

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AND:

ANIMAL JUSTICE CANADA

Proposed Intervener

**MOTION RECORD OF THE PROPOSED INTERVENER / MOVING PARTY,
ANIMAL JUSTICE CANADA**

(Motion for Leave to Intervene)

DATED: April 12, 2018

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Tab 1

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AND:

ANIMAL JUSTICE CANADA

Proposed Intervener

NOTICE OF MOTION

Motion for Leave to Intervene

TAKE NOTICE THAT the proposed intervener, ANIMAL JUSTICE CANADA (“Animal Justice”), will make a motion to the court on April 20, 2018, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Perth Courthouse, 43 Drummond Street East, Perth, Ontario, K7H 1G1.

PROPOSED METHOD OF HEARING: The motion is to be heard orally

THE MOTION IS FOR:

1. An order granting Animal Justice leave to intervene in the within Application;
2. An order granting Animal Justice leave to file a factum of not more than 20 pages (or such other length as this Honourable Court may deem appropriate);
3. An order granting Animal Justice leave to present oral arguments at the hearing of this Application of not more than 30 minutes (or such other length as this Honourable Court may deem appropriate);

4. An order that costs shall not be awarded for or against Animal Justice; and
5. Such further or other orders and directions as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Animal Justice is incorporated pursuant to the federal *Canada Not-for-profit Corporations Act*, and is the only Canadian animal advocacy organization focused on animal law. The objects of Animal Justice include the prevention of cruelty to animals through the enforcement of existing laws.
2. Animal Justice has demonstrated a long-standing, genuine, and continuing concern with ensuring that animals are protected from harm, suffering, and killing to the maximum extent possible under Canadian law.
3. Animal Justice has intervened or otherwise participated in court cases across Canada, including at the Supreme Court of Canada.
4. Animal Justice's mandate includes ensuring the effective enforcement of animal protection laws. Its concern with effective law enforcement is demonstrated by its analyses and critiques of existing animal protection laws in Ontario, such as a comprehensive report it prepared, *OSPCA Act: A Better Way Forward – a Report on the Ontario Society for the Prevention of Cruelty to Animals Act*. Accordingly, the within application goes to the core of Animal Justice's mandate and interests, and Animal Justice can offer the Court a unique perspective on the matters at issue.
5. Animal Justice would seek to assist the Court by bringing forward a unique perspective arising from its particular experience and expertise.

6. If granted leave to intervene, Animal Justice would work with counsel for the parties to ensure that its submissions are as constructive as possible and not duplicative.
7. Animal Justice will not seek to file any new evidence, but rather would rely entirely on the record as it has been created by the parties.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Motion Record of the moving party dated April 12, 2018;
2. Factum and Book of Authorities of the moving party; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

DATED: April 12, 2018

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JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
PERTH, ONTARIO

NOTICE OF MOTION

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Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AND:

ANIMAL JUSTICE CANADA

Proposed Intervener

AFFIDAVIT OF NICK WRIGHT

I, Nick Wright, of the City of Toronto, AFFIRM:

1. I am the Founder and Chair of the Board of Animal Justice Canada ("**Animal Justice**") and, as such, have personal knowledge of the matters hereinafter deposed in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.

A. Background of Animal Justice

2. Animal Justice is the only Canadian animal advocacy organization focused on animal law. Animal Justice comprises both a charitable wing (Animal Justice Canada), and a non-profit wing (Animal Justice Canada Legislative Fund).

3. Collectively, Animal Justice Canada and Animal Justice Canada Legislative Fund operate as "Animal Justice".

4. Animal Justice Canada was incorporated pursuant to the federal *Canada Not-for-profit Corporations Act* on April 8, 2008, and received charitable status on May 19, 2009 pursuant to the federal *Income Tax Act*, with its registered office at 100 King Street West, Suite 5700,

Toronto, Ontario. The objects of Animal Justice Canada include the prevention of cruelty to animals through the enforcement of existing laws, and the education of the public on animal practices.

5. Animal Justice Canada Legislative Fund is a non-profit organization incorporated on February 14, 2012 pursuant to the federal *Not-for-profit Corporations Act*, with its registered office at 100 King Street West, Suite 5700, Toronto, Ontario. The objects of Animal Justice Canada Legislative Fund include advocating for the humane treatment of animals.

6. Animal Justice has approximately 39,000 supporters and donors from communities across Canada. Animal Justice has two full-time staff, two part-time staff, occasional summer and articling students, and dedicated boards of directors and advisors that direct Animal Justice's policies and priorities. The advisors comprise a wide range of leading academics, experts in animal law, professionals, and laypersons with significant experience in animal protection work and other relevant areas. For example, three professors who are members of our board of advisors – Peter Sankoff, Vaughan Black, and Katie Sykes – recently published a book on animal law, entitled *Canadian Perspectives on Animals and the Law* (Irwin Law: Toronto, 2015).

7. Animal Justice is also supported by hundreds of volunteers, and receives *pro bono* legal assistance from a wide array of members in the Canadian legal community.

8. Animal Justice's work has been supported by grants from a number of well-established Canadian charitable foundations, including the Law Foundation of Ontario, the Donner Foundation, the Margolis Family Foundation, and the Animal Welfare Foundation of Canada.

9. Animal Justice has demonstrated a long-standing, genuine, and continuing concern with ensuring that animals are protected from harm, suffering, and killing to the maximum extent possible under Canadian law. To this end, we engage in a variety of activities designed to publicize animal protection concerns, enforce animal protection laws, and advocate for new, stronger laws to protect animals. We seek to use the law creatively, applying existing laws in novel ways to help animals. Animal Justice has expertise in considering the often-complex issues that arise when considering the myriad of ways in which animals' interests intersect with Canadian law.

10. Animal Justice works in furtherance of its objectives in a variety of ways:

(a) **Public Education**: Animal Justice engages in public education by publishing newsletters, reports, and other publications on legal protections and the treatment of animals that are available to the general public; by maintaining a website containing our reports, position statements, and other public documents; by maintaining Canada's most comprehensive Animal Law Library—a searchable database of academic articles, case law, and statutes pertaining to animals; by commenting on current animal protection and animal rights issues in domestic and international news media; by participating in conferences and other public events at which legal protections for animals and animal rights are discussed; by supporting animal law clubs at law schools to provide students with volunteer opportunities and assist future lawyers in understanding issues pertaining to animals and the law; by monitoring and documenting conditions in captive animal facilities like farms, zoos, aquariums, and circuses, and publicizing those conditions through videos, photos, and written works; and by running national billboard advertisement campaigns to publicize concerns over the mistreatment of animals.

(b) **Position Papers and Law Reform Submissions**: Animal Justice prepares position papers and makes submissions to various governmental bodies concerning the advancement of legal protections for animals, the implications for animals and their welfare of proposed legislative or policy initiatives, matters affecting the rights and freedoms of animal advocates to publicize and speak out against animal cruelty, and also advises elected officials regarding these matters at the federal, provincial, and municipal levels.

(c) **Legal Advice and Assistance**: Animal Justice provides assistance in situations where animals and their wellbeing or lives are threatened, including providing advice to individuals and other organizations, and assistance in pursuing administrative or informal remedies; providing assistance to animal advocates in monitoring animal welfare conditions in captive animal facilities and publicizing violations of animal

welfare standards; and providing assistance to animal advocates in exercising their legal rights to speak out about animal protection issues and engage in lawful protest.

(d) **Legal Action**: Animal Justice takes action in its own right when it perceives violations of laws directly protecting animals or pertaining to animals, by launching complaints with the government and other administrative agencies, or by appearing in court and before tribunals as a party or intervener in legal matters that engage animals' interests.

11. Since its inception, Animal Justice has maintained a strong focus on making submissions to governments and courts with respect to laws affecting animals and their protections. Some examples of these submissions include:

(a) 2017: Intervening in *Ocean Wise Conservation Association v Vancouver Board of Parks and Recreation*, 2018 BCSC 196, a case in which the Vancouver Aquarium challenged a municipal bylaw that restricted confining and displaying whales and dolphins in tanks at its facility in Stanley Park;

(b) 2017: Taking legal action against the Ontario Minister of Natural Resources and Forestry over the Minister's failure to prepare recovery strategies for endangered and threatened animals pursuant to the *Endangered Species Act, 2007*, SO 2007, c 6;

(c) 2016: Intervening in *Vancouver Aquarium Marine Science Centre v Charbonneau*, 2017 BCCA 395, a case concerning the Vancouver Aquarium's claim of copyright ownership in video footage and photographs taken by third parties and used in a documentary film that is critical of the Aquarium's practices. Animal Justice's intervention was cited favourably in the decision;

(d) 2015: Intervening in *R v DLW*, 2016 SCC 22, a Supreme Court of Canada appeal in which the scope of the criminal offence of bestiality was at issue. Animal Justice's submissions were cited favourably in the majority decision, and largely adopted in the dissent;

- (e) 2016: Seeking leave to intervene before a police disciplinary tribunal in the case of a Durham Region police officer who was charged with discreditable conduct for rescuing a kitten from a drug user. The matter was settled, with the police acknowledging that assisting animals in distress is not discreditable conduct;
- (f) 2016: Seeking leave to intervene in *R v Robert et al*, 2016 ONCJ 697 in Chatham, Ontario, to save the lives of 21 pitbull-type dogs, rescued from an alleged dog-fighting ring, whom the Ontario Society for the Prevention of Cruelty to Animals sought to euthanize;
- (g) 2015: Participating in *Toronto (City) v Pallas* (2015), Ontario Municipal Board Case No. PL140916, an appeal before the Ontario Municipal Board concerning the issuance of a minor variance that would permit the operation of a traveling exotic animal zoo in the City of Toronto;
- (h) 2012: Seeking leave to intervene in *Eng v Toronto (City)*, 2013 ONSC 6818, a constitutional challenge to a Toronto bylaw outlawing the possession and sale of shark fin products;
- (i) 2016 – present: Engaging in advocacy efforts in support of Bill S-203, a bill currently before the Canadian Senate that would impose a national ban on the keeping, breeding, and import of cetaceans;
- (j) 2016: Advising Members of Parliament on and engaging in advocacy efforts in support of Bill C-246, which would have updated criminal animal cruelty laws;
- (k) 2015: Providing submissions and testimony to the Social Policy Committee of the Ontario Legislature and Minister of Community Safety and Correctional Services concerning proposed amendments to the *Ontario Society for the Prevention of Cruelty to Animals Act* (“OSPCA Act”) to address marine mammal welfare and ban the keeping of orca whales in captivity;

- (l) 2017: Testifying before the Standing Committee on Agriculture of the House of Commons with respect to proposed amendments to federal farmed animal transport laws;
- (m) 2017: Providing submissions and testimony with respect to a City of Toronto proposal to further restrict the keeping and exhibition of exotic animals;
- (n) 2017: Providing testimony with respect to a City of Vancouver proposal to ban the retail sale of cats, dogs, and rabbits;
- (o) 2015 – present: Making regular submissions to provincial governments concerning proposed amendments to wildlife protection regulations to permit increased hunting and trapping;
- (p) 2015: Providing comment to the Attorney General of Ontario on Bill 52, the *Protection of Public Participation Act*, an anti-SLAPP bill designed to protect freedom of expression and public participation, and ensure unmeritorious lawsuits are dismissed early in the legal process;
- (q) 2012 – 2015: Making submissions to the Prince Edward Island government and legislators concerning proposed amendments to its provincial animal protection laws;
- (r) 2011: Preparing a legal opinion on the City of Toronto's jurisdiction to restrict shark fin products and educated city councillors on the issue;
- (s) 2013: Authoring an extensive report analyzing the benefits and drawbacks of Ontario's provincial animal welfare legislation, entitled *OSPCA Act: A Better Way Forward*;
- (t) 2012: Submitting recommendations to the Ontario Human Rights Commission on the need to revise its policy on "creed", a protected ground under Ontario human rights law, to include strongly-held secular beliefs like ethical veganism in addition to religious beliefs. The Commission adopted this position in 2015;

- (u) 2014 – present: Submitting recommendations to the National Farmed Animal Care Council regarding proposed updates to multiple codes of practice pertaining to farmed animals;
- (v) 2017: Submitting a legal complaint to Prince Edward Island animal welfare officials advising that a pig chasing event at a local fair was contrary to provincial law, prompting the cancellation of the event;
- (w) 2012 – 2017: Submitting regular enforcement complaints to provincial and federal law enforcement officials, including the BC Society for the Prevention of Cruelty to Animals, Ontario Society for the Prevention of Cruelty to Animals, Calgary Humane Society, Alberta Society for the Prevention of Cruelty to Animals, Toronto Animal Services, Prince Edward Island Humane Society, Prince Edward Island Department of Agriculture, and Canadian Food Inspection Agency, requesting enforcement of existing animal protection laws in relation to exotic animals, zoos, circuses, rodeos, fur farms, abusive animal training methods, farmed animals, farmed animal transport, and animal slaughter;
- (x) 2012 – 2017: Submitting complaints to the Competition Bureau of Canada regarding false advertising by companies and organizations selling animal products, including fashion retailer Ardene, Dairy Farmers of Canada, chicken company Burnbrae Farms, jacket company Canada Goose, chicken processor Maple Lodge Farms, and grocery chain Safeway;
- (y) 2014: Created a joint program with Community Legal Information Association in Prince Edward Island to increase public understanding of legal issues pertaining to animals in that province; and
- (z) 2011: Prepared a legal opinion detailing Air Canada's legal authority to stop accepting primates destined for research as air cargo. The airline later ended this practice.

B. Animal Justice's mandate includes ensuring the effective enforcement of animal protection laws

12. Animal Justice seeks to protect animals through a variety of legal mechanisms, including advocating for improvements to federal, provincial, and municipal laws protecting animals. However, laws protecting animals are only good as their enforcement. To that end, Animal Justice has always maintained a strong focus on ensuring existing laws are vigorously enforced.

13. Animal Justice is particularly concerned with ensuring animal law enforcement bodies are structured and funded in a way that promotes transparency, accountability, and effectiveness—qualities that we believe are essential to ensuring animals benefit from the protections afforded by existing laws, and that the public can have confidence in animal law enforcement.

14. The Ontario SPCA is created by provincial statute, but is empowered by statute to enforce any and all laws in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals. The Ontario SPCA's broad jurisdiction thus makes it a key gatekeeper of animal law enforcement, not just for protections available to animals under the provincial OSPCA Act, but also under other provincial statutes, federal criminal animal cruelty laws, federal laws protecting farmed animals during transportation and slaughter, and even municipal by-laws. For this reason, Animal Justice is especially concerned that the Ontario SPCA is in a position to vigorously enforce laws.

15. Our concern with effective law enforcement is demonstrated by Animal Justice's work to critique and improve Ontario animal protection laws and ensure their enforcement, including:

a) Preparing a comprehensive report on Ontario's provincial animal protection laws, entitled *OSPCA Act: A Better Way Forward – a Report on the Ontario Society for the Prevention of Cruelty to Animals Act* ("the Report"), attached as **Exhibit "A"**. The Report provides an overview of Ontario provincial laws and how they have been interpreted; the Ontario SPCA's role in enforcing laws and providing care to animals; and examines concerns over governance, transparency, accountability, and conflict of interest inherent in the mandate and operation of the Ontario SPCA;

b) Providing written and oral testimony to the Social Policy Committee of the Ontario Legislature on Bill 80, which proposed to amend the OSPCA Act to enhance protections for

orcas and other marine mammals, attached as **Exhibit “B”**. Animal Justice also provided a written submission to the Minister of Community Safety and Correctional Services, attached as **Exhibit “C”**. Animal Justice’s submissions emphasized our concern with the effective enforcement of laws protecting marine mammals. In particular, Animal Justice recommended requiring the Ontario SPCA to conduct regular, unannounced inspections instead of captive animal facilities instead of relying on allegations of mistreatment to be presented. Animal Justice also recommended that Ontario SPCA inspection reports of facilities housing marine mammals, veterinary records, and details of enforcement actions should be publicly available to ensure transparency, accountability, and contribute to public confidence in the law enforcement process;

c) Meeting and communicating on multiple occasions with the Minister of Community Safety and Correctional Services and Members of Provincial Parliament to discuss our concerns with the animal protection laws in Ontario and their enforcement, including the province’s funding agreement with the Ontario SPCA, the lack of local animal law enforcement services in many major cities and other areas of the province, and the governance of the Ontario SPCA. A letter sent to the Minister in November, 2016 regarding governance of the Ontario SPCA is attached as **Exhibit “D”**. A letter sent to the Minister in March, 2017 regarding the Ontario SPCA funding agreement is attached as **Exhibit “E”**;

d) Regularly filing detailed complaints with the Ontario SPCA and other enforcement authorities when Animal Justice becomes aware of evidence of illegal animal cruelty, including violations of the OSPCA Act, federal criminal law, and federal laws protecting animals during transportation and slaughter. On occasion, Animal Justice receives no follow-up communications from the Ontario SPCA regarding complaints we file, including a record that the complaint was received, details of investigations conducted into allegations, and details of enforcement action, if any, that was taken. Because the Ontario SPCA is not subject to provincial freedom of information legislation, we therefore have no avenue to obtain further information about the status of enforcement complaints. Likewise, there is no legal mechanism to complain about the conduct of an individual agent or the

Ontario SPCA as a whole, as the agency is not subject to police accountability legislation and is not overseen by the Ombudsman of Ontario.

C. Animal Justice's Proposed Intervention

16. If granted leave to intervene, Animal Justice would work with counsel for the appellants and counsel for the other interveners (if any) to ensure that our submissions are not duplicative.

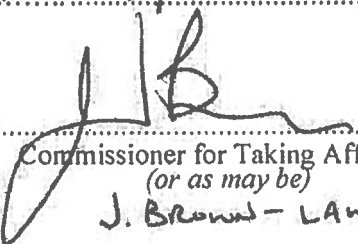
17. Animal Justice does not seek leave to file any new evidence and would rely entirely on the record as it has been created by the parties. Animal Justice would seek no costs and would ask that no costs be awarded against it.

18. Animal Justice therefore respectfully requests that it be granted leave to intervene in this appeal, with the right to file a factum and present oral argument.

Affirmed before me at the City of


TORONTO
in the City of PROVINCE OF ONTARIO

....., on
APRIL 3, 2018


.....
Commissioner for Taking Affidavits
(or as may be)
J. Brown - Lawyer


.....
(Signature of deponent)

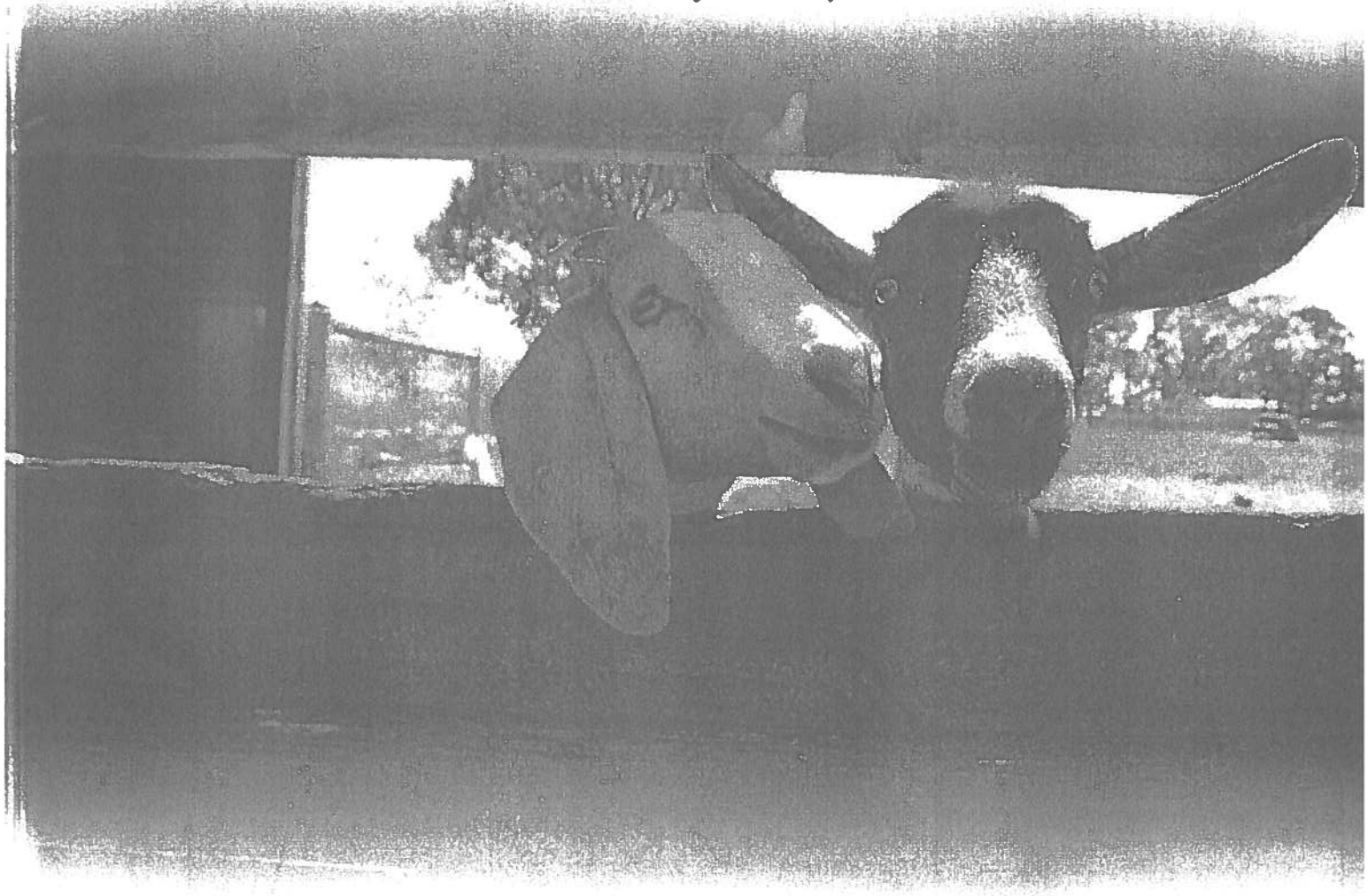
This is Exhibit A referred to in the Affidavit of
Nick Wright, affirmed on April 3, 2018



Commissioner for Taking Affidavits (or as the case may be)

OSPCA ACT: A BETTER WAY FORWARD

*A Report on the Ontario Society for
the Prevention of Cruelty to Animals Act*



This report is not intended to be construed as legal advice and should not be relied upon as such.
It is current as of December 2013 and pertains only to the jurisdiction of Ontario, Canada.

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registered trademark.

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FOREWARD

The *Ontario Society for the Prevention of Cruelty to Animals Act* is Ontario's central piece of animal welfare legislation. However, prior to the release of this Report, there were no freely accessible publications for those with an interest to understand the scope, applicability, and judicial interpretation of this statute.

This Report provides a comprehensive overview of the function and applicability of the *OSPCA Act* and corresponding regulations, as well as a detailed summary of current issues surrounding the function of the *Act* as identified by interested stakeholders.

Based on the growing interest in Canadian animal welfare laws, this Report outlines recent recommendations for legislative amendment to the *OSPCA Act* while providing further best practice recommendations for improvement of this statute.

This report was prepared by Ashley Hamp-Gonsalves, Neva Novakovic, Elizabeth Schoales, Zeynep Husrevoglu and Nicholas dePencier Wright. The cover page photo was taken by Jo-Anne McArthur.

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EXECUTIVE SUMMARY

The *OSPCA Act* legislates an inherent conflict of interest by mandating the OSPCA's investigatory/enforcement function without establishing independent oversight of the OSPCA, which also carries out sheltering services. The *OSPCA Act* exempts industry practice from compliance with the prohibition on causing or permitting an animal to be in distress, as well as the *Standards of Care* prescribed through Regulation. The *OSPCA Act* prevents animals subject to redemption periods from receiving adequate and appropriate medical care. There are no current minimum standards of care specifically directed at animals in the shelter environment, or marine mammals who are held in captivity.

