

Canadian Federal Law Prohibiting Cruelty Against Animals by Peter Sankoff

A somewhat unusual component of Part XI of the Criminal Code of Canada, which covers crimes against property, is the portion that addresses cruelty against animals. Despite their being sentient beings with the capacity to suffer pain, animals in Canadian society are treated exclusively as property. Where a person inflicts harm to that property by killing or injuring it – or to put it in the terms of s.430, by destroying or damaging the property – recourse is already available through resort to the mischief provisions. It follows that the primary objective of sections 444 to 447 cannot really be to protect property at all,¹ and this becomes more evident once it is recognized that several of the provisions even protect animals that cannot be considered property in the ordinary sense.² Indeed, the purpose of these offences is to recognize that animals often suffer from human cruelty that should not occur in a civilized society. Without question,³ the focus of the provisions is on the protection of animals from human harm and neglect.³

Although relatively recent,⁴ provisions of this sort are now common throughout the Western world, the product of an emerging concern about the human treatment of animals. Still, by comparison to the modern legislative efforts that have been enacted internationally,⁵ Canada's provisions seem horribly antiquated, and reflect a view of morality towards animals that would have been understandable when the provisions were last reformed in 1953-54.⁶ Sections 444-447 use some rather tortured language, fail to address many important types of cruelty, and require a high level of *mens rea* for offences that are designed to protect creatures who exist in an extremely vulnerable and dependant relationship with their human owners. The federal government attempted to impose major reforms to this part of the Code in 2001,⁷ but its efforts were narrowly defeated in the Senate, leaving the current animal cruelty provisions – amongst the most limited of their kind in the world – in their existing sorry state.

Not all of the blame can be placed on Parliament. At a conceptual level, animal cruelty offences are notoriously difficult to apply and adjudicate, as they demand a delicate – and

¹ This is probably incorrect with respect to sections 444-445, both of which focus on protecting the property of owners, and do not consider cruelty.

² Section 446(a) prohibits a person from causing unnecessary suffering to any animal or bird, regardless of whether such creature is owned or living in the wild. The latter category does fall within a conventional definition of property.

³ There are other strong rationales as well. Studies in the U.S. demonstrate that animal abusers will go on to commit more serious crimes against humans: Randall Lockwood, "Animal Cruelty and Violence Against Humans: Making the Connection" (1999), 5 *Animal L.J.* 81.

⁴ The first anti-cruelty statute was Martin's Act, passed in 1822 by the British Parliament. See Simon Brooman and Debbie Legge, *Law Relating to Animals* (London: Cavendish, 1997) 17-42.

⁵ Eg. *Animal Welfare Act 1999* (N.Z.); *Animal Welfare Act 2006* (U.K.).

⁶ Minor reform occurred in 1974.

⁷ See Canada, *Crimes Against Animals: A Consultation Paper* (Ottawa: Department of Justice, 1998); Bill C-15, *An Act to amend the Criminal Code and to amend other Acts*, 1st Sess., 37th Parl., 2001 (1st reading 14 March 2001).

some would say impossible⁸ – balancing of interests. The crux of whether a particular act constitutes an offence tends to focus upon whether the act was “necessary” in the circumstances. While this standard can be resolved quite easily in cases involve malicious or sadistic conduct, the test is not so easy to apply in other contexts. The reason lies in the fact that in practice, there exists a real lack of societal consensus regarding what constitutes “unnecessary” treatment of animals. Despite public screams of outrage when media reports reveal animal abuse against household pets, the imposition of deliberate suffering upon animals is an entrenched part of Canadian society, as our agricultural industry alone raises and kills millions of animals every year.⁹ It is no wonder that theorists have difficulty in finding a rational way of approaching this problem and sorting out the “good” cruelty from the “bad”, as the reality is that “[t]he moral perceptions of the public differ quite widely, sometimes inexplicably, from one manifestation of our interaction with animals to another, and a coherent underlying principle is often difficult to find”.¹⁰

