



## **Guide to Private Prosecution of Animal Welfare Offences under the Federal *Health of Animals Act***

**Prepared by Sophie Gaillard for  
Animal Justice Canada  
Currency Date: May 2013**

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***This guide is not intended to be construed as legal advice, nor does it form the basis of a lawyer-client relationship. The information provided in this guide pertains only to the jurisdiction(s) stated. Legal counsel should be sought prior to acting or relying upon anything contained herein.***  
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## 1. Introduction

### Farm animal transport in Canada

Over 700 million animals are slaughtered for food annually in Canada.<sup>1</sup> Due to the centralization of the industry, the size of the country and the live animal trade with the United States, farm animals are transported over increasingly long distances before they arrive at the slaughterhouse. An abundance of research shows that the time spent in transit and accompanying handling is extremely stressful for these animals.<sup>2</sup> Under the authority of the federal *Health of Animals Act*, subsection 64(i)(ii), the *Health of Animals Regulations*, Part XII, are designed to ensure a minimal level of welfare during transport.<sup>3</sup>

Although the standards set by the *Health of Animals Regulations* are some of the lowest in the Western world,<sup>4</sup> investigations have revealed that an unacceptably high number of animals are transported in contravention of this legislation and that little is being done by the Canadian Food Inspection Agency (CFIA), the governmental body responsible for enforcing the *Health of Animals Regulations*, to ensure compliance. A recent study conducted by the World Society for the Protection of Animals (WSPA) found that:

- despite regulations prohibiting the transport of “unfit” animals, thousands of farm animals arrive at Canadian slaughterhouses sick, severely injured, crippled or even dead
- during transport, animals are routinely overcrowded and exposed to severe weather conditions
- severely compromised animals are left to suffer for prolonged periods, sometimes days, before being euthanized<sup>5</sup>

WSPA concludes that lax law enforcement is the reason behind this needless and illegal suffering. According to the organization, CFIA has too few animal inspectors and veterinarians, making it impossible for the agency to properly enforce regulations. Further, many animal inspections are conducted by staff who lack sufficient experience in assessing animal welfare. Finally, CFIA’s reporting and enforcement are often weak and inconsistent: loads that are clearly in violation of regulations are frequently marked as compliant, and even when inspectors conclude that there is a violation, their response is frequently limited to giving warnings or handing out educational pamphlets.

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<sup>1</sup> *Industry Statistics*, online: Canadian Meat Council <[www.cmc-cvc.com/english/industry\\_statistic\\_e.asp](http://www.cmc-cvc.com/english/industry_statistic_e.asp)>.

<sup>2</sup> See e.g. M.C. Appleby, V. Cussen, L. Garces, L. Lambert & J. Turner, eds., *Long Distance Transport and Welfare of Farm Animals* (Wallingford: CAB International, 2008).

<sup>3</sup> *Health of Animals Act*, S.C. 1990, c. 21 [*Health of Animals Act*]; *Health of Animals Regulations*, C.R.C., c. 296 [*Health of Animals Regulations*].

<sup>4</sup> See e.g. EC, *Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97*, [2005] O.J. L3/1.

<sup>5</sup> *Curb the Cruelty: Canada’s farm animal transport system in need of repair*, online: World Society for the Protection of Animals <[www.wspa.ca/ati/CurbtheCrueltyReport.pdf](http://www.wspa.ca/ati/CurbtheCrueltyReport.pdf)>.

In the face of this governmental inaction, farm animals need the public's help.

### Private prosecution

As Canadian citizens, we all have the right to initiate a private criminal prosecution against someone who we believe has committed an offence under a provincial or federal statute or regulation.<sup>6</sup> Unlike public prosecutions (which constitute the vast majority of all prosecutions), neither the police nor government enforcement agencies need to be involved. Private prosecution thus allows individuals and organizations to bypass administrative agencies in order to directly enforce a piece of legislation. Although such prosecutions are relatively rare, environmental groups have increasingly been using them as a means of enforcing unenforced environmental regulations. These groups use private prosecutions not only to bring attention to and stop illegal pollution, but also to expose the failings of administrative agencies and to hold the government accountable to the public. Even prosecutions that fail to result in convictions can make a significant impact by shedding light on an issue and pressuring the government to lay its own charges.

Private prosecution could prove to be an equally useful tool to enforce animal welfare legislation, such as Part XII of the *Health of Animals Regulations*. This is because environmental legislation and animal welfare legislation share certain characteristics. First, both types of legislation have a poor enforcement history. Departments responsible for inspection are chronically underfunded, leaving insufficient manpower and resources to properly police industry. Even when inspections take place, government agencies typically use prosecution as a last resort, preferring to negotiate with the offender. Second, both are areas of increasing concern to the public. Indeed, in a 2008 Harris/Decima national poll, 96% of Canadians surveyed stated that they feel it is important to treat farm animals humanely.<sup>7</sup> Finally, there is a significant risk of industry capture for both areas, i.e. there is a concern that the government agencies responsible for enforcing environmental or animal welfare legislation for the benefit of society act instead for the benefit of the industry they are regulating.

### About this guide

This guide aims to serve as a starting point for concerned individuals and organizations who want to learn how to gather evidence of an offence under Part XII of the *Health of Animals Regulations* and lay charges against the offender. It is heavily based on two existing guides to private prosecution of environmental offences: the Environmental Bureau of Investigation's *Citizens Guide to Environmental Investigation and Public*

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<sup>6</sup> The statutory authority for private prosecutions is found in sections 2, 504, 574, 579 and 795 of the *Criminal Code*, R.S.C. 1985, c. C-46. Section 34(2) of the *Interpretation Act*, R.S.C. 1985, c. I-21 extends this right to offences under any other federal legislation - unless that other legislation specifies otherwise. However, clear and specific language is necessary if an enactment is to exclude the operation of the *Criminal Code* and abolish private prosecutions under a federal statute.

<sup>7</sup> World Society for the Protection of Animals, Harris/Decima data, National survey of Canadian attitudes toward farm animal transport.

*Prosecution and Enforcing Environmental Law: A Guide to Private Prosecution* by James S. Mallet.<sup>8</sup>

The guide was developed and written in preparation for the instigation of Canada's first private prosecution in the area of animal welfare. To our knowledge, no such private prosecution has ever been conducted before. The information in this guide, although carefully researched, has therefore never been tested in a court of law.

Before making the decision to launch a private prosecution it is important to realize that it is a serious, costly, time-consuming, complex and potentially risky endeavour – with no guaranteed result. For these reasons, private prosecution may not be the right tool for you or your organization. If you do decide to proceed with a private prosecution, it is highly recommended that you have access to legal assistance throughout the entire process (see Appendix D for a list of resources). Please keep in mind that this guide is no substitute for legal advice.

## **2. Limits and Challenges of Private Prosecution**

Before launching a private prosecution, it is important to objectively assess the strength of your case and to carefully consider all the challenges you may face. This chapter provides a brief overview of the main issues faced by the private prosecutor. For more details, refer to *Mallet*.

### Power of the Attorney General to intervene

The Attorney General has the right to intervene and conduct or stay (i.e. delay) any private prosecution. Because a criminal trial is such a lengthy and expensive process, the preferred outcome of initiating a private prosecution will be the intervention of the Attorney General to take over the case. The quality and organization of your evidence will be a determining factor, as well as the policy and practices of the Attorney General in question regarding intervention. However, it is important to remember that even prosecutions that fail to result in convictions can make a significant impact by shedding light on an issue and increasing government accountability. For additional information on the intervention power of the Attorney General, see section 7.4.

### Limitation periods

There is a limit to the time within which you may lay a charge following an offence. In the case of offences under the *Health of Animals Regulations*, section 68(1) of the *Health of Animals Act* defines a limitation period of up to two years for summary

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<sup>8</sup> *Citizens Guide to Environmental Investigation and Public Prosecution*, online: Environmental Bureau of Investigation <[www.eprf.ca/ebi/guide/toc.html](http://www.eprf.ca/ebi/guide/toc.html)>; James S. Mallet, *Enforcing environmental law: a guide to private prosecution* (Edmonton: Environmental Law Centre, 2004) [Mallet].

conviction offences. There is no limitation period for the prosecution of indictable offences, but these are more complex to prosecute (see section 6.2).

### Costs

Unlike in civil suits, where the defendants' legal costs can be awarded against a plaintiff who loses, costs are rarely granted in criminal cases. Even if the court uses its discretion to award costs, these are limited to nominal amounts by the schedule of fees and allowances set out in the *Criminal Code*.<sup>9</sup> This means that even if your prosecution succeeds, you will not be properly compensated for the expenses of investigating and prosecuting the case. On the bright side, you don't risk having to pay a considerable amount of money to the accused should you lose the case.

### Risk of prosecution

It is an offence to threaten someone with criminal prosecution in order to get them to stop doing something, as this constitutes extortion. There is no problem with informing someone of the state of the law and telling them you believe they are acting illegally, but be careful not to insinuate that you might take legal action against them.

By prosecuting someone, you also expose yourself to being sued for malicious prosecution. However, if you have reasonable grounds on which to be laying the charge and if it is laid without an improper motive, such a suit is unlikely to succeed.

## **3. Resources**

### Animal protection organizations

Animal rights or animal welfare organizations may already have some information on the case you are interested in. They may also be willing to provide you with assistance, e.g. by sharing documents, contacts, etc. These groups may be particularly interested in building a public education campaign around your case.

Contact your local SPCA and any other local animal protection organizations, as well as national and international organizations. Contact information for these groups is provided in Appendix D.

You should also try contacting organizations outside the animal rights/welfare field that may have vested interests in your case's success (e.g. consumer protection groups). The wider ranging the support you have, the better.

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<sup>9</sup> *Supra* note 6, s. 840.

## Experts and professionals

During the course of your investigation and subsequent prosecution, you will require assistance from animal welfare scientists, veterinarians, and lawyers. You may be able to enlist the help of such experts on a volunteer, or *pro bono*, basis. Local animal rights/welfare groups may have access to professionals willing to volunteer their time. If you are unable to locate a lawyer willing to work on the case *pro bono*, try contacting the Student Animal Legal Defense Fund of your local university to see if any law students are interested in assisting you.

A list of resources for locating experts and professionals is provided in Appendix D.

## The Internet

A wealth of information on the handling, transport and welfare of farm animals is available online. Appendix D lists some of the most useful sites.

## **4. Obtaining Physical Evidence**

### **4.1 Where to look for contraventions of the Health of Animals Regulations**

Violations of provisions under Part XII of the *Health of Animals Regulations* can be documented anywhere farm animals in transit are publicly accessible, namely at auctions, at collecting stations and during transport itself. The easiest access to these animals is through attendance of a public livestock auction. Auction listings for Ontario are provided in Appendix A.

