



**SUBMISSIONS OF THE CANADIAN BAR ASSOCIATION
(BRITISH COLUMBIA BRANCH)**

TO THE

CANADIAN FOOD INSPECTION AGENCY

ON THE

**PROPOSED AMENDMENTS TO
THE HEALTH OF ANIMALS REGULATIONS**

Issued By:

Canadian Bar Association
British Columbia Branch

Animal Law Section

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PREFACE

Formed in 1896, the purpose of the Canadian Bar Association (British Columbia Branch) (the “CBABC”) is to:

- Enhance the professional and commercial interests of our members;
- Provide personal and professional development and support for our members;
- Protect the independence of the judiciary and the Bar;
- Promote access to justice;
- Promote fair justice systems and practical and effective law reform; and
- Promote equality in the legal profession and eliminate discrimination.

The CBA nationally represents approximately 36,000 members and the British Columbia Branch itself has over 7,000 members. Our members practice law in many different areas. The CBABC has established 75 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The CBABC has also established standing committees and special committees from time to time.

The Animal Law Section of the Canadian Bar Association British Columbia Branch (the “**CBABC Animal Law Section**”) studies various issues involving wild and domestic animals and educates the legal community about the same.

The comments expressed in this submission reflect the views of the CBABC Animal Law Section only and are not necessarily the views of the CBABC as a whole.

EXECUTIVE SUMMARY

The CBABC Animal Law Section is pleased to respond to the public comment request from the Canadian Food Inspection Agency (“**CFIA**”) regarding the proposed amendments to the *Health of Animals Regulations*: Part XII as published in the *Canada Gazette*, Part I on December 3, 2016 (the “**Draft Regulation**”).

We commend the CFIA for putting forth the Draft Regulation, as we believe that a substantive revision of the transportation provisions contained in Part XII of the *Health of Animals Regulations* (the “**Transport Regulation**”) is long overdue. We also commend certain proposals in the Draft Regulation including the definitions for “unfit” and “compromised” animals (Section 136), the definition of “interval” as it relates to journey duration (Section 159) and the prohibition on sending compromised animals to auction (Section 142).

Despite the positive changes noted above, we have identified a number of issues with the Draft Regulation that we believe warrant reconsideration and revision.

Our recommendations focus primarily on the inclusion of specific prescriptive requirements in a number of the sections of the Draft Regulation in order to limit discretionary decision-making and minimize ambiguity in the interpretation of the applicable provisions. In addition, in several instances our recommendations are based on the current regulations in effect in jurisdictions outside of Canada, including the European Union.

SUBMISSIONS

THE CBABC ANIMAL LAW SECTION'S APPROACH

The CBABC Animal Law Section is pleased with the introduction of the Draft Regulation. In particular, we commend certain proposals in the Draft Regulation, including:

- The addition of clear and detailed definitions of “unfit” and “compromised” animals in Section 136 of the Draft Regulation.
- The definition of interval in Section 159 which refers to the length of time animals are without food, water or rest, rather than time confined to a conveyance.

- The prohibition contained in subsection 142(1) of the Draft Regulation with respect to the transport of a compromised animal to an auction market or assembly yard.

Nonetheless, in the context of CFIA's stated objective for the Draft Regulation to, among other things, "improve animal welfare and reduce risk of suffering during transportation" and to "better align with the standard of Canada's international trading partners",¹ we have identified a number of areas in which we believe the Draft Regulation falls short and requires substantive revision and/or supplementation.

INTERPRETATION

Section 136 of the Draft Regulation

While the CBABC Animal Law Section is pleased with the comprehensiveness of the definitions of "unfit" and "compromised" in the Draft Regulation, we believe that end-of-lay hens should also qualify as "compromised" and that the definition of "unfit" should be expanded to include wet birds and animals with rectal or vaginal prolapse, both of which are currently only categorized as "compromised". Omission of end-of-lay hens from the "compromised" category allows them to be transported up to 24 hours under Section 159.1 of the Draft Regulation – we find this to be concerning given that these animals are highly susceptible to injury during transport. Similarly, failure to include the above cited external prolapses in the "unfit" definition means that animals suffering from these conditions can be transported as "compromised" for an interval of up to 12 hours

¹ <http://www.gazette.gc.ca/rp-pr/p1/2016/2016-12-03/html/reg2-eng.php>

pursuant to Section 159.1 of the Draft Regulation - a duration of time during which such injuries are likely to worsen and cause additional suffering.

