Animal research and testing in Canada:

Inadequate protection for important interests

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Some of the most disturbing examples of animal suffering are found in footage from scientific laboratories where animals are used in research and testing. Undercover investigations of research facilities have documented animals living under conditions and being subjected to testing that are cause for serious ethical concern. This is not a new concern, however – the anti-vivisection movement has been around for centuries, and campaigns by animal activists began to pick up new steam in the mid-20th century. In response, many countries brought in legislation to regulate the use of animals used in research.

The focus of this paper will be the inadequacy of the regulatory regime for animal experimentation in Canada, with particular emphasis on the Canadian Council on Animal Care, which provides limited oversight of some research activities. Before addressing the substance of this issue, I should make it clear that this paper will not delve into the ethical dimensions of using non-human animals in research and testing, or for any other purpose. Similarly, I will not explore the details of tests performed from an animal welfare perspective, nor will I discuss or propose alternatives to animal models of research.

My personal view is that for ethical reasons, humans should not use other animals for any purpose – whether for food, fashion, entertainment, or research. With particular respect to scientific research that uses non-human animals, there are strong arguments in favour of ending the practice. Using animals in research obviously raises significant ethical concerns, particularly when the animals are subjected to painful procedures or are exposed to harmful toxic substances.

Yet the arguments against animal research are not merely ethical – they are increasingly scientific. Although animal experimenters put great effort into perpetuating the idea that animal research is humane, necessary, saves lives, and cures disease, a growing body of research suggests that the

reverse is true. In fact, many experts now consider animal research to be bad science because animal models rarely serve as good models for the human body. Studies published in esteemed medical journals such as the *British Journal of Medicine* have concluded that biological differences between humans and other animals mean animal research is not a reliable means of predicting outcomes in humans.[1] It is with increasing frequency that pharmaceuticals, thought safe following animal testing, have proven dangerous and even deadly to humans. Two well-known examples include the drugs Thalidomide and Vioxx. Replacing animal research with non-animal methods and techniques often yields technical advantages, and non-animal models are both numerous and widely available.

It is my hope that animal research will end sooner, rather than later, but the reality is that millions of animals are used in research each year in Canada, and this will continue for some time into the future. And until the day the last caged lab animal is set free, humans have an ethical obligation to regulate animal research in a way that is maximally protective of animals' interests. If society accepts the premise that some animal experimentation is acceptable, there should be comprehensive oversight. This paper will provide a critical analysis of the regulatory regime governing the use of animals in research and testing in Canada. It will delve into the inadequacies of the statutory and voluntary mechanisms currently in place with the supposed goal of addressing animals' interests. I will conclude by proposing several overhauls to the regime in order to better protect animals used in research in Canada.

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1 Pound, Ebrahim, Sandercock, Bracken & Roberts. *Where is the evidence that animal research benefits humans?* (February 2004), British Medical Journal, 328:514.

Current legal regime

The legal regime surrounding animal testing in Canada is characterized by secrecy, inconsistency, voluntariness, and inadequate oversight. There is no federal legislation governing animal research. Under Section 92 of the *Constitution Act, 1867*, provinces have jurisdiction over property and civil rights, and all matters of a merely private or local nature in a province. Animals are deemed property and are thus within provincial control, for most purposes. The CCAC once considered the possibility of federal legislation to regulate all facilities in Canada that use animal research. It commissioned a legal opinion in 1998 that concluded the federal government has no jurisdiction to legislate with respect to animal experimentation.[2] There is a strong argument to be made, in my view, that animals have status beyond mere property, as they are beings and have their own set of interests. It seems difficult to defend the idea that animal experimentation is nothing more than the mere manipulation of property. But as a result of this current conception of the division of powers, provincial governments are primarily responsible for the regulation of animal experimentation. Provincial legislation varies greatly.