The goal in attending an auction is to look for and record violations of the animal welfare provisions of the *Health of Animals Regulations*, which are reproduced in Appendix C. The *Health of Animals Regulations* govern how animals are transported, not how they are treated before or after transport. Transportation is defined as beginning when animals are being caught and loaded, and ending when they have been unloaded from a vehicle at their final destination.<sup>10</sup> At the auction, you will therefore primarily want to observe and document the loading and unloading of animals, which can be done from outside the auction itself (e.g. in a parked car). However, it may also be useful to visit the holding areas/stables where the animals are kept during the auction, if possible, to document any conditions that may lead to a violation later on when the animal is being loaded for transport. If, for example, you document signs of distress or injury in a particular animal and manage to record his/her identification number, you can potentially track that animal throughout the auction process and observe whether and in what conditions the animal is loaded onto the buyer's truck. Identification numbers can be

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<sup>10</sup> Canadian Food Inspection Agency, *Transportation of Animals Manual of Procedures* (2010) [unpublished manual of procedures obtained by request from the Canadian Food Inspection Agency], module 1 [*Transportation of Animals Manual of Procedures*].

found on ear tags, stickers on the animal's back, or even written in marker or spray paint on the animal's body (more common in the case of pigs). If groups of animals are being sold as a lot, record the lot number. Also be sure to record the license plate number of the vehicle onto which the animal is being loaded.

## **4.2 Identifying contraventions of the Health of Animals Regulations**

### "Undue suffering"

Several provisions in Part XII of the *Health of Animals Regulations* prohibit acts or omissions only to the extent that these cause "undue suffering" to the animals involved.<sup>11</sup> Use of this terminology suggests that some degree of suffering on the part of the animals is in compliance with the *Health of Animals Regulations* and therefore legal. The term "undue" is quite vague, but it has been interpreted by courts as referring to suffering that is undeserved, unwarranted, unjustified, unmerited.<sup>12</sup>

### The physical condition of the animals

Section 138(2)(a) of the *Health of Animals Regulations* states that a transporter is acting illegally if they are loading animals that, "by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey." This includes, but is not necessarily limited to, non-ambulatory animals.<sup>13</sup> Non-ambulatory animals are animals that are unable to stand without assistance, or to move without being dragged or carried, regardless of size or age, as well as animals who suffer severe pain when walking due to a rupture of the pre-pubic tendon (also called "splitting").<sup>14</sup> For the purposes of this rule, the term "animal" refers to any member of the following species: bovine (cattle), caprine (goats), equine (horses, donkeys), ovine (sheep), porcine (pigs), camelid (camels, llamas), cervid (deer) and ratite (ostriches, emus).<sup>15</sup>

In addition to prohibiting the transport of non-ambulatory animals, section 138(2)(a) has generally been interpreted to mean that a suffering animal who would endure additional pain during the transportation process cannot be loaded and transported, since any further suffering resulting from the transport is "undue."<sup>16</sup> Thus, evidence that an animal was visibly ill and suffering prior to loading may be sufficient to establish that the animal could not be loaded and transported without undue suffering. As you walk around the

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<sup>11</sup> *Health of Animals Regulations*, *supra* note 3, s. 138(2)(a), 139(1), 139(2), 139(3), 140 & 143(1).

<sup>12</sup> *Transportation of Animals Manual of Procedures*, *supra* note 10, module 2; *Canada (Procureur général) c. Porcherie des Cèdres Inc.*, 2005 FCA 59, [2005] 254 D.L.R. (4th) 676 at 26 [*Porcherie des Cèdres*]; *Canadian Food Inspection Agency v. Samson*, 2005 FCA 235, [2005] 339 N.R. 264 at 11 [*Samson*]

<sup>13</sup> *Health of Animals Regulations*, *supra* note 3, s. 138(2.1).

<sup>14</sup> *Compromised animal policy*, online: Canadian Food Inspection Agency [www.inspection.gc.ca/english/anima/trans/polie.shtml](http://www.inspection.gc.ca/english/anima/trans/polie.shtml) [*Compromised animal policy*].

<sup>15</sup> *Transportation of Animals Manual of Procedures*, *supra* note 10, module 2.

<sup>16</sup> *Porcherie des Cèdres*, *supra* note 12 at 27-34; *Samson*, *supra* note 12 at 12; but see *Doyon c. Canada (Procureur général)*, 2009 FCA 152, [2009] 312 D.L.R. (4th) 142 at 43-47.

auction, take note of any injuries or signs of distress. Conditions associated with pain that will likely be aggravated by transport include the following:

- Fractured limbs
- Fractures to the pelvis
- Rupture of the pre-pubic tendon which occurs in late-term pregnant animals and is characterized by ventral swelling
- Other fractures that considerably impede movement or are likely to cause severe pain when the animal is manipulated for loading or when it is being transported
- Body condition score indicating emaciation and weakness
- Dehydration
- Exhaustion
- “Stressed hog,” which is characterized by difficulty breathing (panting, gasping), blotchy skin, reluctance to move (with no other visible abnormalities), high body temperature and/or trembling
- Shock, dying
- Suspected nervous system disorder
- Fever
- Uterine prolapse, which is characterized by a portion of the [vaginal canal](#) protruding from the opening of the vagina
- Hernia (i.e. the protrusion of an organ through the wall of the cavity that normally contains it) that meets one or more of the following criteria:
  - impedes movement (includes conditions in which the hind legs of the animal touches the hernia when animal is walking)
  - is painful on palpation
  - touches the ground when the animal is standing in its natural position
  - has an open skin wound, ulceration, or obvious infection<sup>17</sup>

It is also illegal to transport a pregnant animal if it is probable that the animal will give birth during the journey.<sup>18</sup>

Note that if a condition rendering an animal unfit for transport occurs in transit, the animal must be taken to the nearest suitable place at which it can receive proper care and attention.<sup>19</sup>

Reproduced in Appendix B is CETFA’s list of common signs of distress and injury classified by species.

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<sup>17</sup> *Compromised animal policy, supra* note 14.

<sup>18</sup> *Health of Animals Regulations, supra* note 3, s. 138(2)(c).

<sup>19</sup> *Ibid.*, s. 138(4).

## Handling

The transporter is acting illegally if they are “loading or unloading animals in a way likely to cause injury or undue suffering.”<sup>20</sup> Things to look for include:

- The type of instrument being used to move animals
  - Whips and electric prods are those instruments most likely to cause injury/suffering
- The frequency with which the animal is being hit/electrocuted
- The force being applied with each blow/the duration of each electric shock
- The part of the body being hit/electrocuted
  - The face and genitals are the most sensitive areas
- The proportion of total animals being hit/electrocuted
  - Are only the slower or most hesitant animals being targeted or is hitting/electrocution being done indiscriminately?

## Loading/unloading equipment

The transporter is acting illegally if:

- The gangway, chute, box or other apparatus used to load or unload is poorly maintained so as to cause injury or undue suffering to animals, e.g. sharp projections, large holes, slippery flooring<sup>21</sup>
  - Note the apparent severity of the injuries resulting from the defect and the number of animals being injured
- The slope of the ramp, gangway, chute or other apparatus being used to load or unload is greater than 45 degrees<sup>22</sup>
- The sides of the ramp or gangway are of insufficient strength or height such that animals are falling off it<sup>23</sup>
  - Note the number of animals falling off
- There is an unprotected gap between the ramp or either side thereof and the vehicle onto which the animals are being loaded<sup>24</sup>
- The loading gate or chute is not fitted with safe and secure footholds<sup>25</sup>

## Overcrowding

The transporter is acting illegally if they are crowding animals “to such an extent as to be likely to cause injury or undue suffering to any animal.”<sup>26</sup> Things to look for include:

- The approximate density of animals, i.e. number of animals/cubic meter of space

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<sup>20</sup> *Ibid.*, s. 139(2).

<sup>21</sup> *Ibid.*, s. 139(3).

<sup>22</sup> *Ibid.*, s. 139(3).

<sup>23</sup> *Ibid.*, s. 139(4).

<sup>24</sup> *Ibid.*, s. 139(5).

<sup>25</sup> *Ibid.*, s. 139(6)(a).

<sup>26</sup> *Ibid.*, s. 140.

- For poultry, overcrowding is defined as loading in excess of 13.4 lb./sq. ft. for chickens and 21.6 lb./sq. ft. for turkeys<sup>27</sup>
- Whether animals have enough space to turn around
- Whether animals have enough space to lie down and approximately how many can be lying down at the same time

### Segregation

In order to comply with the law, the transporter must:

- Segregate animals of different species or of substantially different weight or age,<sup>28</sup> with the exception of female animals and their suckling offspring<sup>29</sup>
- Segregate cows, sows or mares with their suckling offspring from all other animals<sup>30</sup>
- Segregate animals of the same species that are incompatible by nature (e.g. aggressive animals must be segregated from others)<sup>31</sup>
- Segregate groups of mature bulls, de-tusked boars, rams and goat bucks from all other animals<sup>32</sup>
- Segregate from all other animals every mature boar that has not been de-tusked and every mature stallion<sup>33</sup>
- Segregate equines whose hind feet are shod from other equines<sup>34</sup>

### Construction of the vehicle

In order to comply with the law:

- The vehicle must allow all animals to stand in their natural position without coming into contact with a deck or roof;<sup>35</sup> and
- Provision must be made for the drainage or absorption of urine from all decks or levels.<sup>36</sup>

The transporter is acting illegally if their vehicle or container is constructed in such a way as to “likely cause injury or undue suffering.”<sup>37</sup> Things to look for include:

- Insecure fittings<sup>38</sup>
- The presence of bolt-heads, angles or other projections that are inadequately padded, fenced off or otherwise obstructed<sup>39</sup>

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<sup>27</sup> *Transportation of Animals Manual of Procedures*, supra note 10, module 14.2.

<sup>28</sup> *Health of Animals Regulations*, supra note 3, s. 141(1).

<sup>29</sup> *Ibid.*, s. 141 (2).

<sup>30</sup> *Ibid.*, s. 141(3).

<sup>31</sup> *Ibid.*, s. 141(4).

<sup>32</sup> *Ibid.*, s. 141(5).

<sup>33</sup> *Ibid.*, s. 141(6).

<sup>34</sup> *Ibid.*, s. 141(7).

<sup>35</sup> *Ibid.*, s. 142(a).

<sup>36</sup> *Ibid.*, s. 142(b).

<sup>37</sup> *Ibid.*, s. 143(1).

<sup>38</sup> *Ibid.*, s. 143(1)(b).

<sup>39</sup> *Ibid.*, s. 143(1)(c).

