

# Wrangling with the Law: Can Federalism Save Rodeo Animals?

## Introduction

The Calgary Stampede is an annual rodeo and festival held every July in Calgary, Alberta. The event hosts one of the world's largest rodeos in which people from all over the world come to compete. However, each year a number of rodeo animals die as a result of the events. The 2019 rodeo was the deadliest in nearly a decade as six horses died. [1] The most dangerous event is the Chuckwagon race which caused the death of three horses in one race on the final day of this year's events. Animal rights activists are calling for changes to the Stampede to better protect the animals. Many want the chuckwagon races, if not the entire rodeo, cancelled altogether.

Despite the significant consequences to animals, there has been no prosecution for animal cruelty as a result of rodeos since the 1950s.[2] This begs the question: who is responsible for the protection of these animals? Under the *Constitution Act, 1867*, both the federal and provincial governments have a role to play. [3]

## Status of Animals in Canada

Animals do not have legal rights in Canada. Animals are considered property in the eyes of the law and property cannot possess rights.[4] There is nothing in the *Constitution Act, 1867* or the *Charter*[5] that directly provides protection for animals. Instead, animal protection laws are created by virtue of the division of powers provisions in sections 91 and 92 of the *Constitution Act, 1867*. Section 91 lists the powers the federal government has and section 92 does the same for the provincial governments.

Both levels of governments have created laws surrounding animal protections. However, as pointed out by animal rights expert, Gary Francione, these laws only restrict the ways humans can use animals. Anti-cruelty laws or laws governing the use of animals in experiments are examples.[6] These laws do not give animals any real rights. Animal welfare legislation is based on the principle that "humans should avoid imposing suffering on animals unless the result of doing so creates greater pleasure for society than the pain it imposes on the animals in question".[7]

## Federal Protections

The *Constitution Act, 1867* gives the federal government power to make criminal laws.[8] Sections 444 to 447 of the *Criminal Code* constitute Canada's primary federal animal protection legislation.[9] Section 445.1, for example, prohibits the willful causing of unnecessary pain, suffering, or injury to an animal.

These provisions have been criticized for the lack of protection they provide animals.

The *Criminal Code* provisions are hard to enforce. The term “willful” requires proof that the cruelty was deliberate. This means careless behavior is not caught by the *Criminal Code*. [10]

### *Provincial Protections*

The provinces have broader power over animal protection laws as a result of their ability to create laws that relate to property and civil rights. [11] The provinces can set specific standards of care that animal owners must follow. As a result, charges for animal cruelty are more often issued under provincial laws than federal.

Provincial laws are lacking as well. These laws typically create a lot of exemptions for certain groups of animals such that the laws do not apply. [12] The criticism is that the laws have so many qualifications that they are too open-ended and elastic. [13] This makes it easier to escape liability for animal cruelty.

The limitations of the animal protection laws created by both the federal and provincial governments have caused World Animal Protection, an international animal welfare group to give Canada a “D” rating for its commitment to protect animals on its Animal Protection Index. [14]

### **What Can be Done About the Stampede?**

Both the federal criminal law and provincial law could be used to stop rodeos like the one at the Calgary Stampede from happening.

The federal government could attempt to use its criminal law power to prosecute those that participate in the rodeo. However, the weak *Criminal Code* provisions may make for a losing case. In order to enforce the cruelty charges, the government would have to prove that the harm done to the animals was deliberate. A horse that dies as a result of an accident in a chuckwagon race may not be seen as a deliberate action on the part of the racer in the eyes of the law. While the racer may have made a mistake that cause the action, the *Criminal Code* provisions do not catch mistakes or careless actions that harm animals.

Provincially, Alberta may be better suited to pursue an action against the Calgary Stampede Rodeo. Under the *Animal Protection Act* (“the Act”), the province has delegated the responsibilities of animal welfare enforcement to the municipalities. The city of Calgary has further delegated some of their responsibilities to the Calgary Humane Society. The Humane Society enforces portions of the Act for the city. The Humane Society would be the group responsible for bringing an animal cruelty action against the Calgary Stampede.