However, the federal government still retains the power to provide grants subject to conditions imposed on recipients, whether they be provincial governments, public institutions, or private corporations. When funds are awarded to academic and non-academic institutions by Canada's scientific granting agencies, the Canadian Institutes of Health Research (CIHR) and the Natural Sciences and Engineering Research Council (NSERC), clause A9015C of the Public Works Standard Acquisition Clauses and Conditions Manual applies.[3] The clause specifies conditions for the care and

2 Canadian Council on Animal Care commissioned Legal Opinion, *Legislative Jurisdiction over Animals used in Research, Teaching and Testing* (1998), Osler, Hoskin & Harcourt.

3 Public Works and Government Services Canada, *Public Works Standard Acquisition Clauses and Conditions Manual* (June 2006), Section 5A – Instructions to Bidders/Contrators, clause A9015C.

use of experimental animals in public works and government services. This provides the federal government with significant power to exert control over animal research in at least some Canadian institutions.

The Canadian Council on Animal Care

Pursuant to the federal government power to provide conditional grants, the CCAC was established in 1968. It came into existence at the recommendation of the National Research Council, in order to provide independent oversight of animals used in science across the country. It was incorporated as a non-profit, autonomous body in 1982. The CCAC receives the bulk of its funding through grants from CIHR and NSERC, with additional funds provided by federal science-based departments and private institutions. Federal grants depend on CCAC compliance, so institutions receiving public money participate in the CCAC. But the CCAC and its procedures are not law – the CCAC process is a voluntary set of guidelines. It imposes no obligation upon private corporations to participate.

According to the CCAC, it acts "in the interests of the people of Canada" in setting and maintaining standards for the ethical use and care of animals used in research, teaching and testing. It allegedly fulfills these responsibilities by ensuring animals are used and cared for in accordance with "acceptable scientific standards", and promoting increased "knowledge, awareness and sensitivity" to relevant ethical principles.[4]

4 Canadian Council on Animal Care, *Mandate and Purpose* (2011), online: <http://www.ccac.ca/en_/about/mandate>

The CCAC is governed by representatives from 22 permanent member organizations, and up to three representatives from limited term members.[5] The representatives are primarily from the pharmaceutical industry, the scientific community, federal granting agencies, and post-secondary educational institutions. The Canadian Federation of Humane Societies (CFHS) is the only animal welfare on the council. Out of the 31 positions currently filled on the council, the CFHS represents only three seats, or less than 10 percent.

To fulfill its mandate, the CCAC develops standards and guidelines for the use of animals in science. Direct oversight over animal research activities is delegated to Animal Care Committees (ACCs) at participating facilities. The ACCs are responsible for approving and monitoring projects, in accordance with CCAC guidelines.

The CCAC sends assessment panels to conduct on-sight inspections of participating labs every three years. Meanwhile, ACCs are to ensure that research is conducted ethically between inspections, that alternatives to the use of animals have been sought out, and that the scientific merit of the work has been established.

Animal testing in Canada

Most animal research in Canada takes place in post-secondary education institutions, private corporations, and government departments. The research conducted falls into several main categories: clinical studies and applied research, and regulatory testing. Clinical and applied studies are often part of medical or health-related research, such as pharmaceutical development. Regulatory

5 Canadian Council on Animal Care, *Member Organizations* (2011), online: <http://ccac.ca/en_/about/structure/members>

testing is primarily done for product safety, and is mostly conducted by government departments, such as Health Canada.

It is impossible to estimate with any certainty how many animals are used in research each year, because the private sector does not to report this information. Private facilities are not required to disclose the numbers of animals they use, the species of animals, or the types of tests they perform. The CCAC, however, does publish an annual report detailing the number of animal used in the research it oversees. These reports show that animal research is on the rise in Canada, with 229 percent more animals used in 2009 (3,375,027) than in 1997 (1,147,1611). Of the 3,375,027 animals reported by the CCAC in 2009 (the most recent year for which data are available), 93 percent of these are fish, mice, rats, wild Canadian species, and domestic birds. There were 3,993 primates used, primarily in regulatory studies.