- Note the apparent severity of the injuries (usually lacerations) resulting from the defect and the number of animals being injured
- Undue exposure to the weather<sup>40</sup>
  - Note the outside temperature and environmental conditions, including wind chill in the winter and humidity in the summer, as well as the time of day
  - In cold weather, note whether animals are shivering, wet, damp or frozen (and if so how many)
  - In hot weather, note any signs of heat exhaustion (e.g. open-mouthed breathing) and how many animals are affected
  - In the case of sheep, note whether they are shorn or unshorn
  - Note whether any precautions seem to have been taken to protect the animals, e.g. using tarps or covers to provide shade, to protect from rain or to deflect wind, providing water on the floor of the truck for cooling (most likely in the case of pigs, who do not have sweat glands), using coverings for metal truck components that are likely to freeze to animals' flesh, providing extra bedding (e.g. straw), etc.
- Inadequate ventilation<sup>41</sup>
  - Adequate ventilation means “fresh air flowing over every single animal in the load at the right temperature, with the right humidity and in the right volume”<sup>42</sup>
  - Note the outside temperature, also note any signs of heat exhaustion (e.g. open-mouthed breathing) and how many animals are affected
  - Pay particular attention to the front of the trailer, just behind the tractor or truck, above the front trailer axle wheels – this is the area on the trailer with the least air circulation<sup>43</sup>

## Bedding

In order to comply with the law, the vehicle must be:

- Strewn with sand or fitted with safe and secure footholds for the livestock;<sup>44</sup> and
- Littered with straw, wood shavings or other bedding material.<sup>45</sup>

However, where livestock is expected to be confined in the vehicle for not more than 12 hours, only one of these two requirements needs to be met.<sup>46</sup>

## Containers

In order to comply with the law, the container must be:

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<sup>40</sup> *Ibid.*, s. 143(1)(d).

<sup>41</sup> *Ibid.*, s. 143(1)(e).

<sup>42</sup> *Transportation of Animals Manual of Procedures*, *supra* note 10, module 6.3.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Health of Animals Regulations*, *supra* note 3, s. 143(2)(a).

<sup>45</sup> *Ibid.*, s. 143(2)(b).

<sup>46</sup> *Ibid.*, s. 143(3).

- Constructed and maintained so that animals inside may (where required) be fed and watered without being removed from the container, animals inside may be readily inspected, and the escape of any liquid or solid waste from the container is prevented;<sup>47</sup>
- Equipped with a sign or symbol indicating the presence of live animals inside and the upright position of the container – except if all animals inside are readily visible from the outside;<sup>48</sup> and
- Secured to the vehicle in which it is carried so as to prevent it from being displaced during transport.<sup>49</sup>

### Food, water and rest periods

In order to comply with the law, the maximum number of continuous hours animals may be confined in a transport vehicle without food and water is:

- 36 hours for equines, pigs or other monogastric animals (including poultry)<sup>50</sup>
- 48 hours for cattle, sheep, goats or other ruminants<sup>51</sup> – unless they will reach their final destination in Canada, in which case the maximum is 52 hours<sup>52</sup>
- 72 hours from the time of hatching for chicks<sup>53</sup>
- 18 hours for calves that are too young to be fed exclusively on hay and grain<sup>54</sup>

Note that this rule does not apply if the transport vehicle is suitably equipped to allow the animals to be fed, watered and rested onboard.<sup>55</sup>

Once these maximum travel times are reached, the clock is reset to zero if the animals are unloaded in order to be fed, watered and rested for a period of at least 5 hours.<sup>56</sup>

During this rest period, the animals must be:

- Unloaded into a pen which is sufficiently spacious to allow all of them to lie down at the same time, is equipped with properly designed racks and troughs for feeding and watering, has well-drained and clean floors of concrete or gravel that provide safe footing, contains an adequate amount of straw or other litter to bed the livestock and provides protection from extremes of weather;<sup>57</sup>
- Provided with an ample quantity of suitable food; and
- Provided with potable ice-free water.<sup>58</sup>

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<sup>47</sup> *Ibid.*, s. 144(1).

<sup>48</sup> *Ibid.*, s. 144(2).

<sup>49</sup> *Ibid.*, s. 144(3).

<sup>50</sup> *Ibid.*, s. 148(1)(a).

<sup>51</sup> *Ibid.*, s. 148(1)(b).

<sup>52</sup> *Ibid.*, s. 148(2).

<sup>53</sup> *Ibid.*, s. 148(3).

<sup>54</sup> *Ibid.*, s. 149.

<sup>55</sup> *Ibid.*, s. 148(7).

<sup>56</sup> *Ibid.*, s. 148(4).

<sup>57</sup> *Ibid.*, s. 145, 148(5).

<sup>58</sup> *Ibid.*, s. 148(4).

Before the livestock is re-loaded, the floor of the vehicle must be littered with straw, wood shavings or other bedding material.<sup>59</sup>

### **4.3 Trespassing**

Auctions rely on members of the public to buy some of the animals sold there, mostly the small animals and horses. The ring should therefore always be open to the public. However, the holding areas/stables may not be fully accessible. If you are sincerely unaware of site boundaries due to the absence of barriers or signs, and if no one indicates to you that you are not allowed access, you may enter the holding areas. However, if you know that you have entered a restricted area and proceed nonetheless, you may be charged with trespassing, the information you gather may not be admitted into evidence, and you risk losing credibility in the eyes of the court and the public.

Also, because auctions are privately owned, the owners have the right to kick you out. The best way to avoid this is by trying to blend in and by being courteous and friendly, no matter what you are witnessing. If you do end up being told to leave, do so immediately. Remain calm and respectful even in the face of intimidation. You can still make many observations and recordings from outside the auction.

### **4.4 Note taking**

Note taking is an important part of any investigation. Your notes should be brief, clear and easily legible. Write in pen rather than pencil and keep your notes in a bound notebook with numbered pages to prove that you have not altered them. Alternatively, you can dictate your notes into a small hand-held dictaphone. Since you will have to disclose your notes to the defence (see section 7.7), you should not include personal details. Notes should be taken on the spot or as soon as possible after your departure from the auction. Review and supplement your notes when you return home, while all the information you gathered is still fresh in your mind. You can rewrite or type your notes to make them easier to read, but keep your originals. Make copies of your final notes and store them in separate locations.

Your investigation notes should include:

- Your name and the name of anyone else present at the auction with you
- The date, time of day and weather (including temperature)
- The name and address of the auction you are attending
- Your observations, including all relevant details
- Any identifying marks on vehicles involved in a potential offence (signs, logos, license plate numbers)

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<sup>59</sup> *Ibid.*, s. 148(4).

- Any identifying marks or features of the animal involved in a potential offence (species, breed, sex, approximate age, colour/markings, particular characteristics, ID number on ear tag/sticker)
- The time and exact location at which any photographs and/or videos were taken
- The names of any persons you spoke to and what was said (see section 4.5 below)
- Any steps the people involved in the potential offence have taken to prevent the perceived problem

#### **4.5 Interviews**

In the course of your investigation, you will have conversations with many people, all of which could potentially be important to your case. Collecting the testimony of people who actually witnessed the prohibited act or omission is particularly useful, if they are willing to talk to you. After every discussion, always write down the date, the person's full name and affiliation, as well as their address and telephone number. This is important because you may need to contact them later on regarding an appearance in court. Record what was said (by both you and the person being interviewed) as accurately as possible. Report the exchange objectively, but do indicate your impressions, such as whether you felt the person was being honest, aggressive or threatening. Ideally, you should have the person in question sign a written statement of his/her evidence as soon as possible after the discussion in order to confirm the content of the exchange.

Alternatively, you can audio record the conversation. You do not need to obtain permission from others if you yourself are participating in the exchange.<sup>60</sup>

When talking to representatives of the company involved in the offence, always try to interview the most senior manager in control. Since transporters are likely to use a due diligence defence – arguing that they have taken all reasonable steps possible to prevent committing an offence – it is one of the first lines of questioning to follow. Are the offenders aware of what they are doing? If so, have they done anything to stop or at least mitigate the risk of injury or suffering to the animals? Did they spend any money on modifying their practices (e.g. buying new equipment, hiring more drivers to decrease the number of animals per load, investing in employee training)?

#### **4.6 Visual evidence**

Videos and photographs are probably the best form of evidence you can get with respect to the physical condition of animals, handling practices during loading/unloading, loading/unloading equipment, overcrowding, segregation of animals and conditions inside the transport vehicle.

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<sup>60</sup> *Criminal Code*, *supra* note 6, s. 183.1.

Videos and photographs are also useful in publicizing your case and are great material to distribute to the media.

However, there are a few things you must keep in mind when taking videos and/or photos. With the exception of large auctions that are also tourist destinations (as is sometimes the case in Ontario), most auctions don't like photos and/or videos being taken. Remember that because auctions take place on private property, what you are allowed to do while you are there is limited by the property owner or anyone acting on his/her behalf (e.g. workers, security guards). If you see signs prohibiting the taking of photos/video or if you are told by staff not to take photos/video, refrain from doing so. Otherwise you risk being charged with trespassing, jeopardizing your evidence's admissibility, and losing credibility. If, however, you are given no notice that taking photos/video is prohibited (i.e. if you see no signs and no one tells you), you may do so. Of course, if auction staff asks you to stop, you must comply. In order to avoid this, be discreet. If videotaping, keep in mind that it is illegal to secretly record oral communications between two or more people unless you have the consent of at least one of the individuals involved (including yourself if you are participating in the conversation).<sup>61</sup> To avoid this issue, it is best to disable the audio feature completely when you are not narrating.

When using a camera or video recorder, always ensure that your batteries are fully charged and check the settings beforehand. Use a new or clean tape or memory card, if possible. When using a video camera, try to limit your shot sequences to between 30 and 45 seconds. Limit narration to topics such as your location and what the shot depicts. Use a number code that matches your notes to keep track of photos and recordings.

When taking photos/video, remember that their admissibility in court depends on their accuracy and objectivity in depicting the facts. There must be no intention to mislead.

#### **4.7 Expert opinion**

Having experts such as animal welfare scientists and veterinarians review your evidence and confirm your conclusions is essential to your case. For example, you will need a veterinarian to confirm that a medical condition you documented in a particular animal does in fact cause severe pain that will be aggravated by transport in order to establish that transporting the animal in this condition contravenes section 138(2)(a) of the *Health of Animals Regulations*. Experts should be provided with all relevant information when asked to review a piece of evidence. Their opinion should be in writing and should clearly identify the specific piece of evidence under examination by referring to the number code you have ascribed it. Select experts based on their qualifications, area of specialization and experience testifying in court. Appendix D provides a list of resources for locating animal welfare and veterinary expertise.

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<sup>61</sup> *Ibid.*

## **4.8 Tips**

### General tips:

- Always conduct investigations with a partner – this is important both for safety and evidentiary reasons (see chapter 6)
- Do not place yourself in a situation that could jeopardize your safety
- Try to blend in as much as possible and be discrete
- Stay calm, be respectful and polite
- Do not enter restricted areas if you are aware these are restricted
- If you are told by auction staff to leave a particular area or the auction itself, do so immediately
- Understand how the physical evidence you are collecting fits into your case (so you can use it to support charges under particular provisions and protect your evidence from attack once in court)

### How to help animals while you are there:

- Provide animals with water, as many of the animals there will be hot and dehydrated
- Look for the “dead pile” outside the facility where dead animals are put. Ensure no live animals are left on it. If you do see a live animal and it is small enough, take it to the nearest sympathetic veterinarian. If the animal is too large to move, have one person stay with the animal while the other asks the auction for a veterinarian or other staff member who can euthanize the animal. Accepted methods of euthanasia are captive bolt pistol, bullet or lethal injection (if preceded by anaesthetic injection). If you are successful in having a suffering animal euthanized, try to stay to witness the animal’s death, but do not record it. If you are unable to stay to witness it, insist on seeing the animal's body after the euthanasia has been performed.

