utilisation, la Commission recommande que toutes les dispositions portant sur la protection des animaux soient regroupées en une seule loi et que cette réalité soit reflétée dans le titre de la loi en question.