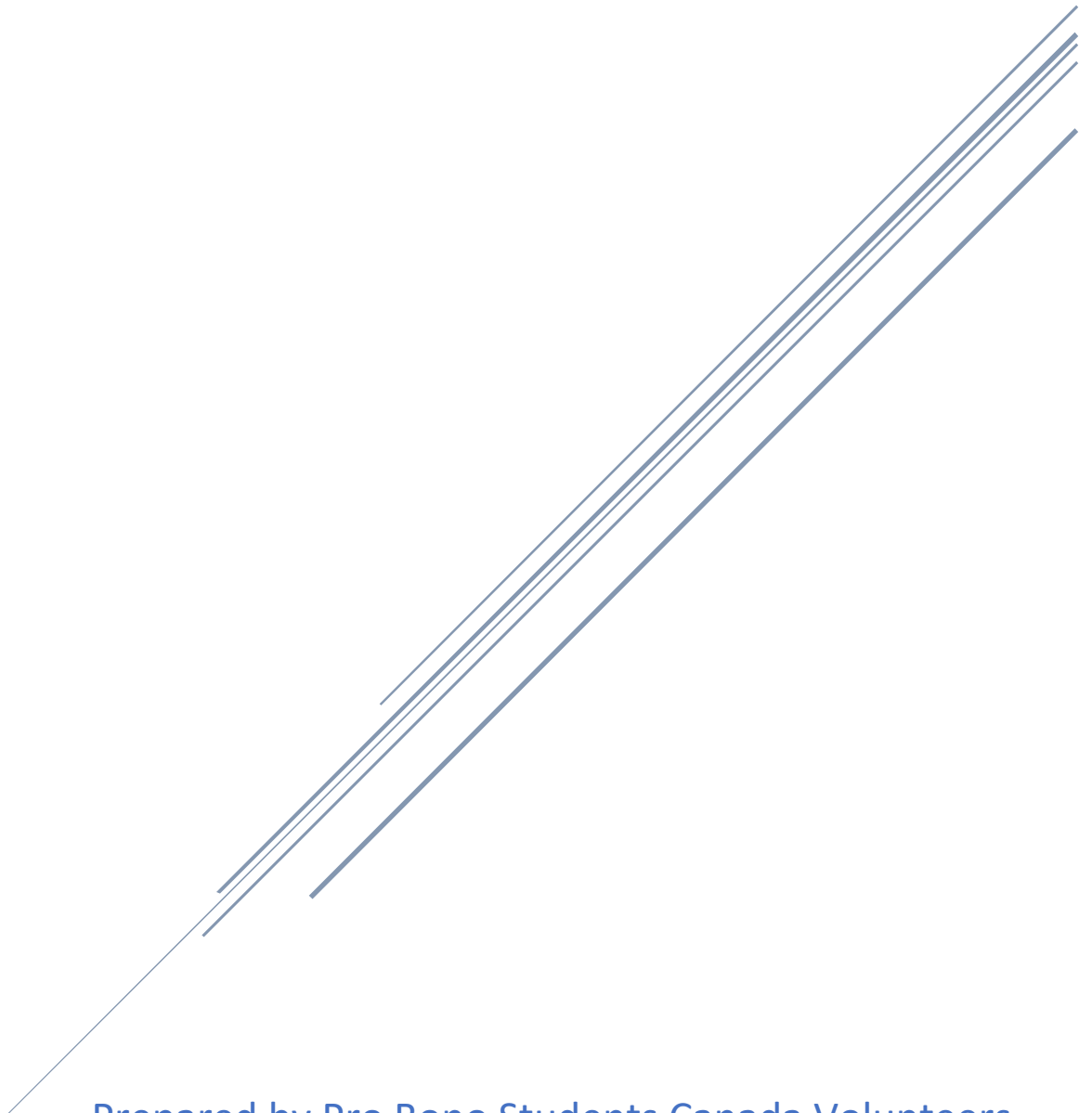


PROTECTING THE VICTIMS OF DOMESTIC VIOLENCE AND THEIR ANIMALS THROUGH THE USE OF PROTECTIVE ORDERS



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2020

Introduction

Ownership of animals is a barrier for many victims from accessing domestic violence services like shelters or transition houses. While lawmakers have attempted to protect animals from abuse or neglect, there is a legislative gap in situations of interpersonal violence. The failure to include pets or animals in family violence legislation could have serious implications for individuals who may not know that their pets can be included in protective orders. The Province of Saskatchewan is lacking in its need to address high rates of intimate partner violence. The connection between animal abuse and domestic violence has long been identified and referred to as “the link”. Legal reform should focus on improving the ability for victims of domestic violence to escape violent conditions and ensure the safety of their pets in the process. This can be done through a shift away from a legal view of animals as property and recognizing the psychological connection between humans and their pets. We contend that treating pets as property results in harm to animals and potentially leads to adverse effects to humans. Educational resources regarding this matter should be provided for members of the legal community. This can encourage lawyers and judges to directly address any issues relating to animals when dealing with victims of interpersonal violence. Although policy reform has been slow, we hope that future generations of legal professionals will aid in this shift away from treating animals as property through the recent emergence of animal law focused classes in several Canadian law schools.

Discussion

A. Animals as Property

Pet owners across the country view animals as more than movable property. However, this view is not reflected in the law. A study conducted by the Alberta SPCA in 2012, revealed that over half of the women in emergency shelters who owned pets, delayed leaving their abusive partner out of

fear that their pets would be harmed.¹ Currently, in Saskatchewan *The Victims of Interpersonal Violence Act*,² has no mention of pets or animals, or how they can be included in an emergency intervention order.³ A review of Canadian legislation demonstrates that only two provinces in the country include the term “pets” or “animals” under their respective family violence legislation. British Columbia’s *Family Law Act* defines family violence as: “intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property.”⁴ [Emphasis added.] In Newfoundland the *Family Violence Protection Act*, includes the term “animals” in the definition of property.⁵ This differs from jurisdictions across the United States of America, where thirty-five states allow the inclusion of pets in domestic violence orders.⁶ The failure to include pets or animals in family violence legislation could have serious barriers for individuals who may not know that their pets can be included in Emergency Protection Orders.