### What to bring with you:

- This guide
- Notebook and pen
- Watch
- Thermometer for recording air temperature
- Buckets and water
- Camera and video recorder with extra batteries and memory cards

## 5. Obtaining Documentary Evidence

Throughout the course of your investigation, you will need to collect a number of official documents to be used as evidence in support of your case, including CFIA inspection reports, Certificates of Incorporation, and Vehicle Records. You should keep all documents you obtain, as their relevance may not become clear until a later date. Keep the originals free of any written notes, except a small note on the back of the document itself indicating the date on which you obtained it, from where or whom you got the document, and the total number of pages it contains. If the copy you receive is incomplete, indicate that as well. In addition to official documents, detailed notes of any conversation you have about the case and copies of correspondence (letters, email) will play an important role in your prosecution.

### 5.1 Freedom of information requests

The federal *Access to Information Act* allows any person or corporation in Canada to submit an official request for Government of Canada records.<sup>62</sup> All federal government institutions, including the CFIA, must make every reasonable effort to help anyone making an access to information request. The identity of all requesters is protected. Using the *Act*, you can obtain any material under the control of the CFIA, regardless of its medium or form, including correspondence, applications, certificates and inspection reports. Note that there are certain types of information, called "exemptions and exclusions," that may not be released under the *Access to Information Act*. Exemptions protect certain types of information that could cause harm if released, e.g. trade secrets of a third party, personal information and information on national security. A complete description of exemptions is listed in Sections 13–23 of the *Access to Information Act*. Exclusions are records not covered by the *Act*, including published material and material available for purchase.

The most useful type of document to request is CFIA inspection reports. Transporters marked as non-compliant with the *Health of Animals Regulations* on an inspection report are made aware of their violation of the legislation through education, administrative monetary penalties (fines) or, much more rarely, prosecution. Your case will be considerably strengthened if you can prove that, after having been inspected and marked as non-complaint with respect to certain practices, a transporter continues engaging in those same illegal practices. By proving that the accused could have avoided the offence, that they failed to make the recommended changes or that they were aware of the situation for a period of time within which they failed to take preventative action, inspection reports pre-dating the events you are investigating will help dismantle a due diligence defence.

#### Making an access to information request at the CFIA

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<sup>62</sup> *Access to Information Act*, R.S.C. 1985, c. A-1.

Access to information requests must be submitting in writing. They also must include sufficient detail to allow staff to find and retrieve the information requested. The "Access to Information Request Form," along with detailed instructions, is available on the Treasury Board of Canada Secretariat's website: [www.tbs-sct.gc.ca/tbsf-fsct/350-57-eng.asp](http://www.tbs-sct.gc.ca/tbsf-fsct/350-57-eng.asp)

Once filled out, mail your request to the following address:

**Canadian Food Inspection Agency**

Andrée Marie Delisle  
Access to Information and Privacy Coordinator  
1400 Merivale Road, Room T1-0-149  
Ottawa, Ontario K1A 0Y9  
Telephone: 613-773-5554  
Facsimile: 613-773-5604  
[Andree.Delisle@inspection.gc.ca](mailto:Andree.Delisle@inspection.gc.ca)

When you submit a request under the *Access to Information Act*, you must also send a cheque or money order in the amount of \$5.00, payable to the Receiver General for Canada. Payments can also be made by credit card by contacting the CFIA Access to Information and Privacy Office at 1-613-773-5554 or ATIP-CFIA-AIPRP@inspection.gc.ca. The \$5.00 fee helps cover the administrative costs associated with processing your request. Additional fees may be charged if staff needs to search, retrieve, prepare and reproduce records. Search fees are \$10.00/hour. However, the federal government does not usually charge for searches that take five hours or less. Photocopying fees are \$0.20/page for requests larger than 125 pages. You must pay all fees in full before the information is disclosed to you.

After receipt of your request, the CFIA has 30 days to respond. It will usually send you a letter confirming receipt of your request, assigning it a file number and indicating when it will get back to you. The agency will then forward a cost evaluation for photocopying the documents with a request that you confirm the procedure by paying a portion of the costs. You then send a cheque in the amount requested, usually half of the estimated total. A complete assessment of the costs and the number and type of documents found will follow. You will have to pay the remaining costs before the agency forwards you the documents.

A few tips:

- Call or email the agency before sending in an Access to Information request, as they may be willing to send you documents for free.
- An in-person visit to the appropriate office may allow you to view the documents and assess their usefulness before sending the request. This also allows you to cite specific documents in your request.

- Make your request specific. If a request encompasses too much, the costs of obtaining the documents may be very high and you may get a large number of unrelated documents.
- Always ask for a fee waiver; if the costs are below a certain amount, the agency may waive them. If the agency doesn't grant a waiver, you may be able to bargain the cost down. Agencies are generally flexible and will reduce their original cost estimates.
- Another alternative is to send in a request, have the agency compile the results, then arrange to view the documents (before requesting photocopies in order to save money and paper).
- Documents released often have sections blacked. If you believe this concealed information is important to your case, fight to get full copies of such documents, e.g. through appeals, requests to other agencies, or pressure from the media.

## **5.2 Certificates of Incorporation**

To charge a corporation, you must have its exact name. You can obtain it by contacting the provincial Registrar of Companies to request a certified copy of the company's Certificate of Incorporation. You will have to give the Registrar basic information such as the company's business name and address. Additionally, the Registrar can provide you with a Certificate of Status for the date of the offence, which establishes that the corporation was active on that date. You may also want to obtain copies of the corporation's annual report, which should document the company's true name and any subsidiaries. You can usually find annual reports on the company's website or by requesting them from the company.

## **5.3 Vehicle Records**

You should also obtain an official Vehicle Record (also called a "vehicle abstract") in order to prove the identity of the owner of the transport vehicle involved in the offence. Certified copies of such documents are available upon request from provincial registries. Be prepared to provide the license plate number you are interested in as well as the specific date for which you want the search performed (i.e. the date of the offence). Note that you will be charged an administrative fee when placing your order (\$18.00 for each certified copy in Ontario).

Different types of Vehicle Records are available from the Ontario Ministry of Transportation, most of which can be ordered online. To find out which type of document to order, visit the Ministry's website:

[www.mto.gov.on.ca/english/dandv/vehicle/getinfo.shtml](http://www.mto.gov.on.ca/english/dandv/vehicle/getinfo.shtml). Once you have identified which type of record you need, you can order it online at [www.mto.gov.on.ca/english/dandv/catalogue\\_certified.shtml](http://www.mto.gov.on.ca/english/dandv/catalogue_certified.shtml)

## 6. Building Your Case

### 6.1 Choosing who to prosecute

Frequently, those committing offences under the animal welfare provisions of the *Health of Animals Regulations* will be employees hired by a corporation (e.g. truck drivers or workers employed by a slaughterhouse or animal transport company). In general, you can prosecute the corporation rather than the specific employee who committed the offence, as it is the transport company's responsibility to ensure that its staff is sufficiently trained, knowledgeable and experienced. The only two exceptions are:

- If the offence was committed without the knowledge or consent of a senior officer (i.e. a director, chief executive officer or any other representative who plays an important role in the establishment of the company's policies or is responsible for managing an important aspect of the company's activities); or
- If the corporation took all reasonable steps to prevent the offence from occurring.

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Corporate directors and officers can also sometimes be held personally liable for the offences committed by their organization if they directed, authorized, or participated in the commission of the offence.<sup>64</sup> This means that you have to be able to prove that the individual had knowledge of the facts relevant to the offence and had the authority to prevent it from occurring.

### 6.2 Indictment versus summary conviction proceedings

All criminal and regulatory offences belong to one of three categories:

1. Indictable offences, generally considered to be more serious, which carry a maximum prison term ranging from two years to life imprisonment;
2. Summary conviction offence, generally considered less serious, which carry a maximum penalty of a \$2,000 fine or six months imprisonment, or both; and
3. Hybrid or dual offences, which give the prosecution the option to prosecute the offence either as an indictable or summary conviction offence.

The offences set out in the *Health of Animals Regulations* are hybrid offences, meaning that you have the choice of prosecuting them as summary conviction or indictable offences.<sup>65</sup> However, given the uncertainty surrounding the right to privately prosecute indictable offences, the complexity of the proceedings involved, and the absence of a right of appeal in connection with indictable offences,<sup>66</sup> it is advisable to opt for summary conviction proceedings when privately prosecuting under the *Health of Animals Act*. The procedural steps detailed in chapter 7 below are tailored to summary

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<sup>63</sup> *Health of Animals Act*, *supra* note 20, s. 72.

<sup>64</sup> *Ibid.*, s. 21.

<sup>65</sup> *Ibid.*, s. 65(1).

<sup>66</sup> *Supra* note 8 at 99-103.

conviction proceedings. For guidance regarding the prosecution of indictable offences, please refer to *Mallet*.<sup>67</sup>

### **6.3 Proving your case**

#### Burden of proof

Offences under the *Health of Animals Regulations* are strict liability offences.<sup>68</sup> This means that once the prosecution has proven that the prohibited act was committed, it is up to the accused to establish due diligence, i.e. to prove that he/she took all reasonable steps to prevent the offence from occurring, in order to escape liability.<sup>69</sup>

The prosecution must be able to prove each element of the offence. For example, section 139(1) of the *Health of Animals Regulations* provides that “no person shall beat an animal being loaded or unloaded in a way likely to cause injury or undue suffering to it.” In order to prove a violation of this provision, the prosecutor must establish:

1. That the accused, or that an employee or agent of the accused, was beating an animal;
2. That this specific animal was being loaded or unloaded at the time of the beating; and
3. That the beating was of such a nature as to be likely to cause injury or undue suffering to the animal.

#### Available defences

Throughout the proceedings, it remains up to the prosecution to prove beyond a reasonable doubt that the accused committed the offence. Thus the prosecution may fail even if the accused does not offer a defence. The accused may, however, bring forth evidence that raises a reasonable doubt as to any element of the offence. The accused may also present specific defences, the most probable being the due diligence defence, where the accused attempts to demonstrate that he/she took all reasonable steps to prevent the prohibited act from occurring. In the case of animal transport, due diligence may take various forms, including the use of special equipment (e.g. tarps or covers to protect animals from the weather), the modification of routes and transit schedules based on weather conditions, or the implementation of a humane handling training program for employees, for example. Adherence to the recommendations set out in the *National Farm Animal Care Council's Transportation Code* (a non-binding, voluntary code of practice) can also be used to establish due diligence.<sup>70</sup> However, the precautionary measure invoked by the defence must relate to the prevention of the

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<sup>67</sup> *Ibid.*, chapter 13.

<sup>68</sup> *R. v. City of Sault Ste. Marie* (1978), 40 C.C.C. (2d) 353 at 374 (S.C.C.).

