The "Pig Trial" Decision: The Save Movement, Legal Mischief, and the Legal Invisibilization of Farmed Animal Suffering

Maneesha Deckha

In the summer of 2015, animal activist and Toronto Pig Save co-founder Anita Krajnc gave water to a pig on a transport truck, an action that eventually led to her prosecution for criminal mischief. The trial that ensued attracted international media coverage and yielded the judgment in *R v Krajnc* in May 2017. *R v Krajnc* is exceptional for an array of reasons that compel its close analysis. In terms of the defence counsel's novel legal arguments in favour of farmed animals, and the consideration of these arguments by the court as reflected in the written judgment, the case is unparalleled in Canada and worldwide. Defence counsel highlights the pigs' sentience, sociality, and subjectivities in order to contest their propertied status and demonstrate their suffering as farmed animals, as well as advance arguments that expose the multiple detrimental impacts of industrial animal farming on people and the planet generally. When we consider these features and know that Krajnc was acquitted, it seems that the case is a clear "win" for animal advocates seeking to disrupt the discursive representations of animals within the farmed animal system.

To the contrary, this paper argues that the judgment instead legally reinforces what Yamini Narayanan calls the "invisibilization" of farmed animals. This legal invisibilization occurs through the court's short-circuiting of multiple opportunities from the defence's submissions to express concern over

En été 2015, Anita Krajnc, l'activiste pour la défense des animaux et la cofondatrice de *Toronto Pig Save* a donné de l'eau à boire à un porc sur un camion de transport, une action qui a éventuellement mené à sa poursuite en justice pour méfait criminel. Le procès qui a suivi a attiré l'attention des médias internationaux et a prononcé le jugement dans l'affaire *R v Krajnc* en mai 2017. L'affaire *R v Krajnc* est exceptionnelle en soi pour une variété de raisons qui en exigent son analyse approfondie. En ce qui concerne les arguments novateurs de l'avocat de la défense en faveur des animaux d'élevage et l'examen de ces arguments par la cour, tels que reflétés dans l'arrêt écrit, cette affaire est sans précédent au Canada et dans le monde. L'avocat de la défense souligne la sentience, la sociabilité et la sociabilité des porcs afin de contester leur statut de propriété et de démontrer leur souffrance en tant qu'animaux d'élevage, tout en avançant des arguments qui dénoncent les nombreux effets néfastes de l'élevage industriel des animaux sur les humains et sur la planète en son ensemble. En tenant compte de ces éléments et sachant que Krajnc a été acquittée, l'affaire semble être une victoire évidente pour les activistes pour la défense des animaux qui cherchaient à perturber les représentations divergentes des animaux au sein de l'industrie de l'élevage.

Au contraire, cet article stipule que l'arrêt a légalement renforcé ce que

2019 CanLIIDocs 17

the treatment of animals in confinement farming, or recognize their vulnerability or suffering. Specifically, the decision adopts implicit and explicit anthropocentric assumptions (that could have been avoided and were not inevitable, even allowing for the legal status of animals as property) and expresses a cavalier attitude to the suffering of the pigs. In other words, the judgment implicitly takes the normativity of industrial farming, instead of the vulnerability and suffering of animals, as a generative departure point. This position minimizes the gravity of the violence farmed animals endure, but also stigmatizes non-normative views regarding the treatment of farmed animals, and reinforces farmed animals non-subject status in the colonial settler legal order.

Yamini Narayanan appelle « l'invisibilisation » des animaux d'élevage. Cette *invisibilisation* légale a résulté du fait que le tribunal ait interrompu plusieurs des arguments de la défense pour exprimer ses inquiétudes par rapport au traitement des animaux d'élevage en confinement et reconnaître leur vulnérabilité et leur souffrance. Plus précisément, cette décision adopte implicitement et explicitement une approche anthropocentrique (qui aurait pu être évitée et qui n'était pas incontournable, même en acceptant le statut des animaux en tant que propriété) et présente une attitude désinvolte face à la souffrance des porcs. Autrement dit, l'arrêt accepte implicitement la normativité de l'élevage industriel, au lieu de la vulnérabilité et la souffrance des animaux, comme point de départ novateur. Cette position réduit la gravité de la violence subie par les animaux d'élevage, tout en stigmatisant les points de vue non normatifs sur le traitement des animaux d'élevage, et affermit le fait que les animaux d'élevage ne sont pas considérés comme une propriété dans l'ordre juridique colonial.

2019 CanLIIDocs 17

CONTENTS

The "Pig Trial" Decision: The Save Movement, Legal Mischief, and the Legal Invisibilization of Farmed Animal Suffering
Maneesha Deckha

Introduction 69

I. Overview and Anchoring Orientation 73
- A. Facts and Issues 73
- B. Issue 1: Are Pigs Persons? Opening Frame of Contention 74

II. Legal Invisibilization Across Issues 2, 3, and 4 77
- A. Issue 2: Were the Pigs Used Lawfully? 77
- B. Issue 3: Did Krajnc Interfere With the Operation of the Property? 84
- C. Issue 4: Was Krajnc Legally Justified in her Actions? 87

III. The Global Development and Environmental Harms of Intensive Farming, and an Emergence of Plant-Based Legality? 93

Conclusion 96

2019 CanLIIDocs 17

2019 CanLIIDocs 17

The "Pig Trial" Decision: The Save Movement, Legal Mischief, and the Legal Invisibilization of Farmed Animal Suffering

Maneesha Deckha[*]

2019 CanLIIDocs 17

INTRODUCTION

When animal activist Anita Krajnc was criminally charged for giving water to a thirsty pig who was en route to a slaughterhouse, the world took notice.[1] Krajnc is the founder of the animal advocacy group Toronto Pig Save, a group dedicated to bearing witness to the suffering of pigs in their near-final moments during transit from an industrial agricultural site of

* Maneesha Deckha is Professor and Lansdowne Chair in Law at the University of Victoria Faculty of Law. She would like to express her thanks to participants at the Animals in Law and the Humanities Workshop at the University of Toronto, who engaged with this work in its first public written iteration in December 2017. Professor Deckha is also grateful to audiences at the Animals in Society, Animals as Society Conference that took place in Melbourne in September 2017 at Deakin University; the 2nd Annual Canadian Food Law and Policy Conference that took place in November 2017 in Ottawa; and the Law and Society Association Annual Meeting in Toronto in June 2018, for their listening and comments. Professor Deckha also thanks her colleagues at the Faculty of Law for their feedback when this work was presented as part of the Summer Research Series in May 2018. She is further grateful to co-defence counsel James Silver for giving a guest lecture in her seminar Animals, Culture and the Law to discuss this case and for reading an earlier draft of this work. Professor Deckha offers her particular and profound thanks to Anita Krajnc for attending her Toronto presentation of this work and for her leadership, dedication, and courage in bearing witness to farmed animal suffering. Finally, Professor Deckha is grateful to the editors at the Ottawa Law Review for their professionalism and careful attention to her work.

1 See Katie Cleary, "Compassion is Not a Crime! Support Anita Krajnc's Pig Trial Tomorrow" (3 May 2017), online: *World Animal News* <worldanimalnews.com/compassion-not-crime-support-anita-krajncs-pig-trail-tomorrow> [perma.cc/5UA8-SP5L]; Brigit Katz, "Activist Will Not be Jailed for Giving Water to Pigs" (5 May 2017), online: *Smithsonian* <www.smithsonianmag.com/smart-news/activist-will-not-be-jailed-giving-water-pigs-180963168> [perma.cc/92AT-WKZC] ; Anita Krajnc, "Bearing Witness: Is Giving Thirsty Pigs Water Criminal Mischief or a Duty" (2017) 23:2 Animal L 479 at 485–86 [Krajnc, "Bearing Witness"].

production to slaughter. Started in 2010, Krajnc and Toronto Pig Save have galvanized the formation of similar groups worldwide—now numbering over 200. Collectively, these groups are known as the Save Movement in animal advocacy circles.[2] At one of these vigil-type protests held by Toronto Pig Save in the summer of 2015, Krajnc gave water to a pig on a transport truck. She was eventually prosecuted for criminal mischief. A trial ensued attracting international media coverage, and the judgment of Justice David A. Harris of the Ontario Court of Justice (Court) was rendered in May 2017.

R v Krajnc is exceptional for an array of reasons that compel its close analysis.[3] In terms of the defence counsel's novel legal arguments in favour of farmed animals, and their consideration by the Court as reflected in the written judgment, the case is unparalleled in Canada and worldwide. Defence counsel highlighted the pigs' sentience, sociality, and subjectivities in order to contest their propertied status and demonstrate their suffering as farmed animals. In addition, counsel advanced arguments that exposed the multiple detrimental impacts of industrial animal farming on people and the planet generally.[4] As a result of these submissions, the judgment of Justice Harris canvassed the following topics:

- whether animals are property or persons;
- the sentience and complex capacities of pigs;
- whether or not factory farmed animals endure conditions of torture;
- comparisons between the Save Movement and other social justice movements;
- the concept of bearing witness to farmed animal suffering; and
- the social, health, and environmental costs of producing and consuming animals.

On first glance, when we look at this list and recall that Krajnc was acquitted, it seems that the case is a clear "win" for animal advocates seeking to disrupt the discursive representations of animals within the farmed animal system. Indeed, we would be hard-pressed to locate

2 See Ian Purdy & Anita Krajnc, "Face Us and Bear Witness! 'Come Closer, as Close as You Can…and Try to Help!': Tolstoy, Bearing Witness, and the Save Movement" in Atsuko Matsuoka & John Sorenson, eds, *Critical Animal Studies: Towards Trans-Species Social Justice* (London: Rowman & Littlefield, 2018) 45 at 46; Krajnc, "Bearing Witness", supra note 1 at 481.

3 2017 ONCJ 281 [*Krajnc*].