The CCAC has created a Category of Invasiveness (CI) rating scale to describe the relative discomfort that is caused to animals used in different types of experiments. At the low end of invasiveness, Category A experiments are conducted on invertebrates of live isolates, like tissue cultures or single-celled organisms. Category B experiments are those which supposedly cause little or no discomfort or stress. Experimental techniques in this category range from temporary restraint of animals for observation or physical examination, to studies where animals are anesthetized and subsequently die without regaining consciousness, or where animals are decapitated after sedation or light anesthesia.[6] Category C experiments cause minor stress or pain of short duration, such as minor surgical procedures under anesthesia, short-term, stressful restraint, and exposure to non-lethal levels of drugs or chemicals. Category D experiments cause moderate to severe distress or discomfort, like

6 Canadian Council on Animal Care, *Guide to the Care and Use of Experimental Animals*, *Volume I* (1993), online: <http://www.ccac.ca/Documents/Standards/Guidelines/Experimental_Animals_Vol1.pdf>.

major surgical procedures under anesthesia, prolonged physical restraint, the induction of anatomical or physiological abnormalities that will result in pain or distress, and exposure to drugs or chemicals that impair physiological systems.

The most invasive techniques, in Category E, are procedures which cause severe pain near, at, or above the pain tolerance threshold of unanesthetized conscious animals. This may include exposure to drugs or chemicals at levels that may cause death, severe pain, or extreme distress; burn or trauma to unanesthetized animals; euthanasia methods not approved by the CCAC; and any procedures that will result in pain in excess of the pain tolerance threshold where death is the endpoint.

According to the CCAC's Annual Report from 2009, three percent of the animals used were subjected to Category E experiments.[7] This means that over 100,000 animals were subjected to experiments that cause severe pain or death without anesthetic. Of the 3,993 primates used in 2009, 867 were subjected to Category D experimental techniques, causing them moderate to severe distress or discomfort.

Private institutions

There are serious substantive criticisms of the strength of CCAC's guidelines and procedurals, but one of its biggest failings of the animal research and testing regulatory regime is structural. The CCAC provides only a voluntary set of guidelines – it is not law. The decision to submit to CCAC oversight is optional. Because CCAC approval is required for some government grants, there is an incentive for many institutions, particularly in the field of education, to participate in CCAC

7 Canadian Council on Animal Care, *2009 CCAC Survey on Animal Use* (December 2010), online:

inspections. University researchers often rely on federal funding for their activities, meaning that a large number of labs using animals in universities are overseen by the CCAC. A list of institutions recognizing the CCAC is found on the Council's website, and the vast majority of them are post-secondary institutions.[8]

Private facilities, however, if they do not receive public funding, have little or no incentive to adhere to CCAC guidelines and participate in its inspections. In fact, they have a strong financial disincentive to join. First, establishing a local ACC is an extra layer of work for a private facility. And further, the CCAC charges a fee each time an assessment panel visits a non-academic institution to inspect its animal research facilities.[9] For private facilities with animal research labs, the fee is $3,029 per assessment day, not including pre-assessment support in the form of CCAC consultation assistance, and not including associated travel costs for members of the assessment panel.

The number of private facilities conducting research on animals in Canada is unknown. There is evidence, however, that a growing number of labs are choosing not to participate in CCAC inspections, particularly in the field of biotechnology.[10] Private facilities conducting animal research must comply with any provincial legislation, but most provinces do not specifically regulate animal research. Provincial regulation of animal research will be explored in more depth later.

Approval and oversight

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8 Canadian Council on Animal Care, *List of Certificate Holders*, online: <http://ccac.ca/en_/assessment/certification/holders_list>

9 Canadian Council on Animal Care, *Cost Recovery Services & Fees*, online: <http://ccac.ca/en_/assessment/cost>

10 Charlotte Montgomery, *Blood Relations* (2000). Between the Lines: Toronto, p 102.

CCAC approval and oversight of animal research is inadequate to ensure the protection of the animals it oversees. The following section will point out a number of deficiencies in approval, monitoring and enforcement done by the CCAC.