<sup>69</sup> Kent Roach, Patrick Healy & Gary Trotter, *Criminal Law and Procedure: Cases and Materials*, 9<sup>th</sup> ed. (Toronto: Edmond Montgomery, 2004) at 373.

<sup>70</sup> *Recommended Code of Practice for the Care and Handling of Farm Animals*, online: National Farm Animal Care Council <[www.nfacc.ca/pdf/english/Transportation2001.pdf](http://www.nfacc.ca/pdf/english/Transportation2001.pdf)>.

specific incident that constitutes the offence. Precautions unrelated to the offence, or steps taken afterwards to mitigate the impact of the offence, are not relevant to due diligence.<sup>71</sup>

Another possible, though less likely, defence is the mistake of fact defence, where the accused tries to establish that, at the moment when the prohibited act was committed, he/she was operating under a faulty assumption and that, were this assumption true, the act in question would not be prohibited. This defence will succeed only if a hypothetical reasonable person placed in the shoes of the accused would have made the same mistake.<sup>72</sup>

### Standard of proof

The standard of proof required on the part of the prosecutor is “beyond a reasonable doubt,” meaning that the court must not have any reasonable doubts as to whether the accused committed the act or omission that constitutes the offence. This is a very high standard and applies to every element of the offence. However, the standard of proof required on the part of the accused in demonstrating that he/she exercised due diligence is “on a balance of probabilities,” meaning that as long as the court believes that there is a greater than 50% chance that the accused took all reasonable steps to prevent the offence from occurring, he/she will be acquitted. Thus the standard of proof is much higher for the prosecution than for the defence.

## **6.4 Rules of evidence**

In preparing your private prosecution, you should familiarize yourself with the rules governing what kind of evidence is admissible in court. These rules are established both by statute and by the common law (i.e. rules derived from previously decided cases). The *Canada Evidence Act* establishes the laws of evidence for prosecutions under federal statutes such as the *Health of Animals Act*.<sup>73</sup> The *Health of Animals Act* itself also provides specific rules relating to evidence.<sup>74</sup>

### General principles

In general, evidence must be:

- Material, meaning that it relates to the alleged act or omission, helps establish the identity of the offender, or provides proof of intent;
- Relevant, meaning that there is a logical connection between the evidence and the alleged offence;

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<sup>71</sup> John Swaigen, *Regulatory Offences in Canada: Liability & Defences* (Scarborough: Carswell, 1992) at 99.

<sup>72</sup> *Mallet*, *supra* note 8 at 50.

<sup>73</sup> *Canada Evidence Act*, R.S.C. 1985, c. C-5.

<sup>74</sup> *Health of Animals Act*, *supra* note 3, s. 74.

- Reliable, as assessed based on the way in which the evidence was collected, the credibility of witnesses and the form in which the evidence is being presented; and
- Factual, meaning that it relates to facts rather than opinion – unless the opinion is that of an expert witness.

Witnesses generally cannot testify regarding statements made by a third party (this is called the “hearsay rule”).

Another important rule is that evidence, particularly physical evidence such as photographs and videotapes, must be maintained under continuous control from the moment of collection through to its introduction as an exhibit in court. This means that you should, whenever possible, be in possession of the evidence and have control over others’ access to it. Preferably, you should keep it under lock and key. If the evidence must leave your possession, keep a record of the names of those handling the evidence as well as the times at which the evidence was under their control.

### Witnesses

Normally, documentary or physical evidence is admissible only if there is a witness who can testify that he/she produced or collected it. This means, for example, that a witness’ written statement must be corroborated by that person’s oral testimony in court. This is why it is important to always record the full name and contact information of anyone you talk to during the course of your investigation. Note, however, that the *Health of Animals Act* creates an exception to this rule by providing that official inspection reports are admissible without the oral testimony of the inspector.<sup>75</sup>

For physical evidence, you may not only require the testimony of the person who collected the evidence, but also a witness to corroborate the testimony of this person. This is why it is important to always conduct investigations in pairs. You will also need the testimony of any other person who handled the physical evidence.

Because witnesses cannot generally give their opinions in court, e.g. regarding whether a given animal was in pain and/or suffering, expert witnesses will play an important role in your case (see section 4.7 above). Preference should be given to the most qualified, recognized and specialized experts available. Experience testifying in court is also an important asset. Keep in mind that experts typically charge a fee for testifying in court.

### Duty to disclose

As a private prosecutor, you have a duty to provide full disclosure to an accused. This means that you must hand over to the accused all relevant information in your possession, whether it assists or damages your case. This includes summary statements of what witnesses are expected to say during their testimonies (also called “will

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<sup>75</sup> *Ibid.*, s.74(1).

says"), your notes, photographs, videotapes, and correspondence. All relevant material, whether you are planning to use it as evidence or not, and whether it is admissible in court or not, must be provided to the accused. The only exception is material that is clearly irrelevant, material not within your control, or material subject to a type of legal privilege. Note, however, that the accused has a duty to ask for disclosure.

## **7. Procedural Steps**

This chapter summarizes the steps involved in conducting a private prosecution under the *Health of Animals Act*. The first two sections (7.1 and 7.2) outline preliminary steps to follow before officially launching the prosecution. The following sections (7.3-7.10) summarize the official procedure to be adhered to when prosecuting summary conviction offences as set out in Part XXVII of the *Criminal Code*.

### **7.1 Making a formal complaint**

Before taking legal action in the form of a private prosecution, it is best to file a formal complaint with the government agency responsible for enforcing the relevant legislation. In addition to giving the agency an opportunity to address the problem, making a formal complaint enhances your credibility should you pursue a private prosecution.

A complaint relating to an offence under the *Health of Animals Regulations* should be made to the CFIA. The complaint should be made in writing and should contain the following information:

- A description of the alleged offence;
- The specific provision(s) of the *Health of Animals Regulations* alleged to have been violated;
- The identity of the person responsible; and
- The date, time and location of the alleged offence.

Request that the matter be investigated and charges be laid. Include copies of the evidence you have collected. Make it clear that you are expecting a reply but give the agency a realistic time frame in which to respond.

### **7.2 Preparing your brief**

If, after having made a formal complaint to the CFIA and allowed the agency sufficient time to respond, no action is being taken, you may decide to initiate a private prosecution. The first thing you need to do is compile and organize all of the information you have gathered into a brief. It is also wise at this point in time to seek legal assistance if you have not already done so, preferably that of a criminal lawyer who has experience in conducting private prosecutions.

Your brief should contain:

- A copy of the information (see section 7.3 below);
- A list of those being accused of committing the offence;
- A summary of the circumstances leading up to the discovery of the offence that refers to all supporting documents, including photographs, correspondence, inspection reports, notes, etc;
- A list of exhibits, i.e. all supporting documents and other evidence you will be relying on;
- A list of potential witnesses, including area of expertise for expert witnesses; and
- For each potential witness, a summary of what that witness is expected to say given his/her knowledge of events and expertise.

The brief should be well-organized and professional looking. It should be appropriately tabbed, indexed, and bound in a three ring binder. You will need to have a total of four copies of the brief.

### **7.3 Laying an information**

An information is a written statement sworn before a Provincial Court Judge or Justice of the Peace that outlines the charges being made. Laying an information officially launches the private prosecution. The following summary sets out the basic form and procedure that must be respected when laying an information. For additional details, refer to *Mallet*.

#### Form

The proper form and procedure for laying an information is set out in Form 2 under Part XXVIII of the *Criminal Code*. The information, which can be written in either French or English, must contain:

- The informant's full name, residence, occupation and affiliation with any organization
  - the informant must be someone who has witnessed the offence first hand or who "has reasonable grounds to believe, and does believe, that" the offence has been committed
- The full name of the accused
  - if the accused is a corporation, state the full registered name and address, except if it is a sole proprietorship, in which case the charge should be brought against "(name of individual) operating as (registered business name)"
  - list all the parties you believe may be responsible for the offence, as it is more difficult to add parties than to withdraw charges
- The date of the offence
  - use the wording "on or about the 17<sup>th</sup> day of July 2010"
- The location of the offence, including the province

- A succinct description of the offence
  - the prohibited act or omission must be described in sufficient detail to allow the accused to identify the event being referred to – but don't include information that is not essential to the offence (otherwise you may have to prove such details later on)
  - it is best to use the exact wording of the provision of the legislation you believe has been violated
  - cite the name of the relevant statute along with section numbers
  - if you are alleging more than one offence, these should be listed in separate counts using separately numbered paragraphs
- The type of proceedings you have elected (summary conviction or indictable)
  - this can be done by specifying the subsection of the offence provision you wish to prosecute under, namely section 65(1)(a) or (b) of the *Health of Animals Act*

Make sure all formal requirements are met. If this is the case, then the Judge or Justice of the Peace before whom you will appear will be legally obliged to receive the information.

An example of a properly drafted information is provided in Appendix E.

### Procedure

The information must be sworn at the location where the offence occurred or where the accused carries on business.<sup>76</sup> When you are ready to lay the information, contact the office of the Court Clerk ahead of time to make an appointment. Specify that you will be laying a private information in connection with farm animal transport legislation. Be familiar with all your facts, as you will be asked to summarize your case. Bring the prepared information as well as all of your evidence with you. You should also bring a letter addressed to the Court Clerk listing a municipal street address for each of the accused.

### **7.4 Intervention of the Attorney General**

Once you have sworn an information, the provincial, or occasionally the federal, Attorney General may intervene in your case. The Attorney General can do one of three things:

1. Review the case, decide not to intervene and turn the case back to the informant for further proceedings, in which case you may proceed with your private prosecution;
2. Assume conduct of the case and decide either to withdraw charges or to pursue the prosecution, in which case you no longer have a say in the proceedings; or

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<sup>76</sup> *Ibid.*, s. 73.

3. Assume conduct of the case and decide to enter a stay of proceedings, in which case, although you can technically lay a new information on identical terms, the case can be considered dead.

The Attorney General's decision to intervene is completely discretionary. He/she is not required to provide you with reasons for this decision. Policies pertaining to intervention vary from jurisdiction to jurisdiction. In British Columbia and Alberta, the prevailing practice is for the Attorney General to intervene in the matter and stay the proceedings. Private prosecutions have been allowed to proceed in Ontario, however, most often in cases where the private prosecutor was represented by experienced and able counsel.<sup>77</sup>

Although the Attorney General's decision is reviewable by the courts, the standard of review is extremely high: courts will not interfere except in cases of "flagrant impropriety."<sup>78</sup> For further information on the possibility of appeal and judicial review, see *Mallet*.<sup>79</sup>

### **7.5 The process hearing and summons**

Once the information is received by a Provincial Court Judge or Justice of the Peace, a process hearing is scheduled. The purpose of such a hearing is to determine whether evidence exists relating to each element of the alleged offence. The evidence is not carefully weighed as in a trial, but rather superficially assessed in order to decide whether it could reasonably result in a conviction. You, as well as additional witnesses, will be required to testify. There is no requirement to notify the accused of the hearing. However, if he/she is present, the judge may give him/her the opportunity to address the court. The Attorney General is also entitled to participate in the hearing.