4 See *R v Krajnc*, 2017 ONCJ 281 (Defence submissions at paras 73, 77–78), online: *Animal Liberation Currents* <www.animalliberationcurrents.com/krajnc/defence> [perma.cc/2CR3-7ZK9] [Defence Submissions].

2019 CanLIIDocs 17

another judicial decision where the court heard so many groundbreaking arguments in favour of animals alongside critical perspectives about the negative impacts of the industrial food system for both animals and humans. Yet, the case is overwhelmingly a disappointment in its treatment of farmed animal suffering. Despite acquitting Krajnc, the judgment of Justice Harris endorses, if not the criminalization of compassion for animals, then social stigma against non-normative views in favour of farmed animals. The reasoning is an example of a golden opportunity where the law could have legitimately (as per the norms of judicial decision-making) and productively borne witness to animal vulnerability and suffering at multiple points of the analysis, but did not.[5]

As I shall argue, using the theoretical framework of critical animal studies that adopts an intersectionally aware animal-centered lens,[6] the judgment instead legally reinforces what Yamini Narayanan calls the "invisibilization" of farmed animals.[7] This legal invisibilization occurs through Justice Harris' short-circuiting of multiple opportunities from the defence's submissions to express concern over the treatment of animals in confinement farming, or recognize their vulnerability or suffering. Specifically, the decision adopts implicit and explicit anthropocentric assumptions (that could have been avoided and were not inevitable, even allowing for the legal status of animals as property) and expresses a

2019 CanLIIDocs 17

5 To be clear, I am not suggesting that Krajnc's act of compassion be read in relation to the concepts of "kindness to animals" or the "humane treatment" of animals, which are legal dispositions normally associated with anti-cruelty legislation. Anti-cruelty laws, which are the legal repository for these sentiments, offer an extremely narrow vision of compassion toward animals. The law's vision for kindness toward animals does not include protesting normative farming practices, such as routine practices in transporting animals, as industry practices are implicitly and explicitly excused from anti-cruelty provisions. See Lesli Bisgould, *Animals and the Law* (Toronto: Irwin Law, 2011) at 4; Maneesha Deckha, "Welfarist and Imperial: The Contributions of Anticruelty Legislation to Civilizational Discourse" (2013) 65:3 American Q 515 [Deckha, "Welfarist and Imperial"]; and *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36, s 11.1(2)(a).

6 For more on the central features and debates within critical animal studies, see generally Atsuko Matsuoka & John Sorenson, eds, *Critical Animal Studies: Towards Trans-Species Social Justice* (London: Rowman & Littlefield, 2018) 45; John Sorenson, ed, *Critical Animal Studies: Thinking the Unthinkable* (Toronto: Canadian Scholars' Press, 2014); Nik Taylor & Richard Twine, eds, *The Rise of Critical Animal Studies: From the Margins to the Centre* (New York: Routledge, 2014). For a discussion of the scope of critical animal studies and what it can offer to animal law, see Maneesha Deckha, "Critical Animal Studies and Animal Law" (2012) 18:2 Animal L 207.

7 See Yamini Narayanan, "Dairy, Death and Dharma: The Devastation of Cow Protectionism in India" (18 June 2017), online: *Animal Liberation Currents* <www.animalliberationcurrents.com/dairy-death-dharma/#more-1732> [perma.cc/V8GN-D25T].

cavalier attitude to the suffering of the pigs. In other words, the judgment implicitly takes the normativity of industrial farming, instead of the vulnerability and suffering of animals, as a generative departure point. This legal manoeuvre, as I demonstrate below, not only minimizes the gravity of the violence farmed animals endure, but also stigmatizes non-normative views regarding the treatment of farmed animals, and reinforces farmed animals' non-subject status in the colonial settler legal order.

After an explanation of the core facts and issues, I examine four of the five legal issues itemized in the case. I employ socio-legal methodology to place the doctrinal legal discussion in a broader social context and better distill the social norms influencing legal principles, concepts, and reasoning.[8] In discussing the first issue in Part I, I anchor the discussion in a critique of the Court's unreflective endorsement of the property status of animals. After establishing this opening to the case, I demonstrate in Part II how the Court's legal reasoning across three of the legal issues in the case skirts or minimizes the issue of farmed animal suffering. The Court evades this issue even though the defence submissions highlights it through adopting anthropocentric norms regarding the perception and representation of violence against animals. The decision also displays a cavalier attitude to what pigs experience in confinement agriculture, and stigmatizes those who contest such norms and express a non-normative view in favour of farmed animals. To offer the reader a balanced assessment of the case and point to animal advocacy legal interventions that might presently have more traction, Part III discusses two hopeful features of the judgment of Justice Harris. Despite the inability of the judgment to bear witness to farmed animal suffering, I briefly reflect on the hopeful aspects of the case as juridical interventions that, if reinforced and increasingly legitimated by other courts and legal actors, may help cultivate new industry norms that will result in future reductions in farmed animal suffering.

8 Although there are multiple understandings of what "socio-legal" analysis entails, all agree that it is an examination of law in a non-doctrinal manner that connects law to social norms. See Dermot Feenan, "Exploring the 'Socio' of Socio-Legal Studies" in Dermot Feenan, ed, *Exploring the 'Socio' of Socio-Legal Studies* (London: Palgrave, 2013) 1 at 4–5; and Michelle M Lazar, "Politicizing Gender in Discourse: Feminist Critical Discourse Analysis" in Michelle M Lazar, ed, *Feminist Critical Discourse Analysis: Gender, Power, and Ideology in Discourse* (London: Palgrave MacMillan, 2005) 1 (critical discourse analysis, a critical reading technique that often goes hand-in-hand with socio-legal analysis, is a methodology that examines how "unequal social arrangements (are) sustained through language use, with the goals of social transformation and emancipation" at 1).

2019 CanLIIDocs 17

I. OVERVIEW AND ANCHORING ORIENTATION

A. Facts and Issues

Toronto Pig Save members have protested multiple times at the site at which Krajnc’s action on June 22, 2015, eventually led to her arrest and charge. At these vigils, members sometimes give water to the pigs through slits in the walls of the trucks that transport the pigs from the farm to the slaughterhouse. They are able to do this by occupying a traffic island at an intersection where the trucks typically stop while waiting to turn toward the slaughterhouse about 100 metres away.[9] The hydrating actions of Krajnc and her colleagues had not previously attracted legal scrutiny, despite the fact that Krajnc had attended vigils for years, and that police had previously attended these protest vigils without taking any action against the protestors.[10] On this specific day, however, instead of merely driving away from the intersection when the traffic signal permitted, the truck driver got out and had words with Krajnc. He asked her what was in the water and told her to stop giving it to the pigs, but Krajnc refused the request. The next day, the driver called his employer, who officially filed a police complaint against Krajnc. Several months thereafter, the charge of legal mischief was laid against Krajnc for having given the pigs an “unknown liquid.”[11]

In Canada, criminal law is a federal matter governed by the *Criminal Code*.[12] Legal mischief is defined in four ways under section 430(1) of the *Criminal Code*, all having to do with interference with property rights. Given the particular facts in the case, Krajnc was charged pursuant to subsection 430(1)(c), which states that legal mischief occurs when someone willfully “obstructs, interrupts, or interferes with the lawful use, enjoyment, and operation of property.”[13] Accused persons, however, are allowed to assert that they “acted with legal justification or excuse and with colour of right.”[14] As the Crown proceeded summarily against Krajnc,[15] she was facing a possible fine of $5000 or six months’ incarceration.[16]

---

9 *Krajnc*, *supra* note 3 at paras 1–3.
10 Defence Submissions, *supra* note 4 at paras 71–72; Krajnc, “Bearing Witness”, *supra* note 1 at 480.
11 *Krajnc*, *supra* note 3 at paras 4, 22.
12 RSC 1985, c C-46 [*Criminal Code*].
13 *Ibid*, s 430(1)(c).
14 *Ibid*, s 429(2).
15 *Krajnc*, *supra* note 3 at para 8.
16 *Criminal Code*, *supra* note 12, s 787(1).

2019 CanLIIDocs 17

In assessing these provisions and their established meaning, Justice Harris stated that the Crown would have to demonstrate beyond a reasonable doubt that all of the following issues should be answered in the affirmative to substantiate a finding of legal mischief in this case:

1. Were the pigs property?
2. Were the pigs being used lawfully?
3. Did Ms. Krajnc obstruct, interrupt or interfere with the lawful use, enjoyment or operation of property:
4. Did she do so wilfully?; and
5. Did she do so without legal justification or excuse and without colour of right?[17]

Krajnc eventually pleaded not guilty to the charge,[18] with her defence counsel leading arguments with respect to all of these issues. My analysis below argues that the cumulative reasoning of the judgment on four of the five issues therein reinforces the invisibility of the suffering of farmed animals in the Canadian food system, and reinforces the stigma against those who express compassion for these animals, even when death is literally around the corner.[19]

2019 CanLIIDocs 17

B. Issue 1: Are Pigs Persons? Opening Frame of Contention

To initially vacate the charge, the defence challenged a foundational principle of the liberal legal system, namely that animals are property.[20] To substantiate this challenge—a radical one by all accounts in our present colonial legal system—and attempt to demonstrate the personhood of pigs, Krajnc's lawyers led evidence from a well-known neuroscientist and animal behaviourist, Dr. Lori Marino,[21] who attested to the sentience and sociality of pigs. This defence submission was in view of voiding the legal

---

17 *Krajnc*, *supra* note 3 at para 27.

18 *Krajnc*, *supra* note 3 at para 8.

19 The reasoning on Issue 4 overlaps with Issue 3 and is very swift and not objectionable from a critical lens. See *ibid* at paras 77–80 (the Court held that Krajnc did not act willfully to cause economic loss to the farm owner by having the slaughterhouse reject the pigs).