Figure 1: OSPCA Legislated Enforcement Function

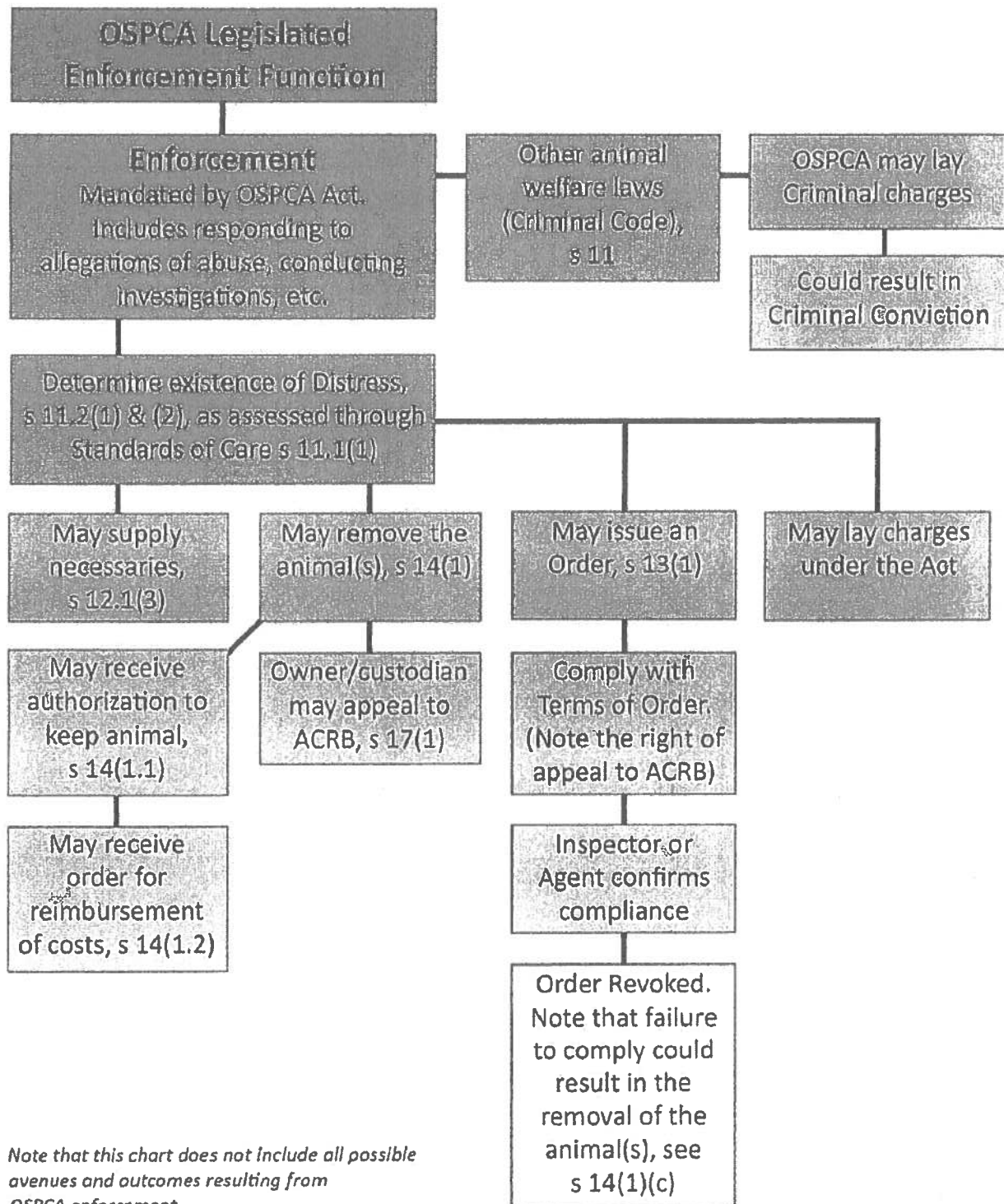
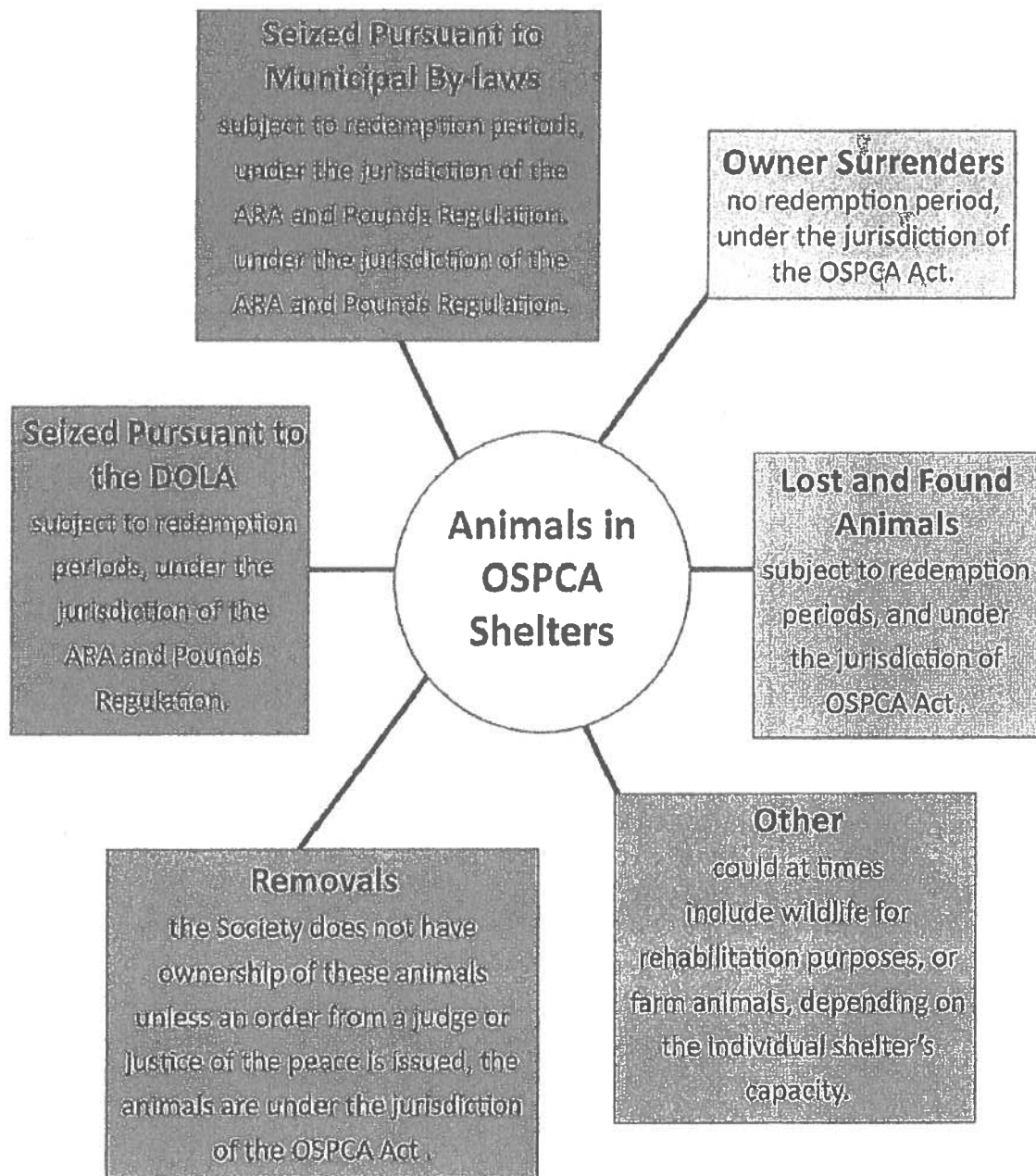


Figure 2: Animals in OSPCA Shelters

Figure 2: Animals in OSPCA Shelters



Note that this figure does not include all animals in OSPCA shelters at any given time

Section 1: Introduction

Ontario Society for the Prevention of Cruelty to Animals Act: A Better Way Forward (the “**Report**”) provides an in-depth analysis and detailed account of the scope and applicability of Ontario’s central piece of animal welfare legislation, the *Ontario Society for the Prevention of Cruelty to Animals Act* (“**OSPCA Act**” or “**Act**”). This analysis includes discussion surrounding the history and context of the *Act*, the key provisions and function of the *Act* and any judicial interpretation thereof. Subsequent sections of the Report canvass issues pertaining to the current statute as identified by interested stakeholders, and outline and analyze recent studies, reviews, and proposed amendments to the *Act*. In the final section of this Report, Animal Justice Canada (“**Animal Justice**”) provides best practice recommendations for improvement of the *OSPCA Act* based on the *Act*’s function, identified issues, interested parties, reviews and reports, and recent legislative treatment.

The overall purpose of this Report is to help educate the public by providing an overview of the *Act*, while also providing recommendations for improvement of the *Act* with the goal of strengthening animal protection laws in the province of Ontario.

Section 2: The *OSPCA Act*

This section of the Report provides a comprehensive overview of the OSPCA Act by outlining the history and context of the Act, and identifying its key provisions or functions and any judicial treatment thereof.

A. History

In 1873, the Ontario Society for the Prevention of Cruelty to Animals (the “OSPCA” or “Society”) was founded by citizens with a concern for animal welfare.¹ The role of the OSPCA at this time was to bring awareness of instances of animal cruelty to the responsible authorities.² In 1887, the Ontario Board of Police Commissioners made the decision to appoint a police officer who would manage animal cruelty matters full-time.³ Following these events, legislation was passed in 1919 to accord protection to animals.⁴ This legislation authorized OSPCA inspectors and agents to investigate instances of animal abuse.⁵ The 1919 *Act* was repealed by the government in 1955 and replaced with legislation which forms the basis of the present *OSPCA Act*.⁶ The 1955 *Act* empowered OSPCA inspectors and agents to enter onto property, conduct investigations and remove animals in need of care.⁷

Between 1955 and 2008, the *OSPCA Act* underwent little comprehensive change. The most recent, and most significant, amendments to the *OSPCA Act* took place on March 1, 2009, when the *Provincial Animal Welfare Act* came into force. These amendments represented significant updates to the *Act* as they were the first wide-ranging changes to be made to Ontario’s animal protection laws since 1919.⁸ Resulting changes to the *Act* included the creation of standards of care for all animals, the granting of authority for the OSPCA to inspect premises other than

¹ Ontario Society for the Prevention of Cruelty to Animals, History, online: <<http://www.ontariospca.ca/inside-the-ospca/history.html>> [OSPCA History].

² OSPCA History, *ibid.*

³ OSPCA History, *ibid.*

⁴ OSPCA History, *ibid.*

⁵ OSPCA History, *ibid.*

⁶ OSPCA History, *ibid.*

⁷ OSPCA History, *ibid.*

⁸ Ontario Ministry of Community Safety and Correctional Services, Animal Welfare, online: <<http://www.mcscs.jus.gov.on.ca/english/AnimalWelfare/paws.html>> [MCSCS, Animal Welfare].

homes, making it an offence to cause or permit distress to an animal, and the creation of exemptions from compliance with certain provisions of the *Act* for standard industry practice.⁹

B. Context

The *OSPCA Act* is not the only piece of animal welfare legislation that exists in the province of Ontario. This section of the Report outlines how the *Act* operates in relation to these other sources of law. There are multiple sources of animal welfare legislation in the province of Ontario, including the *Criminal Code*, the *Animals for Research Act*, the *Dog Owners' Liability Act*, and varying municipal by-laws.

1. Criminal Code

The *OSPCA Act* sets requisite standards of care for animal owners or custodians and prohibits persons from causing or permitting an animal to be in distress. These provisions may be referred to as “animal cruelty laws.” However, there are also federal animal cruelty laws, as set out in the *Criminal Code*.¹⁰

While the *Criminal Code* and *OSPCA Act* contain separate and distinct animal welfare laws, the *Act* creates some overlap for OSPCA investigators. The *OSPCA Act* empowers investigators to enforce animal cruelty laws, which includes those contained in the *Criminal Code*. Investigators may choose to lay charges under the *Criminal Code* in circumstances of severe cruelty and neglect, enabling the OSPCA to bring these cases before the court.

2. Provincial Legislation and Municipal By-laws

i. Animals for Research Act, Dog Owners' Liability Act, Municipal By-laws

OSPCA branches have the ability to enter into pound contracts with municipalities. In doing so, the Society becomes responsible for enforcing municipal animal by-laws and the *Dog Owners' Liability Act* (“DOLA”).¹¹ Animals seized under the applicable by-laws or the DOLA are

⁹ MCSCS, *Animal Welfare*, *ibid.*

¹⁰ *Criminal Code*, RSC 1985, c C-46, ss 444-447.1.

¹¹ Dr. Alan H. Meek and Hon. Patrick J. Lesage, “Independent Review of Events in May 2010 at the York Region Branch of the Ontario Society for the Prevention of Cruelty to Animals” (April, 2011) at 17, online: <<http://ospcatruth.com/docs/OSPCARReport/>> [Meek Lesage Review].

considered to be “pound animals” and the premises where they are held fall under the jurisdiction of the *Animals for Research Act* (“ARA”). Many animals who are housed at OSPCA shelters or affiliates are “pound animals,” and therefore the shelter must meet the standards prescribed by the *Pounds Regulation* of the ARA.¹²

The OSPCA is not the responsible body for enforcing the standards prescribed by the ARA. Instead, the Ontario Ministry of Agriculture and Food and the Ministry of Rural Affairs (“OMAFRA”) is the responsible ministry.

ii. *Veterinarians Act*

Pursuant to the *OSPCA Act*, compliance with the *Standards of Care Regulations* “does not apply to a veterinarian providing veterinary care, or boarding an animal as part of its care, in accordance with the standards of practice established under the *Veterinarians Act*.”¹³

Additionally, the *Act*’s prohibitions on causing or permitting an animal to be in distress “do not apply to a veterinarian providing veterinary care, or boarding an animal as part of its care, in accordance with the standards of practice established under the *Veterinarians Act*.”¹⁴

The *Veterinarians Act*, and its corresponding Regulation, O Reg 1093, govern the practice of veterinary medicine in the province of Ontario.¹⁵ The ministry responsible for administering the *Veterinarians Act* is the Ontario Ministry of Agriculture and Food. The *Veterinarians Act* continues the College of Veterinarians of Ontario (“CVO”) that has as one of its objects to “establish, maintain and develop standards of qualification and standards of practice for the practice of veterinary medicine.”¹⁶ The CVO’s *Minimum Standards for Veterinary Facilities in Ontario* contains welfare standards for animals that result from the minimum standards for accreditation of a veterinary facility. These standards include, for example, that ambient temperatures be maintained, that food storage areas contain sufficient food to feed nutritiously

¹² *Pounds*, RRO 1990, Reg. 23.

¹³ *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36, s 11.1(3) [*OSPCA Act*].

¹⁴ *OSPCA Act*, *ibid*, s 11.2(7).

¹⁵ Meek LeSage Review, *supra* note 11 at p 22; *Veterinarians Act*, RSO 1990, c V.3.

¹⁶ *Veterinarians Act*, *ibid*, s 3(2)2.

the reasonably expected number and variety of confined animals, and that the facility contains material for clean, dry bedding.¹⁷

C. Key Provisions / Function

This section outlines the key provisions and functions of the *OSPCA Act*, including a subsection that canvasses the way in which the *Act* shapes the OSPCA.

One of the main functions of the *Act*, through corresponding Regulations, is to prescribe standards of care that must be complied with by persons owning or having custody of animals.¹⁸ Basic standards of care applying to “all animals,” as outlined in the *Standards of Care* Regulation, clearly stipulate that all animals have basic standards of care that must be met in order to be in compliance with provincial law.¹⁹ These basic standards include the following:

- adequate and appropriate food and water;²⁰
- adequate and appropriate medical attention;²¹
- the care necessary for its general welfare;²²
- transportation in a manner that ensures its physical safety and general welfare;²³
- an adequate and appropriate resting and sleeping area;²⁴
- adequate and appropriate:
 - (a) space to enable the animal to move naturally and to exercise;
 - (b) sanitary conditions;
 - (c) ventilation;
 - (d) light; and,
 - (e) protection from the elements, including harmful temperatures.²⁵

Specific standards of care are also prescribed for dogs who live outdoors, captive wildlife and captive primates.²⁶

¹⁷ College of Veterinarians of Ontario, “Minimum Standards of Veterinary Facilities in Ontario,” Preamble, Part 2.2.4; Title 2, Parts 12.10, 12.11.3 online:

<<http://www.cvo.org/imis15/CVO/PDF/Accreditation/MinimumStandardsOct2012.pdf>>.

¹⁸ *OSPCA Act*, *supra* note 13, s 11.1(1).

¹⁹ *Standards of Care*, O Reg. 60/09 [*Standards of Care*].

²⁰ *Standards of Care*, *ibid*, s 2(1).

²¹ *Standards of Care*, *ibid*, s 2(2).

²² *Standards of Care*, *ibid*, s 2(3).

²³ *Standards of Care*, *ibid*, s 2(4).

²⁴ *Standards of Care*, *ibid*, s 2(5).

²⁵ *Standards of Care*, *ibid*, s 2(6).

²⁶ *Standards of Care*, *ibid*, ss 3, 4, 5, 6.

In addition to prescribing standards of care, the *OSPCA Act* prohibits the training of an animal to fight with another animal or permitting an animal owned or in a person's custody or care to fight with another animal,²⁷ and mandates reporting by veterinarians who have reasonable grounds to believe that an animal has been or is being abused or neglected.²⁸

Pursuant to the *OSPCA Act*, no person shall cause an animal to be in distress, and no owner or custodian of an animal shall permit the animal to be in distress.²⁹ For the purposes of the *Act*, distress is defined as "the state of being in need of proper care, water, food or shelter or being injured, sick or in pain or suffering or being abused or subject to undue or unnecessary hardship, privation or neglect."³⁰ Allegations of distress may result in an OSPCA inspector or agent conducting an investigation, and where the inspector or agent reasonably believes that an animal is in immediate distress they may enter a place, other than a dwelling, without a warrant.³¹

Activities that are carried out "in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry" are exempt from the prohibitions on causing or permitting distress to animals.³²

Offences for contravention of the *Act* vary according to the specific provision of the *Act* that is violated. For individual offenders a penalty can range from a maximum fine of \$1,000 and/or maximum imprisonment of 30 days, to a maximum fine of \$60,000 and/or maximum imprisonment of two years.³³

Contravention of certain provisions of the *Act* will not necessarily result in an owner or custodian facing penalties. The *Act* enables OSPCA inspectors or agents to issue an order for an owner or custodian to "take such action as may, in the opinion of the inspector or agent, be necessary to relieve the animal of its distress" or to "have the animal examined and treated by a veterinarian at the expense of the owner or custodian."³⁴ To issue such an order, the inspector or agent must have "reasonable grounds for believing that an animal is in distress and the owner or custodian of

²⁷ *OSPCA Act*, *supra* note 13, s 11.2(3).

²⁸ *OSPCA Act*, *ibid*, s 11.3.

²⁹ *OSPCA Act*, *ibid*, ss 11.2(1), 11.2(2).

³⁰ *OSPCA Act*, *ibid*, s 1(1).

³¹ *OSPCA Act*, *ibid*, s 12(6).

³² *OSPCA Act*, *ibid*, s 11.2(6)(c).

³³ *OSPCA Act*, *ibid*, ss 18.1(2), 18.1(3).

³⁴ *OSPCA Act*, *ibid*, ss 13(1)(a), (b).

the animal is present or may be found promptly”.³⁵ The order must be made in writing, specify the time within which action required by the order must be performed and have the provisions of subsection 17(1) written or printed thereon, which serves to notify the owner or custodian of their right to appeal to the Animal Care Review Board (“**Review Board**”).³⁶ A person who is served with an order must comply with its terms until it has been “modified, confirmed, or revoked,” and must comply with the order as modified or confirmed.³⁷ Failure to comply with an order could result in the OSPCA taking possession of the animal(s) who are the subject of the order.³⁸ Finally, if, in the opinion of an inspector or agent, an order has been complied with, they must revoke the order, serving the person subject to the order with a written notice of revocation.³⁹

The Review Board is continued by the *OSPCA Act*, which also outlines its composition, function and powers. The purpose of the Review Board is to enable an owner or custodian of an animal who “considers themselves aggrieved” by an order made under subsection 13(1) or the removal of an animal under subsection 14(1), to appeal the order or request the return of the animal.⁴⁰ An appeal to the Review Board involves a hearing, at which the owner or custodian is entitled to hear evidence, call and cross-examine witnesses, present arguments, and to have legal representation.⁴¹

1. The Ontario Society for the Prevention of Cruelty to Animals

The OSPCA was founded in 1873 by citizens concerned about animal welfare.⁴² Today, the OSPCA is a non-profit charitable organization that provides shelter and protection services through its 23 branches. The object of the Society is stated in the *OSPCA Act*, and is to “facilitate and provide for the prevention of cruelty to animals and their protection and relief therefrom.”⁴³ While the responsibilities and duties of the OSPCA are mandated by law, the OSPCA is not a government agency nor is it subject to government oversight. Furthermore, the provincial

³⁵ *OSPCA Act, ibid*, s 13(1).

³⁶ *OSPCA Act, ibid*, ss 13(2), 13(4).

³⁷ *OSPCA Act, ibid*, s 13(5).

³⁸ *OSPCA Act, ibid*, s 14(1)(c).

³⁹ *OSPCA Act, ibid*, s 13(7).

⁴⁰ *OSPCA Act, ibid*, s 17(1).

⁴¹ *OSPCA Act, ibid*, s 17(5).

⁴² OSPCA History, *supra* note 1.

⁴³ *OSPCA Act, supra* note 13, s 3.

government does not currently provide funding for the OSPCA's sheltering mandate or legislated functions.⁴⁴ Through the Ministry of Community Safety and Correctional Services ("MCSCS") the province provides the OSPCA with \$500,000 annually (expected to be increased to \$5.5 million annually⁴⁵), which is "strictly earmarked" for training OSPCA inspectors and agents.⁴⁶

The OSPCA is "unique among animal welfare organizations in Ontario"⁴⁷ because the *Act* mandates that the Society enforce animal cruelty laws in the province and respond to allegations of abuse, while providing Society inspectors with police powers to accomplish this.⁴⁸ Where a society or affiliate does not operate, a police officer with jurisdiction in the area "has and may exercise any of the powers of an inspector or agent of the Society under this *Act*."⁴⁹ Inspectors are authorized by the *Act* to "enter and inspect any building or place used for animal exhibit, entertainment, boarding, hire or sale," in order to determine whether the standards of care are being complied with.⁵⁰ The OSPCA estimates that every year they undertake approximately 16,000 investigations.⁵¹

While conducting an inspection, inspectors are authorized to inspect animals, take samples, and provide food and care to animals when necessary.⁵² In some circumstances inspectors or other agents of the Society may also take possession of animals during an investigation for reasons of abuse or neglect.⁵³ Inspectors are not personally liable for anything done in good faith under the authority of the *Act*.⁵⁴

The *OSPCA Act* prescribes the format of membership in the OSPCA. Members are divided into: Class A members, affiliated societies; Class B members, individuals; and Class C members,

⁴⁴ Meek LeSage Review, *supra* note 11 at 10.

⁴⁵ Linda Diebel and Liam Casey, Ontario brings in sweeping changes to protect animals" The Toronto Star (25 October 2013), online: http://www.thestar.com/news/canada/2013/10/25/ontario_brings_in_sweeping_changes_to_protect_animals.html [Linda Diebel].

⁴⁶ Meek LeSage Review, *ibid* at 11.

⁴⁷ Meek LeSage Review, *ibid* at 7.

⁴⁸ Meek Lesage Review, *ibid*.

⁴⁹ *OSPCA Act*, *supra* note 13, s 11(3).

⁵⁰ *OSPCA Act*, *ibid*, s 11.4(1).

⁵¹ Ontario Society for the Prevention of Cruelty to Animals, What We Do, Investigations, online: <http://www.ontariospca.ca/what-wc-do/investigations.html>

⁵² *OSPCA Act*, *Supra* note 13, s 12.1.

⁵³ *OSPCA Act*, *ibid*, s 14.

⁵⁴ *OSPCA Act*, *ibid*, s 19.

honorary members. Pursuant to the *Act*, the affairs of the Society are to be controlled and managed by a voluntary Board of Directors and Executive Committee.⁵⁵ OSPCA By-Laws outline the composition of the Board of Directors and Executive Committee, as well as their powers and duties.⁵⁶ The Society must also appoint a Chief Inspector who has powers and duties prescribed by regulation, including the power to:

Establish qualifications, requirements and standards for inspectors and agents of the Society, to appoint inspectors and agents of the Society and to revoke their appointments and generally to oversee the inspectors and agents of the Society in the performance of their duties.⁵⁷

As outlined above, OSPCA membership extends to Class A members, Affiliated Societies (“Affiliates”), of which the OSPCA has over 30.⁵⁸ Pursuant to the *Act*, the Chief Inspector can appoint inspectors and agents to the Affiliate to enforce laws pertaining to animal welfare or the prevention of cruelty to animals.⁵⁹ In order for an organization to apply for Affiliate status with the OSPCA, it must be registered as a charitable organization with the Canada Revenue Agency, have animal welfare or the prevention of cruelty to animals as its object, and present a certified copy of a Board of Directors resolution authorizing the request for affiliation and agreeing to comply with the By-law and policies of the OSPCA, and all provincial and federal animal welfare law.⁶⁰ Applications are assessed by the OSPCA Affiliate Relations Committee, who then makes recommendations to the OSPCA Board of Directors based on the criteria for admission contained in the OSPCA By-Law, Article 13.⁶¹

⁵⁵ *OSPCA Act*, *supra* note 13, s 5.

⁵⁶ Ontario Society for the Prevention of Cruelty to Animals By-Law Number Nine. [OSPCA By-Law 9], online: <<http://www.ontariospca.ca/resource/By-LawNo9Final-May10-2008.pdf>>.

⁵⁷ *OSPCA Act*, *supra* note 13, s 6.1(2).