Because you will be required to testify and make legal arguments during the hearing, you must come prepared. Have all four copies of your brief with you. You must also ensure the presence of any witnesses whose evidence you will need at this stage in the proceedings. You will need to obtain a subpoena compelling each witness' attendance from the Judge or Justice of the Peace ahead of time.<sup>80</sup> Blank copies of the form are available from the Court Clerk's office. Once you have drafted the subpoena, make an appointment with the Judge or Justice of the Peace through the Clerk's office. Come prepared with a copy of your brief to leave with the Judge or Justice of the Peace. Once it is issued, it is your responsibility to have the subpoena served either according to the procedure set out in the *Criminal Code*<sup>81</sup> or according to the laws of the province.<sup>82</sup> A sworn affidavit of service should then be filed with the information at the Clerk's office.

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<sup>77</sup> *Mallet*, *supra* note 8 at 86-87.

<sup>78</sup> Keith Ferguson, "Challenging the Intervention and Stay of an Environmental Private Prosecution" (2004) 13 J.E.L.P. 153 [*Ferguson*].

<sup>79</sup> *Mallet*, *supra* note 8, chapter 16.

<sup>80</sup> *Criminal Code*, *supra* note 6, s. 698-700.

<sup>81</sup> *Ibid.*, s. 701.

<sup>82</sup> *Ibid.*, s. 701.1.

Note that you must obtain a subpoena even if your witness has agreed to appear at the process hearing. Witnesses who have agreed to appear don't have to be served, however. Their subpoenas can simply be filed in court. See appendix F for an example of a properly drafted subpoena.

If, during the process hearing, the Judge or Justice of the Peace finds there to be sufficient evidence of the offence, he/she will issue a summons. A summons is an order issued in the Crown's name compelling the accused to appear in court at a specified date and time to answer the charges. It is advisable to bring a typed summons with you to accelerate this process. The summons should be directed to the accused, set out briefly the offence with which the accused is charged, and require the accused to attend court at a time and place to be filled out by the Judge or Justice of the Peace. The summons must be issued "in Her Majesty's name." It should also contain a notice regarding the consequences of a failure to appear. The wording of this notice should follow the text of subsection 145(4) and section 510 of the *Criminal Code*.<sup>83</sup>

Once the summons has been issued, all documents related to the proceedings should mention that the prosecution is being carried out "in Her Majesty's name." Thus, the case may be referred to as "Her Majesty the Queen, on the information of (your name) v. (accused's name)" or "(your name), on behalf of Her Majesty the Queen v. (accused's name)."

Note that it is possible for the Provincial Court Judge or Justice of the Peace to receive your information and yet refuse to issue a summons. Only in very rare circumstances can such a decision be reviewed by the courts.<sup>84</sup>

## **7.6 Serving the accused**

The procedure for serving a summons on the accused is set out in the *Criminal Code*.<sup>85</sup> To serve a summons on an individual, a peace officer must hand it to him/her personally or leave it at his/her last known address with a person who appears to be at least sixteen years old. In the case of a corporation, a peace officer must serve a summons personally to the corporation's manager, secretary, or other executive officer, or to any other person apparently in charge of the branch office.

You should give the summons to the peace officer as soon as possible and follow up with him/her to ensure that it has been served. After serving a summons, the peace officer must swear an affidavit of service on the back of the summons, stating the identity of the person who was served and the time and the place of service. You must then ensure that the officer files the affidavit of service at the proper court.

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<sup>83</sup> *Ibid.*, s. 409(4).

<sup>84</sup> *Mallet*, *supra* note 8 at 75.

<sup>85</sup> *Supra* note 6, s. 509, 701.1 & 703.2.

You may also attempt to personally deliver a copy of the summons to the accused. The accused is not required to respond to your copy of a summons, but if he/she does and appears in court, he/she will be bound by the summons.

### **7.7 First appearance**

At the date of first appearance indicated on the summons, the informant and the accused, or their counsel, must appear in court. The charges are read out and the accused is asked to plead guilty or not guilty to each charge. If he/she pleads guilty, the informant will be asked to read a statement of facts supporting the charge. If the accused accepts enough of these facts so that the essential elements of the offence are established, the Judge will register a conviction. You should therefore be ready to address sentencing at this time (see section 7.9 below). If the accused pleads not guilty to one or more of the charges, a date will be set for the trial. When setting this date you should consider the availabilities of your witnesses, the time you require to adequately prepare for the trial, as well as the time needed to provide the accused with proper disclosure of all relevant documents in your possession (see section 6.4 above).

It is also on the date of first appearance that the court addresses any preliminary or procedural matters. The accused may, for example, apply to have one or more charges quashed (i.e. struck out). You can also take this opportunity to have your information amended. Either party may request an adjournment as long as the delay is reasonable.

### **7.8 The trial**

The trial begins with the prosecutor's opening statement, which briefly summarizes the issues and evidence. The prosecution then goes on to present its case by calling witnesses and entering exhibits. Witnesses are first questioned by the prosecutor (this is called "examination-in-chief"). Following questioning by the prosecutor, the defence is given the opportunity to cross-examine the witness. The judge may also intervene to ask questions. The prosecutor is then entitled to re-examine the witness, but only on issues raised in cross-examination. Exhibits are normally only brought into the trial through a witness. For example, photographs will be entered through the testimony of the witness who took them.

Once the prosecution has presented its case, the defence may make an application for an acquittal by directed verdict, which will be granted only if the prosecution's evidence is lacking on an essential element of the offence. If no such application is made, or if it is made but dismissed, the defence can present its case, but it is not obliged to do so. If the defence elects to enter evidence, then the same procedure is followed as for the prosecution's case: the defence performs the examination-in-chief of its witnesses, followed by the prosecution's cross-examination, and finally the defence's re-examination.

Once all the evidence has been presented, each side makes a closing statement summarizing its interpretation of the law and facts presented during the course of the trial. The defence will present its statement first if it has chosen to present evidence. If not, the prosecution goes first.

Tips for testifying in court:

- Go over your statement with your lawyer ahead of time to make sure you are well prepared
- Bring your notes with you since you may be allowed to refer to them during your testimony
- Stay calm and take your time before answering questions
- If you don't know the answer to a question, say so (don't guess)
- When reporting on something that you did, say "I," not "we," even if you were not alone

### **7.9 Speaking to sentencing**

If the accused has pleaded guilty or been found guilty, the court will provide both parties with the opportunity to speak to sentence, i.e. to suggest a suitable punishment. You should make a request to speak to sentencing on the day the conviction is entered. You can also request an adjournment to prepare to address sentencing. However, it is important to begin preparing for sentencing early on, as part of your trial preparation.

During sentencing, the judge may allow additional evidence to be presented. Further, some types of evidence that are not admissible to prove guilt may be allowed at this stage in the proceedings. Facts that would support a harsher penalty, called aggravating factors, must be proven by the prosecution beyond a reasonable doubt. These include:

- The deliberateness of the offence
- The ability of a corporate offender to absorb the fine as a cost of doing business
- Any benefit, financial or otherwise, than an offender may have received through the commission of the offence
- Prior convictions or enforcement actions taken against the offender
- Evidence that precautionary measures that could have prevented the offence from occurring were easy and/or inexpensive to implement
- Evidence that the offender deliberately flouted the law or refused to cooperate with authorities

Factors that may be raised by the defence to lighten the sentence, called mitigating factors, include:

- The extent of the offender's efforts to comply with regulations
- The entry of a guilty plea
- Remorse
- Cooperation with authorities
- Steps taken and expenses incurred since the offence to prevent similar occurrences

- Limitations on the offender's ability to pay a fine
- Laxity of government agencies in enforcement
- Absence of prior convictions and other evidence of good character

Courts have broad discretion in sentencing but must operate within the constraints imposed by the statute. For summary conviction offences, the *Health of Animals Act* allows for a maximum penalty of a fine of \$50,000 and a six month prison term.<sup>86</sup> The sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The offender must also be able to pay any fine imposed. Imprisonment will only be considered in cases of reckless or deliberate behaviour.

The court is not obliged to impose a sentence at this point, however, and may choose instead to suspend sentencing and issue a probation order requiring the offender to comply with certain conditions. If the offender fails to comply with the order, he/she will be brought before the court for sentencing. The court may also elect to grant an absolute discharge to the offender, in which case no conviction is entered and the offender is released without penalty despite having been found guilty. Finally, the court can order a conditional discharge, requiring the offender to comply with a probation order in order to avoid conviction.

## **7.10 Appeal and judicial review**

### Appeal

The right to appeal a decision is governed by Part XXVII, Sections 812 to 869 of the *Criminal Code*. The informant has the right to appeal orders to stay the proceedings or to dismiss the information. Sentences can also be appealed. The appeal may be on a finding or question of law or fact. The procedure to be followed for providing notice of appeal, filing an appeal and serving the other party can be found in provincial rules of court, such as the *Ontario Court of Justice Criminal Proceedings Rules*.<sup>87</sup> Appeals normally proceed on the basis of the trial record, but the appeal court may order the production of evidence. Simplified procedure is available for certain types of appeal.

### Judicial review

Most decisions of the Attorney General, including the decision to intervene in a private prosecution and withdraw charges, cannot be appealed. Certain actions taken by Judges and Justices of the Peace, such as a refusal to receive an information or issue a summons, are also immune from appeal. However, if the official in question has exceeded or failed to exercise his/her jurisdiction, the informant may apply to the Superior Court for judicial review of the decision. The Superior Court can then decide to provide one or more extraordinary remedies, including an order vacating the action (*certiorari*), an order compelling the official to fulfill his/her duty (*mandamus*), or an order

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<sup>86</sup> *Health of Animals Act*, *supra* note 3, s.65(1)(a).

<sup>87</sup> *Ontario Court of Justice Criminal Proceedings Rules*, SI/92-99.

prohibiting the official from exceeding his/her jurisdiction. The standard of review is very high, however, making a positive outcome unlikely.<sup>88</sup>

## 8. Conclusion

As you probably realize after reading this guide, launching a private prosecution in order to enforce animal welfare provisions of the *Health of Animals Regulations* is a long, complex and arduous process. In addition to requiring specialized knowledge of animal welfare and criminal procedure, it demands a great deal of patience, determination and resilience. As long as government agencies fail to enforce the little animal welfare legislation that exists in Canada, however, it is up to us, as citizens, to act. We hope the information contained in this guide will not only encourage individuals and organizations concerned about farm animal welfare to prosecute offences under the *Health of Animals Regulations*, but that it will prompt research into the use of private prosecution to enforce other forms of animal welfare legislation.

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***If you have found this guide helpful please consider making a donation at:  
[www.animaljustice.ca/donate](http://www.animaljustice.ca/donate)***

***Animal Justice Canada is a charitable organization that operates with the help of  
people like you.***

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<sup>88</sup> *Ferguson, supra* note 78.