20 See Marie Fox, "Re-Thinking Kinship: Law's Construction of the Animal Body" (2004) 57:1 Current Leg Probs 469 at 469.

21 See Virginia Morell, "Lori Marino: Leader of a Revolution in How We Perceive Animals" (29 May 2014), online: *National Geographic* <news.nationalgeographic.com/news/innovators/2014/05/140528-lori-marino-dolphins-animals-personhood-blackfish-taiji-science-world> [perma.cc/BE59-GPPL]. For Dr. Marino's profile, see "Lori Marino", online: *Center for Humans & Nature* <www.humansandnature.org/lori-marino> [perma.cc/3T25-EMCA].

mischief charge: if the pigs were not "property," then there would be no "property" to which the offence of mischief could attach.[22]

On one hand, it is without a doubt a welcome gesture that the Court entertained defence counsel's radical argument that pigs are legal persons and heard evidence about pigs' cognitive and emotional capacities and their sociality. Given the entrenchment of the personhood/property binary within law, and the incredible lengths courts and legislators go to secure it in the face of evidence illuminating the instability of the concepts of "human" and "animal,"[23] Justice Harris is to be commended for permitting defence counsel to articulate a dramatically different legal view. Justice Harris permitted Dr. Marino to testify not only to the sentience of pigs, but also to an array of capacities: their preferences to roam and graze outdoors, to form female-oriented social groups with several mothers and their children together, to communicate and interact at an advanced level, to express empathy and joy, as well as their ability to suffer physically and psychologically in intensive farms.[24] As Dana Phillips has argued, even where the court does not accept the challenge a party brings forward to a foundational legal assumption, permitting the party to identify the assumption that normally goes unchallenged because it is so normative "is itself an achievement worth noting."[25] By admitting Dr. Marino's evidence on the many qualities of pigs, which frame them as social and sentient beings, the Court challenges the prevailing Western view that informs the common law's "common sense"[26] that pigs should be considered property. The admissibility of the evidence provides discursive value in setting possible future precedent that may successfully unsettle that legal assumption, and favour pigs and other animals.[27]

On the other hand, however, the Court did not state that it accepted the opinion evidence about these traits and qualities, and it quickly rejected the argument that pigs are persons.[28] While it might have been overly opti-

22 Defence Submissions, *supra* note 4 at paras 77–78.

23 Fox, *supra* note 20 at 469, 471, 474–85.

24 *Krajnc*, *supra* note 3 at paras 29–30.

25 See Dana Erin Phillips, "Loosening the Law's Bite: Law, Fact, and Expert Evidence in R v JA and R v NS" (2017) 21:3 Intl J Evidence & Proof 242 at 244. Phillips applies this statement to long-standing legal assumptions, the factual basis of which a defence party wishes to challenge. I would argue that it is also a progressive achievement for marginalized worldviews when an entrenched legal principle is challenged as a question of law (*i.e.* who qualifies as legal persons), as in *Krajnc*.

26 *Ibid* at 243.

27 *Ibid* at 244.

28 *Krajnc*, *supra* note 3 at paras 35–37.

2019 CanLIIDocs 17

mistic for Krajnc's lawyers to believe that a lower level court would go against a foundational principle of the common law and hold that pigs were persons—with no precedent to point otherwise—the Court could have referred to *Reece v Edmonton* (*City of*) from the Alberta Court of Appeal.[29] In doing so, the Court could have gestured to the need for Parliament to reconsider how it defines animals, given animals' vulnerability.[30] Instead of acknowledging the judicial recognition of animals' vulnerability as property, which Chief Justice Fraser repeatedly emphasized in *Reece*, Justice Harris made no mention of it. Nor did Justice Harris mention any subsequent case law discussing the commentary in *Reece* on the property status of animals. Both the Alberta Court of Appeal and Justice Abella in dissent at the Supreme Court of Canada have discussed the vulnerability of animals in relation to *Criminal Code* provisions that otherwise presume they are property.[31] Instead, Justice Harris pointed to the lack of legal precedent in support of the defence's submission as reason to reject the proposition that pigs should be legal persons. He went on to affirm that pigs are property in Canada,[32] and added as a passing comment thereafter that (even) "dogs and cats and other pets" are property as well.[33] The reason-

2019 CanLIIDocs 17

29 2011 ABCA 238 [*Reece*].

30 See Maneesha Deckha, "Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability under a Property Paradigm" (2013) 50:4 Alta L Rev 783. See also Defence Submissions, *supra* note 4 at paras 82–83 (defence counsel cited this in their submissions, although on a separate issue as I discuss below).

31 See *R v Alcorn*, 2015 ABCA 182 (an anti-cruelty case, where the Alberta Court of Appeal quoted *Reece* with approval and also held that "[s]entient animals are not objects" at para 41 per Stevenson J). This nascent judicial intimation that the legal treatment of animals need not classify them as property pure and simple is not mentioned in *Krajnc*, likely because the defence did not cite this judgment in their submissions. As a lower court judge, Justice Harris could have found this precedent influential even if, given the different provincial context, it was not binding on him. A judicial discussion of what it would mean to consider pigs, who are sentient animals, as possibly more-than-property, even if still categorically property, could then have ensued. See also the dissenting judgment of Justice Abella in *R v DLW*, 2016 SCC 22 at paras 125–53 [*DLW*]. In particular, see the discussion by Abella J on the need to execute statutory interpretation of the bestiality provision in the *Criminal Code* through an "evolving social landscape" (*ibid* at para 127).

32 *Krajnc*, *supra* note 3 at paras 34–35.

33 As evidence, Justice Harris also rejected Dr. Marino's statement that pigs' capacities qualify them as persons in science and in law, disputing her qualifications to make legal judgments (*ibid* at para 33). This is a fair rejection. However, Justice Harris closed the discussion on this first issue of whether pigs are persons or property by saying that Dr. Marino "was also not qualified to give opinion evidence that the treatment of pigs in 'factory farms' constitutes torture," which was revealing of the analysis to follow (*ibid* at para 38). I further discuss this point below.

ing is very short and does not use the evidence tendered by Dr. Marino regarding pigs' intelligence, sentience, and sociality to engage with the substance of the defence's submissions that such traits call for a re-evaluation of who should count as legal persons. It also does not engage animal ethics literature (let alone anything more critically oriented in favour of animals) or recent judicial decisions where activists have similarly raised personhood arguments in favour of animals, to consider the reasons to dwell on the issue further.[34]

My point here is not to suggest that the conclusion of Justice Harris on this first issue was legally assailable; it would be unrealistic to expect him to go against centuries of criminal law and other legal jurisprudence that have treated animals as property. It was possible, however, to consider the broader socio-legal context surrounding the request, as exemplified by several recent judgments in appellate-level decisions involving animals.[35] Instead, Justice Harris quickly affirmed the property status of pigs by invoking legal precedent and, implicitly, as Phillips argues, law's "common sense"[36] about the proper place of animals. His affirmation served as an influential doctrinal departure point to the case and subsequent analysis of the remaining issues.

2019 CanLIIDocs 17

II. LEGAL INVISIBILIZATION ACROSS ISSUES 2, 3, AND 4

A. Issue 2: Were the Pigs Used Lawfully?

The defence questioned the lawfulness of the transportation of the pigs as a second attempt at voiding the legal mischief charge. In analyzing the Court's reasoning on this second issue, we begin to see the disavowal of farmed animal suffering and the stigmatization of those who hold non-normative, farmed animal-friendly views. Although the defence did not invoke the landmark *Reece* dissent in their written submissions on why the pigs should be seen as persons, they did invoke two notable paragraphs from the landmark case on this second issue. The defence started its submissions here with the statement by Chief Justice Fraser that animal law has evolved since centuries ago such that human domination over

34 For a discussion of such literature and recent decisions see Maneesha Deckha, "Humanizing the Nonhuman: A Legitimate Way for Animals to Escape Juridical Property Status?" in Matsuoka & Sorenson, *supra* note 6 at 209.

35 I am referring to the majority judgment in *Alcorn*, *supra* note 31 and the dissenting judgments in *Reece*, *supra* note 29 and *DLW*, *supra* note 31.

36 Phillips, *supra* note 25 at 243.

animals is now subject to animal welfare principles,[37] and that humans have responsibilities toward animals in the form of stewardship.[38] The defence argued that neither the farm owner, Van Boekel Hog Farms Inc., nor its agent, Jefferey Veldjesgraaf (who drove the truck transporting the pigs to the slaughterhouse), followed the proper regulations governing the transportation of pigs. They led evidence through a veterinarian, Dr. Armaiti May, that the pigs were "distressed, overheated, very thirsty, and in immediate need of hydration."[39] The defence also pointed to the known temperature of that day, being "71 degrees Fahrenheit with 61 percent humidity."[40]

The Court seriously questioned the evidence Dr. May gave. One concern arose from the fact that her opinion was based on the Toronto Pig Save video of the pigs on that date, and that the video only showed a handful of the pigs on the truck.[41] Rejecting evidence on this ground seems odd, given that even one pig in distress should be sufficient to trigger any violations relating to unlawful transportation. But the Court went further, ultimately discrediting her evidence in its entirety because of bias. Given that Dr. May was opposed to animal consumption and their transportation for slaughter, Justice Harris concluded that this view "clearly coloured her testimony"[42] and that, had he realized her ideological disposition earlier, he would not have admitted her as an expert witness.[43] Yet, it is telling to note that Justice Harris accepted the evidence of Crown witnesses, namely the farm owner and the truck driver, regarding their view that they followed the regulations in caring for the pigs despite their obvious view (and the clear basis for their professional livelihood) that they favour transporting and slaughtering pigs for human consumption.[44]

Surely, everybody has a view about slaughtering animals and transporting animals for slaughter. One way to reconcile this disparate treatment of Crown and defence witnesses is to recognize what is arguably a higher standard for expert witnesses to meet. Expert witnesses are allowed to testify not because of their lived factual connection to a case, but because they can illuminate for the court aspects of the factual and legal determinations to be made on which the court requires specialized knowledge. Knowing