The approval process for an animal research project begins with ACCs, to which the CCAC delegates responsibility for reviewing and accepting projects. ACCs are governed by formal Terms of Reference. Most institutions have a single ACC to oversee all projects, but some create multiple ACCs. [11] Institutionally, ACCs are supposed to be responsible directly to the senior administrator responsible for animal care. The CCAC recommends that ACC membership for any given institution include at least one, and preferably two or more, persons representing community interests and concerns who have never been involved in animal-based research. The CCAC also recommends the remaining committee members include scientists or teachers, veterinarians, institutional members not involved in animal use, students (if at an educational facility) and technical staff. Committees may establish their own internal procedures to determine what quorum will be and how many votes are necessary for decision-making.

The recommendations contained in the *Terms of Reference* are non-binding. In practice, an institution may choose to exclude community representation. But whether community representatives are present or not, the result is the same: ACCs tend to be dominated by sympathetic fellow researchers. The problem of bias is glaringly obvious – when the membership of an ACC skews heavily toward those who are already in the business of conducting animal research, there is a strong concern that experiments may not be approved and overseen with the impartiality necessary to ensure the interests of animals are protected to the maximum extent possible. When community members are present,

11 Canadian Council on Animal Care, *Terms of Reference for Animal Care Committees* (March 2006), online: <http://ccac.ca/Documents/Standards/Policies/Terms_of_reference_for_ACC.pdf>

they can easily be outvoted. Further, they are present only at the invitation of the institution and they rely on that invitation to remain in their position.

Stephanie Brown, a former president of the CFHS and a former Toronto Humane Society president, spent more than a dozen years serving on lab assessment panels. Brown has criticized ACCs as being unwilling to turn a critical eye to research projects. While serving on an ACC at a Toronto hospital, Brown once voted against renewing an experiment that involved immobilizing cats by inserting metal bars into their backs. At the time, a single obstructing vote could veto a project. The other members of the ACC simply decided that two obstructing votes would henceforth be necessary to put a project on hold.[12]

It is worth asking the question of whether having a community representative present is worse than not having one at all, as community representation may simply act as a layer greenwashing that helps to cloak the CCAC's operations with legitimacy.

In approving projects, ACCs are not required to undertake any serious evaluation of experimental value. Nor is there any national coordination by the CCAC to ensure that experiments are not being duplicated or repeated. A research project involving animals need only "reasonably be expected" to benefit humans or animals,[13] which is a very low standard – it is less even than having a probable expectation of contributing in some way. There is no requirement that the costs and benefits of an experiment be weighed in considering whether it should be approved.

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12 *Supra,* note 9 at 102.

13 Canadian Council on Animal Care, *Ethics on Animal Investigation* (October 1989), online: <http://www.ccac.ca/Documents/Standards/Policies/Ethics_of_animal_investigation.pdf>

The CCAC imposes no substantial requirement that alternatives to animal testing be considered. According to the CCAC *Ethics of Animal Investigation*, experimenters must only have made "best efforts" to find an alternative to an animal model of research.[14] However, the term "best efforts" is left undefined. Practically, it is obviously not a very high standard, given the widespread availability of non-animal techniques.

Compliance and monitoring procedures are also inadequate. On a daily basis, ACCs are responsible for ensuring projects operate in compliance with their grant of approval. The conflict of interest inherent in this relationship is apparent – again, ACCs are dominated by individuals who share the interests of those conducting the research, creating the potential for bias. Colleagues of experimenters may not wish to make waves by ordering changes or shutting down research in the face of non-compliance.

The CCAC conducts its own assessments of animal research facilities only every three years. It sends an assessment panel comprising at least one scientist and one veterinarian, a community representative selected from a list provided by the CFHS, and an ex officio assessment director. Visits are scheduled far in advance. In fact, an institution is to provide the assessment director with an agenda for the panel's visit at least a month before the inspection takes place.

The advance notice of inspection substantially interferes with the value of having an assessment panel visit the institution in the first place. With several months notice prior to an inspection, a facility has a great deal of time to ensure it presents a sanitized view of its activities to the panel. Any facility that was operating under conditions that fell short of those required by the CCAC could easily

14 *Ibid.*

clean up its act in time for an inspection, and return to non-compliant practices when the inspection concludes.

