Bill C-15

Proposed amendments to Cruelty to Animal Provisions under the Criminal Code

Written Submission to the
House of Commons
Standing Committee on Justice and Human Rights

Canadian Institutes of Health Research
&
Natural Sciences and Engineering Research Council

Ottawa, July 2001

The purpose of this submission is to present the views of the Canadian Institutes of Health Research (CIHR) and the Natural Sciences and Engineering Research Council (NSERC) on Bill C-15. CIHR and NSERC are the agencies through which the Federal Government supports research in health, natural sciences and engineering across Canada.

Research is important to Canadians

CIHR was created by Act of Parliament on June 7, 2000, replacing the former Medical Research Council (MRC). Its legislated mandate is A*to excel, according to internationally accepted standards of scientific excellence, in the creation of new knowledge and its translation into improved health for Canadians, more effective health services and products and a strengthened Canadian health care system*@ (*CIHR Act*, S.C. 2000, c.6). A commitment of funding in the order of $500 M in 2001-2002 demonstrates Parliament=s recognition of the importance of health research to Canada.

NSERC was created from the National Research Council (NRC) by Act of Parliament in 1978 to promote and assist research across Canada in the natural sciences and engineering. NSERC is the national instrument for making strategic investments in Canada's capability in science and technology. NSERC supports both basic research through research grants to post-secondary institutions, and project research through partnerships of post-secondary institutions with industry, as well as the advanced training of highly qualified people in both areas. NSERC's budget is approximately $550 M, again reflecting the importance of research to Canadians.

The Federal Government funds research through CIHR and NSERC because of the many benefits that the generation and use of new knowledge can bring to Canadians. Discovery leads the way toward progress, improved health, leading-edge innovation, new jobs and opportunities in a global, knowledge-based economy. The importance of promoting research and development in Canada was fully recognized in the Speech from the Throne to open the First Session of the 37th Parliament of Canada on January 30, 2001, when the Governor General described the broad goals and directions of Government (Appendix A). This commitment to research and development was reiterated in an address by the Prime Minister the next day in his reply to the Speech from the Throne (Appendix B).

In addition, many Canadians provide direct funds for research, particularly health research, through charitable donations to organizations such as the Canadian Cancer Society, the Heart and Stroke Foundation of Canada, the Multiple Sclerosis Society, and more than 50 other voluntary organizations dedicated to finding cures for disease. Canadians donate these funds because they know that research is essential for improving our understanding of how to promote good health and to prevent, diagnose, and treat ill health.

Many Canadians also understand that progress in medicine, agriculture, and the environment depends on research in which animals are the subjects of experimentation. Such progress would be greatly limited, if not impossible, without the use of whole-animal systems. For example, cancer, multiple sclerosis, heart disease and the body=s response to infections all involve complex biological interactions which can only be fully understood through research involving animals and humans. The health and welfare of entire populations of wildlife as well as livestock depends on knowledge that can only come from the study of animals in the laboratory and in the field. The decision to use animals in experimentation is not taken frivolously: researchers who use animals for experiments are encouraged by NSERC and CIHR to use alternative methods, whenever possible.

CIHR and NSERC are committed to the ethical use of animals in research

CIHR and NSERC have, not only clear government mandates in research, but also a strong commitment to promoting and funding research which meets the highest ethical standards. In respect of research involving animals, the predecessors of CIHR and NSERC (MRC and NRC, respectively) jointly instigated the formation of the Canadian Council on Animal Care (CCAC) in 1968. CIHR and NSERC continue to share equally in providing about 90% of CCAC=s budget. Since 1968, all research involving animals that is conducted in Canadian institutions funded by CIHR and/or NSERC, as well as in other participating institutions, is overseen by CCAC. CCAC also monitors a large part of research carried out in governmental or industrial laboratories. CCAC has achieved wide recognition and international stature for the quality of its work. CCAC is comprised of 22 national organizations whose representatives include scientists, veterinarians, educators, industry and animal welfare groups.

CCAC has developed and maintains guidelines and policies for the care and use of experimental animals in science. Through its Assessment Program, CCAC assesses the animal care and use programs in each participating institution, as well as the effectiveness of institutional animal care committees charged with evaluating the ethical acceptability of all animal-based research projects as a necessary condition for funding. These committees are composed of at least one institutional animal user, one institutional non-user of animals, a veterinarian, a technical staff representative, a student and at least one public representative. CCAC provides a Certificate of Good Animal Practice® to all institutions that maintain satisfactory standards of animal care and use in accordance with CCAC guidelines and policies. Finally, CCAC has a national education responsibility which it fulfils through workshops, publications and presentations on the care and use of animals. As of January 2003, all researchers working with animals will need to have received appropriate training by their institutions.