2019 CanLIIDocs 17

37 Defence Submissions, *supra* note 4 at para 82, citing *Reece*, *supra* note 29 at para 54.
38 Defence Submissions, *supra* note 4 at para 84, citing *Reece*, *supra* note 29 at para 58.
39 *Krajnc*, *supra* note 3 at para 42.
40 Defence Submissions, *supra* note 4 at para 38.
41 *Krajnc*, *supra* note 3 at para 46.
42 *Ibid* at para 45.
43 *Ibid* at para 56.
44 *Ibid* at para 52.

when to admit expert evidence, how much weight to give it, and ultimately applying it is not an easy task for a generalist trial judge to undertake.[45] Furthermore, the consequences of admitting expert evidence that is cause based can be severe and devastating.[46] We cannot fault Justice Harris for wanting to ensure that the evidence that Dr. May gave was impartial.[47]

At the same time, critical perspectives—including those from Supreme Court justices, feminist standpoint epistemology, and feminist theories of embodied judgment—regarding the impact of social identities and social structures on knowledge claims, research, discourse, and opinions, tell us that there is no objective "view from nowhere" unmediated by social and cultural influences.[48] Yet, it is typically the claims that *challenge* the status quo that come to been seen as "biased" or improperly subjective, *particularly when such claims overtly advert to equality issues and draw attention to systemic inequalities*, including in relation to animals.[49] The one exception to this perception of bias revealingly occurs when such views emanate from white males.[50] Given this gendered and racialized backdrop as to when viewpoints challenging inequality are perceived as "objective" and when they are instead perceived to be "biased," it is not surprising, then, that the Court proceeded to discredit the testimony of both of defence

2019 CanLIIDocs 17

45 See Lisa Dufraimont, "New Challenges for the Gatekeeper: The Evolving Law on Expert Evidence in Criminal Cases" (2012) 58:3/4 Crim LQ 531 at 556; and Phillips, *supra* note 25 at 242.

46 In this regard, Dufraimont discusses the evidence of Dr. Charles Smith, once a celebrated pediatric forensic pathologist, whose highly influential testimony regarding infant deaths in Ontario wrongfully convicted many innocent parents of the murder of their children in the 1990s (Dufraimont, *supra* note 45 at 537). Through a public inquiry into these multiple incidents of miscarriage of justice, it was shown that "Dr. Charles Smith was influenced by bias rooted in his association with the Crown and his belief that he should assist in the noble work of bringing child abusers to justice" (*ibid* at 552).

47 This is so even if we interpret the comments from Justice Harris that "had [he] known then, what [he] know[s] now, [he] would not have ruled the same way with respect to Dr. May being qualified to be an expert witness" as ruling that her evidence was inadmissible, rather than simply giving it little weight (*Krajnc*, *supra* note 3 at para 56). Expert bias is classically treated doctrinally as a matter of weight and not admissibility (Dufraimont, *supra* note 45 at 552–53). Dufraimont proceeds to note, however, that "there is growing recognition that serious bias can lead to the exclusion of expert evidence" (*ibid* at 553).

48 Sharlene Nagy Hesse-Biber & Michelle L Yaiser, eds, *Feminist Perspectives on Social Research* (New York: Oxford University Press, 2004).

49 See Jennifer Nedelsky, "Embodied Diversity and the Challenges to Law" (1997) 42 McGill LJ 91; and Reg Graycar, "Gender, Race, Bias and Perspective: OR, How Otherness Colours Your Judgment" (2008) 15:1/2: Intl J Leg Profession 73.

50 See Graycar, *supra* note 49 at 74. See also Maneesha Deckha, "Teaching Posthumanist Ethics in Law School: The Race, Culture, and Gender Dimensions of Student Resistance" (2010) 16:2 Animal L 287.

counsel's female witnesses as non-objective.[51] The testimony of Dr. May, the veterinarian, and Dr. Marino, the cognitive behaviourist who spoke to the social lives of pigs, challenged the normative perception of pigs as inferior, and the normative assumption of them as transportable for farming and human consumption purposes.

I wish to be clear that I am calling attention to the systemic "common sense" about overall human-animal relations that shapes how judges interpret and receive various viewpoints in law.[52] These human-animal relations include farming certain animals, transporting them in intense confinement, slaughtering them in gruesome ways, and eventually eating their dismembered bodies in packaged forms that encourage consumers to dissociate what they are eating from the animal that was killed. I am not suggesting that Justice Harris was individually biased, but that, like all judges, his own views are shaped by his life experience, social location, membership in a privileged professional elite, and acculturation in a dominant culture that is unaware of the brutalities visited upon animals in modern-day industrial farming, including transportation. Epistemic blind spots attach to all of these social markers.

In the end, not only did Justice Harris contest the objectivity of Drs. May and Marino due to these systemic blind spots,[53] but he also appeared to mock their testimony in his closing commentary about the lawfulness of the transportation. He stated: "Finally, I note that despite the dire forecasts of Dr. May and Dr. Marino as to the health of the pigs, not one failed to make it off the truck. Not one was rejected by the slaughterhouse as being in an unsatisfactory condition. I am satisfied that any use of the property in this case was lawful."[54]

2019 CanLIIDocs 17

51 *Krajnc*, *supra* note 3 at para 49.

52 Phillips discusses this point about the blind spots regarding the partiality of legal judgments that are regarded as unassailable "common sense" that attach to "limited and privileged realms of understanding" (Phillips, *supra* note 25 at 248).

53 *Krajnc*, *supra* note 3 at paras 49–50.

54 *Ibid* at paras 54–55. Here, the Court is confusing the issue of humane treatment of pigs in transportation with slaughterhouse standards for animal acceptability. The Court is also collapsing the issue of non-ambulatory downer animals (those who arrive at a slaughterhouse too spent to continue) with the transportation standards. Whatever we may think of the shortcomings of the latter, they do not require that animals succumb to the near-death stage before the standards are violated. This final comment of the Court finding that the transportation was lawful betrays an inadequate grasp of what the regulations require. My point here, however, is to call attention to the cavalier attitude toward the suffering of the animals in the truck that the statement evinces. When coupled with the discrediting of the Crown's two key witnesses regarding the suffering the pigs endured, the reasoning

The irony here is that the court did not need to discredit the female witnesses or adopt a cavalier attitude to the suffering of the pigs. The law already treats the latter in a *de minimis* fashion. Consider that, in support of its claims, the defence cited regulations regarding the transportation of animals (Part XII of the *Health of Animals Regulations*)[55] made under the *Health of Animals Act*.[56] Section 148 of the *Health of Animals Regulations* (the *Regulations*) discusses, among other things, the provision of food and water for animals while in transit.[57] Yet there is no provision for providing monogastric animals (such as pigs) or ruminants (such as cows, sheep, and goats) water while in transit as long as their journey is less than 52 hours, and they will be fed, watered, and rested upon reaching their destination.[58] Otherwise, monogastric animals have to be unconfined after 36 hours, and ruminants after 48 hours.[59]

As animal advocates have noted, Canada has some of the most lax animal transportation standards in the world.[60] What is more, it is critical to note that the governing pig-specific "regulations" that are discussed in *Krajnc* are not really regulations in the conventional sense of enforceability. The *Code of Practice for the Care and Handling of Pigs* is a *voluntary* industry code of practice set by an association heavily weighted in favour of industry interests.[61] These codes delineate *de minimis* guidelines rather

of Justice Harris erects significant roadblocks to the defence's attempt to portray Krajnc's actions as compassionate and lawful.

55 CRC, c 296 [*HAR*].

56 SC 1990, c 21 [*HAA*]. The *HAA* is a federal statute that regulates agriculture in relation to a wide range of matters such as food safety, importing and exporting, disease control, and animal welfare. The statute establishes the Canadian Food Inspection Agency as the regulatory body to enforce the Act: see Vaughan Black, "Traffic Tickets on the Last Ride" in Peter Sankoff, Vaughan Black & Katie Sykes, eds, *Canadian Perspectives on Animals and the Law* (Toronto: Irwin Press, 2015) 57.

57 *HAR*, *supra* note 55, s 148.

58 *Ibid*, s 148(2).

59 *Ibid*, s 148(1).

60 Legislation applicable to farmed animals, in general, is highly deferential to industry norms "in three general ways: they are insulated against nuisance claims; they are excluded from compliance with animal welfare legislation; and the welfare of animals is not seriously required in other legislation governing the industry" (Bisgould, *supra* note 5 at 189).

61 Canada, National Farm Animal Care Council, *Code of Practice for the Care and Handling of Pigs* (Ottawa: NFACC, 2014) online (pdf): *National Farm Animal Care Council* <www.nfacc.ca/pdfs/codes/pig_code_of_practice.pdf > [perma.cc/4Q58-GYJT] [Pig Code]. There are numerous such codes relating to different species of animals. See e.g. National Farm Animal Care Council, *Codes of Practice for the Care and Handling of Farm Animals* (Ottawa: NFACC, 2018), online: *National Farm Animal Care Council* <www.nfacc.ca.codes-of-practice> [perma.cc/97NA-R2Y8]. The author of these codes is a sub-committee of

2019 CanLIIDocs 17

than best practices or mandatory standards.[62] The *Code* does not specify any guidelines for watering pigs while in transit since it only applies to practices on the farm and instead directs readers to the *Regulations*.[63] The voluntary code addressing transportation generally for all farmed animals also incorporates the standards in the *Regulations*, and *recommends* that 40 hours should be the maximum time that pigs are transported without feed and water.[64]

Presumably, given these lax regulations and voluntary industry codes regarding the provision of water, the defence invoked the provision adverting to temperature and weather conditions in transport to argue that a violation of the *Regulations* occurred.[65] Section 143(1) of the *Regulations* prohibits transporting an animal where "injury or undue suffering" is likely because of "undue exposure to the weather or inadequate ventilation."[66] The defence pointed to their experts' testimony that the animals were in "extreme distress,"[67] and to the driver's acknowledged indifference to the condition of the pigs he was transporting when confronting Krajnc.[68] Justice Harris preferred the Crown's witnesses' testimonies, namely, that of the driver and of the farmer, who both attested to their knowledge of the governing regulations and that they were in compliance.

