

Animal Protection Act

Review of the Yukon legislation

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Yukon Territorial Animal Protection Act Review

Executive Summary

The Yukon *Animal Protection Act* is currently perceived to not be working well by the Yukon public. As with any legislation that is perceived to be found wanting, analysis of the effectiveness of the legislation must include both a review of the implementation of the legislation and of the legislation (statute and regulations) itself.

The Yukon *Animal Protection Act* appears to have been drafted using other western Canadian provincial animal protection legislation as templates. The statute is similar to statutes currently in place in western Canadian provinces that are, in the opinions of those enforcing them, working well in their respective provinces.

There are not currently in place for the Yukon *Animal Protection Act* clear parameters as to policy, procedure, funding, staffing and logistical support for the legislation. Nor is there a formal policy with regard to prosecution of cruelty to animals matters. Provincial animal protection acts are enforced through provincial or city humane societies (societies for the prevention of cruelty to animals) that have full-time special constables or hourly contract investigators trained to carry out the provisions of the provincial acts. The critical difference (from the provinces) in the Yukon is that the humane societies in the Yukon function primarily as advocacy and animal shelter organizations, and are not now (and are not likely in the foreseeable future to be) equipped to staff and support paid (as opposed to volunteer) special constable/animal protection officer positions.

Officials in two of the jurisdictions reviewed stated that the effectiveness of their legislation was much enhanced by the availability of designated/special prosecutors familiar with animal cruelty matters.

In order to attempt to improve the effectiveness of the Yukon *Animal Protection Act*, the primary focus should be on policy, procedure, funding and staffing to be put in place to support the act. Implementation of the act can be improved without changes to the legislation itself. Review of other jurisdictions' legislation shows that there is room for improvement in the Yukon *Animal Protection Act* statute and regulations, should the Yukon Government choose to make amendments at some future date.

Purpose

This report, phase 1 of 2, was prepared at the direction of the Yukon Government Community Services Department and reviews animal protection legislation in the Yukon Territory. Specifically, it addresses whether the current legislation and supportive infrastructure are adequate to achieve the goal of ensuring caring and humane treatment of animals in the Territory. The phase 2 report will contain specific recommendations regarding both infrastructure and legislation.

Background

Periodically, specific incidents bring the public's attention to animal cruelty legislation. When these incidents occur, criticism is directed at the only clearly visible target, the legislation currently in place.

While public and media pressure have focussed on legislative change with a tilt towards more severe punishment for acts of cruelty to animals, analysis of any matter affected by legislation must contemplate both the legislation itself and the framework of policy, procedures, resources and staffing that are in place for enforcement.

The stakeholders affected by animal protection legislation include pet owners, dog mushers, farmers, outfitters, wilderness camp operators, humane societies and various other groups and individuals who interact with animals as part of their vocations, hobbies or other interests.

Effective animal protection legislation would meet the legislative goal of ensuring humane treatment of animals without excessive interference in the lives of the various stakeholders.

Information Sources

Preparation of this report involved review of legislation (statutes and regulations), review of judicial decisions, consultation with representatives of humane societies, prosecutors, the Royal Canadian Mounted Police (RCMP), and others involved in drafting and enforcing animal protection legislation in various jurisdictions.

Goals of Animal Protection Legislation

The general goal of animal protection legislation is to ensure that the various interactions between people and animals are objectively humane.

In the case of limited resources, specific goals might be prioritized as follows:

- ◆ Relieve/prevent the distress of the animals. This may range from assisting and/or educating an owner on improving the living conditions of an animal, to the immediate seizure and removal of the animal(s) to a secure location. (This goal is analogous to the steps taken when a social worker considers removal of a child from a risk environment.)
- ◆ Taking steps (seeking a court order) to restrict or prohibit ownership of animals by an individual.
- ◆ Punishment of breach of the Yukon *Animal Protection Act* by fine and/or imprisonment.