For the most part, the courts have approached this problem by taking a very conservative view of the legislation in question, only imposing liability where the actions of the accused resulted in significant harm, and were virtually unexplainable. Even then, a defendant can escape liability where he or she raises a reasonable doubt about whether they were aware of the consequences of their actions. It is an undesirable state of affairs, and it is hardly surprising that some of the provinces have filled the lacuna by enacting very similar legislation – albeit with lesser *mens rea* protection for the accused – as a means of punishing those who negligently harm their animals.¹¹

There are a total of ten different offences that can be committed against animals under the Code, but by far the most commonly raised are the wilful infliction of cruelty (s.446(1)(a)) and wilful neglect (s.446(1)(c)). These two crimes are dealt with first, while the remainder of the offences, all of which deal with very specific types of conduct, are addressed in a subsequent section.

(b) Cruelty to Animals

The crime of causing unnecessary suffering – historically referred to as wilful cruelty against animals – is set out in s.446(1)(a) of the Code. The section provides that every one commits an offence who wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or bird. There are thus three

⁸ See, eg., Gary Francione, *Introduction to Animal Rights: Your Child or Your Dog* (Temple University Press: Philadelphia, 2000).

⁹ As Elaine Hughes and Christiane Meyer, “Animal Welfare Law in Canada and Europe” (2000), 6 *Animal L.J.* 23 at 35, have noted “[p]eople capture, house, feed, transport, wear, ride, eat, slaughter, train, breed and experiment on animals. Animals are used for companionship, sport, research, food, clothing, therapy, entertainment, work and other cultural activities. Simultaneously, society struggles to preserve endangered species and to eradicate “pests”. In all of these human-animal interactions, there is the potential for suffering or abuse”.

¹⁰ Simon Brooman and Debbie Legge, *Law Relating to Animals* (London: Cavendish, 1997) 73.

¹¹ Eg. *Animal Protection Act*, R.S.A. 2000, c.A-41; *Animal Cruelty Prevention Act*, S.N.S. 1996, c. 22. Generally speaking, the provincial legislation is restricted to imposing fines or very short terms of imprisonment. There appears to be no constitutional problem in both levels of government enacting this type of legislation, as they serve different purposes: *Vaillancourt* (2003), 221 N.S.R. (2d) 175 (Prov. Ct.).

primary components to the offence: (1) the accused must cause, or permit to be caused, pain, suffering or injury to an animal or bird; (2) it must be committed wilfully; and (3) the pain, suffering or injury must be unnecessary in the circumstances. Each of these components shall be addressed in turn.

(i) Causes or Permits Pain, Suffering or Injury

As the primary clause targeting the wilful infliction of suffering, section 446(1)(a) places no restrictions on *who* can be accused of causing pain, suffering or injury against an animal. Any person can be charged for inflicting such harm, although only an owner can be held liable for a wilful omission that permits harm of this nature to occur. Although the language is notably different from 446(1)(c), which penalizes persons in “custody or control” in addition to owners, the jurisprudence seems to treat these two terms alike, with the term owner in s.446(1)(c) applied to any person “having dominion and control” over the animals as well as those with exclusive legal ownership.¹²

The provision requires the inflicting of some form of “pain, suffering or injury”, but to be clear, it does not protect the animal’s life, however perverse such a result might seem at first instance. The needless killing of an animal, even by violent or vicious methods, will not constitute an offence where there is no evidence that the animal suffered during the process.¹³ Subject to the restrictions of s.445, it is not a criminal offence to put an animal to death, even if there was no need to do so in the circumstances.

Although the animal must suffer in some measurable way, this element of the *actus reus* does not require a high threshold of harm to be proven. So long as the pain reaches a minimal level of physical discomfort, it will be sufficient, and the issue will become whether the infliction of such harm was necessary in the circumstances.¹⁴ Since most animals are incapable of human speech, determining whether the animal actually suffered pain will occasionally be contentious. Expert evidence can be tendered to establish this element, but judges are also permitted to draw inferences from the available facts and circumstances.¹⁵

(ii) Intent

The pain, suffering or injury must be caused wilfully – or permitted wilfully, in the case of an owner – though as with the other sections in this Part, the term wilfully includes recklessness because of the definition of the term in s.429.¹⁶ As usual, wilfulness should not be confused with motivation, and no proof of improper, cruel or malicious motive is

¹² *Paish*, [1977] 2 W.W.R. 526 at 536 (B.C. Prov. Ct.).