My point here is not to dispute the conclusion of Justice Harris that the pigs were being transported lawfully. The wording of the *Regulations*, to the extent it protects animals, is similar to almost all examples of animal welfarist protections: it only prohibits suffering that is seen as "undue"

---

the National Farm Animal Care Council, an organization comprised overwhelmingly by industry associations. See National Farm Animal Care Council, "Partners" (2018), online: *National Farm Animal Care Council* <www.nfacc.ca/partners> [perma.cc/XKM4-AXSM]. It is also instructive that the copyright for the Code of Practice for the Care and Handling of Pigs is "jointly held by the Canadian Pork Council and the National Farm Animal Care Council" (Pig Code, *supra* note 61).

62 See Andrew Bradley & Rod MacRae, "Legitimacy & Canadian Farm Animal Welfare Standards Development: The Case of the National Farm Animal Care Council" (2011) 24 J Agricultural & Environmental Ethics 19 at 24–25.

63 Pig Code, *supra* note 61 at 36.

64 See Canadian Agri-Food Research Council, *Recommended Code of Practice for the Care and Handling of Farm Animals—Transportation* (Ottawa: Canadian Agri-Food Research Council, 2001), online (pdf): *National Farm Animal Care Council* <www.nfacc.ca/pdfs/codes/transport_code_of_practice.pdf> [perma.cc/C58R-H5JR] at s 5.5.2.

65 Defence Submissions, *supra* note 4 at para 87.

66 *Supra* note 55.

67 Defence Submissions, *supra* note 4 at para 88.

68 *Ibid* at para 89.

2019 CanLIIDocs 17

regarding weather extremes, ventilation, or other stipulations. Industry perspectives significantly shape the meaning of "undue."[69] Rather, I wish to draw attention to what is unsaid about the serious shortcomings of these regulations from an animal-centered perspective. Justice Harris recognized that Krajnc does not think the regulations are sufficient, but tells us that is beside the question.[70] He did so even after indicating that he himself could see from the video that the pigs were "upset/stressed."[71] He thus could have taken this moment to acknowledge and highlight the limited nature of the one applicable regulation and industry code of practice that allows the transport of dehydrated and overheated pigs to be lawful. Instead, the Court expressed the view that "the industry is highly regulated and that it is being subjected to a high degree of public scrutiny by Krajnc and her supporters,"[72] suggesting that the governing regulations and public oversight are excessive and burdensome to the industry.[73] Indeed, Justice Harris cited these two factors as reasons for believing that the Crown witnesses did comply with the "applicable regulations."[74]

By any measure, this is an astonishing view. Even if we leave aside the fact that existing protective provisions for animals in farming are very weak overall (consider the general legislated immunity of farming practices, including transportation of animals, from general anti-cruelty laws, or the meagre provisions of the applicable voluntary codes), given the hidden nature of industrial farming practices, it is astonishing to suggest the farming industry faces public scrutiny from animal advocates. Modern methods of industrial rearing and slaughter of animals have largely been made invisible.[75] It is extraordinarily difficult to enter spaces of confinement farming in Canada to tour these windowless, dungeon-like operations,[76] as civil and criminal penalties may be attached to those trying to access farms or slaughterhouses to expose cruelties and violence,

2019 CanLIIDocs 17

69 Bisgould, *supra* note 5 at 177–78.

70 *Krajnc*, *supra* note 3 at para 53.

71 *Ibid* at para 47.

72 *Ibid* at para 53.

73 It is further telling that the Court refers to the *HAR*, but they are never identified. The regulations occupy an authoritative space without identification or explanation.

74 *Krajnc*, *supra* note 3 at para 52.

75 See Richard W Bulliet, *Hunters, Herders, and Hamburgers: The Past and Future of Human-Animal Relationships* (New York: Columbia University Press, 2005).

76 See Sonia Faruqi, *Project Animal Farm: An Accidental Journey Into the Secret World of Farming and the Truth About Our Food* (New York: Pegasus Books, 2015).

and terrorist labels applied to peaceful animal organizations.[77] Farming of animals today overwhelmingly occurs out of view, such that the only time animals are released from their windowless confines is when they are transported to slaughter.[78]

In short, the decision could have easily held that the transportation, and thus the "use" of the pigs, was lawful despite their dehydration and high heat levels, because the lax governing regulations permit such conditions for animals as warranted suffering and not "undue." Instead, the Court chose to deflect attention away from the suffering of farmed animals in two ways: one, by adopting a dismissive anthropocentric attitude toward the female witnesses who commented on their distress (even when Justice Harris himself agreed that the pigs were distressed!); and two, by asserting that the industry is highly regulated and publicly surveilled on matters pertaining to animal welfare, when it clearly is not. As Lesli Bisgould aptly notes in her overview of the farmed animal landscape in Canada, the extensive regulation of the industry concerns matters of food safety and human public health rather than animal welfare.[79]

2019 CanLIIDocs 17

C. Issue 3: Did Krajnc Interfere With the Operation of the Property?

The Court next considered the issue of interference. The defence had argued that Krajnc did nothing to interfere with the operations of the hog farm.[80] The Crown, in contrast, invoked the spectre of food contamination and food safety. Specifically, the Crown argued that Krajnc administered "an unknown liquid" to the pigs, thereby contaminating them and bringing into disrepute their fitness for slaughter for human consumption.[81] It is on this ground that the Crown's case fell.[82] The Court noted multiple problems with the Crown's theory. Eventually, it rejected the Crown's evidence, which was tendered by the driver and farm owner, that Krajnc gave the pigs something other than water and put the shipment's acceptance by the slaughterhouse at risk.

---

77 John Sorenson, *Constructing Ecoterrorism: Capitalism, Speciesism & Animal Rights* (Halifax: Fernwood Publishing, 2016).

78 See Black, *supra* note 56.

79 *Supra* note 5.

80 Defence Submissions, *supra* note 4 at paras 59, 62.

81 *R v Krajnc*, 2017 ONCJ 281 (Crown submissions at paras 12–13) online: *Animal Liberation Currents* <www.animalliberationcurrents.com/krajnc/crown> [perma.cc/468U-GCM7].

82 *Krajnc*, *supra* note 3 at para 58.

The Court found three facts that spoke to the driver’s belief that Krajnc had only administered water to the pigs, as she and other activists had done in the past: first, the truck driver did not test the bottle that Krajnc offered to him; second, he did not return the pigs to the farm but continued on to the slaughterhouse; and third, he did not inform anyone at the slaughterhouse or back at the farming facility of what happened.[83] Thus, the evidence conclusively showed that Krajnc gave the pigs water, and there was no evidence to show that she “gave the pigs an unknown substance let alone a contaminant.”[84] The Court further rejected the truck driver and farmer’s testimonies that they had a real fear that the pigs would be rejected due to possible contamination: both witnesses had previous knowledge that Krajnc and other protesters routinely stationed themselves at the traffic island and gave water to pigs en route to slaughter, and knew that the slaughterhouse had always nevertheless accepted the pigs.[85] The Court also noted that this pattern continued even after Krajnc was charged, and throughout the trial.[86] Finally, the Court found that Krajnc did not have any intent to contaminate the pigs such that the slaughterhouse would refuse them.[87]

While the Court’s findings secured Krajnc’s victory, the larger implications of Justice Harris’ reasoning make it clear that the legal victory does not equal ethical vindication, or even guarantee another victory in a future case. Notably, it is safe to presume that had the accused given something other than water, something that could constitute a contaminant and trigger an economic loss to the farmer through the slaughterhouse’s refusal to take a pig it believed to be contaminated, the verdict may have been different.[88] As a possible outcome of activists’ actions to bear witness, the fact that the Court gave food contamination theories a serious airing at all is troubling at a systemic level. Indeed, the irony—if not absurdity—of

83 *Ibid* at paras 60–64.

84 *Ibid* at para 60. The Court did not accept the truck driver’s testimony that he was unaware of what Krajnc gave to the pigs and that it “might have been a contaminant” (*ibid* at para 61).

85 *Ibid* at paras 71–73. The Court proceeded to find that the actions of giving water, which is not a possible contaminant, not only obviated the contaminant argument regarding risk to property, but that Krajnc’s *protest methods* also did not “obstruct, interrupt or interfere with the lawful use, enjoyment or operation of any property” (*ibid* at para 67). Approaching the truck from the traffic island did not impede the truck from proceeding to the slaughterhouse (*ibid* at paras 68–69).

86 *Ibid* at para 75.

87 *Ibid* at paras 77–79.

88 “Making Sense of the ‘Pig Trial’” (5 May 2017), online (podcast): *Animal Liberation Currents* <www.animalliberationcurrents.com/podcast> [perma.cc/6CMF-EJ2R] (interview with James Silver).