The absence of animals in family violence legislation may be explained by the reluctance of many governments to regard animals as more than property and recognize them as sentient beings. However, certain jurisdictions have taken steps towards acknowledging animals as sentient beings in order to improve the legal standing of animals.

B. Where in the world have animals been recognized as sentient beings?

Various jurisdictions around the world have modified legislation in order to acknowledge animals as sentient beings. In Australia, amendments to the *Animal Welfare Act* acknowledge that animals are sentient beings. Specifically, the objects of the *Act* state:

¹ Tim Battle, “Including Pets in Protective Orders”, *Law Now* (6 January 2014), online: <https://www.lawnow.org/including-pets-in-protective-orders/>.

² *The Victims of Interpersonal Violence Act*, SS 1994, c V-6.02.

³ *Ibid*, s 3.

⁴ *Family Law Act*, SBC 2011, c 25, s1[*Family Law Act*].

⁵ *Family Violence Protection Act*, SNL 2005, c f-3., s 2(j).

⁶ Michigan State University College of Law, *Map of State Laws Allowing Domestic Violence Orders to Include Pets* (2020), online: Animal Legal & Historical Center <https://www.animallaw.info/content/map-state-laws-allowing-domestic-violence-orders-include-pets> [*Michigan state University*].

4A (1) The main objects of this Act are to recognise that
(a) animals are sentient beings that are able to subjectively feel and perceive the world around them; and
(b) animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value; and
(c) people have a duty to care for the physical and mental welfare of animals.⁷

This indicates a movement away from viewing pets as property, and a broader acceptance of the unique relationship that exists between humans and their respective animals. Additionally, in 2013 New Zealand amended the *Animal Welfare Act* in order to recognize animals as sentient and protect their welfare.⁸ In 1997, the *Treaty of Amsterdam*, amended provisions in the European Union legislation to “ensure improved protection and respect for the welfare of animals as sentient beings.”⁹ In Quebec, *Bill 54* in known as *An Act to improve the legal situation of animals* received Royal Assent in 2015, and was implemented to amend the Civil Code of Quebec. The Bill “provide[s] that animals are sentient beings and not property.”¹⁰ This was done with the purpose of ensuring that animals are treated according to their biological needs. However, *Bill 54* does not fully dismiss the view of animals as property. The Bill clearly states that the Code provisions regarding property remain applicable to animals.¹¹ A further criticism seems to be the lack of protection for animals that are used for different purposes. S. 7 of the Bill states:

7. Despite sections 5 and 6, the following activities involving animals are allowed, to the extent that they are not otherwise practices or procedures that are prohibited by law or by regulation and they are carried on in accordance with generally recognized

⁷ *Animal Welfare Act 1992* (ACT), A1992-45, s 4(1).

⁸ *Animal Welfare Amendment Act 2015* (No 2) (NZ), s 3(A).

⁹ *Treaty of Amsterdam*, Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland, Sweden, United Kingdom, 2 October 1997 UNTC (entered into force 1 May 1999).

¹⁰ *Bill 54, An Act to improve the legal situation of animals*, 1st Sess, 41st Leg, Quebec, 2015 (assented to 4 December 2015) [*Bill 54*].

¹¹ *Ibid*, s 1.

rules:

- (1) agricultural, teaching or scientific research activities; and
- (2) veterinary surgeons' activities as part of their veterinary practice.

For the purposes of subparagraph 1 of the first paragraph, "agricultural activities" means, in particular,

- (1) the use of animals for agricultural purposes;
- (2) the use of animals in agricultural exhibitions or fairs;
- (3) the slaughter of animals; or
- (4) euthanasia of animals.¹²

Despite these criticisms, the move towards recognizing animals as sentient beings will likely encourage an awareness for pets in situations of domestic violence. This could urge the direct inclusion of animals in the Emergency Protective Orders under a category outside the realm of property. Some Canadian judges have recognized that animals are more than mere property. Mr. Justice Renke emphasized this notion in *M.M.M. v B.D.M.*, where he noted that "I would add that the statutory language of "property damage" would not capture the proper significance of pets, who are (or at least may be) more than mere "property.""¹³ Additionally, the Alberta Court of Appeal in *R v S.E.A.*, noted that "sentient animals are not objects."¹⁴

The acknowledgement of the psychological connection that exists between people and their pets by the courts, will perhaps aid in reducing the percentage of individuals who delay leaving their abusive partners out of fear for the well-being of their pet.¹⁵

C. Psychological Connection Between Humans and Pets

A report to the Alberta SPCA indicated that "decision making regarding leaving an abusive situation was negatively impacted by the presence of companion animals, and perhaps to an even

¹² *Ibid*, s 7.

¹³ *M.M.M. v B.D.M.*, 2017 ABQB 532 at para 40, AJ No 910.

¹⁴ *R v S.E.A.*, 2015 ABCA 182 at para 41, 600 AR 182.

¹⁵ Alberta SPCA, "Get Out" (August 2013).

greater degree, by the ownership of livestock.”¹⁶ The connection between animal abuse and domestic violence has long been identified and referred to as “the link.”¹⁷ As discussed, this has led to the inclusion of pets in protection orders in various states throughout the United States. Canadian case law indicates that “the link” has also been accepted. Dunnigan J., In *R v Wicker*, stated that cases involving animal abuse usually follow a trend in that “the attack on the animal is often connected to a domestic relationship incident, invariably involving the offender exacting revenge on the other member of the relationship by injuring the pet.”[Emphasis added.]¹⁸ Similarly, Gorman J in *R v White*, recognized that the accused “killed one cat and injured another. However, his rage and anger [were] also directed at his former girlfriend.”¹⁹ In *R v G.J.W.* “The link” was identified as one that aggravated the circumstances of the case. Specifically, Halley J., stated: “the Offender’s son testified that, on one occasion, his father got so mad that he shot and killed their two pet dogs.”²⁰ An further example of reference to “the link” by Canadian courts can be found if *R v Perrin*. The accused had tortured and injured his girlfriend’s cat. F. Hoskins J., referred to the victim impact statement and noted that “[the victim] described the emotional impact that this offence has had upon her, which included loss of work and sleep... She also expressed her concern for her own safety.”²¹ Finally, in *R v Zeller*, during a dispute the accused killed the couple’s puppy. Van de Veen J., found that “the actions of the accused in killing the puppy were abusive acts perpetrated against his wife.”²²

¹⁶ Donna Crawford and Veronika Bohac Clarke, “Inside the Cruelty Connection: The Role of Animals in Decision-Making by Domestic Violence Victims in Rural Alberta” (July 2012), online: *Alberta SPCA* <https://www.albertasPCA.org/wp-content/uploads/2019/04/InsideTheCrueltyConnection.pdf>.

