ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA
CRIMINAL AND CIVIL SECTION

POLICY REPORT
ON THE TREATMENT OF ANIMALS IN CANADIAN LAW

PRESENTED BY

THE WORKING GROUP ON
The Treatment of Animals in Canadian Law

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the ULCC and its delegates.

Winnipeg, Manitoba
August 17 – 21, 2026

Table of Contents

Working Group Membership and Meeting Report **4**

Background **5**

Criminal Working Group 5
Joint Working Group 6
Challenges to Advancing Uniform Law Reform 8

Application **9**

Consultations **9**

Analysis and Issues **10**

1 – Discussions and Recommendations: *Criminal Code* and *Youth Criminal Justice Act* **10**

A – Definition of "animal" 10

B – Animals as "property" and "victims" 12

C - Section 110(1)(a) and 110(2.1) (discretionary weapons prohibitions) 13

D - Section 447.1 (order of prohibition) 15

Wording of Subsection 447.1(1) 17
Enumerated offences in s. 447.1(1) 18
Conditions and Exceptions 21
Consistent Language 21
Other Considerations 22

E - Section 501 (police undertaking) 23

F - Section 529.3(2) (authority to enter a dwelling house without a warrant) 25

G - Section 718.03 (primary sentencing objectives for injuring or killing an animal) 29

H - Section 446(1)(b) – "Willful neglect" 31

I - Theft of a companion or service animal 34

J - Section 490 (detention) 36

K – *Youth Criminal Justice Act* definition of "violent offence" & release conditions 36

2 – Discussion and Recommendations: Animal Prohibition Orders **39**

A – Legislative Wording for Animal Prohibition Orders 41

B – Animal Prohibition Orders Independent of Charges or Conviction Under Provincial/Territorial Legislation 43
C – Enforcement of Provincial/Territorial Animal Prohibition Orders 47
D – Cross-Jurisdictional Enforcement of Provincial/Territorial Animal Prohibition Orders ... 49
UECJA Model 50
Family Law Model – Parenting Orders 52
Stand-Alone Act Model – Extra Provincial Enforcement of Custody Orders 52
Considerations 52
E – Animal Prohibition Order Registry 55
F – Variation of Animal Prohibition Orders 59
3 – Discussion and Recommendations: Seizure and Management (Care, detention, forfeiture and disposition) of Animals 60
A – Provincial/Territorial Legislation 61
B – Criminal Code 64
Discussion – New regime 68
Discussion –Amendments to existing provisions 72
Discussion – Ability to use provincial/territorial legislation for forfeiture when animals are seized under the *Criminal Code* ("off-ramp") 73
Options for Consideration for Model Provisions in Provincial/Territorial Legislation 76
1 – Animal prohibition orders independent of charges or conviction 76
A – Options for animal prohibition orders independent of charges or a conviction 76
2 – Cross-jurisdictional enforcement of animal prohibition orders 77
A – Options for cross-jurisdictional enforcement of animal prohibition orders 77
3 – Other recommendations of the Joint Working Group on the Treatment of Animals in Canadian Law 77
A – Recommendations for consideration by jurisdictions 78
Next Steps 79
Draft Resolution 79

Working Group Membership and Meeting Report

[1] Current members of the Joint Working Group:

- Nadine Nesbitt – Chair – AB Prosecutions
- Emma Lehrer – BC Prosecutions
- Adam Badari – AB Prosecutions
- Mandy MacLeod – AB Prosecutions
- Andrew Cappell – ON Prosecutions
- Tara Dobec – ON Prosecutions
- Melanie Webb – ON Canadian Bar Association
- Aleksander Godlewski – ON Justice Canada
- Julia Nicol – ON Justice Canada
- Clara Cerminara – AB Legal Services
- Amanda Mrazek – AB Legal Services
- Charlotte Adams – QC Barreau du Québec
- Christina Croteau – ON ULCC Legal Project and Research Coordinator
- Cydney Kane – NS Legal Services

[2] Past members of the Joint Working Group:

- Elisa Frank – AB Prosecutions
- Chelsea Evans-Rymes – AB Legal Services
- Andrew Synyshyn – MB Criminal Defence Lawyers' Association
- Angus Gibbon – NS Legal Services
- Andrew Davis – SK Prosecutions
- Caitlyn Kasper – ON Aboriginal Legal Services
- Karine Bolduc – ON Justice Canada

[3] Criminal Working Group Members:

- Nadine Nesbitt – Chair – AB Prosecutions
- Emma Lehrer – BC Prosecutions
- Adam Badari – AB Prosecutions
- Mandy MacLeod – AB Prosecutions
- Andrew Cappell – ON Prosecutions
- Tara Dobec – ON Prosecutions
- Melanie Webb – ON Canadian Bar Association
- Aleksander Godlewski – ON Justice Canada
- Julia Nicol – ON Justice Canada
- Nadia Farinelli – BC Prosecutions (until September 2023)
- Andrew Synyshyn - MB Criminal Defence Lawyers' Association (until November 2024)

- Andrew Davis – SK Prosecutions (until November 2024)
- Caitlyn Kasper – ON Aboriginal Legal Services (until December 2024)
- Karine Bolduc – ON Justice Canada (until April 2024)

Background

[4] At the August 2022 ULCC Annual Meeting, the Criminal Section Working Group on the Treatment of Animals in the *Criminal Code* (CWG) was created following passage of resolution ON2022-03:

> Create a ULCC Criminal Section Working Group to explore the treatment of animals in the Criminal Code of Canada, with a view to making recommendations for amendments.
>
> The Criminal Section will also bring the issue of the treatment of animals in the civil and criminal law contexts to the ACPDM for consideration of the establishment of a joint working group, which if established would subsume the Criminal Section working group noted above.

Criminal Working Group

[5] The CWG met regularly between October 2022 and June 2024, and discussed recommendations for criminal law reform made by the National Centre for the Prosecution of Animal Cruelty (NCPAC)[1] and the Montréal SPCA, and other possible amendments to the *Criminal Code* and *Youth Criminal Justice Act* (YCJA) including:

- Adding a definition of "animal" to the *Criminal Code*;
- Adding animals to the definition of "victim" in the *Criminal Code*;
- Removing animals from Part XI of the *Criminal Code*, which deals with "property";
- Adding violent offences against animals to the discretionary weapons prohibition provisions in s. 110 of the *Criminal Code*;
- Amending s. 447.1 (order of prohibition) of the *Criminal Code* to clarify the wording and expand the offences for which an animal prohibition order is available;
- Adding a prohibition on having the custody or control of animals as a possible condition on a police undertaking under s. 501 of the *Criminal Code*;
- Clarifying the ability to seize an animal from a dwelling house without a warrant in exigent circumstances to prevent bodily harm or death to the animal;
- Adding the violent abuse of animals to s. 718.03 of the *Criminal Code*, which requires denunciation and deterrence to be the primary sentencing consideration for killing or injuring a law enforcement, military or service animal;

[1] NCPAC is a program of Humane Canada comprised of a community of Crown prosecutors and allied professionals from across Canada who are working together in the service of the public interest to support the effective and efficient prosecution of animal welfare offences.

- Amending s. 446(1)(b) of the *Criminal Code* to clarify the *mens rea* required for this offence (wilful neglect);
- Adding a specific offence for the theft of a companion or service animal to the *Criminal Code.*
- Improving the process for detention and forfeiture of animals under s. 490 and s. 490.1 of the *Criminal Code*
- Adding harm to animals to the definition of "violent offence" in s. 2 of the *Youth Criminal Justice Act*; and
- Adding a prohibition on having custody or control of animals as a possible release condition under s. 29 of the *Youth Criminal Justice Act*;

[6] During discussions, the CWG identified several issues that would benefit from collaboration with the Civil Section. The CWG therefore chose not to finalize its report and recommendations until after discussions with members of the Civil Section as part of a Joint Working Group.

[7] In this Report, the CWG is recommending amendments, or the consideration of amendments, to the *Criminal Code* and the *Youth Criminal Justice Act* (YCJA) in the following areas:

- Discretionary weapons prohibitions (s. 110)
- Animal prohibition orders (s. 447.1)
- Police undertakings (s. 501)
- Definition of "violent offence" in the YCJA (s. 2)
- Release conditions in the YCJA (s. 29(1))
- Detention and forfeiture of animals (s. 490 and s. 490.1)

[8] The CWG has not made recommendations in this Report for *Criminal Code* amendments for the remaining issues that were discussed, but have provided the CWG's deliberations and suggestions that policy makers may want to consider.

Joint Working Group

[9] At the 2023 ULCC Annual Meeting, the CWG proposed the formation of a Joint Working Group that would review provincial animal welfare legislation to identify best practices, with a view to possible harmonization in a few key areas, including, but not limited to:

- Seizure, and post seizure management (care, detention, forfeiture and disposition), of animals;
- Powers of inspection and investigation, including search warrants, warrantless searches, production of documents, production of animals, and authorization for necropsy; and
- Prohibitions on possession, control or contact with animals (animal prohibition orders) that are accessible and enforceable across the country.

[10] Other identified issues for possible examination were:

- Animals as "property" in provincial/territorial legislation;
- The link between cruelty to animals and intimate partner violence and how it is addressed in provincial/territorial legislation;
- Licensing and regulating individuals, businesses and organizations who sell, or provide for adoption, cats, dogs and other companion animals;
- Mandatory microchipping for cats and dogs;
- Spay and neuter laws for cats and dogs;
- Mandatory reporting of suspected animal cruelty by veterinarians; and
- Definition of "distress," or a related concept, in provincial/territorial legislation.

[11] The creation of a Joint Working Group on the Treatment of Animals in Canadian Law (JWG) was approved at the 2023 ULCC Plenary Meeting.

[12] The JWG met regularly between December 2023 and April 2026.

[13] While the JWG wanted to discuss and make recommendations regarding all the issues that were identified, the JWG ultimately only had the time and capacity to make recommendations in this Report for draft model provisions for provincial/territorial animal welfare legislation regarding:

i. Obtaining animal prohibition orders independent of charges or a conviction, and
ii. Cross-jurisdictional enforcement of animal prohibition orders.

[14] The JWG also makes recommendations in this Report for jurisdictions to *consider*, but does not recommend specific legislative change or draft model provisions. These include recommendations with respect to:

- Animal prohibition orders, including;
  i. Wording of animal prohibition orders,
  ii. Enforcement of animal prohibition orders,
  iii. Interim animal prohibition orders, and
  iv. Offence for breaching animal prohibition orders.

- Seizure and management (care, detention, forfeiture and disposition) of animals, including;
  i. The ability to seize animals to prevent distress, and
  ii. The ability to forfeit animals to prevent distress.

[15] The JWG also proposes non-legislative recommendations in this Report regarding:

- Education and collaboration to encourage and facilitate the use of provincial/territorial legislation to seize and forfeit animals,
- Consideration of a national animal prohibition order registry, and

- Enhanced use of the Canadian Police Information Centre (CPIC) for recording animal prohibition orders.

[16] Not all recommendations of the CWG and JWG are unanimous. Given the nature of the joint working group, not all members of the group were present for all discussions which led to the Report and some members may have provided input on some areas and not others. Officials from the federal Department of Justice have not intended to provide input on areas of purely provincial responsibility discussed in the report.

[17] Views expressed by members of the CWG and JWG are not necessarily those of the constituent jurisdiction that appointed them to the working groups.

Challenges to Advancing Uniform Law Reform

[18] The JWG encountered challenges with assessing provincial/territorial animal welfare legislation for possible uniform law reform. Although these laws share the same general purpose of protecting animals, and contain many similar provisions, they also differ significantly across jurisdictions. Key differences include:

- Who is authorized to enforce the laws (e.g. animal protection officers, bylaw officers, peace officers, police officers), and what powers they may exercise under both the *Criminal Code* and provincial/territorial statutes;
- The mix of public and private enforcement, as some officers are employed by government while others are employed by not-for-profit animal protection agencies, leading to inconsistent and overlapping responsibilities;[2]
- Variation in the legal frameworks governing enforcement powers and procedures. Each province and territory has its own statute: some incorporate *Criminal Code* provisions for powers such as arrest and search and seizure (e.g. Alberta), while others rely on specific provincial/territorial legislation setting out these powers (e.g. British Columbia); and,
- Differences in the use of administrative processes, with some provincial legislation incorporating a comprehensive administrative scheme that includes Boards or Directors as ultimate decision makers, while other legislation utilizes the courts as the ultimate decision maker.

[19] Terminology is also inconsistent between statutes, which further complicates recommending uniform law reform. For example, different terms are used when an animal is taken from its owner depending on the reason the animal was taken, the authority/power relied on to take the animal (e.g an investigative power or an inspection power), and whether the animal is taken temporarily or permanently.

[2] For discussion of this issue see Coulter, Kendra. 2022. The Organization of Animal Protection Investigations and the Animal Harm Spectrum: Canadian Data, International Lessons. Social Sciences 11: 22. https://doi.org/10.3390/socsci11010022.

[20] There is also a myriad of provincial, territorial and federal laws relating to animals (e.g. those governing agricultural use, medical testing, and management of wildlife).

[21] In Canada, the distribution of legislative powers is divided between the federal government and provincial governments. The *Constitution Act, 1867* provides the federal government power to make laws with respect to the national interest, including criminal law and procedure. It provides the provinces power to make laws with respect to property, and all matters of merely local or private nature in the province. As a result, provisions that address the protection of animals can be found in both the *Criminal Code* and in provincial/territorial legislation.

[22] This wide array of legislation, the fact that some legislation is federal and some is provincial/territorial, as well as the fact that these statutes may have different purposes and associated characteristics, contributed to the challenge of recommending uniform law reform.

[23] The JWG is not alone in recognizing the challenges associated with this legislative landscape. Animal welfare advocates, academics and professional associations have all noted that the laws governing the treatment of animals in Canada would benefit from a harmonized approach.[3]

[24] It has also been noted that this myriad of laws can be confusing to the public and results in an inconsistent approach to animal protection across the country.[4]

[25] While the JWG recognized there are many different laws governing the treatment of animals in Canada that could be reviewed, it focused its efforts on provincial/territorial animal welfare legislation and the *Criminal Code*.

Application

[26] This report contemplates changes to animal welfare legislation in all provinces and territories including Québec, and to the *Criminal Code*.

Consultations

[27] In February 2025, the JWG consulted with government lawyers from Prince Edward Island and Ontario about the administrative process in their provincial animal welfare legislation, and with animal protection officers from Quebec, Ontario, Saskatchewan, Alberta, British Columbia and the Yukon about their experience with both the *Criminal Code* and provincial/territorial animal welfare legislation.

---

[3] Fraser D, Koralesky KE, Urton G, *Toward a harmonized approach to animal welfare law in Canada*. Can Vet J. 2018 Mar;59(3):293-302; Eugénie Duval (2021), *A Summary of the changes in Canadian Federal and Provincial/Territorial Animal Protection Laws since the Publication of Fraser et al., (2018)*; Canadian Veterinary Medical Association, Animal Welfare Committee; Humane Canada, Toward a Humane Justice System for Animals - Indicators of a Humane Canada: The Legal Keystone

[4] Fraser, *supra* note 3 at p. 293.

[28] The consultations with government lawyers and animal protection officers focused on:

- The ability of animal protection officers in some jurisdictions to make orders without the involvement of the courts;
- Challenges related to the seizure and management (care, detention, forfeiture and disposition) of animals;
- Investigation and inspection powers; and
- Animal prohibition orders.

Analysis and Issues

Definitions

[29] The definitions for terms used in this report are as follows:

- **animal abuse** includes harm suffered both as a result of violent conduct or neglect.

- **animal prohibition order** means a court order, prohibiting, limiting or placing conditions on a person from owning, having custody, care or control of or residing with animals.

- **animal protection officer** means a person authorized to act under provincial/territorial animal welfare legislation who is not a police officer.

- **court** means a provincial, territorial or superior court and includes a judge or justice of a court.

- **disposed** means sold, given away or humanely euthanized.

- **forfeiture** means the extinguishment of ownership, custody and control of an animal.

- **seizure** means the taking of an animal by authorities for any purpose that is authorized by the applicable legislation.

1 – Discussions and Recommendations: *Criminal Code* and *Youth Criminal Justice Act*

A – Definition of "animal"

RECOMMENDATION

[30] **The CWG does not make a recommendation regarding a definition of "animal" in the *Criminal Code*.**

[31] However, the CWG recommends that policy makers review the use of the word "animal" in the *Criminal Code* and consider possible amendments for the purpose of consistency.

DISCUSSION

[32] The *Criminal Code* does not define the word "animal"[5] and the term is used in different ways throughout the *Code*. For example:

- S. 445 (injuring or endangering animals) refers to "dogs, birds or animals,"
- S. 445.1 (causing unnecessary suffering) refers to "an animal or a bird,"
- S. 446 (causing damage or injury) refers to "animals or birds,"
- S. 445.01 (killing or injuring certain animals) defines a "law enforcement animal" as a "dog" or "horse," but a "military animal" and "service animal" are defined only as an "animal,"
- S. 447 (an arena for animal fighting) only refers to "animal" fighting,
- S. 447.1 (animal prohibition orders) refers to "an animal or a bird," and
- S. 160(7) (the definition of bestiality) refers only to an "animal."

[33] Members of the CWG raised concerns that the absence of a definition, combined with differing uses of the terminology throughout the *Criminal Code*, could lead to unintended and uneven application of the law and to unnecessary litigation. It was also noted that, in biological terms, birds are clearly animals, making it unclear why "bird" is expressly included in some provisions but omitted in others.

[34] The CWG reviewed provincial/territorial animal welfare legislation for a definition of "animal" and did not find a consistent definition. Some animal welfare statutes do not have a definition. Some have a broad definition that includes all animals except human beings. Some define animals as non-human living beings with a developed nervous system, or a non-human vertebrate. Some do not define "animal" but define different "types" of animals such as "wildlife," "companion animal" and "farm animal." Some define both "animal" and define different types of animals.

[35] Members of the CWG also reviewed the history and discussion surrounding previous bills aimed at amending the *Criminal Code*, and the definition of "animal."

[36] In 2001, concerns were raised regarding the proposed definition of "animal" in Bill C-15B, which included the words "any other animal that has the capacity to feel pain." It was suggested that the definition of "animal" and other proposed amendments would broaden the application of the animal cruelty provisions and negatively impact industry and Indigenous practices.

[37] Bill C-15B was reintroduced as Bill C-10B in 2002, and the definition of animal was amended to "a vertebrate, other than a human being." This proposed definition was also put

[5] There is a definition of "cattle" in s. 2 and "cetacean" in s. 445.2.

forward in Bill C-22 in 2004 and Bill C-50 in 2005, all three bills died on the Order Paper following dissolution of Parliament and have not been reintroduced.

[38] The CWG discussed whether to propose a definition of "animal" in the *Criminal Code.* Some members took the view that a statutory definition of "animal" is unnecessary and, depending on the definition, could complicate prosecutions by requiring expert evidence to establish that a particular being falls within the definition. None of the members were aware of any case in which the absence of a definition in the *Criminal Code* had created barriers or difficulties in prosecuting an offence. The CWG concluded that the term "animal" provides a sufficient working definition for the purposes of the *Criminal Code*.

[39] The CWG ultimately did not make a recommendation regarding the addition of a definition of "animal" to the *Criminal Code*. However, the CWG recommends that policy makers consider amendments to provide more consistent language.

B – Animals as "property" and "victims"

RECOMMENDATION

[40] **The CWG does not make a recommendation regarding animals as "property" or as "victims."**

DISCUSSION

[41] The CWG discussed the complex issue of animals being considered "property" in Canadian law, particularly under the *Criminal Code*.

[42] The CWG acknowledged that this categorization may no longer be appropriate: society may be moving away from the concept of animals as "property" and there is increasing public sentiment that animals should not be classified as "property."[6]

[43] The CWG also noted that removing animals from the property section of the *Criminal Code* was considered by Justice Canada in a consultation paper in 1998,[7] and that proposed amendments to remove animals from the property section were advanced in the early 2000s through Bills C-17, C-15B, C-10B, C-22 and C-50,[8] but were ultimately not adopted by Parliament.

[44] The CWG agreed that animals are treated as "special" property in the criminal law context and that removing animals from the "property" section of the *Criminal Code* would not necessarily have an impact on prosecutions for offences involving animals.

---

[6] For example, see the discussion re animals as property in family law: Holly Lake, "In the animal's best interest", *CBA National Magazine* (21 February 2024), https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2024/in-the-animal-s-best-interest.

[7] Department of Justice Canada. *Crimes Against Animals: A Consultation Paper*, 1998.

[8] Robin MacKay, Legislative Summary of Bill C-50: An Act to Amend the Criminal Code in Respect of Cruelty to Animals, Publication No LS-509E, 18 August 2005 (Ottawa: Library of Parliament).

[45] The CWG considered that while societal discussions about animals as "property" are important and will likely continue, the issue is a complex one that would require extensive discussion and research.

[46] The CWG concluded it did not have the capacity, nor the need, to make recommendations about animals as "property" in the *Criminal Code*.

[47] The CWG had a brief discussion about whether animals should be added to the definition of "victim" in the *Criminal Code*.

[48] The CWG noted that the word victim in the *Criminal Code* is currently defined in reference to persons and considered whether there should be reflection/study on a philosophical level as to how adding animals to the definition of victim could be effected. For example, could the definition of persons be broadened to encompass animals? Could animals be added as a category of victims distinct from persons? Or could they be considered as a unique category, while not victims, more than mere property?

[49] The CWG recognized that animals are "special" property, and that as sentient beings they can suffer and be the "victims" of certain offences, including animal cruelty offences,[9] and may be harmed as a way of harming or controlling a person in the context of intimate partner violence. However, the CWG noted that there are many sections in the *Criminal Code* where the word "victim" is used that would not apply to animals.

[50] The CWG concluded that adding animals to the definition of "victim" in the *Criminal Code* would cause unintended consequences for some of the sections where the word "victim" is used in the *Criminal Code*.

[51] The CWG concluded that issues regarding protection of animals as sentient beings who can suffer harm may be more appropriately addressed through other *Criminal Code* amendments.

C - Section 110(1)(a) and 110(2.1) (discretionary weapons prohibitions)

RECOMMENDATION

[52] **The CWG recommends that s. 110(1)(a) be amended to enable the imposition of discretionary prohibition orders in cases of violent offences against animals.**

[53] **The CWG recommends that s. 110(2.1) be amended to recognize that violence and violent threats to animals can be a component of intimate partner and domestic violence and to extend the possible duration of an order up to life in intimate partner and domestic violence situations.**

[9] *R v Chen*, 2021 ABCA 382 at para 24.

DISCUSSION

[54] Section 110(1) of the *Criminal Code* allows a court, when it is desirable in the interest of public safety to do so, to prohibit a person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, firearm part, ammunition, prohibited ammunition or explosive substance for up to 10 years (subject to the exception for intimate partner violence and domestic violence cases) when the person is convicted or discharged of an offence involving the use, threat, or attempt of violence against a person, or an offence that involves, or the subject-matter of which is, one of the items listed above.

[55] A weapons prohibition order cannot be imposed on a person who is convicted or discharged of a violent offence against an animal under paragraph 110(1)(a) of the *Criminal Code*, unless the offence involves one of the items listed in paragraph 110(1)(b).

[56] In the view of some CWG members, this appears to be an oversight in the law, as it would allow a court discretion to impose a weapons prohibition for an offender who commits a minor assault against a person, but not for an offender who violently kills an animal by means other than a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, firearm part, ammunition, prohibited ammunition or explosive substance. This is a particularly concerning gap to some CWG members because of the well-known link between violence towards animals and violence towards humans, especially in the context of domestic and intimate partner violence.[10]

[57] The protection of women and children has been a cornerstone of legislative reforms for many decades. These reforms have included restrictions on access to firearms and other weapons.

[58] Given the link between violence against humans and animal abuse, expanding the court's ability to make a discretionary weapons prohibition when a person is convicted of a violent offence against an animal would further important legislative reforms, and assist in protecting both animals and people.

[59] The CWG considered several cases and a hypothetical that highlight where a discretionary weapons prohibition may be appropriate, but would not be available under the current law:

- *R v Zeller,* 1998 ABPC 19, where the offender was convicted of killing the family puppy, provides an example of how an offender may hurt an animal to exert control over an intimate partner, without ever touching the human victim. The Court found killing the puppy was an act of domestic violence and held at para 12:

> The aggravating factors in this case are that the offenses (*sic*) took place in the context of a domestic dispute which escalated into domestic violence, a recurring theme of offences before this Court. I recognize that there was no physical assault upon the accused's spouse in this case, but the damage to

[10] Humane Canada - Canadian Violence Link Coalition; Department of Justice Canada. *Crimes Against Animals: A Consultation Paper*, 1998 at p.2.

> the property and the killing of the pup were both extreme acts of violence indirectly perpetrated against her during the course of a domestic dispute. They were abusive acts directed at his spouse. The accused's motive in killing the dog as he did was not justified by anything the puppy had done to deserve such a fate. It was his wife he wished to hurt through his violent actions, and his show of physical force could only serve to terrify her, as evidenced by the fact she fled the matrimonial home. To cruelly take the life of the puppy before her eyes as he did was an extreme act of selfish violence, without regard to the helplessness of the puppy, or the impact such violence would have upon his wife at the time.

- *R v Chen,* 2021 ABCA 382, where the offender pled guilty to severely beating his 10-month-old puppy over the course of at least 20 minutes. The puppy suffered a broken foot, fractured teeth, blood in his urine and bruising. Despite the Alberta Court of Appeal's strong statement that this was a crime of violence, the court could not make use of s. 110 of the *Criminal Code* to impose a weapons prohibition.

- A reasonable hypothetical where an offender is brutally beating a cat to death in full view of anyone walking down the street. A bystander attempts to intervene and is pushed away by the offender. While the bystander suffers no injury and was only touched by the offender momentarily, this would constitute an assault. The brutal killing of the cat is a much more serious offence. However, in this scenario, the assault on the person would be eligible for a weapons prohibition, while the killing of the cat would not.

[60] The CWG concluded there is a strong societal interest in ensuring that individuals who commit violence against animals may be prohibited from having access to firearms and the other items listed in s. 110(1)(b) in appropriate cases.

[61] The CWG noted that a weapons prohibition order under s. 110 is discretionary, which would provide judges the ability to impose an order when appropriate.

[62] The CWG agreed that violence against animals should be added to both s. 110(1)(a) and s. 110(2.1), to both allow a discretionary prohibition order to be imposed, and to extend the duration of an order up to life in intimate partner and domestic violence situations.

[63] Other legislative amendments that achieve the same goal could also be considered.

D - Section 447.1 (order of prohibition)

RECOMMENDATIONS

[64] **The CWG recommends that s. 447.1(1) be examined to see if it would benefit from increased clarity as to whether a prohibition order can be imposed in the event of a discharge.**

[65] **The CWG recommends that s. 447.1 should continue to refer to the enumerated offences and language recognizing other offences involving animals should be added to the section.**

[66] **The CWG recommends that the minimum 5-year duration for prohibition orders for a second or subsequent offence should only apply to the current enumerated offences in the section.**

[67] **The JWG recommends that an amendment to s. 447.1 should be considered to ensure that an animal prohibition order can be appropriately tailored to the circumstances of the offence and the offender, allowing judges flexibility when necessary.**

DISCUSSION

[68] Section 447.1 allows a court to make an animal prohibition order in addition to any other sentence it may impose under an enumerated animal cruelty offence.

[69] Animal prohibition orders can be powerful tools in the prevention of future offences and the protection of animals.[11]

[70] The current wording of s. 447.1(1)(a) is:

> S. 447.1(1) The court may, in addition to any other sentence that it may impose under subsection 444(2), 445(2), 445.1(2), 446(2) or 447(2),
>
> > (a) make an order prohibiting the accused from owning, having the custody or control of or residing in the same premises as an animal or a bird during any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of five years.

[71] Four issues were identified regarding the wording of s. 447.1:

- Members of the working group noted it may be unclear if the wording in s. 447.1(1) precludes the making of an animal prohibition order if a person receives a discharge[12] or is found not criminally responsible on account of mental disorder (NCRMD);

- The enumerated offences in section 447.1 do not adequately reflect all situations where an animal prohibition order could be appropriate;

---

[11] *R v Chen*, 2021 ABCA 382 at para 24; *R v Josan,* 2025 SKKB 108 at para 78.

[12] The use of the word "sentence" in s. 490.012 in relation to the imposition of a *Sex Offender Information Registry Act* (SOIRA) order has resulted in some uncertainty about the meaning of the word "sentence" and its application when a person receives a discharge. See *R. v. Henry,* 2019 ONSC 4978; *R v Jayswal*, 2011 ONCJ 33 at para 18; *R v Bansil*, 2020 BCPC 34 at para 16; *R v DD*, 2024 ABCJ 98 at paras 75 – 107; c*ontra R c K(D)*, 2009 QCCA 987 at para 41. However, the caselaw regarding SOIRA also relies on an examination of the word "conviction" in relation to the entire SOIRA scheme.

- The wording of s. 447.1(1)(a) may cause uncertainty about the ability to have exceptions or conditions in an animal prohibition order, such as an ability to only prohibit the person from having a certain type or number of animals, or allowing a person to keep a specific animal; and

- Possible benefits that could be derived from consistent or similar wording between animal prohibition orders made under the C*riminal Code* and those made under provincial/territorial legislation.