## **Appendix A: Auction Listings for Ontario**

### **Brussels Livestock**

42845 Newry Rd

Brussels, ON N0G 1H0

Website: [www.brussellslivestock.ca](http://www.brussellslivestock.ca)

Regular Sales:

Fri., 10 am – calves and yearlings

Tues., 9 am – slaughter cattle, bulls, cows

Thurs., 8 am - bob calves

10 am – veal

11:30 am – lambs, goats, sheep

### **Community Livestock Exchange Hoard Station**

2508 County Road 8

R.R.5, Campbellford, ON K0L 1L0

Website: [www.hoardstnsalebarn.ca](http://www.hoardstnsalebarn.ca)

Regular Sales: Every Tues., noon – special sales by request

### **Cargill Auction Market Inc.**

Cargill, ON N0G 1J0

Regular Sales: Every Wed., 7 pm – stockers and feeders

### **Renfrew Pontiac Livestock**

18156 Hwy. 17, R.R.3

Cobden, ON K0J 1K0

Regular Sales: Every Tues., 1 pm – all breeds of cattle

### **Ontario Stockyards Inc.**

Cookstown, ON L0L 1L0

Website: [www.ontariostockyards.on.ca](http://www.ontariostockyards.on.ca)

Regular Sales: Every Thurs., 11 am – stockers and feeders

### **Denfield Livestock Sales**

R.R.2, Denfield, ON N0M 1P0

Regular Sales: Every Tues., noon

### **Ottawa Livestock Exchange Ltd. (Leo's)**

1643 Sale Barn Road

Greely, ON K4P 1N6

Website: [www.ottawalivestockexchange.ca](http://www.ottawalivestockexchange.ca)

Regular Sales:

Mon., 11 am – calves

1 pm – slaughter cows and stockers

Thurs., 11 am – calves, slaughter cows

11:30 am – dairy cows  
2 pm – stockers

**Tri-County Cattle Co. Ltd.**

Hanover, ON N4N 3C4

Website: [www.tricountrycattle.com](http://www.tricountrycattle.com)

Regular Sales:

Every Thurs., (Apr-Oct), 7 pm – all breeds

Every Thurs., (Nov-Mar), 1 pm – all breeds

**David Carson Farms & Auction Services Ltd. / Listowel Livestock Ltd.**

R.R.3, Listowel, ON N4W 3G8

Website: [www.davidcarson.on.ca](http://www.davidcarson.on.ca)

Regular Sales:

Sat., 11 am – stockers, cow/calf pairs, cows, bulls

Tues., 1 pm – all breeds

**Parks Livestock of Canada LP**

6 Spencer Street

Milverton, ON N0K 1M0

Website: [www.parkslivestock.com](http://www.parkslivestock.com)

Regular Sales: Every Mon., 12 noon – calves, veal, stockers, cull cows

Acts as collecting station for market weight pigs (provides feed, water and bedding)

**Temiskaming Livestock Exchange**

R.R.3, New Liskeard, ON P0J 1P0

Regular Sales: Every Mon., 2 pm – all classes of livestock

**Norwich Livestock Sales Yard Ltd.**

R.R.1, Norwich, ON N0J 1P0

Regular Sales: Every Wed., 11:30 am – veal, dollar calves, sheep, goats, pigs, heifers, steers, cull cows and bulls

**Talbotville Livestock Exchange Limited**

Talbotville, ON N0L 2K0

Regular Sales: Every Sat., 10 am – all classes

**Keady Livestock Market**

R.R.4, Tara, ON N0H 2N0

Website: [www.keadylivestock.com](http://www.keadylivestock.com)

Regular Sales:

Tues., 9 am – local calves and stocker cattlemen

Fri., 9 am – yearling steers and heifer

Special Sales: Frequent in Fall (check website)

**Vankleek Hill Livestock Exchange**

1239 Ridge Road

Vankleek Hill, ON K0B 1R0

Website: [www.vankleekhill-livestock.ca](http://www.vankleekhill-livestock.ca)

Regular Sales: Every Mon., 6 pm

**Ontario Livestock Exchange Inc. (OLEX)**

Waterloo, ON N2J 4A9

Website: [www.olex.on.ca/olex](http://www.olex.on.ca/olex)

Regular Sales:

Every Thurs., 11 am – stockers

Every Wed., 1 pm – feeders

**Kawartha Lakes Co-op**

580 Woodville Road, R.R.3

Woodville, ON K0M 2T0

Website: [www.klcauction.ca](http://www.klcauction.ca)

Regular Sales: Every Sat., 10 am – cull cows, bulls, finished cattle, veal calves, bob veal, replacement and stocker cattle, bred cows, cows with calves, pigs, sheep, goats, poultry

## **Appendix B: Common Signs of Distress and Injury by Species<sup>89</sup>**

### **Pigs**

1. Dog-sitting position/Coughing/Sneezing/Open-mouthed breathing – indicates severe respiratory distress. Often due to existing pneumonia (85% of sows have pneumonia due to breathing in high ammonia levels in farrowing barns). This is one of the final stages before a pig becomes a “downer”. If she is not left alone and allowed Dog-sitting position to rest, she will become a downer. If workers continue attempting to load her, she will collapse, vomit and die.
2. Laming, especially in hind end – often indicates arthritis (develops routinely in sows in response to lack of movement in gestation crates). The rear leg joints may fuse into one making walking intensely painful and difficult. These pigs are in great risk of poor handling because they are slower.
3. Ulcerated hips or shoulders – open pressure wounds from lying on concrete.
4. Gestation crate pressure wounds – most frequently seen at the point of the shoulders and hips; appears as vertical line bruising.

### **Cattle**

1. Muscle Rupture due to slipping - the animal will have difficulty keeping her hind legs close enough together to remain standing. She may recover but time and bundling of rear limbs is necessary.
2. Heat exhaustion/Open-mouthed breathing - try to offer the animal water (but not hay).
3. Pink Eye – eye appears completely white with raised pink center (treatable with antibiotics)
4. Broken horns
5. Broken penis - often due to steer or bull attempting to mount pen-mates. Request that the injured animal be penned separately.
6. Fibrosarcoma – tumour of the face
7. Infection of the frontal sinuses due to dehorning – pus, maggots and an odor may be present.
8. Lumpy Jaw – A bacterial infection of the jaw/cheek. Discharge may be present.

### **Dairy cows**

1. Mastitis/Dropped udder – painful bacterial infection of one or more teats. An udder close to the ground may indicate rupture of suspensory ligaments. Note if any teats have been cut off.
2. Leaking milk – indicates that the cow was not allowed to ‘dry’ before taken to auction/still actively lactating. This is very bad practice and is extremely uncomfortable for the cow.
3. Laming
4. Emaciated
5. Broken toes/hooves – often visible as the cow stands with her front legs crossed.
6. Hoof rot on rear legs

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<sup>89</sup> (reproduced from CETFA’s Auction Inspection Checklist, available online at [www.cetfa.com/images/stories/Inspection\\_Checklist.pdf](http://www.cetfa.com/images/stories/Inspection_Checklist.pdf))

7. Twisted Stomach – cow stands with her back arched, difficulty urinating, no defecation

### **Horses**

1. Strangles Infection – swollen lymph nodes particularly in the throat area
2. Lameness
3. Overgrown hooves/laminitis
4. Lacerations
5. Founder – characteristic sawhorse stance (like rocking horse); hooves hot
6. Colic – horse appears very uncomfortable: pawing at ground, biting/kicking at flanks, sweating, rolling, circling or shaking head

### **Poultry**

1. Urine scald – hind area will be bald, red and inflamed
2. Loss of feathers
3. Lameness/crippling leg disorders

## Appendix C: Relevant Provisions of the *Health of Animals Regulations*

### SICK, PREGNANT AND UNFIT ANIMALS

**138.** (2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey;

(b) that has not been fed and watered within five hours before being loaded, if the expected duration of the animal's confinement is longer than 24 hours from the time of loading; or

(c) if it is probable that the animal will give birth during the journey.

(2.1) For the purpose of paragraph (2)(a), a non-ambulatory animal is an animal that cannot be transported without undue suffering during the expected journey.

(2.2) Despite paragraph (2)(a), a non-ambulatory animal may be transported for veterinary treatment or diagnosis on the advice of a veterinarian.

(3) Paragraph (2)(b) does not apply to a chick of any species if the expected duration of the chick's confinement is less than 72 hours from the time of hatching.

(4) No railway company or motor carrier shall continue to transport an animal that is injured or becomes ill or otherwise unfit for transport during a journey beyond the nearest suitable place at which it can receive proper care and attention.

### LOADING AND UNLOADING EQUIPMENT

**139.** (1) No person shall beat an animal being loaded or unloaded in a way likely to cause injury or undue suffering to it.

(2) No person shall load or unload, or cause to be loaded or unloaded, an animal in a way likely to cause injury or undue suffering to it.

(3) Every ramp, gangway, chute, box or other apparatus used by a carrier in loading or unloading animals shall be so maintained and used as not to cause injury or undue suffering to animals and where livestock is loaded or unloaded by a ramp, gangway, chute or other apparatus, the slope shall not be greater than 45 degrees.

(4) Every ramp and gangway used by a carrier in loading or unloading animals shall have sides of sufficient strength and height to prevent animals from falling off the ramp or gangway.

(5) Every ramp used by a carrier in loading or unloading animals shall be so placed that no unprotected gap exists between the ramp or either side thereof and the railway car, motor vehicle, vessel or aircraft.

(6) Subject to subsection (7), every motor vehicle and aircraft in which livestock is transported shall be provided by the carrier with a loading gate or chute that is

(a) fitted with safe and secure footholds; and

(b) suitable for the loading and unloading of livestock.

(7) Subsection (6) does not apply to an aircraft equipped for the loading of livestock in containers.

#### PROHIBITION OF OVERCROWDING

**140.** (1) No person shall load or cause to be loaded any animal in any railway car, motor vehicle, aircraft, vessel, crate or container if, by so loading, that railway car, motor vehicle, aircraft, vessel, crate or container is crowded to such an extent as to be likely to cause injury or undue suffering to any animal therein.

(2) No person shall transport or cause to be transported any animal in any railway car, motor vehicle, aircraft, vessel, crate or container that is crowded to such an extent as to be likely to cause injury or undue suffering to any animal therein.

#### SEGREGATION

**141.** (1) Subject to this section, no person shall load on any railway car, motor vehicle, aircraft or vessel and no carrier shall transport animals of different species or of substantially different weight or age unless those animals are segregated.

(2) Subsection (1) does not apply to a female animal and its suckling offspring.

(3) Every cow, sow or mare with its suckling offspring shall be segregated from all other animals during transport.

(4) Animals of the same species that are incompatible by nature shall be segregated during transport.

(5) Groups of bulls, de-tusked boars, rams and goat bucks, if mature, shall be segregated from all other animals during transport.

(6) Every mature boar that has not been de-tusked and every mature stallion shall be segregated from all other animals during transport.

(7) An equine shall, unless its hind feet are unshod, be segregated from other equines during transport.

(8) Every equine over 14 hands in height shall be segregated from all other animals during transport by air.

(9) Every mature bull shall be securely tied during transport by air.

(10) Every horse shall be segregated from all other animals during transport by sea.