¹⁷ Phil Arkow, “Expanding Domestic Violence Protective Orders to Include Companion Animals” (2008), online: *American Bar Association Commission on Domestic Violence* < <http://nationallinkcoalition.org/wp-content/uploads/2013/01/PPO-ABAarticle2008.pdf>>.

¹⁸ *R v Wicker*, 2007 ABPC 129 at para 37, AJ No 566.

¹⁹ *R v White*, [2012] NJ No 263 at para 45.

²⁰ *R v G.J. W.*, 2004 NLSCTD 144 at para 19(b)(ix), NJ No 279.

²¹ *R v Perrin*, 2012 NSPC 134 at para 18, NSJ No 750.

²² *R v Zeller*, 1998 ABPC 19 at para 44, AJ No 351.

Ultimately, a survey of Canadian case law demonstrates that there is a recognition of the “the link”, and the psychological connection that exists between humans and pets. The case law also demonstrates that abuse to animals has an adverse effect on the well-being of individuals.

D. How Can the Legal Community Help?

There are various steps that can be taken by the legal community to enhance the safety and reduce the risk present to those who face domestic violence. Lawyers representing victims of domestic violence should make great efforts to inquire about any instances of animal abuse and use this evidence in court hearings where applicable. Further, lawyers should guide and assist their clients in the inclusion of animals in any protective orders. Implementing similar programs such as “safe haven”²³ that exist in the United States may help women leave their abusive relationships sooner rather than later. These programs are designed to provide foster care for animals of individuals who may not be able to flee their situations out of fear of leaving their pet behind.²⁴ Educational resources regarding “the link” for both lawyers and judges could provide assistance in dealing with issues surrounding pets or animals of victims of domestic violence. Ultimately, the continuation of policy changes is a vital step. This includes changes such as allowing victims to include pets in protective orders and recognizing animals as sentient beings. The implementation of these policy changes will help mitigate the adverse effects related to “the link” while allowing victims to leave their violent situation without worrying about their pets.

E. Overview of Law

At present, legislation in Saskatchewan is in place that relates to the rights and welfare of animals. While lawmakers have attempted to protect animals from being the victims of abuse or neglect by

²³ Arkow, *supra* note 17.

²⁴ *Ibid.*

human beings, in situations of domestic violence there is a legislative gap. Little work has been done in this province to provide victims of domestic violence rights in regard to pets or livestock during the court process.

An examination of relevant sources of law including provincial statute on animal rights, Criminal Code provisions, and municipal bylaws demonstrates that victims of domestic violence require better legal options pertaining to the protection of animals and livestock in order to reduce barriers to leaving situations of interpersonal violence.

(i) *The Criminal Code of Canada*

Offences relating to animal cruelty are located in Part XI of the Canadian Criminal Code, under “Willful and Forbidden Acts in Respect of Certain Property.” It is important to note that on the whole, the animal cruelty section of the Criminal Code remains the same as its first writing in 1892. For the purposes of the current Criminal Code, animals are only identified as property and are not recognized as sentient beings which has been contested through a developing corpus of literature.²⁵ It would be prudent for the government of Canada to update Criminal Code provisions to reflect the changing norms and understanding of animal rights.

At present, there are four main types of offences against animals in the Criminal Code. There are offences for killing and harming animals (s. 445), for torturing animals (s. 445.1), and for neglecting animals (s. 446). The Criminal Code stipulates:

Injuring or endangering other animals

445 (1) Every one commits an offence who, wilfully and without lawful excuse,

- (a) kills, maims, wounds, poisons or injures dogs, birds or animals that are kept for a lawful purpose; or

²⁵ Broom DM (2014) *Sentience and Animal Welfare*. CAB International, Oxford.

(b) places poison in such a position that it may easily be consumed by dogs, birds or animals that are kept for a lawful purpose.

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years;

or

(b) an offence punishable on summary conviction and liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years less a day, or to both.²⁶

Killing or injuring certain animals

445.01 (1) Every one commits an offence who, wilfully and without lawful excuse, kills, maims, wounds, poisons or injures a law enforcement animal while it is aiding a law enforcement officer in carrying out that officer's duties, a military animal while it is aiding a member of the Canadian Forces in carrying out that member's duties or a service animal.

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years and, if a law enforcement animal is killed in the commission of the offence, to a minimum punishment of imprisonment for a term of six months; or

(b) an offence punishable on summary conviction and liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years less a day, or to both.²⁷

²⁶ R.S., 1985, c. C-46, s.445.

²⁷ R.S., 1985, c. C-46, s.445.01

Causing unnecessary suffering

445.1 (1) Every one commits an offence who

(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

(b) in any manner encourages, aids, promotes, arranges, assists at, receives money for or takes part in

(i) the fighting or baiting of animals or birds, or

(ii) the training, transporting or breeding of animals or birds for the purposes of subparagraph (i);

(c) wilfully, without reasonable excuse, administers a poisonous or an injurious drug or substance to a domestic animal or bird or an animal or a bird wild by nature that is kept in captivity or, being the owner of such an animal or a bird, wilfully permits a poisonous or an injurious drug or substance to be administered to it;

(d) promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or

(e) being the owner, occupier or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (d).

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years;

or

(b) an offence punishable on summary conviction and liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years less a day, or to both.²⁸

Causing damage or injury

446 (1) Every one commits an offence who

(a) by wilful neglect causes damage or injury to animals or birds while they are being driven or conveyed; or

(b) 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.

Punishment

(2) Every one who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than two years;

or

(b) an offence punishable on summary conviction.²⁹

While these Criminal Code provisions may provide some solace for victims of interpersonal violence who are concerned about the welfare of the animals they may have to leave behind in order to escape the situation, they do not expressly address the victim's rights in respect to the safekeeping of animals.