Wording of Subsection 447.1(1)

[72] The CWG discussed whether the wording in subsection 447.1(1) should be amended to address any ambiguity about whether an animal prohibition order can be made when a person receives a discharge.

[73] The CWG also discussed whether the subsection should be amended to specifically allow an order to be made when a person is found NCRMD.

[74] The CWG noted that other provisions in the *Criminal Code* regarding ancillary orders use more explicit language to indicate whether they are available when a person is discharged or found NCRMD.[13]

[75] The CWG agreed that an animal prohibition order should be available in cases where a person receives a discharge. While many cases of animal abuse are very serious and result in significant sentences, the sentencing range remains broad and a person may receive a discharge even in cases where they pose a danger to animals.

[76] It is not unusual for the primary focus on sentencing in "lower level" cases to be on ensuring that the offender no longer has access to animals. In some cases, it may be entirely appropriate to have both a discharge and a lengthy animal prohibition order. An animal prohibition order may be the best way to demonstrate restraint and promote a sense of responsibility in the offender, both cornerstone principles of sentencing.

[77] The CWG recommends that s. 447.1(1) should be examined to see if it would be beneficial to increase clarity as to whether it can be imposed in the event of a discharge.

[78] The CWG further discussed whether specific wording should be added to s. 447.1(1) allowing an animal prohibition order to be made when a person is found NCRMD.

[79] It was noted that if an animal prohibition order is part of a sentence or considered punishment, it cannot be ordered when a person is found NCRMD.

[80] Some members of the CWG thought that the Review Board established under the NCRMD provisions could likely impose an animal prohibition, as the Review Board may impose

[13] See sections 109, 110, 161, 737, and 737.1 for examples of a specific reference to a discharge, and sections 487.051(3) and 490.012(3) for examples of a specific reference to NCRMD.

conditions to make the community safe and to allow for rehabilitation and reintegration. Others suggested that the Review Board may not consider animals when they are considering the safety of the "community."

[81] Some members of the CWG thought that even if the Review Board does have an ability to impose an animal restriction condition, that should not preclude a court from imposing an order.

[82] Some members of the CWG noted that in some cases involving mental illness, once the mental illness is under control, having an animal may be beneficial in keeping the person stable and the Review Board should not be limited in allowing what might be an appropriate support.

[83] It was noted by some members that the *Criminal Code* allows a court to impose DNA and SOIRA orders when there is a finding of NCRMD. However, other members of the CWG cautioned that SOIRA and DNA are not appropriate examples because they have an investigative purpose and have been held to not constitute punishment within the meaning of s. 11 of the *Charter*.[14]

[84] The CWG concluded that a specific reference to a finding of NCRMD, even if possible, is likely not needed in s. 447.1 as the Review Board would likely be able to impose an animal prohibition in an NCRMD case in appropriate circumstances.

[85] The CWG does not to make a recommendation regarding the availability of a s. 447.1 animal prohibition order when a person is found NCRMD.

Enumerated offences in s. 447.1(1)

[86] The CWG considered whether there are offences other than the enumerated animal cruelty offences (445(2), 445.1(2), 446(2), 447(2)) where an animal prohibition order under s. 447.1 should be available.

[87] The CWG considered several other offences where an animal could be used in the commission the offence, or to facilitate the commission of the offence, and where an animal prohibition order after a conviction could be appropriate.

[88] For example, the CWG considered the following offences and reasonable hypotheticals where an animal prohibition order could be appropriate, but for which such orders are currently unavailable:

- Extortion (s. 346): an offender who threatens to harm or kill an animal in order to get a person to do something.

[14] *R v Rodgers*, 2006 SCC 15 at para 64; *R v Cross*, 2006 NSCA 30 at para 84.

- Uttering Threats (s. 264.1(2)): an offender threatening to kill the dog of their spouse/intimate parter.

- Child Luring (s. 172.1): an offender who entices a child to meet and participate in sexual activity by sending messages and pictures of a dog and promising the child they can play with the dog when they meet.

- Making Sexually Explicit Material Available to a Child (s. 171.1): an offender who transmits sexually explicit material including bestiality images to a child in order to groom that child and facilitate the sexual abuse of that child.

- Assault with a Weapon (s. 267(a)): an offender commanding a dog to attack another person.

- Criminal Negligence Causing Bodily Harm or Death (s. 220, s. 221): an offender who is negligent in protecting another person from their dangerous animal.

- Theft (s. 334): an offender who steals a family pet from a former intimate partner or an individual that steals valuable puppies from a breeder and then sells them for profit.

[89] The majority of the CWG felt it would be beneficial for an animal prohibition order to be available in most, if not all, of these types of situations.

[90] It was noted that many of the examples involve the abuse of children or an intimate partner. Both are classes of victims that are especially vulnerable, and animals should not be used to contribute to their abuse. Preventing the offender from having access to an animal in the future would not only protect animals but also human victims.

[91] The CWG also noted that offences related to cetaceans (s. 445.2) and the killing or injuring of a law enforcement, military or service animal (s. 445.01) have been added to the *Criminal Code* but have not been added to s. 447.1.

[92] In addition, Bill C-16, the *Protecting Victims Act*, recognizes that animals are used to victimize humans by proposing an addition of threatening an animal to the criminal harassment offence (s. 264(2(d)), and including threatening an animal as an example of a new coercive or controlling conduct offence (s. 264.01(2)(a)(iv)).

[93] The Bill also proposes to criminalize the distribution of visual representations of bestiality (s. 160(3.1)) and confirms that visual representations of bestiality are "sexually explicit material" for the purpose of the making sexually explicit material available to a child offence (s. 171.1(6)).

[94] When considering the various ways an animal can be used in the commission of the offence, or to facilitate the commission of the offence, the CWG concluded that while the enumerated offences in s. 447.1 may have logically been limited to animal cruelty offences

when s. 447.1 was first enacted, there are sound policy reasons for enabling the imposition of animal prohibition orders for additional offences.

[95] The CWG considered whether additional enumerated offences should be added to s. 447.1 or whether the wording of the section should be broadened to offences "relating to an animal."

[96] The CWG concluded that adding enumerated offences would likely not be the best option as it is difficult to imagine every type of fact scenario where an animal might be used in an offence and where an animal prohibition order would be appropriate.

[97] The CWG considered different general wording that could be used such as "when an animal is used in the offence" or "when an animal is the subject matter of the offence" or "in respect of an offence under section… ."

[98] The CWG reviewed the use of the words "in respect of" in s. 276 and "involving" in the definition of personal injury offence.

[99] The CWG noted that the intended purpose of an amendment to s. 447.1 would be to ensure that in addition to protecting animals when an animal was the subject of the offence, prohibition orders should also be available when an animal is used to victimize a person, for example, by threatening to harm the animal, when the animal is used to facilitate an offence (e.g. in child luring), or when the animal is used as a weapon.

[100] The CWG considered whether broad wording instead of a list of enumerated offences could lead to an animal prohibition order being made when such an order would not be necessary or appropriate. However, given such orders are discretionary, a trial judge is well placed to consider whether an animal prohibition order would be appropriate in a particular case.

[101] The CWG recommends that s. 447.1 should continue to refer to the enumerated offences and language recognizing other offences involving animals should be added to the section.

[102] The CWG also considered what impact the broadening of offences would have on the minimum 5-year duration for an animal prohibition order for a second or subsequent offence.

[103] The CWG agreed that a minimum duration is appropriate for a second enumerated animal cruelty offence, but may not be for other offences. There could also be confusion about what a second or subsequent offence is, if it is not clear from the offence itself that it involved an animal. Members of the CWG were also concerned about the possibility that the minimum duration could dissuade judges from making an order at all.

[104] The CWG recommends that the minimum 5-year duration for prohibition orders for a second or subsequent offence should only apply to the current enumerated offences in the section.

Conditions and Exceptions

[105] The JWG noted there is some unclear caselaw from lower courts about whether an animal prohibition order under s. 447.1 of the *Criminal Code* must be "all or nothing."[15] Or, in other words, whether an animal prohibition order has to apply to all animals or cannot be made.

[106] In *R v O'Donnell,* the prosecutor took the position that s. 447.1 is "all or nothing" in that it does not afford the court jurisdiction to make any exceptions or conditions, because other sections in the *Criminal Code* expressly refer to exceptions or conditions for orders and s. 447.1 does not.

[107] The judge expressed some scepticism about this position, however chose to proceed without having full argument on the issue and proceeded on the basis that the order is "all or nothing."[16] The judge then decided not to make an order.

[108] In *R. v Trithart*, the judge followed the "all or nothing" approach from *O'Donnell* noting that the section, "on its face only contemplates a complete ban of all animals and birds for a period of time. It doesn't expressly provide any authority for the court to impose any other terms."[17]

[109] The JWG agreed that s. 447.1 should not require an animal prohibition order to be "all or nothing." It should be possible for a judge to tailor an animal prohibition order to the circumstances of the offence and the offender by allowing conditions and exceptions.

[110] The JWG recommends that an amendment to s. 447.1 should be considered to ensure that an animal prohibition order can be appropriately tailored to the circumstances of the offence and the offender, allowing judges flexibility when necessary.

Consistent Language

[111] The JWG discussed the benefits of having consistent language used in animal prohibition orders imposed under provincial/territorial legislation and the *Criminal Code.* Some members of the group noted: i) consistent language would make it easier to apply caselaw from other jurisdictions and build a body of caselaw; ii) wording that clearly allows for conditions and exceptions would provide greater clarity and potentially greater protection for animals; and iii) clearer wording would reduce the need for trials for breach offences where the only issue is the meaning of words contained in the animal prohibition order.

---

[15] *R v O'Donnell*, 2023 CarswellOnt 7542, [2023] O.J. No. 2159; *R v Trithart*, 2023 ABCJ 197 .
[16] *R v. O'Donnell* at paras 39 – 41.
[17] R v *Trithart,* at para 64.

[112] Some members of the group raised concerns about whether having the same language in the *Criminal Code* and provincial/territorial legislation could create issues given the different purposes of federal criminal legislation and provincial animal welfare legislation under the constitution.

[113] Other members felt that where provincial/territorial legislation works alongside, or in addition to, criminal law, consistent wording is helpful for enforcement and to reduce confusion. Examples are contained in provincial/territorial legislation that address child pornography (now child sexual abuse and exploitation material), intimate images and intimate partner violence.

[114] The members that identified the potential benefits of having consistent enabling language for *Criminal Code* and provincial/territorial animal prohibition orders, taking into account the other issues discussed regarding the wording of s. 447.1, suggested that wording as set out below could provide a useful example for policy makers:

> 447.1 (1) When a person is convicted, or discharged under section 730, of an offence under subsection 445(2), 445.1(2), 446(2) or 447(2), or another offence involving an animal, the court
>
> a) may make, subject to the conditions or exemptions that the court directs, an order prohibiting the person from any or all of the following: owning, having custody, care, or control of, or residing in the same premises as
>
> i. any animal,
>
> ii. a specified animal, or
>
> iii. a specified number or type of animal
>
> for any period the court considers appropriate, including for life.

[115] It was suggested the minimum duration of five years for an animal prohibition order in the case of a second or subsequent offence under subsection 445(2), 445.1(2), 446(2) or 447(2), could be included in another subsection.

[116] Other members of the JWG did not support a recommendation to have harmonized wording between the *Criminal Code* and provincial/territorial legislation, or a suggestion for possible wording in the *Criminal Code*.

[117] The JWG does not make a recommendation regarding wording for any possible amendments to s. 447.1.

Other Considerations

[118] The JWG also discussed whether there would be value to requiring a court to consider an animal prohibition order after a conviction, or requiring the court to provide reasons for not making an animal prohibition order, or for imposing or not imposing certain conditions.

[119] The prevailing opinion was that requiring the court to consider an animal prohibition order would not make a difference to what already occurs, as prosecutors usually raise the possibility of an animal prohibition order.

[120] There was more support for the idea of requiring the court to provide reasons for not making an order or imposing, or not imposing, certain conditions. It was noted there is precedent for providing reasons in other parts of the *Criminal Code*.

[121] The JWG does not make a recommendation about requiring a court to provide reasons.

E - Section 501 (police undertaking)

RECOMMENDATION

[122] **A majority of the CWG recommends that s. 501(3) should be amended to allow a police undertaking to contain a condition prohibiting an accused from having contact with animals**.

DISCUSSION

[123] When a person is charged with an offence in relation to animals under the *Criminal Code* and held for a bail hearing, prosecutors often seek to obtain a release order under s. 515 with conditions that prohibit contact with animals. The intention is to protect both the animals that are the subject of the offence, and may have been seized, and, where necessary, any other animals that could be the subject of a repeated offence. Some members of the CWG noted that these are similar to no contact conditions for humans to protect both the victim of the offence and to prevent an offence being committed against another person.

[124] A prohibition against communicating with "any victim, witness or other person identified in the undertaking" or going to places related to "any victim, witness or other person identified in the undertaking" can be part of a police release on an undertaking, pursuant to s. 501 of the *Criminal Code*. However, "no contact" conditions are not available as part of a police undertaking in respect of animals because they are neither a "victim" under the *Criminal Code* nor a person.

[125] In order to obtain a "no contact" condition for animals, police are required to detain the accused for a bail hearing so that a justice can impose the condition on a release order under s. 515 of the *Criminal Code*.

[126] Some prosecutors and police have identified this as an issue calling for reform in the *Criminal Code*. In many cases where a person is charged with an offence in relation to an animal, police and prosecutors believe the accused should be released on conditions, with the main condition sought usually being a prohibition on contact with animals.

[127] Sometimes authorities want to seek a prohibition on contact with only the animal(s) that are the subject of the charge, while other times they seek a prohibition on contact with

all animals to prevent the commission of another offence against animals.

[128] Some prosecutors, defence counsel and police have suggested that requiring an accused person's detention for the purpose of a bail hearing, when both police and prosecutors believe the accused should be released on conditions, is unfair to the accused and an unnecessary use of judicial resources.

[129] A majority of the members of the CWG felt that measures that facilitate the release of accused persons by police officers, instead of requiring them to be detained for the purpose of a bail hearing, would be beneficial.

[130] At the ULCC Annual Meeting in August 2023, Alberta resolution 2023-03 was carried (20 in favour - 4 opposed - 2 abstentions):

> Subsection 501(3) of the *Criminal Code* should be amended to allow an undertaking given to a peace officer to contain an optional condition to abstain from having custody or control of a specified animal or bird, or class of animals or birds, where such a condition is reasonable and necessary in the circumstances and connected to the offence.

[131] Some members of the CWG were concerned that a condition on a police undertaking that would prohibit contact with all animals is broader than the no contact condition for people, which is limited to people identified in the undertaking.

[132] Other members of the CWG noted that "other person" is arguably quite broad and could arguably include a long list or class of persons, such as children.[18]

[133] In addition, some members noted that the condition in paragraph 501(3)(e), prohibiting a person from going to "any place" or "any geographic location" "related" to any person referred to in paragraph 501(3)(d), is quite a broad condition.

[134] Some members of the CWG felt that even if a no contact condition with animals is arguably broader than a no contact condition with people, this could be justified based on the increased vulnerability of animals due to their inability to speak and report abuse, the fact that the abuse of animals often happens where others cannot see it, and the unrestrained ability of people to obtain animals.

[135] Some members expressed concerns that the power of a police officer to impose a condition under subsection 501(3) is entirely discretionary and not subject to judicial oversight, and that the breach of such a condition may result in a new criminal offence and up to two years less day of imprisonment upon conviction.

[136] Other members noted that an accused does not have to accept the conditions on an undertaking, and if they do not accept the conditions they will be brought to a justice for a bail hearing. In addition, conditions on a police undertaking can be varied or replaced by a

[18] See *R v Campbell*, 2022 ABKB 663 at paras 99 – 100 and 104.

justice under s. 502 of the *Criminal Code*.

[137] A majority of members of the CWG concluded that police should be able to release an accused person on an undertaking with a condition prohibiting contact with some animals or all animals.

[138] The majority discussed how the goal of allowing a prohibition on contact with animals to be part of a police undertaking could be achieved.

[139] The majority noted that the language at the beginning of s. 501(3) provides that a condition can only be imposed if it is "reasonable in the circumstances of the offence" and "necessary to prevent the continuation or repetition of the offence or the commission of another offence." The majority of the CWG thought this introduction in s. 501(3) would limit the imposition of the condition to cases where it is reasonable and necessary.

[140] The majority considered whether "animal" could be added to paragraph 501(3)(k), or whether a new paragraph should be added. The majority concluded that adding an additional condition prohibiting contact with animals to the list in s. 501(3) would be clearer. The condition could prohibit a person from possessing, having the custody, care or control of, or residing in the same premises as an animal.

[141] A majority of CWG members recommends that s. 501(3) should be amended to allow a police undertaking to contain a condition prohibiting an accused from having contact with animals.

[142] However, some members felt that given the pre-trial context, and the fact that such a condition would be imposed by a police officer rather than a court, further study is needed before recommending such a change

F - Section 529.3(2) (authority to enter a dwelling house without a warrant)

RECOMMENDATION

[143] **The CWG recommends that policy makers consider whether an amendment should be made to the *Criminal Code* to make it clear that a peace officer can enter a dwelling house without a warrant if it is necessary to prevent imminent bodily harm or death to an animal.**

DISCUSSION

[144] The CWG identified uncertainty around police authority to enter a dwelling house without a warrant, in exigent circumstances, to prevent bodily harm or death to an animal. There is a lack of clarity on whether the *Criminal Code* or the common-law authorizes entry without a warrant in these circumstances.

[145] It was noted that prosecutors and police are often unsure whether the police can lawfully enter a dwelling house in these circumstances. A prosecutor on the CWG

confirmed that they have received calls from police while officers are standing outside a house and can hear an animal being abused, asking if they have legal authority to enter the house without a warrant.

[146] The CWG considered situations where police would have reasonable grounds to enter a dwelling house to prevent imminent bodily harm or death to an animal but would not have time to get a warrant. For example, a situation where police are called because someone can be heard beating their dog inside their house. Police arrive and can see the person beating their dog through the window of the house. The police would have reasonable grounds to believe entry is necessary to prevent imminent bodily harm or death to the animal, but, arguably, cannot do so without a warrant.

[147] The CWG noted that s. 529.3 authorizes a peace officer to enter a dwelling house without a warrant for the purpose of arresting or apprehending a person in exigent circumstances.

> 529.3 (1) Without limiting or restricting any power a peace officer may have to enter a dwelling-house under this or any other Act or law, the peace officer may enter the dwelling-house for the purpose of arresting or apprehending a person, without a warrant referred to in section 529 or 529.1 authorizing the entry, if the peace officer has reasonable grounds to believe that the person is present in the dwelling-house, and the conditions for obtaining a warrant under section 529.1 exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.
>
> (2) For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer
>
> (a) has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or
>
> (b) has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.

[148] The common law authorizes warrantless entry to protect life, safety and property.[19]

[149] The CWG discussed a suggestion to amend the exigent circumstances section in s.529.3(2) to allow warrantless entry to a dwelling house if necessary to prevent imminent bodily harm or death to any person or animal, or if there are reasonable grounds to believe there is an animal in distress.

[150] The CWG discussed whether an amendment to the *Criminal Code* would be necessary if provincial/territorial legislation provides for warrantless entry to a dwelling house. However, most provincial legislation exempts a dwelling house from its warrantless

[19] *R v Godoy*, [1999] 1 SCR 311 at para 15.

entry provisions.[20]

[151] There was significant discussion about whether such a provision could be justified in criminal legislation when regulatory legislation does not provide the power because regulatory powers are typically broader than criminal powers.

[152] Some members opined that provincial legislation dealing with regulatory powers, should not bind the criminal law or preclude such a power in the *Criminal Code.*

[153] It was also noted that animals have unique vulnerability because they cannot communicate and abuse often happens in the home. While animal abuse is not equivalent to intimate partner violence or domestic violence, the comments by the Supreme Court in relation to police entry after a 911 call in relation to domestic violence that, "[o]ne of the hallmarks of this crime is its private nature. Familial abuse occurs within the supposed sanctity of the home"[21] could also apply to animal abuse.

[154] Some members of the CWG noted that an effective criminal law response to crimes that are frequently committed within the sanctity of the home may require an allowance for intrusions into the home, and that warrantless entry would be a reasonable power to have in the *Criminal Code* provided the police have reasonable grounds to believe and exigent circumstances exist.

[155] Other members of the CWG felt warrantless entry to a dwelling house was too broad a power and could possibly be abused (e.g. as a pretext for police to enter a residence).

[156] The CWG discussed whether the common law allowing warrantless entry to "protect life and safety" applies to the life and safety of an animal.

[157] *R. v. Ritch*[22] was referred to the CWG as a case that could be interpreted to mean the common law does not apply to animals. However, the case appears to turn on the judge finding that "exigency" did not exist, so arguably it does not address whether the common law powers of the police to protect life and safety would apply to animals. In *R. v. Ringler,*[23] the provincial court judge found that warrantless entry when an animal is in distress is authorized by the "common law and statutory duty to protect life and property."

[158] The CWG also discussed whether s. 487.11, which allows a peace officer to exercise search and seizure powers without a s. 487 warrant if the conditions for obtaining a warrant exist, but by reason of exigent circumstances it would be impracticable to obtain a warrant, could be used to prevent death or bodily harm to an animal.

---

[20] Manitoba, Ontario and Yukon have provisions allowing for a warrantless entry to a dwelling house in exigent circumstances.
[21] *R v Godoy*, [1999] 1 S.C.R. 311 at para 21.
[22] *R v Ritch and Mynott,* 2015 ONSC 5433.
[23] *R v Ringler*, 2004 ONCJ 104.

[159] The CWG noted that s. 487 warrants are normally used to obtain things that will afford evidence of the offence, so it is not clear s. 487.11 could be used to *prevent the offence* like under s. 529.3(2)(a) and the common law.

[160] The CWG further considered the hypothetical of the police viewing the abuse of a dog through the window of a house. The CWG questioned whether the law could be that once the dog is dead, and the person is seen trying to dispose of the body, police could enter to stop the destruction of evidence under s. 487.11, but they could not enter to stop the beating of the dog. Such an interpretation of the law seemed absurd to some members of the CWG.

[161] It was noted that s. 529.3(2)(a) and s. 487.11 are powerful tools in the *Criminal Code,* and there was reticence by some members of the CWG to expand the powers unnecessarily.

[162] There was general agreement that police should be able to enter a dwelling house without a warrant in exigent circumstances to prevent imminent bodily harm or death to an animal. It was not clear to the CWG that warrantless entry should be allowed under the *Criminal Code* for lesser forms of harm (i.e. "distress").

[163] The CWG members discussed whether an amendment to the *Criminal Code* is necessary to allow warrantless entry in exigent circumstances, or whether the common-law and/or s.487.11 could be used. The CWG further considered if an amendment to the *Criminal Code* is warranted, whether it should be in s. 529.3(2)(a) or should be a new provision with the animal cruelty sections.

[164] The CWG concluded that s. 487.11 is likely broad enough to allow police to enter a dwelling house to stop animal abuse when it is occurring, but the police would be unable to arrest an accused without an amendment to s. 529.3.

[165] However, most members of the CWG agreed that even if exigent circumstances, either under the common law or s. 487.11, allow police entry, it would be clearer for law enforcement if there was an express provision in the *Criminal Code*.

[166] There was general, but not unanimous, agreement by the CWG that s. 529.3 should be amended to allow police to enter a dwelling house to arrest a person in exigent circumstances to prevent bodily harm or death to an animal.

[167] The CWG discussed that simply adding the word "animal" to s. 529.3(2)(a) may not be the best way to achieve the goal as it may be lawful to harm, or even kill, animals (e.g. a lobster in pot of boiling water, docking an animal's tail or ears).

[168] The purpose of any amendment to the *Criminal Code* would be to save an animal from bodily harm or death. The CWG recommends that policy makers consider the best approach to meet this aim.

G - Section 718.03 (primary sentencing objectives for injuring or killing an animal)

RECOMMENDATION

[169] **The CWG does not make a recommendation regarding an addition of primary sentencing objectives or aggravating factors in relation to the violent abuse of animals to the *Criminal Code*.**

DISCUSSION

[170] In 2015, Parliament enacted the *Justice for Animals in Service Act*, or Quanto's Law, in response to the killing of a police service dog. The Act created a new offence of killing or injuring a law enforcement, military or service animal (s. 445.01) and added a section for sentencing that directs "when a court imposes a sentence for an offence under subsection 445.01(1), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence" (s.718.03).

[171] The preamble to the Act states that the purpose of the amendments to the *Criminal Code* is "to better protect law enforcement animals, military animals and service animals and to ensure that offenders who harm those animals or assault peace officers are held fully accountable."

[172] The CWG considered a suggestion to expand s. 718.03 to state that denunciation and deterrence are the primary sentencing considerations for other animal cruelty offences, not just s. 445.01.

[173] The suggested amendment for the *Criminal Code* was:

> When a court imposes a sentence for an offence involving the violent abuse of an animal the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence. The following shall be considered aggravating factors:
>
> (a) The abuse was motivated by a desire to assert control over or exact revenge on another person.
>
> (b) Where the offender was in a position of trust over the animal.

[174] The rationale for the proposed amendment was that it would codify existing case law from multiple provinces and territories. The proposed language also mirrors the language used by the Alberta Court of Appeal in *R v Chen*.[24]

[175] The suggested removal of the reference to specific sections of the *Criminal Code* would allow these sentencing principles to be applied to any offence involving the abuse of an animal. It was suggested that the use of the word "violent" would limit the use of the provision to cases where the actions of the offender are the most egregious.

[24] *R v Chen*, 2021 ABCA 382 at paras 44 – 45.

[176] The aggravating factor in the suggested subsection (a) was intended to address the link between animal abuse and family and intimate partner violence.

[177] Some members of the CWG noted that the abuse of animals in the context of intimate partner violence is currently unaddressed by the *Criminal Code* (although that may change if the amendments to criminal harassment and the addition of coercive and controlling conduct in Bill C-16 are passed into law).

[178] Some members of the CWG felt strongly that denunciation and deterrence as primary considerations in sentencing for animal cruelty offences should be codified, and that the link between animal abuse and intimate partner violence should be highlighted in the *Criminal Code* by codifying the intimate partner violence context as an aggravating factor.

[179] The CWG discussed whether the idea of a position of trust over an animal could be incorporated into such a provision, and what a position of "trust over an animal," as suggested in the proposed subsection (b), would encompass. For example, would it only apply to an "owner," or would it also apply to a pet sitter?

[180] It was suggested that the caselaw adequately sets out when a person is in a position of trust over an animal, and it is not difficult in practice to define a position of trust with respect to animals.

[181] It was suggested that if the sentencing objectives of denunciation and deterrence, and the aggravating factor of holding a position of trust, are already contained in the caselaw, an amendment to the *Criminal Code* is not required.

[182] Some CWG members noted the many recent amendments to the *Criminal Code* regarding aggravating factors and considerations on sentencing, and that this can lead to confusion. It could also be argued that as more factors are listed as "aggravating" the less weight they will have, and "aggravating factors" will actually be watered down. The suggestion was that if everything is aggravating, nothing is aggravating.

[183] Other members noted that the *Criminal Code* sets out so many aggravating factors and considerations, that the absence of a reference to the violent abuse of animals is conspicuous.

[184] It was noted that not every jurisdiction has a case like *Chen,* in which the violence inflicted on the puppy and the accused's position of trust were considered aggravating factors on sentence, or follows *Chen*.[25] However, the CWG noted that even without *Chen*, judges are likely to view a "duty of care" or trust relationship (like an owner or dog sitter) as an aggravating factor.

[185] Some CWG members questioned the reasoning in *Chen* if it suggests that animals are the same as people. It was thought by these members that this is a philosophical question

[25] However, *R v Chen* has been followed by lower courts in British Columbia, Saskatchewan, Manitoba and Ontario.

that requires serious debate, as it is clear that animals are not the same as people because the law allows animals to be harmed and killed. Other members noted that the Court in *Chen* stated it was not drawing a moral equivalence between human victims and animals.[26]

[186] It was suggested that an amendment to s. 718.03 should potentially be limited to s. 445.1 offences because these offences relate to cruelty.

[187] Some CWG members noted that s. 718.03 was a response to police dogs being killed while on duty, similar to peace officers and justice system participants in s. 718.02, and that the suggested amendment would not be sufficiently connected to the purpose of s. 718.03.

[188] It was noted that the Supreme Court in *R v Friesen* found that s. 718.01, which makes denunciation and deterrence the primary sentencing consideration for offences involving the abuse of children, was a signal from Parliament that sentences for offences against children should be increased. The Court also found that s. 718.01 limits a sentencing judge's discretion.

[189] Some members of the CWG felt that an expansion of s. 718.03 could have a similar impact on sentencing for animal cruelty offences, and that this would be a positive outcome.

[190] The CWG questioned whether sentencing decisions in animal cruelty cases demonstrate that the sentences are not appropriate. The CWG also questioned whether sentences had increased after the maximum sentence was increased in 2019.

[191] Prosecutors on the CWG noted that sentences did increase after the increase in the maximum sentence, and that *Chen* provides a basis for increased sentences, especially in Alberta.[27]

[192] Ultimately, the CWG was unable to reach a consensus as to whether s. 718.03 should be amended, or another provision added to the *Criminal Code*, to address denunciation and deterrence and aggravating factors in sentencing for violent offences against animals.

