

Stand up, Turn around, Lie down.

California's Proposition 2 and the Canadian Perspective on Farm Animal Welfare Law *

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A Directed Research Paper
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INTRODUCTION

The vast majority of the millions food animals in North America spend their lives suffering in cages too small to move. The practice of raising animals in confinement systems began in the mid 1900s and quickly became the status quo in animal agriculture. After decades of quiet cruelty, public awareness of this systemic torture is on the rise.

In the United States, several jurisdictions have already implemented laws that ban intensive confinement livestock housing. Arguably the most celebrated example is California's Proposition 2 - in November 2008, a majority of voting Californians cast their ballots to pass a citizen initiative that requires layer hens, pregnant sows, and veal calves be housed only in enclosures that allow them to stand up, turn around, and extend their limbs fully. Many other states are already following suit.

Survey after survey indicate the majority of Canadians also care about the welfare of farm animals and do not believe in the use of livestock confinement systems,¹ yet Canada seems to be trapped in a legislative cul-de-sac when it comes to passing its own livestock welfare laws.

¹ "Are Consumers Willing to Pay for Animal Welfare?" *Let's Talk Farm Animals* (accessed 13 March 2011), online: Let's Talk Farm Animals <<http://www.letstalkfarmanimals.ca/2010/07/30/are-consumers-willing-to-pay-for-animal-welfare/>> ("One-third of Americans believe that animals have a soul. Sixty-four percent of Americans believe that God wants humans to be good stewards of animals, and placing animals in small cages does not constitute good stewardship... (e)ducating consumers – by providing objective information – only makes them oppose these cages more". Canadians mirror these views).

This paper canvasses why Canada has not enacted agriculture animal welfare laws similar to those in the United States in spite of considerable public opposition to livestock confinement methods, and looks at the likelihood of Canada enacting legislation similar to Proposition 2.²

First the paper will give a brief introduction of salient background factors including a description of livestock confinement housing, California's ballot initiative system, animal welfare laws in Canada, and the content of California's Proposition 2. The main catalysts and conditions that led to the Yes vote on Proposition 2 will then be explored and compared with Canada's relative situation, followed by a discussion of future hope for Canada's own farm animal welfare legislation.

BACKGROUND

Of all the animals in human care,³ 98% are raised for food.⁴ Most of these animals are raised on factory farms that use intensive confinement housing systems.

1.1. From Farms to Factories

The past 70 years have seen drastic productivity increases in the global agricultural sector. A combination of technological, chemical, and genetic improvements collectively referred to as

² This paper employs California's Proposition 2 as a muse for bringing similar legislation to Canada. While Europe is decades ahead of North America in its animal welfare legislation, reasons for focusing on California's animal welfare legislation include relatively similar economic and geographical conditions as Canada, along with more closely shared culture, values, and political climate. The recent breakthrough in California is a more timely and comparable development, and a more likely harbinger of changing times for animal rights in North America. This paper is concerned with legislation that the animals' life on the farm. It does not deal with laws relating to practices for animal transport, slaughter, or the welfare of non-farm animals.

³ Non-wild animals including food animals, companion animals, working animals, zoo animals, research animals, animals raised for fur, animals used in circuses and rodeos, etc.

⁴ David J. Wolfson & Mariann Sullivan, "Foxes in the Henhouse, Animals, Agribusiness and the Law: A Modern American Fable" in Cass R. Sunstein & Martha Craven Nussbaum, eds., *Animal Rights: Current Debates and New Directions* (New York: Oxford University Press, 2004) 205 at 4.

the “Green Revolution” drove these changes. It began in the 1940s, and continued for several decades.⁵ Living space for livestock was greatly decreased through widespread usage of gestation crates, battery cages, and veal crates. This enabled producers to house more animals and leverage economies of scale, effectively turning family farms into corporate factories.⁶ This rise in productivity translated into significant capital gains for producers and big savings for consumers of animal products,⁷ but at the expense of a devastating decrease in animal welfare.

1.2. Farm Animal Welfare

Owners and operators of intensive livestock operations (ILOs)⁸ often claim that freedom from hunger and thirst is sufficient to establish livestock welfare, and that increases in output reflect a state of livestock well-being.⁹ In reality, the productivity increases associated with

⁵ Daniel Pepper, “The Toxic Consequences of the Green Revolution” (7 July 2008), online: US News and World Report <<http://www.usnews.com/articles/news/world/2008/07/07/the-toxic-consequences-of-the-green-revolution.html>> .

⁶ Jill Sherrill Smith, “Intensive Hog Farms: Global Corporations Belly Up to the Rural Trough” *Concerned Citizens for Our Community Environments* (accessed 28 March 2011), online: <<http://www.spcottawa.on.ca/ofsc/bellyup.htm>>.

⁷ “Putting Meat on the Table: Industrial Farm Animal Production in America” *A Report of the Pew Commission on Industrial Farm Animal Production* (April 2008) at 3 (“In 1970, the average American spent 4.2% of his or her income to buy 194 lbs of red meat and poultry annually. In 2005, Americans spent, on average, 2.1% of their annual income to buy 221 lbs of red meat and poultry”); Erik Marcus, *Meat Market: Animals, Ethics, and Money* (Boston: Bio Press, 2005) at 7 (Between 1950 and 2003, inflation caused consumer prices to rise by 770%, cars and house prices rose even more dramatically by 1400% and 1500% respectively. By contrast, milk prices increased only 350%, and by the end of the period, the price of eggs and meat had yet to double).

⁸ Also called Confined or Concentrated Animal Feeding Operations (CAFOs).

⁹ “An HSUS Report: The Welfare of Intensively Confined Animals in Battery Cages, Gestation Crates, and Veal Crates” *The Humane Society of the United States* (accessed 16 March 2011), online: HSUS <www.humanesociety.org/.../hsus-the-welfare-of-intensively-confined-animals.pdf> at 8 [HSUS, “Intensively Confined”] (Livestock production statistics are cited to support this assertion. Some animal agriculturists also argue that the minimization of animal-to-animal contact in confinement systems is important for welfare with respect to prevention of spread of disease. This argument fails as cages are unable to guard against airborne diseases, and most animals still have some physical contact as their limbs often extend into the next cage).

ILOs are due to intensification and genetic modifications;¹⁰ when more animals are enclosed in a smaller space, the quantity of animal product appears greater.¹¹ Contrary to industry belief, there is ample evidence that enabling livestock welfare requires far more than providing basic nutrition.¹²

When farm animal welfare in confinement systems became a concern in the 1960's, the British Government commissioned an investigation into the matter. The resulting "Brambell Report"¹³ clarified confirmed that central to farm animal welfare is the ability to "stand up, lie down, turn around, groom themselves and stretch their limbs". The widely-referenced "five freedoms" of animal welfare developed by Britain's Animal Welfare Council were based on this report, and include: freedom from thirst, hunger and malnutrition; freedom from discomfort; freedom from pain, injury and disease; freedom to express normal behaviour; and freedom from fear and distress.¹⁴ The results of the report underlined the importance of a degree of physical freedom to overall welfare.

¹⁰ HSUS, "Intensively Confined", *ibid.* at 1.

¹¹ Dr. Joy Mench, *An HSUS Report: The Welfare of Animals in the Meat, Egg, and Dairy Industries*, online: Humane Society of the United States <www.humanesociety.org/assets/pdfs/farm/welfare_overview.pdf>. at 5 (The more animals in a given space, the higher the production numbers, regardless of welfare).

¹² IJH Duncan, "Science-based assessment of animal welfare: farm animals" (2005) 24:2 Rev. sci. tech. 483 at 2 [Duncan].

¹³ U.K., Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems, *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems* by F.W. Rogers Brambell (HMSO London: Her Majesty's Stationary Office, 1965) (named after the chairman of the committee).

¹⁴ "Five Freedoms", *Farm Animal Welfare Council* (accessed 4 March 2011) online: FAWC <<http://www.fawc.org.uk/freedoms.htm>> (A few years after this report, the UK government established the Farm Animal Welfare Council (FAWC) as an independent advisory body); Duncan, *supra* note 12 (While more recent definitions of animal welfare differ, they tend to share these common attributes).

All animals have behavioural needs;¹⁵ birds nest, calves groom, pigs root. When these behaviours are impeded, welfare suffers accordingly. Confinement in modern housing systems segregates animals from each other and prohibits the expression of the most basic behaviours, drastically decreasing the welfare of livestock. Proposition 2 eliminates three of the most oppressive modern confinement systems - gestation crates, veal crates and battery cages, described in turn below.

1.2.1. Gestation Crates

“Gestation crate” is the word used to describe the individual metal pens that sows are kept in for the majority of their lives. The pen area is typically 2’ x 7’, and often smaller.¹⁶ The enclosed sows are scarcely able to move, let alone to turn around or lie in a natural position.¹⁷ The man-made slated floors of the gestation crates contribute to physical injury from slipping, joint damage, lameness, and foot wounds.¹⁸ The physical restriction causes urinary tract infections, reduced muscle mass, weakened bone structure, and lameness.¹⁹ Repeated impregnation takes a physical toll on the sows and worsens these problems, but the worst effects are not physical. Pigs are naturally active, social, and as intelligent than the average three year old.²⁰ Sows unable to interact with other animals or with their natural

¹⁵ HSUS, “Intensively Confined”, *supra* note 9 at 2.

¹⁶ HSUS, “Intensively Confined”, *supra* note 9 at 5.

¹⁷ *Ibid.* at 4.

¹⁸ Commission of the European Communities, 20 final 2001/0021(CNS) *Communication from the Commission to the Council and the European Parliament on the welfare of intensively kept pigs in particularly taking into account the welfare of sows reared in varying degrees of confinement and in groups* (Brussels: 2001) at 5.

¹⁹ HSUS, “Intensively Confined”, *supra* note 9 at 5.