⁵⁸ Meek LeSage Review, *supra* note 11 at 9.

⁵⁹ *OSPCA Act*, *supra* note 13 at s 6.1(2).

⁶⁰ OSPCA By-law 9, *supra* note 56 at article 13.2.

⁶¹ *OSPCA Act*, *supra* note 13 at s 6.1(2).

Section 3: Interested Stakeholders

This section of the Report identifies parties that have an interest in the scope and applicability of the *OSPCA Act*. The following section outlines any issues that have been identified by the relevant stakeholder with respect to the *OSPCA Act*.

A. Landowners

Landowners are interested stakeholders because the *Act* gives OSPCA officers powers that have broad implications for the use of land, and additionally because some landowners may also be farmers. The specific issues that have been identified by the agricultural industry will be addressed in the following subsection.

As outlined in section 2, pursuant to the *OSPCA Act*, OSPCA investigators and agents “may, without a warrant, enter and inspect any building or place used for animal exhibit, entertainment, boarding, hire or sale”.⁶² In order for an inspector or agent to enter into and inspect a dwelling, the consent of the occupier is required.⁶³ The investigator or agent may also enter into and inspect a dwelling by obtaining a warrant pursuant to subsection 11.5(1) of the *Act*. In order to obtain a warrant, the Justice of the Peace or Judge must be satisfied by information on oath that an inspector or agent “has been prevented from inspecting the building or place” or that there are “reasonable grounds to believe” that they will be prevented.⁶⁴ Warrants may also be issued where there are reasonable grounds to believe that an animal is in distress in a building or place.⁶⁵ Where an inspector or agent has “reasonable grounds to believe that there is an animal that is in immediate distress in any building or place, other than a dwelling, he or she may enter the building or place without a warrant”.⁶⁶ Immediate distress is defined under the *Act* and means “distress that requires immediate intervention in order to alleviate suffering or to preserve life.”⁶⁷

It is clear that the *OSPCA Act* gives inspectors or agents of the Society powers that have clear implications for landowners. This has prompted landowners’ groups to raise concerns and advocate for *OSPCA Act* reforms. In considering Bill 50 – *Provincial Animal Welfare Act, 2008*,

⁶² *OSPCA Act, ibid*, s 11.4(1).

⁶³ *OSPCA Act, ibid*, s 11.4(2).

⁶⁴ *OSPCA Act, ibid*, ss 11.5(1)(a), (b).

⁶⁵ *OSPCA Act, ibid*, s 12(1).

⁶⁶ *OSPCA Act, ibid*, s 12(6).

⁶⁷ *OSPCA Act, ibid*, s 12(8).

("Bill 50"), the Standing Committee on Justice Policy held public hearings, giving many industry and non-industry organizations and individuals the opportunity to speak to its provisions.⁶⁸

B. Industry

Those in the agricultural industry are interested stakeholders to the *OSPCA Act* because of the applicability of the *Act* to farming and agricultural operations. It is estimated that 10% of total annual complaints to the OSPCA are related to farm animals; an average of 1,500 calls, 75% of which are related to horses.⁶⁹

The provisions of the *Act* that are of interest to industry stakeholders do overlap with those regarding entry and warrants outlined in the previous subsection. However, the provisions regarding taking samples,⁷⁰ supplying necessities to animals,⁷¹ seizure⁷² and orders⁷³ are also of central importance to industry groups.

As outlined in section 2, the protections afforded to animals used by the agricultural industry differ largely from other groups of animals under the jurisdiction of the *Act*. This is because the *Act* provides exemptions for activities carried out in accordance with reasonable and generally accepted industry practice, which are exempt from both the prohibition on causing or permitting an animal to be in distress as well as compliance with the *Standards of Care Regulations*.⁷⁴ These exemptions came into effect on March 1, 2009, following the enactment of Bill 50.

C. Animal Welfare Advocates

Animal welfare advocates have a stakeholder interest in the *OSPCA Act* because of the generally held position that animals are deserving of care and compassion, and that animal cruelty is

⁶⁸ Legislative Assembly of Ontario, Committee Transcripts: Past Parliaments, online: <http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts.do?ParlCommID=8855&locale=en#TparlCommID8855>.

⁶⁹ Farm & Food Care Ontario, Animal Care, General Farm Animal Resources, Frequently Asked Questions about the OSPCA, (Nov. 2012), at 2, online: <<http://www.farmfoodcare.org/images/pdfs/OSPCAFAQ.pdf>>.

⁷⁰ *OSPCA Act*, *supra* note 13, s 12.1(1).

⁷¹ *OSPCA Act*, *ibid*, s 12.1(3).

⁷² *OSPCA Act*, *ibid*, s 12.1(6).

⁷³ *OSPCA Act*, *ibid*, s 13.

objectionable. As Ontario's central piece of animal welfare legislation, animal welfare advocates are concerned with the protections afforded to animals under the *Act*. This includes companion animals, animals used for entertainment and animals in the agricultural sector.

The sections of the *OSPCA Act* that are particularly relevant to animal welfare advocates are the prohibitions on causing distress, the prescribed standards of care, exemptions for industry, orders, and the sections which outline the penalties for offences under the *Act*.

D. Companion Animal Sheltering Advocates

Companion animal sheltering advocates are animal welfare advocates with a focus on the welfare of companion animals in the shelter system. The companion animals primarily found in shelters are dogs and cats, however, shelters are increasingly housing other small companion animals like rabbits and guinea pigs.

For companion animal sheltering advocates, the sections of the *OSPCA Act* that are of interest are the enforcement power granted to the OSPCA, the prohibitions on causing distress, the prescribed standards of care, and medical care available during redemption periods.

E. Government

The government of Ontario is an interested stakeholder with respect to the *OSPCA Act* because it is the body that enacts and amends provincial animal law including the *Act* itself. Additionally, the MCSCS is responsible for the administration of the *OSPCA Act*, and OMAFRA has an interest in the scope and applicability of the *Act* because of its responsibility for pound animals and the premises used to house pound animals pursuant to the ARA. Proposed government oversight of the OSPCA, if implemented, would create an additional government interest.

Section 4: Issues Identified

A. Abuse of Power

Allegations of the OSPCA abusing the power granted to it under the *Act* have been publicly made by many landowners' groups.

For example, during the public hearings regarding Bill 50, a speaker representing one of the landowners' groups raised issue with the fact that where police officers are required to advise a suspect of his or her rights, the OSPCA enforcement officers have no such obligation.⁷⁵ The speaker suggested that this allows OSPCA officers to abuse their powers by pressuring landowners who do not know their rights for permission to enter onto their property in the absence of a warrant.⁷⁶

Landowners have also made abuse of power arguments respecting the warrantless entry provisions of the *OSPCA Act*. For instance, the same speaker identified above made statements that in their own personal experience, "out-of-control OSPCA enforcement officers tried to seize all of [their] animals without warrants or proper cause."⁷⁷

B. Conflict of Interest

Many stakeholders have voiced concerns that the *OSPCA Act* legislates an inherent conflict of interest. These concerns surround two issues: (1) that the *Act* mandates that the OSPCA enforce animal cruelty laws while the Society also provides sheltering services; and (2) that the OSPCA is not subject to independent oversight.

1. Enforcement and Sheltering

First, as outlined in Section 1, pursuant to the *OSPCA Act*, the OSPCA is the body that is responsible for investigating animal welfare offences and pursuing the prosecution of those

⁷⁵ Standing Committee on Justice Policy, Committee Transcripts: Standing Committee on Justice Policy - July 24, 2008 - Bill 50, Provincial Animal Welfare Act, 2008, online: <http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do;jsessionid=c72d607930d6defc684169db4f3e8a70cfa8385132d7.e3eRb3iNcheNe3qRbhULbhaQbylynknvrkLOIQzNp65In0?locale=en&Date=2008-07-24&ParlCommID=8855&BillID=1979&Business=&DocumentID=23144> [Committee Transcripts].

⁷⁶ Committee Transcripts, *ibid*.

⁷⁷ Committee Transcripts, *ibid*.

charged under animal welfare laws. It is also within the OSPCA's mandate to be the responsible body for providing care and medical services to animals brought into its care from a variety of sources.

This is problematic from the perspective of animal welfare advocates because the OSPCA's legislated enforcement mandate means that the investigations aspect of the OSPCA's operation often consumes the budget of its shelter mandate.

Government stakeholders have identified issues with these dual roles undertaken by the OSPCA. For example, during the York Region Shelter's alleged ringworm outbreak in May of 2010, arguments were made by the Honourable Frank Klees, MPP, that the OSPCA is incapable of meeting its mandated responsibilities.⁷⁸ In response to Mr. Klees' appeal to the Minister of Community Safety and Correctional Services, and the Minister of Agriculture to intervene and stop the planned euthanasia, the Ministers claimed that they did not have the authority⁷⁹ because the OSPCA is an independent body, adding that the government had confidence in the OSPCA and its Board of Directors.⁸⁰ Mr. Klees argued that the confidence in the OSPCA's decision was misplaced due to the fact that there was an alternative to euthanasia, which was eventually implemented due to public pressure, but only after more than 100 animals were killed.⁸¹

In November of 2010 Mr. Klees tabled a motion in the legislature calling on the government of Ontario to review the powers and authority granted to the OSPCA under the *OSPCA Act*. Further, Mr. Klees advocated for specific changes to the *Act* in order to ensure greater efficiency of the organization as well as to afford greater protection to animals. However, the motion was rejected by the Legislative Assembly of Ontario. Details on this motion can be found in Section 6 of this Report, "Recent Legislative Treatment."

⁷⁸ Frank Klees, MPP, Newsroom, Oversight of the OSPCA, online: <http://www.frank-klees.on.ca/Newsroom/OSPCAstayMay11_2010.htm#OSPCA4> [Oversight of the OSPCA].

⁷⁹ Oversight of the OSPCA, *ibid.*

⁸⁰ Oversight of the OSPCA, *ibid.*

⁸¹ Oversight of the OSPCA, *ibid.*

2. Absence of Independent Oversight of the OSPCA

The second issue that stakeholders have identified as contributing to the alleged conflict of interest is that the *OSPCA Act* gives the OSPCA powers akin to those of a police force, but does not identify an agency responsible for overseeing the OSPCA in the execution of the legislative mandate. All interested stakeholders have at times identified the lack of independent oversight as a legislative deficiency.

For example, companion animal sheltering advocates raised concerns regarding the lack of OSPCA oversight following the alleged ringworm outbreak at the York Region Branch. One group, OSPCA Truth, has a mission to raise “public awareness and to lobby for a governmental review of existing legislation to provide Provincial oversight and accountability.” It is OSPCA Truth’s position that “an OSPCA with provincial oversight, [and] accountability...will be a stronger and better organization that can do more to help animals.”⁸²

Government stakeholders have also identified the lack of OSPCA oversight as an issue, seeking to establish oversight through legislative reform. These efforts are canvassed in Section 6, “Recent Legislative Treatment.”

C. Exemptions

Pursuant to the *OSPCA Act*, the Society’s object is to facilitate and provide for the prevention of cruelty to animals and their protection and relief therefrom.⁸³ However, some stakeholders have criticized that exemptions under the *Act* effectively remove farmed animals, of which there are approximately 200 million currently living in Ontario, from the scope of the *Act*. Moreover, stakeholders argue that these exemptions permit activities in the agricultural industry that would otherwise constitute an offence under the *Act* if committed by a private individual.

⁸² OSPCA Truth, About Us, online: < http://ospcatruth.com/?page_id=2>.

⁸³ *OSPCA Act*, *supra* note 13, s 2.

For example, the animal welfare group Canadian Coalition for Farm Animals stated during the public hearings regarding Bill 50 that the proposed exemptions, now in force, undermine the *Act* and are “prejudicial to farm animals.”⁸⁴

Activities that qualify as “reasonable and generally accepted practices of agricultural animal care, management or husbandry” are not prescribed by law. This makes the exemptions granted to industry practice much different than the exemptions granted under the *Act* to activities carried on in accordance with the *Fish and Wildlife Conservation Act, 1997*.⁸⁵

The *OSPCA Act* empowers the Lieutenant Governor in Council to make regulations prescribing activities carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry for the purposes of subsections 11.1 (2) (a) and 11.2 (6) (c), as well as prescribing classes of animals, circumstances and conditions or activities for the purposes of subsections 11.1 (2) (b) and 11.2 (6) (d).⁸⁶ Despite the authority granted by the *Act*, no regulations have been enacted. The Canadian Coalition for Farm Animals advocated that the Lieutenant Governor in Council make Regulations in this regards, as the *Act* does not otherwise provide instruction for determining which practices are reasonable and generally accepted in the absence of regulations.

The National Farm Animal Care Council’s Codes of Practice for the care and handling of farm animals (the “Codes of Practice” or “Code”) may be used as evidence of reasonable and generally accepted industry practices in regard to animals where a respective Code has been developed.⁸⁷ There are thirteen (13) Codes of Practice for animals, five of which are listed as under revision, and one (1) regarding transportation. The Codes of Practice which are not currently under revision include *Veal Calves* (1998), *Bison* (2001), *Transport* (2001), and *Farmed Deer* (1996).

⁸⁴ Standing Committee on Justice Policy, Committee Transcripts: Standing Committee on Justice Policy - July 21, 2008 - Bill 50, Provincial Animal Welfare Act, 2008, online: <http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?jsessionid=c72d607930daf8a449f9ea2a4e53bce8fc0c01363a11.c3eRb3iNcheNe3qRbhuLbhaRa41ynknvrkLOlQzNp65In0?locale=en&Date=2008-07-21&ParlCommID=8855&BillID=1979&Business=&DocumentID=23139#P104_8095>

⁸⁵ *Fish and Wildlife Conservation Act, 1997*, SO 1997, c 41.

⁸⁶ *OSPCA Act*, *supra* note 13, ss. 22(1)(a), 22(1)(b).

⁸⁷ National Farm Animal Care Council, Codes of Practice, Codes of Practice Guidelines, online: <<http://www.nfacc.ca/code-of-practice-guidelines>> [Codes of Practice].

The “Guidelines” for the Codes of Practice state there should be “broad participation of knowledgeable people within an industry in the code development process.”⁸⁸ The guidelines also list participants who must be involved in the process, where applicable, and include a producer, transporter, veterinarian, retail and food services representative, researcher, technical expertise, etc. While “animal welfare organization” is included in this list, the Codes of Practice development committee is dominated by industry representatives.

The Canadian Council for Farm Animals highlighted that these Codes of Practice are guidelines containing recommendations for housing and management practices for farm animals; they are voluntary, lack legal status, and are developed by industry dominated committees – “industry chooses the practices that are acceptable to itself.”⁸⁹ A person may use compliance with one of the Codes of Practice as evidence that the activities they are engaged in meet the exemptions outlined in subsections 11.1(2)(a) and 11.2(6)(c) of the *Act*. Moreover, Farm & Food Care Ontario also state that the Recommended Code of Practice for the Care and Handling of Animals will “most often be referred to for the reasonable and generally accepted practices for all species that have them.”⁹⁰

Some of the recommended practices made in various Codes of Practice, and that could therefore be construed as reasonable and generally accepted industry practice, are the disbudding (dehorning) of young goats using a heated or electronic device without the use of anaesthesia,⁹¹ the use of electric trainers to control a dairy cow’s defecation or urination processes,⁹² and the use of electric prods.

If a person is engaged in activities that do not comply with the Codes of Practice, they will not necessarily be subject to prosecution under the *OSPCA Act*. In contrast, regulations enacted by the Lieutenant Governor in Council under the authority of the *Act* would have legal status,

⁸⁸ Codes of Practice, *ibid*.

⁸⁹ Codes of Practice, *ibid*.

⁹⁰ Farm & Food Care Ontario, Animal Care, General Farm Animal Resources, Frequently Asked Questions about the OSPCA. (Nov. 2012) online: <<http://www.farmfoodcare.org/images/pdfs/OSPCAFAQ.pdf>>.

⁹¹ Canadian Agri-Food Research Council, Recommended Code of Practice for the Care and Handling of Animals – Goats, s 4.4.1, online: <<http://www.nfacc.ca/pdfs/codes/Goats%20Code%20of%20Practice.pdf>>.

⁹² National Farm Animal Care Council, Code of Practice for the Care and Handling of Dairy Cattle, s 3.14, online: <<http://www.nfacc.ca/pdfs/codes/Dairy%20Code%20of%20Practice.pdf>> [Code of Practice – Dairy Cattle].

requiring mandatory compliance, and providing transparent and standardized requirements for persons in the industry, the public and the OSPCA.

Industry stakeholders argue that these exemptions are not problematic from a welfare perspective. This is because following the 2009 amendments granting exemptions to industry, livestock welfare assessment training increased: new trainees are now provided with five days of training on livestock and poultry.⁹³ Additionally, the OSPCA entered into an agreement with Dairy Farmers of Ontario in 2012 to appoint six OSPCA officers to carry out joint inspection activities of dairy farm operations.⁹⁴ While this represents a collaborative approach to balancing the prevention of cruelty to farmed animals with the operation of industry more generally, there are 200 million farmed animals, of many species, in the province of Ontario. For animal welfare advocates, the absence of mandatory codes of practice coupled with five days of training may not be sufficient for OSPCA inspectors and agents to ensure that farmed animals are not subject to cruel or inhumane conditions.

D. Regulatory Omissions

Stakeholders have identified omissions regarding the regulations enacted pursuant to the *OSPCA Act*. Of specific concern is the fact that the regulations do not contain standards of care for animals in shelters and marine mammals held in captivity.

1. Shelter Animals

There are no legislated standards of care for animals in the shelter environment. Although the general regulatory standards of care are applicable in the shelter context, the general standards are inadequate given the nature of the sheltering environment. Animals are generally confined to cages in the shelter environment, suggesting that standards beyond the general are necessary when animals are confined.

⁹³ Code of Practice – Dairy Cattle, *ibid.*

⁹⁴ Code of Practice – Dairy Cattle, *ibid.*

2. Marine Mammals in Captivity

It became apparent that there are significant gaps in the *OSPCA Act* when allegations of animal cruelty were brought forward against Marineland, an animal exhibition park in Niagara Falls, Ontario. The Toronto Star released a series of stories by fifteen former Marineland staffers. In their reports, they blamed animal health problems on poor water quality and insufficient staffing.

Members of the public reacted in protest upon learning of ailing and deceased animals like 'Smoochie' the walrus and 'Skoot' the baby beluga. After the Star investigation, Canada's Accredited Zoos and Aquariums ("CAZA") announced a review of the park. The investigation brought to light the fact that the *Standards of Care Regulations* do not prescribe standards of care for marine mammals that are held in captivity and do not account for the specific needs of marine mammals. As a result, complaints against Marineland led to an OSPCA inspection, but Marineland was not found to be in violation of the *Act*.

As discussed in more detail below, in response to these concerns, Madeleine Meilleur, Minister of Community Safety and Correctional Services, announced a plan for new marine mammal Regulations on October 25, 2013. The regulations are scheduled to be drafted for June of 2014.

Section 5: Recent Studies & Review of the *OSPCA Act*

This section of the Report provides an introduction and overview of the recent studies and reviews which have been conducted regarding the *OSPCA Act*. This includes both the Meek LeSage Review and Animal Welfare Task Force Report.

A. Meek LeSage Review

1. Creation

In 2010, reports that the OSPCA's York Region Branch planned to depopulate its shelter as a result of an alleged ringworm outbreak caused considerable public concern and placed pressure on the York Region Branch to abandon its mass euthanasia plans. Following these events, Rob Godfrey, chair of the OSPCA Board of Directors, announced that an independent review of the events that had transpired at their York Region Branch would take place.⁹⁵ The review was conducted by Dr. Alan H. Meek, and the Honourable Patrick J. LeSage, and on June 3, 2011, the Meek LeSage Review Report ("Meek LeSage Review" or "Review") was released.

2. Function

While independent, the Meek LeSage Review was commissioned by the OSPCA. The function of the Meek LeSage Review was to conduct an independent examination of the events surrounding the May 2010 announcement of a "ringworm outbreak."⁹⁶

In conducting the Review, Meek and LeSage examined the events which preceded the May 2010 outbreak announcement. The applicable timeframe for review that was selected by Meek and LeSage was December 1, 2009 – May 31, 2010.⁹⁷ Following the selection of this timeframe, Meek and LeSage examined animal records, interviewed staff and volunteers, met with interested stakeholders, retained experts to explore medical and veterinary issues, and visited several of the OSPCA branches and affiliate shelters.⁹⁸

⁹⁵ Meek LeSage Review, *supra* note 11 at 2.

⁹⁶ Meek LeSage Review, *ibid* at 4.

⁹⁷ Meek LeSage Review, *ibid*.

⁹⁸ Meek LeSage Review, *ibid*.

3. Report Overview & Recommendations

The Meek LeSage Review contains a thorough overview of the events that took place at the York Region Shelter in regard to the “ringworm outbreak,” identifies core issues that contributed to these events, and provides recommendations for both operational and legislative reforms.

Prior to discussing operational issues or recommendations, the Meek LeSage review makes two core determinations: based on the material reviewed “there was neither a ringworm outbreak nor a mass euthanasia.”⁹⁹ The Meek LeSage Review also states that the OSPCA recognizes the challenges it faces and that it is taking steps to improve its organization, governance, and service delivery model.¹⁰⁰ The Review then: provides an overview of the mandate and functions of the OSPCA itself; provides a brief account of the governing legislation, procedures and policies; canvasses minimum standards of care in veterinary facilities; canvasses guidelines for medical records for companion animals; canvasses guidelines for standards of care in animal shelters; and provides a fulsome overview of the specific operations of the York Region Branch.

The largest section of the Meek LeSage Review is Section 5 – Issues. In this section, the Review describes the ringworm disease and the relevant timeline, and compares the numbers of outcomes for cats and dogs admitted to the York Region Branch during January 1- May 31, 2010 with the equivalent period of January 2, 2009 – May 31, 2009.¹⁰¹ This section also contains consideration of the “issues presented.” These identified issues form the basis of the recommendations made in Section 6.

While outlining the “issues presented” the Meek LeSage Review also considers other proposals for OSPCA reform, including the recommendations made in the Grant Thornton Report 2007 (“GTR”), and proposals that had been put forward by the Honourable Frank Klees, MPP. The GTR was commissioned by the MCSCS in 2006 following the resignation of several members of the OSPCA Board of Directors. The objectives of the GTR were to make recommendations with respect to the OSPCA’s “governance structure, processes, by-laws, relationship with affiliates, service delivery model and finances.”¹⁰² The purpose of the GTR was to “ensure these processes

⁹⁹ Meek LeSage Review, *ibid.*

¹⁰⁰ Meek LeSage Review, *ibid.*

¹⁰¹ Meek LeSage Review, *ibid* at 38-78.

¹⁰² Meek LeSage Review, *ibid* at p 70.

supported the organization's legislated authority, and were effective, efficient and able to sustain the organization's operations, funding and long-term viability."¹⁰³ A copy of the GTR recommendations is attached as Schedule "A."

The majority of the recommendations made in the Meek LeSage Review in Section 6 relate directly to policies, procedures, protocols, record-keeping and infectious disease control in light of the specific events that took place in the York Region Shelter, and are canvassed in brief below.

The Meek LeSage Review recommends that the OSPCA review its policies and procedures documents, stating that a "small number of clear, concise, well-written documents are needed to replace the current ones."¹⁰⁴ Meek and LeSage advise that these must be stated as a policy that must be followed, not as recommendations to be considered. One specific policy the Meek LeSage Review recommends is one requiring that qualified individuals perform animal health assessments with standardized and objective criteria including detail regarding physical examination.¹⁰⁵ Meek and LeSage further assert that there is a need for formal training and retraining programs for staff to be established.¹⁰⁶

The Meek LeSage Review cautions that an infectious disease protocol should be established because the "lack of a specific and defined program can lead to marked inconsistency in the application of a range of infection control activities, including cleaning and disinfection, training, surveillance, animal care and outbreak response."¹⁰⁷ This also includes a protocol wherein staff advise people adopting shelter animals about the risks of human infections and basic measures to take to avoid the risk.¹⁰⁸

Occupational health and safety concerns are also important in the context of the Review in light of reports during the alleged ringworm outbreak that "several staff and volunteers had apparently contracted ringworm."¹⁰⁹ The Review outlines that the Ministry of Labour determined that there

¹⁰³ Meek LeSage Review, *ibid*.

¹⁰⁴ Meek LeSage Review, *ibid* at 47.

¹⁰⁵ Meek LeSage Review, *ibid* at 48.

¹⁰⁶ Meek LeSage Review, *ibid*.

¹⁰⁷ Meek LeSage Review, *ibid* at 49.

¹⁰⁸ Meek LeSage Review, *ibid* at 50.