H - Section 446(1)(b) – "Willful neglect"

RECOMMENDATION

[193] **The CWG does not make a recommendation regarding the *mens rea* for s. 446(1)(b).**

[26] *R v Chen,* 2021 ABCA 382 at para 21.
[27] For a recent review of sentencing decisions see *R v Josan*, 2025 SKKB 108.

[194] However, based on the lengthy and detailed discussions of the CWG, and past legislative attempts to add "negligence" to the animal cruelty provisions, it is suggested that policy makers consider this issue.

DISCUSSION

[195] The CWG identified and discussed the following issues relating to s. 446(1)(b) of the *Criminal Code:*

- The use of the word "and" instead of "or"; and
- The *mens rea* requirement for proof of willfulness.

Use of "and" versus "or"

[196] The CWG discussed the confusing use of the word "and" at the end of s. 446(1)(b) ("and care for it") and whether it should be amended to "or care for it."

[197] The CWG concluded that the list of "food, water, shelter and care" is intended to be disjunctive, and therefore the word should be "or" not "and." However the CWG also noted that most cases have interpreted "and" to mean "or," because that is consistent with the obvious meaning of the section.

[198] The Newfoundland and Labrador Court of Appeal in *R v Picco*[28] held that "and care for it" in 446(1)(b) is disjunctive, because interpreting it as conjunctive would lead to an absurdity and would defeat the purpose of the offence.

Mens rea requirement for proof of willfulness

[199] It was noted that the meaning of "wilful" in both s. 446(1)(b) (wilful neglect) and s. 445.1 (willfully causing unnecessary suffering) has been the subject of debate in the jurisprudence and academia[29] and that the CWG should consider whether the *mens rea* for these offences should be clarified.

[200] The CWG considered the potentially conflicting cases of the lower court decision in *R. v. Picco*[30] and the appellate court decision in *R v Gerling.*[31] However, on October 20, 2023, the Newfoundland and Labrador Court of Appeal released its decision in *R v Picco*.[32]

[201] The CWG reviewed the Court of Appeal's decision and concluded it clarifies that the *mens rea* for s. 446(1)(b) is subjective and includes recklessness.

---

[28] *R v Picco*, 2023 NLCA 33.
[29] See for example, Sankoff, Peter, Mens Rea for Animal Cruelty Offences after R. v. Gerling: A Dog's Breakfast (May 13, 2016). (2016) 26 Criminal Reports (7th) 267, Available at SSRN: https://ssrn.com/abstract=2779749
[30] *R v Picco*, 2022 NLSC 79.
[31] *R v Gerling*, 2016 BCCA 72.
[32] *R v Picco*, 2023 NLCA 33.

[202] In *Picco,* the Court held that a negligence standard should not be imported into the *actus reus* of the offence and the standard under s. 446(1)(b) is whether food, water, shelter, or care is "suitable and adequate." The *actus reus* is "the failure to provide."

[203] The general consensus of the CWG was that *Picco* clarifies any confusion that may arise from the *Gerling* decision, and is consistent with *Gerling* regarding what is required for the *actus reus* and *mens rea* for s. 445.1(1)(a) and s. 446(1)(b).

[204] However, some members of the CWG thought that the term "wilful neglect" would still cause confusion for lawyers and the public. The term is problematic both for the legal meaning of "negligence" and for lay people's understanding of "neglect" and "negligence." These members felt it important for the public to understand the law, such that an amendment should be considered.[33]

[205] The CWG discussed how a prosecutor would prove what is "suitable and adequate" for the purposes of s. 446(1)(b).

[206] The prosecutors on the CWG noted that in most cases, like in *Picco*, it will be clear what is "suitable and adequate" because there is usually evidence of harm. In cases where it is not clear, the prosecutor may call expert evidence.

[207] Requiring proof of "suitable and adequate" may affect whether the Crown proceeds with charges under the *Criminal Code* or under provincial legislation. Practically speaking, the prosecution often proceeds under the *Criminal Code* when there is "harm," even though harm is not required for the s. 446(1)(b) offence.

[208] Now that *Picco* makes it clear that a criminal negligence standard for *mens rea* does not apply to s. 446(1)(b), the CWG considered whether criminal negligence should be added to the offence. It was suggested that a criminal negligence standard would capture situations where, a person says they "forgot" about the animal, or they did not know how to care for the animal.

[209] The CWG considered arguments against introducing a standard of negligence, including whether it would be more appropriate to address this kind of conduct through provincial/territorial welfare legislation than the *Criminal Code,* and whether such an approach would increase *Criminal Code* proceedings that could be better addressed through provincial proceedings.

[210] The CWG considered arguments in favour of introducing a standard of negligence, including the fact that other criminal offences rely on a criminal negligence

[33] See Professor Don Stuart's case comment on *R v Picco*, 2023 CarswellNfld 271, that "the provisions against cruelty to animals and birds in Part XVI of the Criminal Code are notoriously complex and uncertain" and "the inherently contradictory concept of "wilful neglect" should be withdrawn by Parliament. The sections muddle subjective and objective fault standards. If Parliament chooses to create a separate and lesser crime of negligence harming animals, as it did for the crime of arson (section 436(1)), that alone would be the occasion to expressly invoke the objective fault test of a marked departure from the standard of care of a reasonable person set out in *R. v. Beatty*, 2008 SCC 5, 54 C.R. (6th) 1 (S.C.C.)." 2023 CarswellNfld 271

standard; other offences where a negligence standard applies do not require "harm", just danger of harm; people owe a duty of care to animals in their care similar to duties owed to others in society; the requirement in s. 446(1)(b) is not complicated and a criminal negligence standard is not unreasonable for these basic requirements; given the jurisprudence surrounding criminal negligence, the negligence standard may be easier for all parties to understand; and that a negligence standard may be an appropriate addition to recklessness given current attitudes towards the place of animals in society.

[211] Some members of the CWG questioned whether accused are being acquitted because of the recklessness standard.

[212] CWG members provided the examples of the lower court decision in *Picco, R v Heynan,*[34] where an owner did not feed his horses but was found to have erroneously believed he did not need to, and *R v Robinson*,[35] where an experienced horse owner did not provide adequate food and water for her horses, but the court found she was "careless" not "reckless."

[213] It was also noted there have been attempts to add "negligently" to the animal cruelty provisions in 2001 in Bill C-15, in 2005 in Bill C-50, and in 2016 in private member's Bill C-246.

[214] The CWG further noted that there is a presumption in subsections 445.1(3) and 446(3) to assist with proving "wilfully." However the presumption in s. 446(3) does not apply to an offence under s. 446(1)(b). The Court in *Gerling* commented on this omission, stating, "[i]t is not clear to me why the presumption of proof provision, which applies to ss. 446(1)(a) and 445.1(1)(a) does not apply to s. 445(1)(b). This creates the need for a somewhat complex analysis of the test for *mens rea* which could be avoided."[36]

[215] The CWG did not reach a consensus on whether the *mens rea* for s. 446(1)(b) should be changed to a criminal negligence standard. However, based on the lengthy and detailed discussions of the CWG, and past legislative attempts to add "negligence" to the animal cruelty provisions, it is suggested that policy makers consider this issue.

I - Theft of a companion or service animal

RECOMMENDATION

[216] **The CWG does not make a recommendation regarding the addition of a specific offence for the theft of a companion or service animal to the *Criminal Code.***

[34] *R v Heynan*, 1992 CarswellAlta 569, 1992 CanLII 14132 (AB PC).
[35] *R v Robinson*, 2018 BCSC 1852.
[36] *R v Gerling,* 2016 BCCA 72 at para 50.

DISCUSSION

[217] The CWG was created after discussion at the 2022 ULCC annual meeting about the possibility of adding a specific offence to the *Criminal Code* for theft of a companion or service animal.

[218] The CWG considered whether, similar to s. 338 of the *Criminal Code* which deals with theft of cattle, there should be a specific offence in the *Criminal Code* for the theft of a companion or service animal. The CWG discussed why a specific offence would be required and what it would achieve.

[219] It was noted there was a significant amount of media coverage about the theft of companion animals during the Covid-19 pandemic, although it is unclear if this concern was made out in data or based on anecdotal information. It is also unclear whether this is a current and persisting issue.

[220] A suggested benefit to having a specific theft offence related to companion animals was that it would provide statistics about how often companion animals are stolen. This data is currently not available, as the theft of animals is combined with all theft of property offences.

[221] The CWG considered other arguments in favour of and against adding a specific theft of companion and service animals offence to the *Criminal Code*.

[222] Arguments raised in favour of adding a specific offence included:

- It would make it clear that animals are "special" property and recognize the unique impact of the theft of a companion animal. To many people, the theft of a companion animal is more like a "kidnapping" than a theft of property.
- The structure of theft over and under $5000 dollars does not appropriately reflect the seriousness or nature of the crime. The important consideration is not the monetary value of the animal, but the loss of a "family member."
- The maximum penalty of 2 years for a theft under $5000 offence may not adequately denounce and deter the theft of a companion animal.
- There is precedent for recognizing the special nature of animals in s. 445.01 (killing or injuring a law enforcement, military or service animal) of the *Criminal Code*.

[223] Arguments raised against adding a specific offence included:

- New offences should not be added to the *Criminal Code* without an articulable and justifiable need.

- The *Criminal Code* has other "general" offences that are treated differently depending on the specific facts of the offence. For example, an "assault" offence applies both to a bar fight and to an assault on an intimate partner, but they are treated very differently in sentencing.

- The "ownership" of animals can be very difficult to prove.

- Allegations of theft may arise in family break up situations and may be more appropriately addressed in a civil context.

- The offence would still be a "theft" offence, not a "kidnapping" offence.

- No data was raised in the working group to indicate that sentences for theft of companion animals do not adequately address denunciation and deterrence, although some noted it is difficult to obtain data since there is not a specific offence for theft of animals.

- If the concern relates to the general status of animals as "property" in the *Criminal Code*, a more appropriate approach would be to look at all offences related to animals instead of making piecemeal changes.

- Animals are not the only property that holds importance or value to their owner disproportionate to their monetary value.

[224] The CWG was unable to reach a consensus on this issue and concluded it could not make a recommendation about adding a specific offence of theft of a companion or service animal to the *Criminal Code*. Some members of the CWG noted that if statistics about the prevalence of the theft of companion animals and the sentences for such offences could be obtained, a more thorough analysis of the need for a specific offence could be conducted.

J - Section 490 (detention)

[225] The application of s. 490 to the seizure of animals under the *Criminal Code* was considered by the JWG. The considerations and recommendations are contained below in Part 3: Seizure and Management.

K – *Youth Criminal Justice Act* definition of "violent offence" & release conditions

RECOMMENDATION

[226] **A majority of the CWG recommends that amendment to the definition of violent offence in the *Youth Criminal Justice Act* should be considered to include any offence where a young person causes bodily harm, attempts to cause it, or threatens to commit an offence involving bodily harm to an animal.**

DISCUSSION

[227] The CWG considered a suggestion that a gateway to custody should be available under the *Youth Criminal Justice Act* (YCJA) for violent offences against animals, without having to argue "exceptional circumstances" under s. 39(1)(d).

[228] It was suggested that for egregious or disturbing cases of animal abuse, a custodial sentence may be appropriate.

[229] Currently, because violence to animals is not listed in the definition of "violent offence" in s. 2 of the YCJA, it would not automatically be a criterion considered as a gateway to custody under s. 39 of the YCJA.

[230] The definition of a "violent offence" includes any offence where a young person causes bodily harm, attempts to cause it, or threatens to commit an offence involving bodily harm. Further, the definition covers instances where a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

[231] It may be possible to argue "exceptional circumstances" under s. 39(1)(d) for serious cases involving animals, but it was suggested by some members of the CWG that it would be clearer if bodily harm to animals was included in the definition of violent offence.

[232] Members of the CWG noted that a finding of guilt for a "violent offence" only provides a "gateway" to custody and all other sentencing options must still be considered first.

[233] Members also noted that custody includes deferred custody, which is similar to an adult conditional sentence order (CSO), also colloquially known as "house arrest."

[234] Some members of the CWG expressed an opinion that adding the potential for deferred custody might require that more resources be made available for the young person. It was suggested that if a young person is hurting animals it is important to get them as many supports as possible as early as possible. These members suggested that there are marginalized youth who are engaged in both the criminal justice system and the child welfare system, and that deferred custody may signal to agencies that more supports are required.

[235] Other members expressed significant concern that deferred custody may not mean that youth receive increased supports compared to other types of sentencing.

[236] The CWG discussed different sentencing options under the YCJA: intensive support and supervision (probation plus); deferred custody and supervision order (like a CSO); intensive rehabilitative custody and supervision order.

[237] Members of the CWG clarified that the discussion was <u>not</u> about an intensive rehabilitative custody and supervision order, which is only available for a "serious violent offence" or where the young person was found guilty of an offence which involved causing

serious bodily harm or has a history of serious or violent offending and also is experiencing mental health issues.

[238] The CWG discussed whether instead of amending the definition of violent offence to provide a gateway to custody, specific animal cruelty offences should be added to section 39 of the YCJA as offences that can trigger a gateway to custody. However, the CWG concluded that there may be issues with youth "owning" or "having control" of animals for s. 446 offences. In addition, members had concerns that section 39 of the YCJA does not list specific offences for custody and this approach may be at odds with the current framework on youth sentencing.

[239] Some members of the CWG felt that it would be best to add "bodily harm to animals" to the definition of violent offence. Other members of the group noted that an expansion of the concept of "bodily harm" to animals would impact on the definition of "bodily harm" in s. 2 of the *Criminal Code*, which is limited to harms related to persons.

[240] A majority of the CWG recommends that amendment to the definition of violent offence in the YCJA should be considered to include any offence where a young person causes bodily harm, attempts to cause it, or threatens to commit an offence involving bodily harm to a person or animal.

[241] Members of the group who were not in favour of this recommendation expressed concern that it would be contrary to current approaches under the YCJA.

RECOMMENDATION

[242] **A majority of the CWG recommends that s. 29(1)(a) of the YCJA should be amended to allow a release order to contain a condition prohibiting contact with animals, similar to the CWG's recommendations regarding s. 501 of the *Criminal Code*.**

DISCUSSION

[243] The CWG discussed when release conditions can be imposed by a judge or justice under s. 29(1)(a) of the YCJA. The Act does not appear to allow for a no contact condition with animals as the subsection only allows a condition to be imposed where it is "necessary to ensure the young person's attendance in court or for the protection or safety of the public, including any victim of or witness to the offence."

[244] This is similar to the gap identified by the CWG in s. 501 police releases, as an animal is not a "victim," unless it could be argued that a no contact condition with animals is necessary for the protection of the public.

[245] A majority of the CWG recommends that s. 29(1)(a) of the YCJA regarding release conditions should be amended to allow a release order to contain a condition prohibiting contact with animals .

[246] Some members felt that further study was needed before recommending such a change to ensure a consistent approach as between the YCJA and *Criminal Code.*

2 – Discussion and Recommendations: Animal Prohibition Orders

[247] The JWG identified animal prohibition orders as a key tool for protecting animals, and an area where the *Criminal Code* and provincial/territorial animal welfare legislation seek to accomplish similar goals.

[248] In many cases of animal abuse, whether it stems from violent conduct or neglect, the protection of animals through an animal prohibition order, which prohibits or limits the ownership, custody, care, or control of animals, is the primary objective of animal protection officers, police and prosecutors. In some cases, the animal prohibition order is the only thing that the authorities want to obtain, as the goal of the animal prohibition order is to protect animals from future harm.

[249] In some jurisdictions, a corrective action order[37] may be used in addition to, or instead of, an animal prohibition order to prevent future harm.

[250] Animal abuse can take many forms, from those who commit deliberate acts of violent cruelty to animals to those who are not able to recognize they do not have the capacity to care for animals appropriately. (For example, individuals may accumulate – or hoard – many more animals than they are capable of adequately caring for, causing them to suffer harm as a result). In both types of cases, the harm inflicted on the animals can be serious, and the ability to protect animals by preventing future contact with animals is crucial.

[251] The *Criminal Code* and all provincial and territorial animal welfare legislation[38] contain provisions for a court to make an animal prohibition order after a person is convicted of an offence under the Act in question.

[252] Some provincial and territorial legislation have provisions that allow a court to make an animal prohibition order in circumstances that do not require a conviction for an offence under the legislation.[39]

[253] Recognizing the importance of animal prohibition orders for the protection of animals, the JWG reviewed the *Criminal Code* and provincial/territorial animal welfare

[37] Corrective action orders are administrative orders issued by an animal protection officer or tribunal directing a person to take any action, or cease any action, to relieve or prevent an animal's distress or to remedy or prevent a contravention of the animal welfare statute.
[38] Nunavut and the Northwest Territories (NWT) do not have "animal welfare legislation." These territories have statutes regarding wildlife and dogs. The NWT *Dogs Act* contains a provision for an order restraining a person from having or continuing to have custody of dogs after a conviction.
[39] Yukon, Manitoba and PEI have provisions that allow an animal prohibition order to be made by a court when a person is unable to comply with their animal care duties under the Act because the number or type of animals exceeds their ability to carry out their duties.

legislation to identify gaps and challenges with respect to animal prohibition orders.

[254] The JWG also consulted with animal protection officers about the use of, and need for, animal prohibition orders under provincial/territorial legislation. The animal protection officers' comments included:

- We often see "repeat" offenders and people who move from province to province to avoid the application of provincial animal prohibitions. If there was a way for provincial animal prohibitions in one province to be effective across Canada, that would be desired.

- In many jurisdictions, an animal prohibition can only be obtained following a conviction. This means that if the Crown is unable to proceed with charges, there is no mechanism to obtain such a prohibition.

- In some cases, the desired outcome is an animal prohibition (not jail time). However, the Crown may not proceed with charges for a variety of reasons. In these cases (and more generally), it would be advantageous if there was a process to obtain an administrative animal prohibition.

- A mandatory minimum prohibition from owning or caring for animals would be appropriate, perhaps even more so than fines or other sentencing options. Rare is the animal cruelty conviction that does not warrant a period of prohibition.

- The most effective tool in preventing cruelty to animals is an animal prohibition.

- Most provinces/territories do not have a central registry or database for animal prohibitions, so animal protection officers may not know that a person is subject to an animal prohibition order.

- For an animal prohibition to be effective, legislation should include:

    i. Authority for police or animal protection officers to seize an animal in cases where a person is found breaching the animal prohibition by possessing an animal;

    ii. A charge section for breach of a prohibition; and

    iii. Clarity on whose responsibility it is to enforce the animal prohibition.

[255] Noting the importance of animal prohibition orders and their enforcement for the protection of animals and the prevention of repeat offences and offending behaviour, the JWG focussed on the following issues in relation to animal prohibition orders:

- Wording for animal prohibition orders
- Animal prohibition orders independent of charges or a conviction
- "Enforcement" of animal prohibition orders

- Cross-jurisdictional enforcement of animal prohibition orders
- Registry for animal prohibition orders
- Variation of animal prohibition orders

[256] The JWG concluded that:

- Uniform or consistent wording in all provincial/territorial legislation for animal prohibition orders would clarify the scope of the order and aid in cross-jurisdictional enforcement.

- Authorities should have a mechanism to obtain animal prohibition orders under provincial/territorial animal welfare legislation independently of charges or a conviction for an animal welfare offence.

- All provincial/territorial legislation should include an offence for contravening an animal prohibition order and provisions allowing for the seizure, forfeiture and disposal of animals when there is a contravention.

- Uniform law reform that creates legislation for the cross-jurisdictional enforcement of provincial/territorial animal prohibition orders would significantly enhance animal protection.

- The lack of a centralized database or registry for animal prohibition orders is a serious impediment to the enforceability of animal prohibition orders, but should not hinder the enactment of legislation that provides for the cross-jurisdictional enforcement of animal prohibition orders.

- The ability to vary an animal prohibition order is an issue that requires further analysis.

A – Legislative Wording for Animal Prohibition Orders

RECOMMENDATIONS

[257] **The JWG is not recommending draft model provisions for legislative wording for animal prohibition orders.**

[258] The JWG does recommend that all animal prohibition order provisions should allow for sufficient flexibility to take into account the circumstances of the offence and the offender, and to enable the court to make a prohibition order as broad or as specific as required in the circumstances, allowing for the order to be tailored to recognize the specific circumstances of the person and the circumstances of the animal abuse.

[259] The JWG also recommends that the provisions regarding the wording of an animal prohibition order in provincial/territorial legislation should be the same regardless of whether the animal prohibition order is made after a conviction for an offence, or under any other authority provided in the legislation.

DISCUSSION

[260] The JWG reviewed the wording for provincial/territorial animal prohibition orders and *Criminal Code* prohibition orders and noted they all include some variation of prohibiting a person from "owning, possessing, having custody or control or care of, or living with or residing with" "an" animal, "any" animal or animal "s."[40]

[261] The JWG noted both the differences in wording between legislation, and the arguably unclear wording within some legislation about what is prohibited.

[262] For example, the terms "ownership", "possession", "custody", and "control", on their own, may not always be clear concepts in relation to animals. Some provincial/territorial legislation use all these terms, while others only use some of these terms. Only Ontario's PAWS Act, the *Criminal Code* and the proposed amendments to Alberta's *Animal Protection Act*[41] include a prohibition on living with, or residing with, an animal.

[263] Some legislation contains explicit provisions regarding limiting the number or types of animals a person can own, possess, etc., while others do not.

[264] The wording in the legislation should not lead to confusion as to whether an animal prohibition order must apply to all animals, or whether an order can specify a restriction on the number or types of animals.

[265] The JWG concluded that there should be flexibility when a court is making an animal prohibition order to take into account the circumstances of the offence and the offender, and to enable the court to make a prohibition order as broad (e.g. total ban on all contact with all animals) or as specific (e.g. cannot have more than a specified number or type of animal) as is required in the circumstances.

[266] Inconsistent and unclear wording in an animal prohibition order can lead to ambiguity and misunderstandings, both for the person who is subject to the order and for the authorities who are responsible for the enforcement of the order and the prosecution of breaches. Unclear language can result in increased litigation.

[267] Inconsistent wording between provincial/territorial legislation may also cause confusion and inconsistent application if the order is enforceable in another province/territory.[42]

[268] The JWG concluded that having the same or similar language in all provincial/territorial legislation would assist with clarity and with cross-jurisdictional enforcement.

---

[40] See Appendix A - Wording of Animal Prohibition Order Sections.
[41] See Bill 22, *Animal Protection Amendment Act, 2026*, 2nd Sess, 31st Leg, Alberta, 2026.
[42] This will be relevant if jurisdictions adopt the recommendation regarding cross-jurisdictional enforcement of animal prohibition orders.

[269] The JWG also discussed whether the wording for an animal prohibition order should be the same whether it is obtained through a mechanism other than a conviction for an offence under animal welfare legislation (see the discussion in Part B below) or after a conviction. The JWG concluded that for clarity and consistency, the wording should be the same.

[270] The JWG discussed what wording could achieve the above goals. The JWG suggests the following wording, which would be clear and would provide for both a broad prohibition or a tailored one, could be considered:

> If a person is convicted or discharged of an offence under this Act (*or an application is made for an animal prohibition order under this act)*, a judge or justice
>
> a) may make, subject to the conditions or exemptions that the judge or justice directs, an order prohibiting the person from any or all of the following: owning, having custody, care, or control of, or residing in the same premises as,
>
> i. any animal,
>
> ii. a specified animal, or
>
> iii. a specified number or type of animal
>
> for any period the judge or justice considers appropriate, including for life.

B – Animal Prohibition Orders Independent of Charges or Conviction Under Provincial/Territorial Legislation

RECOMMENDATION

[271] **The JWG is recommending draft model provisions that would provide a mechanism for obtaining a provincial/territorial animal prohibition order under animal welfare legislation independent of charges or a conviction.**

[272] The JWG also recommends that all provincial/territorial animal welfare legislation have a process to obtain an *interim* animal prohibition order that prohibits a person from having any animals or a certain number or type of animals, and/or acquiring more animals, when animals have been seized under the provincial/territorial animal welfare legislation and proceedings are ongoing.

DISCUSSION

[273] The JWG discussed the ability to obtain an animal prohibition order under provincial/territorial legislation without requiring a conviction for an offence under the legislation. Such an ability could be used by animal protection officers in lieu of charges, or by a prosecutor to resolve a file on consent without requiring a trial and conviction.

[274] The JWG noted that some provinces and a territory (Manitoba, PEI, Yukon) allow

a court to prohibit a person from having animals without a conviction for an offence under the legislation. These orders appear to only apply to situations where animals have been seized or surrendered because a person is unable to care for the animals due to the number or type of animals they have. An order may be made if the person may not be able to comply with the provisions of the Act because the circumstances that led to the seizure or forfeiture "continue to exist or may occur again." The order may prohibit the person from "owning or having possession or control of more than a specified number or type of animals for a period up to three years."

[275] In most provinces it is not possible to obtain an animal prohibition order until after a conviction for an offence under the provincial Act.

[276] As already noted, in some cases where charges have been laid, the animal prohibition order is the only thing that the authorities want to obtain. Allowing a prohibition order to be obtained independent of a conviction would likely avoid the necessity of some prosecutions, and could allow the accused to avoid a conviction while protecting the animals.[43]

[277] JWG members considered that the use of an animal prohibition order to resolve charges under provincial/territorial legislation could operate similarly to the use of Peace Bonds that are used to resolve many types of charges in the *Criminal Code*.

[278] The JWG further considered the possibility that animal protection officers could obtain an animal prohibition order without laying charges, similar to the 3-year animal prohibition orders available in Manitoba, PEI, and Yukon, but in a broader range of circumstances (i.e. not limited to situations where the person is unable to care for animals because of the number or type of animals).

[279] Animals can be seized under provincial/territorial legislation without charges if the animal is in "distress" or is "abandoned."[44] In some provinces and territories, animals may also be forfeited and disposed of without charges depending on the circumstances and the particular provincial/territorial legislation.

[280] In situations where there is an ability to seize, forfeit and dispose of animals without charges (see further discussion in Part 3: Seizure and Management) it would be reasonable to also allow animal protection officers to apply for an animal prohibition order.

[281] The JWG discussed when, and on what standard, an animal prohibition order without charges, or without a conviction, should be able to be obtained.

[282] The JWG considered a weapons prohibition under section 111 of the *Criminal Code* as an example of when a prohibition can be obtained without the need for charges. Although,

[43] To be used as a resolution tool for prosecutors, there would still need to be a reasonable likelihood of conviction on the charges.

[44] Provincial/territorial legislation all have a definition of "distress" (except New Brunswick which refers to "immediate needs"), but the definition of distress varies and is subject to exceptions - usually based on "generally accepted practices." See definitions of "distress" in Appendix B.

it was noted that the possession and use of weapons (in particular firearms) is highly regulated and the possession of animals, at least in the *Criminal Code*, is not.

[283] Section 111 allows a peace officer, firearms officer or chief firearms officer to make an application to a provincial court judge for a weapons prohibition where the applicant "believes on reasonable grounds that it is not desirable in the interests of the safety of the person against whom the order is sought or of any other person that the person against whom the order is sought should possess any such thing."

[284] The JWG considered whether the threshold for obtaining an animal prohibition order without charges or conviction should be related to the "safety of animals," like in section 111, or to the ability of the person to "carry out their duties" towards animals, like in the Manitoba, PEI, and Yukon legislation.

[285] The JWG felt that linking an animal prohibition to the ability of a person to care for the animal was too narrow, and questioned why a prohibition would not be available for people who "can" care for the animal but choose not to.

[286] The JWG discussed how the purpose of the animal prohibition order could be articulated. The JWG discussed that the order could be obtained "in the interests of the safety, security, or protection of the animal," or it could be obtained to prevent or relieve "distress."

[287] The JWG agreed that the standard of proof for obtaining an animal prohibition order without a conviction should be on a balance of probabilities.

[288] The JWG further discussed whether the standard should be that a judge thinks an animal prohibition order without a conviction is "desirable," "necessary," or "required."

[289] The JWG agreed that "required" would be too high of a bar for an animal prohibition order. However, the JWG did not reach a consensus on whether the standard should be "desirable" or "necessary."

[290] It was noted the term "not desirable" has been interpreted in the criminal law context as meaning "not advisable" and has been held to afford a measure of flexibility without impermissible vagueness.[45]

[291] Some members of the JWG did not think a prohibition related to weapons and firearms (a highly regulated area) was necessarily a good example for a prohibition related to animals, while other members felt that possession of animals can be, and is, regulated and there is no "right" to have an animal.

[292] The JWG discussed the purpose of an animal prohibition order to protect animals versus the rights of an owner. The JWG concluded it is not a contest between the rights of the animal and the rights of the owner. The purpose of provincial/territorial animal welfare

[45] *R v Schill,* 2024 ONCJ 249 and *R. v. Hurrell,* 2002 Canlii 45007 (ONCA).

legislation and animal prohibition orders is the protection of animals - while ensuring fairness and due process to the owner.

[293] The majority of the JWG concluded that "desirable" provides the needed flexibility for a court to impose an appropriate order and that "necessary" may be too high a bar. It was felt that the fact that a court would make the decision and have to weigh all the circumstances would protect against an overbroad application.

[294] A minority of the JWG had concerns about the use of "desirable" and felt that "necessary" would be more appropriate, especially if the owner is not represented by counsel (which is expected to be likely if charges are not laid).