²⁰ *Ibid.* at 5 (Pigs are “capable of learning complex tasks, perceiving time, and anticipating future events”); Chris McLaughlin, “The Intelligent Pig The Smartest Domestic Animal in The World” (16 December 2008), online: Suite 101.com <<http://www.suite101.com/content/the-intelligent-pig-a84448>>; Lisa Duchene, “Are Pigs Smarter than Dogs” *Resesarch Penn State Probing Questions* (8 May 2006), online: Penn State

surroundings literally go insane,²¹ exhibiting repetitive behaviours²² and becoming aggressive with other animals as a result of the mental stress.²³ In Canada, more than 1,440,000 sows are kept for the purpose of reproducing. Almost all of these are raised in gestation crates.²⁴

1.2.2. Battery Cages

Intensively confined layer hens live in “battery cages”. These barren wire receptacles allow a layer hen approximately as much floor space as a sheet of letter paper to live her life in,²⁵ with as many as eight to ten hens crowded in each enclosure.²⁶ From a physical standpoint, these conditions lead to illnesses including oppressive chronic calcium deficiency and osteoporosis.²⁷ Feather loss and skin wounds caused by perpetual contact with other hens and the wire enclosures are pervasive.²⁸ In addition to the negative physical impacts, the

<<http://www.rps.psu.edu/probing/pigs.html>> [Duchene] (Pigs are extremely intelligent; many researches believe they are at least as clever as dogs and smarter than chimpanzees); Salvatore Cullari, “Re: Have pigs got a higher IQ than dogs?” (12 April 2000), online: Madsci Network: Zoology <<http://www.madsci.org/posts/archives/2000-04/955599153.Zo.r.html>> [Cullari] (pigs learn tasks faster and have remarkable memories. They also exhibit team work in problem solving).

²¹ Duchene, *ibid.*; Re: Have pigs got a higher IQ than dogs? Wed Apr 12 12:20:33 2000; HSUS, “Intensively Confined”, *supra* note 9 at 5; Cullari.

²² HSUS, “Intensively Confined”, *supra* note 9 at 6 (Repetitive behaviours are referred to as “stereotypic”. “Bar-biting, head-weaving, pressing their drinkers without drinking, and making chewing motions with an empty mouth” are examples of this type of behaviour, which is indicative of “psychological disturbance, frustration, and impaired welfare”).

²³ HSUS, “Intensively Confined”, *supra* note 9 at 6.

²⁴ “Sow stalls” *Canadian Coalition for Farm Animals* (accessed 13 March 2011), online: Canadian Coalition for Farm Animals <<http://www.humanefood.ca/sowstalls.html>>.

²⁵ HSUS, “Intensively Confined”, *supra* note 9 at 2 (Cages measure 432-555 cm²).

²⁶ “No Battery Cages” *Canadian Coalition for Farm Animals* (accessed march 14, 2011), online: Canadian Coalition for Farm Animals <<http://www.humanefood.ca/battery.html>> [CCFA, “No Battery Cages”] (Hens must stand on sloping metal wire their entire lives, this allows the eggs to roll onto the conveyor belts and be taken immediately away, causing the hens additional stress).

²⁷ HSUS, “Intensively Confined”, *supra* note 9 at 2 (This calcium deficiency is caused by being bred to lay ten times more eggs than normal hens, and results broken bones. Confined hens also get Caged Layer Fatigue, which debilitates bones and leads to “fractures, paralysis, and death”); HSUS, “Intensively Confined”, *supra* note 9 at 4 (Many confined layer hens suffer from fatty liver hemorrhagic syndrome (FLHS), which results from physical confinement and the high-energy diets used for rapid growth).

²⁸ HSUS, “Intensively Confined”, *supra* note 9 at 4.

confinement and animal density deteriorates psychological welfare. Nesting is one of the most fundamental instincts of birds,²⁹ yet hens are prevented from building nests or engaging in any natural behaviour, including dust bathing, pecking, spreading their wings, or even standing fully upright.³⁰ More than 90% of the world's eggs originate in this type of factory farm facility.³¹ It is estimated that 98% of the 26 million layer hens raised in Canada are kept in battery cages.³²

1.2.3. Veal Crates

Calves are literally dragged away from their mothers immediately after birth, causing both cows and calves immense stress. If they are not immediately killed, they are then confined in individual crates for 16-18 weeks before being slaughtered for veal.³³ These metal enclosures prevent almost all movement, a situation exacerbated in some facilities by tethering the head of the calf to the front of the crate.³⁴ As with sows, these oppressive conditions impair calf welfare both physically and psychologically. Calves in confinement crates exhibit significant stereotypic behavior and disease³⁵ including problems with limbs and joints, stomach disorders, diarrhea, muscle atrophy, chronic disease such as pneumonia, and lesions from

²⁹ *Ibid.* at 3.

³⁰ CCFA, "No Battery Cages", *supra* note 26.

³¹ *United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks*, United Egg Producers (2008), online: <<http://www.uepcertified.com/media/pdf/UEP-Animal-Welfare-Guidelines.pdf>> Accessed 15 March 2011 [United Egg].

³² CCFA, "No Battery Cages", *supra* note 26.

³³ *Behind the Moustache*, Farm Sanctuary, 2006-2001 (Accessed 28 March 2011), online: Farm Sanctuary <http://www.farmsanctuary.org/mediacenter/videos_dairy.html> [*Behind the Moustache*].

³⁴ HSUS, "Intensively Confined", *supra* note 9 at 7 (The 66-76 cm (2.1-2.5 ft) crates do not allow enough room for the calves to groom themselves).

³⁵ *Ibid.*

continuous contact with the sides of the crate.³⁶ Cows are social animals by nature; separation from the herd as well as their mothers causes the young calves extreme trauma.³⁷ Veal crates are the Canadian industry standard for confining calves prior to slaughter.³⁸ In Canada, particularly Ontario and Quebec, the veal industry continues to grow.³⁹

Though it is clear that Canadians do not want animals to suffer, Canada's animal welfare laws fail to provide any measure of protection from livestock confinement practices.

1.3. Canada's Farm Animal Welfare Legislation

In contrast to California, Canada's lack of legal protection for livestock has earned it a disconcerting last-place global ranking in animal welfare legislation.⁴⁰ Federal and provincial

³⁶ "Veal Crates" *Canadian Federation of Humane Societies* (Accessed 28 March 2011), online: Canadian Federation of Humane Societies <http://cfhs.ca/farm/veal_crates/> [CFHS, "Veal Crates"].

³⁷ HSUS, "Intensively Confined", *supra* note 9 at 8; *Behind the Moustache*, *supra* note 33.

³⁸ *Behind the Moustache*, *ibid.*

³⁹ CFHS, "Veal Crates", *supra* note 36; Agriculture and Agrifood Canada, *Number of Calves Slaughtered in Federally Inspected Establishments in Canada* (Ottawa: Canadian Beef Grading Agency, 2010).

⁴⁰ Savannah Sher, "Canada's Dirty Secret: our Outdated Animal Laws are enabling Cruelty Across the Country" *Canadian University Press Newswire* (31 January 2011), online: Canadian University Press Newswire <<http://cupwire.ca/articles/41286>> [Sher] ("(E)ven the most modest proposals to update (animal welfare laws) have been stopped by an effective alliance of animal-exploitation industries, including agribusiness, breeders, equestrian associations, hunters and vivisectors"); Marc Massie et al., *Falling Behind - An International Comparison of Canada's Animal Cruelty Legislation* (International Fund for Animal Welfare, 2008) at 5, 13 & 14 [Massie] (This report conducted and reported on a survey of the practices and legislation between various countries. Canada is the only developed country that currently requires neglect of an animal to be "wilful". Canada has the weakest penalties for cruelty with the second lowest fines, and lowest term of incarceration of countries surveyed); Jackie Wepruk, *A Report on Animal Welfare Law in Canada* (Alberta Farm Animal Care, 2004), online: <<http://www.afac.ab.ca/lawsregs/awlcanada.pdf>> [Wepruk] (Livestock statistics are not generally separated from wildlife and companion animal welfare information in enforcement and conviction statistics, but enforcement for crimes against livestock is generally low); The existence of the exclusionary clauses for livestock in all animal welfare legislation in the country suggest systemic inhumane treatment of farm animals).

legislation purports to address animal welfare in Canada, but the very legislation designed to protect animals implicitly sanctions an array of inhumane practices.⁴¹

1.3.1. Federal Legislation

There is no federal legislation exclusively dedicated to protecting livestock on the farm. The few animal cruelty provisions in the *Criminal Code* address the welfare of animals generally,⁴² and have remained substantially unchanged for more than a hundred years.⁴³ Section 445.1(1)(a) prohibits causing “unnecessary pain, suffering, or injury to an animal or a bird”.⁴⁴ It is the term “unnecessary” that renders the provision totally ineffective in preventing all but the most egregious forms of abuse.⁴⁵ Killing animals for meat and other human use is accepted as necessary in Canadian jurisprudence,⁴⁶ though *R. v. Menard* indicates that methods of killing animals that cause the least suffering should be chosen where they are economically and socially viable. In Canada, any pain, suffering or injury that results from standard factory farming methods is not “unnecessary”, since *Regina v. Pacific Meat*

⁴¹ *Constitution Act*, 1867 (U.K.), 30 & 31 Victoria, c. 3, reprinted in R.S.C. 1985, App. II No. 5 (Under Canada’s constitutional division of powers, animal welfare fits under both jurisdictions. From a provincial point of view, farm animals represent agriculture, giving the provinces the right to legislate. Cruelty to animals is a criminal offense under federal jurisdiction).

⁴² The three federal animal welfare acts are the *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*], the *Health of Animals Act*, S.C. 1990, c. 21, and the *Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.). The *Meat Inspection Act* and the *Health of Animal Act* deal with topics such as transportation, slaughter, and disease control, and as such will not be elaborated upon here).

⁴³ Sher, *supra* note 41.

⁴⁴ While there is no definition of “animal” in the *Criminal Code*, the subjects of Proposition 2, including fowl, are covered in the ambit of the *Criminal Code*.