We also query the intent of subsection 136(3) of the Draft Regulation, which appears to make one or more of the circumstances set forth under the definition of “compromised” a pre-requisite to qualification of an animal as “unfit”. For example, must a non-ambulatory animal also be bloated? This is confusing, as the definition of “unfit” does not contain such a qualifier. In the alternative, we question whether the purpose of the provision is to stipulate that if criteria in both definitions are met, it is the “unfit” definition that governs conduct? We recommend that subsection 136(3) be clarified.

WEATHER PROTECTION AND VENTILATION

Section 146 of the Draft Regulation

Section 146 of the Draft Regulation prohibits confining, loading, transporting or unloading if the animal is “likely to suffer, sustain injury or die by being exposed to meteorological or environmental conditions, humidity or inadequate ventilation”. Given the multitude of complex factors involved in transport load temperature assessment and maintenance, we find the issues with the proposed wording of section 146 to be two-fold: First, the lack of prescriptive requirements places decision-making at the discretion of individual transporters, predicating animal welfare in these instances solely on the judgment of those persons responsible for transport. Second, we are concerned that the term “likely” imports significant uncertainty into the provision by creating ambiguity about the degree of probability required. We find the latter to be particularly problematic from

the perspective of proceedings that may be brought under the *Health of Animals Act* in respect to contraventions of section 146.

As such, the CBABC Animal Law Section recommends that section 146 of the Draft Regulation be revised to contain clear affirmative standards similar to those in effect in the European Union, including, at a minimum, specific onboard temperature limits between 5 and 30 degrees Celsius and a requirement for transport vehicles to include and use temperature sensors with a warning system in key areas within the applicable transport vehicle.

OVERCROWDING AND SPACE REQUIREMENTS

Section 147 of the Draft Regulation

We are of the view that similar to section 146, section 147 of the Draft Regulation also must stipulate specific prescriptive standards in order to minimize discretionary decision-making and probability assessments by individual transporters. Accordingly, we recommend that subsection 147(2) be revised to include species-specific stocking densities, derived from allometric equations where k values are known. Including such detailed requirements will allow enforcement on a preventative basis rather than when injury and harm has already occurred. As proposed, section 147 is retroactively focused and is unlikely to allow for any meaningful animal welfare improvements.

SEGREGATION

Section 149 of the Draft Regulation

In our review of the Draft Regulation's provisions pertaining to the segregation of animals, we recommend that section 149 of the Draft Regulation be supplemented to include a prohibition on the de-tusking of boars, a practice which is cruel and unnecessary given the available alternative of segregation. Additionally, we also recommend that section 149 list the groups of animals that should be transported separately, including tusked boars.

FEED, WATER AND REST

Section 159.1 of the Draft Regulation

In our review of section 159 of the Draft Regulation, the CBABC Animal Law Section recommends that the length of intervals during which animals can be without food, water or rest set forth in subsection 159.1(2) of the Draft Regulation be revised to no more than 8 hours. Further, we recommend that the maximum intervals with onboard food, water and rest be limited to 24 hours for animals other than pigs and poultry, 12 hours for poultry and 8 hours for pigs.

Additionally, the CBABC Animal Law Section recommends that the transport of young animals, such as pigs younger than four weeks, lambs younger than one week and calves less than ten days old, be restricted such that these animals may not be confined to a transport vehicle for longer than 4 hours.

Finally, we recommend that the Draft Regulation be revised to provide that "compromised" animals must not be transported for longer than 8 hours.

The foregoing recommended standards are based in part on current regulations in place in the European Union as well as on the European Food Safety Authority's Scientific Opinion Concerning the Welfare of Animals during Transport².

ANIMAL HANDLING

Section 144 of the Draft Regulation

In our review of the Draft Regulation's provisions pertaining to animal handling, we recommend that subsection 144(1) be revised to restrict permissible electric prod use to that by a veterinarian while carrying out diagnostic assessments of an animal.

The CBCBA Animal Law Section also has concerns with the proposed ramp slopes contained in subsection 144(2) of the Draft Regulation. We recommend that the prescribed slope specifications be replaced with a requirement for hydraulic lifts or reduced to slopes no steeper than 20 degrees for pigs and horses, 12 degrees for calves, and 26 degrees for sheep and cattle.

The foregoing recommended standards are based on current regulations in place in the European Union, New Zealand and Australia.

² *EFSA Journal* 9, 1966, doi:10.2903/j.efsa.2011.1966 (2011).

CONCLUSION

We would be pleased to discuss our submissions further with the CFIA, either in person or in writing, in order to provide any clarification or additional information that may be of assistance to the CFIA as it undertakes this important and necessary modernization of the Transport Regulation.

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