¹³ Elaine Hughes and Christiane Meyer, “Animal Welfare Law in Canada and Europe” (2000), 6 *Animal L.J.* 23 at 35, referring to the unreported decision of *R. v. Kohut & Melmoth*, Edmonton, 1997. See also *Menard* (1978), 43 C.C.C. (2d) 458 (Que. C.A.).

¹⁴ *Menard*, *ibid.*

¹⁵ Unfortunately, judges often choose to ignore obvious signs of discomfort. See, eg. *McRae*, [2002] O.J. No. 4987 (S.C.J.) (a dog yelping and crying after being kicked was not conclusive evidence of suffering); *Miller*, [2003] Y.J. No. 170 (S.C.) (dog being kicked “viciously” but no evidence of pain). One would hope that judges would be more willing to draw inferences of pain and suffering, especially where the acts in question were without justification.

¹⁶ *Higgins* (1996), 144 Nfld. & P.E.I.R. 295 (Nfld. S.C.).

required to ground a conviction under this section.¹⁷ Despite the high level of *mens rea* required, cruelty against animals is still regarded as a crime of general intent, and thus drunkenness cannot be raised as a defence under s.446.¹⁸

There exists some controversy over what exactly must be performed “wilfully” in order to attract the penal sanction. In *Clarke*,¹⁹ the trial judge held that although the accused must wilfully commit the action that causes harm, he or she does not have to subjectively foresee or intend for that action to cause pain, suffering or injury. Such harm need only be objectively foreseeable. While perhaps desirable, this approach does not accord with the wording of the provision, and in particular, with the wording of s.429. A preferable interpretation was adopted in *Higgins*:²⁰ the accused must act in the knowledge that the act undertaken will probably cause pain, suffering or injury, and either intend or be reckless as to whether pain, suffering or injury occurs. Section 446 does not require advertence to a specific *type* of injury, but there must be some awareness that injury will probably materialize if the action is undertaken.²¹

Section 446(3) should probably be mentioned here as well. It provides that:

For the purposes of proceedings under paragraph 1(a) or (b), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird, thereby causing it pain, suffering, damage or injury is, in the absence of evidence to the contrary, proof that the pain, suffering, damage or injury was caused or was permitted to be caused wilfully or was caused by wilful neglect, as the case may be.

Essentially, this subsection provides that proof of a failure to exercise reasonable care or supervision permits the trier of fact to infer wilfulness, unless there is some evidence to the contrary. This subsection is unlikely to arise very often in practice, as most charges brought under s.446(1)(a) deal with intentional acts of cruelty, rather than a failure to exercise proper care. Ironically, this subsection is not applicable to subparagraph (c), the neglect provision, where it would probably be most useful.

Still, the clause has some potential utility. In cases premised on neglect or the causing of suffering through neglect, charges can still be brought under s.446(1)(a), and it would not be necessary for the prosecution to prove any direct intention, as the trial judge could infer this intent using the presumption in subsection (3), unless evidence was raised to rebut it. So long as this section is read to only impose an evidentiary burden on the accused, there is nothing wrong with it, as the presumption is quite a logical one to draw. In the absence of evidence indicating otherwise, one generally should presume that a failure to exercise reasonable care was done wilfully. Once some evidence is available to indicate otherwise however, the presumption will have no further effect, and the burden to prove the necessary intent remains at all times with the prosecution.²²

(iii) What is Unnecessary Pain, Suffering or Injury?

¹⁷ *McHugh*, [1966] 1 C.C.C. 170 (N.S.C.A.). Whether the act was committed for a cruel purpose will be considered in sentencing, however: *Paul*, [1997] B.C.J. No. 808 (Prov. Ct.).