⁴⁵ *R. v. Menard* (1978), 43 C.C.C. (2d) 458 at 446 [*R. v. Menard*] (necessity should take into account the “particular case including first the purpose itself (of inflicting the pain and suffering), the social priorities, the means available and their accessibility”).

⁴⁶ *Regina v. Pacific Meat Company Limited et al.*, [1957] B.C.J. No. 98, 24 W.W.R. 37, 119 C.C.C. 237 at para. 8 [*Pacific Meat*] (Killing animals for meat is seen as a necessity: “Hogs fulfil a purpose of providing food for human beings. Before the hogs can be eaten by mankind they must of necessity be killed, so that the fatal injury that is administered to each hog by the “sticker” is a necessity and therefore not “unnecessary”).

*Company Limited et al.*⁴⁷ found that methods of handling livestock that are widely practiced are not “unnecessary”.⁴⁸

A further issue with the *Criminal Code* provisions is that of enforcement. Convictions are difficult since *mens rea*, or the mental element of guilt, must be proven beyond a reasonable doubt, which is a markedly higher threshold to meet than the civil standard of reasonable doubt.⁴⁹ For this reason using the *Criminal Code* to convict in animal cruelty cases is rare, due to the amount of evidence required, the associated expense, and the low probability of success.⁵⁰

The federal parliament has attempted to pass several bills over the last eight years to update the antiquated *Criminal Code* animal welfare provisions:⁵¹ in 2008 a change was finally made, but only to increase the penalties.⁵² Skeptics believe this action was a placebo to pacify the masses and create the appearance that the issue had been addressed - the measure did nothing to close the loopholes that allow for rampant animal abuse and afforded few convictions.⁵³

⁴⁷ *Pacific Meat, ibid.*

⁴⁸ *Ibid.* at para. 10.

⁴⁹ Natasha Sweeney, *The Fight over Canada’s Animal Cruelty Laws* (CBC News, May 2008), online: <<http://video.google.com/videoplay?docid=-8223602782956577018#>> [Sweeney] (1 in 400 complaints leads to a conviction).

⁵⁰ *A Summary Report On Farm Animal Welfare Law in Canada* (Farm Animal Council Network, 2011), online: <<http://nfacc.ca/News-Item.aspx?id=72>> at 2 [FACN, “Summary Report”] (Obtaining charge and conviction rates for crimes against livestock is nearly impossible due to the lack of central compilation of statistics and because livestock are not separated out from companion and wild animals. It is generally agreed that the federal legislation is ineffective at affording farm animals even a base level of protection).

⁵¹ Sher, *supra* at note 41 (*Criminal Code* provisions have not been updated in more than 100 years).

⁵² Lyne Létourneau, “Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals” (2003) 40 *Alta. L. Rev.* 1041 at para. 19 [Létourneau] (The increase in fines barely accounts for inflation); Sher, *supra* note 41; Bill S-203 An Act to amend the *Criminal Code* (cruelty to animals) http://www2.parl.gc.ca/content/Senate/Bills/392/public/S-203/S-203_1/s-203_text-e.htm (The maximum penalties are now \$10 000.00 and 5 yrs in prison s. 445(2)(b)&445.1(2)(b)).

⁵³ Sweeney, *supra* note 49.

The latest effort to amend the animal cruelty provisions in the *Criminal Code* was brought as a private member's bill by Liberal Mark Holland.⁵⁴ Holland's bill proposed to give animals their own section rather than have animal cruelty addressed as a "property crime".⁵⁵ Such a move recognizes that "animals ... deserve protection in their own right because of their capacity to feel pain and suffer".⁵⁶ The bill would have also removed the "wilfully" or *mens rea* component from the *Criminal Code*, drastically raising the possibility for convictions.⁵⁷ Unfortunately, with the recent dissolution of parliament, the bill will not pass⁵⁸ - its predecessors have also failed due to strong opposition from animal use industry lobbies who perceive that "that any recognition ... that animals were more than commodities would endanger (the industry's) interests."⁵⁹ Due to the shortcomings of the *Criminal Code*, particularly the *mens rea* requirement, the use of provincial legislation to combat animal cruelty is generally preferred by enforcement officers.⁶⁰

⁵⁴ "Cruelty to Animals - Mark Holland campaigns for effective animal cruelty bill – now called Bill C-229" *Liberal* (accessed 3 April 2011), online: Liberal <<http://markholland.liberal.ca/cruelty-to-animals/>>.

⁵⁵ The "Cruelty to Animals" provision in the *Criminal Code* falls under Part XI - Wilful and Forbidden Acts in Respect of Certain Property; Bill C-50, *An Act to Amend the Criminal Code in Respect of Cruelty to Animals*, 1st Sess., 38th Parl., 2005 [Bill C-50] (Previous undertakings to pass bills to amend the *Criminal Code*, including bill C-50 have attempted to do the same).

⁵⁶ *Ibid.*

⁵⁷ Létourneau, *supra* note 52 at para. 19 (Bill C-229, like its predecessor bill C-50 "condemns both the vicious killing of animals and the killing without a lawful purpose").

⁵⁸ "Governor General dissolves Parliament, Canadians head to polls in May 2 election" *680 News* (26 March 2011), online: 680 News <<http://www.680news.com/news/national/article/203179--governor-general-dissolves-parliament-canadians-to-head-to-polls-in-may-2-election>>; Susan Munroe, "Private Member's Bill" *About.com* (accessed 7 April 2011), online: Canada Online <http://canadaonline.about.com/cs/parliament/g/privmembill.htm> (private members' bills have a low rate of success).

⁵⁹ John Sorensen, "Canada: No Country for Animals" *The Mark* (3 August 2010), online: The Mark <<http://www.themarknews.com/articles/1957-canada-no-country-for-animals>>.

⁶⁰ Wepruk, *supra* note 41 at 1 (Though the Federal Department of Justice administers the criminal law, many of the provincial SPCA officers have the power of a peace officer, and can lay charges under the *Criminal Code*. Others, however, must be specially appointed as such, or must get an RCMP or police officer to make the charge. Most provincial acts are administered by the provinces' Society for the Prevention of Cruelty to Animals or the

1.3.2. Provincial Legislation

Provincial animal welfare statutes serve to protect animals from the worst abuses, but as with the *Criminal Code*, anything that is considered standard animal agricultural practice is not prohibited.

Most provinces have a general animal cruelty act that prohibits causing or permitting an animal to be in distress.⁶¹ In these acts, distress is typically defined as “the state of being in need of proper care, water, food or shelter or being injured, sick or in pain or suffering or being abused or subject to undue or unnecessary hardship, deprivation or neglect”.⁶² Though the suffering and unnecessary hardship experienced by confined livestock clearly amounts to distress, provincial animal cruelty acts have an exemption clause that excludes farm animals from that protection if the activity causing distress is a “generally accepted” practice,⁶³ including the use of veal crates, gestation crates and battery cages.⁶⁴

Humane Society); FACN, “Summary Report”, *supra* note 50 at 3 (Enforcement is divided between a government appointed agency which enforces the provincial Act, SPCAs that lay charges under the *Criminal Code* and municipal by-law officers).

⁶¹ FACN “Summary Report”, *supra* note 50 at 3 (Nunuvut and North West Territories only have animal cruelty legislation for dogs. However, their livestock industries are limited.); Sher, *supra* note 41 (Quebec’s animal legislation is notoriously weak - it has been dubbed the “puppy mill” capital of Canada. Quebec’s *Animal Health Protection Act*, R.S.Q. c. P-42. covers companion animals, but does not address livestock. Convictions for cruelty to livestock must be pursued under the *Criminal Code*. Enforcement is notoriously weak, as Quebec has only 10 animal inspectors, whereas Ontario has 200).

⁶² Animal protection legislation and provisions are very similar across Canada, in some cases almost identical. *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O-36 [OSPCTAA] (This serves as Ontario’s general animal cruelty legislation. OSPCTAA s. 11.2(2) – prohibits distress, and distress defined in s. 1(1)).

⁶³ *Society for the Prevention of Cruelty to Animals Act*, N.B. Reg. 2000-4 at 4(2) (In New Brunswick the livestock exception is in the regulations rather than the act itself).

⁶⁴ In the *Ontario Society for the Prevention of Cruelty to Animals Act*, s. 11.1(2)(a) is a typical example of this ubiquitous livestock exemption clause - it legalizes any distress caused by an “activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry”; *Standards of Care*, O. Reg. 60/09 (The OSPCA regulations gives protection to some animals more than others. Section 1(4) of the regulations specifically states that “the standard of care be adequate and appropriate or necessary to the specific animal, having regard to its species, breed and other relevant factors”; *Companion*

A central issue with the existing provincial legislation is that it is strictly reactive - the process starts when a complaint is received, but often there is no one to report the abuse in the first place.⁶⁵ Generally, investigators may only enter onto the premise if there are reasonable grounds for believing that there is an animal in distress.⁶⁶ Routine or random inspections are not permitted, which makes concealing mistreatment easy.

In spite of a global trend towards stronger animal welfare legislation, Canada's laws remain archaic.⁶⁷ A serious barrier to law reform in Canada is that even if the populace cares deeply about an issue, it may not translate into legislative response - Canada has scant funding earmarked for investigative committees,⁶⁸ and there is little room for citizen initiatives or input on legislation passed.

1.4. Citizen Initiatives and Referendums in Canada and the United States

Direct public participation in the political process in the United States is facilitated through the use of citizen initiatives.⁶⁹ While there is no national system, 24 states employ ballot

Animal Protection Act, R.S.P.E.I. 1988, c. C-14.1 (Other provinces also allow companion and non-livestock animals to attain a higher level of welfare, such as the PEI's *Companion Animal Protection Act*).

⁶⁵ "Investigations" *About us, Programs and Services* (accessed 28 February 2011), online: Ontario SPCA <<http://www.ontariospca.ca/5-investigations.shtml>>.