Dr. Bill Holley, a former inspector under Ontario's provincial legislation governing animal research, has also sat on CCAC panels. He has suggested that pre-planned panel visits involve a great deal of primping, cleaning up, and fresh paint, and that panel members are wined and dined.[15]

After an inspection, the panel is to submit an assessment report to the institution within 10 weeks. If any serious recommendations for change are made in the report, the institution must submit an implementation report within 2.5 months, and if regular recommendations are made by the panel, the institution must report on their implementation within 8.5 months. The final deadline for submitting updated information to the panel is 13 months after the panel's initial visit to the institution.[16] Facilities found to be in compliance at the end of the process are issued a Certificate of GAP – Good Animal Practice®. If the panel finds that a lab is in compliance, routine inspections are usually reduced to one visit every five years.

To summarize, the practical effect of the CCAC compliance regime is that facilities conducting animal research will undergo inspection once every three to five years. They will have ample advance notice, meaning there is plenty of time to correct any issues over which a panel may be concerned. Even in the case of serious problems with the facility's operation, requiring changes, the facility is not required to report for 2.5 months, and 8.5 months for any "regular" changes. This means that animals could be left in less-than-ideal conditions for several months while changes are implemented and reports are made.

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15 *Supra*, note 9 at 104.

16 Canadian Council on Animal Care, *Assessment Visits*, online: <http://ccac.ca/en_/assessment/visits>

The CCAC may report a finding of non-compliance to government and granting agencies, but getting to that point procedurally may take anywhere from six months to a year, given the lengthy opportunities provided to facilities to correct any issues that arise during an assessment. In principle, CIHR and NSERC have the authority to cut off research funding flowing to facilities that are found to be in non-compliance with CCAC guidelines. Yet during the entire 43-year history of the CCAC, this has apparently never occurred. A funding freeze is clearly considered to be the ultimate penalty. Journalist and author Charlotte Montgomery has reported that a CCAC official advised her that a threat to cut off funding was once made, but the incident remains confidential.[17] Further, the threat of having federal funding cut off may be less worrisome for researchers today than it once was. As facilities, including universities, enter into more and more partnerships with private corporations, they are becoming less reliant on government funding than they were in the past.[18]

Accessing information

Another substantial problem with the CCAC is its preoccupation with secrecy. Despite receiving the bulk of its funding from federal institutions, the CCAC is not covered by federal access to information laws. The CCAC is under no obligation to disclose any information to the public regarding the tests that it oversees, and has taken great care to shield animal experimenters with an impenetrable veil of secrecy.

17 *Supra*, note 9 at 97.

18 Statistics Canada, *Service Bulletin Science Statistics* (February 2011), Cat. 88001-XIB, V.22, N.7.

Virtually the only information the CCAC does release is aggregate data on the numbers of animals used in experiments it oversees, the species used, the general nature of the animal use (e.g., for research or education) and the numbers of animals used in each Category of Invasiveness. It provides no information on the assessments and inspections it conducts, the kinds of research being done on the animals, or any violations it finds. It is left up to the inspected institutions to make public any information about a CCAC inspection or rating, and there is little evidence that this ever occurs. The CCAC does not even provide a complete list of institutions and facilities that it oversees, instead leaving it up to the institution to decide whether it wants this information to be available.

The CCAC preoccupation with secrecy is expressed on its website, which contains the paradoxical proposition that in order to foster open discussion, all information regarding its assessment of labs must be kept "confidential", which can "best be equated with private."[19] It claims that reporting animal use data "allows CCAC to publish aggregate information on animal use in science without identifying individual institutions or animal users."