¹⁸ *Martens* (1986), 39 Man. R. (2d) 249 (Q.B.).

¹⁹ [2001] N.J. No. 191 at para. 59 (Prov. Ct.).

²⁰ (1996), 144 Nfld. & P.E.I.R. 295 (Nfld. S.C.).

²¹ *Ibid.* at para. 14.

²² *Higgins* (1996), 144 Nfld. & P.E.I.R. 295 (Nfld. S.C.).

With the threshold for pain, suffering or injury being so low, it should be apparent that the key to a successful prosecution in most cruelty cases will involve establishing that the effect upon the animal was unnecessary in the circumstances. This element is clearly part of the *actus reus* and it is irrelevant for the purposes of liability whether the accused believed the action in question was necessary. Thus in *Galloro*,²³ the accused was convicted for cutting off a portion of a dog's ear to "alleviate" seizures from which the animal was suffering, even though she honestly believed the act was necessary, because it was clear from the evidence that the procedure was medically unsound.

While not unknown to the criminal law, use of the term "unnecessary" in this context has proven highly problematic. As noted above, the word effectively imports a balancing test whereby the accused's purpose for inflicting the harm in question is measured against the degree of pain, suffering or injury visited upon the animal. What makes this test so challenging to apply is that there is no objective standard by which the relative justifications can be measured. As one commentator has suggested:²⁴

[S]peaking of "necessity" in the context of cruelty prosecutions is not terribly helpful. It is not strictly speaking necessary for any animals to experience pain because of human activity... Typically to claim that a given amount or kind of animal pain or distress is "necessary" is to make two judgements: (1) that a human aim for which the pain (distress and so on) is imposed is legitimate or is sufficiently important to justify the animal pain; and (2) that the amount or kind of pain in question is in fact required for the achievement of that aim.

This can be harder to apply than one might imagine. To be sure, no difficulty arises where the action in question is lacking in any legitimacy whatsoever, such as where the sole purpose is some form of sadistic pleasure. Smashing a cat with a hockey stick for amusement cannot be considered "necessary" by any measure.²⁵ Strangling a dog out of anger in response to its having growled is equally unjustifiable.²⁶ Other cases will be more difficult to assess, however. Is calf roping for sport "necessary", notwithstanding the practice's tendency to occasionally cause grave damage to a calf's neck? Are industrial practices that confine animals to cages for their entire lives a necessary aspect of the agricultural business?

The leading case on this topic shows how difficult such balancing can be. In *Menard*,²⁷ Lamer J.A. – then a member of the Quebec Court of Appeal – defined "unnecessary" in the following manner:²⁸

It is sometimes necessary to make an animal suffer for its own good or again to save a human life. Certain experiments, alas, inevitably very painful for the animal, prove necessary to discover or test remedies which will save a great number of human lives. [Section 446] does not prohibit these incidents, but at the same times condemns the person who, for example, will leave a dog or a horse without water and without food for a

²³ [2006] O.J. No. 2871 (C.J.).

²⁴ Jerrold Tannenbaum, "Animals and the Law: Property, Cruelty, Rights" (1995), 62 *Social Research* 539 at 577.

²⁵ *D.(L.)* (1999), 242 A.R. 357 (Prov. Ct.).

²⁶ *Greeley* (2001), 203 Nfld. & P.E.I.R. 10 (Nfld. Prov. Ct.).

²⁷ (1978), 43 C.C.C. (2d) 458 (Que. C.A.).

²⁸ *Ibid.* at 464.

few days... in order to avoid the costs of a temporary board and lodging, notwithstanding that these animals would suffer much less than certain animals used as guinea pigs. Everything is therefore according to the circumstances, the quantification of the suffering being only one of the factors in the appreciation of what is, in the final analysis, necessary.