[295] The JWG recommends that a provincial/territorial animal prohibition order should be available independent of charges or a conviction under animal welfare legislation on a balance of probabilities standard, either for the purposes of animal protection or to prevent or relieve distress. The JWG recommends consideration of the following options:

A court may make an animal prohibition order if it is satisfied on a balance of probabilities that:

> **Option 1**: an order is desirable in the interests of the safety, security, or protection of any animal, a specified animal, or a specified number or type of animal.
>
> **Option 2**: an order is necessary in the interests of the safety, security, or protection of any animal, a specified animal, or a specified number or type of animal.
>
> **Option 3**: an order is desirable to relieve or prevent the distress of any animal, a specified animal, or a specified number or type of animal.
>
> **Option 4**: an order is necessary to relieve or prevent the distress of any animal, a specified animal, or a specified number or type of animal.

[296] The JWG agreed there should be an ability for both a prosecutor or an animal protection officer to apply for the animal prohibition order, and the application should be able to be made at the provincial or territorial court level.

[297] In practice, it is anticipated that a prosecutor would only apply for an animal prohibition order absent a conviction when charges have been laid but there is no conviction because the animal prohibition order is part of a resolution agreement.

[298] In addition to the ability to obtain an animal prohibition order when there are no charges or a conviction, animal protection officers expressed a need for provincial/territorial legislation to enable the issuance of an *interim* animal prohibition order when animals are seized and proceedings (administrative or charges) are ongoing; similar to release conditions that can be imposed under the *Criminal Code* when criminal charges are laid.

[299] An *interim* animal prohibition order may be needed to prevent harm to animals that were either not seized (because they were not in distress at the time) but the animal

protection officer believes would be at risk of harm, or additional animals that the person may seek to obtain, while the proceedings are ongoing. (The ability for authorities to hold the animals that are the subject of proceedings is addressed under Part 3: Seizure and Management).

[300] It was noted that the legislation in some provinces and territories (Saskatchewan, Manitoba, Ontario, PEI and Yukon) allow animal protection officers to issue corrective orders. Corrective orders may be able to be utilized as an *interim* order to limit the number or type of animals that a person can have. However, these orders are usually related to the animals that are found in distress, not other or future animals.[46]

[301] The legislation in Yukon, Manitoba and PEI that allows a court to make a 3-year animal prohibition order without charges in certain situations may also be able to be used as an *interim* order when charges are laid in those particular circumstances.

[302] The JWG recommends that all provincial/territorial animal welfare legislation contain a process to obtain an *interim* animal prohibition order, similar to a *Criminal Code* release order, that prohibits a person from having any animals or a certain number or type of animals, and/or acquiring more animals, when animals have been seized under the provincial/territorial animal welfare legislation and proceedings are ongoing.

C – Enforcement of Provincial/Territorial Animal Prohibition Orders

RECOMMENDATION

[303] **The JWG is not recommending draft model provisions for the enforcement of animal prohibition orders.**

[304] The JWG does recommend that all provincial/territorial legislation contain an offence for breaching an animal prohibition order and provisions allowing for the seizure, forfeiture, and disposal of animals when there is a breach.

DISCUSSION

[305] For the purposes of this report, "enforcement" of an animal prohibition order refers to the ability to:

- Charge an offence for breaching an animal prohibition order,
- Prosecute an offence for breaching an animal prohibition order,
- Seize any animals that are the subject of the breach, and

[46] In Yukon, it may be possible for an animal protection and control officer to issue an order to a person limiting the animals they can have in order to "prevent a further contravention" of the Act (s. 7), without the need for charges or a conviction.

- Forfeit and dispose of any animals that are seized because of the breach.

[306] Most, but not all, provincial/territorial animal welfare legislation includes an offence for the breach of animal prohibition order.[47]

[307] Most provincial/territorial animal welfare legislation contains provisions for seizing animals when there is a contravention of an animal prohibition order,[48] but the authority is not always clear. Often the provisions related to breaching an "order" seem to be directed at "compliance" or "corrective" orders that are issued by animal protection officers, and not necessarily animal prohibition orders issued by a judge after a conviction.

[308] Manitoba, New Brunswick and Nova Scotia all have clear language that provides an authority to seize animals when a person is in violation of an animal prohibition order.

[309] If animals are seized because of a contravention of an animal prohibition order, the next issue is what can be done with the seized animals.

[310] Some provincial/territorial animal welfare legislation provides an ability to appeal the seizure and have the animals either returned or forfeited to the authorities.[49] Other provincial/territorial animal welfare legislation requires a trial and conviction for a breach of the order before the animal can be forfeited.[50]

[311] For breaches of a *Criminal Code* animal prohibition order, a conviction for a breach of the order would also normally be required for forfeiture, although it may be possible under s. 490(9) to have a forfeiture hearing on the basis that possession of the animal by the person subject to the prohibition order was unlawful.

[312] If an animal prohibition order is to be effective, authorities must be able to act when there is a breach of the order. This requires authority in the legislation to charge an offence when there is a contravention of the order, seize animals that are held in contravention of the order, and forfeit and dispose of the animals that are seized.

[313] Provisions relating to the seizure and forfeiture of animals as a result of a contravention of an animal protection order should provide for a fair process for both the person from whom the animal was seized, and for the animal. The process should take into account that the length of time that an animal is held in care is a concern for both the welfare of the animal and for the associated cost to the agency that has custody of the animal.

[314] The JWG recommends that all provincial/territorial legislation contain an offence for breaching an animal prohibition order and provisions allowing for the seizure, forfeiture,

---

[47] Alberta, Saskatchewan, Ontario and Quebec do not have an offence.

[48] Alberta, Saskatchewan and Ontario do not have provisions for seizure due to a breach of an animal prohibition order. In Saskatchewan an animal protection officer may be able to make an application to Court of King's Bench for a compliance order that could contain any terms or conditions the judge considers appropriate.

[49] Manitoba, Nova Scotia, PEI, Yukon (in Yukon it is not clear if a seizure for failure to comply with an order can be appealed).

[50] BC, NWT, New Brunswick, Newfoundland and Labrador, Quebec (s. 47 allows an application for forfeiture and disposal to be made before end of trial).

and disposal of animals when there is a breach.

D – Cross-Jurisdictional Enforcement of Provincial/Territorial Animal Prohibition Orders

RECOMMENDATION

[315] **The JWG is recommending draft model provisions that would allow for the cross-jurisdictional enforcement of animal prohibition orders.**

[316] **The JWG recommends consideration of the following models for the cross-jurisdictional enforcement of animal prohibition orders:**

- **Addition to a Uniform Enforcement of Canadian Judgments Act,**
- **Addition to provincial/territorial animal welfare legislation, or**
- **Creation of a stand-alone extra provincial/territorial enforcement of animal prohibition orders statute.**

DISCUSSION

[317] The cross-jurisdictional "enforcement" of an animal prohibition order means that animals can be seized and forfeited, and a person can be charged and convicted, if the person is contravening an animal prohibition order made by a court under provincial/territorial animal welfare legislation in a province or territory other than the province or territory where the person is found contravening the order.

[318] The JWG identified the inability to enforce extra-provincial/territorial animal prohibition orders as a significant barrier to the effective prevention of animal abuse. Where an animal prohibition order is made by a court to protect animals from future abuse, the protective purpose of the order is defeated if that person can simply move to another jurisdiction and violate the prohibition order without any ability for it to be enforced.[51]

[319] Some of these types of offenders are notorious for moving between jurisdictions and abusing animals even when they are subject to an animal prohibition order from another province. Examples of this problem have been reported by Canadian media.[52] The lack of

[51] Alberta is the first jurisdiction in the country to introduce legislation (Bill 22) to allow for the enforcement of extra-provincial/territorial animal prohibition orders. See Bill 22, *Animal Protection Amendment Act, 2026*, 2nd Sess, 31st Leg, Alberta, 2026; Appendix A - Wording of Animal Prohibition Order Sections.

[52] For example, Canadian media have reported that: An individual had more than 80 dogs seized from their property in Saskatchewan and received a 10 year provincial animal prohibition order in 2010– she was then charged in 2015 in Alberta and more than 200 dogs were seized (see: https://www.cbc.ca/news/canada/calgary/april-dawn-irving-alberta-hoarder-milk-river-lethbridge-1.5384910); A former Saskatchewan couple with a history of animal neglect allegations was convicted in BC after 177 animals in distress were seized from their property (see: https://www.ctvnews.ca/saskatoon/article/former-sask-couple-sentenced-after-nearly-200-animals-seized-from-bc-property/); Two individuals were banned from owning animals in BC for 20 years following a 2014 discovery of more than 100 malnourished and neglected animals, within months of their sentencing more than 50 animals were seized from them in Alberta (https://www.cbc.ca/news/canada/british-columbia/province-hopping-animal-cruelty-1.4759415).

cross-jurisdictional enforceability means that even when there is an animal prohibition in place in one province/territory, authorities in a different province/territory are unable to remove the animals or intervene unless and until an animal is in "distress." Charges cannot be laid for a breach of the prohibition order, and authorities have to wait until an animal is in "distress" before they can lay charges.

[320] This current state of the law does not adequately protect animals from being abused and may lead to public disillusionment with animal welfare laws and the rule of law in general.

[321] The JWG identified three different precedents for the enforcement of extra-provincial/territorial orders that could be used as a model for animal prohibition orders:

- A clause could be contained in an Enforcement of Canadian Judgments Act, similar to the civil protection order clause in the Uniform Enforcement of Canadian Judgments Act (UECJA);
- Provisions could be contained within provincial/territorial animal welfare legislation, similar to the provisions in provincial/territorial child custody legislation;[53] or
- Standalone extra-provincial/territorial enforcement of animal prohibition order legislation could be enacted similar to the stand-alone legislation for the extra-provincial enforcement of child custody orders.

UECJA Model

[322] The need for cross-jurisdictional enforcement of provincial/territorial animal prohibition orders is very similar to the need for cross-jurisdictional enforcement of civil protection orders (sometimes referred to as "restraining orders") for people. Like civil protection orders, animal prohibition orders may need to be enforced quickly to protect vulnerable animals from those who have been found to pose a danger to animals.

[323] The need for cross-jurisdictional enforcement of civil protection orders was recognized in the work done by the ULCC on the UECJA.

[324] The UECJA clauses regarding civil protection orders state:

> A Canadian civil protection order or a foreign civil protection order is **deemed to be** an order of the [superior court of unlimited trial jurisdiction in the province or territory where the order is sought to be enforced] and is enforceable in the same manner as an order of that court for all purposes. (Emphasis added).
>
> A Canadian civil protection order **is enforceable by a law enforcement agency in the same manner as an order of the [superior court of unlimited trial jurisdiction in the province or territory where the order is sought to be**

[53] Proposed in Alberta's Bill 22, *Animal Protection Amendment Act*, 2026, 2nd Sess, 31st Leg, Alberta, 2026.

enforced], whether or not the order is a registered Canadian judgment. (Emphasis added).[54]

[325] Some provinces have incorporated the civil protection order clauses into their *Enforcement of Canadian Judgments Acts*.[55]

[326] The intention of the UECJA provisions regarding civil protection orders is to facilitate "the immediate enforcement of the order," without the need for any prerequisites, to reduce risk to the victim that could be caused by delay.[56] Authentication of the order is not required.

[327] A similar goal exists for the immediate enforcement of an animal prohibition order. Animal protection officers and police must be able to act immediately and seize animals if they are found in the possession, custody, care or control of a person who is subject to an animal prohibition order. If authorities were required to leave a scene to register the order, or in some way authenticate the order, the person may flee and take the animals, or take steps to hide the animals.[57]

[328] Unlike the UECJA civil protection order clauses, a provision for animal prohibition orders should not be deemed to be an order of the superior court, as the order will usually be made by a provincial/territorial level court and, depending on the particular provincial/territorial animal welfare legislation, may be enforced by a superior or a provincial/territorial court. What is key is that the animal prohibition order be deemed to be an order made by a court in the province or territory where the breach occurs and that it be <u>enforceable in the same manner</u> as an order made by a court in that province/territory.

[329] Like the UECJA clause for civil protection orders, it is important that registration not be required to be able to seize animals from persons who are in violation of an animal prohibition order.

[330] Legislation that requires registration before enforcement (like other civil orders under UECJA or family law orders under family law legislation) rely on one of the "parties" to register the order.

[331] However, with animal abuse cases, it is not clear who the parties would be. The person subject to the order would be one of the parties, but it is not clear if the other party would be the investigative agency, the prosecutor, or possibly the court.

[332] In addition, the authorities would not know to register the order because they likely would not know the person had moved to another jurisdiction until the person was found to be in violation of the order. At that point, the authorities need to be able to act on the order

[54] Appendix C – Uniform Enforcement of Canadian Judgments Act (UECJA).
[55] Appendix D – Examples of Cross-Jurisdictional Enforcement Provisions.
[56] UECJA, p.15.
[57] However, the JWG further discussed whether, after the initial seizure, it would be reasonable to require animal protection officers to confirm the order before proceeding with disposition of the animals. See discussion under Family Law example.

immediately (much like a civil protection order).

[333] It is acknowledged that without a registry for animal prohibition orders (discussed in more detail in Part E below), the ability to act immediately may be somewhat academic as the authorities would not necessarily know about the order unless they checked with other jurisdictions. However, there currently is inter-jurisdictional cooperation between animal protection officers, so it is possible that the authorities would know about, or could find out about, the order. In addition, it is possible the order could be on the Canadian Police Information Centre (CPIC) (see Part E below).

Family Law Model – Parenting Orders

[334] Another precedent for enabling cross-jurisdictional enforcement of court orders without a registration requirement is found in family law; specifically in provincial legislation dealing with child custody/parenting/contact orders.[58]

[335] Although "registration" is not required for family court orders to be enforceable, they do require a court to "recognize" the order if a party is seeking to enforce the order.

[336] A similar process could be used to enforce animal prohibition orders after seizure of the animals, if provincial/territorial animal welfare legislation requires court involvement before an animal can be forfeited and disposed of. A provision in the animal welfare legislation could require an animal protection officer who wants to dispose of animals seized due to the contravention of an extra-provincial/territorial animal prohibition order to make an application to the court for forfeiture and disposal.

[337] Proof of the order could be provided by way of a certified true copy, similar to (or as is done in) family law legislation.

Stand-Alone Act Model – Extra Provincial Enforcement of Custody Orders

[338] Similar to the provisions contained within family law legislation regarding the cross-jurisdictional enforcement of parenting orders, some provinces have stand-alone legislation that allow for enforcement of extra-provincial custody orders upon application to a court.[59]

Considerations

[339] In examining the three examples for enforcement of extra-provincial/territorial orders, the JWG felt that the most important example is the UECJA clause for civil protection orders because the order is "deemed" to be an order of the enforcing jurisdiction, without the requirement for registration, and can be enforced "in the same manner" as an

[58] See Appendix D - Examples of Cross-Jurisdictional Enforcement Provisions.
[59] See Appendix D - Examples of Cross-Jurisdictional Enforcement Provisions.

order made in the enforcing jurisdiction.[60]

[340] The JWG recognized that "enforcement" of a civil protection order is not as broad, or potentially far reaching, as "enforcement" of an animal prohibition order, which may result in the forfeiture of a person's animal.

[341] The JWG considered that for the seizure of animals, the civil protection order provisions in the UECJA provide the best example for animal protection orders because of the potential need for immediate action.

[342] However, for forfeiture of animals, the JWG discussed whether family law legislation provides a better example because a court should perhaps be involved before such action can take place.

[343] This consideration of court involvement is especially important because, as there is no formal registry for animal prohibition orders, due process may require that there be a confirmation of an animal prohibition order before permanent action such as forfeiture is taken.

[344] In addition, the possibility that an animal prohibition order may have been varied (see discussion in Part F below) may require confirmation of the order.

[345] Because most, although not all, provincial/territorial animal welfare legislation currently contains provisions regarding the enforcement of an animal prohibition order made in the province/territory, it may assist with clarity if provisions regarding the enforcement of an extra-provincial/territorial order is contained in the same legislation.

[346] For further enforcement action after an initial seizure, such as forfeiture and disposition of the animals, or a prosecution for breaching the order, the legislation should specify that the order is enforceable in the same manner as an order made by a court under the provincial/territorial animal welfare legislation in the enforcing jurisdiction.

[347] Consideration could be given to whether the authorities are required to obtain a certified true copy of the order before taking enforcement action beyond the initial seizure.

[348] While the lack of a national registry (or even a provincial/territorial registry) impedes the effective enforcement of animal prohibition orders and the protection of animals, the more serious impediment to the protection of animals is the lack of legislation allowing cross-jurisdictional enforcement of animal prohibition orders obtained under provincial/territorial animal welfare legislation. Without the ability to enforce an animal prohibition order obtained under provincial/territorial legislation in another jurisdiction, the need for a national registry is largely moot.

[349] Given that provincial/territorial animal prohibition orders can be powerful tools in the protection of animals from serious harm, the JWG recommends that provinces and

[60] The proposed amendments in Alberta's Bill 22 also "deem" an extra-provincial/territorial order to be an order made in Alberta.

territories enact legislation to allow for the cross-jurisdictional enforcement of animal prohibition orders as soon as possible regardless of whether or not there is a national or provincial/territorial registry.

[350] The JWG recommends that whether the provisions for cross-jurisdictional enforcement are contained within an Enforcement of Canadian Judgments Act, existing animal welfare legislation, or a stand-alone extra-provincial/territorial enforcement of animal prohibition orders act, the order should be "deemed" to be an order made in the jurisdiction where the alleged breach has occurred for at least the purpose of seizure, and seizure should be able to take place immediately.

[351] The JWG recommends considering the following options for the cross-jurisdictional enforcement of animal prohibition orders:

- **Additions to a Uniform Enforcement of Canadian Judgments Act**:

    i. Definition of "animal prohibition order" – An order made by a Canadian court under provincial or territorial legislation prohibiting, limiting or placing conditions on a person from owning, having custody, care or control of, or residing with any animal, a specified animal or a specified number or type of animal.

    ii. An animal prohibition order is deemed to be an order of the court in the province or territory where the order is sought to be enforced and is enforceable in the same manner as an animal prohibition order of that court for all purposes.

- **Additions to provincial/territorial animal welfare legislation:**

    i. Definition of "animal prohibition order" - An order made by a Canadian court under provincial or territorial legislation prohibiting, limiting or placing conditions on a person from owning, having custody, care or control of, or residing with any animal, a specified animal or a specified number or type of animal.

    ii. An animal prohibition order is deemed to be an order of the court in the province or territory where the order is sought to be enforced and is enforceable in the same manner as an animal prohibition order of that court for all purposes, without the order being registered or confirmed.

- **Additions to provincial/territorial animal welfare legislation that differentiate between "seizure" of animals and other enforcement of animal prohibitions:**

    i. Definition of "animal prohibition order" - An order made by a Canadian court under provincial or territorial legislation prohibiting, limiting or placing conditions on a person from owning, having custody, care or control

of, or residing with any animal, a specified animal or a specified number or type of animal.

ii. An animal prohibition order is deemed to be an order of a Canadian court in the province or territory where the order is sought to be enforced and is enforceable in the same manner as an animal prohibition order of that court, for the purpose of the seizure of animals, without the order being registered or confirmed.

iii. An animal prohibition order is deemed to be an order of a Canadian court in the province or territory where the order is sought to be enforced and is enforceable in the same manner as an animal prohibition order of that court, for all purposes other than seizure if a court is provided with a certified true copy of the animal prohibition order.

- **Creation of stand-alone extra-provincial/territorial enforcement of animal prohibition orders Act**:

  i. Creation of a stand-alone Act with the same provisions as those proposed for provincial/territorial animal welfare legislation.

E – Animal Prohibition Order Registry

RECOMENDATION

[352] **The JWG does not make a formal recommendation regarding the creation of an animal prohibition order registry.**

[353] The JWG does recommend that FPT governments consider a national animal prohibition order registry and how it could be funded and cooperatively operationalized.

[354] The JWG also recommends that animal protection agencies liaise with the RCMP about possibly enhancing their direct access to CPIC, and that animal protection officers and police officers increase their collaboration to ensure that animal prohibition orders are recorded on CPIC.

DISCUSSION

[355] The lack of any form of registry for animal prohibition orders was identified as a significant barrier to the effective enforcement of animal prohibition orders; both within provinces and territories and between provinces and territories. Even if orders are enforceable across jurisdictions, if police and animal protection officers are not aware of them, they will not be able to enforce them.

[356] There is currently no official “registry” within provinces and territories, or nationally, of animal prohibition orders made by the courts.

[357] Currently, there is a patchwork of systems across the provinces and territories, and

nationally, where an animal prohibition order may be recorded. These systems include:

- Provincially managed court information systems (these may or may not include information about animal prohibition orders). If the information is contained within the system, it is usually only directly accessible within the province.

    i. Animal prohibition orders in the provincial police information database in Québec (CRPQ) are automatically fed into CPIC (discussed below). Non police officers do not have access to CRPQ.

- Individual animal protection agencies keep their own lists of animal prohibition orders made in their jurisdiction which may include information for a city or provincially (e.g. Calgary Humane Society, Alberta SPCA, BC SPCA, SK Animal Protection Services, Montreal SPCA).

- Informal information sharing and databases are maintained by interested organizations such as Humane Canada (obtains information about animal prohibition orders from reported court cases) and the National Centre for the Prosecution of Animal Cruelty (NCPAC) (a program of Humane Canada that includes prosecutors), and through information sharing between animal welfare system participants.

- Internal record keeping in provinces/territories with a comprehensive administrative scheme (e.g. PEI, Ontario, Yukon).

- Canadian Police Information Centre (CPIC).[61]

    i. The RCMP manages CPIC on behalf of the Canadian law enforcement community.

    ii. Three categories of people can directly access CPIC:

        a) Police,

        b) Agencies with a law enforcement role, and

        c) Others who are complementary to law enforcement. [62]

    iii. In practice, this means that CPIC can usually only be directly accessed by police officers. As it currently stands, information cannot be directly entered onto CPIC or retrieved from CPIC by animal protection officers in most jurisdictions (e.g. BC SPCA, Calgary Humane Society, SK Animal Protection Services, Montreal SPCA).

[61] It is important to note the distinction between "CPIC" and a "Criminal Record." Criminal Records are generated through CPIC, however CPIC can contain more information than what is found in a Criminal Record.
[62] Agencies other than police must be approved as a CPIC agency.

iv. Currently, the only animal protection officers able to directly access CPIC are Ontario Animal Welfare Inspectors.

v. Animal prohibition orders obtained under the *Criminal Code* are sometimes reported to CPIC, but can be missed. An animal prohibition order obtained under the *Criminal Code* may also appear on a person's Criminal Record if they were fingerprinted and if the information is provided by police to CPIC.

vi. In theory, an animal prohibition order made under provincial/territorial legislation could also be added to CPIC (not to the Criminal Record) if police provide that information to CPIC. This would be similar to driving offences under provincial legislation that are often added to CPIC if a police officer lays the charge under the provincial legislation.

[358] The lack of a formal or standard registry, and the lack of accessibility to court management systems and CPIC directly by animal protection officers, limits the enforceability of animal prohibition orders not only *between* jurisdictions but even *within* the jurisdiction where they were obtained.

[359] The JWG identified several possible options for maintaining a database or registry of animal prohibition orders that would be directly accessible by police and animal protection officers both within the province/territory and from outside the province/territory:

- Provinces and territories could possibly maintain a provincial/territorial registry and make it accessible to police, animal protection officers and prosecutors. Provinces that have a comprehensive administrative scheme that utilizes Directors, Boards, etc. would likely be better positioned to do this than others.

- In provinces with one main animal protection investigative agency, the agency could possibly maintain a provincial registry and make it accessible to investigators and prosecutors (e.g. Nova Scotia Society for the Prevention of Cruelty, the BC SPCA).

- One national registry where all animal prohibition orders, regardless of whether the order was obtained under the *Criminal Code* or provincial/territorial legislation, and regardless of the investigative agency involved, could be registered and the information would be accessible to all investigative agencies and prosecution services that need it.

[360] If a province/territory was willing to take on the maintenance of a provincial/territorial registry, that would be an improvement for that province/territory, but may not address accessibility from outside of the province/territory. However, a province/territory could choose to make it accessible to those outside of the province/territory.

[361] A provincial/territorial registry would require education and coordination for animal protection officers, police, prosecutors and the courts to ensure that information about animal prohibition orders made in the province/territory was provided to the provincial/territorial body responsible for the registry.

[362] Challenges with relying on an animal protection agency to maintain a registry include that some provinces, such as Alberta, have multiple non-profit animal protection agencies and, as animal protection agencies are generally non-profit organizations, they may not have the money and resources to maintain a province-wide registry. As with a provincial/territorial body, if an animal protection agency was willing to take on the maintenance of a provincial/territorial registry, education and coordination for stakeholders would be required.

[363] The obvious limitation to the options for a provincial/territorial registry is that a provincial/territorial registry would only contain orders made in that province/territory, unless efforts were made to obtain information about prohibition orders made in other provinces/territories. This would require significant communication and coordination between provinces/territories and would likely lead to a patchwork of registries across the country.

[364] The JWG discussed the possibility of having one national non-profit organization maintain a registry. For example, the organization Humane Canada currently maintains a partial database of animal prohibition orders. However, the maintenance of a registry would likely result in costs for the organization maintaining it, and could require funding for this purpose.

[365] The JWG also discussed whether CPIC could be better utilized as a national registry. To be effective, this would require significant education and coordination between, animal protection officers, police, and the RCMP who are in charge of CPIC.

[366] Enhancing the effectiveness of CPIC as a national registry could include:

- Exploring the possibility of more animal protection officers (or their agencies) having direct access to CPIC, and

- A concerted education campaign for police, animal protection officers, prosecutors and the courts, about the importance of recording animal prohibition orders on CPIC.

[367] The JWG concluded that the best way to ensure that animal prohibition orders (made both under the *Criminal Code* and provincial/territorial animal welfare legislation) are enforced, both within a province/territory and across provinces and territories, is to have a national registry.

[368] The JWG recommends that FPT governments consider a national animal prohibition order registry and how it could be funded and cooperatively operationalized.

[369] The JWG recommends that animal protection agencies liaise with the RCMP about possibly enhancing their direct access to CPIC, and that animal protection officers and police officers increase their collaboration to ensure that animal prohibition orders are recorded on CPIC.

F – Variation of Animal Prohibition Orders

RECOMMENDATION

[370] **The JWG does not make a recommendation regarding the variation of animal prohibition orders.**

DISCUSSION

[371] The JWG considered whether a variation of an animal prohibition order is currently available under the *Criminal Code* or provincial/territorial legislation, and whether there *should* be an ability to vary an order.

[372] The JWG concluded that the law regarding the ability to vary a *Criminal Code* animal prohibition order could potentially benefit from clarity. Some members felt that the *Criminal Code* likely does not allow a variation. However, other JWG members were aware of situations where *Criminal Code* orders have been varied when defence counsel, the prosecutor and the judge have agreed the order should be varied.

[373] Similarly, the variation of a provincial/territorial prohibition order in most jurisdictions would likely only be available through an appeal (although in some jurisdictions corrective orders made by animal protection officers can be varied). However, JWG members were aware of situations where provincial prohibition orders have been varied.

[374] In provinces like Alberta and Saskatchewan where a provincial animal prohibition order can be made "on any terms and conditions that the court considers appropriate," it is arguably possible to include a condition in the order that the order can be varied. However, in one reported case from Alberta, a provincial court judge held that the court does not have an ability to impose a condition about variation in an animal prohibition order, but does have the ability to vary an order because that power is implied in the provincial legislation.[63]

[375] There are many foreseeable situations where circumstances of an individual subject to an animal prohibition order could change that could possibly justify an amendment to the order. For example, an order requiring a person to not reside in the same premises as an animal could potentially be varied if the person's housing situation required them to live with another person who had an animal, and a judge was satisfied that the animal would be safe if the order was varied to allow the person to live with the animal.

[376] Legislation could require that an ability to vary an animal prohibition order could

[63] *R v Perrault*, 2021 ABPC 329 at paras 23 and 34. The proposed amendments in Alberta's Bill 22 allow the variation of an order in prescribed circumstances.

be subject to any conditions or restrictions stated in the original order. The person subject to the order could also be required to present evidence to demonstrate to the satisfaction of the court that the conditions or circumstances that made the issuing of the order appropriate have changed, and that a variation will not create undue risk of harm to animals.[64]

[377] The JWG considered what impact the ability to vary an order could have on the cross-jurisdictional enforcement of animal prohibition orders, and concluded it could create challenges for authorities in determining the most current form of the order, especially if a registry for animal prohibition orders is not in place.

[378] The JWG concluded that it would be preferable for persons who are subject to an animal prohibition order to be afforded the opportunity to vary an order if the person's circumstances change. However, it would only be feasible to vary an animal prohibition order in the jurisdiction where it was made, and variations could create challenges for the cross-jurisdictional enforcement of orders unless there was a national registry in place that kept track of animal prohibition orders and any variations made to the orders.

[379] Given the desire for cross-jurisdictional enforcement, coupled with the current lack of a national registry, the JWG chose not to make any recommendations regarding an ability to vary an animal prohibition order.

3 – Discussion and Recommendations: Seizure and Management (Care, detention, forfeiture and disposition) of Animals

[380] In addition to animal prohibition orders, the JWG identified the post seizure management of animals (care, detention, forfeiture and disposition) as an area where both the *Criminal Code* and provincial/territorial animal welfare legislation have a significant impact on the well-being of animals and where law reform is needed.