2019 CanLIIDocs 17

this analysis is laid bare when we think of the possibility for contamination that is embedded within the normalized practices in the space the pigs left. Namely, think of the normalization of the confined animal feeding operation, and the space that the pigs will soon enter: the slaughterhouse.[89] As previously noted, it is difficult to get inside Canadian factory farms or slaughterhouses to document the practices that attend the raising and slaughter of animals.[90] Some have succeeded, and their first-hand accounts of raising pigs in particular cast considerable doubt on how such confinement agriculture can be seen to be hygienic, let alone sufficiently proactive against the development of food-borne illnesses spreading to the human population.[91] Also, as a matter of common sense, the confinement of massive amounts of urinating and defecating animals in relatively small spaces, and the organization of assembly-line slaughtering of live, heavy, gangly animals by poorly paid, overtasked, and undertrained workers, does not inspire confidence that the final products will be free from bacteria, pathogens, or animal waste. Producers themselves admit to the difficulty in eliminating contamination altogether in the animal food system.[92]

What is also disquieting about the Court's reasoning on this issue of interference is how the discussion unfolded without any advertence to the interests of the 190 pigs on the truck. To be sure, the law is not concerned with the animals' safety, security, or vulnerability in the context of contamination questions or food safety governance. Food safety laws, such as those applicable in Ontario where the trial was held, typically define "safe" and "safety" in anthropocentric ways.[93] Existing law, of course, limits the Court in this instance.[94] However, despite the anthropocentric parameters of food safety norms and laws, there was room for the Court to move differently through its reasoning on this issue. Again, Justice Harris could

89 See Ana M Rule, Sean L Evans & Ellen K Silbergeld, "Food Animal Transport: A Potential Source of Community Exposures to Health Hazards From Industrial Farming" (2008) 1:1 J Infection & Public Health 33.

90 Bisgould, *supra* note 5.

91 Faruqi, *supra* note 76.

92 See PA Luning et al, "Performance Assessment of Food Safety Management Systems in Animal-Based Food Companies in View of Their Context Characteristics: A European Study" (2015) 49 Food Control 11.

93 *MEAT*, O Reg 31/05, s.1.

94 Some jurisdictions take a different view on the relationship between food safety and animal welfare, holding there to be a connection. See Wyn Grant, "Agricultural Policy, Food Policy and Communicable Disease Policy" (2012) 37:6 J Health Pol Pol'y & L 1031. See also Rita-Marie Cain Reid, "The Chicken and the Egg—Animal Welfare, Food Safety and Federalism" (2016) 71:1 Food & Drug LJ 1.

2019 CanLIIDocs 17

have invoked the passages from *Reece*, referred to above, that talk about animal vulnerability and human responsibility to animals, rather than simply accepting the parameters of the Crown's framing of the issue as one where protests to bear witness to animal suffering turn into speculative contamination threats. To let the legal analysis of what counts as an illegal act lie in the Crown's framing of the issue, and relate that analysis to Krajnc's actions—without any mention of the extremely limited scope for individuals to express compassion for animals in farming—represents a choice on the part of the Court to minimize animal vulnerability and animal suffering.

2019 CanLIIDocs 17

D. Issue 4: Was Krajnc Legally Justified In her Actions?

With respect to each of the above three issues, I have assailed the Court's reasoning for effacing animals' vulnerability in the industrial food system, and argued that the latter forms a critical element of context to the charge that should have better informed the reasoning. It would be possible to defuse my critiques, had the Court adverted to the context of animals' vulnerability in the industrial food system in its consideration of the fifth issue, *i.e.* whether Krajnc was justified in doing what she did. As I discuss in this section, this advertence to farmed animal suffering did not occur, even where the Court specifically assessed Krajnc's motivations for her actions.

Doctrinally, the purpose of Krajnc's acts most centrally arose in the part of the legal analysis where her defence strove to house her actions within the statutory defence of "public good" in section 163 of the *Criminal Code*. Counsel used the statutory defence to prove that Krajnc was legally justified in doing what she did, even if it otherwise qualified as "legal mischief."[95] Justice Harris rejected the defence's argument that the statutory defence of "public good" could apply to mischief cases.[96] He did, however, consider the argument that her actions were legally justified, and turned

95 Defence Submissions, *supra* note 4 at paras 101–06. Although the Court had decided that Krajnc was not guilty of legal mischief because of the lack of interference with the farm owners' property, Justice Harris proceeded to consider this issue in case an appellate level court reversed his decision about whether "legal mischief" had occurred. *Krajnc*, *supra* note 3 at para 80.

96 *Krajnc*, *supra* note 3 at para 88. It is arguable that the dismissal of Justice Harris of the "public good" defence for mischief cases was the correct outcome, but I leave aside analysis of this portion of the decision on "public good" to concentrate on the defence's other arguments regarding legal justification and the Court's response to them.

to her full-time activist work and its purposes.[97] Justice Harris laid out the mission of Toronto Pig Save and the Save Movement as follows: "They have a three-fold mission to: [one,] promote a non-violent vegan world where everyone goes vegan; [two,] promote activism so that everyone will be an activist; and [three,] promote a cultural shift so that everyone sees bearing witness as a duty."[98]

Furthermore, Justice Harris described what "bearing witness" meant for Krajnc:

> Ms. Krajnc believes that "bearing witness" requires her to come as close as possible to the suffering of the animals being delivered to slaughter and to help them if she can. She testified that she gives recognition to the senseless suffering of these sentient beings. She tries to "put faces on the nameless numbers." She also wants society to be aware of the sentience of pigs. Society should also know how the factory farming of pigs is contributing to the destruction of our planet. On a more immediate level, Ms. Krajnc believes that by providing water when the pigs are thirsty she hopes to provide some relief even if it is only incremental, and only for a moment.[99]

Finding any discussion of bearing witness to animals in a legal judgment is remarkable. The promise of the Court's opening remarks to illuminate farmed animal suffering, however, is eclipsed by the refusal by Justice Harris to acknowledge such suffering beyond reciting Krajnc's beliefs. If we go further into the reasoning on whether Krajnc acted with legal justification, we see that Justice Harris opted not to consider the suffering of the pigs as vulnerable beings. Far from endorsing the witnessing actions of Toronto Pig Save, Justice Harris essentially remained silent on the violence inherent in the animal industrial system beyond describing that one of the goals of the Save Movement is "to make people aware of the farming processes and of the slaughter house mechanisms for killing animals."[100] Nowhere did the Court mention the details of "farming processes," such as the "practices that extend to lifelong, close-spaced incarceration, controls over reproduction, movement, nutrition and sexuality..."[101] even in a sanitized fashion. Instead, the Court added to its cavalier attitude toward

---

97 *Ibid* at paras 90–93.

98 *Ibid* at para 92.

99 *Ibid* at paras 96–99. For Krajnc's explanation of the purposes of the vigils, see Krajnc, "Bearing Witness", *supra* note 1 at 480–81, 494.

100 *Ibid* at para 94.

101 See Dinesh Wadiwel, "Cruel Indignities: Animality and Torture" (2014) 13:1 Borderlands 1 at 4.

2019 CanLIIDocs 17

the suffering of the pigs (observed earlier), and rejected the defence submissions that emphasized the magnitude of the suffering that farmed animals endure in intensive farming.

Specifically, the Court rejected defence counsel’s suggestion that the treatment of animals is comparable to well-known social injustices and oppression against marginalized human groups. Defence counsel invoked these comparisons to prove Krajnc acted with moral righteousness and thus legal justification. Through the examples of Gandhi, Nelson Mandela, and Susan B Anthony, counsel argued that Krajnc’s actions should be placed in the context of global historical struggles against colonialism, racism, and sexism.[102] The Court held the examples to be irrelevant and counterproductive, and suggested that such comparisons were disingenuous and only made to attract social media attention to the case.[103]

The Court was even more dismissive of the comparison of Krajnc’s actions of giving water to the pigs with “those by people in Hungary who gave water to Jews who were being transported to concentration camps…,”[104] a comparison that arose from an email that defence counsel read in court.[105] In response to this submission, Justice Harris stated: “I found the comparison to be offensive and I will be attaching no weight to it in my decision. I would not be surprised however if it received media coverage.”[106] It is transparent that Justice Harris viewed the comparison as a contemptible media gimmick. The possibility that it might be the least bit credible is not entertained.[107] Instead, Justice Harris commented on his own sense of being offended by the analogy: an unusual admission for

2019 CanLIIDocs 17

102 *Krajnc*, *supra* note 3 at para 116.

103 *Ibid* at paras 117–23.

104 *Ibid* at para 124.

105 This email to the defence lawyers articulating the comparison came from a Jewish Canadian academic, Professor Stevan Harnad at McGill University. Professor Harnad analogized the situation of animals en route to slaughter with those of Jews rounded up in cattle cars to be taken to the concentration camps. This email was read out to the Court during closing arguments. The Court also heard about Professor Harnard’s reflections on the continuities and equivalencies between violence against humans and violence against animals, and his lamentation that violence against animals is still legal. See *R v Krajnc*, 2017 ONCJ 281 (Oral argument, Defendant), online: *Animal Liberation Currents* <www.animalliberationcurrents.com/krajnc/closing-documents-defence/> [perma.cc/3PXV-LS8Q].

106 *Krajnc*, *supra* note 3 at paras 124–25.

107 For a scholarly affirmation of the legitimacy of the comparison, see David Szytbel, “Can the Treatment of Animals be Compared to the Holocaust?” (2006) 11:1 Ethics & Environment 97. For a discussion of such comparisons made by Israeli Jews see Erica Weiss, “‘There Are No Chickens in Suicide Vests’: the Decoupling of Human Rights and Animal Rights in Israel” (2016) 22:3 J Royal Anthropological Institute 688.

a judge to make about a legal submission from counsel, given the stigma that attaches to judges expressing anything that approaches emotion or passion.[108] The remark indicates the magnitude of the offence Justice Harris felt at the comparison but also reflects his racial and gender identity and a larger anthropocentric mindset of human exceptionalism. This is a mindset that supports the "common sense" or reasonability of taking offence at drawing parallels between human and animal suffering, and perhaps particularly, a parallel between the experience of Jews killed in the Holocaust to the experience of animals killed in intensive farming. The normativity of the human exceptionalist mindset—as well as his race and gender identity[109]—protects Justice Harris from claims of possible bias, or even critique that a judge would admit to this emotional reaction in a legal judgment and, moreover, allow it to affect his reasoning.