He continued by emphasizing that necessity had to take into account the relative positions of humans and other animals.²⁹

Thus men... do not renounce the right given to them by their position as supreme creatures to put animals at their service to satisfy their needs, but impose on themselves a rule of civilization by which they renounce, condemn and repress all infliction of pain, suffering or injury on animals which, while taking place in the pursuit of a legitimate purpose, is not justified by the choice of means employed. "Without necessity" does not mean that man, when a thing is susceptible of causing pain to an animal, must abstain unless it be necessary, but means that man in the pursuit of his purposes as a superior being, in the pursuit of his well-being, is obliged not to inflict on animals pain, suffering or injury which is not inevitable taking into account the purpose sought and the circumstances of the particular case. In effect, even if it not be necessary for man to eat meat and if he could abstain from doing so, as many in fact do, it is the privilege of man to eat it.

This certainly sounds reasonable enough, but it renders the "unnecessary" test somewhat ambiguous by providing no indication of what might constitute a legitimate purpose, aside from indicating that animals can be harmed to satisfy human need or desire. Not surprisingly, what the subsequent jurisprudence reveals is that leaving aside clearly disreputable acts motivated by sadism or indifference, there seems to be very little scrutiny of what constitutes a "legitimate" purpose for ill-treatment. Deliberately inflicting pain upon a horse might constitute cruelty in the abstract, but the same act is justified where the purpose is human entertainment, and the horse is intentionally irritated with a painful strap to perform more strenuous bucking in a rodeo contest.³⁰ A similar lack of clarity surrounds the use of the term "inevitable" in *Menard*. Is avoidable pain and suffering justifiable if it is part of a common industrial practice? Once again, the jurisprudence indicates that the necessity test does not require animal owners to avoid suffering if less harmful measures would impose additional cost, and the common practice is used by most others in the industry.³¹

All things considered, the test seems to be weighted quite heavily *against* finding cruelty in almost any situation. At the moment, rationales such as economic need and the desire for entertainment are accepted as meaningful justifications, and consequently, the "unnecessary" test almost invariably tilts in favour of the accused to the detriment of the animals in question, except in extreme circumstances of animal abuse. On the other hand, if a stricter approach were taken, and these purposes were no longer regarded as legitimate, then numerous activities that currently have a high degree of societal acceptance or, at the very least, tolerance, (eg. hunting, rodeo, agricultural production involving veal production or battery chicken cages) would constitute a criminal offence. Given the implications of this reasoning, it is hardly surprising that the courts have

²⁹ *Ibid.* at 465.

³⁰ *Linder* (1950), 97 C.C.C. 174 (B.C.C.A.).

³¹ *Pacific Meat Co. Ltd.* (1957), 119 C.C.C. 237 (B.C. Co. Ct.).

chosen a less revolutionary interpretation of the provision – even if the results end up being rationally indefensible.

(c) Neglecting Animals in One's Care

Neglect amounting to cruelty can occur in two ways under the Code. Section 446(1)(b) addresses harm caused during the transport of animals, and punishes any wilful neglect causing damage to animals while they are being driven or conveyed. This subsection seems to be nothing more than an extension of the wilful neglect provisions in s.446(1)(a) to “non-owners” who take temporary custody of animals during transport, and nothing more need be said of it.

The primary neglect provision is set out in s.446(1)(c). It imposes an offence upon anyone who:

Being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.

To prosecute under this section, it must first be proven that the accused is the owner or has “custody or control” over the animal. As with s.446(1)(a), this section is not designed to assign responsibility over any animals that happen to be on a person's property. A person must voluntarily assume responsibility for an animal for there to be a finding of custody or control, though the court will infer such responsibility by a person's actions even where such custody is denied in court.³² Once this control is assumed, s.446(1)(c) effectively imposes a duty to provide food, water, shelter and care.³³

Still, not every failure to perform this duty will amount to a criminal offence, as the section does not punish negligence regarding the treatment of animals, but only *wilful* failure or neglect. Essentially, the prosecution must prove that the accused turned his or her mind to the situation and intentionally or recklessly failed to act. In *Clarke*,³⁴ the trial judge suggested that “the Crown must prove that the accused was aware of the animal's condition and the effect of his or her actions”, though it would not be a defence for the accused to argue that, in his opinion, adequate food or water were supplied where this was not the case.