[381] The management of seized animals is a significant challenge for animal protection agencies and other designated caretakers who must care for animals that are seized under the *Criminal Code* or provincial/territorial legislation.

[382] Once an animal is seized by authorities, the animal must be cared for until such time as the animal is returned to the person from whom the animal was seized, or to the owner, or the animal is forfeited to the authorities and can be disposed of.

[383] If the time between the seizure and the decision to return or forfeit the animal is lengthy, the cost of caring for the animal can be burdensome on whoever is tasked with their care. In addition, being in care for an extended period of time may be detrimental to the well-being of the animal.[65]

[64] See proposed section 13.2 in Bill 22, *Animal Protection Amendment Act*, 2026, 2nd Sess, 31st Leg, Alberta, 2026
[65] For a discussion of the stress animals experience while in a shelter setting see: Horecka K, Neal S, *Critical Problems for Research in Animal Sheltering, a Conceptual Analysis*, Front Vet Sci. 2022 Apr 1;9:804154 https://pmc.ncbi.nlm.nih.gov/articles/PMC9010978/; Hennessy MB, Willen RM, Schiml PA, *Psychological Stress,*

[384] The JWG considered possible legislative amendments for both the *Criminal Code* and provincial/territorial animal welfare legislation that could possibly reduce the time a seized animal remains in care, thereby reducing the financial burden on those responsible for their care and limiting the possible negative impact on the well-being of the animal.

[385] The JWG also identified several ways in which education and collaboration between animal protection officers and police officers regarding the use of provincial/territorial legislation to seize animals, instead of the *Criminal Code*, could greatly benefit the well-being of seized animals.

[386] The JWG recognized the important interests at play, such as the best interests of the animal, the financial viability of organizations who are responsible for their care, and the rights of the person from whom the animal was seized, or the owner of the animal if that is not the person from whom it was seized.

A – Provincial/Territorial Legislation

RECOMMENDATION

[387] **The JWG is not making a recommendation for draft model provisions in provincial/territorial legislation regarding the seizure and management of animals.**

[388] The JWG does recommend that that all provincial/territorial animal welfare legislation provide an ability to seize an animal to prevent distress when an animal protection officer or police officer has reasonable grounds to believe the animals will become distressed.

[389] The JWG also recommends that all provincial/territorial animal welfare legislation have an ability to forfeit an animal based on the best interests of the animal (i.e. an ability to not return an animal in order to prevent future distress) or failure to comply with a corrective order.

DISCUSSION

[390] The most significant concern raised by animal protection officers regarding the seizure and management of animals is the length of time that authorities are required to keep seized animals, and the associated financial cost and potential detriment to the well-being of the animal.

[391] This concern was expressed both in respect of seizures under the *Criminal Code* and under provincial/territorial legislation.

Its Reduction, and Long-Term Consequences: What Studies with Laboratory Animals Might Teach Us about Life in the Dog Shelter. Animals (Basel). 2020 Nov 7;10(11):2061, https://pmc.ncbi.nlm.nih.gov/articles/PMC7694980/.

[392] The need for a timely, fair process to address either the return of the animal to its owner, or the forfeiture of the animal to the authorities, was identified.

[393] Provincial and territorial legislation tend to have seizure and forfeiture provisions that can more quickly address the disposition of animals than the *Criminal Code* because the legislation is specifically about animals and animal welfare.[66] However, challenges still exist, and some provincial/territorial processes are more efficient than others.

[394] In addition to the ability to seize animals in relation to an allegation of a provincial offence, all provincial/territorial legislation contains provisions for seizing an animal that is in "distress"[67] or is "abandoned."

[395] The mechanism and requirements for forfeiting the seized animal, including whether a conviction is required for forfeiture, are different in each jurisdiction.

[396] Some provinces/territories have an administrative process that uses a Board or Director to address the forfeiture of animals under provincial/territorial legislation, while others use the courts.[68]

[397] The provinces/territories that have an administrative process tend to have more detailed provisions regarding the seizure and forfeiture of animals without the need for charges or a conviction, and are usually able to deal with forfeiture more expeditiously than those provinces that rely on the courts.

[398] For example, in Nova Scotia, the owner of a seized animal must appeal within 5 business days of the seizure. The Agriculture Appeal and Review Board (AARB) must hold the hearing within 10 business days of receiving the appeal. The AARB must render an oral decision within 2 business days of the hearing concluding, with a written decision to follow within 10 business days of the hearing concluding. There are limited mechanisms to recover from the owner the costs to care for the seized animal during that time, and these are rarely used.

[399] However, even in provinces/territories that have an administrative process, there may still be concerns about the time and costs associated with appeals of seizure and forfeiture orders.

[400] Of note, the authority for "seizure" of an animal and for "forfeiture" of an animal are not always clearly delineated in the provincial/territorial legislation. The appeal process is usually based on an appeal of the "seizure," but it is not always clear what the appeal board must consider when the authorities want the animal "forfeited" for disposition.

---

[66] In general, animals seized under the *Criminal Code* may be held until the end of proceedings in relation to criminal charges, which can take months or years.

[67] Except New Brunswick, which refers to "immediate needs."

[68] The provinces and territory that have a Board or Director are: British Columbia, Manitoba, Ontario, Nova Scotia, Prince Edward Island and Yukon.

[401] Provincial/territorial legislation that allows animal protection officers to give a person a corrective order with conditions provide a clearer basis for forfeiture if the person does not comply with the conditions. However, if the animal is seized because it was in distress and the animal protection officer does not provide the person with an order, the basis for forfeiture is often not as clear.

[402] Most provincial/territorial legislation allows forfeiture on the basis that the owner cannot be found, or for nonpayment of care expenses. However, if the owner pays the expenses, it is not always clear that the animal could be forfeited based on the best interests of the animal.

[403] Provinces/territories that do not have a specific administrative regime for the forfeiture and disposition of animals may have to rely on the outcome of charges to determine forfeiture if a person pays the care expenses.

[404] For example, in Alberta, New Brunswick, and Newfoundland and Labrador, animals can only be forfeited if the owner cannot be located, the associated care costs are not paid within a prescribed time, or if the person is convicted of a provincial offence.

[405] Therefore, in these provinces, the provincial process for forfeiture may not be any more expeditious than the *Criminal Code* process.

[406] When the JWG consulted with animal protection officers, most of them seemed to feel that their provincial legislation provided a quicker and more efficient mechanism than the *Criminal Code* in cases where the forfeiture of animals was necessary. For those provinces without a clear administrative process, expeditious forfeiture is likely tied to the nonpayment of care expenses and short appeal periods.

[407] Another challenge regarding seizure under provincial/territorial legislation, is that while most provincial/territorial legislation allow animals to be seized when an animal is *in* distress, only some allow seizure to *prevent* distress.[69]

[408] This means that in a situation where a person has some animals in distress and others that are not, authorities cannot seize the other animals, even if they believe they will become distressed due to the same circumstances that caused the seized animals to be in distress. This limitation is not conducive to the protection of animals from harm, as it prevents authorities from taking action until an animal is <u>in distress</u>, even if they have grounds to believe the animals will become distressed.

[409] The JWG recommends that that all provincial/territorial animal welfare legislation provide an ability to seize an animal to prevent distress when an animal protection officer or police officer has reasonable grounds to believe the animals will become distressed.

[410] The JWG recommends that all provincial/territorial animal welfare legislation have an ability to forfeit an animal based on the best interests of the animal (i.e. an ability to not

[69] Saskatchewan, Manitoba, Québec, PEI and Yukon have provisions that could allow seizure to prevent distress. The amendments in Bill 22 to Alberta's *Animal Protection Act* would allow seizure to prevent distress.

return an animal in order to prevent future distress) or failure to comply with a corrective order.

B – Criminal Code

RECOMMENDATION

[411] **A majority of the JWG recommends that the *Criminal Code* be amended to:**

- **Clarify or confirm that a hearing related to forfeiture under the *Criminal Code* is a "proceeding" for the purpose of s. 490,**
- **Clarify or confirm that s. 490(9) applies after a trial has commenced, and**
- **Amend s. 490.1 to state that if the offence related property is an animal, the conviction or discharge can be on an indictable offence or a summary offence.**

[412] The JWG also recommends cooperation amongst all stakeholders to encourage the use of provincial/territorial legislation for the seizure and forfeiture of animals, if not in conflict with the *Criminal Code*, and if a more efficient process for forfeiture is provided in the provincial/territorial legislation.

DISCUSSION

[413] When "anything" is "seized" pursuant to certain powers under the *Criminal Code,* if the thing is not returned, s. 489.1 requires that a Report to Justice must be filed and the detention, and possibly forfeiture, of the thing is thereafter governed by s. 490 of the *Criminal Code*.

[414] The purpose of s. 489.1 and s. 490 is to address the detention of "things" seized as evidence or offence-related property that are needed for an investigation, trial, or other proceeding, and to facilitate the return of property to lawful owners. While animals are considered property in the *Criminal Code*, their seizure and management create unique challenges that these sections do not explicitly address.

[415] The detention provisions in s. 490 of the *Criminal Code* have been identified by prosecutors, including prosecutors who are members of NCPAC, and the animal protection officers who were consulted by the JWG, as benefitting from modification to better address the post-seizure management of animals, which are living sentient beings.

[416] In particular, the detention provisions do not take into account one of the purposes of authorities when detaining animals in animal cruelty cases, which is to protect the animals from further harm. The result is that animals seized under the *Criminal Code* are often detained until the end of a trial, which can take years.

[417] The justification for detention of "things" seized under the *Criminal Code* is usually that the thing is needed as evidence in a trial or "other proceeding," or because possession of the thing by the person it was seized from is unlawful.

[418] However, if an animal is seized under the provisions of the *Criminal Code*, detention of the animal will often not be needed for evidentiary purposes. For example, photographs will often suffice to prove the offence.

[419] In addition, possession of the animal by the accused person may not be "unlawful," the way possession of a prohibited firearm might be, for example, unless or until there is a court order (e.g. s. 447.1 prohibition order, s. 515 release order) prohibiting that possession.

[420] Prosecutors commonly argue that continued detention of a seized animal is required because the prosecutor intends to seek forfeiture of the animal and a s. 447.1 prohibition order if the accused is convicted. While "proceeding" is not defined in s. 490, there is caselaw (not related to animals) that supports the proposition that a contemplated forfeiture hearing is a "proceeding."[70] An animal can therefore be detained if there is an intention to seek forfeiture of the animal at the end of a trial.

[421] However, when detention of the animal is authorized under s. 490, the animal cannot be forfeited and disposed of until the criminal proceedings are complete. In the meantime, the cost of its care may be borne by non-governmental organizations with limited budgets, and extended temporary accommodation of the animal may not be the best outcome for its well-being.

[422] Prosecutors indicate that, in current practice, forfeiture applications may be made under sections 490(4), 490(9), 490.1, or 490.01.[71]

[423] These sections, however, pose several challenges for the forfeiture of animals, including,

- Due to the lack of clarity and purpose in the wording of subsection 490(4), some parts of Canada use this section once charges are laid, particularly in response to a request for return, while in other parts of the country, "this section of the legislation serves little apparent purpose."[72]

- There was uncertainty and conflicting caselaw, especially from Québec, as to whether s. 490(9) can be used after a trial is commenced or completed. However, it now appears to have been settled by the Supreme Court in *R v Nguyen,*[73] that s. 490(9) can be used after proceedings have been instituted;

- The use of s. 490(9) is dependent on an animal prohibition being ordered (as possession must be "unlawful");

---

[70] *R. v. Nikitczuk*, 2009 CanLII 29911 (ON SC), *R. v. Dawson*, 2013 ONSC 4706, *R. v. Alchin*, 2007 ONCJ 589, *R. v. Buller*, 2009 ONCJ 781, *Lussier c. Québec (Procureur général)*, 2003 CanLII 10163 (QC CQ), *Leduc c. Canada (Procureur général du)*, 2003 CanLII 6017 (QC CQ), *R v Scott*, 2015 MBCA 43, *R v Soares*, 2020 ONCJ 243, *Re Further Detention*, 2022 BCSC 2283, *Further Detention of Things Seized (Re)*, 2021 BCSC 1450 at para. 50. See contra, *R v Tingley* 2021 BCPC 24.

[71] Appendix E – Detention and Forfeiture Sections in the *Criminal Code.*

[72] ULCC Report of the Working Group on Section 490 of the *Criminal Code* ("ULCC 490 Report") at para 173.

[73] *R. v. Nguyen,* 2026 SCC 10.

- Section 490.1, which applies to offence related property, requires a conviction for an "indictable" offence;

- Section 490.01, which addresses "perishable" things, is aimed at returning property to lawful owners and addressing property that may "depreciate" in value. This section does not necessarily clearly address the situation of seized animals. The working group is not aware of reported caselaw where this provision has been applied to animals, or the question of if an animal is a perishable thing, and how the idea of rapid depreciation should be applied to animals, has been examined. It may appropriately apply to cases where animals are injured or ill, or become ill, while in the care of authorities; and

[424] Section 490 is a broadly-framed provision and is not well-adapted to the seizure and detention of living, sentient beings for their protection and well-being. This is understandable given its purpose is the management of "things" seized that are needed for investigation, trial, or other proceeding, and to facilitate the return of property to lawful owners. Furthermore, the criminal law is not primarily focused on animal welfare. However, it can result in significant impacts on the animals in question and the organizations that care for them.

[425] While some provincial/territorial statutes contain similar provisions regarding detention of things,[74] provincial/territorial animal welfare legislation can provide more flexibility regarding the seizure and forfeiture of animals.

[426] Given that provinces and territories have jurisdiction over animal welfare, the JWG considered whether provincial/territorial animal welfare legislation could be used for the seizure, forfeiture, and disposition of animals when *Criminal Code* charges are laid.

[427] A review of provincial/territorial legislation, and discussion with animal protection officers, indicates that in some cases it is possible to use provincial/territorial animal welfare legislation to seize, forfeit and dispose of animals, even when there are *Criminal Code* charges.

[428] In most cases, this would be achieved by using the powers in the provincial/territorial legislation to seize, forfeit, and dispose of animals due to "distress." This power can be used in tandem with *Criminal Code* charges as long as the animals are not seized using *Criminal Code* powers.

[429] It is important to note that even if provincial/territorial legislation provides for seizure, forfeiture and disposition, federal paramountcy would require sections 489.1 and 490 to be complied with in a situation where the animal has first been seized under the *Criminal Code*.

[430] In the opinion of the JWG, if an animal is seized under a *Criminal Code* power, instead of a provincial/territorial power, it will be necessary to ensure that detention under

[74] For example, *Offence Act*, RSBC 1996, c 338, s. 24.

the *Criminal Code* is concluded in some way before provincial measures could be pursued.

[431] It is therefore important for seizing authorities to consider seizing animals under provincial/territorial legislation instead of under the *Criminal Code*, even if criminal charges are laid. The JWG referred to this as a "parallel" process.

[432] The JWG understands that a parallel process is already being used in some provinces. However increased education on this topic for animal protection officers, police officers and prosecutors could likely increase the use of provincial/territorial legislation to seize, forfeit and dispose of animals even when *Criminal Code* charges have been laid. This could potentially reduce the time an animal has to remain in care.

[433] JWG members noted that, while training to encourage the use of provincial/territorial regimes would be advisable, there will always be situations where the seizure takes place under the provisions of the *Criminal Code*.

[434] The JWG therefore considered measures that could be taken to address the concerns about animals remaining in the custody of authorities for long periods of time when they are seized under the *Criminal Code*. These included:

- Amendments that may better adapt the *Criminal Code* to the detention and forfeiture of animals when provincial/territorial legislation cannot be used for forfeiture of animals that are seized using *Criminal Code* powers.

- The ability to use provincial/territorial legislation to seek forfeiture of animals that are seized using *Criminal Code* powers when the animals are no longer required for an investigation, trial or other proceeding (what the JWG referred to as an "off-ramp").

[435] The CWG discussed two suggested approaches for possible amendments to improve the forfeiture and detention scheme in the *Criminal Code* for animals seized using *Criminal Code* powers:

1) **Creation of a new regime** - Create a specific regime in the *Criminal Code* to deal with the detention of animals and allow a forfeiture hearing to occur prior to, or without, a conviction, or

2) **Amendments to existing provisions** - Use the current regime but:

    - Clarify/confirm that a forfeiture hearing is a "proceeding" for s. 490 and that s. 490(9) applies after a trial has commenced, and

    - Amend s. 490.1 to state that if the offence related property is an animal, the conviction or discharge can be on an indictable offence or a summary offence.

[436] The JWG agreed that maintaining animals in the care of animal welfare agencies until the end of a trial process may not be the best possible outcome for the animal's welfare and may place a disproportionate financial burden on animal protection agencies and caregivers, which are usually not-for-profit agencies.

[437] In addition, when criminal charges are laid, even if the accused is acquitted, returning the animal to the accused may not be in the animal's best interest. This can occur when the prosecution was unable to meet the high standard of proof beyond a reasonable doubt for a criminal offence, but there remains a concern for the safety and well-being of the animal.

[438] There may also be situations where it could be desirable to seize an animal for public safety reasons, for example a vicious dog, and forfeiture would be desirable for public safety, not animal welfare, reasons.

[439] For these reasons, the JWG considered whether having an ability under the *Criminal Code* to forfeit an animal to the authorities for disposition, without waiting for, or requiring, a conviction would be desirable.

[440] The JWG recognized that forfeiture before, or without, a conviction is rare in the *Criminal Code*.

[441] The JWG also recognized that an animal, especially an animal that is a "pet," is usually thought of as a family member, and therefore permanently removing the pet from the care of a person can be devastating for that person and other family members.

[442] There is therefore a tension between adjudicating the matter quickly, which may be in the best interests of the animal, and ensuring due process and fairness for the person from whom the animal is taken.

[443] The JWG discussed the challenges with creating a forfeiture or disposition hearing for animals that would take place before the end of a trial and a finding of guilt.

[444] An important question is what the required standard of proof for a pre-conviction forfeiture hearing would be. What would need to be proven? And would it be proof on a balance of probabilities, or proof beyond a reasonable doubt?

- The CWG discussed whether the consideration for forfeiture should be what is in the "best interests" of the animal. However it was noted that the "best interests" of the animal is a difficult standard to use because the criminal law does not require people, or owners, to act in the "best interests" of animals. What is legally required of owners does not equate to "best interests."

- The JWG discussed the precedent in s. 445.2(3)(c) for the consideration of "the best interests of the animal's welfare." While the section does provide an example of considering the "best interests" of an animal, the JWG concluded the section is difficult

to use as an example as it relates to a license issued by the government for the unique situation of cetaceans in captivity.

- Concerns were raised about the possible impact on an owner of an animal from making forfeiture decisions on a lower standard of proof than beyond a reasonable doubt in the criminal process, and a concern was expressed regarding separating forfeiture from a conviction in criminal law.

- To remain consistent with the criminal standard, the JWG considered whether an option could be to return an animal or seek forfeiture based on whether the police officer or animal protection officer "is satisfied return would not facilitate an offence or repeat of an offence." The JWG noted that bail conditions limiting an accused's contact with animals are similarly intended to prevent the commission of another offence, but also noted that bail conditions are temporary and directed at contact, not ownership, so may not provide an appropriate example.

- It was noted by some JWG members that bail hearings are on a balance of probabilities and can result in pre-trial detention. One of the purposes of detention after a bail hearing is to prevent further offences and to protect the public and victims - a rationale that could also support seeking forfeiture of an animal.[75] Some JWG members suggested that incarceration and the loss of liberty is arguably more serious than the loss of a property interest. However, the JWG consistently acknowledged and affirmed that animals are not like other "property." It was also noted that pre-trial detention is temporary, while forfeiture of an animal would be a final disposition.

- A significant concern was whether a forfeiture hearing before a trial would turn into a mini-trial and therefore would not be any quicker and could duplicate proceedings. This consideration would depend on the circumstances that would need to be proven, and whether the standard of proof would be on a balance of probabilities or beyond a reasonable doubt.

- It was suggested that a pre-conviction disposition hearing would add an additional burden to already overburdened court dockets.

- It was noted that it should not be assumed the animal would be forfeited at a forfeiture hearing, as a judge would have the option to return the animal.

[445] The JWG also reviewed some of the forfeiture provisions in the *Criminal Code* for examples of provisions that do not require a conviction. Some members of the JWG expressed concern that the examples reviewed may not provide useful examples because of their clear criminal purposes and distinct contexts.

[75] While an animal is not included in the definition of "victim" in s. 2 of the *Criminal Code*, the caselaw recognizes animals as a type of, or analogous to, a victim. See *R v Chen* 2021 ABCA 382 at para 39; *R v Picco* 2023 NLCA 33 at paras 70 – 71.

Forfeiture Requiring Conviction or Discharge

[446] Offence Related Property (s. 490.1) - The general standard of proof for forfeiture proceedings for offence related property is on a balance of probabilities; however, a conviction or discharge for an offence is a pre-requisite for the proceeding.

[447] Proceeds of Crime (s. 462.37) - The general standard of proof for forfeiture proceedings for proceeds of crime is on a balance of probabilities; however, a conviction or discharge for an offence is a pre-requisite for the proceeding.

Forfeiture Not Requiring a Conviction or Discharge

[448] Weapons and ammunition (s. 491) – Forfeiture does not require a conviction; a court must only "determine" that the weapon, etc. was used in commission of an offence OR that a person has committed an offence that "involves or the subject of which is" a weapon, etc. It is not clear what the standard of proof is for the court to make this determination, but it is likely on a balance of probabilities if there is a conviction, and beyond a reasonable doubt if there is no conviction.[76] Upon such a determination, forfeiture is mandatory (unless the court determines that a lawful owner was not party to the offence).

[449] Property obtained by crime (s. 491.1) – Forfeiture does not require a conviction; a court must only "determine' that an offence was committed and that the property was obtained by the commission of an offence. It is not clear what the standard of proof is for the court to make its determination, but it is likely on a balance of probabilities if there is a conviction, and beyond a reasonable doubt if there is no conviction.[77] The basis for forfeiture also appears to be that the accused is not the "lawful" owner.

[450] Proceeds of crime or offence-related property where the accused has died or absconded (sections 462.38 (proceeds of crime) and 490.2 (offence-related property) – Forfeiture does not require a conviction; a court must determine that proceedings were commenced, the person has died or absconded prior to conclusion of proceedings and that the property is, beyond a reasonable doubt, proceeds of crime or offence-related property.

[451] Voyeuristic recordings, intimate images, child sexual abuse and exploitation material (CSAEM), etc. (s. 164) - Under s. 164(1), a judge may issue a warrant authorizing seizure of material if the judge is satisfied there are reasonable grounds to believe that the material is a voyeuristic recording, intimate image, CSAEM, etc. Under s. 164(5), the material can be forfeited if the court is satisfied on a balance of probabilities that the material is as described in s. 164(1)

[452] Property owned or controlled by a terrorist group, or property that has been, or will be, used to facilitate or carry out terrorist activity (s. 83.14) - Under s. 83.13(1), a Federal Court judge may issue a warrant authorizing seizure of property if the judge is satisfied on reasonable grounds that the property is owned or controlled by a terrorist group, or the property has been or will be used to facilitate or carry out terrorist activity, as described in

[76] See *R. v. Nguyen,* 2026 SCC 10 at para 154.
[77] *Ibid*.

s. 83.14(1). Under s. 84.14(5), the property can be forfeited if the Federal Court judge is satisfied on a balance of probabilities that the property is as described in s. 83.14(1).

Considerations

[453] If policy makers determined that the goal of reducing the amount of time an animal is kept in care after seizure under the *Criminal Code* was pressing enough to allow a forfeiture hearing to be conducted without the need for a conviction, some members of the JWG thought consideration could be given to creating a new process in the *Criminal Code* using existing provisions as examples.

[454] For example, using sections 164 and 83.14 as a model, a new provision could provide that if an animal is seized under section 487, section 487.11, or 489 (which all require reasonable grounds to believe), the animal could be forfeited to the Crown if the court is satisfied, on a balance of probabilities, that an offence was committed in relation to the animal and that forfeiture is necessary to prevent the commission of another offence in relation to the animal.

[455] However, the identified purpose of allowing a forfeiture hearing without a conviction, which is to reduce the time an animal is in care for the well-being of the animal and to reduce costs of care, is not equivalent to curtailing terrorist activities or destroying material that can be determined, on its face, to be unlawful to possess.

[456] It was recognized that the ability to apply for forfeiture, absent a conviction, on a balance or probabilities standard is very rare in the *Criminal Code.*

[457] Of note, the ULCC 490 Report also highlighted that the *Criminal Code* does not contain provisions respecting the forfeiture of things that are not necessarily "unlawful" to possess in the absence of a conviction. The report noted the challenge with forfeiture of items "tainted by crime," such as an electronic device that contains voyeuristic or intimate images or CSAEM, or an otherwise lawful object used as a weapon.

> A conviction can provide a legal foundation for the forfeiture of such things, but in the absence of a finding of guilt, these are examples where the public interest may favour some manner of precluding the return to the person from whom they were seized notwithstanding the fact that the possession by the person would be lawful.
>
> There should also be a provision that permits for consent forfeiture or destruction regardless of the lawfulness of the item. This would be the case for things that might have had suspected evidentiary worth, but no value for the person either from a property or privacy point of view.[78]

[458] The Supreme Court decision in *Nguyen* clarifies the s. 490(9) provides courts with a residual power to forfeit property that is "tainted by crime" in some circumstances.[79]

[78] ULCC 490 Report, p. 69, recommendation 9.5.
[79] *R. v. Nguyen*, 2026 SCC 10.

However, whether this would apply to the seizure of allegedly abused animals is not clear and would require further analysis.

[459] As suggested in the ULCC 490 Report, an amendment to s. 490 that would provide for consent forfeiture would be helpful for seized animals. The basis for consent forfeiture would not be that the animal has no value, like the suggestion in the ULCC 490 Report, but that it may be beneficial to the accused to agree to forfeiture, either as a potential alternative to criminal proceedings, or when the accused does not want the animal returned.

[460] Ultimately, the JWG was unable to reach a consensus or a conclusion about creating a new regime or adding a new provision to the *Criminal Code* allowing a forfeiture hearing to be held without a conviction.

[461] While the length of time a seized animal is kept in care was recognized as a legitimate concern, the JWG was unable to resolve to the satisfaction of all members the many significant challenges related to standard of proof, court efficiencies, legal risks, and related policy risks if forfeiture was not related to a criminal conviction.

Discussion –Amendments to existing provisions

[462] The JWG considered less significant changes that could be made to improve the current detention and forfeiture structure in the *Criminal Code* in relation to animals.

[463] While it would not address the concerns about animals being held until the end of a trial, or seeking forfeiture when a person is not convicted, a majority of the JWG thought amendments to s. 490 and 490.1 would be a significant improvement to the provisions in the *Criminal Code*.

[464] A majority of the JWG thought that the challenges identified in relation to a possible lack of clarity regarding the application of s. 490 to forfeiture hearings, and after a trial has commenced, and forfeiture of offence related property under s. 490.1 only applying when the prosecution proceeds by indictment, should be addressed by amending the *Criminal Code* to:

- Clarify or confirm that a hearing related to forfeiture under the *Criminal Code* is a "proceeding" for the purpose of s. 490,
- Clarify or confirm that s. 490(9) applies after a trial has commenced,[80] and
- Amend s. 490.1 to state that if the offence related property is an animal, the conviction or discharge can be on an indictable offence or a summary offence.

[465] While a majority of the JWG were in favour of making the above recommendations, other members expressed concern with an expansion of s. 490.1 to

[80]These recommendations regarding s. 490 were also made in the ULCC 490 Report, recommendation 9.2, p. 67. While it has now been confirmed in *R v Nguyen*, 2026 SCC 10 that s. 490(9) applies after a trial has commenced, it would be beneficial to have clarity in the *Criminal Code*.

summary conviction offences in cases where the property is an animal given that this provision is a part of a larger framework in the *Criminal Code*, and with making a recommendation about broader changes to section 490 given the working group's mandate.

Discussion – Ability to use provincial/territorial legislation for forfeiture when animals are seized under the *Criminal Code* ("off-ramp")

[466] The JWG spent a considerable amount of time discussing the use of provincial/territorial animal welfare legislation in tandem with *Criminal Code* proceedings. This concept was described as a "parallel process" or an "off-ramp" from *Criminal Code* proceedings.

[467] The JWG agreed that provincial/territorial legislation that is concerned primarily with "animal welfare" may be a more flexible and efficient way to ensure that animals are removed from situations of neglect or abuse when compared to the criminal process. However, the JWG recognized the challenge in using provincial/territorial legislation when animals are seized using *Criminal Code* powers.

[468] The idea of a discretionary "off-ramp" from the *Criminal Code* detention and forfeiture scheme is an acknowledgement of the reality that *Criminal Code* powers will often be used to seize animals, even if the animals could have been seized under provincial/territorial animal welfare legislation.

[469] Animal abuse cases may be investigated by both police officers and provincial/territorial animal protection officers. Police officers tend to have more familiarity with *Criminal Code* procedures, while animal protection officers have more experience with animal welfare legislation. Police officers may not have knowledge about seizure under provincial/territorial legislation, and may also not have the resources needed to use the forfeiture mechanisms in provincial/territorial legislation.

[470] Animal protection officers and police try to work in collaboration; however, the reality is that there may not be enough animal protection officers to handle all the animal abuse cases in a province/territory. Similarly, police resources are stretched thin, and police may be unable to assume more responsibilities within a provincial administrative scheme when laying *Criminal Code* charges for animal abuse.