⁶⁶ FACN, "Summary Report", *supra* note 50 at 4 (The *OSPCTAA* s. 11(1), allows SPCA officers to act as police officers. Section 11(3), allows police officers in areas with no affiliation of the SPCA to act as agents of the SPCA; this is true for all of Canada. In British Columbia, Alberta, Saskatchewan, Ontario, and New Brunswick, SPCA officers are responsible for the majority of enforcement. In other provinces, provincially appointed veterinarians are tasked with animal cruelty enforcement).

⁶⁷ Massie, *supra* note 41 at 18.

⁶⁸ Justice Michel Bastarache, "Law Hour – Experiences as a Supreme Court of Canada Justice" (Lecture presented at the Schulich School of Law, 17 March 2011) [unpublished].

⁶⁹ Kathy Gill, "Citizen Initiatives and Measures" *About.com* (20 August 2007), online: About.com <http://uspolitics.about.com/od/candidatescongress/a/06_initiatives.htm> [Gill] (Between 1904 and 2006, some 2,231 initiatives have appeared on state ballots).

initiatives as a mechanism to allow citizens to bring forward and vote on issues directly.⁷⁰ The use of these citizen directives began in the Progressive Era, when the rich elite was thought to have too much power over the government and legislative process.⁷¹ Oregon was the first of many states to introduce ballot initiatives in 1902, with the objective of strengthening democracy and putting power back into the hands of the people.⁷² While the rules differ slightly in each jurisdiction, generally speaking, any registered voter may draft legislation, gather the required number of signatures, and have the resulting proposition put on the ballot for the next election. If a majority votes yes to the proposed legislation, it may take effect as soon as the following day.⁷³ The number of these initiatives has increased in recent years; the United States general election saw a 26% increase in ballot measures from 2004 to 2006, and California's ballot initiatives increased more than ten-fold from the 1960s to the 1990s - this type of democratic involvement engages the public, increasing participation in politics and the legislative process.⁷⁴

⁷⁰ Michelle Austein, "Initiatives, Referendums Important in U.S. Elections" *Archive* (20 August 2007), online: America.gov <<http://www.america.gov/st/washfileenglish/2007/August/20060728124146hmnietsua0.3070032.html#ixzz1INQTsn9F>> [Austein].

⁷¹ "Ballot Initiative" *Ballotpedia* (accessed 9 April 2011), online: Ballotpedia.org <http://ballotpedia.org/wiki/index.php/Ballot_initiative> ["Ballot Initiative"] (The Progressive Era lasted from the 1890s to the 1920s); Tiffany Sharples, "No to Gay Marriage, AntiAbortion Measures" *Time* (5 November 2008), online: Time <<http://www.time.com/time/politics/article/0,8599,1856820,00.html>> (While ballot initiatives were born in the Progressive Era, not all ballot measures have socially and economically progressive results; though animal rights have fared well, gay marriage, legalized prostitution, renewable energy laws, and legal abortion have all been rejected by the majority in various states).

⁷² "Ballot Initiative", *supra* note 71; Kennedy Stewart, "It's Time for a Canadian Citizens' Initiative Act" *The Vancouver Sun* (13 March 2011), online: The Vancouver Sun: <<http://communities.canada.com/vancouver/blogs/communityofinterest/archive/2011/03/13/it-s-time-for-a-quot-canadian-citizens-initiative-act-quot.aspx>> [Stewart] (Citizen initiatives also tend to have higher voter turnout and citizen involvement in politics);

⁷³ C.A. Const. Art. II, § 10.

⁷⁴ Gill, *supra* note 69; Stewart, *supra* note 72; "Special Report Democracy in California The People's Will" *The Economist*, 399:8730 (23 April 2011) 1 at 4 [Economist].

While the possibility of holding federal or provincial referendums in Canada exists, voting directly on legislation is rare. There have only been three federal referendums in history; on conscription, prohibition and the Charlottetown Accord.⁷⁵ A handful of provincial referendums have also occurred, the most famous being the Quebec referendum, but these are also exceptional measures.⁷⁶

Until recently, Canadian law did not provide for citizen initiatives.⁷⁷ In 1995, British Columbia introduced the *Recall and Initiative Act*⁷⁸, which granted registered British Columbian voters a right to participate directly in the legislative process. On its face, the *Act* appears similar to ballot initiatives in the United States. In practice, the potential political impact afforded by the citizen participation provisions in the legislation is nominal. In British Columbia, 10% of registered voters' signatures must be collected to bring the matter to a vote, as compared with just 5% of Californians who voted in the last gubernatorial election.⁷⁹ British Columbian petitioners have a mere 90 days to collect the required signatures, as compared with the 150 days in California.⁸⁰ Most significantly, in contrast to California, the result of a successful

⁷⁵ Austein, *supra* note 70 (“2006 general election, 204 ballot measures went before voters in 37 states” and “1904 and 2006, some 2,231 initiatives have appeared on state ballots”); Vincent LeMieux, “Referendum” *The Canadian Encyclopedia* (Accessed 2 April 2011), online: The Canadian Encyclopedia <<http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0006734>> [LeMieux].

⁷⁶ LeMieux, *ibid.*

⁷⁷ LeMieux, *ibid.*; Austein, *supra* note 70.

⁷⁸ *Recall and Initiative Act*, R.S.B.C. 1996, c. 398 [*Recall and Initiative Act*].

⁷⁹ *Recall and Initiative Act*, *ibid.* s. 7(1)(b) (“For each electoral district in British Columbia, the signature sheets for the electoral district must be signed by at least 10% of the total number of registered voters entitled to sign those signature sheets”); “Ballot Initiative”, *supra* note 72 (The effective total number of signatures would be significantly less than 5%).

⁸⁰ *Recall and Initiative Act*, *ibid.* s. 4(4) (“An initiative petition must be signed within 90 days from the date on which it is issued by the chief electoral officer”. Making the time limit even more restrictive is that up to 150% of the signature requirement must be collected as a safety margin to allow for invalid signatures); “Laws governing the initiative process in California” *Ballotpedia* (accessed 6 April 2011), online: Ballotpedia <http://ballotpedia.org/wiki/index.php/Laws_governing_the_initiative_process_in_California> (Even this 150

initiative vote in British Columbia is that the government must “introduce the Bill at the earliest practicable opportunity”, but it will not necessarily become law.⁸¹ As a result of these rigorous requirements, only one of the seven initiative applications has even reached the voting stage since the act’s inception, and no public initiatives have become law.⁸²

While British Columbia’s citizen initiative legislation lacks the potency of California’s, it is a clear step in the direction towards facilitating greater public participation in legislative change; having the public vote directly on a bill is a potentially powerful legislative mechanism, and one that enabled the passing of California’s landmark Proposition 2.

PROPOSITION 2

California’s Proposition 2, a quintessential example of the result of public participation in the legislative process, will vastly improve the health and welfare of the 20 million⁸³ animals bred for food products in California.

1.5. California’s Animal Cruelty Legislation – Proposition 2

California was not the first state to pass welfare laws protecting livestock, but as the “largest agriculture state in the country”, Proposition 2 was regarded as a momentous victory with

day window has been criticized as being “unduly restrictive”. Prior to 1943, California did not impose a time restriction on the collection of signatures).

⁸¹ *Recall and Initiative Act*, s. 16, *supra*, note 78.

⁸² Stewart, *supra* note 72 (the petition against Harmonized Sales Tax succeeded and goes to vote in June 2011); *Elections BC*, *ibid.*; The Economist, *supra* note 74 (California’s direct citizen participation is the most liberal in the country, and in spite of best intentions, has caused myriad problems with municipal financing, education, and ironically, democracy. This paper does not address the appropriateness of such involvement, but acknowledges such public participation in the legislative process as beneficial to the implementation of animal welfare laws.

⁸³ Jonathan Lovvorn & Nancy Perry, “California Proposition 2: A Watershed Moment for Animal Law” (2009) 15:2 *Animal L.* 149 at 150 [Lovvorn].

respect to the advancement of farm animal welfare.⁸⁴ California's *Health & Safety Code*⁸⁵ §§ 25990-25994, Chapter 13.8 incorporates the successful Farm Animal Cruelty proposition, and lays out the prohibitions, which include preventing an animal from "(l)ying down, standing up, and fully extending his or her limbs" and "(t)urning around freely" for "all or the majority of any day".⁸⁶ Section 25991 defines the animals covered by the legislation, which include veal calves, pigs during pregnancy, and egg laying hens including chickens, turkeys, ducks, geese, or guinea fowl. This section also clarifies that the livestock must be able to turn "in a complete circle without any impediment, including a tether, and without touching the side of an enclosure."⁸⁷ California has long been seen as a leader in progressive legislation, and Proposition 2 is expected to have nation-wide effects on livestock welfare reforms that may trigger the eradication of confinement housing systems across North America.⁸⁸

Unfortunately, many of the critical factors that lead to the passing of Proposition 2 do not exist in Canada.

⁸⁴ HSUS, "Intensively Confined", *supra* note 9 at 4 (Proposition 2 made United States' history as the first time welfare of layer hens had been addressed); "Trade and Agriculture: What's at Stake for California?" *U.S. Department of Agriculture Trade and Agriculture* (September 2009), online: U.S. Department of Agriculture Trade and Agriculture <www.fas.usda.gov/info/factsheets/wto/states/ca.pdf>.

⁸⁵ Cal. Health & Safety Code §§ 25990-25994, c. 13.8. Farm Animal Cruelty, (2009).

⁸⁶ "Official Voter Information Guide" *California General Election* (4 November 2008), online: California General Election <<http://www.voterguide.sos.ca.gov/past/2008/general/ballot-sum/ballot-meas-sum2.htm>>.

⁸⁷ "United Egg", *supra* note 31 at 2 (In Europe a new egg production system of "enriched colony housing" that combines many of the advantages of both the cage and cage-free systems is emerging. There has been some debate as to the exact enclosures allowed under Proposition 2. Industry players understand that these more spacious enriched cages with perches and scratch pads would be acceptable, whereas California animal advocacy groups insist that the law precludes use of cages. This is the type of detail will gradually be clarified through jurisprudence when the legislation takes effect); Lovvorn, *supra* note 83 at 156 (The prohibitions in Proposition 2 takes effect in January 2015).