Yukon Legislation

There are five Yukon Statutes which speak in some way to the protection of domestic animals:

1. The Animal Protection Act

This act sets out:

- ◆ The circumstances under which an animal is considered to be in distress.
- ◆ The authority under which an agent of the government can intervene where an animal is in distress.
- ◆ Steps that can be taken to deal with the animal's distress. Section 2 (1) of the *Animal Protection Act* sets out that:

(b) ...a peace officer may, subject to this Act, take the action the officer considers necessary or desirable to relieve its distress, and for that purpose may

(c) take custody of the animal;

(d) arrange for any necessary transportation, food, care, shelter and medical treatment of the animal; and

(e) deliver the animal into the custody of an official animal keeper.

- ◆ A framework for prosecution of a person who has caused the distress, including a person who was not the owner of the animal and who did not have care and control of the animal.
- ◆ Authority for a judge or justice to order that a person not have ownership or charge of an animal for as long a period as the judge or justice considers advisable.

2. The Dog Act

The *Dog Act* primarily addresses the control of dogs running at large, but does speak briefly (sections 4 and 5) to care and treatment of dogs.

3. The Pounds Act

The *Pounds Act* deals with livestock matters, including dealing with livestock at large, care of livestock in pasture during winter, and treatment of animals found to be in poor or weak condition (section 23).

4. Highways Act

The *Highways Act* speaks briefly (section 30) to the issue of the presence of domestic animals on Yukon highways.

5. The Municipal Act

Section 265(o) of the *Municipal Act* sets out that a council of a municipality may pass bylaws respecting health and safety of animals.

City of Whitehorse – Municipal Legislation

The City of Whitehorse Animal Control Bylaw, in sections 117 to 119, speaks to cruelty to animals. The current policy is to prosecute animal cruelty matters under the bylaw, rather than the territorial legislation.

Federal Legislation

Criminal Code of Canada

Sections 444 - 447 of the federal *Criminal Code* speak to cruelty to animals. Successful prosecution under the *Criminal Code* requires “mens rea” (proof of a guilty mind, or intent to commit the crime). Prosecutors are often of the view that it is difficult to prove beyond a reasonable doubt that an accused had the requisite guilty mind in many animal protection cases, and therefore prefer to prosecute under provincial (Territorial) legislation. Regardless of amendments to the *Criminal Code* currently under discussion by Canada’s MPs, the hurdle of proving mens rea will remain. It is anticipated that prosecutors in the Yukon will continue to prefer to use the Yukon *Animal Protection Act* where possible.

Process and Support Structure

Following is a brief review of the current procedure of enforcement of the Yukon *Animal Protection Act*.

The typical cruelty to animals complaint comes to one of the humane societies and/or an RCMP detachment.

Upon receipt of the complaint, arrangements are made for attendance upon the animal(s) by, ideally, at least one member of the RCMP and a representative of the humane society

(if available). Whether a veterinarian is in attendance regarding the initial complaint depends on availability of a veterinarian and whether seizure of the animal(s) and/or the laying of charges are being immediately contemplated. When it appears that the animal requires more care than is currently being given to it, and it is not in such distress that its immediate removal is required, recommendations are made to the owner/person in control, and plans are made to attend the animal(s) again at a later date to ascertain whether improvements have been made. There is strong emphasis on the seeking of co-operation from, and the offering of available assistance to, the owner or person in charge of care of the animal(s), and, particularly depending upon the number of animals involved, there is often reluctance to seize animals if there are not available suitable facilities in which to house them.

The fact that legislation very similar to the Yukon *Animal Protection Act* is working well in other jurisdictions indicates that the legislation itself is not the weak link of animal protection in the Yukon. The missing parts of the supporting structure for the Yukon APA are enforcement programs, policies, staffing and funding. With no formal support structure in place, enforcement of the legislation depends upon an ad hoc approach by the individual in receipt of the complaint, which has usually come via a humane society. As noted above, this individual may be a member of the RCMP, a staff member of the Agriculture Branch, or even a volunteer member of a humane society. Complaints often end up in the hands of the RCMP, and their response necessarily depends on available time, support and the expertise and interest of the individual RCMP member.