[471] While communication and coordination between police officers and animal protection officers is recommended, the reality is that communication and coordination often do not occur due to resourcing and time constraints.

[472] In light of these consideration, the JWG discussed whether something could be added to the *Criminal Code* explicitly setting out that provincial/territorial legislation could be used to forfeit and dispose of animals that were seized under *Criminal Code* powers.

[473] The JWG was not aware of any precedent for such a proposal and agreed that it would be an unusual approach. However, some members of the JWG noted that it is unusual because the *Criminal Code* is not designed to take into account the special nature of sentient beings as "property," which is the reason the JWG was considering other options for the

detention and forfeiture of animals that are seized under the *Criminal Code*.

[474] Some members expressed concern that such a proposal has the potential to exceed federal jurisdiction over criminal law and procedure to the extent that it would authorize forfeiture and disposal of property seized for criminal purposes under provincial regulatory mechanisms.

[475] It was also noted that if an amendment was made to the *Criminal Code* explicitly providing for the use of provincial/territorial legislation for forfeiture, it would have to be discretionary, or permissive, not mandatory, because provincial/territorial legislation will not always be able to be used. Importantly, the ability to use provincial/territorial legislation will depend on the circumstances and the particular provisions of the provincial/territorial legislation.

[476] For example, if the provincial/territorial legislation only allows for seizure when an animal is *in* distress, it likely will not be able to be used to "re-seize" animals that were seized under the *Criminal Code* and have been in care. This underlines the importance of considering possible amendments to provincial/territorial statutes to provide for seizure to prevent distress.

[477] In addition, provincial/territorial legislation may not always provide for a more expeditious proceeding. Timely disposition of animals will depend on the authority provided in the legislation for seizure, forfeiture and disposition, whether forfeiture and disposition powers are linked to the outcome of charges, and timelines regarding appeal processes.

[478] Practically speaking, in provinces like Ontario and Québec, the provincial process and the *Criminal Code* process are treated quite separately.

[479] Ultimately, the JWG was not able to come to a consensus or make a recommendation regarding provisions in the *Criminal Code* that would explicitly refer to the use of provincial/territorial legislation for the purpose of forfeiture of seized animals.

Civil Forfeiture Example

[480] After the JWG finished most of its deliberations, civil forfeiture procedures under provincial civil forfeiture legislation were raised as a possible model for using provincial/territorial legislation to seek forfeiture of animals seized under the *Criminal Code* once they are no longer under the purview of s. 490.

[481] It was suggested in the appendix to the ULCC 490 Report that "section 490 and civil forfeiture regimes operate independently, but with significant overlap in operation, [and] there are many gaps and uncertainties in how the two regimes relate."[81] This description of civil forfeiture appears somewhat analogous to the overlap between *Criminal*

[81] ULCC 490 Report, Appendix A - Comments from the civil forfeiture perspective on the Report of the Uniform Law Conference of Canada – Section 490 Working Group.

Code processes and provincial/territorial processes in relation to animals.

[482] The appendix to the ULCC 490 Report notes that one of the practices that may be employed in the civil forfeiture context is that once the seized "thing" is no longer required to be detained for a criminal proceeding, s. 490(9) can be used to obtain an order to return it to the person from whom the thing was seized or the lawful owner. However, s. 490(12) specifies that nothing can be returned within 30 days of the making of the order. This allows time for an application to be made under the provincial legislation for civil forfeiture. The appendix to the ULCC 490 Report notes that, "[t]he law is fairly settled that a return order cannot prevent civil attachment, and a civil restraint order obtained within the 30 days specified in s.490(12) will prevent property from being returned."[82]

[483] It is possible that with appropriate coordination, a similar approach could be taken for animals seized under the *Criminal Code*. Once the animal is no longer required for a criminal proceeding, a return order could be sought under s. 490(9) and provincial/territorial animal protection officers could seize the animals under provincial/territorial legislation for possible forfeiture and disposal.

[484] However, the 30 days provided in s. 490(12) could pose a challenge to coordinating a seizure and forfeiture process under provincial/territorial animal welfare legislation after animals have been seized under the *Criminal Code.*

[485] Importantly, such a process would likely only be available if the provincial/territorial legislation allows seizure to *prevent* distress, as the animal would likely no longer be *in* distress if it is in the custody of an animal protection agency.

[486] The JWG recommends that policy makers consider the comments in Appendix A of the ULCC 490 Report regarding civil forfeiture and, if amendments are made to s. 490, consider clarifying how the criminal and civil forfeiture regimes relate and clarify the ability to conclude the s. 490 process so that a provincial/territorial process can be used.

[487] Using civil forfeiture as an example, animal protection officers, police and prosecutors may want to explore mechanisms to promote co-ordination between criminal and provincial/territorial proceedings with respect to animals, which could address issues arising from the length of time it takes for criminal proceedings to conclude where an animal has been seized.

[488] The JWG also recommends cooperation amongst all stakeholders to encourage the use of provincial/territorial legislation for the seizure and forfeiture of animals, if not in conflict with the *Criminal Code*, and if a more efficient process for forfeiture is provided in the provincial/territorial legislation.

[82] *Ibid* at p. 92, referring to: *British Columbia (Director of Civil Forfeiture) v. Qin,* 2020 BCCA 244; *British Columbia (Director of Civil Forfeiture) v. Hyland,* 2010 BCCA 148; *New Brunswick (A.G.) v. Gorman*, 2017 NBQB 18; but cf. *Ontario (A.G.) v. $787,940,* 2014 ONSC 3069.

Options for Consideration for Model Provisions in Provincial/Territorial Legislation

1 – Animal prohibition orders independent of charges or conviction

[489] The JWG recommends that provincial/territorial animal welfare legislation should provide a process for a court to make an animal prohibition order independent of charges or a conviction under the legislation on a balance of probabilities standard.

[490] This provision should allow for the order to be tailored to recognize the specific circumstances of the person and the circumstances of the animal abuse. The wording of an animal prohibition order in provincial/territorial legislation should be the same regardless of whether the animal prohibition order is made after a conviction for an offence, or under any other authority provided in the legislation.

[491] The purpose of the order could either be structured as being in the "interests of the safety, security, or protection" of animals or as "relieving or preventing the distress" of animals.

[492] The standard for the making of an order could either be that the order is "desirable" or is "necessary."

[493] The JWG recommends that the ULCC civil section endorse the recommendation to allow an animal prohibition order to be made independently of charges or a conviction under provincial/territorial animal welfare legislation.

[494] The JWG further recommends that the following options for when an order could be obtained be considered by the ULCC civil section and recommends that one of the following options be endorsed.

A – Options for animal prohibition orders independent of charges or a conviction

[495] **Option 1**: an order is <u>desirable</u> in the interests of the safety, security, or protection of any animal, a specified animal, or a specified number or type of animal.

[496] **Option 2**: an order is <u>necessary</u> in the interests of the safety, security, or protection of any animal, a specified animal, or a specified number or type of animal.

[497] **Option 3**: an order is <u>desirable</u> to relieve or prevent the distress of any animal, a specified animal, or a specified number or type of animal.

[498] **Option 4**: an order is <u>necessary</u> to relieve or prevent the distress of any animal, a specified animal, or a specified number or type of animal.

2 – Cross-jurisdictional enforcement of animal prohibition orders

[499] The JWG recommends that provinces and territories enact legislation to allow for the cross-jurisdictional enforcement of animal prohibition orders.

[500] The JWG identified three options for the cross-jurisdictional enforcement of extra-provincial/territorial orders. Provisions could be included in an Enforcement of Canadian Judgments Act, within existing provincial/territorial animal welfare legislation, or in a stand-alone extra-provincial/territorial enforcement statute.

[501] Because of the differences between provincial and territorial animal welfare legislation, and the differences between provinces and territories regarding the uptake of the ULCC Uniform Enforcement of Canadian Judgments Act, there may not be one best option for all jurisdictions.

[502] The JWG recommends that the ULCC civil section endorse the recommendation to enact legislation to allow for the cross-jurisdictional enforcement of animal prohibition orders.

[503] The JWG further recommends that all three options for cross-jurisdiction enforcement legislation be endorsed by the ULCC civil section, and individual provinces and territories can choose the option that would work best in that jurisdiction.

A – Options for cross-jurisdictional enforcement of animal prohibition orders

[504] **Option 1:** Provisions in an Enforcement of Canadian Judgments Act.

[505] **Option 2:** Provisions in provincial/territorial animal welfare legislation.

[506] **Option 3:** Creation of a stand-alone extra-provincial/territorial enforcement of animal prohibition orders statute.

3 – Other recommendations of the Joint Working Group on the Treatment of Animals in Canadian Law

[507] The JWG engaged in extensive discussions about enhancing the protection of animals through legislative amendments that reflect best practices and that would provide greater consistency, clarity and cohesion in relation to the treatment of animals in Canadian law.

[508] The JWG quickly realized that the significant differences in provincial/territorial animal welfare legislation, and the legislation governing the enforcement of animal welfare legislation, made it impossible to recommend a Uniform Act in the time available. Even recommendations for model provisions proved challenging based on some of the differences between the acts.

[509] The JWG however made general recommendations that jurisdictions may wish to consider regarding possible amendments to their animal welfare legislation if needed.

[510] The JWG recommends that the ULCC civil section endorse the following recommendations for possible consideration by jurisdictions.

A – Recommendations for consideration by jurisdictions

[511] The JWG recommends that all provincial/territorial animal prohibition order provisions should allow for sufficient flexibility to take into account the circumstances of the offence and the offender, and to enable the court to make a prohibition order as broad or as specific as required in the circumstances.

[512] The JWG recommends that for clarity and consistency, the provisions regarding the wording of an animal prohibition order in provincial/territorial legislation should be the same regardless of whether the animal prohibition order is made after a conviction for an offence, or under any other authority provided in the legislation.

[513] The JWG recommends that the following suggested wording, which would be clear and would provide for both a broad prohibition or a tailored one, could be considered:

If a person is convicted or discharged of an offence under this Act (*or an application is made for an animal prohibition order under this act)*, a judge or justice

a) may make, subject to the conditions or exemptions that the judge or justice directs, an order prohibiting the person from any or all of the following: owning, having custody, care, or control of, or residing in the same premises as,

i. any animal,

ii. a specified animal, or

iii. a specified number or type of animal

for any period the judge or justice considers appropriate, including for life.

[514] The JWG recommends that all provincial/territorial animal welfare legislation provide an ability to obtain an *interim* animal prohibition order, similar to a *Criminal Code* release order, that prohibits a person from having any animals or a certain number or type of animals, and/or acquiring more animals, when animals have been seized under the provincial/territorial animal welfare legislation and proceedings are ongoing.

[515] The JWG recommends that all provincial/territorial legislation have an offence for breaching an animal prohibition order and provisions allowing for the seizure, forfeiture, and disposal of animals when there is a breach.

[516] The JWG recommends that that all provincial/territorial animal welfare legislation provide an ability to seize an animal to *prevent* distress when an animal protection officer or police officer has reasonable grounds to believe the animals will become distressed.

[517] The JWG recommends that all provincial/territorial animal welfare legislation have an ability to forfeit an animal based on the best interests of the animal (i.e. an ability to not return an animal in order to prevent future distress) or failure to comply with a corrective order.

[518] The JWG recommends that FPT governments consider a national animal prohibition order registry and how it could be funded and cooperatively operationalized.

Next Steps

[519] If the ULCC civil section endorses the recommendations for animal prohibition orders independent of charges or a conviction and the recommendations for cross-jurisdictional enforcement of animal prohibition orders, the Working Group will engage a legislative drafter.

[520] The legislative drafter, in consultation with the Working Group, will draft model provisions regarding animal prohibition orders independent of charges or conviction and cross-jurisdictional enforcement of animal prohibition orders.

[521] The model provisions will be presented at the ULCC annual meeting in 2027 in a Final Report for approval.

Draft Resolution

[522] In view of the above, it is proposed to the delegates:

THAT the Policy report of the Working Group on the Treatment of Animals in Canadian Law be accepted;

THAT the Working Group continue working in accordance with the direction of the ULCC; and

THAT the Working Group present a Final report at the 2027 annual meeting.

Appendix A – Animal Prohibition Order Provisions in the Criminal Code and in Provincial/Territorial Animal Welfare Legislation

[1] Criminal Code:

Order of prohibition or restitution

447.1 (1) The court may, in addition to any other sentence that it may impose under subsection 445(2), 445.1(2), 446(2) or 447(2),

(a) make an order prohibiting the accused from owning, having the custody or control of or residing in the same premises as an animal or a bird during any period that the court considers appropriate but, in the case of a second or subsequent offence, for a minimum of five years; and

(b) on application of the Attorney General or on its own motion, order that the accused pay to a person or an organization that has taken care of an animal or a bird as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal or bird, if the costs are readily ascertainable.

Breach of order

(2) Every one who contravenes an order made under paragraph (1)(a) is guilty of an offence punishable on summary conviction.

Application

(3) Sections 740 to 741.2 apply, with any modifications that the circumstances require, to orders made under paragraph (1)(b).

[2] British Columbia – *Prevention of Cruelty to Animals Act*

Offences

24 (1) A person who contravenes section 9.1, 9.2, 9.3, 23, 23.1, 23.2 or 23.3 commits an offence.

…

(3) If a person is convicted of an offence under subsection (1), a justice may, in addition to any other penalty that may be imposed for the offence, prohibit the person from owning or having custody or control of an animal for a period of time specified by the justice.

(4) A justice may make an order under subsection (3) on any terms the justice considers appropriate.

(5) A person who fails to comply with an order made under subsection (3) commits an offence.

[3] Yukon – *Animal Protection and Control Act*

40 Order restricting ownership of animals

(1) For the purposes of this section, to own an animal includes to possess or to control that animal.

(2) A director may apply to a justice for an order under this section if

Classification: Public

(a) an animal has been seized from a person or a person has voluntarily surrendered an animal to an animal protection and control officer; and

(b) the director believes on reasonable grounds that

(i) at the time the animal was seized or surrendered, the person was unable to carryout their duties toward that animal under this Act or the regulations because of

(A) the number of animals owned by that person, or

(B) the species or type of animals owned by that person, and

(ii) the person is not able, or may not be able, to carry out their duties under this Act or the regulations toward any animals that the person presently owns because the circumstances mentioned in subparagraph (i) continue to exist or may occur again.

(3) On an application under subsection (2), a justice may make an order

(a) prohibiting a person, for a period of up to three years, from owning

(i) more than a specified number of animals, or

(ii) a specified species or type of animal; and

(b) directing that the following become the property of the Government of Yukon:

(i)any animals owned by the person beyond the number of animals allowed under the order, and

(ii) any animals owned by the person other than the type of animal allowed under the order.

65 Order prohibiting the ownership of animals

(1) If a person is convicted of an offence under this Act, a justice may order that

(a) the person is prohibited from owning or having possession or control of

(i) any animals, or

(ii)a specified number or type of animals;

(b) the person is prohibited from having control of a corporation that owns or has possession or control of

(i) any animals, or

(ii) of a specified number or type of animals ;and

(c) any animals owned by the person become the property of the Government of Yukon.

(2) A prohibition referred to in paragraphs (1)(a) or (b) may be

Classification: Public

(a)for any period that the justice considers appropriate; or

(b)a lifetime prohibition.

(3) If a corporation is convicted of an offence under this Act, a justice may make an order referred to in subsection (1) directed at an officer or director of the corporation, whether or not the officer or director has been prosecuted for or convicted of an offence as an individual.

[4] Alberta – *Animal Protection Act*

Offence

12(2) If the owner of an animal is found guilty of an offence under section 2, the Court may make an order restraining the owner from continuing to have custody of an animal for a period of time specified by the Court.

(3) The Court may make an order under subsection (2) on any terms and conditions it considers appropriate.

Bill 22 (tabled but not passed)

2 (g.3) "prohibition order" means an order issued under section 12(6) or (7), granted under section 13.1 or deemed by section 12.1(1) to have been issued or granted under this Act prohibiting, limiting or placing conditions on a person from owning, having custody or control of or residing with an animal, a specified animal, a specified type of animal, specified types of animals or a specified number of animals for any period, including indefinitely or for life;

Offences

12(6) If a person is found guilty of an offence under this Act, the Court may issue a prohibition order to the person for a period the Court considers appropriate.

(7) If a corporation is found guilty of an offence under this Act, the Court may issue a prohibition order to a director or officer of the corporation for a period the Court considers appropriate, even if the director or officer has not been convicted of an offence under this Act.

(8) A prohibition order issued under subsection (6) or (7) may include

(a) the manner of and time for complying with the order,

(b) a direction that ownership of any animals owned by, in the custody or control of, or residing with the person at the time the order is issued shall be transferred to another person,

(c) permission for a peace officer to enter and inspect land, a vehicle or a place, including a private dwelling house, without a warrant to ensure compliance with the order,

(d) a requirement that the person provide a peace officer agency with a current residential address,

(e) the specific animal, specific type of animal, specific types of animals and specific number of animals the person is permitted to own, have custody or control of or reside with,

(f) whether and at what age any offspring of the animals permitted are counted within the number

Classification: Public

of animals permitted under clause (e),

(g) requirements for specific care or management of an animal, including

(i) requirements for routine veterinary care or assessment and for the person to consent to related medical records to be shared with a peace officer agency, or for veterinary reports to be prepared for the peace officer agency, and

(ii) requirements related to the sterilization of the animal,

(h) conditions restricting, limiting or specifying the person's ability to apply to have the prohibition order varied in accordance with subsection (9), including that the person may not apply to have the order varied for a specified period, and

(i) any other terms or conditions that the Court considers appropriate.

(9) On application, the Court may vary a prohibition order issued under subsection (6) or (7), subject to any conditions or restrictions stated in the order, if the person subject to the order can present evidence to demonstrate to the satisfaction of the Court that conditions or circumstances that made the issuing of the order appropriate have changed and that a variation will not create undue risk of animals becoming distressed.

Recognition of prohibition orders from other provinces

12.1(1) Subject to the regulations, an order of a court in another Canadian province or territory prohibiting, limiting or placing conditions on a person from owning, having custody or control of or residing with an animal, a specified animal, a specified type of animal, specified types of animals or a specified number of animals made under the legislation of that province or territory is deemed to be a prohibition order issued or granted under this Act and is enforceable in the same manner as a prohibition order issued or granted under this Act.

2) An order deemed by subsection (1) to be an order issued or granted under this Act may not be varied

Prohibition orders

13.1(1) Subject to subsection (2), a peace officer agency or any person prescribed in the regulations may apply, on notice to a person, to the Court for a prohibition order in respect of the person.

(2) An order under this section may be granted if the Court determines that

(a) an animal has been

(i) taken into custody under section 3(3)(b) from a person responsible for the animal, or

(ii) voluntarily surrendered by a person responsible for the animal to a peace officer,

(b) at the time the animal was taken into custody or surrendered, the person was unable to fulfil the animal care duties under section 2.1,

(c) the person is not able, or may not be able, to meet the animal care duties under section 2.1 with respect to an animal, and

Classification: Public

d) the order should be granted to provide for the relief or prevention of distress to an animal.

(3) On an application under subsection (1), the Court may issue a prohibition order to the person for any period the Court considers appropriate.

(4) The application must be made in accordance with the regulations.

(5) A notice of the application must be given in accordance with the regulations.

(6) An order granted or issued under this section may include the provisions referred to in section 12(8).

(7) An order issued under subsection (3) must be served in accordance with the regulations on the person who is subject to the prohibition order.

Variation of prohibition orders

13.2(1) A party that was granted a prohibition order under section 13.1 may apply, with notice to the person subject to the order, to the Court for a variation of the order.

(2) A person that is subject to a prohibition order issued under section 13.1(3) may apply, with notice to the peace officer agency or the person that was granted the order, and subject to any conditions or restrictions stated in the original order, for a variation of the order.

(3) On an application under subsection (1), the Court may vary the order if, in the opinion of the Court, varying the order is appropriate and will not create undue risk of animals becoming distressed.

(4) On an application under subsection (2), the Court may vary the order, subject to any conditions or restrictions stated in the order, if the person subject to the order can present evidence to demonstrate to the satisfaction of the Court that

(a) conditions or circumstances that made the issuing of the order appropriate have changed, and

(b) a variation will not create undue risk of animals becoming distressed.

(5) The application must be made in accordance with the regulations.

(6) Notice of the application must be given in accordance with the regulations.

(7) An order that varies a prohibition order must be served in accordance with the regulations on the person who is subject to the prohibition order.

Animals kept contrary to a prohibition order

13.3(1) If a person owns, has custody or control of or resides with an animal contrary to a prohibition order, a peace officer may take custody of the animal in accordance with the regulations.

(2) If the animal is taken into custody and it appears to the peace officer that the animal is owned by a person other than the person subject to the prohibition order, the peace officer shall take reasonable steps to locate the owner of the animal and notify the owner of the actions taken in respect of the animal.

(3) An animal may be sold or given to a person by a peace officer agency, and the animal becomes the property of the person to whom it is sold or given, in the following circumstances:

Classification: Public

(a) after taking steps to locate the owner of the animal, a peace officer determines that the person subject to the prohibition order owns the animal;

(b) a peace officer is unable to locate or notify the owner within 7 days after the date on which the animal was taken into custody;

(c) a peace officer locates and notifies the owner but the owner does not, within 7 days after the date on which the animal was taken into custody, pay the expenses incurred in respect of the animal under subsection (1) and section 5 or enter into an agreement for the payment of the expenses that is satisfactory to the peace officer agency that incurred the expenses.

[5] Saskatchewan – *Animal Protection Act*

Offence and penalty

23(4) In addition to any penalty imposed pursuant to subsection (2), if a person is found guilty of an offence pursuant to section 4, the court may make an that person from owning or having custody or control of any animal for a period specified by the court

(5) The court may make an order pursuant to subsection (4) on any terms and conditions that the court considers appropriate, including a term or condition that:

(a) the person provide the applicable animal protection agency with a current address of residence; and

(b) the person allow for inspections by an animal protection officer, without a warrant, to ensure compliance with the order imposed.

[6] Manitoba – *Animal Care Act*

Application for order — restricting ownership of animals

10.2(1) The director may apply to a justice for an order under subsection (2) in respect of an owner, if

(a) animals have been seized from the owner under subsection 9(1) or the owner has voluntarily surrendered animals to the director; and

(b) the director believes on reasonable grounds that

(i) at the time those animals were seized or surrendered, the owner was unable to carry out his or her duties under this Act because the number or type of animals owned, possessed or controlled by the owner exceeded the owner's ability to carry out his or her duties toward them, and

(ii) the owner is not, or may not be, able to carry out his or her duties under this Act toward the animals that the owner presently owns, possesses or controls, or may own, possess or control, because the circumstances mentioned in subclause (i) continue to exist or may occur again.

Order

10.2(2) On an application under subsection (1), a justice may make an order

Classification: Public

(a) prohibiting an owner from owning or having possession or control of more than a specified number or type of animals, for a period up to three years; and

(b) directing that any animals owned, possessed or controlled by the owner at the time the order is made
(i) beyond the number of animals allowed under the order, or
(ii) other than the type of animal allowed under the order,

become the property of the Crown.

Prohibition of ownership

35(1) Where a person is found guilty of an offence, the justice may

(a) prohibit the person from owning or having possession or control of animals or of a number or type of animals for any period that the justice considers appropriate, including a lifetime ban on an individual or any corporation controlled by the individual;

(b) direct that any other animals owned by the person become the property of the Crown.

[7] Ontario – *Provincial Animal Welfare Services Act*

Offences

Prohibition Order

49(9) If a person is convicted of an offence listed in subclause (1) (a) (i), (ii), (iii), (iv), (v), (vi) or (ix) or subsection (2), the court making the conviction may, in addition to any other penalty, make an order prohibiting the convicted person and, if the convicted person is a corporation, the directors and officers of the corporation described in subsection (8), from owning, having custody or care of, or living with any animal, or any kind of animal specified in the order, for any period of time specified in the order, including, in the case of an individual, for the remainder of the person's life and, in the case of a corporation, forever.

[8] Québec – *Animal Welfare and Safety Act*

Orders

58. The Minister may order the owner or custodian of an animal to cease their custody or certain related activities or, conversely, to continue their custody or the related activities on the conditions the Minister determines, if the Minister considers

(1) that the animal is in distress; or

(2) that there is an immediate danger to the animal's welfare or safety.

59. The order is effective for a period not exceeding 60 days. It must contain reasons and mention any minutes, analysis or research reports or other technical reports considered by the Minister.

The order is notified to the owner or custodian of the animal and has effect on its date of notification.

Classification: Public

60. The person named in an order may apply to a judge of the Court of Québec to have the order quashed within 30 days from its date of notification. Such an application does not suspend the application of the order.

The judge may confirm, vary or quash the order or make any other order the judge considers necessary under the circumstances. If the order is varied or quashed, the judge may enjoin the Minister to reimburse all or any part of the animal care expenses incurred to the applicant.

The judge may also, on the Minister's request,

> **(1)** prohibit the owner or custodian of the animal from owning or having the custody of a number of animals the judge determines or a type of animal the judge specifies, for the time determined by the judge; and
>
> **(2)** order that the animals belonging to the owner or in the custody of a person named in the order at the time the order is made and in excess of the number allowed or of a type other than the type authorized become the property of the State.

Penal Provisions

76. If a person is found guilty of an offence under section 5, 6, 9, 12 or 58 or a regulation made under paragraph 3, 4, 12, 13, 16, 17 or 20 of section 64, the judge may, on an application by the prosecuting party, make an order prohibiting the person from

> **(1)** owning or having the custody of animals; or
>
> **(2)** owning or having the custody of a certain number or type of animals, for a period that the judge considers appropriate.

The prohibition may apply in perpetuity in the case of a natural person or of a legal person controlled by a natural person.

When making the order, the judge confiscates any animals held in contravention of the order and determines how they are to be disposed of.

[9] New Brunswick – *Society for the Prevention of Cruelty to Animals Act*

Additional Penalties

27 In addition to imposing sentence under the Provincial Offences Procedure Act in relation to a conviction for an offence under this Act, a judge

> (a) may make an order prohibiting the defendant from owning or having any animal in his or her possession or care and control for a period prescribed by the judge,
>
> (b) shall, in the case of a second or subsequent offence, make an order prohibiting the defendant from owning or having any animal in his or her possession or care and control
>
> > (i) for the lifetime of the defendant, or
> >
> > (ii) for a period prescribed by the judge, and

Classification: Public

(c) may make an order vesting in the society

(i) the ownership of all animals owned by the defendant, or

(ii) the ownership of the animal in respect of which the prosecution has been commenced.

[10] Nova Scotia – *Animal Protection Act*

Offences and Penalties

42(3) Where a person is found guilty of an offence under this Act or the regulations, the judge may make an order restraining the person from having ownership, custody, care or control of animals for such period as is specified in the order.

[11] Prince Edward Island – *Animal Welfare Act*

37. Order restricting ownership of animals

(1) The court may, on application by the Director, make an order under subsection (2) in respect of an owner, if satisfied that

(a) the owner's animals have been seized or taken into custody under this Act;

(b) at the time those animals were seized or taken into custody, the owner was unable to comply with this Act because the number or type of animals owned, possessed or controlled by the owner exceeded the owner's ability to carry out his or her duties toward them; and

(c) the owner is not, or may not be, able to comply with the provisions of this Act, the regulations or an order under this Act in respect of the animals that the owner presently owns, possesses or controls, or may own, possess or control, because the circumstances referred to in clause (b) continue to exist or may occur again.

(2) The order may

(a) prohibit the owner from owning, or having possession or control of, more than a specified number or type of animals, for a period up to three years; and

(b) direct that any animals owned, possessed or controlled by the owner at the time the order is made

(i) beyond the number of animals allowed under the order, or

(ii) other than the type of animal allowed under the order,

become the property of the Government of Prince Edward Island, in the case of commercial animals, or the Society, in the case of companion animals.

41. Order in cases of torture

(1) The Director may apply to the court for a protection order under this section if

(a) a person is charged with the offence of torturing an animal contrary to subsection 4(1); and

Classification: Public

(b) there are reasonable grounds for believing that the person is a danger to animals, to any owner of an animal or to a person who is a witness to the acts that gave rise to the charge.

Appearances

(2) The court, on receiving an application under subsection (1), may cause the parties to appear before the court.

Protection order

(3) The court may, if satisfied by the evidence adduced that there are reasonable grounds for believing that the danger exists, make a protection order to restrain the person charged from contacting, harassing, molesting, intimidating, retaliating against, or tampering with the animals or persons at risk.

Duration of order

(4) The protection order shall take effect from the time it is made until final disposition of the offence.

Service of copies

(5) The Director shall serve a copy of the protection order to the persons being protected under the protection order.

Additional animals

(6) The court may, at any time during the proceedings related to the offence, include other animals or persons in the protection order.

Compliance with order

(7) Any person who is restrained by a protection order shall comply with the order in accordance with its terms.

42. Other orders

(1) When convicting a person for an offence under this Act, or granting a conditional discharge in respect of the offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

(a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence, including prohibiting the person from owning or having possession or control of animals of a type or number and for such duration as the court may consider appropriate;

(b) directing the person to take any action that the court considers appropriate to remedy or avoid any harm that resulted or may result from the commission of the offence;

…

(j) transferring ownership of any animals owned by the person to the Government of Prince Edward Island, the Society or any other person the court considers appropriate;

Classification: Public

(k) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences.