¹⁰⁹ Meek LeSage Review, *ibid* at 52.

was an absence of definite training structures of protocols for infection prevention for the workers in the York Region Shelter.¹¹⁰ Specifically in relation to ringworm, the Meek LeSage Review determines that staff and volunteers were not sufficiently trained to deal with this disease, stating that “errors were made both up and down the chain of command.”¹¹¹

The Review finds that records kept were generally “weak and incomplete.”¹¹² The Review also suggests that shelters aim to avoid situations where an animal is “vaccinated in the morning and euthanized in the afternoon.”¹¹³ In regard to the role of veterinarians, the Review states that the level of involvement in the day to day operation of the OSPCA shelters varies, and that it is important for the OSPCA to determine what level of veterinary involvement is mandatory.¹¹⁴

The Meek LeSage Review identifies improvements that could be made to the work environment at the York Region Shelter, suggesting that the OSPCA consider setting core competencies and building camaraderie in addition to establishing clear training protocols.¹¹⁵

While the majority of the Meek LeSage recommendations are policy based, the Review also makes recommendations for legislative amendment to the *OSPCA Act*. These recommendations are as follows:

- (1) The government consider legislative amendments to provide for oversight of the OSPCA.¹¹⁶

In considering the issues presented, Meek and LeSage canvass that the *OSPCA Act* mandates that the OSPCA undertake an enforcement and investigatory role, while the OSPCA also provides sheltering services, and does not legislate a body to oversee the OSPCA’s operations. Moreover the *OSPCA Act* gives the OSPCA “powers akin to those of a police force, but does not identify an agency responsible for overseeing the OSPCA in the execution of the legislative mandate.”¹¹⁷

¹¹⁰ Meek LeSage Review, *ibid*.

¹¹¹ Meek LeSage Review, *ibid* at 64.

¹¹² Meek LeSage Review, *ibid* at 55.

¹¹³ Meek LeSage Review, *ibid*.

¹¹⁴ Meek LeSage Review, *ibid* at 67.

¹¹⁵ Meek LeSage Review, *ibid* at 66.

¹¹⁶ Meek LeSage Review, *ibid* at 83.

¹¹⁷ Meek LeSage Review, *ibid* at 75.

The Meek LeSage Review makes this recommendation with the view that this could remedy the current situation of having the Society essentially policing itself.¹¹⁸

- (2) The government should consider the possibility of separating the OSPCA sheltering services from its investigation and enforcement services.¹¹⁹

Pursuant to the *OSPCA Act* the OSPCA is the body that is responsible for investigating animal welfare offences and pursuing the prosecution of those charged under animal welfare laws. It is also within the mandate of the Society to provide shelter and medical services to animals brought into its care from a variety of sources. The investigative and sheltering functions carried out by the OSPCA are funded almost exclusively through donations. The Ontario government provides no base funding, apart from \$500,000 (expected to be increased to \$5.5 million annually¹²⁰) for inspector training for the investigative and enforcement services that the OSPCA provides.¹²¹

The Meek LeSage review highlights that there are negative implications that flow from the lack of adequate funding. For example, the lack of provincial operational funding coupled with the OSPCA's legislated enforcement mandate means that the investigations aspect of the OSPCA's operation often consumes the budget of its shelter mandate.¹²²

In relation to this recommendation, the Meek LeSage Review calls for a collaborative approach between the OSPCA and government, stating that:

If government supports the life-saving work of the OSPCA and takes animal protection and care seriously, it will work in partnership with the OSPCA to create a solution which makes certain that proper oversight is established to ensure that the legislative mandate is being carried out effectively.¹²³

- (3) The *OSPCA Act* be amended to grant the OSPCA temporary guardianship of animals so as to enable it to authorize non-emergent and preventative medical care.¹²⁴

¹¹⁸ Meek LeSage Review, *ibid*.

¹¹⁹ Meek LeSage Review, *ibid* at 83.

¹²⁰ Linda Diebel, *ibid*.

¹²¹ Meek LeSage Review, *ibid*.

¹²² Meek LeSage Review, *ibid*.

¹²³ Meek LeSage Review, *ibid* at 72.

¹²⁴ Meek LeSage Review, *ibid* at 17.

The Review suggests that this amendment would reduce the risk of disease transmission in the shelter, while also ensuring that animals do not have to wait until their medical needs are emergent before receiving “appropriate veterinary attention.”¹²⁵ The Review does not provide additional suggestions or instructions about how this amendment could be implemented.

- (4) A task force be created to review the recommendations contained therein and “ensure the appropriate changes are made.”¹²⁶

The Meek LeSage Review provides further instruction as to the composition of this task force, stating that it should have representation from ministries with direct involvement in animal issues.¹²⁷ The Meek LeSage Review further suggests representation from the MCSCS, who should “take the lead and convene the group as soon as is practicable.”¹²⁸

- (5) Minimum standards of care should be established for animal shelters in the province to ensure animals housed there receive proper care and treatment.¹²⁹

In making this recommendation, the Meek LeSage Review also recommends that the government consider licensing shelters and regulating minimum standards of care.¹³⁰ This undertaking would also require the creation of an inspection protocol to properly oversee shelter facilities and compliance with shelter specific standards of care.¹³¹

B. Task Force Report

1. Creation

As outlined in the previous subsection, the Meek LeSage Review recommends that a task force be created to “ensure the appropriate changes are made.”¹³² Following the release of the Review the Animal Welfare Task Force (“**Task Force**”) was established by the provincial government.

¹²⁵ Meek LeSage Review, *ibid.*

¹²⁶ Meek LeSage Review, *ibid.* at 83.

¹²⁷ Meek LeSage Review, *ibid.*

¹²⁸ Meek LeSage Review, *ibid.*

¹²⁹ Meek LeSage Review, *ibid.*

¹³⁰ Meek LeSage Review, *ibid.*

¹³¹ Meek LeSage Review, *ibid.*

¹³² Meek LeSage Review, *ibid.* at 83.

In October, 2012, the Task Force released the *Animal Welfare Task Force Report* (“Task Force Report”).¹³³

2. Function

The Task Force Report responds to the recommendations made in the Meek LeSage Review and provides further recommendations for OSPCA reform. The Task Force is dominantly comprised of provincial ministries, including the OMAFRA, the MCSCS and the Ministry of Health and Long-Term Care (“MOHLTC”). The Task Force is otherwise comprised of two municipal bodies, the City of Toronto and the Association of Municipalities of Ontario, the College of Veterinarians of Ontario (“CVO”), and two groups under the heading of Animal Welfare, the OSPCA and the Association of Animal Shelter Administrators of Ontario.

3. Report Overview & Recommendations

The Task Force states that it takes a “balanced approach” in responding to the recommendations contained in the Meek LeSage Review. The balanced approach is characterized by the Task Force’s agreement that while animal shelters provide useful services, there are areas for improvement; however, this does not mean that shelters should be weighed down with unnecessary requirements.¹³⁴ The Task Force takes another approach in making recommendations by allocating a priority level to each recommendation, and directs the recommendation to the provincial government, or non-government task force members where applicable.¹³⁵ Despite these steps, it remains unclear what function or significance the Task Force Report has had since its release in 2008.

The Task Force recommendations are organized under three headings: animal shelter operations, broader related issues, and follow-up.¹³⁶ The present Report will focus on those recommendations that relate directly to the Meek LeSage Review and legislative reform. A full list of the Task Force Recommendations is attached at Schedule “C.”

¹³³ Animal Welfare Task Force, “Animal Welfare Task Force Report,” (October, 2012), online: <http://www.mcscs.jus.gov.on.ca/english/publications/AWTF/awtf_report.html> [Task Force Report].

¹³⁴ Task Force Report, *ibid* at 3.

¹³⁵ Task Force Report, *ibid* at 2.

¹³⁶ Task Force Report, *ibid* at 6.

The Task Force Report also develops a working definition of “animal shelter,” which informs the scope of each recommendation. The proposed definition is “premises where animals are kept temporarily for the purpose of placing them under permanent ownership elsewhere.”¹³⁷

Through consideration of the recommendation made in the Meek LeSage Review, the Task Force Report makes the following statements and recommendations:

- (1) The *OSPCA Act* should be amended to ensure independent inspection of OSPCA and affiliate-operated shelters.¹³⁸

The Task Force makes this recommendation with the acknowledgement that a legislative change to the *OSPCA Act* could allow for the independent inspection of all OSPCA/affiliate-run shelters. The most appropriate independent inspection authority would have to be identified, legally authorized, properly trained and adequately resourced.¹³⁹

The Task Force also notes that under the ARA, the OMAFRA can inspect the shelter of any OSPCA and affiliate if the shelter also operates as an animal pound under contract to a municipality, which represents two thirds of OSPCA shelters and affiliates.¹⁴⁰ These statements suggest that the Task Force’s position is that the OMAFRA should be the independent inspection body. The Task Force recommends this issue be pursued as a priority item by MCSCS, the OSPCA and all stakeholders with potential involvement.¹⁴¹

The Task Force Report is silent in regard to the Meek LeSage recommendation that the government should consider the possibility of separating the OSPCA’s shelter and investigations functions.

- (2) The Standard of Care provision under the *OSPCA Act* pertaining to medical care should be reviewed and revised where necessary to clarify that preventive medicine is a component of “adequate and appropriate” medical care in shelter situations.¹⁴²

¹³⁷ Task Force Report, *ibid* at 5.

¹³⁸ Task Force Report, *ibid* at 11.

¹³⁹ Task Force Report, *ibid* at 11.

¹⁴⁰ Task Force Report, *ibid* at 11.

¹⁴¹ Task Force Report, *ibid* at 11.

¹⁴² Task Force Report, *ibid* at 12.

Instead of granting the OSPCA temporary guardianship of animals, the Task Force suggests that the intent of this Meek LeSage recommendation can be more effectively achieved by “making supportive changes to the *OSPCA Act* to clarify obligations and authorities for providing effective preventive medical care in shelter situations.”¹⁴³

In practical terms, this would require amendment to the *Standards of Care* Regulations of the *OSPCA Act*. The Task Force Report notes that the *Standards of Care* Regulations mandate that the owner/custodian of an animal must provide “adequate and appropriate medical attention.”¹⁴⁴ The Task Force recommends that this section should be amended to specify that:

in a shelter environment this must include preventive medical care, and should be delivered: [f]rom the moment an animal is in the custody of a shelter; and [i]n a manner appropriate to the shelter environment, with regard for the health of animals that are incoming or outgoing and impacts on animals already in the shelter.¹⁴⁵

- (3) A consistent set of basic standards of operation for animal shelters be created by the province.¹⁴⁶

The Task Force posits that establishing basic standards would alleviate concerns about standards of care in shelters by ensuring a reasonable degree of consistency province wide, generally raising standards and eliminating inappropriate operations.¹⁴⁷ The Task Force further states that creating basic operational standards would be sufficient to remedy the problem, dismissing the Meek LeSage recommendation that the government license and regulate minimum standards for shelters.¹⁴⁸ The Task Force Report states that the recommendation is laudable, but would be costly and cumbersome to implement.¹⁴⁹ The Task Force concludes that it would be the least cost-effective approach to dealing with the issues raised and would likely have an unnecessary negative impact on responsible shelter operators.¹⁵⁰ Overall, the Task Force submits that a

¹⁴³ Task Force Report, *ibid*.

¹⁴⁴ *Standards of Care*, *supra* note 19, s 2(2).

¹⁴⁵ Task Force Report, *supra* note 131 at 12.

¹⁴⁶ Task Force Report, *ibid* at 7.

¹⁴⁷ Task Force Report, *ibid*.

¹⁴⁸ Task Force Report, *ibid* at 4.

¹⁴⁹ Task Force Report, *ibid*.

¹⁵⁰ Task Force Report, *ibid*.

licensing approach is unnecessary if the quality and consistency of shelter operations can be obtained through less prescriptive means.¹⁵¹

- (4) The shelter sector should be given easy access to an information resource on all aspects of operating shelters effectively and responsibly, including public health-related best practices. The availability of this resource should be widely promoted.

This recommendation also responds to the Meek LeSage recommendation that “minimum standards of care should be set for shelters.” The Task Force asserts that rather than establishing new standards in addition to those in the *Standards of Care* Regulations and the ARA, it would be more effective to reinforce existing standards by establishing an inventory of best practices and promoting its use.¹⁵²

- (5) Existing OSPCA inspection authority should be reinforced to ensure compliance with *OSPCA Act* standards of care in shelters.

Again, this recommendation responds to the Meek LeSage recommendation that minimum standards be established for animal shelters. The Task Force states that “existing inspection authorities are effective in ensuring compliance with related legislated requirements.”¹⁵³ However, the Task Force posits that by defining “animal shelter” and “adding it to the list of types of premises the OSPCA can inspect without a warrant, the *Act* could more clearly indicate that the OSPCA can inspect all premises (except dwellings and accredited veterinary facilities) engaged in sheltering.”¹⁵⁴

¹⁵¹ Task Force Report, *ibid*.

¹⁵² Task Force Report, *ibid* at 8.

¹⁵³ Task Force Report, *ibid* at 10.

¹⁵⁴ Task Force Report, *ibid*.

Section 6: Recent Legislative Treatment

This section provides an overview of recent and anticipated attempts to amend the *OSPCA Act*. Each subsection identifies the party seeking to amend the *Act*, the manner in which this was or will be undertaken, and the outcome where applicable.

A. Private Member's Resolution – Frank Klees, MPP

On June 1, 2010, following the aforementioned Newmarket shelter euthanasia incident, Frank Klees, MPP tabled a resolution in the Legislature that sought “to ensure that there is a clearly defined and effective provincial oversight of all animal shelter services in the province, and to separate the inspection and enforcement powers of the OSPCA from its functions as a charity providing animal shelter services.”¹⁵⁵ The objective of this resolution was to strengthen the ability of the OSPCA to carry out its mandate, ensure adequate resources, create provincial oversight, and to enable the OSPCA to carry out its responsibilities without the inherent conflict of interest. Klees argued that the conflict was unavoidable under the existing structure.¹⁵⁶ In his proposed resolution he addressed the fact that the OSPCA has historically been a highly respected organization that enjoyed broad public support for its stated mission to “facilitate and provide for province-wide leadership on matters relating to the prevention of cruelty of animals and the promotion of animal welfare.”¹⁵⁷ However, he noted that there is “a growing gap between the OSPCA’s stated goal and its ability to deliver on that goal.”¹⁵⁸ This motion was defeated in the Legislature on November 18, 2010.¹⁵⁹

B. Bill 37 – Jack MacLaren, MPP

After the creation of the Animal Welfare Task Force was announced, but prior to the release of the Task Force Report, Ontario PC Party MPP Jack MacLaren introduced *Bill 37 – An Act to Amend the Ontario Society for the Prevention of Cruelty to Animals Act* (“**Bill 37**”).¹⁶⁰ The Bill

¹⁵⁵ Oversight of the OSPCA, *supra* note 78.

¹⁵⁶ Oversight of the OSPCA, *ibid.*

¹⁵⁷ Oversight of the OSPCA, *ibid.*

¹⁵⁸ Oversight of the OSPCA, *ibid.*

¹⁵⁹ Oversight of the OSPCA, *ibid.*

¹⁶⁰ Bill 37, *Ontario Society for the Prevention of Cruelty to Animals Amendment Act*, 2012, 2nd Sess, 40th Parliament, Legislative Assembly of Ontario.

passed first reading on February 23, 2012 but was withdrawn shortly thereafter in response to significant opposition.

The following are some of the most pertinent of the changes proposed by Bill 37:

- Repeal a number of definitions, including “distress.”
- Repeal sections 11.1, which outlines the standards of care that animal owners must meet, and 11.2, which prohibits causing or permitting distress to an animal.
- Repeal the current prohibition against animal fighting.
- Repeal all provisions regarding the enforcement of the *Act* and eliminate all references to inspectors and agents of the OSPCA, including the provisions that outline their powers.
- Repeal the current obligation of veterinarians to report abuse or neglect of animals where they have reasonable grounds to believe that such abuse or neglect has occurred.
- Repeal the provision granting the OSPCA the right to recover the costs of tending to animals seized by court order or in other prescribed circumstances.
- Repeal all provisions of the *Act* that set out offences and related penalties.
- Repeal all regulations made under the *Act*, including: *General Regulations*, 59/09; *Standards of Care*, 60/09; and *Exemptions Regulation*, 62/09.
- Add provisions to the *Act* on the sale of animals held by the OSPCA when the owner of the animals cannot be found.

It is apparent that, had it been enacted, Bill 37 would have effectively stripped the *Act* of all its substance and power to the detriment of animal protection.

C. Bill 47 – Jack MacLaren, MPP

After the withdrawal of Bill 37, Bill 47 - *Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 2012* (“**Bill 47**”) was introduced by Jack MacLaren, MPP. It was defeated in its second reading on March 29, 2012.¹⁶¹ The key provisions of the proposed Act were as follows:

¹⁶¹ Bill 47, *An Act to Amend the Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 2012*, 2nd Sess, 40th Parliament, Legislative Assembly of Ontario (Lost Second Reading, March 29, 2012).

- The separation of inspections into (a) farm animal inspections and (b) non-farm animal inspections.
- The delegation of farm inspections to OMAFRA.
- The delegation of non-farm animal inspections to the OSPCA.
- Reducing the role of OMAFRA and OSPCA inspection officers to observation, advisement, education, and writing reports on visits made.
- Removing inspector police powers and limiting inspections to those authorized by the landowner.
- Delegating enforcement instead to the Ontario Provincial Police or local police only after abuse has been substantiated and reported by inspectors.
- Limiting the removal of abused animals to instances where a recommendation has been made by a veterinarian and sanctioned by a justice of the peace.
- Eliminating OSPCA powers to invoice animal owners for the care of seized animals.
- Limiting authority to lay charges to the police under either the *Provincial Offences Act* or the *Criminal Code*.

Like Bill 37, Bill 47 aimed to strip the *Act* of its substance and power to the detriment of animal protection.

D. Bill 87 – Jack MacLaren, MPP

Bill 87, *OSPCA Oversight Act, 2013* (“**Bill 87**”) has been introduced by Jack MacLaren, MPP.¹⁶² The Bill seeks to amend the *OSPCA Act* by adding section 21.1, which gives powers to the Ombudsman, under the *Ombudsmen Act*,¹⁶³ to investigate complaints relating to the Society, affiliated societies and the Animal Care Review Board. The benefit of Bill 87 is that it would grant an independent party with the authority to oversee the OSPCA on a provincial level. This represents a step toward separating the investigation mandate from the sheltering mandate by allowing complaints to be investigated by the Ombudsman.

¹⁶² Bill 87, *OSPCA Oversight Act, 2013*, 2nd Sess, 40th Parliament, Legislative Assembly of Ontario (First Reading, June 05, 2013).

¹⁶³ *Ombudsman Act*, RSO 1990, c O.6.

E. OSPCA Act Changes, 2014 – Madeleine Meilleur, MPP

On October 10, 2012 Madeleine Meilleur, Minister of Community Safety and Correctional Services, outlined a three-stage plan to: 1) improve province-wide *OSPCA Act* enforcement; 2) strengthen OSPCA governance; and 3) ensure the protection of marine mammals in captivity including exploring options for the licensing of zoos and aquariums.

On October 25, 2013, Ms. Meilleur made a second announcement stating that the Ministry will be increasing OSPCA funding from \$500,000 to \$5.5 million per annum.¹⁶⁴ The funds will be used to, among other things, hire and train investigators to proactively inspect zoos, aquariums and kitten/puppy mills in the province. Previously investigations were carried out only in response to complaints. Ms. Meilleur attributed the Ministry's action to the issues raised by the Marineland animal cruelty case, which received extensive media coverage.¹⁶⁵

Meilleur noted that she did not proceed with licensing for zoos and aquariums as doing so would require legislative amendment and that new marine mammal Regulations are being drafted for June 2014.

¹⁶⁴ Linda Diebel, *ibid.*

¹⁶⁵ Linda Diebel, *ibid.*

Section 7: Judicial Interpretation

This section of the Report canvasses some key case law dealing with the provisions of the *OSPCA Act*. The purpose of this section is to illustrate how the *OSPCA Act* has been judicially interpreted.

A. Constitutional Challenges

Key cases involving the *OSPCA Act* are cases brought forward to challenge the constitutional validity of various provisions of the *Act*. The most vocal critics of the *OSPCA Act* tend to be farmers and landowners' groups whose complaints of excessive use of power focus on a specific action, such as entry without a warrant, searching property, removing animals, or claiming costs. Complaints of this nature are argued based on the fact that the *Act* confers police powers, but does not clarify inspectors' obligations to the public, and does not provide for any oversight of inspectors when serving this function. The failure of the *Act* to identify a responsible agency to oversee the OSPCA also raises objection by various interested stakeholders.

Complaints such as these have led to a number of allegations that the *OSPCA Act* and the powers conferred breach section 8 of the *Canadian Charter of Rights and Freedoms*.¹⁶⁶ Where allegations of abuse of power have been made, courts will weigh the object of the *Act* in section 3 with the steps taken by inspectors and agents to achieve that object, against the rights of members of the public. While courts take allegations of violations of *Charter* rights very seriously, they appear increasingly to be treating the protection of animals as a serious objective, interpreting the powers of inspectors and agents broadly to allow them to achieve it, and allowing them liberal discretion. Courts also appear to show a growing willingness to comment in their decisions on the importance of allowing inspectors a full use of their powers to help animals in distress. This judicial trend is evident in the following case law:

1. *R v Ringler*

In *R v Ringler*, the accused brought an application to exclude evidence obtained from his residence during a warrantless search and seizure conducted by the OSPCA, which resulted in

¹⁶⁶ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].*

the accused being charged with cruelty to animals under the *Criminal Code*.¹⁶⁷ The accused claimed that the search was not in compliance with section 12 or any other section of the *Act*. The accused also claimed that there were no grounds to conduct a warrantless search and that the search therefore violated section 8 of the *Charter*. In addressing the seriousness of potential violations of *Charter* rights, the court considered if exigent circumstances should extend to the protection of animals in distress. The court acknowledged that while the *Criminal Code* does not give animals the same status as humans, it recognises that they can suffer, and does not allow owners of animals to treat them in any way they wish. Common law, the *Criminal Code* and the *Act* give OSPCA agents a duty to protect animals in the circumstances alleged to be evident. The Court held that, “the bottom line is that they are living things, entitled and deserving of protection from that type of prohibited conduct stipulated in the statutory framework of the [*Act*] and the *Criminal Code*.”¹⁶⁸ The Court also held that the police and OSPCA agent entered the residence in good faith, all actions were reasonably conducted, and there was no violation of section 8 of the *Charter*. In other words, the Court held that the actions of the OSPCA, acting under authority of the *OSPCA Act*, did not violate the owner’s *Charter* rights.

2. *R v Baker*

The defendants in *R v Baker* were charged with cruelty to animals under the *Criminal Code*.¹⁶⁹ At trial, they applied to exclude evidence obtained during a search of their property on the grounds that the OSPCA’s warrant was invalid and the search violated their rights under section 8 of the *Charter*. At issue was the interpretation of section 12(1) of the *Act*, which permits the issuance of a warrant authorizing an inspector or an agent of the Society to enter either alone or accompanied by a veterinarian to inspect a property for animals in distress. The warrant named eleven OSPCA agents/inspectors, five of whom attended, a veterinarian, and two Ontario Provincial Police officers. The trial judge held that the *Act* did not authorize the OSPCA to name additional employees in warrants beyond what section 12(1) allowed, and that the search was a violation of section 8 of the *Charter*. The Court excluded the search evidence, and the defendants were acquitted. The Crown appealed the acquittal and asked for a new trial, which was granted.

¹⁶⁷ *R v Ringler*, 2004 ONCJ 104, 122 CRR(2d) 15; *Criminal Code*, *supra* note 10.

¹⁶⁸ *R v Ringler*, *ibid*.

¹⁶⁹ *R v Baker*, 2004 CanLII 569 (ON SC).

At issue on appeal was whether or not “one or more inspectors or agents of the Society named in the warrant to enter the building or place, either alone or accompanied by one or more veterinarians or other persons as the inspectors or agents consider advisable” in section 12(1) limited the investigation to one inspector and a veterinarian, or should be interpreted liberally to ensure the attainment of the object of the *Act*. Several agents, a veterinarian and two Ontario Provincial Police officers were present when the defendants’ property was searched and 65 dogs in distress were removed. The Court stated that section 12(1) should be read liberally and should allow whatever is necessary within reason to ensure the object of the *Act* is attained.

Accordingly, the Court reasoned that restricting the inspection of a large number of animals in distress in two different locations to only one agent and one veterinarian would have frustrated the true intent and object of the *Act*. The Court concluded that the actions of the OSPCA were under the authority of the *OSPCA Act* and that the owners’ *Charter* rights had not been breached.

3. Anticipated Litigation

Animal Justice has been informed that a group of landowners have filed Notice of Constitutional Question of the *OSPCA Act* to challenge the constitutional validity of sections 1, 11, 11.1, 11.2, 11.4, 12, 12.1, 13, 14 and 18.1. A copy of the Notice of Constitutional Question is attached as Schedule D. The Superior Court of Justice is expected to hear the matter in Perth, Ontario in 2014. The landowners’ concerns revolve around the authority given to the OSPCA to enter their premises and lay charges with regard to the lack of accountability and provincial oversight inherent in the OSPCA under the current legislation.