This interpretation is highly problematic, as there is nothing in the section requiring the accused to know the animal's condition and the effect his or her non-compliance was having. Certainly the accused would have to be aware that food, water, shelter or care was not being provided, allowing forgetfulness to amount to a valid excuse, but it is unclear why a specific knowledge of the effects caused by a deliberate failure to provide sustenance is required. Surely a person who knows that they have an animal, is supposed to provide them with food, and wilfully chooses not to, should be held liable, regardless whether they were subjectively aware of the animal's condition or the effects the failure to provide was having. In contrast to s.446(1)(a), proof that the injury was wilfully

³² *Deschamps* (1978), 43 C.C.C. (2d) 45 (Ont. Prov. Ct.); *D.(L.)* (1999), 242 A.R. 357 (Prov. Ct.).

³³ Care includes medical care where such attention is required: *Galloro*, [2006] O.J. No. 2871 (C.J.).

³⁴ [2001] N.J. No. 191 at para. 71 (Prov. Ct.).

caused is not a feature of this provision.

In any event, the debate over how wilfulness should be interpreted demonstrates one of the primary problems with the existing provision, as the Code desperately requires at least one crime against animals premised on a criminal negligence standard. Animals under someone's care are in an extremely vulnerable situation, and a person who chooses to take on the responsibility of caring for them should be held to an appropriate standard of care. It is no longer morally acceptable to allow an owner of animals to cause devastating harm to animals and simply plead ignorance of the effects of poor care, as occurred in *Heynan*,³⁵ where a horse owner was acquitted of starving his animals on the basis of his mistaken belief that horses could obtain their own food in winter.

In terms of the *actus reus*, the section speaks of "suitable and adequate food, water, shelter and care", and consequently does not demand perfection. What is "suitable and adequate" seems to be a question of fact in each case, although the burden of proving that it was not suitable or adequate lies upon the prosecution. The section does not "seek to establish a universal standard for the feeding or sheltering of animals".³⁶ There must be more than a slight deviation from what is considered reasonable in the circumstances. In *Galloro*,³⁷ the trial judge suggested that there needs to be a marked departure from what is reasonable in order for a conviction to ensue. Again, this seems to be a very conservative approach to the provision, and effectively amounts to a rewriting of the statute, which states that suitable and adequate food, water, shelter and care must be provided. To be sure, this is not intended to be a high standard of care and does not equate to proper, appropriate or acceptable. But to require a marked departure from the ordinary standard seems to go considerably farther than what is written in the statute – especially where the failure to provide must be wilful. Once a person takes charge of an animal, they are responsible for taking care of it; surely, requiring the animal to be treated in a suitable and adequate manner is not too much of a burden to impose.

(d) Specific Offences Towards Animals

In addition to the primary prohibition against causing unnecessary suffering and the general offences addressing neglect, there exist a number of very specific crimes involving animals. Each of them has historic origins, and – with the exception of s.445 – they seem to be used only rarely in modern times.

Section 444 creates the specific offence of injuring or endangering cattle.³⁸ It is the most serious offence that one can commit against animals, and is prosecuted on indictment and punishable by up to five years' imprisonment.³⁹ The section punishes any wilful killing,

³⁵ (1992), 136 A.R. 397 (Prov. Ct.).

³⁶ *Clarke*, [2001] N.J. No. 191 at para. 71 (Prov. Ct.).

³⁷ [2006] O.J. No. 2871 (C.J.).

³⁸ The term "cattle" is not used in the ordinary sense here. Section 2 defines "cattle" to include an animal of the bovine species by whatever technical or familiar name it is known and to include any horse, mule, ass, pig, sheep or goat.