[12] Newfoundland and Labrador – *Animal Health and Protection Act*

Offence

76(4) Where a person is convicted of an offence, a Provincial Court judge may, in addition to another penalty, make an order

(a) prohibiting that convicted person and, if the convicted person is a corporation, the directors and officers of the corporation described in subsection (2), from having the ownership, care or custody of an animal, or of a number or type of animal specified in the order, for a period of time specified in the order, including in the case of an individual, for the remainder of the person's life and, in the case of a corporation, forever; and

(b) directing that an animal in the ownership or care of that convicted person be delivered into the custody of the SPCA or the minister.

Classification: Public

Appendix B– Definitions of Distress

[1] British Columbia – *Prevention of Cruelty to Animals Act*

Definitions

1(2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,

(a.1) kept in conditions that are unsanitary,

(a.2) not protected from excessive heat or cold,

(b) injured, sick, in pain or suffering, or

(c) abused or neglected.

Relieving critical distress in animals

12(1) In this section, **"critical distress"** means distress in an animal of such a nature that

(a) immediate veterinary treatment cannot prolong the animal's life, or

(b) prolonging the animal's life would result in the animal suffering unduly.

(2) If, in the opinion of

(a) a registered veterinarian, or

(b) an authorized agent, if a registered veterinarian is not readily available,

an animal is in critical distress, the registered veterinarian or authorized agent may destroy the animal or have the animal destroyed.

[2] Alberta – *Animal Protection Act*

Interpretation

1(2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate shelter, ventilation, space, food, water or veterinary care or reasonable protection from injurious heat or cold,

(b) injured, sick, in pain or suffering, or

(c) abused or subjected to undue hardship, privation or neglect.

Classification: Public

Bill 22 (tabled but not passed)

Interpretation

1(2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate food, water or veterinary care,

(b) deprived of adequate shelter, ventilation or space, appropriate light or reasonable protection from injurious heat or cold,

(c) confined in unsanitary conditions that over time will impair the animal's health,

(d) injured, sick, in pain or suffering,

(e) abused or subjected to undue hardship, privation or neglect,

(f) deprived of adequate opportunity for exercise, movement or the expression of natural behaviours needed for long-term health,

(g) exposed to conditions that cause undue or prolonged fear, anxiety or frustration, or

(h) subjected to conditions set out in the regulations.

[3] Saskatchewan – *Animal Protection Act*

Definitions and Interpretation

2(2) An animal is in distress if it is:

a) deprived of:

i) food or water sufficient to maintain the animal in a state of good health;

ii) care or shelter; or

iii) veterinary care or medical attention;

b) in need of reasonable protection from injurious heat or cold;

c) wounded, ill, in pain, suffering, abused or neglected;

d) kept in conditions that:

i) are unsanitary;

ii) will significantly impair the animal's health or well-being over time;

iii) cause the animal extreme anxiety or suffering; or

Classification: Public

iv) contravene the prescribed standards, codes of practice or guidelines; or

e) 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 of the factors listed in this section.

[4] Manitoba – *Animal Care Act*

Animal in distress

6(1) Subject to subsection (2), for the purposes of this Act, an animal is in distress if it is:

(a) subjected to conditions that, unless immediately alleviated, will cause the animal death or serious harm;

(b) subjected to conditions that cause the animal to suffer acute pain;

(c) not provided food and water sufficient to maintain the animal in a state of good health;

(d) not provided appropriate medical attention when the animal is wounded or ill;

(e) unduly exposed to cold or heat; or

(f) subjected to conditions that will, over time, significantly impair the animal's health or well-being, including

(i) confinement in an area of insufficient space,
(ii) confinement in unsanitary conditions,
(iii) confinement without adequate ventilation or lighting,
(iv) not being allowed an opportunity for adequate exercise, and
(v) conditions that cause the animal extreme anxiety or distress.

Accepted activity re distress

6(2) For the purposes of this Act, an animal shall not be considered to be in distress as a result of any treatment, process, or condition that occurs in the course of an accepted activity.

[5] Ontario – *Provincial Animal Welfare Services Act*

Definitions

1(1) In this Act,

"critical distress" means distress that requires immediate intervention in order to prevent serious injury or to preserve life;

"distress" means the state of being,

Classification: Public

(a) in need of proper care, water, food or shelter,

(b) injured, sick, in pain or suffering, or

(c) abused or subject to undue physical or psychological hardship, privation or neglect.

[6] Québec – *Animal Welfare and Safety Act*

Obligations of care and prohibited acts

6 A person may not, by an act or omission, cause an animal to be in distress.

For the purposes of this Act, and animal is in distress if

(1) it is subjected to conditions that, unless immediately alleviated, will cause the animal death or serious harm;

(2) it is subjected to conditions that cause the animal to suffer acute pain; or

(3) it is exposed to conditions that cause the animal extreme anxiety or suffering.

[7] Nova Scotia – *Animal Protection Act*

Interpretation

2 (2) An animal is in distress if the animal is

(a) in need of adequate care, food, water or shelter or in need of reasonable protection from heat or cold appropriate to the animal;

(b) injured, sick, in pain or suffering undue hardship, anxiety, privation or neglect;

(c) deprived of adequate ventilation, space, veterinary care or medical treatment;

(d) abused;

(e) subjected to cosmetic surgery as defined in Section 27;

(f) kept in conditions that are unsanitary or unsafe so as to impair the animal's health, safety or well-being;

(g) kept in conditions that contravene the standards of care prescribed by the regulations;

(h) subjected by any person to being trained for or engaged in animal fighting; or

(i) subjected to circumstances prescribed by the regulations.

Classification: Public

[8] Prince Edward Island – *Animal Welfare Act*

1. Definitions

(1) In this Act

(n) "distress" means, in respect of an animal,

(i) any pain, suffering, harm, extreme anxiety or other impairment of health or well-being,

(ii) any lack of care or treatment required under section 3 [duties of owner to provide food, water, vet care, shelter, exercise, safe transport], or

(iii) any occurrence of an activity prohibited under section 4 [torture, pain, suffering or harm], 5 [animal fighting] or 6 [cosmetic surgery].

[9] Newfoundland and Labrador – *Animal Health and Protection Act*

Interpretation

2(1) In this Act

(g) "distress" means

i) being in need of proper care, water, food or shelter,

ii) being in need of reasonable protection from heat or cold, appropriate to the animal,

iii) being sick, injured, abused or in pain or suffering undue or unnecessary hardship, privation or neglect,

iv) being confined to an area that is unfit or has insufficient space, lighting or ventilation,

v) suffering undue or unnecessary anxiety or distress,

vi) being deprived of veterinary care or medical treatment,

vii) being kept in conditions that contravene the standards of care prescribed in the regulations,

viii) being confined in unsanitary conditions,

ix) being deprived of the opportunity for adequate exercise,

x) being kept on premises with another animal that may have an adverse impact on the animal, or

xi) having been abandoned by the owner in a manner likely to cause distress.

Classification: Public

Appendix C

ULCC | CHLC

UNIFORM LAW CONFERENCE OF CANADA

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT (2023)

As adopted August 2023

This document is a publication of the Uniform Law Conference of Canada.
For more information, please contact
info@ulcc-chlc.ca

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

The Uniform Enforcement of Canadian Judgments Act ("UECJA") was originally adopted (under the title Uniform Enforcement of Canadian Judgments and Decrees Act) in 1998 to better facilitate the enforcement of judgments (and certain tribunal orders) across Canada. It was amended in 2004, 2005, 2008 and 2011. These amendments expanded its scope to cover tax judgments and civil protection orders. It is now being consolidated and revised as a new uniform statute.

The UECJA is based on the notion that as a general rule a party seeking to enforce a Canadian judgment in a province or territory which has enacted the UECJA should face no additional substantive or procedural barriers beyond those which govern the enforcement of judgments of the local courts.

Where the UECJA has been adopted, judgments from any other province or territory can be enforced under it. It does not matter whether the province or territory in which the judgment was rendered has itself adopted the UECJA. In other words, no reciprocity is required. This approach is broadly consistent with key decisions such as *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 and is in contrast to that of the older Uniform Reciprocal Enforcement of Judgments Act ("UREJA").

The scheme of the UECJA requires a defendant sued in Canada to raise any concerns about the jurisdiction of the court in which that defendant is sued as part of the initial litigation. It achieves this by precluding a subsequent challenge to jurisdiction at the enforcement stage. In contrast, the common law, the *Civil Code of Quebec*, CQLR c CCQ-1991 and the UREJA allow the defendant significant scope to challenge, as part of the enforcement process, the jurisdiction of the rendering court. The UECJA adopts the approach that within the Canadian federation the courts of one province or territory should not review or assess the taking of jurisdiction by the courts of another province or territory.

An important feature of the UECJA is that it provides a mechanism for the enforcement of non-money judgments. This represents an advance on statutory schemes limited only to monetary judgments such as the UREJA. It is also consistent with subsequent developments in the common law, such as *Pro Swing Inc. v. Elta Golf Inc*., [2006] 2 S.C.R. 612, which have accepted the enforceability of non-monetary judgments.

In some contexts, the UECJA uses the term "enforce" as it is understood in the field of private international law, which means to make the judgment enforceable in the forum in the same manner and extent as is a domestic judgment of the forum. The means by which the judgment is enforced, in the separate sense of being executed, is under the procedures of the forum. In some contexts, such as sections 5 and 6, "enforce" is used in that sense.

DRAFT – UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT (2023)

PART 1
Preliminary Matters

Definitions

1(1) In this Act,

"Canadian civil protection order" means a Canadian judgment or a portion of a Canadian judgment that prohibits a person from

(a) being in physical proximity to a specified person or following a specified person from place to place;

(b) contacting or communicating with a specified person, directly or indirectly;

(c) attending at or within a certain distance of a specified place or location; or

(d) engaging in molesting, annoying, harassing or threatening conduct directed at a specified person; (« *ordonnance civile de protection au Canada* »)

Comment: The definition includes any Canadian judgment or portion of a Canadian judgment that orders protection for an individual from another individual. This wording covers behaviour prohibited in civil protection orders pursuant to provincial/territorial legislation and in *Criminal Code*, RSC 1985, c C-46 provisions and thereby addresses a broad range of behaviour that could intimidate, threaten or otherwise endanger another individual whether through direct contact or indirect harassment.

Subsection 3(3) provides that where a Canadian judgment includes a portion that cannot be enforced under the statute, the balance of that judgment that is enforceable shall be enforced. The definition of Canadian civil protection order adopts this same approach by referring to a "portion" of a Canadian judgment so that where there is a judgment that has, as one of its component elements, a prohibition that falls within the definition then it may be severed from the main judgment and independently enforced as a Canadian civil protection order.

"Canadian judgment" means

(a) a Canadian tax judgment; or

(b) a judgment, decree or order mentioned in subsection (2), but does not include a judgment, decree or order mentioned in subsection (3); (« *jugement canadien* »)

"Canadian tax judgment" means

(a) a judgment for the recovery of an amount of money payable under an Act imposing a tax made by a court of a province or territory of Canada other than [enacting province or territory]; or

(b) a certificate of an amount payable under an Act imposing a tax that is registered in a court of a province or territory of Canada other than [enacting province or territory] and that is deemed under the law of that province or territory to be a judgment of that court; (« *jugement canadien de nature fiscale* »)

Comment: While it remains common to refuse to recognize and enforce the revenue and tax judgments of foreign countries, at least in the absence of applicable tax treaties, such judgments from within Canada do not give rise to the same concerns. The UECJA therefore extends the meaning of a Canadian judgment to include Canadian tax judgments, as defined. To be considered a tax, the levy must be enforceable by law, imposed under the authority of the legislature, levied by a public body and intended for a public purpose: *Eurig Estate (Re)*, [1998] 2 S.C.R. 565 at para. 15.

Part of the definition removes an ambiguity by expressly including a certificate of an amount payable under a tax law registered in a court of a province or territory.

"enforcement" includes requiring that a Canadian judgment be recognized by any person or authority whether or not further relief is sought; (« *exécution* »)

"enforcing party" means a person entitled to enforce a Canadian judgment in the province or territory where the judgment was made; (« *partie exécutante* »)

"registered Canadian judgment" means a Canadian judgment that is registered under this Act. (« *jugement canadien enregistré* »)

(2) Subject to subsection (3), "Canadian judgment", for the purposes of clause (b) of the term as defined in subsection (1), means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory]

(a) that requires a person to pay money, including an order for the payment of money that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than [enacting province or territory] and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction in that province or territory;

(b) under which a person is required to do or not do an act or thing; or

(c) that declares rights, obligations or status in relation to a person or thing.

Comment: A central concept of the UECJA is the Canadian judgment. The term first receives an expansive definition in paragraphs 1(2)(a) to (c) which is then narrowed by the exclusions in subsection 1(3). The judgment must have been made in a "civil proceeding".

Paragraph 1(2)(a) addresses orders for the payment of money. These include certain kinds of "deemed judgments," namely claims which provincial statutes permit to be enforced as judgments although they have not been the subject of formal litigation in a court. In this context only orders of tribunals which exercise a judicial function qualify for enforcement. The definition does not extend to "deemed judgments" based on a certificate of an administrator stating that money is owed to an emanation of government.

Paragraph 1(2)(b) addresses orders such as injunctions and those for specific performance. Paragraph 1(2)(c) addresses orders that operate to define certain rights or relationships. These might include adult guardianship orders. It also includes orders which are purely declaratory.

(3) "Canadian judgment", for the purposes of clause (b) of the term as defined in subsection (1), does not include a judgment, decree or order that

(a) is for maintenance or support;

(b) is for the payment of money as a penalty or fine for committing an offence;

(c) relates to the care, control or welfare of a minor, other than a Canadian civil protection order;

(d) is made by a tribunal of a province or territory of Canada other than [enacting province or territory], whether or not it is enforceable as an order of the superior court of unlimited trial jurisdiction in that province or territory, to the extent that it provides for relief other than the payment of money;

[(e) relates to the granting of probate or letters of administration or the administration of the estate of a deceased person;] or

(f) recognizes or enforces a judgment of another province or territory of Canada or of any other jurisdiction.

Comment: Excluded from the definition are types of orders that are the subject of existing machinery for interprovincial enforcement. They include maintenance and support orders (paragraph 1(3)(a)) and orders about decision-making responsibility in relation to minors (paragraph 1(3)(c)). Most Canadian jurisdictions have local legislation respecting the recognition of foreign probates. The exclusion of probate orders (in paragraph 1(3)(e)) therefore is optional and enacting jurisdictions may wish to examine their local legislation and decide whether to maintain the UECJA's exclusion of them or instead include them within the UECJA.

The exclusion of judgments for fines and penalties (paragraph 1(3)(b)) mirrors the current common law.

The exclusion of orders of tribunals in respect of non-monetary relief (paragraph 1(3)(d)) limits that aspect of the scheme to court orders. Non-money orders made by tribunals are often intensely local in the policies they advance and unsuitable for interprovincial enforcement.

A new exclusion (paragraph 1(3)(f)) has been added. The intention is that the UECJA applies to original judgments rendered on the merits of the case. It is not intended to apply to judgments that recognize or enforce such judgments from other jurisdictions. Otherwise, the decision in one province or territory to enforce a foreign judgment would lead to that foreign judgment being enforceable in all provinces or territories that adopt the UECJA. This limitation is consistent with the developing position at common law limiting recognition and enforcement actions to original, merits-based judgments: see *H.M.B. Holdings Limited v. Antigua and Barbuda*, 2022 ONCA 630.

Restitution orders made in criminal proceedings are not covered (they are not "made in a civil proceeding") but they have their own separate mechanism for enforcement under *Criminal Code*, RSC 1985, c C-46, s 741(1).

Not all judgments that satisfy the definition of "Canadian judgment" may be registered or enforced under the UECJA. Other limitations are imposed in sections 3 and 6.

Application of Act

2 This Act applies to

(a) a Canadian judgment made in a proceeding commenced after this Act comes into force; and

(b) a Canadian judgment made in a proceeding commenced before this Act comes into force and in which the party against whom enforcement is sought took part.

Comment: The application provision permits the retrospective application of the UECJA to some judgments.

It may be unfair to enforce a judgment made in a proceeding commenced before the UECJA came into force. For example, a defendant might have chosen not to appear in litigation in a province or territory on the understanding that, in the absence of an appearance, a resulting judgment would not be enforceable in the enacting province under the law as it stood at the time of that choice. On the other hand, if a defendant took part in the litigation, then there is little reason to deny the plaintiff the right to enforce the judgment under the UECJA.

PART 2
Registration and Enforcement of Canadian Judgments

Right to register Canadian judgment

3(1) Subject to subsection (2), a Canadian judgment, whether or not the judgment is final, may be registered under this Act for the purpose of enforcement.

Comment: The Act covers interim/interlocutory and final orders for non-monetary relief. A condition at common law for the enforcement of a foreign judgment was that the judgment had to be final. This requirement of finality is continued in subsection 3(2) for money judgments. In the context of non-money judgments, other considerations arise.

There is a range of interim/interlocutory orders that might be issued in the course of a proceeding. For example, orders may be made to preserve or protect the subject matter of the litigation or maintain the status quo. The court may issue a freezing order to prevent the defendants from disposing of specified assets. Orders such as these would not meet the test of finality but that is not a sufficient reason to deny their enforcement outside the place where the order was made.

Moreover, in many instances when an interim/interlocutory order is sought, although the pleadings are drafted to claim a final order, the real dispute is about whether an interim/interlocutory order should be

granted. When an interim/interlocutory order is granted, in some cases no further steps are taken. The Act recognizes this reality.

(2) A Canadian judgment that requires a person to pay money may not be registered under this Act for the purpose of enforcement unless it is a final judgment.

Comment: As a general notion, the courts will consider that a judgment is final if it is not subject to revision by the court that has rendered it**.** A judgment will be considered to be final even though the period for an appeal has yet to expire or an appeal has been commenced.

(3) A Canadian judgment that also contains provisions for relief that may not be enforced under this Act may be registered under this Act except in respect of those provisions.

Comment: This ensures that a judgment that provides for various forms of relief is enforceable in respect of the relief falling within the scope of this statute. For example, an order made in a matrimonial proceeding may provide for support, address decision-making responsibility for children of the marriage, and limit the contact one spouse may have with the other. The last form of relief would be enforceable under the UECJA. The other two forms of relief would be enforced under other schemes.

Procedure for registering Canadian judgment

4 A Canadian judgment is registered under this Act by

(a) paying the fee prescribed by regulation; and

(b) filing in the registry of the [superior court of unlimited trial jurisdiction in the enacting province or territory]

(i) a copy of the judgment, certified as true by a judge, registrar, clerk or other proper officer of the court that made the judgment, and

(ii) the additional information or material required by regulation.

Comment: Section 4 sets out the mechanics of registering a judgment under UECJA. If more detailed guidance is desirable this may be done by regulation. Registering a Canadian judgment is a purely administrative act.

Effect of registration

5 Subject to sections 6 and 7, a registered Canadian judgment may be enforced in [enacting province or territory] as if it were an order or judgment of, and entered in, the [superior court of unlimited trial jurisdiction in the enacting province or territory].

Comment: Section 5 describes the effect of registration. It embodies the central policy of the UECJA that Canadian judgments from outside the enacting province or territory should be enforceable as if made by a superior court of the enacting province or territory.

Time limit for enforcement

6(1) A Canadian judgment that requires a person to pay money shall not be enforced under this Act

(a) after the expiry of any time limit for its enforcement in the province or territory where the judgment was made; or

(b) after the expiry of any time limit for enforcement in [enacting province or territory] that would apply if the judgment had been made in [enacting province or territory] on the date that the judgment became enforceable in the province or territory where it was made.

Comment: The limitation laws of most provinces and territories adopt different limitation periods for the enforcement of foreign judgments than for the enforcement of local judgments. Judgments from outside the forum are usually subject to a shorter limitation period. Section 6 gives effect to the policy that Canadian judgments should be treated no less favourably than local judgments of the enacting province or territory. They should not be subject to any shorter limitation period than local judgments.

In setting a limitation period section 6 adopts a dual test. First, the judgment cannot be enforced if for reasons of limitation it can no longer be enforced where it was made. Second, the judgment cannot be enforced if, were it a judgment of the forum, it could no longer be enforced due to a forum limitation period.

It should be noted that a province or territory might not have a limitation period for the enforcement of local judgments. See for example *Limitations Act, 2002*, SO 2002, c 24, Sched B, s 16(1)(b). As a result both branches of subsection 6(1) refer to "any time limit" rather than "the time limit".

(2) Equitable doctrines and rules of law in relation to delay apply to the enforcement of a Canadian judgment to the extent that the judgment provides for relief other than the payment of money.

Comment: Conduct such as delay in seeking enforcement might disentitle the enforcing party to relief.

Application to court

7(1) A party to a registered Canadian judgment may apply to the [superior court of unlimited trial jurisdiction in the enacting province or territory] to set aside the registration of the judgment or for directions respecting its enforcement.

(2) On an application under subsection (1), the court shall make an order

(a) setting aside the registration of the judgment if

(i) the judgment does not meet the requirements for registration under section 3,

[(ii) the judgment is against an individual resident of [enacting province or territory] who did not take part in the proceedings and the judgment enforces a contract for the supply of consumer goods or services within [enacting province or territory] or a contract of employment under which the individual's place of employment is in [enacting province or territory]], or

(iii) the judgment is contrary to public policy in [enacting province or territory]; or

(b) staying or limiting the enforcement of the judgment if an order staying or limiting the enforcement of the judgment is in effect in the province or territory where the judgment was made.

(3) On an application under subsection (1), the court may make an order

(a) setting aside the registration of or staying or limiting the enforcement of the judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if

(i) the person against whom enforcement is sought has brought, or intends to bring, in the province or territory where the judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment, or

(ii) a similar type of order could be made in respect of an order or judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory] under the rules of court or any Act of [the enacting province or territory] relating to legal remedies and the enforcement of orders and judgments;

(b) modifying the judgment as may be required to make it enforceable in conformity with local practice; or

(c) stipulating the procedure to be used in enforcing the judgment.

Comment: In a narrow range of situations a judgment that has been registered should be set aside and in a broader range of situations it may be desirable to "fine-tune" the judgment so that it may be enforced according to its intent. Subsection 7(2) sets out the court's powers in this respect. The section has been reordered for greater clarity but only two aspects of it are new.

Subparagraph 7(2)(a)(i) is a new provision. It makes clear what was previously implicit. Because the process for registration is an administrative act, it is possible that a party might register a judgment that does not meet the statutory requirements, such as satisfying the definition of a Canadian judgment in section 1. There must accordingly be a basis on which such registrations can be challenged and set aside.

Subparagraph 7(2)(a)(ii) is a new provision and is optional. It provides specific protection from registration of certain judgments to local consumers and employees. It is similar to *Canadian Judgments Act*, SNB 2011, c 123, s 6(2). There are also some lesser similarities in the *Civil Code of Quebec*, CQLR c CCQ-1991, Art 3168. Subparagraph 7(2)(a)(ii) is based on the policy that local consumers and employees, as vulnerable parties, should not have to appear, even to raise objections to jurisdiction, in another Canadian province or territory in order to defend themselves. The contrary position, previously adopted by the ULCC, is that this is too great a derogation from the overall scheme of the UECJA. In addition, it is not a defence at common law. Provinces and territories that have adopted the UECJA have done so without such a provision and this does not appear to have been problematic. But it is possible that it could become a concern in the future, so that a provision of this nature might be considered desirable. A province or territory adopting this provision should consider the extent to which it might be necessary or desirable to define "consumer goods or services" and "employment". It should also consider whether to statutorily alter the common law test for enforcement to provide similar protection, since as provided in section 10 the UECJA operates alongside the common law. Without such a change, a judgment creditor

could avoid the protection in subparagraph 7(2)(a)(ii) by using the common law process for enforcement against local consumers and employees.

A residual common law basis for refusing enforcement is maintained in subparagraph 7(2)(a)(iii). As noted in *Beals v Saldanha*, [2003] 3 SCR 416 at para 72, public policy would prohibit registration of a judgment "that is founded on a law contrary to the fundamental morality of the legal system where registration is sought". The defence is narrow, especially as between the constituent parts of a federation. The existence of a difference between the policy choices reflected in the law applied by the rendering court and those that prevail in the province or territory of registration is not enough.

An order made under subparagraph 7(3)(a)(i) may be made for a temporary period and subject to any terms which may be necessary to protect the enforcing party's position. Terms might be imposed to ensure that the party against whom enforcement is sought proceeds expeditiously. The court may, for example, set time limits or require the posting of security.

Treating Canadian judgments as equivalent to local judgments requires that the party against whom enforcement is sought is entitled to take advantage of any limitations which the law of the enacting province or territory may impose with respect to the enforcement of local judgments. This might include, for example, a power in the local court to order payment by installments. Subparagraph 7(3)(a)(ii) clarifies the power of the local court to make orders of this character.

Non-money judgments are frequently framed with reference to the enforcement machinery available in the place where they are made. This may not always be compatible with the enforcement machinery and practice in the jurisdiction where enforcement is sought. Enforcement of the judgment from another province or territory, according to its exact tenor, may be impossible. Paragraphs 7(3)(b) and (c) give the enforcing court the power to make the necessary modifications for local enforcement.

(4) Notwithstanding subsections (2) and (3), the [superior court of unlimited trial jurisdiction in the enacting province or territory] shall not make an order setting aside the registration of or staying or limiting the enforcement of a registered Canadian judgment solely on the grounds that

(a) the court that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment, or over the party against whom enforcement is sought, under

(i) the private international law of [enacting province or territory], or

(ii) the domestic law of the province or territory where the judgment was made;

(b) the [superior court of unlimited trial jurisdiction in the enacting province or territory] would have come to a different decision on a finding of fact or law or on an exercise of discretion than the court that made the judgment; or

(c) a defect existed in the process or proceeding leading to the judgment.

Comment: This provision gives specific effect to policy underlying the UECJA. At common law, a court asked to enforce a foreign judgment can consider whether, in its view, the rendering court properly took jurisdiction over the dispute. It can also consider whether the judgment was obtained by fraud or a violation of natural justice. These considerations can lead the court to refuse enforcement. Allowing the

enforcing court to consider such matters may be appropriate where the judgment emanates from outside Canada. However, it is inappropriate within Canada as it puts the courts of one province or territory in the position of reviewing the actions of the courts of another province or territory.

The UECJA expressly abrogates these elements of the common law approach. Subsection 7(4) stipulates that none of the concerns described above provide grounds for staying or limiting the enforcement of a Canadian judgment. The proper course for a judgment debtor who alleges that the judgment is flawed is to seek relief in the place where the judgment was made, either through an appeal or a further application to the court or tribunal that made the judgment.

(5) An application for directions must be made under subsection (1) before any measures are taken to enforce a registered Canadian judgment if

(a) the enforceability of the judgment is, by its terms, subject to the satisfaction of a condition; or

(b) the judgment was obtained without notice to the persons bound by it.

Comment: Subsection 7(5) sets out particular instances in which directions must be sought. The first is where a judgment stipulates that some condition precedent must be satisfied before the judgment is enforceable. Typically, a judgment might require that a person bound by it receive notice of it before any enforcement proceedings may be taken. Subsection 7(5) requires that the enforcing party seek directions as to whether the condition has been satisfied for the purposes of enforcement within the enforcing province or territory. The second instance is where the judgment sought to be enforced is an ex parte order.

Interest on registered judgment

8(1) To the extent that a registered Canadian judgment requires a person to pay money, interest is payable on the judgment in accordance with the terms of the judgment.

(2) If the terms of a registered Canadian judgment do not address the issue of interest, interest is payable on the judgment in accordance with the law applicable to the calculation of interest on the judgment in the province or territory where the judgment was made.

Comment: Section 8 addresses the rate of interest to be used for post-judgment interest, including the time after registration. If the judgment specifies a post-judgment interest rate, then that rate is used. If it does not, the rate from the rendering jurisdiction that would apply is used.

Recovery of registration costs

9 An enforcing party is entitled to recover all costs, charges and disbursements reasonably incurred in the registration of a Canadian judgment under this Act.

Comment: Costs and disbursements incurred in the registration of a Canadian judgment are recoverable.

Enforcing party's other rights not affected by registration

10 Nothing in this Act deprives an enforcing party of the right to do the following instead of proceeding under this Act:

(a) bring an action on the original cause of action; or

(b) bring an action to recognize or enforce a Canadian judgment.

Comment: An enforcing party can elect between options for enforcing a Canadian judgment. Section 10 preserves the right of the enforcing party to employ the UECJA or to rely on common law methods of enforcement.

However, a province or territory should not have multiple statutory registration schemes that cover Canadian judgments. A province or territory that adopts the UECJA should amend any other schemes (such as UREJA) so that they exclude Canadian judgments.

PART 3
Canadian Civil Protection Orders and Foreign Civil Protection Orders

Comment: Part 3 of the UECJA provides a mechanism for giving immediate effect to civil protection orders. If a province or territory did not want to provide such a mechanism, it could omit Part 3 when enacting the statute. The definition in Part 1 of a Canadian civil protection order should still be retained so as to operate as a limitation on the exclusion in paragraph 1(3)(c) of the definition of a Canadian judgment.

