

ANIMALS AND THE LAW

The PAW Act (the Provincial Animal Welfare Act)

-- Bill 50 --

An Act to Amend the *Ontario Society for the Prevention of Cruelty to Animals Act*
("OSPCA" Act)

By Lynda Spencer (April 2009)

Bill 50, an Act to amend the OSPCA Act, brought to the Ontario legislature by Honourable R. Bartolucci, Minister of Community Safety and Correctional Services, passed 3rd Reading in November 2008. At the time of writing, this Bill awaits Royal Assent.

The preamble of Bill 50 begins:

"The people of Ontario and their government:
Believe that how we treat animals in Ontario helps define our humanity,
morality and compassion as a society;
Recognize our responsibility to protect animals in Ontario" ...

Some New Amendments Are Welcome

Bill 50 has introduced some welcome changes. The former Act made it an offence for persons who are in the business of breeding or selling cats or dogs (i.e. puppy mills) to fail to comply with standards of care. That section is repealed and replaced with Section 11.1 that states it will now be an offence for *any person* who owns or has custody or care of *any animal* to fail to comply with standards of care that are prescribed by regulation.

In addition, the new Act adds new prohibited behaviours and offences. Section 11.2 states, in part: "no person shall cause ... or permit an animal to be in distress; no person shall train an animal to fight ... or permit an animal ... to fight other animals"...

Also new, Bill 50 provides for the inspection of roadside zoos under section 11.4 (1): "An inspector or an agent of the [OSPCA] may, without a warrant, enter and inspect any building or place used for animal exhibit, entertainment, boarding, hire or sale ..."

These new provisions, which are the first comprehensive amendments since the Act was introduced in 1919, seem to broaden and modernize the OSPCA Act.

Exemptions Leave Many Animals With No Protection

However, subsections (6) (a), (b), and (c) of Section 11.2 provide exemptions, so that the offences of causing or permitting distress to an animal do not apply in respect of

native wildlife and fish in the wild, generally accepted practices of agricultural animal management, or other classes of animals or activities prescribed by regulation.

In other words, dog fights, rooster fights and substandard puppy mills are prohibited, but the causing of pain, suffering and distress to trapped wild animals and factory-farm animals are permitted under the new Act. Moreover, research animals are left out of this Act altogether and have no protection at all. So, while some Bill 50 amendments seem to broaden the scope of the former OSPCA Act, the exemptions place limits on who can be prosecuted and under what circumstances. In fact, the OSPCA Act never had such exemptions in the past. Introducing them now is a major step backwards.

Different Standards Applied to the Same Violations

The new Act protects the animal-use industry and applies different standards to the same violations. For example, the subjecting of cats and dogs in a research facility to physical harm, pain or psychological stress is allowed, (in fact, cannot even be investigated by the OSPCA), whereas those same acts done by ordinary individuals would be prosecuted, if caught. Or, to give another example, the containment of farm animals in a cage so small that they can hardly move, and the custom of cutting off body parts such as beaks, teeth and toes without anesthesia, is permissible, while those same acts done in a residential context to non-farm animals, is illegal.

The Sad Existence of Animals Without Protective Legislation

Animals used for research are housed at research facilities that are private property, and the OSPCA is denied access to investigate any complaints of animal cruelty. Over one million animals are used in research in Ontario every year. Bill 50 exempts all research animals from protection from abuse or cruelty.

Thousands of wild animals are hunted, trapped, maimed, and killed every year in Ontario. No protection is afforded to them under the new OSPCA Act.

All animals raised for food are exempted from protection under the new Act. Activities “carried out in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry” are exempt from prosecution for cruel or inhumane acts. Over 200 million farm animals each year (Statistics Canada figures – 2006 data) have no protection against cruel treatment.

Some of the generally accepted agricultural practices that are exempt from prosecution include:

- 1) the use of gestation and farrowing crates for breeding and nursing pigs that thoroughly confine the animals. Growth promoters and antibiotics are required in massive doses because the cramped cages cause stunted

- growth, and the build-up of the animals' waste causes chronic infections and respiratory illnesses;
- 2) the removal of male pigs' teeth (tusks) without anesthesia;
 - 3) castration using crushing devices or rubber rings, with no anesthesia;
 - 4) the use of battery cages for laying hens that hold 4 chickens each, which confine the birds so tightly they cannot stretch or spread their wings.

Animal Law Taught at University of Toronto Law School

While Bill 50 falls far short of the goals stated in its own preamble, society is making some progress. Lesli Bisgould, a lawyer who has practiced animal rights law, began teaching "Introduction to Animals and the Law" at the University of Toronto Law School this January. This course considers legal issues related to non-human animals. It looks at the unique role that animals play as "living property" in a legal system created by and for humans. We eat them, experiment on them, and they are also our beloved family companions. The course looks at how the law handles this discord, and examines the development of anti-cruelty legislation.

Animal Alliance of Canada – Dedicated to Animal Protection

Animal Alliance of Canada, a non-profit group dedicated to animal protection through education and advocacy, made a submission regarding Bill 50 to the Members of the Ontario Provincial Parliament on August 8, 2008. They asked for, *inter alia*, "the removal of all exemptions from the Act and Regulations, recognizing that the exemptions leave millions of animals without any protection from abuse and cruelty". Their recommendations went unheeded.

Animal Alliance of Canada relies on donations from the public, and offers a Lifetime of Caring Estate Plan for those who are interested in advancing the cause of animal protection by leaving a bequest in their will. You may find out more at www.animalalliance.ca.