The best hopes a victim of interpersonal violence has with respect to the animals is that the person charged with a criminal offence will be found guilty and be subject to particular ancillary sentencing orders. For example, if convicted of s. 445, s. 445.1, or s.446 there may be an

²⁸ R.S., 1985, c. C-46, s.445.1

²⁹ R.S., 1985, c.C-46, s.446

Animal Prohibition Order made which can prevent the perpetrator from owning animals and require them to contribute to restitution.³⁰

General sentencing orders may also apply. If convicted of any Criminal Code offence, the judge has the discretion to order that the offender be prohibited from communicating with any victim, witness or other person while in custody except where the judge determines it necessary to communicate with them.³¹ The judge can also apply a restitution order which is available to cover expenses incurred while fleeing a domestic partner, this order can apply if the offender is convicted of any Criminal Code offence.³²

One provision in the Criminal Code that can be thought of as forward looking with respect to the welfare of animals is located in Part VIII concerning “Offences Against the Person and Reputation”. This includes s.264.1(1)(c), uttering threats to kill or harm animals:

Uttering threats

264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

- (a) to cause death or bodily harm to any person;
- (b) to burn, destroy or damage real or personal property; or
- (c) to kill, poison or injure an animal or bird that is the property of any person.

Punishment

(2) Every one who commits an offence under paragraph (1)(a) is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.³³

³⁰ R.S., 1985, c. C-46, s.160

³¹ R.S., 1985, c. C-18, s.42

³² R.S., 1985, c. C-46, s. 738

³³ R.S., 1985, c. C-46, s.264.1

While the Criminal Code provisions are intended to protect animals generally, they do not conceive of or provide for situations of interpersonal abuse or provide for safekeeping of animals before the animals are harmed. The Criminal Code provisions are generally intended to apply after the fact, not ahead of time where the threat of harm befalling beloved animals could prevent a person from leaving situations of interpersonal violence. Further, the Criminal Code functions to provide guidance on how to charge and punish criminal behaviour but does not provide functional policy on how victims of interpersonal violence should approach the decision to leave a situation of domestic abuse. As such, it is clear that better law and policy needs to be put in place to empower victims of interpersonal violence to extract themselves from their abuser with systems in place that proactively ensure the safety and well-being of their animals.

(ii) *Provincial and Municipal Provisions*

In Saskatchewan, there is provincial law in place that compliments federal statute. For example, *The Animal Protection Act, 2018* is intended to protect animals from abuse and distress.

The Animal Protection Act, 2018 states that no person shall cause an animal to be in distress, and no person responsible for an animal shall cause or permit the animal to be or continue to be in distress

An animal is in distress if it is:

1. deprived of food or water sufficient to maintain the animal in a state of good health;
2. deprived of care or shelter;
3. deprived of veterinary care or medical attention;
4. in need of reasonable protection from injurious heat or cold;
5. wounded, ill, in pain, suffering, abused or neglected;

6. kept in conditions that: are unsanitary; will significantly impair the animal's health or well being over time; cause the animal anxiety or suffering; or contravene the prescribed standards, codes of practice or guidelines;
7. abandoned by its owner or by a person responsible for the animal in a manner that causes, or is likely to cause, distress resulting from any or all the factors listed³⁴

In addition to the conditions outlined by the act itself, there are codes of practice outlined in the Regulations which describe acceptable standards of animal care.

If a person is convicted under this *The Animal Protection Act, 2018*, the possible penalties could include a fine of up to \$25,000, imprisonment for up to 2 years, or a prohibition or restriction on owning animals for a specific period.³⁵

Other provincial Legislation that pertains to animal welfare includes *The Stray Animals Act*, which applies to restraining animals running at large³⁶. Associated with this act are *The Stray Animals Regulations* which intend to provide guidance on how to deal with strays, provide compensation for damage done by strays, and recover municipal costs of impounding and caring for strays.³⁷

At the municipal level, there is discretionary authority to address animal control. This includes bylaws on the proper licensing and regulation of domestic animals such as cats and dogs.³⁸

Municipalities have also developed mechanisms to deal with complaints about dangerous animals and to create areas in which livestock is permitted to run at large.³⁹

³⁴ The Animal Protection Act, 2018, SS 2018, c A-21.2

³⁵ The Animal Protection Act, 2018, SS 2018, c A-21.2

³⁶ The Stray Animals Act, RSS 1978, c S-60.

³⁷ The Stray Animals Act, RSS 1978, c S-60.

³⁸ City of Saskatoon, by-law No. 7860, Animal Control Bylaw, 1999.

³⁹ City of Saskatoon, by-law No. 8640, Impounding Bylaw, 2007.

At present at both the provincial and municipal level, there is a lack of legal support for victims of domestic violence who want to leave the situation but have concerns about leaving behind animals or livestock. While provincial and municipal authorities have worked to create policies that protect animals generally, the above provisions are not immediately relevant to people who feel stuck in situations of interpersonal violence as a result of their important relationships with animals.

The reference to the provincial and municipal laws has been included to demonstrate the possibility of building a legal regime that can work towards provincial and municipal goals of controlling and maintaining the health and safety of people and animals while also meeting the unique needs of animal owners who are looking to escape circumstances of interpersonal violence.

For example, municipal bylaws could be altered to include a provision on short term safekeeping of animals belonging to individuals reporting domestic violence in a mechanism similar to how strays are dealt with. Or, provisions could be added to the provincial *Animal Protection Act*. Such amendments could reduce barriers to individuals as they attempt to leave situations of abuse and could help to clarify networks of support available in Saskatchewan aimed at the temporary safekeeping of animals for individuals fleeing domestic violence.

F. Recommendations

i. Where Does Better Recourse for Victims of Domestic Violence & Their Pets Exist?

The Province of Saskatchewan is unmistakably deficient in its need to address high rankings for rates of intimate partner violence in Canada.⁴⁰ As previously mentioned, ownership of animals is a barrier present for many victims from accessing domestic violence services like shelters or transition houses.⁴¹ Whether it is funding or policy related many services are unable to

⁴⁰ Saskatchewan SPCA, *Respondents still needed for research project* (March 2020), online: Saskatchewan SPCA <<https://www.saskspca.ca/post/respondents-still-needed-for-research-project>>.