The bottom line is that the public has no way of knowing what kinds of research on animals is being conducted by labs. Ordinary Canadians are unable to express their approval or disapproval of these activities, and it is likely that most people are simply unaware of the nature or extent of animal testing in Canada. The only way the public might gain access to any information about animal testing in Canada is if a facility decides to release that information on its own. Sometimes, of course, results of experiments will be published in journals or for regulatory purposes. But even then, journal articles rarely go into great detail about the procedures performed on animals and the welfare aspects of those experiments. Further, medical academia and journalism reaches only a very select audience,

19 Canadian Council on Animal Care, *Confidentiality of Assessment Information* (November 2010), online: <http://www.ccac.ca/Documents/Standards/Policies/Confidentiality_of_assessment_information.pdf>

and results are never mentioned in the mainstream media. The result is a public that is unaware and unengaged, while oversight is left entirely to a private, self-interested and unchallenged organization.

Requesting information from animal experimenters has been equally fruitless for members of the public seeking to better understand what kinds of animal testing is occurring in Canada. Universities have been notoriously reluctant to share even minimal information on the types of tests conducted, apart from general aggregate data on the types of animals used.

At the University of British Columbia, animal protection activists have sought information on research conducted at the institution and have launched a highly visible campaign to encourage the disclosure of this data, including the guidelines UBC uses to ensure ethical treatment, and photos and videos of experiments. Stop UBC Animal Research Now (STOP) called on UBC to "fully disclose information about its animal research program" in a letter signed by 60 animal advocacy groups. UBC has refused to disclose information, and has twice turned down requests under provincial freedom of information law.[20] The groups argue that the public has the right to be aware of the details of research that is being conducted with public money, overseen by a publicly-funded agency, in institutions that are funded in part by government.

Provincial legislation

Despite possessing the constitutional power to do so, only a handful of provinces directly regulate the use of animals in science. Ontario's *Animals for Research Act* is the most comprehensive of any piece of provincial legislation, and is the only statute designed to license and inspect public and private

20 Stop UBC Animal Research, News Release, *Groups from across Canada, US, Europe call on UBC to disclose information about animal research* (October 12, 2010). Online: <http://stopubcanimalresearch.org/images/PDF/immediate_news_release_oct_12_2010.pdf>

research facilities. Administered by the Ontario Ministry of Agriculture, Food and Rural Affairs, it requires that any facility conducing animal research be registered and operate in compliance with conditions as described in the statute. Like the CCAC, the provincial legislation also requires institutions constitute ACCs. It lays out guidelines for ACCs at facilities, requiring that they include a veterinarian and providing them with the authority to modify research projects.

One particularly interesting provision is Section 16(2), which provides that "Every animal used in a registered research facility in any experiment that is likely to result in pain to the animal shall be anaesthetized so as to prevent the animal from suffering unnecessary pain." The reason this provision is interesting is that at first glance it is in apparent conflict with Category E experiments as defined by the CCAC, which cause severe pain without anesthesia. Section 17(1) imposes the further requirement that "analgesics adequate to prevent an animal from suffering unnecessary pain during the period of its recovery from any procedure used in an experiment." Taken literally, these provisions appear to require that animals be anesthetized when used in experiments that cause pain. However, the relevance of these provisions turns on the definition of "unnecessary", and whether causing an animal to suffer pain is necessary for the purpose of the experiment.

Inspectors have broad powers to enter and inspect labs, and demand and seize research records. Unlike CCAC assessment panel inspections, visits by a provincial investigator are unannounced. Inspectors are primarily charged with ensuring the source of lab animals is legitimate, and ensuring animals are not subjected to unnecessary pain. However, inspectors have no power to question the purpose of the research, whether animals are used when alternatives are available, or whether they are used in duplicate experiments. Given these restrictions, the term "unnecessary" in Sections 16 and 17 becomes particularly hard to define. An inspector essentially has no way of defining pain that

is unnecessary due to experimental duplication, and evaluating pain that might be seen by researchers as necessary.

There do not appear to be enough inspectors to provide comprehensive oversight of research facilities governed in Ontario. And like CCAC inspections, non-compliance seldom results in any sanctions. Dr. Bill Holley is the Chief Veterinary Inspector for the Ministry and alone has responsibility for inspecting Ontario labs. He has stated that he had never seen a fine or penalty imposed for breaches of the provincial law.[21]

Further, the preoccupation with cloaking animal research with secrecy does not appear confined to the CCAC. Ontario data on animal research and inspection reports are also kept out of the hands of the public.