**142.** No person shall transport or cause to be transported animals in a railway car, motor vehicle, aircraft or vessel unless

(a) each animal is able to stand in its natural position without coming into contact with a deck or roof; and

(b) provision is made for the drainage or absorption of urine from all decks or levels.

#### PROTECTION OF ANIMALS FROM INJURY OR SICKNESS

**143.** (1) No person shall transport or cause to be transported any animal in a railway car, motor vehicle, aircraft, vessel, crate or container if injury or undue suffering is likely to be caused to the animal by reason of

(a) inadequate construction of the railway car, motor vehicle, aircraft, vessel, container or any part thereof;

(b) insecure fittings, the presence of bolt-heads, angles or other projections;

- (c) the fittings or other parts of the railway car, motor vehicle, aircraft, vessel or container being inadequately padded, fenced off or otherwise obstructed;
- (d) undue exposure to the weather; or
- (e) inadequate ventilation.

(2) Subject to subsection (3), every railway car, motor vehicle, aircraft or vessel used to transport livestock shall be

- (a) strewn with sand or fitted with safe and secure footholds for the livestock; and
- (b) littered with straw, wood shavings or other bedding material.

(3) Where livestock is expected to be confined in a railway car, motor vehicle or aircraft for not more than 12 hours, the railway car, motor vehicle or aircraft need only meet the requirements of paragraph (2)(a) or (b).

(4) Every sea carrier who takes an equine on board a vessel for exportation out of Canada where the voyage is to be made during the period from November 1st to the following March 31st shall provide and maintain such facilities and equipment on board the vessel as will ensure that the equine does not become ill from sea-sickness due to rough seas during the voyage.

#### CONTAINERS

**144.** (1) No person shall load or transport or cause to be loaded or transported a container used in the transportation of animals unless the container is constructed and maintained so that

- (a) animals therein may, where required, be fed and watered without being removed therefrom;
- (b) animals therein may be readily inspected; and
- (c) the escape of any liquid or solid waste therefrom is prevented.

(2) Subject to subsection (4), no person shall load or transport or cause to be loaded or transported a container used in the transportation of animals unless the container is equipped with a sign or symbol indicating

- (a) the presence of live animals therein; and
- (b) the upright position of the container.

(3) Every container used in the transportation of animals shall be so secured to the railway car, motor vehicle, aircraft or vessel in which it is carried as to prevent it from being displaced during transportation.

(4) Subsection (2) does not apply to a container if all animals therein are readily visible from outside.

#### PROTECTIVE FACILITIES

**145.** Every carrier shall, at every place where animals are loaded or unloaded for food, water and rest, maintain or have access to facilities at which such animals may be fed, watered and cared for and that provide protection from extremes of weather.

#### FOOD AND WATER FOR ANIMALS IN TRANSIT

**148.** (1) Subject to subsections (2), (3) and (7), no person shall confine in a railway car, motor vehicle, aircraft or vessel

(a) equines, swine or other monogastric animals for longer than 36 hours; or

(b) cattle, sheep, goats or other ruminants for longer than 48 hours.

(2) Subsection (1) does not apply to ruminants that will reach their final destination in Canada where they may be fed, watered and rested without being confined longer than 52 hours.

(3) No person shall confine chicks of any species without food and water for longer than 72 hours from the time of hatching.

(4) Livestock that is unloaded from a railway car, motor vehicle, aircraft or vessel to be fed, watered and rested before the livestock is re-loaded, shall be unloaded into a pen, rested for not less than five hours, provided with an ample quantity of suitable food and potable ice-free water, and before the livestock is re-loaded, the floor of the railway car, motor vehicle, aircraft or vessel shall be littered with straw, wood shavings or other bedding material.

(5) A pen in which livestock is unloaded pursuant to subsection (4) shall provide

(a) sufficient space for all the livestock to lie down at the same time;

(b) properly designed racks and troughs for feeding and watering the livestock;

(c) well-drained and clean floors of concrete or gravel that provide safe footing;

(d) an adequate amount of straw or other litter to bed the livestock; and

(e) protection from inclement weather.

(7) Subsection (1) does not apply to animals if

(a) the railway car, motor vehicle, aircraft or vessel is suitably equipped to feed, water and rest the animals; and

(b) the animals are fed, watered and rested at intervals of not more than 48 hours in the case of ruminants and not more than 36 hours in the case of monogastric animals.

#### SPECIAL FOOD FOR CALVES

**149.** Every railway company, motor carrier and air carrier shall provide suitable food and water at intervals of not more than 18 hours for calves transported in a railway car, motor vehicle or aircraft if the calves are too young to be fed exclusively on hay and grain.

## Appendix D: Resources

National & international animal protection organizations working on farm animal issues:

**Canadian Coalition for Farm Animals**

[www.humanefood.ca](http://www.humanefood.ca)

**Canadians for the Ethical Treatment of Food Animals**

[www.cetfa.com](http://www.cetfa.com)

**Canadian Federation of Humane Societies**

[www.cfhs.ca](http://www.cfhs.ca)

**World Society for the Protection of Animals**

[www.wspa.ca](http://www.wspa.ca)

**Animal Welfare Foundation of Canada**

[www.awfc.ca](http://www.awfc.ca)

**Canadian Horse Defence Coalition (horses)**

[www.defendhorsescanada.org](http://www.defendhorsescanada.org)

Farm animal care & transport:

**Canadian Food Inspection Agency**

[www.inspection.gc.ca](http://www.inspection.gc.ca)

**National Farm Animal Care Council**

[www.nfacc.ca](http://www.nfacc.ca)

**Ontario Ministry of Agriculture, Food and Rural Affairs**

[www.omafra.gov.on.ca/english/livestock/animalcare/transportation.html](http://www.omafra.gov.on.ca/english/livestock/animalcare/transportation.html)

**Ontario Farm Animal Council**

[www.ofac.org](http://www.ofac.org)

**United States Department of Agriculture's Animal Welfare Information Centre**

[www.awic.nal.usda.gov](http://www.awic.nal.usda.gov)

**Animal Transport Association**

[www.aata-animaltransport.org](http://www.aata-animaltransport.org)

**Dr. Temple Grandin's website**

[www.grandin.com](http://www.grandin.com)

Animal welfare science departments:

**The University of Guelph's Campbell Centre for the Study of Animal Welfare (CCSAW)** [www.uoguelph.ca/ccsaw](http://www.uoguelph.ca/ccsaw)

**The University of British Columbia's Animal Welfare Program**

[www.landfood.ubc.ca/animalwelfare](http://www.landfood.ubc.ca/animalwelfare)

**The University of Prince Edward Island's Sir James Dunn Animal Welfare Centre**

[www.upei.ca/awc](http://www.upei.ca/awc)

Veterinary expertise:

**Canadian Veterinary Medical Association**

[www.canadianveterinarians.net](http://www.canadianveterinarians.net)

Legal expertise:

**Animal Justice Canada**

[www.animaljustice.ca](http://www.animaljustice.ca)

**Student Animal Legal Defence Fund (SALDF) Chapters:**

- Student Animal Law Association of Dalhousie (SALAD), Dalhousie Law School  
Halifax, Nova Scotia
- Student Animal Legal Defense Fund, McGill University, Faculty of Law  
([www.saldf.ca](http://www.saldf.ca))  
Montreal, Quebec
- Student Animal Legal Defense Fund, Osgood Hall Law School of York University  
Toronto, Ontario
- Fonds étudiant pour la défense des animaux, Université du Québec à Montréal,  
Department of Legal Sciences Montreal, Quebec
- Student Animal Legal Defense Fund, University of Toronto, Faculty of Law  
(<http://saldf.sa.utoronto.ca>)  
Toronto, Ontario

- Student Animal Legal Defense Fund, University of Victoria, Faculty of Law  
Victoria, British Columbia
- Student Animal Legal Defense Fund, University of Windsor, Faculty of Law  
(<http://windsorsaldf.wordpress.com>)  
Windsor, Ontario

Online resources:

**Farmed animal net (U.S.):** [www.farmedanimal.net](http://www.farmedanimal.net)

An online collection of links, publications, research reports, news items, events, and contacts relating to the welfare of farm animals.

**Animal Concerns (U.S.):** [www.animalconcerns.org](http://www.animalconcerns.org)

The Animal Concerns Community serves as a clearinghouse for information on the Internet related to animal rights and welfare.

## Appendix E: Example of a Properly Drafted Information

You have evidence that John Heartless, a horse dealer, is transporting horses in double-deck trailers which do not allow the horses sufficient headroom. You therefore want to lay charges against Heartless under section 142(a) of the *Health of Animals Regulations* which states that “no person shall transport or cause to be transported animals in a railway car, motor vehicle, aircraft or vessel unless each animal is able to stand in its natural position without coming into contact with a deck or roof.” Section 65 of the *Health of Animals Act* makes section 142(a) of the *Health of Animals Regulations* a summary conviction offence.

Therefore, your information should read:

“This is the information of Jane Horselover, of 52 Maple Road, Toronto, Ontario, Chartered Accountant and Member, Horse Protection Alliance of Ontario, hereinafter called the Informant.

The Informant says that she has reasonable grounds to believe and does believe that: John R. Heartless, operating as Horse Traders Inc., of 895 Main Street, Elgin, Ontario, on or about the 10<sup>th</sup> day of May, 2010, at or near Waterloo, in the Province of Ontario, did unlawfully transport or cause to be transported animals, namely horses, in a motor vehicle, namely a double-deck trailer, that did not enable each animal to stand in its natural position without coming into contact with a deck or roof, contrary to section 142(a) of the *Health of Animals Regulations*, C.R.C., c. 296, and did thereby commit an offence under section 65(a) of the *Health of Animals Act*, S.C. 1990, c. 21.”

## Appendix F: Example of a Properly Drafted Subpoena

To: Jim A. Smith  
Inspector  
Canadian Food Inspection Agency  
1400 Merivale Road  
Ottawa, Ontario  
K1A 0Y9

Whereas John R. Heartless, operating as Horse Traders Inc., has been charged that he did on or about the 10<sup>th</sup> day of May, 2010, at or near Waterloo, in the Province of Ontario, unlawfully transport or cause to be transported animals, namely horses, in a motor vehicle, namely a double-deck trailer, that did not enable each animal to stand in its natural position without coming into contact with a deck or roof, contrary to section 142(a) of the Health of Animals Regulations, C.R.C., c. 296, and did thereby commit an offence under section 65(a) of the Health of Animals Act, S.C. 1990, c. 21.

And it has been made to appear that you are likely to give material evidence for the Information: This is therefore to command you to attend before The Provincial Court of Ontario, on the 21<sup>st</sup> day of September, 2010, at 9:00am at the Provincial Courthouse, Kitchener, to give evidence concerning the above charge and to bring with you anything in your possession or under your control that relates to the charge, and more particularly the following:

All writings made, hardcopy of information electronically stored, and all documents and material obtained or received during the investigation of the events surrounding the alleged offence by the Canadian Food Inspection Agency between the 10<sup>th</sup> day of May, 2010, and the return date of this subpoena.