⁸⁸ Maggie Jones, "The Barnyard Strategist" *The New York Times* (24 October 2008), online: New York Times <<http://www.nytimes.com/2008/10/26/magazine/26animal-t.html?pagewanted=all>> [Jones].

1.6. Getting to Proposition 2: California vs. Canada

Historically, the livestock sector in the United States has held steadfast to the position that the type of progressive animal welfare provisions in California's Proposition 2's would devastate the animal agriculture industry. Animal welfare advocates recognized that the implementation of such laws could have profoundly beneficial consequences on farm animal welfare in California and beyond.⁸⁹ The potential significance of Proposition 2 meant both sides fought hard to win votes. Indeed, it was a complex interplay of factors that led to a Yes vote on Proposition 2. Some of the key drivers for the success of the proposal were industry scandals and law suits that provided needed publicity and awareness of the issues, strong and diverse advocates who propelled the victory, and perhaps most importantly, the availability of the citizen-lead ballot initiatives system in California. This section looks at how Canada measures up with respect to these pivotal factors.

1.6.1. Animal Welfare Advocacy

The Humane Society of the United States (HSUS) played no small part in bringing Proposition 2 to fruition, from collecting signatures to launching law suits.⁹⁰ HSUS is the world's biggest animal advocacy institution, with 11 million supporters⁹¹ and more than 160 million dollars in

⁸⁹ *Ibid.*

⁹⁰ Judy Ki, September 2008 East County Magazine, Vote YES on Proposition 2 - The Prevention of Farm Animal Cruelty Act <<http://www.eastcountymagazine.org/0809prop2>> [Ki] (More than 4,000 HSUS volunteers collected the 790,486 signatures obtained between fall of 2007 and winter 2008, which allowed the proposition to get on the ballot in 2008. Farm Sanctuary also assisted in these efforts).

⁹¹ "About us" Humane Society of the United States (accessed 28 March 2011), online: HSUS <<http://www.humanesociety.org/about/>> [HSUS, "About us"].

assets.⁹² They have the financial capacity and organizational know-how to confront animal cruelty head on, and have been doing it for years.⁹³ The fragmented animal welfare initiatives in Canada lack comparable resources, funding, experience and support.⁹⁴

California also had a strong foundation of animal advocates waiting to be mobilized. During Proposition 2's Yes campaign, more than 25 000 individuals made monetary donations to support the efforts. Countless others from all political affiliations, races, religions, and social classes volunteered to spread the word and fight for the cause.⁹⁵ Upwards of a year before Proposition 2 appeared on the ballot, myriad farm animal advocates, including lawyers, activists, investigators, and members of the public were diligently preparing for the upcoming battle. Legislation was drafted, opposition tactics were anticipated, publicity campaigns were painstakingly orchestrated, and volunteers were educated, organized and dispatched.⁹⁶ The diversity of animal welfare advocates involved resulted in one of the largest undertakings of "animal advocates in the history of the humane movement".⁹⁷

⁹² "Return of an Organization Exempt From Income Tax Form 990" Department of the Treasury Internal Revenue Service (2009), online: The Humane Society of the United States <<http://www.humanesociety.org/assets/pdfs/financials/2009-form-990.pdf>>.

⁹³ HSUS, "About us", *supra* note 91 (The Humane Society of the United States was established in 1954.)

⁹⁴ FACN, "Summary Report", *supra* note 50 at 5 (Under-funding is always a problem for provincial SPCAs); Wepruk, *supra* note 41 at 7 (Ontario SPCA gets only one percent of its budget from the province); "How Your Donations Are Used" *Donation Information* (accessed 28 February 2011), online: Ontario SPCA <<http://www.ontariospca.ca/>> (The bulk of the funding comes from donations and legacies (68%) and animal care revenue (19%). In order to attract funds, animal protection societies are under pressure to appeal to a broad audience, as such, raccoons, horses, kittens and puppies adorn the SPCAs website: meat-eating donors would likely be less inclined to donate to saving livestock).

⁹⁵ Lovvorn, *supra* note 83 at 161 & 168 (Including "HSUS, the Center for Food Safety, the California Veterinary Medical Association, the United Farm Workers, the Cesar Chavez Foundation, the National Black Farmers Association, the Sierra Club, the California Council of Churches, the California Democratic Party, and the Consumer Federation of America").

⁹⁶ Lovvorn, *supra* note 83 at 160.

⁹⁷ *Ibid.*

Given Canada's lack of centralized animal welfare organization and the public's general disinterest in farm animal welfare, it seems unlikely Canada would be able to execute such a cohesive and robust livestock advocacy initiative.⁹⁸

1.6.2. Ballot Initiatives

The power of ballot initiatives is illustrated by the following example: In February 2007, California State Assembly member Mervyn Dymally brought forward an assembly bill with livestock welfare provisions comparable to Proposition 2.⁹⁹ The bill died in the early stages and was withdrawn.¹⁰⁰ By contrast, less than two years later when the same issue was brought directly to Californian citizens via Proposition 2, almost two thirds of voters opted for the elimination of livestock confinement systems and the bill passed.¹⁰¹

The lack of opportunity for the majority of Canadians to propose legislation and vote directly on animal welfare issues means citizens must rely on politicians to push for legal reform on their behalf. The weakness in this system is that the choices of the legislature may not reflect

⁹⁸ "State and County Quick Facts" *California* (4 November 2010), online: U.S. Census Bureau <<http://quickfacts.census.gov/qfd/states/06000.html>> (In 2009, there were almost 37 million Californians - five million more than the entire population of Canada. The fact that the Californian populace is concentrated in an area a fraction of the size of Canada facilitates pooling of resources, publicity, and the unification of advocates.); "Population and dwelling counts, for Canada, provinces and territories, 2006 and 2001 censuses - 100% data" *Statistics Canada* (1 June 2010), online: <<http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/hlt/97-550/Index.cfm?TPL=P1C&Page=RETR&LANG=Eng&T=101>> (Canada's total population in 2006 was 31.6 million).

⁹⁹ Ki, *supra* note 90; "AB-594 Assembly Bill" *Assembly Committee on Agriculture* (9 May 2007), online: California State Senate <http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0551-0600/ab_594_cfa_20070508_133457_asm_comm.html>.

¹⁰⁰ "2007 California Bill Information" *AB-594* (25 March 2011), online: The Animal Council <<http://www.theanimalcouncil.com/CA2007.html>>.

¹⁰¹ "Statement of Vote November 2008, General Election" *California Secretary of State* (13 December 2008), online: <http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf> (California also had an impressive 79.42% voter turnout for Proposition 2).

the values and beliefs of Canadians:¹⁰² polls reveal that 96% of Canadians think that treating animals humanely is important,¹⁰³ and believe keeping animals in confinement housing is unethical;¹⁰⁴ more than three-quarters of Canadians approved of the proposed animal cruelty changes to the *Criminal Code*.¹⁰⁵ Yet the Canadian government repeatedly refuses to strengthen animal welfare laws, partly due to agricultural lobbyists who use their money to manipulate law-making politicians who “are particularly vulnerable to industries with resources and power”.¹⁰⁶ In contrast, ballot initiatives are less susceptible to manipulation by powerful industry lobbies, and activists are more successful persuading citizens through outreach and education than influencing government.¹⁰⁷

The lack of opportunity for the Canadian public to initiate legislative change and vote directly on issues is highly detrimental to the advancement of animal welfare law in Canada. It means not only that public opinion will not be adequately reflected in the laws, but also that the

¹⁰² Matt Rayment et al., *Evaluation of the EU Policy on Animal Welfare & Possible Options for the Future Executive Summary* (Food Policy Evaluation Consortium: London, 2010) at 2 [DG Sanco] (In EU there is a high degree for public participation in creation of the laws).

¹⁰³ *WSPA – Farm Animal Welfare Executive Summary* (Harris/Decima, 2008) (“82% of Canadians believe that it is at least somewhat important for cage-free meat and eggs to be available at their grocery store, and 45% think that having these options is extremely or very important ... Many Canadians (67%) have done something in the past year out of concern for the welfare of animals. Two-in-five (42%) Canadians have purchased food products labeled as ‘certified organic’ ... one-third (35%) have purchased cage-free, free-range, or free-run eggs ... one-third (34%) have purchased free-range meat or poultry ... and one-quarter (26%) have reduced the amount of meat or poultry they consume ... Regionally, British Columbians are more likely to purchase cage-free, free-range, or free-run eggs (50%), as well as free-range meat or poultry (45%)” at 2).

¹⁰⁴ Bailey Norwood, “Should Animal Welfare be Law or Market Driven?” (Presentation for the ADSA-PSA-AMPA-CSAS-WSASAS-ASAS F Denver Colorado Joint Annual Meeting, 11 July 2010) [unpublished][Norwood] (Canadian tastes and trends often mimic those in the US due to cultural similarities).

¹⁰⁵ “Will Canadians Vote with their Hearts” *World Society for the Protection of Animals* (7 March 2011), online: WSPA <http://www.wspa.ca/latestnews/2011/will_canadians_vote_with_their_hearts.aspx>.

¹⁰⁶ Lovvorn, *supra* note 83 at 154.

¹⁰⁷ Norwood, *supra* note 104 (re: confinement housing systems: “One-third of Americans believe that animals have a soul ... (and) (s)ixty-four percent of Americans believe that God wants humans to be good stewards of animals, and placing animals in small cages does not constitute good stewardship.”; Lovvorn, *supra* note 83 at 155).

eventual implementation of animal welfare laws will be delayed due to bureaucracy and political susceptibility to industry lobbies.

1.6.3. Media Scandals and Voter Awareness

A string of scandals in the media that raised public awareness of factory farming and the disingenuous tactics of the Proposition 2 opponents undoubtedly influenced Californian voters when it came time to cast their ballots.