Several other provinces make reference to the CCAC in their legislation. Alberta's *Animal Protection Act* was amended in 2006 and requires that any person conducting animal research must comply with 22 of the CCAC's standards.[22] In Prince Edward Island, the *Animal Protection Regulations* made under the *Animal Health and Protection Act* incorporate CCAC guidelines as applicable to institutions using animals for research in the province.[23] The Manitoba *Animal Care Act* incorporates several CCAC guidelines into its standards for institutions using animals for research and testing, and

21 *Supra*, note 9 at 104.

22 *Animal Protection Act*, R.S.A. 2000, c. A-41.

23 *Animal Health and Protection Act*, R.S.P.E.I. 1988, c. A-11.1.

requires they submit to CCAC assessments.[24] Legislation in New Brunswick,[25] Nova Scotia,[26] and Saskatchewan,[27] while it does not require compliance with CCAC activities, does provide a limited incentive to comply with the CCAC in that handling animals in compliance with CCAC guidelines is a defence to cruelty charges under provincial law.

Other provincial anti-cruelty states may apply, but not all provinces have general animal welfare legislation and much of the legislation that does exist is weak. In the absence of provincial legislation, the only federal measures potentially applicable to animals used in science are the general prohibitions against cruelty to animals contained in the *Criminal Code*. The *Code* prohibits the wilful causation of unnecessary suffering to animals,[28] but is widely seen by animal protection organizations as a very ineffective tool for combatting cruelty toward animals. Further, these provisions are probably not applicable to most uses of animals in research, because any pain or suffering caused to research animals can arguably be justified as necessary to achieve a human goal. Thus, in the absence of very overt or blatant cruelty that is clearly unnecessary for any experimental purpose, it is unlikely that *Code* provisions provide much assistance in protecting the interests of animals.

How can we do better?

As I have explained, government oversight of animals used in research, testing and education is deficient both structurally and substantively. Structurally, the system is set up in a way that ensures

24 *The Animal Care Act*, C.C.S.M. c. A84.

25 *Society for the Prevention of Cruelty to Animals Act*, R.S.N.B. 1973, c. S-12.

26 *Animal Protection Act*, S.N.S. 2008, c. 33.

27 *Animal Protection Act,* 1999, S.S. 1999, c. A-21.1.

28 *Criminal Code,* R.S.C. 1985, c. C-46, ss. 444-47.

coverage varies substantially by province. It is not compulsory, and the internal procedures of the CCAC fall short of what would be required to provide maximum consideration to the interests of the animals it oversees. Substantively, neither the CCAC and provincial law prioritize finding alternatives to animal experimentation nor is there any serious weighing of the costs and benefits of the animal research under consideration. There are a number of measures that could be taken to improve oversight.

First, the federal government and provinces need to cooperate to develop a coordinated approach to regulating animal research in Canada. In principle, there is no reason the CCAC could not act as the oversight body for animal research. The CCAC could continue to set standards and provide compliance oversight, as it does now, provided all provinces make it mandatory that public and private facilities using animals in research, testing and education adhere to CCAC standards and procedures. But for this model to work, a significant degree of coordination and collaboration between federal and provincial governments would be required. It would require provincial governments to amend legislation currently regulating animal research, if it exists. If no statute exists, it would have to be drafted and passed into law.

Assuming provincial coordination can be accomplished, the other key piece of the puzzle is reforming the substance of the CCAC. As detailed above, the CCAC does not provide sufficient protection for animal interests.

To begin, the CCAC must adhere to the principles of openness and transparency. The public should have the ability to inform itself on the details of all animal experimentation undertaken in Canada. The CCAC should publish on its website detailed reports on experimentation undertaken by all laboratories in the country, whether they are public or private. These reports should include the

numbers of animals used, their source, the specific details of the experiments to which they are subjected.