Of course, there are legitimate concerns with drawing comparisons between industrialized food systems or the treatment of animals generally, and the oppression animalized human groups have received throughout history and in the present day. For example, vital specificities may be reduced or racism amplified when comparisons are drawn without sufficient appreciation of the struggles of marginalized humans groups.[110] And, as feminist animal care theorists have long argued, animal advocacy should be intersectionally oriented to not minimize or gloss over the suffering of devalued humans in the causes advocates take up,[111] particularly given the resonance that animal ethics in a particular context can have with fraught inter-human politics and inequalities.[112] But such concerns about speci-

108 See Susan Bandes, *The Passions of Law* (New York: New York University Press, 1999).

109 Graycar, *supra* note 49 at 74.

110 See Julietta Hua & Neel Ahuja, "Chimpanzee Sanctuary: 'Surplus' Life and the Politics of Transspecies Care" (2013) 65:3 American Q 619; Claire Jean Kim, "Multiculturalism Goes Imperial" (2007) 4:1 Du Bois Rev 233; Claire Jean Kim, *Dangerous Crossings: Race, Species and Nature in a Multicultural Age* (New York: Cambridge University Press, 2015); and Weiss, *supra* note 107. It is also instructive to note how such comparisons can be reductive in the other direction, *i.e.* by minimizing the violence that animals experience. As scholars have noted in different contexts, as much as the present conditions of animals today may overlap with the brutalizing treatment meted historically to devalued groups, or even contemporary dehumanizing practices, it is only animals who are killed in staggering numbers for human consumption: see Wadiwel, *supra* note 101. See also Carrie Hamilton, "Sex, Work, Meat: the Feminist Politics of Veganism" (2016) 114:1 Feminist Rev 112 at 113–17.

111 See Carol J Adams, "Afterword" in Andrew Woodhall and Gabriel Garmendia da Trindade, eds, *Ethical and Political Approaches to Nonhuman Animal Issues* (Cham: Springer International, 2017) 395.

112 See Angela Harris, "Should People of Color Support Animal Rights?" (2009) 5:15 J Animal L 15; Weiss, *supra* note 107.

2019 CanLIIDocs 17

ficity, intersectional analysis, and the entanglement of animal rights and human rights, are not what troubled Justice Harris. Reading his judgment, one gets the distinct sense that it was not the nuances of the comparison being obscured that offended him. Rather, it was ethical outrage at the defence's assertion that the suffering of animals can be compared to human suffering at all, let alone be seen as equivalent, or the assertion that it is outrageous to associate human beings who have been victimized as subhuman with animals in any way. This is human exceptionalism pure and simple, amounting here in the context of the case to further dismissal of the horrors of intensive animal agriculture.

This negation that what animals suffer can approximate human suffering must be placed alongside the Court's earlier denunciation of the qualifications of cognitive behaviourist, Dr. Marino. While determining what constitutes torture under Issue 1 (Are pigs property?), Dr. Marino testified that intensive industrial farms are equivalent to torture. With a single line, the Court rejected Dr. Marino's evidence, and left the reader to presume that Justice Harris did not see her as qualified to comment on what counts as torture because torture is a legal concept.[113] From a doctrinal perspective, the decision of the Judge to exclude the evidence because Dr. Marino is not an expert on torture is sensible.[114] But, the Court's disavowal that Dr. Marino can testify about torture, presumably because she is not legally trained, leaves open the question as to who precisely *would* qualify to make an assessment about torture. An international lawyer who litigates human rights torture abuses? A legal scholar who writes about torture? Even if torture is not assumed to be a species-bound humanist concept, as it normally is,[115] how could an expert on animal pain and suffering ever qualify to give an opinion connecting intensive farming to torture, if defining torture is the preserve of international human rights law practitioners or scholars? The Court does not say. Can the law ever entertain a claim that the modern industrial farm is a space of animal torture from an animal-friendly professional qualified to speak about animal pain and suffering, but not the legal definition of torture? If not, as the decision of

113 *Krajnc*, *supra* note 3 at para 38.

114 See *R v Mohan*, [1994] 2 SCR 9, 114 DLR (4th) 419 (the Supreme Court of Canada articulated the admissibility criteria for expert evidence: "(a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert" at 20). See also Dufraimont, *supra* note 45 (although the factors have been tweaked and refined in subsequent cases, *R v Mohan* remains the leading case on expert evidence admissibility, at 533).

115 Wadiwel, *supra* note 101.

2019 CanLIIDocs 17

Justice Harris intimates, the law of evidence reductively shapes the discussion about the violence in intensive farming toward denial of its more than arguable torturous brutality.

This evidentiary posture buttresses the law's overriding yet implicit opinion that animals are "subjects of violence who apparently do not have dignity to violate…[and] are almost always rendered according to a radically different economy of signification and non-signification."[116] Although, from a purely doctrinal perspective, we can approve of the ruling of Justice Harris that Dr. Marino was not a "properly qualified expert" in relation to torture, from a socio-legal perspective, this discrediting of expert testimony classifying what happens to farmed animals in modern day farming minimizes the violence that animals encounter. At the very least, the Court could have validated the underlying details of Dr. Marino's evidence—that what animals experience in industrial farms entails great suffering to them (a qualification she was expertly qualified to make),[117] instead of dismissing that testimony in one line because she opined about the suffering constituting torture. When we place the Court's rejection of the historical comparative analogies to suffering and trauma that the defence sought to make on Issue 4 alongside this earlier silence on animal suffering in Issue 1, we see the Court's perpetuation of the legal myth or common sense that Canadian society does not treat animals violently.

Finally, it is worth noting that the Court's closing comments regarding Krajnc's actions of bearing witness also betray its orientation against recognizing the suffering of animals. The Court even-handedly reviews Krajnc's testimony about her purposes in bearing witness, but closes with statements that dismiss her actions as unhelpful to the pigs on that day, noting that the slaughterhouse would have given the pigs water in any case.[118] However, this outcome is by no means guaranteed given the lack of regulation that the slaughterhouse do so. Far from connecting Krajnc's actions to a defence of public good or legal justification, the reader cannot help but interpret the Court as alluding to the futile nature of Krajnc's desire to bear witness.[119]

---

116 *Ibid* at 3.

117 *Krajnc*, *supra* note 3 (the Court permitted Dr. Marino "to testify as an expert in neuroscience and animal behaviour and to give opinion evidence regarding animal behaviour, self-awareness and intelligence in non-human animals, animal welfare, biopsychology of non-human animals and cognitive ethology" at 29).

118 *Ibid* at paras 127–28.

119 *Ibid* at paras 136–38. The Court confirmed the legality of farming, slaughtering and eating pigs in Canada, and the undesirability of expanding the small number of instances where laws can be legitimately broken for higher purposes (*ibid* at paras 134–138). Ultimately,

2019 CanLIIDocs 17

III. THE GLOBAL DEVELOPMENT AND ENVIRONMENTAL HARMS OF INTENSIVE FARMING, AND AN EMERGENCE OF PLANT-BASED LEGALITY?

I have been arguing that despite the fertile nature of the facts in *R* v *Krajnc* to give rise to visibility for the suffering and subjectivities of farmed animals, the Court's reasoning precludes this outcome. In view of a balanced assessment of the case, I would like to point to two promising developments that *Krajnc* nonetheless exhibits, despite its invisibilization of farmed animals. These developments are promising, as they could actually help to visibilize animal suffering indirectly. The first development points to associations that have burdened animal advocacy in public and regulatory spheres, which this case helpfully does not reinforce. The second points to associations that should be applied to animal advocacy and reinforced in public and regulatory spheres, which this case *does* helpfully promote.

The first positive development in the case comes from something the case does not do: it does not associate Krajnc's action with terrorism. Despite flawed logic and absence of proof or even harm, terrorism is a common media frame for animal rights activism. It is also a dominant legal paradigm in some jurisdictions for interpreting the non-violent actions of animal rights activists.[120] Although Canada does not contain a statutory equivalent to the United State's notorious *Animal Enterprise Terrorism Act* that criminalizes activism that has the potential to affect animal-use businesses,[121] the Canadian government has repeatedly classified animal rights activism as terrorism. As John Sorenson has shown, Canada's equivalent of the United States Central Intelligence Agency, the Canadian Security Intelligence Service, has long identified animal rights groups and other social change organizations that use active modes of protest as terrorists, with barely a trace of evidence.[122] At least in the context of animal rights activism, it would appear that whiteness is not a bar to being labeled a terrorist, as it is in other present-day Western contexts that are heavily overdetermined by "race-thinking" surrounding Muslims in identifying who is

Justice Harris found that "had Ms Krajnc broken the law, she did not act with legal justification or colour of right" at para 140.

120 See Dara Lovitz, *Muzzling a Movement: The Effects of Anti-Terrorism Law, Money, and Politics on Animal Activism* (New York: Lantern Books, 2010); Sorenson, *supra* note 77.

121 18 USC § 43 (2012).

122 Sorenson, *supra* note 77.

2019 CanLIIDocs 17

and who is not a terrorist.[123] Given this background, it is worth noting with appreciation that the spectre of terrorism did not surface in the Crown's submissions or the Court's reasoning.

The media also did not apply the terrorist frame to Krajnc's actions. Indeed, despite the failure of the Court to bear witness to the suffering of farmed animals even at a minimal level, the case qualifies as a media "win." As intimated earlier, the global media coverage was intense, an outcome of the case that the Court also highlighted (and, as discussed above, lamented in part).[124] As scholars have noted, controversial social movement organizations, like animal advocacy organizations, have a difficult time garnering media coverage, let alone good media coverage.[125] This case, however, received even-handed and even favourable coverage.[126] Perhaps most prominently in global media, Krajnc wrote an opinion piece for the widely circulated left-leaning British newspaper *The Guardian*, entitled "I'm on trial for

2019 CanLIIDocs 17

---

123 See Sanjay Sharma and Jasbinder Nijjar, "The Racialized Surveillant Assemblage: Islam and the Fear of Terrorism" (2018) 16:1 Popular Communication 72; Neil Gotanda, "The Racialization of Islam in American Law" (2011) 637:1 Annals American Academy Political and Social Science 184; and Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law & Politics* (Toronto: University of Toronto Press, 2008).