Hallmark/Westland

The Hallmark/Westland Meatpacking Co. scandal has been distinguished by scholars as the decisive event leading to the Yes vote on Proposition 2. In early 2008, HSUS went undercover to investigate reports of cruelty in the Hallmark/Westland production facilities, and exposed the systemic animal abuse to the general public.¹⁰⁸ The media release involved a graphic video portraying the routine abuse suffered by cattle, including ramming the animals and running over their faces and legs with forklifts, spraying high pressure hoses up their noses,¹⁰⁹ dragging them with chains across the ground, and gouging them in the eyes, all to force sick and injured cattle to be slaughtered for human consumption.¹¹⁰ Less than two days after the gruesome video footage had been released, the United States Department of Agriculture (USDA) further raised the profile of the incident by holding a press conference, launching an

¹⁰⁸ Lovvorn, *ibid.*, at 156.

¹⁰⁹ "Mad Cow Scare: 143 Million Pounds of Ground Meat Recalled" *Environment News Service* (17 February, 2008), online: Environment News Service <<http://www.ens-newswire.com/ens/feb2008/2008-02-17-01.asp>> ["Mad Cow Scare"] (This is a simulated drowning torture technique, equivalent to "waterboarding" torture for humans).

¹¹⁰ "Rampant Animal Cruelty at California Slaughter Plant" *News* (30 January 2008), *Humane Society of the United States* online: <http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html> [HSUS, "Rampant Animal Cruelty"].

investigation into the matter, and ordering history's largest recall of meat.¹¹¹ The companies responsible for the abuse comprised the second largest supplier for the school lunch program in California,¹¹² which exacerbated the scandal, and two major restaurant chains and upwards of 150 school districts stopped buying meat from Hallmark/Westland as a result.¹¹³ The San Bernardino County District attorney pressed charges against the workers responsible,¹¹⁴ which not only brought more attention to the callous commodification of livestock, but also signaled a change in attitude towards the treatment of food animals.¹¹⁵ The Hallmark/Westland scandal made headlines only a few months before Proposition 2 made it onto the voters' ballot in November 2008, and it was "difficult to overstate public outrage".¹¹⁶

¹¹¹ Lovvorn, *supra* note 83 at 157; David Brown, "USDA Orders Largest Meat Recall in U.S. History" Washington Post (18 February 2008), online: Washington Post <<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/17/AR2008021701530.html>> ("143 million pounds, equivalent to the company's meat production for the last two years, was recalled"); Lovvorn, *supra* note 83 at 157 ("HSUS lawyers also pushed for prosecution under California Penal Code § 599(f), which requires that slaughter plant personnel take "immediate action to humanely euthanize" non-ambulatory animals "or remove the animal from the premises," and provides that "a non-ambulatory animal may not be dragged at any time, or pushed with equipment at any time"); Cal. Penal Code (Sending a downed cow to slaughter and not euthanizing the creature immediately is contrary to §597 of California's penal code, as is dragging or pushing a "non-ambulatory animal" and "torturing, tormenting, and "cruelly" beating, mutilating, or killing any animal").

¹¹² "Mad Cow Scare", *supra* note 109 (Other federal food assistance programs affected were "the Emergency Food Assistance Program and the Food Distribution Program on Indian Reservations", which were suspended along side the school lunch program).

¹¹³ Daisy Nguyen, "US gov. sues SoCal slaughterhouse over beef recall" SignOn Sandiego (1 May 2009), online: The Sandiego Union/Tribune <<http://www.signonsandiego.com/news/2009/may/01/ca-slaughterhouse-abuse-050109/?california>> (In relation to this incident, the Federal Department of Justice intervened in the HSUS law suit against Hallmark/Westland under the *False Claims Act*, as the companies had purported to comply with California regulation in the supply of meat); Lovvorn, *supra* note 83 at 159 & 160 (The *False Claims Act* had never before been applied in a case for the protection of animals, further heightening public scrutiny, and reclaiming 150 million tax dollars wasted on meat for the National School Lunch Program).

¹¹⁴ Cal. Penal Code §597; "Mad Cow Scare", *supra* note 109 (District Attorney Ramos said of the incident "I need the public to understand that my office takes all cases involving animal cruelty very seriously ... It doesn't matter whether the mistreated animal is a beloved family pet or a cow at a slaughterhouse. Unnecessary cruelty will not be tolerated and will be prosecuted to the fullest extent allowed by law").

¹¹⁵ Lovvorn, *supra* note 83 at 158.

¹¹⁶ *Ibid.*, at 160.

Downer Legislation Loophole

Soon after the Westland/Hallmark scandal, HSUS launched a law suit¹¹⁷ against the USDA in order to address a shortcoming in the federal legislation that allowed downed cattle to pass inspection to be slaughtered for food.¹¹⁸ The regulations¹¹⁹ allowed cows that collapsed after inspection, or cows that had gone down but could be forced to walk before inspection,¹²⁰ to be slaughtered for human consumption.¹²¹ This law suit bolstered public awareness of the systemic livestock abuse in meat industry facilities.¹²²

Opposition Funding Scandals

A prominent campaign funding scandal rocked the boat for the Proposition 2 opposition when multiple complaints were made to the California Fair Political Practices Commission about unreported donations.¹²³ It was found that the “No” campaign had illegally accepted more than \$4.5 million of campaign funding by directing donations through the United Egg

¹¹⁷ *Humane Socy. U.S. v. Schafer*, No. 08-337 (D.D.C., filed Feb. 27, 2008).

¹¹⁸ “The HSUS Sues to Keep Sick and Injured Cows Out of Food Supply” *Humane Society of the United States* (27 February 2008), online: HSUS http://www.humanesociety.org/news/press_releases/2008/02/hsus_downer_cow_lawsuit_022708.html [HSUS, “Sues”]; “No Downers.org.” *A Farm Sanctuary Campaign* (18 April 2008), online: Farm Sanctuary <<http://www.nodowners.org/>> (In animal agriculture, “downer” or “downed” animals are animals that are too sick or injured to stand); Lovvorn, *supra* note 83 at 156; *Crimes of Hallmark Westland Meat Company* (Humane Society of the United States, accessed 1 April 2011), online:

<http://wn.com/Crimes_Of_Hallmark_Westland_Meat_Company_Downer_Cows_Abuse>; HSUS, “Rampant Animal Cruelty”, *supra* note 110 (If downed cows could walk past inspection officers, they could be slaughtered).
¹¹⁹ 69 Fed. Reg. 1862, 1870 (12 January 2004); “Mad Cow Scare”, *supra* note 109 (“Inability to walk is a sign of an advanced stage of mad cow disease”).

¹²⁰ 72 Fed. Reg. 38700 (13 July 2007).

¹²¹ HSUS, “Sues”, *supra* note 118.

¹²² 74 Fed. Reg. 11463, 11466 (Mar. 18, 2009) (The USDA addressed the situation in regulations enacted March 2009).

¹²³ “Prop 2 Opponents Charged with Laundering Money in Violation of State Campaign Finance Laws” *The Humane Society of the United States* (3 September 2008), online: HSUS <http://www.humanesociety.org/news/press_releases/2008/09/prop_2_opponents_charged_09032008.html> [“HSUS, “Prop 2”].

Producers rather than the official ballot committee.¹²⁴ The scandal revealed that the majority of the money used to support the No campaign did not come from Californians, but rather from multi-million dollar out-of-state agricultural businesses such as Moark and Cal-Maine Foods.¹²⁵ These companies sought to protect California as a market, and put a halt to one of the most influential states implementing humane legislation that might eventually harm their business in other states.¹²⁶ This laundering of campaign donations deprived voters of the campaign funding transparency required by the *Political Reform Act*¹²⁷ and resulted in the most substantial violation of campaign finance in the history of Californian elections.¹²⁸

If the dishonestly of this tactic to conceal funds sullied the reputation of the opposition in the eyes of the voters, the concurrent funding scandal involving the federal government made

¹²⁴ Lovvorn, *supra* note 83 at 162.

¹²⁵ *Ibid.*, at 161.

¹²⁶ Lovvorn, *supra* note at 161; Steve Stassen, "Farrowing Crates vs. Pens vs. Nest Boxes" (2003) *Livestock Greenbook 2003*, Energy and Sustainable Agriculture Program, Minnesota Department of Agriculture at 139 [Stassen] (Studies have revealed that it is actually less expensive to build nest boxes and group pens than purchase the crates required confinement systems); "Alternatives to Sow Gestation Stalls" *College of Agricultural and Life sciences* (19 April 2007), online: Iowa State University, <<http://www.ag.iastate.edu/news/releases/319/>> ("The estimated construction cost per gestating sow space for group housing in hoop barns was \$552, compared with \$815 for individual confinement stalls - a 32 percent reduction ... The study found operating costs are similar for both systems ... But total costs per weaned pig are less for the system utilizing hoop gestation." Alternative systems to gestation crates may also reduce operating costs by up to 11%); HSUS "Intensively Confined", *supra* note 9 at 6 ("Compared with typical U.S. crate systems, deep-bedded, loose housing systems studied in Sweden result in lower cull rates and greater sow longevity." In addition, outdoor non-confinement housing improve the health of sows and increase survival rate of piglets); DG SANCO, *supra* note 102 at 5 (An independent assessment of the animal welfare regulations adopted by the European Union found that "there is little independent evidence that animal welfare policies have affected the economic sustainability of the sectors concerned").

¹²⁷ HSUS, "Prop 2", *supra* note 124; "In the Matter of Californians for SAFE Food, a coalition of public health and food safety experts, labor unions, consumers, family farmers and veterinarians. No on Proposition 2 and J. Richard Eichman, FPPC No. 08/0515" *FPPC Meeting Agenda* (8 April 2010), online: <<http://www.fppc.ca.gov/agenda.php?id=440>> Exhibit 1 at 2 ("The failures to ... disclose the sponsors of Respondent Committee are violations of the Political Reform Act ... An express purpose of the Act, as stated in section 81002, subdivision (a), is to ensure that contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters will be better informed and improper practices inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure").