The CCAC oversight model has been envied and emulated by several jurisdictions around the world. While CCAC does not enjoy legislated status at the federal level, its guidelines and policies are referenced in some provincial legislation and/or related regulations.[1] Over time, CCAC guidelines and policies have come to be accepted as the reasonable standard of care against which Canadian researchers should measure their conduct. CIHR and NSERC strongly believe that CCAC guidelines and policies constitute the appropriate national standard for the care and use of animals in research.

Some people who live and work outside the research context may not fully appreciate the social value and legitimacy of research involving animals that complies with CCAC guidelines and policies and that is approved by certified animal care committees as being ethically-sound, responsible and acceptable research in all of its aspects. For example, those who are unfamiliar with the ethical framework governing research involving animals may not fully understand accepted ethical

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[1] *Animal Protection Regulations* (EC71/90), s. 5; *Animal Care Regulations* (Man. Reg. 126/98), ss. 3(1)(b), 4(4), 4(5); *General Regulation - Society for the Prevention of Cruelty to Animals Act* (N.B. Reg. 2000-04), s. 4(2)(a) and Schedule A; *Animal Cruelty Prevention Act*, S.N.S. 1996, c. 22, s. 22(3) and (4).

guidelines for caging, physical restraint devices, blood removal, pain management and methods used for euthanasia that are duly followed and respected by responsible researchers conducting legitimate research.

Concerns about precision, clarity and certainty of Bill C-15

CIHR and NSERC support the objectives of the proposed amendments to the animal cruelty provisions under Bill C-15 which aim to consolidate, modernize and simplify the existing regime and to enhance the effectiveness of the offence provisions. Our concern lies, rather, in the potential, though unintended, impediments that the Bill, as presently worded, may have on legitimate, responsible, ethically-sound research that can lead to benefits for all Canadians.

The objective of this Bill is to criminalize what, by general standards, is clearly abusive, brutal and cruel treatment of animals, without inadvertently impeding what Canadians regard, in legitimate contexts, as socially-acceptable use of animals in research for the benefits of other animals and human beings. It is our view that the precise wording of parts of Bill C-15 is not sufficiently clear to achieve this objective. Terms such as Aunnecessary pain, suffering or injury@ (s. 182.2(1)(a)), Abrutally or viciously@ (s. 182.2(1)(b)), or Asuitable and adequate food, water, air, shelter and care@ (s. 182.3(1)(b)), are all subjective and context-sensitive. What is Aunnecessary@, Abrutal@, Asuitable@ and Aadequate@ for some who are fundamentally opposed to the use of animals in research may be entirely different from that which is meant by those same terms in current, socially-accepted research practice. These terms are not defined in the Bill, hence provide no reference to the *bona fides* or legitimacy of reasonable, responsible and humane research. Their interpretation and application will be highly problematic in practice, and may be inconsistent from province to province. Adding to the difficulty is the absence of an express lawful excuse defense in sections 182.2(1)(a) and (b) and an express *mens rea* requirement of criminal negligence in section 182.3(1)(b).

We are concerned that such imprecisions could be used by a minority of Canadians who are irrevocably opposed to any use of animals for research, however performed, to instigate private prosecutions against researchers who carry out responsible, legitimate and ethically sound research. Unfounded allegations, against responsible, legitimate and ethically sound research, which clearly fall outside the intent of the revisions, yet cannot be dismissed from the outset due to an unfortunate lack of clarity, precision and certainty in drafting could have serious adverse consequences. For instance, unwarranted and frivolous prosecutions would waste valuable public resources, jeopardize careers, deter young Canadians from pursuing careers in biomedical research or other research involving animals, have a negative impact on investment by multinational pharmaceutical and biotechnology companies in Canada, and cause undue hardship to those researchers who acted within the current regulatory framework for responsible use of animals.