Private facilities (and likely public facilities, too) will likely object to stringent disclosure requirements on the grounds that experiments are of a confidential nature. Private experimenters, in particular, will claim that publishing details of animal experimentation may reveal trade secrets and damage profitability. They are also likely to argue that publishing details will leave their labs vulnerable to vandalism and other criminal activity from animal rights activists – this is an argument frequently used by those who engage in animal experimentation. The business and intellectual property interests of private corporations should not be allowed to outweigh the public right to access information, given the moral implications of animal experimentation. Similarly, the argument that animal rights "extremists" seek to damage property and personally harass animal experimenters is unfounded and is a matter best left to law enforcement officials.

Substantively, the protocols of the CCAC are in serious need of revision. All of the CCAC member organizations save one – the CFHS – are implicated in animal experimentation. The CCAC needs increased participation from animal welfare groups and other community organizations on its governing body to ensure that the perspective of the public is represented.

The same is true for ACCs, who are responsible for approval and supervision of animal experimentation at their facilities between inspections by CCAC panels. Rather than simply recommend that a community representative or two be included on ACCs, it should be a requirement that a substantial number of ACC members represent community interests. So long as ACC membership comprises overwhelmingly of individuals with vested interest in conducting animal

experimentation, it will be very difficult to ensure any degree of impartiality with respect to approval and oversight by ACCs.

There should also be more involvement in the approval process by the CCAC to ensure central oversight of project approval. This could reduce the potential for bias in committees dominated by those from an institution where the research and experiments will be conducted. But more importantly, an approval process with central oversight means that an actual assessment of the experimental value and the potential for redundancy can be undertaken. Any project should be vetoed if it is too similar to other research, has questionable value, or if alternatives have not been considered in any more than a superficial way. Under the current regime, there is no central coordination and it is impossible for local ACCs to know whether the proposed research is actually exploring something new and relevant or whether it is redundant. There must be effective tools for screening out useless experiments, and research should not be approved if alternatives are available.

The CCAC inspection process is also in need of serious reform. Presently, facilities are subject to inspections only every three to five years. The length of time between inspections is simply inadequate to ensure compliance. The process is further undermined by the fact that animal experimenters know well in advance when CCAC panels will visit for inspections. This gives a lab adequate time to present the best possible view of its activities to the inspection panel. It is an apparent anomaly to have an inspection schedule known in advance. Other inspections, such as fire inspections and health and safety inspections are always unannounced, to ensure facilities are not able to hide any questionable activities in advance. To be most effective, inspections must be much more frequent, they must be random, and labs must not know about visits beforehand.

It is also essential that inspectors have the power to propose immediate changes to research design upon visiting a lab. The length of time it currently takes for changes to be suggested and made following inspection visits is unreasonable.

There must also be strong sanctions for non-compliance with CCAC procedures. Because of the extreme secrecy surrounding all CCAC operations, it is unknown how many annual violations are found by CCAC panels. This information should be available, of course, but it is also crucial that substantial penalties be imposed for keeping animals in improper conditions and conducting experiments that do not comply with the experimental design as approved by ACC. Presently, the only sanction available is the threat that federal research funding might be cut off. This threat is becoming decreasingly significant to researchers, particularly in light of the fact that more and more of them are receiving private funding for projects. The benefit of approval by the CCAC appears minimal for private actors. It is essential that strong monetary sanctions be imposed anytime violations are detected.

Conclusion

Using animals in research, testing and education raises serious ethical issues, but Canada has not yet given due consideration to these concerns. The current, largely voluntary regime governing the use of animals in research falls woefully short of what is required to ensure animals are given maximal protection. There are good ethical and scientific reasons to consider ending the use animal in research altogether, and this is a conversation that should be had. But until society reaches this point, we must give more consideration to animals' interests.

To protect animals more effectively, a coordinated, mandatory approach must be introduced. A strengthened CCAC could still play an important role in a regulatory regime, but provincial legislation must be introduced or amended, as the case may be, to have provinces comply with centralized standards. Otherwise, the inconsistent regulatory regime currently in place will continue to prevent lab animals from receiving the consideration they deserve.