Mandates/roles of Humane Societies in the Yukon

The Yukon *Animal Protection Act* sets out an approval process for the creation of a humane society and provides that an officer or employee of the humane society may be appointed as a special officer (section 9) “with authority to exercise the powers of a peace officer for the purposes of this Act.”

The Yukon *Animal Protection Act* regulations set out the mechanism for approval of a humane society, and for application by a humane society for the appointment of special constables.

Legislation, Processes and Support Structures of Other Jurisdictions

Northwest Territories and Nunavut

Neither the Northwest Territories nor Nunavut has Animal Protection Legislation. In both territories, the *Herd and Fencing Act* speaks briefly to destruction of animals suffering from disease or injury.

British Columbia

The statutory language in the British Columbia *Prevention of Cruelty to Animals Act* is generally similar to the Yukon *Animal Protection Act* in terms of

identification of animals in distress and steps available to relieve that distress. Only a person who owned or had custody or control of an animal can be charged under the British Columbia act.

Complaints are routed through the British Columbia Society for the Prevention of Cruelty to Animals (BCSPCA) General Manager of Cruelty Investigations. The person currently in this position is a lawyer. At the discretion of this individual, the complaints are investigated by special constable and prosecuted where appropriate.

While, as noted below, the BCSPCA is seeking improvements to the B.C. legislation, the BCSPCA successfully prosecutes cruelty to animal charges on an ongoing basis.

The BCSPCA is actively campaigning to

- ◆ Include in their act prohibition of behaviour by a person that would clearly lead to an animal being in distress

(One example of legislation to which the above would apply can be found in section 8 of the City of Whitehorse *Animal Control Bylaw*:

No person shall transport an animal outside the passenger compartment of any motor vehicle or trailer unless the animal is adequately confined or unless it is secured in a body harness or other manner of fastening which is adequate to prevent the animal from falling off the vehicle or otherwise injuring itself.)

- ◆ Broaden who can be charged under their act
- ◆ Expand their authority to issue orders regarding animal care and enter premises without a warrant to follow up those orders
- ◆ Seize evidence during an investigation
- ◆ Expand the locations where animals are kept to be subject to BCSPCA inspection
- ◆ Increase the penalties allowed under the act
- ◆ Have appointed a special provincial prosecutor in order that there be consistency in interpretation and prosecution of the act

Alberta

Amended in 2005, the Alberta *Animal Protection Act* is the most recently updated western Canadian animal protection legislation. It is similar in basic structure to other western Canadian acts. However, it has some unique features:

- ◆ Section 4 of the Alberta APA allows an officer to access premises (other than a private dwelling house) without applying for a warrant, if the officer perceives that such entry is necessary to ascertain whether an animal is in distress, and, if necessary, deal with the distress. (The Manitoba *Animal Care Act*, section 8(8), allows a police officer entry to a dwelling place under these circumstances.)
- ◆ Section 4.1 sets out that, if an animal is left for more than twenty-four hours without food or water, is abandoned at a veterinary clinic or boarding facility for more than five days, or is left on a rental property where the rental arrangement has ended, the animal may be taken into care by a peace officer.
- ◆ Section 12 sets the upper limit of a fine for breaching the Alberta APA at \$20,000.00. (The upper limit for the Yukon *Animal Protection Act* is \$500.00.)

The regulations under the Alberta *Animal Protection Act* speak to the use of animals for research, keeping of animals in zoos, organization and operation of humane societies, and the sale, transportation and handling of livestock.

The Alberta *Animal Protection Act* is enforced within the cities of Edmonton and Calgary by those cities' respective humane societies. Elsewhere in the province, the act is enforced by the Alberta Society for the Prevention of Cruelty to Animals. Complaints are investigated by full-time special constables employed by the Prevention of Cruelty to Animals.

Officials in Alberta interviewed for this report expressed general satisfaction with the legislation (and the results of actions taken under its authority) and with the support provided by the provincial government.