⁴¹ *Ibid.*

meet the needs of victims trying to leave abusive situations with companion animals. When trying to recommend what Saskatchewan can do as a province to better address its standing as the highest rate of intimate partner violence in the country with the weakest animal protection laws, we can look to the examples of other jurisdictions to strive for stronger animal rights laws.⁴² The United States of America (USA) is significantly more developed in animal rights laws than the cumulative state of animal laws in Canada. Animal rights are more prevalent in the USA in a variety of areas evident in the implementation of state animal abuser registries, law degrees on animal studies, courses on intensive animal law clinics, and provisions explicitly naming pets in protection orders.⁴³ 35 states, the District of Columbia, and Puerto Rico have passed legislation allowing the pets of domestic violence victim's to be included in protection orders.⁴⁴ In the remaining states, Temporary Restraining Orders contain discretionary language allowing for judges to add additional orders like the inclusion of pets.⁴⁵ These orders can give police authorization to help victims gain possession by removing pets from abuser residencies.⁴⁶

⁴² Animal Legal Defense Fund, *Prince Edward Island Jumps to Top Spot as Canada's Best Province For Animal Protection Laws* (July 2017), online: Animal Legal Defense Fund <<https://aldf.org/article/prince-edward-island-jumps-to-top-spot-as-canadas-best-province-for-animal-protection-laws/>>.

⁴³ Lewis & Clark Law School in Portland, Oregon offers animal law degrees and has two animal law clinics. There is also a new animal law clinic at Harvard Law School and Michigan State University College of Law. The purpose of these animal law clinics is to provide learning opportunities for students that result in informative work that helps advocate for animal protection. Animal Justice, *Animal Law Clinics in Law Schools* (September 2019), online: Animal Justice <<https://www.animaljustice.ca/podcast/40-animal-law-clinics-in-law-schools>>; See Center for Animal Law Studies, online: Lewis & Clark Law School <law.lclark.edu/centers/animal_law_studies/>. See online: Animal Legal Defense Fund <www.aldf.org>.

⁴⁴ *Michigan State University*, *supra* note 6.

⁴⁵ Animal Welfare Institute, *Including Pets in Protection Orders* (2019), online: Animal Welfare Institute <<https://awionline.org/content/including-pets-protection-orders>>.

⁴⁶ E. A. Gjelten, *Animal Cruelty and Domestic Violence: Can You Protect Pets From Your Abuser?* (2019), online: Lawyers.com <<https://www.lawyers.com/legal-info/criminal/restraining-orders/animal-cruelty-and-domestic-violence-can-you-protect-pets-from-your-abuser.html>>.

An example of USA legislation explicitly providing for protection of animals can be seen in an amendment to Illinois criminal procedure for domestic violence protection orders.⁴⁷ Such provisions:

Grant the petitioner the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.⁴⁸

The broad ability of protection orders to provide for extracting animals owned by either party is conducive for permitting victims of domestic violence to leave abusive situations with their beloved pets sooner and safer.

In 2018, provisions of the Federal USA *Pet and Women Safety Act (PAWS)* were incorporated and signed into law within the *Agriculture Improvement Act of 2018*.⁴⁹ The provisions expanded existing federal domestic violence protections. *PAWS* provides for the establishment of grant programs for “entities that provide shelter and housing assistance for domestic violence survivors to enable them to better meet the housing needs of survivors with pets”.⁵⁰ The provisions also include “pets, service and emotional support animals, and horses in federal law pertaining to interstate stalking, protection order violations, and restitution. These provisions provide law

⁴⁷ Animal Legal Defense Fund, *Animal Protection Laws of Illinois* (2019), online: Animal Legal Defense Fund <<https://aldf.org/wp-content/uploads/2020/01/Animal-Protection-Laws-of-Illinois-2019.pdf>>.

⁴⁸ *Ibid* at 66.

⁴⁹ Animal Welfare Institute, *Pet and Women Safety (PAWS) Act* (December 2018), online: Animal Welfare Institute <<https://awionline.org/content/pet-and-women-safety-paws-act>>.

⁵⁰ *Ibid*.

enforcement with additional tools for protecting victims from their abusers”.⁵¹ The purpose was to remove the roadblock that delays victims from seeking safety by making it easier for them to escape violent situations with their pets. It is not unusual for victims of domestic violence to fear that their abuser will harm their companion animal as a means of “control and retaliation”.⁵² A sponsor of the bill, Senator Gary Peters, offered the following justification:

Survivors of domestic violence should never have to decide between leaving an abusive relationship or staying and risking their safety to protect their pets. This bill will help ensure more safe havens for survivors and their pets are available — so together they can begin a new chapter in their lives.⁵³

The focus was on responding to the need for “helping programs provide shelter and housing assistance for the companion animals of domestic violence victims”.⁵⁴ The legislation “urges states [that have not already done so] to allow pets to be included under protection orders”.⁵⁵ PAWS redefines the scope of the “definition of stalking under the criminal code ‘to include conduct that causes a person to experience a reasonable fear of death or serious bodily injury to his or her pet’”.⁵⁶

In Canada there has been slow implementation of positive legal change for animal rights. Considering the fundamental differences in the structure of Canada’s and the USA’s constitutional law it is easier to point to examples within the country to more easily persuade provincial judges to consider pets in protective orders. However, Canadian case law has begun to progressively align

⁵¹ *Ibid.*

⁵² Nicole Pallotta, *Federal Farm Bill Includes Important Protections for Animals* (March 2019), online: Animal Legal Defense Fund <<https://aldf.org/article/federal-farm-bill-includes-important-protections-for-animals/>>.

⁵³ *Ibid.*

⁵⁴ Animal Welfare Institute, *supra* note 49.

⁵⁵ *Ibid.*

⁵⁶ Nicole Pallotta, *supra* note 52.

with society's accepted understanding of the general treatment of animals and the underlying bond held between people and their furry companions. Chief Justice Catherine A. Fraser's dissent in *Reece v. Edmonton (City)* at the Alberta Court of Appeal contained empathetic language directed in regards to a captive elephant at the Edmonton Valley Zoo that is rarely offered to animals in Canadian jurisprudence.⁵⁷ Fraser C.J.'s dissent invited the legal profession to question the treatment of non-human "sentient beings" by the law.⁵⁸ While this is unfortunately not a binding precedent it is a glimmer of hope for the possible future understanding of animals in Canadian law.

ii. What Better Recourse for Victims of Domestic Violence & Their Pets Exist?