¹²⁸ Lovvorn, *supra* note 83 at 163.

matters worse.

American Egg Board/USDA

Another media blitz erupted when a federal ploy to support the No campaign came to light in August 2008. Egg Industry Magazine published an article stating that the American Egg Board¹²⁹ had passed a motion earmarking \$3 million for the “industry’s current battle with animal activists...”¹³⁰ The American Egg Board is a federal commodity promotion program, and as such is precluded from spending federally sourced funds “for the purpose of influencing governmental policy or action”, including ballot initiatives.¹³¹ “Yes on Prop 2” (Californians for Humane Farms) sued the USDA and the American Egg Board for agreeing to set aside this substantial amount of federal funding to assist the opposition.¹³² There was a ruling against the USDA, and the money was not allowed to be contributed to the campaign.¹³³ Soon after, the egg industry landed in more hot water when a price-fixing scheme was discovered.

Egg Price Fixing

As a key component of their campaign, the opponents of Proposition 2 cited higher egg prices as a reason to vote no, on the basis that non-confinement systems would raise costs of

¹²⁹ *Ibid.* (The American Egg Board is an advertising branch of the US Department of Agriculture).

¹³⁰ “Federal Officials Sued For Misappropriating Millions of Dollars to Illegally Campaign Against California Anti-Cruelty Initiative” *Farm Sanctuary Current Press Releases* (13 August 2008), online: Farm Sanctuary <http://www.farmsanctuary.org/mediacenter/2008/pr_prop2_feds_sued08.html> [Farm Sanctuary, “Federal Officials Sued”].

¹³¹ 7 U.S.C. § 2707(h); Farm Sanctuary “Federal Officials Sued”, *ibid.*

¹³² Lovvorn, *supra* note 83 at 163 (The American Egg Board is an advertising branch of the US Department of Agriculture); Farm Sanctuary “Federal Officials Sued”, *ibid.*

¹³³ Lovvorn, *supra* note 83 at 164.

production. HSUS, in a remarkably timely fashion, then uncovered a massive egg industry price-fixing scheme that had forced egg prices up 45% in a matter of months by manipulating supply and using “bogus animal welfare certification”.¹³⁴ This revelation resulted in more law suits and a criminal investigation,¹³⁵ with the matter going before the courts just one month before the vote.¹³⁶

Incidents such as this would not attract comparable press in Canada, partially since Canada is a much less litigious society than the United States;¹³⁷ unlike litigation in Canada, in the United States the losing party is not subject to paying the opposing parties’ costs.¹³⁸ This encourages law suits from a financial standpoint, particularly for NGOs who could cover their own costs but may not have the resources to pay costs to the other side if they lost – a potentially devastating burden when dealing with the well-heeled agriculture lobby. Animal welfare groups in the United States were prepared financially and otherwise to assist with the exposure of these scandals and to sue the culprits, resulting in far more press coverage. The Canadian media reflect the reserved nature of its populace, and tend to be less invasive or sensationalist than the United States; these and similar home country scandals barely make news in Canada.¹³⁹ The media coverage that these scandals received, which uncovered pervasive government and industry corruption, undoubtedly played a substantial role in

¹³⁴ *Ibid.*, at 165.

¹³⁵ *Ibid.*, at 166.

¹³⁶ *Ibid.*, at 167.

¹³⁷ “Why Farm in Canada” *Agriculture and Canada* (accessed 6 April 2011), online: Sutton <http://alistermaclean.point2agent.com/Why_Farm_in_Canada/page_1235294.html> [Sutton, “Why Farm”] (Canada is two to three times less litigious than the US).

¹³⁸ Sutton, *ibid.*

¹³⁹ Glen Hallick, “Animal cruelty charges laid in Notre Dame area hog barn case” *Local News* (December 2010), online: the Valley Leader <<http://www.carmanvalleyleader.com/ArticleDisplay.aspx?e=2833729>> (The Martin and Delores Grenier hog farm animal cruelty case was one of few to see any press in Canada).

bringing livestock welfare issues and the controversial activities of the Proposition 2 opponents to center stage prior to the ballots being cast.

1.7. Hope for Canada's Own Proposition 2

Canada's progress in securing farm animal welfare is decidedly glacial in comparison to the rest of the developed world. However, legislative developments in other jurisdictions, particularly the United States, are setting positive and possibly influential examples for Canadian politicians. In spite of competing interests, the animal agriculture industry seems willing to consider increasing consumer demands for humanely-raised products, which may also encourage legislative change. While abysmally apathetic with respect to animal welfare, the Canadian government is beginning to show signs of willingness to acknowledge the issue.

1.7.1.1. Industry Requirements

There is a movement afoot among key players in the meat industry. Big chains such as Ben & Jerry's and Wolfgang Puck in the United States have implemented their own standards for suppliers of animal products.¹⁴⁰ Smithfield Foods, the biggest pork product producer in the world, and supplier to McDonald's, Burger King, and Safeway, embarked on a 10 year plan to phase out gestation crates in the United States. Shortly after, Maple Leaf Foods, Canada's biggest pork producer announced a similar move.¹⁴¹ These actions reflect a growing societal

¹⁴⁰ Lovvorn, *supra* note 83 at 154.

¹⁴¹ "Smithfield Foods and Maple Leaf Foods Decide to Phase Out Cruel Gestation Crates" People for the Ethical Treatment of Animals (April 2007), online: PETA <<http://www.peta.org/about/victories/Smithfield-Foods-and-Maple-Leaf-Foods-Decide-to-Phase-Out-Cruel-Gestation-Crates.aspx>>; "Shameful Smithfield Factory Pig Farm Reneges On Humane Promises (Take Action)" *Global Animal* (15 December 2010), online: Global Animal <<http://www.globalanimal.org/2010/12/18/smithfield-factory-farm-reneges-on-promise-to-be-humane-take>>

demand to treat animals humanely, and put pressure on the Canadian government to respond to this public concern for livestock welfare.

1.7.1.2. Other jurisdictions

Proposition 2 is not the only law of its kind. Other states have enacted similar legislation, and Europe continues to enact increasingly more robust farm animal welfare regulations.

The European Union has committed to completely phasing out battery cages by 2012,¹⁴² though many individual countries including Germany, Switzerland, Sweden, and Austria have already done so.¹⁴³ The use of gestation crates in the UK and Denmark has already been banned,¹⁴⁴ and the entire European Union will prohibit their use as of 2013.¹⁴⁵ Veal crates are now outlawed by all European Union member countries; phasing out began in 1997 and was completed in 2006.¹⁴⁶

In North America, seven states including California have animal welfare laws that prohibit the use of gestation crates, veal crates, or battery cages.¹⁴⁷ In November 2002, a majority of Floridians voted yes on a proposition to ban gestation crates, kicking off a string of similar

action/26938/> (However, this year Smithfield reminded us of the danger of relying on industry to make changes when they recalled their promise to phase out gestation).

¹⁴² EC, *Council Directive 1999/74/EC 1999 on Animal Welfare on the Farm – Laying Hens*, [1999].

¹⁴³ “Dalai Lama Joins Campaign Against Battery Hens” *News* (3 September 2010), online: His Holiness the 14th Dalai Lama of Tibet <http://www.dalailama.com/news/post/577-dalai-lama-joins-campaign-against-battery-hens> [Dalai Lama].

¹⁴⁴ “Colorado bans the veal crate and the gestation crate” *News* (19 May 2008), online: Compassion in World Farming <http://www.ciwf.org.uk/news/factory_farming/colorado_bans_veal_crates.aspx> [CIWF, “Colorado Bans”] (UK banned gestation crates in 1999); “Gestation Crates in Canada” *Humane Society international Canada* (accessed 2 April 2011), online: HSIC <http://www.hsicanada.ca/farmed_animals/gestation_crates/>.

¹⁴⁵ EC, *Council Directive 2001/88/EC of 23 October 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs*, [2001] O.J. L 316/1-4.

¹⁴⁶ EC, *Council Directive 97/2/EC of 20 January 1997 amending Directive 91/629/EEC laying down minimum standards for the protection of calves*, [1997].

¹⁴⁷ HSUS, “Intensively Confined”, *supra* note 9 at 7.

citizen initiatives.¹⁴⁸ Four years later, Arizona voters opted to pass Proposition 204, The *Humane Treatment for Farm Animals Act*, which bans gestation crates and veal crates.¹⁴⁹ In June 2007, Oregon became the first state to ban gestation crates through legislature initiative rather than by ballot measure.¹⁵⁰ Similarly, senate Bill 201, which phases out gestation crates and veal crates over a four-year period, passed in Colorado in May 2008.¹⁵¹ Michigan was the second state after California to bring in legislation that banned all three confinement systems for sows, calves and hens in October 2009, also by legislature rather than public initiative.¹⁵² In May 2009, Maine saw the passage of legislation that banned gestation crates and veal crates.¹⁵³ New York State has a similar bill on its agenda - bill A-1928 would ban gestation crates, veal crates, and battery cages as of January 2015,¹⁵⁴ and similar movements are underway in Illinois, Massachusetts and Rhode Island.¹⁵⁵

¹⁴⁸ "Florida's Historic Ban on Gestation Crates" *Animal Rights Foundation of Florida* (accessed 1 April 2011), online: ARFF <<http://www.animalrightsflorida.org/initiative.html>> (The Florida constitution was amended, and Article X, Section 21 took effect in November of 2008.); Fla. Const. art. 10, § 21 (2004).

¹⁴⁹ "Achievements" *Animal Defense League of Arizona* (accessed 1 April 2011), online ADLA <<http://www.adlaz.org/accomplish.html>> (The ballot measure won with a 62% majority); "Ballot Proposition Guide" *Official Proposition 204 language* (2006), online: Arizona Secretary of State's Office <www.azsos.gov/election/2006/Info/PubPamphlet/Sun_Sounds/english/Prop204.htm>.