Saskatchewan

The Saskatchewan *Animal Protection Act* has the same basic framework as the other western acts.

Complaints regarding cruelty to animals are directed to the Saskatchewan Society for the Prevention of Cruelty to Animals, and are investigated by part-time Animal Protection Officers contracted to the Saskatchewan Society for the

Prevention of Cruelty to Animals. The Animal Protection Officers cannot initiate prosecutions, which must be initiated by the appropriate police force.

Alaska

Alaska Statute 11.61.140 deals with cruelty to animals. As with the Canadian Criminal Code, successful prosecution requires a guilty mind or criminal negligence (awareness that the charged behaviour is a “gross deviation” from the behaviour of an “ordinary person”).

Aside from the comment above, the framework of the legislation, in terms of setting out proscribed behaviour, mechanisms whereby animals may be seized and cared for, and penalty provisions, resembles the other legislation reviewed.

As the (mostly financially strapped) municipalities in which cruelty occurs must lay and fund charges to be prosecuted by the state District Attorney’s office, prosecution is rare. More common is an arrangement where, in return for the state not proceeding with prosecution, the wrongdoer agrees to whatever steps are necessary to deal with the current animal distress matter and avoidance of recurrence in the future.

City of Anchorage

The City of Anchorage addresses protection of animals in Title 17 of its Municipal Charter, Code and Regulations. Under Chapter 17.05030, animal control officers have broad powers to take steps to enforce the legislation. Animal control officers cannot initiate prosecutions under the legislation, but must seek the assistance of a police officer to do so.

The Role of Humane Societies

It appears from the similarity of the Yukon *Animal Protection Act* to other western Canadian acts that the legislators’ intent was that humane societies in the Yukon could fulfil the same enforcement role as in the provinces. The attention given to humane societies in the Yukon *Animal Protection Act* regulations supports this position.

The humane societies in the Yukon are neither structured nor funded in such a way that would place them in a position to provide adequate enforcement of the Yukon *Animal Protection Act*. In the past, humane society volunteers have attempted, usually with the help of the RCMP, to provide enforcement services. While well intentioned, this arrangement has not been consistently functional. Effective enforcement requires a regulatory professional. This person would be required to:

- ◆ respond to complaints
- ◆ attend premises that are the source of the complaints

- ◆ deal with individuals projecting every level of anger and emotion
- ◆ make documented observations
- ◆ competently and consistently assess whether animals are in distress, and to what degree
- ◆ know when to request the assistance of other professionals (prosecutors, RCMP, veterinarians)
- ◆ possess various other skills in order to provide a response that may vary from informed advice on better animal care to arrangement for the immediate seizure and removal of animals to a safe and secure location
- ◆ be prepared to assist with the prosecution of formal charges, if necessary.

As noted above, the humane societies in the Yukon do not have available the person(s) with the above qualifications, and are likely limited for the foreseeable future to the provision of animal shelter and animal advocacy services.

The Role of Veterinarians

The issue of the role of veterinarians in animal cruelty matters arose a number of times in the research for this report. It is clear that, with the correct training, non-veterinarians are well able to investigate complaints and proceed with matters to and including the seizure and removal of animals from a distress situation. After that point, examination (and, if necessary, treatment) of the affected animals by a veterinarian, with the appropriate subsequent report/testimony can be integral to successful prosecution. For emphasis, it was not the position of any enforcement official in any jurisdiction that the presence of a veterinarian was critical (veterinary assistance was always welcome) to the initial investigation of a complaint.

It is worthy of note that a number of jurisdictions have veterinarians in senior civil service roles (i.e. the Chief Provincial Veterinarian in Alberta) where the veterinarian(s) serve(s) as a valuable professional resource regarding animal health and humane care issues.

Summary

The Yukon *Animal Protection Act* is reasonably well written animal protection legislation. With a few small amendments, it could be significantly better.

The Yukon *Animal Protection Act* is not functioning as it was intended to. To remedy this, changes are recommended to the infrastructure that supports the Yukon *Animal Protection Act*.

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