In the province of British Columbia, the *Family Law Act (FLA)* expressly names pets under their definition of "family violence".⁵⁹ The *FLA* notes under Part 1 – Interpretation:

"family violence" includes

(a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,

(b)sexual abuse of a family member,

(c)attempts to physically or sexually abuse a family member,

(d)psychological or emotional abuse of a family member,

including

(i) intimidation, harassment, coercion or threats, including threats respecting other persons, *pets* or property.⁶⁰

⁵⁷ *Reece v Edmonton (City)*, 2011 ABCA 238 (CanLII), <<http://canlii.ca/t/fmjhh>>.

⁵⁸ *Ibid* at para 39.

⁵⁹ *Family Law Act*, *supra* note 4.

⁶⁰ *Ibid*, emphasis added.

It is important to highlight that the *FLA* does not include pets in its definition of property and instead listed them as their own separate category. By having the *FLA* broadly define “family violence” to include pets it legitimizes the reality countless domestic violence victims face and allows judges the opportunity to recognize the different kinds of harm that can be invoked in these situations. One British Columbia judge considered the provision stating, “The broad and inclusive definition of ‘family violence’ recognizes that the kinds of harm that can be inflicted in this situation extend beyond the infliction of physical violence”.⁶¹

In considering pets in protective orders, the province of Newfoundland and Labrador expressly stipulates for the inclusion of animals under its property definition.⁶² The provinces *Family Violence Protection Act* defines “property” under subsection 2(j) as including “an interest, present or future, vested or contingent, in real or personal property, including *companion animals*”[Emphasis added].⁶³ Unfortunately, this provision perpetuates the classification of animals as property but it does expedite the process for including companion animals in protective orders.

In 2017, the Animal Legal Defense Fund (ALDF) named Prince Edward Island as the best Canadian province regarding animal protection laws.⁶⁴ Unfortunately, it also named Saskatchewan as part of the bottom tier for worst protection laws ahead of only the Northwest Territories and Nunavut.⁶⁵ Prince Edward Island surpassed others through the implementation of a variety of animal protections including “empower[ing] courts to issue protection orders covering animals and to order psychiatric evaluations and mental health counselling for offenders”.⁶⁶ However,

⁶¹ *Morgadinho v Morgadinho*, 2014 BCSC 192 (CanLII), <<http://canlii.ca/t/g307l>>, at para 59.

⁶² Tim Battle, *supra* note 1.

⁶³ *Family Violence Protection Act*, 2005 cF-3.1 s 2.

⁶⁴ Animal Legal Defense Fund, *supra* note 42.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

ALDF noted that even in the top tier there was significant room for improvement in Canadian animal protection laws.⁶⁷

Manitoba articulates in its *Domestic Violence and Stalking Act (DVSA)* various considerations to take into account when determining whether to grant a protective order or not.⁶⁸

The *DVSA* states:

6.1(1) When determining whether to grant a protection order, a designated justice of the peace must consider, in addition to any other relevant consideration, the following risk factors:

...

(e) other previous incidents of violence committed by the respondent, *including any violence against animals*,⁶⁹

In addition, under the *DVSA* the Manitoba Court of Queen's Bench application for a protection order includes the following opportunity to address in detail on the application previous incidents of animal abuse in occurrences of domestic violence:

4. There are other previous incidents of violence committed by the respondent, *including incidents of violence against animals* Yes No

(If yes, describe previous incidents of violence and include when, where, if weapons were involved, whether police were involved and whether any injuries resulted for each incident). [Emphasis added.]⁷⁰

iii. *What Legal Alternatives Can Be Imported to Saskatchewan?*

⁶⁷ *Ibid.*

⁶⁸ *Domestic Violence and Stalking*, CCSM c D93, s 6.1(1).

⁶⁹ *Ibid*; emphasis added.

⁷⁰ Manitoba Court of Queen's Bench, *Application For A Protection Order In the matter of The Domestic Violence and Stalking Act*, CRT 20279E(b) (2016/05), online: Manitoba Court of Queen's Bench <http://www.manitobacourts.mb.ca/site/assets/files/1172/application_for_a_protection_order.pdf>.

The Canadian *Criminal Code* provisions regarding animal cruelty have changed only marginally since their first codification in 1892 and are not perfect.⁷¹ The most common provisions within them, “willful infliction of unnecessary suffering (section 445.1(a)) and willful neglect (section 446(1)(b))” both command a “high level of mens rea, or criminal intent” to secure a conviction.⁷² The onus of demonstrating the burden of proof beyond a reasonable doubt that the accused “willfully” participated in the alleged act makes it harder to convict.⁷³ This results in the need for provinces to work within their jurisdictional boundaries of quasi-criminal and regulatory offences to address shortcomings in the law for domestic violence victims and their animals.

The current state of divergent provincial animal law in Canada regarding protections for companion animals and victims of domestic violence indicates a need for education and training for legislative drafters and judges. The connection between domestic violence and animal safekeeping has been established as a primary boundary for victims leaving abusive situations.⁷⁴ Now, Saskatchewan needs to find a solution for moving forward within the current constraints of provincial law. Unfortunately, it is unlikely that the current regime of defining animals under the law as property will change in the foreseeable future. However, it is not outside of Saskatchewan’s ability to follow British Columbia’s *Family Law Act* in expressly naming pets under the definition of “family violence” as an independent category.⁷⁵ Saskatchewan needs to find a way to make it easier for lawyers advocating for the inclusion of pets in protective orders.

⁷¹ Animal Legal Defense Fund, *2017 Canadian Animal Protection Laws Rankings* (July 2017), online: Animal Legal Defense Fund <<https://aldf.org/wp-content/uploads/2018/06/2017-Canadian-Rankings-Report-1.pdf>>.

⁷² *Ibid* at 6.

⁷³ *Ibid*.

⁷⁴ Saskatchewan SPCA, *The Violence Link* (March 2016), online: Saskatchewan SPCA <<https://www.saskspca.ca/about-the-link>>.

⁷⁵ *Family Law Act*, *supra* note 4.