Definitions for Part

11 In this Part,

"foreign civil protection order" means a foreign judgment or a portion of a foreign judgment made by a court of a foreign state that prohibits a person from

(a) being in physical proximity to a specified person or following a specified person from place to place;

(b) contacting or communicating with a specified person, directly or indirectly;

(c) attending at or within a certain distance of a specified place or location; or

(d) engaging in molesting, annoying, harassing or threatening conduct directed at a specified person; (« *ordonnance civile de protection rendue à l'étranger* »)

Comment: The definition of a foreign civil protection order is in substance very similar to a Canadian civil protection order as defined in subsection 1(1). It is however restricted to foreign court judgments. This approach imports the definition of foreign judgment (as defined below) with the significant limitation that the judgment must be from a court rather than an administrative tribunal or other administrative decision maker.

A foreign civil protection order is limited to an order that contains an applicable prohibition against a specified individual. This reflects the purpose of the provision which is to protect one individual from possible harm or harassment from another individual. It is not available to limit the conduct of a class of persons such as a political or social group or with respect to a corporate entity or a government body.

While the definition is relatively open regarding restrictions on attending at or near a particular location, typically these orders will be restricted to generic locations such as the residence, school or workplace of the specified person. Accordingly, enforcement can routinely proceed by local policing agencies without a requirement to finally determine vested property rights of any person. Enforcement can instead focus on immediate risk reduction between the parties to the order.

"foreign judgment" means a foreign judgment as defined in the *Enforcement of Foreign Judgments Act*, except for a judgment made in a foreign state prescribed in the regulations, and includes a decision that would, if the decision were a final decision, be a foreign judgment pursuant to that Act. (« *jugement étranger* »)

Comment: This definition presumes that the Uniform Enforcement of Foreign Judgments Act is in force in the enacting jurisdiction. If it is not, the enacting jurisdiction could instead set out the definition of "foreign judgment" from that statute, subject to the modifications above.

Expressly including decisions that are not final as foreign judgments for the purposes of this statute obviates any need to assess whether the order is final or interim/interlocutory in nature. This is consistent with the approach taken in subsection 3(1).

An exception is also made for those foreign states that are specifically named in the regulations as foreign states whose judgments will not be recognized and enforced under this Part. This reflects the policy decision to extend enforcement to civil protection orders from foreign states except where a specific decision has been made to exclude a particular state from this regime.

Application of Part

12 This Part applies to a Canadian civil protection order or a foreign civil protection order

(a) that is in force at the time this Part comes into force; or

(b) that is issued after this Part comes into force.

Comment: Given the intention of this Part to provide protection for individuals that a court of another jurisdiction has identified as requiring protection, there is no reason to restrict the application of this Part to future orders.

Deeming of order

13 A Canadian civil protection order or a foreign civil protection order is deemed to be an order of the [superior court of unlimited trial jurisdiction in the province or territory where the order is sought to be enforced] and is enforceable in the same manner as an order of that court for all purposes.

Comment: This deeming provision is the key substantive provision in the approach to the recognition and enforcement of civil protection orders.

Since there is no requirement, under this mechanism for giving immediate effect to civil protection orders, for them to be subsequently registered (which would then allow a challenge to the registration), an enacting jurisdiction may wish to consider whether to address the local mechanism by which a person might object to its continued immediate enforcement.

Enforcement by law enforcement agencies

14(1) A Canadian civil protection order is enforceable by a law enforcement agency in the same manner as an order of the [superior court of unlimited trial jurisdiction in the province or territory where the order is sought to be enforced], whether or not the order is a registered Canadian judgment.

(2) A foreign civil protection order is enforceable by a law enforcement agency in the same manner as an order of the [superior court of unlimited trial jurisdiction in the province or territory where the order is sought to be enforced].

Comment: Both a Canadian civil protection order and a foreign civil protection order may be enforced by local law enforcement agencies in the same manner as they would enforce an order of the local superior court of unlimited trial jurisdiction. This further facilitates the immediate enforcement of the order at the scene of an incident without the inherent risk to the potential victim that delay, for example in order to seek legal advice about enforceability, would entail.

The order is enforceable as a local order. While the party seeking enforcement will bear a practical burden of communicating the content of the order to the police officer, there are no formal prerequisites to enforcement such as authentication or translation.

Registration permitted

15 A Canadian civil protection order may be registered and enforced pursuant to Part 2.

Comment: This provision retains the ordinary procedure for the enforcement of a Canadian civil protection order in the same manner as any other Canadian judgment under the UECJA. It continues to apply exclusively to Canadian civil protection orders. Similarly, a foreign civil protection order may continue to be enforced in the same manner as any other foreign judgment under the Uniform Enforcement of Foreign Judgments Act.

Immunity

16 No action or proceeding lies or shall be commenced against a law enforcement agency, including an employee or agent of a law enforcement agency, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the enforcement or supposed enforcement of a Canadian civil protection order or a foreign civil protection order or a purported Canadian civil protection order or a purported foreign civil protection order pursuant to this Part or the regulations made pursuant to this Act.

Comment: This liability protection is intended to address in part the reluctance that a local law enforcement agency may have with respect to immediately enforcing a civil protection order and in particular enforcing such an order in a form with which it is unfamiliar because the order is from a foreign state. If it is well understood within the policing agency that there is no legal liability risk for good faith actions taken to protect a potentially endangered individual, then professional police agencies can proceed to take immediate steps to provide that protection. Education will be a key component of the implementation of this provision, but it remains important to establish a strong legal foundation from which police agencies can proceed.

PART 4
General

Regulations

17 The [Lieutenant Governor in Council or the equivalent regulation-making authority in the jurisdiction] may make [regulations or rules of court]

(a) prescribing the fee payable for the registration of a Canadian judgment under this Act;

(b) respecting additional information or material that is to be filed in relation to the registration of a Canadian judgment under this Act;

(c) prescribing foreign states for the purposes of section 11;

(d) respecting forms and their use under this Act; and

(e) to do any matter or thing required to effect or assist the operation of this Act.

Comment: The regulation-making power in section 17 is self-explanatory.

Paragraph (c) provides regulation making authority to prescribe those foreign states whose civil protection orders the enacting jurisdiction will refuse to enforce under Part 3. No criteria for exercising this authority are set out in the UECJA as it is recognized to be a largely political issue driven by current events in a particular jurisdiction.

Given the limited *in personam* subject matter of these orders, it is presumed that this power will be used sparingly. A foreign civil protection order most often merely requires one individual to stay away from another individual to avoid the risk of physical harm to one or the other. Its scope is therefore modest**.**

Appendix D – Examples of Cross-Jurisdictional Enforcement Provisions

[1] Uniform Enforcement of Canadian Judgments Act with the UECJA civil protection order addition:

a) BC *Enforcement of Canadian Judgments and Decrees Act*

> 9.1(1) A Canadian civil protection order is deemed, without registration under this Act, to be an order made under Part 9 of the Family Law Act.
>
> (2) Nothing in subsection (1) prevents a person from registering a Canadian civil protection order under this Act.

b) SK *Enforcement of Canadian Judgments Act, 2002*

> **10.2** A Canadian civil protection order or a foreign civil protection order is deemed to be an order of the Court of King's Bench and is enforceable in the same manner as an order of that court for all purposes.
>
> **10.3(1)** A Canadian civil protection order is enforceable by a law enforcement authority in the same manner as an order of the Court of King's Bench, whether or not the order is a registered Canadian judgment.
>
> **(2)** A foreign civil protection order is enforceable by a law enforcement authority in the same manner as an order of the Court of King's Bench.
>
> **10.4** A Canadian civil protection order may be registered and enforced pursuant to Part II.

c) MB *Enforcement of Canadian Judgments Act*

> **10** A Canadian civil protection order is deemed to be an order of the Court of King's Bench and may be enforced in the same manner as an order of that court for all purposes, whether or not the order is a registered Canadian judgment
>
> **11** A Canadian civil protection order is enforceable by a law enforcement agency in the same manner as an order of the Court of King's Bench, whether or not the order is a registered Canadian judgment
>
> **12** A Canadian civil protection order may be registered and enforced as a Canadian judgment for the purposes of this Act.

d) NS *Enforcement of Canadian Judgments and Decrees Act*

> **11A** A Canadian civil protection order may be enforced in the same manner as an order of the Supreme Court of Nova Scotia for all purposes.

Classification: Public

11B A Canadian civil protection order is enforceable by a law enforcement agency in the same manner as an order of the Supreme Court of Nova Scotia whether or not the order is a registered Canadian judgment.

11C A Canadian civil protection order may be registered and enforced as a Canadian judgment for the purpose of this Act.

e) PEI *Canadian Judgments (enforcement)Act*

10.1 A Canadian civil protection order is deemed to be an order of the Supreme Court and may be enforced in the same manner as an order of that court for all purposes.

10.2 A Canadian civil protection order is enforceable by a law enforcement authority in the same manner as an order of the Supreme Court, whether or not the order is a registered Canadian judgment.

10.3 A Canadian civil protection order may be registered and enforced as a Canadian judgment pursuant to this Act.

[2] Recognition of extra-provincial parenting orders <u>within provincial legislation</u>:

a) BC *Family Law Act* (s. 75)

75(1) A court must recognize an extraprovincial order if all of the following apply:

(a) the extraprovincial tribunal would have had jurisdiction to make the order under the rules that are applicable in British Columbia;

(b) each party to a proceeding in which the extraprovincial order was made had

(i) reasonable notice that the order would be made, and

(ii) a reasonable opportunity to be heard respecting the order;

(c) the extraprovincial tribunal was required by law to consider the best interests of the child;

(d) it would not be contrary to public policy in British Columbia to recognize the order.

(2) On recognition by a court,

(a) an extraprovincial order has the same effect, and may be enforced, as if it were an order made under section 45 [orders respecting parenting arrangements], 51 [orders respecting guardianship] or 59 [orders respecting contact], as applicable, and

Classification: Public

(b) the court may, if necessary to give effect to the extraprovincial order, make any order that the court may make under this Act.

(3) If an application is made to recognize more than one extraprovincial order and the orders conflict, the court must recognize the order that is most consistent with the best interests of the child.

b) SK *The Children's Law Act* (2020)

24(1) An extraprovincial parenting order may be filed with the court, together with an affidavit of the person seeking to file the order stating that the order is in effect and has not been set aside or varied by another court or by an extraprovincial tribunal.

(2) The extraprovincial parenting order filed with the court must be certified as a true copy by:

(a) a judge or other presiding officer of the extraprovincial tribunal; or

(b) the clerk or other official charged with the keeping of records and orders of the extraprovincial tribunal.

(3) No proof is required of the signature or appointment of a judge, presiding officer, clerk or other official with respect to any certificate produced as evidence pursuant to this section.

(4) The person filing the extraprovincial parenting order must provide notice of the filing to all other parties affected by the extraprovincial parenting order.

(5) Subject to subsection (6), an extraprovincial parenting order, once filed, shall be recognized as if it had been made by the court.

(6) On application by any party affected by the extraprovincial parenting order, the court may refuse to recognize the extraprovincial parenting order if:

(a) the order was made by an extraprovincial tribunal that did not have jurisdiction;

(b) except in cases of urgency, the order was made without the child having an opportunity to be heard in accordance with the laws of the jurisdiction in which the order was made;

(c) except in cases of urgency, the order was made without a party having an opportunity to participate in the proceeding that led to the order; or

(d) recognition of the order would be manifestly contrary to public policy in Saskatchewan.

Classification: Public

(7) Subject to the regulations, a request for advance recognition or a declaration of enforceability of an extraprovincial parenting order is to be made in the prescribed form and manner.

(8) The court shall not review the merits or the fact-finding of an extraprovincial parenting order.

25 On application, the court may:

(a) enforce an extraprovincial parenting order that has been recognized pursuant to section 24 as if the order had been made by the court; and

(b) make any order that the court considers necessary to give effect to the extraprovincial parenting order as if the order had been made by the court.

c) ON *Children's Law Reform Act* (s. 41)

41(1) Upon application by any person in whose favour an order granting decision-making responsibility, parenting time or contact with respect to a child has been made by an extra-provincial tribunal, a court shall recognize the order unless the court is satisfied,

(a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;

(b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;

(c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child;

(d) that the order of the extra-provincial tribunal is contrary to public policy in Ontario; or

(e) that, in accordance with section 22, the extra-provincial tribunal would not have jurisdiction if it were a court in Ontario.

(2) An order made by an extra-provincial tribunal that is recognized by a court shall be deemed to be an order of the court and enforceable as such.

44 A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is proof, in the absence of evidence to the contrary, of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

Classification: Public

d) NB *Family Law Act* (s. 72)

72(1) On application by any person in whose favour a parenting order or contact order in respect of a child has been made by an extra-provincial tribunal, the Court shall recognize the order unless the Court is satisfied

(a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made,

(b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made,

(c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child,

(d) that the order of the extra-provincial tribunal is contrary to public policy in the Province, or

(e) that, under the requirements of subsection 68(1), the extra-provincial tribunal could not exercise jurisdiction if it were a court in the Province.

72(2) If the Court is presented with conflicting parenting orders or contact orders in respect of a child made by extra-provincial tribunals that, but for the conflict, would be recognized by the Court under subsection (1), the Court shall recognize the order that appears to the Court to be most in accord with the best interests of the child.

72(3) An order made by an extra-provincial tribunal that is recognized by the Court shall be deemed to be an order of the Court and enforceable as an order of the Court.

72(4) If the Court has recognized an extra-provincial order, the Court may make any further orders under this Act that it considers necessary to give effect to the order.

77 A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the extra-provincial tribunal that made the order or by a person charged with keeping the orders of the extra-provincial tribunal is proof in the absence of evidence to the contrary of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

e) PEI *Children's Law Act*

55(1) On application by a person who is entitled to parenting time, decision-making responsibility or contact in respect of a child under an order of an extra-provincial tribunal, the court shall recognize the order unless the court is satisfied that

(a) the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;

Classification: Public

(b) the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;

(c) the law of the jurisdiction in which the order was made did not require the extra-provincial tribunal to consider the best interests of the child;

(d) the order of the extra-provincial tribunal is contrary to public policy in the province; or

(e) in accordance with section 35, the extra-provincial tribunal would not have jurisdiction if it were the court.

(2) An order made by an extra-provincial tribunal that is recognized by the court shall be deemed to be an order of the court and may be enforced as an order of the court.

(3) Where the court is presented with conflicting orders made by extra-provincial tribunals for parenting time, decision-making responsibility or contact with a child under a contact order that, but for the conflict, would be recognized and enforced by the court under subsection (1), the court shall recognize and enforce the order that appears to the court to be most in accordance with the best interests of the child.

(4) Where the court has recognized an extra-provincial order, the court may make any further orders that the court considers necessary to give effect to the extra-provincial order.

80. A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is, in the absence of evidence to the contrary, proof of the making of the order, the contents of the order and the appointment and signature of the judge, presiding officer, registrar or other person, as the case may be.

f) NL *Children's Law Act* (s.49)

49(1) Upon application by a person in whose favour an order for the custody of or access to a child has been made by an extra- provincial tribunal, a court shall recognize the order unless the court is satisfied

(a) that the respondent was not given reasonable notice of the start of the proceeding in which the order was made;

(b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;

(c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child;

(d) that the order of the extra-provincial tribunal is contrary to public policy in the

Classification: Public

province; or

(e) that, in accordance with section 28, the extra-provincial tribunal would not have jurisdiction if it were a court in the province.

(2) An order made by an extra-provincial tribunal that is recognized by a court shall be considered to be an order of the court and enforceable as such.

(3) A court presented with conflicting orders made by extra-provincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1) shall recognize and enforce the order that appears to the court to be most in accord with the best interests of the child.

(4) A court that has recognized an extra-provincial order may make those further orders under this Part that the court considers necessary to give effect to the order.

52 A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is, in the absence of evidence to the contrary, evidence of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

g) YT *Children's Law Act*

50(1) On application by any person in whose favour an order for the custody of or access to a child has been made by an extra-provincial tribunal, the court shall recognize the order unless the court is satisfied

(a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
(b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made;
(c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child; or
(d) that, in accordance with section 37, the extraprovincial tribunal would not have jurisdiction if it were a court in the Yukon.

(2) An order made by an extra-provincial tribunal that is recognized by the court shall be deemed to be an order of the court and enforceable as such.

(3) If the court is presented with conflicting orders made by extra-provincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1), the court shall recognize and enforce the order that appears to the court to be most in accord with the best interests of the child.

(4) If the court has recognized an extra-provincial order, the court may make any

Classification: Public

further orders under this Part the court considers necessary to give effect to the order.

53 A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is prima facie evidence of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

[3] Recognition of extra-provincial parenting orders in a <u>stand-alone</u> extra-provincial enforcement Act:

a) AB *Extra-Provincial Enforcement of Custody Orders Act*

2(1) A court, on application, shall enforce, and may make any orders it considers necessary to give effect to, a custody order as if the custody order had been made by the court unless it is satisfied on evidence adduced that the child affected by that custody order did not, at the time the custody order was made, have a real and substantial connection with the province, territory, state or country in which the custody order was made.

(2) The court, on application ex parte, may make an interim order under subsection (1) and may direct that the interim order be served on any persons and in any manner that the court specifies in the interim order.

5 An application under this Act shall be accompanied with a copy of the custody order to which the application relates, certified as a true copy by a judge, other presiding officer or registrar of the extra-provincial tribunal or by the person charged with keeping the orders of the extra-provincial tribunal and no proof is required of the signature or appointment of a judge, presiding officer, registrar or other person in respect of any certificate produced as evidence under this section.

b) MB *The Child Custody Enforcement Act*

3 A court on application shall enforce, and may make such orders as it considers necessary to give effect to, a custody order made by an extra-provincial tribunal as if the custody order had been made by the court unless it is satisfied on evidence adduced that the child affected by the custody order did not, at the time the custody order was made, have a real and substantial connection with the province, state or country in which the custody order was made.

15 A copy of a custody order made by an extra-provincial tribunal certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is prima facie evidence of the making of the order, the content of the order and the appointment and signature

Classification: Public

of the judge, presiding officer, registrar or other person.

c) NS *Reciprocal Enforcement of Custody Orders* (only with reciprocating jurisdictions)

3 A court, upon application, shall enforce, and may make such orders as it considers necessary to give effect to, a custody order made by a tribunal in a reciprocating state.

5 An application under this Act shall be accompanied by a copy of the custody order to which the application relates, certified by the proper officer of the court to be a true copy, and no proof is required of the signature or appointment of the proper officer.

Classification: Public

Appendix E– Detention and Forfeiture Sections in the *Criminal Code*

Restitution of thing or report

489.1 (1) Subject to this or any other Act of Parliament, if a peace officer has seized anything under a warrant issued under this Act, under section 487.11 or 489, or otherwise in the execution of duties under this or any other Act of Parliament, the peace officer shall, as soon as is practicable,

> (a) return the thing seized, on being issued a receipt for it, to the person lawfully entitled to its possession and report to a justice having jurisdiction in respect of the matter and, in the case of a warrant, jurisdiction in the province in which the warrant was issued, if the peace officer is satisfied that
>
> > (i) there is no dispute as to who is lawfully entitled to possession of the thing seized, and
> >
> > (ii) the continued detention of the thing seized is not required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding; or
>
> (b) bring the thing seized before a justice referred to in paragraph (a), or report to the justice that the thing has been seized and is being detained, to be dealt with in accordance with subsection 490(1), if the peace officer is not satisfied as described in subparagraphs (a)(i) and (ii).

Detention of things seized

490 (1) Subject to this or any other Act of Parliament, where, pursuant to paragraph 489.1(1)(b) or subsection 489.1(2), anything that has been seized is brought before a justice or a report in respect of anything seized is made to a justice, the justice shall,

> (a) where the lawful owner or person who is lawfully entitled to possession of the thing seized is known, order it to be returned to that owner or person, unless the prosecutor, or the peace officer or other person having custody of the thing seized, satisfies the justice that the detention of the thing seized is required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding; or
>
> (b) where the prosecutor, or the peace officer or other person having custody of the thing seized, satisfies the justice that the thing seized should be detained for a reason set out in paragraph (a), detain the thing seized or order that it be detained, taking reasonable care to ensure that it is preserved until the conclusion of any investigation or until it is required to be produced for the purposes of a preliminary inquiry, trial or other proceeding.

Further detention

(2) Nothing shall be detained under the authority of paragraph (1)(b) for a period of more than

Classification: Public

three months after the day of the seizure, or any longer period that ends when an application made under paragraph (a) is decided, unless

> (a) a justice, on the making of a summary application to him after three clear days notice thereof to the person from whom the thing detained was seized, is satisfied that, having regard to the nature of the investigation, its further detention for a specified period is warranted and the justice so orders; or
>
> (b) proceedings are instituted in which the thing detained may be required.

Idem

(3) More than one order for further detention may be made under paragraph (2)(a) but the cumulative period of detention shall not exceed one year from the day of the seizure, or any longer period that ends when an application made under paragraph (a) is decided, unless

> (a) a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, on the making of a summary application to him after three clear days notice thereof to the person from whom the thing detained was seized, is satisfied, having regard to the complex nature of the investigation, that the further detention of the thing seized is warranted for a specified period and subject to such other conditions as the judge considers just, and the judge so orders; or
>
> (b) proceedings are instituted in which the thing detained may be required.

Detention without application where consent

(3.1) A thing may be detained under paragraph (1)(b) for any period, whether or not an application for an order under subsection (2) or (3) is made, if the lawful owner or person who is lawfully entitled to possession of the thing seized consents in writing to its detention for that period.

When accused ordered to stand trial

(4) When an accused has been ordered to stand trial, the justice shall forward anything detained pursuant to subsections (1) to (3) to the clerk of the court to which the accused has been ordered to stand trial to be detained by the clerk of the court and disposed of as the court directs.

Where continued detention no longer required

(5) Where at any time before the expiration of the periods of detention provided for or ordered under subsections (1) to (3) in respect of anything seized, the prosecutor, or the peace officer or other person having custody of the thing seized, determines that the continued detention of the thing seized is no longer required for any purpose mentioned in subsection (1) or (4), the prosecutor, peace officer or other person shall apply to

> (a) a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, where a judge ordered its detention under subsection (3), or

Classification: Public

(b) a justice, in any other case,

who shall, after affording the person from whom the thing was seized or the person who claims to be the lawful owner thereof or person entitled to its possession, if known, an opportunity to establish that he is lawfully entitled to the possession thereof, make an order in respect of the property under subsection (9).

Idem

(6) Where the periods of detention provided for or ordered under subsections (1) to (3) in respect of anything seized have expired and proceedings have not been instituted in which the thing detained may be required, the prosecutor, peace officer or other person shall apply to a judge or justice referred to in paragraph (5)(a) or (b) in the circumstances set out in that paragraph, for an order in respect of the property under subsection (9) or (9.1).

Application for order of return

(7) A person from whom anything has been seized may, after the expiration of the periods of detention provided for or ordered under subsections (1) to (3) and on three clear days notice to the Attorney General, apply summarily to

(a) a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, where a judge ordered the detention of the thing seized under subsection (3), or

(b) a justice, in any other case,

for an order under paragraph (9)(c) that the thing seized be returned to the applicant.

Exception

(8) A judge of a superior court of criminal jurisdiction or a judge as defined in section 552, where a judge ordered the detention of the thing seized under subsection (3), or a justice, in any other case, may allow an application to be made under subsection (7) prior to the expiration of the periods referred to therein where he is satisfied that hardship will result unless the application is so allowed.

Disposal of things seized

(9) Subject to this or any other Act of Parliament, if

(a) a judge referred to in subsection (7), where a judge ordered the detention of anything seized under subsection (3), or

(b) a justice, in any other case,

is satisfied that the periods of detention provided for or ordered under subsections (1) to (3) in respect of anything seized have expired and proceedings have not been instituted in which the thing detained may be required or, where those periods have not expired, that the continued

Classification: Public

detention of the thing seized will not be required for any purpose mentioned in subsection (1) or (4), he shall

> (c) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or
>
> (d) if possession of it by the person from whom it was seized is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order it to be returned to the lawful owner or to the person who is lawfully entitled to its possession,

and may, if possession of it by the person from whom it was seized is unlawful, or if it was seized when it was not in the possession of any person, and the lawful owner or person who is lawfully entitled to its possession is not known, order it to be forfeited to Her Majesty, to be disposed of as the Attorney General directs, or otherwise dealt with in accordance with the law.

Exception

(9.1) Notwithstanding subsection (9), a judge or justice referred to in paragraph (9)(a) or (b) may, if the periods of detention provided for or ordered under subsections (1) to (3) in respect of a thing seized have expired but proceedings have not been instituted in which the thing may be required, order that the thing continue to be detained for such period as the judge or justice considers necessary if the judge or justice is satisfied

> (a) that the continued detention of the thing might reasonably be required for a purpose mentioned in subsection (1) or (4); and
>
> (b) that it is in the interests of justice to do so.

Application by lawful owner

(10) Subject to this or any other Act of Parliament, a person, other than a person who may make an application under subsection (7), who claims to be the lawful owner or person lawfully entitled to possession of anything seized and brought before or reported to a justice under section 489.1 may, at any time, on three clear days notice to the Attorney General and the person from whom the thing was seized, apply summarily to

> (a) a judge referred to in subsection (7), where a judge ordered the detention of the thing seized under subsection (3), or
>
> (b) a justice, in any other case,

for an order that the thing detained be returned to the applicant.

Order

(11) Subject to this or any other Act of Parliament, on an application under subsection (10), where a judge or justice is satisfied that

Classification: Public

(a) the applicant is the lawful owner or lawfully entitled to possession of the thing seized, and

(b) the periods of detention provided for or ordered under subsections (1) to (3) in respect of the thing seized have expired and proceedings have not been instituted in which the thing detained may be required or, where such periods have not expired, that the continued detention of the thing seized will not be required for any purpose mentioned in subsection (1) or (4),

the judge or justice shall order that

(c) the thing seized be returned to the applicant, or

(d) except as otherwise provided by law, where, pursuant to subsection (9), the thing seized was forfeited, sold or otherwise dealt with in such a manner that it cannot be returned to the applicant, the applicant be paid the proceeds of sale or the value of the thing seized.

Detention pending appeal, etc.

(12) Notwithstanding anything in this section, nothing shall be returned, forfeited or disposed of under this section pending any application made, or appeal taken, thereunder in respect of the thing or proceeding in which the right of seizure thereof is questioned or within thirty days after an order in respect of the thing is made under this section.

Copies of documents returned

(13) The Attorney General, the prosecutor or the peace officer or other person having custody of a document seized may, before bringing it before a justice or complying with an order that the document be returned, forfeited or otherwise dealt with under subsection (1), (9) or (11), make or cause to be made, and may retain, a copy of the document.

Probative force

(14) Every copy made under subsection (13) that is certified as a true copy by the Attorney General, the person who made the copy or the person in whose presence the copy was made is admissible in evidence and, in the absence of evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

Access to anything seized

(15) Where anything is detained pursuant to subsections (1) to (3.1), a judge of a superior court of criminal jurisdiction, a judge as defined in section 552 or a provincial court judge may, on summary application on behalf of a person who has an interest in what is detained, after three clear days notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained.

Classification: Public

Conditions

(16) An order that is made under subsection (15) shall be made on such terms as appear to the judge to be necessary or desirable to ensure that anything in respect of which the order is made is safeguarded and preserved for any purpose for which it may subsequently be required.

Appeal

(17) A person who feels aggrieved by an order made under subsection (8), (9), (9.1) or (11) may appeal from the order

(a) to the court of appeal as defined in section 673 if the order was made by a judge of a superior court of criminal jurisdiction, in which case sections 678 to 689 apply with any modifications that the circumstances require; or

(b) to the appeal court as defined in section 812 in any other case, in which case sections 813 to 828 apply with any modifications that the circumstances require.

Waiver of notice

(18) Any person to whom three days notice must be given under paragraph (2)(a) or (3)(a) or subsection (7), (10) or (15) may agree that the application for which the notice is given be made before the expiration of the three days.

Perishable things

490.01 Where any thing seized pursuant to this Act is perishable or likely to depreciate rapidly, the person who seized the thing or any other person having custody of the thing

(a) may return it to its lawful owner or the person who is lawfully entitled to possession of it; or

(b) where, on *ex parte* application to a justice, the justice so authorizes, may

(i) dispose of it and give the proceeds of disposition to the lawful owner of the thing seized, if the lawful owner was not a party to an offence in relation to the thing or, if the identity of that lawful owner cannot be reasonably ascertained, the proceeds of disposition are forfeited to Her Majesty, or

(ii) destroy it.

Order of forfeiture of property on conviction

490.1 (1) Subject to sections 490.3 to 490.41, if a person is convicted, or discharged under section 730, of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* and,

Classification: Public

on application of the Attorney General, the court is satisfied, on a balance of probabilities, that offence-related property is related to the commission of the offence, the court shall

> (a) if the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government, order that the property be forfeited to Her Majesty in right of that province to be disposed of or otherwise dealt with in accordance with the law by the Attorney General or Solicitor General of that province; and
>
> (b) in any other case, order that the property be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purpose of this paragraph.

Property related to other offences

(2) Subject to sections 490.3 to 490.41, if the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) is related to the commission of the indictable offence under this Act or the *Corruption of Foreign Public Officials Act* of which a person is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.

Property outside Canada

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

Appeal

(3) A person who has been convicted of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act*, or the Attorney General, may appeal to the court of appeal from an order or a failure to make an order under subsection (1) as if the appeal were an appeal against the sentence imposed on the person in respect of the offence.

Classification: Public