¹⁵⁰ "Back door activists gain momentum" *AG news for America* (5 July 2007), online: Brownfield <<http://old.brownfieldagnews.com/gestalt/go.cfm?objectid=96AD5AA7-BEEA-38F9-4397078DB6063307>>; U.S., S.B. 694, *Cruel and Inhumane Confinement of Sows Act*, 74th Leg. Reg. Sess. Ore., 2007.

¹⁵¹ CIWF, "Colorado Bans", *supra* note 144; U.S., S.B. 08-201, *Concerning Requirements for Confinement of Specified Livestock*, 2008, Reg. Sess. Col. 2008.

¹⁵² U.S., enr. H.R., 5127, *An Act to amend 1988 PA 466*, 95th leg. Reg. Sess. Mich., 2009; Shawna Flavell, "Michigan Bans Battery Cages and Crates" *The PETA Files* (13 October 2009), online: <<http://www.peta.org/b/thepetafiles/archive/tags/gestation+crates/default.aspx>> (The prohibition takes effect for veal crates in 2012, while the phase out period for gestation crates and battery cages is ten years).

¹⁵³ "Another State Bans Gestation Crates and Veal Crates - Let's Keep the Momentum Going!" *Care2* (15 May 2009), online: Care 2 <<https://www.care2.com/c2c/share/detail/1143983>> [Care2]; *An Act To Prohibit Cruel Confinement of Calves Raised for Veal and Sows during Gestation*, Pub. L. c. 127 No. 1021, 7 MRSA § 4020, item 1, 2009.

¹⁵⁴ Laura Allen, "New York's Anti-Confinement Bills" *Animal Law Coalition* (12 February 2011), online: Animal Law Coalition <<http://www.animallawcoalition.com/farm-animals/article/938>>.

¹⁵⁵ Care2, *supra* note 153.

Many parts of the United States and Europe already have already enacted comprehensive farm animal welfare laws.¹⁵⁶ The United States' position as Canada's neighbor and economic and political superpower makes passage of these laws particularly influential. The tipping point of Canada having to implement animal welfare legislation simply by virtue of being a developed country is nearing, and it seems the issue of animal welfare may finally be on the political radar.

1.7.1.3. Increased Government Responsiveness

The Canadian government has long history of blatantly ignoring farm animal welfare; it refuses to amend the *Criminal Code* animal cruelty provisions, Agriculture and Agrifood Canada's 2008 1.3 billion dollar *Growing Forward Framework Agreement* did not even mention livestock welfare,¹⁵⁷ and after funding the inception of the National Farm Animal Care Council (NFACC),¹⁵⁸ the federal government denied further financial support for the modest livestock care initiative.¹⁵⁹ Although the issue of inadequate farm animal welfare legislation has gone unaddressed, in April 2010, the NFACC was finally granted substantial

¹⁵⁶ HSUS, "Intensively confined", *supra* note 9 at 7.

¹⁵⁷ "Codes of practice and the National Farm Animal Care Council" *Canadian Federation of Humane Societies* (accessed 1 April 2011), online: CFHS <http://cfhs.ca/farm/codes_of_practice/> [CFHS, "Codes of Practice"] (In spite of two years of consultation and extensive feedback and recommendations from the Canadian Federation of Humane Societies, there was not even a mention of farm animal welfare in the Growing Forward Framework Agreement); "The Canadian Government Misleading European Leaders say Animal Welfare Groups" *International Fund for Animal Welfare* (24 February 2009), online: IFAW <http://www.ifaw.org/ifaw_canada_english/media_center/press_releases/2_24_2009_52615.php> [IFAW "Misleading"]; "Growing Forward Framework Agreement" *Agriculture and Agrifood Canada* (5 August 2008), online: Agriculture and Agrifood Canada <<http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1217941012105&lang=eng>>.

¹⁵⁸ CFHS, "Codes of Practice", *supra* note 157 (NFACC comprises representatives from government, industry, and scientists, but the Canadian Federation of Humane Societies (CFHS) is the only animal welfare representative on the producer-dominated board).

¹⁵⁹ *Ibid.*

funds to update the codes of practice for animal agriculture, many of which were decades old.¹⁶⁰ While the codes suggest minimum standards as opposed to best practices, they represent recognition by the federal government that they cannot continue to completely neglect livestock welfare.

On a provincial level, animal cruelty laws have all been updated since 2005,¹⁶¹ and further legislative amendments are soon expected from Quebec, Newfoundland, and the Yukon.¹⁶²

British Columbia recently announced that the fines for contravening the *Prevention of Cruelty to Animals Act*¹⁶³ would be increased to a maximum of \$75,000.00 and 24 months in prison.

None of these improvements have been specifically with respect to livestock welfare, but they indicate at a minimum that the provinces are beginning to turn their mind to animal welfare in general.

While Canada's diluted democratic process and splintered animal advocacy movement are hindering the implementation of Canada's own livestock welfare legislation, trends in

¹⁶⁰ *Ibid.* (\$3.4 million was allotted for the updates, which are scheduled to take place from 2010-2013. The original codes were developed by CFHS in the 80s and 90s. Nova Scotia and Manitoba are the only provinces that reference the codes in legislation).

¹⁶¹ FACN, "Summary Report", *supra* note 50 at 2.

¹⁶² FACN, "Summary Report", *ibid.* at 4; "Minister Provides Details of Proposed New Animal Health and Protection Act" *News Releases* (16 June 2010), online: Government of Newfoundland Labrador, Natural Resources <<http://www.releases.gov.nl.ca/releases/2010/nr/0616n02.htm>>

(*An Act Respecting the Health and Protection of Animals*, Chapter A 9.1. was assented to June 24, 2010, but has yet to be proclaimed. This new act will address the definition of animal cruelty and appropriate penalties, enforcement and animal control activities. The six acts being consolidated into one are the *Animal Protection Act*, *Dog Act*, *Heritage Animals Act*, *Livestock Act*, *Livestock Health Act* and the *Poultry and Poultry Products Act*); "N.L. promises tougher animal protection laws" *CBC News* (1 March 2010), online: CBC News <<http://www.cbc.ca/news/canada/newfoundland-labrador/story/2010/03/01/nl-animal-protection-301.html>>; "Statutes of Newfoundland and Labrador 2010" *House of Assembly* (accessed 5 March 2011), online: Newfoundland and Labrador <<http://www.assembly.nl.ca/legislation/sr/lists/statcurses&other/StatCurSes.htm>>.

¹⁶³ *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372.

industry, other jurisdictions, and the Canadian government itself indicate that Proposition 2 protections for Canadian livestock may not be completely out of reach.

FINAL WORDS

“Canada is still in the dark ages when it comes to animal welfare. Most Canadians believe animals should be treated humanely, so it's time our laws reflected that fact”.¹⁶⁴

The majority of North Americans are opposed to factory farming practices. Animal welfare laws in the United States are beginning to reflect this sentiment, yet welfare laws in Canada lag far behind the rest of the developed world. The unique context that led to the passing of Proposition 2, particularly the presence of resource-rich animal welfare organizations and a citizen initiative ballot system, do not exist in Canada. However, other states and countries have implemented farm animal welfare laws without these circumstances, and Canada is running out of excuses not to follow suit.

While there is a glimmer of hope for industry-lead change, the meat business' movement toward humane farming practices may end up splintering standards, making uniform implementation of welfare standards difficult, and provide the government an excuse for further delay in making needed changes in legislation.¹⁶⁵ Though Canada may eventually be

¹⁶⁴ IFAW, “Misleading”, *supra* note 157 (Robert Laidlaw, Director of Zoocheck Canada Inc. succinctly summarized Canada's situation as such).

¹⁶⁵ *Canadian Funding Policy for Farm Animal Welfare: A Step Behind the World: Canadians care about farm animal welfare - Why doesn't our government?** (Canadian Federation of Humane Societies, April 2009), report available online: <http://cfhs.ca/features/canadian_government_ignores_animal_welfare/> at 8 (The issue with

peer-pressured by Europe and the United States into creating laws akin to Proposition 2, it seems likely that further obstruction of meaningful farm animal welfare laws can be expected from farmers and politicians alike.¹⁶⁶

Mahatma Gandhi once said “the greatness of a nation and its moral progress can be judged by the way its animals are treated”.¹⁶⁷ Canada’s actions and attitudes towards animal welfare are sullyng its reputation on the international stage.¹⁶⁸ It is time Canada followed California’s lead in livestock welfare legislation, or it risks losing its privileged distinction as a great nation.

industry-led changes in the United States is that it causes confusion for producers as restaurants and grocers all have different standards and different audit systems. It also creates similar problems in the market for imports).

¹⁶⁶ IFAW, “Misleading”, *supra* note 157 (Canada has shown its unwillingness to bow to European pressure concerning animal welfare through challenging the European Union’s ban on seal products).

¹⁶⁷ “Can the Greatness of a Nation” *People for the Ethical Treatment of Animals* (Accessed 7 March 2011), online: PETA <<http://www.peta.org/features/gandhi.aspx>>; Dalai Lama, *supra* note 143 (The Dalai Lama echoed his statement “Turning these defenseless animals into ... machines with no consideration for their welfare whatsoever is a degradation of our own humanity”).

¹⁶⁸ Gloria Galloway, “Ottawa’s WTO challenge of EU seal ban ‘a matter of principle’” *Globe and Mail* (11 February 2011), online: *Globe and Mail* <<http://www.theglobeandmail.com/news/politics/ottawas-wto-challenge-of-eu-seal-ban-a-matter-of-principle/article1903518/>>; Ian Elliott, “WTO to hear landmark animal welfare case” *Feedstuffs, the weekly Newspaper for Agribusiness* (30 August 2010), online: *Feedstuffs* <<http://www.feedstuffs.com/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=AA01E1C62E954234AA0052ECD5818EF4&tier=4&id=8869C0C85AC9411B9BC36DC12F5A7D17>> (“(S)eal skin has a worse public stigma than herpes”).

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