Recommendation # 1

To address some of these concerns, CIHR and NSERC recommend that subsection 182.3(1)(b) be amended to provide for an express *mens rea* requirement of negligence:

A***182.3(1) Every one commits an offence who***

[...]

b) being the owner, or the person having the custody or control of an animal, <u>negligently</u>, abandons it or fails to provide suitable and adequate food, water, air, shelter and care for it.
[...]@

and that section 182.3(2) also be amended to specify that negligence shall be measured against a criminal standard:

> A***182.3(2) For the purposes of paragraphs (1)(a), <u>(b),</u> and (c)***, ›***negligently***= ***means departing markedly from the standard of care that a reasonable person would use.@***

In our view, these amendments would alleviate much of the anticipated difficulty in interpreting and applying notions that may have different significance to different communities in different situations. More specifically, terms such as Asuitable@ or Aadequate@ are highly subjective terms which potentially open the door to frivolous claims based on poorly understood and arbitrarily defined standards wholly divorced from specific context. For instance, what constitutes suitable and adequate food and water in the domestic context differs markedly from what may be considered ethically acceptable research conditions of withholding food or water from an animal for a very limited period of time and under strict guidelines in order to gain important knowledge about human and animal disease, nutrition and metabolic health.

In its most benign form, many studies call for the overnight withholding of food. This is done to avoid lipemic blood samples. Lipemia (excess of lipids in the blood) often interferes with biochemical test assays that are used to determine the presence or concentration of substances in the blood, other body fluids or body tissues. Overnight fasting is also a critical requirement in certain stroke models. For example, hyperglycemia (temporary excess of sugar in the blood as a result of eating) increases the severity of the already significant effects in the rat stroke model. For this reason, rats are fasted prior to surgery in order to make them hypoglycemic and therefore reduce the severity of the stroke.

Similar food restriction protocols are sometimes used to understand how animal populations respond to environmental change. In some experiments, animals held in outdoor enclosures are subjected to the same food limitation stresses they would be subjected to in the wild. Researchers then observe how these populations respond to reduced availability of food. Such experiments help us better understand the interrelationships among animals and plants in ecosystem “food webs”, and how we can improve their management in a constantly changing environment.

More controversial are the water restriction/deprivation protocols in the laboratory setting, which have already been the subject of attempted law suits by animal rights movements in other countries. The controlled water access paradigm is often necessary for behavioural training. For example, non-human primates can be trained to perform particular motor or perceptual-motor tasks in response to controlled stimuli, while recordings are made from brain areas thought to be involved in these behaviours. This work is relevant to understanding the general functions of the brain. This knowledge, in turn, is relevant to understanding disabilities resulting from damage to certain brain

areas, to the appropriateness of surgical interventions to treat conditions such as epilepsy and, when combined with imaging studies from humans, to understanding the organic base of certain psychiatric and behavioural disorders.

Such use of food and water restriction is permitted under strict adherence to CCAC guidelines. CCAC guidelines on experiments using animals for research, teaching and testing, require, among other things: daily monitoring to prevent dehydration; agreed body weight loss at which the animal should be withdrawn from the trial; topping up of fluid requirements at the end of the testing period if the animal did not drink sufficiently; removal from the study at regular periods; and proper monitoring of the animal=s health. In conducting the ethical review of the protocol, an animal care committee must weigh the potential distress to the animals against the potential benefits to be obtained from the study. The animal care committee must give its approval before the experiment can proceed. This ensures that the controlled water access paradigm is used only in circumstances that are both humane and scientifically justifiable.

Hence, withholding food or water from an animal or other research procedures **B** when done in the context of legitimate, responsible and socially valuable research, funded by government, supported by a majority of Canadians, carried out in accordance with internationally and nationally recognized ethical standards deemed by statute or common law to be reasonable, reviewed and approved by duly constituted institutional animal research committees **B** should not get caught up in lengthy, costly, emotionally and professionally taxing criminal litigation based on highly subjective interpretations of terms such as Asuitable@ and Aadequate@.

The express reference to a criminal standard of negligence as the necessary *mens rea* requirement for the offence at section 182.3(1)(b) would go a long way in dissuading, from the very outset, private prosecutions against responsible, legitimate and ethically-sound research based on unfounded allegations. Moreover, we believe a criminal negligence *mens rea* requirement in the offence itself would be more in keeping with the objective of the Bill, which is clearly to criminalize what are serious and egregious acts of transgression against animals.