B. “Distress”

For the purposes of the *Act*, “distress” is defined as “the state of being in need of proper care, water, food, or shelter, or being injured, sick, or in pain or suffering or being abused or subject to undue or unnecessary hardship, privation or neglect.”¹⁷⁰ Furthermore, according to the *Act*, no person shall cause an animal to be in distress, and no owner or custodian of an animal shall permit the animal to be in distress.¹⁷¹ It is specified in the *Act* that the sections regarding distress

¹⁷⁰ *OSPCA Act*, *supra* note 13, s 1(1).

¹⁷¹ *OSPCA Act*, *ibid*, ss 11.2(1), 11.2(2).

and liability do not apply to permitted activities concerning wildlife, other prescribed classes of animals, and farm animals in most circumstances.¹⁷²

In order to justify the removal of an animal, compliance orders or other actions taken under the authority of the *Act*, inspectors and agents must be able to support the assessments that an animal is “in distress” according to the statutory definition. On occasion, it has been necessary for the courts to make the assessment.

The exceptions, based both on species and circumstances, means that many animals are not protected by the *Act*. Where these exclusions apply, courts will not interpret “animal” to include all animals. This is problematic from an animal welfare perspective in relation to the manner in which certain actions may be permissible so long as exclusions apply under the *Act*. This problem was highlighted when this provision of the *Act* was interpreted to exclude marine mammals at Marineland in the wake of widespread animal abuse allegations.

Courts have also been required to determine who, if anyone, is responsible when distress is caused to an animal. This can be an issue of concern because the wording of the *Act* has meant that charges or a conviction are not possible because the person allegedly causing distress was considered neither an owner nor custodian of the animal. This issue was considered by the Court in *Podolsky v Cadillac Fairview Corp.*¹⁷³

1. *Podolsky v Cadillac Fairview Corp.*

In this case, three corporations faced charges of strict liability offences of causing distress to birds as a result of reflective glass windows in their office buildings. The Court determined that while the *OSPCA Act*, in its current form, does not define ‘animal,’ the “primary focus remains fixed on animal health and welfare and the prevention of exploitation and abuse by pet owners and those engaged in animal husbandry and the exhibition of animals.”¹⁷⁴ Accordingly, the Court determined that the *OSPCA Act*’s objective in section 3 does not apply to non-captive wildlife, including birds.

¹⁷² *OSPCA Act*, *ibid*, ss 11.2(6).

¹⁷³ *Podolsky v Cadillac Fairview Corp.*, 2013 ONCJ 65.

¹⁷⁴ *Podolsky v Cadillac Fairview Corp.*, *ibid* at para 64.

In determining the applicability of the *Act*, the Court found that the exclusion of wildlife was supported by the exception in subsection 11.2 (6) (a) regarding “an activity permitted under the *Fish and Wildlife Conservation Act, 1997* in relation to wildlife in the wild.”¹⁷⁵ The relevant matter was wildlife, rather than an activity, so while section 11.2 would cover captive wildlife, it does not cover wildlife in their natural habitat. Consequently, whatever distress the defendants’ acts or omissions may cause to the birds, it could not be covered by the *Act*.¹⁷⁶

The Court also considered subsections 11.2(1) and (2) in determining responsibility for causing distress. Whereas subsection (1) prohibits all persons from causing distress, subsection (2) also prohibits owners or custodians from permitting distress.¹⁷⁷ The Court interpreted “cause” to mean an active infliction of harm, and “permitting” to mean mere passive participation. Although not disagreeing that distress had occurred, the Court held that the defendants’ passive ownership and management of buildings with which migratory birds collide did not actively inflict distress pursuant to subsection (1), and they were neither owners nor custodians, pursuant to subsection (2).¹⁷⁸

¹⁷⁵ *OSPCA Act*, *supra* note 13, s 11.2(6)(a).

¹⁷⁶ *Podolsky v Cadillac Fairview Corp.*, *supra* note 173 at paras 77-78.

¹⁷⁷ *OSPCA Act*, *supra* note 13, ss 11.2(1), (2).

¹⁷⁸ *Podolsky v. Cadillac Fairview Corp.*, *supra* note 173 at para 76.

Section 8: Animal Justice Best Practice Recommendations

Based on extensive research and consideration of the issues identified by stakeholders, recent studies, reviews and legislative treatment of the *OSPCA Act*, Animal Justice makes the following best practice recommendations for the further development of the Act.

A. Separation of Shelter and Investigative Mandates

Animal Justice recommends that amendments be made to the *OSPCA Act* to separate the investigative and sheltering functions of the OSPCA. This recommendation is consistent with both the Meek LeSage Review and the Task Force Report.

Based on consideration of numerous government agencies, it is clear that the MCSCS is the most appropriate agency to oversee the OSPCA and that the OMAFRA should not be the agency responsible with this task due to the conflict of interest between OMAFRA and animal welfare protections outlined in the *Act*.

B. Establish Independent Oversight of the OSPCA

Animal Justice recommends that the *OSPCA Act* be amended to establish independent oversight of the OSPCA to correct the inherent conflict of interest legislated under the *Act*. It is suggested by Animal Justice that the MCSCS is best suited for such a task as they are most experienced with animal welfare issues and enforcement, but we do not object to the Ombudsman also having the authority to investigate complaints should Bill 87 pass.

C. Amend *OSPCA Act* Exemptions for Standard Industry Practice

Animal Justice recommends that the exemptions from compliance with the *Standards of Care* Regulations and the prohibitions on distress for reasonable and generally accepted industry practice be refined and strengthened to better protect farmed animals from cruelty. This could be accomplished in one of three ways: (1) the exemptions could be completely removed; (2) regulations under the *Act* could be passed; or (3) the current provisions could be refined to create minimum standards.

Animal Justice recommends removing the exemptions for industry practice for the purpose of affording better protection from cruelty for farmed animals. This would provide OSPCA officers a clear set of criteria through which to evaluate these animals' welfare; those found under the *Standards of Care* and the definition of "distress" pursuant to the *Act*. This amendment would ensure that farmed animals benefit from the legislated object of the Society, "to facilitate and provide for the prevention of cruelty to animals and their protection and relief therefrom."¹⁷⁹

The second option, the passing of regulations, would take place through power granted to the Lieutenant Governor in Council pursuant to the *Act*. To date, no regulations on exempted-animal care have been enacted and instead voluntary Codes of Practice may be used as evidence of compliance with standard industry practice. Notably, failure to comply with the Codes of Practice will not necessarily result in a breach of the *OSPCA Act* where other evidence is provided.

Animal Justice recommends that regulations be enacted to regulate those industry practices that are exempt from compliance with the *OSPCA Act*. This would provide farmers and OSPCA inspectors and agents with clear instruction on those activities that are exempt from compliance with the *Act*, and those that are not.

In the alternative, Animal Justice recommends that the *OSPCA Act* be amended in a way that mandates compliance with the Codes of Practice as a minimum, as amended from time to time. For example, the *General Regulations* enacted pursuant to New Brunswick's *Society for the Prevention of Cruelty to Animals Act* state that a person shall not be convicted of an offence for failure to comply with the prescribed standards of care for treating an animal in a manner consistent with a standard or code of conduct, practice or procedure specified in an appended Schedule.¹⁸⁰

¹⁷⁹ *OSPCA Act*, *supra* note 13, s 3.

¹⁸⁰ *General Regulation*, NB 2000-4; *Society for the Prevention of Cruelty to Animals Act*, RSNB 1973, c S -12.

D. Amend the *OSPCA Act* to Authorize Preventative Medical Care During Redemption Periods

The Meek LeSage Review clearly outlines why the current *OSPCA Act* does not afford adequate protection to animals who are subject to redemption periods pursuant to the *ARA* or *General Regulation*, O Reg 59/09. Accordingly, Animal Justice recommends that the *OSPCA Act* be amended to ensure that animals subject to redemption periods receive adequate and appropriate medical care in the absence of owner consent.

Based on the recommendation of the Task Force Report, Animal Justice recommends that the definition of “adequate and appropriate medical attention” pursuant to the *Standards of Care Regulations* be amended to include preventative medicine, specifying that:

In a shelter environment this must include preventive medical care, and should be delivered:

- (a) from the moment an animal is in the custody of a shelter; and,
- (b) in a manner appropriate to the shelter environment, with regard for the health of animals that are incoming or outgoing and impacts on animals already in the shelter.

E. Establish Minimum Standards of Care for Animal Shelters

Basic standards of operations for animal shelters created by the province would be helpful; however, it would not resolve the issue of the inherent conflict of interest within the *OSPCA*. Animal Justice is in agreement with the Meek LeSage recommendations that suggest ensuring standards of care are met in shelters by having a licensing regime. An independent authority such as the police force or the MCSCS could be the body to ensure that the licensing criteria are being met and that the minimum standards of care are being adhered to within shelters. They would also have the ability to enforce penalties in the event that the standards are not being met according to a consistent provincial standard.

F. Regulatory Oversight of Zoos & Aquariums

In accordance with the proposed changes by Ms. Meilleur outlined above, Animal Justice supports the decision by the province to provide more funding to the *OSPCA* in order to implement a program that enables training for *OSPCA* inspectors to be better equipped to

investigate complaints concerning marine mammals, agricultural livestock and exotic animals. Animal Justice is also in support of the inspection regime for the province's ~ 60 zoos and aquariums, and puppy and kitten mills. While this plan is a step in the right direction, Animal Justice recommends that the plan be closely monitored and that the government also move forward to implement a licensing regime for zoos and aquariums through the legislative amendment process.

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SCHEDULE A

Grant Thornton Report Recommendations

The objectives of the review were to make recommendations to the OSPCA with respect to:

- its governance structure, processes, by-laws and “service delivery model” to ensure these support the organization’s legislated authority and are most effective and efficient to sustain the organization’s operations, funding and long-term viability; and
- the OSPCA’s relationship with its affiliates as it pertains to the organization’s legislated authority as well as financial components of that relationship including fees, fundraising and operational/infrastructure costs as they relate to governance.

Outlined below are the recommendations that result from the review. Short term recommendations should be addressed in the next six to twelve months and long term recommendations should be addressed in the next two years.

Improving the Current Governance Model

The OSPCA has the advantage of being able to build on its current governance model from a position where stakeholders agree on the mission of the organization – the prevention of cruelty to animals. Unfortunately, the OSPCA’s history has led to a culture of ‘we-they’ where the various participants in the OSPCA ‘system’ do not have the level of trust and cooperation that allow them to work together as a ‘system.’ Building trust and spirit of cooperation is an essential first step in improving the governance model.

The new Board has begun to create a more cohesive governing body for the organization and, as outlined in Recommendations 1 and 2, is encouraged to continue with its plans to orient its Board and to create short-term plans, priorities and budgets to guide the organization.

To address the lack of trust and cooperation that has evolved in the OSPCA ‘system’ over time and to ensure that the Recommendations related to improving the governance model in the short-run are implemented, as suggested in Recommendation 3, the Board of the OSPCA should create an Implementation Task Team that is responsible for leading the implementation of Recommendations 4 and 5 from this review.

Once reconstituted under the revised and updated by-laws, the OSPCA Board should implement Recommendations 6 through 12 over a one or two year period.

Short Term

1. The Board is encouraged to proceed with its plans to conduct a governance and Board orientation for the Board of the OSPCA to ensure that the Board has a solid

understanding of its role as a governance body, and is equipped to fulfill the roles and responsibilities of a Board.

In the longer term, the OSPCA Board should develop a Board Orientation manual and a new Director orientation program that is available to all new Directors. This orientation program should include presentations from staff about the OSPCA's programs and services, meetings with the Chair (or Past Chair) and two to three former Directors to build understanding of the way the Board operates, review of the Orientation manual, and any additional reading, discussions or presentations that would promote understanding of the role and responsibilities of the Board and individual Directors on the Board.

2. The current Board should establish priorities and/or a business plan for the OSPCA that will guide the organization's operations over the next year. These priorities should be shared with management, the Boards of Affiliated Societies and with Branch Advisory Committees to promote an understanding of the priorities for the OSPCA and the objectives towards which the Board is directing the OSPCA.
3. The Board should create an Implementation Task Team that is responsible for developing an implementation plan for the Recommendations from this review, leading the implementation plan, and communicating the implementation plan and progress against the implementation plan to stakeholders in the OSPCA system.

The Implementation Task Team should consist of representatives from the Board of the OSPCA for the implementation of the Recommendations based on an implementation plan and timeline that is developed by the Implementation Task Team and approved by the Board.

4. The Implementation Task Team should undertake to fully update the OSPCA by-laws over a reasonable period of time to ensure that they provide appropriate direction to the Board and the organization in the conduct of its governance responsibilities. The Implementation Task Team might draw on individuals who have experience in developing by-laws, such as governors and senior leaders in other organizations and potentially the OSPCA's legal counsel to ensure the quality, completeness and comprehensibility of the by-laws.
- 4a. The OSPCA's revised by-laws should clearly identify the membership status of the OSPCA with respect to its service delivery role. The OSPCA's membership status should allow its rights and responsibilities that are the same or similar to Class A membership to recognize that the 'branch system' of service delivery and the members of the OSPCA that support it are an equally important component of the OSPCA's 'system' of service delivery.

Membership status that is consistent with that of Affiliated Societies that carry out similar service delivery roles will also allow the OSPCA to have members elected to the Board of the OSPCA and thus the ability to have 'branch' representatives elected to the Board to represent the interests of the service delivery functions performed by the OSPCA.

- 4b. The OSPCA's revised by-laws should clearly and completely describe the Board's mandate and in particular, identify the Board's responsibilities with respect to:
- approving organizational strategy and planning;
 - evaluating and compensating the CEO and that there is an effective succession plan to ensure organizational continuity;
 - setting the 'tone at the top' with respect to the ethical and value-based management of the OSPCA;
 - approving corporate policy;
 - monitoring performance of the organization;
 - understanding the organization's business risks and ensuring implementation of systems to manage these risks;
 - fulfilling legal and financial requirements;
 - providing the CEO with necessary counsel and constructive challenge;
 - communicating with stakeholders; and
 - ensuring the Board works effectively.

The by-laws should also indicate that Board meetings can be convened by teleconference to allow greater participation on the Board and at Board meetings.

- 4c. The revised by-laws of the OSPCA should define the length of terms for Directors to two to three years and limit the number of consecutive terms for an individual Director to two. This by-law change should be introduced along with a staggering of the terms of the first Directors elected under this revised by-law to allow for orderly transition of the Board. For example, four Directors would have three year terms, four Directors would have two year terms and four Directors would have one year terms.
- 4d. The revised by-laws should define eligibility for election to the Board of Directors to address the perceived conflicts that exist from having employees of Affiliated Societies participate on the Board as Directors and/or Officers. Appropriate safeguards should be put in place to avoid real conflicts and to mitigate perceived conflicts of interest.
5. The Implementation Task Team should develop and introduce a stakeholder communication plan to increase knowledge and understanding of the OSPCA's service delivery and governance model amongst key stakeholders. The communication plan should begin with communicating the implementation plan.

A key objective of the communication plan should be improving understanding amongst OSPCA 'system' stakeholders as a means to improving the level of trust and cooperation within the OSPCA 'system'.

Long Term

6. The OSPCA, under the leadership and direction of the Board as constituted under the revised by-laws should undertake to develop a multi-year strategic plan that identifies the shared vision for the organization and the OSPCA 'system', the goals that would support realization of this vision and the one, two and three year strategies or plans that would be undertaken. This strategic plan should then form the basis for budgeting and operational planning for the OSPCA.

The strategic planning process should include consultation with all key stakeholders in the OSPCA 'system' including Directors, management and staff of the OSPCA, management and staff of Affiliated Societies, Directors on the Boards of Affiliated Societies, Branch Advisory Committees, and donors to humane societies across the province. This highly consultative process would serve not only to ensure that the strategic plan reflected the priorities of the full OSPCA 'system' but would also serve to improve the level of understanding and awareness of the OSPCA amongst all stakeholders.

7. The OSPCA and its Affiliated Societies should undertake to develop 'service level agreements' or updated Affiliation Agreements that clearly define the respective roles and responsibilities of the OSPCA and its Affiliated Societies. These agreements should include mechanisms for measuring and monitoring compliance with the terms in the agreement and should be regularly updated to ensure that they continue to reflect the service delivery model in the OSPCA 'system'.

These agreements should also clearly identify the course of action should either party fail to meet its roles and responsibilities within the agreement.

The Affiliate Review Committee of the Board should be assigned the responsibility for ongoing monitoring of the relevance and effectiveness and compliance with these agreements and for taking any corrective action that is required should there be a breach of the agreement.

8. As part of the continual enhancement of the organization's by-laws, the by-laws should be updated to include:
 - mandate descriptions for each of the Board committees including the objective of the committee, size and composition of the committee, authority of the committee, and its reporting relationship to the board;
 - role or expectation descriptions for individual Directors;
 - the process for evaluation of the Board's effectiveness; and
 - clarification of the voting authorities and requirements for quorum.

9. The OSPCA Board should develop a policy manual that provides further clarification of the legislation and by-laws. A policy manual can be modified with the approval of the Board making it a more effective tool providing clear direction to the Board on how it will operate and make decisions and to the CEO about the Board's expectations for how day-to-day operations of the OSPCA will be managed.

Topics for inclusion in a policy manual include:

- Board meeting processes;
- Management of the Board/CEO relationship;
- Spending limits and delegated authorities;
- Guidelines and parameters for financial management and budgeting;
- Humane Awards;
- Human resource management including parameters for compensation and benefits programs;
- Risk management;
- Internal control; and
- Stakeholder communication and consultation.

The Board policy manual should be regularly reviewed to ensure that it remains relevant, accurate and reflective of the Board's direction in terms of the governance of the OSPCA.

10. The OSPCA Board should develop a profile of the skills, competencies and experience that is required of the Board as a whole to guide the nominating committee in the identification of candidates for the Board. This profile should also recognize the need for geographic representation on the Board.

After their election, the Board should assess the skills, competences, and experience of the board as a whole against the profile and address any 'gaps' through training or inviting ex-officio members or advisors who brings specific skills, competencies and experience to ensure that the Board is equipped to fulfill its mandate.

11. The OSPCA Board should develop a role description for the CEO and the Board and CEO should annually establish performance objectives to ensure that the CEO is leading and managing the organization to achieve the priorities and objectives of the Board.
12. The OSPCA Board and management should define key performance measures for the OSPCA and for the OSPCA 'system' that will be used by the Board to monitor the performance of the organization. These key performance measures should reflect the goals of the organization as identified in the strategic plan and the full range of service delivery activity and legislated responsibility of the organization. The key performance

measures should include input, activity, output and outcome measures along with financial measures related to efficiency and long-term sustainability.

The OSPCA and its Affiliated Societies should work together to develop a process to collect and report information on a timely basis to allow for the development of these key performance measures and their use by the Board.

Improving the Service Delivery Model

Generally, stakeholders indicated that the OSPCA's service delivery mandate is being effectively delivered. Recommendations 13 through 17 identify improvements to the service delivery model that will improve the consistency, and effectiveness of the service delivery model.

Short Term

13. The OSPCA and its Affiliated Societies should endeavour to establish minimum safety equipment standards for its inspectors and agents to promote their safety in carrying out their enforcement activities.
14. The OSPCA board should encourage the development of OSPCA 'system' working groups comprised of management and staff of the OSPCA and Affiliated Societies for the purpose of developing common standards and practices to be applied across the OSPCA 'system'. This practice would promote greater communication and cooperation amongst participants in the OSPCA system and could result in greater efficiencies and economies of scale been realized by the OSPCA and or its Affiliated Societies.
15. A working group of representatives from the OSPCA and its Affiliated Societies should be established to develop and agree upon 'minimum standards' and 'minimum service levels' that will be applied across the OSPCA 'system' for enforcement and investigative services related to the legislative mandate of the OSPCA. These 'minimum standards' should form the basis for ensuring that the legislative mandate related to enforcement is carried out at an appropriate level and in an appropriate way across the province.

These 'minimum standards' and 'minimum service levels' should reflect the available resources within the OSPCA 'system' and will also provide the basis from which the OSPCA makes decisions about where the OSPCA resources are deployed to address any gaps in the ability of local societies to meet the legislative mandate.

These 'minimum standards' and 'minimum service levels' should also form the basis for evaluating whether the OSPCA and its Affiliated Societies are appropriately meeting the legislative mandate for enforcement services.

16. The OSPCA should enhance the monitoring and compliance function related to ensuring that its legislative mandate is fulfilled. This can be accomplished by either:

- providing defined and greater authorities to the Chief Inspector to allow him/her to monitor the compliance of inspectors, agents and Affiliated Societies with the 'minimum standards; and 'minimum service levels' of the OSPCA;
- providing defined and greater authorities to the Chief Inspector to direct inspectors and agents in activities related to fulfilling the legislated enforcement mandate; and/or
- providing the Chief Inspector with the ability to issue sanctions against inspectors, agents and/or affiliated societies who are found not to be in compliance with the OSPCA's minimum standards or minimum service levels; and/or
- creating a 'peer review' group led by the Chief Inspector and comprised of inspectors from Affiliated Societies to issue sanctions against inspectors, agents and/or Affiliated Societies who are found not to be in compliance with the OSPCA's minimum standards or minimum service levels.

Long Term

17. The OSPCA should review its current training format and identify opportunities to make training more accessible to potential inspectors and agents across the province and to increase the opportunities for on-going training for existing inspectors and agents. This might include:

- partnering with other enforcement training agencies for some parts of the training curriculum; and/or
- making some training available at locations across the province; and/or
- scheduling courses or workshops on weekends.

Improving the Financial Relationship between the OSPCA and its Affiliated Societies

The OSPCA and its Affiliated Societies currently derive their revenues primarily from donations and contracts for services. The risk associated with reliance on revenues from donations requires that the OSPCA and its Affiliated Societies manage their financial positions with commensurate prudence. Recommendations 18, 19 and 20 are intended to guide the OSPCA to improving its financial situation and financial relationship with its Affiliated Societies.

Short Term

18. The OSPCA Board is encouraged to continue with the introduction of a new budgeting system for the OSPCA that has the Board establishing guidelines and parameters within which the organization's budget is developed. These guidelines and parameters should be established to support continued operation of the OSPCA and over time, to reduce the organization's reliance on legacy funds and to build sufficient reserves to allow the organization to be financially sustainable in the long run.

In the long run, the Board should continue to play an active role in the OSPCA budgeting and financial monitoring process.

Long Term

19. A working group of representatives from the OSPCA and its Affiliated Societies should be established to identify opportunities for creating greater efficiency and economies of scale in the OSPCA 'system'. These opportunities might include:
 - sharing of best practices in terms of any of the functions of the OSPCA or its Affiliated Societies;
 - creating shared services;
 - acquiring services from the OSPCA and/or other Affiliated Societies on a cost-shared or fee-for-service basis;
 - hosting joint initiatives or projects;
 - leveraging other resources in local communities; and
 - identifying and pursuing alternative sources of revenue.
20. The OSPCA Board should collect and utilize system-wide financial and activity information to inform its decision-making. This will allow the OSPCA to quantify the cost of providing enforcement services across the province. When minimum service standards are available, the OSPCA will also be able to use this information to develop strategies to address any gaps that might exist between funding and service level expectations.

SCHEDULE B

Meek LeSage Review Recommendations

A. Policies, Procedures and Protocols

1. Infection Control Program

The OSPCA should create the position of and appoint a Chief Veterinarian. This person would be a central veterinary resource for shelters and veterinarians working in or for shelters, have a formal role in outbreak management, and be at a very senior administrative level.

An Outbreak Response Team should be developed. This would include relevant internal and external experts and be coordinated by the Chief Veterinarian. Shelters would have a requirement to inform the Outbreak Response Team of any known or suspected outbreak and there would be a requirement to follow all recommendations made by the Team.

The OSPCA should have a provincial Infection Control Officer. This could be a role for the Chief Veterinarian. The Infection Control Officer would: be a central resource for infection control questions from shelters and associated veterinarians; be a member of the Outbreak Response Team; and develop or review all new protocols pertaining to infectious diseases and infection control.

The OSPCA should have a formal written infection control program. This should be reviewed regularly by experts and formally implemented at all shelters.

A formal surveillance program should be implemented in every shelter, so that infection disease events are documented and centrally reported.

Each shelter should have a designated Infection Control Practitioner. This person would: be the local infection control resource; communicate with the provincial Infection Control Officer; ensure training and compliance with infection control protocols; and collate basic surveillance data.

Every OSPCA shelter and affiliate should have an infection control review. This would involve a physical inspection of the facility, as well as a review of protocols and practices. This would be performed by the provincial Infection Control Officer (with assistance from external sources if needed, particularly at the start). This would be repeated every few years, as well as at the time of any known or suspected outbreak, and prior to any renovations.

All plans for new shelter construction should include an infection control review that would be coordinated by the provincial Infection Control Officer, ideally with input from external infection control experts.