Protective orders are made by judges or police to protect the identified person from another. They include conditions that allow for the safety and security for the named person or individuals.⁷⁶ While the protective orders cannot be executed to safeguard pets exclusively, they can be included if it would also benefit the protection of the named individual. To clarify, “to get a pet included, the applicant claims that her concern for the animal is related to her own protection”.⁷⁷ Information like the research conducted by the Saskatchewan SPCA on the connection between animal abuse and domestic violence can be presented as evidence to strengthen protection order applications.⁷⁸

In discussing ways that the USA could include pets in restraining orders legal writer and editor E. A. Gjelten recommended the following ways laws could acknowledge animal abuse in the domestic violence context where pets are not expressly included in protective orders:

- listing animal cruelty as one of the behaviors that help victims prove they need a protective order;
- including abuse or threats against the victim’s pet in the definition of domestic violence or criminal stalking;
- allowing or requiring “cross-reporting” (for instance, animal control officers who are investigating animal cruelty may report signs of domestic violence, child abuse, or elder abuse in the home), or;
- increasing penalties for animal cruelty when it’s done in front of a child or in order to intimidate someone.⁷⁹

iv. Looking Forward: What Law Schools Have Classes on Animal Rights Law?

⁷⁶ Tim Battle, *supra* note 1.

⁷⁷ *Ibid.*

⁷⁸ Saskatchewan SPCA, *supra* note 74.

⁷⁹ E. A. Gjelten, *supra* note 46.

Unfortunately, it appears quite unlikely that the province of Saskatchewan, and Canada for that matter, will stop the practice of equating companion animals to property in the eyes of the law in the foreseeable future. However, we can hope to see the silver lining for a better future for animal rights in the country thanks to future generations of legal professionals and the recent emergence of animal law focused classes in seven Canadian law schools.

The University of Alberta Faculty of Law offers a course called *Animals and the Law* that discusses the increased regulation of human treatment of animals over the past 50 years.⁸⁰ This course is taught by Peter Sankoff the co-host of *Animal Justice's* podcast *Paw and Order*. Diving into the concerning ways society treats the care of non-human animals. The course investigates the “history, philosophy, and ethical foundation of humanity’s treatment of animals and asks whether our current legal treatment of them accords with our stated goal of preventing ‘unnecessary’ cruelty to animals”.⁸¹ This course is noteworthy as it discusses “common legal problems that arise under the existing paradigm, and considers what these problems reveal about our stated concern for non-human animals”.⁸²

The University of British Columbia Peter A. Allard School of Law offers an *Animal Law* focused seminar under *Topics in Public Law*.⁸³ The seminar explores the “vast intersectionality of *Animals and the Law*” in Canada and internationally.⁸⁴ The course offers a critical review of historical and existing treatment of animals in the law with regard for the “theoretical, cultural, socio-economic underpinnings”.⁸⁵ Law students are invited to “analyze relevant statutes, policies,

⁸⁰ Faculty of Law, *2019/20 Law Academic Schedule* (2019), online: University of Alberta <<https://www.ualberta.ca/law/campus-life/academic-resources/>>.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Peter A. Allard School of Law, *2019-2020 Course Descriptions* (2019), online: University of British Columbia <http://www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/JD/course_description_report_2019w.pdf>.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

case law, secondary sources per legal treatment of animals in tort, property, criminal, family, contract, environmental, administrative, municipal, estate law and more”.⁸⁶

The McGill University Faculty of Law offers a specialized topics class on Animal Law under its common law curriculum.⁸⁷ The course description indicates, “through a thematic exploration of the major issues facing animal protection in Canada today, this course will introduce students to the legal framework governing human-animal relations, both from a practical and critical perspective”.⁸⁸

The University of New Brunswick Faculty of Law offers an upper year course on Animals, Values and Laws.⁸⁹ This course examines moral and legal issues that arise from the “use and misuse of non-human animals”.⁹⁰ Welfare and rights based theories are examined in their application in protecting “the use of animals in scientific research and the food industry, cruelty to and neglect of animals, breeding and keeping of dangerous animals, vegetarianism, animal abuse and family violence, and other topics chosen according to student interest”.⁹¹ Each topic contemplates the use and limitations of the current legal regulation while comparing Canada to other international jurisdictions.⁹²

Queen’s University Faculty of Law offers remarkably more than one class regarding animals and the law. The first course offered is called Animal Law: Property, Personhood and

⁸⁶ *Ibid.*

⁸⁷ McGill Faculty of Law, *Course Offerings 2019-2020* (2019), online: McGill <<https://mcgill.ca/law-studies/courses/current>>.

⁸⁸ *Ibid.*

⁸⁹ University of New Brunswick Faculty of Law, *Courses* (2019), online University of New Brunswick <https://www.unb.ca/fredericton/law/_assets/documents/forms/courses.pdf>.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

Social Membership which is described as a short course that considers the “three different models for defining the legal status of animals” in Canada.⁹³ The course description includes:

Under current Canadian law, animals are defined as ‘property’ - a legal status that accords them very few protections. Some legal scholars and animal rights activists have proposed instead that animals be defined legally as ‘persons’, not property, and thereby secure the basic rights of personhood. For example, the Non-Human Rights Project has filed several suits in the United States to secure personhood for primates, so far unsuccessfully. A third model starts from the premise that many animals are members of society, who live and work alongside us, and who should therefore be accorded certain rights of social membership. For example, companion animals might be legally defined as ‘members of the family’, and service animals might be legally defined as ‘workers’. In this short course, we will explore the strengths and weaknesses of these three models.⁹⁴

The second course offered at Queen’s is titled *Animals, Politics and the Law*.⁹⁵ The course description is described as follows:

Animal law is one of the fastest-growing areas of law both domestically and internationally but is also highly contested.

⁹³ Queen’s University Faculty of Law, *Course Catalog* (2019), online: Queen’s University <<https://law.queensu.ca/sites/default/files/files/Course%20Info%20-%20Timetables/2019-2020%20Law%20Course%20Catalog.PDF>>.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

Existing laws typically define animals as the property of their human owners - a framework that many critics argue is unable to afford any true protection to the rights and interests of animals. Various models have been proposed to supplement, or entirely replace, this property framework. This seminar will explore existing legislative regimes related to animals in Canada and internationally, and the limited protections they offer. We will then explore a range of proposals by animal rights advocates for future reform of animal law. These include proposals to accord legal standing or legal personhood to animals, to recognize companion animals as members of the family, to accord farm animals and service animals the rights of workers, to accord wilderness animals rights to territory, and more generally to recognize animals as members of our political community, with rights to representation or citizenship. While many of these proposals may seem utopian, we can see preliminary manifestations of these ideas surfacing in a number of recent legal cases and campaigns for legislative reform. In Lesli Bisgould's terms, we can see a possible shift from "animal law" to "animal rights law". We will discuss the prospect for real change in this field, and the capacity of law to serve as a vehicle of justice for animals.⁹⁶

Queen's University Faculty of Law appears to be the best school in Canada for animal law studies in its offering of several comprehensive animal law courses.