It is an offence to cause distress to an animal under the Act. [15] Distress can occur in a number of ways. Some examples of a distressed animal include one that has been deprived of shelter, food and water. It also includes animals who are in pain or being abused or subject to undue hardship. [16] There is an argument that rodeo animals are put in distress. Chuckwagon races, as an example, are extremely dangerous and to force horses to race in them could potentially be found as abusive behavior. Calf-roping is another controversial

event. The task involves roping a calf, running at high speeds, around the neck and throwing them to the ground. Despite the harm the animals may incur, many argue that rodeo animals were bred for these events and they love participating in them.[17]

However, the Act provides broad exemptions when it comes to who can be charged with causing distress to an animal. Some exemptions include generally accepted practices of animal care, hunting, fishing, and pest control.[18] If the distress caused to an animal is a result of one of these activities, the person causing the distress will not be charged under the Act.

The Calgary Humane Society has stated that rodeos fall under “generally accepted practices” and as a result, they cannot pursue legal action against them.[19] There is no definition for generally accepted practices under the Act. Given that there has been no prosecution of rodeos since the 1950s, there is no concrete statement from the courts that rodeos fall under this exemption. Camille Labchuk, the executive director of Animal Justice, a team of lawyers dedicated to fighting for animal rights in Canada, has stated that it is time to at least try to challenge rodeos and the treatment of rodeo animals as illegal. If there is even a question as to the legality of rodeos, it should be brought to a court for the court to decide. [20]

## Conclusion

The *Constitution Act, 1867* enables both the federal and provincial government to take action against animal cruelty, and in this case, the Calgary Stampede Rodeo. With over 100 animal deaths at the Calgary Stampede since 1986, it may be time to change the way these events are run.[21] Federally, the government could bring criminal action against rodeos. Provincially, the Alberta government could create more regulations or bring charges under provincial animal protection laws. The question we are left with is: Which government will be the first out of the gate?

[1] David Bell, “2019 Calgary Stampede ties as 2nd deadliest year for chuckwagon horses”, *CBC News* (15 July 2019), online: <https://www.cbc.ca/news/canada/calgary/calgary-stampede-animal-horse-deaths-total-1.5212439>.

[2] Camille Labchuk, “#36: Time to Stamp out Rodeo Cruelty at the Calgary Stampede” (5 July 2019) at 00h:39m:50s, online (podcast): *Paw & Order* < <https://www.animaljustice.ca/feed/podcast/>>.

[3] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

- [4] Gary L Francione, *Animals, Property and the Law* (Philadelphia: Temple University Press, 2007) at 4.
- [5] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11.
- [6] Francione, *supra* note 4 at 4.
- [7] *Reece v Edmonton (City)*, 2011 ABCA 238 at para 55 .
- [8] *Constitution Act, 1867*, *supra* note 3, s 91(27).
- [9] *Criminal Code*, RSC 1985, c C-46, s 444 - 447.
- [10] World Animal Protection, "Canada" (last visited 17 July 2019), online: *Animal Protection Index* < <https://api.worldanimalprotection.org/country/canada>>.
- [11] *Constitution Act, 1867*, *supra* note 3 at s 92(13).
- [12] World Animal Protection, *supra* note 9.
- [13] *Reece*, *supra* note 7 at para 59.
- [14] *Ibid*.
- [15] *Animal Protection Act*, RSA 2000, c A-41, s 2.
- [16] *Ibid*, s 1(2).
- [17] Licia Corbella, "Corbella: Rodeo animals love what they do and wouldn't exist otherwise" (15 July 2019), online *The Calgary Herald* <<https://calgaryherald.com/opinion/columnists/corbella-rodeo-animals-love-what-the-y-do-and-wouldnt-exist-otherwise>>.
- [18] *Ibid*, s 2(2).
- [19] Mark Villani, "Second horse dies at Calgary Stampede chuckwagon races" (11 July 2019) at 00h:01m:20s, online (video): *CTV News Calgary* < <https://calgary.ctvnews.ca/second-horse-dies-at-calgary-stampede-chuckwagon-races-1.4503570>>.
- [20] Labchuk, *supra* note 2 at 00h:35m:25s.
- [21] Bell, *supra* note 1.