2. Need for Review and Revision of Key Documents

The OSPCA should re-evaluate its core mandate statement to include recognition of its role in the protection of public health. This core mandate should be incorporated into all OSPCA policies.

A comprehensive review of all written policy and procedure documents is required. Protocols should be re-written to ensure accuracy and completeness, including those for animal health management and infection control.

All newly developed policy, procedure and protocol documents pertaining to animal health and infectious disease control should be reviewed by one or more external experts before being finalized. Documents should be clear and concise. Information must be stated as policy that must be followed, not recommendations that should be considered.

3. Administrative Structure

The OSPCA administrative structure should be assessed to determine whether it facilitates adequate communication and consensus building, and requires the input of personnel with the expertise to properly inform decision-making when major decisions are under consideration. It is important to ensure that people with expertise in animal health and infectious disease control hold an adequately senior position in the organization so that their input is clearly required and seriously considered.

4. The Veterinary Role

The role of the veterinarian in decision-making and animal care must be evaluated and upgraded since there is currently little formal requirement for veterinary involvement, even in significant animal health or outbreak situations.

The Chief Veterinarian should have regular direct contact with veterinarians providing service to shelters.

The OSPCA should develop a formal policy regarding the interaction of shelters with non-OSPCA veterinarians. This should include the requirement that a written agreement exist between the two parties. The agreement should cover topics such as the veterinarian's role and responsibilities, the scope of services to be provided (including the provision of a formal population medicine program), compensation, responsibility for animal care expenses, and the requirement for the veterinarian to have an accredited ambulatory practice.

A 'herd-health' relationship should be established between the shelter and the veterinarian. The veterinarian must develop an understanding of the normal population of animals and the shelter staff's abilities to recognize signs of disease, and must ensure proper storage and administration of drugs. A veterinarian may only prescribe or dispense drugs required for treating animals under his or her professional care. Animals brought into a shelter must pass the legislated redemption period before non-emergency veterinary care can be provided.

A list of specific animal health activities that can be done by non-veterinary personnel should be developed, and the training programs they require to perform those procedures implemented. A veterinarian must always perform procedures that are restricted to veterinarians by the CVO or the OSPCA.

Outreach programs, perhaps linked with the Ontario Veterinary College in Guelph, aimed at increasing the exposure of veterinarians, veterinary students, and veterinary technician students to shelter medicine should be considered. This would help increase the pool of knowledgeable personnel who might ultimately work in, or with shelters.

5. Occupational Health and Safety

An Occupational Health and Safety Liaison position should be created and filled by a physician or nurse with occupational health and safety training to address occupational health and safety questions and concerns. This person would be a member of the Outbreak Response Team and of the OSPCA provincial office Joint Occupational Health and Safety Committee. The person in this role would advise during the development or updating of all policies and procedures that relate to human health. In addition to ensuring that general workplace hazards are addressed, input would be sought with respect to things specific to a shelter environment, such as identifying and managing risk of animal bites and scratches, and zoonotic disease transmission, particularly for potentially immuno-compromised people, with special focus on rabies risk and vaccination. Attention should also be paid to other hazards, for example, the use and disposal of needles and other 'sharps', and controlled and targeted drugs.

6. Animal Adoption

Written information regarding basic animal health and care, and infection control practices, including for zoonotic diseases, should be developed and given to people adopting animals.

People adopting animals should be encouraged to report any animal illnesses that occur during the post-adoption period to the Infection Control Practitioner and human illness to the Occupation Health and Safety Liaison.

The Liaison would also coordinate reports of shelter-associated infections in staff and volunteers. It is important that the OPSCA establish clear policies governing the receipt and protection of all human medical information in order to ensure an individual's privacy is respected.

The OPSCA should re-evaluate current practices pertaining to rabies vaccination of animals. Efforts should be undertaken to maximize vaccination prior to adoption, thereby reducing the current reliance on adopters to get the animal vaccinated. If animals are adopted without rabies vaccination, clear written information regarding the need for rabies vaccination must be provided to the adopters.

B. Record-Keeping

There is a need to restructure recording forms and to enhance the importance of recording health-related data. Specifically, the animal health records must, at a minimum, meet the CVO Guidelines and Minimum Standards. Summary data from these records can be entered into and maintained in computer software such as PetPoint™. These summary data are crucial for ongoing monitoring of the health of the shelter population and for making appropriate management changes. Not all individual animal data needs to be stored in computerized files (e-files); however, the original records need to contain the pertinent details of health events for each animal.

Clear guidance is required regarding electronic record-keeping using PetPoint™ or similar software. Electronic records of summary data are extremely useful but there need to be clear guidelines as to what health data from the paper record should be entered as a diagnostic or health event into the database. For example, the key data could be highlighted or entered in a designated area on the cover page of the paper record.

There should be clear statements describing the decision-making hierarchy (who makes decisions about what) and intended interventions (such as vaccinations, neutering, or euthanasia) should be noted in the animal's record. Having a senior manager explicitly 'sign off' before these interventions can be implemented should prevent problems such as animals being vaccinated in the morning and euthanized in the afternoon.

Logs must be accurate and complete regarding the usage of all controlled and targeted drugs (e.g. euthanasol).

C. Prevention, Testing, and Treatment of Ringworm

Screening all animals for ringworm through an examination for skin lesions, a Wood's lamp examination, and follow up diagnostics for suspected cases should be done at the time of admission. This is the best way to prevent the introduction of ringworm into the general population of the facility.

The use of in-clinic screening tests should be reviewed. Personnel using such tests must be adequately trained to perform and interpret such screening tests. Criteria for selecting a test and the limitations of the test results (false negatives and/or false positives) must be understood. Any tests that involve cultivation of microorganisms must only be performed using full Containment Level II precautions. When a disease outbreak is suspected, or as otherwise appropriate, confirmatory diagnostic testing by an outside accredited laboratory of a number of suspected cases should be done.

Instruction of key shelter personnel, by specialists (distance education materials combined with hands-on training sessions), about the clinical recognition of ringworm, and the proper use of Wood's Lamps and fungal cultures, along with direction on when to send samples to an accredited diagnostic laboratory, is paramount to avoiding misdiagnoses.

Animals suspected of having ringworm should be separated from healthy animals. The Outbreak Response Team, the Chief Veterinarian, and the Infection Control Officer should be notified and should assess the situation. Based on their assessment, a formal action plan would be discussed with the local veterinarian, and other appropriate personnel, and instituted. See Dr Yu's paper for further information on the prevention, diagnosis, control, and treatment of ringworm in the shelter context.

A formal mechanism for assessment of the role, if any, of depopulation in response to an outbreak should be developed. This would involve the Outbreak Response Team and relevant administrative personnel. Depopulation should only be considered as per ASV Guidelines, and such decisions must always be made at the provincial level with the input of veterinary personnel.

Although euthanasia is a controversial issue, shelters should be up front about this fact of shelter life and be forthcoming with their statistics and reasons for euthanasia. Doing so may allow the OSPCA and communities to work together to find alternative solutions to overpopulation.

D. Legislative Amendments and Funding

The *OSPCA Act* gives the OSPCA powers akin to those of a police force, but does not identify an agency responsible for overseeing the OSPCA in its execution of the legislative mandate. The Ontario government should consider legislative amendments to provide for oversight of the OSPCA in order to remedy the current situation of having the OSPCA essentially policing itself.

The OSPCA's legislative mandate often requires that it keep and care for 'investigations' animals, however, the Ontario government provides no base funding (apart from the \$500,000 for inspector training) for the investigative and enforcement services the OSPCA provides. This results in the investigations aspect of the OSPCA's operation often consuming the budget of its shelter mandate. The possibility of separating the OSPCA sheltering services from its investigation and enforcement services should be considered by government.

Many of the problems the OSPCA has faced and continues to face flow from inadequate funding. It is imperative that the Ontario government work in partnership with the OSPCA to create a solution that ensures adequate funding and proper oversight is established to ensure that the legislative mandate is carried out effectively.

Legislation imposes a minimum redemption period during which only emergency veterinary care can be provided. Legislative amendments should be considered to give shelters accepting lost, seized, or surrendered animals temporary guardianship of the animals so that non-emergency veterinary care, including preventive measures, can be provided during the redemption period.

We recommend a task force be created, with representation from the various Ministries directly involved with animal issues, in order to ensure that appropriate changes are made. The task force should have representation from: the Ministry of Community Safety and Correctional Services (MCSCS); the Ministry of the Attorney General; the Ministry of Agriculture, Food and Rural Affairs; the Ministry of Natural Resources; the Ministry of Health and Long-Term Care; and the Ministry of Labour; and from the shelter community and society at large. The MCSCS should take the lead and convene the group as soon as is practicable.

Minimum standards of care should be established for animal shelters in the province to ensure animals housed there receive proper care and treatment. We recommend government consider licensing and regulating minimum standards for shelters. Proper oversight of these facilities is required. Including inspection powers in legislative changes would help ensure minimum standards are being met in all shelter facilities.

E. Work Environment

1. Core competencies and Training

Core competencies should be developed for every position in the OSPCA. Every effort should be made to ensure that new hires fulfill these competencies. Personnel should be considered 'probationary' until all core competencies have been fulfilled.

Personnel should not commence work or volunteering in the workplace until they have at least the minimum training required for the position.

Training programs should be established for all personnel including on-site veterinarians and volunteers. These should be developed centrally, whenever possible, and should include assessment tools to indicate and document that training was performed and was successful. This needs to be followed by ongoing continuing education opportunities.

Training programs for veterinarians who interact with shelters should be developed to inform them about OSPCA protocols, provide general shelter and medicine resource material, and offer, as appropriate, formal continuing education opportunities.

Membership in the ASV is encouraged for all veterinarians working in a shelter environment.

2. Occupational Health and Safety Protocol Established

Policies and protocols must be developed and put in place to prevent or reduce human health and safety risks in the shelter environment. Consultation with experts in veterinary medicine, occupational health and safety, and infectious disease management is recommended to ensure policies are comprehensive. Once established, compliance with health and safety policies must be mandatory for all personnel.

Health and safety policies should be reviewed regularly in order to ensure they reflect the best practices and industry standards. Changes to policies and procedures should be reviewed and authorized by the Infection Control Officer, the Chief Veterinarian and the Occupational Health and Safety Liaison.

The rights and responsibilities of employers and workers as provided by the OHSA should be clearly identified in the OSPCA health and safety policy. All shelter workers and volunteers should receive information and proper training relating to health and safety risks that exist in the shelter environment and the proper protocols to follow to mitigate such risk. It is recommended that, where possible, policies be posted in areas visible to all personnel.

The OSPCA should ensure that Joint Occupational Health and Safety Committees or health and safety representatives are active at each of their shelters. Furthermore, it is important that these Committees and representatives are made fully aware of their responsibilities as established by the *OHSA*.

Information regarding the risk of rabies must be provided to all personnel and risk prevention protocols must be in place. While rabies vaccination should be encouraged for all shelter staff, it is imperative that individuals decide whether or not to be vaccinated based on information about risk levels. The OSPCA should seriously consider requiring vaccination of all high-risk personnel (i.e. animal control officers, inspectors, and agents). Volunteers should never be responsible for handling high-risk animals (e.g. wildlife).

The legislated requirement for all personnel to report potential workplace hazards must be emphasized to staff. Confidentiality issues are addressed in the *OHSA* and should be clarified to personnel to alleviate concerns or hesitation about reporting. Proper records must be kept of Joint Health and Safety Committee inspections and the remedial action taken to address workplace hazards.

Recommendation 5

The *OSPCA Act* should be amended to ensure independent inspection of OSPCA and affiliate-operated shelters.

Preventive Veterinary Medicine**Recommendation 6**

The Standard of Care provision under the *OSPCA Act* pertaining to medical care should be reviewed and revised where necessary to clarify that preventive medicine is a component of "adequate and appropriate" medical care in shelter situations.

Recommendation 7

The CVO should consider a review of existing policies to clarify issues around the provision of preventative veterinary medical care in an animal shelter. In addition, the *Veterinarians Act* should be reviewed and revised as necessary to allow for the obligation and authority of veterinarians, shelter operators and custodians to take preventive medical-related actions.

Recommendation 8

Review and revise as necessary the regulation on animal pounds under the *ARA* pertaining to pound operations and preventive medical care.

Recommendation 9

A review should be undertaken of potential opportunities to include shelter medicine in the veterinary curriculum or via guidelines and/or continuing education options for veterinarians.

Public Health**Recommendation 10**

A Provincial Rabies Vaccination Strategy should be developed to support and strengthen the enforcement of the legal requirement that owners and persons having care and custody of dogs and cats in Ontario must have their animals vaccinated for rabies.

Recommendation 11

The OSPCA's Chief Veterinarian and the MOHLTC Veterinary Consultant should establish a working relationship to enhance communication and coordination on public health issues including the development of protocols for notification of transmissible diseases between animals and humans.

Worker Health & Safety**Recommendation 12**

A central resource for worker health and safety should be created to improve consistency and knowledge of shelter operators by providing information on best practices, tools for compliance and other resources. This resource should be hosted by the AASAO.

OSPCA and Affiliate-Operated Shelter Issues

Recommendation 13

The OSPCA and its affiliates should consider formalizing an appropriate level of authority for the OSPCA's Chief Veterinarian in all affiliate-operated shelters, and revise the OSPCA-affiliate agreement to include a commitment on the part of affiliates to operate shelters in accordance with basic standards established by the OSPCA.

Recommendation 14

Stronger protection of the names "Humane Society", "society for the prevention of cruelty to animals" and "SPCA" is needed by enforcing the provision of the *OSPCA Act* that restricts the use of these names, and repealing the 'grandfathering' component of the current provision.

Section 2: Broader Related Issues

Spay/Neuter

Recommendation 15

The *Veterinarians Act* should be reviewed and revised where necessary to enhance access to low-cost spay/neuter clinics throughout the province.

Responsible Pet Ownership

Recommendation 16

The government should conduct a long-term study on the potential for and implementation of a responsible pet ownership awareness strategy, including spay/neuter, visible pet identification and bylaw compliance throughout Ontario

Recommendation 17

The government should conduct a long-term study on the potential for the implementation of a fee-based provincial pet licensing program that would comprehensively address animal welfare, animal control and public health.

Dangerous Dogs and Irresponsible Owners

Recommendation 18

Information should be made available and circulated regarding dangerous dogs and their owners, and the development of a Dog Bite Registry should be considered.

Section 3: Follow-Up

Recommendation 19

Task force responses and recommendations should be monitored after six and 12 months from the release of its Report.

3. Team Building

Having standard policies and procedures established by OSPCA leadership and applicable to all branches and affiliate shelters would help foster a spirit of teamwork by emphasizing that all members of the OSPCA are working toward common goals.

A system to recognize outstanding contributions by employees and volunteers should be considered. Recognizing exemplary staff members can help encourage pride in one's work and provide opportunities for peer-to-peer mentoring.

Volunteer appreciation days, volunteer of the month awards, and social events are ways to promote camaraderie among the staff and volunteers, and foster positive working relationships and friendships.

The shelter staff and volunteers provide a crucial service to the communities they serve. As such, they can help create closer ties with the community. It is important to inform the community about OSPCA's mission, and to be transparent with statistical information. This will hopefully encourage community participation in, and support for, the OSPCA.

SCHEDULE C

Animal Welfare Task Force Report Recommendations

Task force recommendations have been organized under the following headings:

1) Animal shelter operations

- Operational standards
- Inspection
- Preventive veterinary medicine
- Public health
- Worker health and safety
- OSPCA and affiliate-operated shelter issues

2) Broader related issues

- Spay/neuter services
- Responsible pet ownership
- Dangerous dogs and irresponsible dog owners

3) Follow-up

Section 1: Animal Shelter Operations

Operational Standards

Recommendation 1

A consistent set of basic standards of operation for animal shelters should be created by the province.

Recommendation 2

The shelter sector should be given easy access to an information resource on all aspects of operating shelters effectively and responsibly, including public health-related best practices. The availability of this resource should be widely promoted.

Recommendation 3

An information resource should be made available to municipalities to assist in formulating effective bylaws pertaining to animal shelters and related activities such as animals sold in pet stores.

Inspection

Recommendation 4

Existing OSPCA inspection authority should be reinforced to ensure compliance with *OSPCA Act* Standards of Care in shelters and that, in shelters, the requirement to provide "adequate and appropriate medical attention" includes preventive medicine.

SCHEDULE D

SUPERIOR COURT OF JUSTICE

JEFFREY BOGAERTS -and- ATTORNEY GENERAL OF ONTARIO

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant intends to question the constitutional validity of sections 1, 11, 11.1, 11.2, 11.4, 12, 12.1, 13, 14 and 18.1 of the *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36, and claim a remedy regarding same under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* and section 52(1) of the *Constitution Act, 1982*.

The question is to be argued on a date and at a time to be set by the Registrar of the Superior Court of Justice at the Perth Courthouse, 43 Drummond Street East, Perth, Ontario, K7H 1G1.

The following are the material facts giving rise to the constitutional question:

1. A copy of the Notice of Application dated October 18, 2013 is attached and sets out the relevant facts and evidentiary basis of the Application.

The following is the legal basis for the constitutional question:

Section 18.1 of the *OSPCA Act*, by providing for a term of imprisonment following a conviction for an offence under the *Act*, restricts the liberty of people, animal owners and animal custodians in the province of Ontario, as defined under section 7 of the *Charter*;

The provisions of the *OSPCA Act* which restrict the liberty of people, animal owners and animal custodians in Ontario do not accord with the principles of fundamental justice and, therefore, breach section 7 of the *Charter*;

The definition of “distress” in section 1 of the *OSPCA Act* is unconstitutionally vague in that it does not provide sufficient guidance for legal debate;

The definition of “distress” in section 1 of the *OSPCA Act* does not provide fair notice to the residents of Ontario respecting minimally acceptable care and treatment of animals in Ontario.

The definition of “distress” in section 1 of the *OSPCA Act* does not provide sufficient direction to those enforcing the law to prevent arbitrary exercise of their discretion;

The definition of “distress” in section 1 of the *OSPCA Act* does not provide sufficient direction to those issuing warrants or orders, as authorized by to the *Act*, to prevent arbitrary exercise of their discretion;

The definition of “distress” in section 1 of the *OSPCA Act* is unconstitutionally overbroad in that it may capture acceptable and /or normal care and treatment of animals in Ontario;

The definition of “distress” in section 1 of the *OSPCA Act* violates section 7 of the *Charter* and cannot be saved under section 1 of the *Charter* because it is not rationally connected to the purpose of the legislation and does not impair the rights of Ontario residents as little as possible;

To the extent that sections 1, 11.2(1), 11.2(2), 12, 12.1, 13 and 14 of the *OSPCA Act* rely on and incorporate the definition of “distress” from section 1 of the *Act*, these sections are unconstitutionally vague and overbroad and cannot be saved by section 1 of the *Charter*;

To the extent that section 12 of the *OSPCA Act* relies on and incorporates the definition of “distress” from section 1 of the *Act*, it is unconstitutionally vague and overbroad and, in turn, violates sections 7 and 8 of the *Charter* because it fails to adequately specify an appropriate standard for the issuance of warrants.

To the extent that section 12 the *OSPCA Act* relies on and incorporates the definition of “distress” from section 1 of the *Act*, it cannot be saved by section 1 of the *Charter* because it is not rationally connected to the purpose of the legislation, the means chosen are not proportional to the limits put on peoples’ rights, and it does not impair the rights of Ontario residents as little as possible;

Sections 11.4, 13 and 14 of the *OSPCA Act* grant powers of search and seizure which are unreasonable in their extent and contravene the constitutional standard of reasonableness prescribed by section 8 of the *Charter*;

To the extent that section 11.4 of the *OSPCA Act* confers upon OSPCA Officers the power to search private property at the complete discretion of the Officer, including property where a dwelling unit may be located, either alone or accompanied by any number of other persons as he or she considers advisable, and irrespective of any situation of urgency which makes judicial authorization impracticable, it is not reasonable and violates section 8 of the *Charter*;

To the extent that section 13(6) of the *OSPCA Act* confers upon OSPCA Officers the power to enter private property at the complete discretion of the Officer, including a dwelling unit, at any hour of the day or night into the future forever, either alone or accompanied by any number of other persons as he or she considers advisable, at any time and irrespective of any situation of urgency, it is not reasonable and violates section 8 of the *Charter*;

To the extent that sections 13(1) and 13(6) of the *OSPCA Act* conjunctively confer upon OSPCA Officers warrantless entry powers, subject only to an initial “reasonable grounds for believing that an animal is in distress” on the part of an OSPCA officer, and irrespective of taking any reasonable steps to confirm with a veterinarian that an animal is

in distress, and irrespective of whether there is any situation of urgency which makes the obtaining of a search warrant impracticable, it is not reasonable and violates section 8 of the *Charter*;

To the extent that sections 13(1) and 13(6) of the *OSPCA Act* conjunctively confer upon OSPCA Officers warrantless entry powers, and an appeal of an Order issued under section 13(1) expires after only 5 business days, and while the entry powers prescribed under 13(6) go on forever, it is not reasonable and violates section 8 of the *Charter*;

To the extent that section 14 of the *OSPCA Act* confers upon an OSPCA Officer the power to seize private property, irrespective of any situation of urgency which makes judicial authorization impracticable, it is not reasonable and violates section 8 of the *Charter*;

Warrantless search and seizure powers provided by sections 11.4, 13 and 14 of the *OSPCA Act* cannot be saved by section 1 of the *Charter* because the means chosen are not proportional to the limits put on peoples' rights and do not impair the rights of Ontario residents as little as possible;

To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon Officers of a private organization, with no public oversight, accountability or transparency, it does not accord with principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;

To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon OSPCA Officers, without statutorily prescribed restraints afforded to police officers in Ontario, it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;

To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon OSPCA Officers, and the OSPCA and /or its Officers are not subject to:

- a. *Police Services Act*, R.S.O. 1990, c. P.15 and regulations passed thereunder;
- b. *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 and regulations passed thereunder;
- c. *Ombudsman Act*, R.S.O. 1990, c. O.6 and regulations passed thereunder;

it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;

To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon Officers of a private organization, an organization which is also trusted to raise its own revenues to fund its investigations and salaries of the same Officers, and which

raises said revenues by selling seized animals and other products of its investigations, it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;

Conferral of police powers upon Officers of a private organization, as prescribed by section 11 of the *OSPCA Act*, violates section 7 of the *Charter* and cannot be saved under section 1 of the *Charter* because the means chosen are not proportional to the limits put on peoples' rights and do not impair the rights of Ontario residents as little as possible;

The pith and substance of the *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, is of a moral issue related to criminal law, and constitutes an attempt by the province of Ontario to legislate in the area of criminal law;

To the extent that the *OSPCA Act* intrudes into criminal law, an area which is the exclusive jurisdiction of the Parliament of Canada, the *Act* is *ultra vires* the Province of Ontario for violating sections 91 and 92 of the *Constitution Act, 1982*;

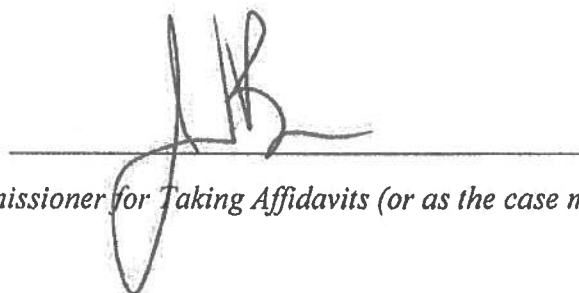
The *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, exposes Ontario residents to criminal prosecution while bypassing the protection provided by criminal law and procedure;

Sections 11.1, 11.2 and 18.1 of the *OSPCA Act* effectively duplicates the "Cruelty to Animals" section of the *Criminal Code*, namely sections 445.1 to 447.1, and said overlap supports an inference that the *OSPCA Act* serves a criminal law purpose;

The severity of penalties prescribed by section 18.1 of the *OSPCA Act* further characterizes the *Act* as criminal law; and

Such further and other grounds as counsel may advise and this Honourable Court may permit.

This is Exhibit B referred to in the Affidavit of
Nick Wright, affirmed on April 3, 2018

A handwritten signature in dark ink, appearing to be 'JLB', is written over a horizontal line. The signature is stylized and cursive.

Commissioner for Taking Affidavits (or as the case may be)



September 14, 2015

Ministry of Community Safety and Correctional Services
25 Grosvenor Street
18th Floor
Toronto, Ontario
M7A 1Y6

***VIA ONLINE SUBMISSION**

Dear Minister Naqvi:

RE: Proposed standards of care for marine mammals under the *Ontario Society for the Prevention of Cruelty to Animals Act*

As Minister of Community Safety and Correctional Services, you are proposing amendments to the *Standards of Care* regulation under the *Ontario Society for the Prevention of Cruelty to Animals Act* (OSPCA Act). The proposed amendments introduce new standards and record keeping requirements in relation to the keeping of marine mammals in captivity.

Animal Justice Canada Legislative Fund ("Animal Justice") is a national non-profit organization dedicated to advocating for the humane treatment of animals. Animal Justice is Canada's only animal law-focused organization, comprised of lawyers and others with expertise in animal law issues. As such, we are well-positioned to provide input to your Ministry regarding the proposed amendments.