124 *Krajnc*, *supra* note 3 at paras 131–32. The judge also commented on the rare nature of the media attention, stating favourably on the one hand that he welcomed the attention, but also noting that he wished that some of the other courtrooms were just as full. His specific comments were:

> I also can say that I was pleased to see the court system receiving some public attention. That is extremely rare. I note that on the day that the final submissions were made, we almost had to turn people away. At the same time, there were no spectators and no media at all in the courtroom next door where a preliminary hearing was being held with respect to a charge of second-degree murder.
>
> I wish to make it clear that we would be even more pleased if the media and members of the public showed the same level of interest in other cases of interest to the people of Halton (*ibid* at paras 13–14).

One wonders though at the existence of not-so-veiled sentiments in or motivations for making the comparison between charges of second-degree murder (of a human being) and legal mischief (for giving water to a pig).

125 See Erin M Evans, "Bearing Witness: How Controversial Organizations Get the Media Coverage They Want" (2016) 15:1 *Social Movement Studies* 41.

126 See e.g. Merrit Kennedy, "Canadian Court Clears Activist Who Gave Water to Pigs", *National Public Radio* (4 May 2017), online: <www.npr.org> [perma.cc/JSE4-PSAN]; David Shum, "Mischief Charge Against Ontario Woman Who Gave Water to Slaughter-bound Pigs Dismissed" *Global News* (4 May 2017), online: <globalnews.ca> [perma.cc/NJH7-3GYJ]; and Jessica Murphy, "Canada Woman Faces 10 Years in Prison for Giving Pigs Water on Hot Day" *The Guardian* (30 November 2015), online: <www.theguardian.com> [perma.cc/9ADT-8QTQ]. See also Krajnc's description of the positive media attention locally, nationally, and internationally in Krajnc, "Bearing Witness", *supra* note 1 at 483–86, 490–93.

giving water to thirsty pigs. If they were dogs, I would be a hero."[127] As even Justice Harris comments, "the act of prosecuting Ms. Krajnc has probably led to enough bad publicity for the pork industry that it might be said that the prosecution actually accomplished what they accused Ms. Krajnc of trying to do,"[128] namely, impairing the property rights of the hog farm.[129]

The second positive development of this case relates to something the Court *did* do: it affirmed expert evidence discussing the health and environmental impacts of industrial animal farming. In the context of discussing Issue 4—*i.e.* whether Krajnc's actions could be justified on moral grounds transcending the law—the Court heard from the two remaining defence counsel witnesses, who qualified as experts of environmental studies and human nutrition, respectively. In the Court's words, the first witness, Professor Tony Weis, "was allowed to…provide opinion evidence on the historical transformations of agriculture, the environmental impacts of industrial livestock production and the social impact of the globalization of livestock production."[130] The judgment contains a summary of Dr. Weis's evidence regarding the global food insecurity, climate change impacts, and general unsustainability of intensive animal farming.[131] The second expert witness, Dr. David Jenkins, a leading Canadian researcher on human health, nutrition, and metabolism, was allowed to testify to the benefits of a plant-based diet and the negative role of animal flesh consumption in causing chronic diseases in humans.[132] The Court did not qualify the evidence of these male experts in any way, unlike how the Court treated the female experts who testified to animal sentience,

2019 CanLIIDocs 17

127 See Anita Krajnc, "I'm on Trial for Giving Water to Thirsty Pigs. If They Were Dogs, I Would Be a Hero", *The Guardian* (27 October 2016) online: <www.theguardian.com> [perma.cc/NCG5-DERK].

128 *Krajnc*, *supra* note 3 at para 132.

129 *Ibid*, Harris J ("[t]hat may be the most ironic aspect of this case. The fact that Ms. Krajnc gave water to a pig received limited attention initially. In contrast to that, Ms. Krajnc being charged and tried, with five days of evidence, one day of submissions, and one day for this judgment along with countless remand appearances have provided her and her movement with all of the publicity they could hope for" at para 131).

130 *Ibid* at para 102, Harris J.

131 *Ibid* at paras 102–07. The Court heard that Dr. Weis is the author of two texts whose titles speak for themselves: Tony Weis, *The Ecological Hoofprint: The Global Burden of Industrial Livestock* (London: Zed Books, 2013); and Tony Weis, *The Global Economy: The Battle for the Future of Farming*. (London: Zed Books, 2007).

132 *Krajnc*, *supra* note 3 at paras 108–09.

sociality, and suffering in relation to Issues 1 and 2. Instead, the Court implicitly affirmed the testimony as fact-based and uncontroversial.[133]

Although the scientific evidence attested to by Dr. Weis and Dr. Jenkins is well-established, global policy discussion of the perilous implications of rising animal product consumption on global health and environmental sustainability is sparse. This is true at both the domestic or transnational level.[134] Judicial discussion of the negative impacts of intensive animal farming is also rare, even more so in the context of a case discussing animal welfare. If nothing else, Justice Harris, through favourably discussing the evidence of Dr. Weis and Dr. Jenkins, has lent rare judicial authority to the science calling for a plant-based diet. In the decision, we can locate a seed that eventually, one day, may germinate a plant-based legality. This may be particularly so if we recall Phillips' view that, in terms of possible future social justice effects, it is productive to challenge exclusionary yet taken-for-granted legal assumptions in court, even if the legal assumption is not negated in a specific case.[135] It seems that the law is able to acknowledge the negative externalities of our current industrialized animal-based food system on the planet and global health priorities, but not yet in relation to animals. While we can remain hopeful that law can start to recognize farmed animal suffering much more than it has, judicial recognition of the merits of plant-based diets can arguably help alter systemic and institutional ideologies about human dietary needs, farming, and animal-human relations, to materially impact future levels of farmed animal suffering.

CONCLUSION

The acquittal of Anita Krajnc for bearing witness to animal suffering that sweltering day in June 2015 was not a victory for the pigs who were en route to slaughter, farmed animals in general, or animal advocacy at large. Doubtless, the Court's favourable reception of expert views in *R v Krajnc*, which delineated the detrimental environmental and global health impacts

133 *Ibid* at para 110. Tellingly, the Court proceeds to discredit some of the beliefs that Krajnc has where those beliefs exceed what the male scientific experts attest to regarding the negative impacts of animal consumption on global food security, climate change and human health, suggesting that some of her "excessive" testimony was meant to catch media attention (*ibid* at para 115).

134 See Paula Acari, "Normalised, Human-Centric Discourses of Meat and Animals in Climate Change, Sustainability and Food Security Literature" (2017) 34:1 Agriculture & Human Values 69.

135 Phillips, *supra* note 25.

2019 CanLIIDocs 17

of industrial farming, provides a positive juridical development for animal advocacy in Canada. But in terms of normalizing compassion toward our animal others, this case has little to offer.[136] On multiple issues relating to the pigs' personhood, lawful transport, contamination by Krajnc's action, and experiences in industrial farming, the judgment of Justice Harris skirts opportunities to attend to farmed animal suffering. Nowhere does he describe, acknowledge, or even consider a fraction of the unimaginable suffering that the 190 pigs on the truck—and farmed animals like them—are forced to endure in industrial animal farming. Instead, the reasoning promotes the stigmatization of those who both contest industrial farming and situate farmed animal oppression alongside human oppression, and adopts a cavalier attitude to the plight of the pigs at issue. The resulting decision should be sobering for animal advocates rather than uplifting.

Moreover, the prosecution of Krajnc for legal mischief—and the judicial reasoning—have to be set against the larger landscape of laws that prevent us from, firstly, witnessing suffering in the conventional legal sense of seeing it through our own eyes and, secondly, peacefully protesting it through bearing witness. Concerns about food safety, whether a pretense or genuine belief precipitating a legal mischief charge, need to be placed in the larger context of a society that discourages consumers from viewing, and thus bearing witness to, the conditions of industrial farming and slaughter through ag-gag laws, cultural desensitization and normalization, or otherwise.[137] The decision of Justice Harris, despite Krajnc's acquittal, does not support animal advocates in their quest to witness animal suffering, to grieve for animals en route to their deaths and dismemberment, or to experience "feeling with" them as part of ethical responsibility to farmed animals.[138] In all of this, the law reveals the narrow scope of its oft-cited plea for "kindness to animals." Derived from humanist

136 I discuss the merits of bearing witness as an act of animal advocacy and a template for law elsewhere. See Maneesha Deckha, "The Save Movement and Farmed Animal Suffering: The Advocacy Benefits of Bearing Witness as a Template for Law [forthcoming in the *Canadian Journal of Comparative and Contemporary Law*].

137 See Andrew Linzey & Priscilla N Cohn, "Entitled to Know" (2013) 3:1 J Animal Ethics v; Erika Cudworth, "Killing Animals: Sociology, Species Relations and Institutionalized Violence" (2015) 63:1 Sociology Rev 1 at 5–8; and James Stanescu, "Species Trouble: Judith Butler, Mourning, and the Precarious Lives of Animals" (2012) 27:3 Hypatia 567 at 567–68, 580–81.

138 See Kathryn Gillespie, "Witnessing Animal Others: Bearing Witness, Grief, and the Political Function of Emotion" (2016) 31:3 Hypatia 572 at 578–79.

2019 CanLIIDocs 17

Enlightenment philosophy and incorporated into liberal legal orders,[139] the welfarist concept sits comfortably alongside judicial ideologies about the normativity and legitimacy of animal exploitation and ownership.[140] This myth about how western liberal legal orders treat animals becomes apparent once the farmed animal industry—and farmed animal jurisprudence—is exposed to close scrutiny.

2019 CanLIIDocs 17

139 Deckha, "Welfarist and Imperial", *supra* note 5.

140 See Gary Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995).