⁹⁶ *Ibid.*

The University of Saskatchewan College of Law unfortunately does not offer any stand-alone animal rights courses. Patricia Farnese's Agricultural Law is the closest alternative in its possible discussion of animal health and welfare in consideration of legislation designed to regulate agriculture.⁹⁷ However, this is not guaranteed as Farnese structures the course based on participant students' interest.⁹⁸

Thompson Rivers University Faculty of Law currently does not offer an animal law course. However, on September 12, 2019, the faculty and student body published an in-depth consideration of animal law in the *Canadian Journal of Comparative and Contemporary Law*.⁹⁹ This was the first time a Canadian legal journal dedicated an entire issue to the individual topic of animal law.¹⁰⁰

The University of Toronto Faculty of Law offers Introduction to Animals and the Law.¹⁰¹ The course description provides:

The subject of animals and the law has emerged nationally and internationally as a new and important topic which has implications in many traditional legal subject areas. We will examine the unique role that animals play as living property in a legal system conceived by and for human beings. On the one hand, they are things that we eat and use in experiments. On the other hand, they are beloved family companions. How does the law handle the discord?

⁹⁷ University of Saskatchewan College of Law, *Long Course Descriptions* (2019), online: University of Saskatchewan <https://law.usask.ca/documents/students/jd/2019-2020_Long_Course_Descriptions_v2.pdf>.

⁹⁸ *Ibid.*

⁹⁹ Thompson Rivers University, *TRU Law Faculty and Students Publish Journal on Animal Law* (September 2019), online: Thompson Rivers University <<https://inside.tru.ca/2019/09/12/tru-law-faculty-and-students-publish-journal-on-animal-law/>>.

¹⁰⁰ *Ibid.*

¹⁰¹ University of Toronto Faculty of Law, *Introduction to Animals and the Law* (2019), online: University of Toronto <<https://www.law.utoronto.ca/course/2019-2020/introduction-animals-and-law>>.

This ambiguity will provide the context for examining the history of - and the historical basis for - laws with respect to animals. We will trace these, from the animal trials which began in thirteenth century Europe through the development of anti-cruelty laws to the current struggle to cope with the conflicting implications of biotechnology and other industrial uses of animals. Throughout, we will critically evaluate the legal status of animals as ‘property’ and consider whether that status is defensible in modern times, asking whether animals should be viewed as objects, as legal subjects, as legal persons or as something else entirely.¹⁰²

The seminar provides a comprehensive discussion of the current issues facing animals in the legal system with international considerations.

The University of Victoria Faculty of Law offers a course called Animals, Culture and the Law.¹⁰³ The course description provides:

This seminar will explore the relationships between nonhuman and human animals, focusing on the legal and ethical issues raised by the legal status of animals as property. In particular, we will look at how recent cultural developments have redrawn the human/nonhuman boundary, implicating what it means to be “human” and “animal”, and resulting in a renewed questioning of the current scope of legal personhood. Specific themes and topics

¹⁰² *Ibid.*

¹⁰³ University of Victoria Faculty of Law, *2019-20 Course Registration – Preliminary Course Information* (2019), online: University of Victoria <<https://www.uvic.ca/law/assets/docs/pcisfall2019/201909-381-animals-deckha.pdf>>.

that will be explored include: 1) current Canadian jurisprudence characterizing animals as property and the specific legal regulation of animals as food, research tools, entertainers, companions and carriers/symbols of human cultural and religious traditions; 2) various western philosophical positions on animals that animate Canadian law and alternative legal conceptualizations in Indigenous legal orders; 3) theoretical challenges to animal exploitation, subordination, and commodification from deontological, utilitarian, feminist, postcolonial, Indigenous, queer, and poststructuralist traditions; 4) the types of legal and ethical alternatives proposed to supplant animals' current status as property; and 5) the imbrication of cultural and legal ideas about animals, animality, and species with the social constructs of gender, culture, race, class, sexuality, and ability and the connections between speciesism, sexism, racism, capitalism, imperialism and ableism. Adopting animal-centered perspectives (as much as humans can) in relation to the law and contesting anthropocentrism, human exceptionalism, and species as a category is integral to this course. We will also discuss power and hierarchies organized along gender, race, class, culture, and ability to understand the role these social forces play in shaping the legal and cultural treatment of animals.¹⁰⁴

¹⁰⁴ *Ibid.*

This seminar focuses more on the ways different theoretical perspectives can shape the understanding of animal rights laws in Canada.

In addition, Animal Justice, Canada's leading organization of legal advocates for animal rights and protection has made a significant name for themselves since their formation in 2008. Their team of lawyers make it their mission to "work to pass strong new animal protection legislation, push for the prosecution of animal abusers, and fight for animals in court".¹⁰⁵ The organization is also responsible for producing Canada's first animal law podcast, *Paw and Order*.¹⁰⁶ The podcast allows for the discussion of current issues in animal rights law in both Canada and internationally providing legal insight on real-time issues. In 2019, Animal Justice commenced Canada's inaugural animal law conference.¹⁰⁷

Conclusion

It is our hope that the Canadian legal system, and in particular Saskatchewan, can move away from the current treatment of pets as property to address the harm and protection of companion animals and potential adverse effects on their owners. Legal reform should have the objective in mind of making it easier for victims of domestic violence to escape violent conditions and ensuring the safety of their pets in the process.

¹⁰⁵ Animal Justice, *About Us* (2015), online: Animal Justice <<https://www.animaljustice.ca/about-us>>.

¹⁰⁶ Animal Justice, *Paw & Order Podcast* (2020), online: Animal Justice <<https://www.animaljustice.ca/podcast>>.

¹⁰⁷ Canadian Animal Law Conference (2020), online: Canadian Animal Law Conference <<https://www.canadiananimallawconference.ca>>.

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