It is our position that the proposed standards of care for marine mammals are vague, not comprehensive, not founded in science, and will not be effective in ensuring the well-being of marine mammals, which is the stated goal of the regulatory amendments.

Our concerns and recommendations are grouped into several main categories.

1. Only qualified veterinarians must be allowed to care for marine mammals.

There is repeated reference to a "veterinarian" in the proposed amendments, including in Sections 7, 9, and 12. However, there is no requirement that such a veterinarian under the regulation be qualified to care for or have any special expertise in the care and treatment of marine mammals.

Animal Justice Canada Legislative Fund
5700-100 King Street West, Toronto, Ontario M5X 1C7
info@animaljustice.ca

The use of the term “veterinarian” should be modified to ensure such a veterinarian has quantifiable specialized expertise in the care of marine mammals. The field of veterinary medicine is broad and diverse. Marine mammals in captivity are relatively rare, and there are very few veterinarians with experience caring for marine mammals. To ensure the best possible care for captive marine mammals in Ontario, a veterinarian qualified in caring for these complex creatures is absolutely essential.

2. Remove vague, ill-defined terms such as “sufficient” and “adequate”, replacing them with clear, specific standards.

The proposed amendments are peppered with vague, undefined terms including but not limited to “sufficient”, “adequate”, “regular”, and “takes into account”.

It is bad practice to draft a statute using vague, undefined terms like the ones listed above as they do not provide sufficient guidance to individuals who wish to comply with the law, to law enforcement, prosecutors, and members of the public who are statutorily required or wish to enforce the law, or to judges who are asked to apply the law.

It is already a rare occurrence for law enforcement to inspect and/or take compliance action against marine mammal facilities in Ontario. If enforcement agencies are not provided with clear, measurable standards against which to measure the conduct of those who keep marine mammals, it is unlikely they will be encouraged to vigorously inspect and enforce the law.

Animal Justice recommends replacing all vague, undefined terms with clear, defined, measurable standards.

3. Veterinary records and other documents regarding marine mammal captivity and care must be made public.

The welfare of marine mammals is an issue of deep public concern to all Ontarians. Currently, transparency around animal welfare concerns is sorely lacking. For example, the allegations of mistreatment of animals at Marineland made public in the summer of 2012 were of grave concern, yet the public was not provided with timely and detailed information respecting inspections and follow-up enforcement action.

All veterinary records, necropsy reports, inspection records, Animal Welfare Committee documents, and other information pertaining to each individual marine mammal kept in Ontario should be submitted to the government and then made available to the public. Greater transparency will help ensure accountability and public confidence.

4. Social enrichment requirements must be strengthened.

As written, the social enrichment requirements under the proposed amendments are weak because many of the requirements are qualified with vague, undefined modifiers

(see #2). For instance, the daily training, social enrichment, and play requirements fail to specify an amount of time required for these activities. A daily opportunity to play for a mere few moments would be virtually meaningless and would not even begin to address the complex social, stimulation, and recreational needs of marine mammals.

In addition, the requirement that there be three enrichment objects per enclosure does not appear to increase as the number of animals in an enclosure increases. This means that a large number of animals could be confined with a small number of enrichment objects. This must be clarified.

There should be a further requirement that environmental enrichment objects provided must be changed on a regular basis to prevent marine mammals from becoming habituated to and bored with the objects.

5. Include space requirements for marine mammals.

One of the most important factors for ensuring the wellbeing of a marine mammal is space. In the wild, many marine mammals are wide-ranging, deep-diving animals, subsisting in large social groups that range vast distances in search of food.

The proposed amendments do not set out any standards related to the amount of space a marine mammal must have. In our view, this is an absolutely critical component of any regime designed to ensure the welfare marine mammals. The regulation must be amended to include science-based, species-specific space requirements for marine mammals in captivity that apply to each individual animal, and to groups of animals, including pool width and depth.

Finally, we note that the provisions related to the environmental considerations for marine mammals are again marked by vague, undefined language. For example, the requirement in Section 15(3) that sunlight be the primary source of light for a marine mammal enclosure “where possible” leave it open to a zoo or aquarium to claim that it is not possible to provide a marine mammal with sunlight because it is financially expensive to do so. This seems arbitrary and unfair to marine mammals.

6. Enhanced enforcement capacity is critical.

You may recall that Animal Justice made an oral presentation before the Standing Committee on Social Policy regarding Bill 80, which amended the *OSPCA Act* and *Animals in Research Act*. At the time, we underscored several gaps in Bill 80. Of particular concern to us is the need for vigorous enforcement of the *OSPCA Act*, which includes the enforcement of the new marine mammals regulations. In our view, complaint-based enforcement of animal care standards is inappropriate for zoos and aquariums, as much of the animals’ lives take place out of public view. Absent a whistleblowing employee, the public and authorities are largely kept in the dark respecting animal welfare issues and violations of provincial law at captive animal

facilities. We recommended that the OSPCA be required to conduct regular, vigorous, unannounced inspections of captive animal facilities, with the assistance of veterinarians and personnel with solid expertise in marine mammal welfare.

Our concern continues to be highly relevant in light of the standards you propose. Without vigorous, randomized inspections, the proposed new standards will be difficult to enforce and their effect may be minimal.

A further concern is that even in the face of flagrant non-compliance with the proposed new standards, your Ministry is still left with little recourse to address violations, apart from prosecution, which, at present, is infrequently pursued. Before the Social Policy Committee, Animal Justice underscored the absolutely critical need for Ontario to create a licensing regime for zoos and aquariums. This would provide you with a further option to address non-compliance with standards, as your Ministry would have the legal authority to revoke the license of a non-compliant zoo or aquarium. As it stands now, you have few, if any, legal options to address a zoo or aquarium that chooses to disregard your standards. In our view, any attempt to protect marine mammals in captivity must be accompanied by a zoo and aquarium licensing regime.

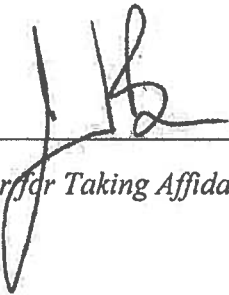
Thank you for the opportunity to provide input regarding your proposed new regulations. As always, Animal Justice remains ready to assist should you wish to further consult with us.

Yours sincerely,



Camille Labchuk, BA, JD
Director of Legal Advocacy
857-800-3879
camille@animaljustice.ca

This is Exhibit C referred to in the Affidavit of
Nick Wright, affirmed on April 3, 2018

A handwritten signature in black ink, consisting of a stylized 'J' followed by a loop and a horizontal stroke.

Commissioner for Taking Affidavits (or as the case may be)



May 11, 2015

HAND DELIVERED

Standing Committee on Social Policy

RE: Bill 80 amendments to the *Ontario Society for the Prevention of Cruelty to Animals Act* and the *Animals for Research Act*

Animal Justice Canada Legislative Fund ("Animal Justice") is a non-profit organization dedicated to using the law to protect animals. We appreciate the opportunity to comment on Bill 80, the proposed amendments to the *Ontario Society for the Prevention of Cruelty to Animals Act* ("OSPCA Act") and the *Animals for Research Act* ("ARA") with respect to the possession and breeding of orcas, and the administrative requirements for animal care in Ontario.

Statutory Changes

Bill 80 proposes the following primary amendments:

- Prohibiting the future possession or breeding of orcas in Ontario, including at research facilities under the ARA, while grandfathering in existing orcas.
- Empowering the Minister of Community Safety and Correctional Services to create committees overseeing animal care at facilities.
- Empowering the OSPCA to demand a record or thing from persons keeping marine mammals in order to ensure compliance with the standards of care and administrative requirements.

Recommendations

In our view, Bill 80 falls far short of fully protecting orcas, other marine mammals, and other animals in captivity in Ontario.

Animal Justice views the ban on the future acquisition and breeding of orcas as a step in the right direction. However, to be meaningful, Kiska, the sole surviving orca in Ontario, captive at Marineland, must be included in the ban, and not grandfathered in.

Bill 80 must be further amended to ban the future acquisition and breeding of other cetaceans, prohibit the importation of wild-captured marine mammals, license zoos and

aquariums, mandate regular, unannounced inspections, ensure public availability of inspection reports, and mandate five-year review of standards of care.

1. Extend protections for orcas to Kiska.

Kiska is the sole surviving orca in Ontario (and in fact in all of Canada), held captive at Marineland. Kiska has been exempted from the protections afforded to orcas and instead has been grandfathered in. The government has acknowledged that orcas are inappropriate for captivity due to their large size, ability to dive deeply and swim up to 100 miles per day, and their inherently social nature. No mere change in standards of care for Kiska will compensate for the fact that she is kept in isolation and is afforded no opportunity to socialize and interact with members of her own species. If Kiska is not included in the ban, the government will have doomed her to die in isolation.

2. Extend the prohibition on breeding and importation to other cetaceans.

The rationale for prohibiting the captivity of orcas extends equally to other species of cetaceans. Belugas and dolphins are also wide-ranging, deep-diving cetaceans, which often travel in large groups and develop strong social relationships. They are deserving, just like orcas, of protections from captivity.

3. Prohibit the importation of all wild-caught cetaceans and pinnipeds.

The report prepared by Dr. David Rosen on marine mammals, commissioned by the government for the purpose of informing proposed protections for marine mammals, discussed at length the need to regulate the acquisition of wild-caught marine mammals. In fact, such regulation was a key, scientifically supported recommendation of the Rosen report, yet it is not reflected in Bill 80.

Marineland is now the only public display facility in Canada that imports wild-caught cetaceans, as the Vancouver Aquarium is prohibited from doing so, and has independently pledged not to. Obviously, no such prohibition or pledge exists in Ontario.

The wild capture and transportation of marine mammals causes significant trauma, stress, and suffering, resulting in broken families. Wild capture of marine mammals is illegal in Canadian waters, but a federal loophole still allows foreign-caught marine mammals to enter the country. Ontario must undertake to fill this gap and amend Bill 80 to prohibit the importation of wild-caught marine mammals into Ontario.

4. Licensing regime for zoos and aquariums.

For captive animals, Ontario is the wild west. Ontario does not protect animals by requiring that zoos and aquariums be licensed, or that wild animal owners be required to seek permits, despite calls for over three decades to do so. Licensing captive animal

facilities is fundamental to protecting captive animals from abuse and neglect, and protecting public safety.

At present, private individuals and corporations are legally able to purchase and keep wild animals, including marine mammals, without a license or permit and without the knowledge of the government. Ontario has no authority to stop a zoo or aquarium from operating, does not have comprehensive, enforceable standards for animal care in zoos and aquariums, does not require record-keeping for zoo and aquarium animals, and does not require any degree of appropriate education, experience, expertise or financial ability on the part of animal owners, handlers, custodians and facility operators.

There is no federal government requirement for notification prior to importing many marine mammals into Canada, meaning they can be brought into the country in relative secrecy. Without a zoo licensing and animal permitting regime, the Ontario government will be unable to effectively oversee wild animal ownership and enforce the relevant laws.

A licensing regime addressing the above-listed gaps is a critical component of any effort to improve protections for captive animals, including marine mammals, in Ontario. This must be included in Bill 80.

5. Provide for regular, mandatory unannounced inspections of marine mammal facilities.

Complaint-based enforcement of animal welfare standards is inappropriate for zoos and aquariums as this model simply does not work. Much of the animals' lives take place out of view of the public. Absent a whistleblowing employee, the public and authorities are largely kept in the dark respecting animal welfare issues and violations of provincial law at captive animal facilities.

Bill 80 should be amended to ensure the OSPCA is required to conduct regular, vigorous, unannounced inspections of captive animal facilities, with the assistance of veterinarians and personnel with expertise in marine mammal welfare.

6. Ensure veterinary records for marine mammals, inspection reports of facilities, and details of enforcement action be made public.

The welfare of marine mammals is an issue of deep public concern to all Ontarians. Currently, transparency around animal welfare concerns is sorely lacking. For example, the allegations of mistreatment of animals at Marineland made public in the summer of 2012 were of grave concern, yet the public was not provided with timely and detailed information respecting inspections and follow-up enforcement action. Greater transparency will help ensure accountability and public confidence.

Bill 80 must be amended to ensure the public has access to full animal welfare committee reports, OSPCA inspection report, veterinary records of captive marine mammals in Ontario, and details of follow-up enforcement action (orders and recommendations) taken by authorities.

7. Mandate a review of standards of care every five years.

Bill 80 must be amended to require that standards of care for marine mammals are reviewed and updated every five years to reflect the state of marine mammal science. Our understanding of the physiological and psychological needs and welfare of marine mammals is constantly growing, as a result of the tremendous volume of research being completed by scientists. Standards of care must be regularly updated to ensure the latest scientific evidence is taken into account.

Conclusion

Bill 80 falls far short of addressing a great number of critical welfare issues facing vulnerable captive animals, especially marine mammals.

We urge you to consider that Ontarians have been asking for better protections for animals in zoos and aquariums for over three decades. A petition presented to former Premier McGuinty urging Ontario to take steps to address the public's concerns over Marineland has now gathered over 110,000 signatures.

But although the concerns of Ontarians are important, do not forget that you govern not simply for people – you govern for animals, too. If marine mammals could tell us how they wish to be treated, they would support stronger protections for all species, and a more transparent process.

Animal Justice appreciates the opportunity to comment on the proposed changes and hopes the Social Policy Committee will take the concerns highlighted in this submission into consideration in respect of the proposed changes.

Please do not hesitate to contact me if you should have any questions or wish to discuss this matter further.

Yours sincerely,

Camille Labchuk, BA, JD
Barrister & Solicitor
Director of Legal Advocacy

This is Exhibit D referred to in the Affidavit of
Nick Wright, affirmed on April 3, 2018

A handwritten signature in black ink, appearing to be 'JLB', is written over a horizontal line.

Commissioner for Taking Affidavits (or as the case may be)



March 27, 2017

***VIA EMAIL to: mcses.feedback@ontario.ca**

**Honourable Marie-France Lalonde
Minister of Community Safety and Correctional Services
25 Grosvenor Street, 18th Floor
Toronto, Ontario
M7A 1Y6**

Dear Minister Lalonde:

RE: Request to Minister to delay new funding agreement with OSPCA

Thank you for your correspondence dated February 22, 2017 in response to my concerns regarding governance of the Ontario Society for the Prevention of Cruelty to Animals (OSPCA).

I am encouraged to learn that your ministry is currently reviewing the animal protection framework in the province of Ontario, and that you will be announcing a consultation process in the near future. I would appreciate the opportunity to meet with you to provide input. As the only animal law organization in the country, Animal Justice has extensive expertise in the area of animal protection laws and would be pleased to assist you in your review of the framework, as well as with respect to the regulation of exotic animals.

As you will know from our previous correspondence, we have several current concerns regarding the state of the animal welfare system in Ontario. The conduct and accountability of the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) have been brought into serious question. Perhaps the most glaring issues include the failure of the OSPCA to provide locally-based animal welfare law enforcement in most of the Greater Toronto Area, Ottawa, Peel Region and other parts of the province including most of Northern Ontario. In addition, as you know the OSPCA has become less open and accountable for its operations and governance by eliminating Annual General Members meetings and board elections.

In response to these and other concerns, the organizations Zoocheck and Animal Alliance have commissioned a report by the former Manager of Animal Welfare for the Ministry of Community Safety and Correctional Service (MCSCS). We eagerly await that report, which is due for release in the next few weeks.

We are immediately concerned that the current \$5.5 million funding agreement between

**Animal Justice Canada Legislative Fund
5700-100 King Street West, Toronto, Ontario M5X 1C7
info@animaljustice.ca**

the MCSCS and the OSPCA expires on March 31, 2017. Our review of that agreement raises serious doubts regarding the OSPCA's obligations under that agreement. It appears that crucial performance measures have not been met, including the basic failure to provide effective province-wide services. We believe the pending Zoocheck/Animal Alliance report will confirm and detail these and other related issues.

We urge you to put any new funding agreement with the OSPCA on hold until that organization's performance under the current agreement has been fully reviewed and the Zoocheck/Animal Alliance report has been released. We would also appreciate the opportunity to meet with you at that time, before any decisions are made regarding any continued funding to the OSPCA and the future of animal welfare services in the province.

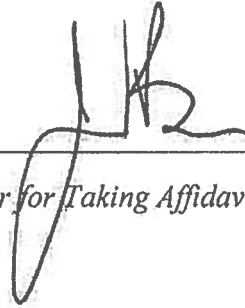
Thank you for your attention to this matter. I am by email at camille@animaljustice.ca or by phone at 613-292-8360 if you should wish to discuss this further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "C. Labchuk". The signature is fluid and cursive, with the first name "C." and the last name "Labchuk" clearly distinguishable.

Camille Labchuk, BA, JD
Barrister & Solicitor
Executive Director

This is Exhibit E referred to in the Affidavit of
Nick Wright, affirmed on April 3, 2018

A handwritten signature in black ink, appearing to be "J. H. 2", written over a horizontal line.

Commissioner for Taking Affidavits (or as the case may be)



November 18, 2016

***VIA EMAIL to david.oraizetti@ontario.ca**

**Honourable David Oraziatti
Minister of Community Safety and Correctional Services
25 Grosvenor Street, 18th Floor
Toronto, Ontario
M7A 1Y6**

Dear Minister Oraziatti:

RE: Ontario SPCA By-Law Emergency Nullification

I am a lawyer and the executive director of Animal Justice, a national animal law advocacy organization. I write to draw your attention to an urgent matter involving the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) and request that as Minister responsible for the OSPCA, you take action.

The OSPCA is involved in a dispute with a number of its affiliated humane societies (known as "affiliates") over its operating bylaw and its effect on how the OSPCA governs itself. As the matter has been before the courts, most of the details about this dispute are now on the public record.

To briefly summarize, in April, 2016 the OSPCA Board met and, without notice to its affiliates other than those already represented on the board, changed its main operating bylaw. The OSPCA board removed the voting rights of all affiliates, and ended the requirements to hold Annual General Meetings (AGM) and future board elections. In effect, under the new bylaw, the current board members would make any future board appointments themselves.

A legal challenge to this was subsequently launched by the Ottawa Humane Society (OHS) and six other OSPCA affiliates. On October 17, 2016 the court quashed the OSPCA's new bylaw and ordered the OSPCA to hold a meeting the week of November 21, 2016 to address the situation. We understand the court has also reserved a date in February, 2017 to deal with the matter if the November meeting is not conclusive.

On the surface, this might appear to be purely an internal OSPCA matter, but it is much more than that. There have been immediate, serious and negative impacts on the public's perception of the OSPCA'S integrity and accountability, as well as direct and very real impacts on the delivery of animal welfare and law enforcement services.

**Animal Justice Canada Legislative Fund
5700-100 King Street West, Toronto, Ontario M5X 1C7
info@animaljustice.ca**

Notably, for example, after the OHS launched its court challenge of the new OSPCA bylaw in June 2016, the OSPCA revoked the OHS's affiliate status was subsequently in July 2016. That meant OHS could not conduct law enforcement activities, which left our nation's capital and Ontario's second largest city without locally-based animal protection. That remains the situation in Ottawa, even now that the court has rejected the new OSPCA bylaw.

Although the OSPCA has stated it will deploy investigators to Ottawa as needed, there is great concern for the effectiveness of those services because they are not locally based. As the action taken by the OSPCA against OHS seems retaliatory, we are also concerned for the future of animal protection in the jurisdictions of the other affiliates that supported OHS's court action; Cambridge and District, Hamilton-Burlington, Kitchener-Waterloo, London, Oakville-Milton, and Windsor-Essex. Together, these jurisdictions comprise many of the most densely-populated urban areas in Ontario.

This concerns us greatly because as many parts of the province are already without locally based animal protection. These areas include the city of Toronto and most of the greater Toronto area, as well as most of Northern Ontario including your own riding of Sault Ste. Marie.

As you can see, the situation is serious. Animal protection services across the province are deteriorating, animals may be going unprotected, and the chances of tragic yet avoidable incidents occurring are increasing daily.

We implore you to become involved as soon as possible. In fact, we urge you to do so proactively and pre-emptively. Although your Ministry does not have direct oversight over the OSPCA, you have the statutory authority to take a very positive role in the current situation.

The OSPCA's governing statute, the *Ontario Society for the Prevention of Cruelty to Animals Act*, sets out in section 7(3) that the Lieutenant Governor in Council may annul any bylaw of the Society. We urge you to consider invoking this authority and to alert the OSPCA prior to their upcoming meeting that you will take this action if necessary. Perhaps that will set the stage for them to take a more constructive course of action at the OSPCA board's upcoming court-ordered meeting. We propose you suggest to the OSPCA that, at the bare minimum, the organization should revert to an operating bylaw that includes AGMs and board elections.

We also suggest that you urge the OSPCA to immediately reinstate the law enforcement authority of the OHS so it can resume its local animal protection activities as well doing so with the Sault Ste. Marie Humane Society, which has been similarly disenfranchised.

Toward ensuring there is impartial and effective scrutiny of upcoming OSPCA meetings, we further propose that you request the OSPCA to allow an MCSCS representative to

attend the upcoming special meeting as well as subsequent AGMs and board meetings as an observer. We have reviewed the 2014-15 MCSCS-OSPCA funding agreement and we note that the OSPCA was required under the terms of that agreement to have such a representative from MCSCS at those meetings. It is deeply troublesome that it seems this practice might have ceased prior to the OSPCA board engaging in their very dubious actions this year. If true, it was extremely ill-advised. Indeed, we believe these events might not have occurred if an MCSCS observer had been present to monitor the OSPCA board during 2016. Please consider correcting this situation if necessary to help ensure a positive outcome at the upcoming meeting and at subsequent OSPCA meetings.

While our research indicates the authority in section 7(3) has never been invoked, this is an extraordinary and urgent situation. Frankly, it seems to be exactly the type of situation contemplated by this section of the legislation. At this time, it is the only direct connection between your authority as Minister and OSPCA's governance and accountability. We hope you will exercise this authority to protect the public interest and to defend the protection of animals in Ontario.

We hope this situation is resolved at the upcoming court-ordered meeting. Waiting for a subsequent court date in February 2017 is not ideal. At best, that would prolong the uncertainty around the OSPCA's integrity as an organization as well as ongoing concerns about local animal protection in Ottawa and elsewhere. If the OSPCA and its affiliates cannot resolve their differences at the upcoming meeting, it seems unlikely that the court could impose an approach that would result in long-term stability for the OSPCA.

Thank you for your attention to this matter. I am by email at camille@animaljustice.ca or by phone at 613-292-8360 if you should wish to discuss this further.

Yours sincerely,



Camille Labchuk, BA, JD
Barrister & Solicitor
Executive Director

Tab 3

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AND:

ANIMAL JUSTICE CANADA

Proposed Intervener

**FACTUM OF THE PROPOSED INTERVENER / MOVING PARTY,
ANIMAL JUSTICE CANADA**

(Motion for Leave to Intervene)

DATED: April 13, 2018

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AND TO: The Attorney General of Ontario
Public Law Division
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General of Ontario

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AND:

ANIMAL JUSTICE CANADA

Proposed Intervener

**FACTUM OF THE PROPOSED INTERVENER / MOVING PARTY,
ANIMAL JUSTICE CANADA**

(Motion for Leave to Intervene)

PART I – OVERVIEW

1. Animal Justice Canada (“**Animal Justice**”) brings this motion for leave to intervene as a friend of the Court pursuant to Rule 13.02. Animal Justice seeks to file a factum of no more than 20 pages, and to make oral arguments of no more than 30 minutes.
2. As Canada’s only animal advocacy organization focused on animal law, Animal Justice is well-placed to provide the Court with legal submissions that will assist the Court in understanding the potentially far-reaching consequences of this proceeding. Animal Justice’s proposed submissions are unique from either of the parties and, it is submitted, would be of assistance to the Court.

3. Further, Animal Justice has a direct interest in the matters at issue in this proceeding. Its record demonstrates that the efficacy of animal protection legislation and enforcement, which are directly engaged by the legal issues raised in this proceeding, go to the heart of its mandate.

PART II – FACTS

The Application

4. This application was commenced on October 18, 2013. The Amended Amended Notice of Application was filed on February 13, 2018 (the “**Application**”).
5. The Application seeks, among other things, declarations that certain provisions of the *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36 (the “**Act**”) violate sections 7 and/or 8 of the *Canadian Charter of Rights and Freedoms* (“**Charter**”) and therefore are of no force and effect.
6. The Attorney General of Ontario opposes the Application.