Recommendation #2:

CIHR and NSERC further recommend that subsection 182.5 be added so as to provide a general regulation-making power as follows:

> A***182.5 The Governor in Council may make regulations generally to assist in the interpretation of this Part.***@

One such regulation, we propose, could read as follows:

> A***In interpreting whether an offence has been committed within the meaning of sections 182.2 and 182.3 in the context of research, reference may be made to the Canadian Council on Animal Care=s* Guide to the Care and Use of Experimental Animals*, volume 1, 2nd ed., 1993 and volume 2, 1984, as supplemented by the other existing guidelines and policies related to the use of animals in research, published by the Canadian Council on Animal Care.***@

To further the objectives of greater clarity, precision and certainty, and yet, at the same time, ensure necessary flexibility, we would recommend that regulations to the Criminal Code make express reference to CCAC=s guidelines for the care and use of animals in research. As formulated, the regulation would serve not as a means of setting research standards in the Criminal Code, but rather, merely as a means of assisting the interpretation of what constitutes criminal conduct in the context of research. This would be especially helpful in those provinces where reference to CCAC=s guidelines and policies have not been made explicit in a statutory instrument and for offences that do not include an express lawful excuse defence. Although there is ample support for the view that CCAC=s guidelines reflect a reasonable standard of care at common law, the regulation would ensure that these guidelines be brought to the attention of prosecutors and courts, and taken into consideration in their deliberations and decisions.

Once again, we believe such an insertion would lend greater clarity, precision and certainty to the new provisions and deter unfounded charges that are not within the purview of the Criminal Code nor consonant with the objective of the Bill.

Summary

In summary, therefore, CIHR and NSERC agree with the objectives Bill C-15, but believe that the Bill could be made more clear, more precise and more certain to better reflect the objective of the Bill and prevent unfortunate, inadvertent or unintended effects as a result of misinterpretation and misapplication. In our view, the recommendations we propose will help achieve this end.

Appendix A

Excerpts from the *Speech from the Throne to Open the First Session of the 37th Parliament of Canada*, January 30, 2001

Innovation

To secure our continued success in the 21st century, Canadians must be among the first to generate new knowledge and put it to use.

Our objective should be no less than to be recognized as one of the most innovative countries in the world. Achieving this will require a comprehensive approach and the support and participation of all governments, businesses, educational institutions, and individual Canadians.

We must strive for Canada to become one of the top five countries for research and development performance by 2010...

As its contribution, the Government will at least double the current federal investment in research and development by 2010. In making new investments, the Government will:

- *continue to pursue excellence in Canadian research by strengthening the research capacity of Canadian universities and government laboratories and institutions;*
- *accelerate Canada=s ability to commercialize research discoveries, turning them into new products and services; and*
- *pursue a global strategy for Canadian science and technology, supporting more collaborative international research at the frontiers of knowledge.*

New federal investments will include strategically targetted research that is co-ordinated with partners. These investments will directly benefit Canadians in areas such as health, water quality, the environment, natural resources management, and oceans research. Among its investments, the Government will increase support for the development of new technologies to assist Canadians with disabilities.

Appendix B

Excerpts from the *Address by Prime Minister Jean Chrétien in Reply to the Speech from the Throne*, January 31, 2001

Canada must have one of the most innovative economies in the world. A key element in getting there is to ensure that our research and development effort per capita is amongst the top five countries in the world.

To achieve this objective, the government has a five-part plan.

First, to at least double the current federal investment in research and development by the year 2010. The government over the course of its mandate will increase its investment in the Granting Councils. It will do more for Genome Canada and the Canadian Institutes of Health Research. And for research within government. This will make Canada to place to be for world-class researchers. It will strengthen our economy and our society.

Second, to build on what we have already done to make Canadian universities the place to be for research excellence. And a place where the best and the brightest want to come. The government will work with the university community to assist our universities so that they have the resources necessary to fully benefit from federally sponsored research activities.

Third, to accelerate Canada=s ability to commercialize research discoveries, and to turn them into new products and services.

Fourth, to pursue a global strategy for Canadian science and technology. Canada must be at the forefront of collaborative international research which expands the frontiers of knowledge.

Fifth, to work with the private sector to determine the best ways to make broad band internet access available to all communities in Canada by the year 2004.

But our research commitment as a country must not be that of the federal government alone. It must be a national endeavour. And today, I challenge the private sector and the provinces to devote more of their resources in the years ahead to making Canada one of the leaders in the world in research and development.