³⁹ Acts of this kind would also qualify as mischief under s.430, as they would damage or destroy another's property, but given the unlikelihood of such cattle being worth \$5000 or more, would only be punishable by up to two years' imprisonment if prosecuted under that section.

maiming,⁴⁰ wounding, poisoning or injuring of cattle, and also prohibits the placing of poison in a place where it might be consumed by cattle. Amazingly, the section protects both owned and wild cattle,⁴¹ which effectively places these animals in an exalted position of safety, preventing them from human injury regardless of whether they are someone's property or not.⁴² This probably was not the intention of the drafters, as there is no logical reason to distinguish cattle from other animals. The section is clearly designed to protect the interests of those who own these animals because of their value.

This interpretation of s.444 is strengthened by the related offence in s.445, which protects dogs, birds or animals that are not cattle and are kept for a lawful purpose.⁴³ These domestic or owned animals are also protecting from killing, maiming and the like, but the offence is a less serious one, only punishable on summary conviction. To be clear, this section does not protect lawfully owned animals from being killed. It merely protects them from being killed by someone other than the owner. Animals have no right to life, and owners are entitled to dispose of them at any time without fear of prosecution under s.445,⁴⁴ even though the manner in which the animal is killed might amount to cruelty under s.446.

Section 445 does permit a person to commit one of the prohibited acts where there is a lawful excuse for the conduct. Obviously, an individual has the right to kill, maim or wound an animal in self-defence in the face of an attack, or to protect another person or animal from such an attack.⁴⁵ Other legislation may also provide a defence to this charge.⁴⁶ Where the animal is a dog, for example, provincial legislation may allow certain conduct as a means of protecting oneself or one's property.⁴⁷

Section 446 lists a number of specific crimes relating to animals. Staged animal fights are prohibited by s.446(d) which prohibits anyone from encouraging, aiding or assisting in such a fight, whether it involves animals or birds. Section 446(4) provides an evidentiary presumption of encouragement where a person is present at such a fight. Strangely, keeping premises for the purpose of animal fighting is not an offence, although section 447 prohibits the keeping or maintaining of a cockpit for cockfighting.

⁴⁰ This term would seem to have the same meaning as s.268, that being a permanent injury that renders the animal less able to defend itself: *Presnail* (2000), 264 A.R. 258 (Prov. Ct.).

⁴¹ *Brown* (1984), 11 C.C.C. (3d) 191 (B.C.C.A.).

⁴² An owner, of course, is permitted to kill or injure his or her own animals on the grounds of colour of right: s.429(2).

⁴³ A stray or wild animal is not encompassed by this provision: *Deschamps* (1978), 43 C.C.C. (2d) 45 (Ont. Prov. Ct.). A "stray" animal is one that is not owned or kept, and this designation does not apply to an animal that temporarily leaves its owner's residence: *Sunduk* (1999), 178 Sask. R. 157 (Q.B.).

⁴⁴ Killing of an animal by, or at the direction of, an owner effectively amounts to a lawful excuse: *D.(L.)* (1999), 242 A.R. 357 (Prov. Ct.).

⁴⁵ *Greeley* (2001), 203 Nfld. & P.E.I.R. 10 (Nfld. Prov. Ct.).

⁴⁶ See the discussion in *Yuke (Private Prosecutor) v. Angus*, [1995] O.J. No. 575 (Prov. Div.), aff'd [1996] O.J. No. 5431 (Gen. Div.).

⁴⁷ Eg. *Livestock, Poultry and Honey Bee Production Act*, R.S.O. 1990, c.L.24, s.2, which states that "any person may kill a dog that is found killing livestock or poultry [or] that is found straying at any time, and not under proper control, upon premises where livestock or poultry are habitually kept".

Section 446(e) prohibits the administering of a poisonous or injurious substance to any domestic animal or bird, or wild animal kept in captivity. This section appears almost entirely duplicative of s.445(a), although it also imposes liability on owners who wilfully permit such substances to be administered as well.

Finally, s.446(f) imposes liability for canned bird hunts, whereby birds are trapped and then liberated specifically for the purpose of being shot at. Section 446(g) punishes the owner of property who permits such activity to take place.