Animal Justice

7. Animal Justice is incorporated pursuant to the federal *Canada Not-for-profit Corporations Act*, and is the only Canadian animal advocacy organization focused on animal law. The objects of Animal Justice include the prevention of cruelty to animals through the enforcement of existing laws.¹
8. Animal Justice has approximately 39,000 supporters and donors from communities across Canada. It has two full-time staff, two part-time staff, occasional summer and articling students, and dedicated boards of directors and advisors that direct its policies and priorities. The advisors of Animal Justice comprise a wide range of leading academics, experts in animal law, professionals, and laypersons with significant experience in animal protection work and other relevant areas. For example, three law

¹ Affidavit of Nick Wright, affirmed April 3, 2018 (“**Wright Affidavit**”), paras. 2-4; Motion Record (“**MR**”), Tab 2.

professors who are members of its board of advisors – Peter Sankoff, Vaughan Black, and Katie Sykes – recently published a book on animal law, entitled *Canadian Perspectives on Animals and the Law* (Irwin Law: Toronto, 2015).²

9. Animal Justice is also supported by hundreds of volunteers, and receives *pro bono* legal assistance from a wide array of members in the Canadian legal community.³
10. Animal Justice's work has been supported by grants from a number of well-established Canadian charitable foundations, including the Law Foundation of Ontario, the Donner Foundation, the Margolis Family Foundation, and the Animal Welfare Foundation of Canada.⁴
11. Animal Justice has demonstrated a long-standing, genuine, and continuing concern with ensuring that animals are protected from harm, suffering, and killing to the maximum extent possible under Canadian law. To this end, it engages in a variety of activities designed to publicize animal protection concerns, enforce animal protection laws, and advocate for new, stronger laws to protect animals. Animal Justice has expertise in considering the often-complex issues that arise when considering the myriad ways in which animals' interests intersect with Canadian law.⁵
12. Animal Justice seeks to advance its objectives in a variety of ways: broadly, through public education, position papers and law reform submissions, legal advice and assistance, and legal action, including by intervening in court proceedings that engage its interests and areas of unique expertise.⁶
13. Animal Justice has a strong track record of making submissions to courts regarding laws affecting animals, animal advocates, and their protections. For example:

² Wright Affidavit, para. 6; MR, Tab 2.

³ Wright Affidavit, para. 7; MR, Tab 2.

⁴ Wright Affidavit, para. 8; MR, Tab 2.

⁵ Wright Affidavit, para. 9; MR, Tab 2.

⁶ Wright Affidavit, para. 10; MR, Tab 2.

- a. 2015: Intervening in *R. v. D.L.W.*, 2016 SCC 22, a Supreme Court of Canada appeal in which the scope of the criminal offence of bestiality was at issue. Animal Justice’s submissions were cited favourably in the majority decision, and largely adopted in the dissent.
 - b. 2016: Intervening in *Vancouver Aquarium Marine Science Centre v Charbonneau*, 2017 BCCA 395, a case concerning the Vancouver Aquarium’s claim of copyright ownership in video footage and photographs taken by third parties and used in a documentary film that is critical of the Aquarium’s practices. Animal Justice’s intervention was cited favourably in the decision.
 - c. 2017: Intervening in *Ocean Wise Conservation Association v Vancouver Board of Parks and Recreation*, 2018 BCSC 196, a case in which the Vancouver Aquarium challenged a municipal bylaw that restricted confining and displaying whales and dolphins in tanks at its facility in Stanley Park.⁷
14. Particularly relevant in the context of the Application is the fact that Animal Justice’s mandate includes ensuring the effective enforcement of animal protection laws.
 15. Animal Justice seeks to protect animals through a variety of legal mechanisms, including advocating for improvements to federal, provincial, and municipal laws protecting animals. However, laws protecting animals are only as good as their enforcement. Accordingly, Animal Justice has always maintained a strong focus on ensuring existing laws are vigorously enforced.⁸
 16. Animal Justice is particularly concerned with ensuring animal law enforcement bodies are structured and funded in a way that promotes transparency, accountability, and effectiveness—qualities that it believes are essential to ensuring animals benefit from the

⁷ Wright Affidavit, para. 11; MR, Tab 2.

⁸ Wright Affidavit, para. 12; MR, Tab 2.

protections afforded by existing laws, and that the public can have confidence in the enforcement of laws designed to protect animals.⁹

17. The Ontario SPCA is empowered by statute to enforce any and all laws in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals. The Ontario SPCA's broad jurisdiction thus makes it a key gatekeeper of animal law enforcement, not just for protections available to animals under the provincial *OSPCA Act*, but also under other provincial statutes, federal criminal animal cruelty laws, federal laws protecting farmed animals during transportation and slaughter, and even municipal by-laws. For this reason, Animal Justice is especially concerned that the Ontario SPCA is in a position to maintain public confidence through the meaningful and effective enforcement of animal protection laws.¹⁰
18. Animal Justice's concern with effective law enforcement is demonstrated by its work to critique and improve Ontario animal protection laws and ensure their enforcement, including:
 - a. Preparing a comprehensive report on Ontario's provincial animal protection laws, entitled *OSPCA Act: A Better Way Forward – a Report on the Ontario Society for the Prevention of Cruelty to Animals Act* (the "**Report**"). The Report provides an overview of Ontario provincial laws and how they have been interpreted; the Ontario SPCA's role in enforcing laws and providing care to animals; and examines concerns over governance, transparency, accountability, and conflict of interest risks inherent in the legal structure and mandate of the Ontario SPCA;
 - b. Providing written and oral testimony to the Social Policy Committee of the Ontario Legislature on Bill 80, which proposed to amend the OSPCA Act to enhance protections for orcas and other marine mammals. Animal Justice also provided a written submission to the Minister of Community Safety and Correctional Services. Animal Justice's submissions emphasized its concern with

⁹ Wright Affidavit, para. 13; MR, Tab 2.

¹⁰ Wright Affidavit, para. 14; MR, Tab 2.

the effective enforcement of laws protecting marine mammals and recommended requiring the Ontario SPCA to conduct regular, unannounced inspections instead of captive animal facilities instead of relying on allegations of mistreatment to be presented. Animal Justice also recommended that Ontario SPCA inspection reports of facilities housing marine mammals, veterinary records, and details of enforcement actions should be publicly available to ensure transparency, accountability, and contribute to public confidence in the law enforcement process;

- c. Meeting on multiple occasions with the Minister of Community Safety and Correctional Services and Members of Provincial Parliament to discuss its concerns with the enforcement of animal protection laws in Ontario, including the province's funding agreement with the Ontario SPCA, the lack of local animal law enforcement services in many major cities and other areas of the province, and the governance of the Ontario SPCA;
- d. Regularly filing detailed complaints with the Ontario SPCA and other enforcement authorities when Animal Justice becomes aware of evidence of illegal animal cruelty, including violations of the OSPCA Act, federal criminal law, and federal laws protecting animals during transportation and slaughter. On occasion, Animal Justice receives no follow-up communications from the Ontario SPCA regarding complaints it files, including a record that the complaint was received, details of investigations conducted into allegations, and details of enforcement action, if any, that has been taken. Because the Ontario SPCA is not subject to provincial freedom of information legislation, Animal Justice therefore has no avenue to obtain further information about the status of enforcement complaints. Likewise, there is no legal mechanism to complain about the conduct of an individual inspector or agent, or the Ontario SPCA as a whole, as the agency is not subject to police accountability legislation and is not overseen by the Ombudsman of Ontario.¹¹

¹¹ Wright Affidavit, para. 15; MR, Tab 2.

PART III – ISSUES TO BE DETERMINED

19. The Issues to be determined on this motion are whether Animal Justice should be granted leave to intervene as a friend of the Court in the Application and, if so, the terms on which its intervention is granted.

PART IV – THE LAW

The Test for Leave to Intervene

20. Rule 13.02 of the *Rules of Civil Procedure* directs that leave to intervene as a friend of the Court may be granted to any person for the purpose of rendering assistance to the Court by way of argument.¹²
21. The considerations that courts will consider in deciding whether to grant intervener status in Ontario are summarized in *Morden & Perell*, as follows:

¶4.381 To be granted intervener status, the onus is on the proposed interveners to demonstrate that the court's ability to determine the issues before it would be enhanced by the intervention. Proposed interveners must be able to offer something more than the repetition of another's evidence and argument or a slightly different emphasis on arguments raised by the parties.

¶4.382 Usually, where intervener status is granted to a public interest group, at least one of the following criteria are satisfied: (1) the intervener has a real, substantial and identifiable interest in the subject matter of the proceedings; (2) the intervener has an important perspective distinct from the immediate parties; and (3) the intervener is a well-recognized group with a broad identifiable membership and special expertise. To be granted the right to participate based on an interest in the matter, proposed interveners must be able to show that they will be able to make a useful contribution to the proceeding.

¹² *Rules of Civil Procedure*, RRO 1990, Reg. 194, Rule 13.02.

¶4.383 To have an interest in the subject matter of the proceeding includes a public interest to the extent that the interest goes beyond that of the public generally. The court is more willing to grant intervener status in cases involving the constitution or Canadian Charter of Rights and Freedoms than in lawsuits involving private litigants.

¶4.384 In considering whether to grant the right to intervene and the extent of the intervention, the court will consider: (1) the nature of the case; (2) the issues that arise; (3) whether the issues are essentially private or whether they involve a public interest component; (4) the likelihood of the applicant making a useful contribution to the resolution of the issues; and (5) whether the applicant's participation would be unfair to the immediate parties. The possibility that a decision may provide a precedent for another action involving other parties is not in and of itself a sufficient interest to support intervention.¹³

22. In *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada*,¹⁴ the Ontario Court of Appeal confirmed that the rules with respect to whether an intervention will be granted are relaxed in the context of constitutional cases:

In constitutional cases, including cases under the *Canadian Charter of Rights and Freedoms*, which is the case here, the judgment has a great impact on others who are not immediate parties to the proceedings and, for that reason, there has been a relaxation of the rules heretofore governing the disposition of applications for leave to intervene and has increased the desirability of permitting some such interventions.

23. When a public interest group such as Animal Justice seeks to intervene in a *Charter* case, usually at least one of the following three criteria is met by the proposed intervener:
- a. It has a real and substantial and identifiable interest in the subject matter of the proceeding;
 - b. It has an important perspective distinct from the immediate parties; and

¹³ Paul M. Perell and John W. Morden, *The Law of Civil Procedure in Ontario, 2nd Ed.* (Lexis Nexis: online) c. 4, s. 21(c).

¹⁴ (1990), 74 OR (2d) 164 (CA).

- c. It is a well-recognized group with a special expertise and a broadly identifiable membership base.¹⁵
24. Animal Justice respectfully submits that *all* three of the above criteria are met with respect to its proposed intervention in the present Application.
25. This case involves broadly significant constitutional matters in relation to the division of powers, and sections 7 and 8 of the *Charter*, and it is therefore important that a range of perspectives are before the Court.
26. Animal Justice has a unique perspective from either of the parties, has demonstrated expertise in legal issues concerning animal welfare and protection, and has a genuine interest in the matters directly at issue. The efficacy of animal protection legislation and enforcement are directly engaged by the constitutional issues raised by the parties, and go to the heart of Animal Justice's mandate. Indeed, as noted above, Animal Justice prepared a comprehensive report on Ontario's provincial animal protection laws and the *OSPCA Act*.
27. Animal Justice has demonstrated its unique perspective and expertise through public advocacy, testifying before parliamentary and legislative Committees, and in numerous interventions over the past five years, including before the Supreme Court of Canada and the British Columbia Court of Appeal.
28. Moreover, Animal Justice's proposed submissions, set out in greater detail below, are unique from either of the parties and, it is submitted, would be of assistance to the Court.
29. Finally, Animal Justice's proposed submissions are grounded in the arguments and issues raised by the parties, in particular the reasonableness of the searches authorized under the *OSPCA Act*, and the principles of fundamental justice that apply in this context. As such, granting intervener status to Animal Justice will not take the litigation away from the parties or raise new issues or facts that would not otherwise have been before the Court.

¹⁵ *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, at para. 2.

Animal Justice will not seek to file further factual material, nor will it seek costs. Finally, it will work within the timeframe for the Application established by the parties.¹⁶

30. If granted leave to intervene in the Application, Animal Justice proposes to make the submissions outlined below, subject to the direction of the Court

Proposed Section 8 Submissions

31. From the perspective of Animal Justice, it is critically important that state agencies have the powers they need to effectively enforce animal protection legislation, particularly in the unique context of animal abuse and neglect.
32. Section 8, as much as any other section of the *Charter*, requires a contextual analysis.¹⁷ This means that the “reasonableness” of the search for the purposes of section 8 must be understood in light of the context in which the search is undertaken, the statutory regime at issue, and the efficacy of the search in that context.
33. Animal Justice proposes to provide submissions on the contextual approach to *Charter* interpretation in the context of section 8, including:
- a. that section 8 is uniquely well suited to the contextual approach to constitutional interpretation, given its focus on the “unreasonableness” of a search;¹⁸
 - b. that among the relevant factors in a contextual approach are the unique protective functions of the statutory regime, the purposes of the search, and what is required for meaningful enforcement of the laws at issue;¹⁹ and

¹⁶ Wright Affidavit, paras. 16-17; MR, Tab 2.

¹⁷ See e.g. *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, [2015] 3 SCR 250, 2015 SCC 46 at para 53; *R. v. Jacques*, [1996] 3 SCR 312 at para 20; *R. v. Buhay*, 2003 SCC 30, [2003] 1 S.C.R. 631, at paras. 18 and 21; *R. v. Edwards*, [1996] 1 S.C.R. 128, at para. 31; *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at 647.

¹⁸ *R. v. Rodgers*, [2006] 1 SCR 554, 2006 SCC 15 at paras 26-27; *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, [1990] S.C.J. No. 23 (“*Thompson Newspapers*”); *R. v. Monney*, [1999] 1 SCR 652 at paras 35-37; *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, [1991] S.C.J. No. 79 (“*Wholesale Travel*”) at para 27 (QL); *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, [1990] S.C.J. No. 25 (“*McKinlay Transport*”) at paras 24-31 (QL).

- c. therefore, the unique difficulties in relation to the enforcement of animal protection legislation should be taken into account in determining the reasonableness of the search under a contextual analysis of section 8.
- 34. With that approach in mind, Animal Justice proposes to submit that a contextual approach to section 8 should be informed by the unique statutory context of animal protection legislation, and the unique circumstances of those the laws in question are intended to protect.
- 35. In particular, in order to fulfil its purpose, animal protection legislation requires robust preventative and investigative search powers, because:
 - a. Animals are frequently kept on private property, out of public view. They are especially vulnerable to being abused out of public sight;
 - b. Animals cannot self-report the abuse they are suffering; and
 - c. Unlike in many regulatory contexts – which tend to involve at least some oversight mechanisms, such as reporting and filing requirements – there are virtually no attendant oversight mechanisms to ensure breaches of animal protection laws are identified.
- 36. Taking these contextual factors into account is important in determining the “reasonableness” of the searches authorized by law, both in terms of the “regulatory searches” set out in s. 11.4(1) of the *OSPCA Act*, and the warrantless searches in s. 12(6) of the *OSPCA Act* where an animal is in “immediate distress”.²⁰
- 37. First, regulatory or preventative searches are even more justified in this unique context than in many other regulatory contexts, in which they have been found to be consistent with section 8, because of the unique difficulty of identifying and bringing to light animal abuses.

¹⁹ See e.g. *Thomson Newspapers*, *supra* at paras 121-123, 134; *Wholesale Travel*, *supra* at paras 27-29, 156-167 (QL); *McKinlay Transport*, *supra* at paras 27, 32-35.

²⁰ *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36 (“*OSPCA Act*”).

38. As in other contexts in which regulatory searches have been upheld, the searches in s. 11.4(1) are limited to those who have chosen to engage in a regulated activity, namely keeping animals “for the purpose of animal exhibition, entertainment, boarding, hire or sale”.
39. These regulatory searches also create a disincentive to engaging in the prohibited conduct, which is particularly important in this context, given the lack of other oversight mechanisms.
40. Second, the legislation reasonably recognizes that state officials should not require a warrant if there are reasonable grounds to believe that an animal is currently in “immediate distress”. The reasonableness of warrantless searches for this purpose must be understood in the unique context of animal protection legislation.
41. The very existence of animal protection legislation demonstrates that animals are protected under Canadian law because of their inherent moral value. Society recognizes that animals are not merely property.²¹ As set out in the preamble to the *OSPCA Act*:

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;

42. In light of that recognition and statutory purpose, if the state determines on reasonable grounds that animals are in immediate distress, but is required to obtain a warrant before intervening, any resulting delay could make a significant difference to the welfare of animals meant to be protected by the legislation.
43. At the very least, in every case where there is ongoing abuse or neglect, delay will lead to increased or prolonged suffering. At the extreme, a delay in intervention could even make the difference between life and death for the animal. That result would be entirely

²¹ *R. v. Munroe*, 2010 ONCJ 226; *R v. D.L.W.*, 2016 SCC 22, at para. 69.

incompatible with the very purpose of the legislation, and the moral value the legislature accords to animals.

44. Permitting the ongoing abuse or suffering of animals while a warrant is obtained is not a mere administrative delay or inconvenience, but rather involves “exigent circumstances”, where warrantless searches are normally permitted.²²
45. Therefore, Animal Justice proposes to submit that a contextual interpretation of section 8 should take into account the unique nature of animal protection legislation, and the interests meant to be protected, in determining the reasonableness of the searches authorized in this context.

Proposed Section 7 Submissions

46. Animal Justice’s second interest in this litigation is grounded in the critical importance of ensuring that bodies who are charged with enforcing animal protection legislation can undertake that task effectively and in a manner that maintains public confidence.
47. Animal Justice’s proposed submissions in this regard relate to and expand upon the Applicant’s alternative submission with respect to section 7 that seeks recognition of a novel principle of fundamental justice relating to certain qualities that, Animal Justice would submit, should be considered prerequisites before an agency or organization may be delegated police and investigative powers.
48. Animal Justice proposes to submit that the protection of animals, like the protection of human persons, depends on the enforcement of regulatory and criminal law by public bodies that bear the hallmarks of transparency, integrity and accountability. This is critically important in order to ensure the meaningful enforcement of animal protection legislation, which is at the heart of Animal Justice’s mandate.
49. These common features of law enforcement bodies are necessary to ensure not only that persons subject to laws are treated fairly, but also to ensure that the laws themselves are adequately enforced and their enforcement subject to public scrutiny.

²² See e.g. *R. v. Grant*, [1993] 3 S.C.R. 223; *R. v. Feeney*, [1997] 2 S.C.R. 13.

50. Put another way, the fundamental assumptions of the legal system are compromised to the extent that laws on the books are not adequately or properly enforced, which undermines both the clear purposes of the legislation (to protect animals), and the public confidence in the integrity of law enforcement functions.
51. In light of those considerations, Animal Justice proposes to provide submissions on the following legal principles:
- a. How the courts determine to recognize “new” principles of fundamental justice according to the Supreme Court of Canada’s jurisprudence;
 - b. How this analysis involves identifying legal principles that are both certain and deeply ingrained in broader societal conceptions of justice; and
 - c. How the principle that enforcement bodies must bear the hallmarks of public transparency, integrity, and accountability, has sufficient certainty and permanence to be characterized as a principle of fundamental justice.
52. The principles of fundamental justice take into account principles that are “vital or fundamental to our societal notion of justice”;²³ they encapsulate the “shared assumptions upon which our system of justice is grounded” and “the basic norms for how the state deals with its citizens”.²⁴
53. This analysis necessarily takes into account not only the interests of the accused, but also the broader public importance of ensuring that law enforcement bodies are institutionally capable of adequately and meaningfully fulfilling their mandates.
54. Put simply, Animal Justice proposes to submit that in order to maintain the integrity of and public confidence in the administration of justice, the state must ensure that the bodies tasked with enforcing regulatory and criminal laws are subject to the safeguards

²³ *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at p. 590; *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 SCR 76, 2004 SCC 4 at para 7; *R. v. Malmo-Levine*; *R. v. Caine*, [2003] 3 SCR 571, 2003 SCC 74 at para 112.

²⁴ *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 SCR 248, 2004 SCC 42 at para 68; *Canadian Foundation for Children, supra* at para 8.

traditionally required of public bodies, namely, that they bear the hallmarks of accountability, transparency, and integrity.

55. In this context, there is a genuine concern that bodies like the OSPCA do not bear the hallmarks of accountability, transparency, and integrity, which constitute a fundamental assumption upon which our justice system is based, because:

- a. The legal regime governing the OSPCA is substantially less transparent than with respect to other law enforcement agencies. For instance, the OSPCA is not subject to freedom of information legislation, which leaves animal protection organizations, as well the general public, with no way to obtain data that assists in evaluating the effectiveness of animal cruelty investigations and prosecutions in Ontario, thereby undermining public confidence in meaningful and effective enforcement.²⁵
- b. The OSPCA is substantially less accountable than public policing agencies. For instance, it is not subject to police accountability legislation that applies to police officers, despite OSPCA inspectors and agents being vested with the authority of police officers when exercising their duties with respect to animals. Moreover, unlike other law enforcement bodies which are under the control of politically accountable officials, the OSPCA is self-governing; OSPCA bylaws are created by the OSPCA itself, and are not even required to be publicly available.
- c. The OSPCA's funding model puts it in a conflict of interest, which undermines the integrity and public confidence in its law enforcement functions. The OSPCA is a private charity and relies largely on donations from the public to cover its operating expenses. Since 2013, the OSPCA has received \$5.5 million in annual funding from the provincial government, but this funding does not cover the OSPCA's budget for cruelty investigations. The OSPCA covers the shortfall through fundraising efforts, i.e., soliciting donations from the public, including

²⁵ See, e.g., Transcript of Cross-Examination of Connie Mallory on September 7, 2017, pp. 73-81; Application Record of the Attorney General of Ontario, Volume III, pp. 114-122.

animal owners—the very individuals it is charged with monitoring and investigating.²⁶

56. The real or perceived failure or inability to meaningfully enforce animal protection legislation caused by the delegation of police and investigative powers to the OSCPA, as well as the manner in which the OSCPA is structured and funded, should be taken into account in determining whether the delegation of law enforcement authority to the OSCPA is consistent with the principle of fundamental justice that law enforcement bodies must bear the hallmarks of accountability, transparency, and integrity.

PART V – ORDER REQUESTED


57. Animal Justice respectfully requests an order granting it leave to intervene as a friend of the Court in this Application, on the following terms:
- a. Animal Justice shall serve and file a factum not exceeding 20 pages (or such other length as this Honourable Court may permit) by the deadline set by this Court or within 10 days of this motion being granted;
 - b. Animal Justice shall be permitted to make oral submissions at the hearing of the within Application of not more than 30 minutes (or such other duration as this Honourable Court may permit);
 - c. Animal Justice shall not file any additional evidence;
 - d. Animal Justice shall not be entitled to, nor be subject to, any costs of this motion, or the Application; and

²⁶ Transcript of Cross-Examination of Connie Mallory on September 7, 2017, p. 16; Application Record of the Attorney General of Ontario, Volume III, p. 57.

- e. Such further or other terms and conditions and this Honourable Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of Vancouver this 13th day of April, 2018



Arden Beddoes (62108W) and
Benjamin Oliphant (66956K)

Counsel for the Proposed Intervener, Animal Justice

SCHEDULE “A” - AUTHORITIES

Application under s. 83.28 of the Criminal Code (Re), [2004] 2 SCR 248, 2004 SCC 42 at para 68; *Canadian Foundation for Children*

Bedford v. Canada (Attorney General), 2009 ONCA 669

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 SCR 76, 2004 SCC 4

Goodwin v. British Columbia (Superintendent of Motor Vehicles), [2015] 3 SCR 250, 2015 SCC 46

Paul M. Perell and John W. Morden, *The Law of Civil Procedure in Ontario, 2nd Ed.* (Lexis Nexis: online) c. 4, s. 21(c)

Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada (1990), 74 OR (2d) 164 (CA)

R. v. Malmo-Levine; R. v. Caine, [2003] 3 SCR 571, 2003 SCC 74

R. v. Grant, [1993] 3 S.C.R. 223

R. v. Feeney, [1997] 2 S.C.R. 13

R. v. Munroe, 2010 ONCJ 226

R. v. Jacques, [1996] 3 SCR 312

R. v. Buhay, 2003 SCC 30, [2003] 1 S.C.R. 631

R. v. Edwards, [1996] 1 S.C.R. 128

R. v. McKinlay Transport Ltd., [1990] 1 S.C.R. 627

R. v. Rodgers, [2006] 1 SCR 554, 2006 SCC 15

R. v. Monney, [1999] 1 SCR 652

R. v. Wholesale Travel Group Inc., [1991] 3 S.C.R. 154, [1991] S.C.J. No.

R. v. McKinlay Transport Ltd., [1990] 1 S.C.R. 627, [1990] S.C.J. No. 25

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519

Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission), [1990] 1 S.C.R. 425, [1990] S.C.J. No. 23

SCHEDULE “B” – STATUTES and REGULATIONS

Rules of Civil Procedure, RRO 1990, Reg. 194

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
PERTH, ONTARIO

**FACTUM OF THE MOVING PARTY;
MOTION FOR LEAVE TO INTERVENE**

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ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
PERTH, ONTARIO

MOTION RECORD OF THE MOVING PARTY /
PROPOSED INTERVENER, ANIMAL JUSTICE

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